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THE INSTITUTION OF WAQF IN ISLAMIC LAW AND ITS APPLICATION IN AZERBAIJANI HISTORY

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Abstract. The formation of the waqf (endowment) institution in Azerbaijani history is closely linked to the principles of Islamic law. This article explores the religious significance of zakat, sadaqah and waqf and their role in promoting social justice and shaping the religious-cultural environment within Muslim societies. Based on fiqh (Islamic jurisprudence) norms, the classification of land ownership into state lands, waqf lands and private property is examined through historical evidence. Drawing on primary sources, the study investigates the drafting of waqf deeds, the activities of mutawallis and the management of waqf assets in 15th-16th century Azerbaijan. The transformation of Rais Baraka's property into waqf, his conflict with Isfahan governor Haji Kövsec Bayandur and the restoration of waqf rights under Shah Ismail are presented as historical case studies. Additionally, the collection of waqf documents related to the mausoleum of Sheikh Safi, the compilation of the "Sarih al-Mulk" register are analyzed. The article concludes that the waqf institution fulfilled significant religious-legitimizing, socio-economic and administrative functions in Azerbaijani statehood. By comparing the legal foundations of waqf with Qur'anic verses and examining its practical implementation through historical sources, the study reveals the multifaceted role of waqf in the region's Islamic governance and cultural heritage.

Keywords: *Waqf (Islamic endowment), Fiqh (Islamic jurisprudence), Safavid administration, socio-economic functions, legal foundations, Azerbaijani historical practice.*

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1. Introduction

The institution of waqf has played a pivotal role in shaping socio-economic relations across the Islamic world. Alongside zakat and sadaqah, waqf served as one of the principal mechanisms regulating both the religious and social dimensions of Muslim communities. Although the term "waqf" is not explicitly mentioned in the Qur'an or Hadith, verses concerning infāq (charitable spending), ṣadaqah jāriyah (ongoing charity) and public welfare provide the legal and moral foundations for this institution. In medieval Muslim states, including Azerbaijan, waqf lands were instrumental in sustaining mosques, madrasas, hospitals, caravanserais and guesthouses, while also serving as the economic backbone of religious-political centers.

The essence of waqf, its legal-shar'i principles and its socio-economic functions are of significant scholarly interest, particularly when examined through primary sources such as the works of Hasan Bey Rumlu, Khaja Zeynalabidin Ali Abdi Bey and the chronicle Tārīkh-i ʿĀlamārā-yi Ismāʿīl.

2. The concept of zakat, sadaqah and waqf in Islamic law

Islam is founded upon five fundamental pillars: Shahādah (the declaration of divine unity and prophethood), Ṣalāh (ritual prayer), Zakāt (financial purification and social justice), Ṣawm (fasting as a means of spiritual discipline and piety) and Ḥajj (the pinnacle of worship and global Muslim unity). These pillars constitute the core of Muslim religious practice and moral obligation and they collectively underpin the theological and legal framework within which charitable institutions such as waqf operate.

In Islam, zakat refers to the obligation of financially capable Muslims to allocate a portion of their annual income to those in need. This act of worship not only promotes economic equity but also balances personal attachment to wealth with spiritual responsibility. Alongside obligatory practices such as canonical prayer and fasting, Islamic tradition also recognizes and encourages voluntary prayers, supplications and fasts, which are often recommended and accepted as acts of devotion. In addition to mandatory zakat, Islam also promotes voluntary charity (*sadaqah*), which devout Muslims regard as spiritually beneficial for the salvation of the soul. Such charitable acts are frequently practiced either through direct aid to the poor - especially dervishes - or through the donation of money, land and immovable property to religious and philanthropic institutions such as mosques, madrasas, hospitals, orphanages and guesthouses (Lapidus, 2014). These offerings are believed to possess the power to atone for sins and protect the soul from the torments of hell. Individuals often sought closeness to God by renouncing personal property and engaging in acts of benevolence (Yediyildiz, 2003).

