



Preferential Gifts in Islamic Law: A Critical Analysis of *Hiba Tafzili* and Its Impact on Women's Right to Inheritance in Pakistan

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This research paper critically evaluates the notion of *Hiba Tafzili*, or preferential gift, in the domain of Islamic law and its consequences on women's right to inheritance within the domain of Pakistani law. It explores the basic Islamic values like fairness, justice, etc., together with the respect of rights of men and women versed particularly in inheritance. While this is the teaching of Islam, the general view is that *Hiba Tafzili* is used as a tool for the alienation of women from their ancestral properties and that it really is a notion and practice that promotes economic injustice. The paper discourses exactly on the concepts and categories of *Hiba* with divergent views of many jurists regarding the meaning of *Hiba* on behalf of one heir rather than the others. The pertinent case laws from both Pakistan courts, which exhibit the dichotomy in judicial interpretation voicing validations regarding the preferential gifts on one side, and nullification on the other, underscore the tension between legal permissibility and moral considerations. It appeals for a new legal position about *Hiba Tafzili* within Pakistan, which in turn would serve the interest of women and equitable distribution of property requirements based on the spirit of Islamic law, as well as recommend changes consistent with fairer interpretations of Islamic law than those that currently exist.

Keywords: Preferential Gifts, *Hiba Tafzili*, Women's Right to Inheritance, Legal System of Pakistan



Introduction and Significance:

In Islamic law, the concept of gifting, or "*Hiba*," is firmly embedded in the values of generosity and kindness. This act of giving is regarded as a virtuous deed that enhances communal ties, fortifies relationships, and promotes goodwill. "*Hiba*" means to offer a benefit to someone without expecting anything in return.¹ In technical terms, Hanafi and Shafi'i scholars describe "*Hiba*" as a voluntary agreement that facilitates the transfer of ownership without compensation between two living parties. The Hanbali scholars add further specificity, defining *Hiba* as a contract where an eligible donor transfers ownership of an existing, deliverable asset to another person without compensation, specifying the transfer as a gift or similar. These assets can vary in nature but must be conventionally suitable for gifting.² However, Shia scholars provide perhaps the clearest definition: they describe *Hiba* as an act that instantly and unconditionally transfers property ownership to another person, without any exchange or religious motivation on the part of the donor.³ Exchanging one item for another, often in the form of a sale, is commonly associated with monetary compensation for work, known as a wage or salary. When something is given purely to seek Allah's pleasure, it is considered charity, or *ṣadaqah*. In contrast, the transfer of property without any form of compensation is referred to as *hibah*.⁴

Hiba, in its purest form known as absolute *Hiba*, is the transfer of property by the owner to another person without any form of consideration, similar to a "gift" in English law. The second type, *Hiba-bil-Iwaz*, combines the terms '*Hiba*' (gift) and '*Iwaz*' (consideration) and refers to a gift given in exchange for something already received. This involves two reciprocal gifts between the parties: one from the donor to the recipient,

¹ Zafar Iqbal Kalanauri, Hibah (Gift) in Pakistan in the Light of Shari'a Accessed October 20, 2024. <https://zafarkalanauri.com/wp-content/uploads/2020/05/HIBAH-GIFT-IN-PAKISTAN-IN-THE-LIGHT-OF-SHARIAH-1-1.pdf>.

² Dr. Wahbah Al-Zuhayl, *Financial Transactions in Islamic Jurisprudence*, Translated by Mahmoud A. El-Gamal, Ph.D. Revised by Muhammad S. Eissa, Ph.D. (Damascus: Dar Al-Fikr, 2001), Page 539 Vol. 1, Accessed October 31, 2024. <https://ia601202.us.archive.org/26/items/FinancialTransactionsInIslamicJurisprudenceVolume1/Financial%20Transactions%20in%20Islamic%20Jurisprudence%20Volume%201.pdf>

³ Syed Ameer Ali, *The Law Relating to Gifts, Trusts, and Testamentary Dispositions Among the Mahommedans* (Calcutta: Thacker, Spink, 1885), Page 46. Accessed October 30, 2024. <https://archive.org/details/lawrelatingtogifts00ali/page/46>

⁴ Waheedulla Hussaini Quādrī Multānī, Dr. S. S. *A Brief Study on Islamic Law of Gift (Hibah)*. Accessed October 25, 2024. https://www.academia.edu/38883836/A_Brief_Study_on_Islamic_Law_of_Gift_Hibah.

and another from the recipient back to the donor. These gifts are separate transactions, and only when both the gift and the return gift (*iwaz*) are completed does the transaction qualify as *Hiba-bil-Iwaz*.⁵ For instance, if A gifts a car to B, and subsequently, B gifts a house to A, the situation can be seen as *Hiba-bil-Iwaz*. If B claims that the house was given to him by A in return for the car, then both gifts become irrevocable transactions. This means that once the gifts are exchanged, neither party can retract their gift, solidifying the mutual agreements made. The third type is known as *Hiba-bi-Sharth-i-Iwaz*, where "*Shart*" translates to "stipulation." This refers to a gift made with a condition for a future return. In this arrangement, a gift is given with the expectation that some consideration will be received at a later date. Unlike *Hiba-bil-Iwaz*, where the consideration is exchanged immediately, the payment here is deferred. Because the consideration is not paid up front, the delivery of possession of the gifted item is essential to ensure the transaction's validity.⁶ *Mushaa*, or *Hiba bil Mushaa*, derives from the Arabic term meaning confusion and refers to an undivided share in property. In the context of Muslim law, *Mushaa* signifies a share that is not partitioned. The validity of gifting an undivided share in an indivisible property is accepted across all schools of thought. However, there is a lack of consensus regarding the gifting of undivided shares in divisible property. According to Shafi'i and Ithna Asharia laws, such a gift is deemed valid if the donor relinquishes their control over the property in favor of the recipient. In contrast, Hanafi law considers this type of gift invalid unless the property is physically separated and delivered to the donee.⁷ Here it is pertinent to distinguish between *hiba* and *sadaqa*. *Sadaqa* refers to a religious act of giving aimed at pleasing Almighty God. Any gift given with a religious intention is classified as *sadaqa*. Once a *sadaqa* is transferred, it becomes irrevocable. To ensure its validity, three essential conditions must be met: declaration, acceptance, and delivery of possession. However, it is important to note that express acceptance is not a necessary requirement for *sadaqah* to be

⁵ Fazal Khaliq, Aziz Ahmad, The Gift of Usufruct in Favor of Wife, *Article 4, Vol. 1, No. 3*. Accessed October 28, 2024.

