Waqf or Law for Muslim endowments: Constructing Religious Singularity for appropriating shrines

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Abstract

This article shows that the lego-religious development took place during colonial period necessitated to imagine local sacred sites, especially shrines in the form of singular conception of Waqf. The article highlights the development, during colonial judicial and legislative process, that defined such concepts as Sharia, religion and endowment singularly and inhering the needs of newly developing economic system. The development provided with singular explanation for the working of shrines and reduced the pluralistic life-forms. The Muslim community could claim on local shrines as essentially belonging to it. The article shows that the religio-legal development also understood the organizational structure of the local sacred site through universal term that reduced the need for managing the sites through local and customary means.

Keywords: Waqf, Muslim Auqaf, Sharines

Waqf stands as a legal concept for defining certain form of endowments, exclusively attached with the practices of Muslims. After the West Pakistan Waqf Properties Ordinance of 1959 the state of Pakistan has legally appropriated this concept for understanding and taking over this form of property. After the promulgation of the Act, though many other Acts for the same purpose were enforced, no government ever felt the need to change the basic meaning and understanding of the concept of Waqf. Treading upon its understanding, the state changed forcefully the traditional care takers of the local sacred sites with its own bureaucracy and took control on the hundreds of Waqf properties, including shrines, Mosques, Takias, etc. From then on, a visitor of such sites find, instead of Mutwalli and Mujawar (the traditional care takers), managers of Auqaf department, created to take care the taken over Waqf property. The nationalization of the Waqf properties not only gave control to the State on around 78000 acres of agricultural land, but also provided with the monthly cash income of millions of rupees. However, all such activities took place because of the religio-legal meaning of Waqf and its application in specific way. Interestingly, the Ordinance of 1959 attaches itself with the British colonial legal and judicial tradition.[1] It therefore creates a need to understand the development of this concept within colonial legal and judicial process.

This article will try to trace the development of Waqf laws and the conception of Waqf property as they emerged during the Colonial lego-judicial process. The article follows those like Nicholas Dirk and Erik Stokes who consider the development of Colonial Law as a development in the enlargement of its influence, and to dispense the new truths.[2]

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It will see this development, while giving rise to multiple dialectics, as Appadurai understands the phenomenon, between control of sacred sites by local communities and the need for a universal lego-religious control, at the same time.[3] The article will follow Kozlowsky to unearth the tension between *Mohammadan Shariat*, as constructed during the Colonial judicial process as a universal religious concept, and pluralistic customary traditions. The article will highlight that the tension made Colonial authorities simplify otherwise fuzzy concepts into strict logical categories defining through private and public realm the application of local sacred charities. The article shows that both private and public realms were the economic concepts and the colonial judicial process, in order to reduce threats to newly emerging market economic system based upon private property, delinked the customary application of endowment to pluralistic life-form from 'secular' economic realm. However, the resistance from Muslim elite, though succeeded in rehabilitating the right of endowment, could not move out of continuous legal tradition. Moving on the line of both Appadurai and Kozlowsky, the article shows that initial contradictions found their synthesis into new legal Act, such as Waqf Validating Act of 1913, that justified the extension of singular religious-legal concepts, embedded within the framework of economics, into the sphere of pluralistic spaces of local sacred sites. The article shows that later on, Mussalman Waqf Act of 1923 devised universal singular identity for the care takers of the local sacred sites, and equated the care taker with Muslim community, thus not only paved the way for identifying local sacred sites with the Muslim community but also reduced the need of care takers of such sites.

Endowment Act 1863: Colonial distancing from the direct control of the sacred sites:

As the Colonial state already extended to Punjab and North Western Provinces till 1860, and also successfully controlled the repercussions of the violence of 1857, the state considered it politically right to distance itself from the direct control of the sacred sites, like shrines, mosques and temples, along with properties attached with them.[4] The earlier Regulation XIX, 1810 of Bengal Code granted permission to the Colonial authorities to take direct control of the sites of worship directly through their officials. For the authorities, it was neither un-feasible nor inconvenient to give local religious communities with the control of their sites for worship. As for the Colonial authorities, there were quite sufficient evidences that, only with little exception, the religious classes and groups found themselves quite satisfied under the Colonial dominance, the rulers thought it sagacious to move back from the direct control of the localized sites of worship.[5] However, as Appadurai emphasizes that it was the experience of controlling directly the mutually warring religious sacred spaces, especially Hindu Temples in Tamil, Southern India, that compelled British rulers to distance themselves from the direct control of the sacred sites.[6] The endowment Act, 1863, therefore after getting promulgated, enabled the British authorities to divest themselves from the direct control of the sacred spaces.

However, as Appadurai claims, the distancing of the British rulers from the direct control of sacred sites also generated a dialectic between the Colonial and

South Asian forms of knowledge. In the sense in which the Colonial form of knowledge linked with the law-making activity and the other linked with the static religious sites.[7] The unfolding of dialectics, this section considers, developing further Appadurai's position, generated further dialectical relationships during the interaction of central-universal lego-religious rules enforcing with the working of local religious communities. On the one hand the dialectics generated a conflicting relationship between the religious streams developing around the rationalizing tendencies of the Colonial State and the local religious sites, like shrines, considered and remembered as an archaic remnant of the deviated past by the religious streams. On the other hand the dialectics produced another struggle between the appropriation of singular construction of religious community and customs attached with the pluralistic religious sites. The change in the policy as the distanced control from laws through the local committees or Mutwaalis (care takers of the religious sacred site) also created a tension between the authority of customary controller of the sacred site, as Mutwalli in shrine or mosque, and the local committee[8] that is to be composed of members of local religious community. This situation also created a sense of having communal identity with the sacred sites, as Ann Murphy also sees in the context of Sikh Gurdwara and the growth and development of Sikh Gurdwara Act, 1925.[9]

As the Colonial State distanced itself from the direct control of the sacred sites, through the Act of 1863, and opened up the possibility of having control on religious sites by local communities, it also initiated a process of articulation for redefining the religious concepts so that, a universal control could be achieved on the pluralistic religious spaces through legalistic structures. The situation correlated, as Ritu Birla understands in his study, with the increased burden on Colonial authorities to dispose of fiscal deficits through "systematizing law and jurisprudence that governed economic relations. The systematizing not only engenders basic legal infrastructure of India through introducing "Civil and Criminal procedures based on British law and principles of contract" but also regulated matters of "religion, caste, family, inheritance."[10] Interestingly, this situation produced an inverse effect opposing the intentions of the Endowment Act of 1863, and created not only more articulated discursive modes for the strong hold of the religious sites, but also initiated more control on the properties attached with the religious sites, especially with the shrines. On the one side, the judicial tensions produced simplification for the pluralistic concept of *Waqf*, customary practices of Muslim for managing endowed property. On the other hand, the tension generated the idea of singular Muhammadan Law or Shariat embedded within the original texts, like Quran, delinking with customary interpretations.

