
THE VALIDITY OF AN ORAL GIFT UNDER MUSLIM LAW: STUDY

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ABSTRACT

The scope of this research is restricted to Islamic law. 'Hiba' refers to the concept of gifts in Muslim law. With the use of case laws, the researcher has attempted to comprehend and examine the essential notion of Gifts in this work. Gifts' status under several regulating laws, such as the Transfer of Property Act of 1872 and the Indian Succession Act of 1925, has also been discussed.

The many types of Gifts under Muslim Law, the constitutional legitimacy of an Oral Gift, and how a Gift is revoked are all covered in this paper. As this is a very broad and comprehensive topic, the researcher hopes to obtain more knowledge and raise awareness about Gifts under Muslim Law through this study.

Introduction

A hiba, or gift, is a transfer of property from one person to another, made immediately and without any transaction, and acknowledged by or on behalf of the latter. Essentially, it is a gratuitous transfer of property, including rights and absolute interests, by the act of parties without payment of any compensation; if any consideration is received, the transfer is void. Since 600 A.D., the concept of gift has existed. The Prophet's statement, "Exchange presents among you so that love may increase," is the foundation of the gift concept.

Muslims can divide their assets in a variety of ways under Islamic law. It could happen through a gift (Hiba) or a will (Wasiyat) in Muslim law. In Muslim jurisprudence, the term "gift" is called "Hiba." 'Gift' has a far broader meaning in English, and it refers to any transaction in which an individual donates his or her property to another without receiving any compensation. In Muslim law, however, the term "Hiba" has a considerably more limited meaning. A Muslim can give away all of his assets during his lifetime, but only one-third of his assets can be given away through a will. Moreover, the religion of the person to whom the gift is made is irrelevant.

Property is transferred immediately and without consideration when it is given as a gift. It's a property transfer with no strings attached. Despite the fact that the gift is a property, it is subject to the 1882 Transfer of Property Act. However, in Muslim law, the gift is not covered under Chapter 7 of the Transfer of Property Act 1882¹. As a result, the Muslim gift, or "Hiba," is governed by Muslim personal law.

Hiba's Essentials

There are primarily three elements that must be met in order for a Muslim to successfully transfer property or make a gift. The following are the conditions:

- The donor makes a gift declaration.
- The donee's acceptance of the gift.
- The donor's transfer of ownership and the donee's acceptance of it.

Before we go any further, it's important to grasp what the terms donor and donee signify.

A Donor is someone who expresses their readiness to donate their possessions to another individual. The Donee, on the other hand, is the individual who affirms his assent to the

¹ <https://www.indiacode.nic.in/bitstream/123456789/2338/1/A1882-04.pdf>

acceptance of the donor's gift.

- **Declaration**

The offer to make a gift must be clearly consensual and conveyed purposefully, with no ambiguity. The statement is one of the requirements for a gift to be considered legitimate. One of the most important parts is that this declaration, from the donor's perspective, must not be tainted by a mala fide intent to defraud, but must be genuine and bona fide.

The declaration requires witnesses or testimonies stating the donor's gifting of the property to the donee, and it cannot be made in segregation without them. The court decided in *Mohammad Mustafa v. Abu Bakr*² that any gift given under duress, undue persuasion, or deception cannot be considered a declaration. and the gift was void.

- **Acceptance**

Another requirement is that the gift be accepted by a competent donee or on his behalf by a competent person. The donor revealed the gift to his grandkids in front of his friends in *Musa Miya v. Kadar Bux*³. Nonetheless, because the father had not accepted delivery of possession of the property, it was determined that if the father is alive and the sole legal guardian, only he can act as a guardian of his minor sons' property, and without his acceptance, the gift would be invalid, and thus the gift was deemed incomplete and invalid. If the mother accepts the present, then it is likewise regarded invalid and incomplete.

Because there is no guardian, a person other than the minor's guardian can only accept the donation on behalf of the minor. However, if a younger girl marries after reaching puberty, the husband may legitimately take the gift for her even if his father is there.

- **Possession is handed over**

The other two requirements must be satisfied before the transmission of possession can take place. It could be beneficial or real. There is a distinction in the interpretation of a gift from The Transfer of Property Act of 1882 in this case. There is no mention of an immediate surrender of possession in this, and it can be done physically at a later time depending on the circumstances.

² AIR 1971 SC 361, (1970) 3 SCC 891, 1971 III UJ 109 SC

³ 1928 54 M.L.J. 655: L.R. 55 I.A. 171 : A.I.R. 1928 P.C.

There is no mention of an urgent delivery of possession in this, and it can be done physically at a later time based on the arrangement without affecting the gift's genuineness. The delivery of possession, on the other hand, is an important part of a gift under Muslim law.

Oral Gift of an Immoveable Property-

According to section 123 of the Transfer of Property Act, an unregistered gift of immoveable property is void in law and cannot convey title to the donee. Because of the provisions of section 123, no spoken gift of immovable property can be made. Without a formal instrument, just delivering possession does not confer any title. An oral gift is acceptable under Muslim law. However, in order for a gift to be lawful, the giver must relinquish full ownership and jurisdiction over the subject of the gift.

It is also necessary for the donee to demonstrate not only that the donor made an oral gift in his favor, but also that he accepted the gift and received ownership of the bestowed property.

Although Hindu law requires surrender of possession to consummate a gift of immovable property, sec. 123 of this Act overrides that need. This clause appears to have the effect of making delivery of possession unnecessary by replacing registration for delivery of possession.