Regarding the endowment of land, the development of feudal land ownership during the caliphate period is weakly and ambiguously reflected in Islamic legal discourse. Jurists of the time - scholars deeply versed in Islamic law - sought legal justification for land ownership not in empirical realities but in the Qur'an and Hadith, resulting in abstract and imprecise classifications. Islamic jurisprudence identifies three primary categories of land ownership (including water and irrigation systems): state lands (*ard al-mamlaka*, *arazi-yi divani*), waqf lands (*waqf*) and private property (*milk*, *mulk*, pl. *amlak*, meaning "immovable property") (Petrushevsky, 1966).

Waqf lands are those bequeathed by caliphs or wealthy individuals for the benefit of religious (mosques, madrasas, shrines) and charitable (hospitals, retirement homes, traveler lodges, etc.) institutions. In his chronicle, Hasan Bey Rumlu records that in 1421, Ulugh Beg commissioned the construction of a madrasa in Samarkand, endowed it with substantial property and established an observatory, appointing one hundred scholars to serve there (Rumlu, 2017). Another waqf-related account in Rumlu's work refers to the late 15th century (circa 1480s), when Timurid ruler Sultan Husayn Bayqara (Husayn Mirza) supported the development of a shrine believed to be the tomb of Ali ibn Abu Talib in the village of Khwaja Khayran near Balkh (modern-day Mazar-i-Sharif, Afghanistan). The event began when a man named Shams al-Din Muhammad presented a book from the era of Sultan Sanjar, leading to the "discovery" of the tomb, the construction of a dome and the endowment of the Nahri-Shahi (Royal Canal) river (Rumlu, 2017; Farzaliyev, 1983). The canal held economic significance for the Balkh region, as it was endowed to support irrigation, agriculture and revenue generation, thereby ensuring the maintenance of the shrine as a site of healing and pilgrimage. In general, revenues from lands endowed to religious and charitable institutions were partially allocated to support imams, teachers and other members of the jurist class. This waqf-based fund served as the primary financial foundation for the sustenance of the scholarly elite (Petrushevsky, 1966).

3. Waqf deeds, administration and socio-economic functions

According to Islamic law, any individual wishing to bequeath property must do so in the presence of at least two witnesses. The person making the bequest - known as the testator (muwassi) - is required to appoint an executor (wasi) to carry out the terms of the will. The testator may freely dispose of up to one-third of their estate, allocating money, land or possessions to any beneficiary of their choosing. Acts such as endowing part of one’s wealth or emancipating slaves for the sake of divine approval and “salvation of the soul” were also commonly included in such wills. The remaining two-thirds of the estate, by law, had to be distributed among legal heirs (Akgunduz, 2013).

In the case of waqf, the testator could stipulate various conditions in the waqf deed (waqf-nāmeh) regarding the income generated from endowed assets - such as agricultural lands, orchards, vineyards, irrigation channels or subterranean aqueducts (kahriz), livestock herds and urban properties including caravanserais, shops or entire marketplaces. The founder could also designate themselves or their descendants as the administrator (mutawalli) of the waqf. In primary sources, terms such as waqfnamacha, qabala and sijil are used alongside waqf-nāmeh to refer to official documents concerning the registration, organization and management of waqf properties. To formalize the endowment, a document known as waqfnamacha was issued with the seal of the local qadi, serving as a legal guarantee for the rights of the founder and their heirs.

During the Aq Qoyunlu period, Rais Baraka endowed property valued at 10,000 tumans, formalized through a waqf deed (Musali, 2011). According to the chronicle, near the end of King Rustam’s reign, the governor of Isfahan, Haji Kövsec Bayandur, entered into conflict with Rais Baraka, had him executed and unlawfully seized the waqf property. In 1497, when Gödek Ahmad ascended the throne, Rais Baraka’s nephew Rais Yusuf brought the waqf documents to Tabriz and appealed to the new ruler. However, due to Gödek Ahmad’s assassination, the matter remained unresolved until Shah Ismail’s rise to power, when the rights of the Baraka family and their waqf lands were restored based on records from “Hasan Padishah’s register”. This case illustrates how waqf deeds enabled heirs to reclaim their legal rights.

