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Waseem ul Hameed
The Islamia University of Bahawalpur,
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*CORRESPONDENCE

Muhammed Buhary Muhammed
Thabith
Ph.D. Ahmad Ibrahim Kulliyah of
Laws, International Islamic University
Malaysia (IIUM)
Email: thabith786@gmail.com

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ACADEMIC PAPER

Creation of Cash *Waqf* in Sri Lanka: Lessons from Turkey's Experience

Muhammed Buhary Muhammed Thabith^{1*}, Nor Asiah Mohamad²,
Zaid Khaliq³

¹ Ph.D. Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia (IIUM)

Email: thabith786@gmail.com

² Professor at Civil Law Department, Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia (IIUM)

Email: nasiahm@iium.edu.my

³ Ph.D. Candidate, International Institute for Halal Research and Training, International Islamic University Malaysia (IIUM)

Email: zaidkhaliq89@gmail.com

ABSTRACT

In recent years, cash *Waqf* has gained recognition throughout the Muslim world as a highly efficacious mechanism for achieving socio-economic objectives. Cash *Waqf* is a financial instrument that facilitates the provision of funds for a diverse range of products and services across numerous countries, both within and outside the Muslim world. In Muslim minority communities, *Waqf* can be used creatively that changes and adapts to the needs of the community. Under the Sri Lankan *Waqf* Act, there are no provisions providing for cash *Waqf* to develop and maintain the *Waqf* property or use it to provide socio-economic and other services that benefit the society. This research examines the prospects for cash *Waqf* under the *Waqf* Act, as well as the problems and difficulties associated with its establishment. This research utilizes a doctrinal analysis, which involves both primary and secondary sources of information, such as statutes, practices, case laws, and reports. This study sought some lessons from Turkey's experience. The findings show that innovative cash *Waqf* initiatives play significant roles in socio-economic development even in Muslim minority countries. The establishment and recognition of cash *Waqf* will effectively help to develop dormant and undeveloped *Waqf* property while sustaining the socioeconomic situation. The *Waqf* board will have financial independence in managing *Waqf* properties in Sri Lanka.

KEYWORDS

Cash *Waqf*, Socio-economic, *Waqf* board, Sri Lanka, Turkey.

INTRODUCTION

Waqf refers to Islamic endowment which has four main elements called the pillars of *Waqf* include *Waqif* (endower), *Mawquf* (subject matter), the *Mawquf Alaih* (beneficiaries), and the *Sighah* (pronouncement of *Waqf*). Cash *Waqf* is referred to as a special dedication in which cash is the subject matter (*Mawquf*) in contrast to the common use of immovable assets. Cash or fiat money, just like any other *Waqf* commodity, is created with a specific purpose. Cash as *Mawquf* is also managed according to Islamic principles (Bulut & Korkut, 2016). The creation of the cash *Waqf* and its revenue shall be



used to fund the activities of *Waqf* as well as to fulfill the objective of the *Waqf* based on the intention of the *Waqif*. The most important characteristic of cash *Waqf* is that the *manfaah* (yields) are used to benefit the beneficiaries while the cash which is the subject matter (*Mawquf*) remains to be invested and preserved. The practice is important to ensure the perpetuity of *Waqf* to make it sustainable and profitable. The sustainability of cash *Waqf* may also be achieved through the dedication of the yields or benefit of the *Mawquf* as *Waqf*. With this creativity, the perpetuity of cash *Waqf* is maintained irrespective of the movable nature of 'cash' or 'fiat money'.

Cash *Waqf* has become a model that played an important role in the development of *Waqf*. In Islamic civilization especially during the Ottoman period, *Waqf* institutions provided services for the welfare of the community and championed as institutions that manage finances for the country's economic growth. Cash *Waqf* is a mechanism that is simple and flexible; in the modern world, anyone can contribute or donate in the form of cash if they have cash at hand or digital (Johari et al., 2015). During the time of the Ottoman, cash *Waqf* was created and used successfully (Çizarça, 1995). Most of the expenditure of *Waqf* property was allocated for education, health, and religion.

In Sri Lanka, a special Board is established to manage and maintain (Muhammed Buhary Thabith & Nor Asiah Mohamad, 2021). As per the Waqf Act (MMCTWA), the Department of Muslim Mosques and Religious Affairs holds the authority to designate the members of the Board.¹ In this study, the authors discuss the creation of cash *Waqf* and assess its position under the current MMCTWA and explain why the creation of cash *Waqf* is necessary and how it is implemented within the context of Sri Lanka having considered its position as a Muslim minority country.

