

**A Comparative Analysis of Transfer of Property as a Gift under the Transfer of Property Act, 1882 and Muslim Law**

---

**Author: Abdul Basith**

**Course : BCOM LLB**

**COLLEGE: ST.JOSEPH'S COLLEGE OF LAW**

**ABSTRACT**

The concept of gift is an important mode of transferring property without consideration. In India, gifts are governed by the Transfer of Property Act, 1882 (TPA) for the general population, while Muslims are also governed by the principles of Muslim Personal Law relating to Hiba (gift). Although both systems recognize the voluntary transfer of property without consideration, they differ significantly regarding formalities, registration, delivery of possession, revocation, and legal requirements. This paper examines the concept of gifts under both legal systems and highlights their similarities and differences.

Keywords: Gift, Hiba, Transfer of Property Act, Muslim Law, Donor, Donee, Property Transfer.

**Introduction and Historical Background of Gifts**

A gift is a legal transaction through which ownership of property is transferred from one individual to another without any payment or consideration. The person making the transfer is known as the donor, while the person receiving the property is called the donee. Such transfers are made voluntarily and are often motivated by affection, generosity, or personal relationships. Gifts may involve either movable or immovable property and become legally effective when the donee accepts the property transferred by the donor.

**Historical Background**

**1. Development of the Law of Gifts under the Transfer of Property Act, 1882**

Prior to the enactment of the Transfer of Property Act, 1882, rules relating to the transfer of property in India were largely derived from local customs, religious practices, and judicial decisions. The absence of a uniform legal framework frequently resulted in inconsistencies and legal disputes.

To establish certainty and consistency in property transactions, the British Indian legislature enacted the Transfer of Property Act, 1882. The provisions relating to gifts are contained in

## Lawful Legal || June 2026

Sections 122 to 129 of the Act. These provisions laid down essential conditions for a valid gift, including voluntary transfer, absence of consideration, acceptance by the donee, and registration in the case of immovable property. The legislation aimed to safeguard property rights and provide a clear legal structure for property transfers.

### 2. Evolution of Hiba under Muslim Law

Under Muslim law, a gift is known as *Hiba*, a concept derived from Islamic legal principles. The foundation of Hiba can be traced to the Quran, the traditions of Prophet Muhammad, and the writings of classical Islamic jurists. The practice of making gifts has long been encouraged in Islam as a means of promoting goodwill, generosity, and social harmony.

During the early Islamic period, gift-giving was regarded as an important social and moral practice that strengthened relationships and supported community welfare. Islamic jurists subsequently developed detailed legal principles governing Hiba. For a gift to be valid under Muslim law, three essential requirements must be fulfilled:

- A clear declaration of the gift by the donor (*Ijab*);
- Acceptance of the gift by the donee (*Qabul*);
- Transfer of possession of the gifted property (*Qabza*).

Unlike the formal requirements applicable under statutory law, Muslim law traditionally recognizes oral gifts. Therefore, a written document or registration is generally not necessary, provided the essential elements of a valid Hiba are satisfactorily established.

## LEGISLATIVE FRAMEWORK

### Gift under the Transfer of Property Act, 1882

Gift under the Transfer of Property Act, 1882

Here is a rewritten academic version with substantially improved originality while preserving the legal meaning and structure:

### Gift under the Transfer of Property Act, 1882 and Muslim Law

#### Meaning of Gift

In law, a gift is a mode of transferring property from one person to another without any consideration. For a gift to be legally effective, there must be a valid transfer by the donor and acceptance by the donee. Section 122 of the Transfer of Property Act, 1882 defines a gift as the voluntary transfer of existing movable or immovable property by one person, known as the donor, to another person, known as the donee, without consideration and accepted by the donee.

## **Lawful Legal || June 2026**

A gift made between living persons is known as an *inter vivos* gift. In contrast, a transfer intended to take effect after the death of the transferor is called a testamentary gift. Since Section 5 of the Transfer of Property Act applies only to transfers between living persons, testamentary transfers fall outside its scope.

A gift that does not satisfy the legal requirements prescribed by law may be declared invalid or revoked. Acceptance by the donee is a crucial element. Therefore, if the donee dies before accepting the gift, the transfer becomes ineffective even if the donor had expressed a clear intention to make the gift and had delivered the property.

### **Essentials of a Gift under the Transfer of Property Act, 1882**

According to Section 122, a valid gift must involve:

1. Transfer of existing movable or immovable property.
2. Voluntary transfer by the donor.
3. Absence of consideration.
4. Acceptance of the gift by the donee during the donor's lifetime.

The section recognizes both movable and immovable property as proper subjects of a gift and requires a complete transfer of ownership from the donor to the donee.

### **Modes of Making a Gift**

Section 123 of the Transfer of Property Act prescribes the manner in which gifts must be executed. The procedure differs depending on whether the property is movable or immovable.

