



Hiba, Lifetime Usufruct and the Question of Shariah Compliance: A Quranic and Legal Analysis of Bangladesh's Transfer of Property (Amendment) Bill, 2026

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Abstract

This article examines whether Bangladesh's Transfer of Property (Amendment) Bill, 2026 – which creates a statutory mechanism permitting donors to transfer property while reserving lifetime usufruct – contravenes Qur'anic inheritance provisions. The analysis distinguishes between three distinct legal concepts: inheritance (mirāth), which governs property remaining at death; classical Hiba, a completed lifetime gift; and the proposed statutory gift with reserved usufruct. The Qur'an's inheritance rules in Surah al-Nisa 4:11 – 14 attach to property forming part of the deceased's estate and do not expressly prohibit genuine lifetime dispositions. Critically, proposed section 122A(4) expressly states that the new mechanism is a distinct mode of transfer that does not affect the validity of existing "gift or Heba." The article concludes that the amendment does not, on its face, violate Qur'anic inheritance commands, provided the arrangement constitutes a genuine lifetime transfer rather than a testamentary disposition disguised as a gift. The humanitarian objective of protecting elderly parents from dispossession is compatible with Islamic principles of justice, family responsibility, and prevention of harm, though careful safeguards against abuse remain essential.

Keywords: *Bangladesh property law, Hiba, Islamic law, lifetime usufruct, Qur'anic inheritance, Shariah compliance, Transfer of Property Amendment 2026*

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1. Introduction

Property disputes within Muslim families frequently arise at the point where religious inheritance rules encounter modern social realities. One particularly difficult situation concerns parents who have only daughters and no sons.

Under Qur'anic inheritance law, the existence of daughters does not necessarily mean that every part of the parents' estate will pass exclusively to the daughters. Depending upon the complete surviving family structure, other heirs may have rights in the residue. Consequently, some parents, during their lifetime, voluntarily transfer property to their daughter through Hiba, intending to secure her economic future and to prevent later disputes concerning the property.

There is nothing inherently unusual about a living owner making a lifetime transfer. The legal and theological difficulty begins when the parent wants simultaneously to:

- transfer the property to the daughter;
- protect the daughter against future claims of more distant relatives;
- continue living in and enjoying the family home;
- prevent the daughter's husband or other persons from dispossessing the parent; and
- preserve the parent's security until death.

The Bangladesh legislature has attempted to address precisely this social problem through the Transfer of Property (Amendment) Bill, 2026.

The Government Press published Bill No. 105/2026 on 27 August 2026. The Bill proposes new sections 122A and 122B. Section 122A is entitled "Gift with reservation of right of usufruct."

The central question is therefore: Does such a statutory arrangement violate any express command of the Qur'an?

In my considered view, the answer is not necessarily, and on the face of the Bill, there is no clear Qur'anic violation merely because Parliament creates such a lifetime-usufruct property arrangement. But this conclusion requires careful qualification.

2. Three Different Concepts Must Not Be Confused

A large part of the present controversy appears to arise from treating three different legal concepts as though they were identical.

2.1. Inheritance

Inheritance arises after death. When a Muslim dies owning property, the estate is distributed among the heirs according to the applicable rules of Islamic inheritance.

2.2. Hiba

Hiba is a lifetime gift. A living owner voluntarily transfers property to another person without consideration, subject to the requirements applicable to Hiba.

2.3. Statutory Gift with Reserved Lifetime Usufruct

The 2026 Bill proposes a third category: a transfer by gift in which the donor reserves the right of lifetime enjoyment (usufruct).

The proposed section 122A(1) expressly states that a transfer of movable or immovable property by way of gift, while reserving the donor's lifetime enjoyment, shall be valid. The proposed section 122A(2) limits this mechanism to specified close family relationships, including parents and children, grandparents and grandchildren, and spouses. This distinction is crucial.

3. What Does the Qur'an Actually Say About Inheritance?

The principal Qur'anic provisions are found in Surah al-Nisa 4:11–14.

Qur'an 4:11 states that if there is only one daughter, she is entitled to one-half of the estate; if there are two or more daughters, they collectively receive two-thirds, subject to the complete rules of succession. The verse also provides shares for parents and emphasises that these are obligations ordained by Allah.

