
THE LEGAL CHALLENGES OF PROPERTY TRANSFERS TO UNBORN PERSONS: ROLE OF LIFE INTEREST UNDER TRANSFER OF PROPERTY ACT, 1882

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ABSTRACT

The concept of life interest plays a key role to enable property transfers to unborn persons under Indian property law, primarily governed by the Transfer of Property Act, 1882. This paper studies the complex relationship between life interest and transfers to unborn persons, discussing key statutory provisions, judicial interpretations, and practical challenges. The study further through analysis of landmark cases and considering modern concerns such as digital assets, gender equality, and intergenerational wealth planning, identifies the areas where the existing framework falls short and suggests potential reforms that can help address the contemporary needs in property law.

Keywords: Transfer of Property Act, 1882, Life Interest, Unborn Person, Rule against Perpetuity, Property.

I. Introduction

The Transfer of Property Act, 1882, although prohibits direct transfers to unborn persons, creates a well-structured exception by means of life interest through Section 13 of the Act.¹ This framework still remains of crucial importance in modern India, where rapid economic growth and changes in family structures make transfer of intergenerational wealth increasingly complex. The relation between life interest and transfers to unborn persons represents more than a mere legal doctrine, but a legal solution to reconcile the demands of today with those of tomorrow.

Transferring property to unborn persons has always presented challenges. Life interest provides the legal framework where property owners can plan for future generations, providing the unborn person a vested interest upon birth. This was prominently illustrated in the landmark case of *Girjesh Dutt v. Datadin* (1934),² where the court established fundamental principles that continue to guide modern property law.

Now, in rapidly changing socio-economic environment, modern issues such as digital assets and properties holding overseas have grown. The legal framework governing life interest has remained largely unchanged since the 19th century. This raises the question as how can the current law adapt to address relevant concerns of today's society without losing its fundamental values?

This paper studies the significance of life interest in creating property interests in unborn persons under the Transfer of Property Act, 1882, dealing with statutory provisions, judicial interpretations and practical challenges. Further through analysis, the paper proposes reform for modern asset classes, gender equality, and evolving family structures.

II. Legal Framework

A. Statutory Provisions

As per the Transfer of Property Act, 1882, property transfers in India, including those to unborn persons, are governed here. The key sections addressing this include:

¹ Transfer of Property Act, 1882. Section 13.

² *Girjesh Dutt V. Datadin* AIR 1934 Oudh 35.

1. Section 13,³ prohibits direct transfers to unborn persons but allows property to be transferred for their benefit through the creation of life interests. This ensures the unborn person acquires a vested interest upon birth, provided the transfer includes an absolute interest and follows specific conditions.
2. Section 20,⁴ clarifies that the unborn person acquires vested interest at birth. It ensures that the unborn person's rights are protected even though they cannot immediately enjoy the property.
3. Section 14,⁵ complements Sections 13 and 20 by emphasizing the rule against perpetuities that is to ensure that property does not remain in an indefinite state of suspension. This assures that the unborn person's interest vests within a reasonable timeframe.

B. Means of Life Interest

The concept of life interest functions as the key mechanism for facilitating property transfers to unborn persons. Under the Transfer of Property Act, life interest holders (typically those alive at the time of the transfer) manage the property until the unborn beneficiary reaches a vested age. Life interests must be absolute and unencumbered by any conditions that could invalidate the transfer.

Key considerations regarding life interests include:

- **Trusteeship:** The life interest holder usually assumes the role of trustee, managing the property for the unborn beneficiary's eventual benefit. The trustee has a fiduciary duty to act in good faith in managing the property.
- **Vested Interest upon Birth:** As per Section 20, the unborn beneficiary's interest is "vested" at birth. The vested interest can only be exercised after their birth of the beneficiary, but it remains protected legally.

³ Transfer of Property Act, 1882. Section 13.

⁴ Transfer of Property Act, 1882. Section 20.

⁵ Transfer of Property Act, 1882. Section 14.

C. Legal Gaps and Challenges

Even with the detailed provisions, there remain practical challenges in applying life interest arrangements under the existing framework:

- **Complexities with Modern Assets:** The law primarily addresses immovable property, and many modern assets (such as cryptocurrencies, digital assets, or intellectual property) complicate the transfer process to unborn persons.⁶
- **Conflicts in Trust Management:** The use of trusts to manage life interest and unborn persons' rights can lead to disputes over trustee authority and decisions of the management.

