HIBA AND THE DISINHERITED DAUGHTER: STRATEGIC USE OF GIFTS UNDER MUSLIM PERSONAL LAW TO CIRCUMVENT WOMEN'S INHERITANCE RIGHTS IN INDIA

Vaishnavi Upadhya, KLE Law College, Bengaluru

ABSTRACT

Muslim Personal Law, regulated mainly by the Muslim Personal Law (Shariat) Application Act, 1937,[1] follows the system of faraid established in the Holy Quran[2], whereby the Quran assures daughters of having a rightful share of their father's inheritance[3]. The system of faraid thus ensures that the inheritance rights of daughters in relation to ancestral property are protected[4]. The problem, however, lies in the very structure of the system of faraid, which includes a provision known as hiba[5], where hiba implies the power of giving all of one's possessions before death, without there being any limit on the amount that can be transferred in this manner[6]. Once the three elements of hiba declaration, acceptance, and delivery of possession have been fulfilled[7], the courts have always found that hiba was validly performed and not inquired too deeply about the impact that this might have on the potential heirs[8]. Based on a critical study of Supreme Court judgments, the structure of the faraid system, various reform schemes, and the experience of Muslim women, it is proved in this paper that Indian courts have opted for technicality over justice in matters of Muslim women's inheritance rights[9]. In order to solve the problem of fraud committed against Muslim woman heirs through gift, it is suggested that a legislation must be introduced to create a rebuttable presumption of fraud in case an entire estate is gifted within a reasonable period before death[10].

[1]Muslim Personal Law (Shariat) Application Act, 1937, No. 26 of 1937, § 2.
[2] The Quran, Surah An-Nisa 4:11–12
[3] Id.
[4] Mulla Principles of Mahomedan Law (defining Quranic heirs and fixed shares).
[5] Id. §§ 138–152
[6] Id.
[7] Abdul Rahim v. Sk. Abdul Zabar, (2009) 6 S.C.C. 160
[8] Hafeeza Bibi v. Shaikh Farid, (2011) 5 S.C.C. 654.
[9] See generally Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (1999).
[10] See Law Commission of India, Consultation Paper on Reform of Family Law (2018).

I . INTRODUCTION

The fact that "the daughters have a right to inherit their father's share" mentioned in Surah An-Nisa[11] some fourteen centuries ago was interpreted by classical scholars as an absolute breakaway from the pre-Islamic practices of Arabia, wherein women were virtually deprived of all inheritance rights[12]. The inheritance laws of the Quran the fara'id are, indeed, a means of safeguarding the rights of women against being totally subject to patriarchal whims[13]. In modern India, where the Muslim Personal Law (Shariat) Application Act of 1937 makes provisions for applying the principles of Muslim personal laws concerning inheritance and succession[14], the guarantee still stands. Yet, the legal situation is far more complex.

The hiba principle, which is basically a transfer of property or an outright gift during the giver's lifetime[15], is well established within the history of Islamic law, and there are legitimate reasons why this practice should exist[16]. First, it promotes generosity among individuals, and it fosters family relationships, besides promoting sensible estate planning[17]. But when this practice becomes a means by which one avoids providing heirs of the deceased with their rightful shares, such that he makes transfers that render nothing left in the property except a nullity to the girls, then the hiba is no longer a noble act in Islam.[18]

The Indian judiciary, caught up in this conflict, has generally come down in favor of the legality of the procedure.[19] Once the essential conditions of a valid hiba have been fulfilled through declaration, acceptance, and transfer of possession[20], then the gift has been treated as irreversible and irrefutable, regardless of any discrimination against the female heirs in the bargain[21]. This tendency can be seen clearly in two cases decided by the Supreme Court of India: Hafeeza Bibi v. Shaikh Farid[22] and Mahboob Sahab v. Syed Ismail[23].

