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AN EVALUATION OF THE TRUST SYSTEM OF BANGLADESH.

by

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Definition and related problems

'Trust' literally means confidence. But as a legal device of transferring property it may mean transferring property to someone with the confidence that he will hold the property for the use or benefit of others as nominated by the transferor. For example. A conveys property to B for the use or benefit of C. Here A creates a trust. A is the author of the trust. B is the trustee and C is the beneficiary. But this is the most simple example for firsthand Knowledge on the subject. With the use and development of trust system for different purposes and in different manners, it has become almost difficult to give one commonly acceptable definition of trust. Many well-known authors and jurists on the subject have tried to define trust. But no definition seems to be exhaustive. Prof. Keetons definition "Trust is a relationship which arises whenever a person called the trustee is compelled in equity to hold the property, whether real or personal, and whether by legal or equitable title, for the benefit of some persons (of whom he may be one and who are termed cestui que trust) or for some objects permitted by law, in such a way that the real benefit of the property accrues, not to trustee, but to the beneficiaries or other objects of the trust"[1] . But Keeton is criticized on that nobody can be compelled to undertake a trust and also that his definition does not solve the question who is the actual or real owner.[2] Underhill defines trust as" an equitable obligation binding a person (who is called a trustee) to deal with property over which he has control (called the trust property) for the benefit of the persons (called the beneficiaries) of whom he may himself be one, and any one of whom may enforce the obligation."[3]

1. George. W. Keeton: The Law of Trusts, 9th Edn. 5 (1968).
2. Snell's Principles of equity, 27th Edn., 88 (1973), by R. E. Megarry and P. V. Baker.
3. Sir A Underhill: Law of Trusts,12th Edn. 3(1970).

But underhills definition is not exhaustive in the sense that it does not include charitable trust and some unenforceable trust which are permitted by law although having no human beneficiaries.

Even to define a trust as a confidence (i. e. lewin's definition)-has been criticized by maitland[4] . There may be cases where no reliance or confidence is reposed by one person in another e. g. where the owner creates a trust by declaring himself a trustee of his property i. e. a watch for his child. Here a trust is constituted from the moment of the declaration though the child may not even know anything about it.

Hanbury in his Modern Equity [5] says:" It is not thought that a dissection and criticism of earlier definitions are very rewarding, rather it is better to describe than to define a trust, and than to distinguish it form related but distinguishable concepts". Snell, a renowned authority on the subject, also holds the same view. [6]

We have got the same definition problem in Bangladesh. The definition of trust given in Section 3 of the Turst Act, 1882, says: "A Trust is an obligation annexed to the owneship of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner."

Since the Act applies to the private secular trusts only ; the definition does not include charitable trusts, public religious trust, private religious trust etc. Moreover, the words "confidence reposed in and accepted by the Owner" shows that it refers to express trusts only. Resulting and constructive trusts are not within the purview of the definition and are discussed seperately in chapter IX of the Act under the heading "Obligations in the nature of trusts. "In fact, no enactment has given an exhaustive definition of trust in Bangladesh.

In the history of English legal system, as we know, because of the rigidity and inflexibility of the common law courts, it could not give remedies to the people in many cases. That is why the court of equity

4. F. W. Maitland: Lectures in Equity, 44-45 (1969 Edn.).
5. Hanbury's Modern Equity, by R. H. Maudsley, 9th Edn. 85 (1969).
6. Snell's Principles of equity,27th Edn. 87 (1973) , by R. E. Megarry and P. V. Baker.

came into existence to solve the problems of the society on the basis of equity, Justice, fairness and good conscience. Thus trust dealings being a new innovation of society were unknown to the common law courts. Thus where 'A' transfers property to 'B' in trust for C, common law courts recognised B as the legal owner; because with the passing of the property legal ownership passed from A to B But for many reasons i.e. (i) the rigidity and inflexibility of the common law courts and (ii) there was no law before the court to recognize C, (iii) no capacity to enforce a moral obligation etc. the court, therefore, refused to help C in cases of breach of trust by B. To remove this uncertanity, court of equity came forward. The court of equity recognised B to be the legal owner but it attached an obligation to B on the basis of conscience, wherby he was bound to hold property for the benefit of C, for to do otherwise would be an act of dishonesty. Thus the court of equity gave B an equitable ownership. In other words equity converted moral obligation into legal obligation by separating beneficial interest from legal title and gave the benefit to C and the husk to B. A trust thus arises when beneficial interest is separated form legal title and confidence is reposed in the legal title-holder. This double ownership idea i. e. legal ownership to trustee and equitable ownership to beneficiary, is not present in this sub-continent. The same court here applies both law and equity. The beneficiary, here does not have equitable ownership but he has only rights against the trustees (Sec. 3 of Trust Act. 1882)[7]

