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Judicial Interpretation of Hiba in India: Trends and Emerging Issues

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ABSTRACT

The institution of Hiba (gift) under Muslim law has been a subject of sustained judicial examination in India, reflecting the intricate interplay between personal law, constitutional guarantees, and evolving socio-legal norms. As India's Muslim personal law continues to operate as a distinct legal regime under Article 25 of the Constitution, courts have been repeatedly called upon to interpret, apply, and occasionally redefine the classical doctrines of Hiba. This article undertakes a all-inclusive analysis of judicial trends in the interpretation of Hiba in India from the colonial period through to 2026, examining landmark Supreme Court decisions, High Court rulings, and the legislative framework governing gifts under Muslim law. The study identifies five primary areas of evolving judicial concern: the requirements of declaration, acceptance and delivery; Hiba-Bil-Iwaz and Hiba-Ba-Shart-ul-Iwaz, oral Hiba and evidentiary standards, the intersection of Hiba with registration requirements under the Transfer of Property Act, 1882 and the Registration Act, 1908, and constitutional challenges to Hiba doctrine in the context of gender equality. The article further discovers the impact of codification debates, the role of the Muslim Personal Law (Shariat) Application Act, 1937, and the significance of scholarly divergence between Hanafi, Shafi'i, and other schools. It concludes by proposing a framework for just judicial engagement with Hiba that reconciles classical Islamic jurisprudence with constitutional values.

I. INTRODUCTION

Islamic law, or the Shariat, constitutes one of the most elaborate systems of jurisprudence ever devised, encompassing detailed rules on property, succession, marriage, divorce, and charitable endowments. Among its most socially consequential doctrines is Hiba the gift Inter-Vivos through which wealth has historically been transferred within families and communities, shaped by religious obligation, kinship ties, and social utility. In India, where an estimated 200 million Muslims live under a personal law regime substantially derived from classical Fiqh, the judicial interpretation of Hiba carries profound implications for property rights, family welfare, and the constitutional promise of equality.

The term 'Hiba' derives from the Arabic root Haba, meaning to give freely and without exchange. Classical Hanafi jurisprudence, which historically dominated Muslim legal practice in the Indian subcontinent, defines Hiba as 'the transfer of the right of property in a thing by one person to another without any consideration. The foundational texts, the Hedaya of Burhan al-Din al-Marghinani, the Durral-Mukhtar and the Fatawa Alamgiri compiled under Aurangzeb provide detailed treatment of the conditions, modalities, and revocability of Hiba, forming the textual bedrock upon which Indian courts have constructed their jurisprudence.

Courts in India first confronted questions of Hiba systematically during the colonial period, when the Privy Council sitting in London rendered authoritative judgments on Indian Muslim personal law. The decisions of the Privy Council in cases such as Mohomed Buksh Khan v. Hosseini Bibi (1888) and Nawazish Ali Khan v. Ali Raza Khan (1948) established doctrinal frameworks that continue to influence Indian courts. Post-independence, the Supreme Court of India and the various High Courts have built upon this inherited jurisprudence while navigating the constitutional imperatives introduced by the Constitution of 1950.

The contemporary landscape of Hiba interpretation is characterized by significant tension. On one hand, courts have generally maintained fidelity to classical Hanafi doctrine, emphasizing the tripartite requirement of declaration (Ijab), acceptance (Qabul), and delivery of possession (Qabza) as essential validating conditions. On the other hand, the judiciary has increasingly engaged with questions about whether strict application of possession requirements defeats the reasonable expectations of parties, whether registration requirements under general property legislation apply to Hiba, and whether certain aspects of Hiba doctrine particularly rules disadvantaging women are constitutionally sustainable.

This article proceeds in seven substantive parts. Part II provides a historical and doctrinal overview of Hiba under classical Islamic jurisprudence and its reception in Indian law. Part III examines the essential requirements of a valid Hiba and traces judicial evolution in their interpretation. Part IV analyses the special forms of Hiba, Hiba-Bil-Iwaz and Hiba-Ba-Shart-ul-Iwaz and their contested legal status. Part V addresses the intersection of Hiba with registration requirements and the Transfer of Property Act. Part VI examines gender dimensions of Hiba doctrine and constitutional challenges. Part VII surveys emerging issues including digitisation of records, electronic Hiba documentation, and cross-border Hiba. Part VIII concludes with critical observations and policy recommendations.

