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The Doctrine of Election Under Section 35 of the Transfer of Property Act, 1882: Development and Contemporary Relevance

Mariya Faiz

BA.LLB, 3rd Year, Kiit School of Law, Bhubaneswar, Odisha

ABSTRACT

The principle of election is regulated by section 35 of the Transfer of Property Act 1882 and forms a doctrine of equity whereby there must be a choice of one inconsistent right or claims arising under the same instrument conferred by a beneficiary. The principle of election is regulated **by section 35 of the Transfer of Property Act 1882.** It forms a doctrine of equity whereby there must be a choice of one inconsistent right or claim arising under the same instrument conferred by a beneficiary. The doctrine keeps one from receiving the fruits of any legal document and refusing its obligations simultaneously. This doctrine is derived from the English equity law and adopted to India. It has developed into ensuring equity and justice in property, including wills, settlements, and deeds. Election refers to the necessity of electing between two conflicting or alternative rights conferred by the same instrument, where both rights cannot be enjoyed simultaneously. It underlines that the one who benefits under an instrument also bears the burden that follows it. This doctrine does not allow beneficiaries to take in favorable provisions but reject adverse ones thereby ensuring consistency and fairness. The judgment in the case of **C. Beepathuma v. Viduri Shankar Narayana Kadambolithya is AIR 1965 SC 241,** highlighting that the done must elect for or against the instrument. It is highly relevant to the settlement of property litigations as it averts unjust enrichment, in that a beneficiary must receive both the fruits of rights and liabilities created through a legal document. The doctrine was developed on the foundation of equity and is of high importance for the observance of justice in law concerning property as it forces recipients to either abide completely by the tenets of transfer or to relinquish the benefit.

KEYWORDS: Doctrine, Beneficiary, Obligation, Property, Instrument, Fairness, Election.

INTRODUCTION

The doctrine of election is a principle given under **Section 35 of the Transfer of Property Act, 1882,** and under **Sections 180-190 of the Indian Succession Act, 1925**. It has the compulsive effect of making a person choose between two conflicting rights or benefits or alternatives, both arising out of the same deed. It ensures no one shall take a benefit of an instrument such as a will or a transfer of property without rejecting or ignoring the associated burden or condition. This doctrine ensures equity and justice in cases of property law as well as in a transaction. In simple words, "election" can be defined as "the act of choosing between two inconsistent or alternative rights". Whenever two rights have been given to a person under an instrument in such a manner that exercising one is made to exclude the other, the person concerned has to choose between them. The doctrine is founded on the principle of fairness; that is if a person intends to take a particular advantage, he must also accept the obligations and burdens that accompany it. They cannot take the benefits to themselves and reject the burden they incur. This doctrine is dealt with in Section 35 of the Transfer of Property Act. It comes into operation when a person undertakes to transfer property which he has no right to transfer, but as part of the same transaction confers a benefit on the rightful owner of the property. The owner must then accept the transfer and the benefit it brings, or reject it and lose the benefit. If the beneficiary elects to dissent from the transfer, then they must forfeit the benefit given to them, which would revert to the transferor or his or her agent. If the transferor is dead or otherwise incapable of making a new transfer, then the consideration transfer might still bind the recipient of the benefit to make good the disappointed transferee's loss. The principle applies whether the transferor thought the property was theirs or not. And if a person indirectly benefits from a transfer of property without being a party to the transaction, they are not obliged to election.The doctrine of election is founded upon the equitable maxim "**qui approbato non reprobat**," which means "**he who accepts cannot reject**." It, therefore, bars a person from two inconsistent acts toward the same transaction. This doctrine draws its origin from the body of English equity law and was accepted in the Indian law to make it fair regarding dealing in properties. The main function of the doctrine is not to deprive a person unjust enrichment, but to compel a party to accept benefits under a transaction if it intends to accept burdens**. In C. Beepathuma v. Viduri Shankar Narayana Kadambolithya, AIR 1965 SC 241**, the Supreme Court of India reiterated the principle of the election doctrine. This was a transfer of property in which the done had to decide whether to take advantage of the benefit under the instrument or satisfy certain conditions. The court ruled that the donee may not both enjoy the benefit and the property unless the conditions that are stipulated are satisfied. This landmark case posited that one cannot "have his cake and eat it too" in legal affairs, where fairness and equity must intervene. The doctrine of election remains pertinent even today in the realm of modern property law and practice. It serves to settle real property dispute as well as conflicts resulting from a number of claims springing from a single transaction. The doctrine applies not only to transfers but also to wills, settlements, and other legal instruments where there are rights that are in conflict or inconsistent with one another. Its continued use lies in its ability to maintain the auspices of justice in and through legal transactions that there be no enrichment at others' expense The doctrine of election, enacted by **Section 35 of the Transfer of Property Act, 1882,** and **sections 180-190 of the Indian Succession Act, 1925,** is an integral component of Indian property law. The doctrine reminds beneficiaries to choose between conflicting rights or benefits. It prevents unfairness by carrying the corresponding burden with the benefit it takes under a legal instrument. Formed in English equity law, the doctrine stays relevant today in contemporary property transacions for equity and justice in the settlement of disputes.

