



THE VIABILITY OF CASH WAQF MODELS UNDER
THE EXISTING LAWS IN NIGERIA: A FOCUSED
STUDY ON CORPORATE, *TAKĀFUL* AND
COOPERATIVE MODELS

BY

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ABSTRACT

This research examines the prospects for implementation of cash waqf models in Nigeria without violating any law. As there are many cash waqf models being implemented across the globe, this study focuses restrictively on three key models, namely; Corporate Cash Waqf Model; Islamic Insurance (*Takāful*) Model [which are in two sub-models of *Takāful* Plan Model and Waqf Fund Wakalah Model]; and Cooperative Cash Waqf Model (*Waqf Ta'wun Ijtimā'ī*). While Cash Waqf simply means the dedication of an amount of money as waqf (Islamic endowment), its models are the various means, methods and schematic plans and practices by which it is being implemented. The models may therefore vary from one jurisdiction to another, depending on each legal regime, among others. Thus, the fact of a successful implementation of any model in any country cannot justify introducing and implementing it without due regard to the legal reality in the other country. To this extent, this study has explored the existing laws in Nigeria to determine if the three focused models can be implemented without legal inhibitions. It is found that implementation of the focused Cash Waqf Models is viable under the existing laws in the nation. This can be realised by exploring enabling legal tools like the 1999 Constitution; Company and Allied Matters Act (CAMA), 1990; Insurance Act, 2003; National Insurance Commission (NAICOM) Act, 1997; Guidelines for Takaful-Insurance Operation, 2013; and, the Cooperative Laws of various States. Based on these laws, the Islamic Finance Institutions to play active role in the scheme will include Banks, Microfinance, Takaful Companies and Muslim/Islamic Cooperative Societies. To properly employ corporate institutions like Company Limited by Shares (Ltd/Plc.), Company Limited by Guarantee (Ltd/Gt) or Incorporated Trustees to implement cash waqf, the research identified the need for a Separate Cash Waqf Fund to be set up to avoid vesting the cash waqf in the corporate bodies while they only play the roles of waqf managers. For desired improvements and better legal facilitation of the implementation of the focused Cash Waqf Models in the country, it is recommended that various States should enact Waqf Laws in which adequate provisions are made for Cash Waqf with approval for the focused Models. In States where it may be difficult to specially enact such Laws, such as States in the Southern Region, Charity and Endowment (C & E) Laws is recommended. In such C & E Laws, specific provisions should be made for "Religious Charity and Endowment" in which necessary provisions are made for "Islamic Religious Charity and Endowment (Waqf)". Significantly, this research has made far reaching findings and their consideration will provide useful guide on implementation of the focused Cash Waqf Models under the existing laws in the country. The research has been actualised by qualitative research methodology, content analysis; semi-structured interviews; observations; discussions; internet explorations and field work. The interviewees included Law Lecturers and Students, Islamic Studies Lecturers and Students; Community Leaders; Philanthropists; Lawyers; Judges; Court Officials; Muslim Scholars; Imams; as well as Non-Muslims. Though there is still room for some reforms to put in place facilitating laws, yet it can be safely concluded that, based on the findings from this research and the available enabling laws, Corporate Cash Waqf Model, Islamic Insurance (*Takāful*) Cash Waqf Model and Cooperative Cash Waqf Model are viable for implementation under the existing laws in Nigeria.

