

## Is it Sufficient for The Mother to Take Possession of a Gift Given to The Child?

**Darulifta Ahlesunnat** (Dawateislami)

### Question

What do the noble scholars and jurists of Islamic law say about the following: My mother gifted my non-baligh and immature daughter a gold bangle. My wife took possession of it on behalf of the daughter without informing me. I have recently been facing some (financial) difficulties. So, when I found out about this, I asked my wife to give me the bangle so I can use it to resolve my problem. She replied that this is in the ownership of our non-baligh child and we cannot use it. Please give an answer and let me know whether this bangle has come into the ownership of my daughter or not, and can I use it for my own needs?

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ  
الْجَوَابُ بِعَوْنِ الْمَلِكِ الْوَهَّابِ اللَّهُمَّ هِدَايَةَ الْحَقِّ وَالصَّوَابِ

In the enquired situation, the bangle has not entered your non-baligh and immature daughter's ownership, rather it is still in your mother's ownership. Without your mother's permission, you cannot make personal use of the bangle.

The detail is that in the terminology of Sharī'ah, making someone the owner of one's property without any 'Iwad (return) is known as 'Hibah' (gifting). One of the conditions for a Hibah to be complete is that the gifted item must be given into the possession of the 'Mawhoob Lahu' (the one who the gift is given to). If the 'Wahib' (the one giving the gift) didn't give the Mawhoob Lahu possession of the item, the Hiba will remain incomplete and the 'Mawhoob' (the item being gifted) will remain in the Wahib's ownership. If a gift is given to an immature and non-baligh child by anyone other than the father or other guardians, the father must take possession of the item on behalf of the child if he is present. It is insufficient for the mother or any other person to take possession of the gift if the father is present and hasn't granted permission. (Being 'present' doesn't only mean being there physically at that time, but 'Ghaibat Ghair Munqati'ah' is also included in being present i.e. though he

isn't physically there right now but his whereabouts are known and it is known when he will return) Therefore, in this situation, since your wife took possession of the gold bangle on behalf of your daughter without your permission, the Hibah is incomplete and the bangle is still in your mothers ownership. Your mother has full authority over her gold bangle; she can give it to you or make use of it herself. But without her permission, you cannot make use of it. The definition of Hibah is mentioned in Al-Durr Al-Mukhtar as follows:

تمليك العين مجاناً أي بلا عوض

Translation: Granting ownership of an 'Ain' (item) without any compensation.

(Al-Durr Al-Mukhtar, Book of gifting, Vol. 8, p. 567, Publ. Quetta)

For the Hibah to be complete, possession is necessary. Regarding this, Aishah Siddiqah رضي الله تعالى عنها states:

إن أبابكر الصديق كان نحلها جاد عشرين وسقاً من ماله بالغابة. فلما حضرته الوفاة، قال: والله يا بنية ما من الناس أحد أحب إلي غنى بعدي منك. ولا أعز علي فقر بعدي منك. وإنني كنت نحلته جاد عشرين وسقاً. فلو كنت جددتيه واحتزتيه كان لك. وإنما هو اليوم مال وارث. وإنما هما أخواك وأختاك، فاقسموه علي كتاب الله

Translation: Abu Bakr Siddique رضي الله تعالى عنه had gifted her i.e.

Aishah رضي الله تعالى عنها some date trees in 'Al-Ghabah' that produce 20 Wasqs (a unit of measurement) of dates. When he was about to pass away, he stated: Oh, my daughter! By Allah, there is no one whom I would love to be wealthier after my passing than you and after my passing, no one's destitution is more difficult for me to see than yours. I gave you some trees that produce 20 wasq. If you had taken possession of them, they would have become yours. (But since you haven't taken possession of them till now, they aren't in your ownership) Today they are the property of the heirs. You have two brothers and two sisters, so divide it according to the Book of Allah. (Muwatta Imam Malik, Book of Judgments, Chapter of what is impermissible to gift, Vol. 2, p. 752, Publ. Beirut)

For the Hibah to be complete, it is a condition to give possession. Regarding this, Malik Al-‘Ulama’, Allamah Kasani Hanafi رحمۃ اللہ تعالیٰ (d. 587 AH/1191 CE) states:

قال عامة العلماء شرط والموهوب قبل القبض على ملك الواهب يتصرف فيه كيف شاء... (ولنا) إجماع الصحابة رضي الله عنهم وهو ما روينا أن سيدنا أبا بكر وسيدنا عمر رضي الله عنهما اعتبرا القسمة والقبض لجواز النحلي بحضرة الصحابة ولم ينقل أنه أنكر عليهما منكر فيكون إجماعا وروى عن سيدنا أبي بكر وسيدنا عمر وسيدنا عثمان وسيدنا علي وابن عباس رضي الله عنهم أنهم قالوا لا تجوز الهبة إلا مقبوضة محوزة ولم يرد عن غيرهم خلافه

(Badai’ Al-Sanai’, Book of Gifting, Topic of conditions of gifting, Vol. 8, p. 105, Publ. Quetta)

It is stated in Fatawa ‘Alamgiri:

لا يثبت الملك للموهوب له إلا بالقبض هو المختار

(Fatawa ‘Alamgiri, Book of gifting, Vol. 4, p. 378, Publ. Quetta)

It is necessary for the wali (guardian) to take possession on behalf of the child; if the father is present, he is the wali. Thus, it is stated in Mukhtasar Lil-Qudoori, Al-Hidayah, Al-Binayah, Fath Al-Qadeer, Kanz Al-Daqa’iq, Tabyeen Al-Haqa’iq, Al-Bahr Al-Ra’iq, Al-Durr Al-Mukhtar, and other books of fiqh (the following word are in Al-Bahr Al-Ra’iq):

(قوله وإن وهب له أجنبي يتم بقبض وليه) لأن للولي ولاية التصرف في ماله وقبضها منه أراد بالولي هنا واحدا من أربعة وهو الأب ووصيه والجد ووصيه على هذا الترتيب وأطلقه فشمّل ما إذا كان في حجره أو لا ولا يجوز قبض غير هؤلاء الأربعة مع وجود واحد منهم سواء كان الصغير في عيال القابض أو لم يكن وسواء كان ذارحم محرّم أو أجنبيا

(Al-Bahr Al-Ra’iq, Book of Gifting, Vol. 7, p. 288, Publ. Dar Al-Kitab Al-Islami)

A’la Hazrat, Imam Ahmad Raza Khan رحمۃ اللہ تعالیٰ (d. 1340 AH/1921 CE) was asked about a grandmother taking possession on behalf of her granddaughter. He replied:

اگر نواسی اس کے قبضہ میں نہ ہو، تو باپ کے ہوتے نانی وغیرہ کسی کا قبضہ جائز نہیں۔

Translation: If the granddaughter isn’t in her custody, then it is impermissible for her and others to take possession of the item in the presence of the father. (Fatawa Razawiyah, Vol. 19, p. 340, Publ. Raza Foundation, Lahore)

وَاللّٰهُ اَعْلَمُ عَزَّوَجَلَّ وَرَسُوْلُهُ اَعْلَمُ صَلَّى اللّٰهُ تَعَالٰى عَلَيْهِ وَاٰلِهٖ وَسَلَّم

(Allah Almighty knows best and His Messenger صَلَّى اللّٰهُ عَلَيْهِ وَاٰلِهٖ وَسَلَّم knows best.)

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**Dar-ul-Ifta Ahlesunnat (Dawat-e-Islami)**



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