Evolution of the Doctrine of Election

The doctrine of election is traced back to the equity laws of England and developed to ensure that a person obtained justice in cases where there might be conflicting rights in a transaction in respect of a legal instrument. This doctrine developed due to necessity because it ensured that a party is not given an unfair advantage by agreeing and rejecting the same instrument. Later, it fell under the ambit of the Transfer of Property Act, 1882, and Indian Succession Act, 1925 - sections 180-190.

Historical Development in English Law

The doctrine of election is based upon the maxim "***qui approbate non reprobat***," which means a person cannot accept and, at the same time, reject the same transaction. This doctrine emanates from the courts of equity in England during the 17th and 18th centuries. Then, the courts of equity in England tried to avoid rigidities of the common law and provided an equitable remedy wherein parties might have inconsistent or alternative rights in some transactions. This doctrine entailed making an election when faced with two rights under a legal document that were conflicting. When a person accepted a benefit in a will or deed, they became obliged to carry out the totality of that instrument, including the liabilities it created.

Introduction to Indian Law

The Transfer of Property Act, 1882, brought the doctrine of election to the Indian legal framework. The draftsmen of this enactments heavily drew from English equity law to adapt it into the socio-economic and legal conditions of India. Section 35 of the Act particularly codifies the doctrine and applies it to the transfers of properties in India. The section insists that when a person professes to transfer the property which no right of his exists to transfer, but in the same transaction grants some benefit to the owner, that owner must either ratify the transfer or dissent him. If he dissent him, he must abandon the benefit.

The Indian Succession Act, 1925 also follows the doctrine under sections 180-190 so that the very same principle applies to the wills and bequests. Where the subject of its application is a will, then the beneficiary who derives a bequest, where such bequest is inconsistent with another right which the beneficiary otherwise enjoys shall have to decide either to accept the bequest or retain their original right.

Modern Adaptations

Through the evolution of doctrine, the context was consulted to meet complicated property disputes and legal instruments involving multiple parties and conflicting interests. Residing judgments guarantee the application of the doctrine in matters of equity and dismiss unjust enrichment. This doctrine held good with changing legal scenarios that wore various guises, such as family settlements, partition deeds, and many such more documents involving conflicting rights.

Key Provisions of Section 35

Election Requirement Where a person acquires a right under an instrument but has also a right inconsistent with the terms of the instrument, he must elect in order to be admitted to the benefit of the instrument between accepting the benefit and waiving the inconsistent right or exercising his inconsistent right and declining the benefit.

Relinquishment of Benefit: If the beneficiary objects to the transfer and elects to retain his inconsistent right, he is obliged to relinquish any benefit conferred upon him under the instrument. The relinquished benefit lapses back to the transferor or his representative.

Gratuitous Transfers: When the transfer is gratuitous, and the transferor is either dead or incapable of making a fresh transfer, the doctrine compels the done to make good the loss to the disappointed transferee when they refuse to accept the burden of the transfer.

Landmark Judicial Pronouncements

Several landmark judicial pronouncements have enriched and defined the doctrine of election in India over the years.

