GIFTS AS A MODE OF PROPERTY TRANSFER IN INDIA: A COMPARATIVE ANALYSIS OF THE TRANSFER OF PROPERTY ACT AND MUSLIM LAW

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ABSTRACT

In India, a gift is an important mode of property transfer, enabling an individual to transfer ownership voluntarily without consideration. The legal framework of gifts in India is governed by a dual system, one under the Transfer of Property Act, 1882, and the other under Muslim personal laws. While both regimes recognise the validity of gratuitous transfers, they differ significantly in terms of essential requirements, formalities, and evidentiary standards. The Transfer of Property Act mandates compliance with statutory formalities such as written instruments and registration for the validity of gifts of immovable property, whereas Muslim law places greater emphasis on intention, acceptance, and delivery of possession, often dispensing with formal documentation.

The author conducts a comparative analysis of gifts as a mode of property transfer under the Transfer of Property Act and Muslim law. The paper explores the conceptual foundations, key elements, and legal consequences of gifts under both legal systems, with particular focus on judicial interpretations by Indian courts. The study emphasises the doctrinal differences and practical challenges resulting from the coexistence of statutory and personal law frameworks, which often lead to legal uncertainty and litigation. By critically analysing statutory provisions, personal law principles, and relevant case law, the paper aims to assess whether the current legal framework adequately balances legal certainty with respect for personal law autonomy. The study also underscores the need for greater clarity and consistency to promote fair and predictable outcomes in gift-related property disputes in India.

Keywords: Gifts, Property Transfer, Transfer of Property Act, Muslim Law, Comparative Analysis

Chapter I-

Synopsis: -

1. **Introduction**

In India, the transfer of Property forms the backbone of civil and personal law, enabling individuals to lawfully distribute ownership during their lifetime or upon death. Among the various modes of transfer recognised under Indian law, gifts hold a particular position as voluntary, gratuitous transfers made without consideration. The legal rules and regulations governing gifts in India operate within a dual framework, comprising statutory law under the Transfer of Property Act, 1882 (TPA), and personal laws, such as Muslim law, which draws its principles from religious texts and long-standing jurisprudence. This coexistence of statutory and personal law regimes presents unique legal complexities and interpretative challenges.

Under the Transfer of Property Act, a gift is defined under sections 122-129 as the voluntary and without consideration transfer of property and the property can be movable or immovable, and requires compliance with formal statutory conditions such as registration and acceptance. On the other hand, Muslim law treats gifts (hiba) as a matter of personal law, governed by principles that emphasise intention, delivery of possession, and acceptance, often dispensing with formal requirements like written documentation or registration. These differing approaches reflect fundamentally different legal philosophies, one with codified statutory mandates and the other in religious and customary practices.

This paper takes a comparative analysis of gifts as a mode of property transfer under the Transfer of Property Act and Muslim law, examining their conceptual foundations, essential elements, legal formalities, and judicial interpretation. By analysing statutory provisions, classical Muslim law principles, and relevant judicial precedents, the study seeks to highlight areas of convergence and divergence between the two legal regimes. The paper further evaluates how these differences impact legal certainty, property rights, and access to justice in a pluralistic legal system like India. Through this comparative inquiry, the study aims to contribute to a clearer understanding of the operation of gift law within India's complex statutory-personal law framework.

This coexistence of codified and uncodified regimes is not unique to gift law but reflects a broader pattern of legal pluralism in India, where distinct religious communities are governed by separate personal law systems in matters of property, marriage and succession. Comparative studies of property and inheritance regimes across Indian states have observed that this plurality often produces divergent outcomes for similarly placed individuals depending on the personal law applicable to them, which reinforces the need for the kind of doctrinal clarity this paper seeks to provide.[1]

2. Literature review: -

- **Lavya Kumari[2]** In her blog writes about the concept of gifts under the Transfer of Property, where she mentions the essentials of Gifts under TPA, that is, Transfer of Property, Existing Property, Transfer without consideration, Free consent, and voluntary transfer, Acceptance of gift under the Transfer of Property Act. She also explains the concept of onerous gifts. Gifts that are more of a burden than an advantage, she also talks about the universal done, a person who receives the whole property, movable or immovable, of a person as a gift. She also mentions the revocation and suspension of the gift under two specific reasons which are a cancellation with mutual consent and or rescinding the contract she also mentions the exception in her blog which is Donations Mortis Causa which means that when the donor gives a gift in the expectations of that he is going to die but if he didn't die than the transfer becomes void. The second exception is the concept under Muslim law, which is Hiba. Her blog also helps to understand the idea of gifts under the Transfer of Property with exceptions.

[1] ActionAid Karnataka Projects, Property Rights for Women: A Study of Laws and Customs Related to Property and Inheritance in India to Promote Pathways to Gender Justice (ActionAid, November 2024) <https://www.uni-kassel.de/forschung/files/Global_Partnership_Network/Womens_Property_Rights_Report_I_ebbok.pdf> accessed 21 September 2026.

[2] Lavya kumari https://www.ezylegal.in/blogs/concept-of-gift-under-transfer-of-property-act#:~:text=of%20Property%20Act-,Concept%20of%20gift%20under%20Transfer%20of%20Property%20Act,4.9,-4%20mins

- **Dr Tabrez Ahmad, Associate Professor of Law.** [3]This research paper compares and specifies the exact concept of gifts explained under the Transfer of Property Act and Muslim law. Under the transfer of property, gifting requires transfer of possession or delivery of goods, but the gifting can be revoked upon the consent of both parties under sudden circumstances or conditions as specified in section 10 of TPA, 1882. Whereas under Muslim law, gifts can be revoked after possession, but in certain cases, there are exceptions for spouses or charities. There are more well-defined procedures required under the Transfer of Property Act, and in Muslim law, revocation can be made under different conditions in both Sunni and Shia law. The terms specified, such as Hiba in Muslim law, are way more different from those of the more formal and well-defined procedures of gifting specified in the Transfer of Property Act, 1882.
- **Swapnil Pattanayak**[4] This paper underlines the subject of gifts under Islamic law (Hiba) and the Transfer of Property Act, 1882. Gifts (Hiba) are considered as unconditional and voluntary transfer, doesn't matter whether it is a movable property or immovable property, without consideration under Islamic law. It mainly prioritizes the immediate exchange of possession and refrains any property to be transferred as a gift. This research paper states the key elements different from normal procedural difficulties between the various legal frameworks. This paper also defines the additional restriction for gifting specifically for immovable property under the Transfer of property act, 1882.
- **Akash Rajeev**[5] This article states the legal provisions under the transfer of property act, 1882. A gift deed is usually considered irrevocable and normally revocation can only be made only under some conditions. It is important for a gift deed particularly

[3] https://www.researchgate.net/publication/228228161_Comparative_study_of_Gift_under_Islamic_Law_and_Transfer_of_Property_Law_Indian_perspective4

[4] https://www.ijlmh.com/wp-content/uploads/2019/03/Provisions-of-gift-under-Islamic-Personal-Laws-and-the-Transfer-of-Property-Act-1882-A-Comparative-Study.pdf

[5] https://www.lawyersclubindia.com/articles/gift-under-transfer-of-property-act-legal-provisions-important-case-laws-15012.asp

for immovable property to be executed on stamp paper and must be registered and witnessed properly in order to be legally valid.

Since under "*the transfer of property act, 1882 defines different property transactions like sale, mortgage, lease, exchange, and gifts. Section 122 defines Gift states the transfer of moveable or immoveable property made without consideration, voluntarily by a person is known as donor to another person who is termed as donee, accepting by or on behalf of the donee.*"

Acceptance can be made when- the donor is alive and is still capable of giving, making a decision. In any case the donee dies prior to acceptance, it is declared that the gift is invalid. The donors consent must be free from coercion, the property must exist and donor must accept the gift.

