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Topic:

Define Gift (Hiba) and its ingredients.

Introduction.

In muslim law 'Hiba' Means gift

It is defined as the transfer of the possession of property, movable and immovable, from one person to the other willingly and without any reward or consideration. The one who makes this transfer is known as donor (Wahib), and the thing transferred is known as Mauhubah, and the one who is donated is known as Mauhub lahu (donee). It is facilitated by the transfer of property act

Hiba

Islam is not only a religion but a way of life hence it covers every aspect of it no matter how insignificant

Prophet Muhammad S.A.W said "Exchange gifts as that will lead to increasing your love to one another"

This Hiba a gift generally a transfer of ownership of a property by a living person to another living person without any consideration. In Islamic law. To be very accurate, gift implies to an extensive overtone and appertain to all kind of transfers of ownership not involving any consideration.

On the other hand, the term 'Hiba' includes a narrow connotation. It is basically transferred inter vivos i.e. between living people.

According to **Hedaya**– "Hiba is an unconditional transfer of ownership in an existing property, made immediately without any consideration."

According to **Ameer Ali**– "A Hiba is a voluntary gift without consideration of property by one person to another so as to constitute the donee the proprietor of the subject-matter of the gift."

According to **Mulla**— “A Hiba is a transfer of property, made immediately and without any exchange by one person to another and accepted by or on behalf of the latter.”

According to **Fyzee**— “Hiba is the immediate and unqualified transfer of the corpus of the property without any return.”

Constitutionality of Hiba :

The Transfer of Property Act, 1882 contains besides general principles relating to transfer of property-the laws relating to sale, mortgage, charge, lease, and exchange, transfer of actionable claims and gifts of property. All the Chapters of this Act except that on gifts are applicable to the Muslim. As regards the general principles relating to disposition of property contained in Chapter 2 of the TPA, the Act declares that ‘nothing in the second Chapter of this Act shall be deemed to affect any rule of Islamic Law.

Ingredients of a Hiba

A Hiba will be valid if the following conditions are fulfilled:-

1.The manifestation of the wish to give on the part of the donor.

In expressed form The donor may declare a gift of any kind of property either orally or through a written deed.

Ownership of Property : The person making a Hiba must be the owner of the property which is the subject matter of the Hiba. In other words, the ownership of the property must be with the donor, at the time of making a gift.

The person who wish to gift someone out of love and affection should be the age of majority when something considerable is in question

he/she should not be duped into giving something which he/she did not originally consented

there shall be no force on the donor to render any gift otherwise this gift will be considered nugatory. A declaration of a gift must be expressly made in clear words that the donor is conceding his ownership of the property completely. A gift made in ambiguous words is null and void.

2. Acceptance of the gift, express or implied, by the donee

For the gift to be executed legally it must be accepted by him/her if whether implied or expressed, acceptance shows that the receiver is willfully taking the property.

If the donee is minor he can receive a gift accepted by his guardian

If the gift is towards juristic person or institution it must be accepted by its competent authority or manager

Two or more Donees: Gift made in favour of two or more donees must be accepted by each and every person separately. If the share of each person is explicitly specified by the donor then, they will get the separate possession in the same way as declared by the donor. But if the share under a gift is not specified and no separate possession is given by the donor, then also the gift is valid and the donees will take the property as tenants-in-common.

3. possession of the subject-matter of the gift by the donee

As in Muslim law gift is a bilateral transaction where the donor gifts and the donee receives it, it is important for the donee to accept the gift for it to be considered a valid gift, when the donor gifts a subject matter it is imperative for the gift to be in possession or transferred properly to the

donee if it's not possessed by the donee the gift will not be considered executed.

Some exceptional scenarios

*Existence of a donee or Child in Womb : A Hiba cannot be lawfully made in favour of an unborn person. Such a Hiba to unborn person is invalid, with one exception. For example, if the donor makes a gift of some property to a donee and after his death to donee's son who is not in existence, such gift will be void. But a gift to an unborn donee, who is in womb and is born within 6 months of making of the gift, is valid. Therefore, the child in its mother's womb is a competent donee.

*A Hiba cannot be made in favour of a dead person. When a widow makes a Hiba of her Mehr to her deceased husband, though such a transaction is called Hiba-a-Mehr

*A Muslim can make a Hiba of the whole of his/her property. Every form of property or right which has some legal value may be the subject-matter of a Hiba. However, the property must be transferable under Section 6 of the Transfer of Property Act, 1882. As a matter of fact, any property (mal) over which ownership may be exercised, may be transferred through a gift. Tangible as well as intangible property may be the subject matter of a gift. Whatever is mal according to Muslim jurisprudence can be lawfully subjects of gifts at Muslim law.

Conclusion

Hence it is clear that Islam encourages the transaction of Hiba to increase love for one another along with it properly gives the guidelines as to how to properly execute a gift without transgressing commandments of Allah SWT