

WAQF IN WESTERN COUNTRIES*

DECEMBER 19, 2012 ADMINISTRATOR



I was asked to write on this subject, which is of extreme importance as it constitutes a significant means to preserve the identity of Muslims in the West and to secure suitable conditions so that they can practice the rites of their religion.

Introduction

This brief paper on endowment in the West aims to manifest the importance of endowment in Western countries.

Therefore, we shall talk about Muslim minorities, the aim of this paper, and about the obstacles that face Islamic endowment in the West and the solutions, including the necessity of helping Muslims and the importance of achieving mutual solidarity.

We will look at the definition of endowment in Islam along with a quick comparison with the foundation system in the West – using France as an example – to form the proper concept of endowment in the West.

Endowment has to be adapted to the Western environment.

First: Muslim minorities

“Minority” as a term was not known in the past. It emerged in the last century and has gained much strength since the beginning of the 15th Hijrah century with the establishment of Islamic organisations interested in the situation of Muslim communities in the West. The Muslim World League is the leading such organisation, followed by the Organisation of Islamic Conference. The word “minority” has grown to be used for a group of people with special characteristics who live among a congruent, larger group of people who wield more influence as they possess all or most of the power.

Much dispute took place about the term “the fiqh of Muslim minorities”. The European Council resolved this dispute in the round held in Dublin, Ireland, by approving the use of this term, as there should be no contention with regard to terms, and also as it was used in contemporary speech. In addition, the term minority is conventionally used internationally as a political term that stands for groups of people in a state who belong to a different ethnicity, language, or religion than that which the majority belong to. The Council also approved the opinion that the subject of the fiqh of Muslim minorities is the fiqh rulings related to Muslims who live outside Muslim countries.

The special characteristics of the minority could be religious or ethnic. Therefore, the majority usually tend to ignore the rights of this minority if not harass them, physically or psychologically, because they are bothered by the values and ideals of this minority. This is the most important problem that faces minorities; namely, how to balance between adhering to their values and achieving adaptation and congruity with the bigger society.

History has witnessed many disasters that befell minorities due to their disputes with the majorities. We are not going to give a historical survey of the massacres of minorities that the world witnessed at the turn of the twentieth century in Kosovo and Bosnia and Herzegovina.

But in the modern age, an important development took place in the world. The system of human rights has become the grounds for the existence of a minority among the majority particularly in the West, which fostered the principles of human rights, which was basically established as a means of coexistence between the followers of Protestant and Catholic Churches. But in the course of time, minorities from Africa and Asia have been allowed to live there. These minorities emerged for different reasons that had led to the migration of the workers from colonies to the colonizing countries.

For a period of history the Islamic civilization was the only human civilization which regulates the rights of minorities with regard to the practice of their religious rites and their right to resort to their own courts.

Thus the Coptic minority has lived for 14 centuries protected by Islam, as was the case with the Jewish minority in Morocco.

After World War I, many of the international treaties were concerned with the protection of minorities. The issue of minorities was one of the most important problems that faced the League of Nations.

The situation of Muslim minorities in non-Muslim countries can be described as one of necessity in the general sense of the word which includes need and necessity in its particular sense.

Therefore, it needs a special kind of fiqh. This does not mean the formation of a new fiqh outside of the framework of the Islamic fiqh whose basic references are the Quran and the Sunnah together with other evidences such as *ijma`* (consensus), *qiyas* (analogical reasoning), juristic preference, public unrestricted interests, blocking the means to evil, custom and presumption of continuity, in addition to all other evidences approved by scholars when they expressed their different juristic opinions, which represent a rich and broad legacy. Thus the issues of minorities are old in genre but new in type. The growing Islamic existence poses new challenges and tasks, and endowments could be a means to deal with this complex situation if the Islamic endowment is established in different fields besides mosques, or houses of worship as they are called in the West, and educational institutions, which are of major importance in all the levels of educations including elementary and secondary levels where the individual's creedal and ethical personality is formed, in addition to providing a solution for the problem of banning hijab in some European countries. This is also the case with regard to higher and university education, such as the institute of Human Sciences in Paris, which students from Europe attend, and cultural centres where cultural activities can take place to preserve Muslims' cultural and intellectual distinctiveness and to play a role that integrates with the role of the educational institutes and mosques. There are also some other important fields that Muslims have not paid attention to such as study and research centres. The European Council for Fatwa and Research has a research branch that issues the Council magazine. We need endowments in the field of research, thoughts, social studies, dialogue, etc.

