



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN



WHITE BLACK
LEGAL.

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal

– The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK
LEGAL

EDITORIAL **TEAM**

Raju Narayana Swamy (IAS) Indian Administrative Service **officer**



Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru

and a professional diploma in Public Procurement from the World Bank.

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



Senior Editor

Dr. Neha Mishra



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.



Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.

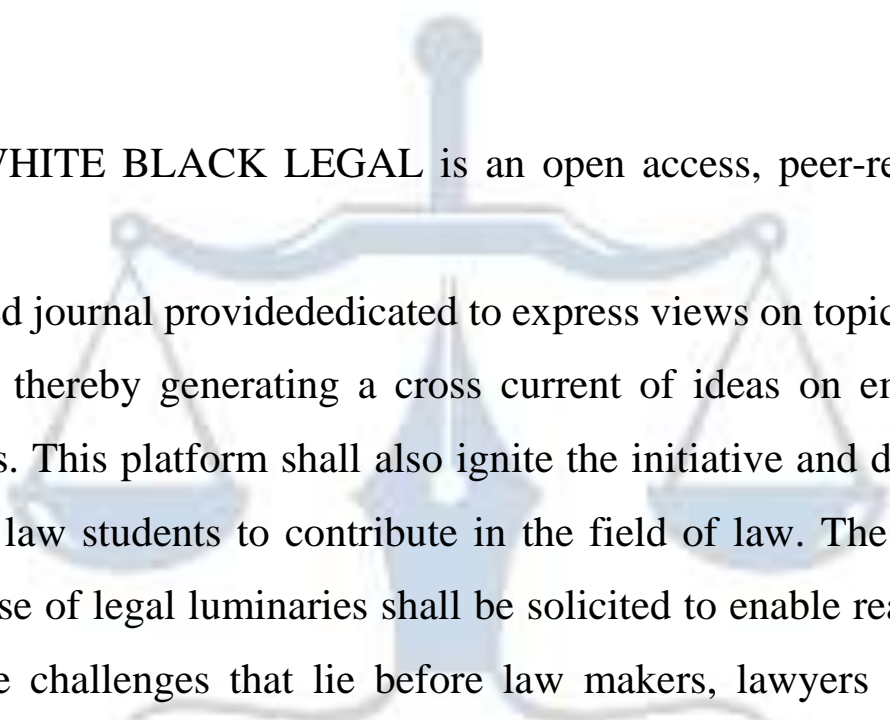


Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

A STUDY OF THE PROVISIONS OF GIFT UNDER THE TRANSFER OF PROPERTY ACT, 1882

AUTHORED BY - PRAGATI GYAN
Roll no- 2283116 Section- BA.LLB (B)
3rd year. (5th semester)

Abstract: -

The Transfer of Property Act of 1882 governs the concept of a gift, which is defined as a voluntary transfer of property without consideration, specifically Sections 122–129. This article examines the key characteristics of a legal gift, including the need for voluntariness, a lack of consideration, and acceptance by the donee. The donation must be for existing property, and for immovable property, it must be executed using a registered document. The statute also includes provisions for the revocation of gifts in specific cases, such as fraud, undue influence, or failure to follow agreed-upon conditions. The topic of onerous gifts and universal donees is also covered. Section 127 states that a donee must reject burdensome portions of gifts and accept only their helpful aspects. According to Section 128 universal donees receive the donor's obligations to the amount of the bestowed property. In addition, void gifts are explained, including donations that involve future property or that are not received. Legal decisions such as *Naramadaben Maganlal Thakker v. Pranjivandas Maganlal Thakker* and *Renikuntla Rajamma v. K. Sarwanamma* highlight the significance of correct permission and gift-giving procedures. Generally, the Transfer of Property Act's provisions provide a just balance between the duties and rights of the donee and the donor, offering a precise legal framework for the gratuitous transfer of property.

INTRODUCTION: -

A comprehensive law that governs the transfer of immovable property in India is the Transfer of Property Act, 1882. Gift-related requirements are expressly addressed in Sections 122 to 129 of Chapter VII of the Act. The purpose of this article is to present a comprehensive study of the main features of gift under the Act, including its definition, necessary components, transfer mechanisms, and the parties' rights and obligations.

As old as the idea of property ownership itself is the concept of gifting property. Gifts have been an integral part of many legal systems and societies as voluntary transfers of ownership. In India, Chapter VII (Sections 122 to 129) of the Transfer of Property Act, 1882 (TPA) largely governs the laws pertaining to the transfer of property by gift. This article explores the fundamental elements of a legitimate gift under the TPA, clarifies the donee's and donor's rights and responsibilities, and addresses the legal repercussions of void and voidable gifts.

