

ISSN: 2582-6433



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

www.ijlra.com

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Conditional Gifts: Extent & Limitation Of

Its Conditions Under TOPA, 1882

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Abstract

"A gift is a transfer of property without any monetary consideration by one person in favor of another and accepted by him or by a person on his behalf."¹ However, conditional gifts are those kinds of gifts where the parties to the gift agree upon conditions that would enable the donor to revoke the gift on the failure of the donee to abide by the conditions attached by the donor. This paper will attempt to explore and examine the topic of a conditional gift. Conditional gifts are included under the ambit of section 126 of the Transfer of Property Act, 1882 (hereafter referred to as 'TPA').

The only requisite of the conditions for this gift under the given provision of TPA is that these conditions shall not purely depend on the will of the donor. However, what underlies unanswered in the words of this provisions is the limit or extent of the conditions that can be imposed by the donor. TPA does not demarcate any extent or limit on these conditions that can be imposed by the donor. Whether the conditions can be against public policy or retain the power of alienation, none of these are answered by section 126 of TPA, and this can lead to an ambiguous situation. The first portion of the paper will briefly discuss the essence of gifts under TPA, and the subsequent portion of the paper will critically analyze and strive to generalize the nature of conditions that can be attached with gifts under section 126 of TPA, drawing upon various findings of the courts.

¹ Dr. POONAM P. SAXENA, PROPERTY LAW 623 (LexisNexis, 3d ed. 2017).

Introduction

A voluntary transfer of property without any consideration is known as a gift. *Section 122* of the TPA defines a gift as a transfer of ownership of the property from a person to another in the absence of consideration. Construing the definition stated by *section 122* of TPA, the essence of a valid gift can be classified into a few crucial elements:

- 1. Parties to the gift:** In case of gifts, the parties to a gift comprises of a Donor and Donee. The person who makes the donation of the property is known as donor. A donor must be competent and authorized to make a valid transfer of gifts. The donee is the person who accepts the donation made by the donor.
- 2. The subject matter of the gift:** Gifts can be made of both movable and immovable property; however, the property should be in existence and capable of being delivered when the gift is made.
- 3. Interest made by the donor:** The donor is in an authorized position to make either absolute or limited interest in favor of the donee, as per his wish. The intention of the donor also must be clear for a valid transaction.
- 4. Valid delivery/transfer of the gift:** A gift should be made voluntarily by the donor. This transfer should be free of any kind of coercion, fraud, or undue influence. A transfer of property by means of gift would be considered valid only when it is made by the donor's free consent.
- 5. Acceptance of the gift:** The donee himself must accept the gift.² The acceptance of the donor is irrelevant. In case of a minor donee, acceptance can either be given by him or his mother³, guardian⁴, or agent⁵.
- 6. Delivery without consideration:** Transfer of property under the cloak of a gift shall be made without and consideration in return. The consideration here refers to a monetary value and not natural love and affection.⁶

However, despite being constitutionally challenged, the position of Muslim law regarding gifts is inconsistent with the provisions of TPA; it follows the provisions laid down by Quranic laws. *Section 122-129*, TPA lays down the provisions for gifts. Gifts can be labelled under different categories according to their nature –

² *Id.* at 630.

³ Balwant Singh v. Chatin Singh, AIR 1985 P&H 74 (India).

⁴ Ashkar Singh v. Rawal Singh, AIR 1992 P&H 148 (India).

⁵ Ram Bharosee v. Rameeshwar Prasad Singh, AIR 1938 Oudh 26 (India).

⁶ Debi v. Nandalal, AIR 1929 Pat 591 (India).

