

LIFE INTEREST UNDER MUSLIM LAW OF GIFT

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Introduction:

Life interest denotes holding of right in land limited in duration to the life of the holder or of some third person. Life interest is a term of art in English law and holder of life interest is spoken of as owning property for life. The concept of life interest under English law falls under the general head of the creation and transfer of rights short of full ownership. Under Muslim law, the terms 'life interest' or 'life estate' is being used by the jurists, text book writers, judges and lawyers to denote right in property conveyed by way of gift or family *wakf*, family settlement or will which fall short of full or absolute ownership. But the nature and incidents of these limited right for life under Muslim Law are different from the nature and incidents of limited interest under English law because the concept of property under these two systems of law are different. Failure to keep in view this difference has led to confusion in appreciating the nature and incidents of limited interest conveyed by way of gift or other means of transfer under Muslim Law. As Tyabji has stated that much difficulty in the appreciation of the Hanafi law governing limited interest in property or rights in property not amounting to its full ownership has arisen from a failure to attend to the classification and terminology of the Hanafi texts and from a forced identification of terms used in those texts with terms prevalent in English law though there is no real equivalence between the two.¹ It is submitted that much of this confusion can be avoided if the nature and incidents of the limited rights for life conveyed by gift or other modes of transfer are grasped fully and an appropriate terms is used to designate such limited interest.

This paper seeks to identify the nature and incidents of limited right to property conveyed by way of gift for the life time of the donee to facilitate the proper understanding of the right. Our concern here is only with one type of limited right, namely, right for the duration of life of the donee.

1. F.B. Tyabji *Muslim Law*, (Bombay, 4th Edition, 1968) pp. 446-447

Concept of Gift and *Hiba*.

According to the orthodox Muslim jurisprudence the term gift or *hiba* is identified with absolute and unconditional transfer of ownership of any property without any return for indefinite period, and anything less than absolute and unconditional transfer is not acceptable. This requirement obviously limits the ambit of gift or *hiba*, and limits the number of beneficiaries who can have the ownership at a given time. But this orthodox view of gift has been consistently maintained, one reason being that the Prophet never liked the idea of imposition of condition to a gift. The Prophet approved of *amrees* (life grant) but held the condition annexed to them by the grantor to be void. In spite of the orthodox notion of gift, transfer of right or interest other than absolute ownership has fallen for consideration as owners of property in all ages have been purporting to convey right or interest in property which is not intended to be absolute right or ownership. The term 'gift' is used to designate such transactions. According to Fyzee, the term gift is generic and is applied to a large group of transfers. The word *hiba*, however is a narrow well-defined concept.² *Hiba* is the immediate and unqualified transfer of the corpus of the property without any return.

Concept of Ownership :

Under Muslim Law no distinction is drawn between movable and immovable property in respect of ownership. The expression "Ownership of Property" is restricted under Muslim Law to denote full and absolute ownership. Rights or interests not amounting to full ownership are not spoken of as "Ownership for a limited period of time." Rights or interests that fall short of full ownership, that is, rights limited in point of duration are equated with the right of enjoying the possession or benefit of the property for life or for a fixed period of time although such right can justifiably be spoken of as limited ownership. Ownership is absolute and indivisible.

Concepts of Corpus and Usufruct :

Muslim Law distinguishes between corpus and usufruct of any property. In the case of land corpus means the very plot of Land,

2. A.A.A. Fyzee, *Outlines of Muhammadan Law* (Delhi, 4th edn. 1974), pp. 217-218.

whereas usufruct means the use or produce of the land. According to *Fyzee*,³ the main distinction between the two terms is this : with the right to take the produce is intimately connected the notion of time or duration ; so that one may transfer the *manafi*, usufruct for a specified time, but not the corpus. If the corpus is transferred, in Islamic jurisprudence, there can be no question of a time limit ; it is the absolute transfer of ownership and is therefore for an indeterminate duration or in ordinary parlance, for ever. The Prophet is understood to have said this : "When you have made an absolute gift of a house, you cannot cut it down by conditions repugnant to it ; you cannot restrict the use of the property to the lifetime of a man in such a case."⁴

According to the textbook writers gift or *hiba* of corpus connotes and comprehends the entire bundle of rights in the property but conveyance of use or usufruct of any property can be subject to condition or limitation. Although usufruct can be transferred for a well defined period according to Tyabji transfer of usufruct for life does not amount to creation of life estate as understood under English law, notwithstanding some essential identity between a usufruct for life and a life estate.⁵

