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Foundations of Revocation in the Contract of Gift (Hiba) and Its Role in Crime Prevention

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ABSTRACT

All transactions carried out by members of a society are normally conducted with prior intention, planning, calculations, and consultations. However, due to miscalculations or changes in attitudes and circumstances, one of the parties to a contract may withdraw from the concluded transaction. In situations where no mechanism for reversal exists, compelling a party to continue a transaction may, in some cases, lead to dangerous and irreparable consequences. One of the contracts that existed prior to Islam and was subsequently recognized and formalized within Islamic law is the contract of hiba (gift). Like other transactions, the contract of hiba involves two parties—a donor (wahib) and a donee (mutahabb). Similar to other contracts, the contract of hiba includes mechanisms that allow for revocation. Through examining the relevant legal evidence and clarifying these mechanisms, both the donor and the donee can be informed of the permissible methods of revocation, as well as the obstacles that may bar revocation. This awareness enables the parties to act with full understanding should they decide to retract from the transaction.

Keywords: *hiba, contract, revocation of hiba, legal grounds*

Introduction

The expression “transferring ownership of property without consideration” includes wills, endowments (*waqf*), almsgiving (*sadaqah*), and gifts (*hiba*). For this reason, in defining *hiba* specifically, certain qualifications—such as “transferring ownership of property absolutely and presently, without consideration in return for the gifted object, and without requiring an intention of piety”—have been incorporated so that *waqf* is excluded from the definition, since *waqf* does not involve an absolute transfer of ownership. Likewise, *sadaqah* is excluded because intention of religious devotion is a condition, and sale is excluded because the transfer is not gratuitous. Compromise (*sulh*) is also excluded because it is the creation of mutual settlement and not a transfer of ownership. Finally, a will is excluded because its effect is not immediate. In light of the foregoing definition and the precise identification of *hiba*, it is necessary to examine the foundations of the rulings related to it according to the theme of this article.



The importance and necessity of this discussion becomes clear considering that, in contemporary times, crime prevention has gained greater prominence than the mere punishment of offenders. Therefore, understanding those legal foundations and scriptural proofs that play a preventive role is of significance both for legislators and for society at large. The former addresses the effects of revocation in *hiba*, while the latter examines the forfeiture of the right of revocation. However, the present article focuses on the legal foundations and evidentiary basis for the right of revocation, which differentiates it from the two aforementioned studies.

The Lexical and Technical Meaning of Hiba

Lexically, *hiba* means transferring property into another's ownership without compensation (1). For example, it is said that "someone gave something to another without consideration." In jurisprudential terminology, *hiba* refers to the verbal or practical expression by which a person creates and brings about the transfer of ownership of property without receiving anything in return. This definition corresponds to the linguistic meaning of the term. As Meshkini notes, the technical meaning aligns with the lexical meaning (2).

Conditions for the Validity of Hiba

In Islamic law, *hiba* has several conditions, the fulfillment of which establishes its validity. The existence of a donor (*wahib*), a donee (*mutahabb*), and the presence of property intended to be gifted are fundamental pillars of *hiba*. After establishing these pillars, the donor must perform an act of creating ownership (*inshā' al-tamlik*). This act constitutes the offer (*ījāb*) on the part of the donor, while the donee must express acceptance (*qubūl*). Other conditions include legal adulthood, sanity, intention, and free will. Additionally, the donor must not be legally incapacitated or economically incompetent, and the donee must be legally eligible to acquire ownership. For example, one cannot gift the Qur'an to a non-Muslim, because in such a case the donee lacks the legal capacity to own the Qur'an.

The contract of *hiba* also has further conditions, such as delivery and taking possession (*qabd wa iqbāḍ*). The donor must deliver the gifted property, and the donee must take possession. Only then is the *hiba* legally realized.

Revocation of Hiba

First Case

What this article addresses is the foundations and evidences for revocation in *hiba*, meaning the donor's regret and desire to reclaim the gifted property. Since the contract of *hiba* is a revocable contract (*jā'iz*), dissolving it is not impossible but is permitted under certain conditions (3).