Cash *Waqf* and Its *Sharī'ah* Aspect

Cash is one of the movable commodities that can be created as a *Waqf*. Cash provides an important option for donors who do not have a fixed asset but rather have movable assets, such as fiat money or cash. Ibn Nujaym brought up the thought of Zufar, who approved the validity of Dirham (money) to be dedicated as *Waqf*. Money deposited as *Waqf* can be invested in *Mudārabah* (profit and loss transactions) and the returns are to be used for pious purposes. He also issued a *fatwa* that cash *Waqf* can be invested through *Mudārabah* and its revenue is devoted to pious purposes (Nujaym, n.d.). The process of creating cash *Waqf* to provide without interest to the specified beneficiaries is permissible in *Sharī'ah*.

According to Çizakça (2000), a contemporary scholar of *Waqf*, cash *Waqf* can be considered a distinct form of endowment that distinguishes itself from traditional real estate *Waqf* in that its initial capital, also known as *asl-al-māl* or corpus, is comprised entirely or partially of cash." (Çizakça, 2000). According to him, the beginnings of cash *Waqfs* can be traced back to the Islamic world during the eighth century. This phenomenon is present in Syria, Egypt, Sudan, and Aden. (p. 24). According to Mohsin, "cash *Waqf*" (*Waqf* money / *Waqf al-nuqud*) refers to a donation that allows the organization to establish a charity in the form of cash (Mohsin et al., 2016). Accordingly, this is defined as an individual *Waqf*, a group of people's *Waqf*, institutions, or *Waqf* of any legal entity in the form of cash. Later, it could be seen that the scope of cash also includes securities (Mohsin et al., 2016). The capital for Cash *Waqf* is sourced from monetary contributions made by various entities such as private or public organizations, corporations, companies, individuals, and institutions. The legal requirements for establishing a *Waqf*, regardless of whether it is movable or immovable, are identical. The three fundamental conditions that are universally applicable to *Waqf*, irrespective of its nature, are irrevocability, perpetuity, and inalienability. The returns generated by fixed *Waqf* are sourced from the underlying assets, whereas for liquid *Waqf*, such as cash, the principal must be allocated across diverse investment vehicles to generate returns (Mahadi, 2022).

¹ The Muslim Mosques and Charitable Trusts or *Wakfs* Act No. 51 of 1956 as amended by Act No. 21 of 1962 and Act No. 33 of 1982.



In comparing the development of cash *Waqf* in some Muslim countries, it is noticed that Indonesia and some states in Malaysia have incorporated into their *Waqf* laws proper provisions that allow for cash to be accepted as *Mawquf*. The effort is championed by the Muslim religious councils in these countries. They have issued a fatwa stating that cash *Waqf* is permissible. In other words, *Waqf* may be created even when the *Mawquf* is a moveable property. The Majelis Ulama Indonesia (MUI) issued a fatwa "on May 11, 2002, which is the 28th Safar of the year 1423 H", regarding the permissibility of cash *Waqf*. The MUI's definition of *Waqf* has expanded the scope of the definition of *Mawquf*. The initial endowment exhibits a greater focus on specific subjects. The practice of cash *Waqf* entails adherence to Islamic law in the distribution of cash flow, a requirement that is deemed imperative by MUI and must be upheld. Therefore, the awarded funds cannot be sold, transferred, or inherited (Kumkelo et al., 2015). Similarly, in Malaysia, cash was approved for use as a *Waqf* movable commodity by the Muzakarah Majlis *Fatwa* Kebangsaan.² At present, cash as *Mawquf* has been recognized and practiced widely in countries like Malaysia, Indonesia, Syria, Turkey, South Africa, Singapore, and Egypt. In Indonesia, there are clear laws in the Wakaf Law 2004 and the recent launch of the *Wakaf* Linked Sukuk marks another achievement of cash *Waqf* in Indonesia.

Justification for the use of cash as *Mawquf* is logical and reasonable. Cash *Waqf* is allowed because *Waqf* in the form of monetary donations is simple and flexible. Anyone who has cash can contribute or donate (Johari et al., 2015). Nowadays, cash *Waqf* is used to fund many different initiatives, including those concerned with education, food security, the equitable upkeep of *Waqf* structures and mosques, social services, waterworks, and the salaries of workers.