ملخص البحث

هذه الدراسة تبحث عن إمكانية تنفيذ نماذج الوقف النقدي في نيجيريا دون انتهاك أي قانون. كما أن هناك عديدًا من نماذج الأوقاف النقدية التي تتم تنفيذها في جميع أنحاء العالم، إلا أن الدراسة تركز على ثلاثة أنماط وهي: الأوقاف النقدية للشركات؛ التأمين الإسلامي (التكافل) أنموذج (وهذا أنموذج ينفرد إلى الأنموذجين: وقف النقدي التكافل والوقف النقدي على صيغة الوكالة). وأنموذج الوقف النقدي التعاوني (وقف التعاون الاجتماعي). في حين أن الوقف النقدي يعني ببساطة اقتطاع مبلغ مالي بوصفه وقفًا إسلاميًا، وهذا الأنموذج له الوسائل والأساليب المختلفة والخطط والممارسات المختلفة تتم تنفيذه. لذلك هذا الأنموذج يختلف من اختصاص واحد لآخر؛ تبعاً لنظام كل قانوني. وبناءً على ذلك، فإن نجاح تنفيذ أي الأنموذج من أي دولة لا يمكن تنفيذه دون أخذ الاعتبار للواقع القانوني في البلاد الآخر. وإلى هذا الحد، تستكشف الدراسة القوانين القائمة في نيجيريا لتحديد ما إذا كان يمكن تنفيذ النماذج الثلاثة المركزة دون وجود أي مانع قانوني. وتبين أن تنفيذ نماذج الوقف النقدي المركزة في البحث قابلت للتطبيق بموجب القوانين القائمة في نيجيريا. ويمكن تحقيق بالاستناد على الدستور لعام 1999م؛ وقانون الشركات والمسائل المتصلة بها لعام 1990م (CAMA)؛ وقانون التأمين لعام 2003م؛ ومبادئ توجيهية للتكافل لعام 2013م؛ وقانون الهيئة الوطنية للتأمين لعام 1997م (NAICOM) (ACT)؛ والقوانين التعاونية لمختلف الدول. واستناداً إلى هذه القوانين، فإن المؤسسات التي تضطلع بأدوار نشطة تشمل المؤسسات المالية الإسلامية؛ والبنوك؛ وشركات التمويل الأصغر؛ والتكافل؛ والجمعيات التعاونية الإسلامية. ويمكن أيضاً تسجيل المؤسسات القانونية الخاصة إما بوصفها شركة محدودة بالضمان، أو الأمانة المؤسسين. ومن أجل التحسينات المرغوبة والتيسير القانوني الأفضل لتنفيذ نماذج الوقف النقدي المركزة في البلد، يوصى الباحث بأن تقوم مختلف الدول بسن قوانين الوقف التي تتم فيها توفير محصنات كافية للأوقاف النقدية من خلال النماذج المحددة. وفي الدول التي قد يصعب فيها سن مثل هذه القوانين، مثل دول المنطقة الجنوبية، ويوصى الباحث بضرورة سن قوانين للجمعيات الخيرية والأوقاف. وفي هذه القوانين الخاصة بالمراقبة والتقييم، يوصى الباحث بإصدار أحكام خاصة بـ "المؤسسة الخيرية والأوقاف الدينية" التي تنص على أحكام ضرورية "للجمعيات الإسلامية الخيرية والأوقاف". ومما له دلالة أن هذا البحث قد أسفر عن نتائج بعيدة المدى يمكن أن يؤدي النظر فيها إلى قطع شوط طويل في جعل تنفيذ نماذج الوقف النقدي المركزة بموجب القوانين القائمة في نيجيريا أسهل مما كانت عليه الحال حتى الآن. وقد تم تحقيق هذا البحث من خلال منهجية البحث النوعي، وتحليل المحتوى؛ مقابلات شبه منظمة؛ الملاحظات؛ مناقشات؛ استكشافات الإنترنت والعمل الميداني؛ شملت مقابلات مع الطلاب ومحاضري القانونيين؛ والطلاب ومحاضري الدراسات الإسلامية؛ والمحامين؛ والقضاة؛ وقادة المجتمع؛ والمحسين؛ والعلماء المسلمين؛ والأئمة وغير المسلمين. وعلى الرغم من وجود بعض مجالات الإصلاح التي تم تحديدها كما هو الحال في مجال اختصاص المحكمة، إلا أنه يمكن الاستنتاج بأمان أنه استناداً إلى النتائج التي توصل إليها هذا البحث، فإن نماذج الوقف النقدي الثلاثة المركزة ذات فرص كبرى لتنفيذها ضمن المناخ القانوني النيجيري .

APPROVAL PAGE

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DECLARATION

I hereby declare that this dissertation is the result of my own investigation, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

Abdullahi Saliu Ishola

Signature.....