Both private and public trusts are in operation in Bangladesh. A private trust is one where benefit is conferred to some selected individuals,i. e., beneficiaries are identified. For example, A conveys his land to B in trust for C. In a public trust benefit of the trust is conferred to public at large[8] · Here beneficiaries are not identifiable. Trusts to promote public welfare activities or education are public trusts. It may be a charitable or religious trust. For example, A transfers his land to B for building a hospital for the public at large.

In Bangladesh private trusts are at present guided mostly by the Trusts Act, 1882. Prior to the enactment of the Act there were

7. Tagore vs. Tagore (1872) BLR.377(P. C.)
8. Deokinandan V. Murlidhar AIR. 1957 SC 133.

various provisions under different enactments dealing with the subject. Thus trust Act of 1866; the penal code contained provisions for the punishment of criminal breach of trust, the Specific Relief Act made provisioins of suit for the possession of property by trustee. the Civil Procedure Code made provisions of suite by and against the trustees executors and administrators and suits relating to public charity, Limitation Act, 1877 provides the time limit of recovering the property transferred by breach of Trust. So the Act of 1882 was passed to define and ammend the laws relating to private tursts and trustees. But the Act does not apply to (i) The Rules of Mohammadan law as to wakf; (ii) The mutual relations of the members of an undivided family as determined by any customary or personal law; (iii) public or private religious or charitable endowments (iv) trusts to distribute prizes taken in war among the captors.[9] It is said that the English rulers, at the time of British India did not want to injure the religious feelings of the people. Therefore they made above reservations in order to leave Muhammaden and Hindu religious and charitable trusts untouched.

The Trust Act 1882 has got 96 Sections and is divided into nine chapters. In the Preamble it says that the object of making the lagislation is to define and amend the law relating to Private Trusts and Trustees. In section 3 - Interpretation clause -it defines the relevant terms like Trust, author of trust, trustee, beneficiary, trust property, breach of trust etc. The Act, does not use the English names like express trust, implied trust, resulting trust, constructive trust, etc rather the arrangements of the Act shows that Sections 4-79 deal with express trust and section 80-96 deal with implied, resulting or constructive trust. Section 4 says that a trust can only be made for lawful purposes. A Private trust, in Bangladesh in order to comply with Section 4 of the Act must not be against the rules of valid disposition of property i. e. the rule against perpetuities under section 14 of T.P Act 1882, section 114 of the Succession Act, 1925, Section 13 of the T. P. Act 1882, Section 113 of the Succession Act relating to the gift infavour of unborn persons, the

9. Sec, 1 of Trust Act, 1882

rule against accumulation under section 17, T. P. Act and section 117 of the Succession Act.

Any trust which is directed to alter the ordinary law of descent or succession is void[10] Under the Act, a trust can be declared both by way of a gift and a will and of both for moveable and immoveable properties. In the case of a gift of immoveable property it must be in writing signed by the author or the trustee and registered under the Registration Act, 1908. If it is by way of a will it must comply with the provisions of the Succession Act, 1925, except where the testator is a Muslim (section 58 of Succession Act, 1925). Trust of moveable properties can be declared as aforesaid or by transfering the ownership of the property to the trustee (Section 5). In the latter case registration is not compulsory. The property must be transferred to the trustee Unless - (a) The trust is declared by a will or (b) the author of the trust is himself to be the trustee (Section 6).

But the absence of the above mentioned formalities in the creation of trust (Section 5, 6) can not be pleaded as a means of effectuating a fraud (Proviso to Section 5)[11]. It is also held that the acquisition of title by adverse possession will not be affected by the requirements of the trust Act. Thus where the trust is void ab initio for want of registration, uncertainty etc; the trusrtee acquiring title by 12 years adverse possession and a suit by settlor to repudiarte the trust and recover the possession from the trustee being void, would be barred. [12]

Section 6 of the Act embodies the English rule of three certainties [13] i. e. (i) certainty of intention (ii) certainty of subject matter (iii) certainty of object i. e. beneficiaries. Apart form these three it adds two further essentials - (iv) certainty of the purpose and (v) the transfer of the trust property to the trustee.

