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A Study of the Provision of Gift under the Transfer of Property Act, 1882

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Abstract

The Transfer of Property Act's Chapter VII contains the 'Gifts'-related legal provisions. It is described in accordance with section 122 of the aforementioned statute. A gift is typically understood to be the willing transfer of property ownership without payment or any consideration of monetary worth from the sender. Moving or immovable property may be involved, and the parties may be two live people, or the transfer may only take place after the death of the transferor. This section explains the prerequisites for a gift's legality, such as the need for the donor to be competent to make the gift and the recipient to accept it. Except in cases where the donee passes away before accepting the gift or the gift is not registered, a gift is irrevocable once it has been made. The paragraph further mentions that presents can be given orally in front of witnesses or through a registered gift deed. The provision further emphasises that stamp duty and registration costs must be paid for donations of real estate.

KEYWORDS: Gift, Transfer of Property Act, Movable Property, Immovable Property, Ownership.

Introduction

Under the Indian Transfer of Property Act of 1882, a gift is termed as the voluntary transfer of property from one to another without any consideration or payment in return. Section 122 of the Act defines gift as the transfer of a moveable or immovable property that exists when the gift is to be transferred. Such transfers must be voluntary and without regard for the consequences. The transferor is referred to as the donor, and the transferee is referred to as the

donee. The recipient must accept the gift. Because testamentary transfers are not covered under Section 5 of the Transfer of Property Act, only transfers that are inter vivos are considered as gifts under the act.

The Act establishes certain essential requirements for the validity of a gift. First and foremost, the donor must intend to make a gift. Second, property must be transferred from the donor to the donee and accepted by the latter. Third, the gift must be given freely, without coercion or undue influence. Finally, if the gift involves immovable property or the value of the property exceeds a certain threshold, it must be made in writing and registered. The Transfer of Property Act also places limitations on the donor's ability to make gifts. A gift made by an insolvent person or a Non-Hindu, may be void under certain conditions. A gift made with the intent of defrauding creditors or others may also be declared void. If the essentials of the gift are not properly implemented, the gift is bound to be revoked or declared void by law. The concept of gift is important under the Act because it plays an important role in the transfer of property from one person to another. Individuals must understand the legal requirements and restrictions associated with making gifts in order for their gifts to be valid and legally binding.

Research Objective

1. To understand the concept of gift and the provisions surrounding gift under Transfer of Property Act, 1882
2. To know the essentials, types and conditions of gifts.
3. To know the exceptions of gifts.

Research Question

- Q1. What is the concept of gift and the provisions surrounding gift under Transfer of Property Act, 1882?
- Q2. What are the essentials of a valid gift?
- Q3. What are the exceptions to a gift?
- Q4. What are the types of gifts?

Scope

Although the concept of gifts has been interpreted in various ways by other researchers, the present research on the concept of gifts under the transfer of property act, has achieved a well-

defined and clear understanding on what is types of the gifts, parties of the gifts, essentials of the same. The present topic is broad and has multiple aspects that can be covered. For a better idea, the researchers have broadened the scope by analysing case laws that have played a major role in the formation of the legal background of the law.

Research Methodology

This study employs a qualitative research design, with an emphasis on case law analysis and literature review. The research methodology entails conducting a thorough review of existing case laws concerning the concept of gifts under the Transfer of Property Act of 1882, as well as analyzing the legal requirements and restrictions pertaining to gifts.

Literature Review

The five main types of transactions covered by the Transfer of Property Act, 1882 are sale, mortgage, lease, exchange, and gift. Section 122 of the Act governs the concept of 'gift'. It defines a gift as the uncompensated voluntary transfer of specific existing movable or immovable property from one person, known as the donor, to another, known as the donee, and accepted by or on behalf of the donee. If the recipient dies before accepting the gift, the gift is rendered null and void. As a result, when a gift is made, one person's property is unilaterally transferred to another without payment. Furthermore, as the legislation states, the Section only applies to inter vivos gifts, or gifts made between living people. Gifts and inheritance from a decedent are not covered.¹ Donors must be knowledgeable. That is, you must be both knowledgeable and authorized to donate. The donor is considered able to donate if he is legally competent. This means that the donor must be legally competent at the time of donation. Legal entities are associations, corporations, and corporations that are registered and permitted to donate. Gifts from minors or the insane are not accepted. To contract, Donee no longer wishes to be able. He will be any living man or woman at the time of the donation². The mere

¹ Rajeev, A. (2022) Gift under transfer of Property Act: Legal Provisions & Important Case Laws, Gift Under Transfer Of Property Act: Legal Provisions & Important Case Laws . LAWYERSCLUBINDIA. Available at: <https://www.lawyersclubindia.com/articles/gift-under-transfer-of-property-act-legal-provisions-important-case-laws-15012.asp>

