

# Law Relating To Suspension And Revocation Of

## Gift<sup>1</sup>

### 1. Introduction.

According to Section 122 of Transfer of Property Act, 1882 'Gift' is defined as the transfer of certain existing moveable and immovable property made voluntarily and without consideration, by one person called the donor, to another, called the donee, and accepted by or on behalf of the donee.

Gift, as defined in this section, is gratuitous transfer of ownership in some existing property made voluntarily. The definition includes gift of both movable as well as immovable property. The transferor is called donor and the transferee is called donee.

There are certain essentials of a gift like a must transfer of ownership, the ownership must relate to a property in existence, the transfer must be without consideration, it must have been made voluntarily, the donor must be a competent person and lastly the transferee must accept the gift.

A gift is a transfer of property without any monetary consideration by one person in favour of another and accepted by him or by a person on his behalf. Transfer without consideration is called a gratuitous transfer. A gratuitous transfer may take place between two living persons or, it may take place only after the death of the transferor. Gift may, therefore, be either *inter vivos* or, testamentary. Gift *inter vivos* is gratuitous transfer of ownership between two living persons and is a transfer of property within the meaning of Section 5 of Transfer of Property Act, 1882. Gift testamentary is called a will which is transfer by operation of law and is outside the scope of this Act. A gift made during apprehension of death is called a gift *mortis causa*. A gift, where both the parties are Muslims, is governed by the provisions of Quranic Law, and not by the Transfer of Property Act as it is inconsistent with the provisions of this act.

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## **2. Essentials Of A Gift.**

The essentials of a valid gift are given below:<sup>2</sup>

### **❖ There must be transfer of ownership:**

As in case of a sale, there must be a transfer of all the rights in the property by the donor to the donee. It may, however, be noted that it is permissible to make conditional gifts. The only restriction is that the condition must not be repugnant to any of the provisions of Section 10 to 34 of the Transfer of Property Act, 1882.

### **❖ The ownership must relate to a property in existence:**

Gift must be made of existing movable or immovable property capable of being transferred. Future property cannot be transferred. The share obtained after partition of the joint family property can be gifted. Even a gift of property that is obtained after a preliminary decree of partition is passed by the court is valid.

### **❖ The transfer must be without consideration:**

The word 'consideration' refers to monetary consideration and does not include natural love and affection. If the consideration is a nominal amount of money or the property is grossly undervalued yet the transfer would not be a gift but a sale. In fact, the passing of money as a consideration, howsoever small it may be, would destroy the nature of transfer as a gift. Gifts in lieu of expectation of spiritual and moral benefit or a promise to look after the donor in her old age or through our life are transactions without any consideration. A transfer executed for consideration of a donee undertaking the liability of the donor is not gratuitous, and not a gift.

### **❖ It must have been made voluntarily:**

The offer to make the gift must be voluntary. A gift therefore should be executed with free consent of the donor. This consent should be untainted by force, fraud or undue influence. Mere relationship between the donor and donee is not a conclusive fact of the exercise of undue influence and it must be proved that the transaction is unconscionable.

### **❖ The donor must be a competent person:**

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<sup>2</sup> Section 122, Transfer of Property Act, 1882.

Donor is the person who makes the gift. In a transaction by way of gift the transferor is called a donor and he divests his ownership in the property so as to vest it in the transferee, the donee. The donor must be a sui juris. He must have therefore attained the age of majority, possess a sound mind and should not be otherwise disqualified. Section 7 of this Act provides that only such persons can effect a transfer of property who are competent to contract. The result is, therefore, that a minor cannot make a gift of his properties. According to Halsbury's Laws of England<sup>3</sup>, persons in fiduciary positions, e.g., trustees cannot make gifts of the property vested in them on behalf of others unless they are authorised to do so.

❖ **The transferee must accept the gift:**

The gift must be accepted by the donee himself. Acceptance can be validly given by a minor donee himself or by his mother or guardian or by an agent in case of a deity. If the guardian gives the acceptance on behalf of the minor the minor on attaining majority can either accept it or reject it. If a gift is made to two or more persons, one of whom is capable of taking and the other is not, it has been held that the former will take the whole of the property.<sup>4</sup> Acceptance must be made during the lifetime of the donor and while he is capable of giving. According to Section 122 if the donee dies before the acceptance of gift the gift is void.

### **3. Suspension Or Revocation Of Gift.**

Section 126 of Transfer of Property Act, 1882 deals with when gift may be suspended or revoked. According to it, the donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor is void wholly or in part as the case may be.

A gift may also be revoked in any of the cases in which if it were a contract it might be rescinded. Such as aforesaid a gift cannot be revoked. Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

Gift is transfer of ownership without consideration. Like other transfers, gift too can be made subject to certain conditions. Donor may make a gift subject to a condition of it being

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<sup>3</sup> Vol. 15, para 795.

