



The waqf: a global financial instrument

Mara Bisi^{1*}, Wisam Zreg²

¹ University of Turin, Department of Management “*Valter Cantino*”
Corso Unione Sovietica 218bis, Italy
Corresponding author: mara.bisi@unito.it

² University of Turin, Department of Law
Lungo Dora Siena 100, Italy

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Abstract

The article investigates waqf as a classical Islamic institution that has evolved from a charitable endowment into a versatile contemporary legal and financial tool. It first reconstructs the terminological, historical, and structural features of waqf, clarifying its links with inheritance law, its main types (charitable, family, and mixed), and the roles of actors such as the waqif and the mutawalli. The analysis then adopts a comparative-law perspective to explore the relationship between waqf and the common law trust. It examines both functional and structural analogies – notably asset segregation, perpetuity, and the pursuit of public benefit – and reports on scholarly debates about possible historical connections between the two devices, while refraining from any deterministic genealogy. These similarities help explain the contemporary mobility and partial interchangeability of waqf and trust, as demonstrated by the growing reliance on trust instruments in jurisdictions where waqf regulation applies, including dynamic commercial environments such as Dubai. The core of the contribution focuses on India as a legal “laboratory” where common law, Islamic law, and Hindu law intersect. The article traces the historical development of waqf in the subcontinent, from its medieval implantation and colonial reconfiguration to the present framework shaped by the Waqf Act 1995, the Income Tax Act 1961 and the recent Waqf (Amendment) Act 2025. Attention is paid to governance arrangements (Waqf Boards and related institutions), fiscal treatment, and ongoing constitutional challenges to the 2025 reform. By combining historical and functional comparisons, the article demonstrates how waqf operates today as a complex, contested, yet promising instrument of ethical and sustainable finance, capable of supporting social welfare and poverty reduction while raising delicate questions about religious autonomy, minority protection, and the balance between state control and community self-government.

Keywords: Waqf, Trust, India, Ethical and Sustainable Finance



1. Introduction

One of the most significant economic characteristics of the Islamic world before the colonial period was the welfare mechanism, which, at no cost to the authorities, was constituted by the waqf instrument. In addition to its welfare function, the waqf instrument aimed to reduce social differences (Çizakça, 1998).

If, on the one hand, some authors speak of the decline of the waqf, it should, however, be observed that the Islamic majority States continue to consider the waqf an important institution to be preserved, so much so that in some cases it is also included in constitutional provisions, as in Jordan and Iraq. These countries regulate the methods of control and management of the waqf, one of the thorniest issues of contemporary times.

In addition to its historical dimension, the waqf, given its similarity to the trust instrument, represents a versatile legal institution of ethical finance, a helpful tool to reduce poverty and social inequity.

The article will first analyse the historical, definitional, and structural dimensions of the waqf, and subsequently explore any connections with the trust instrument according to the views of different authors. Eventually, it will outline the characteristics of the institution in India, a multicultural, multi-confessional state, with an essential Muslim minority, whose statute has always been the subject of heated political, legal and sociological debates (just think of the highly divisive topic of codification)¹.

The methodology employed in this study is that of comparative law. The choice of a comparative framework responds to the nature of the research subject itself: the waqf is an institution that cannot be fully understood within the boundaries of a single legal system. Its development has always been conditioned by interaction with different legal traditions—Islamic, Hindu, and common law—and its present-day applications extend far beyond the societies in which it first emerged. A comparative approach, therefore, allows us to situate the waqf within a broader constellation of legal institutions, highlight functional analogies and divergences, and examine the transformations it has undergone in response to shifting social, political, and economic contexts.

At the core of the analysis lies the method of taking institutions, describing their essential characteristics, and then examining them in relation to both their historical origins and contemporary functions. The inquiry begins with the waqf in its classical Islamic formulation, which is analysed not merely as a religious or charitable endowment but as a legal mechanism for the segregation of property with a long-lasting purpose. This definitional step is crucial: comparative law requires that institutions be clearly delineated before any attempt is made to draw parallels or contrasts with others. The waqf is then often juxtaposed with the trust, a typical product of the common law tradition, which has likewise been conceived as an instrument for asset segregation and management, benefiting designated beneficiaries. By focusing on these two institutions, the methodology enables us to place the waqf within the broader global discourse on endowments, foundations, and fiduciary mechanisms.

The comparative approach employed here is both historical and functional. Historical analysis is indispensable to understand how the waqf has evolved from its earliest formulations in the Arab-Islamic world to its present-day applications in diverse jurisdictions. For this reason, particular attention is devoted to the Indian subcontinent, where the waqf was transplanted during the Islamic conquest and later subjected to the profound influences of colonial administration and post-independence statutory reforms. The Indian experience represents a legal laboratory in which the waqf has been systematically compared to the trust, both in legislative provisions and in judicial interpretations. The Mussalman Waqf (Validating) Act of 1913, the Wakf Acts of 1954 and 1995, and the Income Tax Act of 1961 all illustrate how Indian law has progressively assimilated the waqf into the broader category of charitable and religious endowments, drawing explicit analogies with private and public trusts (we will

¹ Here follows a brief glossary of the main terms referring to the subject:

Waqf al-Khayri: charitable or public waqf, where the endowed property is dedicated to public welfare and charitable purposes, such as supporting schools, hospitals, or other community services. The proceeds from a **waqf al-khayri** are used to support the community or societal good, and the benefit extends to a wider group of people rather than a specific family or individual.

Waqf al-Ahli: family or private waqf, where the endowment is dedicated to the benefit of the founder's family members, descendants, or specific individuals. The revenues from a waqf al-ahli are generally used to benefit a specific group of people, usually the family or relatives of the person who established the waqf.

Mutawalli: the administrator or trustee of a waqf. This individual or entity is responsible for managing and overseeing the waqf property, ensuring that it is used in accordance with the founder's intentions, and that the proceeds are distributed appropriately.

