



The Awqaf Sector in Algeria from the Ottoman Era to Post-Independence: Obstacles and Requirements for Development

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Abstract: This study seeks to explain the *Awqaf* sector in Algeria from a historical view and to show the Algerian protection of *Awqaf* properties, in addition, to discussing the obstacles facing *Awqaf* in Algeria and the requirements that must be introduced for development and improvement. This paper adopts an analysis based on Algerian laws. It studies the steps to be followed to avoid the obstacles that prevent the development of the *Awqaf* sector in Algeria. The results show that taking a set of reform measures in the *Awqaf* sector in Algeria can activate its positive role in various aspects of life.

Keywords: Algeria; Waqf; Waqf properties; economic development; social development; Waqf institutions.

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1. Introduction

Waqf or Islamic *Waqf* is a social and economic system and a course of solidarity among members of the Muslim community, as it is based on the spirit of solidarity, giving, and cooperation. The Islamic community has achieved social, scientific, civilizational, and economic progress in the various phases of its history through this charitable work that Islam opened its doors to. Therefore, the Islamic *Waqf* is one of the manifestations of the civilized advancement of the Islamic nation, as it has a role in covering the majority of the nation's needs in all aspects of life.

The Islamic *Waqf* as a current system did not come as a whole, but its details resulted in an important historical, legislative gradation and development, which is what Algerian society has known, it has dealt with centuries ago, and it expanded and flourished during the Ottoman period, as it contributed at that time to the establishment of charitable institutions that had a legal personality and an administrative status that had a significant impact on the economic situation, by financing cultural, religious, and social services. But then, specifically during the period of French colonialism, the work of these Islamic *Waqf* institutions was disrupted due to the sabotage policy at the time, which sought to destroy the *Waqf* system in Algeria.

After the colonial period, the Algerian state after regaining its sovereignty, the

Islamic *Waqf* property was lifted, but it was in a catastrophic situation. The Algerian state sought to revive and restore the role of the *Waqf* in Algerian society through the enactment of several laws.

The analysis of the various historical stages that the *Waqf* sector has gone through in Algeria leads us to the need to delve into the Protection of the Islamic *Waqf* sector in Algeria and the obstacles that stand in the way of development and improvement, which represents the importance of this study, which searches for the origin of the problem that the *Waqf* sector suffers from in Algeria in order to reach effective solutions.

The paper analyses the different historical stages that the *Waqf* sector went through in Algeria, beginning with the Ottoman era, and the period of French colonialism, then the period of Algeria's restoration of national sovereignty. Next, we will discuss the protection of *Waqf* properties in Algeria, Obstacles, and Requirements for the development.

2. The history of *Awqaf* sector in Algeria from Ottoman to Post-Independence era

Beginning with the Ottoman era, and the period of French colonialism, then the period of Algeria's restoration of national sovereignty.

2.1 The history of *Awqaf* sector in Algeria from Ottoman era

The *Waqf* during this historical period is considered a precise internal system. The staff or the Nazir is the main supervisor over it, and he is the one who ensures the conditions stated in the *Waqf*, and he is responsible for the development of the *Waqf* and its use in the specific aspects of it, the "Basha" or "Bey" in the provinces is the one who The agent was appointed based on certain specifications such as virtuous morals, integrity, knowledge and a good reputation among people, and the agent could be changed when things were known about him that violated the *Waqf* system or public morals. (Hadjira, 2017)

The Ottoman period in Algeria was characterized by the abundance of *Waqf* and their spread throughout the country due to the conditions that Algeria knew from the late 15th century until the beginning of the 19th century AD, It increased until it constituted a large percentage of urban agricultural properties, as confirmed by *Waqf* records and Sharia court documents. (Hadjira, 2017)

The Algerian *Awqaf* during the Ottoman period were distributed among several charitable institutions of a religious nature and legal personality, and a special administrative status regulating the *Waqf* work, which is classified according to the following order: (Hadjira, 2017)

