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A Study on the Transfer of Property By Way Of Gift under Hindu, Muslim and Statutory Laws of Bangladesh

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ABSTRACT
The Gift is a wider term which refers to the transferring of the property with no consideration. Such transferring is recognized under two categories of laws in Bangladesh-Personal laws and Statutory laws. Hindu and Muslim personal laws prescribe gift laws in detail. The Transfer of Property Act redress statutory provisions relating to gift. Besides, the Registration Act formulates the laws for the registration of gifts. Besides, the Contract Act, the Succession Act, the Guardianship Act, the Indian Majority Act, Civil Procedure Code and other related laws are there for dealing with gifts in Bangladesh. Thus, the Muslim *Shariat*, Hindu *sastric* texts, and statutory laws are the mostly regulatory gift laws in Bangladesh. Under Statutory Law, transfer of movable and immovable property by gift must be done voluntarily by a written instrument registered under registration laws and attested by at least two witnesses, but in Muslim sharia law, it is termed as *'Heba'* and Oral *Heba* is completely valid (Though from 2005, *Heba* also must be registered). Elements of Hindu law are substantially the same as that of Muslim law. This piece of writing tries to explore, examine and compare the Hindu, Muslim and Statutory laws in regard to the disposition of property by gift and tries to find out the distinct area of complexities that shows the necessity of uniformity of gift laws in Bangladesh.
KEYWORDS: Gift, Transfer of Property, Voluntary, Personal law, Statutory law, Consideration, *Inter Vivos.*

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I. INTRODUCTION

The right to property is a fundamental right.[1] This right can be transferred legally in many ways. The gift is one of the legally supported ways of transferring property from one to another. There are two natures of governing laws in Bangladesh to deal with this transfer. One is statutory law based on parliamentary enactments and the other is personal law, also called divine law based on religious texts. It is said the Muslim gift laws are the preceded laws than statutes in this Indian Subcontinent. Again, gift of Hindu law manages Hindu property in this area since long. Both the laws (personal and statutory) have distinct principles and procedural features in their application and dealings. As for the application, statutory laws are applicable to all irrespective of religion within the state's boundary, whereas personal laws are applicable to the persons considering their communal identity, which the person bears with him even beyond the state's territorial boundary. There a well-founded question may arise- What are the provisions of gift under these laws? , and how these laws are applied in a state's territory simultaneously? Above all, whether unifying these laws may result in more effective regulation or not? This article mainly discusses about Muslim *shariat l*aw, Hindu *sastric* law, relevant case decisions, statutory laws relating to the gift, and other correlated instruments in Bangladesh. This article tries to describe and find out the nexus of the individual aspects of them and the necessity of uniformity of gift laws in Bangladesh.

II. OBJECTIVES OF THE STUDY

The primary objective that this article is to describe and analyze the gift related Hindu, Muslim and Statutory laws in Bangladesh and to find out the need for their uniformity. It targets to achieve some other specific objectives such as examining and identifying the complexities and ways out in the application of multi-structured gift laws simultaneously in the same jurisdiction.

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III. METHODOLOGY OF THE STUDY

This doctrinal research has mainly been completed with descriptive and analytical approaches, generally relying on the original statutes, sastric texts, journal articles, newspaper articles, books, case laws, online materials, etc. Views of experts have helped a lot in gathering materials and understanding technical words to get a clear idea and improve the research problem intensely. This article is mostly limited (though Indian case decisions have been immensely used) to the Bangladesh context and to the secondary study materials available in Bangladesh and Indian jurisdiction.

IV.DISTINCTIVE CONCEPTS OF GIFT UNDER HINDU, MUSLIM AND STATUTORY LAWS

In *Sastric* Hindu law, a gift is the transfer of one's own right in some property without consideration in favor of another who would accept it to create his right in that property. Under this law, a gift becomes complete as soon as it is accepted by the person to whom it is offered and there is no way except this established rule. According to *Sastric* Hindu law, there are three ways of completing acceptance either mentally, verbally or incorporeal means. In every case, possession delivery is indispensable to make lawful a gift, especially in the case of land, because the produce of the land cannot be enjoyed without possession, however little it may be. Unless there is delivery of the possession and acceptance of that possession, the gift would be incomplete. *Sastric* Hindu law did not require any written document in case of a gift, but the delivery of possession is necessary.[2] Similarly, a Hindu may dedicate his property to a deity, and such dedication may be made even without any document.[3] Gift under Hindu law varies in certain points based on its major two schools of Mitakhshara and Dayabhaga. Most of the Hindus living in Bangladesh follow Dayabhaga School.[4]

