

تحقيق المشاكل والتوصيات لإدارة أفضل للخلافات الوقفية في سريلانكا

محمد بخاري محمد ثابت

زميل ما بعد الدكتوراه، كلية أحمد إبراهيم للقانون، الجامعة الإسلامية العالمية بماليزيا

thabith786@iium.edu.my

نور آسيا محمد

أستاذ في قسم القانون المدني، كلية أحمد إبراهيم للقانون، الجامعة الإسلامية العالمية بماليزيا

nasiahm@iium.edu.my

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الملخص:

الوقف هو أداة حاسمة لتوفير المساعدة الاجتماعية والاقتصادية في قطاعات مختلفة، بما فيه التمويل الاجتماعي، والصحة، والتعليم، والممارسات الاجتماعية الدينية. ويدل ذلك على وجود مستويات مختلفة من الفعالية في تلبية الاحتياجات الاجتماعية والاقتصادية، وقد يكون هذا مرتبطًا أساسًا بالإدارة الفعالة والسليمة

للقف. وبعد التعديل على قانون الوقف في سريلانكا في عام 1982م، كان هناك زيادة ملحوظة في النزاعات والقضايا المتعلقة بالوقف في البلد، وتشمل مديريها وأصحاب المصلحة والأطراف المختلفة؛ نتيجةً لذلك، يوجد حالياً أكثر من 5,000 قضية وقف غير محلولة في مجلس الوقف في سريلانكا، تتضمن اتهامات عديدة بالفساد وسوء الإدارة والاختلاس وعدم استخدام المساجد وعقارات الوقف بشكلٍ كافٍ. ويمكن ربط التحدّيات بإدارة نظام الوقف الأساسي والنظام القانوني في سريلانكا بشكلٍ غير كافٍ. وتستخدم هذه الدراسة منهجاً نوعياً لجمع البيانات وتحليلها لفهم القضايا. تجمع البيانات من مصادر مختلفة، بما في ذلك الكتب، الرسائل الجامعية، مقالات المجلات، والمواد ذات الصلة الأخرى، خاصةً التشريعات والتقارير القانونية. وتركّز هذه الدراسة بشكلٍ أساسي على تقديم وصفٍ مختصرٍ لدراسات الحالة والنزاعات الوقفية في سريلانكا، وتشمل النتائج أكثر فئات النزاع شيوعاً، وأسبابها الرئيسية، وطرق منع النزاع، وإجراءات الحلّ والتسوية في محكمة الوقف، والقوانين ذات الصلة؛ لتعزيز الوقف في سريلانكا، وتقييم هذه الدراسة عمل محاكم الوقف في ولايات قضائية أخرى. ويوصى بأن يفكر المجلس في نزاعات الوقف التي تمّ تسليط الضوء عليها بواسطة تعديلات القانون والإجراءات الإدارية الفعّالة للمحكمة لتقليل النزاعات الوقفية ومنعها بمساعدة علماء الشريعة. وتشير هذه الدراسة إلى أنّ التوصيات قد تساعد مديري الوقف في سريلانكا في تحقيق الإدارة المناسبة للوقف، وتحتاج دولة سريلانكا إلى تطوير نظامٍ فعّالٍ لحلّ نزاعات الوقف.

الكلمات المفتاحية: نزاع الوقف، توصية، إدارة، محكمة، سريلانكا.

Investigation of Issues and Recommendations for a Better Management of Waqf Disputes in Sri Lanka

Muhammed Buhary Muhammed Thabith

Postdoctoral Fellow, Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia (IIUM)

thabith786@iium.edu.my

Nor Asiah Mohamad

Professor at Civil Law Department, Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia (IIUM)

nasiahm@iium.edu.my

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Abstract:

Waqf is a crucial instrument for providing socio-economic assistance in various sectors, including social finance, health, education, and socio-religious practices. It indicates that there are different levels of effectiveness in fulfilling socioeconomic needs, and this could be primarily associated to the effective and proper management of waqf. Post-amendment to the Waqf Act in Sri Lanka in 1982, there has been a significant increase in disputes and issues related to waqf in Sri Lanka, involving its managers, stakeholders, and various parties. As a result, over 5,000 waqf cases are currently unresolved at the Waqf Board of Sri Lanka, involving numerous accusations of corruption, mismanagement, misappropriation, and underuse of mosques and waqf properties. The challenges can be connected to the inadequate management of Sri Lanka's fundamental waqf administration and legal system. This study employs a qualitative approach for data collection and analysis to understand

