

Applying law "as
religious, pious or
charitable". the



**ASSIGN
BUSTER**

Applying the analogy of a trust, it is also usual to talk of the beneficiaries of a wakf. In the family wakfs or private wakif it is easy to discern who the beneficiaries are. In a Wakf for alal-aulad, the beneficiaries are the children, descendants and relations of the wakif. In public wakfs, the task is not easy, particularly; on account of the enjoinder that object of the Wakf is for benefit of mankind. The Muslim law-givers hold the view that Wakf may be made: (a) for the rich and the poor, (b) for the rich, and thereafter, for the poor, and (c) for the poor alone.

It is submitted that this is proper to approach the subject from the point of view of the objects of the wakf. In the language of a Mussalman Wakf Validating Act, 1913, the purpose of the Wakf must be one recognized by Muslim law " as religious, pious or charitable". The Wakf Act, 1954 also uses the same language. It says that a Wakf may be created for any purpose recognized by the Muslim law as pious, religious or charitable, and includes: (i) a Wakf by user, (ii) mushrut-ul-khidmat, and (iii) a Wakf for alal-aulad to the extent to which the property is dedicated for any purpose recognized by Muslim law as pious, religious or charitable. The qualification in the family Wakf is stated on account of the reason that family wakfs are outside the purview of the Wakf Act, 1954.

What does religious purpose or object mean in the context of wakfs? The Supreme Court said that " a religion is not merely an opinion, doctrine or belief; it has its outward expression in acts as well, and religious practices or performances of acts in pursuance of religious belief are as much a part of religion as faith or belief in particular doctrines". A pious act, in the words of Ameer Ali, means an offering or gift made with the object of obtaining the

approval of the Almighty, or a reward in the next world, or, as Fyzee puts it, "the test is what has the Shariat to say about it? You may make a Wakf validly for a school or a hospital or a mosque; but you cannot legally dedicate to a gambling house, or a wine shop, or a shop for the sale of hem or bacon".

According to the Muslim law-givers, the ultimate object of a Wakf is the benefit of the poor. As the Hedaya put it, "though poor may not be named in a wakf, yet they will take on the failure of the object named. There are several heritable purposes that are recognized by Muslim law as valid objects of wakf.

The question as to what objects of wakfs are valid and what are not has come before the High Courts in a number of cases. The Muslim authorities, too, have given a fairly elaborate list. On the basis of these, it may be stated that the following are the valid objects of the wakfs: (a) mosques, and provision for Imams to conduct worship there, (b) colleges, schools and universities and provision to teach there, (c) aqueducts, bridges, and caravan-serias, (d) distribution of alms to the poor and financial assistance to the poor for going to pilgrimage, (e) celebrating the birth of Ali Murtaza, (f) for making and keeping of tazias, (g) provision for camels and duldul for religious procession during muharram, (h) repairs and maintenance of imambaras," and khankahs, (i) celebrating the barsi (death anniversary) of the settlor, or members of his family, (j) performance of ceremonies known as Kadam Sharif burning of a lamp in a mosque, (k) reading of the Koran, (l) performance of the annual fateha of the settlor or members of his family, (m) construction of free boarding-house (robat) for pilgrims at Mecca, (n) payment of moneys to fakirs or the poor, and (p) a durgah or shrine of a pir.

A Wakf cannot be created for objects prohibited by Islam. Thus, a Wakf cannot be created for the maintenance of a church or a temple. It has been seen earlier that in some cases, it has been held that celebrating the death anniversary of settlor and members of his family and performance of annual fateha of the settlor and of the members of his family are valid objects of wakf. In *Kunhamutyya v. Ahmed Musaliar*, it was held that if there was no distribution of alms, the reading of the Koran and the performance of ceremonies for the benefit of the soul of the settlor was not a valid object of the wakf.

However, in *Abdul Sakur v. Abubakker*, it was held that the performance of such ceremonies at the grave of an individual or at the tomb of a saint is a valid object of the wakf. In *Abdul Karim v. Rahimbhai*, it was held that a Wakf the purpose of which was to spend a certain sum of money for feasting of Cutchi Memons every year on the death anniversary of the settlor was not a valid wakf.

A Wakf of a house for the use of all travellers, Muslims and non-Muslims is not a valid wakf.