In order to show that, in the wake of Religious Endowment Act of 1863, how the singular idea of Muhammadan Law emerged, along with a clarifying the conception of Waqf, the endowment, and its singular attachment with the religious purposes, this section will bring forward the debate initiated within the British judiciary after 1863 through discussing some important cases of Muslim Waqf. The tracing of the judicial history will bring forward the way British judicial system

gradually reduced the pluralistic interpretation and accepted the singular position. The tracing also highlights the activities of significant lawyers who got training within the British judicial system, but who not only became important, rather some of the most significant, political personalities but also provided Muslim textual en-framing within which even the judiciary of post colonial state of Pakistan was bound to perceive the conception of Awqaf.

British Judicial system and the dialectics of Awqaf and Singular Muhammadan Law:

The concept of Waqf and its application, by withdrawing personal possessory rights from certain property and attach it to some sacred sites like that of mosque or khankah/shrine, remained important in Muslim history, especially in subcontinent. In the absence of the concept of Private property, and during the Muslim kingdom where all property, in a sense, was considered to belong to the king, the application of Waqf, on the one hand maintained a sense of perpetuity and kept a religious justification for the next ruler to carry on the continuity of sustenance because of the sacred nature of property. The application of Waqf, therefore remained highly attached with the sacred sites, as though the "earliest recorded *waqf* in the subcontinent dated from the last years of the twelfth century, Muhammad Ibn Sam, one of the Ghurid Sultans, that set aside the revenue of a single village to support a mosque in the city of Multan,"[11] However on the other hand the Waqf also provided a sustenance to the sacred space, though not necessarily Muslim. As during the rule of Muslim kingdom, often the endowments in the form of Madad e Muash (support for the sustenance) was also provided to the non-Muslim sacred sites.[12]

However, the application of *Waqf* has not been exclusively attached with the sacred purposes, and often this concept was evoked for inheritance purposes when the person demanded to keep property, i.e., land, intact. In that sense the concept of Waqf provided perpetuity to the property in changing socio-politico circumstances. In this sense the application of the concept of Waqf cover both *public* and *private* or *religious* and *secular* domains.[13] The application to both *religious* and *secular* domains has its justifications and guidance in the religious scriptures too. Doctors of Islam or Fiqh, has long ago explained the nature and condition to have and run Waqf properties.[14] And as the practice of converting property with Waqf for religious purposes, for even the benefiting one's own family has its religio-scriptural root, there have been however, a customary justification too of Waqf especially in the domain of secular or familial Waqf. The tensions during Colonial judicial process within these two concepts, provided detailed instances of judicial reflectivity that segregated these, otherwise over-lapped, modes of Waqf. However, at the same time, this charting of judicial conceptual topography provided lawyers an important place to become not only active in judicial and legislative elaborative law-making activities but also turned them as significant political leaders of their respective religious communities.[15]

In Colonial judicial process, after the Religious Endowment Act of 1863, the application of Waqf however engendered new form of discussions, as it gradually

threatened the foundational principle of modern economy, that is Private property that can be possessed by an owner, sold out and mortgaged. The Colonial rule underwent the pressure of recently prevailing modern Capitalistic economy, and concurrently changed its perception regarding Shariat, in general, and Waqf in particular. In a very significant sense, the change of the Colonial judicial understanding regarding Waqf also helped its redefining the concept of Muslim Sharia. As the British authorities allowed Qazis to keep working along with the British Judicial system till 1862,[16] the decisions of the British judges found less bearing upon the laws and life of the local Muslims. However, after the war of independence or mutiny in 1857, the court system, under the compulsion to modify its working and it's Laws, reformed itself and, from 1862, gradually but almost completely nullified the role of Qazis in judicial working. And, as with the promulgation of Religious Endowment Act 1863, the British judiciary became more intrusive within the Muslim religious matters.

Instead of distancing itself, as the Religious Endowment Act 1863 maintains, and the secularization of judiciary suggest, the British judiciary seemed to be taken up itself the role to define Mohammadan Law or *Sharia*. The process of defining Sharia however remained embedded within the concepts of "simplicity", "purposive-ness" and "clarity" for which British judicial system seemed to be striving for. The attempt to redefine Mohammadan Law unearthed the dichotomies and at the same time paved the way for the domination of singular stream upon the customary multiplicity. The elaboration of the demarcation between concepts like "translated" (concepts understood through the background of judicial and social history of British) and "native" (as understood through local traditions), "Universal (public)" and "specific (private)", "Customary" (susceptible to historical changes) and "Orthodox" (scriptural and original), and "secular" (non-local-religious) and " religious (Sharia-based)", brought forward the modern judicial-intellectual streams. As these intellectual streams emerged out of Colonial judicial decisions, those not only generated the judicial traditions of precedence for the next generations, but also stretched out concepts and procedures necessary for Colonial India's legislative assembly's working and politics at large.[17]

Till 1862-63, the religious understanding of the British judiciary can be seen regarding local communities as pluralistic. Though British identified Muslims as Muhammadans, the follower of Muhammad (PBUH) different from Hindus and other religious groups, yet their judicial system earlier than that also recognized multiplicity, or possibility of pluralistic interpretations within Muhammadan religion. The division between Shia and Sunni was recognized with the emphasis that there was a need to create separate and distinct religious rules for them as Shia, in general, differed from Sunni in the interpretation of Quran and attached with different religious traditions, along with having history of conflicting relations with Sunnis. While Sunnis were considered to be divided among four major schools, *Hanfi*, *Maliki*, *Hambali* and *Shafii*, and the concern that different schools of religion employ different interpretation and its application to their life was there.[18] Largely,

British judiciary depended for its understanding of "Muhammadan law" upon two main translated sources: *Hidaya*[19] and *Fatawai Alamgiri*[20], those kept the differences intact.