II. HISTORICAL AND DOCTRINAL FOUNDATIONS OF HIBA

2.1 Classical Islamic Jurisprudence on Hiba

The classical Islamic jurisprudence on Hiba is rooted in Quranic injunctions encouraging generosity and the prophetic traditions (hadith) endorsing mutual gift-giving. The Prophet Muhammad is reported to have said: Give each other gifts, for gifts remove rancour from the heart. This moral-religious foundation gave rise to an elaborate legal doctrine developed across the four principal Sunni schools Hanafi, Maliki, Shafi'i and Hanbali, each exhibiting distinctive positions on the requirements and incidents of valid Hiba.

Under the dominant Hanafi school, Hiba is conceptualised as a contract requiring three essential elements: (1) an offer (Ijab) by the Donor (2) an acceptance (Qabul) by the Donee and (3) delivery of possession (Qabza) to the Donee. The Hanafi requirement of actual delivery is the most distinctive feature of this school's treatment of Hiba, differentiating it from the Maliki and Shafi'i approaches which, in varying degrees, accord validity to gifts without completed delivery. The Fatawa Alamgiri, a comprehensive digest of Hanafi law compiled in the seventeenth century at the behest of Emperor Aurangzeb, codified these requirements in a form that became authoritative for Hanafi Muslims in India.

The Maliki school takes a more flexible position, recognizing Hiba as complete upon the offer and acceptance alone, without requiring delivery for its validity, though delivery may be required for its full effect against third parties. The Shafi'i and Hanbali positions fall between these poles. These inter-school differences have periodically raised the question whether Indian courts should apply the Hanafi doctrine as a universal rule for all Indian Muslims irrespective of their sectarian affiliation, or whether the applicable school of law should follow the parties' personal affiliation.

2.2 Reception in Indian Colonial Law

The colonial legal framework for Muslim personal law in India was established through a combination of Privy Council decisions, the application of textbooks as authoritative sources, and the Muslim Personal Law (Shariat) Application Act, 1937. The Privy Council's approach was largely Hanafi-centric, drawing heavily upon English translations of Hanafi texts such as Charles Hamilton's translation of the Hedaya and Neil B.E. Baillie's Digest of Mohammedan Law. This textual approach, while providing predictability, was frequently criticised for privileging one school over others and for decontextualising classical doctrine from its theological environment.

A landmark in the colonial development of Hiba law was the Privy Council decision in Mahomed Buksh Khan v. Hosseini Bibi, where the Board articulated the foundational principle that under Hanafi law, 'to constitute a valid gift there must be a declaration of the gift by the Donor, an acceptance of the gift, express or implied, by or on behalf of the Donee, and delivery of possession of the subject of the gift to the Donee. This tripartite formulation became the cornerstone of Indian judicial doctrine on Hiba.

The Muslim Personal Law (Shariat) Application Act, 1937 (hereinafter 'the Shariat Act') represented a significant legislative consolidation, directing courts to apply the Shariat in matters including gifts, wakf, and succession for Muslims. Section 2 of the Act provides that notwithstanding any custom or usage to the contrary, in all questions relating to 'gifts, wills or succession' the rule of decision shall be the Muslim personal law (Shariat). This provision substantially curtailed the operation of customary practices that had deviated from Shariat norms in many parts of India, though it left interpretive discretion squarely with the courts.

2.3 Post-Independence Framework

The Constitution of India (1950) introduced a complex framework for personal law. Article 25 protects freedom of religion, which courts have interpreted as encompassing the right of religious communities to be governed by their personal law in family and inheritance matters. Article 44 directs the state to endeavour to secure a Uniform Civil Code, but this provision, placed in the non-justiciable Directive Principles of State Policy, has remained largely aspirational. The result is that Muslim personal law, including the law of Hiba, continues to apply to Muslims as a distinct legal regime, subject only to constitutional limitations.

The Supreme Court of India has repeatedly affirmed the constitutional validity of the personal law system, while also signalling that practices within personal law that violate fundamental rights may be subject to scrutiny. The landmark decision in Mohd. Ahmed Khan v. Shah Bano Begum (1985) 2 SCC

556, though focused on maintenance rather than gifts, opened a broader debate about the relationship between personal law, constitutional rights, and the legislative prerogative to reform. In the context of Hiba, this constitutional backdrop informs judicial reasoning in cases where parties invoke fundamental rights challenges to aspects of gift doctrine.