² Goyal, S. (2022) Authorization of gifts under transfer of property act, LawBhoomi. Available at: <https://lawbhoomi.com/authorization-of-gifts-under-transfer-of-property-act/> (Accessed: May 1, 2023).

registration of a gift does not refer to the delivery of property, and it is certainly insufficient to pass the title. However, there is an exception depending on whether physical delivery of possession is possible or not. The Act modified the Hindu law of gift; delivery of possession is no longer required for the legality of a gift, according to Section 123 of this Act. However, in cases where the Act cannot be enforced, a gift may be made orally or in writing. Section 123 of the Act focused on delivery of possession rather than acceptance, as stated in section 122; mere registration by the donor does not constitute proof of acceptance by the donee. Acceptance must, of course, be proven as a separate and independent fact. Section 123 of the Act states: "Gift of immovable property, the transfer must be enforced by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses, and gift of movable property may be effected by a registered deed signed as aforesaid or by delivery. It must be kept in mind that on the delivery of the gift deed to the donee even before registration, acceptance of the gift becomes complete, and close the door to the donor to revoke the gift. A gift can only be made in the ways specified in the aforementioned section. No gift made by a Hindu will be valid under this section if a registered instrument is not present."³

What is a Gift?

A gift is defined in the Transfer of Property Act under Section 122 as the transfer of a moveable or immovable property that already exists. Such transfers are required to be made voluntarily and without regard for consideration. The transferor is called as the donor, and the transferee is termed as the donee. The recipient must accept the gift. In the case of Mt. Brij Devi v. Shiva Nanda Prasad & Ors⁴ the court correctly upheld the defendant's claim and ruled that "*the gift deed cannot be revoked by the ancestor who made the gift deed in favour of Jain Bulaqi because the transfer was unconscionable in the first place because it restricted the donee's ability to alienate such property completely.*" This was the first major decision that correctly upheld the donee's claim and correctly interpreted the law relating to sections 10 and 126.

parties involved in a gift transfer

- **Donor:** he/she needs to be legally competent, which means he must have the capacity as well as the right to make the gift. If the donor is competent to contract, he has the capacity

³ Hanif, M.A. (2020) A Study on the Transfer of Property By Way Of Gift under Hindu, Muslim and Statutory Laws of Bangladesh. IOSR Journal of Humanities And Social Science (IOSR-JHSS). Available at: <https://www.iosrjournals.org/iosr-jhss/papers/Vol.25-Issue10/Series-2/12510026373.pdf>

⁴ Mt. Brij Devi vs Shiva Nanda Prasad & Ors, AIR 1939 All 221

to make the gift. This implies that the donor must be of legal age and of sound mind at the time of making the gift. Juristic persons are registered societies, firms, and institutions who have the authority to make gifts. Gifts made by minors or insane people are void. In addition to capacity, the donor must have the legal right to make a gift. Because a gift is a transfer of ownership, the donor's right is determined by his ownership rights in the property at the time of the transfer.

- **Donee** does not require being legally competent to enter into a contract. He could be anyone alive at the time the gift is made. A gift made to an insane person, a minor, or even a child in the mother's womb is valid if lawfully accepted on his or her behalf by a competent person. Firms, institutions, or corporations are considered competent donees, and gifts made to them are valid. However, the donee must be a person who can be identified. The gift to the general public is null and void. If known, the donee may be two or more people.

What constitutes a valid gift?

- Transfer of ownership from one person to another:** The transferor, i.e., the donor, must relinquish absolute ownership of the property to the transferee, i.e., the donee. The transfer of absolute interests entails the transfer of all property rights and liabilities. To be able to make such a transfer, the donor must be the legal owner of the property in question. By gift, nothing less than ownership may be transferred. The gift, like other transfers, may, however, be made subject to certain conditions.
- Must be an existing property:** The property that is the subject of the gift may be of any kind, movable or immovable, tangible or intangible, but it must exist at the time of the gift and be transferable under Section 5 of the Act. Any gift of future property is deemed void. Also void is the gift of *spes successionis* (expectation of succession), or the mere chance of inheriting property, or the mere right to sue.
- Transfer must be without consideration:** A gift must be gratuitous, which means that the property's ownership must be transferred without any consideration. Even a negligible property or a very small sum of money given by the transferee in exchange for the transfer of a large property would result in a sale or an exchange. Consideration shall have the same meaning as defined in Section 2(d) of the Indian Contract Act for the purposes of this section. The consideration is pecuniary, i.e. monetary in nature. Mutual love and affection are not monetary consideration, so property transferred in exchange for love and affection is a transfer without consideration, and thus a gift. A gift is a transfer of property made in exchange for 'services' rendered by the donee. However, a property transferred in exchange

for the donee taking on the donor's liability is not gratuitous, and thus it is not a gift, because liabilities evolve pecuniary obligations.

