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## WAQF ADMINISTRATION IN KHIVA KHANATE: THEORY AND PRACTICE (XIX – EARLY OF XX CENTURIES)

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### ABSTRACT

The paper is devoted to historical activities of waqf administration of religious and social foundations in Khiva khanate. It was analyzed the legal aspects of waqf and its implementation by the example of these foundations. In particular, the function, rights and obligations of trustee who was the in charge of management of waqf assets and supervision of particular institution were examined.

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### INTRODUCTION

As other Muslim societies, *waqf* institution has had a considerable impact on social, economic, and cultural life in Central Asia for many centuries. In particular, the functioning of religious and educational establishments have been ensured by *waqf* properties that generated the enduring revenues. In addition, public and social utilities—such as hospitals, inns and construction of bridges and drinking fountains and their further provisions, as well the financial support of the vulnerable layers of the population have been conducted due to *waqf* incomes. *Waqf* derives from Arabic verb 'waqafa' that means 'to stop' and 'to hold'. It is a type of property for religious needs and charitable purposes. The declaration of donator (*wāqif*) is considered as act of founding of *waqf*. Although not required by Sharia, this declaration is traditionally recorded in a document with the stamp of judge (*qādī*).<sup>1</sup> The act of creation

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of *waqf* in written form was first introduced by caliph Umar. This type of document was popular in Khorezm under the name 'waqfnāma'.<sup>2</sup> The *waqf* deed has a legal force and it reflects issues such as the will of donator/s, the type of property being transformed into *waqf*, the class of beneficiaries, the order of using the *waqf* assets and distribution of its revenues. Moreover, the stipulations of *waqf* document deals with the activity and procedure of Islamic religious and social establishments. At the beginning of the 20th century, there were 133 madrassas, about 1500 mosques and schools (*maktab*), 164 houses for Qur'an reciters (*qārīkhāna*), 74 shrines, 71 sacred places that functioned owing to their *waqf* assets in the Khorezm oasis.<sup>3</sup> These institutions differed from each other according to their function and mode of operation. In this article, I will attempt to examine the mechanism of *waqf* administration by the example of these organizations. As the manager of *waqf* administration the trustee (*mutawallī*) is responsible for the fulfillment of

<sup>2</sup> White, A. (2006) Breathing new life into the contemporary Islamic *waqf*: what reforms can *fiqh* regarding *awqaf* adopt from the common law of trusts without violating *Shari'ah*? In *Real Property, Probate and Trust Journal*, Vol. 41, No. 3, p. 507.

<sup>3</sup> Boltaev, A. (1950) *Khiva khonligitarikhiga oid materiallar*. Al-Beruni Institute for Oriental Studies, № 11645, pp. 3-4

<sup>1</sup> The encyclopaedia of Islam. Vol. IX. P. 61.

