

Muhammedan Law

COMPILED FROM
AUTHORITIES IN THE ORIGINAL ARABIC

VOL. 1
CONTAINING
THE LAW RELATING TO
GIFTS, WAQFS, WILLS, PRE-EMPTION
AND BAILMENT

SYED AMEER ALI

MAHOMMEDAN LAW

Tagore Law Lectures, 1884

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VOL. I

CONTAINING THE LAW RELATING TO
GIFTS, WAKFS, WILLS, PRE-EMPTION AND BAILMENT

(With an Appendix on the Law of Wakf)

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PREFACE TO THE FOURTH EDITION.

THE last edition of this work appeared in 1904. Since then various decisions of the Indian High Courts have necessitated a further examination of the rules of law applicable to the subjects under consideration. Consequently, in this edition a great deal of new matter has been added, and many of the chapters have been re-arranged. Those relating to gifts and *wakf* have been either re-written or considerably amplified, and the work has generally been brought up to date.

The prosperity and well-being of the Mussulmans of India, a matter of importance not only to the community but also to the State, depend largely, if not entirely, on the system of family benefaction or *wakf* by which the law endeavours to neutralise the effects of distribution of property under the rules of inheritance. For this reason I have given in the Appendix copious translations from recognised works of authority, bearing on that branch of the Mussulman Law.

Like other legal systems, the Mahomedan Law requires a certain amount of critical and analytical study. Unfortunately, such study has fallen greatly into disuse; even its professed expounders scarcely attempt to deal with or discuss the subject in a manner satisfactory to the critical lawyer. When passages are cited in the Courts of Justice from works on Mahomedan Law, no reference is made to their character or relative authority, or to the evolution of the principle involved in the discussion. Nor do the Courts endeavour to divert the arguments into that channel.

I have tried in these pages to meet the difficulty to which I have referred, and to assist, in some degree, the practical lawyer

as well as the Judge administering the law, by indicating the position of the authorities and the development of the system.

AMEER ALI.

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PREFACE TO THE SECOND EDITION.

THE law relating to Gifts, *Wakfs* and Wills formed the subject of my Tagore Law Lectures for 1884, and, to some extent, the present work may be regarded as a reprint of those lectures, but it possesses several features of its own, which, I venture to think, entitle it to a higher position than that of a mere second edition. The Introduction has been altered and considerably enlarged; the Shiah Law relating to life-grants and limited estates in general is fully discussed; the Chapters dealing with the Hanafi Law relating to *Wakfs* have been almost completely re-written with quotations from the most important authorities; those dealing with the Shiah Law of *Wakf* have been amplified; and the subject of Pre-emption and Bailment has been added. The Chapters in the old Lectures on the Hanafi Law of *Wakf* were founded chiefly on the *Radd-ul-Muhtâr* and the *Fatâwai Alamgiri*. For the present work I have consulted nearly thirty recognised standard authorities and have embodied their statements in my compilation. Additional extracts are given in the Appendix.

The law relating to *Wakfs* is, to the Mahommedans of India from every point of view, the most important branch of their legal system. Not only does it form an essential part of their religion, but the existence of their principal families is dependant upon it. I have, therefore, endeavoured in these pages, to the best of my ability, to state clearly and precisely what the Mussalman Law is.

In some places I have rendered the term "*wakf*" as trust, in others, as dedication or consecration. Ryan, C. J., in the case of *Doe dem Jaun Beeber v. Abdollah Barber*, used the latter expression, and M. Tornouw, in his *Droits Musulman*, has done the same. Properly analysed, it will be found that the word *wakf* combines all the ideas conveyed by these different expressions.

The Mussulman Law holds that there can be no *milk* (property) without a *mâlik* (proprietor), that all property owned by human beings is God's free gift to them ; and that when a man creates a *wakf*, he transfers the *milk* (the ownership in " the substance of the thing ") to the Almighty, on the condition that the *usufruct* should be applied to the benefit of His creatures, whoever they may be. It will thus be seen that the word combines the elements of trust, dedication and consecration. From one point of view, God is the owner of the *substance (asl)*, the recipients of the benefaction being His creatures ; in another sense, He is the trustee on their behalf. The *mutwalli* is a mere manager ; he has no power of mortgage, sale or lease over the *wakf* property, even for a necessity, save and except so far as is provided in the *wakf-nâmah*. His position is more analogous to that of a manager of a minor's estate than to that of a trustee in the technical sense. I mention this here in order to prevent any misapprehension.

AMEER ALI.

CALCUTTA
1892.

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