- d) **Transfer must be voluntary with free consent:** The donor must make the gift voluntarily, that is, with his own free will and consent, as is free consent. The donor has complete freedom to make the gift without the use of force, fraud, coercion, or undue influence. The will of the donor in carrying out the deed of the gift must be free and independent. A donor's voluntary act also implies that he or she executed the gift deed with full knowledge of the circumstances and nature of the transaction. The burden of proving that the gift was made voluntarily and with the donor's free consent falls on the donee.
- e) **Must be accepted by the donee:** A gift needs to be accepted by the donee. Property cannot be gifted to someone without their consent. As with non-beneficial property or onerous gifts, the donee may refuse the gift. Onerous gifts can be referred to those in which the burden or liability exceeds the subject matter's actual market value. As a result, accepting the gift is required. Such acceptance can be expressed or implied.

Modes of Making a Gift

(a) Immovable Property

In the case of immovable property, regardless of its value, registration of the transfer is required. Before registering a document, including a gift-deed, the transaction must be in written form, signed by the donor, witnessed by two legally competent witnesses, and duly stamped. The Apex Court ruled in the case of *Gomtibai v. Mattulal*⁵ that *“the gift of immovable property is incomplete in the absence of a written instrument executed by the donor, attestation by two witnesses, registration of the instrument, and acceptance by the donee. All conditions must be met because the doctrine of partial performance does not apply to gifts. A donee cannot defend his possession if he is evicted due to an unregistered gift-deed. Regarding the registration requirement, keep the following in mind:*

In cases of gifting of immovable property registration is necessary; however, the gift is not suspended until registration. A gift may be registered and made legally enforceable even after the donor's death, provided that all of the essential elements of the gift are present.

⁵ *Gomtibai vs Mattulal*, AIR 1997 SC 127

The registration will not validate the gift if the necessary elements of a valid gift are missing. The registration will not validate the gift if the necessary elements of a valid gift are missing.”

According to Section 123, there is no delivery of possession necessary in the case of an immovable gift. The court in *Renikuntla Rajamma v. K. Sarwanamma*⁶ held that “*the mere fact that the donor retained the right to use the property during her lifetime did not affect the transfer of ownership from herself to the donee because the gift was registered and accepted by the donee.*”

(b) Movable Property

In the instances of moveable property, transaction may be completed by the transfer of possession. Registration is not required in such cases. The delivery of possession is valid regardless of the value of the property. The nature of the property determines the mode of delivery. The only requirement is that title and possession be transferred to the donee.

(c) Actionable Claims

Section 3 of the Act defines actionable claims. It could be unsecured money debts or the right to claim movables that the claimant does not own. Beneficial interests in movables are actionable claims. As a result, they are movable intangible properties. Section 130 of the Act governs the transfer of actionable claims. Actionable claims may be transferred as a gift through the execution of a written instrument signed by the transferor or his duly authorized agent. It is not necessary to register or deliver possession.

Gifting Future Property

Gifting of a property that would exist in the future is essentially a legally unenforceable promise. As a result, future property gifts are void under Section 124 of the Act. If a gift includes both the present as well as the future property, i.e., one property exists at the time of the gift but the other does not, the entire gift will not be considered void. Only the portion pertaining to future property is declared null and void. A gift of future income from a property before it has accrued is also void under the aforementioned section.

⁶ *Renikuntla Rajamma vs K. Sarwanamma*, (2014) 9 SCC 445

Provision relating to Onerous Gifts

Gifts that are more of a liability than an asset are referred to as onerous gifts. 'Onerous' is a synonym for 'burdened'. As a result, a property is said to be onerous when its obligations outweigh its benefits. When such a gift is given, it is referred to as an onerous gift, or a non-beneficial gift. Such gifts are subject to rejection by the donee.

The recipient is not free to accept the other properties and reject the onerous element of a single gift that comprises multiple properties, one of which is an onerous property, as stated in Section 127. This rule is founded on the idea that whoever accepts the advantage of a transaction must also accept the associated burden, which is known as the "Qui sentit commodum sentire debet et onus" principle. The donee is therefore required to make a choice when two properties, one burdensome and the other wealthy, are delivered as presents to them in the same transaction. He has the option of accepting the gift and the burdensome property or completely rejecting it. If he decides to accept the favourable portion of the present, he must also accept the burdensome portion. A single transfer, however, is an essential part of this Section. It is only when both the troublesome and lucrative properties are sold at the same time that a combined acceptance or rejection of the duty is required.

