Comparative Trends in the Concept of Waqf: Lessons for Indian Waqf Jurisprudence

INTRODUCTION:

The term 'Waqf' or 'Wakf has nowhere mentioned explicitly in the 'Holy Qur'an' This raises an obvious question, how did this institution acquire such prominence and significance in Islam? The reason lies in inspiring and transformative nature of this institution itself. Developed merely by the two or three authentic prophetic traditions, the institution of Waqf gradually became one of the largest charitable institutions of the world.

In this blog, I will try to answer the important question, what makes these comparative standard distinct from each other? What factors have contributed to emergence of these distinct yet unique and vibrant notions? The blog presents the perspective on definition of the waqf as provided under the statutory enactment of the different countries, including Indonesia, Malaysia, Singapore, Turkey and Saudi Arabia. It concludes suggesting the lesson Indian waqf legislature may draw from these comparative trends.

LITERAL MEANING OF 'WAQF':

The term 'Waqf' in Arabic language means to hold, confinement or prohibition of any use or disposition of the property outside that specified objective. The term 'Waqf' is known by different names in north and western Africa i.e. 'Habs' (singular) or 'Ahbs' (plural).[i] Although, there is the use of the word 'waqf' even before the advent of Islam in Arabia, but with the mercy of Islam it got shaped into well organized and recognized institution.

However, there is hardly any consensus when it comes to defining the term 'Waqf', different juristic schools, countries and independent Mujtahids (Islamic Scholars) have their own notion based on their own arguments in narrating the definition, nature, essentials and management of this holy institutions.[ii]

[illegible] the term waqf was applied to non-perishable property (simply permanent in [illegible]se benefit can be utilized without actually explicitly consuming it. Therefore, these property are majorly concerned with either land or benefit derived from land, like building. However, all jurists with no exception approves temporality of the 'waqf' if it originated from the nature of the asset made into the waqf. Therefore, temporary assets like Books, Agricultural machinery, cattle's and cash money can also dedicated to waqf in certain instances.[iii]

PERCEPTION OF WAQF/WAKF IN INDIA:

According to Waqf Act, 1995 ("1995 Act") It means "*the permanent dedication by any person, of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable.*"

Now, let's break the definitions into simple essentials, Following are the important constituent of the definition:

1. **Perpetuity:** Any dedication to Waqf must be permanent, i.e. once the property is dedicated to a waqf, it remains in the same status until the day of Judgment.
2. **Person can belong to any Faith:** Earlier, under Mussalman Wakf Validating Act, 1913 ("MWVA Act"), the dedication to waqf shall be made by a person professing Islam But, 1995 Act repealed these provisions allowing any individual dedicating his/her asset to waqf, can belong to any religion or faith, he/she need not necessarily be a Muslim. However, recent amendment in 1995 Act through waqf Amendment Act, 2025 ("2025 Act") mandates that any person dedicating an asset to waqf must be following the same faith from last five years.
3. **Movable or Immovable Property:** There is no reference of nature of the property, whether movable or immovable leading to ambiguity under MWVA Act. However, 1995 Act explicitly clarified that the dedicated property can either be movable or immovable, means it can be land , building or any permanent asset and books, cash or any temporal assets.
4. **Religious or Charitable purposes:** The assets dedicated to the waqf can either be utilized by fulfilling religious obligation and promotion like construction of Mosque, Shrine etc. or can be utilized productively for the philanthropic purposes, like establishments of schools, hospitals etc.

CHANGING DIMENSIONS OF WAQF IN INDONESIA AND MALAYSIA:

Article 1(1) of Act No. 41 of 2004 (Indonesia) ("2004 Act") 'Waqf' means a *f the waqif to separate and/or hand over some of his property to be exploited* *indefinitely or for a certain period according to his intention for worship and/or general welfare, and in accordance to Shariah."*

From the definition above, following essential can be derived:

I) **Transfer of the Property:** The waqif shall separate some of his property to be utilized, this transfer can either be of movable or immovable property.

II) Transfer can either permanent or on temporary basis: The property dedicated by the waqif can be exploited indefinitely or for certain fixed interval.

III) Intention of Waqif can be religious or Charitable: The 'Waqf' can be utilized by dedicating for pious purposes like constructing mosque or for philanthropic purposes i.e. for the larger interest of the society.

NOTE: The 2004 Act is the only waqf governing statute in the world, that explicitly recognizes temporary waqf besides the perpetual and inalienable nature of this institutions. [iv]

Moreover, the regulation of the 'waqf' in Malaysia is decentralized, means different state have their unique and distinct statutes for governing the institution of waqf. The most progressive state in this venture of modernizing the law of waqf is state of Selangor in Malaysia.