Qazis employed quite regularly for understanding and interpreting documents, terminology and witness in the cases similar or over-lapping terminologies. Instead of using *Waqf*, Mughals liked to use the concept of *Madad i Maash* (support for the sustenance), a less religious but a similar concept as that of *Waqf*. Mughals used this concept for distributing a variety of grants for revenue free land (*inam*) "or of some portion of the government revenue in a particular district as *Madad i Maash (support for the sustenanc).*" However, descendants and holders sometimes claimed that these grants were actually *Awqaf*. During Colonial period this usage of synonym created a troubled position of British officials. British revenue officers puzzled by the terminology as many of them understood Awqaf as only related with religious and pious purposes. According to the texts on *Sharia*, as many of them started considering, the word Awqaf did not have to be used in the dedication of property for "secular" or family benefits. The position of many Qazis who argued that imperial grants had the same intention, to promote a 'good purpose', as Awqaf, and should be treated in the same way,"[21] started losing its force with the increase of the process of "simplification" and "secularization".

The gradual increase of administration on all over India produced legal rules for generalized objective working through bureaucratic state officials. A gradual shift away from religious scholars and religious *fatawas* started taking place that in few years made the judicial activity take decisions without the help of religious scholars. Not only judicial activity pushed local religious scholars out but also gave place to the local lawyers trained within British legal system having scholarly interest in religion. The re-alignment of judicial process also re-aligned law-interpreting and making activity more aligned with administrative needs. However, this does not mean that earlier courts remained objective while dealing with administrative matter. A case of Wasiq Ali against Revenue authorities, as early as in 1924, is the noted example in which courts took the position in favour of administration. Wasiq Ali claimed that he managed the richly endowed *Imam Barah* of Hooghley and Revenue authorities took the endowment under his control on the charges of corruption in 1824.[22] When Wasiq Ali approached the court with the support of lot of religious interpretations and *fatawas* in his right, the judge refused to give him the management of his endowment. The *fatawas* objected to the changes the state had introduced in the endowments with the view that religiously no change could take place once a property get endowed. However, the judges kept the decision in favour of administrative action and refused to accept *fatawas*.

The question whether a *waqf* could be created for the purposes other than the sacred purposes became an important debating point after the *de-localized* Colonial Judiciary started its activity. The concept became important because of its usage for showing the continuity or perpetuity of land even within Colonial period. However, the concept gained importance because of the conflict arising out of

monetary transactions within which Muslim landowners pleaded in courts that their property could not be sold out, as it is *Waqf*, religiously endowed for their personal usage. In one such case, on a separate note by judges Raymond West and R. H. Pinhey of the Bombay High Court, wrote that "Whether a Waqf could, indeed, be created for the purpose merely of conferring a perpetual and inalienable estate on a particular family, without any ultimate express limitation to the use of the poor or some other inexhaustible class of beneficiaries, appears to be a question of some "nicety",[23] as to one element, at least of which the Muhammadan doctors have differed."[24]

The difference between a *Waqf* property created for benefitting a family purpose and for expressed general good became a significant dilemma in judicial understanding. The Muslim cultural and historical practices showed that such things do take place but the interpreting of the translations of the available "Muhammadan" law books were directing against the customary practices. The translation of *Hidaya*, made by Hamilton, showed the possibility of the difference of opinion among multiple Muslim scholars but with Hamilton's personal emphasis toward definitive position in favour of "good purposes" only made that difference invisible. The other main text book, Baillie's translation of *Fatawai Alamgiri*,[25] "reported approval for Awqaf in favour of one's self, children or children's children."[26] Further the translation showed differences of opinion between the two disciples of Abu Haneefa for considering certain appropriation or alienation a Waqf or not.[27] The text book of Macnaghtan shows the difference of opinion as present in the community and as present in the religious views.[28] The appropriated text books by the colonial judiciary showed the existence of the possibility of different opinions among Muslim scholars and texts as well. And kept the judicial process to understand situation within the plurality.

In next few years, however, the judicial proceedings made it clear that the judicial understanding must pursue the direction of clarity and upheld the orthodoxy of the scriptures of prophet in consonance with the Victorian morals. All the cases of endowments which came to court afterwards passed through the critical observations and discussions upon the nature of Muhammadan Law and the effort remained to suppress the difference in favour of creating singular Sharia out of the multiple religious texts available. In most of the cases, judges thought that the families appealed for maintaining Waqf were hiding their mal-practices or fraudulence as in most of the cases the selling of mortgaged endowed property became a point of conflict. A case of Ahsan ullah vs. Amarchand Kundu[29] that even went to privy council resulted into a rough draft of non-definitive decision not necessarily effecting on all the endowments, gave similar verdict.[30] One of the important Councillors in the Privy Council, Lord Hobhouse (d. 1904) wrote in his decision,[31] in 1889, that Ahsan ullah's *Waqf* was an illusory religious endowment as the endowment helped self-aggrandizement of the concerned family. For Lord Hobhouse, a Waqf must have been a religious or charitable trust and he defied accepting all those Muhammadan

opinions employing "Customary" practices as a ground for non-charitable usage of a *Waqf*.

Following the line of Lord Hobhouse, and only three years later, in 1892, Calcutta high court gave a verdict on Haji Bikani Mian's case that the position, that Muhammadan Law approved the usage of endowments as family settlements, is not valid. Like the privy councillor, the court took it for granted that a *neat* distinction could be made between *waqf* which were "public", "religious" or "charitable" and those which served the self-aggrandizement of a particular "family". The court itself considered this "private Waqf" a very recent development only arising out during British rule in India. "This matter of private *Waqfs* is an offspring of purely modern and secular considerations." [32] It is interesting that in this case Syed Amir Ali, who was judge at that time, was also part of the bench. The case appeared in his court first and he decided to take it into a full court bench. As a serious scholar of religion, Syed Amir Ali remained against the position of Woodroff and Lord Hobhouse and all other judges who took Sharia as a singular concept and, following a singular interpretation, as he maintained that Hamilton's translation and interpretation of *The Hidaya* is faulty, and therefore had a clear tilt against the endowments for supporting family.[33] However, judges refused to accept Syed Amir Ali's references from prophet's sayings, claiming that the referred sayings were abstract enough and did not apply precisely and clearly on the application of endowments in favour of using it for families.