stipulations and requirements that established in *waqf* document. In Khiva khanate, according to the will of founders, the organizational aspects of the religious and social establishments that functioned due to *waqf* properties are typically determined. In particular, the functions of these establishments, such as the role of trustee on the management of *waqf* economy, the rights and duties, as well as the personality of trustee were enacted in *waqf* deeds. In most cases, the person who appointed to the post of trustee for the first time was also assigned this position by other endowers for newly founded *waqf* assets. It should be noted that founder of *waqf* property has the right for free selection of trustee. Some *waqf* deeds suggest that several individuals were designated as trustees in one particular establishment. As a result, special board of trustees was emerged within *waqf* foundation. Though each trustee was in charge of only his/her designated *waqf* properties, the management and economic matters of them used to be settled on the basis of their mutual agreement in accordance with Sharia.<sup>4</sup> Usually endower selected an individual for the post of trustee among the staff of particular *waqf* establishment. In madrasas of Khiva khanate the professor (*ākhund*) occupied the trusteeship, whereas in mosques – the person who leads prayers (imam) or the man who calls to prayer (mu'adhdhin) and in houses for Qur'an reciters – main reciter were often designated for the position. The rulers (khans) of *Qongrat* dynasty of Khiva khanate appointed occasionally high officials of their Courts to the position of trustee. For instance, Sayyid Muhammad Rahim Khan II (poetic pseudonymous - Firuz) nominated Hasan Murod qo'shbegi to the post for his newly reconstructed madrasa that located in *Boghchadistrict (mawḍi')*. Later, the trusteeship was transferred to Sayyid Islam Khuja, who was great Minister (*Vazir-i Akbar*) during the reign of Isfandiyar khan, the son of Sayyid Muhammad Rahim Khan II.<sup>5</sup> The jurists of the *Hanafi* school, in particular, the founder of the tradition Abu Yusuf holds that endower (*wāqif*) can act as a trustee of *waqf* assets. However, the *Mālikī* doctrine disapproves the position of endower who appointed himself/herself to the post of trustee and being beneficiary. By-turn, some documentary sources from Khorezm suggest that endowers designated themselves as beneficiaries and at the same time held trusteeship. In particular, the *waqf* deed of Matniyoz Devonbegi that notarized in 1871 contain information on the process of construction of the madrasa, the types of assets, as well as the individual who occupied the post of trusteeship. According to the stipulation of the *waqfnāma* Matniyoz Devon begi with his brother, Bekniyaz Mahram were entrusted to the control over the properties of the foundation.<sup>6</sup> As usual, the founder sought to ensure the permanent management of *waqf* assets. Some *waqf* deeds show that the transmission of trusteeship followed by right of succession that deliberately defined by endower. In most cases, male children of a founder and after their death their male offspring were assigned to trustee for *waqf* properties in perpetuity. Moreover, as mentioned above, the staff of religious and social establishments often held the post along with the other positions. The designation of trusteeship and the order of use of newly founded *waqf* assets were not defined in some

*waqfnāmas* from Khorezm. There are different ways in such situation. According to the doctrines of *Mālikī* and *Shāfi'* the designation of trustee is under the jurisdiction of judge (*qāḍī*) whereas *Hanafīs* (with the exception of Imam Shaybānī who asserts illegality of *waqf* in this state) and *Hanbalīs* hold the competence of a ruler. The implementation of the verdict is well reflected in the activity of one of the renowned architectural structures of Khiva, Sayyid Niyazboysholikor madrasa complex. Sayyid Niyazbay, the sponsor of this institution, donated large properties for the madrasa complex that he had constructed during his lifetime. These properties have been described in detail in the newly *waqfnāma* that composed during the reign of Allah Quli Khan.<sup>8</sup> The document informs that the trustee had not been assigned and other stipulations of *waqf* assets had not been set up by founder. Further, it contains passage from juridical manual 'Fatawa-i Alamjiri' that holds "if the conditions of *waqf* are not set, the terms of *waqf* asset and distribution of income are within the competence of the Sultan or the judge." Based on this, the ruler Allah Quli Khan has personally appointed the trustee who was responsible for the property of the foundation and other terms of the *waqf*.<sup>9</sup> Trustee has a number of functions that he has pursued within the framework of the legitimate conditions established by founder and the Sharia.

#### These functions can be divided into four types:

- regulation of the issues concerning the state and management of the foundation property;
- keep the edifice of foundation (madrasa, mosque, mausoleum, etc.) in the proper way;
- accounting the incomes which generated from *waqf* assets and make their distribution;
- general management and guidance on the activities of religious and social institutions.

Trustees primarily responsible for maintaining a permanent prosperity and well-being of *waqf* assets. The income from usage of *waqf* properties has to be spent on self-improvement first. For example, if a fruit-tree stops bearing or dries out, its previous revenue should be used to buy new seedlings.<sup>10</sup> This rule on *waqfis* also well illustrated in manual for judges – 'Collection of *Jungs*' of Khorezm that dates from the 19th century.<sup>11</sup> As aforementioned, the management of *waqf* properties and the procedure of their usage set up by founder. However, some Khivian *waqf* deeds suggests that these matters were under the competence of trustee in accordance with the will of endowers. In the process of conveying *waqf* properties under the lease or other types of contracts a trustee acts as a grantor. As a rule, in the Khiva khanate, a trustee drew up contracts with the lessee (*mustajir, kārandā*) or sharecropper on *waqf* lands in accordance with the stipulations of founder/sand in a favorable condition for *waqf*. It should be noted that a lessee or sharecropper has to get permission on building construct (a house, a shop etc.) or planting tree on *waqf* assets from a trustee. By-turn, lessee or

