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Evaluation of the Practice of *Waqf* Management in Muslim Minority Country: Sri Lanka

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Abstract: Waqf institution has been widely established to provide for socioeconomic assistance in various field such as health, education, and socio-religious activities. Some countries successfully record positive outcomes in waqf management such as al-Azhar University in Egypt, the management of million worth of waqf assets in Singapore and mushrooming of various waqf projects in Indonesia. This study explores the origin of waqf and its management in classical literature and assesses its suitability in application within the contemporary sustainable economic world. The study is premised on the statement that waqf institutions achieve their objectives through better management, and this management is absent in the current waqf management in Sri Lanka. Hence, the validity and relevancy of this management is analyzed using classical and contemporary literature. This research adopts literature surveys and thematic interview involving twelve respondents comprised of Shari'ah scholars, current and former members of the waqf board, and waqf managers of trust. The study highlights the causes for lack of efficient management of waqf; theoretical and practical issues of the existing waqf Act in Sri Lanka, gaps in waqf legal frameworks, conceptual and management gap among the waqf board, equating waqf management to general charitable trusts. One of the notable reasons for this issue is due to a lack of understanding of the concept of waqf and its legal framework. This study recommends for the amendment of the waqf Act. Among others, to incorporate contemporary rules and practices based on Islamic law, staff training to include fundamentals of Islamic knowledge, as well as emphasizing on employment of audit processes for management while promoting awareness on waqf is crucial for waqif, managers, beneficiaries, and members of the society.

Keywords: *Waqf* Act; *Waqf* Board; Management; Muslim Minority; Sri Lanka

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1. Introduction

Waqf is a unique concept of Islamic social finance. It is an important aspect of Islamic history, serving to advance both social justice and welfare of the *ummah*. Furthermore, the most crucial aspect of the waqf institution in Islamic law is management. Beneficial outcomes for the needy will increase if waqf is managed more efficiently. Managers of waqf are referred to as *Mutawalli*, *Nāzir*, or *Qāyim* in Islamic jurisprudence. Generally, the term 'trustee' which has its origin from the English law of

trust may be used alternately in explaining the strength and the important of the duties of waqf managers. The 'trust' is very crucial in waqf management. Previous researches reveal that waqf management is inefficient and ineffective, failing to fulfil its mission to distribute wealth properly and enhance societal welfare. However, there is a renewed interest in reviving the Prophet's (SAW) traditions concerning waqf.

In Sri Lanka, waqf is management and administered by the waqf board. This board has been appointed based on the guideline provided in the Act of waqf, which is the Muslim Mosques and Charitable Trust or Waqf Act (MMCTWA),¹ placed under the department of Muslim Religious and Culture Affaires (MRCA). In this study, the paper evaluates the approach of management of waqf board and its existing practise in Sri Lanka. We highlight the current practise of the management of waqf and its challenges and issues on the implementation of proper management among contemporary and early juristic methods of waqf management to meet the modern needs.

This paper also analyses the performance of *waqf* management and their position from current perspective with a view to gauge how *Shari'ah* views on waqf management. It explains who the manager of *waqf* is and what are the qualifications needed to be a waqf manager. Similarly, this covers the power of the manager of *waqf*, and make recommendations to improve the overall *waqf* management.

2. Methodology

The study adopts a qualitative method of data collection using in-depth interviews to achieve the research objectives. The objective of the interview is to seek opinions from the selected experts for an in-depth analysis to explore the feasibility of the management and development of Waqf property. For this purpose, semi-structured interviews were designed to obtain twelve responses from *Shari'ah* scholars, current and senior members of mosque, waqf boards and *waqf* managers in Sri Lanka.

3. Waqf and its Legal Framework in Sri Lanka

Sri Lanka is a multi-religious country, and the Muslim is the minority. The Muslims have been devoted to their religion and live in special communities. However, Sri Lanka was politically under the control of the European colonial powers from the sixteenth century to the middle of the twenty-first century. It was initially under the Portuguese, later under the Netherlands and Britain. During the colonial of Britain, the Code of Muhammadan Laws was the first part of legislation governing Muslims introduced in 1806. The statute covered Muslim marriages, divorces, and inheritance. However, it did not cover *Waqf* or Muslim charitable trusts.