In Bangladesh, the Muslim personal law application in practical life is ensured in some issues of family dealings, including gift.[5] Justice Mustafa Kamal (in a maintenance case) referring gift amongst others, said that where parties are Muslims, the Muslim Personal Law (Shariat) will be the basis of decision making.[6] Under Muslim law, the Arabic term m "*Heba'* is the synonym of the English word 'Gift.' *Hiba* refers to the voluntary disposition of a thing by a donor to the donee and which needs to be effected immediately and completely. Technically, gift bears wider assortment than gift, it is considered alike to *Heba* in Bangladesh. *Heba* applies only to the issue where all parties are Muslims.[7] Hedaya, the famous book of Islamic jurisprudence, defines gift stating that *"Unconditional transfer of property, made immediately and without any exchange or consideration, by one person to another and accepted by or on behalf of the latter"* The most essential element of *Hiba* is the delivery of possession (though some exceptional cases actual delivery of possession is not occurred such as gift made by husband to wife, father to a child, guardian to ward, to person residing in the same house).*Heba* is of two types. Such as (i) *Heba-bil-iwaz and* (ii) *Heba –bil-shart -ul -iwaz*: here,*Iwaz* indicates consideration and *Shart* means stipulation. So, *Heba-bil-iwaz* refers to gift for consideration which has already been received. It is generally made in exchange for a previous gift. *Heb- bil-shart –ul- iwaz* is a gift on the condition to return a future gift between the same donor and donee. 1st gift is *Heba-bil-shart -ul –iwaz* and 2nd gift in exchange of the condition is *Heba-bil-iwaz* .It may also be called reciprocal gifts between two persons-one gift from donor to donee and the other from donee to donor. Here, the gift and return gift are separate dealings. In *Heba -bil-iwaz-* free consent and payment of consideration needed, the delivery of possession not, but in *Heba- bil-shart-ul-iwaz-* delivery of possession is necessary. *Heba-bil-shart-ul –iwaz*is revocable until the consideration is paid, and it becomes irrevocable after the payment of consideration. It becomes analogous to sale when the transaction is completed.[8]

On the other hand, section 122-129 of the Transfer of Property Act, 1882 deal with gift in Bangladesh. gift is defined under section 122 as '*Gift is the transfer of certain existing moveable and immoveable 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'* A gift of an immovable property has to be executed by a registered document, signed by or on behalf of the donee, and attested by at least two witnesses;[9] a gift of a movable property can be completed either by a registered instrument or by mere delivery of possession of the subject of gift.[10]

Nexus between Gift under Muslim Sharia Law and the Transfer of Property Act

Gift laws in this Indian Subcontinent are deemed to be originated from *Heba* of Muslim sharia law. So, both gift and *Heba* have inherent relation. Every Muslim (capable of making contract under the Contract Act 1872) with major age (18 years under the Indian Majority Act 1875, Section 3) and sound mind may express his intention to dispose of his property without consideration by *Heba*. This intention may be arisen out from spiritual benefit, affection and love.[11]*Heba* in Muslim Laws is *Inter Vivos* means both donor and donee need to be alive at the time of gift. *Heba* is thought to be part of Contract law as the essential elements of contract like offer, acceptance and finally delivery of possession or custody are also the three important requirements for a valid *Heba.*[12] Gift deed of movable and immovable property not necessary to be written under Muslim sharia

law. The Transfer of Property Act, 1882 requires gift of immovable property to be in a written instrument and to be registered and also need to be attested by at least two witnesses, but in case of a gift of movable property, it relies on the provisions of Muslim law.[13].Registration is not required in case of movable property.[14] But the Registration Act, 1908 requires additional provisions that every *Heba or* Muslim Gift must be made through a registered deed.[15]

