Colonial State and Muslim Institutions: History of Regulatory Framework for Awqāf (Religious Endowments) in British India

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From an English law perspective, a typical waqf was a strange mixture of paradoxical features such as religious-secular and public-private. Lawyers and judges in India spent much time and energy in distinguishing these conflicting elements in awqāf. The classification of awqāf, either as secular or religious and public or private, was at the heart of debates on their regulation by the state. Since huge lands were vested in awqāf, the officials of the East India Company could hardly ignore them. Therefore, after their full assumption of charge as the *diwan* or tax collector of Bengal, Behar and Orissa, the Company officials launched a survey of lands held in charity. This was followed by a gradual resumption proceedings to recover lands held as rent-free grants. These included a large number of awqāf.

The Company acquired the administration of awqāf as the successor of old regimes under the Bengal Regulation XIX of 1810, which was extended to Madras in 1817. However, the European officers who professed Christianity deemed it against their conscience to manage non-Christian religious institutions. Therefore, the Company officials started to divest the control of religious awqāf within a few decades of their taking over the control. This was formalized under the Religious Endowments Act 1863, which transformed administrative control of awqāf into judicial control. However, the lack of official supervision caused large-scale mismanagement of waqf funds and even alienation of waqf properties by their managers. The absence of centralized administration also meant that the waqf funds remained in the hands of local managers and the surplus funds could not be efficiently utilized for the benefit of Muslim community eg for educational purposes.

This led the Muslim leaders especially politicians to require the government to provide an effective control and supervision of awqāf. However, the government was not ready to depart from its policy of non-intervention in the religious endowments through its officials. But the courts kept on deciding endowment related disputes including mismanagement of their funds. While rejecting a dozen legislative proposals on the administration of Hindu and Muslim endowments, the Government of India tried to facilitate the judicial control of endowments by decreasing the cost of litigation, increasing the powers of judges and removing the cumbersome judicial procedures. This did not stop agitation for the legal reform to provide effective state supervision of endowments. Both Hindu and Muslim politicians were united on this point and pressed the central government to pass a law on this issue.

This showed the failure of both the judicial control and self-governance on the one hand and rifts within the native communities on the other. The courts failed to curb wide scale corruption in endowments because of their lack of powers, delays and cumbrous procedures. But the indigenous communities also failed to play their role because their attitude was marred by rational apathy and internal conflicts. In most cases, only the materially interested parties took the issue of mismanagement of awqāf to courts. A few organisations were formed for collective action to provide communal supervision of awqāf but they did not achieve much success. The British officials realized that these were the educated and progressive Indians who wanted the state control of endowments which were in the hands of conservative religious class. The officials believed that the former were a small minority and they did not want to offend the latter who enjoyed the support of majority population. In the

end, the central government yielded to the persistent pressure for legal reform after having resisted it for more than half a century. However, the issue was not dealt with under a single statute but different statutes were passed at provincial and communal levels. At the central level, a statute providing general principles was passed in 1920 and each provincial legislature was enabled to pass its own law, suited to its circumstances. Muslims opted to have a Waqf Act which provided general principles at the central level and various provinces either adopted this Act or passed separate statutes providing control over awqāf.