2.1.1 *Awqāf* Foundation of the Two Holy Mosques

In terms of its inception, this is considered as the oldest *Waqf* foundation in Algeria. It was initiated before the Ottoman rule, and its *Awqāf* revenues were devolved to the Meccan and Medinan poor, sometimes overland with a convoy of pilgrims and sometimes by sea in Muslim or Christian ships, at the beginning of every two years, where it would reach the Algerian agency in Alexandria, and from there to the two holy mosques. The foundation of the two holy mosques has gained the most *Awqāf* in Algeria, because of the high status of the two holy mosques in the hearts of Algerians, who endowed many of their properties for this. This placed it in the forefront of charitable institutions in terms of the number of *Awqāf* belonging to it, and the charitable works it provided as subsidies to people of the two holy mosques living in Algeria or passing through the country. At the same time, this foundation was responsible for spending on

three other mosques in the city of Algiers, where it was supervising and governing about three quarters of all religious *Awqāf*, as stated by some French reports dating back to the first years of the occupation. For instance, the “Genty de Bussy” report declared that the *Awqāf* of the two holy mosques were estimated to be around 1373 properties and 70 lands. 20 Furthermore, the French consul “Valiard” stated that all the homes of Algeria and the surrounding territory belonged to the foundation of the two holy mosques. 21 Therefore, it confirmed that *Waqf* of the two holy mosques gained the bulk of *Awqāf* outside the city of Algiers. (Laallam, 2021)

2.1.2 *Awqāf* Foundation of the Great Mosque

Referring to the historical sources related to the *Waqf* funds, the city of Algiers had several mosques, including the Great Mosque, which is the most important mosques of the Maliki school of thought in the city of Algiers, the Great Mosque foundation dates back to before the Ottoman era. It has witnessed an important judicial, religious, social and educational activity during the Ottoman era, it belongs to the Malikis and was built much more than 9 centuries in the year 409 AH corresponding to 1018 AD (Lanwar, 2017). This mosque was known for its important role in the Ottoman era judicially, religiously, educationally, socially, and politically, to the extent that it covered the activities of all the other mosques which were built by the Ottoman governors, which exceeded more than 100 mosques in the late 16th century. 22 It should be mentioned that the great mosque administration was independent, and the rental incomes of its *Awqāf* helped a lot in performing and financing multiple functions and activities. It was reported in French reports that the *Awqāf* of the great mosque contained: 125 houses, 39 shops, 3 furnaces, 19 orchards and 107 other incomes from different sources. 23 These *Awqāf* revenues were benefiting and assisting a large group of people consisting mostly of 19 Imams, 18 teachers, 08 *Mua'din* (caller of prayer) and so on. Furthermore, the revenues were spent on maintenance and the functioning of the services, while the surplus was directed to create Islamic schools, mosques, and others. (Laallam, 2021)

2.1.3 Hanafi *Awqāf* Foundation of Subul Al-khayrat

This institution is considered one of the oldest charitable *Waqf* institutions, as it was distinguished by its large *Waqf*. As for the management method in it, it was managed in a collective manner, as it ran eight mosques, including the Great Mosque, Katshawa Mosque, Ali Khoja Mosque, and it was managing and valuing *Waqf* that were Accepted and directed to serve the poor and disabled students. (Amar & Rahma, 2020)

2.1.4 *Awqāf* Foundation of Treasury (Baytul-Māl)

This *Waqf* institution supervises the provision of aid to orphans and the poor; it was also concerned with the establishment of public utilities. As for the management of this institution, it was supervised by a venerable employee known as (Bait al-Maldji) assisted by a judge nicknamed the agent. The affairs of the registration there are two notaries, as some scholars attach to it. (Amar & Rahma, 2020)