The waqf legal framework was first introduced in 1931. The Muslim senator of the Legislative Council approved the law as an ordinance. Waqf was previously regulated as a Charitable Trust under the Trust Ordinance, 1917. After some problems found in 1921, another Ordinance was introduced. M.M.M Mahroof explained the need for a separate Ordinance for *Waqf* since the Charitable Trust Ordinance of 1917 was initially adopted from the Indian Charitable Trust Act and The English Trustee Act. Hence, the 1931 Muslim Charitable Trust or *waqf* Ordinance came to fruition. Nonetheless, this Ordinance too was not comprehensive enough to manage the *Waqf*.

Justice M.T. Akbar suggested the creation of a special committee of justice after acknowledging the flaws in the Muslim Intestate Succession and *waqf*. A committee made up of a senator and parliamentarian from the Muslim community was established in 1952 to thoroughly investigate the problems. The Muslim Mosques and Charitable Trusts or *Waqfs* Act (MMCTWA) (No. 51 of 1956) served as the Sri Lanka's first piece of

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.

legislation establishing a preliminary legal framework for *Waqf* and trusts. In 1957, this rule became effective.

Since then, in 1962 and 1982, there have been two separate amendments to this Act. As a result, the MMCTWA becomes the law in operative in Sri Lanka which is the Act No. 33 of 1982. The most significant change that took place in 1982 was the establishment of a Waqf Tribunal with the purpose of resolving disputes about waqf. In 1982, the government made a forward-thinking move by establishing the Tribunal after years of deliberation and planning. This amendment was proposed by the Honorable Minister M.H. Mohammed and passed it in the parliament to settle *waqf* Tribunal under the Muslim Mosques and Charitable Trusts or *Wakfs* Act (No.33 of 1982). The purpose of the establishment of the *waqf* Tribunal was to resolve all disputes relating to *waqf* under the *waqf* Act. The first *waqf* Tribunal was established in 1985 in Colombo, it is the capital of Sri Lanka.

The current waqf Act also provide for way how to solve disputes related to waqf. Section 9J of the Act states that, "the jurisdiction exercisable by the Tribunal in respect of matters relating to Muslim charitable trusts or waqf shall be exclusive and any matter falling within that jurisdiction shall not be tried or inquired into by any court or tribunal of first instance. Accordingly, the registration of a Muslim charitable trust and the appointment of the trustees thereof are by the waqf Tribunal".² This waqf Tribunal is a judicial body. The Sri Lankan Judicial Service Commission appoints three Muslim members to the waqf Tribunal. The Chairman is one of the Tribunal's members.

The Tribunal has the status of a District Court and has the original as well as the appellate jurisdiction. Sections 9D to 9H of this Act speak of the general powers of the Tribunal, which has the powers of the District Court. Procedurally, it has to follow the procedure of the District Court and the provisions of the Civil Procedure Code. Section 9J confers special jurisdiction on the Tribunal in respect of charitable trusts. The Act states that "The jurisdiction exercisable by the Tribunal in respect of matters relating to Muslim charitable trusts or waqf shall be exclusive and any matter falling within that jurisdiction shall not be tried or inquired into by any court or tribunal of the first instance".³ Accordingly, any matter relating to Muslim charitable trust or waqf, apart from appeals from the waqf board, can be instituted, invoking the original jurisdiction, in the waqf Tribunal. By having this provision, the Syariah principles of waqf and charitable trust can be maintained and preserved.

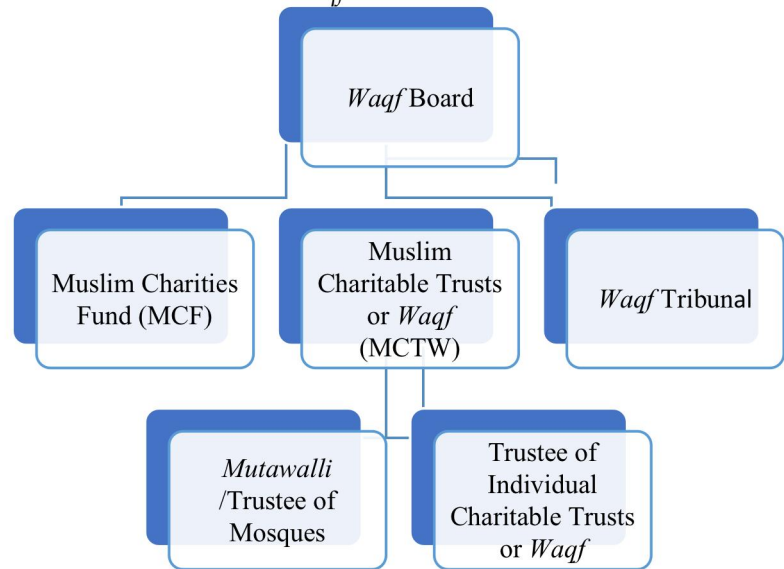
Practically, the disputes of waqf can be settled at the waqf board, if any member of the trustee or manager or any benevolent person who observed any dispute related to mismanagement of waqf or any misuse of its property. They prepare a file related to the dispute. Initially, the waqf board will solve the dispute of the waqf based on their investigation. If it is not successful, the case may be handed over to the waqf Tribunal.