Case Law :

The distinction between the corpus and the usufruct was not evident in the earlier cases, for example, *Mst. Hameeda & others V. Mst. Badlun and Government*⁶, *Abdul Gafur and others v. Nizamuddin*,⁷ nor did these earlier cases consider the creation of rights in the use and enjoyment of any property. In those earlier cases it was held that life interest for limited duration could not be transferred or conveyed under Muslim Law. In *Anamalay Chetty V. Shaikh Mohmomed Ismail and others*,⁸ it was held that creation of life estate was inconsistent with the Mohammadan law and where a life estate was attempted to be created the donee took an absolute interest. This exposed the confusion surrounding the conception or property under Muslim Law and a failure to attend to the classi

3. Ibid, pp. 245-247.

4. Ibid, p. 246.

5. Tyabji, Supra p. 450.

6. (1872) 17 WR 525

7. (1872) 19IA 170

8. AIR 1914 Lah 152

fication in text-books of corpus and usufruct. The interpretation as to the enlargement of life estate into an absolute ownership resulting from the failure to construe gift was given a decent burial in the Privy council decision in *Amjad Khan V. Ashraf Khan*.⁹

In *Amjad Khan V. Ashraf Khan*¹⁰ the question of enlargement of limited interest into absolute interest was raised. The Privy Council decided against the view that when life interest was purported to be created by gift the donee took entire interest of donor without pronouncing any opinion on the question of the validity of life-interest. In this case, the donor gave to his wife his entire property as to one-third with power to alienate by mortgage, sale or gift and as to two-third she did not possess any power of alienation but remained in possession thereof in her life time. After the death of the donee the entire property gifted away by the document were to revert to the donor's collaterals. On her death her heirs claimed (as against the donor's collaterals) the whole property. On the question whether the interest given in the one-third was an absolute interest or was only a life interest with a power to alienate, their Lordships held that wife's heir could not succeed as either (a) that she acquired only life interest and in that case that interest came to an end on her death and her heir had no title or (b) that if under Hanafi Law, such could not be transferred to the wife by way of gift inter-vivos then she acquired no interest in property. The alternative plea of wife acquiring full interest by expansion of life interest into a heritable interest or a life interest resolving itself into an absolute estate was altogether excluded in respect of those cases in which after ascertaining the intention of donor by reading terms of deed as a whole and giving them natural meaning of language used it was found as a matter of construction that life estate was intended to be granted.

In *Bai Saroobai V. Hussain Somji and others*¹¹ the majority verdict was that under Sunni law a gift of a life interest was valid but it did not become automatically enlarged into a gift of the corpus of the property absolutely.

9. (1929) 56IA. 213, AIR 1929 PC 149 affirming AIR 1925 Oudh. 568.

10. Ibid.

11. AIR 1936 Bom. 330

In *Nazimuddin and others V. Khairat Ali*,¹² it was held that a bequest for a limited period or a bequest of the life estate or the usufruct of the property for a fixed period is valid and such a bequest does not operate as absolute interest. The basis of these decisions must be that the gift of the life-tenant is of the usufruct and not of corpus of the property.

The validity of life interest by way of gift was in issue before the Privy Council in *Sardar Nawazish Ali Khan V. Ali Reza Khan*.¹³ In that case a Shia Muslim by his will purported to give an estate for life to A and thereafter to B for life, with a power to nominate his successor. It was held that A and B took life interest and the power of appointment was invalid under Muslim Law. A and B had life interest in the usufruct and the testator's heirs were the owner of the property. Their Lordships further stated as under:

“In general, Muslim Law draws no distinction between real and personal property, and it does not recognize the splitting up of ownership of land into estates, distinguished in point of quality like legal and equitable estates or in point of duration like estates in fee simple, in tail, for life or in remainder. What Muslim law does recognize and insist upon, is the distinction between the corpus of the property itself (*ayn*) and the usufruct in the property (*manafi*). Over the corpus of property the law recognizes only absolute dominion, heritable and unrestricted in point of time and where a gift of the corpus seeks to impose a condition inconsistent with such absolute dominion the condition is rejected as repugnant; but interests limited in point of time can be created in the usufruct of the property and the dominion over the corpus takes effect subject to any such limited interests. But though the same terms may be used in English and Muslim Law, to describe much the same things the two systems of law are based on quite different conceptions of ownership. English law recognizes ownership of land limited in duration. Muslim law admits only ownership of unlimited duration in the the use of property. There is no difference between the several schools of Muslim Law in their fundamental conception of property and ownership. A limited interest takes effect out of the usufruct under any of the Schools”.