The first case in which revocation occurs is when the conditions mentioned above for the validity of *hiba* are not fulfilled. Naturally, in such a case no valid *hiba* has occurred. Therefore, using the term "revocation" here is technically metaphorical, because in reality, the contract never came into legal existence. Consequently, the donee acquires no rights, and the donor need not undergo any procedural steps to reclaim the property—because it is legally deemed never to have left their ownership.

The rationale is clear: the general proofs that deem contracts invalid upon the non-fulfillment of their essential conditions apply equally here. If the defining pillars of a contract are missing, the contract is not concluded. The

following are examples of such necessary conditions for *hiba*, whose absence means the gifted property never leaves the donor's ownership and never enters that of the donee.

Creation of Ownership (Inshā' al-Tamlik)

Among the essential conditions of *hiba* is the act of creating ownership. The donor must explicitly create and bring about the transfer of ownership to the donee—i.e., bring into existence that which previously did not exist. Ayatollah al-Hakim, in his commentary on *al-Makāsib*, states that unlike sale—where other expressions may suffice—the only valid expression for *hiba* is that which signifies the creation of gratuitous ownership, because the essence of *hiba* is gratuitous transfer (4).

Therefore, if this act is not properly performed, *hiba* has not taken effect. If property was physically transferred without a valid act of ownership creation, the property must be returned to the donor, because no actual legal transfer occurred.

Sanity, Adulthood, Intention, and Free Will

Another essential condition for all contracts—including *hiba*—is the presence of sanity in both parties. If either the donor or the donee lacks sanity, the contract does not occur. Thus, if property was transferred under such circumstances, the transfer is void and the property returns to the donor. As stated in *Sharḥ al-Tahrīr al-Wasīlah*, both parties must possess adulthood, sanity, intention, and free choice for the contract to be valid (5).

Absence of Legal Incapacity or Bankruptcy

Because the donor intends to dispose of their own property, they must not be legally barred from managing their assets; thus, they must not be under guardianship (*ḥajr*). If a *hiba* occurs while the donor is legally incapacitated, it is void, and the property must be returned. Similarly, the donor must not be bankrupt, because bankruptcy imposes legal restrictions on the disposal of one's property (6).

Ayatollah Tabrizi, in Issue 968 of *Minḥāj al-Ṣāliḥīn*, explicitly states that the donor must not be legally incapacitated due to insanity, economic incompetence, or bankruptcy. If such a condition exists, the *hiba* is invalid and the property must be returned.

Prohibition of Control over Certain Types of Property

Sometimes the donee is unable to exercise control over certain types of property, and it is impossible for such property to enter his ownership—for example, gifting a copy of the Qur'an to a non-Muslim, and similar cases. In such a situation, if the donor gives this type of property to the donee, the relevant condition has not been fulfilled; consequently, the *hiba* is not complete, and the property has not left the donor's ownership.

Justification for the Requirement of Possession

Among the conditions mentioned for *hiba* is delivery and taking possession (*qabd wa iqbāḍ*), meaning that the donor must place the gifted property in the donee's hands, and the donee must actually take it. If this condition is not fulfilled, the conditions of *hiba* are impaired, the *hiba* is not valid according to the Sharī'a, and no transfer of

property has taken place. Therefore, the donor does not need to follow any special procedure to “revoke” the *hiba*; the property has, in fact, remained in the donor’s ownership from the outset.

The justification for this condition is reported as consensus (*ijmāʿ*) in two works: *al-Tadhkira* and *al-Idāh*. Their authors hold, as noted above, that if this condition is not observed, no transfer of ownership occurs from the donor to the donee (7, 8). In support of this position, they also rely on narrations such as the following:

The first narration states that as long as gifts have not yet reached the hands of the recipient and the giver dies, they are treated as part of the estate—meaning that the property has not left the ownership of the donor and is distributed as inheritance (9).

The second narration states that *hiba* is never truly considered a *hiba* unless the donee takes possession of it, whereas almsgiving (*ṣadaqah*) is binding upon the giver in any case (3).