- **Absolute Gift:** Absolute gifts do not have any conditions attached and are irrevocable.⁷
- **Conditional Gift:** Conditional gifts come in the ambit of *section 126* of TPA. These gifts have conditions attached to them by the donor and can be revoked on the failure of the donee to fulfill the conditions.
- **Onerous Gift:** *Section 127* of TPA lays down the provision for onerous gifts. These include all those gifts wherein the donee is subjected to an obligation imposed by the donor along with a benefit. The donee can either choose both or reject both; he cannot only accept the benefit and avoid the burden.
- **Universal Donee:** An universal donee is a donee who is conferred with the entire property of the donor. A universal donee is entitled to the entire property of the donor and has to bear all his liabilities at the same time. *Section 129* of TPA lays down the provision for the same.
- **Donation Mortis Causa:** *Section 129* of TPA lays down the provisions for such types of gifts. Donation Mortis causa gifts are also known as deathbed gifts and are made in contemplation of death.

Conditional Gifts: Essence & Limitation

Conditional gifts, also known as revocable gifts, come under the ambit of *section 126* of TPA. Conditional gifts are those gifts wherein the parties to the gift, i.e., donor and donee, agree to the revocation of gift by the donor on the happening or not happening of an event. The event may be certain or uncertain; however, if the cancellation of the gift purely depends on the will of the donor, the gift will stand void. The condition attached to the gift can either be a condition precedent or subsequent. Where a condition precedent is illegal, immoral, or anything making it void, the transfer would stand failed; on the other hand, in case a condition subsequent is immoral or illegal, the condition would stand void, but the transfer will still amount to a good gift.⁸

A conditional gift would be subjected to revocation by the donor on failure to fulfill the conditions attached to it,⁹ at the same time, the donee cannot plead ignorance of the condition as an excuse for not fulfilling the conditions attached to the gift. In case the conditions are not made expressly at the time of making the gift, the donor no more stands in the position to revoke the gift,¹⁰ as no condition can be imposed after making the gift to the donee. Moreover, where the condition is not clear and cannot be construed from the words of the deed, the gift will be considered as an absolute gift.¹¹

⁷ Garagaboyina Radhakrishna v. District Registrar, Vishakhapatnam, AIR 2012 AP 190 (India).

⁸ Ram Sarup v. Bela, (1884) ILR 6 All 313. (India)

⁹ Somashekarrao v. KS Mishra, AIR 1944 Ngp 185 (India).

¹⁰ Ankamma v. Narsaya, AIR 1947 Mad 127 (India); Collector of Ratnagiri v. Vyankatrau, (1872) 8 Bom HC 1 (India).

¹¹ Tila Bewa v. Mana Bewa AIR 1962 Ori 130 (India).

Where the condition is ambiguous in nature, the interpretation favoring the interest of the donee will mostly be held applicable. Further, where the condition is evident and apparent, non-fulfillment of the same will result in the revocation of the gift by the donor.

Validity Of Conditions For Conditional Gifts

The grey area underlying Section 126, TOPA is that there is no specific demarcation of the precise nature of the condition that may be considered valid and legal in case of conditional gifts. Section 126 of TPA only has a single requisite for a valid condition in a conditional gift, which is, the condition attached to the gift shall not be purely dependent on the will of the donor. However, a valid conditional gift has various other checks and bounds on the conditions attached to it. This section will attempt to study and generalize a category of conditions that deem fit and valid in case of such gifts. It will also strive to highlight certain restrictions imposed on the revocation of conditional gifts, drawing from the precedent cases.

The general section 126 of TPA is controlled by section 10 and section 12 of TPA,¹² which means a general condition state by section 126 of TPA should be aligned and consistent with the provisions of sections 10 & 12 simultaneously, despite this requirement is nowhere explicitly stated in the words of section 126, TPA. Whether it be a condition restricting alienation of the property or a condition that opposes the public policy, if it is repugnant to the provisions laid down by sections 10 and 12 of TPA, the conditions will stand void.

The first condition that the paper will shed light on is – condition-restricting alienation of a conditional gift. A condition could either restrict alienation partially or absolutely. A partial restriction would not result in a void condition¹³ however, an absolute restriction will, which means a condition that absolutely restricts alienation of a gift shall stand void¹⁴. This condition is held void as it violates the right to transfer property from the owner of the property, i.e., the donee. The right to transfer property is an inseparable right of the owner of the property, and any condition that violates the right of the owner shall stand invalid. Imposing such conditions would take away the rights of an owner of a property given to him by law. However, if the transfer is valid, but the condition is void, the transfer would still be considered valid, only the condition would stand invalid. Conditions that absolutely restrain alienation are considered void both in Hindu as well as Mohammad Law.¹⁵

¹² M Lakshminarayana v. DB Pradeep Kumar, (2010) 1 UP LJ 192 (DB) (India).