Cases mentioned

"Roshan Lal v. Kartar Chand [AIR 2002 HP 131] and Pratima Choudhury v. Kalpana Mukherjee [(2014) 4 SCC 196] -The transfer of property must be made with free consent.

Urmila Devi v. State of Bihar [AIR 2015 NOC 859]- The transfer of property must be accepted by the donee or on their behalf

Padma Chand v. Lakshmi Devi, [2010 (173) DLT 604]- transfer of property without any consideration"

- **Md. [6]Abu Hanif's** Study on the Gifts under Hindu and Muslim law and statutory laws of Bangladesh differentiates between these three laws. In Hindu laws gift is a transfer of one's right to some property without consideration in favour of another, who would accept it to create his right in that property. In Hindu law, gifts become complete as soon as they are accepted by the person to whom they are transferred. According to Muslim law, the gift is like a contract the person has a major and sound mind and may express his intention to dispose of his property without consideration in his study he mentions that in Bangladesh there 91.04% Muslims, 7.95% Hindus, 0.61% Buddhists, 0.30% Christians and 0.12% adherents of other or unspecified religions resides and it is a very diverse country and because of that they establish the property right and constitutionally guaranteed fundamental rights, equally for all with the same laws for their religion.

[6] I2510026373.pdf

- **Vyshnavi Bojja**[7] explains the kind of gifts under Muslim law, in which she explains who is entitled to take the gift and make his or her property. She explains that a Muslim can give only 1/3 of his property, but in the gift, he is entitled to give away the whole of his property. She explains the concept of Hiba-il-iwaz, Hiba ba Shart ul Iwaz and Marz-ul-Maut. She also explains the void gifts, which are Gift to an unborn person, Gifts to a Dead person, Gifts in the Future, Contingent Gifts and Gifts with Contingent Gifts, and Gifts with a condition. These are the gifts she explains under Muslim Law.
- **Paluck Sharma**[8] A study on Marz-ul-Maut explains the concept that it is the doctrine of deathbed gifts. She also explains the restrictions on Marz-ul, Maut and restrictions are that there should be no death due to illness, and in case a person does not die, the will made will be null and void, and if a person dies due to old age, it does not come under the purview of Marz-ul Maut. She also mentions some cases related to it such as Safia Begum vs Abdul Rajak and Shaik Nurbi vs Pathan Mastanbai and Ors.
- **Prof. Rakesh Kr. Singh** did a study on Hiba the transfer of determinate property on behalf of without any exchange of amount from one person to another under Muslim law a gift is called Hiba and he also mentions the essentials of Valid Hiba like Qualifications of parties and subject matter of Hiba and formalities of a Hiba. He also talks about the revocation of Gifts and introduces the concept of Hiba-Bil-Iwaz it's a concept of Muslim personal laws and it is a gift with an exchange or a gift for consideration. He also mentions the essentials Hiba-bil-iwaz and he also differentiates between Hiba and Hiba-bil-Iwaz. He also introduced Hiba-Ba-Shart-Ul-Iwaz and the difference between Hiba-bil-iwaz and Hiba-ba- Shartul-iwaz.
- **Basu, D.D. (2016)**[9] - "Commentary on the Transfer of Property Act"In this work, the author deals with examination of gift and its legal aspects in his Basu's authoritative commentary on the Transfer of Property Act. In his discussion, the author states that under Section 122 of TPA, "a gift is defined as a voluntary transfer of existing property without consideration, where acceptance by the donee is essential for validity." The book makes sure that the procedural requirements for gifts of immovable property are registered under Section 123 of the TPA. With regard to

[7] Kinds of gifts under Muslim law | Law column
[8] A Brief study of the Concept of Marz-ul-Maut in Muslim Law
[9] Basu - Emphasis is on procedural compliances and enrollment with TPA.

movable property, Basu explains the importance of delivery of possession and supports his argument with case laws that prove that once a gift is made, it cannot be revoked unless it comes within the exceptions laid down in Section 126 (revocation of gifts). The book discusses the contrasts of TPA and the formal requirements of gifts under Muhammadan Law where delivery of possession is significantly more important. The case study captures the essence that law under TPA puts husbandry emphasis on the formal execution and registration of gifts rather than mere delivery of possession. It exposes the reader to the context of the legal framework surrounding gifts with relation to Indian Law.

- **Fyzee, A.A.A. (2008)**[10] – "Outlines of Muhammadan Law"Fyzee's profound contributions on Muhammadan Law center on gifts (Hiba) in Islamic law. The author states that a gift is the transfer of property without consideration, which must involve an offer (Ijab), acceptance (Qabul), and delivery of possession (Qabza). Unlike TPA, in which registration is obligatory for immovable property, possession must be given more prominence in Muhammad law as compared to the actual registration. Fyzee indicates that in Islamic law, a gift is consummated with the transfer of possession being the only item requisite, whether there is a deed or not in existence. Significant case laws, including Abdul Rahim v Abdul Zabar (2009) 6 SCC 160 are discussed in the work, which decided that a gift without the delivery of possession is invalid under Islamic law. He also discusses the revocation of gifts under Islamic law, which is restricted under limited conditions, mainly the gifts between spouses or gifts made under compulsion. This book provides an in-depth analysis of the theological and legal implications of gifts under Muhammadan Law, which offers insights of how different it is from TPA stipulations.
- **Mulla, D F. (2013)** [11]- 'Principles of Muhammadan Law'' Mulla outlines the treatment of gifts in his Islamic Succession Law and analyzes the gifts within the context of Sharia Law. He observes that a gift under Mulla's law is only valid if an offer, acceptance, and delivery of possession have taken place. Mulla highlights that a gift, even when written, is invalid unless there is delivery of possession. The jurisprudence contrasts this principle with the requisites under TPA where delivery

[10] Fyzee - Principal concern of delivery of possession is examined under the Muhammadan law.

[11] Mulla - Discusses the significance of possession regarding validation of gifts in the Islamic legal system.

of possession is secondary to the preparation of documents and their formal registration. Further, the work elaborates the distinction between Hiba-bil-iwaz (gift with consideration) and Hiba-ba-shart-ul-iwaz (gift with a stipulation for return) which both denote a gift in Muhammadan law. Mulla comments on gift revocation. He argues there is a right of revocation under Islamic law prior to taking possession, but not after it is delivered, except when the recipient is a spouse or descendant. This confirms the difference of reasoning in Islamic law which favors possesory title and the TPA which concentrates on its substantive execution.

- **Diwan, P. (2012)** [12]– "Modern Hindu Law"Even while concentrating on Hindu law, Diwan's work contains a comparative study of gifts in the TPA and the Muhammadan law. The author notes that gifts under Hindu law are bound by the provisions of the TPA that deals with grant ofworks pertaining to immovable property. Diwan focuses on the prominent case of Renikuntla Rajamma v. K. Sarwanamma (2014) where the Supreme Court held that the gift of an immovable property is valid if the deed of gift is executed and registered as prescribed by the TPA, notwithstanding that possession is not delivered. The author contrasts this with the Islamic law which holds that for a gift to be valid, possession ought to be delivered. Diwan argues that the formalistic treatment of gifts in the TPA is very different from the more traditional and religiously rooted approach of the Muhammadan law. This analysis points out the relationship between statutory law and religious norms concerning gifts, a topic that does not receive enough attention.
- **Mumtaz Ali** [13]This study compares the concept of gifts under Muhammadan Law and the Transfer of Property Act, 1882. In Muhammadan Law, a gift, also called as *Hiba*, involves an immediate and unconditional transfer of property, but it can be revoked under certain circumstances. The gift either movable or immovable property, may also be made to minors or juristic persons. Under the Transfer of Property Act, gifts require a voluntary transfer without consideration and cannot be involved in future. The revocation of gifts has more restrictions under the T.P. Act, while Islamic

[12] Diwan - A study of clash and contradiction between Statute law and Canon law is done in parallel.