The judicial process remained determined to stop increasing fraudulence using the concept of *Waqf*. Though, to uncover fraudulence certainly did not mean to converge difference for a singular position and chart a law ending the possibilities of different opinions, yet the judicial process followed this path and through its decisions made Law in the books dominant upon Custom. For understanding this process and its aftermath two decisions are very important. In a verdict against the case, *Abdul Fata Mahommed Ishak* (and others) v. *Russomey Dhor Chodhry (and others)*,[34] came in 1891, the lawyer of Abdul Fateh, Sir Charles, knowing the earlier verdict of privy council, defended his case for the right of family endowments as that the institution of endowment is an ancient system of Muhammadan Law and the modern conditions could not change its authenticity. He accepted that this institution of endowment seem to be a *device* or *evasion* of the laws of inheritance. He maintained that both British and Muhammadan law were full of such *devices* and this thing should not come in abrogating its usage. The justices of the high court, however brought in the terms *secular* and *religious* and played with their differences in order to understand *Waqf*. The judge maintained that the dedication was "secular" and not "religious". Taking the precedence of the Privy Council's earlier decision of Ahsan Ullah, the judge, Trevlyan, maintained that "the endowment served only the family's interest and did not support in any substantial fashion a "religious" or "charitable" purpose."[35] It is interesting that the difference between secular and religious concealed the differences of customary Muslim understanding and refused to give any space for the overlapping of *religious* traces upon *secular*.

After failing to get acceptable decision the case went into Privy Council and the Councillors decided the matter in December, 1894, though not different from the earlier ones, but in more definitive way. In summing up the Privy Council's judgment, Hobhouse showed that he and his colleagues were trying to defend the Muslim's *own* system. He noted, that "their Lordships have endeavored to the best of their ability to ascertain and apply the Mahommadan Law, as known and administered in India; but they could not find that it is in accordance with the *absolute*, and it seems to them *extravagant*, application of abstract percepts taken from the mouth of the prophet. Those percepts may be excellent in their proper application. They may, for aught their Lordships know, have had their effect in moulding the law and practice of *Waqf*, as the learned judge [Amir Ali] says they have. But it would be doing wrong to a great lawgiver [Muhammad] to suppose that he is thereby commending gifts for which the donor exercises no self-denial; in which he takes back in one hand what he appears to put away with the other; which are to form the centre of attraction for accumulations of income... which seeks to give to the donors and their family the enjoyment of property free from all liability to *creditors*; and which do not seek benefit of others beyond the use of empty words."[36] Privy council, in a clear and definite way demarcated between the *private* and *public* usage of *Waqf*.

The debate upon the nature of *Waqf* not only made it incumbent upon the judges to follow what privy Council had decided, that is against the *private* usage of *Waqf* but also opened up the possibility for introducing puritan and revivalist position of Muslim judges to prevail upon the matter of *Waqf*. During his tenure in Allahabad bench from 1902-1907, the judge, Karamat Hussain made a *Waqf* invald in one such case in which the founder left money to provide for the upkeep and placing of lamps on the founder's tomb. Interestingly, he ruled that, because a Waqf must be for a good purpose, and the concern for a tomb is like doing *idolatory*, and as *idolatory* is not a good purpose therefore the Waqf was invalid.[37] However, at that time, accepting the precedence was like invalidating almost all of the *Waqf*, if the rationale of the decision would have been accepted even by the higher judiciary. Subsequently the British higher judiciary considered the Karamat Hussain's position extremist, and further on invalidate his decision. However, his decision showed the possibility of perceiving tombs and practices attached therewith, if the puritan position of modern intelligentsia prevailed.

In another case of *Cassamally Jiraj Bhai Pirbhai* v. *Sir Currimbhoy Ibrahim*[38] in Bombay high court, the judge once again made it clear that British courts would not give "customs" precedence over Muslim *Sharia* or Muhammadan Law. This case however, also became a reason for gaining good repute in politics for the then young lawyer, but later on one of the most important personality of sub-continent, Mr. Muhammad Ali Jinnah, who though lost this case yet able to develop an Act for Family Endowments (*Waqf*), after only few years. Qasim Ali, the son of a rich Bombay tycoon, JairajBhai Pirbhai, went to the court with the bunch of lawyers included M.A. Jinnah and F.B. Tayyab Ji, (also a famous Muslim Lawyer and a

former judge) to make court overturn the endowment (*Waqf*) established by his father in 1866. Standing on a decision in 1866, already established the special status of Khoja community to handle their matter of inheritance according to their customs, the lawyers tried to make their case on a special status of Khoja community to which the defendant belonged. However, the judge, Frank Beaman ruled that though the usage and *custom supersede the written law* is a universal maxim but in this country not the Customs but the Muhammadan Law must be kept supreme. The courts finally closed down all the possible avenues for keeping the customary tradition of using *Waqf* for benefitting family purposes. The courts not only demarcated clearly the concepts private and public usage of Waqf but also inserted already segregated such concepts as *secular* and *religious* to interpret *Waqf*. Further, judicial activity defined clearly the singular conception of Muhammadan Sharia and reduced all sects-differences within the singular Muhammadan Law.

Howver, the refusal of Colonial judiciary to accept the demands of Muslim elites for private or Family Awqaf increased the anger and anxiety. Soon, the need arose to bypass judiciary by using legislative path for making the space for private *Waqf*. Jinnah, who got recently elected from Bombay on Muslim seat as a Legislative member, took this opportunity by taking initiative. Jinnah drafted a simple but precise Bill to be presented in the legislative assembly for making it possible for the Muslim family to endow for even private purposes. Though Jinnah was deeply embedded within British education, yet his effort was applauded by scholars of Al-Nadwah, as Shibli Naumani lent his active support for the Bill and even visited Jinnah before finalizing the Bill. Also, Jinnah had a good backing of Muslim elite, with such figures as Qasim Bhai, the Bombay business magnate and Nawab Salim Ullah of Dhaka, his position seemed to be strong enough. Further, the issue was hot enough to get discussed in newly developed Muslim league's sessions, creating a needed political support for the Bill to get passed.

However, the Bill for Private *Waqf* also attracted opposition from different quarters, including religious, political and administrative sections. The need for the Bill did not have its basis on the largest Muslim population province of Punjab. The orthodox section of Sunni Muslims from Punjab, Ahl e Hadith and religious social reformer did not give much support to the Bill, rather even published pamphlets against the Bill. Despite the efforts of Shibli and Nadwah, the consensus on the issue could not be reached. The judges, as that of karamat Hussain criticized the Bill for not addressing the matter of perpetuity directly. The British judiciary largely opposed the Bill as the Bill was to go against the already given decisions of Privy Council regarding Waqf. Few newspapers considered the act of passing Awqaf Bill as an attempt from modern intelligentsia to interfere in the religious matters within which they have no authority. From within the assembly, when the bill was presented, Malik Umar Hayat Khan, the legislative member from Punjab, criticized the Bill though only half-heartedly. He feared that the Bill might open the possibility for disturbing the rules of inheritance. However, as he did not feel any direct threat, he became content quite soon and votes in favour of the bill.

