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## A STUDY OF EXCHANGE AND GIFT UNDER TRANSFER OF PROPERTY ACT, 1882

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### ABSTRACT

*“Gift is the gratuitous transfer of property from one person to another”:*

A gift is typically thought of as the exchange or transfer of ownership of any property from one person to another where the sender voluntarily provides his or her property to the receiver without any remuneration, that is, without taking into account any monetary worth. Gifts are frequently referred to as rewards. It may be given by the sender to the recipient at any occasion, such as a birthday party or a wedding ceremony. Both portable and immovable property are acceptable forms of gifts. When the sender intends to provide a present to the recipient and the recipient accepts it without the sender receiving any compensation under the law, the gift should be recognised as a lawful gift under the law. When the fundamental components of a present are not correctly carried out, the gift may be cancelled and declared void by the law.

Section 122 of the Transfer of Property Act governs gifts. It describes a gift as “...the voluntary and consideration-free transfer of specific existing moveable or immovable property made by one person, known as the donor, to another, known as the donee, and accepted by or on behalf of the donee.” If the recipient passes away before accepting, the gift is invalid. Such acceptance must be given when the donor is still alive and capable of giving.

As a result, when a gift is made, a property already owned by one person is unilaterally transferred to another without payment. Furthermore, the Section solely applies to inter vivos gifts, or gifts made between living people, as is clear from the legislation’s phrasing. Mortis causa gifts and inheritance are not covered.

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## INTRODUCTION

A gift is typically thought of as the exchange or transfer of ownership of any property from one person to another where the sender voluntarily provides his or her property to the receiver without any remuneration, that is, without taking into account any monetary worth. Gifts are frequently referred to as rewards. It may be given by the sender to the recipient at any occasion, such as a birthday party or a wedding ceremony. Both portable and immovable property are acceptable forms of gifts. When the sender intends to provide a present to the recipient and the recipient accepts it without the sender receiving any compensation under the law, the gift should be recognised as a lawful gift under the law. When the fundamental components of a present are not correctly carried out, the gift may be cancelled and declared void by the law.

In the eyes of the law, a “gift” is the transfer of property. The legal characteristics of a gift will collapse in the absence of a suitable giving and taking process between donor and donee.

The Transfer of Property Act, Section 122, states that “A Gift is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor or guarantor or sender, to another, called the donee, and accepted by or on behalf of the donee, guarantee, or receiver.” If the laws and regulations of giving and accepting a present are not correctly followed, any gift may be declared void and suspended. As an illustration, even if the recipient or donee of a gift passes away prior to accepting it, the sender or giver may still be held legally responsible for the present due to the donee’s failure to accept it.

However, Mohammedan Law (Muslim Law in India) defines the word “Gift” differently than the Transfer of Property Act, 1882.

“A gift is a transfer of property or right by one person to another in accordance with the provisions given in the Mohammedan law and includes- a) A Hiba, an immediate and unconditional transfer of the ownership of some property or of some right, without any consideration or with some return (ewaz); and b) An ariyat, the grant of some limited interest in respect of the use or usufruct of some property or right.”

According to Islamic law, “Sadaqah” refers to any property or privilege that is given as a gift without payment with the intention of gaining religious merit.[2] For instance, Mr. M donated 5 acres of property to the I Foundation so that it can build a complex that will include a mosque

and a madrasa.

The names “Hiba” and “Gift” are frequently used interchangeably in Mohammedan law, however the former only refers to a specific type of transaction that falls within the general definition of “gift,” which is a transfer of property without compensation. [3]"Any gift provided by a Muslim in support of a member of his own faith must comply with Islamic law. Even though in original Muslim law a gift was referred to be a contract, the idea may still be relevant in this case.

When the giver of the gift intends to send the gift to the donee with proper delivery and when the donee would accept it, the gift should be considered legally acceptable under Islamic law. Five main sorts of transactions that fall under the definition of “transfer” as defined by the Transfer of Property Act, 1882, are sale, mortgage, lease, exchange, and gift. A gift is typically something that is freely offered to someone without expecting anything in return. A gift is regarded in law as a gratuitous transfer, meaning that there is no exchange of value.

Section 122 of the Transfer of Property Act governs gifts. It describes a gift as “...the voluntary and consideration-free transfer of specific existing moveable or immovable property made by one person, known as the donor, to another, known as the donee, and accepted by or on behalf of the donee.” If the recipient passes away before accepting, the gift is invalid. Such acceptance must be given when the donor is still alive and capable of giving.

