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The Institution of WAQF in relation to the Ayodhya Dispute

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ABSTRACT

The institution of wakf acts as a magnificent manifestation of the Islamic concept of human rights and human responsibilities, it contributes to the formation of a society that is aligned with the ambitions of diverse systems of secular governance in the circumstances of the current day. In addition, it is essential to recognize that wakf, which is a notion that is deeply entrenched in the principles of Islamic equity, has indisputably demonstrated a tremendous capacity to boost the efficiency of the English legal system. This is something that must be acknowledged because it is vital. In the present document, the author has astutely done an intellectual study in order to elucidate the legal safeguards and administrative distortions surrounding the Aukaf, in view of judicial judgements, legislative enactments, and sociological variations. This examination was undertaken in order to provide clarity regarding the legal safeguards and administrative distortions surrounding the Aukaf.

INTRODUCTION

Waqf (Arabic for endowment) is a special kind of philanthropic deed in perpetuity. In literal sense, it means, detention or stoppage. It involves donating a fixed asset that can produce a financial return or provide a benefit. The Holy Quran does not mention about Waqf (or Auqaf) separately, but certain verses dealing with charity and endowments are the root of the development and expansion of Waqf in the Mohammedan religion, like:

i. "And in their wealth, the beggar and outcast had due share."[1]
ii. "Ye shall never attain to goodness till ye give alms of that which ye love, and whatever ye give, of a truth God Knoweth."[2]

Islam has given rise to the institution of Waqf. The institution of Auqaf did not come into existence in Arabia or any other part of the world before the advent of Islam. The law of Waqf is the most important branch of Muslim Law, for it is interwoven with the entire religious life and social economy of Muslims.[3] The law of Waqf owes it origin to a Hadith (compilations of Sunnah of the Prophet), which is as follows:- Omar had acquired a piece of land in Khaiber, and proceeded to the Prophet, and sought his counsel to make the most pious use of it, when the Prophet declared, "tie up the property and devote the usufruct to human being: and it is not to be sold or made the subject of gift or inheritance: devote its produce to your children, your kindred, and the poor in the way of God." So, Omar dedicated the property in question, and the

[1] Quran - LI : 19.
[2] Quran - III : 92.
[3] 1 SYED AMEER ALI, MUHAMMADAN LAW 207 (Kitab Bhawan 1965).

waqf (or stoppage of property) continued in existence for several centuries, until the land became waste.

According to Islamic law, waqf is a norm that was established by the Prophet. The right of a waqif (settler) in the property is terminated as a result of the establishment of a Waqf, and ownership is now vested in the Almighty. The Mutawalli, the Governor, Superintendent, or Curator, is the waqf's manager. However, he does not have any ownership rights over the waqf's property in that capacity, and he is not a trustee in the traditional sense of the word.

LAW OF WAQF IN INDIA

In the Indian context, the government had passed various legislation pertaining to waqf, like The Waqf Act 1954, U.P Waqf Act 1950, Bengal Waqf Act 1934, Bihar Waqf Act 1947, Bombay Public Trust Act 1950, and Dargah Khwaja Saheb Act, 1955 which dealt with administration and supervision of auqaf prior to the enactment of the Waqf Act 1995.

Earlier, the Section 2 of the Mussalman Waqf Validating Act 1913 defined Waqf and laid down that "a waqf will be valid, notwithstanding the fact that there was no express dedication of properties in favour of God."[4] The Waqf Act 1995 slightly changed the definition. Later, the Waqf (Amendment) Act 2013 had substituted the definition again, in the Section 3(r) of the Act of 1955, after which, the Section read as follows:-

"Waqf" means the permanent dedication by any person, of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes—

i. a waqf by user but such waqf shall not cease to be a waqf by reason only of the user having ceased irrespective of the period of such cesser;
ii. a Shamlat Patti, Shamlat Deh, Jumla Malkkan or by any other name entered in a revenue record;
iii. "grants", including mashrat-ul-khidmat for any purpose recognised by the Muslim law as pious, religious or charitable; and
iv. a waqf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable, provided when the line of succession fails, the income of the waqf shall be spent for education, development, welfare and such other purposes as recognised by Muslim law, and "waqif" means any person making such dedication;'.[5]

