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Consequently, the owner of the intellectual property is the legal entity of the waqf, and the tenant must observe the dignity and prerequisites of the waqf in exploiting the endowment and refrain from measures that exacerbate the religious and group feelings. In general, he shall avoid measures against tradition and dignity in order not to endanger or deteriorate the legal entity of the endowment or damage to the dignity of the waqif, beneficiaries, and trustees.

### Conclusion

Observing the spiritual expediency of the endowed property as a legal entity and an organization and institution designed and constructed by the Waqif and approved by holy legislators is based on the spiritual affairs, including concepts such as charity, benefaction, sacrifice, alms, good deeds, ever-abiding good works, cooperation, etc. to avoid stinginess, avarice, pride, and rage. Hence the spiritual status of the waqf should not be discounted.

In exploiting the object of the lease, the tenant is committed to act in a tenantlike manner, observe the Waqf ethics (intellectual rights), cast no aspersions on the spiritual character and status of the waqif and the beneficiary of endowed property, refrain from change-of-use in the object of the lease, and submit the same tenancy to the lessor if the contract is terminated.

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is that the waqif must remove himself from the waqf otherwise the waqf becomes void [14]. That is, the waqif should not involve himself in the mawquf'alaih, or use the waqf to clear his debts.

Therefore, after the fulfillment of the waqf, although a good name remains for the waqif, the waqif is alienated with the mawquf'alaih and all its intellectual rights belong to the legal entity. On the other hand, the intellectual rights do not create material rights for the founder and all the material rights are spent for charity purposes and becomes a spiritual issue.

The waqif (the founder) transfers his domination to his own will, spiritual motives, creativity, experiences, and tact to the legal entity of waqf through creating the "waqf entity" (work), , and after the emergence of this entity, the intellectual and material domination on the endowment (work) is one of the features of the legal entity (waqf) The waqif himself can also supervise the establishment of the newly-developed "waqf" entity. Accordingly, the intellectual right of a waqf is a legal relationship through which full legal domination is transferred by the waqif (the founder) to the legal entity of the waqf; however, the material benefits are for the mawquf'alaih in some cases (profit-making waqfs). We must know that material benefits also come to spiritual affairs due to the benevolent intentions and altruism.

Sometimes, the intellectual rights of waqf are expressed in the form of preserving the dignity of the endowment. For example, Article 10 in the Administrative Code of the Corrections Amendment Act dated 2000/5/1 stipulates: "If all or a part of the movable lands located within the vicinity of the public waqf villages are considered as national resources in the implementation of Article 56 in the Law on Protection and Exploitation of Forests and Rangelands approved in 1967, they should be entrusted to the General Directorate of Endowments and Charity and trustees by Forests, Range and Watershed Management Organization." In Note One of the same Article, the aforesaid lands are considered as an endowment. In order to observe the intellectual rights of waqf and reach perfect profit-making, the legislator declares privacy for waqf and states the privacy as the endowment. In cases where waqif stipulates that the endowment is to be rendered to a certain person, he usually intends the endowment to be leased to a person who meets most of the spiritual issues of the waqf.

implementation of intellectual right preservation and continuation is broader with greater sensitivities, and, besides legal and religious support, it also has the support of the public. The legislator knows that the intellectual right preservation is bound with the preservation of the endowment; thus, he makes his best to preserve the endowment (in the form of principles and regulations).

### **Observing the rights of waqf by individuals**

From the past, the religious treated the endowments with respect; especially religious profit-making endowments such as mosques, ḥosayniyas, and holy places. And if that were not the case, nothing should have been left out of endowments after centuries.