Arkan: the essential components or pillars required for the establishment of a valid waqf. These generally include: the waqif (the founder, *infra*), the mawquf (the property or endowment), the muqtaf (the beneficiary), the mutawalli (the administrator, *supra*)

Waqif: the person who establishes the waqf by donating property, money, or assets for charitable or religious purposes.

Mawquf Qurba: waqf property that is dedicated specifically to seeking closeness to Allah (i.e., for religious purposes or acts of piety). The term "qurba" means "nearness" or "proximity," indicating that the donation or endowment is made with the intention of earning divine reward.



then analyze the impact of the new Waqf reform of 2025 on this topic). Examining this trajectory provides a concrete demonstration of how an institution of Islamic origin has been reshaped through interaction with a different legal culture.

The functional dimension of comparison complements the historical inquiry. Here, the analysis considers the purposes served by the waqf across time and space: the promotion of religious life, the financing of education and health services, the preservation of family wealth, and, more recently, its potential role as a vehicle for ethical and sustainable finance. By assessing how these functions have shifted in response to social needs and legal constraints, the study evaluates both the resilience of the waqf and the challenges it faces in adapting to modern financial and regulatory environments. At the same time, the trust is examined by many authors as a common law analogue that has similarly been used to manage property, pursue charitable purposes, and provide flexibility in inheritance planning. The comparison is not intended to suggest a direct derivation, but rather to highlight the convergences that make the waqf intelligible in global terms.

This methodological orientation entails several steps. First, the conceptual framework of the waqf is reconstructed through doctrinal sources, including fiqh literature and later statutory enactments. Second, the historical phases of its evolution are identified, with emphasis on moments of legal transplantation and adaptation, such as the colonial codifications and the recent constitutional debates in India. Third, the waqf is examined in its contemporary regulatory environment, with a focus on its institutional governance, fiscal treatment, and contested constitutional status. Finally, the institution is placed alongside the trust, and their similarities and differences are articulated to draw out the comparative insights that each sheds on the other.

The methodology is also normative in the sense that it considers not only how the waqf has functioned in the past, but also how it might function in the future. The comparative analysis is therefore attentive to difficulties—such as inefficiencies in management, risks of state overreach, or lack of transparency—as well as to potentialities, particularly in the realm of ethical and sustainable finance. By treating the waqf as a dynamic institution rather than a static relic, the research seeks to capture how it can continue to serve as a meaningful tool for social welfare and community development within modern legal systems. The choice of comparative law as a methodology is justified by the very hybridity of the waqf's legal trajectory. The institution originated in Islamic law, developed through centuries of practice across the Muslim world, and in India was explicitly assimilated to the logic of the trust. This cross-cultural evolution makes it an ideal subject for comparative inquiry. Moreover, the trust itself, though often viewed as a peculiarity of the common law, has found resonance in civil law jurisdictions, and some scholars argue that encounters with Islamic law may have influenced it. By setting the waqf and the trust in dialogue, the study participates in a broader conversation about the circulation of legal ideas and how institutions migrate, adapt, and transform across jurisdictions.

In sum, the methodology of this research is comparative in both its historical and functional dimensions. It begins with a careful delineation of the waqf, tracing its origins and development, situating its evolution within the Indian subcontinent, and examining its convergence with the trust as a global fiduciary institution. It then evaluates the present challenges and opportunities of the waqf as a legal instrument of ethical finance. This approach enables a nuanced understanding of how a traditional Islamic institution has endured and adapted across centuries and diverse legal systems, and how it may continue to evolve.

2. Terminological roots and origin of the *waqf*

Introduction

Before addressing the subject of the waqf institution's origin and its subsequent evolution in the Arab-Islamic world, we need to focus on some definitive issues. Several scholars identify the Arabic word from which the term waqf derives with the verb waqafa, which is often translated as “to stop or to hold” (Abbasi, 2012). Other scholars, however, selected both the terms waqafa and habasa, which would express the same concept but are not used in the same way, as precursors of the waqf (D'Emilia, 1938).

Scholars therefore questioned, based on the root of the word, what could be a valid definition of the institution of waqf: according to many of them, the meaning of the institution of waqf and, consequently, its definition have changed during the years, also due to the evolving needs underlying its creation with respect to the early days of the institute's formation. According to Kuran, for example, the term waqf is associated with the block of asset expropriation and the block of changes in asset management in accordance with the founder's directions (Kuran, 2001).

Historical Background and Legal Sources

Having briefly clarified the terminological issue, we should analyse the historical background of the institute. This aspect of Islamic law has not been regularly addressed for several reasons, the most significant of which is the scarcity of reliable sources on the matter during the early phase of Islam (Morgan 2001; Cahen 2020). One of the major problems concerning the sources of the waqf, or rather regarding the origin of the institution, is the absence of comments on the matter in the collections of



ḥadīth (the sayings, facts and unsaid of the prophet) or fiqh. Indeed, we find the waqf discipline in the secondary sources of Islamic law. Nevertheless, this analysis is crucial for understanding the needs that drove its creation and the functioning of the segregation mechanism.

We do not find a specific reference to the waqf institution in the Koran. However, it contains a general exhortation for Muslims to donate to charity. Without any particular provision, it can be assumed that, according to the Koran, a donation to charity is made through the transfer of absolute ownership title to the beneficiary, who is consequently given the power to dispose of the donated goods (Syed, 2006).

On the other hand, some events testify to the existence of an ancient form of asset segregation for charitable purposes. Kuran, in his initial considerations regarding the institute, defined the ancient waqf, maintaining that in 750 AD, it represented a charitable instrument to support or donate public goods (Kuran, 2001). According to Schacht's reconstruction, however, one of the original waqf's functions was to contribute to the assets of the wealthiest individuals to support the war effort and allow the expansion of the Islamic world.

In analysing the sources of the waqf discipline, we find various approaches and provisions. This aspect is also since secondary sources refer to and belong to very different socio-cultural contexts (Cahen, 2020).