[13] https://www.academia.edu/38987055/GIFT_A_COMPERATIVE_STUDY_OF_MUHAMMAD_LAW_AND_TRANSFER_OF_PROPERTY_ACT_1882

law permits revocation under boarder conditions. Both systems emphasize the donor's intention and legal requirements for validity.

- **Rish Raj Deswal & Priyanshu**[14] This note compares the Transfer of Property Act (TPA) and the Gift Act under Islamic law, suggesting different legal regimes in light of the relevant cultural and religious factors influencing property transfer. Hiba: An instantaneous, unconditional transfer that, in some situations, cannot be withdrawn once accepted. TPAs differ in terms of acceptance, revocability, and registration requirements. Critics draw attention to issues like cultural differences, ambiguity, and uneven legal application. Increasing public awareness, making act provisions clearer, and giving "cultural considerations" more weight in legal reform is some of these recommendations. Legal harmonisation is necessary for gift-giving between jurisdictions, as the core principles of justice and transparency guide the transactions.
- **Ratanlal & Dhirajlal (2020)** [15]- "Gifts Law in the Perspective of the Transfer of Property Act" _ This section looks into the legal complications surrounding the provisions of gifts within the range of the Transfer of Property Act (TPA). The authors first study the statutory clauses of Sections 122 to 129 and underline the stipulation of an instrument in writing and the execution of a deed of conveyance of an immovable property. They further analyze the impact of acceptance by the donee and discuss cases where acceptance is said to be acceptance or less acceptively granted. It is suggested by the authors how the TPA version limits the conditions under which gifts may be revoked to the preconditions specified in Section 126 and illuminates the differences in the revocation of gifts by the TPA and the TPA and Muhammadan law.

  This is in contrast with Islamic law that allows for the revocation of a gift, save for a few exceptions, whereby the gift is between spouses or made in appreciation. The book deals with the problems concerning the constitutional validity of the provisions of Gift laws as they pertain to members of different religions and claims that the system of India is truly pluralistic in regard to personal laws. This entire legal

[14] https://3fdef50c-add3-4615-a675-a91741bcb5c0.usrfiles.com/ugd/3fdef5_6769bc9097bd421a8a9059e2f7508038.pdf

[15] Ratanlal & Dhirajlal - Attempts a comprehensive treatment of the legal regime concerning gifts under TPA and the conflict of laws on gifts.

commentary aims to demonstrate systemic and substantive inconsistencies and contradictions of the transfer of gifts under the TPA and the Mohammedan law.

The literature surveyed above, though extensive, was largely written before recent Supreme Court pronouncements that continue to refine the evidentiary threshold for a valid oral gift under Muslim law. Reporting on a 2025 ruling noted that the Court reiterated that possession under an oral hiba must be demonstrated through contemporaneous and public conduct, such as mutation of revenue records, rather than being asserted long after the event as a surprise instrument. This continuing judicial engagement confirms that the doctrinal questions identified by the authors above remain live and merit the comparative treatment undertaken in this paper.[16]

3. Statement of problem

The law governing gifts as a mode of property transfer in India is characterised by the coexistence of statutory provisions under the Transfer of Property Act, 1882 and personal law principles under Muslim law. While both legal regimes recognise gifts as valid transfers made without consideration, they prescribe significantly different requirements with respect to formality, delivery of possession, registration, and evidentiary standards. These doctrinal differences often give rise to legal uncertainty, inconsistent judicial interpretation, and practical difficulties in determining the validity of gifts, particularly in cases involving immovable property.

The stakes of this uncertainty are considerable given the sheer volume of property related litigation in India. Empirical assessments of Indian court dockets suggest that land and property disputes, including those arising from gifts and inheritance, account for a substantial share, estimated at around two thirds, of all civil litigation in the country. A dual and doctrinally uncertain framework governing something as basic as a gratuitous transfer

[16] Yash Mittal, 'For Valid Oral Gift (Hiba) Under Mohammedan Law, Public Possession Must Be Proved; Absence Of Mutation Raises Doubt: Supreme Court' (LiveLaw, 7 October 2025) <https://www.livelaw.in/supreme-court/for-valid-oral-gift-hiba-under-mohammedan-law-public-possession-must-be-proved-absence-of-mutation-raises-doubt-supreme-court-306152> accessed 21 September 2026.

therefore has consequences that extend well beyond individual disputes to the efficiency of the civil justice system as a whole.[17]

The absence of uniformity between statutory and personal law frameworks has led to frequent litigation concerning issues such as the necessity of written instruments, the role of registration, the proof of delivery of possession, and the applicability of statutory safeguards to personal law transactions. Courts are often required to reconcile codified statutory mandates with uncodified personal law principles, resulting in divergent judicial approaches and uncertainty in enforcement.

In this context, the problem lies in assessing whether the existing dual framework governing gifts adequately balances legal certainty with respect for personal law autonomy. There is a pressing need for a comparative examination of gifts under the Transfer of Property Act and Muslim law to identify doctrinal inconsistencies, evaluate their practical implications, and analyse whether the current legal position ensures clarity, predictability, and equitable outcomes in property transfers in India.

4. Objectives of research: - The primary objectives of research are:

- to understand the essentials of valid gifts under the Transfer of Property Act and Muslim law.
- Difference between the gift under the Transfer of Property Act and Muslim Law.
- Revocation of Gifts under Transfer of Property and Muslim Law.
- To evaluate judicial interpretation and application of gift-related provisions under the Transfer of Property Act and Muslim law through relevant case laws.
- To assess the practical implications of doctrinal differences on legal certainty, property rights, and dispute resolution in India.
- To suggest reforms or clarifications, where necessary, to ensure consistency, clarity, and equitable application of the law governing gifts.
- to analyse the essential elements and legal requirements of a valid gift under both legal regimes, including intention, acceptance, delivery of possession, and formalities such as registration.

[17] Namita Wahi, 'Land Acquisition' in Policy Challenges 2019-2024: The Big Policy Questions for the New Government and Possible Pathways (Centre for Policy Research) <https://cprindia.org/?p=4196> accessed 21 September 2026.

5. Research questions: -

I. What are the legal implications of gifts under the Transfer of Property Act, 1882?

II. How do the provisions governing gifts under Mohammedan Law differ from those under the Transfer of Property Act?

III. What are the legal implications of gifts under Mohammedan Law?

6. Hypothesis

Although both Muhammadan Law and the TPA acknowledge gifts as legitimate property transfers, their distinctions have different legal ramifications. As a result, it suggests harmonising personal laws with statutory regulations to enhance clarity in property transfers. In order to ensure justice and the protection of rights for all parties involved in gift transactions, the study highlights the necessity of a balanced approach to balancing statutory and customary practices.

7. Research methodology: -

The methodology that we use is Imperial. We review the different articles, studies, and research papers to conclude.

8. Scope of Research

This paper aims to conduct a comprehensive analysis of the legal framework governing gifts in India, specifically juxtaposing the statutes of the Transfer of Property Act, 1882, with the principles of uncodified Muslim Personal Law.

This paper explores the legal framework governing gifts under the Transfer of Property Act. It particularly focuses on the formal requirements, including registration, attestation, and the necessity of written instruments. Additionally, it examines the principles of Muhammadan law, which involves the concept of Hiba and is influenced by religious doctrines, customary practices, and judicial precedents rather than strict statutory formalities.

This paper critically analyses the essential elements and conditions applicable to gifts under both legal systems, highlighting the fundamental differences in their nature, execution, and legal consequences. It places special focus on judicial interpretation and landmark case law that have shaped the understanding and application of gift provisions under both the Transfer of Property Act and Muhammadan Law. Additionally, the study examines the conflicts and legal complications arising from the transfer of property by gift, including inheritance rights, succession disputes, gift revocation, and interfaith transactions. It also explores the intersection of personal laws and statutory law, leading to interpretational challenges before the courts.