In cases when the exploiters resort to tricks to abuse endowments, the considerate individuals come to scene, void their measures, and preserve the endowments. During my years of experience in the service of the endowment, I heard from many individuals that, upon the orders of the elders, they even wipe up the dirt coming from an endowed land lot on their shoes in order not to bring it to their own property. They believed that all the rights of the endowments should be observed and even no dust from such endowments should be mixed with their own property, and that the endowments should be treated with special respect. In fact, a benevolent waqif who sacrifice himself and his comfort and convenience in the world and devotes his own property to others to meet their needs is respected by people. In the same way, people in different times have respected the waqif's good intentions, and made their best to preserve the endowment as an intellectual property. In other words, it is better to say that these persons have saved the endowments over a long run and their role has been certainly effective and undeniable.

### **How Waqf enjoys intellectual rights**

Three major components are needed to make up a waqf: the founder or waqif, the beneficiaries or mawquf'alaih, and the entity of waqf itself or mawquf. In accordance with Article 3 of the Waqf Law, waqf is a legal entity; therefore, mawquf is placed in the ownership of a legal entity when concluding a waqf contract and receiving the endowment, and the legal entity is the center of all rights associated with the waqf. One of the prerequisites for the authenticity of the waqf

- In the law of endowment, although the intellectual rights of waqf are not explicitly mentioned, they repeatedly referred to as the endowment's expediency.
- No regulation (e.g., non-sale and upturn of the endowment, no change in waqif's will, no change in waqif's terms, and observance of waqif's expediency) is predicted in legislation to support the intellectual right of waqf, and the protection of intellectual rights is placed within the framework of the law adopted in 1348 on the protection of intellectual rights for authors, writers, and artists.
- The intellectual right of the waqf is above 1400 years old; however, the observance of the intellectual rights (in the general sense) for the authors, writers and artists is recently developed and dates back to not more than a few decades.
- Waqf can be a platform for the development and growth of mental and intellectual works so that the authors and writers' work in terms of intellectual rights is aforementioned.
- The intellectual rights of the waqf are protected when its legal entity is formed; however, the right to intellectual property in the general sense in no way require the possession of a legal entity.
- When the waqf contract is completed and the endowment is delivered to the beneficiary, the waqif (founder) can no longer make any changes. This means that he can add or remove no term, or assign a person as the trustee; however, regarding the intellectual property right, the founder after completing his work is not alien to his work and can make his concerned changes. For example, an author can edit his own book and print it again with better content.

### **Guaranteeing the implementation of intellectual right preservation and continuation in waqf**

Public endowment is sometimes established with a merely spiritual nature (e.g., mosques, ḥosayniyas, and holy shrines) and is sometimes designed in the form of an enterprise, and the resulting profits are spent on good deeds. In the former case, which is of a completely spiritual nature, the supports and guarantees for the

religious venues, seminaries, schools, and libraries, which have contributed to the promotion of culture, science, knowledge, and rationality, and development of public opinion and ultimately converted the supreme Islamic values from culture to civilization. In other words, if we look at the role of the mosques and ḥosaynias in terms of spiritual effects of the waqf, it mostly forms the foundation of the Islamic culture. The role of the waqf however is not exclusive to these cases but it includes all the good deeds as some endowments have long been aimed at improving science and knowledge to eliminate illiteracy as the source of many social problems through education and flourishing rationality to achieve the prerequisites of excellence and cultural progress; therefore, the book preparation, compilation, authoring, and publication is considered as one of the waqf topics, representing the scope of spiritual effects for waqf. Its scope is much wider than the intellectual property which has been of interest to writers.

### **Difference between the intellectual rights of waqf and those for authors, researchers, and artists**

The most important difference in their intellectual rights is embedded in how they are created and originated. The intellectual rights of waqf is based on the religious teachings and incentives and the founder's personality, project, and idea and is respected and considered by individuals and legislators; however, the intellectual rights for the authors, researchers and artists are originated from rational traditions to prevent chaos in the community and to observe the public interests of the Islamic society.

As a result of the intellectual rights, the founders' good name remains forever, however, it brings no financial benefits to the waqf since waqf is mostly of spiritual nature and an institution essentially based on spiritual matters, and he never regards it from a non-spiritual view and endows its interest to the beneficiaries. With the recognition of the intellectual right for the author, researcher, or artist, some non-intellectual rights are provided within a specified period and this right even after their death is transferred to their heirs.