When a minor receives a burdensome gift and accepts it, they have the right to return it once they reach the legal drinking age. The gift is his to accept or reject when he reaches adulthood; the donor cannot take it back until the donee rejects it.

Revocation of gifts

In Section 126 of the Act, the requirements for a conditional gift are listed. The donor may only make a gift subject to a few conditions that could lead to it being stopped or cancelled, and the provisions of Section 126 must be observed. This Section outlines two methods for cancelling gifts, which are only subject to cancellation for certain reasons.

Revocation by mutual agreement

A gift that is subject to a condition established by mutual agreement between the donor and donee is one that will be suspended or revoked upon the occurrence of an event that is independent of the donor's will. It must include the following components:

- The requirement must be a component of the identical transaction; it may be stated in the gift deed itself or in a different document that is also a part of the identical transaction.
- The requirement must be made explicit.
- These requirements must be in accordance with the legal guidelines established for conditional transfers. For instance, Section 10 of the Transfer of Property Act declares unlawful any clause that forbids the alienation of real property.
- A gift's revocation requirements cannot be determined exclusively by the donor's will.
- A gift that can be revoked at the donor's discretion is invalid, even if both parties consent to it.
- The condition must be accepted by both the donor and the donee.

Withdrawal by the rescission of the contract

Such a transfer being a transfer requires a contract before a gift. This pact may be made explicitly or subliminally. Without a doubt, if the earlier agreement is void, the future transfer will take place. As a result, any reason that allows for the cancellation of a contract may be used to revoke a gift in accordance with Section 126. For instance, Section 19 of the Indian Contract Act gives the party whose consent was coerced, coerced, excessively influenced, misrepresented, or fraudulent the authority to void the agreement. A gift can therefore be revoked by the donor if it wasn't provided willingly, that is, if the donor's assent was obtained through coercion, undue influence, misrepresentation, or force.

The agreement can only be withdrawn by the donor; but, following the donor's death, the legal heirs of the donor may initiate a lawsuit to have the agreement revoked.

Exceptions

The entirety of the Act's chapter on gifts is accepted as not applying to presents made in accordance with Section 129 of the Act. Those are:

- **Donations mortis causa:** These are contributions given while thinking about passing away.
- **Muslim-gifts (*Hiba*):** These are subject to the rules of Muslim Personal Law. Only the transfer of possession, acceptance, and declaration are absolutely necessary conditions. No matter the value of the contribution, registration is not necessary. Muslims who receive gifts of real estate worth more than 100 rupees are required to register under section 17 of the Indian Registration Act. A gift can only be considered *Hiba* if the donor is a Muslim; the donee's religion is irrelevant.

Conclusion

In India, a gift is used to transfer property. The Act establishes the legal requirements for a gift to be valid, such as the donor's intending to make a gift, the transfer of property without consideration, and the donee's acceptance of the gift. The Act also includes remedies in the event that a gift deed is found to be invalid. To be considered a gift, a transfer must adhere to the provisions of the Transfer of Property Act⁷. This Act defines the gift and the circumstances surrounding its transfer in great detail. The gift, which is a transmission of ownership rights, must be in the transferee's ownership and possession at the time of the transfer. The transferor must be of legal age to make the transfer, but the transferee can be anyone. If the transferee is unable to contract, the acceptance of the gift must be ratified on his or her behalf by a competent person. A gift of future property is void. Partially accepting prosperous gifts and rejecting onerous gifts is also not acceptable. Accepting a gift entails accepting both the welfares and the liabilities associated with that gift. A gift may be revoked only by means of mutual agreement between the donor and the donee on a condition, or by withdrawing the contract pertaining to such gift. In the literature, the legal ramifications of invalid gift deeds under the Act have also been discussed. The legal implications of invalid gift deeds under the Act have also been analyzed in the literature. The donee has no right to the gifted property if a gift deed is found to be invalid, but the donor may be entitled to recover the property by way of a suit

for possession. The legal implications of invalid gift deeds under the Act have also been analyzed in the literature. The donee has no right to the gifted property if a gift deed is found to be invalid, but the donor may be entitled to recover the property by way of a suit for possession. If a gift deed is found to be invalid, the donee has no right to the gifted property; however, the donor may be able to recover the property through a suit for possession.

Overall, the concept of gift under the Transfer of Property Act, 1882 is an important aspect of Indian property law. To ensure that the transfer of property by gift is legally enforceable, the legal requirements for a valid gift must be met. The Act establishes a consistent legal framework for the transfer of property by gift and protects the legal rights of both the donor and the donee.