

ISLAMIC CONCEPT OF WAQF: CHALLENGES AND PROSPECTS WITH REFERENCE TO THE JAMMU AND KASHMIR MUSLIM WAQF BOARD

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Abstract

Allah sent Adam (A.S.) and His Kin on earth and made them to pass through diverse phases of life following His guidance from time to time through various prophets for each community, nation. In a society, He made them to depend on one another by bestowing some over the other to maintain the integrity of brotherhood, co-operation and so on. The challenging aspect in this way is the financial security which works against the greedy nature of a Man. In addition to *Huqūq al-Allah*, Islam also stresses on *Huqūq al-'Ibād*, wherein helping someone economically becomes an important facet. To bring this idea into action, an institution has been developed named as 'Waqf' which provides all possible help to the downtrodden and marginalized section of the society. It plays very substantial role in the overall prosperity of both Muslims and non-Muslims. This paper aims at deliberating on present scenario of Waqf in the Union Territory of Jammu and Kashmir, India and highlights challenges to this institution, a barrier in overall development and security of a well-to-do society.

Keywords: *Waqf, Jammu and Kashmir, Challenges, Prospects*

Introduction

The Institution of *Waqf* has been an inimitable one in the Islamic economic system which owes its origin to the Prophetic period or goes back to Roman period as per some scholars. According to general opinion of Muslim jurists and scholars, there was no *Waqf* in Arabia before Islam, either in the form of buildings or lands. *Waqf* has been categorized in various forms, namely religious charitable, family and a blend of all these. The first mosque in Islamic history known as *Masjid-e-Qubāh* is documented as the earliest occurrence of religious *Waqf*.ⁱ

By the second caliph Omar Ibn-e-Khattab in 6th Hijri, the first deed of *Waqf* in Islamic history was taken up. This initiation of Omar (RTA) was basically an outcome of inspiration that he had incarcerated on Prophet's suggestion to render his palm orchard in Khaybar as *Waqf* for the pious cause of Allah (ﷻ).ⁱⁱ

Historically, this initiation was enthusiastically followed by the Prophet (ﷺ)'s companions like Abu Bakr, 'Umar, 'Uthmān.ⁱⁱⁱ 'Ali, Zubair, Mu'āz, Zaid bin Thābit, 'Abu Talha, 'Aisha, Hafṣa, 'Abdullah bin 'Umar, Umm Habība, Ṣafi'a Bint Hayy, Sa'd bin 'Abi Waqqāṣ, and Jābir^{iv} in Arab, and later on the same drew an awe-inspiring attention of Muslims around the globe. In the subsequent centuries, Muslims from different corners of the world tremendously contributed in *Waqf* and other categories of generous exercises.^v

Since the emergence of Islam, the Muslims have voluntarily given out of their wealth for the benefit of others in the form of *Waqf*. Throughout the history of Islamic civilization, it is obvious that the scope, effect, magnitude and viability of *Waqf* have been far greater than any other voluntary institutions in Islam such as *Ṣadaqah*, *Hibah*, *Waṣiyah*, *Qard*, and *Nadhr*.

There has been immense no. of buildings and services for society which have been financed and preserved for centuries through this system in all parts of the Muslim world. Many *Awqāf* had even endured for considerably longer than half a millennium and some even for more than a millennium. The existence of *waqf* is not only a religious ritual but also as a humanity ritual through empowering the potential for community welfare (Rusydia and Al-Farisi 2016).

The success of *Waqf* system subsequently spread to the west during crusades and then adopted as part of their social institution. It has been acknowledged that the famous Oxford University in England was built upon the Islamic *Waqf* Model. Nevertheless, few western scholars have a negative insight towards this institution. They have considered *Waqf* as an outdated institution which is no longer relevant and hence could not play any important role in the contemporary economy like it did in the past. According to this view, *Waqf* is part of institutional traps that block economic development in Muslim countries, together with the Islamic law of inheritance and the absence of the concept of a corporation. It is further argued that system restrains resource pooling and locks vast resources into unproductive organizations for the delivery of social services. In other words, *Waqf* becomes dysfunctional due to the inflexibility in its nature.