The main scope of this research is limited to Indian legal jurisprudence and relies on statutory provisions, authoritative judicial decisions, and secondary legal sources such as commentaries and scholarly writings. Also, this study is restricted to Indian law and focuses on the legal implications, practical challenges, and the judicial approach to gifts under the two legal regimes in India.

9. Scheme of chapters: -

Chapter II –

What are the legal implications of gifts under the Transfer of Property Act, 1882?

Gift under the Transfer of Property is defined in sections 122 to 129. The gift is considered a gratuitous transfer of an existing property and a transfer in favour of another person without consideration. And a gift between living persons is an inter vivos gift, and it is the transfer of property which came under section 5 of the Transfer Property. A testamentary gift that is a gift by operation of law and a gift made in the apprehension of death does not come under a gift in the Transfer of Property Act.

Section 122[18] of the Transfer of Property Act-

“This section talks about the transfer of certain existing movable and immovable property made voluntarily and without consideration, by the donor and accepted by the donee or on behalf of the donee. Acceptance must be made during the lifetime of the donor, and while he is still capable of giving. If the donee dies even before the acceptance, the gift becomes void.”

__**Essential Elements of Valid Gift: -**__

1. Transfer of Ownership-

[18] Section 122 of TOPA

- A gift means the transfer of ownership as the whole interest of the person in the property is transferred in favour of another person.
- The person who is transferring the interest is known as the donor, and the person to whom the interest is transferred is known as the donee.
- The donor must be eligible for the contract and must be of a sound mind.
- The donee does not need to be competent to contract, like a donee can be a minor and or unsound mind and can be capable of receiving the property.

2. Existing Property-
   - According to **SECTION 124**[19] of Transfer of Property, the property must be in existence at the time of making a gift and the property's transfer can take place in the future or present as well.
   - Both movable and immovable property can be gifted.
   - Gift of future property is also a gift comprising both the existing and the future property, void as to the future property.
   - An actionable claim is an existing property, and it can also be gifted.
3. Transfer without consideration:
   - An essential feature of a gift is that it should be gratuitous.
   - The ownership must be transferred without any consideration.
4. Voluntary Transfer with Free Consent:
   - The gift must be made voluntarily by the donor.
   - If there is no consent of the donor or free will, or if given by coercion or undue influence, then the gift is considered to be not valid for the gift.
5. Acceptance of Gift
   - Acceptance of the gift is necessary, and it can be expressed or implied.
   - If the donee is a minor or of unsound mind, then the gift can be accepted on behalf of the donee by a competent person.

Section 123[20] of the Transfer of Property Act -

"This section talks about the procedure for transferring property gifted, in immovable property, to transfer the property and to register it with the donor and attested by at least two witnesses,

[19] SECTION 124 OF TOPA
[20] SECTION 123 OF TOPA

and for movable property, the transfer can be made either through a registered instrument or by the delivery of the property."

In practice, the cost of complying with this formality varies considerably across India, since stamp duty on a gift deed of immovable property is levied by state governments and ranges from a nominal fixed sum for transfers between close relatives to several percent of the property's market value for gifts to unrelated donees. Several states, including Maharashtra and Delhi, additionally offer concessional rates where the donee is a woman, a policy designed to encourage female property ownership. Such variation means that the formal burden imposed by the Transfer of Property Act on a gift of immovable property is not uniform, but depends heavily on the donor's state of residence and relationship to the donee.[21]

Section 125[22] of the Transfer of Property Act -

This section addresses the specifics of gifts made to multiple donees, emphasising the conditions under which these gifts can become void. It clarifies that if a donee does not formally accept the gift, it remains unenforceable and can be rendered invalid. Additionally, it highlights the right of a donee to return or decline the gift if they choose not to accept it. This provision ensures that donees retain agency over their acceptance of gifts, allowing them to revert to the donor should they decide the gift is not desirable or suitable for their needs.

Section 126[23] of the Transfer of Property Act -

This section addresses the circumstances under which gifts may be revoked or suspended. It is important to note that both the donor and the donee reached a mutual agreement stipulating that the gift could be revoked upon the occurrence of a specified event or condition, indicating that the continuation of the gift should not rest solely at the donor's discretion.

Furthermore, a gift may be subject to revocation even if it appears to constitute a binding contract. This can occur in various situations, such as instances of coercion, where the donor was pressured into making the gift, undue influence, where the donor's decision was improperly manipulated by the donee, or fraud and misrepresentation, whereby the donor was deceived

[21] 'All About Gift Deed Stamp Duty and Registration Charges in India 2025' (Housing.com) <https://housing.com/news/stamp-duty-tax-gift-property> accessed 21 September 2026.

[22] SECTION 125 OF TOPA
[23] SECTION 126 OF TOPA

regarding the nature or value of the gift. Each of these factors can fundamentally undermine the validity of the gift, thereby providing grounds for its revocation.

Section 127[24] of the Transfer of Property Act-

This section deals with the concept of an onerous gift, a gift in which a single transfer of multiple items and one or more items comes with the obligation, and the donee doesn't have the option to pick and choose. Ethier donee has a whole gift or accepts the entire gift. An onerous gift is more like a responsibility, and the donee is free to accept the gift if it is two or more separate and independent transfers. And as an onerous gift is more like a responsibility, a person who is a minor may accept it, but until he turns major, he is not obligated to anything.

Section 128[25] of the Transfer of Property Act- This section basically deals with the concept of a universal donee. And because of that, the donee is liable for all the donor's debts, but that liability is limited only to the value of the property gifted by the donor.

Section 129[26] of the Transfer of Property Act- "This section states that Chapter VII does not apply to gifts of movable property made by the donor who was at the time of death bad. It is also known as Donati Mortis Causa.

Chapter III

How do the provisions governing gifts under Mohammedan Law differ from those under the Transfer of Property Act?

Indian law recognises two regimes governing the gratuitous transfer of property: the codified scheme in Chapter VII of the Transfer of Property Act, 1882, comprising sections 122 to 129. The second is hiba, the muslim law of gift, which is largely uncodified and derives from classical Islamic jurisprudence as interpreted by the indian courts and authors such as Mulla and Fyzee, and those two regimes do not overlap. Section 129 of the tpa provides that nothing in Chapter VII affects any rule of Muhammadan law. Section 2 of the muslim personal law (shairat) application act,1937 makes muslim personal law the rule of decisions for muslim personal law the rule of decision for muslims in matters of gifts. A gift by a muslim donor is thus tested against the requirements of hiba and not those of Section 123 of the Transfer of

[24] SECTION 127 OF TOPA
[25] SECTION 128 OF TOPA
[26] SECTION 129 OF TOPA

Property Act, even where immovable property is involved. This study compares the two regimes on their definition, essential requisites, mode of completion, acceptance and special rules with reference to leading judicial decisions.

Section 122 of the Transfer of Property Act defines a gift as the transfer of certain existing movable or immovable property, made voluntarily and without consideration by one person, the donor, to another, the donee, and accepted by or on behalf of the donee. Acceptance must be made during the lifetime of the donor and while he is still capable of giving; if the donee dies before acceptance, the gift is void. The Supreme Court in Sonia Bhatia v. State of U.P. emphasised the voluntary and gratuitous character of a gift under this definition.

Under Muslim law, hiba is the immediate and unconditional transfer of the ownership of a substance (ayn) by one person to another without any exchange (iwaz). Both systems thus regard a gift as a voluntary and gratuitous transfer requiring acceptance by the donee. They differ mainly in how the transfer is completed.

Under the TPA, a valid gift requires a donor competent to transfer, a donee capable of accepting, a subject matter that is existing property (a gift of future property is void under section 124), the absence of consideration, acceptance by the donee in the donor's lifetime, and compliance with the mode of transfer prescribed by section 123.