Nexus between Gift under Hindu *Sastric* texts and Statutory laws

Under Hindu Law "A Gift consists of the relinquishment of one's own right and the creation of the right of another. The creation of another man's right is accomplished on the other's acceptance of the gift, but not otherwise. Acceptance is made by three means, mental, verbal, or corporal. In the case of land, as there can be no corporal acceptance without the enjoyment of the product, it must be accompanied by some little possession; otherwise, the gift, sale, or other transfer is not complete".[16] With regard to the requisites of a valid gift, there is an important point of distinction between the Dayabhaga and the Mitakshara schools. Under the Mitakshara law- acceptance is necessary; there can be no complete gift without the donee's consent, whereas under the Dayabhaga law the donor's act of giving alone completes the gift. This Hindu law of gift has been modified by section 123 of the Transfer of Property Act, 1882 a gift of immovable property under Hindu law must require (a) A registered deed (b) signature of donor and (b) at least two witnesses for attesting the deed.[17]

V. DISCUSSION, ANALYSIS, COMPARISION AND FINDINGS

Transfer of property by Gift under Hindu, Muslim and Statutory laws are explored and discussed in the distinct headings as regards their varying requirements and state as follows:

On the Subject of Property or Subject Matter ofGift:

A Hindu, of either Mitakshara or the Dayabhaga School, may transfer his self-acquired or separate property by means of gift subject to reservation of maintenance of those persons (mentioned in the Statute[18]) who he is legally bound to maintain.[19] Although the Hindu *Sastric* texts do not approve of absolute gift by a husband governed by Dayabhaga School, but as the net result of the judicial pronouncements, a husband can make an absolute gift in favor of his wife.[20] Under the Dayabhaga law, a coparcener may dispose of his interest of coparcenary by gift following the above conditions.

In Bangladesh, an absolute owner of the property (ancestral or not)may make gift as he pleases. This right exists to such an extent that a Hindu can dispose of his entire property by gift *inter vivos* without making any provision for the maintenance of his widow. Of course, in such a situation the donee must hold the property on the condition to the claim of that widow. However, after the passing of the Hindu Women's Right to Property Act, 1937, a widow's right to maintenance rarely arises.[21]Under the Mitakshara school, a coparcener has no such power unless he is the sole surviving coparcener; a sole coparcener can dispose of his coparcener interest as if it were his separate property, he can sell or mortgage, transfer by gift, and even if he does that to son subsequently born or adopted by him, the alienation will stand, and cannot be objected.[22]However, under this school, no coparcener can dispose of his undivided coparcenary interest by gift. [23]Such a Gift is altogether void; he may, however, do that with the other coparceners' consent.[24] Under the Dayabhaga law, a father may dispose by gift the total property (self-acquired or ancestral) subject to the claims of maintenance to whom he is bound to maintain.[25] The reason is that according to the Bengal school, the father holds the property as the head of the family having absolute ownership in the family property; so long he is alive, his issues have no ownership in the family property. Upon his death, his sons would inherit the property and they would be able to exercise the right to a partition in that property.[26] Under the Mitakshara law, a father has no such authority over the joint family property. He cannot dispose of it, not even his own interest therein by gift. In certain cases, such as for the gift of affection or for pious purposes, the father has a special power to transfer by gift a small portion of joint family property.[27]

In India, after taking consent from husband in certain cases, a female may dispose of her stridhana by gift. A woman has absolute power to sell or give away or devise her *sudayika* property even when it is converted into immovable property. After 1956, she can transfer all properties by gift, because any property held by a Hindu female as *stridhana* shall be treated not as a limited owner but full owner.[28]Under Hindu law a woman cannot dispose of the property (either movable or immovable) by gift, which she obtains by inheritance from a male according to all schools of Hindu law. So a widow cannot dispose of the property inherited by gift or will as such property being considered as her widow's estate on her death, her ownership terminates in such property. But she can transfer by gift a small portion to her daughter on the time of her daughter's wedding or to her son-in-law's such occurrence. But she cannot do so by will.[29]In such case, section 14 of the Hindu Succession Act, 1956, the rights of female has considerably been increased in India.

