

## **The Judicial Committee of the Privy Council and Islamic Endowments (Awqāf)**

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The waqf (plural awqāf) is an important Islamic institution. Historically, from mosques, schools and hospitals to markets and inns, most of the public sector was financed through Islamic endowments (awqāf). The Judicial Committee of the Privy Council decided about one hundred cases on Islamic endowment related issues during a period stretching over more than a century. The first such case was decided in 1840 and the last in 1968. These cases came from all over the Muslim populated territories of the British Empire such as India, Africa, Ceylon (Sri Lanka), Palestine, Burma and Mauritius. A large number of these cases originated in various provinces of India. There were about a dozen cases in which awqāf were established by Hindus in favour of their temples. This was due to the fact that under classical Islamic law a non-Muslim could also establish an Islamic endowment (waqf).

Instead of using the long name, the Judicial Committee of the Privy Council, a shorter expression, Privy Council, was commonly used, especially by lawyers. In its decisions, the Privy Council acted as the highest court of appeal in the British Empire. It performed the crucial function of making the law uniform in the Empire as its decisions had binding precedential value same as the decisions of the erstwhile House of Lords (replaced by the UK Supreme Court) upon all lower courts. The Privy Council decisions contributed towards the development of several legal principles in Islamic endowment law. Based on these principles, the subject matter of Islamic endowments was extended to new forms of immovable property, such as shares of joint stock companies and securities issued by the state. Under classical Islamic endowment law, only land could be the valid subject matter of an endowment. The Privy Council decisions also introduced new administrative strategies aimed at the better governance of Islamic endowments. For doing this, the judges of the Privy Council were guided by the principles of English trust law. For instance, in many cases the Privy Council approved drawing of management schemes for Islamic endowments.

A large number of cases decided by the Privy Council involved disputes regarding control of religious institutions such as mosques and shrines. In most of the cases parties were Muslims and were members of the same family. In some cases, the dispute involved parties belonging to different Muslim sects. In a few cases, the parties belonged to different religions. The Privy Council liberally construed Muhammadan law (Shar'ia or Islamic law) in a case involving a dispute between different Muslim sects. [*Fazl Karim v Maula Baksh* [Bengal] [1891] UKPC 13 *per* Hobhouse]. In this case, the Privy Council refused to remove a prayer leader of a mosque for his adopting a different style of saying prayers according to Ahle hadith sect. This was the endorsement of the decision of the first Muslim judge of an Indian High Court—Syed Mahmood—the son of the leading Muslim reformer, Sir Syed Ahmad Khan.

In a famous case of *Masjid Sheed Ganj*, the decision of the Privy Council resolved a dispute between Muslims and Sikhs in 1942. In this case, the claim of Muslims over an ancient mosque situated in Lahore, the provincial capital of the Punjab, was

rejected on the ground of lapse of time. The mosque was occupied by Sikhs during their rule over the Punjab in the late eighteenth century. The presence of Sikh temple (Gurdwara) at that place to date remains the lasting legacy of the Privy Council.

One of the most important decisions on Islamic endowments was delivered by Lord Arthur Hobhouse in 1894 in the famous *Abul Fata* case. In its judgment, the Privy Council held that an Islamic family endowment was invalid under Muhammadan law. Such an endowment could only be valid when substantial benefits were allocated for charitable purposes. The most salient feature of this decision was that it purported to be based on the construction of Islamic law. In fact, the main principle underlying this case was well-known English rule against perpetuities. This rule discourages the creation of perpetual interests in the land because it stops the land from market circulation and is thus economically inefficient. Interestingly, the decision in *Abul Fata* did not appear suddenly. Rather five years earlier, Lord Hobhouse had questioned the validity of Islamic family endowments in the *Ahsanullah* case for their incompatibility within the Islamic legal system because they were in conflict with the Islamic gifts law and inheritance law. The decision in *Abul Fata*, however, was not well received by the Muslims of India. Therefore, a statute was passed in 1913 in order to validate Islamic family endowments in India. However, the Privy Council refused to give this statute a retrospective effect. Therefore, another statute was passed in 1930 to give the 1913 Act retrospective effect.