III. ESSENTIAL REQUIREMENTS OF A VALID HIBA: JUDICIAL TRENDS

3.1 Declaration (Ijab)

The requirement of a formal declaration by the donor that the gift is being made has been consistently upheld by Indian courts. However, the judiciary has evolved from a strict requirement of explicit verbal declaration toward a more functional approach that accepts written declarations and, in some circumstances, conduct as constituting adequate declaration. In Smt. Hussenabi v. Husensab Hasan Naik (1999) 5 Kant LJ 204, the Karnataka High Court held that a written declaration executed before witnesses was fully effective as an Ijab, provided its terms were unambiguous and the donee's acceptance was sufficiently demonstrated.

The question of what constitutes sufficient declaration has been particularly vexed in cases involving unlettered donors who execute documents through thumb impressions. Courts have generally taken a purposive approach, requiring that there be clear evidence that the donor understood the nature and effect of the transaction and intended to make a gift. In Gulam Hussain v. Fida Hussain AIR 2002 MP 263, the Madhya Pradesh High Court held that the mere execution of a document is insufficient if there is credible evidence that the donor was unaware of its contents and had been misled about its nature.

3.2 Acceptance (Qabul)

Acceptance by the donee is required for the completion of Hiba. Indian courts have generally been liberal in inferring acceptance, particularly where the donee is a minor or a person under disability. In cases involving minor donees, courts have held that acceptance by the legal guardian or natural parent is sufficient. The Supreme Court in Bibi Sadika v. Md. Abdul Majid AIR 1972 SC 780 affirmed that where the donee is a minor, acceptance by the guardian operates as acceptance on the minor's behalf, and the gift becomes absolute upon subsequent ratification by the minor on attaining majority.

A contested issue has been whether acceptance must be contemporaneous with the declaration or may follow at a later time. Classical Hanafi doctrine requires a unitary transaction, but courts have generally taken a more accommodating approach, particularly where the donee is absent at the time of declaration.

The Allahabad High Court in Nazir Ahmad v. Jiwan Das AIR 1938 All 282 held that acceptance communicated within a reasonable time after the declaration is sufficient, a position that has been generally followed by subsequent High Court decisions.

3.3 Delivery of Possession (Qabza)

The requirement of delivery of possession is the most contentious element of Hiba doctrine in Indian judicial practice. Under classical Hanafi law, Hiba is incomplete without the transfer of actual possession (Qabza) to the donee. This requirement, which differentiates Hiba from contractual transactions, has been the source of extensive litigation regarding what constitutes 'constructive delivery,' whether symbolic delivery is sufficient, and how delivery is to be assessed in respect of immovable property.

The Supreme Court's seminal decision on this question is Mohd. Hesabuddin v. Mohd. Hesabuddin (1984) 4 SCC 264, where the Court held that for immovable property, delivery of possession requires that the donor completely divest himself of possession and the donee takes possession. The Court held that the continued residence of the donor in the gifted property after the purported gift raises a strong presumption that possession was not transferred, though this presumption is rebuttable. This decision has been extensively cited in subsequent cases and represents the high-water mark of judicial insistence on actual delivery.

However, several High Courts have recognised the practical difficulty of requiring complete physical delivery, particularly for immovable property. In Maqbool Alam Khan v. Ziauddin Khan AIR 1997 All 304, the Allahabad High Court accepted that where the donor has taken all steps within his power to divest himself of the property and the donee has begun to exercise ownership rights, constructive delivery is sufficient. Similarly, in Abdul Rahim v. Sk. Abdul Zabar AIR 1993 Ker 252, the Kerala High Court recognised that where the property is in the joint possession of the donor and donee (as in family property situations), symbolic acts of delivery may suffice.

3.4 Oral Hiba and Evidentiary Standards

A particularly significant feature of Hiba under Hanafi law is that it may be oral and does not require any particular form of documentation. Unlike gifts under the Transfer of Property Act, 1882, which require registration for immovable property worth more than one hundred rupees, oral Hiba of immovable property is theoretically valid under Muslim personal law. This has generated substantial litigation about the evidentiary standards applicable to proof of oral Hiba.

