



# MOHANLAL SUKHADIA UNIVERSITY, UDAIPUR

FACULTY OF LAW

## FIRST YEAR BACHELOR OF LAWS

(Effective from Session 2019-20)

PAPER – VI (PAPER CODE - 6005)

(PAPER NAME – FAMILY LAW – II (MUSLIM LAW))

Max. Marks: 100

Min. Marks: 36

**Note:** A. In order to ensure that students do not leave out important portions of the syllabus, examiners shall be free to repeat the questions set in the previous examination.

B. Leading cases prescribed under this paper may be read whenever they are relevant.

1. **Muslim Law:** Origin, Development, Sources, Schools, Application, Interpretation and Conversion.

2. **Marriage:**

A. Nature of marriage, Essential of marriage, Khyar-ul-bulugh, Iddat, Khilwat-ul-sahiha, Matrimonial stipulations, Kinds of marriage and effects of marriage.

B. Mahr : Meaning, Nature, Kinds, Objects and Subject matter, Wife's rights on non payment of dower.

C. Dissolution of marriage: Talaq, Talaq-ul-Sunnat , Talaq-ul-Bidaat, Ilia, Zihar, Talaq-e-tafweez, Mubarat, Khula, Lien, Faskh, The dissolution of Muslim Marriage Act, 1939- Section 2, Position of Triple Divorce in India, Legal effects of divorce, and rights and duties of parties.

D. Guardianship: Appointment of guardian, Kinds of guardianship

3. A. **Pre-emption:** Meaning, Nature and Classification of Haq Shufa (Pre-emption), Rights of pre-emption, conflict of laws, subject matter and formalities of preemption, legal effects of pre-emption, Devices for evading pre-emption.

B. **Gift:** Meaning and requisites of gift (Hiba); Gift of Musha, Conditional and future gifts, Life estate, Life interest, Hiba-bil-ewaz, Hiba-bil-Shartul-ewaz,

4. A. **Will (Vasiyat) :** Competence of testator and legatee valid subjects of will : Testamentary limitations, Formalities of a will and abatement of legatee. Legitimacy and acknowledgement: Legitimacy and legitimization Presumption of legitimacy under Muslim Law and Section 112 of the Indian Evidence Act, conditions of a valid acknowledgement.

**Death Bed Transactions:** Meaning and effect of Marj-ul-maut

B. **Maintenance:** Person entitled to maintenance, Principles of maintenance, The Muslim Women (Protection of Rights on Divorce) Act, 1986.

**Waqf:** Meaning, essentials and kinds, Beneficiaries of Waqf. The Waqf Validating Act, 1913 and 1939. Formalities for creation of Waqf. Waqf of musha, Muslim religious institutions and officers Administration of waqfs, Mutawally

**Inheritance :** General principles of law of inheritance, doctrine of Aul and Rudd under Hanafi and Shia Law.

### LEADING CASES FOR EXAMINATION :

1. Maina Bibi v. Chaudhary Vakil Ahmed, 2, LA. 145
2. Shah Bano Begum v. Mohammad Ahmed Khan, 1985 SCR (3) 844
3. Danial Latifi v. Union of India, (2001) 7 SCC 740
4. Noor Saba Khatoon v. Mohd. Quasim, AIR 1997 SC 3280
5. Shayara Bano v. UOI & Ors., WP (C) No. 118 of 2016

Omitted

5. A.

B.

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(SC-P103) issued on 09/08/2018  
PAPER - IV PAPER 2008 - 2009

**CASES FOR READING:**

1. Immambandi v. Mustsaddi (1918), 45, LA. 71
2. Jafree Begum v. Amin Mohammed Khan, 7, All 822
3. Saiyid Rashid Ahmed v. Mt. Anisa Khatun, AIR 1932 PC 25

