

the beneficiary; however, they are prohibited to transfer the possession of the endower's property⁽¹⁾. Finished ⁽²⁾.

Accordingly, the endower must carefully select the beneficiary so that it is a channel of good deeds and charities; he is entitled to endow for his family in particular, for various channels of good deeds in general, or for both of them.

Conclusion:

The above topics are examples of Sharia Caveats in Awqaf for the endower, endowed funds and beneficiaries. I ask Allah Almighty that I have been able to gather and present these topics. My success is by Allah only but any error, omission or forgetfulness is by me and the devil. May the mercy of Allah be upon those who read these topics, and remove defects, correct errors, or remind us about valuable information. «Whoever leads to good, he is like the one who does it»⁽³⁾.

(1) Sharh Muntaha Al-Iradat (2/498).

(2) Encyclopedia of Islamic Jurisprudence (44/139-149 simple interpretation).

(3) Muslim transmitted it (1893).

The second opinion is: That waqf must be ceased and repossessed by the endower or his heirs if he dies.

Regarding the opinion that waqf is valid, Shafi'i has two opinions related to the proceeds:

The first opinion which is preponderant is: The proceeds must be refer to those closest to the endower upon the death of the beneficiary since charity for relatives is one of the best deeds, as explained in Hadith: "Sadaqa given to a poor man is just sadaqa, but when given to a relative it serves a double purpose: being both sadaqa and a connecting link" ⁽¹⁾.

A more correct opinion (in Assah) indicates that the proceeds must refer to the poor relatives rather than the heirs in general, as stated by Al-Khwarizmi and others. Therefore, providing proceeds for a grandson (of a daughter) is better than providing them for a cousin. If the endower has no relatives, Imam must spend proceeds on Muslims' interests, as stated by Al Ruyani. It was said: Proceeds must refer to the poor and needy.

The opinion contrary to the more correct opinion (Assah) is that proceeds must refer to the poor and needy since waqf devolves to them at the end⁽²⁾.

According to Hanbalis: After being precise, Waqf is valid and its proceeds are permissible to be spent on the endower's heirs after whom it is permissible to endow for. The endower's heirs are entitled to these proceeds up to their due bequeath and they became

⁽¹⁾ Reported by Al-Tirmidhi (3/38), saying: This Hadith is Hasan.

⁽²⁾ Mughni Al-Muhtaj (2/384), and Al-Mohazab (1/448 and beyond).

Fourth: The case that the beneficiary is suspended at the ending:

Such as the endower who endows for his sons only, or for Zaid, then a church.

According to Hanafis: It is required for the endower to endow his waqf for an indefinite beneficiary, i.e. It shall be perpetual according to Abu Hanifa and Muhammad al-Baqir, unlike Masjid. Abu Yusuf has two opinions:

The first opinion is: Perpetuity is not required, and if the beneficiary is suspended for a certain period, such as endowing for sons only, this waqf is valid. In case the endower's sons die out, the waqf is repossessed by the endower, if alive, and if not, it must be possessed by the endower's heirs.

The second opinion is: Perpetuity is a required condition to spend the proceeds to the poor after the endower's sons' suspension⁽¹⁾.

Malikis differentiate between perpetual waqf and temporary waqf in details.

Shafi'i has two opinions. The first opinion which is preponderant is: That waqf is valid since the purpose of waqf is good deeds and perpetuity. If the waqf channel of spending is clearly indicated at the beginning, its perpetuity can be easily conducted for goodness' sake. The second is: That waqf is invalid since it is suspended. Shafi'i has two opinions in case the beneficiary dies out.

The first opinion is: That waqf must continue, which is preponderant.

(1) Hashiya Ibn Abdeen (3/365), Tabyin Al-Haqa'iq (3/326–327), Fath Al-Qadir (6/214–215).

Third: The case that the beneficiary is suspended at the middle:

Such as when the endower endows for Zaid then his slave, for unclear man then the poor, or for Zaid, the endower himself, and then the poor.

According to Hanafis, Malikis, and Hanbalis: The waqf proceeds must be spent on the poor after the suspension of whom is entitled for these proceeds. According to Malikis, this opinion is limited to the case the beneficiary possessed the proceeds before prohibitions that may be addressed by the founder such as bust, illness or death, as explained in the second case.