The controversy generated by the Privy Council decision in the *Abul Fata* case showed that its judges (called Councillors) were unable to understand indigenous laws and legal norms in India. Therefore, in the early twentieth century three Indian judges Ameer Ali, Shadi Lal and D.F Mulla were appointed as the Councillors. This ensured indigenous representation at the Privy Council. These Indian judges played an important role in bringing their knowledge and experience of the Indian legal system at the Privy Council. Previously, only retired British judges served as the Councillors.

As the highest court of appeal, the Privy Council had an advantage over the House of Lords. Unlike the latter, it was not bound by its own previous decisions. Therefore, in *Ramanadan Chettiar v Vava Levvavi Marakayar*, decided in 1916, the Privy Council held that family members could benefit from the endowed property if that was the secondary and subsidiary object of a charitable Islamic endowment. In a case decided in 1951, however, the Privy Council refused to validate a Muslim family endowment by declaring that it was bound by its decision in the *Abul Fata* case.

In conclusion, the decisions of the Privy Council proved to be a mixed blessing for Islamic endowments in British India. They caused the development of new legal principles which responded to changing circumstances and ensured better management of these endowments. At the same time, these decisions limited the use of Islamic family endowments and tried to create a distinction between public/private and religious/secular endowments. In the absence of a Federal Court in India until the very end of colonial rule, the role of the Privy Council in developing uniform legal principles was vital. The fact that some of its decisions proved to be controversial does not overshadow its historical importance as the highest court of appeal in the British Empire.

For the full text of these judgments please [click here](#)

**Table of Judicial Committee of the Privy Council Judgments on Awqāf**

<b>Sr No</b>	<b>Name</b>	<b>Date of Creation</b>	<b>Beneficiaries</b>	<b>Type</b>	<b>Decision</b>
<b>Bengal</b>					
1	<i>Jewun Doss Sahoo v Shah Kubeer-Ood-Deen</i> [Bengal] [1840] UKPC 20	Royal grant of 14 <sup>th</sup> March 1717	Khankah	Official Grant	Waqf validated, appeal dismissed
2	<i>Bishen Chand Basawut v Syed Nadir Hossein</i> [Bengal] [1887] UKPC 45	1859	Taziadari, water supply and family members	Substantially Public	Waqf validated, appeal dismissed.
3	<i>Sheik Mahomed Ahsanulla Chowdhry v Amarchand Kundu</i> [Bengal] [1889] UKPC 56	1864	Mosque, madrasa and family members	Fictitious	Waqf invalidated, appeal dismissed.
4	<i>Fazl Karim v Maula Baksh</i> [Bengal] [1891] UKPC 13; ILR 18 Cal, PC 448	1858	Mosque	Pure public	Appeal allowed.
5	<i>Ismail Ariff v Mahomed Ghouse</i> (Fort William (Bengal)) [1893] UKPC 8	1850	Mosque but sons were mutawallis.	Substantially public	Appeal granted without deciding the validity of the waqf.
6	<i>Abul Fata Mahomed Ishak v Russomoy Dhur Chowdhry</i> (Fort William (Bengal)) [1894] UKPC 64	1868	Family members but ultimate beneficiaries were the poor	Pure Private	Waqf invalidated, appeal dismissed.
7	<i>Nilratan Mandal v Ismail Khan Mahomed</i> (Fort William (Bengal)) [1904] UKPC 48	1855	Hooghly imāmbāra	Pure public	Tenure of waqf properties held valid, appeal allowed
8	<i>Khajeh Soleman Quadir v Nawab Sir Salimullah Bahadur</i> (Fort William (Bengal)) [1922] UKPC 23	1846, 1868 and 1881	Family members	Pure private	Waqf held valid, appeal allowed.
9	<i>Haji Abdur Rahim v Narayan Das Aurora</i> (Fort William (Bengal))	1894	Mosque and legal heirs	Substantially public	Waqf validated, appeal

