13720 - Rulings on Waqfs

the question

What is the Islamic ruling on the issue of waqfs?

Summary of answer

Waqf is an act of worship which is recommended in Islam (mustahabb). The one who establishes the waqf should be one who has the authority to dispose of this wealth. The property given as waqf should be something from which ongoing benefit may be derived whilst its original essence remains. It is obligatory to act in accordance with the wishes of the one who set up the waqf so long as it does not go against the Shari`ah.

Detailed answer

Praise be to Allah.

What is waqf?

Waqf means putting aside the original property and donating its benefits for the sake of Allah. What is meant by the original property is something from which benefit may be derived while its essence remains, such as houses, shops, gardens, etc. What is meant by benefits is beneficial produce that comes from the original property, such as crops, rents, provision of shelter, etc.

Is waqf recommended?

The ruling concerning waqfs is that the waqf is an act of worship which is recommended in Islam (mustahabb). The evidence for that is the sahih Sunnah.

In al-Sahihayn, it is narrated that ‘Umar (may Allah be pleased with him) said: “O Messenger of Allah, I have got wealth from Khaybar and I have nothing that is more precious to me than that.

What do you command me to do with it?" He said, "If you wish, you can put it aside and give in charity from it (from what it produces), but the original property should not be sold, given away or inherited." So 'Umar gave it in charity to the poor and to relatives, used it to set slaves free, gave it for the sake of Allah, helped wayfarers and honoured his guests. Muslim narrated in his Sahih that the Prophet (peace and blessings of Allah be upon him) said: "When the son of Adam dies, all his good deeds come to an end except three: ongoing charity, knowledge from which others may benefit after he is gone, and a righteous son who will pray for him." Jabir said: "There was no one among the Companions of the Messenger of Allah (peace and blessings of Allah be upon him) who had the means, but he set up a waqf."

Qurtubah (may Allah have mercy on him) said: "There is no dispute among the scholars concerning waqfs of aqueducts and mosques in particular, but they differed concerning other types of waqfs."

There is the condition that the one who establishes the waqf should be one who has the authority to dispose of this wealth, i.e., he should be an adult, free and mature, because a waqf made by a minor, a fool or a slave is not valid.

Forms of waqf contract

The contract of the waqf is done in either of two ways:

1. By saying something that indicates that a waqf is being established, such as saying, "I make this place a waqf" or "I make it a mosque."
2. By doing something that customarily indicates a waqf, such as making a house into a mosque, or giving general permission to the people to pray there, or making one's land into a graveyard and giving people permission to bury their dead there.

Types of wording of waqf

Words which indicate a waqf are of two types:

1. Clear words, such I saying “I make this a waqf,” or “I make this for the sake of Allah,” and so on… these words are clear, because they cannot be interpreted as meaning anything other than a waqf. When he utters these words it becomes a waqf with no need to add anything further.
2. Words which are indirect, such as “I give this in charity,” or “I deny myself its benefits” or “This is for the sake of Allah in perpetuity”. These are called indirect because they may be interpreted as meaning a waqf or something else. If he says an expression such as this, it has to be accompanied by the intention to set up a waqf, or one of the clear phrases, or one of the other indirect phrases. The clear phrases include “I give such and such in charity as a waqf, or for the sake of Allah, or denying myself its benefits, or in perpetuity.” Or the indirect words may be accompanied by the ruling on waqfs, such as saying, “I give such and such in charity and it is not to be sold or inherited.”

Conditions of the validity of wqaf

Certain conditions apply in order for the waqf to be valid. These include:

1. That the person who is setting up the waqf is one who has the authority to dispose of this wealth, as stated above.
2. That the property given as a waqf should be something from which ongoing benefit may be derived whilst its original essence remains. Things which do not remain after they have been used cannot be given as a waqf, such as food.
3. That the property given as a waqf should be something specific. A waqf consisting of something unspecified is invalid, such as saying, “I give one of my slaves or one of my houses as a waqf.”
4. The waqf should be for a good purpose, because the purpose behind it is to draw closer to Allah – such as mosques , aqueducts, waqfs for the poor, books of knowledge and waqfs to benefit relatives. It is not permissible to set up a waqf for purposes that are not good, such as waqfs for places of worship of the kuffar, or the books of the heretics, or for installing lights on tombs or perfuming them with incense, or to support those who look after tombs,

because that is helping people to commit sin, shirk and kufr.

5. In order for the waqf to be valid if it refers to a specific thing, that thing should be in the firm possession of the one who is setting up the waqf. So one who cannot possess anything, such as the dead and animals, cannot set up a waqf.
6. In order for the waqf to be valid it must be executable with immediate effect. A waqf which is temporary or suspended is not valid, except when a person connects it to his death, such as saying, “When I die, my house will be a waqf for the poor,” because of what Abu Dawud narrated: “‘Umar made a will that if anything were to happen to him, then Samagh – some land which he owned – would be given in charity.”This became well known and no one denied this action, which amounted to unanimous agreement on this point. The waqf which is connected to a person’s death should be (no more than) one-third of the wealth, because it comes under the rulings of wills (wasiyyah).