<https://www.iiu.edu.pk/wp-content/uploads/downloads/journals/ilr/volume1/num-3/Article-4-Vol-1-No-3-140119.pdf>.

⁶ Tanzeel ur Rehman, *Majmoain Qawaneen e Islami* (Islamabad: Islamic Research Institute, International Islamic University, 2021), 954 Vol. 4.

⁷ Tabrez Ahmad, Comparative Study of Gift under Islamic Law and Transfer of Property Law: Indian Perspective, *Electronic Copy*. Accessed October 28, 2024. <https://ssrn.com/abstract=1471926>.

considered valid.⁸ Similarly the concept of *Areyat* is distinct from a transfer of ownership; it constitutes a temporary license that allows the recipient to enjoy the benefits of a property as long as the grantor permits. Upon the donee's death, the property reverts to the donor. This arrangement involves granting possession of an item to another person temporarily and without any form of compensation. During this period of lending, there is a change in possession, but ownership remains with the original owner.⁹

The Notion of 'Preferential Gift'

Hiba as discussed is an Arabic term which means gift "Transferring ownership of a property during one's lifetime without compensation"¹⁰ and *Tafzili* is also Arabic term which means preference.¹¹ "*Hiba Tafzili*" is that type of "*Hiba*" (gift) that someone gives to one or more of their heirs, preferring them over others, by giving them more than their fair share of the inheritance, or by giving one heir more than the others, resulting in an unfair distribution.¹² The term "*Hiba Tafzili*", not known in the classical *fiqh*, specifically refers to a type of gift that favors one heir over others, typically intended to address a particular need or provide additional support. This practice must adhere to the broader principles of fairness and justice outlined in Islamic inheritance laws, ensuring that all heirs receive their due shares while allowing for preferential gifts. The term "preferential gift" implies that the gift is given to favor certain individuals over others for a specific motive. One aim of such a gift may be to deprive someone of what they would receive under Islamic inheritance law if the gift had not been made. For example, if Mr. X has one son and one daughter, his son would inherit two-thirds of his estate, while his daughter would receive one-third upon his death. If Mr. X wishes to alter this distribution to give more property to his son, he can gift that property to his son during his lifetime. This practice essentially serves as a means to circumvent the sharia distribution of property dictated by inheritance laws. In practice, these preferential

⁸ Wizarah al-Awqaf wa al-Shuun al-Islamiyyah. *Al-Mawsu'ah al-Fiqhiyyah* (Kuwait: Dar al-Safwa Printing, Publishing, and Distribution, 1st ed. 1998), 323 Vol. 26.

⁹ Munir Ahmad Mughal, Islamic Concept of Lending (Al-'Ariyah/العارية), SSRN, April 3, 2012. <https://ssrn.com/abstract=2034056> or <http://dx.doi.org/10.2139/ssrn.2034056>.

¹⁰ Abu Zakariya Muhyi al-Din Yahya ibn Sharaf al-Nawawi, *Minhaj al-Talibin* (Damascus: Dar al-Fikr), 171.

¹¹ Hans Wehr, *A Dictionary of Modern Written Arabic*, (Spoken Language Services, 4th ed. 1994) 820.

¹² Rehman, Tanzeel ur. *Majmoain Qawaneen e Islami*, 954 Vol. 4.

gifts are often made to sons, frequently resulting in daughters being excluded from receiving their rightful shares of their parents' estate.¹³

Islamic law has emphasized the philosophy of justice and fairness, rejecting any unjust coercion, oppression, and injustice in unequivocal terms. Islam has advocated for the rights of both men and women, ensuring that everyone receives their due rights. Just as Islam has taken various measures to secure men's economic well-being, it has also issued numerous guidelines regarding women's economic protection. Particularly, Islam's teachings on women's rights are explicit and unwavering. Islam has provided women with exemplary rights that no civilization or religion has been able to match so far.¹⁴ However, unfortunately, this segment of society remains deprived due to various factors in our community. Among these, women are also deprived of their inheritance rights. Many people give away all their wealth and property to their sons, depriving their daughters through gifts known as Hiba Tafzili. If someone tries to resist such actions during their lifetime, the issue can still arise after death. In such cases, brothers may take over their sisters' rightful share by using a fake or counterfeit gift deed.

In Pakistan, according to the 2017-2018 Demographic and Health Survey, 97% of women do not inherit land or property, highlighting the worrying tendency of giving boys priority over daughters when it comes to inheritance.¹⁵ This problem is highlighted by research by PhD student Ambrin Bibi, which reveals that 86% of family heads forbid women from receiving mobile property and a startling 91% forbid them from keeping control of such assets. According to the Awaz Foundation Pakistan, 70% of women do not claim their inheritance because they are afraid of societal rejection, which feeds the cycle of disenfranchisement. Over 90% of women in Khyber Pakh-

¹³ M. E. Haque, Gender Bias 'Preferential Gift' is Illegal: New Interpretation, *Dhaka University Law Journal* 25, no. 1 (2014): art. 2. *The Dhaka University Studies Part-F*.

¹⁴ Inam Ullah, *Depriving Daughters of Inheritance Rights through Hiba: A Shariah Perspective* (کے ذریعے بیٹیوں کو جائیداد سے محروم کرنے کا شرعی جائزہ) (Islamabad: Ijtihad Council of Islamic Ideology, 15th ed. 2022–2023), 57.

¹⁵ Transparency International, Pakistan: Empowering Women through Access to Justice." Last modified July 25, 2023. Accessed November 24, 2024. <https://www.transparency.org/en/blog/women-rights-corruption-pakistan-transparen-cy#:~:text=This%20is%20evident%20in%20the,during%20the%20COVID%2D19%20pandemic>.

tunkhwa (KP) are denied the right to inherit, according to senior lawyer Saifullah Kakhel.¹⁶ This situation is made worse by documented cases from the KP Revenue Department's service delivery center in Shangla, where only two daughters were included out of 30 instances of *tamleek* (the gifting of property to legal heirs), demonstrating a systemic bias that needs to be addressed. Furthermore, lawyer Khan Bahadur estimates that approximately 80% of inheritance disputes are settled informally, with women typically hesitant to take legal action in order to preserve familial bonds and avoid cultural disgrace. Daughters are typically excluded from land transfers through *tamleek* because dads sometimes opt to leave property only to boys, based on the erroneous notion that daughters will transfer their fortune to another family through marriage. Surprisingly, 52.6% of brothers force their sisters to sign inheritance forms under duress, while 50% of women are pushed into obtaining power of attorney, and nearly half of the cases involve fake documentation. This alarming story is further supported by Iram Rubab's PhD thesis on women's inheritance rights in Punjab, which shows that while 48% of women do inherit, control over this property is still elusive, 22% of women are flatly denied their shares, and 30% of women give up their inheritance.¹⁷ Just 10% of people who inherit retain complete control, 60% have no control at all, and 30% have just partial control. Since it is essentially at odds with the fairness and justice ideals that ought to guide inheritance laws, this disparity in the allocation of property needs to be aggressively contested and altered. A fairer structure that acknowledges and protects daughters' rights is necessary to guarantee that they receive their just share without fear or discrimination.¹⁸

¹⁶ Kamran Ali, Khyber-Pakhtunkhwa: 90% of Women Deprived of Inheritance, *Aaj News*, September 23, 2023. Accessed November 24, 2024. <https://english.aaj.tv/news/30334707/khyber-pakhtunkhwa-90-of-women-deprived-of-inheritance>.