The authors of the first collections on the subject attempted to seek in the practice of the prophet and his successors what the institution preceding the waqf was based on, and what it was created for. However, this form of research may not be reliable (Cahen, 2020).

Classical jurists considered the waqf as a perpetual and inalienable endowment. However, it appears that this concept already represents an evolution of the institution. In Malik's time, the most common form of *habs* was a right for life, similar to the discipline of usufruct: in this case, the property could revert to the settlor or his heirs in the event of the beneficiaries' death. However, it was Malik himself who questioned this form of institution by proposing instead that ownership of the assets could only return to the heirs of the settlor, who would not acquire ownership but rather a form of usufruct; according to Oberauer, this idea is the basis for the creation of the waqf figure (Oberauer, 2013).

According to Kuran, the waqf would have had predecessors in the Persian, Egyptian, Jewish, Byzantine, and Roman traditions; however, its structure sufficiently differed from the others, making it appear as a purely Islamic institution. Indeed, he claims that its distinct identity has become a source of 'cross-civilizational emulation'.

The first Islamic waqfs were likely created immediately after the birth of Islam; however, the term waqf already existed and served to indicate the conquered lands that were permanently set aside for the benefit of the Muslim community (Kuran, 2001). In any case, scholars agree in believing that waqf acts began to be recorded and known after the first two centuries of the Hegira and found widespread diffusion around the 12th century. In the last centuries of the Middle Ages in Europe, we find many documents establishing waqfs: this fact allowed scholars to access fundamental information on the instrument and on the economic and social context surrounding the waqf during that period.

The lack of documents in the previous period mainly derives from the fact that a waqf could also be established orally and from the fact that the fiqh works were composed in the middle of the 3rd century AD and considered reconstructions by scholars of previous centuries (Cahen, 2020).

The first nature of the waqf

Other interesting questions on the ancient waqf institution arise. One of them regards its public or private nature. The prophet himself would set up several foundations for his lieutenants and family, as well as for all those who were in the path of God; after his death, his family claimed his assets, but most of the Caliphs, including 'Omar ibn al-Khaṭṭāb, always considered them belonging to the Islamic community (Cahen, 2020).

Another question concerns the relationship between the assets of the foundation and the settlor's family. Often, relatives were included as beneficiaries of the endowment, together with the poor or the pious purpose of segregated assets, and had some rights on the surplus income produced by the waqf; in other cases, the family was instead directly indicated as the sole beneficiary and the charitable purpose was only remote and, in any case, subordinated to the family. Eventually, there was the case of a family not indicated as the beneficiary of the provision: in this instance, they had the right to support themselves with the foundation's income (Cahen, 2020).

Another issue concerns the type of property that can be transferred to waqfs. Kozłowski emphasises that in the early days, there was perhaps greater elasticity regarding the segregated assets, as they could also include money, not just land. The veto on the segregation of money was after the ancient institute. However, it is widely believed that, since the early Islamic centuries, the waqf has served as a means for the preservation of wealth (Kozłowski, 1985).

The waqf, precisely because of its characteristics, represented an essential legal instrument for the spread of Islam itself, through the construction of places of worship, schools, hospitals and caravanserais, also allowing the accumulation of assets, even by women, a peculiarity less present in the so-called Western world, in the same period.



From a historical point of view, precisely because fixed assets had been created, both the colonial forces and the Arab national States attempted to de-immobilize waqf assets, on the one hand to limit the accumulation of assets in the hands of opposing elites, coming above all from the religious world, and, on the other hand, to allow a greater circulation of real estate wealth: just think that during the Ottoman Empire about a third of all productive lands were donated to waqfs (Kuran, 2001).

3. Different types of *waqf*

Introduction and basic notions

From a structural point of view, the waqf presents specific essential elements (arkan), such as the existence of a settlor (waqif), of an object (mawquf) and the qurba (pious purpose), understood in an extremely broad sense, since it includes both the provisions for the fulfillment of a religious duty, typically the construction of a mosque, or activities of a charitable nature or of a public utility nature, as well as the presence of beneficiaries, i.e. the subjects who are entitled to the enjoyment of the income of the property (manfac). It should be noted that the settlor freely designates these beneficiaries, provided that they remain within the framework of the "*pious purpose*" (Castro, 2017).

The specific types of waqf

There are two traditional types of the institute, to which a third must be added (Castro, 2017).

The first is the waqf al-khayri (charity), whose function consists of allowing the achievement of a pious purpose (qurba) through the immobilisation of assets.

The second type is the al-ahli (family) waqf, an institution developed for private purposes linked to one's family. This form of waqf is significant as it is connected to the Islamic inheritance system, involving the perpetual transmission of property through the acquisition of usufruct rights by descendants on the income of the assets (Hoexter, 1998). The family waqf also represents a valid alternative to inter vivos donation, as it allows to avoid the application of the Islamic discipline inherent to inheritance for a portion of the assets. These are, however, only usufruct rights conferred for all future generations, hypothetically forever (Powers, 1999).

The founder of a charitable waqf retained no rights or financial interests; on the contrary, in the case of a family waqf, the mutawalli, who manages the waqf assets, could also be the founder and obtain a large sum of money from the property as compensation for his activities. Usually, the mutawalli's income was considered a surplus compared to the expenses incurred for the waqf (Kuran, 2001).

In Islamic law, there was a form of weakness in the protection of property rights, so that the waqf also represented a different way to protect assets. However, even in the case of family waqf, it was expected that some community service would also be provided with the income from the waqf, to respect the charitable function of the institute (Kuran, 2001).

The third type of waqf is the one created by Abu Yusuf, the disciple of the founder of the Hanafi school of Islamic law. According to this jurist, no examination of the property in waqf is required by the settlor. The latter could attribute the loss of the property to himself, considering himself the first beneficiary, with the consequence that the charitable character of the institution is blurred. This third type of waqf, therefore, allows the constituent to have the availability of manfac, but not that of the property.