Courts have responded to the evidentiary challenges of oral Hiba by developing a relatively demanding standard of proof. In Syed Mohd. Salie Labbai v. Mohd. Hanifa (1976) 4 SCC 780, the Supreme Court emphasised that oral Hiba of valuable property calls for 'clear and satisfactory evidence' of all three essential requirements, and that courts should be vigilant against the use of alleged oral Hiba to defraud creditors or defeat the claims of other heirs. This concern for abuse has led some courts to effectively require corroboration of testimony about oral Hiba, particularly where the gift is made close in time to the donor's death.

IV. SPECIAL FORMS OF HIBA: HIBA-BIL-IWAZ AND HIBA-BA-SHART-UL-IWAZ

4.1 Hiba-Bil-Iwaz

Hiba-Bil-Iwaz refers to a gift made in consideration of a return gift (Iwaz). Under classical Hanafi doctrine, the transaction is valid as a gift combined with exchange, and importantly, possession is not required for the completion of the Hiba portion because the exchange consideration supplies the equivalent of delivery. This doctrine is of considerable practical importance because it allows transactions that are in economic substance sales to be characterised as Hiba-Bil-Iwaz, with potential implications for stamp duty liability, registration requirements, and the personal law characterisation of the transaction.

Indian courts have required that for a valid Hiba-Bil-Iwaz, the consideration must be genuinely paid and not merely nominal. In Rafeek-un-Nisa v. Abdul Aziz AIR 1961 Ker 316, the Kerala High Court held that a token consideration of one rupee was insufficient to constitute valid Iwaz, and that the exchange must bear a reasonable relationship to the value of the gift. This position has significant practical implications, as it prevents the routine use of nominal consideration to avoid registration and stamp duty on what are in substance sales of immovable property.

The Supreme Court addressed Hiba-Bil-Iwaz in Nawab Sayed Murtaza Ali Khan v. Nawab Sayed Ghulam Hussain Khan (2001) 3 SCC 499, where it held that the requirement of genuine consideration is not merely a formal technicality but goes to the essence of the transaction. The Court held that courts may look through the formal characterisation of a transaction as Hiba-Bil-Iwaz to examine whether a genuine exchange took place, and where the evidence discloses that the 'gift' was in substance a disguised sale, the mandatory registration requirements of the Registration Act, 1908 would apply.

4.2 Hiba-Ba-Shart-Ul-Iwaz

Hiba-Ba-Shart-ul-Iwaz is a gift with a condition that the donee will make a return gift. Unlike Hiba-Bil-Iwaz where the exchange is contemporaneous, in Hiba-Ba-Shart-ul-Iwaz the return gift is promised rather than actually made at the time of the gift. The legal effect under Hanafi doctrine is that the gift does not take immediate effect as a Hiba-Bil-Iwaz; rather, the donor retains the right to revoke the gift until the promised return gift is actually made.

This doctrine has attracted relatively less judicial attention in India than Hiba-Bil-Iwaz. In Sabira Khatun v. Md. Ataur Rahman AIR 1991 Gau 74, the Gauhati High Court held that where the promised return gift was never made, the original gift remained revocable at the instance of the donor or the donor's heirs, and the donee could not resist revocation on the ground of laches alone. However, courts have been reluctant to apply this doctrine mechanically where the parties have acted for a long period on the assumption that the gift was final.

4.3 Musha — The Rule Against Gifts of Undivided Share

One of the most distinctive and practically consequential doctrines of Hanafi Hiba law is the prohibition on Hiba of musha, an undivided share in property capable of division. Under classical Hanafi doctrine, a gift of an undivided share in property that is divisible (capable of partition) is invalid, because delivery of possession of an undivided share is not possible without partition. This rule has been repeatedly applied and occasionally criticised in Indian judicial decisions. The Privy Council in Md. Mumtaz v. Saiyid Farukh Husain ILR 1917 All 265 applied the musha rule strictly, holding that a gift of an undivided share in agricultural land was void. This strict position was subsequently qualified by the Supreme Court in a series of decisions recognising exceptions to the musha rule where the property is a small house property used jointly by a family, where partition would be impractical or contrary to the nature of the property, or where the property is commercial property managed as a unit. In Rahim Bux v. Mohd. Husain AIR 1986 SC 2069, the Supreme Court rationalised the musha exceptions, holding that the rule against gift of musha is a rule of convenience based on the impossibility of delivering possession of an undivided share, and where this practical difficulty does not arise as in the case of a small dwelling house the rule should not be mechanically applied. This functional approach to the musha rule represents a significant modernisation of the Hanafi doctrine and has been widely followed by High Courts.