Date

INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA

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This thesis is dedicated as a token of appreciations to my beloved aged good parents, Alhaji Saliu Aremu Ishola and Alhaja Adijat Anike Ishola and to the memory of my beloved late Step Mother, Alhaja Fatimoh Ishola whose death continues to sadden my heart. May Allah make this research a Ṣadaqah Jāriyah for each of them. Oh Allah! Bless them and care for them more than they blessed and cared for me when I was little.

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TABLE OF CONTENTS

Abstract.....	ii
Abstract in Arabic.....	iii
Approval Page	ii
Declaration.....	iii
Copyright	iv
Dedication	v
Acknowledgements	vi
List of Table.....	xiv
List of Figures.....	xv
List of Cases.....	xvi
List of Statutes	xvii
List of Abbreviations	xviii
CHAPTER ONE:GENERAL INTRODUCTION	1
1.1 Background to the Study	1
1.2 Statement of the Problem.....	8
1.3 Objectives of the Research	9
1.4 Research Questions.....	10
1.5 Hypothesis	10
1.6 Scope and Limitation of the Study	10
1.7 Research Methodology	12
1.7.1 The Use of Doctrinal Legal Research Methodology	13
1.7.2 The Use of Qualitative Non-Doctrinal Legal Research Methodology.....	14
1.7.3 The Use of Electronic Resources	16
1.7.4 Arabic and English Resources	16
1.8 Literature Review	16
1.8.1 Waqf in the General Context	17
1.8.2 Issues in Cash Waqf.....	24
1.8.3 Scholarly Works on Waqf and Cash Waqf in Nigeria.....	32
1.8.4 Gaps for this Research to Fill.....	45
1.9 Chapterisation Structure of the Research	47
CHAPTER TWO:ENDOWMENT SYSTEM IN ISLAMIC LAW: CONCEPTIONS, PRINCIPLES, DIVISIONS AND ESSENTIAL PARTIES TO WAQF WITH SPECIAL REFERENCE TO CASH WAQF ...	49
2.1 Introduction.....	49
2.2 Conceptions of Waqf.....	50
2.2.1 General Linguistic Meaning of Waqf	50
2.2.2 Technical Conceptions of Waqf.....	54
2.2.3 Relationship Between <i>Waqf</i> , <i>Habs</i> and <i>Ṣadaqah</i>	67
2.3 Principles of Waqf: Legal Issues in Perspective.....	70
2.3.1 Basis for Waqf in Islamic Law	70
2.3.2 Waqf as a Contract in Islamic Law: Fundamentals of <i>‘Aqd-l- Waqf</i>	73

2.3.3 Pillars of a Valid Waqf and their Conditions: <i>Arkān Wa Shurūt-l-Waqf</i>	77
2.4 Divisions of Waqf of Waqf Based on the Mawqūf Alaih	84
2.4.1 Waqf Khairī: Non-Family Waqf	86
2.4.2 Waqf Dhurī: Family Waqf	91
2.4.3 Waqf Mushtarak: Joint/Combine Waqf	98
2.5 Essential Parties to Cash Waqf	101
2.5.1 The Wāqif	101
2.5.2 The Mawqūf Alaih	102
2.5.3 The Mutawallī	102
2.6 Legal Rulings on Participation of Non-Muslims in Waqf: Can Non-Muslims Get Involved in Cash Waqf in Nigeria?	109
2.6.1 Descriptions of a Non-Muslim	110
2.6.2 Legality of Participation as Wāqif (Donor/Endower)	121
2.6.3 Legality of Participation as the <i>Mawqūf Alaih</i> (Beneficiary)	125
2.6.4 Legality of Participation as the <i>Mutawallī</i> (Manager)	127
2.7 Conclusion	128