These legal gaps indicate an emerging need for change, given the present framework struggles to incorporate types of modern assets and changing societal norms.

III. Judicial Interpretation and Development

The Supreme Court of India has played a significant role in interpreting Section 13 of the Transfer of Property Act, 1882 concerning transfers to unborn persons. Several landmark cases have shaped the development of property law in this area.

In **Girjesh Dutt v. Datadin (1934)**,⁷ the Supreme Court established the precedent, stating that in order for a transfer to an unborn person to take place, the transfer must be made for absolute vested interest. The court held that any condition or prior interest on the transfer would make it invalid. This case remains as a key in understanding the requirements for valid property transfers to unborn persons under the Act.

In **Raja Bajrang Bahadur Singh v. Thakurdin Bhakhtrey Kuer (1976)**,⁸ the court ruled that such transfers are valid in regard to beneficiaries who exist already, but are invalid for unborn person unless the transfer guarantees a vested interest upon birth. This ruling reinforced the idea of

⁶ Hillis, B., & Sutton, P. (2024, September). The third category conundrum: Digital assets as objects of personal property rights: The Law Commission's supplemental report and revised draft bill. Reed Smith. <https://www.reedsmith.com/en/perspectives/2024/09/the-third-category-conundrum>.

Wyczik, J. (2024). Ownership in the 21st century: property law of digital assets. *Information & Communications Technology Law*, 1–20. <https://doi.org/10.1080/13600834.2024.2408917>.

⁷ Girjesh Dutt V. Datadin AIR 1934 Oudh 35.

⁸ 1953 AIR 7 1953 SCR 232

transfer for the benefit of an unborn person complying with the specific conditions outlined in Section 13 of the Act, particularly the vesting of interest upon birth.

In *Trustees of Sahebzadi Oalia Kulsum Trust v. CED* (1998),⁹ the Court addressed the use of trusts to manage property for unborn beneficiaries. The decision highlighted a trustee's fiduciary duties, emphasizing that they must act in good faith and exercise discretion for the benefit of the unborn beneficiary.

Lastly, in *F.M. Devaru Ganapathi Bhat v. Prabhakar Ganapathi Bhat* (2004),¹⁰ where the court reiterates the principle that as per Section 20 of the Act, a transfer made for an unborn beneficiary must vest at birth. This case also reiterated that life interest holders are fiduciaries, meaning they control the property until the right can be executed by their vested interest.

These rulings collectively establish a clear legal framework for transfers to unborn persons, emphasizing the importance of vested interests, trustee duties, and the timing of vesting.

IV. Critical Analysis of the Legal Framework

The Transfer of Property Act, 1882 establishes a foundational legal framework for property transfers to unborn persons, but modern challenges and evolving asset types expose limitations in the law's scope and applicability.

A. Limitations of the Current Framework

1. **Outdated for Modern Assets:** The Transfer of Property Act was drafted with traditional, immovable property. As society becomes increasingly digital, the need to address the complexities of transfer of digital assets like cryptocurrencies and intellectual property has become urgent.¹¹ With these assets become increasingly significant, the law's failure to address their transfer creates uncertainty.
2. **Rigidity of the Perpetuity Rule:** The rule against perpetuities limits how long property can be held before the interest vests. While this rule helps to achieve the purpose of preventing indefinite holdings, it stands as a barrier for estate planning, especially for

⁹ (1998) 6 SCC 267

¹⁰ (2004) 2 SCC 504

¹¹ Maydanyk, R. (2024). General Provisions of Digital Property Law and How to Categorize Digital Assets. *Open Journal for Legal Studies*. 6. 49-64. 10.32591/coas.ojls.0602.02049m.

families with multigenerational wealth. These restrictions can cause the property to vest in ways that don't align with the transferor's long-term plans.

3. **Gender Inequality:** While the Act allows for property transfers to unborn beneficiaries, it still even post amendments, reflects outdated social norms that may not ensure gender equality in inheritance. The law does not prevent discriminatory practices, where male heirs may be favoured over female ones, even when property is meant for both genders.¹²

V. Practical Challenges in Property Transfers and Proposed Reforms

A. Common Issues

Property transfers to unborn persons often face several practical challenges due to the complexities involved. One of the main challenges is to ensure that the property remains in the intended hands until the unborn person reaches majority. To address this, lawyers often recommend using trusts as a solution. The trust formed can hold the property until the unborn child reaches majority, and the property is managed until then.