Some rulings of waqf

- Among the rulings on waqfs is that it is obligatory to act in accordance with the wishes of the one who set up the waqf, so long as it does not go against the Shari`ah. The Prophet (peace and blessings of Allah be upon him) said: “The Muslims are bound by their conditions, except for conditions which make haram things permissible or halal things forbidden.”

`Umar (may Allah be pleased with him) set up a waqf and stipulated certain conditions, and if it had not been obligatory to adhere to the conditions there would have been no point in stipulating them. So if (the person setting up the waqf) stipulates a certain amount, or that some deserving people should be given precedence over others, or that those who are to benefit should have certain qualities or be free of certain qualities, etc., then it should be done in accordance with his conditions, so long as that does not go against the Quran or Sunnah.

- If he does not stipulate any conditions, then rich and poor, male and female, should be treated equally when given the benefits of the waqf .
- If he does not designate a specific person to be in charge of the waqf, or if he designates a specific person then that person dies, then the one to look after the waqf should be the one

for whom it was set up. If the waqf was not set up to benefit a particular person, such as a waqf set up for a mosque, or for people who cannot be counted, such as the poor and needy, then the ruler should take care of the waqf, either in person or by delegating someone else to do it.

- The person who takes care of the waqf has to fear Allah and do a good job in taking care of the waqf, because that is something that has been entrusted to him (amanah).
- If a person sets up a waqf for his children , he must treat males and females equally, because he has included all of them in that, which implies that they all have an equal share. Just as if he were to give something to them, it should be shared equally among them, so too if he sets up a waqf for them, they should have equal shares. After his own children, the waqf should pass to the children of his sons, and not the children of his daughters, because they belong to another man and should be attributed to their father, because they are not included in the ayah (interpretation of the meaning): "Allah commands you as regards your children's (inheritance):" [al-Nisa 4:11]. Some of the scholars think that they (daughter's children) are included in the word "children", because the daughters are also his children, so their (daughter's) children are also his children in a real sense. And Allah knows best.
- If he says "I set up a waqf for my sons , or for the sons of So and So," then the waqf is for the males only, because the word sons is used in the specific sense, as Allah says (interpretation of the meaning):

"Or has He (Allah) only daughters and you have sons?." [Al-Tur 52:39]

- Unless those for whom the waqf is set up are a tribe, such as Bani Hashim or Bani Tamim, in which case the women are also included, because the name of the tribe includes both the males and the females.
- But if the waqf is set up for a group who can be counted, they must all be included and treated equally. If they cannot all benefit from it because they are so many, such as Bani Hashim and Bani Tamim, then they do not all have to be included, because it is impossible, and it is permitted to limit it to some of them and give precedence to some of them over others.

- Waqfs are among the contracts which become binding just by speaking them, and it is not permissible to annul them, because the Prophet (peace and blessings of Allah be upon him) said: “The original property should not be sold, given as a gift or inherited.” Al-Tirmidhi said: “According to the scholars, it is not permissible to annul a waqf, based on this hadith and because it is established in perpetuity and is not to be sold or moved somewhere else unless its benefits cease altogether, such as a house which gets destroyed and cannot be rebuilt using the money of the waqf , or agricultural land which gets ruined and becomes dead and cannot be restored, and there are no funds from the waqf to restore it. In this case the waqf should be sold and the money spent on a similar thing, because this is closer to the aims of the waqf. If it is not possible to spend the money on something that is exactly the same, then it is to be spent on something smaller that is of the same nature, and the replacement becomes a waqf as soon as it is bought.
- If the waqf is a mosque and can no longer be used where it is, such as if the neighbourhood in which it is located is destroyed, then it should be sold and the money spent on another mosque. If a waqf is set up to benefit a mosque and produces more than is needed, it is permissible to spend the extra money on another mosque, because in this way the benefit is given to something similar to the purpose for which the waqf was set up. It is permissible to give in charity to the poor the extra benefits produced by a waqf that was set up to benefit a mosque.
- If a waqf is set up for a specific person, such as saying, “This is for Zayd; he is to be given one hundred of it every year,” and it produces more than that, then the extra amount should be given (in charity). Shaykh Taqiy al-Din (may Allah have mercy on him) said: “If he knows that the produce will always be more, then he has to dispose of it; withholding it is a waste of this extra amount.”
- If a waqf is set up to benefit a mosque, and that mosque is destroyed, and it is not possible to rebuild it from the waqf funds, then they should be given to other mosques.

And Allah knows best.