Another form of distinction depends on the beneficiaries of the pious foundation. As a result, there would be three distinct structures: the pious foundations (such as those created for mosques), which are entirely public in nature and have this special regime also because they provide the less well-off with the opportunity to access their own spiritual sphere. Then there are charitable institutions established for the less well-off, which can be of both public and private nature. Finally, there is the waqf of a family nature considered a form of perpetual trust for the benefit of the family and of a solely private nature as long as the lineage remains alive; only where there are no longer descendants of the family, this type of waqf becomes public in nature and is made available to the community, generally for people experiencing poverty (Morgan, 2001).

There are two additional legal forms in the category of public waqf: one involves donating a specific asset to the waqf, and the other consists of donating a particular amount of money to the waqf. At the same time, the second is a donation of income or assets for the benefit of a previously existing waqf. In the late Middle Ages, there was an expansion of waqfs of the second type, marked by the establishment of large foundations (Cahen, 2020).

The waqf also served various social purposes, including bringing water to the population and defending the country. Waqfs, therefore, can be broadly categorised into those for the benefit of all, those for private purposes (such as tax purposes), and others that are mixed or intended for specific groups of people.

Lastly, a further possible division of the types of waqf is based on the objective, or lack thereof, of promoting Islam. It should be noted that in the 18th century in Turkey, religious or charitable waqfs represented approximately 60% of existing waqfs; in fact, it was believed that the waqf served as a financing of Islam as a society (Kuran, 2001).



4. Purpose of the *waqf*

The strict connection between the waqf and inheritance law

It is now interesting to analyse the purpose of the *waqf*: both at the origin of its creation and as a means for its evolution. Many scholars attribute the reason behind the birth of the *waqf* to the inapplicability of the Koranic inheritance law for assets conferred in *waqf* (Syed, 2002).

Within the Koran, some rules pertain to the division of hereditary assets. These rules are particularly stringent and limit the testator's freedom to dispose of his own assets. In summary, there are two classes of heirs: those who have the right to a share of the inheritance and the agnates that are hierarchically ordered. Initially, they were conceived as harsh rules intended to preserve family well-being and prevent conflicts within the family (Powers, 1999).

In the case of estate succession, Islamic inheritance follows two phases: first, the sharers satisfy their rights to the inheritance, and then the closest agnate will obtain the residue. In any case, the subject close to death has no possibility of deciding according to these rules how to distribute his assets in the event of death (Powers, 1999).

In the first two centuries of the Hegira, there existed divisible inheritance, thus implying the subsequent fragmentation of capital. Consequently, one way or another, many attempted to circumvent these rules, also because there was no limit to inter vivos provisions (Powers, 1999). Having considered that, *'as part of the larger Islamic inheritance system, endowment law accorded Muslim proprietors a legal means to circumvent the effects of the Islamic inheritance rules by allocating usufruct rights to specific people in specified amounts and to regulate the transmission of those rights from one generation of beneficiaries to the next. Over time, the institution appears to have contributed to the physical integrity of both urban and rural property. Whether or not it also contributed to the economic viability of the local economy is a subject that deserves further investigation'* (Powers, 1999: 24).

Keep in mind that one of the hereditary possibilities at the time of the division of Islamic law was considered the partition by usufruct, through which all the heirs could enjoy the assets or profits of the hereditary estate in rotation. However, if one of the heirs insisted on requesting the ordinary division, he would have prevailed over any request for partition by usufruct (Standish Grove Grady, 1984).

Other purposes

However, *waqfs* also had other functions. Indeed, many of them were also created for the purpose of giving shelter to travellers, giving alms, granting loans and offering safekeeping of valuables (Hoexter, 1998).

Furthermore, a large percentage of *waqfs* under the Ottoman Empire were created due to the lack of suitable and effective means for the protection of property rights. The State was the owner of most of the land and often confiscated it; consequently, individuals perceived the need to preserve their family assets.

For other scholars, the *waqf* had the function of supporting the family. Sometimes, the scope of the operation was twofold: on the one hand, the *waqfs* were established to defend the family's heritage, and on the other, to exclude daughters from succession, as a form of defence of the patriarchal family (Cahen, 2020).

Usually, the settlors of *waqfs* received economic benefits themselves. Indeed, they were often the first beneficiaries and were rewarded with economic security of the assets, for example, the exemption from confiscation by the State, with the condition that they also used their funds for public purposes. Subsequently, there were increasing protections for *waqf* settlors, such as tax reductions. The first form of *waqf* was therefore probably a form of compromise between the wealthy, who could have some benefits, and at the same time also put their wealth at the service of the State (Kuran, 2001).

It should be underlined that the tradition of providing an exemption from State expropriation of the lands conferred in *waqf*, where a public purpose was conceived, has also created a negative vision of the sovereign who proceeded with the confiscation despite this. The *waqf*, in fact, conferred in a certain sense a good reputation and therefore provided status and authority (Kuran, 2001).

Among the various purposes for the creation of a *waqf*, there was also the idea of piety, in the sense of *pietas*, although it was not the first intent to move subjects to segregate their assets (Kuran, 2001).

A further reason for the creation of the *waqf* could have consisted in becoming the bearer of an ideology and helping it to grow, providing funds, especially for the political purposes of the settlor; for example, *waqfs* were often created for schools, but the founder expected the teachers who taught there to be faithful to them (Kuran, 2001).

The *waqf* also served to obscure assets, given the limited means in the world of Islam to protect assets against opportunistic taxation and expropriation (Kuran, 2001).

Similarly, the institute has been used for money laundering: for example, it could also be used to legitimise confiscations that did not comply with the canons of legality (Kuran, 2001).