The new elements introduced in 1982 demonstrate the progress for better waqf management in Sri Lanka. Besides the Tribunal, the emphasis on objective or waqf intention is critical in assisting the department to achieve the waqf objectives efficiently. The Muslim Mosques and Charitable Trusts or Waqfs Act (MMCTWA) brings under its scope all mosques or other Muslim shrines and places of religious devotion, whether incorporated or not. The MMCTWA also specifies the powers, duties, and tasks of trustees of registered mosques and Muslim Charitable Trusts, generally known as *waqf*.

² Sections 40 and 41 of the Wakfs Act.

³ Section 9J.

Chart: No 1: Structure of the current *Waqf* Act



The structure above shows the organizational chart of the *Waqf* legal framework in Sri Lanka. This legal framework has been engaged under the Department of Muslim Religious and Culture Affairs.⁴ Based on this, the *Waqf* Act should be under the DMRCA. In order to the practice, the department just monitors the Muslim Mosques and Charitable Trust or *Waqf* Act (MMCTWA) (DMRCR, 2017). However, the waqf board has full power, as regulator, to manage the mosques, the trust and these waqf properties and this board has been appointed under the *Waqf* Act by the Minister. This regulator should manage the whole sectors related to the *waqf* such as the properties, legal matter, tribunal, management, development and etc.

The Department of Muslim Cultural Affairs was in charge of managing the office of the Commissioner, which administered the governing body of the Muslim Mosques and Charitable Trusts or Waqfs Act (MMCTWA). After this Act was signed into law, it was discovered that its execution would be challenging. For example, as a result of a shortage of labor force, the number of cases filed concerning Waqf properties gradually reduced. At the same time, Islamic scholars voiced opposition to the Act alleging that it did not properly depict the principle of *Shari'ah*.

4. Analysis and Discussion

4.1. The Management of waqf

All In Sri Lanka, *waqf* has been managed by the *waqf* board as a regulator. The power of the management of waqf is granted by the Muslims Mosque Charitable Trusts or *waqf* Act (MMCTWA).⁵ This is a top-level management of the waqf. Another level is the mosques and the trust level. Commenting on the second level, Jaldeen stated that the

⁴ This department, some time, will become a separate ministry depending on the decision of government. However, at present, this is a department under the Ministry of Buddhasasana.

⁵ *The Muslims Mosque Charitable Trusts or Wakf Act (MMCTWA)* No. 51 of 1956 as amended by Act No. 21 of 1962 and Act No. 33 of 1982.

existing management of *waqf* has been supervised by those who have become members of the trustees of either the mosque or the charitable trust. They are referred to as the managers of the *waqf*. This is the current practise of the management of *waqf* in Sri Lanka.

One of the procedures adopted by the second level of the management pertains the guideline that every mosque is required to appoint a trustee who is not only responsible for managing the mosque but also the waqf properties belong to the mosque and the trust.⁶ This trustee consists of the president and nine members for a small mosque management while eleven or thirteen members are required for Jumma mosques, including a president, deputy president, trustors, deputy trustors, and other members. Similarly, the private charitable trust also has a trustee management to take charge of its waqf properties.⁷ This trustee may constitute ten members with some members from the waqif family and other independent members, but the control of the management will always be with the family member. This power is created based on the endower's constitution of the charitable trust. This private power of the management has several issues and challenges in the current practice in Sri Lanka. One of the issues is, there is no proper provision to control the private trust by the waqf board. There is no clear provision to disqualify and terminate the managers if there is any mismanagement or fraud by the manager.