Section 122 of the TPA defines a gift: - The Transfer of Property Act describes a gift as: "The transfer of certain existing movable or 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."

- **ESSENTIAL PROVISIONS: -**

A gift is defined as "the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person (the donor) to another (the donee), and accepted by or on behalf of the donee." This definition highlights several key aspects: -

- Property Transfer:** Property must be transferred as part of a gift; the property can be immovable or moveable. At the time of the donation, the property being transferred has to be real and existent.
- Act Voluntary:** There must be no fraud, deception, undue influence, or coercion involved in the transfer.
- Without Consideration:** A gift cannot be given in exchange for any kind of payment or other benefit. The law does not consider anything to be a gift if there is any exchange or payment involved.
- **Acceptance by Donee:** A gift cannot be considered valid unless it is accepted by the donee while the donor is still living and able to make the transfer.

- **TYPES OF GIFT: -**

There are two main categories of gifts: -

Presents given between living people are known as inter vivos.

Testamentary: Donations that become effective after the donor passes away; not covered by this Act.

- **QUALITIES OF VALID GIFT:** - The statutory definition states that a gift must meet the following criteria in order to be considered valid
- I. **Ownership Transfer:** When someone gives something, ownership is transferred from the giver to the recipient. The donor needs to own the legal title and rights to the property in order to be able to transfer it. Crucially, at the time of the gift, the property must exist and belong to the donor.
 - II. **Existing Property:** Only existing property may be included in a gift. The TPA prohibits the transfer of future property by gift since a gift must involve real property.
 - III. **Voluntariness:** The donor must willingly make the transfer. This voluntary conduct must not be the result of fraud, deception, undue influence, or force. When determining whether a gift was given voluntarily, courts frequently take the donor's mental competence into account, particularly when the donor is an older vulnerable individual.
 - IV. **Without Thought:** A present ought to be given without thinking about it in any way. Should the giver anticipate receiving something in return, the deal would be classified as a sale, exchange, or contract.
 - V. **Acceptance by the Donee:** A gift cannot be considered legitimate unless the donee accepts it. The donor must accept this offer while still alive. The gift is null and worthless if the donee rejects it while the donor is still living.
 - VI. **Donor Capacity:** In accordance with the Indian Contract Act of 1872, the donor must be able to enter into contracts. This implies that the donor must be competent to transfer the property legally, be of sound mind, and not be a minor.
 - VII. **Registration (Section 123):** The law requires that any donation of immovable property be carried out through a registered document that is confirmed by two witnesses and bears the donor's signature. If the property in question is movable, registration is not required; a gift is deemed valid only upon handover of the movable object's possession.
- Modes of Making a Gift (Section 123):**-The method of executing a gift under Section 123 of the TPA is determined on the type of property
 - Immovable Property:** A gift of immovable property needs to be made via a gift deed, which is a written document that needs to be registered in accordance with the Registration Act of 1908. The donor's signature and the attestations of at least two witnesses are also required on the document.
 - Movable Assets:** In the case of transferable assets, the gift may be completed through registration or handover of ownership. For an item to be considered transferred, the transfer of possession alone is adequate.

- **Revocation of Gift (Section 126):-** Once given and accepted, a present usually cannot be taken back. On the other hand, the TPA's Section 126 specifies the following conditions under which a gift may be withdrawn
- **Conditional Gifts:** A gift may be withdrawn if it was given with a condition attached that is not met. Revocation may occur, for instance, if a gift was given with the requirement that the donee care for the giver in their latter years.
- **Revocation by Agreement:** A gift may be withdrawn if the donee and the donor specifically agreed at the time of the gift that it would be withdrawn in the event that a given circumstance materialised. Still, this kind of requirement shouldn't be based only on the donor's wishes.
- **Fraud, Coercion, or Undue Influence:** The donor may withdraw a gift if it turns out that it was made in a way that involved fraud, coercion, or undue influence.
.It is important to note that the right to revoke a gift must be exercised during the donor's lifetime and must be based on specific grounds permissible by law.
- **Onerous Gift (Section 127):** - When a present is given with conditions or liabilities attached, it is referred to as an onerous gift. According to Section 127 of the TPA, the donee cannot accept the advantageous portions of a gift and reject the burdensome ones when the gift has several attributes, some of which are beneficial and others of which are onerous. The donee must accept the gift in full, together with any obligations related to the burdensome property, if they so choose. If the donee is a minor, on the other hand, they are not subject to these requirements, and the gift can be interpreted differently in line with the law.
- **RIGHTS AND LIABILITIES: -**
- **Donee Universal (Section 128):-** A universal donee is a recipient of a gift who obtains all of the donor's assets, both immovable and mobile. To the extent of the property transferred to them, a universal donee is personally liable for all of the donor's debts and liabilities at the time of the gift, as stated in Section 128. This clause makes sure that just because property was received as a gift, a universal donee cannot avoid the obligations associated with it.
- **Liabilities for Onerous Gifts:-** If an onerous gift is accepted by someone who later becomes competent to contract, they are bound by its obligations if they retain possession after becoming competent.
- **Exceptions to Gift Provisions Certain types of gifts do not fall under this Act:**