When provisions of waqf are studied along with with the legislations and judicial rulings in India, the major fact that emerges and needs to be considered is that the institution of Hanafi or Sunni law of Waqf has discernibly been contracted over the years for various reasons. In addition to this, there is an increasing need to re-evaluate the status of Waqf-alal-aulaad as an

[4] S.S. Mumtaz Ali v. S.K. Ali, AIR 1968 Orissa 208.
[5] The Waqf (Amendment) Act 2013 made sweeping changes to the Wakf Act 1995, like, the title was changed from 'The Wakf Act 1995' to 'The Waqf Act 1995'.

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institution of perpetuity. In this article, we will be discussing about the contraction of the Hanafi law of Waqf in relation with the Ayodhya Dispute.

CONTRACTION AND CURTAILMENT OF WAQF LAW IN INDIA

There are three major contexts wherein the Hanafi Law of Waqf has been curtailed and contracted time and again in India. They are stated and explained as follows:

i. **Prohibition on Non-Muslims to create Waqf:**

The three legislations pertaining to wakfs in India, including the Wakf Act of 1995 and the J & K Wakf Act of 1978, provide that the establishment of wakfs is restricted to individuals who identify as Muslims[6]. Therefore, individuals who do not adhere to the Islamic faith are prohibited from establishing wakfs. The Hanafi school of law, along with other schools of Islamic law, permits non-Muslim individuals to establish wakfs, albeit with specific stipulations[7]. According to Fatawa Alamgiri, as documented in volume 4, page 62 of the Urdu translation by Moulvi Ameer Ali, it is not a need for the wakif to be exclusively of the Muslim faith. Ameer Ali asserts "Islam is not a necessary condition for the constitution of a wakf. Any person of whatever creed may create a wakf, but the law requires 36 that the object for which the dedication is made should be lawful according to the dedicator as well as the Islamic doctrines."[8]

The aforementioned enactments have imposed a limitation that is absent in Hanafi or Islamic law by denying non-Muslims the ability to establish wakf. These statutory prohibitions appear to disregard the perspective adopted by various High Courts that permit non-Muslims to establish wakf. In the year 1940, the Lahore High Court rendered a ruling stating that it was permissible for a Hindu individual to consecrate his land as a Muslim burial ground. This devotion was deemed legally lawful under both Islamic and Hindu jurisprudence.[9] In a parallel vein, the Madras High Court, in 1930, rendered a verdict affirming that it is not an infrequent occurrence for individuals who do not adhere to the Muslim faith, occupying positions of Zamindars, mittadars, and the like, to acquire property endowments for the benefit of Muslim institutions. Furthermore, it was established that such endowments have consistently been acknowledged and accepted[10]. The Nagpur High Court upheld the validity of a wakf established by a non-Muslim, on the condition that it adhered to the customary stipulation of Hanafi law. This requirement entails that the object of the wakf must be

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[6] Section 3(r), Wakf Act, 1995; Section 3(d), J & K. Wakf Act, 1978; Section 2(1), Mussalaman Wakf Validating Act, 1913.

[7] Hanafi and Maliki law require that the object must be valid both according to Islamic law as well as to the creed of dedicator. Whereas Shafis and Hanabalis require the object to be valid in accordance with Islamic law. A non-Muslim cannot make a wakf of or for mosque.

[8] Ameer Ali, Syed, Mahammedan Law, vol. 1, 5 ed revised by Raja Said Akbar Khan

[9] Arur Singh v. Badar Din, 1940 Lah. 119.

[10] Paritha Peda Venkatasubbaraydu v. Haji Silar Saheb, (1930) 58 MLJ 524 at 529.