CHAPTER THREE: EXAMINATION OF WAQF LEGAL REGIME IN NIGERIA 131

3.1 Introduction	131
3.2 Basic Information About Nigeria in Relation to Waqf	132
3.2.1 Political and Demographical Information of Nigeria	132
3.2.2 Legislative Powers in Nigeria and Jurisdiction to Legislate on Waqf	136
3.2.3. Judicial Structure in Nigeria: The Implication for Jurisdiction in Waqf	139
3.3 Jurisprudence of Waqf in Nigeria	145
3.3.1 Constitutional Conception of Waqf: Waqf as an Islamic Personal Law Subject	145
3.3.2 Waqf Conceptions under Other Nigerian Legal Instruments	154
3.4 Ingredients of a Valid Waqf under the Nigerian Law	156
3.4.1 Islamic Faith/Islam/Being a Muslim: Constitution vs. State Laws	156
3.4.2 Being Individual Persons/Groups or Organisations or Corporate Bodies	160
3.4.3 Residence in the State or Any Part of the Muslim World	163
3.4.4 Rightful Ownership of the Endowed Property	167
3.4.5 Being with Permissible Items in Islamic Law	168
3.4.6 Can Be with Any Amount or Quantity	168
3.5 Legal Bases for Waqf in Nigeria	168
3.5.1 Constitutional Basis	169
3.5.2 Islamic Law Basis	173
3.5.3 Legal Basis in the Sharia Court of Appeal Law	173
3.5.4 Legal Basis in the Relevant State Enactments on Endowments ..	177
3.5.5 Legal Basis from Human Rights Perspectives	178
3.5.6 Legal Basis at the Federal Capital Territory (FCT), Abuja	180
3.5.7 Peculiar Situation of Its Legal Basis in the Southern States	181

3.5.8 Legal Basis for Non-Muslims' Participation in Waqf in Nigeria	181
3.5.9 Legal Basis for Cash Waqf in Nigeria	183
3.6 Categories of Waqf under the Nigerian Law	185
3.6.1 Muslim Endowed Waqf	185
3.6.2 Non-Muslim Endowed Waqf	185
3.6.3 Perpetual/Temporary Waqf	189
3.6.4 Official/State Endowed Waqf	193
3.6.5 Statutory Waqf: Mandatory Waqf and Voluntary Waqf	197
3.6.6 Traditional Waqfs	202
3.7 Conclusion	203

CHAPTER FOUR:ANALYTICAL DISCOURSE ON CASH WAQF AND ITS MODELS.....206

4.1 Introduction.....	206
4.2 Connotations of Cash Waqf.....	206
4.2.1 Meanings of “Cash” from Different Purviews.....	208
4.2.2 Conceptions of Cash Waqf	214
4.3 Views on the Strengths/Weaknesses and Merits/Demerits of Cash Waqf	217
4.3.1 Arguments For and Against Cash Waqf: Strengths and Weaknesses.....	218
4.3.3 Merits and Demerits of Cash Waqf.....	218
4.4 Limitations To Waqf And Their Relevance To Cash Waqf.....	220
4.4.1 Prohibition of Sales (<i>Bai' u</i>)	221
4.4.2 Prohibition of Gift (<i>Hibah</i>)	221
4.4.3 Prohibition of Inheritance (<i>Mirāth</i>).....	222
4.4.4 Prohibition of Mortgage (<i>Rahan</i>).....	222
4.4.5 Money as the Object of Waqf (<i>Mawqūf</i>) and the Need for Its Preservation	223
4.5 New Cash-Based Waqf Practices in the Modern World: An Introduction to the Concept of “Waqf Cash” as Different from “Cash Waqf”	225
4.5.1 Conception of “Waqf Cash” As Different from “Cash Waqf”	226
4.5.2 Understanding “Cash Waqf” As “Monetary Waqf” And “Waqf Cash” As “Monetised Waqf”	230
4.5.3 Comparison of Cash Waqf Processes with Waqf Cash Processes.....	231
4.6 Models of Cash Waqf in Perspectives	245
4.6.1 Meaning of “Cash Waqf Model” As A Concept.....	245
4.6.2 Model No.1: Corporate Cash Waqf Model.....	247
4.6.3 Model No. 2: Waqf <i>Takāful</i> Model.....	254
4.6.4 Model No. 3: <i>Wakalah</i> with Waqf Fund Model	258
4.6.5 Model No. 4: Waqf <i>Ta'wun Ijtima'i</i> (Cooperative) Model	260
4.7 Conclusion	262