In the case of general trust, the waqif and the regulator have the right to terminate the manager from his work if they find out any mismanagement related to the waqf. Then, the regulator may take over the management of the waqf until they find another qualified manager. Similarly, when the manager utilizes the benefits of the *waqf* for his own needs or if he finds out any guilt from his management, the regulator could take an action by terminating of them from his duties. In relation to this regulation, al- Nawawī mentions that the *wāqif* also has a right to dismiss a manager immediately, when he observes any kind of guilt, and hand over his duties to another qualified person. In the practise of Sri Lanka, under the MMCTWA, who will be appointed as a member of the Waqf Board, their position is as a regulator. Similarly, who will appoint a member of the trustee or trustees of a mosque and a charitable trust their position is as a manager. So, the waqf board has the right to disqualify the manager and trustee when they have been observed in any mismanagement of the waqf or any guilt from their duties, and they will temporarily handle the trust or the waqf until a new qualified manager is appointed.

Accordingly, the Department of Muslim Religious and Cultural Affairs (DMRCA) has issued a guideline to manage the mosques, *takkīyyah*, and *zāvīyyah* under the Muslim Mosques and Charitable Trusts or *Waqfs* Act (MMCTWA). This guideline has a policy related to qualifications for a person who shall become a manager of the waqf or the trust. Consequently, the Sri Lankan "Muslim (sample) legitimate code" stated that under the "Section 8"⁸ as follow;

Division "(A)" elaborates that: a person who will be selected as a trustee should become a member of the mosques, or *takkīyyah* and *zāvīyyah*, which are small mosques, and live in a local society. Division "(B)" explain that (a) he should be a Muslim, (b) could be maintaining daily prayers, (c) must be qualified to pay *Zakāt* and he should follow sensitively and could be fear only for Almighty Allah (SWT). Division (C) describe that (1) at the same time he is not a committee member in two mosques (this

⁶ This is under the topic of a Qualifications of Manager who will be selected to manage the Mosques, its Waqf, and other properties. In order to this "Section 8":

⁷ "Muslim (sample) legitimate code" (Section 8).

⁸ This is under the topic of a Qualifications of Manager who will be selected to manage the Mosques or the trust, its Waqf, and other properties. In order to this "Section 8":

division only valid and applicable for the Jumma‘ah Mosques), (2) the authority of a code should be done not any judgement as a guilty because of his misbehaviour, (3) any of code should not judge as a mentally ill person, (4) could be no loan on any of a bank that has been clarified by a code, (5) would be not work in the mosque, takkīyyah and zāvīyyah, and not take a salary for his work at the mosque, (6) could not take any properties of a mosque, takkīyyah and zāvīyyah as a lease or rent.⁹

These guidelines have been released by the MMCTWA as a recommendation to the manager who will manage the mosques and the trust. If a manager fails to fulfil these obligations, they become an unqualified member of the board of trustees of the mosques and the trust. These guidelines of the MMCTWA for a manager are significant to ensure that this policy is not in conflict with the rule of *Sharī‘ah*. However, some additional guidelines should be added to the policy, whose appointment of a trustee to manage the mosques and their waqf property is to ensure that the waqf property is well administered, efficient, and able to generate good results for the beneficiary or for welfare purposes, whether predestined or unspecified by the waqf donor. Likewise, he will be knowledgeable about, and have academic experience in, investments and the evaluation of feasibility studies that are currently being implemented in other Muslim countries around the world.

Practically, there are several issues and challenges to manage the waqf in Sri Lanka. According to Saujan and Mazahir, they criticised that there is no discussion about qualification, selection of manager, documentation of waqf, and the performance of the waqf tribunal in the Act of Waqf in Sri Lanka. For example, there is no right for the waqf tribunal to reconsider the previous judgment; there is no mention of how to select the manager and mutawalli; no duration for the appointment where the same group of managers and trustees hold to manage the waqf for a long period of time; there is no supervision of the manager and who does it; and no proper documentation about the waqf properties at the waqf board. Similarly, Thabith & Mohamad point out that their wide authority and lack of monitoring may result in the mismanagement of waqf properties and contribute also to the low rental collection. In many cases, the lessee subleases the property and earns a significantly higher amount, and the mosque and its societies do not benefit from it

4.2. The evaluation of the management practices

Recurring themes were identified based on investigation and a second review of the data that was collected. As can be seen in Table one, each of the themes that emerged from the analysis of the questions was given a succinct name that reflected a summary of the theme. The findings for each question are provided and categorized by themes. Quotations from the interview are illustrated to add extra validity and dependability to the conclusions of the research. The interviewees were asked a variety of questions, and their responses have been arranged in Table 2 according to a number of distinct categories. Each of the themes has a succinct name that can be used to identify it. The approach known as "thematic content analysis" was used to classify these themes.