This waqf is valid according to Shafi'i, while two opinions are indicated:

First: The case when the waqf is suspended at the middle, as said: "I endow for my sons, then for unclear man, then for the poor." This school of thought is proper due to the existence of spending during the case and its outcomes. Accordingly, the proceeds are spent on the poor after his sons' suspension, rather than those closest to the endower due to the unknown period of suspension.

Second: As if he said: "I endow for my sons, then the slave and then the poor." This case is suspended at the middle. However, in this case, the proceeds are spent on the endower's relatives after the suspension of his sons⁽¹⁾.

(1) Hashiya Ibn Abdeen (3/414), Hashiyyah Ad-Dusuqi (4/80), Mughni Al-Muhtaj (2/384), Sharh Muntaha Al-Iradat (2/497-498).

Shafi'i's opinion: has two aspects, one of which is by Al-Shirazi: Some of our companions decidedly believe in its invalidity since the first case is invalid; the second case is a branch of an invalid case; thus it is invalid. Other companions have two opinions: One is that this waqf is invalid for what was mentioned before, and the other is that it is valid since the invalidity of the first case turned it into null; thus, the second case is the origin. It can be said that this waqf is valid. If, in the first case, the beneficiary cannot be considered as dying out, such as an unspecified man, proceeds are spent on his successors, i.e. the poor due to the inability to be considered as dying out; then this rule must be null. If it can be considered as dying out, such as slaves, three opinions are indicated:

The first is: That it must be immediately transferred to the endower's successors since the beneficiary for whom the endower endowed at the beginning is not permitted to be the waqf beneficiary; thus, it turned into null.

The second: Which is set out that the waqf proceeds refer to the endower, then to his heirs until the beneficiary dies out so that the proceeds go for their successors since no condition is set out regarding transferring the proceeds to the poor; thus, the possession of the endower continues without change.

The third is: That the proceeds must refer to the endower's relatives until the beneficiary dies out and the proceeds are transferred to the poor since no condition is set out regarding transferring the proceeds to them⁽¹⁾.

(1) Ash-Sharh Al-Kabir (4/80–81), Al-Mohazab (1/449), and Sharh Muntaha Al-Iradat (2/497-498).

The second is when Ibn al-Qasim said: Waqf is mandatory upon its being conducted and is possessed by the endower only if it is impossible for him to have sons; thus, the issue of endowing the property is predicated on Menopause. If the endower has reached the menopause, he is permitted to sell his waqf.

The third is when Ibn Al-Magishun said: This waqf must be endowed and transferred to a reliable source to be properly possessed; this waqf proceeds are permitted to be endowed. If the endower has a son, this waqf and its proceeds must be for this son, and if not, they are given for those closest to the endower.

Al-Desuqi said: The disputed issue is the case that the endower has never had a son before. However, if he had a son, he must indisputably wait. Finished.

Second: The case that the beneficiary is suspended at the beginning, and continuous at the ending:

Such as a person who endows for himself -according to jurists who prohibit waqf on the founder- or for slaves or the poor. According to Hanbalis, after the endower suspension, waqf proceeds are immediately given to his successors, i.e. the poor. Malikis' opinion is similar to Hanbalis opinion in case the proceeds are given to the beneficiaries before prohibitions that may be addressed by the endower such as default, illness or death. If any prohibition from those three issues (bust, illness or death) precedes the possession, the waqf must be invalid. Heirs of the endower are entitled to invalidate or validate this waqf in case of illness or death of the endower. In case of default, the debtor is entitled to invalidate it and use its proceeds in his debt.

endowed by a Dhimmi since it is unlawful and a contribution for them to demonstrating disbelief; good deeds are realized according to Sharia perspectives⁽¹⁾.

Second: The case that the beneficiary is suspended for a certain party/parties:

Endowment for an indefinite beneficiary such as the poor and mosques is unanimously valid by jurists⁽²⁾, while they differ in the status of the beneficiary whether suspended at the beginning, the middle or the ending.