---

[11] The Quran, Surah An-Nisa 4:11–12.
[12] See Asaf A. A. Fyzee, *Outlines of Muhammadan Law* (5th ed.)
[13] See Tahir Mahmood, *Principles of Muslim Law*.
[14] Muslim Personal Law (Shariat) Application Act, 1937, No. 26 of 1937, § 2.
[15] Mulla Principles of Mahomedan Law §§ 138–152.
[16] Id.
[17] See Asaf A. A. Fyzee, *Outlines of Muhammadan Law*.
[18] See generally Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (1999).
[19] See Gulam Abbas v. Haji Kayyum Ali, (1973) 1 S.C.C. 554.
[20] Abdul Rahim v. Sk. Abdul Zabar, (2009) 6 S.C.C. 160.
[21] Hafeeza Bibi v. Shaikh Farid, (2011) 5 S.C.C. 654.
[22] Id.
[23] Mahboob Sahab v. Syed Ismail, (1995) 3 S.C.C. 693

This essay argues that the failure to conduct such an investigation is not only doctrinally inadequate but also constitutionally indefensible[24]. This essay will follow the sequence below: In Section II, the legal doctrine of hiba is examined within the context of doctrinal and juristic discussions, based on classical Islamic jurisprudence and Supreme Court rulings[25]. The structure of the Qur'anic framework of women's inheritance rights and the gap between the ideal principle of faraid and its realization in reality are explored in Section III[26]. In Section IV, the structural loophole of hiba in the inheritance system is identified, and through case studies and statistical data, it is shown how this loophole works against the interests of daughters[27]. In Section V, the legal method of valuing legal form over substance is challenged[28]. Section VI looks at other models of legal reform in other Muslim countries[29].

II. THE DOCTRINE OF HIBA: DOCTRINAL FOUNDATIONS AND LEGAL ESSENTIALS

A. Definition and Historical Roots

The term "hiba" is derived from an Arabic root which implies "gift" or "bestowal"[30]. Hiba is the name of the category in the field of Muslim personal law, which relates to the act of giving away something immediately and gratuitously from one living person to another[31]. Unlike the wasiyya (the testamentary bequest) that can take effect only upon the death of the giver, who cannot exceed one third of the inheritance and which cannot involve sadaqa (devotional gift)[32]The act of hiba is governed by a set of rules which have been derived from classical sources on Islamic jurisprudence, but have been applied in the context of India through the device of the Shariat Application Act, 1937.[33]

It is clear from the definition given in Mulla's Principles of Mahomedan Law that hiba is a legal gift.[34] Sections 147, 148, and 149 lay down rules about the same and have been approved of

[24] See Constitution of India arts. 14, 15.
[25] See generally Mulla Principles of Mahomedan Law.
[26] See The Quran, Surah An-Nisa.
[27] See Law Commission of India, Consultation Paper on Reform of Family Law (2018).
[28] See Roscoe Pound, *The Spirit of the Common Law* (discussing form vs substance in law).
[29] ee Comparative Islamic Law (discussing reforms in Muslim-majority jurisdictions).
[30] Mulla Principles of Mahomedan Law § 138.
[31] Id.
[32] See Asaf A. A. Fyzee, *Outlines of Muhammadan Law*.
[33] Muslim Personal Law (Shariat) Application Act, 1937, No. 26 of 1937, § 2
[34] Mulla Principles of Mahomedan Law § 138.

by the Supreme Court of India[35].

B. The Three Essentials of a Valid Hiba

In Hafeeza Bibi v. Shaikh Farid, the Supreme Court clearly reiterated that a hiba according to Mohammedan Law consists of three essential conditions: firstly, a declaration of the gift by the donor; secondly, acceptance of the gift by or on behalf of the donee; and thirdly, delivery of possession of the object of the gift by the donor to the donee[36]. It was stated in Mahboob Sahab v. Syed Ismail by referring to the nineteenth edition of Mulla, that the donor must be divested of his ownership of the subject matter, for without this the hiba will never become effective since there will be nothing left to transfer from him to another.[37]

Each one of the above mentioned essentials has its own legal implications. Declaration of the gift by the donor implies that the gift was made voluntarily[38]. Acceptance of the donee will make the gift a two-way business[39]. Delivery of possession of the gift is of paramount importance because it differentiates the hiba from other contracts which only amount to promise.[40]

C. Formality, Registration, and Irrevocability

It is precisely such a unique characteristic of hiba that there is absolutely no requirement of writing or registration, be it for movable or immovable properties[41]. According to the Supreme Court case of Hafeeza Bibi, the provisions of Section 129 of the Transfer of Property Act, 1882 have the effect of maintaining the Mohammedan law on gifts and, consequently, excluding the application of Section 123[42]. As a result, an oral hiba satisfying all the three essentials of hiba is completely valid without being subject to registration[43].

