



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820  
Editor-in-Chief – Prof. (Dr.) Rishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

---

## Muslim Law of Property – Hiba Concept

Alefiyah Hasan Kapasi<sup>a</sup>

<sup>a</sup>PDEA Law College, Pune, India

*Received 22 November 2022; Accepted 03 December 2022; Published 14 December 2022*

---

*Hiba is a concept and a law study of Muslim law. Hiba is a procedure of lending out a gift & the acceptance of the gift, Hiba lays out the law that speaks about the types of Hiba and various case studies that supports Hiba for the people belonging to the Muslim community. In this journal, we will learn more about Hiba in detail and study the cases where in the Hon'ble Court supports hiba even though the laws supporting it aren't that very well-versed and framed by the Indian Constitution. The Hiba law focuses on a particular group of people i.e. Muslims' and it is framed on the principles laid down by the Prophet Mohammed and the writings in the holy book "Quran".*

**Keywords:** *hiba, muslim law, gift, acceptance, quran.*

---

### INTRODUCTION

Muslim law is a personal law followed by a specific group of people; Muslim law is formed on the learnings of Prophet Mohammed and the saying of the holy book Quran. Muslim law governs the various aspects of law and is even known as "Sharia law" which is derived from the Arabic word.

In the case law of *Narantakath v Prakkal*,<sup>1</sup> it was stated the Muslim community is based on the basic two beliefs i.e. the belief of one god and secondly the principles and mission of Prophet Mohammed.<sup>2</sup> The most common topic in the Muslim law or Sharia law is the topic of “Hiba”. Hiba concept is the concept of “Gift” under Muslim law. The gift is a term that states the transfer of movable or immovable property from one person to the other person by the will of one individual may it be written or orally performed without any consideration in return. The concept of Hiba is not controlled by the Transfer of Property Act, 1882.

Hiba is defined in various aspects of the Indian Judiciary, hiba states its rules and its basic performance very clearly as being practiced by the society at large, Hiba is a topic that states to gift those properties that are presently in possession of the donor and the donor promises to the donee to gift that property to him and the transfer of the property is effectively made. Just a verbal or written promise by the donor without anything in action doesn't stand hiba. All the properties that are gifted as hiba can be revoked by the donor even after the actual transfer of the property is done. The laws describing the hiba and its revocation are different in Sunni and Shia laws respectively.

## **HIBA CONCEPT**

The term Hiba signifies as a gift, under Muslim law the gift can be of two types constructive and actual. In constructive only the symbolic representation of the gift comes into the force and whereas in the actual delivery the gift is actually transferred to the receiver.

Hiba is a single term that means gift with nothing in return (Ewaz). The other sources of Hiba described in various different Muslim law schools also states about the hiba with consideration in return; these sorts of Hiba are Ariya or sadakah where one Muslim performs hiba as a religious duty to earn good deeds and blessings by the god. The Hanafi lawyers define hiba as ‘an act of bounty by which a right of property is conferred in something specific without an exchange’. The shias holds that ‘a hiba is an obligation by which property in a specific object is

---

<sup>1</sup> *Narantakath v Prakkal* (1922) ILR 45 Mad 986

<sup>2</sup> Prof. Rakesh Kr. Singh, ‘Law of Hiba’ (Lucknow University)

<[https://www.lkouniv.ac.in/site/writereaddata/siteContent/202004021930365160rksingh\\_LAW\\_OF\\_HIBA.pdf](https://www.lkouniv.ac.in/site/writereaddata/siteContent/202004021930365160rksingh_LAW_OF_HIBA.pdf)

> accessed 12 November 2022

transferred immediately and unconditionally without any exchange and free from any pious or religious purpose on the part of the donor'.<sup>3</sup>

