

This of almighty god,
so that property right



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This means that, according to Abu Hanifa, the ownership in the wakf property continued to be vested in the owner, and its usufruct was spent for charitable or pious purpose.

Not merely this, it seems that in the opinion of Abu Hanifa, the “ tying up” of the corpus of the property was not of a permanent nature: it was recovable by the wakif at any time, and he was also free to dispose it of according to his will. His two disciples, however, took a different view. According to Abu Yusuf and Imam Muhammed, wakf is the tying up the substance of a thing under the rule of the property of Almighty God, so that property right of the wakif becomes extinguished and is transferred to Almighty God for any purpose by which its profits may be applied to the benefit of His creatures”. However, Muhammad thought that the right of the wakif was not extinguished until he appointed a mutawalli, while Abu Yusuf took the view that the right of the wakif was extinguished the moment he made the declaration. Abu Yusuf's definition came to be established in view of wakf and of the Hanafi School and today it is the accepted definition of the wakf of the Hanafi School in Modern India.

The definition of the wakf has three essential elements: (i) the ownership of the founder or the wakif is extinguished, (ii) the property is vested in the ownership of God perpetually and irrevocably, and (iii) the usufruct of the property is used for the benefit of mankind. The Shia law defines a wakf in a different manner. According to the Sharia-ul-Islam, “ A contract, the fruit or effect of which is to tie up the original of a thing and to leave its usufruct free”, is known as wakf This definition has two elements: (1) tying up or immobilizations of the corpus the subject-matter of the wakf, and (ii) the use

of the usufruct for certain purposes for the benefit of mankind. It is not clear from this definition as to in whom does the property vest. Tayabji opines that it belongs to the beneficiaries. There is some authority for the view that even under the Shia law the ownership of wakfs property vests in God Almighty. At any rate, this seems to be the position in modern India. (See below under the title, " Property vests in the ownership of God".

) Under the Shia law also a wakf is made for pious, religious or charitable purposes. Or, broadly speaking, the usufruct of the corpus is assigned to the benefit of mankind. The Wakf Act, 1913, S. 2, defines a wakf thus, " Wakf means the permanent dedication by a person professing the Mussalman faith of any property for any purposes recognized by Mussalman law as religious, pious or charitable.

" Even though the Privy Council has observed that this definition is not exhaustive, it brings out the dominant elements of wakf, viz., the purpose of the wakf must be religious, pious or charitable, the dedication of property must be permanent, and the usufruct must be utilized for the good of mankind. Whether the properties have been dedicated to a wakf or whether a charge for a wakf has been created on the property will depend upon the construction of the wakf deed.