the issues. It gathers data from various sources, including books, theses, journal articles, and other relevant materials, especially legislation and legal reports. This study primarily focuses on providing brief descriptions of case studies and waqf conflicts in Sri Lanka. The findings include the most common categories of disputes, their primary causes, methods for dispute prevention, the waqf tribunal's resolution and settlement procedures, and the relevant laws. To further advance waqf in Sri Lanka, this study evaluates the operation of waqf tribunals in other jurisdictions. It is recommended that the Board may consider waqf disputes highlighted by amendments to the law and effective administrative procedures of the tribunal to minimize and prevent waqf conflicts, with the assistance of Shari'ah scholars. This study indicates that the recommendations might assist waqf administrators in Sri Lanka in attaining appropriate waqf management. Sri Lanka needs to develop a proficient waqf dispute resolution system.

Keywords: Waqf Dispute, Recommendation, Management, Tribunal, Sri Lanka

INTRODUCTION

Waqf, as an institution, begins with the religious intention of performing good deeds for the benefit of its beneficiaries. waqf, or Islamic endowment, is one of the most commendable theological dedications of wealth compared to other forms of charity. It involves dedicating a portion of one's wealth where its benefits are distributed to the people in need. With good intentions and the right procedures in Sharī'ah, the dedicator (wāqif) will receive a continuous reward from Almighty Allah (SWT). Over time, waqf has been designed and structured to be administered and managed as an institution, ensuring its proper utilization for the benefit of its beneficiaries. Over time, waqf institutions have made positive contributions to society by supporting social organizations and playing significant roles in economic and social growth.⁽³⁾

Following the collapse of the Ottoman Empire in Turkey, the condition of the waqf institution deteriorated.⁽⁴⁾ The current state of waqf institutions can be attributed to several reforms that have been implemented in developing modern waqf institutions, including the establishment of the ministry of awqaf, the creation of a specific department of waqf with the assistance of Muslim jurists, and the development of ijthihad relating to waqf. To appropriately manage and preserve waqf property, some countries have recently enacted specialized waqf legislation.⁽⁵⁾ In Sri Lanka, a unified legal framework called the Muslim Mosques and Charitable Trusts or Wakfs Act governs the management, and development of waqf properties across the whole island.⁽⁶⁾

Given the significant potential of waqf and its management, which has yet to be fully systematized in an appropriate manner,⁽⁷⁾ there is also potential for

(3) Muhammad Abdurrahman Sadique, "Development of Dormant Waqf Properties: Application of Traditional and Contemporary Modes of Financing", *IUM Law Journal* 18, no. 1 (2010).

(4) Magda Ismail Abdel Mohsin and et al, "Development and Administration of the Institution of Waqf (Past and Present)." in *Financing the Development of Old Waqf Properties* (New York: Palgrave Macmillan, 2016), 13–20.

(5) As an illustration, seven Malaysian states, namely Selangor, Melaka, Negeri Sembilan, Terengganu, Johor, Sabah, and Perak, have established their own Waqf Enactments. Additionally, some states, such as Pulau Pinang and Wilayah Persekutuan Kuala Lumpur, are actively collaborating to introduce their specific Waqf legislation.

(6) Muhammed Buhary Muhammed Thabith, Nor Asiah Mohamad, & Zaid Khaliq, "Creation of Cash Waqf in Sri Lanka: Lessons from Turkey's Experience", *Journal of Banking and Social Equity (JBSE)*, 2(1), (2023), 37–44. Filippo Osella and Tom Widger, "'You Can Give Even if You only Have Ten Rupees!': Muslim Charity in a Colombo Housing Scheme." *Modern Asian Studies* 52, no. 1 (2018): 297–324.

(7) Muhammed Buhary Muhammed Thabith, Nor Asiah Mohamed and Sharina Farhah, "Evaluation of the Practice of Waqf Management in Muslim Minority Country: Sri Lanka", *Journal of Contemporary Business and Islamic Finance*, Vol. 3, (2023), Pp 31-42.

disputes to arise in its administration. Therefore, over time, waqf disputes have evolved into intricate issues. Based on this, the waqf dispute in Sri Lanka revolved mainly around waqf properties. The reason for the dispute is that firstly the Act of Sri Lankan waqf is outdated it has not been amended since 1982 until now, and the waqf board is not properly functioning because it is not systemized appropriately based on modern practices. The evaluation of waqf practices by the manager, and trustee even through the stakeholders, raises disputes and conflicts day by day because they do not have the proper knowledge and awareness about the waqf. Therefore, this study attempts to investigate the issues and suggestions for better management of waqf disputes in Sri Lanka. Moving on to the above premise, this paper also aims to recommend the use of appropriate methods to minimize issues and manage disputes in the Sri Lankan context.