The term Hiba means significantly the gift which is movable or immovable in nature. The future purchase of any property or thing cannot be considered as a gift under Muslim law. Hiba law focuses on the present possession of the property to be accounted as a gift. Even the settlement of debt cannot be counted as Hiba, as the settlement of debt doesn't involve any kind of transfer of property. The Hiba concept of gift mainly refers to one possession of a property in the present. In the case law of *Noorunissa alias Pichamma v Rahaman Bi*,<sup>4</sup> it was stated by the learned counsel that the settlement of the money advanced by the gift donor cannot be stated as a gift by an individual according to the Mohammedan law. The court upheld this argument forwarded by the learned counsel and further stated that the court came to a decision reported in **A.R. Abdul Latheef v A.R.Mohammed Iliyas** has held that as per Mohammedan Law, even though a gift (Hiba) can be made orally, it should be expressly accepted by the donee and the offer for a gift should be made by the donor, expressly/implicitly, and in completion of the offer and acceptance of the hiba the property in possession of the donor should be actually made to the donee.

The Hiba concept based on various judgements and laws drives its focus on the willingness of the giver and the acceptance of the gift by the receiver is the most crucial part of the Hiba. The Hiba may it be oral or written should contain these two vital elements to stand valid before the law. The important part of the Hiba is that the individual who is performing Hiba is mandatory to be a Muslim and the receiver can be anyone irrespective of one's religion. The Hiba concept is a narrower term as compared to the gift by English law. The Muslim can gift his whole property in his lifetime to anyone he desires. The application of gift of property is normally performed by the Transfer of Property Act, 1882 but as in Chapter 7 of the Transfer of Property

---

<sup>3</sup> 'ISLAMIC LAW OF GIFT (HIBA) LESSON 1' (*University of Sargodha*)  
<https://lms.su.edu.pk/lesson/189/islamic-law-of-gift-hiba-lesson-1#:~:text=Durr-ul-Mukhtar%20defines%20it,any%20pious%20or%20religious%20purpose> accessed 12 November 2022

<sup>4</sup> *Noorunissa alias Pichamma v Rahaman Bi & Ors* (2001) 3 MLJ 141

Act doesn't speak about hiba or any such law governing the Muslim gift hence the hiba or Muslim gift is governed by the Muslim law.

**PARTIES INVOLVED IN HIBA (GIFT):**

Hiba requires two parties in a general scenario i.e. the donor and the donee, the donor can be two parties jointly providing Hiba to the donee. By the term "Donor" we mean an individual lending out its property may it be movable or immovable as Hiba(gift) and the "Donee" means an individual who is receiving Hiba(gift) from the Donor without any consideration in return.

**REQUIREMENTS FOR DONOR**

The donor according to Muslim or Mohammedan law means the party who is willingly out of his/her honest intention wishes to Hiba(gift) another person either his/her whole property or a part of the property.

The donor to carry out Hiba (gift) needs to be:

1. A donor must be compulsorily a Muslim.
2. A donor must be an adult i.e. a major while performing Hiba.
3. A donor must gift the property out of the free will.
4. A donor while performing Hiba should own the property under his/her name and there should not be any kind of fraud or any kind of adulteration. It should of free consent and will of one individual.
5. A donor can Gift (Hiba) to anyone, it can be a Muslim or from any other caste or religion.

**REQUIREMENTS FOR DONEE**

A Donee is a receiver of a gift who without any consideration receives the transfer of property.

1. The donee may or may not be a Muslim.
2. The donee may or may not be a minor.
3. The donee can be married or unmarried.
4. The does not need to pay any consideration in return of Hiba.

5. An unsound person or a minor may become a donee when the offer for any gift is made but to complete the hiba the delivery of the actual property is to be made to the guardian of the such unsound or minor person.
6. A dead person can never have Hiba in his name as donee. Muslim law strictly rejects hiba in the name of the dead person even though is made by the widow as meher.
7. A hiba can be made to the future unborn child whose interest is opened as a legal heir.
8. If the hiba is made jointly for more than one individual it stands invalid under Muslim law.

But if the donees jointly share the possession of the property irrespective of the shares divided to each one then the hiba is valid and lawfully performed.