In such conditions, an oral hiba that is irrevocable upon completion becomes a part of pre-

[35] See Abdul Rahim v. Sk. Abdul Zabar, (2009) 6 S.C.C. 160.
[36] Hafeeza Bibi v. Shaikh Farid, (2011) 5 S.C.C. 654.
[37] Mahboob Sahab v. Syed Ismail, (1995) 3 S.C.C. 693.
[38] Mulla Principles of Mahomedan Law § 149.
[39] Id.
[40] Id.
[41] Hafeeza Bibi v. Shaikh Farid, (2011) 5 S.C.C. 654.
[42] Transfer of Property Act, 1882 §§ 123, 129.
[43] Hafeeza Bibi v. Shaikh Farid, (2011) 5 S.C.C. 654.

mortem transfer schemes[44]. Until 2025, the Supreme Court had to remind its citizens again that 'possession is the soul of a valid hiba', yet oral gifts shall never become a 'surprise instrument' after decades[45]. However, this case does not solve the issue of gifts being openly made and intentionally targeted at excluding daughters from their inheritance rights[46].

III. WOMEN'S INHERITANCE RIGHTS UNDER MUSLIM PERSONAL LAW

A. The Quranic Scheme of Faraid

The main source of inheritance rules under Islamic law is Surah An-Nisa, namely verses 4:11–12 and 4:176.[47] Inheritance is regulated in the form of a compulsory distribution according to specific shares that must be distributed among certain heirs[48]. The system is not based on any permissiveness on the part of the Qur'an, but is established by it: there are shares to be distributed, and they are divine orders, rather than personal preferences[49]. Therefore, the traditional view of Islamic law scholars is that the system of inheritance cannot be changed by the will of the testator since the Quran distributes its shares[50].

The share for women is established unequivocally: if the deceased had one child (daughter), she would get one-half of the inheritance; two or several children (daughters without sons) – two-thirds; if there is a son among heirs, then all daughters would take half of his share[51].Shares of women were less compared to those of men but formed the whole economic scheme which included special obligations of men to pay alimony to their wives and children but no such obligation from women[52].

B. The Protection Intended by the Faraid System

The Faraid system was an institutional intervention within the framework of seventh century Arabia, where agnatic lineages regularly denied daughters any entitlement to inherit[53]. The

[44] See Tahir Mahmood, *Principles of Muslim Law*.
[45] See Abdul Rahim v. Sk. Abdul Zabar, (2009) 6 S.C.C. 160.
[46] See generally Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (1999).
[47] The Quran, Surah An-Nisa 4:11–12, 4:176
[48] See Asaf A. A. Fyzee, *Outlines of Muhammadan Law*.
[49] Id.
[50] See Tahir Mahmood, *Principles of Muslim Law*.
[51] The Quran, Surah An-Nisa 4:11.
[52] See Asaf A. A. Fyzee, *Outlines of Muhammadan Law*.
[53] See Joseph Schacht, *An Introduction to Islamic Law*

prescribed shares of divine law were intended to render the inheritance claims of daughters inviolable protected from the subjective preferences of patriarchal arbitrariness[54]. It should be emphasized that the rule against wasiyya to an heir of legal inheritance is a product of this very protectionist approach: a Muslim is forbidden to will something to one heir rather than another after death[55].

C. The Implementation Gap

In spite of the clear directive provided in the Quranic texts, however, the ability of Muslim women in India to benefit from their inheritances has been severely impeded[56]. V P Suhara, who heads NISA, an organization that fights for the rights of Muslim women, pointed out that there were hundreds of cases in which women in Kerala lost their right to inheritance when they became the only surviving heirs after a male family member died, while agnatic relations laid claim to the remainder of the estate[57]. In addition, in some situations, although daughters were entitled to receive one-half or two-thirds of the inheritance, they ended up with nothing, since the property was sold off inter vivos to males[58].

The difficulty is further compounded in that it does not stem from mere lack of compliance in society; rather, it is supported by a legal principle[59]. The concept of hiba, as applied in Indian law, offers a means by which the entitlements to property of daughters can be rendered void before the succession process has even commenced[60].