Qur'an 4:12 deals with spouses and other categories of heirs. Qur'an 4:13 describes these provisions as the limits ordained by Allah, while 4:14 warns against transgressing those limits.

Therefore, Islamic law must never permit a deceased person's estate to be distributed contrary to the Qur'anic inheritance rules merely because someone dislikes the prescribed shares.

But there is a fundamental question: When do those inheritance rules attach to property?

They attach to the property left by the deceased. If an owner has genuinely transferred property during his lifetime, that property is ordinarily no longer part of the owner's estate at death. This is the conceptual foundation of Hiba.

4. The Qur'an Does Not Say That a Living Owner Cannot Dispose of His Property

This point is often overlooked in public discussion.

The Qur'an lays down inheritance rules for the property left after death. It does not contain a verse stating: "A Muslim owner must preserve all his property until death so that his future heirs may inherit it."

Nor does Qur'an 4:11 state that a parent with daughters must retain ownership of all property until death. Indeed, the Qur'an recognises numerous forms of lawful ownership, voluntary spending and transfer during life.

Therefore, it would be incorrect to argue simply: "Because inheritance shares are fixed in Qur'an 4:11, every lifetime transfer that reduces the eventual estate is necessarily a violation of Qur'an 4:11." That proposition is too broad.

At the same time, one must distinguish a genuine lifetime transfer from a transaction that is merely disguised as a lifetime transfer while actually functioning as a testamentary disposition taking effect only after death. That distinction is central to the Shariah debate.

5. Hiba Is Not the Same as Wasiyyah

A fundamental distinction exists between Hiba and Wasiyyah (bequest/will).

A genuine Hiba takes place during the donor's lifetime. A Wasiyyah ordinarily operates upon death and is consequently subject to the Islamic rules governing bequests.

The classical law of Hiba therefore contains requirements intended to establish that ownership has genuinely moved during the donor's lifetime.

Bangladesh's existing Transfer of Property Act, 1882 defines a gift as a voluntary transfer of existing movable or immovable property without consideration, accepted by or on behalf of the donee.

Section 123 addresses the mode of transfer and expressly recognises a Hiba under Muhammadan law for the registration purposes specified there.

Thus, Hiba is a lifetime transaction, whereas inheritance and testamentary succession are activated by death.

6. The Problem That the 2026 Amendment Attempts to Solve

Consider the following real-world situation.

A father and mother have one daughter and no son. They own the family home. They make a Hiba to their daughter. The daughter becomes owner. The parents continue living in the house because it has always been their home.

But after registration, the daughter and/or her husband may claim: "The property now belongs to us. You have no legal right to remain."

The result can be extraordinarily harsh. The parents may have voluntarily surrendered ownership precisely because they wanted to protect their daughter, only to discover that they have also surrendered their own residential security.

This is not merely a theoretical problem. The present legislative initiative was publicly described by the Law Minister as an attempt to allow parents and other donors to retain the right to use and enjoy property during their lifetime after transferring it to children or other close relatives. The stated humanitarian purpose was to prevent donors from losing access to their own homes.

7. What Exactly Does Section 122A Propose?

The wording of proposed section 122A is extremely important.

It provides for: "Gift with reservation of right of usufruct."

The proposed section 122A(1) validates a transfer by gift where the donor reserves the right of lifetime enjoyment of the property.

Subsection (2) limits the arrangement to specified close relationships, including:

- parent → child;
- child → parent;
- grandparent → grandchild;
- grandchild → grandparent; and
- husband and wife.

For immovable property, the provision requires a registered deed under the Registration Act, 1908.

This is not simply a provision saying: "The daughter will become owner only after the parents die." The statutory model is more

nuanced. It contemplates a transfer by gift while preserving a lifetime usufructuary right for the donor. That distinction matters greatly to the Shariah analysis.

8. The Most Important Clause: Section 122A(4)

Perhaps the most significant provision for answering the objections of Islamic scholars is proposed section 122A(4).

It expressly provides that a transfer under section 122A constitutes a distinct mode of transfer and shall not be interpreted as limiting, derogating from, or affecting the validity of any gift or Hiba or other recognised mode of transfer.