The Bill however got passed from the assembly and became as, *The Mussalman Waqf Validating Act*, 1913. The Bill not only gave the right to a Muslim elite to endow for his family, but also created an initial glimpse and the possibility of the sense of unified Muslim-hood while having a unified Muhammadan Law. The process made religious scholars use the ideas and skills of Westernized educated Muslim elite; as Shibli employed most of the arguments already put forward by Syed Amir Ali to convince others and Jinnah drafted and presented the Bill in the legislative assembly. The process of introducing the Bill also opened the doors for the possibility of speaking on religious matters by non-religious Lawyers and legislative members. At the same time, the process highlighted the dire condition of many of the Muslim Waqf and the need for reforms. The situation however also highlighted another factor, and that is, the religio-politics and the law making process of center had not touched Punjab considerably till then, as the whole process of Waqf Validating Act did not find wholehearted support from the Punjab.

In Punjab, the situation and question of Waqf did not stir much religio-political activity. Not only because the influential Sajjada nashin were largely aligned with the Colonial system of government, but also because of the emphasis and importance of the Colonial State for the Customary Laws instead of Colonial Law. Further, as the settlement reports showed, Colonial rule accepted most of the *Maafian*, or non-revenue generating land, for the religious purposes. Further, the Punjab government accepted the right of inheritance as already established in Punjab, as the "1902 Descent of Jagir Act enabled *jagirdars* to regulate their succession by legally adhering to the practice of the primogeniture."[39] As, the region's customary practice of inheritance limited the division of land among heirs, a "private *wqaf* " found not much attraction for the settler's families. Also, the Punjab Government with its especial concern for the maintenance of the control on lands introduced Punjab Court of Wards Act (1903)[40] to further increase the efficiency of the already working Court of Wards. The Punjab administration introduced the rule that "an estate's debt would automatically be wiped out if they were not legally contested within three years of its passing under the jurisdiction of Courts of Wards Administration." The Punjab state policies did not generate, therefore an interest within "private Waqf", and thus a lack of interest within Mussalman Waqf Validating Act, 1913 of Jinnah.

Differentiating between Endowments and Religious Waqf:

The debate ensued through the question of the nature of *Waqf* not only divided the pluralistic concept of Waqf within neatly segregated singular concept of Private (Family) Endowments and Religious Endowments, but also differentiated "secular" Endowments from Religious Endowments. The difference though already highlighted during the debates on the issue of Waqf in Colonial judiciary and in process of making Waqf validating Act 1913, yet it needed to be differentiated clearly. As many new endowments, and many *trusts*, not "religious" in nature, but for social welfare and educational purposes have been created during the British rule by many Muslim elites, and made a state authority *trustee* or caretaker of such

endowments. The need was there to clearly state these endowments and enact rules for maintaining such endowments. For this the Colonial state promulgated the Charitable Trust Act, 1882 and enabled charities for non-religious, but social welfare purposes to find legal protection. Further, only eight years later, the colonial state introduced another Charitable and Endowments Act 1890 that demarcated clearly the charitable endowments from religious purpose endowments.

The Charitable Trust Act of 1882 introduces British legal conception of "private Trusts and Trustees." In this manner, the Act gives way to introduce the Common Law and Law of Contract in India, while keeping at the same time, indecisive position upon religious endowments. The Act was linked with the liberal reformist agenda[41] to modify judicial decisions taken in the middle ages in Britain for the perpetuity of properties.[42] The Act clearly states that it excludes "the rules of Muhammadan law as to waqf", and also the Act did not touch upon the customary laws of inheritance, "or the mutual relations of the members of an undivided family as determined by any customary or personal law."[43] Also the Act opens up the possibility of taking into consideration many endowments and charities transcending the local customary practices and arising out of the necessities of modern socio-economic systems introduced by the Colonial authorities. The constrain of perpetuity in Muslim *Waqf* made it impossible for the property to be used as a business entity, and also already neatly divided between private and public charities, the Act provided a well-suited legislative measure for controlling non-religious charities.

Furthering the legal conception of Trusts, the Colonial state introduced *The Charitable Endowments Acts*, 1890 in order to supervise and administer the property held for the Charitable purposes. The Act explains the Objects and Purposes of its enforcement as to provide legal coverage and supervision to the property declared *charitable* by the locals and vested under the supervision of state officials "from time to time in different parts of India." The Act maintains that such functions as the supervision for Charitable Trusts, was though new phenomena in India, in England such functions were already discharged by "the official Trustee of Charity Lands and the Official Trustees of Charitable Funds." The State intended to appoint a Treasurer of a Trustee of Charitable Endowments for taking care of the trusts entrusted to the Government by the trustees themselves. The State makes it clear that " the object of vesting the property in him (Treasurer of Charitable Endowments) by his name of office as a corporation sole being to secure the holding of the property by someone always present, and to avoid the difficulty and expense of appointing a new trustee on the retirement or death of any incumbent of the trust."[44]

The Act though defines charitable purposes, yet makes it quite clear that this Act does not include any such purpose that relates with "religious teaching" or "worship." The Act came to give state cover to the newly developing socio-economic space of charities. Colonial India found itself entering into some form of capitalistic market economy. The traditional educational system started shifting towards modern school system already attached with the jobs being created in the Colonial economic institutions. The modern philanthropist started making charities for non-religious or

secular purposes, that is to help and support their communities to have modern educational facilities without expressed and clear religious intentions. After the death of the endowed philanthropists, many of such charitable endowments came under the supervision of state authorities. However, as there is no legal provision for such acts, the Charitable Endowment funds that defines charitable purpose as including "the relief of the poor, education, medical relief and the advancement of any other object of general public utility" came into force for giving them legal coverage.

Religious Endowments and segregated Laws for Local Sacred Sites:

Though the Waqf Validating Act, 1913 got approved from the legislative assembly without the clause of official registration, the need and fears stood there. There was not only the need attached directly with the handling of Waqf properties but, in changed political circumstances, the fear grew of the unknown influence that might disturb the ruling capacity. After the decade of Minto Morley Reforms, the dyarchy was introduced to delegate some powers to the provinces. Along with the delegation of powers, a new form of politics of electoral system was finding its way. This politics was to change the direction of political rival to find their strength. Instead of pursuing the agenda already toed by the state officials and increased political role in associations, the new situation was to take into account the interests of a large section of franchisee. In this changed situation, the state officials found it sagacious to collect information of all those care takers of the shrines and, especially those influential Sajjada Nashin who also happen to participate in the political process.