Having stated the importance and contribution of the *fatwa* to the development of Islam in general and *Waqf*, the acceptance and recognition of the *fatwa* as a source of laws has been challenged a few times. Most of the problems occurred in a jurisdiction where Muslims and non-Muslims live together. Lack of understanding about Islam or *Waqf* has been identified as the main reason for not recognizing *Waqf* as an act of submission to Almighty Allah (SWT). *Waqf* is not a mere 'charity'. It is a perpetual act of doing charity where the continuous flow of impact is the prime consideration of doing or managing charity. Donation or '*sadaqah*' is a one-off giving and there is no role of trustee or Mutawalli involved in the act. The challenge of not having clear law on *Waqf* as the Quran is silent about it but emphasizes charity while the *hadith* speaks about continuous charity (*Sadaqah Jariah*). This has been resolved with a clear law on *Waqf*. The significance of the *fatwa* as a legal authority is of utmost importance in cases where there exists uncertainty regarding the law governing *Waqf*.

The position of not having a clear law on cash *Waqf* in Sri Lanka is clear. Hence, the *Waqf* Board has referred to a *Fatwa* (edict) to solve the issues and disputes surrounding the legal development of *Waqf* in Sri Lanka. They also ask for a fatwa to create cash *Waqf* and add a provision related to cash *Waqf*. For example, when they need to *Istبدال* (replace *Waqf* property with another property) they may follow the practice of other Muslim countries. Having mentioned this, it shows the relevancy of Fatwa in the development of Muslim laws, especially in a Muslim minority country such as Sri Lanka. The Fatwa Board must continuously equip themselves with the current development to gain the confidence of the public. Fatwa must be relevant and timely. Although there are still many other countries that do not recognize cash *Waqf* such as Pakistan, Brunei, or Thailand for the simple reason of following the Shafie school of thought, Sri Lanka should differ in this matter. Muslims in minority countries are not all rich or financially successful. Nonetheless, economic freedom may be achieved through the proper employment of cash *Waqf*. During the Ottoman period, cash *Waqf* served as providing capital for the entrepreneurs without any interest. Later, the Mudarabah system complemented the Cash *Waqf* product making business more competitive and trendier.

² E-Fatwa, JAKIM. <http://www.e-fatwa.gov.my>.



Turkey Cash Waqf

Turkey is the choice for reference for one special reason i.e., the historical development which marks the development of juristic views and practices. The Ottomans also offer the various creativity of utilizing cash *Waqf* and its synergy with Qardul Hasan and the employment of Islamic finance tools of the *Mudharabah* system. The renaissance of *Waqf* during the Ottoman era is acknowledged for its highly sophisticated system of administration. The Ottoman institution of *Waqf* constituted a major element in the public sector (Pamuk, 2004). One-third of the total territory captured by the Empire was transformed into endowed land, and most of the social services provided in the Ottoman provinces were provided through *Waqf* and contributed largely to their rapid expansion (Hoexter, 1998). Larger *Waqf* allocations initiated called imperial *Waqf* were set up by the sultans, their families, or other members of the ruling class, while smaller *Waqf* properties were created to support local communities (Sait, Lim, & House, 2005).

The home to Cash *Waqf* is Turkey. In the fifteenth century, the Ottomans introduced the concept of cash *Waqf*, followed by a special *Waqf* bank that offered several types of investment and development modes (Mandaville, 1979). Yağcı Hacı Muslihuddin in Edirne established the first cash *Waqf*. According to reports, in 1423, he allocated 10,000 arches (the currency used in the Ottoman Empire) and several shops to compensate three individuals with a daily wage of one akche each for their recitation of the Qur'an at Kilise Mosque. The term "istirbah" was employed to denote the act of generating profit from funds, while the borrowing rate was established at a rate of ten percent within the context of this *Waqf* (Bulut & Korkut, 2019).