This clause deserves special attention.

If Parliament had intended to redefine Muslim Hiba, the legislation could have amended the relevant provisions governing Hiba itself. Instead, the Bill says expressly that the new statutory mode does not affect the validity of Hiba.

The Law Minister similarly stated during the parliamentary debate that the measure was not intended to alter Muslim Hiba and that the statutory gift was a separate property-law mechanism.

9. Does the Amendment Violate Qur'an 4:11?

My answer: Not on its face.

The reason is simple. Qur'an 4:11 regulates inheritance. The proposed section 122A regulates a lifetime property transfer.

If the donor transfers ownership during life, the property may no longer form part of the donor's estate at death. Therefore, the transaction does not necessarily interfere with the distribution of the property that actually remains in the estate.

This is analogous to a person spending, selling or otherwise lawfully disposing of property during life. The heirs do not acquire a vested ownership right in every asset merely because they may become heirs in the future.

The Qur'an gives heirs rights in the deceased's estate; it does not necessarily give them a present ownership interest in every asset of a living parent. This is the key distinction that should inform the public debate.

10. But Is the New Mechanism Itself "Hiba"?

Here the scholars' objection deserves careful consideration.

The answer should be: Not necessarily.

The Bill itself deliberately calls the arrangement a distinct mode of transfer and separately preserves Hiba. Therefore, one should not argue: "Classical Hiba permits X, therefore every feature of section 122A must be classical Hiba." That does not follow.

Nor should one argue: "Section 122A is not identical to classical Hiba, therefore it violates the Qur'an." That also does not automatically follow.

The appropriate question is: Is the new statutory property right itself contrary to any explicit Qur'anic prohibition or an established, definitive rule of Shariah? That is a much narrower and more intellectually defensible question.

11. The Principle of Intention

The questioner has specifically referred to the famous Hadith: "Innamal-a'malu bin-niyyat" ("Actions are judged by intentions"). This Hadith is recorded at the beginning of Sahih al-Bukhari and Sahih Muslim and is among the foundational principles of Islamic jurisprudence.

The intention of parents in the situation under discussion can be entirely different from an intention to defeat Allah's inheritance law.

Suppose the parent's intention is: "I want my only daughter to receive the property during my lifetime because I fear that distant relatives may eventually take it, but I also want to retain my home and security until my death."

That intention should be examined fairly. It is not automatically equivalent to: "I reject Allah's inheritance law."

The first intention may arise from a desire to protect a daughter and preserve parental security. Nevertheless, good intention alone cannot make an otherwise invalid transaction valid. The Hadith on intention does not mean that every legally impermissible act becomes permissible merely because the actor has a good motive. Thus, *niyyah* is important but not sufficient by itself.

12. The Hadith Concerning Gifts to Children

There is another important Hadith that should not be ignored.

In the well-known narration of al-Nu'man ibn Bashir, his father gave him a gift and sought the Prophet's ﷺ approval. The Prophet asked whether the father had given equivalent gifts to his other children. When the answer was no, the Prophet instructed him to take the gift back.

This Hadith establishes an important principle of fairness among children in gifts. But the factual situation differs when there is only one child. Where there is genuinely only one child, there is no sibling against whom the parent is discriminating.

This does not by itself answer every question about inheritance, but it demonstrates why the jurisprudence of Hiba cannot be reduced to the statement that "all gifts to children are prohibited."

13. A Crucial Distinction: Defeating Inheritance Versus Disposing of Property

There is a significant jurisprudential distinction between:

A. Fraudulent circumvention of inheritance

A person creates a sham transaction merely to deprive rightful heirs, while the supposed transfer is not genuine.

B. Genuine lifetime disposition

A living owner genuinely transfers property during life and thereby changes the ownership before death.

The first raises serious Shariah concerns. The second is a recognised feature of property ownership and Hiba jurisprudence.

Therefore, the mere fact that a lifetime gift has the consequence that certain people will not inherit that particular property does not automatically prove that the donor has violated Qur'an 4:11. If that proposition were accepted without qualification, virtually every lawful sale, gift or consumption of property during a person's lifetime could be characterised as an interference with future inheritance. That would be an untenable approach.