#### **ESSENTIAL ELEMENTS FOR HIBA**

Hiba is a wide concept with minute details covering the concept, to perform Hiba without any arrears one needs to follow its ground rules to make it valid; here are a few points that make Hiba valid:

##### **1. Declaration of Hiba(Gift):**

Declaration of gift means that the person is willingly performing Hiba without any kind of force or fraud in it. The gif that is attested for Hiba should be unambiguous and should be presently held by the donor. The declaration of gift here means the free will and pure intention of the one performing Hiba. Under the case law of **Kamarunissa Bibi v Husaini Bibi**,<sup>5</sup> the court upheld that while declaring the property to the donee the donor should have pure and true intentions for the delivery of the property to the donee without any dark motive behind it. The hiba doesn't need to be registered or stamped by the law.

The declaration is the most crucial point for making a hiba valid; the declaration needs free consent and pure intention while performing Hiba. In the case law of **Husaina Bai v Zohra bai**,<sup>6</sup>

---

<sup>5</sup> *Kamarunissa Bibi v Husaini Bibi* (1930) All 478

<sup>6</sup> *Husaina Bai v Zohra Bai* (1960) MP 60

the court held that the hiba performed is void and enigmatic, the pardanashin woman has no right to know any kind of advice or truth.

The gift deed in Muslim law is called Hibanama, and the Hibanama needs not to be registered to hold its validity, this was upheld by the Guwahati court in the case of **Md Hesabuddin v Md Hesaruddin**<sup>7</sup> when the women performed the gift deed without its registration. If the gift is gifted to an individual who is of unsound mind or mind then its guardian are given the power to receive Hiba on their behalf.

## 2. Acceptance of Hiba:

The acceptance of Hiba here refers to the gift that once the declaration is made the next crucial stage is acceptance of the gift. The acceptance of Hiba is to be made by the donee, when the donor declares its gift to the donee it should be “Qabool” by the donee to make Hiba valid. The hiba without any acceptance is considered invalid even though it is registered.

The second most element is very well expressed by the Karnataka HC in the case of **Smt Hussenabi v Husensab Hasan**<sup>8</sup>, in which the court held that the presence of all the rules of Hiba should be present while gifting a property under Muslim law to make it a valid deal. In the present case, the court stated that the hiba made by the grandfather towards grandchildren lacking the offer of the gift and was not expressly implied, at the same time the acceptance of the hiba is also absent by the grandson, therefore the court comes to the decision the Hiba is valid to the minor grandchildren and stands voidable to the major grandchildren.

The acceptance of Hiba is merely completed when after the acceptance of the gift; the gift is of the ownership of the donee and has full rights enjoyed as the head of the property.

## 3. Transfer of the Gift (Hiba):

The declaration and acceptance are two vital elements but the hiba is incomplete if the Hiba is not transferred to the donee by the donor. The hiba is said to be completed when the acceptance is completed and the donor with pure intentions transfers the property in the name of the donee,

---

<sup>7</sup> *Md Hesabuddin v Md Hesaruddin* (1984) Pat. 203

<sup>8</sup> *Smt Hussenabi v Husensab Hasan* (1989) Kant 218

from that date and time the hiba is completed and considered as valid as it's given and accepted from the two parties which makes it a complete deed.<sup>9</sup>

In the case study of **Noorjahan v Mukhtar**,<sup>10</sup> the bench states that once Hiba is made as the acceptance of such property is made by the donee but later on the profits are enjoyed by the donor till his lifetime is a voidable Hiba, as after the delivery of the property to the donee the benefits and perks are to be given to the donee as his share of the property.

The transfer of property is of two kinds basically which are actual and constructive delivery.

**Actual delivery:** The actual delivery here means that the gift is of tangible nature which can be seen, touched, or physical in nature. The actual delivery means the gift is transferred from the giver to the donee in real possession i.e. in documents' as well as possession of the same.

Example: when a party receives a laptop that can be seen, felt, and is movable in nature.

**Constructive Delivery:** Constructive delivery mainly refers to the immovable property which is intangible and its transfer isn't seen. Here one cannot pick up land and transfer its needs to be transferred in the term of valid documents in the name of the donee which fulfills the criteria of constructive delivery. In the concept of Hiba, Muslim law emphasizes that the transfer of the property should be in the name of the donee to complete the legal procedure of the Hiba.