<sup>4</sup> Nandi Singh v. Sita Ram, (89) 16 Cal. 677; 16 Ind. App. 44 (P.C.).

suspended or revoked. But, such gifts would then be governed by those provisions of this Act which regulate conditional transfers. Accordingly, if a gift is made subject to condition of it being revoked in future the condition must be valid and enforceable under those provisions. Section 126 lays down two modes of revocation of gift:

- (i) Revocation by mutual agreement of donor and donee.
- (ii) Revocation by rescission as in the case of contracts.

#### ❖ **Revocation by Mutual Agreement:**

Donor and donee may agree that the gift shall be suspended or revoked upon happening of an event not dependant on the will of the donor. The condition revoking the gift must be express; it should not be merely in the form of a wish or desire. In other words, the condition on the non-fulfilment of which the donor may revoke the gift must be expressly laid down in the gift. A gift of certain properties was executed in lieu of the past and future services rendered by donee to donor. But failure of donee to render services to donor or to maintain donor in future, was not specified to be a condition for revocation of the gift deed. The Himachal Pradesh High Court<sup>5</sup> held that since the condition for revocation of gift upon donee's failure to render services to the donor was not laid down in the deed, it was unconditional gift and, therefore, cannot be revoked by the donor.

However, even though a condition is not laid down in the gift deed itself, and has been provided under a mutual agreement separately but forms part of the transaction of gift, the condition would be valid and enforceable.<sup>6</sup>

The condition upon which a gift is to be revoked must not depend solely on the will of the donor. A gift revocable at the pleasure of donor is no gift at all. The condition or stipulation providing for revocation must have been mutually agreed upon at the time of the gift. If such agreement is made after completion of gift, since the gift has already become absolute, it cannot be revoked. However, it's not necessary that stipulation for revocation is given in the deed of gift itself. What is necessary is that stipulation and gift both are made at the same time. They might be in two separate documents but must form part of the same transaction. That is to say, the stipulation must relate to the same gift which is to be revoked.

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<sup>5</sup> Mool Raj v. Jamma Devi, AIR 1995 HP 117.

<sup>6</sup> Thakur Raghunathjee Maharaj v. Ramesh Chandra, AIR 2001 SC 2340.

The condition for revocation of gift is a condition subsequent. It must be valid under the provisions of law given for conditional transfers. The condition totally prohibiting the alienation of property is void under Section 10 of this Act. Therefore, if the gift is made revocable with such condition, the condition itself being void, the gift is not revoked.<sup>7</sup>

It is also necessary that the condition upon which the gift is agreed to be revoked must be a condition subsequent the fulfilment of which is not dependant on the will or desire of donor. The condition subsequent must be in the nature of future event beyond the control of donor. For example, A makes a gift of his field to B reserving to himself with B's assent the right to take back the field in case B and his descendants die before A. Here the condition upon which the field given in gift is to be revoked is a condition depending on uncertain future event not depending on the will of A. Therefore, if B dies without descendants in A's life time, the gift is revoked and A may take back the field.

Where the stipulation provide for revocation of gift at the will or pleasure of donor the stipulation is void and gift is not revoked although such stipulation is merely agreed upon by donor and donee. Gift revocable at the will of donor is void. For example, A makes a gift of one lakh rupees to B reserving to himself with B's assent the right to take back at his (A's) pleasure Rs. 10,000/- out of this amount. The gift as to Rs. 90,000/- is valid but as regards Rs. 10,000/- the gift is void, i.e., it shall continue to belong to A. Law shall consider that no transfer of Rs. 10,000/- was made at all.

#### ❖ **Revocation by Rescission as Contracts:**

Gift is a gratuitous transfer of ownership made voluntarily. If it could be proved that the gift was not made voluntarily, i.e., the consent of the donor was not free, the gift must be revoked. Gift is always preceded by an express or implied contract; offer by donor and acceptance by donee. If the preceding contract itself is rescinded or revoked there is no question of taking place of transfer (gift) made under it. Accordingly, under Section 126 a gift is revoked also on any of the grounds on which it might be rescinded has it been a contract. Section 19 of the Indian Contract Act provides that "Where consent to an agreement is caused by coercion, undue influence, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so obtained". Thus, where the gift is not made voluntarily because of any of the factors mentioned above, the gift may be

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<sup>7</sup> Jagdeo Singh v. Nandan Mahto, AIR 1982 Pat. 22.

revoked by the donor. It is to be noted that this section deals with revocation which means rescission or repudiation of gift; it does not deal with cases where the gift is void, e.g., for want of donor's title. So, where the donor's consent has been obtained by coercion, undue influence, fraud or misrepresentation the donor has option to repudiate or revoke the gift. If he does not exercise this option, the gift is not revoked. Gift may be revoked on the above mentioned grounds only by the donor, he cannot assign this right to any other person. However, after donor's death, his legal heirs may sue for the revocation of gift on any one of these grounds.

The period of limitation for the revocation of gifts on the ground of fraud, coercion, misrepresentation or undue influence is three years from the date on which such facts are known to the plaintiff (donor).<sup>8</sup> The right to revoke the gift on the above mentioned grounds is lost when the donor ratifies the gift either expressly or by his conduct.

