

# The indian courts relating to gift-deeds made by



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The rule of Muslim law of majority, i. e., attainment of puberty, does not apply to gifts. A person of unsound mind can make a valid gift during lucid intervals.

The Muslim law-givers recognize the doctrine of ikrash or compulsion, and a gift-deed executed under compulsion is not valid. In such a case the gift is voidable, and it can be avoided by the donor whose consent was so obtained. On the ground of ikrash, a transaction can be avoided if the “compellor was in a position to carry out the threat held out by him, and that the threat itself was such as would influence the conduct of a reasonable person.” Cases of this nature have come before the Indian courts relating to gift-deeds made by pardLa-nasheen ladies. Thus, in Hussaina Bai v.

Zohara Bai, a parda-nasheen Muslim lady was brought from Nagpur to Burhampur, on the pretext that her brother-in-law was seriously ill. At Burhampur, she had a fit of hysteria, and soon after it, she was made to sign the impugned gift-deed without affording her any opportunity of taking independent advice and without informing her as to what were the contents of the document. The court said that the gift-deed was not executed from the lady under compulsion, it was not her voluntary act, and therefore, the deed was held invalid. In a number of cases the Indian courts have held that when a gift is made by a parda-nasheen lady, the proof of independence outside advice is the usual mode of discharging the burden by the donee that the gift was free from compulsion. On the other hand, if the parda-nasheen lady had the advantage of independent advice and the contents of the deed were fully explained to and understood by her, then the gift is valid.

**2. Financial capacity:**

The Malikis hold the view that a person under insolvent circumstances or extremely involved circumstances has no capacity to make a gift. On the other hand, the Hanafis hold the view that insolvency does not create incapacity to make a gift, but the kazi has the power to render such gift nugatory, if it is made with a view to defrauding the creditors.

The Indian courts follow the Hanafi view. Thus, in an early case it was held that mere indebtedness of the donor, or his being in embarrassed financial circumstances is not by itself a ground for avoiding a gift, since from the fact of indebtedness of the donor, or his being in embarrassed financial circumstances is not by itself a ground for avoiding a gift, since from the fact of indebtedness alone fraudulent intention cannot be inferred. However, in every gift there must be a bona fide intention on the part of the doner to transfer property to the donee. Obviously, if a gift is made with an intention to defraud the creditors, the gift is invalid.