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deemed valid according to both Islamic law and the beliefs of the individual making the dedication.[11]

ii. **Compulsory acquisition of Mosques (like Babri Masjid) and graveyards:**

In a significant ruling in 1995[12], the Supreme Court of India referenced several previous cases that supported the compulsory acquisition of places of worship for public purposes. The court held that a mosque, similar to any other place or property, could be acquired under the Land Acquisition Act of 1894. Additionally, the court upheld the acquisition of the Babri mosque under the Acquisition of Certain Area at Ayodhya Act of 1993. But in accordance with Islamic jurisprudence (Sharia'ah), it is believed that Muslims are unable to engage in worship in a satisfactory manner without the presence of a mosque. Therefore, the compulsory acquisition of mosques would be deemed impermissible both from a legislative and judicial standpoint. The justification for the acquisition in question cannot be substantiated solely on the basis that the Act permits the acquisition of places of worship belonging to other religious denominations as well. In the event that the perceptions of others do not align with a sense of objection, it is imperative to recognize that such alignment does not inherently necessitate that individuals of the Muslim faith ought to adopt a similar stance or behavior. The inclusion of compulsory acquisition of places of worship within the secular ethos of India is untenable. The Land Acquisition Act of 1894, a legislative artifact of the colonial era, stands in dire need of amendment. The aforementioned Acquisition of Certain Area at Ayodhya Act, 1993 can be perceived as a political enactment devoid of any complexities, primarily aimed at achieving political objectives. It is crucial to acknowledge that this legislation, in its essence, appears to be in conflict with Islamic law and may potentially infringe upon the sentiments held by the Muslim public.

iii. **Adverse Possession of Mosques:**

According to Islamic law, the acquisition of property through adverse possession (ghasb) is strictly prohibited, regardless of the duration of such possession. Therefore, a mosque that has been adversely held would retain its character indefinitely; upon regaining possession, it would immediately revert back to its previous character. In the Indian context, it is noteworthy that both the Privy Council, in the well-known Masjid Shahid Ganj Case (1940) 67 A.I. 250, and the Supreme Court, in the Ismail Faruqui Case[13], have established that a mosque may lose its status as such if it is adversely possessed for an extended period of time. According to the Supreme Court's statement:

"… It is impossible to read into the modern Limitation Act any exception of property made wakf for the purpose of mosque whether the purpose be merely to provide money for the upkeep and conduct of a mosque or to provide a site and building for the purpose. While their Lordships have every sympathy with the religious sentiment which would

[11] Motishah v. Abdul Gaffar, AIR 1956 Nag. 38 at 42.
[12] Miru v. Ram Gopal, (1935) 33 All L.J. 1269 at 1273.
[13] M. Ismail Faruqui v. Union of India, (1994) 6 SCC 360 : AIR 1995 SC 605.

ascribe sanctity and inviolability to a place of worship, they cannot under the Limitation Act accept the contentions that such a building cannot be possessed adversely to the wakf, or that it is not so possessed so long as it is referred to as "mosque" or unless the building is razed to the ground or loses the appearance which reveals its original purpose".

Section 107 of the Wakf Act of 1995, which became effective on January 1st, 1996, addresses this issue by introducing a remedy for the first time - "Nothing contained in te Limitation Act, 1963 shall apply to any suit for possession of immovable property comprised in any wakf, or for possession of any interest in such property."

THE AYODHYA DISPUTE

Now that the Hanafi law of Waqf in India and the reasons for its contraction in India have been discussed in detail, we can further move on to the discussion about the Ayodhya Dispute and how the rules of adverse possession are applied to it.

i. Facts and history of the Dispute:

The Ayodhya conflict, in its historical sense, started around 1528 when Babar is supposed to have commissioned one of his officers, Mir Baqi Isfahani to convert a temple to mosque in Ayodhya. We obtained this information from the 2003 Archaeological Survey of India ('ASI') Report[14]. The opening of the story highlights the challenge of assessing the accuracy of the information in this subject. In a thorough article in Economic and Political Weekly, archaeologists Supriya Varma and Jaya Menon argue that the ASI Report's findings are erroneous.[15] There can be no serious contestation that from 1528, there did exist a mosque in the contested property which was under the hands of Muslims. The first incidents of violence on this place that I could find range back to 1857 as Hindus sought to occupy the mosque and was kept back by use of force by the Muslims. After the argument, the parties reached a solution, dividing the site into two courtyards: the inner courtyard for Muslims and the outside courtyard for Hindus. The first intervention of a court of law in this litigation was in 1885 when a Hindu priest, Raghubar Das sought permission from the court to build a temple in the outer courtyard that was given to Hindus as per the 1857 compromise. This suit was refused on public policy grounds since the court feared greater disturbances if this was granted. Thus, there was a decree requiring maintenance of status quo in the two divisions. The Ayodhya conflict continues with the 1934 riots that destroyed the mosque and claimed many lives. Certain Hindus retaliated for an alleged

[14] https://asi.nic.in/ last seen on March 8, 2020. The Allahabad High Court has referred extensively to the Report in its orders in Gopal Singh Visharadv.

[15] Supriya Varma and Jaya Menon, "Was There a Temple under the Babri Masjid? Reading the Archaeological 'Evidence'", 45 (50) Economic & Political Weekly 61 (2010).

cow slaughter in the mosque. Hindus and Muslims say they prayed in the inner courtyard from 1934.[16]

In 1947, the courts reaffirmed their tendency to protect the status quo by prohibiting Hindus from erecting temples and Muslims from rebuilding damaged mosques.

A key disagreement point was December 22, 1949, when Hindu parties took the mosque, declared its center as Lord Ram's birthplace, and placed idols there. A court order attached the entire property and gave control to a government-appointed receiver. After this, the decision was made to prohibit both religions from worshipping on the spot.[17]

The Supreme Court judgement in November 2019 was based on the initial suits filed against this decree in several district courts. Gopal Singh Visharad filed a suit in 1950 to pray at Ramjanmabhoomi, claiming it was in the disputed area's inner courtyard. Nirmohi Akhara sued the receiver nine years later, claiming they had the right to oversee temples dedicated to Lord Ram.[18] To rebuild the mosque and restart prayers, the Sunni Central Waqf Board sued the receivers in 1961 to take over their property.[19] Sri Deoki Nandan Agarwala filed a fourth petition in 1980 on behalf of the idol erected in 1949 and Ramjanmabhoomi, both claiming juristic status[20]. In 1986, a district judge ordered the locks to be unlocked and Hindus allowed to worship the statue within, notwithstanding ongoing proceedings in 4 suits. The ruling states that Hindus worshipped in the outer courtyard and that allowing them to worship the idol in the inner courtyard would not cause heavens to fall.[21] In 1986, Hindus resumed devotion in the inner courtyard after a 35-year hiatus.

In 1989, the Allahabad High Court seized four district court suits under Chapter VIII, Rule 4, granting it the ability to take over cases from lower courts[22]. In October 1991, the Uttar Pradesh Government acquired the entire sub-judice property using Land Acquisition Act notices. Due to a writ process, this notification was made interim and subject to the High Court's suit decisions.[23]

A year later, on December 6, 1992, Hindu protesters violently razed the mosque. After then, a prayer ritual was held and a temporary temple was built. Parliament passed the Acquisition of Certain Area at Ayodhya Act, 1993, to address the widespread violence caused by the mosque's destruction and resolve the situation. The Act stipulated that all court cases on these topics would be dissolved after its implementation. The clause was overturned by the Supreme Court for infringing the right to judicial recourse for the