LITERATURE REVIEW

The issues of waqf management have been discussed by several scholars around the world. They have highlighted the urgent need for improvement in all aspects of waqf management to achieve the objectives of waqf. Among these, Moh. Mahrus highlights that waqf disputes are caused by several determinative aspects, such as ownership by the endower, changes in the objectives of waqf, and idle waqf property. He explains that these disputes can be resolved in two ways: through the legalization of waqf disputes by Islamic courts and by engaging in either formal or informal mediation processes.⁽⁸⁾ Similarly, Haryanto, Maufiroh & Sulaiman state that resolution to solve waqf conflict through the traditional ways such as deliberation and mediation. They also mention that these ways are proved to be effective.⁽⁹⁾

Zait Ilham proposes the establishment of a specific body, such as a mediation committee, to hear and resolve waqf disputes. She also recommends that

(8) Moh. Mahrus, "Settlement of Waqf Disputes and its Asset Protection in East Java, Indonesia", *Mazahib Jurnal Pemikiran Hukum Islam*, Vol.20, (2021), Pp.357-391

(9) Rudy Haryanto, Lailatul Maufiroh and Sulaiman Hasan Sulaiman, "Waqf Land in Madura; Its Management and Typical Dispute Resolution", *al-Ihkam: Jurnal Hukum dan Pranata Social*," Vol. 18 (2), (2023) Pp. 496-518.

a Tribunal could provide an accomplishable solution for waqf matters. By resolving these issues, it may improve public participation in waqf institutions.⁽¹⁰⁾ Harmoniously, Nor Asiah points out that disputes involving various ethnicities and religions are inevitable. Also suggests that one of the potential solutions for emulation is to establish a waqf tribunal, which should operate at a state or regional level.⁽¹¹⁾

MANAGEMENT OF WAQF IN ISLAMIC LAW

In classical Islamic law, in the management of waqf, the key role was played by the judge (Qādi) and the ruling authority in both external and internal waqf management. However, in modern times, a separate administrative body has been established in some Muslim countries to protect, develop, and manage waqf. In non-Muslim majority countries, on the other hand, the Ministry of Cultural Affairs usually creates a special board to oversee the management of waqf.⁽¹²⁾

Islamic law provides that a wāqif (endower) proposes the appointment of one or a group of trustees as Mutawalli to manage their waqf, according to the terms and conditions stipulated.⁽¹³⁾ However, if the wāqif does not appoint anyone as a Mutawalli to manage the affairs of the endowment, the judge appoints a qualified person to be in charge of it. This is the opinion of the Maliki and Shafi'i schools of thought. The Ḥanafi viewpoint is that, in such a situation, the wāqif is to assume the position of the Mutawalli.⁽¹⁴⁾ Zubair Abbasi noted that the wāqif may appoint a person to be in charge after their passing. This condition of the wāqif should be considered as a final will (Waṣīyyah). In case there is no such will, then a judge is to manage the waqf and ensure that the intentions of the wāqif are enforced.⁽¹⁵⁾

(10) Zati Ilham Binti Abdul Manaf, "Resolution of Waqf Land Disputes: The Relevance of a Waqf Tribunal in Malaysia", Kertas Prosiding, International Conference on Dispute Resolution, (2017).

(11) Nor Asiah Mohamad, *Waqf Law and Administration in Malaysia*, (Selangor: Pustaka Salam Sdn. Bhd, 2018), 177.

(12) Muhammed Buary Muhammed Thabith, "Formulating A Legal Framework for the Management and Development of Waqf Property in Sri Lanka", (Ph.D. Thesis, Aikol, International Islamic University Malaysia, Malaysia, 2033) 68.

(13) Ibn 'Ābidīn, *Raddu al-Mukhtāar 'Alā al-Ḍurri al-Mukhtāar*, (Beirut, Lebanon: Dār al-Fikrī, 1992), vol. 4. 363.

(14) al-Shaykh Niẓām, "Fatāwā al-'Ālamgīrīya", (Pakistan: Nawal Kishawr, 1865).