Table No: 2, This table shows the analyses of the themes of the interviews related to the management of waqf

Questions		Themes
Q1	Management Committee	Not Available
		No Proper Committee
		Need Amendment

⁹ Muslim (sample) legitimate code, Muslim Mosques and Charitable Trusts or Wakfs Act (MMCTWA), Department of Muslim Religious and Cultural Affairs (DMRCA).

Q2	Appreciation of Administration and Management of Waqf	Appreciation
		Neutral
		Unsatisfied
Q3	Legal Factors of Contribution for Successful Management	Not Satisfied
		Need Awareness
		Need Amendment
Q4	Suggestion to Solve the Practical Issues	Awareness
		Islamization
		Regulations
		Follow-Up
		Shari'ah Audit

4.2.1 Establishment of Management Committee

The first question for the interviews was directed towards the respondent's thoughts about the existing enforcement of management committee, which is presently practiced in Sri Lanka. Seven respondents shared their views on the management committee, while others kept silent on it. One respondent was not sure whether there is a management committee to manage and administer Waqf property in Sri Lanka, while one respondent agreed that there is and another disagreed.

Only two respondents stated that there are management committees to manage the mosques and its properties in other Muslim countries but not in Sri Lanka. One respondent commented about the qualifications of the committee and thought that its members lack proper knowledge of the legal framework and the Waqf Act and do not understand the importance of the management of Waqf property from the Shari'ah perspective. The committee members are appointed by the minister, and it is more of a formal and political appointment than a proper role. Another respondent agreed that there is a Waqf Board but not a management committee.

The above findings of the interview based on the second question showed that the respondents are of the view that those in charge of managing Waqf properties are not qualified and lack legal knowledge to carry out their roles in the Waqf Management Committee or Waqf Board, which is clearly stated in Section 5. (1) of the Waqf Act. It provides that:

There shall be established for the purposes of this Act a board which shall be called the Mosques and Muslim Charitable Trusts or Wakfs Board and which shall consist of the Director and seven other members appointed by the Minister.

This provision states that there is a Waqf Board, and this Board comprises of seven Members with a Chairman and a Director. In other words, the law merely provides for the Waqf Board but not for the Management Committee. According to the Waqf Act, the Minister has only the authority to appoint the Director or Deputy Director, as well as the Chairman of the Waqf Board. The Minister also has no authority to interfere with the internal and external administration of the Waqf matters.

Only one respondent mentioned that there is no management committee available in the current Waqf legal framework. This finding is reflective that there is no provision in the Waqf Act related to any management committee, but only for the Waqf Board. The observations show that the practitioners and whoever that has connections with the Waqf Act do not have a clear understanding about the Waqf Act itself, Waqf Board and the management committee as well as how they are associated to Sri Lankan Waqf legal framework and Islamic law.

A close look at the Waqf Act shows that there are two kinds of provisions in the Act. The first section stated that there is a Waqf Board as shown below:

There shall be established for the purposes of this Act a Board which shall be called the Mosques and Muslim Charitable Trusts or Wakfs Board and which shall consist of the Director and seven other members appointed by the Minister.

The second section indicates that there is a management trustee, and this is evidenced by the section as below:

Appointment of trustees of mosques, shall confirm and appoint a person or persons to be a trustee or trustees who is or have been selected or nominated according to the practises, rules, regulations, or other arrangements on force for the administration of the mosque.

Both sections show that there is a Waqf Board, a management committee, and a trustee. Hence, the Waqf Board plays the role of regulator under MMCTWA. The appointment of the management committee is also acceptable, and they are sometimes referred to as the management trustee. Thus, the management committee and management trustee are used simultaneously. This committee practically manages the mosque and their Waqf properties under the supervision of the Waqf Board. The role of the committee or trustee is as a manager and a Mutawalli from the Shari'ah perspective. Hence, these two group committees are available in the Waqf Act of Sri Lanka where the Waqf Board is the regulator while the management committee or trustee is the manager or Mutawalli.

To summarise this point, ignorance or misunderstanding of the provisions of the Waqf Act exist among the practitioners as well as the management committees of Waqf in Sri Lanka. This can be associated with the reason why the management of Waqf property has not been properly managed and has open for criticism.