[16] Sushil Srivastava, “The Abuse of History: A Study on the White Papers on Ayodhya”, 22 (5/6) Social Scientist 39, 47 (1994)
[17] Ved Mehta, “The Mosque and the Temple - The Rise of Fundamentalism”, 72 (2) Foreign Affairs 16, 16-18 (1993).
[18] M. Siddiq v. Suresh Das, (2020) 1 SCC 1, pg. 34. hereinafter “Ayodhya SC decision”
[19] Id., p.38
[20] Id., p.44.
[21] Gerald James Larson, India's Agony Over Religion269-70 (State University of New York Press 1995)
[22] Kalyani Ramnath, “Of Limited Suits and Limitless Legalities: Interpreting Legal Procedure in the Ayodhya Judgment”, 5 NUALS Law Journal 1, 9 (2011).
[23] Ratna Kapur, “The Ayodhya Case: Hindu Majoritarianism and the Right to Religious Liberty”, 29 Maryland Journal of International Law 305, 335 (2014), pg.340.

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Muslim community. The subject was remitted to the High Court for a merits-based decision.[24]

ii. Application of Adverse Possession to the Ayodhya Dispute:

Adverse possession is a defense for trespassers when the owner sues for possession. Thus, adverse possession applies to the former owner. Adverse possession in the Ayodhya factual matrix begins with the fact that none of the four initial actions could show a title document to assert ownership. As recognized by numerous parties, the government owned the property as a Nazul. British categorisation of the property after annexation in 1858. [25] Before proceeding, it is necessary to explain why I have chosen to begin the application of law from 1858, rather than from the construction of the original temple in Ayodhya or from 1528 when Babri Masjid was built. The British East India Company annexed the Kingdom of Oudh in 1856, where the disputed area was situated.[26] The common law, which forms the basis of our modern legal system, was first applied in India in 1856. It is uncertain if the legal systems in Oudh/Awadh prior to 1856 acknowledged possession as a valid concept in property law. It is reasonable to begin our calculation from 1857 rather than 1947 because our Constitution acknowledges the legitimacy of the laws that governed the sub-continent immediately prior to its implementation.[27] The Supreme Court also acknowledged this in the Ayodhya decision.[28]

The High Court's frequent use of a brief point can now be definitively dismissed. The High Court utilized Section 110 of the Evidence Act and the judges' individual interpretations to ascertain title based on whether Hindus, Muslims, or both jointly held possession.[29] Section 110 of the Evidence Act is as follows:

S.110: The burden of proof regarding ownership lies with the person claiming that someone in possession is not the owner.[30] Based on the plain language of this provision, it is evident that it is merely a presumption. S.110 does not apply when there is proof of title. Given that the parties have acknowledged the existence of the Nazrul, any analysis based on Section 110 is bound to be unsuccessful.[31]

I respectfully disagree with the Honourable Supreme Court's decree on title for Hindus, as it appears to lack logical coherence. The court has determined that Muslims are not eligible for

[24] M. Ismail Faruqui v. Union of India, (1994) 6 SCC 360, pg.61-62, hereinafter "Ismail Faruqui Decision".
[25] Ayodhya SC Decision, supra note 18, p.768.
[26] Subrata Roy, "Tragedy of the Nawab Wajid Ali Shah of Lucknow in Calcutta (1856-78)", 72 (2) Proceedings of the Indian History Congress 1561 (2011).
[27] Art. 372(1), Constitution of India.
[28] Ayodhya SC Decision, supra note 18, pp. 770-71.
[29] See for example Ayodhya HC Decision per S.U. Khan, J. in Gopal Singh Visharad v. Zahoor Ahmad, 2010 SCC OnLine All 1935, pp. 252-55.
[30] Indian Evidence Act, 1872 (Act No. 1 of 1872, dated March 15, 1872).
[31] Ayodhya SC Decision, supra note 18, p.838.