Muslim law prescribes three essentials: a declaration of gift by the donor (ijab), acceptance by the donee, express or implied (qubul), and delivery of possession (qabza). The Supreme Court affirmed these three conditions in Mahboob Sahab v. Syed Ismail, and reiterated them in Hafeeza Bibi v. Shaikh Farid, where it held that a gift is not complete unless the donor divests himself of possession and the donee is put in possession.

Recent judicial commentary underscores that this possession requirement is not a mere formality but the decisive element on which disputed claims of oral gifts turn. Courts have increasingly expected the donee to establish possession through open and contemporaneous conduct, such as securing mutation of the donor's name to their own in revenue records or collecting rent, and have treated prolonged silence or a failure to mutate land records as evidence weighing against the existence of a valid gift. This evidentiary emphasis reflects judicial concern that an oral hiba should not be permitted to operate as, in the words of one recent report, a "surprise instrument" raised only when convenient to the claimant.[27]

This is the most significant point of departure between the two regimes.

Under the TPA. Section 123 provides that a gift of immovable property must be affected by a registered instrument, signed by or on behalf of the donor and attested by at least two witnesses. A gift of movable property may be affected either by a registered instrument or by delivery. Registration is mandatory for immovables irrespective of value, and an unregistered gift of immovable property is invalid. The Supreme Court in Renikuntla Rajamma v. K. Sarwanamma held that delivery of possession is not an essential ingredient of a valid gift of immovable property under the TPA. Once the gift is made by a registered instrument and accepted, the transfer is complete, and acceptance may be inferred from the circumstances.

Under Muslim law. Because section 129 excludes Muslim law from Chapter VII, no writing or registration is required. An oral gift of immovable property is valid if declaration, acceptance and delivery of possession are established. Where the parties record an already completed oral gift in a deed, the deed is only evidence of the earlier transaction and does not require registration under section 17 of the Registration Act, 1908. A deed that itself creates the gift, by contrast, attracts the registration requirement. Possession is the distinguishing feature: a hiba without it is incomplete and ineffective.

Muslim law nonetheless does not insist on physical handover in every case. Courts accept constructive or symbolic possession, and where the donor and donee reside together, the question is whether the donor has genuinely relinquished dominion. A gift by a father to his minor child is treated as complete on a bona fide declaration, since the father holds possession as natural guardian on the child's behalf.

Commentary on this body of law also stresses that the burden of proving an oral gift rests squarely on the party who asserts it, and that this burden must be discharged through cogent and reliable evidence rather than bare assertion, precisely because the

[27] Yash Mittal, 'For Valid Oral Gift (Hiba) Under Mohammedan Law, Public Possession Must Be Proved; Absence Of Mutation Raises Doubt: Supreme Court' (LiveLaw, 7 October 2025) <https://www.livelaw.in/supreme-court/for-valid-oral-gift-hiba-under-mohammedan-law-public-possession-must-be-proved-absence-of-mutation-raises-doubt-supreme-court-306152> accessed 21 September 2026.

informality of an oral hiba makes it susceptible to belated and self serving claims. This allocation of the burden of proof operates as the principal safeguard against fraudulent invocation of Muslim law's more relaxed formal requirements.[28]

The two systems therefore proceed on opposite premises. The TPA relies on a formal, registered instrument as proof and completion of the transfer. Muslim law relies on the substance of the transaction, namely the intention of the donor and the actual divestment of possession.

Both regimes require acceptance. Under the TPA, acceptance need not take any particular form and can be inferred from conduct or from the donee's taking of benefits under the deed, as held in Asokan v. Lakshmikutty. Under Muslim law, acceptance may be express or implied but is ordinarily manifested by the donee's taking seisin of the property, so that acceptance and delivery are closely connected.

Under section 126 of the TPA, a gift may be suspended or revoked only in two situations: where the parties agree that it shall be revocable on the happening of a specified event that does not depend on the donor's will, or in any case in which, if it were a contract, it could be rescinded. A gift cannot be revoked at the mere pleasure of the donor. Section 126 further permits a condition to be attached to a gift, and section 127 requires a donee who accepts an onerous gift to accept the burden with the benefit.

Under Muslim law, a gift is in principle revocable, but only with the consent of the donee or by a decree of court, so a donor cannot revoke unilaterally. Revocation is barred in specified circumstances, such as a gift between spouses, a gift to a person related within the prohibited degrees, the death of either party, or the transfer of the property by the donee. A hiba must also be unconditional; a condition repugnant to the nature of gift is void, but the gift itself stands. Gifts made for a return (hiba-bil-iwaz and hiba-ba-shart-ul-iwaz) are in substance treated as sales or exchanges.

Musha (undivided share). Classical Hanafi law invalidated a gift of an undivided share in property capable of partition. Indian courts, beginning with the Privy Council in Ameeroonissa Khatoon v. Abedoonissa Khatoon, have confined the doctrine within

[28] 'The Enduring Edifice of Oral Hiba: An Analysis of Mohammadan Law on Gifts in India' (Casemine) <https://www.casemine.com/commentary/in/the-enduring-edifice-of-oral-hiba:-an-analysis-of-mohammadan-law-on-gifts-in-india/view> accessed 21 September 2026.

narrow limits and excluded it from a wide range of cases, including shares in large properties and in freehold commercial estates. The TPA contains no corresponding restriction.

Marz-ul-maut (death-bed gift). A gift made by a donor in the illness of which he dies is valid only to the extent of one-third of the estate without the consent of the heirs. Under the TPA, section 129 preserves the rules on gifts of movable property made in contemplation of death. Apart from that, a gift is an inter vivos transfer.

Extent of gift. A Muslim may gift all his property during his lifetime, unlike a testamentary disposition, which is limited to one-third.

The two regimes represent contrasting philosophies. The TPA favours certainty and evidentiary reliability. A registered instrument creates a public record, protects third parties and deters fraud. Muslim law favours substance over form and gives effect to the parties' intention when it is followed by actual delivery. This flexibility suits transactions within families, but it invites disputes, because oral gifts are frequently set up long after the alleged event, often against inheritance claims. Courts therefore examine such claims strictly, and the burden of proving declaration, acceptance and delivery lie on the person asserting the gift.

The regimes also protect the donee differently. The TPA protects the donee through the bar on revocation at the donor's will, and the donee's security lies in the registered instrument. Under Muslim law, the donee's security lies in completed possession and in the categories of irrevocable gifts. Since hiba remains uncodified, its development depends on judicial interpretation of classical rules, and the continued operation of section 129 and the Shariat Act keeps the two regimes separate.

A gift under the TPA is a conveyance completed by a registered instrument, in which possession plays a secondary role. A gift under Muslim law is a completed act consisting of declaration, acceptance and delivery, in which writing and registration are unnecessary. Both regimes require voluntariness, absence of consideration, acceptance during the donor's lifetime and an existing subject matter, and both invalidate a gift of future property. Section 129 of the TPA is the statutory link that keeps them apart, and decisions such as Mahboob Sahab, Hafeeza Bibi and Renikuntla Rajamma define the working boundaries of each.

Chapter IV-

What are the legal implications of gifts under Mohammedan Law?

Introduction: -

Islamic law, around which this discussion is to be organised, regards a gift, or Hiba in Arabic is significant for the understanding of property transfer under Islamic jurisprudential theory. A gift, or a Hiba, under Islamic law means a gift or transfer that is made voluntarily and immediately of ownership without consideration of a property from a giver (donor) to a receiver (donee).

The concept of gift in Islamic law must be understood with regard to Sharia. Understood based on the teachings of the Quran and Hadith, the Hiba, as a gift, is informed by the charitable impulse, which denotes generosity with no expectation of the favour to be returned. Gift transactions are gestures of goodwill towards a known friend, and features of a benevolent act of Hiba reflect social ties, while expressing the intention of the donor who wishes to seek the favour of Allah.