The owner of an importable estate, unless there is a ban on transfer or the term is of such a character that the estate cannot be alienated, can dispose of it by gift.[30]Dedication of the property for the performance of

an act which confers a spiritual benefit on the soul of the deceased owner is considered a dedication even though there is no express mention in such dedication deed. A Hindu female who has acquired by inheritance a limited interest in some property may alienate in religious purpose a small fraction of the estate. [31]A Hindu may dedicate his property to a deity; the deity has the capacity to hold the property and it has the capacity to contract, to sue and be sued but in every case, it must have a human agent, namely, the *Shebait*.[32]

Under Muslim Laws, gift of Mushaa (undivided share of property, if indivisible valid but if divisible invalid) and gift in Future are void. Property are not divided in such above nature like ancestral, separate, moveable or Immoveable, corporeal, non-corporeal or any other. All kinds of properties can be dealt with in the same manner, either in transfer or in inheritance.**[33]** On the other hand, statutory law divided property as movable and immovable property which are mainly governed by the Transfer of property Act, Registration Act, Contact Act along with other legislations.

As Regards the Essentials of a Valid Gift:

There must be a donor to effect a Hindu gift, who will be the lawful owner and who will relinquish his own right in favour of another in the gift property. The owner must have the lawful capacity (Major and sound mind) to make the gift; he must have contractual ability. A person of unsound mind or infant cannot make a gift. Under Hindu law a female is entitled to transfer her *stridhana* , but she was not allowed to transfer her widow's estate except to an approved limited extent, though now in India , absolute owner of property has been given and a Widow can make a gift as like as a male.[34]Under the Mitakshara law a gift is the result of canceling of one's right and the formation of another's rights in it, such creation of another's right is accomplished on its acceptance not otherwise.

There must be a donee to accept the gift property. Either the done himself or some other person on his behalf must accept the gift. Usually, if the donee is a minor; his guardian would accept. If the donor dies before the acceptance, gift shall become void. As a general principle under Hindu law, donee must be in survival, either in fact or in law, at the time when the gift takes effect.[35]

The essential element is that free consent must be there in making a gift. The donor must have free intention to make the gift. Where a gift deed has been prepared under undue influence, force or fraud the gift will be voidable. No gift will be valid unless there is free consent in its creation. Where a Hindu dies and his two wives are alive and if one of these widows without taking the express or implied consent of the other widow makes a gift of her deceased husband's property to her daughter and son-in-law who has been taken as a *'Ghar-jamai* and then dies. Thereafter, the other widow sold the entire estate of her husband to the plaintiff, it was held the sale was valid and the gift was not binding on the seller widow.[36]

Under Hindu law, both movable and immovable property maybe the subject matter of a gift provided the person making gift fulfills the requirement of his personal capacity to make a gift. A Hindu, either following the Mitakshara or Dayabhaga School, may transfer by gift his self-acquired and separate property subject, in certain cases, to the claims of maintenance of those whom he is legally bound to maintain. Where a Hindu dispose of his entire property by gift *inter vivos*, the donee must hold the property subject to her claims. However, after the passing of the Hindu Women's Right to Property Act, 1937, a widow's right to maintenance rarely arises.[37]

The gift must be free and without consideration, but with the aim to the creditors' defeat or defraud is voidable at the choice of the creditors .A gift made in death sickness is valid under Hindu law. Hindu law does not make any distinction between gift made in contemplation of death and other gift, but if the donor recovers from his illness or survives the donee, the gift will be void.[38]

Without acceptance, no gift will be complete. Under Hindu law the acceptance may be either expressed or implied as section 122 of the Transfer of Property Act, 1882 states regarding this that it must be expressed.[39]The acceptance must be effected before the donor's death and before the donor losses his capacity to make the gift. According to Mitakshara School acceptance is very much necessary; there can be no complete gift without the donee's consent. But according to Dayabhaga School the donor's act of giving alone completes the gift.

According the Muslim law, the essential elements of a gift are- declaration of gift by the donor, acceptance of the gift, and the delivery of the possession. Moreover, a gift can be made orally or in writing, irrespective of the fact whether the property is movable or immovable according to the Muslim law.[40] The only requisite that is essential for a gift to be valid under Muslim law is "taking the possession of the subject-matter of gift by the donee either actually or constructively".[41]This provision of gift is something different from the Hindu provisions. [42]