From narrations of this kind it is clear that as long as the gift has not reached the donee, it is not regarded as a valid *hiba*, and the property remains in the donor’s ownership.

However, in contrast, a number of jurists do not regard the absence of possession as invalidating the *hiba*. They rely on narrations such as the following and consider the absence of possession by the donee merely as a reason for the *hiba* to remain a revocable contract. In other words, the default rule in contracts—namely, bindingness—changes in this specific case: when the gifted property has not been received, the contract is treated as revocable, and the donor may reclaim the gift at any time (10, 11).

The first such narration states: “*Hiba* is valid, whether possession has been taken or not, whether it has been divided or not. What people have actually misidentified is *nuḥla*, for *nuḥla* is not valid until it has been taken into possession” (10).

The second narration states: “If a person gives *ṣadaqah* or *hiba*, whether the recipient takes possession or not, and whether it is known or unknown [to others], in all cases it is valid (i.e., it does not fail for lack of possession)” (11).

As has also been reported from the noble book *al-Istibṣār*, some scholars interpret the term “permissible” (*jāʾiz*) in these narrations as indicating bindingness (*luzūm*), not revocability (11). Even if we accept, for the sake of argument, that these narrations indicate revocability of *hiba* when possession has not occurred, they would still conflict with the earlier narrations. In such a case, recourse must be had to the criteria for preference (*marājiḥ*). The first such criterion is juristic fame (*shuhra*), which clearly supports the view that possession is a condition in *hiba*, and that without it, the very validity of the contract is compromised.

Second Case

As mentioned at the beginning of this study, some jurists consider the contract of *hiba* to be revocable (*jāʾiz*), while others regard it, like other contracts, as binding (*lāzim*). According to both views, there are specific situations in the Sharīʿa in which the donor is **not permitted** to revoke the *hiba* and reclaim the gifted property from the donee. These include:

When the gifted property has been destroyed while in the donee’s possession.

When the donor made the *hiba* with an intention of religious devotion and seeking nearness to God.

When the *hiba* was made to relatives (*arḥām*).

When the *hiba* was a compensated gift (*hiba muʿāwaḍa*).

The following narration concerns the first case—namely, when the gifted property has perished in the hands of the donee and the specific object no longer exists:

“‘Alī b. Ibrāhīm from his father, from Ibn Abī ‘Umayr, from Jamīl b. Darrāj, from Abū ‘Abd Allāh (peace be upon him), and Ḥammād b. ‘Uthmān from al-Ḥalabī, from Abū ‘Abd Allāh (peace be upon him), who said: ‘If the *hiba* is still present in its very form, he (the donor) may revoke it, but if not, then he has no such right.’” (3)

The next narration relates to the second case, where the donor made the *hiba* with devotional intent. In such a situation, the donor cannot revoke the *hiba* and reclaim the property:

“He (peace be upon him) said: ‘As for that which is given as *ṣadaqah* for the sake of God, then no (revocation is allowed). As for *hiba* and *nuḥla*, he may revoke them, whether possession has been taken or not, even if the recipient is a relative.’” (3)

The following narration refers to the third case:

“In the authentic narration of Muḥammad b. Muslim from Abū Ja‘far (peace be upon him), he said: ‘In *hiba* and *nuḥla*, the giver may revoke them if he wishes, whether possession has been taken or not—except in the case of a relative of the womb (*dhū al-raḥim*); in that case, he cannot revoke them.’” (3)

And in the authentic report of Zurārah from him (peace be upon him), we read: “It is not befitting for one who has given something for the sake of God to take it back. Whatever is not given for God and in God may be reclaimed, whether it be *nuḥla* or *hiba*, whether possession has been taken or not. And a man may not revoke what he has gifted to his wife, nor may a wife revoke what she has gifted to her husband, whether possession has been taken or not.” (3)

At this point, we should respond to the objection that some narrations appear to state in absolute terms that revocation in *hiba* is never possible, such as the following:

“Imam al-Ṣādiq (peace be upon him) said: ‘As long as the gift is in your hand, you are free to dispose of it. But when it leaves your hand and reaches the donee, you may not revoke it. The Messenger of God (peace and blessings be upon him and his family) said: Whoever revokes his gift is like one who returns to his own vomit.’” (9)

