

## Waqf

### INTRODUCTION

The literal meaning of the word waqf is 'detention'. In the legal context, waqf means detention of a property so that its produce or income may always be available for religious or charitable purposes. When a waqf is created, the property is detained or, is 'tied up' forever and thereafter becomes non-transferable. Meaning and various types of waqf are defined in this project. There is an object behind making a wakf. Office of Mutawalli (manager) is very important. There are many modes to create waqf, which are dealt with in this project. Wakf is binding and enforceable by law, it has legal consequences which are dealt with in this project. The law of waqf is "the most important branch of Mohammedan Law for it is interwoven with the entire religious, social, and economic life of Muslims.

### MEANING

When Muslim a person who is working for a charitable purpose under religious faith and sentiments and for the benefit and upliftment of the society, has donated his property in the name of Allah is called waqf. Waqf literally means 'detention' stoppage or tying up, meaning thereby that the ownership of dedicated property is taken away from the person making waqf and transferred and detained by God. Details are given in old texts about wakf made by the prophet.

It is observed in *M Kazim vs A Asghar Ali* that technically, it means dedication of some specific property for a pious purpose or secession of pious purposes. As defined by Muslim jurists such as Abu Hanifa, Wakf is the detention of a specific thing that is in the ownership of the waqif or appropriator, and the devotion of its profits or usufructs to charity, the poor, or other good objects, to accommodate loan.

**Wakf Act, 1954** defines Wakf as, "Wakf means the permanent dedication by a person professing the Islam, of any movable or immovable property for any purpose recognized by Muslim Law as religious, pious, or charitable."

### ESSENTIAL CONDITIONS FOR A VALID WAQF

The essential conditions for a valid waqf are as follow:

1. Permanent dedication: The dedication of waqf property must be permanent and Waqf himself must devote such property and give it for any purpose recognized by Muslim law, like religious, pious or charitable. If the wakf is made for a limited period it won't be a valid wakf and also there should be no condition or contingency attached otherwise it will become invalid. The motive behind Wakf is always religious.

In *Karnataka Board of Wakfs v. Mohd. Nazeer Ahmad*, the dedication of house by a Muslim for use of all travelers irrespective of religion and status was held not to be a Wakf on the ground

that under Muslim law a Wakf should have a religious motive and it should be only for benefit of Muslim community, and if it is secular in character, the charity should be to the poor alone.

When a Wakf is constituted, it is presumed that a gift of some property has been made in favor of God. This is ensured through a legal fiction that waqf property becomes the property of God.

## 2. Competency of the Waqif:

Who Can Create a Waqf? : The person who constitutes the waqf of his properties is called the 'founder of waqf or, Waqif. The waqif must be a competent person at the time of dedicating the property in waqf. For being a competent waqif a person must possess the capacity, as well as the right to constitute the waqf. As regards the capacity of a Muslim for making a waqf, there are only two requirements:

(i) soundness of mind and,

(ii) majority.  
A person of unsound mind has no capacity to create any waqf because he or she is incapable of knowing the legal consequences of the transaction. Waqf constituted by an insane or minor person is void.

Waqf by Non-Muslims: The dedicator must profess Islam i.e., believes in the principles of Islam', he need not be a Muslim by religion. The Madras and Nagpur High Courts have held that a non-Muslim can also create a valid waqf provided the object of waqf is not against the principles of Islam.

Patna High Court has also held that a valid waqf may be constituted by a non-Muslim. However, according to Patna High Court, a non-Muslim waqf may constitute only a public waqf; a non-Muslim cannot create any private waqf (e.g. an Imambara).

3. Right to make waqf: A person having the capacity but no right cannot constitute a valid waqf. The subject matter of wakf should be owned by wakif at the time when wakf is made. Whether a person has the right to constitute a waqf or not depends on the fact whether the dedicator has a legal right to transfer the ownership of the property or not. A widow cannot constitute any waqf of the property which she holds in lieu of her unpaid dower because she is not an absolute owner of that property.

Where the waqif is, a pardanashin lady, the beneficiaries and the mutawalli have to prove that she had exercised her independent mind in constituting the waqf and had fully understood the nature of the transaction. Amount of property: a person can dedicate his entire property, but in the case of the testamentary wakf, more than one-third of property cannot be dedicated.