As a result, when a gift is made, a property already owned by one person is unilaterally transferred to another without payment. Furthermore, the Section solely applies to inter vivos gifts, or gifts made between living people, as is clear from the legislation’s phrasing. Mortis causa gifts and inheritance are not covered.

#### Important Components

- The voluntary transfer of property that is already owned, whether it is movable or immovable;
- Valid acceptance by or on behalf of the donee;
- Existence of the donor and donee conveyance of property.

#### **Transfer of Property**

A transfer of property, whether it be moveable or immovable, is required for a gift to be considered lawful. The individual giving the interest is referred to as the “donor,” while the one receiving it is referred to as the “donee.” A bequest made through a will is not regarded as

a transfer. However, conditional transfers and gifts are allowed as long as they do not violate any of the Act's rules.

A relinquishment deed will be regarded as a gift. For instance, a tenant-in-common's share surrender in favour of another person or a religious charity would all be regarded as gifts and subject to the TPA.

## **ANALYSIS OF THE TOPIC**

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However, Mohammedan Law (Muslim Law in India) defines the word "Gift" differently than the Transfer of Property Act, 1882.

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According to Islamic law, "Sadaqah" refers to any property or privilege that is given as a gift without payment with the intention of gaining religious merit. For instance: Mr. M has given the I Foundation 5 acres of land so that it can build a mosque and madrasa complex.

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definition of "gift," which is a transfer of property without compensation. "Any gift provided by a Muslim in support of a member of his own faith must comply with Islamic law. Even though in original Muslim law a gift was referred to be a contract, the idea may still be relevant in this case.

When the giver of the gift intends to send the gift to the donee with proper delivery and when the donee would accept it, the gift should be considered legally acceptable under Islamic law.

### **Types of Gifts:**

Gift has various types. These are:

#### **i. Lifetime Gifts:**

Any present that the donor intends to deliver to the recipient while the donor is still alive is deemed to be a lifetime gift. Lifetime gifts are typically presented to the donee by the donor in recognition of special events like birthday parties and planting ceremonies, among others.

As an example, Mr. V wants to give his son Master Q a Nokia smartphone as a lifelong gift when he celebrates his 21st birthday.

#### **ii. Deathbed Gifts:**

Deathbed presents are items that, in accordance with the giver's intention, will be delivered to the donee after the donor passes away. These presents can also be thought of as donations from the donor to the donee. Any contribution made on the deathbed won't take effect until the donor passes away. Example: As a present on his deathbed, Mr. V wants to leave Tk. 1 crore to Q Orphanage Trust.

#### **iii. Onerous Gift:**

Onerous gifts are any gifts that come with a weight or responsibility placed on the donor's shoulders regarding any immovable property. The exchange of a debt for an item from the giver to the donee is another name for this gift. This gift is typically prohibited, but under Section 127 of the Transfer of Property Act of 1882, it may be made valid provided the donee is not required to bear the burden of the gift. Example: Mr. Q wishes to give Mr. E a present of

one of the Gulshan buildings that is mortgaged to N bank for Tk. 2 crore. This gift may be allowed if Mr. E wants to bear responsibility for the mortgage loan on that home; otherwise, it is illegal.

### **Essential elements or Conditions of a gift:**

A gift must meet a number of requirements in order to be accepted legally. Which are:

#### **1. Absence of Consideration:**

When the donor or guarantor offers the gift to the donee or guarantor without accepting any consideration, that is, without receiving payment or any form of value, the gift should be considered valid legally. Example: Mr. X wishes to give his employee Mr. Y his own car as a thank-you for a job well done, but he won't accept any payment or monetary value for it.

#### **2. Parties of a Gift:**

According to law, there should be two legal parties for giving and taking a gift. These are:

##### **i) Donor or Guarantor:**

The individual involved in making a donation is referred to as the donor or the guarantor. As an illustration, Mr. X gave Mr. M a Nokia N8 smartphone for his birthday. In this instance, the Nokia N8 Smartphone was given as a present by Mr. X.

##### **ii) Donee or Guarantee:**

The recipient of a gift from the giver is referred to as the donee or guarantee. As an illustration, Mr. X gave Mr. M a Nokia N8 smartphone for his birthday. The recipient of this gift of a Nokia N8 smartphone is Mr. M.