“In another narration, it is mentioned that a man purchased some goods and, along with the purchase, received a pearl as a gift. Later, the buyer concluded that there was a defect in the purchased goods and wished to return them. He asked whether he must also return the gifted pearl. The Imam replied: ‘There is no revocation in *hiba* once it has been possessed and taken. His only recourse is with respect to the sale itself; if the buyer returns the sold item, he does not return the gift along with it.’” (9)

The answer regarding this group of narrations is that, when compared to the narrations cited earlier, they are absolute in their wording and can therefore be restricted (*taqyīd*) by the more specific narrations. These absolute narrations may be understood as referring to compensated gifts, gifts to relatives, or gifts in which devotional intent was present. Thus, they can be reconciled by interpreting them in light of the particular cases previously mentioned.

First Category of Prohibited Revocation: Gift from Parent to Child, the Reverse, and Other Relatives

One of the situations in which revocation of *hiba* has been deemed impermissible is the case of a father gifting to his children, and vice versa—children gifting to their father. As Shaykh al-Ṭūsī states in *al-Mabsūṭ*: “Some jurists do not permit revocation of a *hiba* when the donor is the father and the donee is his minor child, but they do permit revocation when the gift is given to an adult child” (3).

In contrast to this view, Sayyid al-Murtaḍā reports consensus in *al-Intiṣār*: “Among the distinctive positions of the Imāmī school is that if one gifts something to another without intending it as an act of devotion for God Almighty, revocation is permissible so long as no compensation has been received in return. There is no difference in this regard between a stranger and a relative of the womb (*dhū al-rahim*).” (12)

As can be seen, two seemingly opposing opinions are reported from leading jurists: one implying the impermissibility of revoking a gift to a child—at least in the case of an adult child—and the other implying the general permissibility of revocation, covering both children and other relatives. To determine the correct view, we must analyze the relevant narrations and their underlying principles.

The first narration states: “In the authentic report of al-Baṣrī and ‘Abd Allāh b. Sulaymān, from Abū ‘Abd Allāh (peace be upon him): He was asked about a man who gives a *hiba*. May he revoke it if he wishes or not? He (peace be upon him) replied: ‘*Hiba* is valid for relatives, and whoever receives compensation for his *hiba* may revoke it in other than that (i.e., non-relatives) if he wishes.’” (3)

The second narration states: “In the *mursal* report of Abān, which has the strength of an authentic narration, from him (peace be upon him): ‘I asked him: Does anyone have the right to revoke *ṣadaqah* or *hiba*?’ He (peace be upon him) replied: ‘As for what is given as *ṣadaqah* for the sake of God, then no. But as for *hiba* and *nuḥla*, he may revoke them, whether possession has been taken or not, even if the recipient is a relative.’” (3)

In the first narration, gifting to relatives is treated as valid in general, but revocation is not absolutely permitted. In the second narration, revocation even in *hiba* to relatives appears to be allowed without restriction. Thus, at first glance, there seems to be a contradiction regarding revocation of gifts to relatives.

This apparent conflict can be resolved using two points. First, in the second narration, it is possible to understand the phrase “even if the recipient is a relative” as referring back to the clause “whether possession has been taken or not”—that is, the meaning would be: “If possession has not occurred, there is no difference between a relative and a non-relative.” In other words, when the original object of the *hiba* is no longer present, there is no distinction between relatives and non-relatives, and revocation is impossible. Second, the first narration is absolute and includes all cases, making no distinction between parent and child or other relatives; thus, all are treated equally in terms of the prohibition of revocation.

Finally, we arrive at the conclusion presented by Ayatollah Rouhani in *Fiqh al-Ṣādiq* (peace be upon him): revocation is not permissible in gifts given to all relatives, provided that the donee has taken possession. This is because the sound narrations—such as those cited above—are absolute in this regard, and although some jurists have permitted revocation in gifts to relatives, their objections and doubts can be resolved in light of the foregoing analysis (13).