The Administration of Charitable and Religious trust Act of 1920 came into force for providing more effectual control over the administration of Charitable and religious trusts. The Act differentiate itself clearly from the Trusts not falling within the category of Charitable and Religious trusts. Also the Act makes this Act for those Charitable Acts those are religious in nature. The Act provided a general guideline for collecting information regarding any charitable or religious trust created for the public purposes. The Act makes it incumbent on the trustees of such trust to obtain the directions of a Civil Court, and by claiming themselves trustee of such trust the trustees can obtain provision for "the payment of the expenditure incurred in certain suits against the trustees of such trusts." In this manner the Act regulates the expenditures incurred during the operations of the Trust, and enable the trustee to find relief from the Civil court by getting registered its Charitable or Religious Trust. However, as the trust was general and many of its clauses needed to be specified clearly for the Muslims, the Mussalman Awqaf Act, 1923 also came afterward.

The Mussalman Waqf Act, 1923[45] stepped down, conceptually from the generalized religious charities, understood as religious trust, to the sacred sites controlled by the community of Muslims through Islamic laws. The Act in this way, for the first time, segregated clearly Muslim Waqf or religious endowments, understood as all sort of local sacred sites, including shrines, from the sacred sites of other communities and placed them under singular laws for the Muslim community. Earlier the segregation could not find such a universal application on all sort of local

sacred sites as many local sacred sites, especially shrines and related religious forms such as Takia, continued to show pluralistic life form. Even in 1930 whereas the shrine of Data Ganj Bakhsh sahib of Lahore declared that the shrine followed Muslim law of inheritance, however "the shrine of Hazrat Khwaja Khawind Mahmud of Lahore, is governed by customs and not by Muhammadan Law, and by that custom the existing sujjada-nashin nominates his successor in his life-time, and, on his death, the *murids* and worshippers of the shrine and other *mutaqads* (believers) assemble and formally recognize the new *mutwalli* and duly install him into the office in accordance with the wishes of the last sujjada-nashin..."[46]

The Mussalman Waqf Act, 1923 introduced first time the terminology of Mutwalli for the care taker of Muslim religious sites. Before that, each sacred institution was governed by its own usage and there was no single term stood for all.[47] Multiple terms such as, Mujawar, Khadim and Gaddi Nashin were in usage. However, with the promulgation of the Mussalman Waqf Act, 1923, the term, Mutwalli stood attached exclusively as a "care taker" for the Muslim religious sacred sites legally. The Act defined Mutwalli as, "Mutwalli means any person appointed either verbally or under any deed or instrument by which a *Wakf* has been created or by a Court of competent jurisdiction to be the *Mutwalli* of a wakf, and includes a *naib-mutwalli* or another person appointed by a *mutwalli* to perform the duties of the *mutwalli*."[48] The Act interestingly, though attached the meaning of *Mutwalli* with the origin of *Mutwalli* however leave the possibility for considering any one Mutwalli who was not appointed as such but "who is for the *time being* (italics mine) administering any wakf property."[49]

The Act further defines the concept of Waqf as, "Wakf means the permanent dedication by a person professing the Mussalman faith of any property for any purpose recognized by the Mussalman Law as religious, pious or charitable, but does not include any *Wakf*, such as is described in section 3 of the Mussalman Wakf Validating Act, 1913, under which any benefit is for the time being claimable for himself by the person by whom the *Wakf* was created or by any of his family or descendants."[50] The Act also differentiates between the benefits coming out of the working of *Waqf* and benefits taken by the *Mutwalli* in its position of being care taker of the shrine or mosque.[51] The division remained important for saving *Mutwalli* from acquiring benefit for the personal use, but at the same time, this definition bracketed *Mutwalli* of a shrine or a mosque within a category of businessman. However, in a sense of a businessman who runs a religious sacred site of Muslims. The Act binds each Mutwalli to furnish before the court the monetary details of the last five years and of the property attached with the sacred site. The Mutwalli was to submit not only the gross annual income from the Waqf property attached with the sacred site, and "a description of the *Wakf* property sufficient for the identification thereof,"[52] but also the record of last five years. The Act also made it compulsory for the Mutwalli to furnish before the court the amount of the "Government revenue and cesses, and of all rents annually payable in respect of the Waqf property."[53] The Act also requires from the Mutwalli to furnish all the expenses set aside during the year

not only for his own expenditure, as "the salary of the mutwalli and allowances to individuals" but also for other purposes like "purely religious" or charitable. The Act though remained a religious Act however could not resolve the tension between the charitable and "purely" religious activities.

The Act not only created a clear difference between pure religious purpose and family purpose, it also created a division between those shrines running through a family or descendants of a family and those without that. The Act breached the ownership of the shrines by Mutwalli through progeny or perpetuity through the force of custom. Rather, make this position redundant by matching it with the emphasis upon the Waqf created through family or descendants of the family. In this way the Act provided in a sense a definition of the family and the legitimacy of the ownership of the Waqf only to the two entities, one if Mutwalli and the other is Family and its immediate descendants through Waqf Validating Act of 1913. The Act also highlighted the ambivalent presence of Mutwalli on shrines. Though the Act left out the personal benefits of the Mutwalli, however at the same time it highlighted its fluid and almost redundant existence. Especially its existence started losing justification were those Waqfs developed without any origin. As most of the shrines of the Muslim sufi saints grew without any declared form of trust, the existence of care taker on any such shrine started losing its meaning. In this way, the Act abstracted the position of Mutwalli and make it accountable not only in front of the community but also in front of the state. As the compulsion to submit audit reports and salary details the Act turned running of shrines as a business activity and the figure of a Mutwalli as a manger without any legitimacy. The act triggered the disenchantment process and paved the way for justifying the already going on criticism of religious revivalists and reformists.