12. AIR 1938 Oudh. 51.

13. (1948) 75 I.A. 62

“In dealing with a gift under Muslim Law, the first duty of the Court is to construe the gift. If it is a gift of the corpus, then any condition which derogates from absolute dominion over the subject of the gift will be rejected as repugnant, but if upon construction, the gift is held to be one of limited interest the gift can take effect out of the usufruct, leaving the ownership of the corpus unaffected to the extent to which its enjoyment is postponed for the duration of the limited interest”.

The decision highlighted the fundamental difference in the concept of property in English law and Muslim Law and serves as a caution against using technical term out of context. The incidents of limited interest under Muslim Law are not identical with the incidents of interest or estates under the English Law. Under Muslim law these limited interests are only usufructuary in nature and not rights of ownership of any kind.

Under English law a person having interest in immovable property for limited period of time is said to be the owner of the property during that period exercising all rights of property including alienation and enjoying all proprietary remedies as against the third party. Under Muslim Law, a person can be said to be an “owner” only if he has full and absolute ownership. Ownership for a limited period is not contemplated at all. In the case where enjoyment of property is granted to a person for life or other limited period such person cannot be said to be an owner for that period.

The principles laid down in *Amjad Khan's case* and *Nawazish Ali Khan's case* have been consistently followed in cases involving both Sunni and Shia Muslims, and the Sunni and Shia Law on the validity of limited interest are now assimilated. The decisions in *Mst. Inayet Begum V. Mst. Maryum Bibi and another*,¹⁴ *Anjuman Ara V. Nawab Asif Kader*,¹⁵ *Samir Shaikh V. Aijan Bewa and others*,¹⁶ *Syed Duresh Mohidden V. Madras State*¹⁷ *Sheikh Mastan Bi V. Sheikh Bikar Saheb*¹⁸ *Wali Mohammed V. Most. Anowara Sultan*,¹⁹ *Mst. Bibi Alan Taj V. Most. Inayet Begum*²⁰ *Khan Bibi V.*

14. PLD 1953 Pesh. 1.

15. (1953) 2 Cal. 109.

16. PLD 1956 Dac. 143

17. AIR 1957 Mad. 577

18. AIR 1958 A.P. 751

19. PLD 1958 Lah. 198

20. PLD 1963 Pesh. 199

*Safira Begum*²¹ *Fateh Mohammed V. Nathu*,²² *Abdur Razzak V. Rabeya Khatan*,²³ *Ghulam Iqbal Khan V. Abdul Jalil*,²⁴ to cite a few, have followed the decisions in the two above mentioned Privy Council cases. Some of these decisions in upholding interest for the duration of life have thrown some light on the nature and incidents of these limited interest, and a discussion of the same would be illuminating.

In *Mst. Inayet Begum V. Mst. Maryam Ribi and another*²⁵ where it was observed that if a person granted a lease of certain property in favour of his four daughters and that lease was to subsist till the lifetime of these four girls, it could not be said that the lease was against any law much less the Hanafi Law, even though the consideration was natural love and affection which was permissible under Section 25 of the Contract Act. The creation of life interest was nothing more than a lease of certain property which were to subsist for the life-time of the lessee. In such a case the owner does not part with the corpus of the property, but he only grants to another its use and occupation for a specific period, which cannot on any ground be made subject to any legal objection and the owner's absolute right is not affected in any way.

A Division Bench of Madras High Court in *Syed Duriesh Mohideen V. Madras State*²⁶ held that where a donor made a condition that the donee should pay an annuity to one of his heirs in perpetuity and gave effect to the dominion by transferring the subject thereof to the dominion of the donee, as the condition in no way interfered with the completeness of the gift, both the gift and the condition became operative in law. There is no real basis for the contention that the only exception to the general rule that any condition that derogated from the full rights of ownership in property, the corpus, gifted by a Muslim, is a reservation of the usufruct or a portion thereof in favour of the donor, A direction to pay a portion of the usufruct to some one other than the donor and direction to pay it in perpetuity are valid and enforceable obligations. So the arrangement was valid so long as the rule against

21. PLD 1969 Lah. 338

22. 1982 CLC 2082

23. 34 DLR 309

24. PLD. 1958 Pesh 43.

25. PLD. 1953 Pesh 1.

26. AIR 1967 Mad. 577

perpetuity was not violated and the enjoyment of the property was not postponed for an indefinite period. The court also recognised the limited extent of remedies available, namely, the enforcement of right and obligation under the gift by one party to the gift against another.