The recommendation for improvement of the Waqf Act should take into account recent opinions of the Muslim scholars related to new concepts and ideas on management of Waqf. This should include a new approach from the Shari'ah perspective. In light of that, Dafterdar explained that the overview of the management of the Waqf institution are relevant from the time of the Prophet (SAW) to the present day. By establishing such a management system in Sri Lanka, it will fulfil the objective of the waqif and serve the intended beneficiaries and Muslim community at large.

4.2.2 Appreciation of Administration and Management of Waqf

The respondents were asked about their satisfaction of the current management of Waqf in Sri Lanka. Two of the 12 respondents agree that the management committee for Waqf in Sri Lanka works well, while four respondents showed a substantial dissatisfaction with the current Waqf management, and the remainder are dissatisfied with it.

Further, six respondents are dissatisfied with the management committee of the Waqf in Sri Lanka. This shows that the Act, in particular the provisions on the management section, have several issues and weaknesses. Such as, the Act does not mention the qualification of the manager or the trustee; the properties are not systemized under the Waqf Board; and there is no proper communication between manager, trustees, and Waqf Board. For these reasons, six of the respondents are not appreciative of the existing management of the waqf property under the Sri Lankan Waqf Act.

The Waqf Act is silent about the establishment of the management committee, who will become a member, the qualifications and how to choose a committee. There is no guideline pertaining to this matter. The proposed amendment to the law should emphasise for the need to have the guidelines, rules and regulations to strengthen the working of the Waqf Act.

4.2.3 Legal of Contribution for Successful Management

Only two respondents agree that a comprehensive and improved law will contribute to the successful Waqf management in Sri Lanka. They have the view that the

current legal framework offers an appropriate legal basis which can be further amended. Another respondent viewed that the current Waqf Act should be amended from time to time to make it in line with the Shari'ah and to follow the best practices of Waqf as adopted by other countries. Only one respondent stated that Sri Lankan law and common law are not suitable for Muslim charitable purposes and Islamic endowments. Eight respondents did not answer this question.

Another respondent mentioned that the existing legal framework offers a very solid legal foundation for Waqf property management; however, the problem is that the current practise of Waqf management is not properly implemented on the ground because its practitioners lack the necessary knowledge. Further, the Muslim jurists who have knowledge about Waqf and the Shariah legal system do not seem to support or cooperate with the current Waqf management. In addition, the trustees or managers do not understand the purpose of Waqf and its objectives, and they do not take its rules and regulations seriously. For this reason, the Waqf properties and their management have been hugely misused and abused by the responsible and management people who actually should be taking care of them and managing them.

Following an examination of the comments concerning legal aspects of Waqf management, it is clear that practitioners and those affiliated with the Waqf lack knowledge of Waqf management and its legal framework based on the Sri Lankan Act. It needs consultation from religious scholars from both theoretical and operational sides under the Shari'ah perspective. It could also make an immediate amendment to the Waqf legal framework, which is used by the regulator, the Waqf Board, the managers, and the trustees.

4.2.4 Legal Contribution to Successful Waqf Management

Two respondents did not answer this question, while others admitted that there are issues relating to the management of Waqf. The most common observation is there is no amendment to the Act, no new legal framework or amendments since 1981. Besides, they pointed out that there needs to be more awareness of Waqf and its legal framework for the manager, the trustee, and the public due to their ignorance of the current practice.

Additionally, two respondents highlighted another fundamental issue namely the unavailability of separate functional sectors and lack of appropriate human resources. According to the Act, the Waqf Board must hold a meeting among themselves once a month. Thus, there is enough opportunity to discuss current issues and contemporary needs to improve waqf management from time to time. Hence, it is advisable to have a separate body for each sector, such as a separate agency handling awareness, Islamisation, regulation, management, Shari'ah audit, and penalty. In addition, there should be a committee for solving problems and a separate body for auditing and management, so that they can keep track of their own problems and provide practically solution.

Furthermore, one respondent observed that globally, many Waqf properties are being misused, which worth billions of rupees and so the real recipients of benefits do not receive such benefits because of mismanagement. In Sri Lanka, mismanagement may happen due to lack of provisions addressing this issue such as a strict requirement for auditing, punishment for mismanagement, etc. This may also be associated to the fact that staff does not provide such support in protecting these properties. In some cases, the use of waqf properties is taken lightly as it is considered as public or government properties.