Conclusion:

The Colonial law making efforts engendered singular conceptions for Muslim customary traditional life practices. The colonial judicial process became a rationalistic mould to simplify the otherwise pluralistic life practices. The colonial legal rules for managing endowments gradually reduced the multiplicity of interpretations of such concepts as *Madad e Maash* and *Waqf* (endowments) and gave way to a universal, coherent and simple application of singular definitional concept of Waqf. The judicial process also redefined religion and, while giving it clear and distinct meaning, attached it with a singular Muhammadan Law. The judicial process developed rules for differentiating private and public life forms, and connected them with the concept of Waqf. The developing rules, made newly emerging Muslim lawyers' group, engage with the colonial judicial process and found ways for their elite so eager to have Waqf for keeping perpetuity for their large land. The tension between colonial judicial rules making and its impact on Muslim elite resulted into the continuous process for devising universal rules for local sacred sites, such as shrines, those otherwise being managed through local religious leaders. The right for a person to have Waqf for his family found its universal-law form

through Mussalman Waqf Validating Act, 1913. The law though remained focused on giving rights to the Muslim elite for claiming Waqf, yet, it became a singular moment as Muslim endowments since then would be imagined as Waqf only and would be seen as divided between private and public practices. Later on, the Mussalman Waqf Act of 1923 created a universal framework for all the local sacred sites through segregating Muslim sacred sites from others and paved the way for linking sacred sites with the territorial identity for Muslim community.

References:

[1] West Pakistan Waqf Properties Ordinance of 1959 links itself with the Charitable Endowment Act of 1863, and cancels all sort of binding with any other legal act in between. Interestingly the Ordinance refuses to bind itself with any legal development between 1863 and 1959. Still, the ordinance accepts the spirit of Waqf Validating Act of 1913, and resultantly the Mussalman Waqf Act of 1923. Also, the post-colonial judicial process, triggered along with the Ordinance, takes un-hesitantly precedence of the cases decided during the "refused" time period.

[2] For Erik Stokes "Law was to be autonomous from the working of the Colonial State." See, Eric Stokes, *The English Utilitarians and India* (London: Oxford University Press, 1959). For Nicholas Dirk, "Law was seen as a counterbalance to the capricious exercise of political power... and law became the most effective and the most valued domain for the dispensation of the new truths of colonial rule." Nicholas B. Dirks, *From Little King to Landlord: Property, Law, and the Gift under the Madras Permanent Settlement*, p.321 and p.177.

[3] Appadurai, *Worship and Conflict Under Colonial Rule: A South Indian Case,* (Cambridge University Press, 2007).

[4] Through the Regulation XIX, 1810 of Bengal Code, the British authorities had already taken legalistic permission to take control of sacred sites, like mosque, temples, etc.

[5] Anne Murphy, *The Materiality of the Past: History and Representation in Sikh Tradition* (Oxford: OUP, 2012), p.192.

[6] Appadurai, *Worship and Conflict Under Colonial Rule: A South Indian Case,* (Cambridge University Press, 2007).

[7] Appadurai, *Worship and Conflict Under Colonial Rule: A South Indian Case,* (Cambridge University Press, 2007) p.17.

[8] The Endowment Act of 1863 maintains that the "State Government shall once for all appoint one or more committees in every division or district to take the place, and to exercise the powers, of the Board of Revenue and the local agents under the Regulations hereby repealed. Constitution and duties of committees. -- Such committee shall consist of three or more persons, and shall perform all the duties imposed on such Board and local agents, except in respect of any property which is specially provided for under section 21 of this Act." Section-07, The Religious Endowment Act, 1863, http://www.indiankanoon.org/doc/377820/ .

[9] See, Anne Murphy, The Materiality of the Past: History and Representation in Sikh Tradition.

[10] Ritu Birla, *Stages of Capital: Law, Culture and Market Governance in Late Colonial India* (Duke: Duke University press, 2009), p.4.

[11] Gregory C. Kozlowsky, Muslim Endowments and Society in British India (Cambridge : Cambridge University press), p. 22.

[12] Dr. Irfan Habib mentioned this point that Mughals extended the state support to non-Muslims in his work, *The Agrarian system of Mughal India* (Delhi: Asia Publishing House, 1963). Along with Irfan Habib, one can find similar information from the set of documents published as Jhaveri's Imperial Farmans (Bombay, 1928) and documents collected by Goswamy and J.S. Grewal in *The Mughals and the Jogis of Jakhbar* (Simla: Indian Institute of Advanced Study, 1967)

[13] The support of this can be found through sayings of prophet Muhammad (PBUH), See Amir Ali, Muhammadan Law. Also the Waqf, even for the sacred site included sections for the upkeep of the caretaker of the site, like Mutwalli and salaries of the workers working in them, etc. In changing political circumstances, in different parts of India, except Punjab, Muslims turned for the concept of Waqf to maintain their lands intact. kozlowsky discussed forty such cases. See, Gregory C. Kozlowsky, Muslim Endowments and Society in British India, pp.42-43.

[14] All four school of Sunni Islam has definition of Waqf and the conditions attached therewith. Ibid.

[15] One such law that emerged out of judicial decision was that of Awqaf and such political personalities as Syed Amir Ali, FB Tayyib Jee and Muhammad Ali Jinnah remained significant in developing it.

[16] The judicial system after the issuance of the charter by Warren Hastings, as a Governor of Fort William in 1772, made British authorities collect revenue directly and settle matters of arising disputes through British Laws, while in matters pertaining to "inheritance, marriage, caste and other religious institutions," and the Company employees should use laws of Hindus and Muslims for the said purposes. Under the supreme courts, " Sadr Diwani Adalat", dealing with civil matters and "Sadr Nizami Adalat," dealing with criminal matters established. For the clarification and understanding of the "Law", the British judges, in routine, either referred cases of religious in nature to Qazis or took their help in the proceedings. See, W. H. Morley, Administration of Justice in British India (London: Norman Publishing, 1854). Also, Gregory C. Kozlowsky, Muslim Endowments and Society in British India (Cambridge : Cambridge University press), p. p. 106-107.

[17] It is interesting that Indian Muslim and non-Muslim intelligentsia, largely lawyers, found themselves bound to develop through these judicial clarification processes.

[18] W. H. Morley, *Administration of Justice in British India*, p.245.

[19] Burhan-ud-din al-Marghinani wrote this work first time in twelfth century A.D. This work gradually acquired a very important position for detailing Hanafi Laws. When British took control of Bengal in second half of eighteenth century, this work had already gained position within Mohammadan Law of a Classic. This work was translated by Charles Hamilton to facilitate the judicial work for cases relating to Mohammadan community of Bengal on the orders of the then Governor General,

Warren Hastings. Al-Marghinini, trans. Charles Hamilton, *The Hidaya or Guide; A Commentary on the Musalman Laws* (London: Bentsley Publication, 1780)

[20] Fatawai Alamgiri is a multi-volume work compiled by the orders of a Mughal king, Aurangzeb Alamgir. This work became a standard text for the Muslim judiciary to decide cases according to the collected cases till 1862. This work was translated quite late in the last decade of nineteenth century by Bailliei and Syed Amir Ali. Baillie, Neil B.E. *A Digest of Muhammadan Law* (London: Eldler Smith and Co., 1875).