This was indicated as follows:

First: The case that the beneficiary is suspended at the beginning, or the ending:

Such as a person who endows for his son while he does not have sons; this waqf is not valid according to Hanbalis and Shafi'is, but it is valid according to Hanafis. Proceeds are spent for the poor until the founder have a son, then these proceeds are spent for sons. Maliki has three opinions on this issue⁽³⁾:

The first is: When Imam Malik said: It is valid when a person endows for his son while he does not have sons but it is not required; the endower is entitled to sell this waqf before the beneficiary's (son) birth and in case that it is still possible for the endower to have a son. If the endower neglected this waqf, and then has a son, this waqf becomes valid.

(1) Encyclopedia of Islamic Jurisprudence (44/140).

(2) Ibn Abidin (3/365), Al-Mohazab (1/448), Al-Mughni (5/622, 623), and Ad-Dusuqi (4/84).

(3) Hashiya Ibn Abdeen (3/414), Manh Al-Jalil (4/66), Mughni Al-Muhtaj (2/379, 386), and Al-Mughni (5/607).

is a condition for its validity⁽¹⁾ due to the general preponderant evidence that a person is not entitled to dispose of what he does not possess, as said by the Prophet (peace be upon him): «Do not sell what you do not possess»⁽²⁾, in addition to what the Prophet - peace be upon him- said: «There is no sale transaction till you possess»⁽³⁾ since this sale is a disposition of the property asset by bringing it out of the property which can only be conducted by this property owner so that it is permitted for the owner (founder) to bring it out of his property.

Accordingly, one is not entitled to endow till he possesses.

The Third Chapter: Sharia Caveats in Awqaf for the Beneficiary:

First: The case that the beneficiary is unlawful:

The beneficiary must be of good deeds and righteousness, whether Muslim or Dhimmis since Dhimmis are a channel of good deeds and charities; thus, it is permitted to give them charity⁽⁴⁾. It was narrated that «Safiyya bint Huyayy, may Allah be pleased with her, the wife of the Prophet (peace and blessings of Allah be upon him), included her Jewish nephew in her well»⁽⁵⁾.

Considering the condition that the beneficiary is a channel of good deeds and charities, the beneficiary must not be unlawful: Such as endowing churches, synagogues and firehouses, even if

(1) See: Al-Durr Al-Mukhtar (4/348), Al-Thakhira (6/339), Sharh Mukhtasar Al-Khalil by Al-Kharshi (7/84), Nihayatul Matlab (4/247), and Al-Mughni (6/24).

(2) Reported by Abu Dawud: (3503), graded as Sahih by Al-Albani.

(3) Reported by Abu Dawud (2190), and graded as Sahih by Al-Albani.

(4) Al-Durr Al-Mukhtar (3/360, 361), Ash-Sharh Al-Saghir (4/77), Mughni Al-Muhtaj (2/379, 380), and Al-Mughni (5/644, 646).

(5) Reported by Abdul Razzk (6/33).

withholds the mortgagee's right to dispose of his property which is forfeited after permission of the mortgagee; thus, the mortgaged property is redeemed. Endowing the mortgaged property initially redeems this mortgage; therefore, it is permanently redeemed⁽¹⁾.

These conditions are mentioned in short; each school of thought "Madhhab" has some details such as Hanafis: Ibn Abidin reported from Al'iiseaf and other books: Waqf of redeemed property is valid, and the judge shall require the endower to pay his debts if he is moneyed, and if not, he is permitted to invalidate or sell his waqf to pay them.

Waqf of the mortgaged property is valid after its redemption. If the endower dies with a property that will fulfil his debts, his waqf is valid and does not need to be changed. Hence, if his property does not fulfil his debts, the judge invalidates this waqf to be sold for debt payment⁽²⁾.

Malikis have limited the validity of endowing the mortgaged and rented property to the case when the endower intends to endow this property after redemption and termination of rent since waqf does not require immediate implementation⁽³⁾ Finished⁽⁴⁾.

Third: The case that the endowed funds are not owned by the endower:

Obviously, waqf is not valid or required unless the endowed property is totally owned by the endower; the possession of waqf

(1) Sharh Muntaha Al-Iradat (2/234), Al-Mughni (4/401), and Al-Insaf (5/153 - 156).

(2) Al-Durr Al-Mukhtar (3/391, 395), and Al'iiseaf (p:21).