Because possession of the property is not required, if a Hindu makes a gift in presenting of three villages using a duly registered instrument but retains possession of the villages in order to enjoy the usufruct during his lifetime while also ensuring that he will not alienate the property to anyone else, the gift is perfectly valid.

The basics of a gift, according to Mohammedan law, are the donor's statement of gift, the donee's acceptance of the present, and the conveyance of possession of everything the subject of the gift is capable of. The provisions of section 123 of the Transfer of Property Act have no bearing on this rule of Mohammedan law, and hence a registered instrument is not required to verify a gift of immovable property.

Possession may not always imply actual physical possession, but rather possession of the property's ability to be given. In terms of declaration, it must be demonstrated that the donor made a public statement in the "presence of witnesses" or otherwise that he gifted the property to the donee and that he divested himself of ownership of the property by handing possession to the donee. Under these conditions, a Mohammedan can make an oral gift of his immovable gift.

Because possession is required for the validity of a gift, it follows that if possession is not delivered, the gift is invalid. A legitimate gift can be influenced by delivery of possession under Mohammedan law, and if delivery of possession occurs, the presence of an unregistered document of gift does not render the gift void.

Validity of an Oral Gift under the Constitution

A gift might be given orally or in writing. If the declaration, valid acceptance followed by the prompt delivery of possessions, fulfilled all the fundamental requirements of a valid donation, i.e. there was no reduction of any of the aspects to writing, it shall remain entirely valid. Even if a donation is written or registered, it will be invalid if it does not meet the minimum standards. Otherwise, a simple letter or registration would not be sufficient to rectify the flaw of an invalid gift.

As a result, a gift can be made orally or in writing, and if it is written, it is valid even if it is not attested or registered. If the donation is otherwise valid, even a name change isn't required. Under the Law on the Transfer of Property of 1882, an immovable donation made by a non-Muslim must be witnessed by at least two competent witnesses and recorded in writing.

The husband offered his wife an oral house present in *Fatmabibi v. Abdul Rehman Abdul Karim*⁴. In the event of a dispute over the gift's legitimacy, the Court determined that the gift met just one criteria, namely, a statement, and that the gift was invalid because the other two conditions, namely, acceptance and delivery of ownership, were not met.

An oral gift must be conclusively established explicitly in the event of a disagreement. Here, the three essential components of a lawful gift, namely declaration, acceptance, and delivery of ownership, as well as other criteria, must be proven. It must be shown that the donee does not own the donated property at the time of the dispute, but that the donee must immediately return it.

It is insignificant that the purported Donee took care of the property during his lifetime, freed the owner's obligations, performed his last rites, and was allowed to take over for a full year after his death if the gift is not demonstrated to have taken possession of the property. Even a Panchayat notice is insufficient to compel him to pay house tax, and he must show when and how the gift was made to him.

⁴ 27 April, 2000

Several statutory laws and court decisions clearly control the situation. These are the following:

Section 9 of the Transfer of Property Act: states that a transfer of property may be conducted without a written instrument in any instance when a written instrument is not specifically required by law.

Section 129 of the Transfer of Property Act: Nothing in this chapter... (Sections 123 to 129 of the T P Act dealing with "Gifts") shall be construed to affect any rule of Mohammedan Law.

- Possession delivery is critical in gift giving. Registration does not make a problem go away⁵ –
- A gift given by a Mohammedan must adhere to Mohammedan law – AIR 1928 PRIVY COUNCIL 108
- A legitimate vows (i.e., among alive persons) among Muslims does not require writing, but there must be delivery of possession in accordance with the nature of the property provided — AIR 1966 SUPREME COURT 1194
- The Supreme Court's legal principles cannot be disregarded simply because the circumstances are not same –AIR 1980 KARNATAKA 66,69
- The Supreme Court's Obiter Dicta (i.e., even passing observations) is binding on all courts⁶ -
- A document of gift signed by a Mohammedan and recording a gift made in accordance with the three conditions laid down by Muslim Law is merely evidence of a completed gift and, as such, is not required to be registered and is admissible in evidence despite sections 17 and 49 of the Registration Act⁷. (Full Bench)
- Because a memorandum of already transacted business does not constitute a gift, no registration is required – AIR 1971 CALCUTTA 162

Conclusion

When the giver is a Muslim, the gift is referred to as Hiba and is governed by Muslim Personal Law. The only requirements for a valid Muslim gift are declaration, acceptance, and delivery of possession. It is neither essential nor sufficient to register. A Muslim's oral gift is legal

⁵ MYSORE 97, AIR 1971, HIMACHAL PRADESH 5.

⁶ AIR 1977 ALLAHABAD 370

⁷ AIR 1962 ANDHRA PRADESH 199

regardless of the value of the property given. However, if an immovable property worth Rs. 100 or more is gifted and the donation is made in writing, it must be registered under Section 17 of the Indian Registration Act. Muslims are covered by this clause of the Registration Act.

The definition of a gift and the subject matter of a present is a long-standing and traditional topic that has evolved into a unique aspect of property law. This article focuses on several parts of the Gift in Property Act, as well as the differences between it and Mohammedan law and their repercussions. When considering the law of gifts, keep in mind that the term 'gift' in English is generic and should not be confused with the technical term in Islamic law, hiba. The terms "gift" and "hiba," as employed in the transfer of property act, are not interchangeable.

Reference

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