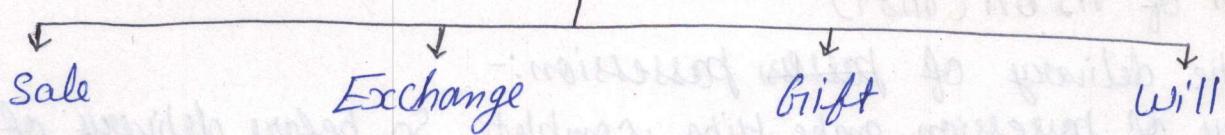
**SUGGESTED READINGS:**

1. Mulla : Principles of Mohammedan Law
2. Paras Diwan : Muslim Law in Modern India
3. Fayzee. A.A.A. : Mohammedan Law
4. Akil Ahmed : Muslim Law (English & Hindi)
5. B.R. Verma : Islamic Law (English & Hindi)
6. Ameer Ali : The Principles of Mohammedan Law
7. के. पी. शर्मा – मुस्लिम विधि

## Gift (HIBA)

Acc. to Mulla "Gift is a transfer of property made imidiately & without any exchange".

### Types of property transfer



- 2 Parties involved : a) Donor  
b) Donee

[In muslim major age is 15 yrs. & only for marriage & divorce] otherwise 18 yrs. as per law. [like exchange of property and gift]

#### Condition applied on Donor:

- 1) Major
- 2) Sound Mind
- 3) Free Consent

#### Condition applied on Donee:

- 1) Can be Muslim or Non-Muslim.
- 2) Minor
- 3) Unborn child - [only some agree other don't, who agrees they believe that child shall be born within 6 month otherwise it would be void.]

#### Essential Elements of Gift:

- 1) Donor Declaration → Donee acceptance should be their.  
• Declaration must be real & bonafied.
- 2) Acceptance can be either express or implied.  
express → By donee or any guardianship. Donee acceptance
- 3) Possession → Delivery of subject matter of gift: It can be 2 type :-
  - a) Actual [mutual consent]
  - b) Constructive [objection can be there]

[Rashida Khatoon v/s Aslighue Ali]

## Subject Matter of Oral HIBA :-

- It must be exist at the time of making gift. (produced in future as void)
- Donor must possessed it.
- Subject of gift may be movable or immovable or self acquired or paternal property.

## Revocation of HIBA (Gift)

### 1. Before the delivery of ~~possession~~ possession:-

- (a) Delivery of possession make Hiba complete. So, before delivery of possession all hiba are revocable.
- (b) A gift may be revoked by donor at any time before delivery of possession.

### 2. Revocation after delivery of possession

- (a) Consent of donee.
- (b) Mere declaring revocation by the donee or institution of a suit or any other action is not sufficient to revoke a gift till the decree of a court of law is passed revoking of court.

Exception or irrevocable gift : [उसा दाने परीक्षे रद्द नहीं किया जा सकता]

1. Death of either party.
2. Where the property has been lost or destroyed.
3. Where the one has transferred the property to another person.
4. Where the gift is Sadqah.

22 Feb 2021

## Kinds of HIBA

Hiba - bil - ewaz      Hiba - bil - shartul ewaz      Sadqah      Ariyat



Hiba means gift and  
ewaz means consideration.

Hiba - bil - ~~ewaz~~ ewaz:

It is a gift of property from donor to donee along with payment of consideration in cash & kind from donee to the donor. (It is like sale only / Exchange only)

*The exchange terms aren't pre-defined. e.g. 'A' gives property to 'B' in exchange of anything what 'B' wants to give.*

Hiba - bil - shartul ~~ewaz~~ ewaz:

Where a gift is made with stipulation for a return from the donee. It is a simple gift initially with all three essential ~~car~~ conditions to be fulfilled and when the condition is fulfilled by the donee it ~~becomes~~ becomes gift.

*The exchange terms are pre-defined. e.g. 'A' gives property to 'B' in exchange of a ~~car~~ car.*

Sadqah:

Gift for religious purpose. For a valid Sadqah consent of donee is not required/essential.

Ariyat:

It is the gift of right to enjoy the usufruct in a specific property for a specific period.

Usufruct

The right to enjoy the use or advantage of another Property.

## Doctrine of Musha (मुसा का नियम)

### Musha

Undivided shares in a joint property. Musha is a gift of part of a thing / property which is capable of division is not valid unless the part is divided off and separated from the property of the donor. Whereas; a gift of an indivisible thing is valid.