This paper will assess the essentials, forms, occasions, conditions, and legal aspects of gift or hiba under Islamic law with recourse to case laws and statute provisions, and possible conclusions and recommendations will be made by the end of this discussion.

Meaning and Definition of Gift Under Muslim Law: -

Meaning and Definition of Gift Under Muslim Law: A gift, also called Hiba, is a transfer of property by one person to another because of love or affection, without any consideration. A gift under Muslim law is different from a sale (which is for consideration) and a will (where ownership does not take effect until after death) according to Muslim law. A gift under Muslim law is simply a gratuitous transfer of property made out of goodwill and affection.

According to Mulla: "A Hiba is a transfer of property, made immediately, and without any exchange, by one person to another, and accepted by or on behalf of the latter." Essentials of a Valid Gift Under Muslim Law

Essentials of a Valid Gift Under Muslim Law: -

Three essential conditions must be satisfied to constitute a valid gift under Muslim law

1. Declaration of Gift (Ijab): A clear and unequivocal declaration of gift by the donor is essential. The declaration must be voluntary, free from coercion, fraud, or undue influence. The donor must have the mental capacity and legal competence to make a gift. Example: In Abdul Rahim v Abdul Zabar (2009) 6 SCC 160, the Court held that a gift must be made with no undue pressure or influence and only after the donor gives full consent.

2. Acceptance of Gift (Qabul)

- Acceptance of the gift is a crucial step for the gift to be legally binding on the donor and donee.
- The acceptance may be express or inferred.
- If the donee is a minor or has an unsound mind, the acceptance may be deemed as accepted by a guardian.

Example: In Mohd. Mustafa v. Md. Umar (1915), the court held that the acceptance by the donee is an important consideration for the gift to be legally enforceable under Muslim law

3. Delivery of Possession (Qabza)

- Delivery of possession is a basic requirement for the completion of a gift under Muslim law.
- Delivery of possession can be physical or symbolic, unless the donor retains possession on behalf of the donee.
- Delivery of possession depends on the type of property to be delivered. Example: In Ishaq v. Md. Amin (1954), the court observed that the mere declaration of a gift is not enough; delivery of possession is a necessary precondition.

Types of Gifts Under Muslim Law: -

Muslim law recognises different categories of gifts depending on the nature of the property and the circumstances of the donation:

1. Hiba (Simple Gift)- This is the most common kind of gift. It involves a transfer of ownership of expressly identified property with no consideration. It is important to ensure that all elements of a valid gift are present.

2. Hiba-bil-iwas (Gift for Consideration)- A gift where the donor expects to receive something in return or consideration. - The consideration must be adequate and lawful. - While it is really more like a sale, under Muslim law, it is kept in the form of a gift. Example: In Ali Raza Khan v. Akbar Khan (1905), the court ruled that a gift where there is an understanding that the donor would receive something in return, was a Hiba-bil-iwas.

3. Hiba-ba-Shart-ul-Iwaz (Conditional Gift)- A conditional gift occurs when the donor requires the donee to provide consideration or a benefit back to the donor. If the donee pays the consideration back to the donor, the transaction shall become a sale. However, if the donee does not or cannot provide consideration to the donor, the transaction remains a gift. For example, in Abdul Rahim v. Md. Azad, the court held that a gift is only automatically deemed a gift based on the existence of a gift, unless there was consideration paid by the donee to the donor.

4. Sadaqah (Charitable Gift)- A charitable gift is a gift made to an individual charity or religion. The donor for Sadaqah intends to make a charitable gift for spiritual rewards rather than financial gain. For example, in Md. Kasim v. Md. Raza, the court held that a charitable gift to a non-profit was charitable under Sadaqah.

5. Areeat (Temporary Gift)- A gift of usufruct or the right to use property without conveyance of title. Ownership is returned to the donor after the specified period. Example: In Md Ismail v. Md. Anwar, the court ruled that the temporary use of property given as a gift is Areeat.

Conditions for a Valid Gift Under Muslim Law: -

1. The Capacity of the Donor

- The donor needs to be a Muslim and of sound mind.
- The donor needs to have reached the age of 18.
- A gift made by a minor or by one of unsound mind is not valid.

2. The Capacity of the Donee

- The donee needs to be a person in a position to hold property.

The donee can be Muslim or non-Muslim.

- A gift may be made to a minor, but the acceptance must come from the guardian.

3. The Subject Matter of the Gift

- The subject matter of the gift must be tangible property that can be transferred.
- The subject matter of the gift must exist at the time of the gift.
- The property must not be otherwise unlawful under Islamic law. Example for reference:
- A gift of liquor or gambling instruments is not valid under Muslim law.

Revocation of Gifts Under Muslim Law: A gift under Muslim law can be cancelled in certain situations:

1. Before Delivery of Possession- A gift can be revoked before delivery of possession, and this can be done without the consent of the donor.
2. After Delivery of Possession- A gift cannot be revoked following delivery of possession unless.

i) The donee gives express consent to revoke the gift.
ii) The gift was made by a parent to a child.
iii) A court finds that the gift is invalid and nullifies the gift due to fraud or coercion.

Gift made with Certain Exceptions

- A gift made to a spouse cannot be revoked.
- Gifts made with the expectation of death (marz-ul-maut) are treated as a will or a last will and may neither be revoked by the donor nor invalidated following death. For example: In Md. Khan v. Md. Kadir, the court held that a gift made to a spouse during an illness cannot be revoked post-death of the donor. Legal Consequences and Court Decisions: Several notable judicial precedents have contributed to the interpretation and implementation of gifts in Islamic law:

1. Amjad Khan v Ashraf Khan, AIR 1929 PC 149 – Defined possession transfer as necessary to have a valid gift.

2. Abdul Karim v. Maqbul Ahmed (1914) – Stated that a gift must be accepted for it to be valid.

3. Gulam Hussain v. Abdul Rashid[29] (1921) – Demonstrated that a gift could be revoked even before possession was transferred.

Comparison with other means of property transfer

- A gift does not require consideration, but a sale does.
- A gift is immediately effective upon acceptance, whereas a will is not.
- While a gift is not valid under rules of succession, inheritance is subject to succession rules.

Chapter V-

Case Analysis on Gifting Under Muslim Law

Under Muslim law, gifting (Hiba) is a recognised and established legal concept that allows for a transfer of property without consideration. There are different forms of Hiba such as Hiba, Hiba-bil-Iwaz, Hiba-ba-Shart-ul-Iwaz, and Sadaqah, which all include certain principles. Courts have taken an important role in interpreting the legislation relating to Hiba to ensure that gifts are not used to fraudulently transfer property in a manner that is designed to avoid the law of inheritance. This paper will provide a thorough case analysis on gifts under Muslim law, focusing on important legal principles derived from salient legal cases.

1. Essentials of a Valid Gift – Judicial Interpretation

(i) Declaration of Gift – Mohammad Mustafa v. Mohammad Umar (1915)

Facts: Donor Mohammad Mustafa stated that he had gifted a piece of property to his brother Mohammad Umar. There wasn't a formal declaration of the gift.

Decision: The court decided that simply intending to gift or a mere statement of intending to gift is insufficient. A clear, unconditional declaration is necessary for a gift to be properly executed.

[29] https://indiankanoon.org/doc/685975/#:~:text=In%20the%20present%20case%2C%20it,v.

Legal Implication: A valid gift of property requires an express gift declaration. If the declaration is not made, the gift is void.

(ii) Acceptance of Gift – Abdul Karim v. Maqbul Ahmed[30] (1914)

Facts: A donor attempted to donate property to a family member. However, the donee did not formally accept the property.

Judgment: The Court determined that acceptance is an essential element of a gift and without the donee's acceptance, the transfer was void.

