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Sections 122A & 122B Transfer of Property Act: Family Succession Planning Gaps

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The Transfer of Property (Amendment) Act, 2026 gives long-overdue statutory footing to a common family arrangement: gifting property while reserving lifetime enjoyment, i.e. usufruct rights. The policy goal is sound, and the safeguards built into Section 122B are thoughtful. But a closer look at several practical areas — the formalities for movable property, the restricted class of eligible donees, mutation, alienation, tax liability, and the scope of the usufruct — reveals a drafting exercise that solves one problem while creating several new ones. The amendment also sits in genuine tension with Islamic law, a debate already underway in the profession.

The Underlying Rationale

Sections 122A and 122B address a genuine and long-standing gap: ageing property owners can now transfer title early for succession planning or tax purposes without surrendering their home or income during their lifetime. Section 122B's default rule of irrevocability after registration gives the donee real security, protecting a registered interest from being unwound on a whim, while its narrow exceptions — mutual consent, or judicial intervention where consent genuinely cannot be obtained — prevent the rule from becoming a trap in cases of real hardship. Section 122A(4), which preserves the validity of

Heba and ordinary gifts as parallel modes of transfer, reflects careful drafting that avoids unsettling existing practice built on other legal foundations.

An Unresolved Formalities Gap for Movable Property

Section 122A(1) extends the new mechanism to both movable and immovable property, but the formal requirements set out in Section 122A(2) — a declaration made by deed, registered under Section 17(1)(a) of the Registration Act, 1908 — are expressly tied only to gifts of immovable property. Nothing in the amendment says what formality, if any, is required to validly reserve a lifetime usufruct over movable property, such as shares, jewellery, vehicles, or business assets. Under ordinary principles, a gift of movable property can typically be completed by delivery without any writing at all, and registration of a movable-property gift deed under the Registration Act is optional rather than mandatory. Section 122A(2) suggests that a donor wishing to gift movable property while reserving lifetime usufruct under Section 122A now must execute and register a formal deed to bring the arrangement within the section, which would have an overriding impact on Section 17 of the Registration Act 1908 and implies that it would have an informal declaration accompanied by some form of delivery (actual or constructive) would not suffice.

A Narrowly Defined and Potentially Vulnerable Class of Donees

Section 122A(2) strictly restricts the application of this mechanism to transfers between ascendants and descendants—specifically parents or grandparents and their respective children or grandchildren—as well as between spouses. Siblings, other relatives, and non-family donees are excluded entirely, meaning that a brother wishing to gift property to a sister while retaining lifetime enjoyment, for instance, cannot rely on this section at all and must fall back on the pre-existing, less certain workarounds the amendment was designed to move away from.

This restricted donee class may also raise a constitutional question. Constitution of the People's Republic of Bangladesh guarantees that all citizens are equal before the law and are entitled to equal protection of law, though Bangladeshi jurisprudence applies this guarantee through the doctrine of reasonable classification, under which a distinction survives scrutiny if it bears a rational nexus to a legitimate object and is not arbitrary. The legislature could point to the closer bonds of trust, dependency, and intergenerational succession planning that typically characterise parent-child, grandparent-grandchild, and spousal relationships as the rational basis for the distinction. But the amendment itself articulates no such rationale, and without one on the record, an excluded sibling or other relative denied access to this mechanism has a colourable argument that the classification is under-inclusive and arbitrary rather than reasonable, particularly given that the underlying policy concern, protecting an ageing donor's security of occupation and income, applies with equal force outside the specified relationships.

The Unresolved Question of Mutation

Perhaps the most consequential silence in the amendment concerns mutation, the recording of a name change in the land record, or khatian, which is what makes a title change visible and enforceable against

government departments, banks, and third parties in practice; registration of the deed alone does not achieve this. The amendment or any other subsequent delegated legislation says nothing about whether the donee can apply for mutation immediately upon registration of the gift deed, with a note recording the donor's subsisting usufruct, or whether mutation should instead be deferred until the usufruct terminates on the donor's death, leaving the donor as the recorded owner in the interim, or whether some dual entry is contemplated, showing the donee as owner of the corpus and the donor as usufructuary. This matters enormously in practice: if mutation happens immediately, the donee becomes the assessee for property tax, may be able to use the property as loan collateral, and could in theory deal with the corpus, all while the donor still lives there; if mutation is deferred, the donee holds a registered but practically unrecorded interest, weakening their position against subsequent third-party claims or disputes with siblings. Land offices will need administrative circulars to standardise this practice, and until they do, treatment is likely to vary by district, precisely the kind of inconsistency that invites litigation.