#### **Gift of Immovable Property**

A gift of immovable property can be made only through a registered instrument. The gift deed must be signed by the donor, attested by at least two witnesses, properly stamped, and registered according to law. Registration is mandatory irrespective of the value of the property.

The doctrine of part performance does not apply to gifts. Consequently, an unregistered gift deed relating to immovable property does not confer legal title upon the donee. A person claiming possession under such a deed cannot rely upon it to protect possession if challenged.

#### **Gift of Movable Property**

Movable property may be transferred either through a written instrument or by actual delivery of possession. Registration is not compulsory in such cases. The transfer becomes valid when ownership and possession pass from the donor to the donee.

The method of delivery depends on the nature of the property. Any act that effectively places the property under the control of the donee may amount to valid delivery. Even where registration is

## Lawful Legal || June 2026

subsequently completed after the donor's death, the gift may remain valid if all essential requirements had already been fulfilled during the donor's lifetime.

### Gift of Actionable Claims

Section 3 of the Transfer of Property Act defines actionable claims as unsecured debts or beneficial interests in movable property not in the claimant's possession. Since actionable claims are regarded as intangible movable property, they can also be gifted.

Under Section 130, an actionable claim may be transferred through a written instrument signed by the transferor or an authorized agent. Neither registration nor delivery of possession is required for such transfers.

### Gift (Hiba) under Muslim Law

The concept of *Hiba* has been recognized under Islamic law since its early development. A Hiba refers to an immediate and unconditional transfer of ownership of property from one person to another without consideration. Such a transfer must be accepted by or on behalf of the recipient.

Unlike gifts governed by the Transfer of Property Act, gifts under Muslim law are regulated by principles of Islamic jurisprudence. Muslim law allows a person to transfer the whole of his or her property by way of Hiba during his or her lifetime.

### Definitions of Hiba by Jurists

#### Hedaya:

Hiba is the immediate and unconditional transfer of ownership in existing property without any consideration.

#### Ameer Ali:

Hiba is a voluntary transfer of property made without consideration, resulting in the complete transfer of ownership from the donor to the donee.

### Nature of Gifts under Mohammedan Law

Muslim law recognizes several methods through which property may be transferred, one of which is Hiba. Although the terms "gift" and "Hiba" are often used interchangeably in India, Hiba has a more specific meaning under Islamic law than the broader concept of gift recognized in English law.

Under Mohammedan law, a gift may take the following forms:

#### (a) Hiba:

An immediate and absolute transfer of ownership in property without consideration, though a return or *ewaz* may sometimes be involved.

### **(b) Ariat:**

A transfer of a limited right to use or enjoy the benefits of a property without transferring complete ownership.

### **Sadaqah**

Where property is transferred without consideration for religious or charitable purposes, the transaction is known as *Sadaqah*. Such gifts are made with the intention of obtaining spiritual or religious merit.

For example, if an individual donates land for the construction of a mosque or an educational institution connected with religious instruction, the transfer may be treated as a valid charitable gift under Mohammedan law.

## **Judicial Precedents**

### **1. Judicial Precedents on Gifts under the Transfer of Property Act and Muslim Law**

#### **1. Hafeeza Bibi v. Shaikh Farid (2011)**

In this case, the Supreme Court held that a gift (*Hiba*) made under Muslim law does not necessarily require a written document or registration. The Court observed that a Muslim gift is valid when three fundamental conditions are satisfied: a clear declaration by the donor, acceptance by the donee, and delivery of possession. The decision reaffirmed that Muslim gifts are governed by personal law and remain outside the general requirements applicable under the Transfer of Property Act by virtue of Section 129.

#### **2. Abdul Rahim v. Sk. Abdul Zabar (2009)**

The Supreme Court emphasized that a mere intention or declaration to make a gift is insufficient. For a valid *Hiba*, possession of the gifted property must be transferred either actually or constructively to the donee. Failure to establish delivery of possession may invalidate the gift.

#### **3. Renikuntla Rajamma v. K. Sarwanamma (2014)**

The Court examined the requirements of a valid gift under the Transfer of Property Act. It held that acceptance by the donee is an indispensable element of a valid gift. The judgment further clarified that a donor may reserve certain rights during his or her lifetime without affecting the transfer of ownership.

#### **4. K. Balakrishnan v. K. Kamalam (2004)**

## Lawful Legal || June 2026

In this decision, the Supreme Court discussed the legal requirements governing gifts of immovable property. The Court stressed the importance of registration and acceptance for the validity of such gifts and distinguished statutory gifts under the Transfer of Property Act from gifts recognized under Muslim personal law.

### 5. Mohammed Hesabuddin v. Mohammed Hesaruddin

The Court reaffirmed the established principles governing Muslim gifts and stated that a valid *Hiba* requires three essential elements: declaration by the donor, acceptance by the donee, and delivery of possession. The absence of any one of these elements would render the transaction ineffective.