Property capable of division e.g. parental house

Property ~~of~~ which is indivisible. e.g. theater, shop.

# Family Law - II (Muslim Law)

①

Law tells us rights & duties

Book

Akil Ahmed

- The pre-Islamic period called Ayyam-il-Zahiliya period of ignorance
- In 570 AD birth of Prop. Mohd. Saheb. in Mecca.
- At the age of 35 he got married to a widow Khadija (1<sup>st</sup> wife) and she was 15 years older than him.
- At the age of 40 he received Wahi (message of God)
- He received message (Wahi) from Gabriel.
- He married to 4 women.
- His last wife was Aysha & her father was Abu Bakar.
- In Mecca the revolt was started, so he went to Madina in 622 AD, After that the 'Hijrat' muslim calendar was started.
- In Madina he started promotion of Muslim culture.
- In 632 AD he died.
- After his death, Abu Bakar 1<sup>st</sup> successor known as Caliph (Khalifha). And he became through election.
- Abu Bakar held the power for 2 years.
- 2<sup>nd</sup> Caliph was Umar, <sup>new student</sup> he ruled for 10 years. He was also elected. He ~~was~~ by murdered.
- 3<sup>rd</sup> was Usman. He ruled for 12 years. He was important during his time Quran was comes in existence.
- 4<sup>th</sup> was Ali. He was Fatima's husband, Fatima was the daughter of prop. Mohd. He was from heridity.
- From here division started who followed heridity process are called Shia & people who followed election process are called sunni.

Nikaah movie  
For the story of triple talaq

Exam tip

Landmark cases & conclusions

## Teachings :

### 1. Existence →

- Tawhid (~~تَوْهِيد~~ / ~~تَوْهِيد~~)
- Brotherhood
- Zakat 2½ % of income in donation
- Transgressor

### Orders →

- Fard → You have to perform
- Haram → You should not do
- Mandub → You are asked to do, but not compulsory.
- Makruh → You are asked not to do, but not compulsory.
- Zaiz → Behave as per the religion/situation.

### Who is Muslim -

- 1) Unity of God
- 2) Believe in Prophet Mohd.

### Who can be Muslim -

1) By Birth → Both parents are Muslim

→ One parent Muslim eg. Rajeev Gandhi & Sanjay Gandhi  
(Brought up) [as Indira Gandhi married with Feroze Gandhi]  
[mostly father's religion is followed]

2) Conversion → Bonafide (good faith)

→ Malafide (not good intention)  
eg. Dharmendra.

He converted & ~~then~~ got married with Hema Malini

### Cases of Malafide Conversion:

- Skinner v/s Orde
- Sarla Mudgal v/s UOI
- Lily Thomas v/s UOI

Effects, if the couple is married and conversion took place after marriage: (2)

- 1) Islamic Country - Dissolve the marriage
- 2) Non-Islamic Country - Mutual consent of spouse / marriage dissolved after 3 months.
- 3) India - Agreed party - If divorce case goes to the court then only marriage dissolved.

The Shariat Act, 1937:

Sec 2:- In this there is a list of 10 items on which Muslim law will be applicable.

- exception →
- 1) Agriculture land
  - 2) Testimony / will (वक्तव्य)
  - 3) Religious (acc. to custom)

### Sources

1) Primary → They are imp. on the basis of which Muslim law developed:-

- a) Quran
- b) Sunnat / Ahadis
- c) Ijma
- d) Qiyas

In exam primary  
OR Secondary source.  
OR any one source  
from them will come

2) Secondary → They are less important.

- a) Customs / Urf
- b) Justice, Equity & Good conscience
- c) Precedent (पूर्व नियम)
- d) Legislation (विधान)

Quran → It consists of 114 chapters, 6666 verses (ayat).  
200 ayat are legal principle & 80 ayat are personal law.

- Mecca preaches are religious & Madina preaches are legal principles.
- At the age of 23 years Usman compiled preaches.
- 609 AD - 632 AD

Sunnah/Ahadiṣ → In Sunnah the problem deals by Prof. Mohd. According to his thoughts. They can be done said, done or allowed.