1. C. Beepathuma v. Viduri Shankar Narayana Kadambolithya 1965

In the landmark case, the Supreme Court of India emphasized that a donee cannot accept the benefit of an instrument while not taking on the burden that goes with it. The court held that the doctrine of election was for equitable purposes, by which beneficiaries must not be allowed to select portions of a will or deed. This case is an example of the doctrine that "one cannot have their cake and eat it too," thereby reiterating that a person taking advantage of a particular contract has to bear the burdens accompanying it.

2. Nisar Ahmad v. Shama Bibi (1930)

On this, the Privy Council applied the doctrine of election where it made a person refrain from retaining inconsistent right with the benefit under the will. The court held that a person who was benefited by a legal instrument made a choice between accepting the benefit and resiling from the inconsistent claim or renouncing the whole benefit.

3. Rani Pritam Kaur v. State of Punjab (1983)

The Supreme Court applied the doctrine to a family settlement where under the same instrument conflicting rights were claimed. The court ruled that the beneficiaries had to elect between the conflicting rights, reiterating the need to uphold the intention of the transferor.

Exceptions to Doctrine of Election

If, however, the grant of the particular benefit is declared to be made for the benefit of the owner of the property which the transferor has and conveys, and the benefit is in replacement thereof, then if that owner claims the property he is not obliged to abate any other benefit which he is enjoying from the same transaction. Acceptance of the benefit by the original owner shall be deemed an election by him to ratify the transfer, if he knows his duties and rights and the circumstances which might move a prudent (reasonable) man to elect. This knowledge of the circumstances can be presumed if the person who receives the benefit enjoys it for a period of over two years without doing any act to show dissent. The transferor would ask him to elect his choice, if the original owner does not elect his option within a year of the transfer of property. Even after reasonable time, if he does not elect, then the erstwhile owner shall be considered to have elected validation of the transfer of property as his choice .In the case of a minor, the period of election shall be adjourned till the individual attains majority unless he is represented by a guardian .

Methods of Election

Election made by the owner can either be direct or indirect.

In direct election one has merely to express his intention about the choice or option elected. But in case of an indirect election, the acceptance of the benefit by the owner is contingent upon two conditions:

- He must be possessed with the knowledge of his duty to elect.
- There must exist proof of knowledge of the circumstances which would move a prudent man to make an election.

The election shall be presumed when the donee acts in such a manner with the property gifted to him that it becomes impossible to return it to the original owner in its original state. Difference between English Law and the Indian Law Perspective-

The English law relies on the principle of compensation that goes about as follows: unless the original owner ratifies the transfer, he can retain the property and also the benefit accrued, subject to compensation provided to the donee, to the extent to which he had suffered a loss.

But, under Indian law, this doctrine is affected by the principle of forfeiture which says that if the real owner does not confirm the transfer, the donee incurs a forfeiture of the granted benefit which goes back to the transferor.

Compensation

The approximate value of the compensation that he is going to receive is the estimated cost of the property which is to be transferred to the transferee. However, in the case of immovable properties, there arises an issue of changing the value of the properties according to the lapse of time. So, this valuation needs to take place at the time of the instrument coming into force rather than the time of election.

Doctrine of election applied

- **Hindu law**

It has always been applied to Hindus. According to Rungamma v atchamma, the privy council made a rule that a person cannot accept and reject according to him. One cannot accept until he gains from it and stop accepting it until prejudiced.

- **English law**

The buyer chosen not to be transferred, does not lose profits, but is obliged to compensate disappointed people. Difference between English law and Bangladesh law. There is a difference between English and! Bangladesh law concerning elective teaching. The main differences are as follows British law applies the principle of compensation, while English law applies the rules of confiscation. English law does not regulate the time for election. The British law provides a year within which the owner of the property has to decide whether to affirm the transfer or not. If the owner fails to adhere to the reutilization, then it is considered that he has been elected to validate the transfer.