Another practical challenge arises when the unborn person does not survive to reach majority. In such cases, the property reverts to the original transferor or their heirs. To reduce this risk, some lawyers suggest drafting clauses that specify alternative beneficiaries or charitable organizations in case the unborn person does not survive.

Trusts also serve as a solution to another key challenge that is to ensuring that the property always has an owner during the transfer period. Since Section 5 of the Transfer of Property Act, 1882 states that transfers can only be between living persons, using trusts allows property to be transferred indirectly to unborn beneficiaries.

Creating and managing of trusts for unborn persons in itself comes with its own set of challenges. Issued like legal fees for maintaining the trust, possible conflicts over management decisions, and also need for regular reviews and updates to the trust to ensure that it aligns with the original intentions. A new area of research is exploring how blockchain technology can

¹² Adhithya, M. M. (2023). Contemporary challenges in Indian property law concerning immovable property. ILE Lex Speculum (ILE LS), 1(1), 142-145. APIS – 3920 – 0036 | ISBN – 978-81-964391-3-2.

help automate trust administration, ensuring transparency, reducing disputes, and preserving the intentions of the property transferor.¹³

B. Proposed Administrative Solutions

To address practical challenges and ensure smooth execution of transfers to unborn persons, several administrative solutions have been developed:

1. Smart Contracts or Electronic documentation: Modern technology allows for electronic recording of property transactions, including those involving unborn beneficiaries and automate the execution of property transfers when the unborn person is born. This can streamline the process, reduce paperwork, and potentially increase transparency
2. Blockchain technology: There is growing interest in exploring blockchain technology for recording property transactions, also including those involving unborn persons. This technology provides secure, transparent, and tamper-proof records of property transactions which could further simplify the management of trusts over time.¹⁴
3. Standardized forms: Legal professionals often develop standardized forms for creating trusts for unborn beneficiaries. These forms typically include clauses addressing common scenarios such as the unborn person not surviving or reaching majority prematurely.
4. Regulatory guidance: Some jurisdictions provide regulatory guidelines or model laws for drafting transfers to unborn persons. While India does not have specific national guidelines, state-level regulations or court precedents may offer valuable insights for practitioners.

These administrative solutions through modern application aim to mitigate the complexities associated with transfers to unborn persons, making the process more accessible and less prone

¹³ Lee, L. (2024, April 25). Examining the legal status of digital assets as property: A comparative analysis of jurisdictional approaches. SSRN. <https://ssrn.com/abstract=480713>.

Brahmbhatt, D., & Matange, N. (2022, August 15). *A square peg in a round hole: NFTs and the traditional construction of property*. National Law University Jodhpur. <https://nlujlawreview.in/uncategorized/a-square-peg-in-a-round-hole-nfts-and-the-traditional-construction-of-property/>.

¹⁴ Kumar, N. (2024, February 25). Legal challenges in the digitalization of property transactions: A critical examination of the TOPA framework. SSRN. <https://ssrn.com/abstract=4738262>

to errors or disputes.

VI. Conclusion

This paper has examined the relation between the concept of life interest and the transfer of property to a unborn persons under the Transfer of Property Act, 1882. By analyzing statutory provisions, judicial interpretations, and practical mechanisms, we have seen how life interest serves as one of the legal instruments in the course of such transfers. The Act, through provisions like Sections 13, 20, and 14, allows for creation of future interests in the property for the benefit of unborn person and thus preserves the present proprietary interests of the majority.

However, the existing legal framework, while historically effective, faces increasing challenges in the context of modern property dynamics. Issues that are associated with transferring digital assets, constraint of the perpetuity period, and an increasing use of trust law are some of the challenges in the current law that have exposed gaps in the law. Furthermore, the interaction between traditional legal constructs and emerging technologies presents a unique area for further exploration. As property law continues to evolve, it is crucial that legislative reforms address these complexities, ensuring that the law remains adaptable to new forms of wealth and evolving societal norms.

In conclusion, even though life interest is still relevant within the scope of property law, its usage should be reconsidered to take into account the modern terrain. Legislative reforms, informed by both practical experience and technological advancements, could significantly enhancing the legal framework governing transfers to the unborn persons, making them effective in the complicated world that we live in today.