[21] Kozlowsky, Muslim Endowments and Society in British India, p.132.

[22] After the removal of Wasiq Ali, the state authorities found out that the most important thing along with Imam Barah was a school that was also run by the endowment. The authorities gave more emphasis on school and gradually the school turned into a big college, Hooghley College. In the college, number of non-muslims grew higher than the muslim students because the state introduced British educational system. See, Kozlowsky, Muslim Endowments and Society in British India, p.133.

[23] "Nicety" means, for these English elites, a sense of complexity and ambiguity. The Bombay High court therefore showed intention to see the double application of Waqf in Public as well as Private usage. See, Kozlowsky, Muslim Endowments and Society in British India, p.132.

[24] The case appeared as the dispute between Phate Sahib Bibi (and Others) v. Damodar Premji. The appellant pleaded for the case mainly for the point that the land was immune to debt because of being Waqf. However, the defendant claimed his right on the disputed property because he, Damodar Premji had purchased the property. Indian Law Reports Bombay, III, 88 ff.

[25] N.B.E Baillie, A digest of Muhammadan Law, (London: Eldler Smith and Co., 1875), pp. 557-595.

[26] Ibid., p. 136.

[27] It maintains, "If a person should say, ' This my land is appropriated for such an one,' or ' on my son,' or c the poor of my kindred, being good persons,' or * orphans, and the appropriation of it is not to be reversed,' it would be no wukf, according to Moohummud, because it is for a purpose that may be cut off or fail, and is not perpetual ; but it would be a wukf, according to Aboo Yoosuf, because the making of it per- petual is not a condition with him." Ibid. pp.567-568.

[28] MacNaghtan, William Hay, *Principles of Hindu and Muhammadan Law*, ed. H. H. Wilson, (London: Williams and Norgate publishers, 1860).

[29] Calcutta Courts, XVII, 498ff and LI, vol. 340, 89.z

[30] Ibid., XVII, 510ff. The Law Lords maintained further in their decision that, "They are not called upon by the facts of the case to decide whether a gift of property to charitable uses which is only to take effect after the failure of all the grantor's descendants is an illusory gift, a point on which there have been conflicting decisions in India, (Fatima Bibi's case)... On the other hand, they (the Privy Councillors) have not been referred to, nor can they find any authority showing that, according to

Muhammadan Law, a gift is a good *wakf* unless there is a substantial dedication of the property in charitable uses at some time or other."

[31] Lord House remained part of Judicial Committee of Privy Council after getting succeeded Sir Joseph Napier for twenty years and took decisions on very important cases of the Empire, like that of hereditary principle of Hindu Law. He was liberal in his political views and pursued the principle of "simplicity" and "objectivity."

[32] Bikani Mian's case, Cal, XX, 128-129 in Kozlowsky, *Muslim Endowments and Society in British India*, p.140.

[33] Kozlowsky, Muslim Endowments and Society in British India, p.143-144.

[34] Report of the Calcutta Court, Cal, XVIII, 399 ff; of the privy council, IA, XXIII, 76 ff, and LI, vol. 382, 607 ff.

[35] Ibid., p.146.

[36] Kozlowsky, *Muslim Endowments and Society in British Indi,a* p.148.

[37] Ibid., p.144.

[38] Bombay Reports, XXXVI, 214ff.

[39] Talbot, *Punjab and the Raj* (New Delhi: Manohar Publications, 1988), p.63.

[40] The Act came after repealing the similar previous Acts of 1854, 1872 and 1878. The objective of the Act
remained to control and maintain the agricultural property (estate) for better efficiency. The Act made such a
lengthy rules for mortgaging property that it became almost impossible to change the ownership of the land. See,
THE PUNJAB COURT OF WARDS ACT, 1903, http://punjablaws.gov.pk/laws/19.html

[41] Plucknett, while tracing the history of Common Law, summarizes the spirit of Common Law as, " The strange but fascinating theories of Hobbes gave way to the reasonableness of Locke, and when a century later the French Revolution issued a challenge to all established governments, it was Burke who found an answer which served England and America equally well. That answer was an appeal to history, to experience, and to the traditional English habit of compromise and cautious reform- to what Montesquieu might have called the spirit of the common law." Theodore frank Thomas Plucknett, A Concise History of the Common Law (New Jersey: The Law book Exchange Ltd., 2007 (originally,1956)), p. 76.

[42] Nilima Bhadbhade, *Contract Law in India* (Alphen, Kluwer Law International, 2010), p.57.

[43] "But nothing herein contained affects the rules of Muhammadan law as to *Waqf*, or the mutual relations of the members of an undivided family as determined by any customary or personal law, or applies to public or private religious or charitable endowments, or to trusts to distribute prizes taken in war among the captors; and nothing in the Second Chapter of this Act applies to trusts created before the said day." See, The Indian Trusts Act, 1882, http://www.indiankanoon.org/doc/470004/

[44] Gazette of India, 1889, Part V, p. 137.

[45] The Mussalman Waqf Act got published in Punjab Gazette on 14 May 1924 with the details of forms necessary to be filled in by all the *Mutwalli* or trustees, and especially for the candidates appearing for the elections. The first elections for the provincial council had already taken place in 1920. However, after the publishing of the Act, in Punjab Gazette, the candidates appearing in the next elections for the Council had to fill in the forms duly and the list of such candidates published later on in the Gazette. The Act of 1952, later on also used the similar forms for gathering necessary information regarding the trustee of the Muslim religious spaces.

[46] W.H. Rattigan, "Religious Institutions And Waqf Property" in A Digest of Civil Law of Punjab, first published in 1880,http://punjabrevenue.nic.in/fmanu.htm

[47] Ibid. http://punjabrevenue.nic.in/cust73.htm#ch6.

[48] Act, 1923, "Definitions", clause c.
http://www.legalcrystal.com/acts/description/51269

[49] Ibid.

[50] Ibid., "Definitions", clause b.

[51] Ibid. clause (a) "Benefit" does not include any benefit which a Mutwalli is entitled to claim solely by reason of his being such Mutwalli;

[52] Ibid. section 3, clause (a)

[53] Ibid., section 3, clause (d)