

MUSSALMAN WAKF VALIDATING ACT, 1913

6 of 1913

[7th March, 1913]

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-STATEMENT OF OBJECTS AND REASONS "The object of this Bill is to remove disability and great hardship that has been created by the recent decisions of the Privy Council in AbdulFataMahomadIshak and others v. Russomoy Dhur Chowdry and others, LR 22 Ind App 76 and other cases. The power of a Mussalman to make a settlement for or in favour of his family, children and descendants or what is known as wakf-alal-aulad to the Mussalman law is paralysed. In the case above cited it was held that under Mussalman Law is perpetual family settlement expressly made as wakf is not legal and valid merely because there is an ultimate gift to the poor and it confirmed the decision in Ashanulla Chowdry v. Amarehand Kundu, reported in LR 17 IndApp 28 the principle of which was approved in a subsequent case of Abdul Gafur v. Nizamuddin LR 19 Ind App 170. where it was laid down that a gift is not good as wakf unless there is a substantial dedication of the property to charitable uses at some period of time or other. The decision does not fix any limit of time, it simply says "some period of time or other". It does not define what is "substantial dedication". Thus. it introduces the greatest uncertainty in the law and is generally opposed to the true, principles and correct exposition of the Mussalman jurisprudence.

This Bill is intended only to reproduce the Mussalman law or wakf-alal-aulad In a codified form which (with) certain safeguards for the authenticity of the wakfnama and for prevention of fraud upon creditors or otherwise. It is not intended to codify or define the general law of wakf which must be governed by the Mussalman Law".- Gaz. of India, 1911, PartV, page 107. EXTRACT FROM SELECTCOMMITTEE REPORT "We have restricted the provisions of the Bill so as to confine it to a measure specifically declaring the rights of Mussalmans to create wakfs of the character referred to in clause 3. The clauses which deal with the manner in which wakfs may be created and with the registration of deeds creating wakfs have been omitted as they make important changes in the personal law governing Mussalmans and the avowed object of the Bill is not to make any change in this law but to restore it to the position which it is believed by many competent authorities to have occupied prior to the decisions of the Privy Council referred to in the Statement of Objects and Reasons. The omissions of these clauses has made it possible to omit many of the definitions and to shorten the Bill considerably. We have added a clause to make it clear that no wakf is to be deemed to be invalid merely because the ultimate dedication to the poor or other charitable object of a permanent nature is postponed until after the extinction of the family of the person creating the wakf. We have further provided that nothing in the Bill shall affect any sectarian or local custom or usage." -Gaz. of India. 1913, Part V, page 39.

1. Short title and extent :-

(1) This Act may be called the Mussalman Wakf Validating Act. 1913.

(2) It extends to the whole of India except ¹ [the territories which, immediately before the 1st November, 1956, were comprised in Part B States].

1. Substituted for the words "Part B States", by 2 A. L. O., 1956.

2. Definitions :-

In this Act, unless there is anything repugnant in the subject, or context,-

(1) "Wakf" means the permanent dedication by a person professing the Mussalman faith of any property for any purpose recognised by the Mussalman law as religious, pious or charitable.

(2) "Hanafi Mussalman" means a follower of the Mussalman faith who conforms to the tenets and doctrines of the Hanafi school of Mussalman law.

3. Power of Mussalmans to create certain :-

wakfs.-It shall be lawful for any person professing the Mussalman faith to create a wakf which in all other respects is in accordance with the provisions of Mussalman law for the following among other purposes :-

(a) for the maintenance and support wholly or partially of his family, children or descendants, and

(b) where the person creating a wakf is a Hanafi Mussalman, also for his own maintenance and support during his lifetime or for the payment of his debts out of the rents and profits of the property dedicated : Provided that the ultimate benefit is in such cases expressly or impliedly reserved for the poor or for any other purpose recognised by the Mussalman law as a religious, pious or charitable purpose of a permanent character.

4. Wakfs not be invalid by reason of remoteness of benefit to poor, etc :-

No such wakf shall be deemed to be invalid merely because the benefit reserved therein for the poor or other religious, pious or charitable purpose of a permanent nature is postponed until after the extinction of the family, children or descendants of person creating the wakf.

5. Saving of local and sectarian custom :-

Nothing in this Act shall affect any custom or usage whether local or prevalent among Mussalmans of any particular class or sect.