

DR. Ajit Kumar Gond, Assistant professor of Law, YBN University, Ranchi



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MUSLIM LAW

LIFE ESTATE

Ch, 7. life Interests

In life estate its creation is done with the transfer of the corpus of the property to a certain person with certain limitations as to its use and alienation. In this sense life estate in Mohammedan law is unknown. However life interests are known to Mohammedan law in the following forms,

(a) By family Wakfs, (b) By wills, (c) By the rule in Nawab Umjad Ali Khan's case, (d) By the law of gifts as in Amjad Khan Vs. Ashraf Khan, (e) Family settlement.

The most common among all these in India is the rule in *Amjad Khan Vs. Ashraff Khan*.

The Privy Council in Humeeda's case held that life estate was strange to Mohammedan usage and therefore it was an unusual transaction, ma later case Abdul Gafar Vs. Nizamuddin the court held that life rents as a kind of estate was unknown to Islamic law. These

decisions had led to various interpretations and life interest was understood as 'gift with a condition.' The conditions were bad and therefore void but the gift was good. Hence it was held that if A gives to B a life interest in a certain property subject to some condition, the condition was bad. and B took it absolutely.

According to tyabji who is the leading authority on Muslim law:

(i) Corpus is different from use. (ii) Hiba is the transfer of corpus.

(Hi) Life interest is the transfer of the use and *not of the* corpus or property and therefore it is valid.

This has been accepted and followed in a number of cases :

(a) Sardar Newezash Ali Khan case (b) Anjuman Begaum Vs. Nawab Asif Khadir (c) Sheik Mustanabi Vs. Sheik Bikar Sahib.

The leading case is:

Amjad Khan Vs. Ashraf Khan:

Hanafi husband A, executed a deed and made a gift of his entire property to his wife W. He divided the property into two parts i.e., 1/3rd and 2/3rds. W was to remain in possession of 1 /3rd and she could alienate that property. But, as to 2/3rds property she had no power to alienate, but had only possession for her life-time. After her death the entire property (1/3rd-t-2/3rds) was to revert to the

collaterals of A. A and W died. Thereupon W's brother B claimed the whole property; he stated that there was a condition, but the condition was bad and void and therefore the gift was valid. This was opposed by A's collaterals.

The matter was decided by a division bench consisting of judges Ashworth and Wazid Hassan. Both gave different reasons but ultimately came to the same conclusion, that W's brother B was entitled.

J. Ashworth held : Muslim law permitted separation of corpus from use.

On examining the text and the cases he held that a man may retain but cannot transfer a life interest. A life interest can only be created by transferring the corpus and retaining the use.

A gift of a life interest is a gift of a whole interest (1/3rd-i- 2/3rd). He therefore held that W, the wife took an absolute interest. The gift had been perfected by delivery of possession, by A to W. Wazir HussainJ, reasoned thus : The gift deed created a life interest in favour of W, and it was valid. But as on the date of the suit, W had died, her interest had ended. Hence, her heirs took her interest.

Their Lordships of the Privy Council accepted Wazir Hassan's conclusion and held that W acquired life interest in the property and also power of alienation over 1/3rd.

The Privy Council expressed no opinion regarding the life estate. Hence Amjad Khan Vs.

Ahraf Khan has created a finding in favour of the validity of life interests.

The decision has two propositions :

(i) That the life interest cannot be enlarged or changed to absolute interest, (ii) The validity of life interest in Muslim law is an open question.