Murat Cizakca stated that cash *Waqf* was crucial to maintaining capital for the economy and Ottoman public stability. They were also significant contributors to the financial well-being of the communities in which they operated. During the early fifteenth century, Ottoman courts granted authorization for cash endowments. By the late sixteenth century, these endowments had proliferated across Turkey and the European territories of the empire (Çizakça, 2000). He explained that in practice, the cash *Waqf* may serve the same purpose as a bank, except that it would not collect money from individual people before lending them to business owners at variable interest rates. Endowment capital is the result of a person's lifetime of saving and investing, and cash *Waqf* would work as a tool of capital distribution by redistributing this money to borrowers. Furthermore, unlike a bank, which must pay a fixed rate of interest to savers (borrowing rate), an endowment involves no cost when transferring money to borrowers. To rephrase: an endowment's cost of capital would be zero. Therefore, all the rates of return might be considered profit and put to effective use in the community and the religion (Cizakca, 1998).

The Ottoman *Waqf* institution was properly structured and highly systematic. The management and development of *Waqf* were carried out according to Islamic law under the Directorate General of Endowments (GGE) (Karagedikli & Tunçer, 2018). The proceeds generated from cash *Waqf* are allocated towards a diverse range of philanthropic endeavors, encompassing domains such as education, historical research and archaeology, healthcare and nursing, artistic pursuits, museums, and other related areas.

The following is the example of a procedure for establishing a cash *Waqf*:

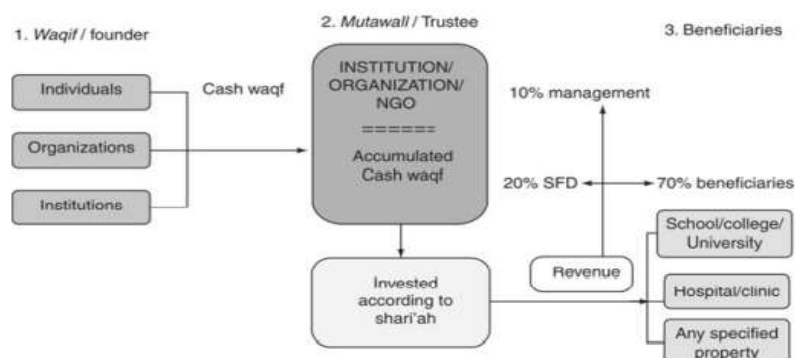


Figure 1.1: Modus operandi of cash Waqf
 (Source (Ismail Abdel Mohsin, 2014))



The diagram demonstrated how to create a cash *Waqf* in the context of *Mudharabah* transactions. This analysis also includes many models and frameworks of cash *Waqf* that have the potential to assist in the fight against poverty and the improvement of the standard of education and other socioeconomic indicators in Muslim societies. In contemporary times, cash *Waqf* serves as a dual-purpose entity, functioning as both a charitable organization and a financial intermediary. It has undergone significant transformation and emerged as a viable alternative to conventional lending mechanisms.

Lessons Learned

Sri Lanka can learn useful lessons from the experience of other Muslim countries particularly Turkey and their *Waqf* regulation and the creation of cash *Waqf*. Firstly, there should be a clear and comprehensive law on *Waqf*. It shall define the scope of *Waqf* to include movable and immovable and thus provide for the procedures facilitating the use and development of both types of assets. At present, no amendment or modification made to the *Waqf* Act in Sri Lanka since its last amendment in 1982 (Muhammed Buhary Muhammed Thabith & Nor Asiah Mohamad, 2021). As a consequence, several challenges have emerged, such as the absence of a clear delineation of the parameters of *Waqf*, which has impeded the growth of *Waqf* resources, and the constrained nature of fundraising efforts. The inadequate supervision and extensive authority have resulted in unsatisfactory property management.

We acknowledge that the Act does not highlight any unique guidelines for managing cash *Waqf*. Nonetheless, there are provisions of Part VI expound the Muslim Charities Fund (MCF) which is also managed and administered by the Board.³ This fund generates income from every single registered mosque at 6 percent and Muslim shrines or places of religious resort at 10 percent per annum respectively from their net income of the year. This Director of the Board has the responsibility to utilize the fund for such purposes that shall be approved by the Board.⁴ The purpose of this fund is to be used for religious purposes and the benefit of the Muslim community. Section 45 illustrates the purposes of the MCF fund on the following: (a) building, restoration, and maintenance of mosques; (b) alleviating poverty among Muslims or any other section thereof; (c) development of Muslims' education or any other section thereof; (d) development of Islam in general; (e) any other beneficial objective for Muslims or any other section thereof; and expenditure incurred by the management and administration of the MCF fund.