Sections 11-22 discuss about the duties of a trustee; and sections 23 to 30 discuss about the liabbilties of a trustee for breach of trust. Sections 31 to 45 deal with rights and powers fo a trustee, sections

10. Tagore V. tagore (1872) B. L. R. 377.
11. Ramchandra V. Anandibai, A. I. R. 1932 BOM 188.
12. Hemchand V. Pearylal (1942) 47. C. W. N. 46. P. C.
13. Knight V. Knight (1840) 3 Bear 148.

46 to 54 deal with the disabilities of a trustee, sections 55-69 deal with the rights and liabilities of beneficiaries, sections 70-76 about the vacation of office of trustee and appointment of trustees, sections 77 to 79 about extinction, revocation of trust, sections 80 to 96 about certain implied resulting or constructive trusts.

In the recent years, there have been major changes in the field of private trust i. e. the annulment of Benami Transaction.Benami Transaction means a Transaction without using the name of a real purchaser. For example under sec. 82 of Trusts Act, 1882: where property is transferred to one person for a consideration paid or provided by another person, and it appears that such other person did not intend to pay or provide such consideration for the benefit of the transferee, the transferee must hold the property for the benefit of the person who pays or providing the consideration.

In a Benami transaction, the apparent owner in not the real owner. The purchased land is registered in the name of a third person, not in the name of a person who pays the money. People used to take recourse to such transactions for various purposes alongwith an object of defrauding the creditors. One of the legal characteristics of such transaction was that it did not create any title or interest in favour of the Benamdar i. e. apparent owner. To prove a Benami Transaction court had to cosider the follwing points. (i) Source of consideration (sec. 82, trust Act, 1882) (ii) Relationship of the parties, if any (iii) Motive of purchase (iv) who was in possession and enjoying profits (v) who had the custody of title deeds (vi) Subsequent conduct of the parties relating to the property in question etc. Such transactions used to encourage lot of frauds, and malpractices in the society. Even in some cases the Benamdar did not know that his name had already been used. In the Trial Court it took lot of time and caused complexities to prove the transaction. Therefore it was repealed by sec. 5 of the Law Reforms Ordinance, 1984.

A major portion of public religious and charitable trust in Bangladesh relates to the wakf estates operation. The term "wakf" literally means detention or stoppage. According to the two disciples, Abu Usuf and Muhammad, Wakf, singnifies the extinction of the appropriators

ownership in the thing dedicated and the detention of the thing in the implied ownership of God, in such a manner that its profits may revert to or be applied for the benefit of mankind (Baillie, 557-558, Hedays 231, 234). According to Abu Hanifa-(i) It singnifies the appropriation of any particular thing (Corpus) in such a way that (a) the appropriator's right in it shall continue, and (b) the advantiages of it go to some charitable object; or (ii) It is the (a) detention of a specific thing (Corpus) in the ownership of the waqf or appropriator, and (b) the devoting or appropriating of its profits or usufruct in charity, on the poor, or other good objects in the manner of an ariyat, or commodate loan.[14]

The view of Abu Yusuf and Imam Muhammad has been generally accepted. The term wakf in Islamic law, is not restricted to an appropriation of a pious or caritable nature but includes settlements on a person's self and Children.

Under the wakf Ordinance of 1962, which applies to wakf in Bangladesh, "Wakf" means the permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognised by Muslim Law as pious, religious or charitable, and includes any other endowments or grant for the aforesaid purposes, a Wakf by use and a wakf created by a non-Muslim. [15]

The above definition of wakf given by the wakf ordinance 1962 seems to cover wakfs of public nature i. e. wakf conferring benefit to the public at large. It is not an exhaustive definition since it does not include wakf al-al-aulad i. e. wakf in favour of family, children or descendants. The latter kind of wakf is dealt with under Mussalman Wakf validating Act, 1913 and the Bengal, Wakf Act, 1934. In fact, there is no officially recognised exhaustive, comprehensive or conclusive definition of wakf.16

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14. Bail. I 549 (557)
15. Sec. 2 (10) of the Wakfs ordinance, 1962
16. Dr. Tahir Mahmood : The Muslim law of India, 269 (1980 Edn)

SOME IMPORTANT RULES OF WAKF UNDER ISLAMIC LAW

Muslim as well as a non muslim can make a valid wakf (Ordinance 1962). A wakf may be made for any good purpose not prohibited by Islam. The following are some lawful purposes of wakf mentioned in the texts of Islamic law.[17]

i. maintenance of mosques, including the remuneration of imams and muazzins;

ii. maintenance of educational institutions, including salaries of their staff;

iii. giving of alms to the poor and the needy;

iv. financing Haj pilgrimage for the poor;

v. construction or maintenance of bridges; aqueducts,etc.