Munazza Hameed, The Women Inheritance Paradox in Pakistan: Faith vs Family, *Modern Diplomacy*, September 20, 2024. Accessed November 24, 2024. <https://moderndiplomacy.eu/2024/09/20/the-women-inheritance-paradox-in-pakistan-faith-vs-family/>.

¹⁷ Umar Bacha, "Passing Inheritance Down through Men Is an Old Practice. Though the Law Ensures Women's Right to Inherit, Old Habits Die Hard." *Dawn*, March 5, 2022. Accessed November 24, 2024. <https://www.dawn.com/news/1678231>.

¹⁸ Iram Rubab, *Women's Right of Inheritance: Practices and Challenges in Punjab*. PhD diss., Department of Gender Studies, University of the Punjab, Lahore, 2019. Accessed November 24, 2024.

One of the methods that is used to deprive women from their due rights in property is through preferential gift. This preferential gifting of property to sons must be addressed to ensure equitable distribution and uphold the rights of daughters in Pakistan. Therefore, it is essential to consider the legal and religious aspects of these gifts.

Is “Preferential Gift” valid in Islamic Law?

The issue of legitimacy of ‘preferential gift’ in Islamic law revolves around the following traditions narrated from the Holy Prophet (SAW). An-Nu'man ibn Bashir (RA) narrated that the Holy Prophet (ﷺ) said: “Be just among your children, be just among your children”.¹⁹ In another report it is narrated from an-Nu‘man bin Bashir that his father took him to Allah’s Messenger (SAW) and said, “I have given this son of mine a slave.” The Prophet (SAW) asked, “Have you given all your sons the like?” He replied in the negative. The Prophet (SAW) said, “Take back your gift then.”²⁰ In the words of another report it is narrated that Nu‘man bin Bashir on the pulpit saying, “My father gave me a gift but ‘Amra bint Rawaha (my mother) said that she would not agree to it unless he made Allah’s Messenger (SAW) as a witness to it. So, my father went to Allah’s Messenger (SAW) and said, ‘I have given a gift to my son from ‘Amra bint Rawaha, but she ordered me to make you as a witness to it, O Allah’s Messenger!’ Allah’s Messenger (SAW) asked, ‘Have you given (the like of it) to everyone of your sons?’ He replied in the negative. Allah’s Messenger (SAW) said, ‘Be afraid of Allah, and be just to your children.’ My father then returned and took back his gift.”²¹ These *ahadith* regarding the permissibility or impermissibility of preferential gifts (*Hibah*) have been used as evidence by both sides of the argument. Those who support the per-

<https://pr.hec.gov.pk/jspui/bitstream/123456789/12160/1/Iram%20rubab%20gender%20studies%202019%20uop%20lhr%20pr.pdf>.

¹⁹ Abu Dawud, Sulaiman bin Ash‘ath, *Sunan Abu Dawud*, "The Book of Employment." Translated by Nasiruddin al-Khattab. Final review by Abu Khaliyl. Edited and referenced by Hafiz Abd Tahir Zubair ‘Ali Za’i. (Riyadh: Darussalam, July First edition: 2008), 159 Vol. 4, Hadith no. 3544.

²⁰ Muhammad ibn Isma‘il Al-Bukhari, *The Translation of the Meanings of Sahih Al-Bukhari*, "The Book of Gifts." Translated by Dr. Muhammad Muhsin Khan (Riyadh: Darussalam, July 1997, 438, Vol. 3, Hadith no. 2586.

²¹ Muhammad ibn Isma‘il Al-Bukhari, *The Translation of the Meanings of Sahih Al-Bukhari*, , "The Book of Gifts." Translated by Dr. Muhammad Muhsin Khan 438, Vol. 3, Hadith no. 2586.

missibility of preferential gifts and those who reject it as invalid both try to prove their point using this narration.²²

Different schools of thought, including Hanafi, Maliki, Shafi'i, and Shia, have varying opinions on this matter. According to some scholars, a Muslim man or woman has the right to give their wealth or property to anyone they choose, at any time, as long as they are of sound mind and body. While according to other scholars it is not permissible to give preferential treatment to one child over others, as it is considered unfair and unjust. However, if a person gives a gift to stranger or no blood relation, preferring stranger over his children, it is legally valid, but considered undesirable and sinful.²³

Scholars who support the permissibility of preferential gifts include Imam Thawri, Saad, Qasim bin Abdul Rahman, Muhammad bin Munkadir, Imam Abu Hanifa, Imam Abu Yusuf, Imam Muhammad ibn Hasan al-Shaybani, and Imam Shafi'i. They argue that if a person, in a state of good health and sound mind, gives a gift to one of their children, preferring them over others, it is legally valid, even if it is considered unfair. They believe that the hadith relating to this are advisory in nature, rather than binding legal rulings.²⁴ Scholars who reject preferential gifts as invalid include Hazrat Ta'us, Ata bin Abi Rabah, Mujahid, 'Urwah, Ibn Juraij, Nakh'i, Sha'bi, Ibn Shabrumah, and Imam Ahmad bin Hanbal (in one narration). They argue that such gifts are unfair and unjust, and therefore, cannot be legally valid. They believe that preferential gifts are null and void, and go against the principles of justice.²⁵

Imam Kasani's "*Bada'i al-Sana'i*" advocates for equality among children, arguing that giving preference to one over others leads to hatred and envy.²⁶ However, if a father gives a gift to one child, depriving others, it is legally valid but not just and fair. Imam Muhammad and Imam Abu Yusuf disagree, stating that gifts intended to harm other children are invalid.²⁷ Imam Sha'rani Shafi'i agrees, but Imam Muhammad ibn Hasan

²² Ibn Hajar al-'Asqalani. *Fath al-Bari bi Sharh Sahih al-Bukhari* (Egypt: Dar Taiba for Publishing and Distribution, 1st ed. 1426 AH/2005 AD), 436 Vol. 6.