Ironically, Zarook (2018) states that there are approximately 40 million SLR in government banks that are not being used for MCF. He also observed that the MCF is not properly implemented according to its purpose. It is generally understood that the Board must not invest the money in interest-based investment to earn interest. Accordingly, the legal framework of the development states that immovable property can adopt an Islamic leasing model to earn an income from the *Waqf* property. Similarly, the trustee or Board may use a movable property and invest on interest-free investment or adopts any Islamic models of investment such as *Musharakah*, *Mudharabah*, and *Murabahah*. Nevertheless, this Act does not mention the proper way how, and where to develop and invest in both properties as discussed by Islamic scholars according to Islamic law and as practiced by developed countries like Turkey.

Therefore, it is also learned that Sri Lanka must prepare a more efficient and transparent *Waqf* legal framework. The law needs to be modified based on contemporary scholars' thought and as practiced by developed countries for a revival of the *Waqf* development and to protect the interest of the beneficiaries.

Moreover, as Sri Lanka is a minority Muslim country where the legal and economic system is civil or conventional in nature, there is a lack of an Islamic Bank or Islamic bank window providing for the capital to develop *Waqf* assets. Even if there is, the issue of appropriate human resources in managing

³ The Muslim Mosques and Charitable Trusts or *Wakfs* Act No. 51 of 1956 as amended by Act No. 21 of 1962 and Act No. 33 of 1982, Section 43 (1).

⁴ Section 43 (5).



Waqf assets or initiating the development of a project is crucial. This is where *Waqf* needs strategic partners globally and cross-border *Waqf* may also provide another challenge to *Waqf* development and governance. In this aspect, when the *Waqf* Act is inexhaustive specially to create the cash *Waqf*, the use of *Fatwa* (issuance of Islamic edict) is necessary. Hence, for a short-term plan, Sri Lanka must have a strong juristic foundation such as the Shariah Advisory Board or *Fatwa Committee* to further interpret the law on cash *Waqf*. The expert would also minimize any dispute on *Waqf* and if any, reference may be made to the experts, avoiding binding rules of the respective civil court.

As the banking system prospers in terms of adopting technological advancement, cash *Waqf* should not be left behind. Since cash *Waqf* is about money, it should form part of the environmental, social, and Governance (ESG) agenda. It is a form of Islamic social finance where transparency must have support from auditing and accounting system. In the past and at present, Muslim organizations have been plagued with reputational risk.

Advantages of Creating a Cash Waqf

The advantages of implementing cash *Waqf* are highlighted as follows: Firstly, cash *Waqf* is a flexible and accessible method that requires only a small amount of wealth, thereby enabling a larger group of individuals to participate. Secondly, it has the potential to generate additional resources for the development of assets, such as undeveloped *Waqf* land. Thirdly, it can assist educational institutions in addressing cash flow issues by creating a reserve fund for them. Fourthly, it can reduce the dependence of Islamic institutions on government funding and promote greater autonomy. Finally, from the perspective of the education sector, cash *Waqf* has been demonstrated to play an active role in supporting Islamic educational institutions. Al-Azhar University in Egypt serves as a noteworthy illustration of the successful application of cash *Waqf* in the educational domain. The university was constructed utilizing funds obtained through cash *Waqf*. Moreover, it has been acknowledged for its potential in establishing income-generating initiatives that cater to disadvantaged groups such as individuals with physical disabilities, single mothers, and those lacking formal education and work experience. The implementation of income-generating activities can provide significant support to individuals who face challenges in securing employment opportunities. Furthermore, such activities have the potential to contribute to the expansion of existing *Waqf* properties. A significant portion of *Waqf* properties remain underutilized and unproductive due to a lack of financial resources. The restructuring of Cash *Waqf* has the potential to facilitate the financing of *Waqf* property development via the utilization of *mudharabah* and *musharakah* methods (Beik & Arsyianti, 2013). Hence, by creating the cash *Waqf*, the objectives of the MCF, which are mentioned in the purposes above, will be fulfilled to the benefit of the religion and the Muslim community.

Creativity in the management of the *Waqf* fund is necessary. A combined form of *Waqf* such as *Waqf* of immovable property can be paired with *Waqf* of Cash. This will certainly facilitate better the need to raise, preserve and distribute the benefits to the needy. For example, the International *Waqf* Fund (IWF) under the Islamic Relief organization distinguished their activities from other charitable organizations as they focus on investing capital and distributing the benefits. With this, they continue to preserve the capital to be benefitted for a long time.