There are 3 types of Sunnah:

- 1) Sunnat - ul - Fiṭṭah : his action, words, and practices.
- 2) Sunnat - ul - Qawāl : all words, counsels or precepts of the Holy Prophet  
(He solved any problem by his own)
- 3) Sunnat - ul - Taqrīr : His silence implying a tacit approbation on his part of any individual act committed by his disciples.  
(He didn't say anything, if someone give solution. He was neither agree nor disagree with given solution.)

Ahadiṣ → It is a narration. This happened not in present situation but going out & solved or told accordingly.

There are 3 types of Ahadiṣ :

- 1) Ahadiṣ - i - Mutwara → Universally accepted.
- 2) Ahadiṣ - i - Mushara → Might or might not [50-50]  
But mostly accepted/followed.
- 3) Ahadiṣ - i - Wahī → Accepted by few or some group.

Ijma → Unanimously [بَدْلٌ مُّعَتَابٌ]

- If any problem solved through Ijma it can't be opened/relooked again.
- It should not be against the Quran & Sunnah.
- 100% agreed on some decision is Ijma.

[ Above three Quran, Sunnah, and Ijma are followed by both Shia & Sunni ]

Qiyas → • This is analogy [إِنْتِهَا]

- Condition, assumptions should be proved as according to Quran.
- This is only followed by Sunni, but not by Shia.

Custom/Wrf → • This is the followed practice which is being followed from the long time & still continue.

Legislation → • Shariat Act 1937

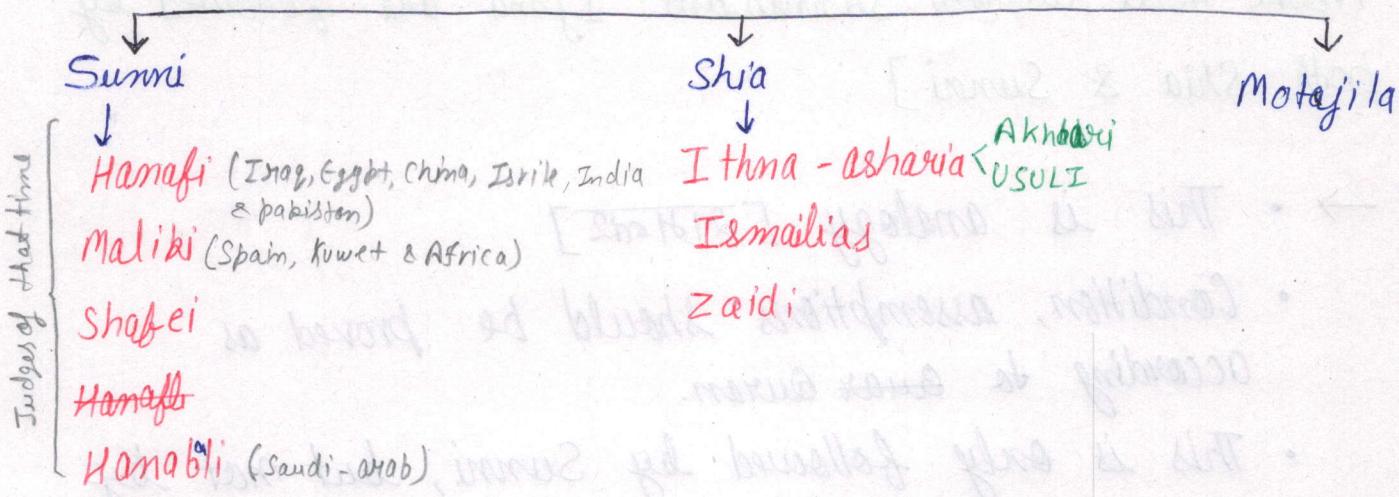
- The muslim women [protection on rights on divorce] 1985
- The muslim women [protection on rights on marriage Act] 2019

Judicial Decision → • The judgement of SC should be followed by them if that case or type of that come to them at personal level.