The *waqf*, therefore, represents a versatile tool, which adapts to multiple legal needs, including contemporary ones, as new forms of revisiting the *waqf* in the financial sector have been developed, such as *waqf* crowdfunding, as a means of raising



funds to pursue goals of social integration and economic development (Miglietti, 2022) or the operation of the waqf in the context of the blockchain (Rashid, 2018) or attention to the environment (green waqf).

5. Legal structure

The difficulties of the legal discipline of waqf

The waqf in Islamic law can be regulated under three disciplines: successions, donations or charitable provisions. The choice between these three areas is linked to the Islamic school that deals with it (Abbasi, 2012).

Notwithstanding the applicable discipline, generally three requirements are considered basic for the waqf: irrevocability, perpetuity and inalienability. However, even in this field, not all schools share the same thoughts, especially regarding the essentiality of the requirement itself (Gaudiosi, 1988). For example, there is also a doctrinal opinion that considers the temporary nature of the waqf admissible (Abbasi, 2012).

In any case, it appears that its charitable nature should be deemed essential as well, as the waqf dedicated only to wealthy people is null and void.

Another issue addressed by scholars concerned the type of assets that could be contributed to the waqf.

The most interesting discussion centred on the possibility of establishing waqfs with sums of money. The cash waqf in Islamic doctrine has been recognised as a legitimate form of charitable endowment since the 8th century. However, a problem remained: the ban on levying interests. To overcome this problem, jurists of the time argued that waqf funds should be distributed based on *mudaraba*, a partnership between the *mutawalli* and the person who would borrow them (Syed, 2002; Jaiyeoba et al., 2015). Initially, in the Hanafi and Hanbalita schools, the waqf of consumable goods, including money, could not be considered valid as it could not last forever; however, in some parts of the Ottoman Empire, the practice of cash waqf was accepted, and perpetuity was achieved through the investment of money. This practice eventually became generally accepted (Abbasi, 2014). It can therefore be observed that, in any case, nowadays it is possible to establish a cash waqf. Many countries that make use of the Islamic waqf as a tool for sustainable finance allow cash waqfs; for instance, Malaysia (Fairuz Ramli, Shaari, Syamsul Bakhri, 2022; Ab Shatar W.N., Hanaysha J.R., Tahir P.R., 2021; Ali, Markom, 2020) and Singapore (Mahadi, 2015).

Regarding the legal structure of the waqf, it is noted that the term waqf refers to the foundation, the term waqif corresponds to the settlor, while the *mutawalli* is the person in charge of asset management.

Indeed, to administer the waqf, there must be a *mutawalli*, and the rules created by the settlor must specify how to appoint future managers. The *mutawalli* will always have to manage the assets in accordance with the provisions of the Waqf Act (Abbasi, 2014).

According to the Hanafi school, the settlor coincides with the figure of the *mutawalli* and upon his death, the successor will be appointed based on the testamentary provisions. In the absence of these provisions, a waqf of a public nature for indeterminate subjects could be managed by the State. In contrast, in the case of waqfs of a private nature, the related right is attributed in proportion to the beneficiaries' shares (Abbasi, 2012).

The role of *mutawalli* could also be attributed to a woman, but only with reference to the managerial component, separated from any religious duties. Such duties can only be performed by a man.

In any case, during the Umayyad caliphate, for example, the administration of the waqf was typically assigned to the *qadi* (Syed, 2006).

The *qadi* had the power to supervise the administration of waqf by the *mutawalli*. Between the years 661 and 750 AD, during the Umayyad dynasty, a specific governmental body was also responsible for regulating public waqfs (Abbasi, 2012).

In any case, the settlor's powers do not cease upon the establishment of the waqf. If the *qadi* is required to choose the *mutawalli*, preference will be given to the names indicated by the settlor's relatives or heirs.

However, it must be kept in mind that waqf management could prove to be challenging, since the *mutawalli* could also be incapable. This situation is well known and often leads to misuse and poor administration of the foundation (Pa. Diwan and Pe. Diwan, 1992).

Furthermore, as the supervision work carried out by the *qadis* could not be considered sufficient, this problem increased, especially in cases of waqfs of a religious nature where there were no beneficiaries interested in their management. Because of this, there were several attempts to move the management to a governmental level: a first example was the Ottoman Land Code of 1858, which created a Ministry of *Awqaf*, structured at an administrative level in all the provinces, but only covered the so-called untrue waqf (*waqf ghayr sahih*) made by the sultan or with his permission. In any case, even public control was not considered significant enough, and sometimes management was then entrusted to companies that enjoyed wide freedom (Syed, 2006).

From a formal point of view, to validly create a waqf, there must also be an unambiguous declaration to this purpose, even in oral form, made by the settlor. It should also be noted that so-called illusory - or simulated-waqfs may exist, which are such



only in appearance, but there has been no segregation of assets. In this case, if the deed of transfer of the assets is completely missing, then the illusory waqf will be considered ineffective. On the contrary, if this act exists, those who have an interest in asserting the simulation will have to provide proof (Pa. Diwan and Pe. Diwan, 1992; Singh, 1998).

Furthermore, it is noted that the different schools of thought do not agree on the nature of the possession of assets in waqf as a prerequisite for the validity of the waqf itself (Pa. Diwan and Pe. Diwan, 1992).

The ownership of waqf property

Another issue concerns the ownership of the assets transferred into the waqf. In the times of Abū Ḥanīfa, it was believed that the settlor of the waqf retained ownership of the assets in any case, and the waqf did not have a perpetual character. Abu Yusuf's vision, however, is the same that will later be espoused by the Hanafi school, which considers three essential elements of the waqf in reference to property: the property of the founder expires at the moment of the creation of the waqf, the ownership of the assets belong perpetually and irrevocably to God and the fruits of ownership are used for the good of humanity (Pa. Diwan and Pe. Diwan, 1992).

There is a hypothesis that the assets in the waqf can revert to the ownership of the settlor: this would occur when these assets are destroyed or become unusable for the purpose indicated in the waqf. On this point, Abū Yūsūf instead maintained that in any case the goods conferred must be intended for the community and, specifically, for people with low incomes (Abbasi, 2012).