The Institution of *Waqf* in India dates back to the establishment of Muslim rule in

this sub-continent. The Muslim rulers in India dedicated enormous amount of moveable and immovable possessions which included productive land and revenue collected from number of villages for the maintenance of *Masājid*, Tombs, *Imām-Bārās*, *Yatīm-Khānās*, *Madāris* and other Islamic institutions. They were directing their subjects to build the socio-cultural symbols of Islam at various places for which huge properties were attached. The fund from the public exchequer was not only allocated to propagate Islam through development of *Waqf* but also to ensure the overbearing of Islamic civilization in this country.

Research Methods

Qualitative research with humans consists of three types of data gathering:

- (a) In-depth, open-ended interviews;
- (b) Direct observations and
- (c) Written documents. Interviews provide direct references to people's experiences, opinions, feelings and knowledge.

Observation data consist of detailed descriptions of the activities, behaviours, actions of individuals and the full range of interpersonal interactions and organizational processes that are part of the observed human experience. Document analysis includes studying excerpts, quotations or entire passages from organizational, clinical or program records; memoir and a and correspondence; official publication sand reports; personal diaries; and open-ended written responses to questionnaires and surveys. In addition, in qualitative research, analysis and intuition must be carried out to answer the phenomena raised. Therefore, the analysis was carried out through these three data (Tripodi and Bender 2010). Data for qualitative research tend to come from field work. During fieldwork, the researcher spends time in the study environment – a program, organization or community, where change efforts can be observed, interviewees and records analyzed. The researcher makes first-hand observations about activities and interactions, sometimes engaging personally as a “participant observer”.

Observation

Observation is regarded as basic to sound qualitative research. Observation can be used to capture different types of behavioural or interactive information. In observation, the observer will record systematically according to the predetermined code (Given 2017). Observation data collection ranges from open data (model search) to closed coded data (model confirmation search). Observations also vary depending on the continuum of involvement, where the researcher is accepted as someone who is regularly present and a member of the student community, in no participatory, where the researcher is an underdog who leads systematic observations without interacting with anyone. (Given 2008)

Waqf in Islamic Perspective

Literal Meaning

The word “Waqf” is derived from the root word “Wa-qa-fa” which means “to

halt", "to stand", "to pause", "to retain", "station" etc. One of the fundamental pillars of performing Hajj is "Waqūf-i-'Arafah" which means "standing on the 'Arafāt". The Holy Quran does not directly define Waqf or make any orientation to it; however, it persuades the Muslims to do charity.

In the Holy Qur'ān, Allah says:

وَلَوْ تَرَىٰ إِذْ وَقَفُوا عَلَىٰ النَّارِ فَقَالُوا يَلَيْتَنَّا نُرَدُّ وَلَا نُكَذِّبُ بِآيَاتِ رَبِّنَا وَنَكُونُ مِنَ الْمُؤْمِنِينَ ﴿١٧٧﴾

"Were you to see when they (wrong doers and the deniers of faith) are brought to a halt by the fire, whereupon they will say, "If only we were sent back (into the world)! Then we will not deny the signs of our lord, and we will be among the faithful!"^{vi}

The Similar Word used in another verse of the Holy Qur'ān as:

وَلَوْ تَرَىٰ إِذْ وَقَفُوا عَلَىٰ رَبِّهِمْ قَالَ أَلَيْسَ هَذَا بِالْحَقِّ قَالُوا بَلَىٰ وَرَبِّنَا قَالَ فَذُوقُوا الْعَذَابَ بِمَا كُنْتُمْ تَكْفُرُونَ ﴿١٧٨﴾

"Were you to see when they are stationed before their Lord? He will say, 'Is this not a fact?' They will say, 'Yes, by our Lord!' He will say, 'So taste the punishment because of what you used to disbelieve.'^{vii}

In the same way Allah says:

وَقِفُوهُمْ إِنَّهُمْ مَسْئُولُونَ ﴿١٧٩﴾

"(But first) stop them! For they must be questioned."^{viii}

The Dictionary meaning of Waqf or Ḥabs as defined by Ibn Manzooris as:

"Waqf literally means Imprisonment and interdiction. Its plural is Awqaf which is derived from the root word "Waqafa" which means "to stop", "to retain".^{ix}

Technical Meaning

"Which means retaining the basic asset ('Aṣl) and donating / distributing its fruits or benefits to the concerned."^x

The Prophet (ﷺ) said:

"When a man dies, all of his acts come to an end, except three; recurring charity (Sadaqah Al-Jāriyah) or Knowledge (by which people benefit), or a pious off-spring

who prays for him.”^{xi} Here the Word “*Sadaqah Al-Jāriyah*” according to Sayyid Sābiq means Waqf.^{xii}

Views About Waqf by Various Islamic Scholars

A. Waqf becomes public invested property with immortality characteristics that mean it cannot be sold, is mortgaged and passed down. Since its inception, waqf has provided significant benefits for the majority of society (Usman and Ab Rahman 2020). Things which have been endowed as Waqf can neither be sold, nor given as gift; no one can become its owner, nor can anyone be made its owner. This rule has been established considering several books of jurisprudence (*Fiqh*). Thus, in *Durr-i-Mukhtār*, it is said, “When Waqf (procedures) are completed and the Waqf has become effective, no one can become its proprietor, nor can anyone be made its owner, and nor can it be given as a gift or be placed on mortgage.”

In Shāmi, it is said, “In Waqf, neither shall the Sāhib-i-Waqf (that is the person doing the Waqf) enjoy possession nor shall he accept the possession of anyone else whether it is by way of sale or otherwise, because that which is devoid of state of being possessed cannot be made subservient to someone else.”^{xiii}

And in Hidāya, it is found that, “When Waqf is rightfully performed, then it is not fitting to sell it neither to make it belong to someone.” The author of Hidaya has used as proof to this rule, one unanimously approved Hadith reported by Sahīh Bukhari & Sahīh Muslim where the Holy Prophet (PBUH) has said: “What has been given as Waqf can neither be sold, nor can anyone inherit from it and nor can it be gifted to anyone.”^{xiv}

And in Sharh-e-Wiqāya, it is written that: “When Waqf has been performed, then it is not possible for it to have an owner nor is it possible to give ownership to it. In fact, for it to have an owner or to be given ownership to it is forbidden. Because Sahih Waqf does not accept ownership just like freedom does not accept slavery.”^{xv}

And in Kanzul Daqā’iq, it is written as: “It is not allowed to make someone become owner of *mawqūf* (something which has been given as *Waqf*) nor is it possible to divide or share it.”^{xvi}

- B. In only two circumstances, waqf objects can be sold:
- (i) Where the person doing the waqf has clearly given permission for sale in the *Waqf Nāma*.
 - (ii) When the object of Waqf is in such a state where no profit can be gained out of it. Only in these two cases can a Waqf be sold, otherwise it is not allowed.^{xvii}
- C. The purpose for which the *Wāqif* (person doing Waqf) intended the Waqf; only for that purpose should the Waqf be used. It is not permitted to depart from the original intent of the *Wāqif*. Thus, in Shāmi, it is stated that: “It is obligatory (Wājib) to respect and obey the objectives of the *wāqifin* (persons doing Waqf)”. Abu Hanifah and Imam Malik agreed that the ownership between wakaf

property and wakif transferred to Allah when wakif had died. Imam Syafi'i likened waqf to al-'itq (liberation of slaves), the slave belongs to his master, but when he is free, he belongs to God (Sesse 2010). So the purpose of waqf in waqf is only meant for Allah.

- D. If someone has given any piece of land, house or any other valuable object as Waqf to the Masjid or as donation, then it is fitting that the property be used exclusively for the Masjid.

Administration of Waqf in Jammu and Kashmir: Challenges and Prospects

Origin and Development

The history of the institution of Waqf in Jammu and Kashmir is recent and dates back from the first half of the twentieth century (1940s). Numerous significant Muslim sacred places such as Shah-i-Masjid (Srinagar), Mujāhid Manzil, Masjid-i-Akhūn Mullāh Shah (Ganderbal), Masjid-i-Dāra Shukūh and many others were under the command of the then State Government and were being used as Sales depot Granary, Tehsil Office and Stores of arms and ammunition etc.

It was only during the movement launched by Sher-i-Kashmir Sheikh Mohammad Abdullah that these were got released and the idea of collective and organized management of Muslim Waqf properties was conceived. An Organization namely "*Idāra Auqāf-i-Islāmīa*" was created and a good number of the shrines, mosques and other Waqf properties including the Hazratbal shrine, which contains Holy Relic of Prophet Hazrat Muḥammad (ﷺ), were brought under its control.