IV. THE STRUCTURAL LOOPHOLE: STRATEGIC USE OF HIBA TO DISINHERIT DAUGHTERS

A. How the Loophole Operates

The means works on a principle that is disarmingly simple and highly effective[61]. Because, in accordance with Indian Muslim personal law, a Muslim possesses unlimited rights to transfer all of his immovable property by way of hiba during his lifetime unrestricted as regards

[54] Id.
[55] See Tahir Mahmood, *Principles of Muslim Law*.
[56] See generally Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (1999).
[57] See NISA (reports on Muslim women's inheritance issues).
[58] See Law Commission of India, Consultation Paper on Reform of Family Law (2018).
[59] See Mulla Principles of Mahomedan Law.
[60] Id. §§ 138–152.
[61] See Tahir Mahmood, *Principles of Muslim Law*.

quantum, equality between the children, or the clear exclusion of daughters in favour of sons[62] an influential patriarch who wishes to deprive his daughters of inheritance does so quite within the bounds of the law[63].

In general, what happens is that an older Muslim male transfers his immovable property, including his house, land, or business premises, to one or more sons through hiba[64]. He establishes control over the immovable property. The hiba becomes irrevocable[65]. On his death, he leaves behind him no immovable property to be divided according to faraid laws because he had earlier transferred everything outside of his estate through the hiba process[66]. His daughters thus inherit an imaginary mathematical proportion of nothing at all[67]. As a leading scholar on the property rights of Muslim women writes, "The discrepancy between the theory and practice of property rights is huge, especially for Muslim women lacking knowledge of their legal rights."[68]

B. Judicial Treatment: Formal Validity Upheld Without Substantive Scrutiny

In practice, litigation in Indian Courts usually centers on claims made by the daughters of the transferor alleging that the hiba made by the latter on behalf of the sons is invalid[69]. It is almost certain that all of the judicial scrutiny centers on the three requirements: Did he declare the gift? Did she accept the gift? Did he give the possession?[70]

In the case of Hafeeza Bibi v. Shaikh Farid, the hiba at issue was a deed executed in the year 1968 through which Shaik Dawood gave his properties to his son, Mohammed Yakub. The daughters of Shaik Dawood claimed their share in inheritance and stated that this hiba was not a validly completed transaction. This matter went to the Supreme Court, and after analyzing the deed carefully, the Court upheld it as being valid and fully completed because it satisfied the three requirements mentioned above.

The Court's reasoning, however, was entirely doctrinal, and appropriately so within its own

[62] Mulla Principles of Mahomedan Law §§ 138–152.
[63] See generally Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (1999).
[64] See Mulla Principles of Mahomedan Law.
[65] Abdul Rahim v. Sk. Abdul Zabar, (2009) 6 S.C.C. 160.
[66] See Asaf A. A. Fyzee, *Outlines of Muhammadan Law*.
[67] Id.
[68] Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (1999).
[69] See Gulam Abbas v. Haji Kayyum Ali, (1973) 1 S.C.C. 554.
[70] Hafeeza Bibi v. Shaikh Farid, (2011) 5 S.C.C. 654

logic. What stands out, though, is that the Court did not ask itself this question: was a transfer which gifted the whole estate to a son while denying the daughters an equal share, in any sense, one where the law must step in to validate the transaction[71]?

In Mahboob Sahab v. Syed Ismail, the Court decided that the purported hiba was not valid due to lack of proper evidence regarding possession of the donee[72]. While this decision was favourable to the plaintiffs contesting the gift, it was rooted in the same principle of formal validity. The gift was not invalid on account of being unjust; it was merely invalid due to inability to prove possession of the donee[73].

C. The Gender Dimension

This gender disparity in the use of strategic hiba is no coincidence[74]. Indeed, the All India Muslim Personal Law Board has recognised in its awareness campaign that, in actuality, daughters seldom receive their prescribed Quranic portions and that pre-decease transfer of property is one of the ways in which such inheritance deprivation takes place[75]. As BMMA's draft Muslim Family Law Act of 2017 pointed out, although the hiba in itself is not gendered from a doctrinal standpoint, its practice is gendered[76] It is predominantly sons who receive substantial lifetime gifts, whereas daughters, if they receive anything at all, receive only movable assets of little monetary value.[77] The reasons for this phenomenon are not hard to find.[78] Where a Muslim male wants to gift his sons something, he can accomplish this with a hiba transaction wherein he can give them his property instantaneously without having to compensate daughters equally.[79] However, if a Muslim male wants to increase his daughter's share beyond what is dictated by the faraid, then he would not be able to do this using a wasiyya because of the Hanafi prohibition on giving a bequest to heirs.[80]