These dilemmas regarding property ownership created additional management difficulties. Some authors then argued that ownership belonged to the beneficiaries; others, however, contended that the settlor did not retain ownership of the property rights on tied assets (Abbasi, 2012).

Furthermore, some scholars even believe that in some waqfs it is mixed, and this would lead to the possibility of State intervention on the matter. In theory, given that even the family waqf is for charitable purposes since the usufruct, once the possible beneficiaries have been exhausted, belongs to the less well-off, state intervention in the matter would always be justified. Initially, this control task was entrusted to the qadi. The same conclusions are also reached in the schools of thought that support God's ownership of the goods conferred in waqf (Abbasi, 2012). In this perspective, the qadi was entrusted with a supervisory function in managing waqf assets, as in the case where the waqf deed had not specified rules for appointing the mutawalli's successor (Gaudiosi, 1988).

6. Relations with the *trust*

Introduction

From a comparative point of view, it is necessary to observe how many people, of different legal traditions, have attempted to create instruments to achieve perpetual maintenance of property, to avoid its hereditary division. However, neither the English, having introduced the rule against perpetuities, nor the Romans left room for this specific possibility. The waqf has therefore remained, in a certain sense, a unique institution (Pa. Diwan and Pe. Diwan, 1992).

Nonetheless, there are structural similarities between the trust and the waqf, to the extent that some scholars have analysed the relations between the two institutions, suggesting that the trust may have descended from the Islamic tool. It is also essential to notice that the purposes of the two instruments are quite similar and respond to basic needs of the society; this concept is particularly revealed while analyzing the history of the trust as it appears from a common law point of view (Virgo, 2018, Keeton & Sheridan 1971, Holdsworth, 1923, Riddal, 2002, Clements & Abass, 2018). Specifically, the idea was to permit persons who did not have the opportunity to own certain goods (such as the friars of St. Francis) to achieve social purposes or to avoid the application of specific laws (inheritance or fiscal imposition).

The similarities, though, also concern the structure of the two institutes. It appears that the *waqif* renounces the property, which is to be held in perpetuity by the *mutawalli*, with a right of *usufruct* granted to the beneficiary. This type of structure clearly resembles that of the English uses and the trust, namely for what concerns the separation of legal and equitable ownership (Gaudiosi, 1988; Heffening, 1960).

We do not engage in that theoretical debate, though it could be interesting for the present purpose to report some opinions. According to Cattan, for example, the trust and the uses derive from the waqf: in fact, both institutions are aimed at binding certain assets, for a specific time or indefinitely, with simultaneous renunciation of the title of ownership, usufruct of the assets in favor of the beneficiaries who may not even be alive at the time of the establishment of the trust or waqf (Cattan in Syed, 2002).

There would then be a further analogy between the two institutions: perpetual bonds and blocked large capitals, sometimes going against growth and development. Consequently, these contributions, even those in waqf, were identified as 'dead hand', not dissimilar to the in mort main donations made in England, often in favour of the Church (Morgan, 2001).

In English law, the uses were introduced in the 13th century by the Franciscan friars for pious or charitable purposes (according to many scholars, although not all agree): the waqf would therefore, in any case, precede the creation of the uses. It has been



argued that there were many possible moments of contact between the English and the Arabs which may have led to the knowledge of the waqf by the English as an inspiration for the creation of the uses (*ex multis*, Van Thomas Wynen, 1949, Hang Wu, 2018, Gvelesiani, 2020, Abdullah, 2016, Rosen, 2000, Kuran, 2001). For example, one hypothesis connects the two institutes to the pilgrimages to the Holy Land of the 11th and 12th centuries, the Crusades, as well as the journey of Saint Francis to Egypt in 1219 (Catton in Syed, 2002).

The Merton College case

To delve further into the topic, the author who has dealt most with this matter is Monica Gaudiosi, who argued plainly that the trust originated from the waqf.

According to the author, in particular, there is a trace of this thesis in the constitution of Merton College, Oxford, dating back to 1264, whose constitution, the *Regula Mertonensis*, represents the basis of the modern system of British colleges. Specifically, Merton College was initially established as a charitable trust, defined as unincorporated, i.e., without legal personality, which, for this very reason, was very similar to a waqf (Gaudiosi, 1988).

The moment in which the trust was born, in the author's words, is also the exact moment in which there was greater contact between the world of Islam and the United Kingdom. For example, the Franciscan friars were very present in Western Asia, and Saint Francis himself was in Islamic territories between 1219 and 1220, without even mentioning the Crusades (Gaudiosi, 1988).

Religious orders, such as the Knights and Templars, proliferated during that period, with bases in Jerusalem (e.g., the Knights Templar) and London (the Order of the Templars). The forms of these orders seem, for example, to have been an inspiration for the development of the Inns of Court in England in the 14th century. It was, in fact, supported by scholars of the subject that the Inns of Court were created like the Islamic Colleges of Law, which included a building with a mosque and a separate inn (Gaudiosi, 1988).

The founder of Merton College was Walter de Merton, who held the office of Lord Chancellor of England on several occasions. He also had connections with the New Temple, which served as the English headquarters of the Knights Templar of Jerusalem. This very Temple later became one of the Inns of Court in England. Furthermore, Water De Merton had relations with Sicily, which was a significant vector of Islamic culture in Europe, having also been subjected to its domination (Gaudiosi, 1988).

The Statutes of Merton College of 1264 did not provide for a structure with legal personality, and the College acquired it only in 1274. The author therefore maintains that in the Statutes of 1264, the figure which was not conferred legal personality would have essentially consisted of a waqf. Indeed, it respected all the conditions as well as the formalities. This was also because the Statutes provided support in perpetuity for the students of the College, essentially serving as a contribution to charity, which also involved real estate. Many scholars of the time, the author reports, wondered exactly where Water De Merton had drawn inspiration from; according to Gaudiosi, it was precisely from the discipline of waqf in Islamic law (Gaudiosi, 1988).