¹³ Mohd Raza v. Abbas Bandi Bibi, AIR 1932 PC 158 (India); Canbank Financial Services Ltd v. Custodian, (2004) 8 SCC 355 (India).

¹⁴ Bhavani Amma Kanakadevi v. CSI Dekshina Kerela Maha Idavaka, AIR 2008 Ker. 38 (India).

¹⁵ Anantha v. Nagamuthu, (1882) ILR 4 Mad 200 (India); Hussain Khan v. Nateri, (1872) 6 Mad HC 356 (India).

Furthermore, in a case where the donor imposed a restriction that neither of his heirs or the owners could dispose of the property besides religious purpose, the court held that the transfer was valid, but the condition here was void.¹⁶ Similarly, a condition limiting alienation to a particular person was held as absolute restraint, thus void.¹⁷ While, on the other hand, a condition restraining alienation out of the family was upheld by the court.¹⁸ However, further, in the case of *Teja Singh v Moti Singh*,¹⁹ it was held that, conditions which restrained alienation to a stranger was also considered as an absolute restraint as the freedom of alienation by the owner was violated.

Conditions, where the donor confers the right to profit from property to him for life, align with *section 10 and 12* along with *section 126* of TPA, but at the same time restraining the donee from alienating the property totally would stand invalid.²⁰ In a case where the conditions directed the donee to pay specific people out of the proceeds from the sale of the gifted property results in a void and repugnant condition, leading to an absolute restriction on alienation.²¹ In another case, the condition attached to the gift imposed that the wife of the donee shall have a right to purchase the donee's property at 1/5th of the market value, given such sale was made during the lifetime of the wife.²² Here the right of the donee as an owner was exploited through the conditions imposed to him; thus, the conditions here stood void.

Moreover, In a case, where the donor had imposed a conditional clause on the donee (his daughter) wherein the gifted property would revert to the heirs of the donor in case there is a failure of her descendants,²³ the court held that such a condition deprived the donee of exercising her rights as an owner to alienate the property at her will and declared the condition void. Where conditions attached to gift deprive the property of its legal incidents or depreciate the completeness of the property, it will stand void and invalid despite the gift being considered a valid transaction.

Conditional gifts also cannot have any conditions attached to it that violate public policy. Any such conditions would stand void. In a case where the conditions attached to the gift directed the donee to cease to live with her husband was held void by the court as such conditions opposed public policies.²⁴ Similarly, in another case, the conditional clause attached to the gift directed the donee to

¹⁶ Saraju Bala v Jyotirmoyee, (1931) 35 Cal WN 903 (India).

¹⁷ Attwater v. Attwater, [1853] 18 Beav 330.

¹⁸ Deo d Gill v. Pearson, 1805] 6 East 173.

¹⁹ Teja Singh v Moti Singh, AIR 1925 Oudh 125 (India).

²⁰ S R Radhakrishnan v. Neelamagam, (2003) 10 SCC 705 (India).

²¹ Kelly v. Elliot, [1896] 2 ChD 353.