Therefore, we need to strengthen our legal system or our Act by looking into best practices and do the necessary amendments to the Sri Lanka waqf Act. Likewise, we need to provide strong members of those in charge of waqf so that it shall appear as a respected job. This requires continuous training and application of new technology such as fintech or blockchain facilities which can monitor each initiative in waqf management.

In addition, the Waqf Board should appoint people of good character and those who have special Shari'ah knowledge, and those who are interested in the management of Waqf to be able to work seriously.

The respondents also criticised that the waqf act is silent about the establishment of the management committee as to who will become a member, their qualifications and how to choose a committee. We are left with no guidelines pertaining to this. Similarly, they viewed that the current practise of waqf management is not properly legal-based application because some of the practitioners are not aware of the Act and how to apply it. They also stated that the theologians and religious scholars, who have knowledge about waqf and the Shari'ah legal system, are not supporting or cooperating with the current waqf management. In addition, some of the trustees or managers do not understand the purpose of waqf and its objectives, and they do not concern the seriousness of its rules and regulations. For this reason, waqf and its management have been hugely misused and abused by those who are entrusted to manage waqf. Therefore, the respondents suggested that the proposed amendment to the law should emphasise the need to have the guidelines, rules, and regulations to strengthen the working of the waqf Act.

The most common observation is that there is no amendment to the Act, no new legal framework, or any new rules and regulation since the last amendment in 1981. Besides, they also pointed out that there needs to be awareness of the Waqf and its legal framework for the manager, the trustee, and the public because they do not know the present practice.

Additionally, they highlighted that another fundamental issue is the unavailability of separate functional sectors for each matter and a lack of human resources. According to the Act, the Waqf Board must hold a meeting among themselves once a month. So, in practice, it should commonly happen every fortnight. Thus, there is actually avenue to discuss issues rather than focusing on management only. Hence, there should be a separate body for each sector, such as a separate body for awareness, Islamisation, regulation, management, Shari'ah audit, and penalty. In addition, there should be a committee for solving problems and a separate body for auditing and management, so that they can keep track of their own problems and come up with solutions even though everything is being talked about.

Furthermore, they also commented that "we find that globally, many Waqf are being misused, which worth billions of rupees and so the real recipients of benefits do not receive such benefits because of mismanagement. Similarly, one of the reasons for the mismanagement is our legal system which is the Waqf Act, and the staff does not provide such support in protecting these properties". Therefore, we need to strengthen our legal system or our Act by making a new amendment. Likewise, we need to provide strong members who are working on it and managing it properly. The waqf Board should appoint people of good character and those who have special Shari'ah knowledge, and those who are interested in the management of Waqf to be able to work seriously.

Following an evaluation of the comments concerning waqf management, it is apparent that there are several issues and challenges in the management of waqf, both theoretically and practically. Similarly, the practitioners and those affiliated with the waqf lack knowledge of waqf management and its legal framework based on the Sri Lankan Act. It needs consultation from religious scholars from both theoretical and operational sides under the Shari'ah perspective. It could also make an immediate amendment to the waqf legal framework, which is used by the regulator, the manager, and the trustee. Accordingly, the amendment is necessary in view of Shari'ah as well as the contemporary practices of waqf. Hence, there is a need to strengthen the waqf Act.

Analysis of the responses show that there are several issues and challenges in the management of Waqf and its properties, both theoretically and practically. Accordingly,

amendment to the Waqf Act is necessary in view of Shari‘ah as well as the contemporary practices of Waqf. Hence, there is a need to strengthen the Waqf Act.

5. Conclusions

This paper achieves to evaluate the practice of waqf management in Sri Lanka. This evaluation has shed light on the gaps between the waqf legal framework and its practise in the waqf management under the Department of Muslim Religious and Cultural Affairs (DMRCA), Sri Lanka. The paper finds out that the major issue with the waqf Act is that from 1982 until now, there has been no amendment to align it with contemporary practise and Shari‘ah principles. Additionally, the most essential issue is that there is no qualification to be selected as a member of the board, manager, and trustee.