14. The Parents' Right to Security Is Also a Serious Islamic Consideration

Islam does not merely discuss inheritance. It places enormous emphasis on:

- justice;
- kindness to parents;
- prevention of harm;
- fulfilment of obligations;

- protection of property; and
- preservation of family relationships.

The Qur'an repeatedly commands good treatment of parents. Therefore, a legal framework designed to prevent a parent from becoming homeless or being expelled from the family home after transferring property should not be dismissed without examining its protective purpose.

The classical legal maxim commonly expressed as “lā ḍarar wa lā ḍirār” (no harm and no reciprocating harm) is also relevant as a general jurisprudential principle, although the grading of individual Ibn Majah transmissions should be distinguished from the broader acceptance of the maxim in fiqh literature.

The important point is that Islamic jurisprudence has never been indifferent to preventing serious and unjust harm.

15. The Daughter's Husband Does Not Automatically Become Owner

Another misconception deserves correction.

If a father gives property to his daughter, the daughter's husband does not thereby become owner of that property merely because he is her husband. The property belongs to the daughter according to the terms and validity of the transfer.

The problem in practice is therefore not that Islamic law automatically gives the daughter's husband ownership. The practical problem is whether the daughter may allow or facilitate her husband's interference with her parents' residence. This is precisely why a lifetime right of occupation/use can be valuable.

16. Why the Proposed Law May Actually Strengthen the Parents' Position

Traditional Hiba can create a difficult practical situation:

Before Hiba

Parent = owner + occupier.

After unconditional Hiba

Daughter = owner. Parent = potentially only an occupier by permission.

Under the proposed statutory mechanism

Daughter = transferee/owner while Parent = holder of a legally protected lifetime usufruct/right of enjoyment.

Thus, the law attempts to separate ownership from lifetime enjoyment. This is a sophisticated property-law solution to a genuine social problem.

17. The Bill Does Not Appear to Abolish Hiba

This is perhaps the strongest response to the argument that the amendment itself destroys Islamic Hiba.

The proposed legislation explicitly states that the new statutory mechanism does not affect the validity of: gift; Hiba; or other recognised modes of transfer.

Therefore, if a Muslim family wishes to execute a traditional Hiba according to Muslim law, the Bill does not, on its face, abolish that avenue. Rather, Parliament has attempted to create another form of property transfer. This distinction should be central to any scholarly debate.

18. Where the Scholars' Objection Can Be Legitimate

It would nevertheless be unfair to dismiss the scholars' objections as irrational.

There is a genuine jurisprudential issue if the statutory mechanism is interpreted as follows: “The parent has given Hiba, but the daughter has no present ownership whatsoever and will receive the property only after the parent's death.”

That arrangement would resemble a testamentary transfer much more closely than a completed lifetime Hiba. Classical Hiba generally involves a present transfer, and questions of possession and control are important.

Therefore, Islamic scholars are justified in asking: What exactly is transferred now? What remains with the donor? Is ownership transferred immediately? Is only usufruct retained by the donor? Or is ownership itself postponed until death? These questions cannot be answered merely by looking at the word “Hiba” in a deed.

19. The Better Legislative Interpretation

The best interpretation, in my view, is to regard section 122A as creating a statutory lifetime property transfer with reserved usufruct, not as an amendment to the classical law of Hiba.

Under that interpretation:

- ownership is transferred during the donor's lifetime;
- the donor retains a legally protected right of enjoyment;
- the transaction is separate from inheritance;
- existing Hiba remains available;
- the Qur'anic inheritance shares continue to govern whatever property remains in the estate at death.

This interpretation is consistent with the actual wording of section 122A(4).

20. Section 122B and Protection Against Abuse

The proposed section 122B provides an additional safeguard.

After registration, the gift is generally described as irrevocable, subject to specified exceptions involving mutual consent or judicial intervention for circumstances such as financial, medical, educational, family or other genuine necessity.

Where consent cannot be obtained because of minority, disappearance, unsoundness of mind, legal incapacity or another sufficient cause, the District Judge may authorise variation or revocation subject to the statutory requirements.