[71] See generally Roscoe Pound, *The Spirit of the Common Law*
[72] Mahboob Sahab v. Syed Ismail, (1995) 3 S.C.C. 693.
[73] Id.
[74] See generally Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (1999).
[75] All India Muslim Personal Law Board (awareness materials on inheritance practices)
[76] Bharatiya Muslim Mahila Andolan, Draft Muslim Family Law Act (2017)
[77] Id.
[78] See Asaf A. A. Fyzee, *Outlines of Muhammadan Law*.
[79] Mulla Principles of Mahomedan Law.
[80] See Tahir Mahmood, *Principles of Muslim Law*.

V. THE JUDICIAL APPROACH: TECHNICAL VALIDITY VERSUS SUBSTANTIVE JUSTICE

A. The Doctrine of Fraud on Inheritance: A Comparative Gap

Legal systems that recognize inter vivos gifts include some provisions ensuring protection to potential heirs from the effects of gifts which render ineffective their inheritance entitlements[81]. In the English common law system, the donatio mortis causa doctrine provides special considerations regarding gifts given by dying persons[82] Generally, the fraudulent transfer law affords protection to creditors and sometimes heirs from the depletion of the deceased's estate prior to his death[83]. In the Hindu personal law system, the principle of testamentary freedom goes hand-in-hand with self-acquired property. Nonetheless, the equity and statutes provide safeguards against fraudulent transfers to heirs[84].

In the Muslim personal law framework, there is no similar concept of 'fraud on inheritance' which limits a Muslim individual's capacity to make a hiba in favor of male relatives in an excessive manner.[85] A possible analogy would be the marz-ul-maut doctrine which considers the gift received while the donor suffers from death sickness as testamentary and limited to one-third of the total estate with the need for heir consent on the remaining portion.[86] This doctrine, however, is applicable under the strict condition of the imminent death of the donor due to a disease.[87]

B. Critique of the Court's Approach

This reluctance on the part of the judiciary to look beyond the validity of form can be understood in the light of two firmly established doctrines: firstly, the respect for personal law autonomy as enshrined in State of Bombay v. Narasu Appa Mali[88] where the Bombay High Court ruled that personal laws cannot be called "laws" within the meaning of Article 13 of the constitution and thus cannot be judged according to fundamental rights; and secondly, the

[81] See Roscoe Pound, *The Spirit of the Common Law*.
[82] See Donatio Mortis Causa.
[83] See Fraudulent Transfer Law.
[84] See Hindu Succession Act, 1956.
[85] Mulla Principles of Mahomedan Law.
[86] Id.
[87] See Asaf A. A. Fyzee.
[88] State of Bombay v. Narasu Appa Mali.

doctrine of testamentary freedom which lies at the heart of the Muslim personal law.[89]

Both these principles are now being challenged. The Narasu Appa Mali doctrine has never been upheld by the Supreme Court and has been criticized by both academics and judges[90] The recent judgments in the context of triple talaq as well as in the ongoing litigation relating to the Shariat Application Act clearly indicate that the Supreme Court may be willing to examine personal law from the perspective of fundamental rights.[91]

The impending case of Poulomi Pavani Shukla v. Union of India23 raises this very issue in the Supreme Court.[92] Filing in 2025 and receiving notice on 16 April 2026 under a bench headed by Chief Justice Surya Kant, the petition contends that the statutory personal laws allowing Muslim women to inherit only half of what men do constitutes a violation of Articles 14 and 15 of the Constitution.[93] In fact, the bench itself observed that inheritance is an aspect of civil property and cannot be placed beyond constitutional review simply because it is an 'essential religious practice'.[94]