CHAPTER FIVE:ANALYSIS OF THE EXISTING LAWS FOR IMPLEMENTATION OF CORPORATE CASH WAQF MODEL IN NIGERIA.....265

5.1 Introduction.....	265
5.2 Legal Instruments Relevant To Implementation of Cash Waqf and Its Models in Nigeria	265
5.2.1 Relevant Federal Legal Instruments	266
5.2.2 Relevant State Legal Instruments	267
5.3 Viability of Corporate Cash Waqf Model Within the Nigerian Legal Framework.....	271
5.3.1 Overview of the Companies and Allied Matters Act (CAMA) ...	273
5.3.2 Viability of Implementing Corporate Cash Waqf Through Companies	275
5.3.3 Viability of Implementing Corporate Cash Waqf through Incorporated Trustees	299
5.4 Comparison of Corporate Cash Waqf Structures in Nigeria	309
5.4 Conclusion	310

**CHAPTER SIX: ANALYSIS OF THE EXISTING LAWS FOR
IMPLEMENTATION OF *TAKĀFUL* AND COOPERATIVE CASH
WAQF MODELS IN NIGERIA.....312**

6.1 Introduction.....	312
6.2 Viability of Waqf <i>Takāful</i> Model Within the Nigerian Legal Framework.....	313
6.2.1 Feasibility of Waqf <i>Takāful</i> within the Nigerian <i>Takāful</i> Guidelines	316
6.3 Viability of the Cooperative Cash waqf Model within the Nigerian Legal Framework.....	320
6.3.1 Types of Cooperative Societies under the Nigerian Law	324
6.3.2 Analysis of the Relevant Factors for a Guide on the Viability of the Cooperative Cash Waqf Model in Nigeria	326
6.5 Analysis of the Field Work Reports	332
6.5.1 Interview Methods and Constraints	332
6.5.2 Language, Venue and Duration of the Interviews	333
6.5.3 Notable Materials and Documents Received from the Interviewees.....	334
6.5.4 General Demographical Information About the Interviewees.....	335
6.5.5 Overview of the Contents of the Semi-Structured Interview Questions	336
6.5.6 Thematic Issues Arising from the Interviews and Reactions of the Interviewees	336
6.5.7 Recommendations of the Interviewees for Successful Implementation of Cash Waqf Models in Nigeria.....	340
6.5.8 Benefits of the Fieldwork to the Research	341
6.5.9 General Critique on the Fieldwork Reports	342
6.6 Conclusion	342

CHAPTER SEVEN: CONCLUSIONS AND RECOMMENDATIONS345

7.1 Introduction.....	345
7.2 Summary.....	346
7.3 Findings	353
7.4 Recommendations.....	354

7.4.1 Issuance of (Islamic) Non-Interest Cooperative Societies Regulations	355
7.4.2 Implementation of Cash Waqf Deposit Account by Islamic Banks in the Country	355
7.4.3 Introduction of Waqf as a Subject in educational curricular on Islamic studies and Islamic law	356
7.4.4 Use of “Waqf” in the Registered Names of Waqf Corporate Bodies	357
7.4.5 Enactment of Dedicated Laws on Waqf in the Northern States ..	357
7.4.6 Enactment of Endowment and Charity Registration Laws in the Southern States	358
7.4.7 Establishment of Waqf Registry at the Sharia Court of Appeal ..	358
7.4.8 Registration of Waqf Trustees by Islamic Banks.....	359
7.5 Implications for Further Research	359

BIBLIOGRAPHY362

APPENDIX I: SEMI-STRUCTURED INTERVIEW QUESTIONS.....	390
APPENDIX II: SEMI-STRUCTURED INTERVIEW QUESTIONS FOR MALLAM YUSUF ALI, SAN	391
APPENDIX III: LIST OF INTERVIEWEES.....	393
APPENDIX IV: WRITTEN INTERVIEW RESPONSES BY IMAM ABDULLAHI SHUAIB, SECRETARY/CEO, JAIZ ZAKAT AND WAQF TRUST, ABUJA.....	398
APPENDIX V: ENDOWMENT DECLARATION AND DISTRIBUTION FORMS, ZAMFARA STATE, NIGERIA.....	401
APPENDIX VI: LIST OF WAQF PROPERTIES UNDER THE MANAGEMENT OF KANO STATE ZAKAT AND HUBSI COMMISSION AS AT 20TH AUGUST, 2015	405
APPENDIX VII: APPLICATION FORMS FOR REGISTRATION OF COOPERATIVE SOCIETIES IN KWARA STATE.....	407
APPENDIX VIII: LIST OF PUBLICATIONS DURING THE STUDY, 2015-2017	412