This is significant because it shows that the legislature is attempting to balance the security of the donor with the security of the donee.

21. Comparison with the 1961 Muslim Family Laws Reform

Bangladesh has historical precedent for legislating in areas connected with Islamic family law.

The Muslim Family Laws Ordinance, 1961, which remains applicable in Bangladesh, was enacted following recommendations of the Commission on Marriage and Family Laws. Its section 4 provides a form of representational succession for children of a predeceased son or daughter. Bangladesh inherited this reform

framework after independence. Academic literature describes the provision as a significant modification of the classical scheme of succession.

This historical experience is important. It demonstrates that the relationship between classical fiqh and modern Muslim family legislation has never been completely static. There has been continuing debate over whether particular reforms are faithful applications of Islamic principles, legitimate ijtiḥad, or departures from established rules.

Therefore, simply saying “Parliament has legislated, therefore it is Shariah” is insufficient. But equally, saying “Parliament has legislated differently from one traditional fiqh formulation, therefore it violates the Qur’an” is also insufficient.

22. The Qur’an Must Remain the Ultimate Reference Point

The correct hierarchy should be:

Qur’an → authentic Sunnah → established principles of Islamic jurisprudence → legitimate juristic interpretation → statutory implementation.

Where a statute directly contradicts a clear Qur’anic command, Parliament cannot make the contradiction disappear merely by legislative wording. But where the Qur’an has prescribed inheritance rules and Parliament regulates a lifetime property transaction outside the estate, there is no automatic contradiction. That distinction is fundamental.

23. The Question of “Only Daughters”

The case of parents with only daughters deserves particular attention.

Qur’an 4:11 expressly recognises daughters as heirs. One daughter has a prescribed share of one-half; two or more daughters collectively have two-thirds under the verse. The remainder can, depending on the surviving relatives and the applicable rules, pass to other heirs.

Consequently, parents who fear that their daughter may not ultimately retain their entire property are addressing a genuine succession issue. However, the exact outcome must always be calculated from the actual surviving relatives. It is not correct to state universally that: “If there is one daughter and no son, the paternal uncle or cousin automatically gets the remainder.” Islamic inheritance is a technical system of exclusion and priority. The identity of the surviving heirs must be established before calculating the estate.

24. A Balanced Shariah Position

The following propositions can reasonably be defended:

- **Proposition 1:** Qur’an 4:11–12 must be respected when distributing property that remains in the deceased’s estate.
- **Proposition 2:** A lifetime Hiba is conceptually different from inheritance.
- **Proposition 3:** A genuine lifetime transfer does not automatically violate Qur’an 4:11 merely because it changes what remains in the estate at death.

- **Proposition 4:** Good intention is relevant but does not legalise an otherwise invalid transaction.
- **Proposition 5:** The 2026 statutory mechanism should not automatically be called “Hiba” in the technical classical sense.
- **Proposition 6:** The Bill expressly preserves the validity of Hiba.
- **Proposition 7:** The statutory reservation of lifetime usufruct is intended to protect parents from losing their home and security after transferring ownership.
- **Proposition 8:** Whether every technical feature of the new statutory mechanism conforms to every school of classical fiqh is a separate jurisprudential question.

25. The Central Error in the Present Debate

The most serious analytical error would be to reduce the debate to: “Hiba is Islamic; therefore every amendment concerning Hiba is Islamic.” That is too simplistic.

The opposite error is: “The amendment differs from classical Hiba; therefore it violates the Qur’an.” That is also too simplistic.

The proper legal question is: Does the new statutory arrangement contradict a clear Qur’anic rule, or does it merely create a new civil-law mechanism governing ownership and lifetime enjoyment while preserving the existing rules of inheritance and Hiba?

On the wording presently available, the second interpretation is stronger.

26. The Importance of Social Reality

Islamic jurisprudence has historically dealt with changing social circumstances through principles of ijtiḥad, *maslahah* (public interest), prevention of harm, custom where legally relevant, and the objectives of Shariah (*maqasid al-shariah*).

Property law must address real human problems. If an elderly mother transfers her only house to her daughter out of love and religious conviction and is subsequently expelled from that home, the law has failed to protect an obvious human interest.