(15) Muhammad Zubair Abbasi, "Shari'a under the English Legal System in British India: Awqāf (Endowments) in the Making of Anglo-Muhammadian Law", (Ph.D. thesis, St. Hilda's College, Faculty of Law, Oxford University, 2013) 165.

If a Mutawalli or manager fails to perform their duties or is guilty of misconduct or incapable of proper management, the judge or regulating authority can remove them from their duties.⁽¹⁶⁾ If there is a group of managers, they may jointly share the legal responsibility in managing waqf. In this case, if some of them speculate and make any mistake, then all of them will be removed from their duties and offices.⁽¹⁷⁾ Similarly, al-Nawawi illustrates that a wāqif has also the right to remove the Mutawalli and appoint another person who is more qualified for the position. This practice is referred as agency (wakālah)⁽¹⁸⁾ practice in Islamic law.⁽¹⁹⁾

Classical Islamic legal texts have specified the responsibilities of a Mutawalli. Their first and most important responsibility is to maintain and use the waqf in the most advantageous way, according to the stipulations of the waqf deed. On behalf of the endower, the manager is considered as the appointed guardian of the waqf, in addition to being its caretaker on behalf of the beneficiaries.⁽²⁰⁾ Furthermore, the Maliki jurist al-Dusuqi said that if a Mutawalli passes away shortly after being appointed while the wāqif is still alive, the latter can appoint a new person or the judge can appoint a qualified person on their behalf. When a Mutawalli transgresses or misuses the waqf property, such as by selling it or giving its proceeds to undeserving people, the regulator should remove the Mutawalli from their responsibility and appoint someone else instead.⁽²¹⁾

MANAGEMENT OF DISPUTES

In early Islam, the Qādi (judge) played a significant role in managing any disputes in society. This practice is evidenced by the verse of Qur'an, where Almighty Allah (SWT) says, "Indeed, we have sent you down the book with the truth that you (Muhammad) may judge between the people by what God has

(16) Ibn 'Ābidīn, *Raddu al-Mukhtār 'Alā al-Ḍurri al-Mukhtār*, (Beirut, Lebanon: Dār al-Fikri, 1992), vol. 4, 578.

(17) Muhammad Zubair Abbasi, "Sharī'a under the English Legal System in British India: Awqāf (Endowments) in the Making of Anglo-Muhammadan Law".

(18) A Wakīl, or vakeel in ancient literature, is a representative acting on behalf of a principle in Islamic law. This term was previously written as Wakīl. It is possible to use this term to refer to a lawyer, a diplomat, or the keeper of the mosque or religious institution. Esposito, John L., ed. "Wakīl". *The Oxford Dictionary of Islam*, (Oxford University Press, 2003).

(19) 'Abu Zakariyā Muḥyī al-Dīn al-Nawawī, *Rawḍat al-Tālibīn Wa 'Umdat al-Muttaqīn*, (Beirut: al-Maktab al-'Islāmī), vol. 5, 349.

(20) Abbasi.

(21) Ibn al-Ḥajar al-Haiyatmī, *al-Fatawah al-Qubrah al-Fiqhīyah*, vol. 3, 252.

shown you.”⁽²²⁾ Islam has accorded the judiciary a high degree of recognition for its role. The role in managing the dispute was either a friendly and peaceful settlement or a negotiated settlement of the dispute.⁽²³⁾ Abdul Hak, Ahmad, and Oseni state that, in the era of the Arabic period, the general method to manage disputes was resolute by self-help, comprising both peaceful negotiation and personal revenge.⁽²⁴⁾

In the modern world, there are practically several approaches to settling disputes for better management of waqf. These include mediation, a process where an impartial third party facilitates the resolution of a dispute between two parties; negotiation, a process in which two or more parties attempt to reach an agreement on a particular issue; settlement, a process in which two or more parties agree to a resolution of the dispute without going to court;⁽²⁵⁾ arbitration, a process where an impartial third party decides on the dispute; and court proceedings, a formal legal process in which a court decides on the dispute.⁽²⁶⁾

ANALYSIS OF WAQF DISPUTES IN SRI LANKA

The Waqf Board of the Department of Muslim Religious and Cultural Affairs (MRCA) in Sri Lanka is currently handling a significant number of disputes.⁽²⁷⁾ Some of these disputes, which are related to the management of waqf properties, are analysed and discussed below.