(3) Hashiyah Ad-Dusuqi (4/77), and Sharh Az-Zarqani (7/75).

(4) Encyclopedia of Islamic Jurisprudence (44/168).

Second: The case that the endowed property is entitled to a person other than the endower (in case of being mortgaged or rented), and is endowed without his permission:

Jurists differed in the validity of endowing the property which is entitled to a person other than the endower, such as being mortgaged or rented.

The majority of jurists have agreed that endowing the property which is entitled to a person other than the endower is permitted. Hanafis and Malikis have permitted endowing the mortgaged or rented property, given that this property must be entitled to the beneficiaries after redemption or termination of rent. Shafi'i agreed with this opinion regarding the rented property, while it had two opinions regarding the mortgaged property, as follows:

The First: According to Shafi'i thoughts "Madhhab", the mortgaged property is permitted to be endowed, similar to emancipation, since it is of the Rights of Allah Almighty that must not be forfeited after being established; thus, it is like emancipation.

The second Shafi'i opinion: The mortgaged property is not permitted to be endowed since this action prevents the person other than the endower (mortgagee) to act like the owner of this endowed property; thus, it is not permitted like being sold or given as a present⁽¹⁾.

Hanbalis have limited the validity of endowing the mortgaged property to the permission of the mortgagee whereas this action

(1) Fath Al-Qadir (2/201), Hashiyyah Ad-Dusuqi (4/77), Az-Zarqani (7/75), Al-Mohazab (1/320), Al-Mughni (4/401), and Asna Al-Matalib (2/458).

small or large parts; even if it is explicitly specified later, it is not permitted to be endowed whereas the founder may endow too little part to be endowed. In case the endower said: "I endow this land.", this waqf must be invalid due to the lack of due diligence⁽¹⁾.

Shafi'i and Hanbali stated that only the specified property is permitted to be endowed; endowment of unspecified slave or horse is not permitted. Similarly, it is not permitted for the endower to endow one of his houses or one of his slaves since waqf is considered a property transferred for the sake of good deeds and charities so it is not permitted to be unspecified or in custody such as houses or slaves even if they were specified⁽²⁾.

As noted in ash-Sharh al-Kabir, Maliki stated that contingent Waqf is permitted as said by the endower: If I owned someone's house, it must be considered a waqf⁽³⁾.

Accordingly, it is found that waqf must be specified to be valid; however, jurists differed in the anonymous (unspecified) waqf ruling, with two opinions, the most preponderant of which is that the anonymous waqf is not permitted since it leads to conflicts. Considering waqf as a transferred part of the property, the endowed property must be properly clarified and specified in order to avoid uncertainty⁽⁴⁾.

(1) Al Bahr Al Ra'iq (5/203), Al-Durr Al-Mukhtar and Hashiyah Ibn Abidin (3/360).

(2) Al Mohazab (1/447), Mughni Al-Muhtaj (2/377), and Sharh MuntahaAl-Iradat (2/492).

(3) Al-Sharh Al-Kabir (4/76).

(4) A training material holding an address: "Awqaf Problems and their Solutions" by Abdullah bin Mohammed Al-Dakhil.

- 2- Puberty: A child, whether youthful or not, is not entitled to endow Awqaf since puberty is assumed to be mind wisdom, and donation is a risk for children⁽¹⁾.
- 3- Majority: The major adult shall not be incapacitated for foolishness and heedlessness. Some jurists permitted a major adult's endowment (Waqf) only if he endowed himself or endowed a charity, which preserves his interest⁽²⁾.
- 4- Choice: Compelled people are not entitled to endow Awqaf⁽³⁾.
- 5- Liberty: Slaves are not entitled to endow Awqaf due to their inability of ownership⁽⁴⁾.

Second Section: Sharia Caveats in Awqaf for the Endowed Funds:

First: Lack of specification of the endowed fund in a manner of due diligence:

Jurists have agreed that the endowed property must be specified; ambiguous property must not be endowed.

Hanafis said: The endowed property must be clearly specified. It is not permitted for the endower to endow a part of his land without specification of this part since a part may include

(1) Ibid.

(2) Hashiya Ibn Abdeen (3/359), Al-Sharh Al-Saghir (2/298), Mughni Al-Muhtaj (2/148), and Mughni (4/486).