Criticism on the Doctrine of Election

Although the doctrine of election is based on equity and fairness, it has been criticized on several accounts:
Ambiguity and Confusion: Perhaps the greatest failure of the doctrine is its obscurity. The reader is often left at many points unsure of which particular rights are "inconsistent" with themselves, or, at least, how they conflict with one another. People may make a wrong choice trying to fathom the confusions of the election, and this can lead to subsequent disputes.
Rigidity: The doctrine is also criticized with rigidity because, once elected, most elections tend to be final and binding. Many times, a person electing without knowledge of what awaited his choice or where change in circumstances occurs after the election, he or she is still bound by that election, which consequently gives way to unfair results.
Application to Gratuitous Transfers: If the transfer is gratuitous, the doctrine puts a charge on the beneficiary either to accept the transfer or to compensate the disappointed transferee. Critics charged that this places an unfair burden on the beneficiary who cannot compensate the transferee and thus results in unfair judgment.
Outdated Conceptions of Property Rights: In this regard, several law scholars have contended that the doctrine, driven by older notions of property and estate, need not necessarily be in tandem with contemporary thinking about property rights and transfers. In the increasingly dynamic and complex legal settings of today, strict election does not always lead to a fair outcome.

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CONCLUSION

The doctrine of election emphasizes one of the fundamental principles of equity, where fairness in a transaction is assured as and when there are inconsistent rights or benefits, which the beneficiary has to elect between. While codified by **Section 35 of the Transfer of Property Act,** 1882, it has been further expanded in **Sections 180-190 of the Indian Succession Act, 1925**. According to this doctrine of election, no person can make unfair gain by accepting the beneficial provisions of the legal instrument but rejecting its burdens. While the doctrine has undergone a metamorphosis of sorts over the years, evolving with changes in law and jurisprudence related to property, criticism about its rigidity and complexity has also been dimmed. In Indian law, under Section 35 of the Transfer of Property Act, 1882, there is a defined procedure for invoking the doctrine on matters related to proceedings involving property. A transferor can confer a benefit on the owner of a property during the attempt to transfer that particular property. In this case, the owner of the property can either keep or accept the benefited conferred upon him or her. If he or she decides to keep his or her property then, he or she has to forfeit all the conferred benefits. This principle also holds good for cases dealing with a will and succession issues, as adopted by the Indian Succession Act, 1925, where the beneficiaries have to choose between conflicting claims under a will.

Although the principle is sourced from English equity law, the principle has found solid footing in **Indian jurisprudence through landmark judgments. Such judgments include the cases of C. Beepathuma v. Viduri Shankar Narayana Kadambolithya (1965) and Nisar Ahmad v. Shama Bibi (1930)** have been some of the judgments that significantly shaped the comprehension of the principles in India. Again, these decisions emphasized the principle that where alternative rights are given to a done, he must exercise or waive one of the alternatives, so that such transaction as a whole may not be unjust. For instance, the courts have often repeated that a beneficiary cannot, as it were, approbate and reprobate the same transaction; that is to say, that he can neither take its benefits nor reject the burdens going with them. Prima facie its theoretical equity lends this doctrine to superficial appeal. Still, criticism has been forthcoming. The current objections turn in good part upon the uncertainty of the rulings regarding when an election is necessary and upon the consequences of making a mistaken choice. The strict application of the doctrine results in harsh consequences should the person fail to appreciate the consequences of their election. For one, the implication from the application of the doctrine in cases of gratuitous transfers where a transferor is either dead or incapacitated creates complications for beneficiaries who would be burdened with undue burdens on them. One other criticism is that in some contemporary legal settings, the doctrine is regarded as archaic. Even though it is very relevant for disputes over property and succession, developments of rights to property within the modern legal context and the growing intricacy of property dealings make the application of the doctrine risky. Where there are several interconnected beneficiary relationships or conflicting claims, the doctrinal framework can never, by necessity, yield the most just results. One of those commonalities towards equitable principles in Indian property law is the doctrine of election. The doctrine cannot be used by the beneficiaries to unjustly enrich themselves at the expense of other parties involved with it. Thus, it remains one of the primary tools for maintaining the integrity of legal transactions by forcing a person to make an election between inconsistent rights. Its rigid nature, complexity and sometimes the portent of confusion justify a more subtle approach in modern legal contexts. While its fairness and equity are unquestionable, reforms or clarifications may be deemed essential to ensure that the doctrine remains able to adapt to contemporary legal and societal changes. Hence, its continued applicability would lie in its ability to evolve and provide answers to challenges brought about by modern property disputes, succession matters, and legal standards.

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