	[1922] UKPC 112				allowed.
10	<i>Abdur Rahim v Syed Abu Mahomed Barkat Ali Shah</i> (Fort William (Bengal)) [1927] UKPC, 113	Ancient	Mosque	Pure public	Appeal allowed.
11	<i>Nawab Khajeh Habibullah Saheb v Raja Janaki Nath Roy</i> (Fort William (Bengal)) [1929] UKPC 98 [this is linked to <i>Khajeh Solehman v. Salimullah Bahadur</i> (1922) 49 IA 153 and is decided accordingly]	1846, 1868 and 1881	Family members	Pure private	Appeal dismissed.
12	<i>Syed Mahammed Mazaffar-Al-Musavi v Bibi Jabeda Khatun</i> (Fort William (Bengal)) [1930] UKPC 1	1772 and 1773	Property included a mosque	Official grant	Appeal dismissed.
13	<i>The Honourable Nawab Habibula v The Commissioner of Income-tax, Bengal</i> (Fort William (Bengal)) [1942] UKPC 34	1854	Charitable purposes such as poor, mendicants, indigent and mosque but hereditary mutawalli	Substantially public	Appeal dismissed.
14	<i>Hafiz Mohammed Fateh Nasib v Sir Swarup Chand Hukum Chand a firm</i> (Fort William (Bengal)) AIR 1948 PC 76: [1947] UKPC 84	First waqf was created in 1876, second in 1880 and third in 1908	Family members	Substantially private	Appeal dismissed.
<b>Punjab</b>					
15	<i>The Court of Wards for the Property of Makhdum Hassan Bakhsh v Ilahi Bakhsh</i> (Punjab) [1912] UKPC 88	The is waqf by long use.	Graveyard	Pure public	Appeal dismissed.
16	<i>Nawab Bahadur Muhammad Rustam Ali Khan v The Municipal Committee of Karnal City</i> (Punjab) [1919] UKPC 122	Unknown	A right of public way on a private property	Pure public	Appeal allowed.

17	<i>Khawaja Muhammad Hamid v Mian Mahmud</i> (Punjab) [1922] UKPC 88	Around 1800	Khankah	Pure public	Appeal allowed.
18	<i>Balla Mal v Ata Ullah Khan</i> (Lahore) [1927] UKPC 61	1907	Family members	Pure private	Waqf invalidated, appeal dismissed with costs.
19	<i>Musammat Hussain Bibi v Sayad Nur Hussain Shah</i> (Lahore) [1928] UKPC 17	Unknown	Shrine and mosque	Pure public	Mutawalli removed, appeal dismissed with costs.
20	<i>Musammat Ali Begam</i> (since deceased) now represented by <i>Saiyed Mohammad Raza v Badr-ul-Islam Ali Khan</i> (Lahore) [1938] UKPC 22	1887	Sarai (rest house) with private interests	Substantially public	Waqf validated on some properties, appeal partially dismissed with one half costs.
21	<i>Sain Maule Shah v Ghane Shah</i> deceased (now represented by <i>Fatch Mohammed</i> ) (Lahore) [1938] UKPC 29	Unknown	Shrine	Pure public	Appeal allowed with costs.
22	<i>Mohammad Ismail v Hanuman Parshad</i> (Lahore) [1938] UKPC 63	1926	Family members	Pure private	Waqf invalidated, appeal dismissed.
23	<i>The Mosque known as Masjid Shahid Ganj v Shiromani Gurdwara Parbandhak Committee, Amritsar</i> (Lahore) [1940] UKPC 21	1772	Mosque	Pure public	Appeal dismissed with costs.
24	<i>Beli Ram &amp; Brothers v</i>	1917	Family members	Pure private	Waqf