Another important aspect of management is record. It is observed that there is no data evidencing the record of waqf assets under the Waqf Board at DMRCA. Similarly, if any, it is not systemized. There are properties that do not have any server plans and their deeds are not registered at the land department of Sri Lanka. There are some properties that are taken over by someone, usually a former manager or family member of the waqif. Another major issue among regulators and practitioners is that their mindset is to equate a Waqf with a normal charity. The implication of this attitude is serious, especially from Shariah perspective. Waqf properties are to be treated differently. This problem must be resolved urgently and comprehensively by educating and training the regulators and practitioners with sufficient knowledge of the mission and vision of the MMCTWA in general. The observations as discussed above show that the understanding of the concept of waqf legal framework, the application of the regulations and the Act is still lacking among the practitioners. This deficiency may tarnish the credibility and reputation of the MMCTWA as a source of waqf regulation and management in the long run.

Finally, a proper understanding of the management of waqf and its legal framework is essential for all members of the society including the managers as well as the Shariah scholars. Education about waqf should be relayed across the board especially among the young members of the community to sustain Waqf in the country. This can be done through the informal education in the mosque or via formal education, if possible. Education and training are among of the effective ways to ensure waqf is perpetual, irrevocable and inalienable.

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References

- Al-Nawawī, Y. (1995). *Rawdhatu al-Tālibīn Wa ‘Umdati al-Muttaqīn*, Vol. 5. Beirut: Dār al-Fikri.
- Bushra & Nafees, M. T. (2022). Management of Waqf Properties: A Case Study in Sri Lanka. *Sprin Journal of Arts, Humanities and Social Sciences*, 300-310.
- DMRCR, T. D.-S. (2017). *Muslim Mosques and Charitable Trusts or Wakfs Act. The Department of Muslim Religious and Cultural Affairs- Sri Lanka*. Retrieved from <http://muslimaffairs.gov.lk/wpcontent/uploads/2017/05/Wakf-A>: <http://muslimaffairs.gov.lk>

- I. Zarook. (2018). *The Law Relating to Mosques & Muslim Charitable Trusts or Wakfs*. Colombo: UDH Compuprint.
- Ibn ‘Ābidīn, ‘. a.-‘.-Ḍ.-Ḥ. (1992). *Raḍḍu al-Muktāar ‘Alāa al-Ḍurri al-Muktāar, Hāshiyathu Ibn ‘Abidīn, Vol. 4*. Ḍimishiḡ: Dār al-Fikri.
- Jaldeen, M. S. (1993). *The Muslim Law of Succession, Inheritance, and Waqf in Sri Lanka*. Colombo: Federation of Association of Muslim Youth in Sri Lanka.
- Mahroof, M. M. (1985). The Enactment of ‘Wakf’ Legislation in Sri Lanka: the Law in Context. *Institute of Muslim Minority Affairs. Journal 6, no. 2*, 283-294.
- Mahroof, M. M. (1990). Islamic Law in Sri Lanka: The Formal and Informal Aspects. *Islamic Studies 29, no. 1*, 77-90.
- Mat Rani, M. A. (2010). Waqf Management and Administration in Malaysia: Its Implementation from the Perspective of Islamic Law. *Management & Accounting Review (MAR) 9, no. 2*, 1-7.
- Mohsin, M. I. (2016). Development and Administration of the Institution of Waqf (Past and Present). In M. I. Mohsin, *Financing the Development of Old Waqf Properties*, pp. 13-20. Palgrave Macmillan, New York (pp. 13-20). New York: Palgrave Macmillan.
- Saujan & Mazahir, I. a. (2021). Legal and practical issues in the management of waqf properties in Sri Lanka. *8th International Symposium, FIA, SEUSL*. Oluvil: South Eastern University of Sri Lanka.
- Saujan & Mazahir, I. a. (2021). Waqf Governance in Sri Lanka: Legal Framework, Issues, Challenges, Way forward. *8th International Symposium, FIA, SEUSL* (pp. 405-421). Oluvil: Department of Islamic Studies, South Eastern University of Sri Lanka.
- Thabith & Mohamad, M. A. (2021). Creation and Management of Lease of Waqf Properties in Sri Lanka: Issues and Challenges. *Journal of Contemporary Business and Islamic Finance, Volume 1, Issue 1*, 59-72.
- Thabith & Mohamad, M. B. (2021). Waqf and Its Legal Framework in Sri Lanka: A Preliminary Study. *Intellectual Discourse 29, no. 2*, 357-378.
- Thabith, M. M. (2019). Legal framework of waqf in Sri Lanka: an analytical study. *Proceedings of 6th International Symposium*. Olivil: FIA, SEUSL.