Similarly, Muslim minorities need active economic and cultural institutions to compensate for their weakness, safeguard their creed, and preserve their children through teaching them their religion, and help the needy, the poor, and the sick among them; particularly after the number of Muslims in the West has increased and their existence there has become no longer accidental but rather perpetual and growing. According to some researchers, their number has exceeded 60 million in America and Europe including both native Muslims in Eastern Europe and newcomers. There are cities where the number of Muslims tends to grow faster than the number of the people of other religions as in the case of Brussels in Belgium, capital of Europe. In Paris, the number of Muslims has reached two million.

Endowment in Western Countries

Second: the obstacles of Islamic endowment in the West

Endowment in the West faces obstacles:

The first obstacle is the scarcity of resources, which resulted mainly from the fierce attack against charity institutions, which has driven many of charity doers to abstain from giving money that helps in establishing endowments in the West. Hence, they spend instead – when they do spend – on building mosques and orphanages within a very limited geographical area, while missionary institutions spend lavishly to establish their call in Muslim countries in Africa and Asia without restriction.

Therefore, this subject should be added to the list of dialogue with the West and the attention of officials should be drawn to the importance of equal treatment in such issues.

Muslims are like one body. We cannot let down Muslim minorities that constitute a part of the Muslim nation, a bridge for cultural communication, and a link in the chain of the relation with the West.

The second obstacle is that there are some flaws in achieving solidarity and cooperation between individuals and Islamic associations in West countries. This constitutes an obstacle before making collective efforts to establish challenging multi-purpose endowment institutions. However, there is an undeniable level of solidarity – thanks to Allah – in more than one district.

The third obstacle is the lack of organisational and administrative competency to achieve the maximum utilisation of the available – or potentially available – human and financial resources.

The fourth obstacle is working in conformity with the Western systems and laws. Muslim minorities live in a non-Muslim society under positive laws which mostly differ from the rulings of the Shari`ah that regulates the Islamic endowment owing to its special nature that requires rules that cannot be harmonised with the Western systems even with the employment of ijthihad and selection of juristic opinions.

Solutions:

To face these obstacles we can suggest, with regard to the first obstacle, that significant endowment organisations in the Islamic world can grant large funds to acknowledged Islamic institutions in these countries to carry out an endowment program resisted.

I confess that this solution requires intense communication between the beneficiary Islamic organizations and the officials, particularly after some organisations in European countries have started to set up local funding institutions to build and supervise houses of worship as protective measures against what is called “incoming fundamentalism.”

With regard to the second obstacle, there is a need for more awareness in the ranks of Muslims in order to convince them to integrate their organizations, as in the meantime institutions and mosques are established on ethnical or sometimes doctrinal basis. This then will help in forming huge endowments to meet the need. In this context rose the new European Islamic endowment and a similar one in America which supervises over 130 mosques. The European Council for Fatwa and Research and the International Union of Muslim Scholars can play a leading role in this field.

As for the third obstacle, which is related to lacking the organisational and administrative competency for ideal utilisation, it can be overcome, in my view, through exchanging experiences, organising courses, and focusing on successful examples to be raised as models. The General Secretary of Endowments in Kuwait can supervise these courses.

With regard to the fourth obstacle, which is related to fiqh and legal sides, we have to point it out to clarify in brief the nature of endowment in Islam.

The definition of *waqf* (endowment):

In Arabic, the words *waqf* and *habs* (dedication) are used synonymously by jurists for the same meaning, though al-Rassa` held the view that *waqf* is a stronger term than *tahbees*. [See *Sharh al-Rassa`* 2:539]

This word can be used for the endowed thing and for the act of endowing itself.

Ibn `Arafah defined it as endowing the utility of something as long as it exists while remaining in the possession of its endower even assumingly.

Ibn `Arafah rejected the definition given by Ibn `Abd al-Salam who defined it as “endowing utilities forever”, for it does not apply to all cases.

The author of *Aqrab al-Masalik* defined it as dedicating the utility or product of a property, even for a payment, for someone for a period determined by the granter. [Al-*Sharh al-Sagheer li al-Dardeer* 4:97] According to Abu Hanifah, it is to dedicate a property in accordance with the will of the granter of the utility in charity. [See the commentary of Ibn `Abdeen 3:357]

Ibn Qudamah said: it means to dedicate the estate and give the product in charity. [al-*Mughny*8:184] This definition is close to the exact wording of the hadith reported by al-Nasa'y in his *Sunan* on the authority of Ibn `Umar that the Prophet (peace and blessings be upon him) said to `Umar about the share he was given from *Khaybr* “Dedicate the estate and give the product in charity.” [Reported by al-Daraqutny and al-Bayhaqy and authenticated by al-Albany in *Irwa' al-ghaleel*]

Endowment is a great institution that manifests the wisdom of this divine and eternal shari`ah with regard to establishing the bases of cooperation between the individuals of the community and taking care of the people of need and poverty even before they come to existence. It is a credit for the coming generations and a running charity of a running reward for the endowers to receive the return in their graves and on the day of resurrection.