On the other hand, the statutory law also binds some necessary requirements to make gifts. under this law, there are some essential elements of gift which are, (a) No consideration; (b) the existence of donor; (c) The donee; (d) The subject-matter; (e) the transfer voluntarily (f) the acceptance, (f) the registration (g) at least two witnesses.[43] Gift of future property is void under section 124. It reads as: 'A gift comprising both existing

and future property is void as to the latter' .Any donor can legally make gift of his immoveable property to the donee by a written deed without taking any compensation. If the transfer was related to any consideration, the transaction would be treated as a sale within the ambit of sec. 54 or to an exchange within the purview of sec. 118 of The Transfer of Property Act 1882. The main defining factor of a Gift *inter vivos* must always be between living persons and without consideration of the nature defined in sec. 2(d) of the Contract Act 1872. A gift in consideration of conferring spiritual benefit to the donor cannot be treated as a transfer with consideration, but should be treated as a gift. When a mother confers her property to the only daughter, who agrees to maintain the property all her life, the promise cannot enforceable in law because the gift must arise out of natural love and affection and not for any consideration.[44]Moreover the Delhi High Court decided in a case that gift can be defined as transfer of property made voluntarily without any pecuniary consideration and the property pass to the transferee from the owner without any financial benefit.[45]

As regards the Process of Gift:

Under *Sastric* Hindu law a gift will be valid if it is written and completed by possession delivery of the property from donor to donee.[46] Only mere registration of a gift does not mean the delivery of property and certainly not enough to pass the title.[47]But there is an exception considering the nature if physical delivery of possession possible or not. [48] The Hindu law of gift has been modified by the Transfer of Property Act, 1882, delivery of possession is necessary to the legality of a gift has been abrogated by section 123 of this Act.[49] But in cases of gift by Hindus to which the Transfer of Property cannot be not enforced , a gift may be made orally or in writing. The effect of section 123 of the Transfer of Property Act emphasized on delivery of possession, not on acceptance as is clear from section 122; mere registration by the donor does not comprise of a proof of acceptance by the donee. Acceptance of course need to be proved as a separate and independent fact. The Transfer of Property Act in section 123states as follows: '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."So for making a gift of immovable property, a registered deed signed by donor and attested by at least two witnesses are compulsory; while for making a gift of movable property is not so. 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. According to the Transfer of Property Act, the requisites of a valid gift are (i) Certain existing property must as subject matter; (ii) the transfer must be made voluntarily and without consideration and (iii) it must be accepted by or on behalf of the donee in the life time of the donor.[50] So, under the Transfer of Property Act, delivery of possession is no longer needed to complete a gift except the gift of movable property. A gift under the Transfer of Property Act can only be made in the ways prescribed under section 123 of the act. When there is lack of a registered instrument, no gift made by a Hindu will be valid under this section. The effect of this section is to dispense with the delivery of property, but the act does not quash with the need of acceptance. As stated above the mere execution of a registered deed by the donor is not proof of reception by the donee; the reception must be expressed or implied[51], and it must be proved as an independent fact.[52] Under Hindu law a gift of shares in a company may be made only by entry in the books of the company. A husband governed by the Dayabhaga law can make an absolute gift in favour of his wife.[53]

According to Muslim law, in order to be a valid gift, three essentials must exist: (a) assertion of intention of the gift by the donor (b) an express or implied acceptance of the gift, either by or on behalf of the donee, and (c) delivery of possession of the subject of gift except some exceptions.[54] Courts of Law reiterated stating that when there is no obedience of any of the above three essential elements the gift renders itself as invalid. Another characteristic of Muslim law gift is that writing is not essential to the legitimacy of a gift movable or immovable property. It is decided in a case that under the Muslim law for the validity of gift, four elements must be present:(a) declaration by the donor (b) relinquishment by donor of ownership and dominion (c) acceptance by donee, and (d) delivery of possession.[55]

As regards Gift When Complete:

Under the traditional Hindu law, no gift was valid unless the property or subject matter of the gift was delivered from the donor to the donee.[56] This law was radically changed by the passing of the Transfer of Property Act. Under this Act of 1882, and now, in case of immovable property, a gift can be completed by a registered deed,[57]delivery of possession is not an indispensable element of a gift anymore. On the contrary, in case of movable property, gift can be completed either by registered document or by delivery. However, the nature of the subject matter of a gift if physical possession cannot be delivered, it is enough that the donor has performed all from his side to entitle the donee to obtain possession.[58]Thus, gift of property, which is in an adverse possession of a third person, can be completed by the execution of gift deed. Similarly, a gift of property in the possession of tenants can be completed by the tenants regarding the donee as their landlord at the request of donor, and would agree to pay the future rent to donee instead of to the donor. Where the gifted

property is already in the possession of the donee, the gift can be completed by the declaration by the donor and by acceptance thereof by the donee.