In *Shaikh Mastan Bi and others V. Shaikh Bikari Shaheb and others*,²⁷ the court observed that a Sunni under Hanafi Law could not without consideration convey ownership of the property with limitation for the life of the donee. But where the ownership is vested in somebody and only the enjoyment of the property was conveyed or received the rule did not apply. Therefore limitation on the enjoyment of property is permissible, though it is not allowed on ownership. This separate enjoyment is known as "ARIAT"²⁸ A *hiba* has become associated with transfer of ownership and the several conditions necessary for making valid gifts would not be essential for creating *ariat*. Thus in *ariat*, it is not necessary for the donor to be of age nor that the thing given should not be undivided. It equally follows that the prohibitions concerning what cannot be done by gift would not extend to the rules governing *ariat*, for the ownership is not conveyed by the latter transaction. Where only *ariat* rights are being conveyed to a person, they can be limited by time.

In *Abdur Razzak V. Rabiya Khatun*²⁹ it was observed, that reservation of usufruct by the deed of gift itself would not invalidate the gift under the Muslim Law and that the possession of the donee can be effected either by actual possession or constructive possession which constructive possession could be evidenced by the mutation of the record of right in the name of the donee.

The decisions following *Nawazish Ali Khan's* case have thrown light on the nature of usufructuary or limited interest conveyed by the owner of property. This is not a proprietary right conferring any semblance of ownership but at best it is a personal right or

27. AIR 1958 A.P. 751

28. 'Ariat' does not mean a transfer of ownership but a temporary licence to enjoy the profit or usufruct of a thing. It has been defined by the author of *Darul Mukhtar* as "making another owner of the usufruct without consideration."

29. 34 DLR 309

privilege conferred by the donor upon the donee. As against the donor, the donee can invoke the law of contract or trust to vindicate his right. The donee does not have any title to the property and his possession is deemed to be the constructive possession of the donor or the donee of the corpus of the property in question. By invoking the doctrine of constructive possession the donee of the corpus of the property can obtain mutation of his name in the record of right and therefore create his evidence of title. The donee of the usufruct cannot maintain any suit against a third party who threatens to or really dispossess him unless he seeks the assistance of the donee of the corpus. The donee of the limited interest does not have the security of his interest against the donor as the interest by its nature is revocable. All these incidents serve to distinguish limited interest under Muslim law from the limited interest under English law. Although the nature of the usufructuary or limited interest under Muslim law is clear to many text-book writers and lawyers but for many others the use of the technical terms 'life interest' or 'life estate' to designate such limited interest for life causes a lot of confusion and it is better that these terms be avoided.

Conclusion

The conclusion that can be reached is that the very definition of gift or *hiba* as the absolute and unconditional transfer of ownership renders it impossible to conceive that any right or interest of ownership for the duration of one's life can ever be created or conveyed by *hiba* or gift. To be precise, it would be a contradiction in terms if the concept of gift or *hiba* could be applied to the transfer of right less than full ownership, for example, use and enjoyment for the duration of the life of the donee or any other person. The term 'gift' is used to designate the transfer without consideration of limited right. When one uses the words 'gift of life interest' or 'gift of usufruct' the term 'gift' is loosely used in a much wider sense than '*hiba*'.

There is no doubt that use and enjoyment of property for one's life time can be arranged through family settlement, can be endowed by will to a limited extent and can be conferred by family *Wakf* and contract, but these mode of transfer are not the same as gift or *hiba*.

In the context of Muslim Law, gift of life interest is used to designate transfer without consideration of the use and enjoyment of property for one's life time and this bears no resemblance with the concept of life interest in English Law. Under Muslim Law such interest has got very limited scope and can be equated with bare right, privilege or indulgence. It does not create any transferable right and the legal protection for such right is very restricted. Nevertheless the reason for creation of such right is possibly to keep control over the beneficiary of such right. In the light of the above analysis the use of the terminology 'gift of life interest' or 'gift of life estate' to designate creation of rights in the usufruct, rights which fall short of absolute ownership do not convey the right meaning and should be avoided and instead phrases like 'gift of usufructuary or user right for life or for a fixed period' should be used to denote transfer or creation of right to the use or enjoyment of produce of land.