LIST OF TABLE

<u>Tables No.</u>		<u>Page No.</u>
5.1	Corporate Cash Waqf Structures in Nigeria in Comparison	309
7.1	Chronological Links of Chapters and Their Relationships with Research Objectives and Research Questions	348

LIST OF FIGURES

Figure No.		Page No.
2.1	Types of Waqf Based on the Mawqūf Alaih.	85
3.2	Division of Waqf khairi	91
4.1	Cash-Based Waqf Principle	231
4.2	Istibdal Processes	235
4.3	Cash Waqf Processes and the Approved means for its use	239
4.4	Waqf Cash Processes	243
5.1	Corporate Cash Waqf Structure in Nigeria Through Company Limited by Shares	287
5.2	Corporate Cash Waqf Structure in Nigeria Through Company Limited by Guarantee.	292
5.3	Structuring of Unlimited Liability Company for Corporate Cash Waqf	298
5.4	Structure Model for the Use of Incorporated Trustees for Corporate Cash Waqf in Nigeria	307
6.1	Waqf Takaful Structure through introduction as a New Model	319
6.1	Waqf Takaful Structure for Cash Waqf in Nigeria though Its Aligning with the Existing Operating Business Models as an International Best Practice	320
6.2	Non-Member Deposit Structure for Cooperative Cash Waqf in Nigeria	328
6.3	<i>Wakālah and Muārabah</i> Contract-Based Structure for Implementation of Cooperative Cash Waqf Model in Nigeria	331

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LIST OF ABBREVIATIONS

AA	Arbitration Act
ACA	Arbitration and Conciliation Act
ADR	Alternative Dispute Resolution
BUK	Bayero University Kano (Nigeria)
CA	Court of Appeal
CAILS	College of Arabic and Islamic Legal Studies
CAMA	Companies and Allied Matters Act
CAP	Chapter (with reference to statutes)
CHAP	Chapter
CJ	Chief Judge
CJN	Chief Justice of Nigeria
FGN	Federal Government of Nigeria
ICCRS	Department of Islamic, Christian and Comparative Religious Studies (Kwasu)
ICWR	International Centre for Waqf Research
IDB	Islamic Development Bank
IIIBF	International Institute of Islamic Banking and Finance (BUK)
IIIT	International Institute of Islamic Thought
IIUM	International Islamic University Malaysia
IRTI	Islamic Research and Training Institute
IT	Incorporated Trustees
JCA	Justice of the Court of Appeal (Nigeria)
JSC	Justice of the Supreme Court (Nigeria)
KWASSHCA	Kwara State Sharia Court of Appeal
KWASU	Kwara State University (Nigeria)
LFN	Laws of the Federation of Nigeria
LGA	Local Government Area
LTD	Company Limited by Shares (Private)
LTD/GT	Company Limited by Guarantee
MDG	Millennium Development Goals
MLJ	Malaysian Law Journal
MLJU	Malaysia Law Journal Unreported
MUI	Majlis Ulama Indonesia (Council of Indonesia Ulama)
NBA	Nigerian Bar Association
NJI	National Judicial Institute
NLR	Nigerian Law Report
NWLR	Nigerian Weekly Law Report
OAU	Obafemi Awolowo University
OIC	Organisation of Islamic Cooperation
PLC	Company Limited by Shares (Public)
QB	Queen's Bench
SAN	Senior Advocate of Nigeria
SC	Supreme Court
SDG	Sustainable Development Goals
UNILORIN	University of Ilorin (Nigeria)

UNLTD
UNO
v
ZEB

Unlimited Liability Company
United Nations Organisation
Versus
Zakat and Endowment Board (Zamfara State, Nigeria)

CHAPTER ONE

GENERAL INTRODUCTION

1.1 BACKGROUND TO THE STUDY

On the global scale, the recently available data reveals significant reduction in the number of the extremely poor people from 1.9 billion in 1990 to 836 million in 2015.¹ This figure remains referenced on this issue till now as the most updated data in 2017.² Despite this, the figure may not be generalised to represent the state of poverty among the world Muslim populace. Rather still, “mass poverty is known to be widely spread in the Islamic world, and many believe that this is not in keeping with the vast resources endowment of the Islamic countries”.³