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title by adverse possession[32], waqf[33], or the doctrine of lost grant[34]. Section 110 of the Evidence Act encompasses the doctrine of lost grant, which presumes ownership for those in possession of a property. This presumption exists because the law acknowledges that original title deeds and grants may become lost over time. The court independently determines that, based on the available evidence, it is more likely than not that a temple existed beneath the mosque[35]. There is a significant leap in both logical reasoning and legal justification to argue that the lawsuit filed by the deities is permissible, provided that an alternative piece of land is allocated to Muslims[36]. Interestingly, Article 142 is utilized to provide alternative land to Muslims as compensation for the destruction of the mosque in 1992.[37] However, no legal doctrine is referenced to determine the ownership of the land in favor of the deity.[38]

The only possible way to support the finding mentioned in the title is to consider the land as a separate deity, as argued by the plaintiffs in the lawsuit filed by the deities. Then, one could argue that if the land is seen as a deity, property laws do not apply to it. However, this finding would contradict the court's rationale for dismissing the Waqf board's claim regarding the property's status as part of a Waqf. The court disregarded historical evidence supporting the property's classification as a Waqf[39], deeming it inconceivable to consider a property used by a different religion for worship as a Waqf.[40] Treating property used by Muslims for prayer as a deity is unimaginable. There is no justification for the court's decision to favor Hindus in determining the title.

To address this matter, let us revisit the point on which we agreed with the court: in 1858, a valid Nazul occurred, transferring the property to the government. The court's language regarding the government's relationship with worshippers of both faiths states that the British allowed the people to practice their rituals in the disputed area. [41]Although it is true that perceiving the relationship as one where the government grants permission restricts the use of adverse possession against the government.

However, a careful analysis of the situation indicates that the relationship was not based on permission. According to the Hindu perspective presented in the final lawsuit, the land is considered a deity and, as a result, cannot be owned by anyone. Muslims assert that the land they worship on is a Waqf. The waqf is dedicated to Allah and cannot be owned by anyone, including the state[42]. Both parties openly possessed the property since the compromise of 1857, with an adverse animus denying the government's title. Both Hindus and Muslims have fulfilled

[32] Id., p.866.
[33] Id., p.856.
[34] Id., p.881.
[35] Id., p.921.
[36] Id., p.925-927.
[37] Id., p.925.
[38] Id., p.45 shows that "Asthan Sri Rama Janambhumi" is itself regarded as a deity in the plaint to Suit 5.
[39] Id., pp. 791-98.
[40] Id., pp. 856.
[41] Id., p.770.
[42] Muhammad Zubair Abbasi, "The Classical Islamic Law of Waqf: A Concise Introduction", 26 (2) Arab Law Quarterly 121, 126 (2012).

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the necessary requirements for acquiring ownership through adverse possession of the outer and inner courtyards by 1917. This is because the 60-year Limitation period stated in Article 149[43] for filing a possession lawsuit had expired.[44]

I disagree with the higher court decisions in the Ayodhya dispute regarding the divisions in the 1500 square yard property. This is evident from the separate titles for the inner and outer courtyard. The High Court divided the property into three parts among the three petitioners who claimed ownership. The Supreme Court ruled that the property cannot be divided and must be viewed as a whole. Both decisions do not align with the fact scenario where the parties themselves considered the property as two parts for 77 years from 1857 to 1934.

The Waqf board cannot make a credible claim to defeat the exclusive possession of the Hindus in the outer courtyard. Let's examine if Hindus can claim adverse possession between 1934 and 1961 to acquire title of the inner courtyard from the Muslims. Fortunately, the Supreme Court has already addressed this issue in its analysis of Limitation. The lawsuit by the Board was filed in 1961. According to Article 142 of the Limitation Act of 1908, the limitation period for filing a claim for possession after being dispossessed is twelve years. The Board should not have been dispossessed prior to 1949. According to the aforementioned historical accounts, the dispossession of Muslims occurred during the riots on the nights of December 22-23, 1949. The suit was filed on Dec. 18, 1961[45]. This falls within the limitation period, so adverse possession is not applicable.

