

The Mussalman Wakf Validating Act, 1913

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Act 6 of 1913

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17.

/774Statement of Objects and Reasons.-The object of this Bill is to remove disability and great hardship that has been created by the recent decisions of the Privy Council in Abdul Fata Mahomad Ishak v. Russomoy Dhur Chowdhry, LR 22 Ind App 76 and other cases. The power of a Mussalman to make a settlement for or in favour of his family, children and descedants or what is known as wakf-alal-aulad to the Mussalman Law is paralysed. In the case above cited it was held that under Mussalman Law is perpetual family settlement expressly made as wakf is not legal and valid merely because there is an ultimate gift to the poor and it confirmed the decision in Ashanulla Chowdhry v. Amarchand Kundu, reported in LR 17 Ind App 28 the principle of which was approved in the subsequent case of Abdul Gafur v. Nizamuddin, LR 19 Ind App 170, where it was laid down that a gift is not good as wakf unless there is a substantial dedication of the property to charitable uses at some period of time or other. The decision does not fix any limit of time, it simply says "some period of time or other". It does not define what is "substantial dedication". Thus, it introduces the greatest uncertainty in the law and is generally opposed to the true principles and correct exposition of the Mussalman Jurisprudence. This Bill is intended only to reproduce the Mussalman law or wakf-alal-aulad in a codified form which (with) certain safeguards for the authenticity of the wakfnama and for prevention of fraud upon creditors or otherwise. It is not intended to codify or define the general law of wakf which must be governed by the Mussalman Law[7th March, 1913]An Act to declare the rights of Mussalmans to make settlements of property by way of "wakf" in favour of their families, children and descendants. Whereas doubts have arisen regarding the validity of wakfs created by persons professing the Mussalman faith in favour of themselves, their families, children and descendants and ultimately for the benefit of the poor or for other religious, pious or charitable purposes; and whereas it is expedient to remove such doubts; It is hereby enacted as follows:-

This Act was given retrospective effect by the Mussalman Wakf Validating Act 32 of 1930, Section 2, *ibid*, reads thus, -" 2. The Mussalman Wakf Validating Act, 1913, shall be deemed to apply to wakf created before its commencement: Provided that nothing herein contained shall be deemed in any way to affect any right, title, obligation or liability already acquired, accrued or incurred before the commencement of this Act."This Act has been declared to be in force in the Sonthal Parganas by Notification under Section 3 of the Sonthal Parganas Settlement Regulation 3 of 1872. It has been extended to the new provinces and merged States by the Merged States (Laws) Act 59 of 1949 and to the States of Manipur, Tripura and Vindhya Pradesh by the Union Territories (Laws) Act 30 of 1950. Manipur and Tripura are full-fledged States now, see Act 81 of 1971. Vindhya Pradesh is a part of the State of Madhya Pradesh now, see Act 37 of 1956. This Act and the Act 32 of 1930 have been extended to the transferred territories, (i.e.), the Kanyakumari District and the Shencottah taluk of the Tirunelveli District in Tamil Nadu, by the T.N. Act 23 of 1960. It has now been extended to the Union territory of Dadra and Nagar Haveli by Regulation 6 of 1963.

1. Short title and extent .-(1) This Act may be called The Mussalman Wakf Validating Act, 1913.

(2) It extends to the whole of India except [the territories which, immediately before the 1st November, 1956, were comprised in Part B States].

2. Definitions .-In this Act, unless there is anything repugnant in the subject, or context,-

(1) "Wakf" means the permanent dedication by a person professing the Mussalman faith of any property for any purpose recognised by the Mussalman law as religious, pious or charitable. (2) "Hanafi Mussalman" means a follower of the Mussalman faith who conforms to the tenets and doctrines of the Hanafi School of Mussalman law.

3. Power of Mussalmans to create certain wakfs .-It shall be lawful for any person professing the Mussalman faith to create a wakf which in all other respects is in accordance with the provisions of Mussalman law, for the following among other purposes:-

(a) for the maintenance and support wholly or partially of his family, children or descendants, and (b) where the person creating a wakf is a Hanafi Mussalman, also for his own maintenance and support during his lifetime or for the payment of his debts out of the rents and profits of the property dedicated: Provided that the ultimate benefit is in such cases expressly or impliedly reserved for the poor or for any other purpose recognised by the Mussalman law as a religious, pious or charitable purpose of a permanent character.

4. Wakfs not to be invalid by reason of remoteness of benefit to poor, etc .-No such wakf shall be deemed to be invalid merely because the benefit reserved therein for the poor or other religious, pious or charitable purpose of a permanent nature is postponed until after the extinction of the family, children or descendants of the person creating the wakf.

5. Saving of local and sectarian custom .-Nothing in this Act shall affect any custom or usage whether local or prevalent among Mussalmans of any particular class or sect.