- By establishing the waqf entity, an independent legal entity called the endowed is born and all the material and intellectual rights are assigned to the legal entity of the waqf; however, the rights derived from a work belong to its founder.

(from which, however, it may be derived) and that the subject is a mental phenomenon, or the product of an intellectual effort of thoughtful individuals; therefore, there are qualities and characteristics apart from the properties of material ones.

Legislators have assumed responsibility for identifying and protecting the right to follow the traditions of the society so that, with the growth and development of mankind in the new age, they have come to the conclusion that there is also a right entitled intellectual right to the immaterial phenomena and founders' works. Since a thousand years ago, the holy legislator with regard to religious incentives and supreme human values in the form of a particular contract has given spiritual validity to waqifs' works and has made the work permanent; therefore, the founder's name as the founders of this spiritual institution becomes ever-lasting and eternal.

### **The scope of waqf from a spiritual perspective**

Regardless of the fact that the waqf has significant impacts on the waqif, degrades and eliminates negative attributes such as avarice and greed, provides the grounds for the development and evolution of moral virtues such as charity, benefaction, sacrifice, forgiveness and so on in human beings, it is intertwined with the following social consequences:

It should be noted that the nature of the waqf contract is as such that it empowers the waqif to fulfill any plan addressing the problems of the community; therefore, endowments are usually different in terms of purpose and the extent of their diversity is as vast as individuals' attitudes and changes in human needs; therefore, their consequences are manifested in various social fields, including culture and art, poverty alleviation, economic balance, science and knowledge, religion, social security and others.

Waqf as a spiritual entity has contributed to the cultural and artistic development of various communities; Waqf in this case has crossed the geographic borders the countries, and transcends the boundaries to serve humanity. It promotes the development and expansion of Islamic culture. Since many years ago, the philanthropist waqifs have been working toward fulfilling the cultural and artistic needs of the community and training believers through constructing and founding places such as mosques, ḥosayniyas,

operational term, the right is the legal, social, or ethical principles of freedom or entitlement assigned by each country to directly use a property or to ask for transferring a property or doing a task from others. In other words, it is a certain entitlement (in Sharia) for a person or some trusted with something so that they can take possession or benefits from the concerned property. Therefore, this domination and capability entitled to individuals is credited either by rules and regulations, or by the virtue of sharia law.

In literal term, intellectual means spiritual and mental in contrast with material, mundane, and superficial. Intellectual property rights merely point to the fact that the right of the property is not material, but it is the mental activity of men. In other words, the intellectual property in nature is a combination of valuable financial rights and non-monetary nature-dependent rights.

Although these definitions refer to literary and artistic collections, the intellectual rights seem not to be limited to literary and artistic works, books, movies or audio clips. In fact, the intellectual right is associated with any phenomenon credited by the founder's idea or characteristic or religious incentives so that it is respected by the public. It is sometime accompanied with some material and financial benefits to the founder. In some other cases, no material benefit is predicted for the founder due to the very intellectual nature of the subject matter. For example, a book author can gain financial benefits by providing the public with his book; however, the nature of the work is intellectual. On the other hand, a benevolent school- or mosque- constructor never seeks for the financial interests and endow all its benefits to the target community, so the nature of its work brings him no material benefits.

### **Validity of intellectual rights for endowed properties**

The intellectual right is a newly-developed concept in law and is sometimes known as intellectual property, literary and artistic intellectual property, spiritual, industrial, and intellectual property such as the copyright, patents, and the rights for artists, inventors, industrial and commercial brands, the right to goodwill and so on.

Today, intellectual property is of special importance in terms of spiritual credibility and economic value. And it should be noted that the subject of intellectual property is not a material or external object

community needs, the waqif established an endowment entity to make money required by the poor to meet their life needs or to provide the required funding for scientific and research projects; each of which are derived from the spiritual aspect of his ideas.