According to Takmilat al-Akhbar, Abdi Bey, who served as a financial custodian in the royal chancery for 35 years, assumed responsibility for managing the waqf properties of the Sheikh Safi mausoleum in Ardabil after 1566. While residing in Ardabil, he collected and organized the mausoleum’s property records (Qabala) and compiled them into a register titled Sarih al-Mulk. Based on Abdi Bey’s account, on December 7, 1543 (10 Ramadan 950 AH), Qazikhan Tekelu endowed the “Shahzadeh Beyim Canal” in the town of Khosrovabad (Salyan), along with rice fields, grain, cotton and other agricultural lands, to the Sheikh Safi mausoleum in Ardabil, as documented in Qazi Ruhullah’s register (Abdi bey, 1996). This represents a concrete waqf act, formally recorded through official documentation.

Administrators of waqf properties - mutawallis - typically received a fixed share of the waqf’s income (usually 10%). As a rule, waqf assets were exempt from state taxation. Waqf lands and properties could not be sold, transferred or confiscated. Consequently, for many landowners, endowing their property was not only a pious act but also a strategic one: by retaining the mutawalli role for themselves and their descendants, they secured control over the waqf's revenues while avoiding taxation and protection from state seizure (Petrushevsky, 1966).

For this reason, many large landowners converted their estates into waqf properties, thereby protecting them from confiscation while retaining the income within their own families. During his stay in Miyana, King Hasan showed particular respect to Abu-Yusuf Mirza, a representative of the Qara Qoyunlu dynasty and appointed him as mujāwir - a guardian and servant of the shrine - at his father's tomb in Tabriz. Furthermore, the tawliyya (the authority to manage and oversee waqf properties) of the shrine and its associated endowments in Tabriz was also entrusted to Abu-Yusuf Mirza (Rumlu, 2017). In effect, King Hasan designated Sultan Abu-Yusuf Mirza as the mutawalli of all waqf properties affiliated with his father's mausoleum in Tabriz, thereby integrating the shrine and its waqfs into the royal domain and ensuring their supervision by the ruling dynasty. This arrangement fulfilled religious (maintenance of the shrine), social (support for the poor, students and religious figures through waqf revenues) and economic (collection and allocation of agricultural and commercial income) functions.

According to Tārīkh-i ʿĀlamārā-yi Ismāʿīl, Shah Ismail appointed Sayyid Muhammad Kamuna as the "mutawalli and custodian of the noble shrine of the Commander of the Faithful" in Najaf. Shah Ismail himself personally donated luxurious carpets woven from silk and gold-threaded yarn, felt mats, brocade curtains, gold and silver lanterns and a sum of 30,000 tumans from his private wealth to the shrine of Imam Ali (Musali, 2011).

In some cases, inhabited villages, their arable lands, orchards, vineyards and mills - as well as urban shops and entire marketplaces - were endowed to madrasas and mosques as income-generating assets. Revenues from the sale of agricultural products in rural areas, along with rental payments from merchants and artisans leasing waqf properties in cities, were directly allocated to these religious institutions. However, the entirety of such waqf income was typically spent on salaries for teachers, their assistants and other staff, as well as on the administration, maintenance and restoration of the buildings themselves.

4. Legal and Shar'i foundations of Waqf: Qur'anic verses and fiqh principles

The conditions outlined by Bekkin for the legal and shar'i validity of waqf reflect the fundamental principles rooted in Islamic jurisprudence (fiqh) and the conceptual essence of the waqf institution (Bekkin, 2008):

1. Permanence, continuity and ırrevocability - one of the defining characteristics of waqf is its permanence. This principle ensures that the waqf serves the long-term welfare of society. Irrevocability prevents the founder from annulling or altering the waqf once it has been established, thereby safeguarding its stability and reliability. From a shar'i perspective, this aligns with the concept of ṣadaqah jāriyah (ongoing charity), which emphasizes the enduring benefit of righteous deeds. Several Qur'anic verses affirm this principle:

"The example of those who spend their wealth in the way of Allah is like a seed of grain that sprouts seven ears; in every ear is a hundred grains…" (al-Baqarah, 2:261).

"Do not nullify your charity by reminders or injury…" (al-Baqarah, 2:262).