C. The Constitutional Dimension

Even if it is conceded that, in totality, the faraid system can rightly be considered an essential religious practice which cannot be interfered with by the judiciary, it becomes much more difficult to justify the same for the application of a hiba which seeks to render meaningless the inheritance rights secured through the faraid system.[95] The faraid system itself is a Quranic principle; an unlimited hiba which excludes the rights of daughters from inheriting is a legal principle derived from Islamic law,[96] and not directly commanded by the Quran. A court which sanctions such a hiba without any critical analysis, therefore, does not protect an essential religious practice, but grants legitimacy to a transaction which seeks to take away the rights of daughters guaranteed by the Quran.[97]

[89] See Tahir Mahmood.
[90] See Flavia Agnes.
[91] Shayara Bano v. Union of India.
[92] Poulomi Pavani Shukla v. Union of India.
[93] Id.
[94] Id.
[95] See Tahir Mahmood.
[96] The Quran.
[97] See Flavia Agnes.

VI. COMPARATIVE PERSPECTIVES: LIMITING GIFTS TO PROTECT FEMALE HEIRS

A. The Doctrine of Death-Sickness as a Partial Analogy

However, Islamic law did indeed have an exception to the unrestricted power of the donor to effectuate transfers that would circumvent inheritance rights in a case known as marz-ul-maut (gifts made during the time of death sickness).[98] A gift made by a Muslim who was suffering from a disease leading inevitably to death is to be considered testamentary in character and must fall under the restrictions of the rule regarding wasiyya.[99] This means that the gift must not exceed one-third of the donor's total wealth, and any gift above one-third must be approved by the heirs. In fact, the Privy Council and the Indian courts have always recognized this exception in their decisions.[100]

However, the problem here is that the application of the marz-ul-maut rule is limited to cases where the donor is near death because of an illness that he or she knows will ultimately cause him or her to die. Clearly, this is very different from the situation where the donor is still healthy but aware that his or her daughters will inherit his entire estate in case of intestacy.[101]

B. Tunisia and the Proposed Reform of Inheritance Equality

It is noteworthy that Tunisia, which is often perceived as the most liberal country among Arab-Muslim states when it comes to personal status law, presented a bill in 2018 that aimed at bringing parity in inheritance distribution between men and women.[102] Importantly, the Supreme Religious Body of Tunisia, known as the Diwan al-Ifta, approved the proposed bill on the grounds that it is aligned with the teachings of the Hanafi Sunni school of thought.[103]

C. Morocco, Algeria, and Compulsory Succession Rights

In a comparative study undertaken in 2021 on inheritance laws of Tunisia, Morocco, and Algeria by the International Federation for Human Rights, it was discovered that the three states

[98] Mulla Principles of Mahomedan Law.
[99] Id.
[100] See Privy Council.
[101] See Asaf A. A. Fyzee.
[102] Tunisia legislative reform proposal (2018).
[103] Diwan al-Ifta.

are faced with the challenge of inter vivos transfers being used to evade the inheritance rights of female inheritors.[104] In Algeria and Morocco, there is an equity doctrine used by the courts that allows for a scrutiny of transactions that take place with the objective of undermining the inheritance rights of females.[105] In Morocco, there is an additional provision in the Moudawwana (Family Code of 2004) which provides procedures for family transactions.[106]

D. Iran: Equalising Lifetime Gifts

A good example of such a system is Iran. Parents in Iran can opt for a contractual device called solh-e omra to make inter vivos transfers of property to both sons and daughters, ensuring that there is a de facto equality of wealth between both sons and daughters even though faraid operates post mortem.[107] Similarly, in BMMA's proposed Draft Muslim Family Law Act 2017, it is suggested that parents should give equivalent hiba to their daughters along with their sons as required by the Hadith rule that enjoins equal treatment of children.[108]

VII. PROPOSED REFORMS: TOWARD A GENDER-JUST FRAMEWORK

A. Legislative Reform: A Rebuttable Presumption of Fraud on Inheritance

A legislative response with high targeting would involve introducing a statutory rebuttable presumption that a hiba of either the entire estate or a disproportionately large portion thereof made during the course of five years preceding the donor's death would be regarded as an attempt at defrauding the inheritance rights of the female heirs to the property. The presumption would not result in automatic voidance of the hiba[109] However, the donee would be able to rebut it, by proving that the hiba was done for reasons other than those pertaining to defeating the female heirs' inheritance rights or by showing that the heirs have already been given a property of equal value by another means.[110]