2.1.5 *Awqāf* Foundation of Andalusia People

The immigrants of Andalusia were living in a special situation in Algeria before their final integration into the new society. At first they were refugees looking for places of stability and means of living and security, and with the passage of time they settled in the coastal cities and some of them took part in the naval wars against the Spaniards, Some of them also practiced trade, education, and agriculture, but these actions did not prevent them from feeling the need for solidarity as a special group. Therefore, they established, with the encouragement of the authority, which sympathizes with them, several charitable institutions, which aimed at solidarity among themselves on the one hand and serving the poor at On the other hand, they established an association for this purpose, which in turn supervised the establishment of a mosque, “Al zawiya”, and a

private school. This Andalusian association was made up of six people, all of whom were Andalusian immigrants. The *Awqaf*, according to some statistics, amounted to sixty *Waqf* institutions, and they appointed an agent for that, "Sheikh Muhammad Al-Abli", and it is noted that many *Awqaf* were shared between the Two Holy Mosques and Andalusia, or between the Great Mosque in the capital and Andalusia, and this Andalusian Society and its many *Awqaf* remained until the French colonialism, which eliminated the Assembly and seized its *Awqaf*. (Abu El-Qasem Saad Allah, 1998)

2.1.6 Al-Ashraf Foundation

The number of noble families in the city of Algiers was about 300, and we found some *Awqaf* belonging to this institution in most of the documents in the overseas archives in France, but their number is very few if we compare them with other *Waqf* institutions. (Aakil, 2011)

2.1.7 The *Awqāf* of Soldiers and Barracks and Public Utilities

There were a number of *Awqaf*, whether inside or outside the city of Algiers, the proceeds of which were devoted to spending on public utilities, such as roads, springs, waterways, and water channels, as well as some *Awqaf* for soldiers and barracks, which numbered in the city of Algiers in the late Ottoman era, about seven barracks, and Each of these facilities had its own agent who took care of its *Awqaf* and took care of its affairs, such as the agent of springs and streams. (Naser El deen, 2001)

2.2 The Algerian *Waqf* sector during the French Colonialism

The French colonial policy tried to destroy the *Waqf* institution in Algeria and its achievements, as it constituted an obstacle to the dismantling of Algerian society, being based on the principle of solidarity, and for this reason France worked to issue many decisions and decrees that provided for the removal of the immunity status of *Waqf* properties, and their introduction Within the scope of commercial exchange, so that the settlers could seize it.

The Decree "De bourmont" was issued on September 8, 1830, which stipulates the confiscation of *Awqaf* and their seizure to become property under the administration of the occupation and has the right to dispose of them. Plans also emerged to liquidate *Waqf* institutions, which began on October 25, 1832, when the Director General of State Properties presented a general plan for the organization of *Awqaf* to the French civil economy, who had the powers to dispose of a large number of *Awqaf*, and a decree was issued on October 31, 1838, and then came the publication The royal court on August 24, 1838, which divided the properties into three types: (Al aid, 2017)

- State property
- Colonial property
- Retained property

After that, the decree of October 30, 1858, the law of 1873 and other decrees and legal texts appeared in which the French administration tried to subject the *Awqaf* to the real estate laws applicable in France. (Al aid, 2017)

2.3 The Algerian *Waqf* sector after independence

After independence and as a result of the legal vacuum, French laws continued to operate, except for those related to national sovereignty, and one of the results of that neglect of *Awqaf* and disruption of their role, but at this stage *Waqf* became subject to all kinds of abuse, and this narrowing continued until the beginning of the nineties of the twentieth century, and In which the legal texts regulating the *Waqf* and its institutions emerged. (Koudid, 2014)

3. Protection of *Waqf* properties in Algerian legislation

The Algerian legislator has worked to devote a variety of legal protection to *Awqaf* with a variety of laws regulating them, starting with the constitution, then successive laws and regulations that provide for the protection of *Waqf* properties in the civil law, the penal code, and the civil and administrative procedure code.

3.1 Protection of the *Waqf* in the Algerian constitution

The Algerian legislator has worked to provide constitutional protection from the 1989 to the 2016 constitution, which explicitly stipulated in Article 64, paragraph 3, (*Waqf* properties and the properties of charitable associations are recognized, and the law protects their allocation)

3.2 The protection of *Waqf* properties in Algerian civil law

The Civil Code is the first law to confirm the protection of real estate property in general from Articles 674 to 689 of Decree No 75-58 of 09/26/1975 containing civil law, amended and supplemented by Law No. 05/10 of 06/20/2005.