A constitution was framed which provided setting up of *Majlis-i-Uzama* (General Council) as the Supreme authority and a *Majlis-i-Intizāmīa* (Management Committee) for smooth and democratic functioning of the organization for protecting, maintaining and managing the Shrines, Mosques and other properties affiliated with the *Idārah*.

In 1973, the *Majlis-i-Uzama* considered it necessary to transform the organization into a Trust for general welfare and efficient management of the ever-growing constituent units of Muslim Auqāf, Khanqāhs, Masājid, Shrines, other religious places, institutions and properties attached thereto. On August 31, 1973 in a huge gathering of Muslims at Hazratbal, it was resolved that the "*Idāra Auqāf-i-Islāmīa*" be transformed into a Trust called "*All Jammu and Kashmir Muslim Auqāf Trust*" with Sher-i-Kashmir Sheikh Mohammad Abdullah as the First Trustee and Chairman for life. The Trust Deed was drawn on September 23, 1973. ^{xviii}

During 1990-97, the Trust ran into various financial and administrative crises with several units disaffiliating from Muslim Auqāf Trust. The annual income slipped down to mere Rs.1.20 crores. It was only after the Board of Trustees took-over again in 1997 that the Trust once again regained its position of strength with several new programmes directly related to the social and educational development of the society; besides the upkeep and management of shrines, mosques and other assets of the Trust.^{xix} Recognizing that education is a vital instrument for the social,

cultural, scientific and technological transformation of the society and the region at large, the Trust devised several plans to strengthen and modernize the whole system of education through its network of schools, Madrasās and Dar-ul-Ulūms, based on Islamic culture and ethos.

The beginning was made by establishing a modern state of art school namely Sultan-ul-Arifin School at Makhdūm Sahib with all modern facilities of Computer, IT. Deenyāt and Islamic Studies were made part of the compulsory curriculum. The management of the school was supervised by the BOG which included distinguished scholars, administrators, and eminent members of civil society with Chief Minister as the Chairman. Mr M.A. Laharwal, former Secretary Education, J&K Government gracefully accepted to work as Director on honorary basis and the School in short time achieved excellence in all fields of education. This was supposed to be starting point for spreading the canvass of modern education through opening of College for technical education and a University in a phased manner.

In June 2003, the Board of Trustees commenced the agenda of setting up an *"Islamic University"* at Ganderbal for which 110 Kanals of land near Baba Daryadin Sahib Shrine were identified with prospectus of expansion over several thousand Kanals of adjacent area. A working group of eminent experts both from within and outside the State was appointed and a detailed project report got prepared and approved. But before this could be executed the Trust was converted into a Board for *"Specified Wakfs and Specified Wakf Properties"*, through the instrument of an ordinance issued by the Governor, Jammu & Kashmir (vide No: III of 2003 dated 08-09-2003), by virtue of which the Shrines/Mosques and other properties of *"All Jammu and Kashmir Muslim Auqāf Trust"* were brought under the control of the Board. Subsequently a Bill was placed before J&K Legislature for enactment and the same was passed in January 2004 as an Act entitled: *"The Jammu and Kashmir Board for Specified Wakfs and Wakf Properties (Management and Regulation) Act 2004"*.

This was further amended in 2005 and the words *"Jammu and Kashmir Specified Wakfs"* were substituted by *"Jammu and Kashmir Muslim Specified Wakfs"*

Organizational Structure

Figure 1 Organizational Structure of Jammu and Kashmir

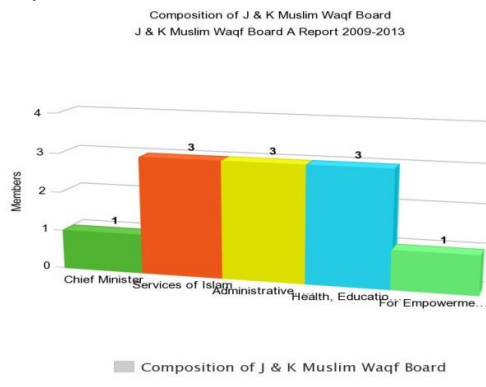


The above mentioned Figure 1 shows the Organizational Chart as Board Of Directors > Vice- Chairman > Chief Executive > Secretary > General Manager Ziyarats > FA/CAO > Chief Controller/General Manager Revenue and Estates > Advisor Bāghāt > Ex. Engineer (Tamīrāt) > Forest Officer > Education Officer > Zonal Officer/Sr. Controller (Audit and Inspection) > Accounts Officer > Zonal Officer Bhāgāt > Assistant Engineer > Assistant Education Officer > Controller/Manager Assistant Secretary > Principal Nursing College > Administrators/ Auqāf Officer/Section Officer > Revenue and Estates Officer > Horticulture Assistant > Jr. Engineer > Forester.