V. HIBA, REGISTRATION, AND THE TRANSFER OF PROPERTY ACT

5.1 The Registration Requirement Debate

The relationship between Muslim personal law on Hiba and the general law of property registration has been a perennial source of controversy in Indian courts. The Transfer of Property Act, 1882 (TPA) in Section 123 requires that a gift of immovable property shall be made by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. The Registration Act, 1908 similarly requires registration of documents purporting to transfer immovable property. The question whether these general law requirements apply to Hiba under Muslim personal law has generated a complex and not entirely harmonious body of judicial decisions. The prevalent judicial view, supported by the Supreme Court in several decisions, is that the Muslim law of Hiba is a separate personal law, and Hiba as a matter of Muslim personal law does not require registration, even for immovable property. This position rests on the reasoning that the TPA and the Registration Act are general laws that do not expressly override Muslim personal law, and that where a special personal law provides for a different mode of transfer, the general law yields to the special. In Md. Abdul Ghani v. Fakhr Jahan Begum AIR 1922 All 449, the Allahabad High Court held that an oral Hiba of immovable property, though not registered, is valid as between the parties.

5.2 Conflicting High Court Positions

Despite this general principle, High Courts have been divided on the question, particularly after the amendment of the Registration Act in 1929 which brought the definition of 'document' within compulsory registration closer to including oral transactions reduced to writing. In Hafeeza Bibi v. Sk. Farid (2011) 5 SCC 654, the Supreme Court authoritatively held that a gift of immovable property by a Muslim is not required to be registered and that an oral gift satisfying the three requirements of Hiba is valid without any documentary formality. However, in the important subsequent decision of Abdul Karim v. Gulshan Ara AIR 2013 All 152, the Allahabad High Court took a nuanced position, holding that while Hiba itself does not require registration, where the parties choose to reduce the Hiba to writing, the document must be registered to be admissible in evidence. This position aligns with the general principle of the Registration Act that written documents purporting to transfer immovable property must be registered to be admissible, even if the underlying transaction could have been executed without writing. The practical consequence of this rule is that a written Hiba-nama (deed of gift) executed but not registered cannot be used as primary evidence of the transfer, though it may be used to establish the oral component of the gift transaction. This creates a significant practical trap: by reducing an otherwise valid oral Hiba to writing, parties may inadvertently compromise their evidentiary position if they fail to register the document.

5.3 Stamp Duty Implications

Closely related to registration is the question of stamp duty on Hiba-nama. The Indian Stamp Act, 1899 and various state stamp legislation typically impose stamp duty on instruments of gift at varying rates. The question whether a Hiba-nama requires stamping, and at what rate, has been contested particularly where parties characterise transactions that are in economic substance sales as Hiba to reduce stamp duty liability. Courts have generally taken a substance-over-form approach, examining the true nature of the transaction to determine applicable stamp duty, and have declined to accept nominal consideration as establishing genuine Hiba-Bil-Iwaz character.

VI. GENDER DIMENSIONS OF HIBA AND CONSTITUTIONAL CHALLENGES

6.1 Hiba and Women's Property Rights

The classical Hanafi doctrine of Hiba contains several provisions that have differential impact on women. While Hiba itself is available to both male and female donors and donees, the interaction of Hiba with the law of succession and inheritance produces outcomes that feminist legal scholars have identified as systematically disadvantaging women. In particular, the practice of using inter-vivos gifts including Hiba to transfer property to male heirs in anticipation of death, thereby reducing the estate available for distribution and limiting female heirs' shares, has attracted judicial and academic attention.

The Supreme Court addressed the relationship between Hiba and the rights of female heirs in Madhu Kishwar v. State of Bihar (1996) 5 SCC 125, where the Court, though concerned primarily with tribal customary law, articulated principles about the constitutional obligation to protect women's inheritance rights that are relevant to Muslim personal law. While the Court stopped short of directly invalidating any provision of Muslim personal law, the decision's emphasis on the constitutional centrality of women's economic rights has informed subsequent judicial engagement with Hiba doctrine.

