

Further endowment.  
(1) absolute  
dedication: for the



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Further the fact that the income of a land is used for idol is not proof of dedication; however this fact may be taken into consideration when the document pertaining to dedication is being construed and is not in clear language and unless the dedicator does not relinquish the property, merely the writing of a document will not establish dedication. In fact the endowment is created from that date when the property has been dedicated.

Following are the conditions which are to be established for a valid endowment.

**(1) Absolute Dedication:**

For the creation of a valid endowment it is necessary that the property is absolutely and in perpetuity dedicated for the worship of deity by the donor or the dedication is for a charitable purpose. It is necessary that the donor has divested himself of the beneficial interest in the property. It is not necessary that the normal religious procedure for Sankalp, and construction is observed. The Supreme Court had in the case of Devakinandan v. Murlidhar, observed “ The essentials of a dedication are sankalapa (determinations), utsarga (renunciation of ownership in the property) and prathista (installation).

There should be formal declaration by the settler of his intention to dedicate the property. The owner of the property should secondly renounce his interest in the property. If the renunciation is made for the public interest or for the use of public it becomes a public endowment. Thirdly, there should be formal installation, if it is of temple, the installation should be of deity. In case of creation of an endowment there is no question of acceptance of the

dedication of property, whereas in case of a gift in secular sense the acceptance of gift is necessary." Similarly the court in the case of *Nirmala Bala v. Balaichand*, has held that where renunciation of the property is made and none of its part is retained for the successors then the dedication is absolute. The fact that the ancestors gave other persons the right to U80, will not affect the validity of the trust.

**(2) Object Must Be Definite:**

It is necessary that the object of the dedication is definite, meaning thereby it should be made explicit as to for which diety the dedication has been made or the charitable purpose for which the bequest has been made. A dedication to the Dharma is invalid, the dedication being vague and uncertain. In the same manner leaving the charitable trust at the will of trustees to decide the purpose is invalid.

A trust created for the worship of any diety, is invalid, the specific name of the diety being not mentioned. According to Madras High Court there cannot be dedication under charitable trust or endowment for the Samadhi of a person or for Gurupuja and other rites (anosthana). In *Saraswati v. Raj Gopal*, the Supreme Court held that building of a Samadhi of an ordinary person cannot be the object of charitable endowment. But where an institution has emerged out of a Samadhi and it has become the place of worship and archana for the members of the public, a charitable endowment can be created for it. Similarly in *Nagu v. ànu*, the Supreme Court said where an ancestor's Samadhi has been built up, raising of a memorial over it for performing shardha ceremonies and conducting periodical worship over it could be done through creation of an endowment.

In *Radha Govindji v. Smt. Kewala Devi*, the Calcutta High Court has held that no valid endowment is created simply by the execution of an instrument to this effect by the donor. It has to be clearly proved that (1) the donor virtually intended to dedicate the property in the name of the deity; and (2) he has divested himself of all the benefits from that property.

Both these conditions are essential for the creation of a valid endowment. Reiterating the above view the Andhra Pradesh High Court has said later on in a case that following are the incidents which are to be considered for deciding as to whether an endowment is real or nominal— (1) The fact that the endowment was created, and (2) The conduct of the parties (donor and donee) and the surrounding circumstances. Where an endowment or a trust is created, the conduct of the parties with respect to enjoyment of the property, as laid down in the deed of endowment is not very much material”.

### **(3) Property Must Be Definite:**

Any endowment is not valid unless some definite property is dedicated. Any uncertainty regarding the subject matter of the bequest is fatal for its validity. Hence the subject matter of the property given in the endowment must be specified, for example, A by means of a will has directed that the income of a property be spent for a specified charitable purpose; but he did not mention in it the exact amount to be spent.

Such a bequest will be invalid for uncertainty. In *Gokul v. Ishwar Lochana*, the executor of a Will directed the administrators of instrument that a temple should be constructed by incurring reasonable expenses in the courtyard of his house.

Here the amount was not fixed for the construction of temple, yet the court held that in such a case the expenses upto the tune of 39% of the income would be considered as reasonable expense.

**(4) Person setting or creating the Endowment should be Competent Person:**

It is necessary that the settler is major, of sound mind and is not legally disqualified for creating an endowment. A person governed by Mitakshara can only dedicate his separate or self acquired property but not his coparcenary interest. But a person governed by Dayabhag School, i. e., a father is competent to create an endowment of his whole property in which his coparcenary property is also included. Even a woman after the passing of Hindu Succession Act, 1956, can dedicate her property as she is now an absolute owner of the property. Earlier her right of dedication was limited.

A Karta of H. U. F. can also make a gift inter vivos of small portion of joint Hindu family property for pious, religious and charitable objects.

In Raghunath v. Govind a Karta alienated providing permanent shrine to a family idol, such an alienation was held valid.

**(5) Endowment must not be opposed to Law:**

In spite of the fact that the endowment must not be opposed to law, yet bequests to idols and temples are not treated invalid for transgressing the rule which forbids perpetuities.

But an endowment created for saving the property from creditors is void or if it is made within two years of the insolvency of the transferor. Where a part

of the property is dedicated for performing puja of a diety it does not give rise to a valid religious endowment. In M.

Appala Ramanujacharyalu v. Venkatavanara Sorhacharyulu, the Andhra Pradesh High Court has held that mere execution of a deed of dedication without the donor intending to act upon the terms of the deed would not create a valid endowment. To constitute a valid endowment, it must be established that the donor intended to divest himself of his ownership in the property dedicated.

Where, in fact, an endowment is created or a trust came into existence, the subsequent conduct of the parties with regard to the enjoyment of the property settled or endowed, is not very much material. The principle upon which a gift cannot be made in favour of unborn person is inapplicable upon idols.