#### **3. Subject matter of the gift:**

The gift's subject matter is the item that is intended to be presented by the donor as a gift to the recipient. The gift's subject matter must take the shape of either mobile or immovable property. The subject of the donation shall not be deemed to be a future property.

#### **i) Moveable Property as a Gift:**

Any item that may be moved from one place to another is referred to as transportable property. Other names for it include private property and personal property. Any donor may legally transfer their personal moveable property to the donee. It could be something physical, like a car or a phone, or it could be something intangible, like a share or bond.

#### **ii) Immoveable Property as a Gift:**

A type of object known as immovable property is one that cannot be moved or transferred from one location to another. Consider the following real estate-based objects: land, buildings, etc. Immoveable property can be legally given to the donee by any donor through a documented deed or agreement without the need for payment.

#### **4. Intention or Declaration of the donor:**

Any mobile or immovable property that is given as a gift by the giver and is in accordance with their declared desire to do so will be considered lawful property. A formal contract or agreement must be made between the donor and donee if the donor intends to offer the donee a gift in the future. For instance: During Master C's 18th birthday celebration, Mr. B plans to present his son Master C, who is currently 16 years old, an HP laptop. Therefore, Mr. B cannot present his son with an HP laptop till his son turns 18 years old.

#### **5. Proper delivery or Transferability of the gift:**

A gift should be considered legitimate when the giver transfers or delivers it in accordance with his or her intentions within the allotted period. For instance, Mr. B's plan to present his son Master C, who is 16 years old, an HP laptop at a birthday celebration should be legally lawful when that laptop is delivered to or transferred to his son on the occasion of his son's 18th birthday.

#### **6. Acceptance of the gift by the donee:**



Any gift that is accepted by the recipient after being intended and being delivered by the donor on schedule should be considered legally genuine. Otherwise, that gift ought to be void in law. As an illustration, Mr. B's plan to give his son Master C, who is 16 years old, an HP laptop during the celebration of his 18th birthday, should be legally acceptable when Master C accepts the laptop from his father on his 18th birthday by the delivery or transfer of the HP laptop.

### **7. Taxability of the gift:**

Gift tax refers to the tax that the donor must pay on the monetary value of a gift at the time of purchase, with the exception of donations and gifts given for religious purposes. The absence of tax on a gift may prevent it from being valid even after proper delivery and acceptance between the giver and donee. Any gift must be taxed by the donor at the highest rate of 20% under Bangladesh's Gift Tax Act of 1990, with a few exceptions, including gifts of immovable property made outside of Bangladesh, gifts valued under Tk. 20,000, gifts of government bonds, gifts to institutions with a religious or charitable foundation, and gifts made on one's deathbed. As a result, the Gift Law of Bangladesh exempts some gifts from gift taxes if they are sent abroad, are donations, or are for the benefit of a particular religion or country.

### **8.Actionable Gifts:**

It is defined under Section 3 of Transfer of Property Act. It can be the unsecured money debt or right to claim the movable properties which aren't the possession of claimant. It is for the beneficial interest. They are thus intangible movable properties. Transfer of actionable claims comes under the claim of section 130 of the act. Actionable claims may be transferred as instrument in writing signed by the transferor or his duly authorised agent. Then registration and delivery of possession isn't required.

### **9.A Gift Of Future Property:**

It is considered as a mere promise that is unforeseeable by law. Section 124 of Transfer of Property Act renders the gift of future property void. If a gift which contains present as well as future property then one of these properties in the existence of time as gift and other is not, the whole gift can't be considered as void. Gift of the future income of a property before it had accrued would also be void under section 124.

**10.A gift to more than one donee:**

Section 125 of the act says that in case of property gifted to more than one donee one who doesn't accept it the gift to extent of the interest which the person would have taken will be void. Such interest reverts to the transferor and doesn't go to other donee. The gift made to two donee in rightful survivorship is valid, so on the death of one donee the other donee takes it.

**11. Suspension or revocation of gifts:**

Section 126 of the acts provides the legal provisions that are followed in conditional gift. The donor may make a gift subject certain conditions of being suspended or revoked and these conditions must adhere to the provisions of section 126. This Section lays down two modes of revocation of gifts and gift can be revoked only by these grounds.