Section 2 of Waqf Enactment (State of Selangor), 2015 ("2015 Enactment") while defining the 'property' dedicated to the waqf is expanded to include properties, expertise and services. *The interpretation of property has also been further widened to include;*

i. ...intellectual property;

ii. Any benefit or interest in any movable property, immovable property or intellectual property;

iii. Any right, interest, title or otherwise in connection with movable property, immovable property or intellectual property; and

iv. Expertise and services having value in accordance with Hukum Syarak

The definition provided by 2015 Enactment presents a unique example for the world's waqf jurisprudence by making the definition of the waqf not merely inclusive, but more importantly definition satisfying the needs of contemporary society and larger public interest. Moreover, this alteration was made in this enactment after Scholars agreed that this expansion is beneficial, as the Islamic legal system recognises services and expertise as property.[v]

Reforms made under 2015 Enactment like giving 'intellectual properties' such as Copyrights, trademarks etc. the status of the waqf property after being dedicated by the concerned waqif. This demonstrate changing legal dynamics of this institution, and the immediate need for reforms in this institutions according to the changing needs of society.

S.NO	Comparative Country:	Definition of Waqf
1.	India. WAQF ACT, 1995:	permanent dedication by any person of any movable or immovable property for any purpose recognised by Muslim Law as pious, religious or charitable.
2.	Indonesia, Act No. 41 of 2004	waqif to separate and/or hand over some of his property to be exploited indefinitely or for a certain period according to his intention for worship and/or general welfare,
3.	Selangor, Malaysia Waqf Enactment (State of Selangor),2015	Expanded to include: • Intellectual Property. • Benefit or interest in an immovable property. • Service & expertise as property.
4.	Singapore: Administration of muslin Law Act, 1966	permanent dedication by a Muslim individual or the Majlis of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable;
5.	Turkey: Foundational Law, 2008	Allocation of movable and immovable properties of one's own accord and request by excluding from his personal landownership, in order to enable them to be used under the conditions and services, determined by himself for the purpose of charity and good, forever.
6.	Saudi Arabia Guidebook for Endower	retention of a valuable asset and the dedication of its benefit or revenue for a charitable and/or familial cause

{Table 1.1 (Status of different Countries defining the waqf under their respective statutes.}

ION TO INDIA-THE WAY AHEAD:

From the above discussed comparative trends on the conceptual definition of the term 'waqf', the jurisprudence of waqf in India should consider the following reforms:

1. The law governing the waqf should allow the individual of all religions and faiths to dedicate their property to waqf and utilize it according to their own will, unless contradicting with Islamic principles.
2. The authorities should find an alternative to waqf by user, rather than complete abolition of it, they must examine those properties and separate real waqf properties from government owned or encroached properties.
3. The Parliament, while amending the waqf law through 2025 Act should enhance the scope of the term waqf to not merely movable or immovable properties but also intellectual properties and benefit arising out of those properties, to satisfy the need of the contemporary progressive society.

CONCLUSION:

The journey of Institution of Islamic waqf which merely starts with the donation of some piece of orchards to becoming an institution, which owns the largest amount of land area as an institution in the world is not hidden from anyone. Moreover, in India, which is not even the Muslim-majority country, the waqf property is third in number among the institutions owing the largest amount of the property. However the 2025 Act seems to be enacted with malice intention, has restricted the definition of waqf by making only individual following Islamic faith to donate the property to Waqf, repealing waqf by user and even limiting waqf al-aulad is against the spirit of Article 25 and 26 of the Indian Constitution. Therefore, the authorities should re-examine the amendment with the intention, so as to best suit the real purpose of origin of this Holy institution.

---

[i] Monzer Kahf, Waqf: A Quick Overview, INT'L INST. OF ISLAMIC BUS. & FIN. (IIIBF), https://www.iiibf.org/papers/english/WAQF_A_QUICK_OVERVIEW.pdf (last visited Jan. 15, 2026).

[ii] MULLA, *PRINCIPLES OF MOHAMMEDAN LAW* (23d ed. 2018) (LexisNexis).

[iii] Monzer Kahf, *Towards the Revival of Awqaf: A Few Fiqhi Issues to Reconsider* (Paper presented at the Harvard Forum on Islamic Finance and Economics, Oct. 1, 1999), **https://monzer.kahf.com/papers/english/FIQHI_ISSUES_FOR_REVIVAL_OF_waqf.pdf** (last visited Jan. 15, 2026).

[iv] Muchamad Choirun Nizar, *The Indonesian Waqf Law No. 41 Year 2004 from Ushul Fiqh Perspective*, ch. 17 (Sultan Agung Islamic Univ. (UNISSULA), Semarang).

[v] Zati Ilham Abdul Manaf, Sharifah Zubaidah Syed Abdul Kader & Nor Asiah Mohamad, Examining the Evolution of Waqf Regulations in Selangor: An Analysis of the Governance Framework and Transformative Approach, 27(2) *INT'L ISLAMIC U. MALAYSIA L.J.* 337, 337–65 (2019).