## EXEMPTIONS OF HIBA

- Hiba by more than one co-heir: when a mother dies leaving behind her kids then the undistributed property of the mother is divided among the children by 1/6<sup>th</sup> share jointly held by the co-heirs. This was held by the Privy Council.
- When a hiba is gifted a freehold property or commercial town is held invalid. When AB decides to give his 1/3<sup>rd</sup> share of the property to YZ Hiba but that property is located in the commercial town it is held invalid.
- If a zamindari holder of a property or Taluka gifts his property to the donee then such gifts are held invalid. According to Ameer Ali, the Doctrine of Musha was applicable only

---

<sup>9</sup> Prof. Rakesh Kr. Singh (n 2)

<sup>10</sup> *Noorjahan v Mukhtar* (1970) All 170

to small plots of land, and specific shares in large landed properties, like zamindaris. Thus if A and B are to be shareowners in a zamindari, each having a well-defined share in the rents of the undivided land, A makes a gift of his share to B, there being no regular partition of the zamindari, the gift is valid.

### CONCEPT OF CORPUS AND USUFRUCTS OF PROPERTY

According to Muslim law, the meaning of 'corpus' or 'Ayn' means the full ownership of the property, and 'usufructs' or 'Manafi' means the limited ownership of the property. It is limited power vested in the hands of the owner as it is not heritable property. The gift or corpus of a thing is called Hiba and the gift of only the usufructs of property is called Ariya. The corpus is full ownership and is stated as the owner of the property holding unlimited rights towards the property.

In **Nawazish Ali Khan v Ali Raza Khan** it was held that the gift of the corpus is subject to any such limitations imposed due to usufructs being gifted to someone else. It further held that gift is valid and it doesn't automatically enlarge into the gift of the corpus.

In **Rahim Bux v Mohd Hasen**<sup>11</sup> the court held that services are not a part of Hiba and the gift of services are not considered valid in Muslim law.

### KINDS OF HIBA

There are various kinds of Hiba, these variations are mentioned below:

#### **Hiba-Bil -Iwaz:**

Hiba means 'gift' and Iwaz means 'consideration'. In this kind, it's basically an exchange of gifts i.e. Hiba from both ends. Hiba-Bil-Iwaz means that when the donor grants Hiba to the donee, the donee in return grants the donor in exchange.

For Example, Alex gifts Beyonce a bungalow then Beyonce in return for the bungalow gives Alex a car or the consideration amount for the bungalow.

---

<sup>11</sup> *Rahim Bux v Mohd Hasen* (1883)



The Hiba-Bil-Iwaz is a type of barter system where in return for a thing another gets the thing or any kind of consideration. Hiba bil iwaz is in exchange for consideration and it is the best example of purchasing a commodity in return for money.

#### **Requirements for valid Hiba-Bil-Iwaz:**

- Amount of consideration for the gift given by the donor: the donor here gifts the donee and the donee in return either gifts him something or repays it with the consideration amount for the gift. In the case study of **Khajoorunissa v Raushan Begam**,<sup>12</sup> the court declared the judgement that the adequacy of the consideration is not the question, as long as the consideration is bonafide it is valid no matter even if It is insufficient.
- The pure intention of giving the gift out of free will is essential to make the gift (Hiba bil Iwaz) valid. The business of Hiba between the donor and donee needs to be in action and the donor should lend the gift to the donee.<sup>13</sup>
- The gift in place of the dower debt: In **Gulam Abbas v Razi** the court of Allahabad stated that a gift made orally by the husband to his wife with the valuation of more than Rs 100/- is not validly made by the Muslim men to his wife in form of gift in lieu of dower debt which is also more than 100/-. It is not hiba or hiba bil Iwaz. This is the sale and must be performed through a registered forum.