²³ M. E. Haque, "Gender Bias 'Preferential Gift' is Illegal: New Interpretation." *Dhaka University Law Journal* 25, no. 1 (2014): art. 2. *The Dhaka University Studies Part-F*. ; Tanzeel ur Rehman. *Majmoain Qawaneen e Islami*, 963-964 Vol. 4.

²⁴ Tanzeel ur Rehman. *Majmoain Qawaneen e Islami*, 963, Vol. 4.

²⁵ Tanzeel ur Rehman. *Majmoain Qawaneen e Islami*, 963, Vol. 4.

²⁶ Imam Kasani, *Bada'i al-Sana'i* (Beirut, Lebanon: Dar al-Kutub al-Ilmiyya, 2nd ed. 1424 AH / 2003 AD), 115, Vol. 8.

²⁷ Ibn Hajar al-'Asqalani. *Fath al-Bari*, Kitab al-Hibaat (Riyadh: Dar Taiba, 1st ed. 1426 AH / 2005 AD), 436, Vol. 6.

al-Shaybani believes a father can give preferential gift among his children.²⁸ Imam Malik believes that preferential gifts are valid, but giving the whole wealth to one heir and depriving others is not permissible.²⁹

Imam Shafi'i discusses the Hadith of Numan bin Bashir in his book "*Mukhtasar al-Muzani*." He believes that it is good manners to avoid giving preference to one child over others, as it can create a negative impact on their actions. Giving gifts to some children is permissible, as the Prophet (peace be upon him) would not have commanded revocation. A father has the right to revoke a gift given to their child, as seen in Hazrat Abu Bakr's gift to his daughter Hazrat Aisha.³⁰ In "*Al-Muhadhab*," Imam Shafi'i argues that giving preference can create a negative impact on one's family.³¹

The Hanbali's opinion in "*Al-Muharrar fi al-Fiqh*," is that, equality is obligatory in gifts to children and relatives based on their inheritance shares.³² In "*Al-Iqna*," it is obligatory for parents and relatives to maintain equality in gifts, but not necessary in small matters like food or clothing.³³

In the famous Shi'i book "*Shara'i al-Islam*", it is written that giving gifts to relatives is recommended, especially to children and parents. Similarly, dividing gifts equally among children is also recommended, whether they are boys or girls, or of different ages. However, it is permissible to give preference to one child over others in dividing wealth, although it is disliked (*makruh*).³⁴ According to Sheikh Ibn Hazm al-Zahiri, if someone gives a gift or charity that gives preference to one child over others, it is prohibited and invalid. If such a gift is made, the ruler (hakim) will declare it invalid and divide it equally among the children according to the correct procedure.³⁵

²⁸ Al-Sha'rānī, *Mizān al-Kubrā* (Egypt: Dar al-Taḳwa, 1st ed. 1443 AH / 2022 AD), 95, Vol. 3.

²⁹ Ibn Rushd, *Bidayat al-Mujtahid*, Kitāb al-Hibat (Cairo: Maktaba Ibn Taymiyya, 1st ed. 1415 AH), 160, Vol. 4.

³⁰ Imam Kasani, *Bada'i' al-Sana'i'*. (Beirut, Lebanon: Dar al-Kutub al-Ilmiyya, 2nd ed. 1424 AH / 2003 AD), 92, Vol. 8.

³¹ Ibrahim bin 'Ali bin Yusuf Ferozabadi, *Al-Muhazzab* (Beirut: Dar al-Kutub al-Ilmiyya, 1995, 333, Vol. 2.

³² Majd ad-Din Ibn Taymiyyah, *Al-Muharrar fi al-Fiqh* Bab al-Hiba (Beirut: Dar al-Kutub al-Arabi), 374, Vol. 1.

³³ Sharf al-Din Al-Muqaddasi, *Al-Iqna*, *Kitāb al-Waqf*, *Bab al-Hiba wa al-'Atiya* (Beirut: Dar al-Ma'rifa), 34–35, Vol. 3.

³⁴ Najm ad-Din Abi Ja'far Al-Hilli, *Sharā'i al-Islam* (Beirut: Dar al-Kari, 11th ed. 2004), 472, Vol. 1.

³⁵ Ibn Hazm. *Al-Mahalla*, Kitāb al-Hibat, (Beirut: Dar Ibn Hazm, 1st ed. 2016), 177, Vol. 11.

To sum up the debate on the legitimacy of preferential gifts in Islamic law is divided among scholars. Some, from Hanafi, Maliki, and Shafi'i schools, believe parents can legally give preferential gifts to one child, despite ethical concerns. Others, from Hanbali and Shi'i traditions, argue that such treatment is unjust and invalidates gifts. The debate highlights the tension between legal permissibility and moral considerations for familial equity.

Preferential Gift in Pakistani Law and Jurisprudence

The term "Gift" as it is used in Islamic personal law, in order to carry out a comparative analysis, it is required to have a grasp of the original and formal meaning of 'Gift' as it is used in the Transfer of Property Act. The substance of what 'Gift' is gets defined in Section 122 of the Transfer of Property Act of 1882, which also lays out the procedural stipulation that must exist in order to make a legitimate gift.

*"Gift is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee."*³⁶

According to the language of Section 122 of the Act on the Transfer of Property, the act of giving must be done voluntarily and without any payment being exchanged for the gift. Under the act's definition of "Gift," both movable and immovable property is considered as gifts. Another crucial point to remember is that Muslims are subject to the principles of Hiba rather than the Transfer of Property Act. This argument has been recognized in the case of *Babu Lal v. Ghansham Das*³⁷, where the court decided that transfer of gift from one Muslim to another is to be controlled by the Islamic Law recognized as Hiba.

Following that judgment, the legislation was amended to yield a textual and statutory basis to this assertion.

*"... nothing in this chapter shall be deemed to affect any rule of Mohammadan Law."*³⁸

In case of *Abid Hussain v. Muhammad Yusuf*³⁹ the Supreme Court of Pakistan states that:

³⁶ Section 122 of the Transfer of Property Act, 1872.

³⁷ (1922)ILR44ALL633 available at [142 Babu Lal v. Ghansham Das and another \(633-634\).pdf](#)

³⁸ Section 129 of the Transfer of Property Act, 1872.

“The Transfer of Property Act, 1882, has no application to the hiba/gift envisioned and encapsulated under the Muslim Law and for this reason, Section 123 and 129 of the Transfer of Property Act can neither surpass nor outweigh or preponderate the matters of oral gifts contemplated under the Muslim Law for which a registered instrument or indenture is not mandatory.”