**12. Revocation by the recession:**

Gift is the transfer of contract which is either expressed or implied. The prescending contract is not rescinded then there is no question of subsequent transfer to take place. This option lies between the donor and can't be transferred, but the legal heirs of the donor may sue after the death of the donor. The right to revoke the gift on the above mentioned grounds is lost when the donor ratifies the gift either by express or by conduct.

**13. Bonafide Purchaser:**

This tells about the right of Bonafide Purchaser. A Bonafide Purchaser is a person who has purchased the gifted property in consideration and good faith. When such purchaser is unfamiliar with the condition attached to property which was subject of a conditional gift then no provision of revocation of gift or suspension of such gift shall apply.

**14. Muslim Gifts (Hiba):**

These are governed by Muslim Personal laws , the essential elements that are required are acceptance, declaration, delivery of possession. Registration is not necessary for for value of gift. In case of gift of immovable property worth more than 100 ruppess registration under

section 17 of Indian Registration Act is must, as it is applicable to Muslims also. For a gift to be Hiba only the donor is required to be Muslim, the religion of the donee is irrelevant.

## LEGAL PROVISIONS

(1) Section 5- A transfer of property is the act of giving away property to another live person, either now or in the future.

(2) Section 122- The voluntary, consideration-free transfer of specific existing personal property from one person—the donor—to another—the donee—and acceptance of the gift by or on behalf of the donee.

(3) Section 123- There are two ways to carry out the transfer in accordance with section 123 of the Transfer of Property Act:

(a) Registering. (b) With Delivery.

The type of the property largely determines the execution strategy. Delivery of possession is sufficient for mobile property, however regardless of the property's valuation, registration is required for immovable property.

(4) Section 124- The entire gift is not deemed to be void where it consists of one existing and one future property. Only the portion made up of future property will be invalid, whereas the portion made up of current property will be. This is so that what we do not have, we cannot transfer further. A gift is a transfer of a vested right and is not contingent.

(5) Section 125- When a present is made jointly to several people and some accept it while others do not, the gift will be considered valid for the recipient and void for the others.

(6) Section 126- Revocation is the cancellation of a promise or ruling. A gift is never revoked after it has been accepted. A donor may also stipulate that the donation will be suspended or cancelled upon the occurrence of a certain event and the fulfilment of a particular condition.

(7) Renikuntla Rajamma vs K. Sarwanamma- In this case the mere fact was that the donor retained the right to use the property during her life time which doesn't affect the transfer of ownership of the property from herself to donee as the gift was registered and accepted by the donee.

- (8) M.T. Brij Devi vs Shiva Nanda Prasad- Brij Devi had claimed possession of a land which had formed the focus of a gift deed executed by ancestors on 11<sup>th</sup> December 1994, in favour of Jain Bulaqi Shankar.
- (9) Padma Chand vs Laxmi Devi- In this case that a gift is voluntarily transfer of property without consideration and divison by the owner of the property without any peculinary benefit.
- (10)Vimla vs Narayananswamy- In this case the court mention where the deed is to be taken with immediate effect, the property is transferred to life of executor in gift deed not a will.
- (11) D.N. DANWAR vs Ganga Ram Saran Dhama- This case is a gift of an immovable property if the document isn't registered then mere delivery of possession will not pass the title of donee.
- (12) Shahdev vs Sheikh Papa- In this case the gifts of immovable property as compulsory<sup>2</sup>registered and amounts to notice subsequent transfer and not transactions.

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<sup>2</sup> Sandeep Bhalla, Law of Ownership and Transfer of Property in India, vol. 1.

## CONCLUSION AND SUGGESTIONS

In conclusion, we can say that any gift is the transfer of any item, whether it be movable or immovable property. The following conditions must be met in order for a gift to be considered valid: there must be no consideration given; the donor and recipient must be present; the gift must be of movable or immovable property; the donor must have the intended gift; the gift must be delivered; and the donor must accept the gift. paying taxes on gifts received from donors, with the exception of gifts from abroad, donations relating to charities or religion, etc. A gift may be revoked for a variety of reasons, with the exception of having the intention of exchanging gifts, giving gifts to close relatives, giving gifts for religious purposes, etc., such as lack of a donor's will and the donee's acceptance, lack of the donee's death, disqualification of the donor or donee, illegal subject matter, misrepresentation of subject matter, etc. All legal features of giving and receiving any present should be put into effect if everyone follows the rules and regulations surrounding the nature and suspension of gifts.