In some cases, a waqif's prominent personality multiplies the spiritual aspect of the endowed property and brings it a special respect because "the right of the mental creations, in addition to material and financial values, is of spiritual value and credit, which depends on its founder's personality and the intellectual value of a property, compared to its financial value, for many legislators is of greater importance." For example, Muslims have shown a special respect for Imam Ali's (PBUH) endowment, known as Yanbu, for about 4400 years.

### **Intellectual rights of waqf**

The main issue in the conclusion of the lease and waqf contracts is the property (itself and its interest), and the interest depends on the property. The place where the two contracts (waqf and lease) are concluded as well as the intellectual right of the "Property" is the focus of our discussion. First, we provided a definition for the concept "property".

The property of the endowment belongs to the legal entity of the waqf. In terms of profit-making endowments, given the fact that the main property is detained and off-traded, it seems that the economic value of the property is lost; however, it is converted into a business entity and makes befits in line with the intention and purpose of waqf.

This is of a different sense when the profit making endowments, such as the mosques, roads, shrines, and ḥosayniyas are concerned. The profit-making endowments are intended to use the property or the object and pursue no economic goal; they are fully aimed at spiritual goals. Thus, the endowments are presented in two ways, albeit generally, with a benevolent view towards the community; however, they also have material and economic aspects in some cases; the endowed property is of greater validity to people and is respected by a large number of individuals.

### **Definition of intellectual right**

Right literally means entitlement, correct, against false, justice, certainty, fixed, gain, interest, and one of God's names. In

violation and restrict to the contract when exploiting the property. Furthermore, the tenant shall observe the intellectual rights of the Waqf not to cause desecration, make no changes in the object of the lease, and submit the same leasehold if the lease is terminated. Regarding the endowed properties (waqf), certain rules are set for the involved parties according to the laws and regulations and type of use. If the tenant is not entitled, the trustee or contractor must (as the holder) assign the endowed property of the parties to a rental auction.

Observing the spiritual expediency of the endowed property as a legal entity and an organization and institution designed and constructed by the waqif and approved by holy legislators is based on the spiritual affairs, including concepts such as charity, benefaction, sacrifice, alms, good deeds, ever-abiding good works, cooperation, etc. to avoid stinginess, avarice, pride, and rage. Hence the spiritual status of the waqf should not be discounted; however, a review of the previous studies reveals that this issue is not explicitly stated by great religious jurists and lawmakers.

The findings of the present study would not only clarify the duties of the parties involved in a lease agreement but also lead to a better recognition and respect for each other's rights and make the waqf trustees and practitioners reach the maximum benefits and information within the shortest time possible, thereby increasing the productivity of the endowments across the country.

### **Observing waqf dignity and terms on how to exploit it (intellectual rights of waqf)**

The tenant's behavior and performance in exploiting the interests should be in accordance with the supreme goals of waqf. The tenant should not use the endowed property in a way threatening the dignity of the waqif and the endowed property since waqf is underpinned by the supreme human and Islamic goals and has always sought to solve the problems of the society. The profit-making endowments are manifestations of spiritual goals. For example, when a waqif endows a mosque or school to raise the spiritual and scientific level of individuals in a society, there is nothing but spiritual issues, and he with self-sacrifice and has sought social justice and security. The same comes true for the endowments of interest. Being aware of the

## Introduction

Although God declares that every being returns to him, one of the most desired dreams of human beings has been lastingness. When they became despaired of immortality, human beings came to the idea of "good name". One of the best-known tools to create a good name is to use endowment institutions. Some assets are traded off and their interests flow to the goodwill of their former owner, which undoubtedly take into account the others' interests.

A waqf is a contract, the consequence of which is detainment of the object and the devotion of the benefits for beneficiary of the endowed property. The lease of endowments is of particular importance since it is one of the few contracts which is consistent with the legal nature of the waqf and the intentions of the waqif as concluding the contract makes the endowed property detained and its sale is no longer allowed. Furthermore, the waqif endowed his property for the sake of mawqūf'alaih (beneficiary of an endowed property). On the other hand, the endowment is often an immovable property since it shall possess survival capability. When being rented, the same remains and the income concerned by the waqif is obtained and used to meet the needs of the mawqūf'alaih.