<sup>4</sup> Joseph, S. (2012) *Islamic Law on Peasant Usufruct in Ottoman Syria*. 17th to Early 19th Century. Studies in Islamic Law and Society. Volume 35. Brill. Leiden–Boston, p. 53.

<sup>5</sup> Khiva State Historical Architectural Reserve-Museum «Ichan-Kala», ГХМЗ КИИ 1305

<sup>6</sup> Khiva State Historical Architectural Reserve-Museum «Ichan-Kala» ГХМЗ КИИ 1356

<sup>7</sup> Zubair, A.M. (2012) *The Classical Islamic Law of Waqf: A Concise Introduction*. In *Arab Law Quarterly* 26, p. 141.

<sup>8</sup> Al-Beruni Institute for Oriental Studies, folder № 3 (4)

<sup>9</sup> Al-Beruni Institute for Oriental Studies, folder № 3 (4)

<sup>10</sup> Abdurrahman, M.S. (2010) *Development of Dormant Waqf Properties: Application of Traditional and Contemporary Modes of Financing*. In *IJUM Law Journal*. Vol. 18 no.1, p. 78.

<sup>11</sup> Al-Beruni Institute for Oriental Studies, № 8470

sharecropper are rightful owner of constructed buildings and planted trees on *waqf* (or state) lands. The type of such ownership was widespread with the special term '*amala wa sukniyain* Central Asia, and '*kirdār*' in Ottoman Empire.<sup>12</sup> If a tenant refuses to pay a rental fee, a trustee has the right to cancel a mutually agreed contract and to enter into a new contract with another tenant.<sup>13</sup> The *waqf* property can not be sold, inherited and transferred and it has perpetuity and inalienable character. However, if *waqf* property is deteriorated and stops to generate revenues founder or trustee can replace it by another property only with the approval of judge. The procedure of exchanging property was well known under the name *istibdāl*. Fakhr al-dīn Qāḍīkhān, who was prominent Islamic scholar of 12<sup>th</sup> century from Central Asia and other jurists hold that the exchange of *waqf* property for dirhams and dinārs is permissible.<sup>14</sup> Indeed, a judge or *muffī* can change the stipulations of *waqf* assets if they are in critical and impair condition. After maintenance of *waqf* property itself, the revenues must spend for the upkeep and the repair of a religious or social institutions that *waqf* assets were dedicated. Some *waqf* deeds of Khiva madrasas and mosques clearly stipulate that trustee had been in charge of the matter. For instance, according to the *waqfnāma* of Sayyid Ibodullah Tura's madrasa, the trustee of the foundation should carry out repairs of the building if it requires.<sup>15</sup> The madrasa was erected in the city of Khiva by the prince Sayyid Ibodullah Tura, the son of Muhammad Rakhim Khan II. It should be noted that the stipulation on the upkeep and the repair of building of particular foundation was come in different sequences in Khiva *waqf* deeds. In some documents, expenditure for keeping in repair of building was in the first place, whereas other deeds stipulated that the revenues should be spent for the maintenance of foundation after the trustee's salary. However, as discussed above, the keeping of building in a good order is the first and foremost in compliance with the Sharia.<sup>16</sup> The abandonment of *waqf* property and, ultimately, the loss of the beneficial character of the property, in fact, lead to lack of financial support of religious and social foundations and the further cessation of the activity of these institutions. As well as, the neglect of timely repairs of the building of the foundations can be caused for disruption. Therefore, it was vitally important to keep *waqf* perpetuity and to preserve the property as the source of regular income for intended charitable activities in Khiva khanate. One of the duties of a trustee is to collect the revenues from the *waqf* properties and distribute them accordingly. In the process of distribution all needs have to be taken into account. The process was well documented by the example of *waqf* economy of madrasa of Matniyaz Devonbegi.