- [Shayara bano v/s UOI → triple talaq]
- [Mohd. Ahmed Khan v/s Shah Bano Begum → sec 125 maintenance]

Justice, Equity & Good Conscience: If any personal/general law is not their or not any provision in primary sources in that case inefficient then SC make law on that.

## Schools of Muslim Law



Hanafi: - Founder Abu Hanifa

In making deductions he always resorted to the texts of the Quran. To find the law rather than basing his decisions on Sunnat. Where he could not find the law in the Quran he always obtained the unanimous opinions or decisions of other jurists.

Maliki: Founder Maliki Anas

He was a strong believer of Sunnat (tradition). When it came to the judgement of modern rules or suitable for the time period. He believed Qiyas & Ijmas were sources to be resorted to a last resort.

Shafei School: Founder Mohd. bin Shafei

Acc. to this school, they consider Ijams (Ijma) as the important source of the Muslim Law and provide validity to the customs of the Islamic people.

Hanabili: Founder Ibn Hanbal

The sources of law believed by the member of this school are →

- Tradition of the ~~prophet~~ prophet.
- He neglected the Qiyas & Ijma
- This school doesn't allow human reasoning & private judgement.
- This school has no following in India.

Shia : —

Ali — 1<sup>st</sup> Imam

Hasan — 2<sup>nd</sup>

Hussain — 3<sup>rd</sup>

Zainaluddin — 4<sup>th</sup>

Zaid ↙ ↘  
Baquir — 5<sup>th</sup>

Jafar — 6<sup>th</sup>

Musa Kazim  
(Imam-Ashari'a)

Ismail

Imam-Ashari'a —

After the death of Jafar the 6<sup>th</sup> Imam.

Majority of the Shias followed the younger son of Jafar Musa Kazim. The followers of this school believe that every opinion comes from the Imam. is taken to be a law.

It was further divided in two ~~parts~~ <sup>sub-schools</sup> ;—

- Akhbari
- Usuli

## Ismailias : —

After the death of Jafar. Minority of Shias followed his elder son Ismail. And they hence come to be known as Ismailias. In India Ismailias are divided into 2 groups. It is further divided into two sub-schools :

- a) Khoja (Nizari)
- b) Bohra

## Zaidi School : — (Zaidia)

The name of this school is from Zayd Ibna Ali who the son of the 4<sup>th</sup> Imam. This school believed in responsibility & political upraise. It was believed that untrue and undivine leaders should be revolted against.

It is believed that Khoja & Bohras were converted from Hindu & other religions

## Motajila : —

Founder Al-Ghazal.

The followers of this school are in minority and can be found in Iran. This school arose out of a different school. It doesn't co-relate itself to either of two schools. Either Sunni School or Shia School. The followers of this school believed in true divine, justice & unity and believed that evil could be overpowered by the good and that the Quran it self can only be the truest and divine source to overcome evil from the society. They believed in Monogamy. (5<sup>th</sup> Fatwa)

# Application, Interpretation and Conversion

(5)

Application:

Who is Muslim?

- By birth
- Whose both parents are muslim
- In case of one parents it will be decided by brought-up & bringing of a child.
- Who believed in prop. Mohd. and not a Hindu, Christian etc.
- Who is converted to muslim.

Interpretation:- The judgement will be passed based on the holi book, thoughts and by Act.

[Muslim Personal (Shariat Act) 1937]

- Marriage
- Divorce (ila, zihar, lien, khula, Mubarat)
- Mehar
- Maintenance

Conversion:

- Must be bonafied.

[Sarla Mudgal V/s UOI]

- Conversion must be bonafied.

## Marriage (Niqah)

# Marriage (NIQAH)

6

Definition:-

Acc. to Abdur Rahim — The muslim jurist regard the institution of marriage as part taking both of the nature of Ibadat or devotional act & Muamlat dealing among men.

