

Waqf

- One and a half thousand years ago, long before the birth of the doctrine of uses and trusts in English Law, Islamic Law recognized and developed a legal method under the name of wakf, which permitted an owner to settle his property for the use of beneficiaries in perpetuity.
- **Definition of Waqf:**
- Wakf has been variously defined by different writers on Muslim Law. **Mr. Justice Ameer Ali** in his book "Muhammadan Law" says that 'waqf literally means detention, stopping or tying up'. Whereas **Wilson** looks at it as ...: "specified property ... permanently devoted to specific objects ... such a permanent dedication is termed wakf". **D.F. Mulla** has adopted the definition of wakf as contained in the Mussalman Wakf Validating Act, 1913. According to this definition, "Wakf means the permanent dedication by a person professing the Mussalman faith of any purpose recognized by the Mussalman Law as religious, pious or charitable."

definition

- The definition given in **Wakf Act of 1954** is more **elaborate**:
- 'Waqf' means a permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognized by the Muslim Law as pious or charitable and includes:
 - (i) wakf by the user,
 - (ii) mashrut-ul-khidmat; and
 - (iii) a wakf-alal-aulad to the extent to which property is dedicated for any purpose recognised by Muslim Law as pious, religious or charitable."

Quranic Guidelines

- The Quran contains no reference to wakf but it abounds in injunctions in the matter of charity,
- "And in their wealth the beggar and the outcaste had due share." (Surah 51, Ver. 19)
- "They ask thee (O Muhammad) what they shall spend, say; that which ye spend for good (must go) to parents and near kindred and orphans and the needy and wayfarer. And whatever good ye do, to I Allah is Aware of it." (Surah 2, Ver. 215)
- The true measure of charity is indicated in the following Quranic verses:
- **"Ye shall never attain to goodness till ye give alms of that which ye love, and whatever ye give, of a truth, God knoweth."**
- Al-Quran, Surah 3, Ver. 92.

conditions required for the validity of a wakf

- **The conditions required for the validity of a wakf are:**
- a) the wakf must possess the requisite capacity to dedicate the property;
- (b) the property to be made wakf must be tangible. It can be movable or immovable;
- (c) the property must be declared wakf by the owner. No particular form is necessary and the declaration may be either oral or written. Declaration is sufficient and delivery of possessions to the mutawalli is not an essential condition of validity;
- (d) the dedication must be irrevocable, unconditional and permanent
- (e) the object of the wakf must be charitable in the general sense, capable of gaining favour (sawab) with the Almighty. The charitable purpose of the wakf serves as its legal justification and constitutes the basic condition of its validity.

Who can create a Waqf

- "The requisite for the valid constitution of a wakf is, the wakif must be free, must be an adult and must be possessed of understanding. The wakf so created should not be dependent for its operation upon a contingency which may or may not happen. And to the wakif, required that he is of full age, of sound mind, and uncontrolled in the use or disposition of his property. Wakf can, therefore, be created by any person who has attained majority and is of sound mind, and there is no fraud, undue influence, coercion, etc. Also the wakif should be in good health and should not be suffering from Marz-ul-Maut (death-illness), because in that case, he cannot dedicate more than a third of his estate unless the heirs give their consent. This consent need not be express but may be implied.
- It is not necessary that the person constituting a wakf should be a Muslim; non-Muslims can also validly create a wakf. "As a general rule it may be stated," observed the Nagpur High Court in Mori Shah's ease "that all persons who are competent to make a valid gift are also competent to constitute a valid wakf. Islam is not a necessary condition of a wakf."
- So are the observations of Fatwa-i-Alamgiri and Darr-ul-Mukhtar.

Kinds of Wakf

- Wakfs can be of two kinds: Public and private. But the most accepted is its three-fold classification -- public, quasi-public and private.
- **Public trusts** are those which are dedicated to the public at large having no restriction of any kind regarding its use, e. g., bridge, well, road, etc.
- **Quasi-public wakfs** are those, the primary object of which is partly to provide for the benefit of particular individuals or class of individuals which may be the settler's family, and partly to public, so they are partly public and partly private.
- **Private Wakfs:** Private Wakfs are those which provide benefit to private individuals, including the settler's family or relations. Such a wakf is termed as wakf-alal-aulad. The Mutawalli manages the wakf but he cannot alienate the property. He is, however, more than a manager or superintendent, as he does not hang on the pleasure of anybody else or to anybody.

Creation of Wakf

- There is no essential formality or the use of any express phrase or term requisite for the constitution of wakf. The law looks to the intention of the donor alone. Where a dedication is intended, the law will give effect to it in whatever language it may be expressed or in whatever terms the wish may be formulated.
- It is not necessary that a wakf should be made in writing. All that is necessary in constituting a wakf is that some sort of declaration, either oral or in writing must be made. Though oral wakf is permitted yet when the terms of a wakf are reduced into writing, no evidence can be given to prove the terms except the document itself or secondary evidence of its contents, when it is admissible.
- Where a wakf deed is executed, it must comply with the provisions of the Registration Act. Thus, a wakf deed of immovable property would require registration.

Examples

- **In the following cases the wakf created was held to be valid:**
- (1) Where the wakif is the owner of the property but the property is leased to or mortgaged with some other person.
- (2) Where the wakif is in possession of the property under a contract of sale with no option to the seller and ultimately purchase it.
- (3) Where the wakif is not the owner but the true owner ratifies the wakf.
- (4) Where he is in fact the owner but is under the belief that he is only a Mutawalli s
- (5) Where a wakf is validly created by a competent wakif, it cannot be revoked or avoided. In *Fatima Bibi v. The Advocate General*, (1881) 6 Bom 42, where a Sunni lady after creating a wakf primarily for herself and alal-aulad, wanted to revoke it, it was held that she could not do so, and the case of Delroos Bano would not apply.

What can be dedicated as a Wakf?

- the idea of property which could be the subject of wakf was extremely restricted. When the institution of wakf came into being, the oldest known wakf was of a reasonably permanent character and consisted of land, fields and gardens. But very soon thereafter the jurists came to the conclusion that in addition to immovable properties, some sort of movable properties could also be made wakf.
- For instance, working cattle and instruments of husbandry; Quran's for reading in mosques's other movables not necessarily consumed in their use war horses, camels and swords; and a chest of money for loans to the poor. Imam Abu Hanifa has laid down that only immovable property can be made wakf, and even Abu Yusuf maintained that no movables were valid as wakf except beasts of burden and weapons of war.
- On the other hand, according to Imam Muhammad, all articles or movables that can be subjected to the dealings and transactions of men may lawfully be dedicated as wakf.