According to the stipulation on the division of income of the madrasa, the trustee had to spend revenues for the upkeep of the building of foundation in the first place. Then, he should take tithe of total proceeds as annual wage. The defined and specific parts of revenues were intended for ensure the lighting system of the madrasa complex, and the regular satisfaction of the needs of the mosque with the necessary things such as reed braids, mats. The rest of proceeds had to be distributed among the staff (professor, imam, muezzin, cleaner, barber) of the foundation and students who received stipends according to their degree: high (*a'lā*), medium (*awsaṭ*) and low (*adnā*). The trustee of the madrasa was responsible for the distribution as was defined. The trustee entrusted not only the management of economy of religious or social institutions, but also organization of their activities through staff members. Candidates for trusteeship and other positions of the foundations have to meet special requirements that regulated to the stipulations of founder and Islamic law on *waqf*. In particular, the trustee must be trustworthy (*amīn*) and fair (*adl*)<sup>17</sup> according to all law schools. The *waqf* deed of Muhammad Ya'qub boy that notarized in 1908, established requirements for trusteeship. Muhammad Ya'qub boy stipulated that the trustee must have necessary skills such as piousness and honesty. These requirements were reflected in other Khiva *waqf* documents. Professor (*mudarris*) of the madrasa complex occupied at the same time the position of *imam*. Professor must have deep religious knowledge and be pious. As *imam* he should know Sunna and be best Qur'an reciter. The person who gets Qur'an by heart could be held both positions - Qur'an reciter (*qārī*) and muezzin.<sup>18</sup> In addition, all employees of the religious and social institutions, which are funded by *waqf*, have certain rights and obligations as prescribed in *waqf* deeds. For example, the obligations of staff and students of Rahmon Birdibiy's madrasa was established in its *waqfnāma* as follows: the students must not leave their cells (*hujra*) for forty days uninterruptedly; the professor must not miss lessons continuously for two weeks; cleaner must tidy up the madrasa and barber should cut student's hair and shaves.<sup>19</sup> The trustee coordinated and supervised the work of the staff of the madrasa. Employees and students of the institution, who did not perform their duties properly, were resigned from their positions. As a manager of *waqf* administration, trustee was responsible for management of *waqf* properties, ensuring the capital flow, distributing *waqf* revenues among staff accordingly, continuously repairs and maintaining a property-oriented institution. Trustee who has failed to perform his duties in a timely manner, unconvincing, and abusive left his/her post by the judge.

<sup>12</sup> Baer, G. (1979) The Dismemberment of Awqāf in Early 19<sup>th</sup> Century Jerusalem. In Asian and African Studies, Vol. 13, No. 3, p. 223.

<sup>13</sup> Barnes, R.J. (1987) An Introduction to Religious Foundations in the Ottoman Empire. Leiden-New York-Kopenhagen-Koln, p. 53

<sup>14</sup> Joseph, S. (2012) Islamic Law on Peasant Usufruct in Ottoman Syria. 17th to Early 19th Century. Studies in Islamic Law and Society. Volume 35. Brill. Leiden-Boston, p. 57.

<sup>15</sup> Central State Archive of Republic of Uzbekistan, f. I-323, op. 1, d. 608.

<sup>16</sup> Joseph, S. (2012) Islamic Law on Peasant Usufruct in Ottoman Syria. 17th to Early 19th Century. Studies in Islamic Law and Society. Volume 35. Brill. Leiden-Boston, p. 47.

<sup>17</sup> The encyclopaedia of Islam. Vol. IX. P. 63

<sup>18</sup> Central State Archive of Republic of Uzbekistan, f. I-323, op. 1, d. 126

<sup>19</sup> Khiva State Historical Architectural Reserve-Museum «Ichan-Kala» FXM3 KII 1327