Crime Prevention

As has been shown, it is not permissible for the donor to approach the donee among relatives (*arḥām*) in order to reclaim the gift. Thus, if a father gives something to his son, or vice versa, as mentioned earlier, the father may not approach the son to take the gift back. If the father is aware of this legal–religious ruling, he must consider all aspects before giving the gift; otherwise, after deciding to revoke the *hiba* and encountering the son’s refusal to return it, he may enter into a dispute with his own child.

Second Category of Prohibited Revocation: Gifts between Spouses

If one spouse gives a gift to the other and, for whatever reason, regrets having given it and wishes to revoke the gift, can they approach their spouse and reclaim it? Due to verses and narrations such as the following, some jurists do not permit revocation in the case of gifts between spouses: “And it is not lawful for you to take back anything of what you have given them” (Qur’an 2:229), and “But if they, of their own good pleasure, remit any part of it to you, then enjoy it in satisfaction and ease” (Qur’an 4:4).

Another narration states: “In the time of the Messenger of God (peace and blessings be upon him and his family), people used to give *nuḥla* and *hiba*, and it is not befitting for one who has given something for the sake of God to take it back” (9).

As can be seen, in the two verses God Almighty declares that it is not lawful to take back anything of what has been given; since the wording is absolute, it also covers gifts.

In contrast to this view, some jurists consider revocation of gifts between spouses permissible and rely on narrations such as the following:

“In the authentic narration of Muḥammad b. Muslim from one of the two Imams (peace be upon them), he asked about a man who owned a slave girl and whose wife complained about her. The man said, ‘She is charity (*ṣadaqah*) for you.’ The Imam said: ‘If he said that for the sake of God, then it must stand; but if he did not say it for the sake of God, he may revoke it if he wishes.’” (3)

First, this narration assumes that what was given is *ṣadaqah*, not *hiba*. Second, the wording “for you” appears in the form “‘alayk” (upon you) and not “li-imra’atih” (for his wife), which indicates that a technical *hiba* to the wife is not what is being established here.

Crime Prevention

Spouses, too—especially husbands—must exercise sufficient care when giving gifts to one another. Once a gift is given, it is generally not possible to return to one’s spouse and reclaim it. If the recipient spouse then refuses to hand it back, a dispute will almost certainly arise between the couple and may even reach the courts. Thus, heed must be paid to the divine prohibition mentioned in the verse above, since its consequences will inevitably affect both the donor and the donee.

Third Category of Prohibited Revocation: Destroyed Hiba

What is well known among jurists is the impermissibility of revoking a *hiba* when the gifted property has been destroyed, even if the donor is neither a relative nor a spouse but a stranger. In such a case, too, revocation is not allowed, and in some discussions a scholarly consensus (*ijmā’*) has even been claimed on this point (3).

The rationale for this can be presented in two ways.

First, when we examine the evidences for the permissibility of revocation in *hiba*, the certain minimum (*qadr mutayaqqan*) they establish is the permissibility of returning the very object of the *hiba* itself. That is, the evidences state that one may return to the gifted property—not that the contract of *hiba* as such is revocable in the abstract and subject to unilateral dissolution. It becomes clear, then, that the permissibility of revocation does not absolutely concern the contract of *hiba* in and of itself, but rather the dissolution of the contract on the condition that the original

object is physically returned. If, after destruction, no original object exists, there is nothing to take hold of in order to effect revocation of the *hiba*.

Crime Prevention

The donor must therefore know that if the gifted property has been destroyed or altered, it is no longer possible to retract the intention and approach the donee in order to reclaim the gift. If the donor is unaware of this ruling and nonetheless attempts to take back the gift while the donee refuses, a dispute will almost certainly arise between the two parties.

Fourth Category of Prohibited Revocation: Altered Hiba

In light of the reasoning just mentioned, it also becomes clear that if part of the original gifted object has been destroyed, the donor cannot claim the remaining part. This is explicitly reflected in the narrations. Imam al-Ṣādiq (peace be upon him) states that if the very object of the property gifted is still present, revocation is possible; otherwise, revocation is not allowed (14). When part of the original property has been destroyed, one can no longer say that the entire property or the full original object remains; thus, applying the phrase of the narration—"if the object remains"—to the remainder is not correct.