Hindu law rule that delivery of possession is essential for the gift to be valid has been repealed by the Act of 1882.[59]Now delivery of possession is not essential to enforce a gift. Likewise, mere delivery is not adequate to constitute a gift apart from in the case of movable property. It is to be noted that although the Transfer of Property Act has put emphasis with the Hindu law principle of delivery of possession, the act has not emphasized with the need of acceptance**.**[60] When the gift is to more than a one person, and of whom one does not accept under section 125, the gift is void.

As regards the Conditional Gift:

Where a gift is already completed by the passing of property from the donor to the done, any conditions that may be subsequently added are absolutely void. A gift once completed cannot be revoked by the donor and it is binding upon the donor,[61] unless it was gained by undue influence or fraud .[62]When property is given on condition that the donee is absolutely limiting from transferring it,[63]such condition is void, but the gift itself not affected by it. Similarly, when property is given as gift to two or more persons subject to a condition that they shall not make partition of the property, the condition will be void, but the gift will remain valid .[64]A gift can be made contingent on a condition subsequent that the property would be passed over to another person on happening or non-happening of any uncertain event. In such case the donee acquires only a contingent interest which becomes a vested interest on the happening of the event in one case or when it becomes impossible in another it becomes void thereafter.[65]Where the property is given to a person absolutely, but paper contains a route that it must not be alienated or partitioned or that it must be applied or enjoyed in a fixed manner, such direction will not operate and the condition is void, but the gift itself remains good and the donee will take the property as if the document had contained no direction.[66] Where an immoral condition is attached to a gift, the gift remains good but the condition becomes void.

In Muslim Law, generally any gift with the kind of condition or requisite that restricts or prescribes some definite or particular use of property, like the donee cannot sell it, the gift is valid, but condition is void. However, a gift with reservation for life is generally valid.[67]The conditional or contingent gifts are those kinds of gifts which are made reliance on the occurrence of a consistency for their operation. A contingency is likelihood for a certain event, a chance, an event, which may or may not occur. Under Muslim law, contingent or conditional gifts are invalid. Under this law, a gift is not rendered void, if it involves any invalid condition. Muslim law of Hanafi school clearly states that in such a circumstance, the gift is valid and the condition is invalid.[68]Under Shia law, if the conditions affixed to a gift is secondary, then both the gift and the condition are valid.

An onerous gift is gift of immovable property made on imposing some obligation to donee to perform, generally, illegal but valid on the basis of Section 127 of the Transfer of Property Act1882 if donee have no objection.

As Regards the *Donation Mortis Causa or* Gift in Deathbed:

Under Hindu law a gift made in contemplation of death, i.e., a *donation mortis causa*, is valid; but if the donor recovers from his illness or survives the donee, it becomes void.

Under Muslim law, synonym of gift in Deathbed in Arabic language is *Marz-ul-maut*. A sickness in which there is reasonable apprehension of death of a person. If the donor makes the gift during death sickness, the gift treated as a *'Will' or Wasiyat*. There will be no 'will' in favour of any heir and no 'will' for more than one-third of the total property.[69]

The Transfer of Property Act, 1882 in its section 129 saves the D*onations mortis causa* and Mohammedan law and exempts the application of its provision on gift of movable property made in the sickness of death.[70]It means gift during death illness. Such gift is valid under section 191 of the Succession Act 1925.[71]

As regards the Gift to Unborn Person:

Under S*astric* Hindu law, if a person is not in existence at the date of gift, a gift made in favour of him will not sustain. [72]The donee must be inexistence at the date when the gift takes effect.[73]This rule still is a must to comply except in cases to which the Hindu Transfers and Bequests Act, 1914, and the Hindu Disposition of Property Act, 1916, apply. These two Acts have modified the provisions of the *Shastric* Hindu law by stating that no gift will be void only because the persons for whose benefit the gift made were not born on the day of making the gift. This different rule concerning gift to unborn persons applies only to such cases of disposition as are conditioned to come into operation after the inception of these Acts. However, now even this altered rule is subject to the provisions contained in Chapter II of the Transfer of Property Act, 1882. These provisions may be summarized in the following words:(a) If the gift made to an unborn person is supported by a prior disposition to an alive person, (b) the gift should be of the total remainder. (b) The gift must not breach the rule against

perpetuity laid down in section 14under Transfer of Property Act. Section 14 (c) runs as -If the gift is conferred on a class of persons and if in respect to some of whom it is invalid according to rule (a) and (b) above, the gift will fail in regard to such persons only and not in regard to all such persons. (d)If the gift to an unborn is void under rule (a) or (b) above, any gift which is intended to take effect after such gift will also be void.