	<i>Chaudri Mohammad Afzal</i> (Lahore) [1948] UKPC 35				validated, appeals dismissed.
25	<i>Haji Abdul Razaq v Sheik Ali Bakhsh</i> (Lahore) [1948] UKPC 38	1855	Charitable institution, but descendants are mutawalli.	Substantially private	Appeal allowed with costs.
<b>Oudh</b>					
26	<i>Nawab Umjad Ally Khan v Mohumdee Begum</i> (Oudh) 11 MIA 517; [1867] UKPC 41	1848	The Radd-i-Mazalim fund figured as a “family religious and charitable fund.”	Substantially public	Waqf validated, appeal dismissed.
27	<i>Prince Suleman Kadr v Darab Ali Khan</i> (Oudh) [1881] UKPC 21	1866	Imāmbāra and servants	Substantially public	Waqf validated, appeal dismissed.
28	<i>Baker Ali Khan v Anjuman Ara Begam</i> (Oudh) [1903] UKPC 13	1890	Imāmbāra and descendants mutawalli generation after generation	Substantially public	Shia testamentary waqf validated, appeal allowed.
29	<i>Mizra Sajjad Husain v Nawab Wazir Ali Khan</i> (Oudh) [1912] UKPC 41	1886, 1898 and 1902.	Tomb	Pure public	Waqf invalidated, appeal dismissed.
30	<i>Mirza Fida Rasul v Mirza Yakub Beg</i> (Oudh) [1924] UKPC 89	1911	Family members	Substantially private	Waqf validated, appeal dismissed.
31	<i>Musammat Farid-un-nisa v Munshi Mukhtar Ahmad</i> (Oudh) [1925] UKPC 60	1914	Mosque and rituals but mutwallis to draw salaries.	Substantially private	Waqf invalidated, appeal allowed.
32	<i>Maharajah Sir Mohammad Ali Mohammad Khan, Khan Bahadur v Musammat Bismillah Begam</i> (Lucknow) [1930] UKPC 76	1916	Family members	Fictitious	Waqf invalidated, appeal allowed.
33	<i>Nawab Mirza Mohammad Sadiq Ali Khan v Nawab Fakr Jahan Begam</i> ((Lucknow) [1931] UKPC 90	Origins uncertain earliest mention 1857	The Radd-i-Mazalim fund figured as a “family religious and charitable fund.”	Substantially public	Waqf validated, appeal dismissed.
34	<i>Sardar Nisar Ali Khan</i>	1892	Not available	Substantially	Appeal

	<i>v K. B. Sardar Mohammad Ali Khan</i> (Lucknow) [1932] UKPC 32			public	dismissed.
35	<i>Ballabh Das v Nur Mohammad</i> (Lucknow) [1935] UKPC 89	Before 1868	Graveyard	Pure public	Appeal dismissed.
36	<i>Mahabir Prasad v Syed Mustafa Husain</i> (Lucknow) [1937] UKPC 45	1922	Family members	Pure private	Waqf invalidated, appeal allowed.
<b>North Western Province</b>					
37	<i>Musammat Mujib-un-Nisa v Abdul Rahim</i> (Allahabad) [1900] UKPC 65	1889	Family members	Pure private	Waqf invalidated, appeal dismissed.
38	<i>Maulvi Saiyid Muhammad Munawwar Ali v Razia Bibi</i> (Allahabad) [1905] UKPC 16	1881	Family members	Pure private	Waqf invalidated, appeal dismissed.
39	<i>Nawab Bahadur Muhammad Rustam Ali Khan v Nawab Maulvi Mushtaq Husain</i> (Allahabad) [1920] UKPC 58	1908	Charitable purposes including Aligarh College.	Substantially public	Appeal dismissed.
40	<i>Kunwar Muhammad Abdul Jalil Khan v Khan Bahadur Muhammad Obaid Ullah Khan</i> (Allahabad) [1929] UKPC 61	1909	Mosque, tomb, relatives, and family members.	Substantially private	Waqf validated, appeal allowed.
41	<i>Ghulam Mohammad v Shaikh Ghulam Husain</i> (Allahabad) [1931] UKPC 113	Approximately in 1837	Family servants	Substantially public	Waqf invalidated, appeal allowed.
42	<i>Rai Bahadur Sahu Har Prasad v Shaikh Fazal Ahmad</i> (Allahabad) [1933] UKPC 5	1913	Family members	Substantially private	Waqf invalidated, appeal allowed.
43	<i>Musammat Allah Rakhi v Shah Mohammad Abdur Rahim</i> (Allahabad) [1933] UKPC 107	Sometimes in the Mughal era.	<i>Dargah</i> (shrine)	Pure public	Appeal dismissed.
44	<i>Zafrul Hasan v Farid-Ud-Din</i> (Allahabad) [1944] UKPC 19	1915	Settlor and his family members	Substantially private	Waqf validated, appeal dismissed.