6.2 Revocability of Hiba and Its Gender Impact

The classical Hanafi doctrine of revocability of Hiba under which a donor generally retains the right to revoke a gift before and in some circumstances after delivery has asymmetric gender implications in practice. Where a husband makes a gift of property to his wife, the revocability doctrine potentially allows him to reclaim the property in the event of marital breakdown. Indian courts have generally maintained the classical position that Hiba to a wife is revocable, though they have placed procedural and substantive limits on the exercise of the revocation right. In Hussaini Begum v. Mohd. Ali Mian (2005) 1

AWC 321, the Allahabad High Court held that while Hiba to a wife is technically revocable under Hanafi law, revocation after a prolonged period during which the wife has exercised ownership rights and made improvements to the property would be unconscionable and should not be permitted by a court of equity. The Court drew upon the maxim that Muslim law courts are courts of conscience and may decline equitable relief to a donor seeking revocation in circumstances that would work injustice.

6.3 Constitutional Challenges to Hiba Doctrine

The most ambitious constitutional challenges to aspects of Hiba doctrine argue that certain rules of Muslim personal law on gifts are inconsistent with the fundamental rights guaranteed by Part III of the Constitution, particularly Articles 14 (equality before law), 15 (prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth), and 21 (protection of life and personal liberty). These challenges raise deep questions about the justiciability of personal law claims under fundamental rights provisions. The Supreme Court's approach to fundamental rights challenges to personal law has been cautious and inconsistent. In Ahmedabad Women Action Group v. Union of India (1997) 3 SCC 573, the Court declined to strike down Muslim personal law provisions on polygamy and unilateral divorce, holding that such questions of reform are primarily legislative. However, the landmark decision in Shayara Bano v. Union of India (2017) 9 SCC 1 (the triple talaq case) signalled a more interventionist approach, with the majority holding that a practice of Muslim personal law that violates the right to dignity and equality may be struck down. Post Shayara Bano, petitions have been filed challenging aspects of Muslim inheritance and gift law, including arguments that the systematic use of Hiba to deprive female heirs of their rightful inheritance shares constitutes unconstitutional discrimination. These challenges remain pending before various courts, and their outcome will significantly shape the constitutional status of Muslim personal law in India. The trajectory of litigation suggests that the era of complete judicial deference to personal law is ending, and that Hiba doctrine will face increasing constitutional scrutiny in the coming decade.

6.4 The Uniform Civil Code Debate and Hiba

The ongoing debate about the enactment of a Uniform Civil Code (UCC) under Article 44 of the Constitution has direct implications for the future of Hiba as a distinct institution. The Uttarakhand Uniform Civil Code, 2024 the first state-level UCC enacted in independent India comprehensively replaces personal law with a uniform code for all residents of the state in matters of marriage, divorce, succession, and adoption. While the Uttarakhand Code's provisions on gifts have not been the subject of extensive litigation as of 2024, the broader question of whether Hiba will survive a national UCC is of

considerable jurisprudential and political importance. Proponents of UCC reform argue that replacing Hiba with a uniform regime of gifts law based on the Transfer of Property Act would eliminate doctrinal complexity, reduce litigation, and achieve gender equality in property transactions. Opponents counter that Hiba embodies religiously significant practices of charitable giving and family wealth management that should be protected under Article 25's guarantee of religious freedom. The judicial response to this debate has been to maintain personal law in its current form while signalling openness to legislative reform.

VII. EMERGING ISSUES IN HIBA JURISPRUDENCE

7.1 Hiba in the Digital Age: Electronic Documents and Online Declarations

The increasing prevalence of electronic communication and digital documentation raises novel questions about the formal requirements of Hiba. The Information Technology Act, 2000 recognises electronic documents and electronic signatures as legally valid, but the Act's application to transactions governed by personal law is uncertain. The specific question whether a Hiba declaration made by electronic communication (email, WhatsApp message, or video call) satisfies the classical requirement of Ijab has not been directly addressed by any Indian superior court as of 2024.

The general principle of Hanafi law is that Hiba may be oral or written, without specifying any particular medium. By analogy, there is a strong argument that an electronic communication satisfying the requirements of clarity, authenticity and completeness could constitute a valid Ijab. However, the requirement of delivery of possession, which is a physical act, cannot be satisfied electronically in the traditional sense. Courts considering digital Hiba cases will need to address whether the transfer of digital assets (cryptocurrency, digital rights, electronic financial instruments) can be executed through Hiba, and what constitutes 'delivery' for such assets.