Composition of Board

The Board shall consist of eleven members, all of whom shall be Muslims as:

Figure 2 Composition of Board

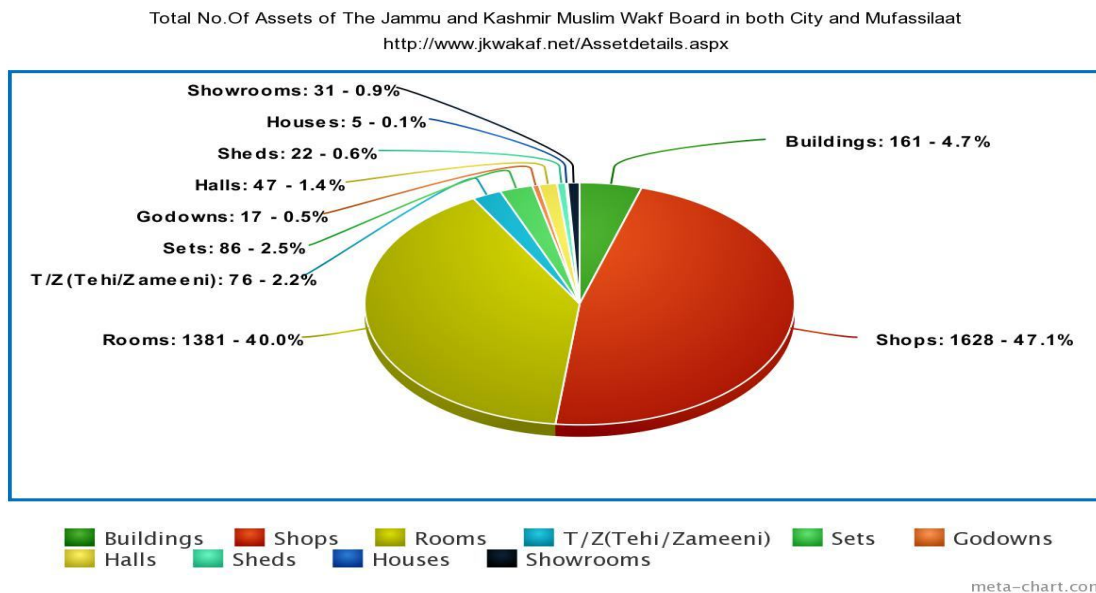


In the Above Figure 2 The Chief Minister of the State shall be the ex-officio Chairman of the Board and if he happens to be a non-Muslim, he may appoint an eminent Muslim from the Council of Ministers, to be the Chairman. The remaining members shall be nominated by the Chairman as I) Three persons who have distinguished themselves in the service of Islam in the State II) Three persons who have distinguished themselves in administrative, legal or financial affairs III) Three persons who have distinguished themselves in health, education and social service; and IV) A woman who has distinguished herself in the social service particularly in the empowerment of women in the State.

According to the First Board of Directors as provided in The Jammu and Kashmir Wakfs Act 1959, was constituted with Chief Minister as ex-officio Chairman of the Board.¹

Asset details of Jammu and Kashmir Muslim Waqf Board

Figure 3 Asset of Jammu and Kashmir Muslim Waqf Board



The above figure 3 shows the total No. of Assets of The Jammu and Kashmir Muslim Wakf Board in both City and Mufassilat in which shops are highest in No. (47.1%).