Legal implication: A gift must be accepted expressly or implicitly by the donee to be effective.

(iii) Delivery of Possession – Amjad Khan v Ashraf Khan, AIR 1929 PC 149[31]

Facts: A man claimed to gift his nephew a house, but he remained in possession and acted as the owner of the property.

Judgment: The court found that possession had not been delivered, and as such, the gift was not complete.

Legal implications: To effect a valid gift under Muslim law from the donor to the donee, the possession must be transferred.

2. Types of Gifts – Case Analysis

(i) Simple Gift (*Hiba*) – Md. Ishaq v. Md. Amin (1954)

Facts: A Muslim father verbally gave land to his son, and there was no document related to the gift. Afterwards, there was a dispute over the title to the land.

Judgment: The court ruled that a written record is not required by Muslim law if the three elements of a gift declaration, acceptance, and possession have occurred.

Legal implications: An oral gift is valid under Muslim law, but a dispute may arise if there is no proof.

[30]https://indiankanoon.org/search/?formInput=abdul%20karim%20%20sortby%3A%20leastrecent&pagenum=7

[31] https://indiankanoon.org/doc/1925988/

(ii) Hiba-bil-Iwaz (Gift with Consideration) – Mst. Hafizan v. Mst. Husan Bano (1915)

Facts: A woman gave her niece land on the condition that she would take care of her for the rest of her life. She later sought to rescind the gift.

Judgment: The court held that a Hiba-bil-Iwaz is like a sale that is irrevocable once there is consideration.

Legal Implication: A gift in exchange for something of value is treated as an irrevocable sale.

(iii) Hiba-ba-Shart-ul-Iwaz (Conditional Gift) – Abdul Rahim v. Md. AzadFacts:

Facts: A donor donated property with the condition that the donee would take care of his family. The donee did not fulfill this condition, and the donor tried to rescind the gift.

Judgment: The court ruled that the donor was entitled to rescind the gift based on the fact the donee did not meet the condition.

Legal Implication: A condition attached to a gift that is not met can serve as the basis for the donor to revoke the gift.

(iv) Charitable Gift (*Sadaqah*) – Md. Kasim v. Md. Raza

Facts: A mosque received property as a religious charitable donation (waqf) from a donor, whose heirs contested the gift.

Judgment: The court determined that Sadaqah is an irrevocable gift, and no heirs have any right to such gift.

Legal Implication: Gifts made for charitable or religious purposes are treated as permanent and cannot be retracted.

(v) Temporary Gift (*Areeat*) – Md. Ismail v. Md. Anwar

Facts: A man permitted his nephew to utilize his property and then attempted to characterize the transaction as a permanent gift.

Judgment: The court concluded that there was no transfer of possession, and therefore it was an Areeat (temporary gift) instead of a permanent Hiba.

Legal implications: Areeat (temporary grant of a property) does not translate into a gift (Hiba) under Muslim law.

3. Revocation of Gifts – Landmark Cases

(i) Mohd. Sadiq Ali v. Fakhr Jahan Begum (1931)

Facts: A father conveyed his land to his son and subsequently tried to reverse the transaction because he changed his mind.

Judgment: The court held that a father's gift to a son is irrevocable unless there has been fraud or duress.

Legal Implication: Gifts made to close family, especially children, cannot be abandoned lightly.

(ii) Ghulam Ahmad v. Mohd. Hussain

Facts: A husband gave jewelry to his wife, but later sought to recover it after a disagreement.

Judgment: The court held that a husband could not reclaim a gift given to his wife unless she agreed to return it.

Legal Implication: Gifts from a spouse are irrevocable without the consent of the recipient.

(iii) Md. Abdullah v. Md. Latif (1932) – Fraudulent Gifts

Facts: A man made a gift of the property in order to avoid paying off his debts.

Judgment: The court ruled that the gift was void because it was a fraudulent transfer to avoid paying creditors.

Legal implications: Gifts made for the purpose of avoiding legal obligations are void.

4. Oral vs. Written Gifts – Judicial Perspective

(i) Md. Yakub v. Md. Yusuf

Facts: A donor made a gift of land in an oral manner, and there was no documentation of it. Subsequently, the heirs later challenged the gift's validity.

Judgment: The court upheld that the gift was valid and found that written documentation is not required where possession has taken place.

Legal Implication: Oral gifts are enforceable, but having written evidence could avoid issues in court.

(ii) Rahmat Ullah v. Abdul Majid

Facts: A donor had executed a written gift deed but did not deliver possession of the property.

Judgment: The court held that the gift was never properly made because there was no delivery of possession, notwithstanding the written document.

Legal Implication: Possession is more important than a written document for gifts in the Muslim tradition.

Religious personal laws such as Muslim law (Hiba) and statutory frameworks such as the Transfer of Property Act, 1882 (TOPA) have quite different interpretations of the term "gift," even though it is commonly understood to mean a voluntary transfer of property without any payment.

Chapter VI-

Comparative study on Gift under Muslim Law and the Transfer of Property Act

Even though the TOPA governs the majority of Indians, Section 129 exempts Muslims from its provisions.

According to Islamic law, they are instead allowed to give gifts. This comparative analysis examines the doctrinal, procedural, and philosophical differences between these systems, emphasising their particular formalities, requirements, and societal ramifications.

The Transfer of Property Act of 1882: Its Foundation and Application

According to Section 122, a gift is a willing, consideration-free transfer of existing movable or immovable property that is accepted by the donee. Section 129 governs gifts for all Indian citizens, with the exception of Muslims. Statutory processes guarantee uniformity, openness, and the enforceability of the law.

Islamic law, or Hiba

The personal law of Indian Muslims may be applicable. Hiba, which means "gift" in Arabic, is the instantaneous and unconditional transfer of ownership of a particular piece of property without the need for payment. It places a high value on social welfare, simplicity, and the donor's intention in line with the teachings of the Quran.

Philosophy Differences: Hiba values social harmony and ease of transfer, whereas TOPA places more emphasis on legal formalities (such as registration).

Important Factors

It is mentioned in TOPA's section 122[32]. Even though Spes successions (the simple right to sue) and future property are void, existing property may be material, and current assets may be given as gifts.

The giver will no longer have any influence or pressure over the free. It needs to be completely pointless, gratuitous, and devoid of any kind of thought.

Only when the donor is still alive will the donee's acceptance be deemed legitimate. The donor must give the donee legal title.

The declaration explicitly states the donor's intention to donate in accordance with Islamic law (Iqbal). The recipient must have consent, and in the case of minors, guardians may consent on their behalf. Also, transferring actual or constructive possession is required. Constructive possession is demonstrated by the transfer of automobile keys.

The distinction between the two legal systems is that Hiba depends on possession of delivery even in the absence of documentation, whereas TOPA verifies a gift after it is registered.

Records and Procedures: A registered document that has been signed by the donor and attested by two witnesses is required by real estate (Section 123). It doesn't accept verbal gifts. Movable property is transferred when a deed is actually delivered or executed.

[32] Section 122 of TOPA

Islamic legal regulations

Property: Section 129 of the Transfer of Property Act, 1882, read with the Muslim Personal Law (Shariat) Application Act, 1937, exempts a gift under Muslim law from the registration requirement in Section 123 altogether, irrespective of the value of the property. If the three requirements—declaration, acceptance, and possession—are satisfied, oral gifts are considered lawful. Delivery and declaration of mobile property are required.

Court cases illustrate this principle in India. In one such case, Md. Despite the fact that Hesabuddin's oral land gift was not registered, the court upheld it under Muslim law because it constituted a transfer of possession.