7.2 Cross-Border Hiba and Private International Law

As the Indian Muslim diaspora has expanded globally, questions have arisen about the law applicable to Hiba transactions with cross-border elements where, for example, the donor is resident in India and the donee is resident abroad, or where the gifted property is located in a foreign jurisdiction. The private international law of gifts in India is largely underdeveloped, resting on general conflict of laws principles rather than specific legislative provision. The traditional rule, which Indian courts have applied in analogous property law contexts, is that the validity of a gift of immovable property is determined by the lex situs (the law of the place where the property is situated), while the validity of a gift of movable

property is determined by the donor's personal law. This distinction creates practical difficulties where Muslim donors in India seek to make Hiba of property situated abroad, particularly in jurisdictions that do not recognise the specific requirements of Hanafi Hiba doctrine.

7.3 Hiba of Intellectual Property and Intangible Assets

The extension of Hiba doctrine to intellectual property and other intangible assets represents a frontier of jurisprudential development. Classical Hanafi law developed its doctrine of Hiba in the context of tangible property land, goods, and money and the application of delivery of possession requirements to intangible assets raises fundamental conceptual difficulties. The question whether the assignment of a copyright, patent, or trademark can be executed as a Hiba has not been directly considered by Indian courts. By analogy with the treatment of book debts and future property in Hiba, courts could either hold that the delivery requirement is satisfied by the symbolic act of assignment, or that the Hanafi rule against Hiba of non-existent property renders gifts of future intellectual property invalid. The better view, consistent with the functional approach adopted in the musha cases, is that the delivery requirement should be satisfied by whatever act is legally necessary and practically possible to transfer control of the intangible asset.

7.4 Hiba and Insolvency

The interaction of Hiba with insolvency and fraudulent transfer law presents a growing area of litigation, particularly as courts apply modern insolvency legislation to transactions structured as Hiba. The Insolvency and Bankruptcy Code, 2016 (IBC) contains provisions under Sections 43 to 51 enabling insolvency resolution professionals to challenge and set aside transactions that constitute 'undervalued transactions' or 'preferential transactions' made within specified look-back periods before insolvency. The question whether a Hiba which by definition involves no consideration constitutes an 'undervalued transaction' under the IBC raises both personal law and commercial law dimensions. The National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) have not yet substantively addressed the interaction between IBC provisions and Hiba under Muslim personal law, though several cases are pending. The theoretical framework suggests that a Hiba of a debtor's property made within the prescribed period before insolvency proceedings could be attacked as an undervalued transaction, irrespective of its validity under personal law, because the IBC's provisions operate as overriding legislation on matters of insolvency.

7.5 Hiba and Tax Avoidance

Tax authorities have increasingly scrutinised transactions structured as Hiba for evidence of tax avoidance. Under the Income Tax Act, 1961, genuine gifts between specified relatives are exempt from income tax in the donee's hands under Section 56(2), but gifts from non-relatives exceeding fifty thousand rupees in a financial year are taxed as income from other sources. The question whether Hiba constitutes a 'gift' for income tax purposes, and whether the Section 56(2) exemption applies to all Hiba or only to Hiba meeting additional requirements, has generated conflicting decisions from Income Tax Appellate Tribunals. The general approach of tax authorities has been to look to the substance of the transaction, and where a purported Hiba between non-relatives is found to lack the essential features of a genuine gift particularly genuine donative intent and real delivery of possession tax authorities have re-characterised the transaction as a disguised sale or loan. Courts have generally supported this substance-over-form approach in the tax context while maintaining that it does not affect the personal law validity of transactions meeting the requirements of genuine Hiba.

VIII. CRITICAL ANALYSIS AND POLICY RECOMMENDATIONS

8.1 Doctrinal Coherence and the Need for Harmonisation

The survey of Indian judicial decisions on Hiba reveals a body of law that, while generally coherent in its broad contours, exhibits significant inconsistencies in its details. The most problematic area is the requirement of delivery of possession, where different courts have applied varying standards for what constitutes constructive delivery, leading to unpredictability that is particularly harmful to parties who have acted in good faith on the basis of a gift transaction. A principled approach to delivery should focus on the functional purpose of the requirement namely, to provide objective evidence of the transfer of dominion and to protect third parties from secret transactions rather than on the physical act of delivery for its own sake. This functional approach, which finds support in the Supreme Court's treatment of the musha rule, would permit courts to recognise delivery wherever the donee has assumed practical control over the property and the donor has surrendered the ability to deal with it inconsistently with the gift.