Alienability of the Donee's Interest During the Donor's Lifetime

Section 122A is equally silent on whether the donee's title, vested but burdened by the donor's usufruct, is freely alienable. One reading favours full alienability subject to the burden: the donee owns the property outright, subject only to the usufruct, and can sell or mortgage it, with any buyer or mortgagee simply taking the property subject to the donor's continuing right to live there or collect rent, much as a remainder interest operates alongside a life estate in other jurisdictions. A second, more restrictive reading is also available. Because Section 122A(3) describes the donor's right as "continuing to subsist and attached to the property" even after the donee's death, one could argue the legislative intent was to protect the donor's actual occupation, not merely a financial interest, meaning a sale that would effectively evict the donor mid-usufruct should be void or unenforceable without the donor's consent. Nothing in the text resolves this tension. In practice, prudent drafters will need to insert express restraint-on-alienation clauses into every gift deed made under this section, though restraints on alienation of immovable property are themselves subject to scrutiny under general property law principles, since Section 10 of the Transfer of Property Act 1882 itself renders absolute restraints void, so even a contractual fix carries its own litigation risk.

The Missing Allocation of Taxes and Outgoings

The amendment does not say who bears property tax, municipal holding tax, land development tax, or utility charges during the period the usufruct subsists. Ordinarily, liability would follow the owner of record, but as the discussion above shows, who that is may itself be unclear once mutation practice is factored in. Two donors in otherwise identical family situations could end up with opposite outcomes: in one, the donee, as new title-holder, is assessed and billed while the donor enjoys the property tax-free; in the other, the donor remains the recorded owner and continues paying as before. Absent a statutory default rule, for instance, a provision stating that the donor shall bear ordinary outgoings during the subsistence of the usufruct unless the gift deed provides otherwise, every family will need bespoke drafting to avoid disputes, which is precisely the kind of burden the amendment was arguably intended to remove rather than add.

The Undefined Contours of the Usufruct Itself

The phrase "lifetime enjoyment (usufruct rights)" is used loosely throughout Section 122A without further definition, leaving open whether it denotes the donor's personal right to occupy the property, the donor's right to let it out and collect rent without occupying it personally, or both, potentially at the donor's election and subject to change over time, as where a donor occupies the property initially but later lets it out if health or circumstance requires relocation. This distinction matters in very practical terms: a donee who plans to eventually live in the property needs to know whether the donor can instead let it to a stranger for years at a stretch, and a donee wishing to raise finance against future rental income needs to know whether that income stream belongs to the donor or is available to be assigned or pledged. The amendment would benefit considerably from a default rule, coupled with an express mechanism allowing the parties to specify the usufruct's precise contours in the deed itself, along with clarity on what governs where they fail to do so.

The Underlying Tension with Islamic Doctrine

Beyond the questions raised above, Section 122A sits uneasily against Islamic doctrine on gifts and bequests, and this tension has already drawn commentary from within the profession. The first difficulty concerns wasiyat: Islamic law caps testamentary bequests at one-third of the estate and bars bequests to legal heirs without the consent of the other heirs. Because a gift with reserved lifetime usufruct delivers full, unencumbered enjoyment to the donee only upon the donor's death, it functionally resembles a bequest rather than a completed inter vivos gift, raising the concern that Section 122A could let Muslim donors favour one child over others, or gift more than a third of the estate to an heir, in a manner that would be barred if the same disposition were structured as a will.

A second, more fundamental difficulty is doctrinal and remains unanswered by the government. Under classical Hiba doctrine, a valid gift requires actual or constructive delivery of possession to the donee, and established authority treats a donor's reservation of a life interest or possessory usufruct, as distinct from merely reserving the income from the property, as negating that possession requirement and thereby invalidating the gift. This draws a real factual distinction that Section 122A fails to make: where the donor and donee already share the same premises, constructive possession might arguably survive the reservation, but where the donee lives elsewhere, the donor's reserved right to occupy more plainly defeats the possession requirement altogether. By using a single undifferentiated term, "lifetime usufruct," to cover both possessory occupation and mere income rights, Section 122A(1) fails to distinguish between these fact patterns, even though Islamic doctrine plainly does.

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