❖ **No Revocation on any other ground:**

Except on the ground of (a) condition subsequent not depending on the pleasure of the donor and (b) on the grounds justifying of a contract, a gift cannot be revoked on any other ground. A gift deed was validly executed in favour of the donee. It was held that a simultaneous claim by the donor that the gift deed was revoked unilaterally by him and lodged for registration was not valid as there was no participation by the donee.<sup>9</sup>

❖ **Subsequent conduct of donee after acceptance – Irrelevant:**

A father executed a registered deed of gift in favour of his son. He had done it because of love and affection for the son and also to enable him to live a peaceful life. There was no proof of undue influence. The donee remained out of India for a long time. In the meantime the gift deed remained with the donor and he also kept paying taxes. There was no mutation for that period in the revenue records. The Supreme Court held that these circumstances were not sufficient in themselves to show that the execution of the gift deed was not voluntary. The deed could not be rescinded on the premise that it was an onerous gift and that the donee had failed to fulfil the condition for the gift of contributing towards the marriage of the donee's sister the specified sum. Once a gift is complete, it cannot be rescinded for any reason

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<sup>8</sup> Art. 59, Indian Limitation Act, 1963.

<sup>9</sup> Sheel Arora v. Madan Mohan Bajaj, AIR 2009 NOC 333 (Bom).

whatsoever. The subsequent conduct of the donee is not a ground for rescission of a valid gift.<sup>10</sup>

❖ **Transferee for Consideration without Notice:**

The last paragraph of Section 126 of the Act protects the interest of a bonafide transferee for consideration without notice of donor's right of revocation. For example, A makes a gift of his house to B with a condition that he shall revoke the gift if B's son does not take up the studies of law after graduation. B sells the house to C. C has no notice of any such condition. After graduation B's son does not join the law course. A cannot revoke the gift because C's interest shall be affected. If C has notice of such condition or that C was a gratuitous transferee, A could have revoked the gift.

#### **4. Suspension Or Revocation of Gift under Mohammedan Law.**

A gift, where both the parties are Muslims, is governed by the provisions of Quranic Law, also known as the Mohammedan Law, and not by the Transfer of Property Act as it is inconsistent with the provisions of this act. A Mohammedan, as opposed to others, can revoke a gift even after delivery of possession except in the following cases:<sup>11</sup>

- 1) When the gift is made by a husband to his wife or by a wife to her husband;
- 2) when the donee is related to the donor within the prohibited degrees;
- 3) when the gift is Sadaka (i.e. made to a charity or for any religious purpose).
- 4) when the donee is dead;
- 5) when the thing given has passed out of the donee's possession by sale, gift or otherwise;
- 6) when the thing given is lost or destroyed;
- 7) when the thing given has increased in value, whatever be the cause of the increase;
- 8) when the thing given is so changed that it cannot be identified, as when wheat is converted into flour by grinding; and
- 9) when the donor has received something in exchange for the gift

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<sup>10</sup> Asokan v. Lakshmikutty, (2007) 13 SCC 210.

<sup>11</sup> <http://www.legalserviceindia.com/articles/transfer.htm>

Except in those cases, a gift may be revoked at the mere will of the donor, whether he has or has not reserved to himself the power to revoke it, but the revocation must be by a decree of court.

## **5. Conclusion.**

The conception of the term gift and subject matter of gift has been an age old and traditional issue which has developed into a distinct facet in property law. The Transfer of Property Act, 1882 lays down all the rules, regulations and procedures relating to gift and how its transfer is made. There are certain essentials of a gift like a must transfer of ownership, the ownership must relate to a property in existence, the transfer must be without consideration, it must have been made voluntarily, the donor must be a competent person and lastly the transferee must accept the gift. The most important essential of the gift is its acceptance i.e. an acceptance of gift must be made during the lifetime of the donor and while he is capable of giving. According to s. 122 if the donee dies before the acceptance of gift the gift is void.

Also registration is necessary in all cases of gift of immovable properties and the title cannot pass without there being a registered deed of gift. A gift is valid and complete on registration. Also while dealing with the laws relating to gift we have come across important aspects relating to gift like gift of existing and future property, when gift may be revoked, donation *mortis causa* etc.

A deed of gift once executed and registered cannot be revoked, unless the mandatory requirement of Section 126 of Transfer of Property Act, 1882 is fulfilled.<sup>12</sup> So in the end it can be concluded fairly that Transfer of Property Act, 1882 and its sections is a complete code dealing with regulations of gift in India. Section 126 of the Transfer of Property Act, 1882 is very clear and elaborative upon the manner in which gifts can be suspended or revoked, which is of two ways:

- (i) By mutual agreement, or,
- (ii) By rescissions as contracts.

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<sup>12</sup> Kamalakanta Mohapatra v. Pratap Chandra Mohapatra, AIR 2010 Orissa 13.