Therefore, in an attempt to proactively address the scourge of poverty ravaging various parts of the Muslim world,⁴ Muslims at various levels and in different capacities as governments,⁵ individuals and organisations have been making recourse to various schemes of socio-economic empowerment provided in Islam.⁶ This is also

¹ UNO, “Millennium Development Goals Report” (United Nations, 2015), 4, [http://www.un.org/millenniumgoals/2015_MDG_Report/pdf/MDG 2015 rev \(July 1\).pdf](http://www.un.org/millenniumgoals/2015_MDG_Report/pdf/MDG%2015%20rev%20(July%201).pdf).

² <https://makewealthhistory.org/2017/02/02/how-many-people-still-live-in-poverty/> (last visited on 12 September 2017); Max Roser and Esteban Ortiz-Ospina (2017) – ‘Global Extreme Poverty’. *Published online at OurWorldInData.org*. Retrieved from: <https://ourworldindata.org/extreme-poverty/> (last visited on 12 September, 2017).

³ Abdelrahman R Zeinelabdin and Imam Ali Ibn Aby Taleb, “Poverty in OIC Countries: Status, Determinants, and Agenda for Action,” *Journal of Economic Cooperation among Islamic Countries* 17, no. 3–4 (1996): 1–40.

⁴ OIC countries are widely noted to be the most impoverished countries in the world. On this, see Amuda Yusuff Jelili and Nor Azizan Che Embi, “Alleviation of Poverty among OIC Countries through Sadaqat, Cash Waqf and Public Funding,” *International Journal of Trade, Economic and Finance* 4, no. 6 (2013): 403–9.

⁵ As observed by Siddiqi in this regard, “Islamic economics has recently attracted the attention of the rulers of some Muslim countries who want advice on development strategies, financial management, and welfare programs”. See Muahammad Najatullah Siddiqi, “Islamizing Economics,” in *Toward Islamization of Disciplines*, Series No. (Virginia, USA: The International Institute of Islamic Thought, 1995), 260.

⁶ These schemes include *hibah* (gift); *wasiyyah* (will); *mīrāth* (inheritance); *waqf* (endowment); *qard hasan* (benevolent loan); etc. Generally on this, see ‘Abdur Rahman I. Doi, *Shari’ah: The Islamic Law*, Seventh Pr (Kuala Lumpur: A. S. Noordeen, 2007), 328–405.

true of the development among Muslims in Africa.⁷ This appears to have been informed by the global reawakening among the Muslims on the need for them to look for solutions to their problems, especially their economic problems, within the safeguards in their religion of Islam.⁸ Along this thought, Weiss, referring to some Muslim scholars, observed, that “critical Muslim economists⁹ have claimed that the only way forward for today’s Muslim societies is a return to the Islamic values and bases of the legal, social and political system”.¹⁰

It is not doubtful to the Muslims that, the desired solutions could be found to their economic problems, like any other problem, from the Islamic schemes as it is believed that nothing is left unaddressed in Islamic law.¹¹ As from the dawn of the 21st century, there have been burning desires and moves among Muslims across the globe towards Islamisation of various phases and aspects of their life.¹²

Consequently, in the recent past, the institution of *waqf*, generally translated as “Islamic Endowment” or “Charitable Endowment”, among other translations given to it,¹³ which had hitherto declined,¹⁴ has gained a wider recognition as an effective tool

⁷ For a general insight into the development on welfare schemes in Muslim societies in Africa, see Holger Weiss, ed., *Social Welfare in Muslim Societies in Africa* (Nordiska AfrikaInstitutet, 2002).

⁸ It is clearly stated as part of the Islamic belief that Allah will not change a situation in which a people have found themselves (whether good or bad) until when they change their own attitudes, affairs and ways of doing things. See *Glorious Quran*, n.d. *Surah Ar-Ra’d* (Q13): 11 - “Verily! Allah does not change the condition of a people until they first change that which is in their hearts”

⁹ Within the context of the call made by these scholars, Weiss is not correct in designating those scholars as “Critical Muslim economists” which tends to depict those scholars as extremists or so in their calls. Rather, this is an inexplicable reality which Muslims must face in their affairs.