To the allegations of corruption, mismanagement, and misappropriation of the properties, one of the cases was filed⁽²⁸⁾ at Waqf Board.⁽²⁹⁾ This case was filed because there were several accusations against the trustees concerning

(22) Surah An-Nisa': 105.

(23) Umar A.Oseni. "Shari'ah Court-annexed ADR: the Need for Effective Dispute Management in Waqf, Hibah and Wasyyah Cases in Malaysia", 14th Annual Conference of the Shari'ah Legal Officers of Malaysia, (2012).

(24) Nora Abdul Hak, Sao'dah ahmad and Umar A. Oseni, "Alternative Dispute Resolution (ADR) in Islam, (Kuala Lumpur, IIUM Press, 2011).

(25) Faisal, "Waqf Land Disputes and Alternative Settlements", Randwick International of Social Sciences Journal, (2021).

(26) Agung Wicaksono, "The Problematic of Waqf Representatives and The Settlement of Disputes", Jurnal Akta, (2020).

(27) This is found by the author when he visited the department of Muslim religious and cultural affairs to collect the data on the Waqf properties and he finds out what is going on. There is not a good way for the data to be received and it is not systemized. In fact, they are afraid that any data received about the case of Waqf may be spread because this is very confidential until the court makes a decision.

(28) (WT/227/2015 – Mohaideen Jummah Mosque, Jaffna).

(29) I. Zarook, *The Law Relating to Mosques & Muslim Charitable Trusts or Wakfs* (Colombo, UDH Compuprint: 2018): 99.

corruption, bad management, and taking money from the mosque without permission. Chemmar Street Muslims and some members of the Memon community in Jaffna⁽³⁰⁾ worked together in 1956 to rebuild and develop this mosque. To the joint efforts, they entered into an agreement that the trustees of the mosque be formed by six members, comprising three from Chemmar Street Muslims and three from Memon Muslims. Unfortunately, after the Muslims were forcibly ousted from Jaffna by the LTTE terrorists⁽³¹⁾, this mosque was neglected until Muslims started resettlement to their places. In 2003, the applicants (i.e., trustees of the mosque) retook charge as the trustees of the mosque, which had functioned until 2014.⁽³²⁾

After the trustees of the mosque got back to their duties, there were several allegations against the trustees regarding corruption, mismanagement, and misappropriation of mosque properties. Similarly, the president of the trustee admittedly held the post of trustee for over 13 years, and he had allegations about non-payment of LKR.69,000 due to the mosque. For this reason, the Waqf Board record contains several letters addressed to the Waqf Board and the Director of MRCA against the president of trustees alleging corruption, mismanagement, and misappropriation of mosque funds.

This case is pending with the court and the Waqf Board. After considering the management of the mosque, however, the Waqf Tribunal had to decide to appoint six people who volunteered to be on the committee of the mosque. The secretary explained that the objective of this decision had nothing to do with the violation between the former and new trustees. The decision, on the other hand, may be not only clarified by the allegations made against them, but it manages and gathers the information about the case too. It has been observed that the applicant should not be allowed to continuously hold the

(30) Jaffna serves as the capital of Sri Lanka's Northern Province and is the administrative center of the Jaffna District, situated on a peninsula bearing the same name. As of 2012, with a population of 88,138, it ranks as the 12th largest city in terms of population in Sri Lanka. Currently, the district is home to around 2,230 Muslim families. "Census of Population and Housing 2011". www.statistics.gov.lk. Retrieved 2017-12-17.

(31) The Liberation Tigers of Tamil Eelam (LTTE), also known as the Tamil Tigers, was a Tamil militant organization located in northeastern Sri Lanka. It waged a campaign for an independent Tamil state named Tamil Eelam in the north-eastern part of the island. This was in response to ongoing discrimination and violent acts against Sri Lankan Tamils by the government of Sri Lanka, which was dominated by the Sinhalese. See T. Sabaratnam, *Pirapaharan*, Volume 1, Introduction (2003), <https://www.britannica.com/topic/Tamil-Tigers>.