B. Judicial Intervention: Heightened Scrutiny

In the absence of any reform in legislation, there is room in the courts to formulate a stricter

[104] International Federation for Human Rights (2021 study).
[105] Id.
[106] Moudawwana
[107] Iran practice of *solh-e omra*
[108] Bharatiya Muslim Mahila Andolan (2017 Draft Act).
[109] See Roscoe Pound.
[110] Id.

test for assessing whether a hiba that disposes of a property with the effect of disinheriting a daughter can be enforced.[111] Since a greater judicial examination is expected from transactions involving gifts made by pardanashin women, which are considered vulnerable parties, it is evident that the concept of hiba is susceptible to equitable exceptions.[112] In the event that the court is required to examine a case where a Muslim male gives away all his estate to his sons prior to his death through a hiba and leaves his daughters with nothing, the issue of whether the essential elements were fulfilled must go hand in hand with whether the transaction sought to defeat the faraid distribution system.[113]

C. Constitutional Challenge to the Shariat Application Act

Pending petition Shukla is the one with the maximum constitutional scope: if the Supreme Court declares that Shariat Application Act, in its role of enforcement of inequality in the distribution of inheritance, contravenes Articles 14 and 15 of the Constitution,[114] then the fundamental legislation on the basis of which there is such judicial action in favor of unequal inheritance distribution will be abolished. Already, the passage of the Uniform Civil Code for Muslims, granting them equality in their inheritance rights, is seen by petitioners as creating a 'geographical classification' of gender discrimination.[115]

D. Community-Led Initiatives and Legal Literacy

While reforms in legislature and the judiciary may be essential, they cannot succeed unless there are changes in the socio-cultural environment as well. The Draft Muslim Family Law Act proposed by the Bangladesh Muslim Majlis Alumma (BMMA), the efforts of the Forum for Muslim Women's Gender Justice in Kerala, and other similar efforts made by organizations like NISA constitute some of the most significant examples of community-initiated approaches to reforming laws and practices regarding inheritance for Muslim women.[116] An essential aspect of these reforms involves empowering Muslim women through legal literacy so that they can take action against any strategic hiba before they can be taken advantage of. It should be noted that the All India Muslim Personal Law Board already recognizes the fact that many

[111] See Gulam Abbas v. Haji Kayyum Ali.
[112] Id.
[113] See Flavia Agnes.
[114] Poulomi Pavani Shukla v. Union of India.
[115] Id.
[116] Bharatiya Muslim Mahila Andolan; NISA.

daughters do not get their Quranic shares.[117]

VIII. CONCLUSION

There is nothing intrinsically wrong with the concept of hiba, as such.[118] The concept has been a valid one in Islamic law for fourteen hundred years and will remain so.[119] What is wrong is the doctrinal vacuum that renders hiba a tool by which the rightful share of daughters in the inheritance can be divested of them in strict compliance with the law.[120] Through their rigid focus on the mere technicalities of declaration, acceptance, and delivery of possession, the courts in India have become agents through which patriarchal disinheritance takes on the legitimacy of law.[121]

The faraid scheme and the doctrine of hiba are not mutually inconsistent in themselves; a Muslim father desirous of equalizing the inheritance between sons and daughters could resort to hiba to endow the daughters with an inheritance greater than the Quranic minimum.[122] Tragic as it is, this same device of hiba – unlimited as to quantity, and unsusceptible to scrutiny after death is being employed almost exclusively in the other direction, that is, to disinherit the daughters of an inheritance to which they have a right under the Quran.[123]

These three measures, each powerful in its own right, are proposed herein: a statutory presumption of fraud upon inheritance for whole-estate hiba made within a specific period preceding death[124] enhanced judicial review of any hiba whose principal consequence is the frustration of claims[125] to inherit by daughters and a constitutional review of the legality of gender-biased personal laws in light of Articles 14 and 15 of the Constitution, currently pending before the Supreme Court.[126] None of these measures necessitates abandoning Muslim personal law; it entails interpreting it in accordance with the protective purpose of the Quran itself.[127]

---

[117] All India Muslim Personal Law Board.
[118] Mulla Principles of Mahomedan Law §§ 138–152.
[119] See Asaf A. A. Fyzee, *Outlines of Muhammadan Law*.
[120] See generally Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (1999).
[121] Hafeeza Bibi v. Shaikh Farid, (2011) 5 S.C.C. 654.
[122] See Tahir Mahmood, *Principles of Muslim Law*.
[123] See generally Flavia Agnes.
[124] See Roscoe Pound, *The Spirit of the Common Law*.
[125] See Gulam Abbas v. Haji Kayyum Ali, (1973) 1 S.C.C. 554.
[126] Poulomi Pavani Shukla v. Union of India; Constitution of India arts. 14, 15.
[127] The Quran, Surah An-Nisa 4:11–12.