### 6. Smt. Gontibai v. Mattulal (1996)

The Court held that a gift becomes complete only upon acceptance by the donee. Such acceptance may be express or may be inferred from the conduct and circumstances surrounding the transaction.

### 7. Naramadaben Maganlal Thakker v. Pranjivandas Maganlal Thakker (1997)

This case dealt with the effect of non-acceptance of a gift. The Court concluded that a gift lacking valid acceptance does not create legal rights in favour of the donee and is therefore void and unenforceable.

## Comparative Analysis

Basis	Transfer of Property Act, 1882	Muslim Law (Hiba)

Definition	Transfer of existing movable or immovable property made voluntarily and without consideration by the one person to another accepted by the donee.	Hiba is the immediate and unconditional transfer of ownership of property by a Muslim to another person without consideration
Consideration	No consideration is required	No consideration is required
Registration	Registration is compulsory for gifts of immovable property	Registration is generally not compulsory if the essential requirements of Hiba are fulfilled
<b>Basis</b>	<b>Transfer of Property Act, 1882</b>	<b>Muslim Law (Hiba)</b>
Writing	A written and registered gift deed is mandatory for immovable property.	Oral gifts are valid writing is not essential
Delivery of Possession	Not essential for validity if the gift deed is properly executed and registered.	Delivery of possession is an essential requirement for a valid Hiba subject to certain exceptions.

Acceptance	Acceptance by the donee during the lifetime of the donor is the mandatory.	Acceptance by the donee is an essential condition for valid Hiba.
Future Property	A gift of future property is void.	Only existing property can be gifted future; property cannot be the subject of Hiba.
Revocation	A completed gift is generally irrevocable except in cases permitted by the law or by the mutual agreement.	A gift may be revoked in certain circumstances before delivery of possession but after completion it is generally irrevocable subject to recognized exceptions.
<b>Basis</b>	<b>Transfer of Property Act, 1882</b>	<b>Muslim Law (Hiba)</b>
Governing Law	Governed by the Transfer of Property Act, 1882 (sections 122-129)	Governed by the Muslim Personal Law (Shariat) and principles developed through judicial decisions

**Suggestions**

Preservation of Personal Law with Legal Certainty

## Lawful Legal || June 2026

- Any reform should balance two objectives:
- Respecting the religious and cultural principles of Muslim Law.
- Ensuring transparency, certainty, and protection against fraudulent transfers.

### Judicial Clarification through Precedents

- Higher courts should continue to provide clear interpretations regarding the interaction between Section 129 of the Transfer of Property Act and Muslim Personal Law.
- Consistent judicial guidance will help resolve ambiguities in the law.

### Alternative Dispute Resolution (ADR)

- Family disputes arising from gift transactions should be resolved through mediation and conciliation wherever possible.
- ADR mechanisms can preserve family relationships and reduce the burden on courts.

### Optional Registration of Muslim Gifts

- Registration should be promoted, though not made mandatory, for Muslim gifts involving immovable property.
- Registered documents provide stronger proof of transfer and protect the interests of both donor and donee.

### Strengthening Awareness of Legal Requirements

- Many disputes arise due to a lack of understanding of the legal requirements of a valid gift.
- Public awareness programs and legal literacy campaigns should educate citizens about:
  - Declaration of gift
  - Acceptance by the donee
  - Delivery of possession
  - Registration requirements under the TPA

### Digital Record-Keeping

- Governments should facilitate digital registration and maintenance of gift deeds.
- Digital records improve transparency, accessibility, and protection against fraud and document tampering.

### Clear Guidelines on Delivery of Possession

- Courts and legislatures should formulate clearer guidelines regarding actual and constructive possession in gift transactions.
- This would reduce conflicting interpretations and ensure consistency in judicial decisions.

### Conclusion

Gifts, a transfer without consideration, hold the same meaning under the Transfer of Property Act (TPA) and Muslim/Islamic Law. However, they share some similarities and differences.

Firstly, the conditions and consequences for revoking a gift under TPA and hiba under Muslim Law are distinct.

Secondly, the concepts and provisions related to gifts under TPA and hiba under Muslim Law are identical. Therefore, both hiba and gift are forms of gratuitous transfer, involving a transfer without consideration. Despite their similarities, particularly in the case of gifts to minors, the methods of revocation differ significantly between the two.

### References

- Mulla, Principles of Mohammedan Law (2017) Principles of Mohammedan Law. LexisNexis.
- Fyzee, Outlines of Mohammedan Law (2008) Outlines of Mohammedan Law. Oxford University Press.
- Avtar Singh, Transfer of Property Act (2021) Transfer of Property Act. Eastern Book Company.
- R.K. Sinha, Transfer of Property Act (2020) The Transfer of Property Act. Central Law Agency.
- Transfer of Property Act, 1882