(32) I. Zarook, *The Law Relating to Mosques & Muslim Charitable Trusts or Wakfs* (Colombo, UDH Compuprint, 2018): 100.

post as trustee for around 13 years.⁽³³⁾

There are disputes between the former trustees and the Tribunal after the appointment of the new trustees to manage the mosque. The appellants (the former trustees of the mosque) have filed a notice of appeal against the order of the Tribunal. To this appeal, the secretary of the Tribunal justified that this order is an interlocutory order, not a final order, which is made during the progress of the action, and that the order does not dispose of the rights of the parties. He also explained that the new six members of the committee are indeed remarkable, and they helped to do all the preliminary work and held the election of trustees peacefully.⁽³⁴⁾ They also voluntarily supported the Tribunal to make the election successful, and they spent their own money and time traveling from Jaffna to Colombo,⁽³⁵⁾ where the Tribunal office is located. In analysing the dispute, the researchers are of the view that it is not an appropriate decision to appoint new trustees for the mosque while the case is still being heard by the court. It is also questionable as to how can they bring any solution without the consent of the Judge or the Chairman of the Waqf Board. They also are not following the legal framework properly and lack awareness about it. Another reason that could be associated with the problems is the fact that there is only one office of the Tribunal, and it is located in the capital city of Sri Lanka, while the registered mosques, waqf properties, and Muslim Charitable Trusts are located throughout the country. For this reason, the control of all the cases is challenging as we cannot make a judgement from one place to another place. Moreover, it is also not possible to make an order in a case where the judgement is pending at the Court and Waqf Board. Members of the Tribunal must demonstrate to those who financially and physically support them that they are qualified to serve as trustees.

Another case WT/202/2012– AL-MADRASATHUL CASSIMIYA TRUST, PUTTALAM was decided on 21 March 2015. The trust was created by

(33) Ibid.

(34) Ibid.

(35) The distance of these two places is approximately eight hours of travelling time covering 403 km.

Segu Ismail Marikkar Muhammedu Cassim Marikkar of Puttalam, with the clear intention and purpose for a charitable trust in favour of the Cassimiya Madrasa or Cassimiya Arabic College situated in Puttalam.⁽³⁶⁾ The wāqif declared in his Will for the Advancement of Education, Knowledge, and the Advancement of Islam. He had dedicated several properties, such as Prawn Farm, for these religious purposes. Further, he had given instructions as to how these properties should be managed and used for the welfare and benefit of the Madrasa and the Idroos mosque.⁽³⁷⁾ This trust was created on 21 January 1921 based on the last will and testament.

When the lease agreement of Prawn Farm was bonded between the trustees of the Madrasa and Seastar Aquatic Product in 1996 to generate the income, the dispute came out. Seastar Aquatic Product needed to resign and continue the lease agreement based on the previous condition and the payment. Further, the previous agreement was an unattested lease, so it was filed of record. Similarly, the lessees (Seastar Aquatic Product (Pvt)) argued that the trust of the Cossimiyya Madrasa does not have the power of the trust to sign the agreement because the trust was created in 1921. On the other hand, the Muslim Intestate Succession and Waqfs Ordinance was introduced in 1931 and, subsequently, a special law by the name of Muslim Mosques and Charitable Trusts or Waqfs Act No.51 of 1956.⁽³⁸⁾ As a result, they explained that the Waqf Act does not apply to Segu Ismail Marikkar Muhammedu Cassim Marikkar's existing charitable trust, which was established before the trust law was introduced.

The lessees' argument was rejected. When preparing the formation of the charitable trust, it is not required to observe the formalities of the trust's constitution. For the construction of a valid charitable trust or Waqf, even the absence of the word, phrase, or term denoting "charitable trust" can be simply

(36) Puttalam stands as the largest town in the Puttalam District of the North-western Province in Sri Lanka. Serving as the administrative capital of the Puttalam District, it is managed by an urban council.

(37) I. Zarook, *The Law Relating to Mosques & Muslim Charitable Trusts or Wakfs* (Colombo, UDH Compuprint, 2018): 104–107.

(38) *Ibid.*

ignored. The intention behind the creation of the trust is extremely important.⁽³⁷⁾ Under the Muslim Mosques and Charitable Trusts or Waqfs Act, Section 55 of the present Act explains that Sections 100 to 109 of the Trusts Ordinance shall not apply to any Muslim charitable trusts or Waqfs or any property subject to such trust or waqf. Thus, it is clear that the Trusts Ordinance does not apply to Muslim charitable trusts, even though some of its rules are similar to those of the Act.⁽³⁸⁾

Regarding this dispute, the author elaborates that there is a clear lack of awareness among the manager, trustee, practitioner, and public. The Waqf Board needs to disseminate waqf-related information throughout society. To the lease, the trustee should follow the Waqf Act's instructions and may make the lease agreement for three years; if they need more than three years, they should use the Ijāriatiyyn or Hikir (long lease) modes and fix the rental based on the market price.⁽³⁹⁾