However, some differences remain between the two disciplines: on the one hand, the waqf of a private nature, once its main purpose has been fulfilled, continues to exist with a charitable purpose, whereas this does not happen for the trust of a private nature. On the other hand, another incisive difference concerns the ownership of assets conferred in trust or waqf (Gaudiosi, 1988).

Furthermore, another difference is the existence of the rule against perpetuities in England, which aims to prevent the immobilisation of wealth. Again, the ownership of the property in the trust is in the hands of the trustee, while in the case of a waqf, the ownership is not with the mutawalli (Catton in Syed, 2002).

Finally, the contribution to the waqf would remain inalienable forever, and the beneficiaries would retain rights only towards the income, or fruits, of the assets, which are therefore given in usufruct to them; all this does not happen in the trust, as the property can be sold (Morgan, 2001). This, perhaps, is the most significant difference: the waqf is a static perpetuity (Abbasi, 2012, p. 26).

In any case, many authors maintain that nowadays, even in Arab countries where the waqf discipline is in force, a greater use of the trust instrument is actually emerging, especially in the United Arab Emirates (Morgan, 2001).

7. The waqf in India

The origins of the waqf in India

When it comes to the so-called Islamic world, India is not often considered because there is a tendency to overlap it with Arab majority countries. On the contrary, India is the third State in the world by number of Muslims, after Pakistan and Indonesia. India, from this perspective, represents a legal laboratory, also due to its essential legal pluralism and historical-cultural stratification. In this context, the history and application of the waqf must be considered in light of the intersection between common law, Hindu law, and Islamic law.



The instrument of waqf was introduced in India during the Islamic conquest. In the year 930, Muhammad Bin Qasim had temporarily occupied Sind in northwestern India (now Pakistan). Still, there is no evidence that waqfs were established at the time, although scholars tend to lean towards a possible use of the instrument for the construction of mosques (Syed, 2006).

The first recorded waqf in India appears to date back to the late 12th century, when it was created by Muhammad ibn Sam, one of the Ghurid sultans, who segregated the income of a single village to support a mosque in the city of Multan (Kozlowski, 1985).

During their reign, Islamic rulers had established waqfs not only for the creation and maintenance of places of worship, but also for the support of educational institutions. However, in 1828, the British abolished the system and took possession of all the lands and revenues of the waqfs, which were used to sponsor English and Christian education in schools (Syed, 2006).

The waqf under British colonialism

When the English subsequently arrived on Indian territory, the first objective of the colonisers was to clarify the ownership and provenance of all the lands in the country, starting with Bengal. One of the first implemented operations aimed at establishing a tax on land ownership, even if this attempt did not have much success. Subsequently, the English sought to establish a permanent settlement, appointing a person responsible for collecting land taxes. To this end, the title of owners of the lands that formed his estate was entrusted to the zamindars (literally '*he who holds the land*') (Kozlowski, 1985).

The Privy Council had initially also denied the validity of the waqf. It was only in 1913, with the enactment of the Mussalman Waqf (Validating) Act, that the possibility of establishing a waqf with the contribution of any property was officially guaranteed (Syed, 2002).

The British controlled the waqfs until 1863, when the Secretary of State in England decided to issue the Religious Endowments Act. This act repealed the previous provisions on waqf management and established local committees to oversee the management of waqf properties. The waqf management problem was further exacerbated after the abolition of the qadi system in 1864 (Syed, 2006).

Later, in 1923, the Mussalman Waqf Act was enacted. It required the mutawalli to provide the courts with all information regarding the management of the waqf, including the accounting records. The Courts could then analyse these documents, but with little power to intervene, as they could only issue a fine if the accounting records were not kept (Syed, 2006).

There were then isolated experiments in Bengal (1934), Delhi (1943) and Uttar Pradesh (1936) aimed at entrusting control over management to institutionalized subjects and, similarly, in Bombay in 1935 a new amendment act was issued of the Mussalman waqf Act of 1923 (called Mussalman Waqf – Bombay Amendment – Act of 1935) through which special District Waqf Committees were established (Syed, 2006).

The waqf in contemporary India

The management of waqfs in India has always been highly complex, although this instrument is used and forms part of a broader collection of charitable endowments that can be established in the subcontinent. A contemporary wave of thought is keen on regrouping these different instruments under the general category of public trusts (Shah, 1964). Within this category fall many other tools, such as the waqf, an institute that aims to achieve a public and charitable purpose.

Although this was surely within the institute's definition, it is equally clear that its functions are varied and can serve multiple purposes. Nonetheless, it is essential to remember that there is an ultimate charitable purpose that renders the instrument more suitable as a tool for sustainable finance.

Even so, the difficulties encountered in managing the institute in contemporary India were essentially the same for all public trusts, namely, controlling asset management when there are no identifiable beneficiaries.

For the purposes of controlling waqfs in India, several governmental waqf institutions were introduced with the Waqf Act of 1995 for the supervision of waqf management. They are: the Waqf Boards located in each state and each Union Territory, a Chief Executive Officer, appointed by the State Government after consulting the State Waqf Board, State Government, the Central Government, the Central Waqf Council and the Waqf Section of the Government of India, which have a political direction function with regards to waqfs (Syed, 2006).

Furthermore, regarding the regulation of waqfs, the Indian Government enacted the Income Tax Act of 1961, which established that public and charitable waqfs are exempt from income tax, basing this provision on a comparison with the trust instrument (Syed, 2006).

We also need to highlight that the Indian waqf management system is decentralised and characterised by poor transparency, with mechanisms of corruption and a lack of community participation within the institutions responsible for controlling waqfs (Owais, Abdul Manaf, 2023).