A similar case arises when the original object of the *hiba* has been altered or modified, or when a defect has newly appeared in it. In such situations as well, it is not possible to return to the exact gifted object. In the narration of Jamīl, it is reported that a person purchased a garment or some goods and later discovered a defect in them. The Imam said that if the garment or the very goods are still intact, he should return that same item to its owner and take back his money. But if alterations have been made to the garment—for example, it has been sewn or dyed—he may only claim the value of the defect (14).

Although this narration addresses sales rather than *hiba*, it clarifies what is meant by "the object remaining as it is" (*qiyām al-‘ayn*). Accordingly, in the narrations about *hiba*, what is intended by the "remaining" of the object is that the gifted object has neither perished nor undergone substantive change or transformation.

Fifth Category of Prohibited Revocation: Revocation after Death

Death of the Donee (Mutahabb)

From the foregoing, it becomes clear that when the donee dies after having taken possession of the gift before death, it is not permissible for the donor to approach the donee's estate to reclaim the *hiba*. The certain minimum established by the narrations is the donor's return to the living donee to reclaim the very object. In the scenario under discussion, however, the donee has died and the property has passed to the heirs. This situation differs from the minimum case of certainty (the donor's direct recourse to the donee). Consequently, in such a case we must adhere to the view that the contract of *hiba* becomes binding and that revocation is not permissible (13).

Death of the Donor (Wāhib)

If the donor dies, the right to reclaim the original object does not transfer to his or her heirs, and the heirs may not approach the donee to revoke the *hiba*. As mentioned above, what is derived from the evidences is specifically "the donor's recourse to the donee regarding the original object," whereas in our scenario the donor has died. Jurists

such as the author of *Jāmi' al-Maqāṣid* and the author of *Masālik al-Afhām* have also pointed to this conclusion (13, 15).

The claim sometimes made—that the heir inherits both the property and the rights pertaining to it—is not acceptable in this context. First, the “rights” intended are those that are by nature transferable, and here the transferability of this particular right is doubtful and uncertain; indeed, it may be a mere legal ruling (*ḥukm*), not a proprietary right (*ḥaqq*) at all. Second, what is meant by inheritable rights are those that can persist after death, whereas the continued existence of this right after the donor’s death is not established. This right is specific to the donor personally and may not survive him or her.

Crime Prevention

Certainly, if the heirs of both the donor and the donee know in which situations they may or may not lawfully seek revocation of a *hiba*, many conflicts and disputes will be prevented. For example, if the heirs of the donor do not know that the donor’s gift, being in the donee’s possession and having been partially used, cannot be reclaimed by them, they may nonetheless attempt to do so. If the donee refuses to return the gift, a dispute may arise between the donor’s heirs and the donee. Thus, knowledge of the rulings pertaining to *hiba* serves as an important means of preventing such conflicts.

Conclusion

The purpose of this article was to examine the foundations and evidences regarding revocation of *hiba* in Shī‘ī jurisprudence and to explore its impact on preventing disputes. The outcome of the study is that the donor’s recourse to the gifted property and its reclamation from the donee is not permissible in the following situations:

- When the donee is a relative of the donor.
- When the *hiba* has taken place between spouses.
- When the gifted property has been destroyed.
- When the gifted property has been altered.
- When the donor has died.
- When the donee has died.

Awareness of these matters helps donors, donees, and also their heirs, agents, and executors to avoid making claims that are contrary to Islamic and legal principles. By adhering to these principles and rules, they can keep disputes at bay. Otherwise, by asserting claims that contradict the rulings established and supported by evidence, donors and donees will inevitably find themselves in conflict in certain cases—and such conflicts are unlikely to have good consequences.

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All authors equally contributed to this study.

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The authors of this article declared no conflict of interest.

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All ethical principles were adhered in conducting and writing this article.

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In accordance with the principles of transparency and open research, we declare that all data and materials used in this study are available upon request.

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