#### **Hiba-ba-shart ul-Iwaz:**

‘Shart’ means stipulation and Hiba ba shart ul Iwaz means’ the gift made with a stipulation for return’. This means that Hiba ba shart ul iwaz is a type of Hiba where the delivery of the property is first considered and once the delivery of the property is completed the donee is required to pay the amount for the hiba transferred to him. When the consideration is paid after the delivery it is to be assumed that the character of the sale is subject to Shufa (Preemption). In case of any problem with the delivery of the property, the donee can return the subject just like

---

<sup>12</sup> *Khajoorunissa v Raushan Begam* (1939) Lah 292

<sup>13</sup> ‘Meaning of Hiba, Kinds of Hiba/Gift And its difference from Sadkah, Ariyat & more’ (*Lawnn*, 22 June 2016) <<https://www.lawnn.com/kinds-of-hiba-gift/>> accessed 13 November 2022

a sale. This is a type where the hiba is first to be delivered to the donee and then the donee pays a consideration amount to the donor for the same Hiba in return.

Hiba ba shart ul iwaz is a kind of gift where the possession of the delivery of the gift is the main crucial element and the payment of the hiba is the next element that completes the whole transaction.

**Requirements of the Hiba ba shart ul iwaz:**

- Delivery of property is the first necessary step.
- It can be revocable until the consideration i.e. iwaz is paid.
- Once the consideration is paid the revocation of Hiba is void.
- The payment of iwaz is proof of the sale of the property in Hiba ba shart ul iwaz.

The form of iwaz is followed as the requisites of the hiba.<sup>14</sup>

**Sadakah:** This is a way of lending out to the poor and the needy by the rich or affordable classes of society by the way of some financial help or any food supplements or whatever is needed that causes one's daily life practice in an easy flow. This is a will by the donor to gift according to his wish or according to the need of the needy.

**Ariyat:** This form of gift is like a relationship between a landlord and a tenant that is occupied by the donee (Tenant) till the will of the landlord (Donor). This type of Hiba doesn't give ownership to the donee, it just gives access to the donee to use that property for a limited time. The ariyat is a temporary kind of Hiba that lets you enjoy its services, reputation, and its facility for a decided period of time with the consideration in return for using that property.

**Musha:** Musha means confusion, which basically means that musha is a type of Hiba that states about the undivided share of the property. The Hanafi (Sunni) law states that the property first needs to be divided and then be given out as Hiba. Musha even covers the property such as common building area, land, etc. musha, if is about such joint owners of the property then the will and intention of those joint owners should be there to lend out Hiba to the donee.

---

<sup>14</sup> *Ibid*

### **Exception of Musha:**

- Musha can be acted when it is made on a divisible property to co-heirs without dividing the property.
- When an individual credits his zamindari share of the property to the donee.
- When the hiba is the share of a limited company.
- If the hiba is of a commercial town or a freehold property.

It is considered that the prohibition of the musha goes against the right of the property hold by the owner who has full rights to dispose of the property in whatever manner he may desire.

### **Examples of Musha:**

- When Hiba is of claimable or dividend fund.
- When the property is a type of promise of future holdings of the property.
- Services can be a hiba to an individual.

## **CONSTITUTIONAL ROLE OF HIBA IN INDIA**

Article 14<sup>15</sup> of the Constitution of India states that all are equal before the law and the law should not discriminate against anyone based on their caste, religion, sex, creed, or anything. Article 14 states that “Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth”. Article 14 prohibits any type of discrimination based on violating the rights of an individual rather focuses on valid grounds of reasonable classification to provide full justice.

It is clearly specified that Article 14 focuses on the motive of justice with all without any kind of discrimination; it lays its grounds for justice very clearly in the constitution that no justice will have prevailed if there is discrimination or motive of discrimination in any particular case. Article 14 comes into effect when there is any reasonable ground in the case, it requires a clean and neat motive for article 14 to come into effect. The reasonable ground should serve the purpose of legislation for the article to come into effect validly.