A wakf may be made either orally or in writting. In the latter case the Registration Act 1908 will apply.It can be created either by an act inter vivos, non-testamentory form i. e. gift or by testamentory instrument i. e. will, taking effect after the death of the wakif. In the former form (gift) a muslim can wakf his entire property. In the latter form (will) he can wakf only to the extent of one-third of his property normally.

Any property which has value,whether moveable or immoveable, may be the subject of wakf. Hanafi law does not insist on Transfer of property to Mutawali, so musha i. e. , Undivided share of a property which is capable of being separated, can be the subject of wakf. But musha, whether it is capable of devision or not, is not a valid subject of making wakf for musque or burial ground.[18]

The wakif must be the actual owner or must have a permanent dominion over the property, a temporary interest will not do.[19]

A wakf for a limited period of time is void.[20]

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17. 278 (1980) ibid.
18. Mohd. Ayub V. Amir Khan. A. I. R. 1939 cal. 268
19. Rahiman V. Bagridan (1936) 11 Luck. 735; 5 DLR 109.
20. Mst. Peeran V. Hafiz Mahd, (66) A. All. 201.

According to Abu Hanifa the ownership of the property even after the dedication continues to be with wakif and as auch the wakif is at liberty to resume the wakf, while according to the disciples the wakif ceases to be an owner and hence can not be revoked. The view of Abu Hanifa is not accepted. An inportant characteristics of wakf is perpetuity and irrevocability. When a wakf is created through a will, before the death of the testator like any other will it can be revoked,[21] but after the death of the testator as soon as it becomes operative it can no more be revoked being a perpetual thing.

All the schools of muslim law are in agreement that a contingent wakf is invalid. [22]

a wakf created during death illness (maraz-ul-maut) is - as in the case of gift - regarded as a testamentory wakf-[23]

Wakf can broadly be divided into two :-

(a) Wakf benefitting the public at large,

(b) Wakf benefitting the family, children or descendants.

(a) wakf benefitting the public at large : Wakf for public purposes (Masliah -al aama) e. g. mosques, graveyards, dargahs, takias etc.

In Bangladesh the major law on this public wakf is wakf ordinance, 1962 (Ord No. 1 of 1962) which was enacted to consolidate and amend the law relating to the administration and management of wakf properties in Bangladesh.

(b) wakf benefitting the family, children or descendanrts :

These may be of three kinds :-

(i) Exlusively for the family :

Wakfs for the family are recognised by the Muslim Law. The view is expressed by Ameer All relying on a number of traditions of the prophet (sm) that a Wakf even exclusively for the benefit of the wakif's family (without any provision for charity) is a valid one. Bikani

21. D. F. Mulla: Mahomedan Law, 18 th Edn; 207 (1977)
22. Habib Ashraff V. Syed Wajibuddin (1933) 144 I. C. 654. Baillie; 564.
23. Dr. Tahir Mahmood: The Muslim law of India, 271 (1980).

Mia vs. Shuk Lai I. L. R. 20 Cal, 116. But this view of Ameer Ali was disapproved by the Privy Council and it was held that wakf exclusively for one's family was not a wakf for charitable purposes and was therefore invalid. Abul Fata Mohammad vs. Rasamaya 1LR 22 Cal. 619 (P.C.)

(ii) wakfs substantially for the familly

With some provisions for charity :

Prior to the passing of the Act 1913 it was held by the privy Council that if the primary object of the wakf was the aggrandizement of the family, there the wakf would be invalid even if there was some gift of an illusory kind for charity.

Abdul Fata Mohammad vs. Rasamaya (I. L. R 22 Cal. 619 (PC) It was held that a wakf both for the charity and for the benefit of the family was valid only if there was a substantial dedication of the property to charitable uses but not otherwise. Under Act, 1913 wakf substantially for family is recognized the only condition being as ultimate dedication to charity. The Act is intended to expand the law relating to wakfs and not to restrict.