Therefore, the Messenger of Allah (peace and blessings be upon him) listed it among the three deeds of constant rewards that do not cease with death. The authentic hadith reads “When a human being dies, all his deeds come to end with the exception of three: a running charity, beneficial knowledge, or a pious child who prays for him.” [Reported by Muslim]

The running charity was interpreted as the endowment. Al-Shafi'y (may Allah be pleased with him) said that endowment is one of the peculiarities of this nation and was not known before Islam.

One of the characteristics of endowment is the perpetuity of the estate while spending the product on charity avenues. Therefore, there are many rulings related to endowments which form one complete system that acts as a shield to block the ways to intervene with the endowment in the face of the governors and administrators who may attempt to change or even waste it.

Hence, issues such as exchanging, substituting, transferring, compensating, restoring, and dividing the endowment have all gained the interest of Muslim jurists and sometimes led to juristic differences. This gave rise to three juristic schools that have different points of view: one school is conservative with regard to the estate of the endowment to the extent of strict abiding by words; another one manages the estate freely to preserve the perpetuity of the utility not the perpetuity of the estate; and third one takes a middle course between the two sides and inclines to the preponderant benefit in a rigid flexibility – if it is possible to combine between two opposites.

The first group includes the Malikites and the Shafi`ites. They do not allow exchanging or compensation in endowments except to very narrow limits in certain cases, which we will mention later.

The second group is represented by the Hanbilites and some Malikite scholars; particularly the Andalusians.

The third group which goes with the preponderant interests consists of some Hanifite scholars, such as Abu Yousof, and late Hanbilite scholars such as Ibn Taymiyyah, in addition to some late Malikite scholars.

Here we adopt the opinion of the school that goes with the interest with regard to endowment and thus allows transferring it and compensating for it. This school adopts the Malikite definition of endowment we quoted from *Aqrab al-Masalik* because the endowed property does not have to be immovable. It should be just a property or even a utility during the period of lease. Also, this school does not disallow timing in endowment.

One important issue related to endowment is its administration. Revising scholars' opinions and the positions of the schools of Islamic law, the administration is for the endower, the appointed administrator, the judge, the Muslim ruler, the beneficiaries, and Muslim community. (See our book *ʿamal al-Maslahah fi al-Waqf* and the paper we presented to this forum about the administration of endowment)

The administrator could be one or more persons as explicitly stated by the author of *al-Tawdeeh al-Jami` bayna al-Muqni` wa al-Tanqeeh* who belongs to the Hanbalite school.

Therefore, the association administers the endowment and so does the foundation in the new French system in which a government commissioner joins.

The permissibility of dedicating an endowment to non-Muslims relies on the case when Safiyyah, mother of the believers, (may Allah be pleased with her) dedicated an endowment fund to her Jewish brother.

It is also permissible to dedicate an endowment fund for a church to spend on those who pass by it (see *al-Mughny* and other references). This is of course when the endowment functions as a social institution from which both Muslims and non-Muslims benefit. So is the case when the endowment is an educational institution that receives Muslim and non-Muslim children; because the interest of Muslims is the most important criterion in this regard.

As for the case in the West, there are various forms: to register an association for public utility that has legal personality. This association administers the properties according to the institutional system to which it submitted in order to get the license. It can raise funds from the public and can also receive aid from authorities as well as grants and wills.

There is the form of foundation which does not differ much from the system of the associations of public utility with regard to their resources. But there is one big difference in the French law which is that the grants given to the foundation needs an administrative license to receive donations.

Moreover, the acknowledgement of the foundation needs a decree from the State Council which is the highest judicial body in France.

In conclusion:

There must be a comprehensive outlook to the status quo of endowments in the West and the future horizons to find a suitable form that allows the promotion of endowments in the Western circles while sticking at the same time to the basic principles of endowments in the Islamic shari`ah.

Finally, there are many fields of Islamic endowment in the West; the most important of which are: the field of calling to the way of Allah; the educational field; the social field; and the field of scientific researches, as elaborately explained by Dr. `Abd al-Majeed al-Najjar in his paper “*Maqasid al-Waqf fi al-Gharb*”.

It is probably right to make a list of Muslims’ needs in these fields.

Allah is the One who grants success.

Abdullah ibn al-Sheikh Mahfudh ibn Bayyah

Jeddah 23 Rabi` al-Awwal 1426 AH.

* Source: <http://binbayyah.net/english/2012/01/31/waqf-in-western-countries/>