Furthermore, the Indian Islamic finance system remains underdeveloped, limiting the full potential of waqf in combating poverty and inequality. It is, however, essential to remember that India proposed a model based on cash waqfs for poverty reduction, which is a significant concern for many Muslim communities in the subcontinent (Owais, Qutaiba, 2023).



The most recent reform, the Waqf (Amendment) Act, 2025, introduces structural innovations that have immediately been challenged before the Supreme Court through numerous constitutional petitions. Among the most debated provisions is the abolition of the so-called waqf by user, which can no longer be created without a written deed, together with the new requirement that the founder of a waqf must have been a Muslim for at least five years, a condition perceived as discriminatory. The Act also excludes properties belonging to scheduled tribes from being transferred into waqf, while at the same time reforming the composition of Waqf Boards to permit the appointment of non-Muslim members, raising the question of the possible consequence that the Boards may even have a non-Muslim majority. Furthermore, the application of the Limitation Act of 1963 and of the doctrine of adverse possession to waqf properties undermines the traditional principle of “once a waqf, always a waqf.” Taken together, these measures are widely viewed within the Muslim community as a serious interference with religious autonomy and as reforms that weaken the distinctive Islamic character of the waqf. The pending judicial review will therefore be decisive in determining whether the reform can withstand constitutional scrutiny, considering the principles of equality, non-discrimination, freedom of religion, and property protection, as well as more broadly in clarifying the balance between minority rights and state powers within India’s pluralistic constitutional order.

8. Last thoughts. Conclusions

In the pre-modern period, the Islamic welfare system was substantially based on the waqf mechanism, whereby specific key sectors were supported by this institution, including education, health, water supply, food assistance for the poor, the maintenance of mosques, the salaries of imams, and the support of orphans. There are many problems associated with the waqf, including the institution’s restrictive regulations and equally problematic management. Nevertheless, it remains a vital and flexible tool, and potentially a harbinger of solutions to some of the major challenges of modernity.

In an era attentive to the value dimension of the economy and finance, it should be remembered that in the juridical construction of the waqf, its ethical substratum clearly emerges, since, as we have seen, the provisions in favour of charity, as well as public utility purposes, are included. The waqf, despite its ancient lineage and some characteristics that make it rigid, at least compared to the trust, is experiencing a period of revitalisation, with original experiments such as waqf crowdfunding or cash waqf.

Precisely because it is an instrument of ethical finance, the waqf lends itself to carrying out support functions for impoverished sections of the population, especially when public decision-makers opt for courageous policies, as in the case of India.

Despite the debate within Islamic law, it has been observed that for some legal schools, the cash waqf is admissible, which would effectively allow the lending of money, thereby overcoming the impediment of interest rates, which are prohibited under Islamic law.

India represents a peculiar case because, despite having a substantial Islamic minority, the third-largest in the world in absolute terms, it still has a poorly developed Islamic finance system, making it quite complex to activate ethical banking and finance mechanisms, such as cash waqf (Rashid, 2018). The first Indian Islamic bank was established in Kerala in 2011, giving rise to a legal case that ultimately came before the High Court of Kerala. According to the appellants-opponents, this form of bank would have represented a violation of the principles of secularism and non-equidistance of the Indian State with respect to religions.

It is essential to note that India is not the only country to have adopted this specialised legal tool. Many other countries have developed a form of sustainable finance through the Islamic waqf, as seen in Malaysia and Singapore (*e.g.*, Khaliq, Hussin, Mohammad, 2019; Ibrahim, 2018; Papa, Santostasi, 2019), while also facing similar difficulties in managing waqf property.

The case of Singapore, a country with a non-Muslim majority, is particularly interesting in the context of the waqf sector, being cited as a success story and best example in many forums (Saad et al., 2013: 744). In this country, waqf assets are managed by the Majlis Ugama Islam Singapore (MUIS), a public body established to oversee the overall religious life of Muslims and play a significant role in establishing and managing regulations governing Muslim life in Singapore (bin Abbas, 2012). One of the key features of this management lies in the principle of financial optimisation (Rusydiaana & Ali, 2024).

From a regulatory perspective, MUIS, established by the Administration of Muslim Law Act (AMLA) of 1966, serves as the central authority responsible for supervising waqf assets. It has the power to regulate, appoint, supervise, and remove waqf trustees to ensure efficiency and prevent mismanagement (Rusydiaana & Ali, 2024).

A modern aspect of waqf management in Singapore is the transformation of unproductive waqf properties into high-value commercial assets, often through MUIS-controlled entities, such as Warees (Waqf Real Estate), which was founded in 2001. Warees has played a crucial role in revitalising waqf assets through real estate investments, property development, and strategic financing, such as the redevelopment of waqf properties on Bencoolen Street, one of Singapore’s main roads. Specifically, this project resulted in the construction of a 12-story multipurpose building, which incorporates a mosque, residential apartments, office spaces, and commercial units (Nagaoka, 2016).



Furthermore, Singapore has adopted the practice of Istibdal Waqf (substitution of waqf assets) as a strategy to optimise waqf management. This process involves replacing underutilised or deteriorating waqf properties with new assets that generate higher returns (Bte Abdul Karim, 2010, p. 148). The concept of Istibdal has been the subject of academic debate (Rusydia & Ali, 2024). Still, MUIS issued a fatwa supporting its permissibility, also to prevent underperforming waqf assets from being acquired by the government under Singapore's Land Acquisition Act (Nagaoka, 2016: 16).

Another innovation in waqf management in Singapore, representing the modern use of waqf, is the introduction of cash waqf, which allows donors to contribute funds that are invested in real estate and secure financial instruments. Returns from cash waqf investments have provided long-term financial support to Islamic educational institutions, including madrasahs. Between 2012 and 2016, cash waqf investments generated approximately USD 1.96 million in returns, benefiting religious and social institutions (Rusydia & Ali, 2024).

In conclusion, waqf management in Singapore represents an exemplary model of integrating Islamic philanthropic principles with efficient financial and legal institutions (Rusydia & Ali, 2024).

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