Currently, there is a widely known dispute over a waqf property related to the Islamic trust known as the Gafooriya Trust, which was registered under the Common Law of Trust in 1935. This trust includes valuable properties: 17.9 acres of land in Maharagama,⁽⁴⁰⁾ and 2 acres in Grandpass,⁽⁴¹⁾ Colombo. The trust was established with the objective of operating an Arabic college, now popularly referred to as the Ghafooriya Arabic College, aimed at enhancing Arabic education and Islamic studies. N. D. H. Ghafoor Hajjar founded this Arabic college in 1931,⁽⁴²⁾ and it was registered under the DMRC.⁽⁴³⁾ Unfortunately, at that time, there was no Islamic trust law under the constitution of Sri Lanka. Later, the Muslim Charitable Trust or Waqf Ordinance was introduced, although it was not comprehensive. In 1956, the Muslim Mosques

(37) Ibid.

(38) Ibid.

(39) Mohammad Anas al-Zarqa, "Some Modern Means for the Financing and Investment of Waqf Projects", in *Management and Development of Awqaf Properties* (Saudi Arabia: Islamic Development Bank (IsDB), Islamic Research and Training Institute (IRTI), 1987): 43-44.

(40) It is an outer suburb of capital of Sri Lanka.

(41) It is located in the capital of Sri Lanka.

(42) Fathima Nazeefa Namiz Fawzer, "Status of Waqf Management in Muslim Minority Country: A Case Study of Colombo District (Sri Lanka)", (Master These, IIUM, Kuala Lumpur Malaysia, 2011).

(43) <https://abdulghafoortrust.com/arabic-school/>.

and Charitable Trusts or Waqfs Act (No. 51 of 1956) provided a preliminary legal framework for waqf and trusts, but the Ghafooriya Trust was not registered under this Waqf Act of 1956.

Disputes have arisen between the Ghafooriya Trustees and the college's old boys' association's management. A member of the Ghafoor family, actively involved with the trust and belonging to the fourth generation, has claimed that the Arabic college and its properties are family assets, despite being endowed as waqf.⁽⁴⁶⁾ Conversely, the old boys' association insists that the college and its properties belong to the Arabic college, arguing that the benefits should support the students currently studying there, as the college is managed by the association. They highlight that the college is registered with the DMRCA and has consistently paid the relevant fees to the Waqf Board, producing over a thousand Muslim scholars with the trust's support. Additionally, 80 students reside and study at the college, enjoying full access to educational facilities.⁽⁴⁷⁾

However, the Ghafooriya Trust's current trustees have ceased funding student support at the college. They also attempt to influence and intervene in various aspects of the college's management, including the Arabic and Islamiyah curriculum and teacher appointments, leading to conflict between the two parties.

To resolve the conflict, former students sought a decision from the Waqf Board and Waqf Tribunal. The issue has since escalated into various contentious matters across different legal platforms, including the Court of Appeal, High Court, and District Court. Notably, the Colombo District Court issued an Enjoining Order allowing the Board of Trustees to appoint a new Principal and a Management Committee and ordered the previous principal and his representatives to avoid interfering with the college's operations.⁽⁴⁸⁾

Regarding this dispute, the authors observe that the appointment of a new

(46) Abdul Samad Ashraff, "Hands Off the Endowed Gaffooriya Madrasa – Slogan- at a Protest in Colombo," Colombo Times, <https://www.colombotimes.net/hands-off-the-endowed-gaffooriya-madrasa-slogan-at-a-protest-in-colombo/>, (2022).

(47) Ibid.

(48) Ibid.

principal while the case is still under judicial review, as inappropriate as it might exacerbate the conflict with the trustees. This concern may be related to the judge's unfamiliarity with Islamic spiritual matters due to being non-Muslim and a general lack of adherence to the legal framework. Additionally, the Waqf Tribunal's effectiveness is limited by having only one office in Sri Lanka's capital, whereas Waqf properties and Muslim Charitable Trusts are scattered nationwide, complicating case management and judgment execution. The Tribunal members must prove their competency to those who support them financially and physically, affirming their suitability as trustees.