3.3 The protection of *Waqf* through the Estate Guidance Act

The law No. 25/90 of 11/18/1990, which includes the Real Estate Guidance Law, came to reconsider real estate ownership in general and to *Waqf* properties in particular, as it rescinded Ordinance No. 71/73 dated 08/11/1971 related to the agricultural revolution. In this context, the categories of real estate ownership in Algeria were defined, and this law made *Waqf* property a separate category among the other categories, according to Article 23, which states that: Real estate properties are classified according to their different types within the following legal categories:

- National property
- Private property
- Waqf* properties

3.4 The protection of *Waqf* through the Algerian *Awqaf* law

After the real estate guidance law set the general and legal framework for *Waqf* properties, the Algerian legislator enacted a law on *Waqf* to organize and protect them, which is Law No. 91/10 of 27/04/1991 containing the *Waqf* Law, making it a priority to strive to preserve the remaining *Waqf* properties, and trying to recover the *Awqaf* that were seized.

3.5 The protection of *Waqf* through the Algerian Penal Code

In this regard, the Algerian Penal Code has gone to punishing the offender who violated *Waqf* properties in particular, with the penalties prescribed for felonies and misdemeanors received on funds.

3.6 Administrative protection of *Waqf* properties in Algeria

In the context of protecting *Waqf* real estate properties by dedicating distinct legal protection through an arsenal of scattered laws, the administration has an effective role in establishing this protection on its part, by seeking to follow up on violations and abuses that would harm the *Waqf* property.

In order to achieve these goals and establish this protection, the administration has the powers and privileges that entitle it to limit these violations through specific legal procedures.

4. *Awqaf* Obstacles in Algeria

The obstacles facing the *Awqaf* sector in Algeria are numerous, including:

- The body that manages *Awqaf* sector is not supported by a clear structure of jurisdiction (Dhilys & Aamer, 2020)
- Limited formulas used by law for the exploitation of *Waqf* properties, as the law allows only the form of rent by auction or by mutual consent, with the stipulation that the lease term is limited

- The current *Waqf* properties are difficult to exploit, as a large number of them are in dispute between the *Waqf* administration and other parties
- The Algerian banking system lacks Islamic banks that make investing their money in the field of *Awqaf* a priority and concern. Algeria knows two Islamic banks with limited investment

5. Requirements for the development of *Awqaf* in Algeria

Among the most important points that help in the development of the *Waqf* in Algeria, we find:

- The trend towards more institutionalization in the practice of the *Waqf* business and its activities, by managing it through a highly efficient administration;
- Facilitate administrative procedures to establish a moratorium away from all obstruction or procrastination;
- The use of the Internet because of its great role in encouraging the public to establish new *Awqaf*; (Dhilys & Aamer, 2020)
- Spreading *Waqf* awareness and culture by holding seminars and preparing radio and television programs to introduce the *Waqf* and its importance.

6. Conclusion

In final analysis, Algeria today is in dire need of reviving the role of the *Waqf*, due to the important role that the *Waqf* plays in relieving many of the burdens on the state budget, but the *Waqf* sector still suffers in Algeria from many obstacles, whether legislative or regulatory, the *Waqf* today is in dire need to restore it To its natural location to achieve the desired development by making more efforts.

The paper also records the following results:

- The history of the Algerian *Awqaf* shows that the Algerians have a spirit of solidarity, and the best proof of this, is that the Algerian *Awqaf* have crossed the borders of the state;
- The *Awqaf* in Algeria needs a lot of attention and reforms related to the administrative, financial and investment aspect;
- The advancement of *Awqaf* and activating their positive role in various aspects of life requires great efforts on the part of those in charge of them, by holding meetings with countries that are witnessing development and popularity in *Awqaf* investment for the purpose of exchanging experiences.

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