Donations Mortis Causa: Gifts made in contemplation of death. Hiba (Muslim Law): Governed by Muslim personal law with different requirements for validity.

- **Null Gifts:-** A gift could be void under the following circumstances: Presents to Non-Existing Individuals: A present to an individual that is not in existence at the moment of the transfer is null and void.
- **Unaccepted Gifts:** A gift is null and worthless if it is not accepted by the donee while the donor is still living.
- **Future Property Gifts:** As previously stated, a future property gift is null and invalid.
- **Non-compliance with legal formalities:** A gift will be deemed void if it does not comply with the registration requirements for real estate or the correct handover of possession for movable property.
- ❖ **Specific conditions under which a gift can be challenged:-**
 - i. **Absence of free consent:** A donation may be disputed if the giver was forced, tricked, or pressured into making it. There must be no fraud, deception, or undue influence on the donor's consent.
 - ii. **Legal non-compliance:** The gift deed may be contested if it was not executed and registered in accordance with the law. Regardless of value, registration is required for immovable property.
 - iii. **Parties' incompetence:** A gift may be contested if it was made by someone who was not legally able to enter into a contract at the time of the donation. The donor must be at least eighteen years old and of sound mind.
 - iv. **Presence of consideration:** The gift deed would not be enforceable and may be contested if it contained any consideration.
 - v. **Non-acceptance:** A gift is null and worthless and subject to challenge if it is not accepted by the donee while the donor is still living.
 - vi. **Conditional gift:** The gift deed may be withdrawn if the recipient does not fulfil the condition of the gift.
 - vii. **Future property inclusion:** The donation deed is null and void and subject to challenge if it contains future property.

- **Time limits for challenging a gift deed:-**

Three Years after Implementation or Finding a gift deed may be contested within three years of the date of execution or the donee's discovery of it.

Article 59 of the Limitation Act, 1963 establishes the three-year statute of limitations. The gift deed becomes enforceable and legitimate if the challenge is not submitted within this time frame.

Exemptions from the 3-Year Limit The donor may initiate a lawsuit to set aside the gift deed at any time, without waiting the three years, provided they had no other immovable property separate from the one given under pressure or compulsion.

The gift deed is legally void and subject to challenge at any time if it was not properly registered and stamped in accordance with the law.

The 12-Year Adverse Possession Limit if the donee has been in possession of the property for at least 12 years, they may obtain it through adverse possession, even in the event that a gift deed is contested after three years.

Even if the gift deed is revoked, the title passes to the donee after 12 years of adverse possession, and the donor forfeits their ability to regain ownership.

• **Steps can the donor take if the donee refuses the gift: -**

- Gift Is Null and Void: -** In the event when the recipient expressly declines the gift, the gift exchange is nullified. A gift needs to be accepted by the donee in accordance with Section 122 of the Transfer of Property Act. The gift is void since ownership cannot be transferred without acceptance.
- Ownership Retains by Donor: -** Should a gift be offered but declined, the asset belongs to the giver. Since the transfer was never finalised, the donor is still in possession and can regain it without facing any legal repercussions.
- Donor's Right to Revocation: -** If the present is not accepted, the giver is free to withdraw it. This revocation may take place at any point prior to the donee's acceptance. If there is a common understanding between the parties about revocation, it can be made official by means of the legal system.
- Requirements for approval Acceptance: -** May be indicated or articulated. A competent individual (such as a guardian) must accept on behalf of the donee if they are incompetent (such as a minor). A minor has the option to accept or reject the gift after they reach majority.
- Legal precedent and case law: -** Indian courts have steadfastly maintained the requirements for a legitimate gift.

For example, the Indian Supreme Court held in *Naramadaben Maganlal Thakker v. Pranjivandas Maganlal Thakker* (1997) that a gift given under duress or with undue influence is void. Similarly, the court stressed the need for free consent while making a gift in *K. Balakrishna v. K. Kamalam* (2004).

The Supreme Court addressed the issue of whether possession must be given to the donee at the moment of the gift in the 2014 case of *Renikuntla Rajamma v. K. Sarwanamma*. The court decided that there must be a clear transfer of ownership even though physical delivery is not necessary for a gift to be considered legitimate.