One who wants to lease something must at least be the owner of its interests in order to acquire the benefits in lieu of specified charge. As the beneficiary of the endowed property temporarily becomes the owner after concluding the waqf contract, if the beneficiary of an endowed property rents the object of the contract, the contract will become ineligible after his death: however, if the trustees accepts, the lease will not be terminated upon the beneficiary's death because he represents the waqf institution and his action is absolutely in place unless his measures are in contrast with the rationale of the waqf.

With concluding a lease contract, the contractors are obliged to fulfill the contractual obligations and terms of the waqf contract. On the one hand, the holder of the endowed property is committed to submit the same tenancy to the tenant and, on the other hand, the tenant undertakes to pay the rent in due time. The holder is committed to pay for repairs and expenses, refrain from any changes in contrast with the lease purposes, and provide the tenant with the benefit of the property. The tenant is also required to refrain from

**Abstract:-**

Waqf is the endowment of an asset by the owner for charitable purposes, and its benefits are permanently exploited when used for the concerned purposes. The endowment of a property as waqf not only removes the *Waqif* or owner's right forever but also creates an independent legal entity that, like other individuals, benefits from independent object, title, and capital. On the other hand, spiritual or intellectual (property) rights are credit and intangible assets endowed by the society under the law to the scientists who have their own ideas and initiatives, providing them an opportunity to take benefits from the short-term and exclusive value of these credit rights. Given the significance and development of these types of property, it is now of paramount importance to know whether or not these newly-recognized or immaterial rights are subject to waqf.

In exploiting the object of the lease, the tenant is committed to act in a tenantlike manner, observe the Waqf ethics (intellectual rights), cast no aspersions on the spiritual character and status of the waqif and the beneficiary of endowed property, refrain from change-of-use in the object of the lease, and submit the same tenancy to the lessor if the contract is terminated.

In general, a clarification of the scope of the commitments for the parties in a lease agreement makes the parties better observe each other's rights and urges the trustees of the endowments to maximize the use of the endowed properties and to obtain the required information in the shortest possible time, thereby increasing the productivity of the endowments across the country.

**Keywords:-** Intellectual rights of Waqf, endowed properties, Waqf dignity and terms.

**المخلص:**

الوقف يطلق علي المال الذي يعطيه المالك لأغراض خيرية و تخصص منافع الوقف لتلك الأغراض دائما. تخصيص المال وقفا هو تخرج من ممتلكات الشخص السابق وخلق شخصية حقوقية مستقلة في الوقت نفسه. تجب مراعاة الاقتصاد والاعتدال في الانتفاع الممتلكات الوقفية خلال عقد الإيجار، و علي المستأجر الالتزام بطريقة مستأجرة، فيلتزم بأخلاقيات الوقف (الحقوق الفكرية)، ولا يلقي أي طموحات على شخصية الوقف الروحية و موقف الواقف و المنتفع عليه، و يمنع المستأجر عن تغيير الغرض من عقد الإيجار و من ثم فيلزم بتقديم الإيجار ذاته إلى المؤجر إذا تم إنهاء العقد.

وبشكل عام، فإن تحديد نطاق الالتزامات للأطراف في اتفاقية التأجير يجعل الأطراف يلاحظون حقوق بعضهم البعض بشكل أفضل، حيث يمكنهم الانتفاع الأكثر بالأوقاف والحصول على المعلومات المطلوبة في أقصر وقت ممكن، وبالتالي فتزيد منافع الأوقاف في جميع أنحاء البلاد.

**الكلمات المفتاحية:** الحقوق الفكرية للأوقاف - الممتلكات الوقفية - شؤون الوقف.

# Commitment to waqf when used

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## الالتزام بشؤون الوقف عند الانتفاع به

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