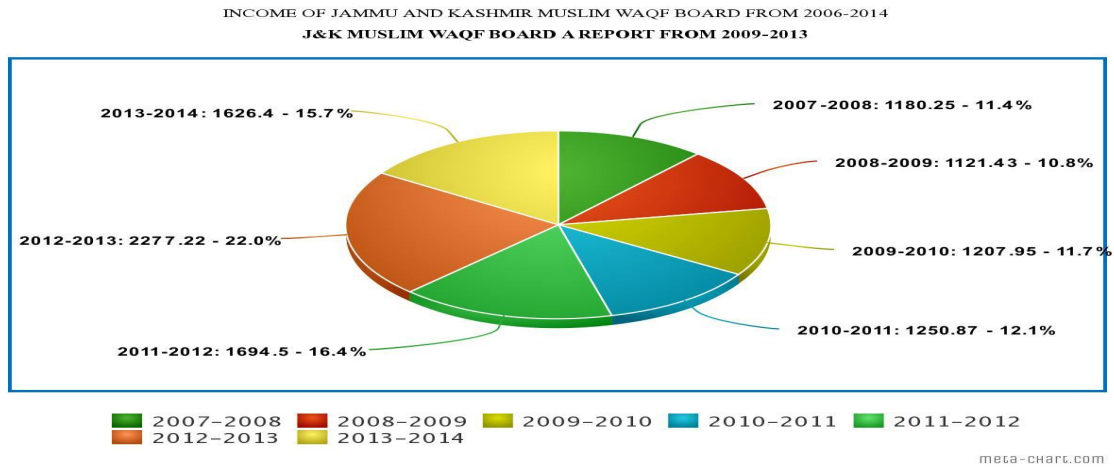
¹The other members nominated by the Chairman were as under :- Mufti Mohammad Bashir-ud-din Ahmad (Mufti A'zam, J&K State); Prof. Syed Mohammad Tayyib Kamili (Principal, Jamai Madinat-UI -'Uloom); Dr. Sidiq Wahid (Vice-Chancellor, IUST, Awantipora); Mr. G. A. Lone (Ex. Secretary, Law Department); Dr. Nusrat Andrabi (Ex-Principal, Women's College Srinagar); Muzaffar Ahmad Khan (Rajbagh, Srinagar); Dr. Mohammad Amin Masoodi (Registrar, IUST, Awantipora); Maulana Mohammad Ashraf Andrabi (Chairman, Shah-i-Hamdan Trust Pampore); and Dr. Mohammad Yousuf Bhat (Rtd. Director Health Services).

Specified Waqf Properties

According to the Report of J & K Muslim Waqf Board 2009-2013, there are about 100-110 properties in which 70-75 were taken over by J & K Muslim Waqf Board. The remaining 30-35 (33%-40%) are not specified or under the control of Board, which shows insufficient administrative and management qualities.

Income of J & K Muslim Waqf Board

Figure 4 Income of J&K Muslim Waqf Board



The above Figure 4 Shows the Income of Jammu and Kashmir Board For Muslim Specified Wakfs and Wakf Properties, Waqf Building, Zero Building, Srinagar, from the various sources like Donation In Cash, Donation in Kind, License fee, Agricultural fee, School Income, Premium and Lease, Capital, other Income etc.

