

Governance issues

[Business](#), [Corporate Governance](#)



Just as in the case of waqfs existed in the pre-modern era in the Middle East, the trusts created in pre-industrial period in the Western countries, also suffered from serious deficiencies that hindered the administration of these trusts efficiently. However, the European economic history has witnessed the development of different kinds of trusts that give the trustees (equivalent to mutawallis in the case of waqfs) greater operational flexibility. The powers entrusted to the trustees enabled them to run businesses, manage the investment portfolios of the trusts, and to hold majority-voting powers in corporations.

Even though some of the Western trusts suffered from the rigidity as was the case with waqfs most of the trusts could mitigate this issue by providing substantial powers to the trustees or board of trustees which are more or less similar to those of the board of directors of a corporate entity. This is evident from the fact that during the late eighteenth and early nineteenth century, English trusts were established as an alternative to corporations and registration of these trusts was required by an Act of Parliament.

It was actually a common practice to have a number of business entities managed by trustees for the benefit of the shareholders. This brings out the fact that although trusts were somewhat similar to waqfs have undergone tremendous changes over a period. Another point of distinction that needs to be elaborated is the powers of the founders. The perpetuity element prevalent in the waqfs was discouraged in the English trusts even during the fourteenth century by the judges in England. The courts were against the powers vested with the donors to micro-manage the property for generations.

In fact trusts that provided for the benefits of un-born beneficiaries were declared void or made subject to the destruction by the previous beneficiaries. The resistance to static perpetuity, which has the danger of immobilizing the properties, resulted in attempts to remove the rigidity in the case of Western trusts even from fourteenth century onwards. However, the efforts to enlarge the powers of mutawallis in the case of waqfs created in the Middle East were attempted much later in the twentieth century.

Thus, the degree of intensity with which changes and developments in the concept of trust and waqfs were attempted made the difference. The rapid developments in the operations of trusts made it easier for the resources to be allocated easier in the case of West as compared to the Middle East where the rigidity in the constitution and operation of waqfs continued to exist until the twentieth century. Rationale behind the Perpetuity Element of Waqfs While the polycentric properties of the waqf system provided freedom to the founder to specify the purpose and appoint mutawallis or change them if found undesirable.

On the other hand, the principle of static perpetuity restricted the operational flexibility of the functionaries. With the meaning of the word ‘Waqf’ denoting to “stop” or to “make dependent and conditional” ; the system sought to stop the expropriation of the benefits accruing from the trust property for personal gains of individuals. It also provided for applying restraints on the deviations of the intentions of the founder on the uses to which the properties are to be put to.

The operational rigidity unlike the English and other Western trusts has been influencing both the mission and management of the waqfs. The

irrevocability in the mission or objective of the waqf may make the resources of the trust dysfunctional and put it inefficient use. The static perpetuity may also give rise to serious management issues also. In case the founder has not allowed the pooling of the resources with other organizations, there will be less likelihood that the possible economies of scale resulting from technological advancements can be reaped.

The root cause of these operational rigidities may be found in the rights provided to the founder by the traditional waqf system in terms of setting the management of the trust, treating the mutawalli as an executor with no independent decision making role. However in line with the English and Western trusts waqfs have also undergone numerous changes with the modern Islamic world changing the legal infrastructure of the waqf system. Such changes have enlarged the powers of the mutawallis and have endowed them with more operational freedom.

Like any other Western form of trust, a modern waqf is treated more like a corporation with more autonomy. This has made the courts treat waqfs as independent legal persons. The role of mutawalli is raised much more than that of a superintendent following the orders of the founder and is now expected to maximize the overall return on all assets and properties of waqfs subject to the acceptability of risks. Another improvement is that the mutawallis themselves are expected to take an active part in defining the goals of waqf so that they are more beneficial to the beneficiaries.

The essay thus attempted to bring out the similarities in the waqf form of trusts and the English trusts. While the salient features of waqfs were discussed, a comparison of the governance issues in both the concepts of

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waqfs and trusts were analyzed with specific detailing of the operational rigidity existed in waqfs until the twentieth century when legal reforms were undertaken to make the waqfs function more or less similar to the Western trusts. Bibliography

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