CONCLUSION AND COMMENTS

The laws and judicial decisions pertaining to the compulsory acquisition of mosques and graveyards are undeniably in violation of the principles enshrined within Islamic Law. The potential legal extinguishment of mosques and graveyards through the mechanism of adverse possession represents yet another conspicuous example of such a transgression. In a parallel vein, imposing limitations upon the entitlements of individuals who do not adhere to the Islamic faith with regards to establishing wakfs fails to serve any meaningful objective.

Instances pertaining to the augmentation and amplification of the Hanafi legal doctrine concerning wakf matters inherently fall within the purview of Hanafi jurisprudence. Several of these, nevertheless, possess distinctive characteristics, such as the recoverability of wakf established by a *paradanashin* lady, the wakf of *mashrut ul-khidmat* grants, *takia*, khanqah, and dargah as wakf institutions. In certain cases, it is evident that the judiciary's excessive enthusiasm is unwarranted, as it has resulted in the incorporation of elements into the wakf law that deviate from the principles of Hanafi law or shari'ah.

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[43] Limitation Act, 1908 (Act No. 9 of 1908 dated August 7, 1908).

[44] Art. 146-A prescribes a 30-year limitation period for the government when it is dispossessed from public streets or roads. Since, it is not accurate to regard the Ayodhya property as a public road or street, I applied Art. 149 which is the miscellaneous provision for suits by the government. In any case, even if Art. 146-A were to be applied, the limitation period would be in fact shorter than Art. 149 and the government would still fall prey to adverse possession claims.

[45] Nivedita Menon, "The Ayodhya Judgment: What Next?", 46 (31) Economic & Political Weekly 81, 87 (2011).

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The Court's inclination to mandate the disbursement of remuneration to imams of mosques by the Wakf Board, irrespective of the Boards' lack of formal appointment of said imams, is unduly reductionist in nature. In order to ascribe the legal obligation to remunerate wages predicated upon the Board's duty to "supervise" wakfs, it is evident that the Supreme Court's analogy fails to persuade any discerning individual, as it stands in direct opposition to the principles of Islamic law, rationality, and sound judgment.

The comprehensive endorsement bestowed upon cash wakfs, as well as wakf of shares and promissory notes, without duly considering the deleterious impact of interest (riba), casts doubt upon the legal soundness of said wakfs. The re-determination of the scope of section 2 of the Wakf (Validating) Act, 1913 is imperative. This particular segment cannot be employed to bestow comprehensive endorsement upon wakfs that are afflicted by certain legal deficiencies as per the principles of Islamic law.

According to the principles of Hanafi law, it is imperative that the subject-matter of a wakf of incorporeal rights be duly recognized as "property" in order for such a wakf to be validly established. Given the exclusive reliance on Hanafi law, it becomes imperative to assess the classification of said rights as "property" by scrutinizing their recognition as such within the prevailing customs and practices of the relevant jurisdiction. It is worth noting that this crucial aspect has been largely overlooked by judicial authorities, thereby casting significant doubt upon the legal soundness of such wakfs under Hanafi law.

In conclusion, it is evident that the institution of wakf of alaulad in India is currently experiencing a state of profound decline, bordering on the precipice of obsolescence. The aforementioned fact, when combined with the prevailing inclination observed among Indian Muslims, wherein the establishment of wakfs is typically motivated by the desire to safeguard family assets from the imprudent actions of future generations, compels us to contemplate the necessity for a reassessment of these practices. The imposition of limitations upon the duration of existence for such wakfs would align harmoniously with comparable constraints observed within certain Islamic nations. Furthermore, it is plausible that such restrictions would garner endorsement from the esteemed perspective of Imam Abu Hanifa regarding the revocability of wakf, as well as the analogous viewpoints articulated by Imam Malik on this particular matter. In summary, it is contended that the current legal circumstances in India portray a representation of Hanafi wakf that, upon closer examination, appears to deviate from the authentic essence of wakf as defined in Hanafi jurisprudence. The gradual and inconspicuous evolution of this legal shift has transpired devoid of any comprehensive evaluation of said metamorphosis.