A humane legal system should not force parents to choose between protecting their daughter and protecting themselves. The proposed lifetime-usufruct mechanism attempts to avoid precisely that dilemma.

27. A Necessary Safeguard: No Coercion or Fraud

The humanitarian purpose of the amendment should not become a licence for abuse.

A valid statutory system should ensure:

- informed consent of the donor;
- absence of coercion;
- capacity of the donor;
- clear identification of the property;
- registration;
- explicit specification of the donor’s lifetime rights;
- protection against fraudulent execution;
- protection against exploitation of elderly persons; and

- access to judicial remedies.

The objective should be family security, not family manipulation.

28. Final Answer to the Central Question

Does the 2026 amendment violate the Qur'an?

On the face of the published Bill, I do not find a direct violation of a specific Qur'anic inheritance command merely because the law permits a donor to transfer property while retaining lifetime enjoyment.

The Qur'an's inheritance provisions, especially Surah al-Nisa 4:11–14, govern succession to the estate left at death. They do not expressly prohibit a living owner from making a lawful lifetime disposition.

Moreover, the Bill expressly says that its new mechanism is a distinct mode of transfer and does not invalidate or restrict Hiba.

Does that mean every feature of the amendment is automatically Shariah-compliant? No.

If the statutory mechanism were interpreted to mean that there is no present transfer whatsoever and ownership arises only upon death, a serious Shariah objection could arise because the arrangement would begin to resemble a testamentary disposition.

Therefore, the decisive legal question is: Is ownership transferred during the donor's lifetime while only usufruct/enjoyment is retained, or is ownership itself postponed until death? The first is substantially different from the second.

29. A Proposal for Constructive Dialogue

Instead of framing the matter as “Government versus Islamic scholars,” the better approach would be: “Islamic scholars + jurists + legislators + property-law experts + social researchers.”

A joint expert committee could examine:

- classical Hanafi doctrine of Hiba;
- the four Sunni schools;
- contemporary Muslim personal-law reforms;
- Bangladeshi property law;
- the rights of elderly parents;
- actual cases of parental dispossession;
- the distinction between ownership and usufruct;
- the Qur'anic rules of inheritance; and
- safeguards against fraudulent or coercive transfers.

Such an approach would be more consistent with the Qur'anic command to deliberate with knowledge and justice than simply issuing categorical accusations of “Shariah violation.”

30. Conclusion

The debate over Hiba and the 2026 property-law reform should not be treated as a conflict between Islam and modernity.

The real challenge is to reconcile three legitimate objectives:

First: Preserving the Qur'anic inheritance system;

Second: Protecting parents from injustice and dispossession during their lifetime; and

Third: Allowing parents to make legitimate lifetime arrangements for their daughters and other children.

The Qur'an clearly establishes inheritance shares. Those shares must be respected when the estate comes into existence upon death. But a living owner is not necessarily prohibited from making a genuine lifetime disposition of property.

The proposed Bangladesh mechanism goes one step further by separating ownership from lifetime enjoyment. It allows the donor to transfer property while retaining the right to live in and enjoy it. Most importantly, the legislation expressly preserves Hiba as a separate recognised mode of transfer.

Accordingly, the strongest scholarly conclusion is not that the amendment is automatically contrary to the Qur'an. Rather, its Shariah validity should be assessed according to its actual legal structure, not merely by its social consequences or by calling it “Hiba.”

The humanitarian objective of protecting elderly parents is compatible with the broad Islamic concern for justice, family responsibility and prevention of harm. At the same time, the legislature should ensure that the new statutory mechanism does not disguise a testamentary disposition as a lifetime transfer.

In short: A law protecting a parent's lifetime right to remain in and enjoy property that the parent has lawfully transferred does not, by that fact alone, violate Qur'an 4:11.

The real Shariah question is not whether parents may protect themselves and their daughters; it is whether the legal form used to achieve that protection constitutes a genuine lifetime transfer or improperly postpones ownership until death. That distinction should be the starting point for a serious Islamic legal debate in Bangladesh.

Important Legal-Status Note

I have deliberately not described the measure as an already-assented Act without qualification. The official Government Press record identifies it as Bill No. 105/2026, published on 27 August 2026.

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