Pakistani Jurisprudence on Preferential Gifts:

The superior courts have issued conflicting decisions in this regard. These verdicts can be classified into two schools of thought. The first declares that the preferential gift is valid, but the second declares it to be void and without legal effect.

1) Pakistani Jurisprudence in Favour of Preferential Gifts:

The first group of case laws that reinforce the validity of preferential gifts. Such gifts are lawful if they meet essential formal standards, most notably clarity of the donor's intent and sufficient documentation, without requiring equitable distribution among heirs. In these judgements, the courts place a high burden of proof on people opposing gifts, requiring evidence of fraud or coercion.

In case titled *Siraj Din v Mst Jamilan*, the concept of preferential gifts in Muslim law was a key issue, where differences in interpretations among Muslim scholars were acknowledged. The Supreme Court of Pakistan in *Noor Muhammad Khan v. Habibullah Khan* addressed the issue of whether preferential gifts under Muslim law are legally permissible, particularly when they favor a single heir over others. The court recognized the rule that, despite differing scholarly views, such gifts are valid as long as they meet specific legal requirements. These requirements include the necessity for the gift to be explicitly, rather than implicitly, stated, with supporting documentation properly executed. In its application of this rule, the court noted that preferential gifts might raise ethical concerns among some jurists but held that legal validation rests on the clarity of intent and formality in documentation, rather than moral viewpoints. It emphasized that any heir receiving a preferential gift must provide strong, unequivocal evidence of the donor's intent to substantiate the gift's legitimacy.⁴⁰

³⁹ CIVIL PETITION No. 1647 OF 2018 (Against the judgment dated 26.03.2018 Lahore High Court, Multan Bench, in Regular Second Appeal No.18/2004)

⁴⁰ *Siraj Din v Mst Jamilan and another*, PLD 1997 Lahore 633

Similarly, in *Muhammad Saeed v Muhammad Siddique* the key issue was whether a preferential gift made to a respondent by his father could be legally contested on grounds of depriving other heirs of their shares. The Lahore High Court applied the rule that a preferential gift is presumed legally valid unless there is compelling evidence of fraud, forgery, or misrepresentation. In affirming the decisions of the lower courts, the High Court underscored that, under Islamic law, the validity of a gift does not depend on equal distribution among heirs, and the law imposes no restriction against making a preferential gift. The court emphasized that to overturn such a gift, the challenging party bears the burden of presenting clear evidence that the gift was improperly obtained.⁴¹ Likewise, in *Malik Ghulam Akbar Khan v Al-Haaj Abdul Raziq Khan* the main issue was whether a preferential gift could be upheld under Islamic law, despite it depriving other legal heirs of their shares. The court applied the rule that such a gift is valid if it is supported by clear, credible evidence that inspires confidence, beyond simple revenue entries. The court emphasized that revenue records alone are insufficient to validate a preferential gift; instead, all essential elements of a gift such as the donor's intent, acceptance by the recipient, and possession transfer must be demonstrated through substantial evidence. Applying this standard, the court ruled in favor of the appellants, affirming that the distribution of property among Haji Abdullah Jan's heirs would adhere to these requirements.⁴²

In *Nisar Ahmad v Muhammad Anwar* the court upheld the rule that such gifts are valid, asserting that Islamic law grants a father the right to exercise preferential treatment among heirs in gifting. The court supported its decision by referencing prior judgments, Quranic texts, and relevant legal authorities, which collectively affirm that a father's choice to favor specific heirs is not a legally valid reason to nullify a gift deed. In applying this principle, the court underscored that, although preferential gifting may result in unequal distribution, it remains within the father's rights and does not violate Islamic legal standards.⁴³

In *Mst Nusrat Zohra v Mst Azhara Bibi* the issue before the Supreme Court of Pakistan was whether Islamic law permits a donor to make a preferential gift to one or more heirs while excluding others, without invalidating the gift. The court referenced the le-

⁴¹ Muhammad Saeed v Muhammad Siddique and others, 2010 MLD 855

⁴² Malik Ghulam Akbar Khan through LRs and others v Al-Haaj Abdul Raziq Khan and another, 2011 CLC 1734

⁴³ Nisar Ahmad and others v Muhammad Anwar and others, 2022 MLD 85

gal rule that such a gift is valid if it is made during the donor's lifetime, the donor is the sole owner of the property, and all legal formalities are fulfilled. In applying this rule, the court acknowledged scholarly debate among Muslim jurists about the potential for discord among heirs and the moral implications of favoring specific heirs. However, it found no legal basis for prohibiting preferential gifts, emphasizing that Islamic law grants a donor full discretion over their property, allowing them to gift it to any heir, regardless of considerations of equality.⁴⁴

Moreover, in *Mst Aman Mai v. Government of Punjab*, the Federal Shariat court identified the issue as whether Section 142 of Muhammadan Law,⁴⁵ which permits an individual to gift any part or all of their property to an heir during their lifetime, violates Islamic injunctions. The rule in question, Section 142, explicitly allows a donor to make a complete or partial gift of their property to any person, including an heir, while the donor is still alive. The petitioner cited a hadith advocating for fairness among heirs, suggesting that such gifts should be distributed equally to ensure equity. In its application of the law, the court explained that while Islamic jurisprudence morally encourages fairness among heirs, it does not impose a legal requirement for equal distribution; a person's right to manage their property during their lifetime is unrestricted. Thus, a donor can legally allocate their property as they choose, even if the distribution is unequal. The court concluded that since inheritance rights only become relevant after the donor's death, Section 142 does not infringe upon Islamic injunctions. Finding the petition legally unsubstantiated, the court dismissed it in limine, or at the preliminary stage, without a full hearing.⁴⁶

In the above discussed case laws the courts are of the view that the preferential gift in question was legally sound; emphasizing that Islamic law accommodates such gifts as long as they meet all formal requirements. The preferential gift in question remains valid; reinforcing that Islamic law permits donors the freedom to allocate property preferentially, provided the gift is genuine and untainted by misconduct as long as the donor fulfills all necessary requirements, upholding the principle of ownership rights in property distribution. These rulings reinforced that Islamic law permits preferential gifts even if such gifts result in unequal distribution among heirs. However, these judge-

⁴⁴ *Mst Nusrat Zohra v Mst Azhra Bibi and others*, PLD 2006 S C 15

⁴⁵ "Extent of donor's power: A gift as distinguished from a will may be made of the whole of the donor property, and it may be made even to an heir."