It is to be cited here that the above rules are contained in sections 13 to 16 of Chapter II of the Transfer of Property Act, which link to sections 113 to 116 of the Succession Act 1925. Both these sets of sections are alike in substance and all these sections believe that a gift can be made in favour to an unborn person. At present, a Hindu may dispose of his property by gift made for an unborn person subject to the limitations incorporated in Chapter II of the Transfer of Property Act, 1882. A gift of property will not be invalid as because the donor has reserved the usufruct of the property to himself for life.[74]

According to the Muslim law, a gift can be made to any person free from any distinction of age, sex or religion. Under the Hanafi school of Islamic law, the donee must be legally in existence at the time of *Heba*. Thus, a Gift to an unborn person, means a person not in existence, so gift made in favour of un unborn person is invalid.[75]But gift to child in the womb considered valid if he is born within six months from the date of gift.[76]

As regards the Revocation of Gift:

Gift under Hindu Law perspective is little bit different from Muslim Law's concept. The nature of gift, its effectiveness and the other legal formalities are almost same with that of Muslim law, only the difference is a gift under Hindu law is once completed, it cannot be revoked unless obtained by practicing fraud and undue influence.[77]Under Hindu law once a gift is complete, it is binding on the donor and it cannot be revoked by him,[78]unless it has been obtained by fraud or undue influence .[79]Where a gift is made by a Hindu widow, the burden lies on the donee to show that the widow made the gift with full understanding of what she was doing. If a gift is made with the intention to defeating or defrauding the creditors, it will be voidable at the instance of the creditors.[80] It is to be pointed out here that the grounds on which Gifts are avoided under Hindu law are not open after the amendment of Transfer of Property Act making Chapter VII applicable to gifts by a Hindu. The situations under which a Gift may be revoked are specified in the Transfer of Property Act.[81] The most usual ground for revocation is undue influence specified in the Contract Act, 1872.[82] In order to revoke a gift on the ground of undue influence or fraud, The period of limitation is three years, beginning from the time when the facts come to his knowledge under the Limitation Act, 1908.[83] A gift to which an unethical or immoral stipulation is attached remains a valid Gift, while the condition becomes void. [84]A gift may become invalid even after completion correct delivery and acceptance only owing to the absence of tax on a gift as per Gift Tax Act, 1990 of Bangladesh.[85]

According to section 126 of the Transfer of Property Act, 1882 provides the following conditions for revocation of a gift: (a) Donor and donee agreed on condition at the time of accepting the gift to revoke on happening a specified event not dependant on donor's will (b) Conditions must be legal and moral. This section 126 is supported by section 10 which says if gift not based on misrepresentation or fraud or undue influence cannot be cancelled. However, such gift deed can be cancelled by competent court.

Gift under Muslim Law by mere will of the donee and by decree of a court is revocable even after delivery of possession. The following gifts cannot be revoked (a) gift by husband to wife or vice-versa (b) donor and donee's relation is within prohibited degree (c) gift made for charity or religion purpose (d) donee is dead (e)subject matter lost or destroyed (f)the value increases (g)subject matter changed and became unidentifiable (h) donor received something in exchange..[86]

The conception of the term gift used In the Transfer of Property Act is somewhat different from the Muslim law. A *Heba* is defined as an unconditional and immediate transfer of the ownership of some property or of some right, without any kind of consideration or without some return (Iwaz); and the grant of some partial interest in respect of the use or usufruct of some property or right. A gift by a Muslim in favor of his co-religionist must be done according to the Muslim law. A gift cannot be said as a contract (though in Muslim law it is called a contract) but the principle may be appropriate even for gift. In Statutory law, there are differences in the concept of property between Muslim and man made statutory laws. Rights in property are categorized on the basis of immoveable and moveable (real and personal) property under the statutory law. Muslim law draws no real distinction between real and personal property.[87]