45	<i>Saiyed Mazhar Hussain v Rao Bahadur Adiya Saran Singh</i> (Allahabad) [1947] UKPC 61	1813	Mosque	Pure public	Appeal allowed with costs.
<b>Bombay</b>					
46	<i>Abdul Gafur v Nizamudin</i> (Bombay) [1892] UKPC 35	1838	Family members	Pure private	Waqf invalidated, appeal dismissed.
47	<i>Ruhulla alias Hakim Hamad v Hassanalli Degumia</i> (Bombay) [1928] UKPC 41	1917	Mosque and mutawalli	Substantially public	Waqf validated, appeal dismissed.
48	<i>Mahomedally Adamji Peerbhoy v Akberally Abdulhussein Adamji Peerbhoy</i> (Bombay) [1933] UKPC 98	Unknown	Mosque, sanatorium and rest house	Pure public	Appeal dismissed.
49	<i>Ali Mohomed Adamalli v The King-Emperor</i> (Bombay) [1945] UKPC 30	unknown	Charitable and religious	Pure public	Appeal dismissed with costs.
<b>Behar</b>					
50	<i>Bibi Akhtari Begam v Diljan Ali</i> (Patna) [1922] UKPC 113	1873	Mosque and Khankah but family members to be mutawalli	Substantially public	Appeal allowed.
51	<i>Abadi Begum v Mt. Bibi Kaniz Zainab</i> (Patna) [1926] UKPC 92; 54 IA 33	1882, 1897 and 1907	Mosque and imāmbāra	Substantially private	Waqf invalidated, appeal dismissed.
52	<i>Bibi Aesha v Mohammad Abdul Kabir</i> (Patna) [1931] UKPC 41	Not available	Not available	Not available The validity of the waqf was not disputed in this case. A daughter was deprived of her inheritance share during the lifetime of the father.	Appeal allowed.
53	<i>Syed Ali Zamin v Syed Akbar Ali Khan alias Syed Chhotey Nawab since deceased</i> (Patna) [1937] UKPC 32	1917	Mosque and imāmbāra	Substantially public	Waqf validated, appeals allowed.
<b>Central Provinces</b>					
54	<i>Muhammad Raza v</i>	1840	Imāmbāra	Official grant	Grant by a



	<i>Syed Yadgar Hussain</i> (The Court of the Judicial Commissioner Central Provinces) [1924] UKPC 7				Hindu raja; was held not to be a valid waqf, appeal dismissed.
55	<i>Hasanali v Mansoorali</i> (Nagpur, Central Provinces) [1947] UKPC 83	School was established in 1902, date of the establishment of tombs is unknown.	School and tombs of Bohra community.	Pure public	Appeal allowed.
<b>Madras</b>					
56	<i>Mutu K. A. Ramannadan Chettiar v Vava Levvai Marakayar</i> (Madras) [1916] UKPC 107	1893	Performance of <i>fateha</i> , almsgiving and family members.	Substantially private	Waqf validated, appeal dismissed with costs.
<b>North West Province</b>					
57	<i>Sardar Abdul Rahman Khan v Sardar Mohd Ashraf Khan</i> (North West Frontier) [1943] UKPC 53	Not available	Family members	Official grant	Appeal dismissed with costs.
<b>Sind</b>					
58	<i>Pir Ahsanullah Shah v Pir Ziauddin Shah</i> (Sind) [1937] UKPC 4	Not available	Dargah	Pure public	Appeal dismissed with costs.