SUMMARY OF KEYPOINTS: -

The Act defines a gift as a voluntary transfer of existing movable or immovable property made without consideration, requiring acceptance by the donee. The essential elements for a valid gift include:

- Transfer of Ownership:** The donor must relinquish all rights to the property being gifted.
- Existing Property:** The property must exist at the time of the gift; future property cannot be gifted.
- Gratuitous Nature:** The transfer must be made without any compensation.
- Free Consent:** Both parties must consent freely, without coercion or undue influence.
- Acceptance:** The donee must accept the gift during the donor's lifetime.

- **Legal Consequences and Difficulties: -**

Under some circumstances, such as the donor's incompetence, lack of free consent, or failure to comply with legal requirements (such as registration), gifts may be contested in court. A successful challenge to a gift may result in its nullification and the return of the assets to the giver.

The Act also allows for revocation in specific situations. A gift may be rescinded by the donor, for example, if it was made with conditions that aren't met or if it was given under coercion or improper influence. Mutual consent is required in order to rescind a gift under Section 126 under certain circumstances.

- **The Value of Adherence: -**

To guarantee that gifts are enforceable under the law, compliance with the statutory requirements is essential. The intention behind giving might be undermined by

disagreements and legal action resulting from noncompliance with these rules.

Transparency in property transfers is ensured and false claims are protected by requiring immovable property gifts to be registered.

- **Legal Interpretations: -**

A number of characteristics of gift transactions have been further defined by judicial opinions. Courts have stressed that a gift deed may be voidable if there is any proof of force or improper influence. Furthermore, incidents involving children or people who are mentally ill emphasise the need for competent individuals to accept gifts on their behalf.

CONCLUSION: -

To sum up, the Transfer of Property Act, 1882's gift-related clauses create a thorough legal framework that controls how presents are given and received in India. These clauses safeguard the rights of both parties while ensuring that gifts are given freely and openly. In order to prevent disagreements and make sure their intentions are upheld in court, anyone involved in giving transactions must be aware of these legal nuances.

This Act is important because it preserves legal order in property transactions and fosters personal relationships through gifting. It will be vital to continuously review and modify these rules as society changes and new types of property ownership appear in order to meet modern issues and uphold the fundamental values set by this historic legislation.

A formal legal foundation for the voluntary transfer of property without consideration is provided by the laws governing gifts under the Transfer of Property Act, 1882. The transfer of current movable or immovable property from a donor to a donee—which must be accepted during the donor's lifetime—is referred to as a gift in Section 122. A legitimate gift must include the following components in order to be considered: ownership transfer, property existence, gratuitousness, free consent, and donee acceptance.

Registration is necessary for legal formalities to be enforceable, especially when it comes to immovable property. The Act also covers situations where gifts are given to several donees and gifts that are burdensome. Notably, donations of future property are null and void, and gifts may be revoked by the donor in certain circumstances.

In order to safeguard their interests and guarantee legal compliance, anyone involved in giving transactions must be aware of these restrictions. The Act preserves legal order in property transactions while simultaneously facilitating personal interactions through giving. It will be crucial to keep reviewing these rules in order to handle new issues and maintain the fundamental values that this historic legislation established, even as society standards change.

REFERENCES: -

- ✓ <https://www.ezylegal.in/blogs/recent-supreme-court-judgment-on-cancellation-of-gift-deed>.
- ✓ <https://lawbhoomi.com/authorization-of-gifts-under-transfer-of-property-act/>
- ✓ Garg, Ananya & Malhotra, Bhuvan. (2020). "Concept of Gift under the Transfer of Property Act, 1882". iPleaders. This article discusses the legal provisions relating to gifts under Chapter VII of the Transfer of Property Act, including definitions, conditions for validity, and modes of making a gift. Available

at: iPleaders

- ✓ Kanishta Naithani. (2020). "Concept and Kinds of Gift; Transfer of Property Act, 1882". Legal Bites. This article provides an overview of different types of gifts and their legal implications under the Transfer of Property Act. Available

at: Legal Bites

- ✓ "Gift Under Transfer of Property Act, 1882: Essential Elements and Kinds". ILMS Academy Blog. This blog post outlines the essential elements required for a valid gift and discusses various types of gifts under the Act. Available at: ILMSAcademy
- ✓ "Gifts under Transfer of Property Act - Drishti Judiciary". This resource covers essential definitions and elements related to gifts as defined in Section 122 to Section 129 of the Transfer of Property Act, along with relevant case law examples. Available at: Drishti Judiciary