Expenditure of J&K Muslim Waqf Board

Figure 5 Expenditure of J&K Muslim Waqf Board

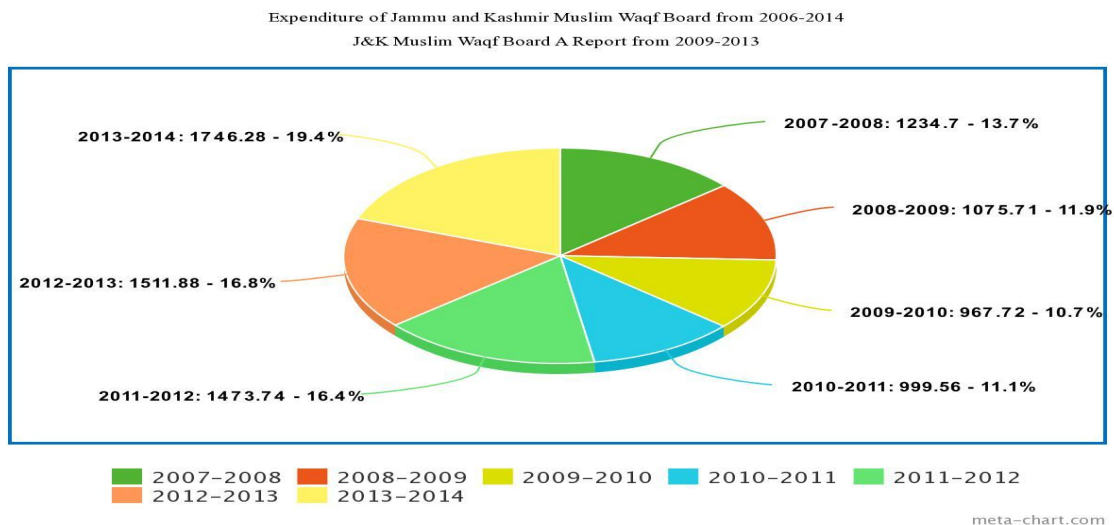
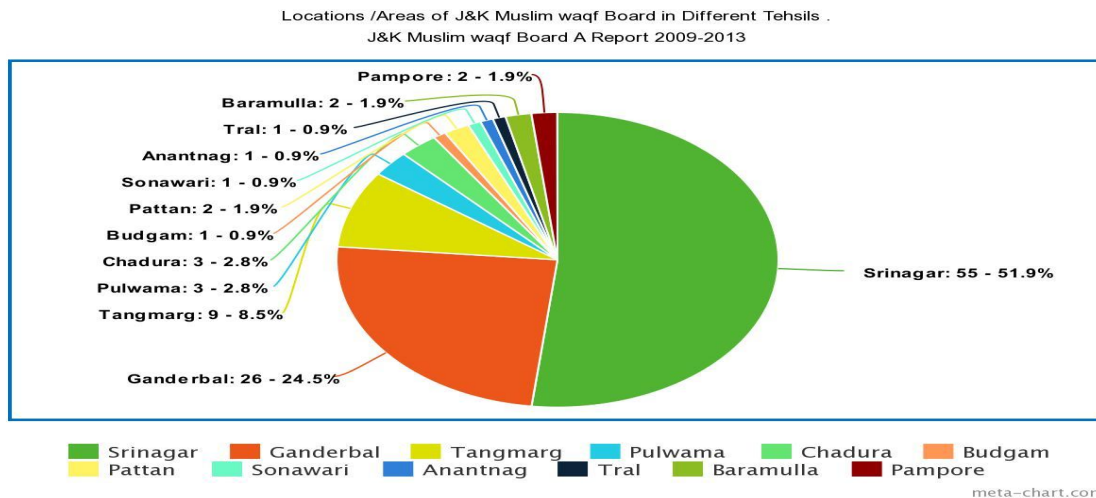


Figure 5 shows the Expenditure of Jammu and Kashmir Board on Muslim Specified Wakfs and Wakf Properties, Waqf Building, Zero Building, Srinagar, on

Establishment charges, Maintenance of Mosques and Shrines, Baitul Māl/Financial Aid/Scholarship, Schools/ Madāris, Bāghāt Maintenance, Professional and other charges, capital expenditure, etc.

Location/Areas of J&K Muslim Waqf Board in Different Tehsils of Jammu and Kashmir

Figure 6 Location/Areas of J&K Muslim Waqf Board in Different Tehsils of Jammu and Kashmir



The above Figure 6 shows Locations /Areas of J&K Muslim Waqf Board in Different Tehsils in which the maximum no. of locations under Waqf Board are in Distt. Srinagar of 51.9% (which is the most income generated hub). Of about 107 locations covers area of about 21000 Kanals in which 77 (71.96%) areas have been taken over by The Board. The rest 30 (28.03%) areas are still not under the control of Waqf Board.

Conclusion

The Administration of Jammu and Kashmir Muslim Waqf Board is unable to perform on expectations. There is a need to streamline the system, showing slow progress. The Board should be made autonomous. Those properties not taken over by the Board need to be identified village-wise and reclaimed so that more income can be generated. An initiative about poverty alleviation by providing various opportunities to the unemployed youth of the State needs to be given due consideration. Unemployment is a growing crisis in this part of the world. Moreover, digitization of Waqf records/properties, the need of the hour will ensure transparency in the system to avoid mismanagement and check any corruption allegations harming its reputation as an Institution of great significance. The focus should be on providing the scientific, technical, skill-based job oriented and Islamic Education to students through educational institutions (about 20) under the Board including IUST Awantipora (partly funded by the Board). The role of J&K Muslim Waqf Board gains importance in the present times considering the pathetic condition of people struggling with (n) number of problems related to financial stability and

education. Quality education can bring a permeate change by enabling an environment promising a well-to-do community, later, serving the purpose, otherwise not.

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