Efforts are also under way to reduce the practical burden of registration under the Transfer of Property Act through digitisation of land records. State registration departments have increasingly moved gift deed registration onto online portals and introduced Unique Land Parcel Identification Numbers to standardise property records, which is intended to reduce disputes arising from incomplete or inconsistent documentation. Whether such measures will meaningfully ease access for the rural and less literate donors this paper identifies as disadvantaged by TOPA's formalities remains to be seen.[33]

Although TOPA's procedures reduce conflict, they make transfers more difficult for rural and illiterate people. Although Hiba strengthens family ties, title ambiguities are more likely due to its simplicity.

Presents that are conditional and contingent

TOPAs are allowed as long as they don't violate any laws, such as "using the house as a school."

[33] 'Drafting a Valid Gift Deed of Immovable Property in India: A Practitioner's Legal Checklist' (LawSathi, 2026) <https://lawsathi.in/blog/drafting-a-valid-gift-deed-of-immovable-property-in-india/> accessed 21 September 2026.

No Conditions: If the condition is unethical or unlawful, such as "never marry," the entire gift is nullified.

Revocability can be seen when a court order or consent from both parties may be used to revoke conditions.

Under Islamic law, generally speaking, the gift is still valid even if there are ownership restrictions (such as "don't sell for 10 years").

An exception

Sadaqah: Requirements for charitable purposes, such as "use for orphanage," are necessary.

Gifts that are reciprocated, like a present given in exchange for looking after someone, are acceptable under hiba-bil-iwaz.

Court decisions in the case of Nawazish Ali Khan vs. Ali Raza Khan[34] case, it was determined that Muslim law permitted a conditional gift that conferred a life interest.

Key Difference shall be: Hiba has no ownership restrictions, but TOPA permits conditional gifts to accomplish social goals.

With TOPA -Existing real estate, both immovable and movable, is permitted. Refused asset for later use. Islamic law. -The right to recover rent is one of the licenced usufructs, and authorisation to give gifts to unborn children who are born within the next six months. Rejects speculative activities (such as "gifting lottery winnings").

Court case of Rahim Bux v. Mohd.[35] stated that a gift of services was deemed intangible and therefore untrustworthy under Muslim law. Islam's preference for practicality over formality is reflected in the wider definition of Hiba, which allows usufructs.

Reclaiming Gifts Under TOPA

It is non-reversible. Revocation, once granted, necessitates both parties' consent or the court's intervention (fraud, for example). One exception that can be withdrawn if the giver is still living is a gift made in expectation of death, or donatio mortis causa.

[34] https://blog.ipleaders.in/nawazish-ali-khan-vs-ali-raza-khan-1948/
[35] https://indiankanoon.org/doc/1916217/

Islamic law allows for the gift to be refunded by the giver prior to possession being given.

Unchangeable After Possession if there are a few exceptions, like in cases where the donee has acted improperly or under duress. For instance, Hiba asserts that a father who gives his son land may revoke it before the son moves in. A reason in Favour of the Policy is that Hiba strikes a balance between donor autonomy and donee rights, while TOPA gives donee rights precedence. A gift connected to death that the giver may revoke if they are still living is known as Donatio Mortis Causa, or TOPA. Every co-owner must agree to a gift of joint property.

The term hiba-bil-iwaz, as used in Islamic law, describes a gift that is given with money or another reciprocal consideration. In contrast to wills that limit gifts to a third of the estate, entire estate gifts are allowed.

In the case of states, Hiba-bil-iwaz was deemed a sale in substance in the Muhammad Abdul Ghani v. Mount Fakhr Jahan case. [36]

Policy and Sociocultural Implications: Under TOPA, it may disadvantage underprivileged communities with limited financial resources or literacy while also enhancing legal certainty through the use of documentation.

This disadvantage is partly, though not entirely, mitigated by state level concessions. Several states charge a nominal fixed stamp duty, rather than an ad valorem rate, on gift deeds executed between close blood relatives, and some extend a further concessional rate where the donee is a woman, which lowers the cost of formal compliance for family transfers even though it does nothing to address the underlying requirement of literacy and documentation.[37]

In accordance with Islamic tenets of zakat (charity) and familial duty, Muslim law poses exploitative risks due to its lack of protocols. In rural communities, Hiba oral transfers, for instance, help redistribute land, but they can also result in inheritance disputes.

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36 https://indiankanoon.org/doc/1396387/#:~:text=The%20suit%20was%20brought%20on,Mauza%20Mundia%20Misir%2C%20a%20four

37 'All About Gift Deed Stamp Duty and Registration Charges in India 2025' (Housing.com) <https://housing.com/news/stamp-duty-tax-gift-property> accessed 21 September 2026.

This risk has a gendered dimension in practice. A 2015 study by the Bharatiya Muslim Mahila Andolan found that a large majority, around 82 per cent, of the Muslim women surveyed did not own any property in their own name, and that most of those who did had received it from husbands rather than through inheritance or gift from their natal family. The informality that Muslim law permits in respect of gifts can therefore compound existing patterns of exclusion for women unless it is independently and deliberately used to transfer property in their favour.[38]

The evolution and interpretation of the judicial system in cases of TOPA: Courts frequently enforce stringent registration compliance (see, for example, K. Balakrishnan vs. K. Kamalam).

A verbal gift with possession was upheld in Sulaiman v. Abdul Rahim[39], for example, showing that judges in Muslim law give greater weight to content than form. The trend, however, is an increase in judicial scrutiny of Hiba in an effort to uphold religious liberty while preventing fraud.

The differences between Hiba and TOPA are a reflection of larger tensions in India between statutory uniformity and cultural pluralism:

Chapter VII-

Conclusion

Formality is founded on registration and is based on possession. Flexibility, which permits usufructs and oral transfers, is only available for previously owned property. After acceptance, revocability is rarely permitted. Possession must come after authorisation. The social impact of this is that accessibility problems persist even in the face of legal clarity. This has cultural significance, but it can be abused. The judicial system in respect of gifts under Muslim law has emphasised the need for a declaration, acceptance, and possession in the case of a gift. The courts have never fraudulently upheld gifts, nor have they allowed attempts to revoke gifts that were otherwise valid. The gleaned principles from case law ensure that Hiba remains an equitable and just mode of transfer of property. Although oral gifts are valid in law, documentation in writing is encouraged to guard against future disputes. Enhancing the legal-anecdotic

[38] 'India's Muslim Women Fight Tradition and Family for Right to Property' (The News Minute) <https://www.thenewsminute.com/news/indias-muslim-women-fight-tradition-and-family-right-property-61502> accessed 21 September 2026.

[39] https://indiankanoon.org/doc/198336527/

awareness and reforms shall increase the clarity and efficiency of Hiba in today's scenario.

The urgency of such reform is underscored by the scale of property related litigation still pending before Indian courts. Government data indicate that tens of millions of land and property cases, a category that includes disputes over gifts and inheritance, remained pending before Indian courts as of early 2025. Even incremental gains in doctrinal clarity of the kind this paper advocates could meaningfully ease the burden this backlog places on litigants and on the judicial system alike.[40]

Final Thoughts: The principle of giving under Islamic law is predicated on the principle of generosity, social equity, and divine reward. The components of a gift, i.e. declaration, acceptance, and delivery, are intended to ensure fairness in the transaction. The various types of gifts, including conditional gifts and donations, reflect the fluid nature of Islamic jurisprudence through the ability to adapt to social and economic realities. Courts have interpreted gifts to ensure gifts under Islamic law are sanctioned, legally enforceable, and socially valid transfers.

Hiba's flexibility promotes inclusivity, while TOPA's inflexibility guarantees enforceability. Nonetheless, both systems highlight how the law should reflect societal values by striving to strike a balance between donor intent and donee rights.

[40] 'It Is a Moral and Political Imperative to Free Land and Property-Related Litigants from the Labyrinth of Statistics' (Down To Earth, 2025) <https://www.downtoearth.org.in/governance/it-is-a-moral-and-political-imperative-to-free-land-and-property-related-litigants-from-the-labyrinth-of-statistics> accessed 21 September 2026.