⁴⁶ Shariat Petition No: 6/L of 2000

ments have reinforced the importance of both moral considerations and substantial proof in upholding the validity of preferential gifts within Muslim law. While acknowledging the ethical consequences of preferential gifting, such as potential discord among heirs, the courts have generally stated that moral arguments do not invalidate a gift. The courts appear to make a clear distinction between moral and legal frameworks, eventually siding with legal considerations that value the donor's rights.

2) Pakistani Jurisprudence Against the Preferential Gifts:

The second group of case laws highlight judicial commitment to fairness and justice in inheritance law, especially regarding preferential gifts. The courts emphasize stringent evidence and protection of inheritance rights, especially for women, highlighting an evolving understanding of gender equity in Pakistani property and inheritance law.

In *Mst Kamalan Bibi v Province of Punjab*, the main issue was whether Mst. Kamalan Bibi could successfully challenge the lower courts' judgments that dismissed her lawsuit regarding a fraudulent mutation of property through an alleged oral gift to respondents Gul Sher and others. The Supreme Court ruled in her favor, reversing the lower courts' decisions and awarding her the suit with costs. The court found that the essential elements required to validate an oral gift were not established, as there was a lack of credible evidence supporting the claim of a gift or its transaction. Mst. Kamalan Bibi effectively argued that inheritance rights are not subject to extinction over time, emphasizing that the mere possession of property by her brothers could not be construed as excluding her rights as a co-owner. Ultimately, the Supreme Court reinforced the principle that all legal heirs retain their rights to inheritance, ensuring equitable treatment among siblings.⁴⁷

In *Muhammad Yar v Bibi Gul Seema*, the issue was whether the petitioners could establish the validity of an alleged oral gift and subsequent mutations, which they claimed had legally transferred certain properties to them from their predecessor before his death. According to legal principles governing gifts, particularly oral ones, it is the responsibility of the claimants to provide credible evidence, including witness testimony and specific details about the gift transaction. The petitioners failed to meet this burden, as key witnesses, such as the Tehsildar, were not presented, and no concrete evidence was given regarding the date, time, or location of the alleged gift. In applying these principles, the lower courts found the evidence insufficient to substantiate the petition-

⁴⁷ *Mst Kamalan Bibi v Province of Punjab through District Officer and 9 others*, 2022 CLC 890

ers' claim, and the High Court ultimately upheld this decision, rejecting the petition due to the lack of proof regarding the oral gift and related mutations.⁴⁸

In *Mst Rasoolan Bibi v Province of Punjab*, the issue centered on whether the respondents could validly claim a gift mutation in their favor to exclude the petitioner from her rightful share in her deceased father's estate. Under Muhammadan Law and the Qanun-e-Shahadat Order, 1984, specifically Articles 17 and 79, a valid oral gift must include evidence of an "offer," "acceptance," and "delivery of possession." The respondents failed to meet these requirements, as they could not substantiate the necessary elements for a valid gift. The Supreme Court of Pakistan, which has condemned the exclusion of female heirs from inheritance, ruled that the respondents' actions amounted to an attempt to deprive the petitioner of her lawful inheritance rights. As a result, the Court granted the petitioner's suit for declaration, affirming her rightful entitlement to her share in the estate.⁴⁹

In *Abdul Nasir v Bibi Hajira*, the issue in this case was whether the plaintiffs, as rightful heirs, were wrongfully deprived of their inheritance by the defendants, who allegedly transferred the property of the late Malik Muhammad Anwar to themselves through deceptive means. Under inheritance law, any transfer of property intended to exclude lawful heirs, particularly without a clear and credible reason, requires substantial proof from the defendants justifying such an action. Although the trial court initially dismissed the plaintiffs' claim, the appellate court reversed this decision, finding discrepancies in the defendants' evidence. The court noted a lack of valid motive for excluding the plaintiffs, as well as the absence of a legitimate reason for the donor to deprive his daughters of their rightful inheritance. Given that the gift appeared to be made in bad faith, with the donor in a compromised physical state, the appellate court concluded that the defendants failed to justify their claim, ultimately ruling in favor of the plaintiffs and affirming their entitlement to the inheritance.⁵⁰

In *Barkat Ali v. Muhammad Ismail*, the main issue was whether Din Muhammad's gift of land to his grandson, Muhammad Ismail, met the requirements for a valid Islamic gift or if it was designed to unlawfully exclude other heirs, specifically female heirs, from inheritance. The Supreme Court of Pakistan applied the rule that for a gift to be

⁴⁸ Muhammad Yar and others v Bibi Gul Seema and 10 others, 2023 CLC 433

⁴⁹ Mst Rasoolan Bibi v Province of Punjab and others, 2023 CLC 1171

⁵⁰ Abdul Nasir and 2 others v Bibi Hajira and others, 2023 CLC 1391

valid under Islamic law, it must satisfy the essential conditions of offer, acceptance, and transfer of possession. In examining the facts, the court found that these conditions were not fully met, raising suspicion that the donor's intent was to bypass inheritance laws to prevent his daughters from inheriting the property. Additionally, since the land was partially owned by the donor's son, Barkat Ali, the court concluded that the gift was made in *mala fide* with dishonest intent rendering it invalid. Consequently, the Supreme Court declared the gift to be unlawful and ineffective; underscoring that Islamic law does not permit the manipulation of inheritance laws to exclude rightful heirs.⁵¹

In *Islam-ud-Din v Mst Noor Jahan*, the key issue was whether the document presented as a gift to the three sons of the deceased, Haji Sahraney, could be legally recognized as a valid gift, conveyance, or agreement. The court ruled that the alleged gift document failed to satisfy the necessary evidentiary requirements and thus could not be classified as a legitimate gift. The court noted concerns that the mutations and purported gift were mere devices intended to deny the respondent and the other daughters of the deceased their rightful inheritance. In applying this analysis, the court emphasized the importance of substantial proof in validating gift claims and underscored that any attempts to circumvent inheritance rights through dubious documentation would not be upheld under the law. Ultimately, the court's decision reinforced the principle that legitimate inheritance rights must be respected, and any fraudulent attempts to alter rightful claims are unacceptable.⁵²

In *Allah Ditta v Manak Alias Muhammad Siddique*, the central issue was whether the petitioners could substantiate their claim of a gift made by a deceased individual in favor of his nephews, despite the apparent disinheritance of his own children. The Court upheld the Lahore High Court's decision, ruling that the petitioners failed to provide positive evidence to support their claim. Specifically, they could not specify the exact date, location, witnesses, or the consideration involved in the gift. The Court expressed skepticism regarding the rationale behind a person choosing to disinherit his children in favor of nephews, finding the circumstances surrounding the property mutation questionable. Furthermore, it highlighted lapses by revenue authorities that cast doubt on the legitimacy of the transfer. Ultimately, the Court reaffirmed the necessity for clear and