## KINDS OF WAQF

Generally, there are two types of wakf:

1. Public Wakf
2. Private Wakf

Categories of waqf from the perspective of its purpose:

- Waqf ahli: the proceeds of waqf are designated for the waqf founder's children and their offspring. However, these beneficiaries cannot sell or dispose of the property subject-matter of waqf.
- Waqf khayri: the proceeds of waqf are earmarked to charity and philanthropy. Examples of beneficiaries include the poor and the needy. Waqf khayri is typically used to finance mosques, shelters, schools, and universities. This is meant to help financially-challenged individuals and communities.
- Waqf al-sabil: a waqf whose beneficiaries are the general public. It is very similar to waqf khayri, though waqf al-sabil is usually used to establish and construct the public utility (mosques, power plants, water supplies, graveyards, schools, etc).
- Waqf al-awaridh: the yield of waqf is held in reserve so that it can be used at times of emergency or unexpected events that negatively influence the livelihood and well-being of a community of people. For example, waqf may be assigned to the satisfaction of specific needs such as medication for sick people who are unable to pay medication expenses and education of poor children. Waqf al-awaridh may also be used to finance maintenance of the utilities of a village or neighborhood.

Categories of waqf from the perspective of its output nature:

- Waqf-istithmari: the waqf assets are intended for investment. Such assets are managed to produce income that will be used in constructing and reconstructing waqf properties.
- Waqf-mubashar: the waqf assets are used to generate services to the benefit of some charity recipients or other beneficiaries. Examples of such assets include schools, utilities, etc.

## VALID OBJECTS OF WAKF

An essential for the validity of wakf is that the dedication should be for a purpose recognized as religious, pious or charitable, under Muslim Law. On basis of decided cases and the text of eminent Mohammedan Jurists, certain objects which had been declared to be valid objects of wakf are:-

1. Mosque and provisions for Imamas to conduct worship.
2. Celebrating the birth of Ali Murtaza
3. Repairs of Imambaras.

4. Maintenance of Khankahs.
5. Reading the Koran in public places and also at private houses.
6. Maintenance of poor relations and dependant.
7. Payment of money to Fakirs.
8. Grant to an Idgah.
9. Grant to the college and provisions for professors to teach in colleges.
10. Bridges and Caravan Sarais.
11. Distribution of alms to poor persons, and assistance to the poor to enable them to perform pilgrimage to Mecca.
12. Keeping Tazias in the month of Moharram, and provisions for camels and Duldul for religious processions during Moharram.
13. Celebrating the death anniversary of the settler and of the members of the family.
14. Performance of ceremonies known as Kadam Sharif.
15. The construction of a Cobat or free boarding house for pilgrims at Mecca.
16. Performing the annual Fateha of the members of his family.
17. A Durgahor or shrine of a Pir which has long been held in veneration by the public.

The following are not recognized as valid objects of the wakf, by the Muslim law.

1. Objects prohibited by Islam, e.g. erecting or maintaining a church or temple.
2. A wakf for the perairs of the waqif's secular property is invalid according to Shea law.
3. Providing for the rich exclusively.
4. Objects which are uncertain.
5. A direction to spend a certain sum of money for feasting Cutchi Memons every on the anniversary of the anniversary of the settlor's death is not valid.

## **CREATION OF WAKF**

Muslim law does not prescribe any specific way of creating a Wakf. If the essential elements as described above are fulfilled, a Wakf is created. Though it can be said that a Wakf is usually created in the following ways –

1. By an act of a living person (inter vivos) – when a person declares the dedication of his property for Wakf. This can also be done while the person is on death bed (marj-ul-maut), in which case, he cannot dedicate more than 1/3 of his property for Wakf.
2. By will – when a person leaves a will in which he dedicates his property after his death. Earlier it was thought that Shia cannot create Wakf by will but now it has been approved.
3. By Usage – when a property has been in use for the charitable or religious purpose for time immemorial, it is deemed to belong to Wakf. No declaration is necessary and Wakf is inferred.