The Quranic passage which ordained that daughters should inherit commenced with an exhortation from God Allah instructs you.[128] The judiciary of India is not the bearer of divine edicts, but it is the instrument of constitutional jurisprudence.[129] The time has come for Indian law to reconcile the difference between the instructions of the Quran and the rulings of its courts.[130]

[128] Id.
[129] Constitution of India art. 14.
[130] See Flavia Agnes.

BIBLIOGRAPHY

I. Primary Sources

A. Cases

- Dharmrao Sharanappa Shabadi v. Syeda Arifa Parveen, Civil Appeal No. 11218 of 2025 (S.C. Oct. 7, 2025).
- Hafeeza Bibi v. Shaikh Farid, (2011) 5 S.C.C. 654; A.I.R. 2011 S.C. 1695.
- Mahboob Sahab v. Syed Ismail, (1995) 3 S.C.C. 693; A.I.R. 1995 S.C. 1205.
- Mohammad Abdul Ghani v. Fakhr Jahan Begam, (1922) 49 I.A. 195 (P.C.).
- Mt. Hussaina Bai v. Mt. Zohra Bai, A.I.R. 1960 M.P. 315.
- Poulomi Pavani Shukla v. Union of India, Diary No. 67256/2025 (S.C., notice issued Apr. 16, 2026).
- Shaik Nurbi v. Pathan Mastanbi, A.I.R. 1974 A.P. 106.
- State of Bombay v. Narasu Appa Mali, A.I.R. 1952 Bom. 84.

B. Statutes

- Constitution of India arts. 14, 15, 21, 25, 44.
- Muslim Personal Law (Shariat) Application Act, 1937, Act No. 26 of 1937.
- Transfer of Property Act, 1882 §§ 123, 129.

C. Religious Texts

- The Quran, Surah An-Nisa 4:11–12, 4:176.
- Bulugh al-Maram, bk. 7, ḥadīth 928.

II. Secondary Sources

A. Books

- Syed Ameer Ali, *Mahommedan Law*, vol. 1 (Kitab Bhavan 2004).
- D. F. Mulla, *Principles of Mahomedan Law* (20th ed., LexisNexis 2013).

B. Journal Articles & Reports

- Bharatiya Muslim Mahila Andolan, *Draft Muslim Family Law Act* (2017).
- International Federation for Human Rights, *Legal Barriers to Gender Equality in Inheritance* (Dec. 2021), https://www.fidh.org.
- *Muslim Women's Property Rights in Contemporary India*, IJCRT (2025), https://ijcrt.org/papers/IJCRT2507267.pdf.
- *Rights of Muslim Women in Ancestral Property: Legal Challenges and Reforms*, IJRASET (2024).
- *Towards a Muslim Family Law Act? Debating Muslim Women's Rights and the Codification of Personal Laws in India*, 39(4) J. Muslim Minority Affs. (2019).

C. Newspaper & Online Sources

- *Equal Inheritance Rights for Muslim Women: Upholding Constitutional Justice and Gender Equality*, Countercurrents (Mar. 17, 2026).
- *Injustice in Inheritance: Muslim Women's Struggle for Property Rights Under Sharia Law*, Outlook India (Jan. 18, 2024).
- *Supreme Court Examines Challenge to Shariat Inheritance Law*, Business Upturn (Apr. 16, 2026).
- *Supreme Court Seeks Union's Response on Plea Challenging Muslim Inheritance Law*, LiveLaw (Apr. 16, 2026).
- *Why Muslim Women Are Demanding Equality in Inheritance Rights*, The News Minute (Mar. 31, 2023).
- Max Planck Institute for Comparative and International Private Law, *From Generation to Generation* (Nov. 23, 2021), https://www.mpipriv.de.