(3) Hashiyyah ad-Dusuqi a'ala ash-Sharh al-Kabir (4/77), and Mughni Al-Muhtaj (2/377).

(4) See: Bada'i al-Sana'i of Al-Kasani (3/219), Al-Sharh Al-Saghir of Al-Dardir (4/101), Hashiyyah Qalyubi Waeumayrah a'ala Sharh Al-Mahalli (3/99), Al-Mughni of Ibn Qudamah (6/51).

ibn al-Khattab got a piece of land in Khaibar, he came to the Prophet saying, "I have got a piece of land, better than which I have never got. So what do you advise me regarding it?" The Prophet said, "If you wish you can keep it as an endowment to be used for charitable purposes". So, `Umar gave the land in charity (i.e. as an endowment on the condition that the land would neither be sold nor given as a present, nor bequeathed..."⁽¹⁾.

Connotation is indicated in:

When the Prophet - peace be upon him- said: "The land would neither be sold nor given as a present, nor bequeathed"; this is an explicit provision given that the Waqf passes out of the property of the endower who cannot retract it.

Therefore, the endower shall not retract his Waqf regardless of his conditions of this case since it is considered a retraction of the Pursuit of Allah's Pleasure. Allah knows more.

Fifth: The case that the endower is found to be incompetent (such as the Child until he reaches puberty, insane or lunatic people, incapacitated people for foolishness and heedlessness, or slaves):

The endower must be competent and meet the following conditions:

- 1- Mind: Neither Insane people, due to their mental disorder, nor lunatic people, due to their mental defectiveness, nor mentally deranged people to illness or aging, due to their unsound mind, are entitled to endow Awqaf since competence requires mental capacity and ability of judgment⁽²⁾.

(1) Reported by Bukhari (2772) and Muslim (1632).

(2) Bada'i al-Sana'i' (6/291), Al-Sharh Al-Saghir (2/298), Nihayat Al-Muhtaj (5/356), Kashshaf Al-Qina (4/240).

No scholar whether of Hanafi⁽¹⁾, Maliki⁽²⁾, Shafi'i⁽³⁾, Hanbali schools of thought⁽⁴⁾, or other has allowed the endower's conditions when contrary to Allah Almighty Sharia.

The contradiction between approving or dismissing some conditions by scholars results from their different views regarding the extent to which these conditions violate Allah Almighty orders, are desired by the legislator, or are permissible. All scholars dismiss conditions violating Sharia, even if they differed in identifying the necessary regulations for these conditions. All scholars also consider conditions adhering to Sharia and differ in identifying conditions as neither offensive nor desired. Allah knows more⁽⁵⁾ Finished.

Fourth: The case that the endower retracts his waqf:

The majority of Maliki⁽⁶⁾, Shafi'i⁽⁷⁾, and Hanbali⁽⁸⁾ jurists, and Abu Yusuf and Muhammad Ibn Al-Hasan, the two Hanafi⁽⁹⁾ jurists, have agreed that in case waqf is endowed by a competent person completing its conditions, this waqf shall be binding and shall neither be retracted nor sold nor given as a present, nor bequeathed.

Therefore, they relied on some evidence:

Ibn 'Umar (May Allah be pleased with them) said: "When `Umar

(1) See: Fath al-Qadir (6/200), and Al-Bahr Al-Ra'iq (5/245).

(2) See: Al-Sharh Al-Saghir (2/305), Al-Sharh Al-Kabir (4/88), and Mawahib Al-Jalil (6/33).

(3) See: Nihayat Al-Muhtaj (5/376), and Tuhfat Al-Muhtaj (6/256).

(4) See: I'lam Al Muwqieayn (3/96), and Al Insaf (7/56).

(5) Awqaf in Modern Era: How can we direct them to support universities and develop their resources, Khaled Al-Mushiqih, P. (44-47)

(6) See: Al-Tafri` by Ibn Al-Jallab (2/357) and Al-Kafi by Ibn Abdel Barr (2/1014).

(7) Al-Hawi Al-Kabir (7/511) and Bahr al-Mazahib by Al-Ruwyani (7/208).