---

<sup>15</sup> Constitution of India 1950, art. 14

It is clearly seen that Muslim law have various branches each describing Hiba and laws related to it in various form but in the Indian judiciary system the Mohamedan law and its dealings with Hiba come into force, it is known that the Transfer of Property Act, Section 129<sup>16</sup> exempts the Mohamedan laws from it and at the same time keeps the rules and guidelines of article 14 to safeguard the Hiba law. The crucial element of Hiba is to declare Hiba on to the donee as a wording stating 'I have given' or 'I have gifted' as per the norm of the Hedaya: Hiba is defined as a willful transfer of the property to the donee on the part of the donor being the property his/her ownership without in return of any kind of consideration. This type of dealing is basically pure intention and a display of one's pure love towards another.

According to Fyzee 'Hiba is the immediate and unqualified transfer of the corpus of the property without any return.'

### **REVOCAION OF HIBA**

As we have learned that according to Muslim law anything that is given out of free will can be revoked before & after the delivery of the possession of the property by the donee.

The revocation after the delivery of the property can be done by the court order according to the Mohamedan law. The donor can revoke the property before the delivery without any prior permission or order from the court. Revocation means that the donor is not willing to gift the donee or any other person the ownership of his property.

The revocations of Hiba are of two kinds which are as follows:

- Revocation of the property before delivery.
- Revocation of the property after the delivery.

**Revocation of the property before the delivery:** Whenever a gift is lent out of the free will and pure intentions these types of Hiba are revocable if it is revoked before the delivery of the property, which means it can be revoked from the donee without any court order or permission. This is the simpler form of revocation of the property as its an easy and cost-free procedure.

---

<sup>16</sup> Transfer of Property Act 1882, s 129

For instance: A gifts B a car but before the delivery of the car A decides to revoke the car from B, A can revoke the car without any permission from the court or from the donee as A still holds the ownership of the car and the possession of the car is still with A only.

**Revocation of the property after the delivery:** Revocation cannot just be done verbally or through the action of the donor, the revocation of the hiba needs to be done by the procedure laid down by the laws. The revocation of the gift after the delivery by the donor to the donee of the property needs the order by the court to revoke back the property to the donor without any entitlement of the donee, till the time of revocation by the court the donee has all the rights to access the property and the revocation needs the permission of the donee as the property has the donees entitlement. Under Muslim law revocation of the gift is the right of the donor and cannot be revoked by the legal heirs of the donor nor can a gift be revoked by the donee after his death by his legal heirs.

The Hanafi School of law states that a gift can be revoked even after the death of the donee in exceptional cases. According to the Hanafi School with the exception of the following cases, a gift can be revoked even after the death of the donee.

The Shia and Sunni law differs in the case of revocation by the following means:

- The gift can be revoked by the declaration given by the donor without any interference from the court proceedings.
- A gift to a partner (spouse) is revocable.
- And a gift to relatives in the Muslim law under the prohibited degrees or not is revocable.

It seems that:

- Revocation after the property by the donor needs to have an order from the court.
- Revocation needs the permission of the donee.

## CONCLUSION

The Hiba concept is based upon the Mohamedan law and focuses on the practices and rituals of the Muslim law. Hiba involves two parties and at the same time, even the hiba in exchange for the consideration is considered a gift under Muslim law, whereas that is not the scenario with

the English law as the English law speaks only about the gift without any kind of consideration in return.

Under Muslim law, Hiba focuses on:

- A donor
- A donee
- A donor is only a Muslim and also takes any kind of consideration in return for Hiba in certain cases.
- Revocation of Hiba.
- Acceptance and transfer of property in the name of the receiver.

Whereas under English law or under the Transfer of Property Act:

- The donor
- The donee
- No consideration in return for the hiba
- Movable and immovable property laws for Hiba are different.

The English laws and Muslim laws are somewhat similar but hold a lot of different aspects in law as English laws are more stable and more often practiced in the courts and the Muslim laws are particularly for a selected group of people and are based on the following of the prophet and Quran and the laws formulated by the Muslim community are not framed that accurately and needs development with the changing needs of the society towards modernization. Hence, Hiba is underdeveloped, yet practiced by the larger section of the country.