Section 122 of the Transfer of Property Act 1882 states that a gift is a transfer of any particular existing immovable or movable property made voluntarily and without any consideration by one person called the donor, to another, called a donee and accepted wither by or on behalf of the done himself. The required elements in order to constitute as a gift are (a) Gift should be made without any consideration; (b) there must be a donor;(c) a donee;(d) the subject-matter; (e) the transfer; and (f) the acceptance. In statutory law a person having interest in immoveable property for limited periods of time is said to be the owner. On the contrary, in Muslim law, a person is said to be an owner only if he has full and absolute ownership. Indian Majority Act 1875, sec 3 says the age of majority is 18 years but in case of retaking property from guardian of property is 21 years.

Mohammedan and Hindu law depends on the statutory law regarding age. A donor has the unrestricted power in Muslim law as the whole property can be made gift. A *Heba* though not valid in favor of unborn child but in the case of child in the womb, gift is valid if child is born within six months as because the child existed in the womb is a distinct entity. Gift to juristic persons and non-muslims may be valid under Muslim law; subject matter may be certain existing property either lands, goods or actionable claims which must be transferrable under section 6 of the Transfer of Property Act. According to the Muslim law, any property or right which has some legal value may be the subject matter of a gift. Delivery of property is not absolute requirement for the completeness or the validity of the gift in Muslim law. Under Hindu law, two different views are there on the need of acceptance of gift by donee in two schools. Under Transfer of Property Act, the constituting elements of gift are voluntary transfer and without consideration and gift inter-vivos; property can be both moveable and immovable but here, the Requisite is that the same has to be tangible property for constituting gift.Though the word consideration is not defined in the Transfer of Property Act, 1882.[88]

VI. CONCLUDING REMARKS AND RECOMMENDATIONS

Gift under Muslim and Hindu Personal laws are based on religious texts, case laws, and literature. Though later on supplemented by some statutory provisions, these statutory provisions are also age-old as the Transfer of Property Act was enacted almost 140 years ago in 1882. Besides, problems arise regarding the simultaneous application of the Act with personal laws in case of conflict. The main differences and comparison of gift laws among Hindu, Muslim and Transfer of Property Act are described above, here if it is summarized amongst other points- delivery of possession, which is essential in Hindu and Muslim Law, but not essential under the Transfer of Property Act except in case movable property. As regards the fundamental conception of property and ownership, there is no difference between the various schools of Muslim law. On the Contrary, In Hindu law, there are clear differences between the Schools on several issues -under the Dayabhaga school of law, a father may dispose of his self-acquired, as well as his ancestral property subject to the claims of maintenance. The situation is otherwise under the Mitakshara where the father may dispose of his self-acquired property, but not the ancestral property as in that property, his sons, grandsons and great-grandson acquire right as coparcener by birth. In India, section 14 of the Hindu Succession Act, 1956 empowers a widow to become an absolute owner of the property; in Bangladesh it is still it its natal stage, thus, she may make a gift exactly like a male. Transfer of immovable property by gift under Statutory law must be made by a registered instrument accompanying other necessary requirements, but in Muslim sharia law Oral gift is completely valid though under statutory provisions from 2005, it also must be registered. On the other hand Hindu gifts are substantially the same as that of Muslim law.[89] Focusing on statutory and Muslim personal law, it is observed as 'The provisions of gifts as under Islamic law are more futuristic and easily applicable have less procedural requirements. While The Transfer of Property Act, 1882 requires a lot of procedures and possesses difficulties in providing gifts.' [90]

In Bangladesh, there reside 88.23% Muslims, 10.69% Hindus, 0.60% Buddhists, 0.37% Christians, 0.067% Shikhs and 0.043% others[91]. It is clear that diversity of religion is there in our country. Considering the huge distinguishing features of Hindu, Muslim and Statutory laws of gift within a territory, there exists a huge problem of inconsistency among the personal laws that govern the population of the country. So, it is strongly recommended that a uniform gift law be enacted as it is badly needed for a smoother managing, transferring, holding of property by gift and thereby establishing the right to property, the constitutionally guaranteed fundamental rights, equally for all with same level playing field i.e. same laws irrespective of religion.

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