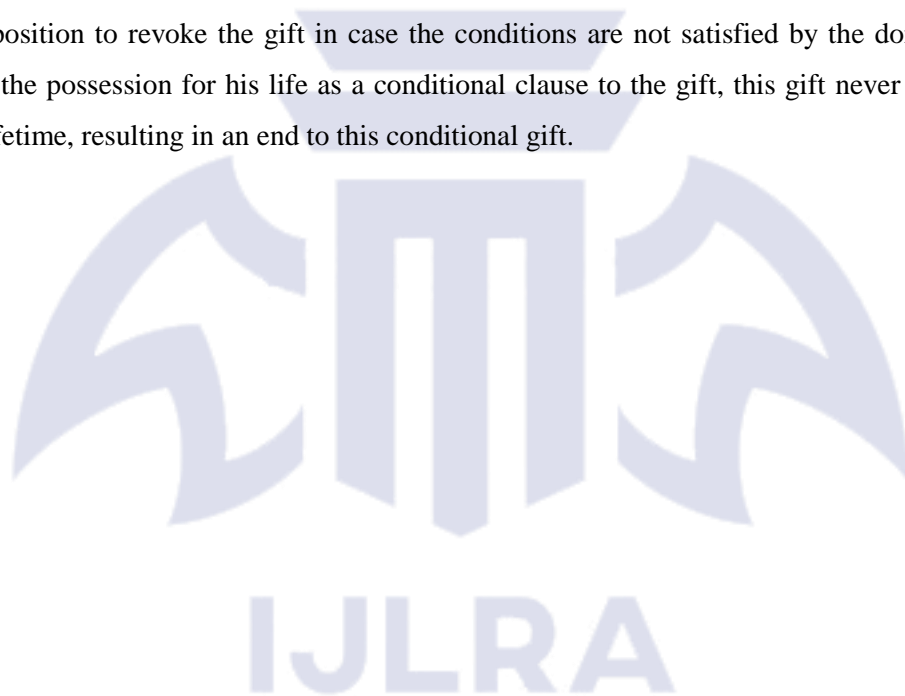
²² Rosher v. Rosher, [1884] 26 ChD 81.

²³ Saraju Bala v. Jyotirmoyee, AIR 1931 PC 179 (India).

²⁴ Wilkinson v. Wilkinson, [1871] 12 Eq 604.

marry A and divorce her husband.²⁵ This condition was again held immoral and against public policy, thus void by the court. Where the donee was restrained from joining naval or military forces as a condition attached to the gift, it was held void and against public policy by the court.²⁶ Hence, the conditional clause in a gift shall not be opposed to public policy. Further, in TPA, there is no provision that annuls the transfer in ownership of property without the transfer of possession and right of enjoyment of the property.

However, in the case of *Narmadaben Maganlal v Pranjivandas Maganlal*,²⁷ it was held that execution of deed might not complete the transaction of gift in case of a conditional gift. For example, in a situation where the donor holds possession until he or she is alive, the delivery of possession of the gift does not take place. The donee in this situation enjoys just a constrained right. The donor here stands in a position to revoke the gift in case the conditions are not satisfied by the donee. Since the donor holds the possession for his life as a conditional clause to the gift, this gift never gets complete during his lifetime, resulting in an end to this conditional gift.



²⁵ Bai Vijli v. Nansa Nagar, (1886) ILR 10 Bom 152 (India).

²⁶ Beard, Reversionary & General Securities Ltd v. Hall, [1908] 1 ChD 383.

²⁷ Narmadaben M. Thakker v. Pranjivandas M. Thakker, (1997) 2 SCC 255 (India).

Conclusion

On a concluding note, TPA imposes no limitation on the donor and the extent of condition that a donor can attach with a conditional note. This can result in an ambiguous situation and exploitation of the rights of a donee as an owner of the gifted property. The conditions in a conditional gift that has certain limits and extent, that lies unanswered by *section 126* of TPA. The analysis in this paper has been done with an attempt to demarcate the ambiguous umbrella term 'conditions' that can be imposed by the donor under *section 126* of TPA, as this very section has laid down a single requisite for such conditions.

These conditions must not be repugnant to the provisions laid down by *sections 10 and 12* of TPA. At the same time, these conditions cannot alter the interest of the donee. Further, no such conditions may stand valid, which will reduce the right of ownership of the donee. Restraining alienation is an example of altering such rights as it reduces the freedom of the donee as an owner to enjoy the rights of the property in its entirety. Moreover, a recent case – *Sridhar v. N. Revanna*,²⁸ had asserted that any condition posed by a donor that restricts alienation should be held void. It is rightly found in quite a few such events, that, any condition that exploits the right of a donee as an owner shall not be held as a good condition.

²⁸ *Sridhar v. N. Revanna*, (2020) SCC OnLine SC 171 (India).