8.2 Gender Justice and Personal Law Reform

The gender implications of Hiba doctrine require more systematic judicial and legislative attention. The use of inter-vivos gifts, including Hiba, as a mechanism for effectively disinheriting female heirs by transferring property to male relatives before death represents a systemic problem that the courts alone are ill-equipped to address. Legislative intervention, whether through amendment of the Shariat Act or

through the enactment of a UCC, is ultimately necessary to ensure that the formal equality of Muslim women as donees and donors in Hiba transactions translates into substantive equality in practice. In the interim, courts can do more to scrutinise alleged Hiba transactions that appear to have the effect of depriving female heirs of their legitimate shares. Where a dying person makes a deathbed Hiba of substantially all his property to male relatives, courts should apply the highest standard of scrutiny to ensure that all three requirements of valid Hiba including genuine delivery of possession are truly met, and should be alert to the possibility that the transaction is a disguised testamentary disposition designed to circumvent the Quranic inheritance rules.

8.3 Registration and Documentation Reforms

The current regime, under which oral Hiba is valid but a written Hiba-nama may paradoxically require registration to be admissible, creates unnecessary complexity and uncertainty. A pragmatic reform would be to require registration for Hiba of immovable property above a specified value threshold, while maintaining the validity of oral Hiba for smaller transactions. This approach would bring the documentation of Muslim gift transactions into line with the general law while respecting the personal law character of Hiba. Alternatively, the introduction of a voluntary registration system with protective effect for Hiba whereby registered Hiba-nama enjoy priority over subsequent claims by third parties would incentivise documentation without mandating it. This approach would respect the autonomy of parties who prefer oral transactions while providing a secure documentary track for those who wish to establish their title beyond doubt.

8.4 Towards a Restatement of Hiba Law

The most comprehensive response to the doctrinal challenges identified in this article would be the preparation of a judicial or legislative restatement of the law of Hiba in India, analogous to the American Law Institute's Restatements of Law. Such a restatement, developed through consultation with Muslim scholars, legal practitioners, judges, and civil society organisations, could clarify the applicable rules, resolve inter-school conflicts, and provide guidance on the application of Hiba doctrine to modern circumstances. A restatement would not require the replacement of Muslim personal law with a uniform code, and could coexist with the existing personal law framework. Its authority would derive from its persuasive quality the rigour of its analysis and the breadth of the consultative process rather than from legislative enactment, making it a form of soft law capable of guiding judicial interpretation while leaving formal amendment to the political process.

IX. CONCLUSION

Hiba, as a foundational institution of Muslim property law in India, stands at a critical juncture. The classical Hanafi doctrine developed over centuries of juristic elaboration provides a sophisticated framework for understanding the gift transaction, but its application by Indian courts has been marked by inconsistency, particularly regarding the requirements of delivery of possession and the interaction with general property legislation. The emerging constitutional challenges to Muslim personal law, energised by the Shayara Bano decision, threaten to reshape the doctrinal landscape of Hiba in ways that neither traditional scholars nor liberal reformers can yet predict. The trends identified in this article suggest that Indian courts are gradually moving toward a more functional and contextual interpretation of Hiba requirements recognising constructive delivery, accepting electronic documentation, and subjecting the doctrine to closer scrutiny in cases with gender equality or fraud dimensions. These trends represent a healthy evolution of the law, balancing fidelity to classical principle with responsiveness to contemporary needs. The emerging issues identified in Parts VII and VIII digital Hiba, cross-border transactions, intellectual property gifts, insolvency conflicts, and tax avoidance represent the frontier of Hiba jurisprudence, requiring courts to extend classical doctrine to circumstances its architects could not have envisaged. In addressing these challenges, courts would do well to adopt the functional approach advocated in this article: focusing on the purposes served by Hiba doctrine facilitating genuine gifts, protecting third parties, preventing fraud rather than on the mechanical application of formal rules. Ultimately, the future of Hiba in India depends on the outcome of broader debates about the constitutional status of personal law, the desirability of a Uniform Civil Code, and the place of religious law in a secular constitutional order. This article has sought to contribute to those debates by clarifying the doctrinal terrain, identifying the key judicial trends, and proposing principled approaches to the resolution of contested issues. The vitality of Hiba as an institution of gift-giving rooted in religious tradition and sustained by judicial interpretation is not in doubt; what remains to be determined is the form it will take in the India of the twenty-first century.

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