⁵¹ Barkat Ali through Legal Heirs and others v Muhammad Ismail through Legal Heirs and others, 2002 SCMR 1938

⁵² Islam-ud-Din through LR's and others v Mst Noor Jahan through LR's and others, 2016 SCMR 986

compelling evidence in gift claims, particularly in situations involving significant familial implications.⁵³

In *Shabla v Ms. Jahan Afroz Khilat*, the central issue was the inheritance rights of the respondent concerning her father's estate, which had been fraudulently mutated in favor of her nephew while she was still a minor. The Supreme Court held that the usual limitations on fraud, particularly regarding the inheritance rights of females, do not apply. The court placed a significant burden of proof on those claiming that a female legatee voluntarily relinquished her property. It emphasized the importance of protecting women's inherited rights under both Islamic and Pakistani law from fraudulent transactions. The Court rejected the appellants' claims of being bona fide purchasers for value without notice, noting that the fraudulent nature of the mutation was evident and could have been uncovered with due diligence. Additionally, the Supreme Court affirmed that a co-sharer in an estate is considered to be in possession of the property until a formal partition occurs, dismissing arguments that the suit was non-maintainable due to the respondent being out of possession.⁵⁴

In *Farhan Aslam v Mst Nuzba Shaheen*, the issue was whether the petitioners, Farhan Aslam and others, could prove their claim of receiving a gift of land from the late Mansab Khan against the rulings favoring his widow and daughter. The Supreme Court of Pakistan ruled that the alleged gift was unsubstantiated and appeared fabricated, as the petitioners failed to provide a legal basis for the gift. The court noted that the absence of testimony from the adult donee and the lack of specific evidence regarding the gift significantly weakened their case. In applying Islamic inheritance laws, the Court emphasized that these laws are a matter of public policy and declared any agreements aiming to relinquish inheritance rights as void. Furthermore, it highlighted the legal and moral obligation to protect the inheritance rights of vulnerable family members, citing Quranic verses that condemn the unjust appropriation of orphans' property. Ultimately, the Court concluded that the petitioners' claim was legally indefensible, reinforcing the necessity of upholding inheritance rights in accordance with Islamic principles.⁵⁵

In *Bashir Ahmad Anjum v Muhammad Raffique*, the central issue was whether the petitioner, Bashir Ahmad Anjum, could validate his claim of receiving land from his late

⁵³ Allah Ditta and others v Manak alias Muhammad Siddique and others, 2017 SCMR 402

⁵⁴ Shabla and others v Ms Jahan Afroz Khilat and others, 2020 SCMR 352

⁵⁵ Farhan Aslam and others v Mst Nuzba Shaheen and another, 2021 SCMR 179

father through a power of attorney executed by an individual he alleged was acting on his father's behalf. The Supreme Court of Pakistan found significant doubts regarding the authenticity of the power of attorney, as the original document was not presented in court, and the District Registrar's office had no record of its existence. Additionally, the court noted the lack of a satisfactory explanation for why the father would not have directly gifted the land or appointed one of his other children as attorneys. In its analysis, the Court concluded that the power of attorney appeared to be fictitious, likely created to sidestep legal complications that would arise from the petitioner seeking a power of attorney for his benefit. As a result, the Supreme Court dismissed the petitioner's appeal and revision as frivolous, reaffirming that the legal heirs were entitled to their rightful shares of inheritance under Islamic law following the father's death.⁵⁶

In *Mst Parveen v Muhammad Pervaiz*, the issue was the legal validity of a gift mutation and the principles surrounding inheritance under Islamic law. The Supreme Court of Pakistan reaffirmed that, upon a Muslim's death, their property devolves to their legal heirs, and any heir claiming to exclude others based on a purported gift bears the burden of proof. The Court expressed its dismay at the prevalent practice in Pakistan where male heirs often resort to fraudulent tactics to deny female heirs their rightful inheritance. It emphasized that every day a male heir deprives a female heir is an affront to divine commandments, as it contradicts what has been ordained by Almighty Allah. Consequently, the Court directed the relevant revenue authority to ensure compliance with Islamic law concerning the inheritance of the estate of Nizam Din, reinforcing the need for equitable treatment of all heirs under Shariah principles.⁵⁷

In *Tahsinullah v Mst Parveen*, the primary issue was the validity of a land gift, referred to as a tamleek mutation, allegedly made on the same day the donor (the father) passed away, without formal acceptance by the appellant (the son). According to Islamic Shari'ah, a valid gift must be established with clear acceptance and proof, especially when it impacts the inheritance rights of legal heirs, with the burden of proof resting on the claimant. The appellant's sisters challenged the gift's validity, arguing it unjustly deprived them of their rightful inheritance. The court found that the appellant failed to provide sufficient evidence to support the legitimacy of the gift. Consequently, the High Court ruled in favor of the sisters, a decision upheld by the Supreme Court, which

⁵⁶ Bashir Ahmad Anjum v Muhammad Raffique and others, 2021 SCMR 772

⁵⁷ Mst Parveen (deceased) through LRs v Muhammad Pervaiz and others, 2022 SCMR 64

noted the appellant's wrongful possession of the land for nearly 38 years. Ultimately, the Supreme Court ordered the District Collector to enforce the Trial Court's decision, ensuring that the sisters or their legal heirs received their rightful shares according to Islamic law within three months, thereby reinforcing the principle of equitable distribution of inheritance rights.⁵⁸

In *Muhammad Rafiq v Mst Ghulam Zoharan Mai*, the issue was whether Muhammad Rafiq could substantiate his claim to inherited land based on an alleged gift deed from his father, Ghulam Muhammad. Under both Islamic inheritance law and legal principles, a claimant must provide concrete evidence to validate a gift deed, particularly when it affects the rights of other heirs. In his appeal to the Supreme Court, Rafiq presented only a photocopy of the sub-registrar's register as evidence, which the Court found insufficient to substantiate his claim. The Court ruled that Rafiq's actions were dishonest, noting that they contravened Islamic inheritance laws as outlined in Surah An-Nisa of the Holy Quran, which safeguard the rights of all heirs. Additionally, the Court condemned Rafiq's attempt to unlawfully benefit from the land's usufruct during the dispute, viewing it as a tactic commonly used by male heirs to dominate inheritance proceedings. Consequently, the Supreme Court dismissed his appeal, imposed costs on him, and ordered him to pay a special penalty of Rs. 500,000.⁵⁹