ALTERNATIVE DISPUTE RESOLUTION

There are several ways to solve Waqf disputes. For a multi-religious country, Nor Asiah highlights that those disputes are bound to happen which involve different ethnicities and religions. She proposes two resolutions that could be emulated; firstly, to either refer to a court that has jurisdiction over non-Muslims, such as the civil court, and secondly, to establish a waqf tribunal. She suggests that the tribunal should be state-based or regional-based.⁽⁴⁹⁾ In the context of Sri Lanka, there is a tribunal, but it is not functioning properly and systematically.⁽⁵⁰⁾ It is also located in Colombo which is the capital of the country, for this reason, many cases are not brought to the tribunal by respectable committee members from around the country.

Regarding the issue, this paper recommends that the waqf board should establish branches of the tribunal in every district, province, and region with a Muslim-majority population to manage waqf cases. The Waqf Tribunal must resolve the cases promptly, in consultation with the board registered under the Waqf Board. Additionally, the tribunal should initiate a mobile service to address the cases registered under the waqf board. The tribunal, composed solely of judicial officers and Muslim scholars, is responsible for determining and addressing disputes related to waqf. It also employs a multi-tiered

(49) Nor Asiah Mohamad, *Waqf Law and Administration in Malaysia*, (Selangor: Pustaka Salam Sdn. Bhd, 2018), 177.

(50) Muhammed Buhary Muhammed Thabith and Nor Asiah Mohamad, "Waqf and its Legal Framework in Sri Lanka: A Preliminary Study", *Intellectual Discourse*, Vol. 29, (2021), Pp. 359-378.

settlement process for disputes, which initially relies on Islamic guidance based on sulh (reconciliation) to resolve the disputes. If the dispute cannot be appropriately resolved through sulh, then the tribunal should adopt modern methods such as mediation, negotiation, settlement, and arbitration from the Shari'ah perspective.

The paper also recommends that the tribunal, in managing and resolving disputes, should request a fatwa from Muslim scholars of the ACJU⁽⁵¹⁾ or follow a fatwa that has already been practiced in other Muslim countries, such as Malaysia⁽⁵²⁾ to fulfil the intention of the waqf. Utilizing alternative dispute resolution methods like mediation, conciliation, or arbitration proves to be a preferable option compared to subjecting waqf disputes to court proceedings. This approach not only reduces expenses and costs but also preserves the esteemed reputation of waqf as an Islamic institution. So, if there is no any feasible solution to manage and handle disputes among us, it may be worth considering to file to court proceedings. When waqf disputes are brought to court and are unsuccessful, the decision is frequently made by a judge who may not be Muslim.⁽⁵³⁾ Such judges base their rulings on their understanding rather than Islamic principles. This method of adjudication could negatively affect religious practices, considering that waqf is a form of worship in Islam.

CONCLUSION

This paper highlights the effectiveness of Waqf Tribunals in other jurisdictions, comparing them to improvements in the management of Waqf disputes in Sri Lanka. It is crucial to amend or introduce provisions for resolving pending waqf disputes registered with the Waqf Board. To effectively address these cases, it is essential to set up branches that consider provincial, district, or

(51) The All Ceylon Jamiyyathul Ulama (ACJU) is the foremost organization of Islamic scholars residing in Sri Lanka. Established in 1924, which is 24 years prior to Sri Lanka gaining independence, ACJU has a history spanning over 90 years. During this time, it has offered spiritual leadership to the Aalim community and engaged in a broad range of secular initiatives benefiting Muslims and non-Muslims alike, both within the country and internationally.

(52) Zati Ilham Bt Abdul Manaf, "Management of Waqf Disputes in Malaysia: Issues and Recommendation", (PhD Thesis, IIUM, Kuala Lumpur, Malaysia), 2020.

(53) Muhammed Buhary Muhammed Thabith and Nor Asiah Mohamad, "Waqf and its Legal Framework in Sri Lanka: A Preliminary Study", *Intellectual Discourse*, Vol. 29, (2021), Pp. 359-378.

population factors, particularly in regions where the majority of the population is Muslim. The tribunal is advised to initiate mobile services specifically to address pending issues at the board. Additionally, it is advised that the Board, with the assistance of Shari'ah scholars, addresses waqf disputes through legal reforms and efficient administrative actions to reduce or eliminate such conflicts. This study proposes that adopting these recommendations could help waqf administrators in Sri Lanka to manage waqf effectively. It is indeed crucial in establishing a comprehensive and effective waqf dispute resolution system for Sri Lanka to meet the goals of waqf within the nation.

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