(iii) Wakfs substantially for charity with some provision for the family :

Even before the Act, 1913; wakf, the primary object of which was a permanent dedication of the property to charity held to be valid even though there was private settlement in favour of the wakif himself or his family.

Mohammad Ahsnullah v. Amarchand I. I. R. 17 Cal. 498. (P. C.)

Such wakfs have thus been always valid and are valid even now without invoking the provisions of the wakf Act of 1913.

Thus we see that law relating to wakfs in Bangladesh is guided and governed partially by the Statutes, Judicial decisions and partially by the personal laws of Muslims.

Follwing are the Enactments on the law on wakfs in Bangladesh : --

1. Mussalman wakf validating Act, 1913
2. Mussalman Wakf validating Act, 1930
3. The Mussalman Wakfs Act (XLII of 1923)
4. Bengal. Wakf Act, 1934
5. Official Trustees Act, 11 of 1913
6. Charitable Endowments Act. VI of 1890, Secs. 2, 3, 4, 5, 6, and 8.
7. Religious Endowments Act, XX of 1863 Sec. 14.
8. Charitable and Religious Trusts Act, XIV of 1920.
9. Civil Procedure code, 1908, Sec. 92-93
10. East Bengal Non-agricultural Tenancy Act, 1949 Sec.85
11. Wakf ordinance of 1962.

Religious and charitable endowments under Hindu Law

Religious endowments like Debottar (property dedicated to the ownership of Deity) and Mutts (religious educational institution) can be created both orally and in writting. And can take the form of both gift and will (in case of a will section 57 of the succession Act, will apply if the case is governed by theAct). [24] Endowments for charitable purposes can be created for feeding the poor or Brahmans etc. Formal Deeds of Endowments for religious or charitable purposes must comply with the provisioins of T.P. Act, 1882. and registration Act, 1908. Religious Dedication may be of two types i. e. complete or partial. In case of a complete dedication the owner loses his tille completely and diety becomes the absolute owner and in case of a partial dedication the ownership is retained by the owner and only a charge is created in favour of the object [25] Where the dedication is of absolute nature any surplus money can be utilised by applying the doctrine of cypres.[26] Debottar may take two forms i. e.

24. D. F. Mulla : Hindu Law, 9th Edn. P. 475.
25. Hemantakumari V, Gourishankar (1940) C. W. N. 637 P. C.
26. Pillayan V. Commrs, H. R. E. . . . Board, A. I. R. 1948 P. C. 25.

public and private. In public debottar,[27] the right of worship is open to the public at large, In Private debottar the right is confined to the members of a particular family or the members of a definite group of persons and public are not entitled to as of right. In an English model of trust, the beneficiaries with common consent, can put an end to the trust. Privy council by applying this principle has decided that in a private debottar, the interested members,with common agreements, may change the debottar character of the property into an ordinary secular property; although this was criticised. [28]

Generally no formalities are required for the creation of a Hindu Religious or charitable endownent. But according to some authorities[29]

(A) The object or purpose of the trust must be a valid religious or charitable purposes according to the rules of Hindu law.

(b) The founder should be capable under Hindu law of creating a trust in respect of the particular property,

(c) The founder should indicate with sufficient precision the purpose of the trust and the property in question,

(d) The trust must not be opposed to the provisions of law for the time being in force.

In Bangladesh it is held that the Government can not take possession of such debottar property as an enemy property merely because the shebait has left the country[30] . Thus apart from the Hindu religious rules, and judicial decisions, following enactments apply to the Hindu Public or private religious and charitable endowments :-

(a) Religious endowments Act, 1863,

(b) Charitable and Religious Trusts Act, 1920,

(c) Sec. 92 of Civil Procedure Code, 1908,

(d) Transfer of property Act, 1882,

27. Venkataramana V. State of Mysore,A. I. R. 1958 S. C. 255
28. Mukherja: "Hindu Law of Religious and charitable Trusts" (Tagore Law lectures), 3rd Edn. PP-193-194.
29. Mukherjea: P. 52 ibid.
30. Shuk Deb V. Province of East Pakistan 22 . D. L. R. P-245.

(e) Registration Act, 1908

(f) Succession Act, 1925

It will not be irrelevant here to try to make a comperative examination of these three, institutions i. e. (i) Trust in the English sense, (ii) Wakf under Islamic Law, (iii) Debottar under Hindu law.