In *Babar Anwar v Muhammad Ashraf*, the issue was whether the registered gift deed, which the petitioner (Babar Anwar) claimed was validly gifted to him by his father, could be legally upheld despite the father's subsequent revocation and claims of duress due to age and health. Under property and inheritance law, for a gift deed to be upheld, there must be clear, consistent evidence of the donor's intent and lack of undue influence. The plaintiff, the father, challenged the deed, presenting evidence of his continued possession of the property, which included bills, indicating that he did not intend to gift it away. Additionally, Babar Anwar's contradictory claims asserting both that he had purchased the property and that he received it as a gift were considered mutually destructive, casting doubt on the validity of his claims. Applying these principles, the Supreme Court found the petitioner's assertions unconvincing and dismissed his civil

⁵⁸ Tahsinullah v Mst Parveen (deceased) through LRs and others, 2022 SCMR 346

⁵⁹ Muhammad Rafiq v Mst Ghulam Zoharan Mai and another, 2023 SCMR 988

petition, refusing him leave to appeal, and thereby upholding the cancellation of the gift deed.⁶⁰

In *Khallid Hussain v Nazir Ahmad*, the issue was whether the petitioners could validly challenge the gift deed transferring property from the estate of Muhammad Din, who passed away in 1996, to the respondents. Under inheritance law, a gift deed must meet specific formalities to be legally enforceable, including evidence of execution, attestation, and proper registration. The High Court had previously dismissed the petitioners' suit, citing procedural deficiencies; however, the Supreme Court held that the petitioners' suit was maintainable, as it directly questioned the gift deed's validity and appropriately sought injunctive relief. Upon review, the Supreme Court found that the respondents failed to produce adequate evidence, particularly lacking testimony from attesting witnesses and registration officials who could have verified the deed's authenticity. Consequently, the Supreme Court overturned the High Court's dismissal, supporting the petitioners' challenge to the validity of the gift deed.⁶¹

In *Faqir Ali v Sakina Bibi*, the issue was whether Faqir Ali could substantiate an oral gift of property that allegedly deprived his sisters of their inheritance rights. Under Islamic inheritance law, a valid gift must meet three essential conditions: a clear declaration by the donor, acceptance by the donee, and delivery of possession. This rule applies equally to both written and oral gifts, which require solid evidence to be upheld. In its decision, the Supreme Court found that the appellants failed to establish the validity of the oral gift, as they did not fulfill the procedural and evidentiary standards necessary to legitimize the property entries and mutations. The Court concluded that the transactions appeared to be an attempt to sidestep legal requirements and unfairly deprive the appellants' sisters of their lawful inheritance. Consequently, the Court dismissed the appeal, upholding the principles of equitable inheritance distribution.⁶²

In *Abdul Aziz v Mst. Zaib-un-Nissa*, the issue in this case was whether the property gift made by illiterate Pardanashin women was valid, given allegations that they were misled into transferring their property rights through fraud. Under legal standards, transactions involving Pardanashin or illiterate women demand heightened scrutiny to ensure protection against coercion, with requirements including clear evidence that the women

⁶⁰ Babar Anwar v Muhammad Ashraf and another, 2024 SCMR 734

⁶¹ *Khallid Hussain and others v Nazir Ahmad and others*, Civil Petition No 2144-L of 2011, Civil Appeal No 1-L of 2012, [2011]

⁶² *Faqir Ali and others v Sakina Bibi and others*, PLD 2022 SC 85

fully understood the transaction, received independent advice, and were informed of the deal's nature in a language they comprehended. The Supreme Court emphasized that such transactions also require testimony from close family or acquaintances and a demonstration of fair consideration. In this case, the petitioners failed to meet these strict evidentiary standards, as they did not provide adequate proof of the women's understanding and voluntary consent. Consequently, the Court denied the Civil Petition for Leave to Appeal (C.P.L.A.), ruling that the gift transaction had not been proven with the necessary level of evidence.⁶³

The unifying topic in the above discussed case laws is the courts' reluctance to support gifts that appear to unfairly disadvantage legitimate heirs, especially where such gifts are believed to exclude female heirs or established legal heirs from their inheritance rights. The courts emphasize that all legal heirs retain their rights to inheritance, rejecting any attempts to deprive them through alleged gifts. The courts are skeptical of gifts that appear to disinherit entitled heirs without a valid reason. This is especially important in situations where male heirs want to benefit at the expense of their sisters or daughters that compromise gender equity in the realm of property and inheritance law in Pakistan. This trend not only serves to protect individual rights but also aims to foster a more just society consistent with Islamic values. It appears that in these judgments, the courts held the opinion of Muslim jurists, who believe preferential gifts are null and void, which is seen as beneficial for societal benefit. This shift in the approach towards preferential gifts is expected to uphold the principles of fairness, justice and equity in case of property related rights.

Conclusion & Recommendations

This article argued that the notion of gift has strong legal and ethical aspects within Islamic and Pakistani law. The practice of preferential gifting which seeks to give certain portions of the estate to select heirs, to the detriment of others, most often males at the expense of females, is often contrary to the basic tenets of Islamic law which are equity and justice. The notion of preferential gift not only violates the doctrines in the Quran on the subject of inheritance, but also contributes to structural injustices and discrimination against other stakeholders especially women. Whilst recognizing these gifts, a number of courts appear to have emphasized or at least left the door open to ethical concerns which indicate that these issues may require further examination. However,

⁶³ Abdul Aziz v Mst. Zaib-un-Nissa and others, PLD 2022 SC 504

the policy direction which the law seems to be taking with most courts accepting the validity of gifts made to close relatives without reservations is troubling. If these cases are examined along with the principles of justice that are fundamental to Islam, they appear to be irreconcilable. It would require a paradigm shift and embrace stricter interpretation of the laws in the domain of inheritance and gift as prescribed under Islamic law. Thus, ensuring just distribution of the assets is the key to meeting the principles of justice and equity. It argues for reevaluation in the legal approaches to Hiba Tafzili, promoting reforms that emphasize a more just and equitable society according to both Islamic values and contemporary legal standards for fairness and equal rights in inheritance matters. The research paper suggests two alternatives to the existing law in Pakistan about preferential gifts: to accept the Hanbali view that absolutely prohibits such gifts or reformulate the Hanafi view by making judicial validation a pre-requisite. The former is favored as it shifts the burden of proof to the donor and is directed towards protecting women from exploitation in a patriarchal society. Using the Hanbali approach, which strongly disallows preferential gifts, will give a much needed structure in safeguarding inheritance rights to women and, consequently all heirs getting what they deserve. The said legislative reform would align both with the Islamic principle but more importantly be a necessary measure to correct the historical disadvantage of women. With this legislative reform, it is therefore possible to create an environment in which all heirs enjoy their rights and women can no longer be systematically deprived of their rights.