"O you who believe! Spend from the good things which you have earned and from what We have produced for you from the earth…" (al-Baqarah, 2:267).

"Indeed, those who give charity - men and women - and lend to Allah a goodly loan, it will be multiplied for them…" (al-Hadid, 57:18). These verses underscore the necessity of sincerity, permanence and continuity in charitable endowments.

2. Valid ownership - the physical existence and lawful ownership of the endowed property are essential for the validity of a waqf. This condition prevents the establishment of waqf over fictitious or ambiguously owned assets. For instance, one cannot endow land that does not exist or belongs to someone else. This requirement aligns with the fiqh principle of clearly defined property rights. The endowed asset must be real, lawful (halal) and owned by the donor. Relevant Qur'anic verses include:

"O you who believe! Do not consume one another's wealth unjustly, but only [in lawful] trade by mutual consent…" (an-Nisa, 4:29).

"Eat of the lawful and good things which Allah has provided for you and fear Allah…" (al-Ma'idah, 5:88).

"Do not consume one another's wealth unjustly or use it to bribe authorities in order to consume a portion of others' wealth sinfully…" (al-Baqarah, 2:188).

"Whatever [spoils] Allah has given to His Messenger from the people of the towns - it is for Allah, the Messenger, the relatives, the orphans, the needy and the traveler - so that it will not circulate only among the rich among you…" (al-Hashr, 59:7) These verses confirm that waqf cannot be established over unlawful, non-existent or improperly acquired property.

3. Capacity to generate benefit - to ensure sustained benefit, the waqf property must be income-generating or practically usable. This condition excludes consumable items (e.g., food) or assets associated with prohibited activities (e.g., alcohol). The goal is to preserve the asset while enabling long-term utility. For example, a rental property or agricultural land is suitable for waqf, as it provides continuous income. The waqf asset must be beneficial and usable. Supporting Qur'anic verses include:

"That which benefits people remains on the earth…" (ar-Ra'd, 13:17).

"Spend in the way of Allah and do not throw yourselves into destruction…" (al-Baqarah, 2:195).

"They believe in the unseen, establish prayer and spend out of what We have provided for them…" (al-Baqarah, 2:3).

"Whatever you spend is for your own benefit… You spend only seeking the pleasure of Allah…" (al-Baqarah, 2:272). These verses emphasize that waqf property must be capable of producing benefit and serving the community over time.

4. Types of property - the flexibility of waqf is reflected in its ability to encompass both movable (e.g., books, money, tools) and immovable (e.g., land, buildings) assets. This versatility allows waqf to respond effectively to diverse economic and social needs. For instance, during the Ottoman period, cash endowments (waqf al-nuqud) became widespread and played a significant role in financing charitable activities. The Qur'an encourages the use of both movable and immovable assets for benevolent purposes:

"Spend from what Allah has provided for you…" (al-Munāfiqūn, 63:10).

"You will never attain righteousness until you spend from that which you love…" (Āl ʿImrān, 3:92).

"Charities are only for the poor, the needy, those employed to collect them, those whose hearts are to be reconciled, for freeing captives, for those in debt, for the cause of Allah and for the traveler…" (al-Tawbah, 9:60). These verses clearly indicate that any lawful asset - whether money, food, books, land or buildings - may be endowed for charitable purposes.

5. Compliance with sharīʿah objectives - the purpose of a waqf must align with areas permitted by Islamic law, such as education, healthcare and assistance to the poor. Activities deemed unlawful (e.g., constructing gambling establishments) cannot be the object of waqf. This condition ensures that waqf remains consistent with Islamic ethical and legal values and reinforces its role in promoting public welfare.

"Say: 'My Lord has forbidden indecencies - open and secret - sin, unjust aggression and saying things about Allah of which you have no knowledge'" (al-Aʿrāf, 7:33).

"Cooperate in righteousness and piety, but do not cooperate in sin and aggression…" (al-Māʾidah, 5:2).

"They ask you about wine and gambling. Say: 'In them is great sin and some benefit for people, but their sin is greater than their benefit'" (al-Baqarah, 2:219). These verses affirm that waqf directed toward unlawful ends - such as gambling, alcohol or oppression - is invalid.