The privy council[31] examined the fundamental differences of Muslim and Hindu system with the English juridical conception of trust. In an English trust, the legal interest is given to the trustee but equitable interest is given to the beneficiary. But neither under Muslim law[32] nor under Hindu law [33], the legal interest is given to the Mutwalli or Shebait although they have certain obligations and duties like a trustee. Mutwalli is not a trustee in the legal sense.[34] In case of wakf, the ownership of the wakif is extinguished and transferred to the Almighty. In Hindu law the property is vested to the idol or deity. The idol or temple etc in Hindu law, are juridical persons[35] The juridical person acts through Shebait or manager. But under the trust the property vests in the trustee. In the case of a Kahankas the head is called sajjadanashin althoug he enjoys more facilities, he is of the same legal character. Certain enactments have, after considering wakf and Debottar etc, as trust of public nature, given remedies for breach of trust by trustees of Muslim or Hindu religious endowments of public nature i. e. section 92 of C. P. C. 1908, section. 14 of Religious endowments Act, 1863.

The privy council[36] has held that since the property is not vested in the Shebait, Mutwalli, they are entited to plead limitation in a suit to recover endowed property form their head. But a legislative amendment (Second paragraph to Sec .10 limitation Act, 1929) has changed the position saying "shall be deemed to be property vested

31. Vidyavaruthi v. Balusamy (1921) 44 Mad. 831. P. C.
32. Alla Rokhi V. Abdur Rahim, A. I. R 1934 P. C. 77.
33. Vidyavaruthi V. Balusamy (1921) 44 Mad. 831 P. C.
34. Nawab V. Directo of Endowments, A. 1963 S. C. 985.
35. Pramatha V. Pradyumnal (1925) 30 C. W. N. 25 P. C
36. Vidyavaruthi V. Balusamy (1921) 44 Mad. 832

in trust" and "shall be deemed to be the trustee." It attempts to equalize Shebait and Mutwalli to a trustee in respect of liabilities. Like a trustee a Mutwalli or a Shebait can sue or be sued for legal matters. [37]

Mutwalli and Shebait like a trustee are held liable for breach of their duties and are liable to be removed almost for similar grounds. [38]

A Trustee has got wider power than a Mutawalli. A mutwalli acts like a manager. A wakf is perpetual, irrevocable and inalienable but it is not necessary that a Trust may be perpetual, irrevocable or inalienable.

Conclusion :

It appears that the consequencs of repealing the law of Benami Transactions were not given due thought There is no exhaustive definition of wakf. Even the criteria used for deciding public or private wakf is confusing. Explanation to Section 2 (10) of the Ordinance of 1962 says," when more than fifty percent of the net available income of wakf is exclusively applied for religious and charitable oruposes, such a wakf shall be deemed to be a public wakf withing the meaning of clause (e) of sub-section (1) of Section 85 of the East Bengal Non-agricultural Tenancy Act, 1949. Whereas under the Bengal wakf Act. 1934 section 2 (11) says wakf al-al-aulad means a wakf under which not less than seventy-five percent of the net available income is for the time being payable to the wakif for himself or any member of this family or descendants.

Well-known authorities like Ameer Ali and D. F. Mulla claim that under pure Islamic Law wakf to the family, children or descendants is valid, even though there is no dedication to charity but this view in not legally recognised. Privy Council's decisions hold that to be a valid wakf there shold be a substaintial dedication to the charity and illusory or remote dedication to charity with substantial dedication to the family children or descendants is not valid, Although Mussalmen

37. Jayadivdra V. Hemartakumari (1904) 8. C. W. N. 809 P. C.
38. Husain V. Nur Hussain (1928) 32 C. W. N.

Wakf validating Act, 1913 has validated such kind of wakf, it is claimed that the Act of 1913 does not operate to validate wakf exclusively for the family, children or descendants's without any dedication to charity and on this subject privy Council's decision is still the law. Nearly on hundred years have passed since the decision of privy Council (1894) so, in my view, the matter demands special attention of the legislative body of Bangladesh, so as to make the law according to islamic Sharia. The Law on the whole subject is not clear and systematic. Ordinanc of 1962 in not clear about the functioning of other enactments. By the ordinance, none of the previous enactments, i. e. Bengal wakf Act, 1934 or the wakf validating Act, 1913 has been repealed. Different enactments, originated for different purposes have piled on the subject.

Legal sanctions and remedies are spread haphazardly in different enactments. There can be a complete legislation regulating the whole subject within one and the same system of administration.