(8) See Al-Mughni by ibn Qudama (6/4).

(9) See Sharh Ma'ani al-Athar (4/95).

dower seeks this act, it will be a violation against Allah's wisdom and division⁽¹⁾.

This also contradicts the guidance of the Prophet, peace be upon him, based on Saad bin Abi Waqas - may Allah be pleased with him, when he reported: The Prophet (PBUH) said: "To leave your heirs rich is better than to leave them poor and begging from people. You will not spend anything, seeking thereby to please God, without being rewarded for it, even the mouthful you give your wife"⁽²⁾.

Third: The case that the endower imposes a condition contrary to Sharia:

The endower is prohibited from imposing a condition contrary to Sharia. In the case of a Sharia-contrary condition, it must not be permissible; thus, Ibn Taymiyyah reported the nation consensus regarding that some endowers' conditions are considered valid and must be permissible, and vice versa⁽³⁾.

Several scholars have interpreted Jurists' view: {Endower's Conditions are similar to Legislator's Stipulations} as meaning that conditions are similar to stipulations in terms of concept and connotation of words intended by the endowers, not in terms of being of obligatory acts⁽⁴⁾.

(1) See: Tafsir Ibn Kathir (2/231).

(2) Transmitted by Bukhari (1295) and Muslim (1628).

(3) See: A Great Compilation of Fatwa (31/47).

(4) See: Al-Ashbah wa'l-Nazai'r by Ibn Najim (p.: 195), Hashiyat (An Annotative Commentary of) Ibn 'Abidin (4/433), A Great Compilation of Fatwa Ibn Taymiyyah (31/47), and Al Mubdie (5/333).

Command will then be issued about him, and he will be dragged on his face and thrown into hell. Next a man who has acquired and taught knowledge and read the Qur'an will be brought forward, and after God has reminded him of the favor, He showed him and the man acknowledges it, He will ask, 'What did you do to show gratitude for it?' The man will reply, 'I acquired and taught knowledge and read the Qur'an for God' sake.' God will say, 'You lied. You acquired knowledge that people might call you learned, and you read the Qur'an that they might call you a reader, and they have done so.' Command will then be issued about him, and he will be dragged on his face and thrown into hell. Next a man whom God has made affluent and whom He has given all kinds of property will be brought forward, and after God has reminded him of the favor, He showed him and the man acknowledges it, He will ask, 'What did you do to show gratitude for it?' The man will reply, 'I have not neglected to give liberally for sake to all the causes God likes us to spend on.' God will say, 'You lied. You did it that people might call you generous, and they have done so.' Command will then be issued about him, and he will be dragged on his face and thrown into hell"⁽¹⁾.

Second: The case that the endower intends to abuse heirs:

This violates the Almighty quote: "After any bequest which was made or debt, as long as there is no detriment [caused]." [An-Nisaa:12] i.e. The endower's bequest must depend on justice, rather than abuse, oppression and deviation through preventing some heirs from their allowed inheritance, or decreasing or increasing inheritance unlike Allah's religious obligation; whenever the en-

⁽¹⁾ Muslim transmitted it (1905).

Examples of Sharia Caveats in Awqaf

Prepared by:

Mr. Hamada Ismail Fouda

Financial Advisor, and Researcher in Waqfs

Praise be to Allah, and prayers and peace be upon
the Messenger of Allah, may the peace and blessings of Allah
be upon him, having said that:

This research includes examples of Sharia Caveats in Awqaf
divided by the researcher in three sections and a conclusion as fol-
lows:

First Section: Sharia Caveats in Awqaf for the Endower:

**First: The case that the endower does not seek the countenance
of Allah, Almighty:**

When he endows a waqf, seeking power or fame or to be said:
Somebody endowed something. In Sahih Muslim, Abu Hurairah
(May Allah be pleased with him) reported: The Prophet (PBUH) said:
He also reported God's messenger as saying, "The first person to
be judged on the day of resurrection will be a man who died as a
martyr. He will be brought forward, and after God has reminded him
of the favor, He showed him and the man acknowledges it, He will
ask, 'What did you do to show gratitude for it?' The man will reply, 'I
fought for you till I was martyred.' God will say, 'You lied. You fought
that people might call you courageous, and they have done so.'