6. Form of establishment - a waqf may be declared either orally or in writing, which facilitates its establishment. However, precise definition of its terms is essential to prevent future disputes or misunderstandings. Written documents (waqfiyyah) are generally preferred, as they serve as legal proof. Ottoman waqf records are exemplary in this regard. The formal declaration and documentation of waqf are religiously significant:

"O you who believe! When you contract a debt for a fixed term, write it down…" (al-Baqarah, 2:282) - the longest verse in the Qur'an, emphasizing the importance of written agreements.

"O you who believe! When death approaches any of you, let two just men from among you act as witnesses…" (al-Māʾidah, 5:106).

"Fear Allah and bring witnesses. Let the testimony be taken justly…" (al-Ṭalāq, 65:2). These verses support the tradition of documenting waqf through written deeds and confirming them with witnesses.

7. Charitable nature - waqf must serve the public good and not be used for the personal benefit of wealthy individuals. This condition underscores the philanthropic essence of waqf and ensures its alignment with principles of social justice and equity. For example, a wealthy person cannot establish a waqf solely for the private needs of their family; the waqf must generate public benefit.

"They give food to the needy, the orphan and the captive, saying: 'We feed you only for the sake of Allah. We seek neither reward nor thanks from you'" (al-Insān, 76:8-9).

"Those who spend their wealth in the way of Allah - by night and day, secretly and openly - will have their reward with their Lord…" (al-Baqarah, 2:274).

"They ask you what they should spend. Say: 'Whatever you spend should be for parents, relatives, orphans, the needy and travelers'" (al-Baqarah, 2:215).

"Even though they themselves are in need, they give preference to others…" (al-Ḥashr, 59:9). These verses demonstrate that the primary aim of waqf is altruism, not personal gain and that it must be established for the sake of Allah and the welfare of society.

Although the term "waqf" is not explicitly mentioned in the Qur'an, numerous verses support its legal and moral foundations through concepts such as charity (ṣadaqah), infāq (spending in the way of Allah), justice, property protection and public welfare. The Qur'anic framework provides a comprehensive basis for the legal-shar'i structure of waqf. Its permanence, lawfulness, profitability, public utility and compliance with Islamic law as well as its formal declaration and charitable intent - are fully consistent with Qur'anic principles.

5. Conclusion

The concept of waqf stands as one of the most enduring and multifaceted institutions within Islamic legal and social thought. Rooted in the principles of justice, benevolence and communal responsibility, waqf transcends the boundaries of mere individual charity to become a structural mechanism for sustaining religious, educational and welfare institutions across centuries. Its legal foundations, firmly established through Qur'anic injunctions and the interpretive efforts of classical fiqh scholars, have enabled waqf to evolve into a dynamic tool for redistributive justice and long-term social investment.

Historically, waqf has played a pivotal role in shaping the urban and rural landscapes of Muslim societies. Mosques, madrasas, hospitals, caravanserais and public kitchens were often maintained through waqf revenues, reflecting the institution's capacity to integrate spiritual values with material infrastructure. In the context of Azerbaijan, particularly during the Safavid period, waqf administration became deeply intertwined with state governance, serving not only religious and philanthropic ends but also reinforcing dynastic legitimacy and centralized control. The strategic endowment of land, water systems and commercial assets to religious shrines and educational centers illustrates the waqf's dual function as both a spiritual offering and a political instrument.

Moreover, the legal sophistication of waqf deeds, the role of mutawallis and the preservation of waqf records underscore the administrative maturity of the institution. The safeguarding of waqf properties from confiscation, their exemption from taxation and their role in sustaining scholarly and religious elites further highlight waqf's embeddedness in the socio-economic fabric of Islamic governance.

In sum, waqf is not merely a historical relic or a devotional practice - it is a comprehensive legal and social system that has shaped the moral economy of Islamic civilization. Its principles continue to offer valuable insights into contemporary debates on ethical finance, community-based welfare and sustainable development. As demonstrated through the Azerbaijani experience, waqf remains a testament to the enduring synergy between law, faith and society in the Islamic tradition.

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