¹⁰ Holger Weiss, “Zakāt and the Question of Social Welfare,” in *Social Welfare in Muslim Societies in Africa*, ed. Holger Weiss (Nordiska AfrikaInstitutet, 2002), 7.

¹¹ *Glorious Quran. Surah al-An’ām* (Q 6): 38 – “There is not a moving (living) creature on earth, nor a bird that flies with its two wings, but are communities like you. We have neglected nothing in the Book, then unto their Lord they (all) shall be gathered”.

¹² For a general study on such desires and moves towards Islamisation of various fields of specialisation and study, see IIIT and IIPH, *Toward Islamization of Disciplines*, Series No. (USA: The International Institute of Islamic Thought, 1995).

¹³ It is also called Religious Charity; Islamic Charity; Perpetual Endowment, Islamic Trust.

¹⁴ For steps towards revival of *waqf* after its decline, see S K Rashid, “Certain Legal and Administrative Measures for the Revival and Better Management of Awqaf,” *Islamic Research and Training Institute*, 2011.; Syed Khalid Rashid, “Certain Legal and Administrative Measures for the Revival and Better Management of Awqāf,” *Islamic Economic Studies* 19, no. 1 (n.d.): 1–40.

of wealth creation and wealth redistribution Muslims can resort to.¹⁵ In achieving wider circulation of wealth, the mechanism of waqf can be effectively adopted and it “has been used for the welfare of the needy, the poor, the family and the society”.¹⁶

In its simple description, “waqfs in Islam are the religious and charitable endowments¹⁷ which should be utilized for the benefit and welfare of the Muslim community”,¹⁸ comprising of Muslim and non-Muslim members and it also extends to other beings such as animals and birds. Undoubtedly, “waqf has a great potential to provide for the needs of the poor in not only the short run but also enriching them in the end”.¹⁹

Cash waqf is a special waqf system designed to achieve waqf purposes with better and easier means. It has gained this beneficial attention due to its “flexibility and potential to benefit [the] poor anywhere”.²⁰ The fact that “cash”²¹ is the original property upon which cash waqf is founded makes it generally distinct from any other form of waqf. By its simple description, it is a movable waqf, as different from the immovable type of waqf. It is established with liquid money, as different from any other form of property. It is designed to benefit mankind with the aim of earning

¹⁵ Khalifa Mohamed Ali, “Waqf for Poverty Alleviation: Challenges and Opportunities,” 20 IRTI Working Paper, 1435. Habib Ahmed, “Waqf-Based Microfinance: Realizing the Social Role of Islamic Finance” (Singapore, 2007). Nasim Sha Shirazi, “Integrating Zakā and Waqf into the Poverty Strategy of the IDB Member States,” *Islamic Economic Studies* 22, no. 1 (2014): 79–108.

¹⁶ *Ibid.*, 87.

¹⁷ Waqf however expands beyond mere religious and charitable endowments; it may achieve other purposes and serve other interests such as provisions for the family of the waqf donor such as through family waqf.

¹⁸ Adfer Rashid Shah and Mohammed Basheer, “Understanding the Efficacy of Waqf Education in India: A Sociological Perspective,” in *Promoting Peace, Harmony & Development through Education in the Indian Ocean Region*, ed. Kanishka Bedi (Bagalore, Karnataka, India: St. Joseph’s College, 2015), 24.

¹⁹ Shirazi, “Integrating Zakā and Waqf into the Poverty Strategy of the IDB Member States,” 89.

²⁰ *Ibid.*, 90. For similar arguments on why recourse is being made to cash waqf in the modern time, see Anwar Allah Pitchay, A.K.M Meera, and M.Y. Saleem, “Factors Influencing the Behavioral Intentions of Muslim Employees to Contribute to Cash-Waqf Through Salary Deductions,” *JKAU: Islamic Econ* 28, no. 1 (2015): 70.

²¹ In this age of electronic money, it is intriguing to know whether raw cash would still be needed to be physically made available before a waqf can be properly regarded as “cash waqf”. The arguments on this issue however falls outside the scope of this research.