In Sri Lanka despite being a follower of the Shafie school promoting *Waqf* of immovable property, the creativity in *Fatwa* is necessary. Consideration based on the needs or *maslahah* deriving from a proper understanding of *Maqasid al Shariah* is timely. Being a minority, Muslims should embark on activities that can secure the sustainability of their assets. Cash *Waqf* will allow all segments of society to participate. In some countries such as Malaysia, there is a *fatwa* that requires the moveable to be converted into immovable assets as a long-term plan.

Fawzer (2011) reported that the status of Muslims in Sri Lanka is not promising. The situations may be considered inadequate in many aspects, including health, education, and religion. He observed that one of the reasons is the lack of funds especially from the government. A look at the *Wakf* Law shows that there is a provision for *Waqf* to play a role in assisting education, health, promoting the religion of



Islam, etc. and this could be done with sufficient funds. Again, a common problem in a minority Muslim country is the lack of capital. They have problems in getting funds from the banking institutions as most of the banking sector are non-Islamic services and the *Waqf* ecosystem must be Shariah compliant. In addition, their Islamic bodies such as mosques or religious committees are not managed by the appropriate manpower. For example, most of the *Waqf* assets are under the Mosque committees which are volunteers. As such, the utilization of *Waqf* assets is traditional and not generating sustainable income. Hence, various forms of cash *Waqf* such as money and jewelry may be used to invite more people to participate in the cash *Waqf* project.

A synergy or collaboration with *Zakah* institution may increase the capital or fund for investment. Nonetheless, there are challenges to juristic views of whether the *Zakah* fund can be used beyond the eight *asnaf* (recipients) as determined by the *Syarak*. In Malaysia and Indonesia, there are many calls for cash *Waqf* to be utilized in a more concerted manner to get a better and wider target of the beneficiaries. Another valid justification for cash *Waqf* to be utilized in a developing country as it can support SDGs activities as these are some of the efforts to battle climate change. Furthermore, over an extended period, cash *Waqf* possesses significant potential in promoting socio-economic development within communities and creating additional opportunities for individuals to engage in *Waqf*. This is due to its adaptable nature, which allows for the utilization of e-wallets, online banking, and other artificial intelligence platforms in the future. Cash *Waqf* has the potential to be utilized through various economic endeavors, including business ventures and investment opportunities. Subsequently, the generated revenue can be effectively managed and allocated toward fostering the economic and social progress of the community.

CONCLUSION

This paper elaborates on the creation of cash *Waqf* in Sri Lanka. Moreover, this study analyses the practice of cash *Waqf* in other countries especially in Turkey. Cash *Waqf*, a highly recommended Islamic practice, has come a long way since the Ottoman Empire's heyday. The Ottoman Empire's implementation of cash *Waqf* had far-reaching effects on society and the economy. Not only has cash *Waqf* benefited society in general, but it has also helped the government's economy grow; in fact, some of the revenue generated by *Waqf*'s property now goes straight to the government. *Waqf* growth is not limited to urban areas but can now be seen in rural and suburban areas as well. Many business owners have been able to get off the ground with the aid of cash *Waqf*.

The implementation of cash *Waqf* institutions in Sri Lanka and the conversion of the MCF into a cash *Waqf* are significant measures taken to enhance the efficacy of cash *Waqf* development. Through the establishment and effective administration of cash *Waqf*, the *Waqf* institution can be demonstrated as a form of Islamic social finance within the framework of Islamic economic theory. This would represent a noteworthy societal contribution on the part of the Sri Lankan government. Similarly, the cash *Waqf* fulfills the objective of *Waqf* and benefits the beneficiaries. The Sri Lankan *Waqf* Act requires any provisions related to cash *Waqf*, which should be added with the amendment. The law must be supported with a strong Shariah advisory system or a Fatwa Committee. Where there is any issue regarding the creation of cash *Waqf*, they should use the fatwa (issuance of an Islamic edict) as necessary. Hence, innovative cash *Waqf* initiatives will play significant roles in the socio-economic development of Sri Lanka. Therefore, the *Waqf* board should create the cash *Waqf*, and it will have financial independence in managing *Waqf* properties.

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