Formalities of marriage :-

- Proposal and Acceptance presence  
one meeting
- Competent Parties major  
sound mind
- Prohibited Relationship

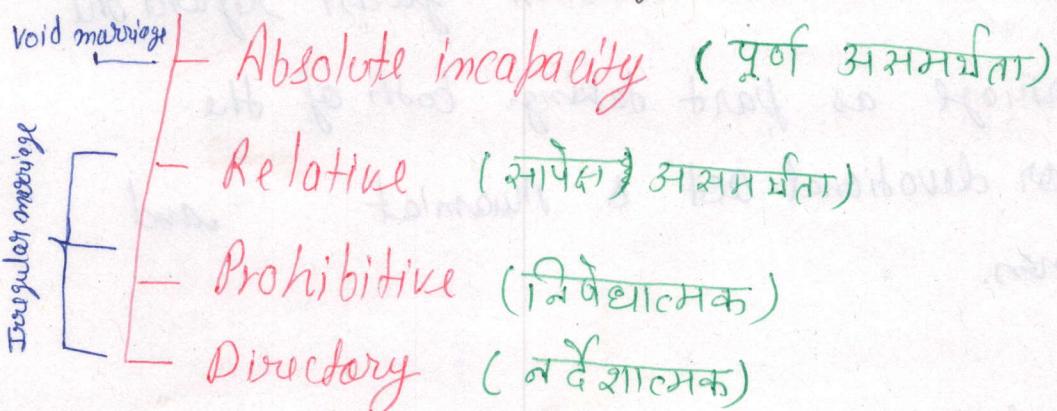
a) Proposal & Acceptance

- presence
- One meeting
- Free consent
- Witness

- One party make an offer the marriage is complete only when other party accept the offer.
- For a valid marriage proposal & acceptance should be carried out at the same meeting.
- In Sunni, either one male & two female or else two male required for witness.
- In Shia, there is no need of any witness
- The age of puberty is 15 years for both boy & girl.  
[The child marriage Act will not apply in this case]
- Sound mind.
- They can get married if less than 15 years with agreement of parents.

→ if less than 7 is getting married then it'll be void.

## 6.) Prohibited Relationship



### (i) Absolute Incapacity

- Consanguinity (Blood relation)
- Affinity (विवाह संबंध)
- Fosterage (दोत्रीय संबंध) (लाटि माँ [Fosterage mother] के संबंध)

### (ii) Relative

- Marriage of 5<sup>th</sup> wife.
- Absence of proper witness.
- Women undergoing Iddat.
  - Divorce - 3 months she has to spend
  - widow - 4 months & 10 days she has to spend before remarriage.

### (iii) Directory Incapacity

◦ Conjunction (अवैद सहयोग) अपनी wife के बहन एवं भाई (Valid if the divorce is happened with current wife)

### (iv) Prohibitive Incapacity

- Polygyny (Can't marry when there is already a husband)
- A muslim women marrying a non-muslim.

Imp.

⑦

## Nature of Marriage

There are diversions of opinion with regard to nature of muslim marriage. Some jurist <sup>are</sup> of opinion that it is purely a contract. While other says it is a religious sacrament in nature.

Marriage as  
contract

Acc to Hedaya Marriage is defined to be contract which has for its objects, the procreation and legalizing of childrens.

[Abdul Aadir v/s Salima 1886]

first time said by Justice Mehmud said - marriage among muslim is not a sacrament but purely a civil contract. It has feature similar to contract.

[~~Sabru~~ Sabrunnisa v/s

[Sabrunnisa v/s Sabdu 1934]

Marriage under muslim law is a civil contract and is like a contract of sale. Sale is transfer of property for a price. In contract of marriage the wife is a property & Mehar is a price.

Marriage as  
sacrament

Acc to Amir Ali marriage is an organisation for the protection of the society. This is to protect the society from foulness and unchastity.

[Sharat Singh v/s Jafri Begam 1915]

Marriage under law is a religious ceremony. Marriage as an institution leads to the uplift of man and is a means for the continuance of the human race.

[Anis began 1/5 Mohd. Istafa 1933]

Marriage is so holi as sacrament that in ~~this~~ world it is an act of worship. For it preserves mankind free from pollution (~~sin & sinning~~) (Immorality)

Muslim marriage has similar characteristics as a contract:

- Proposal
- Consideration (Mehar)
- Free Consent

Muslim marriage can also be differentiated from a contract on the basis of following points:

- It cannot be done on the basis of future happening; unlike the contingent contract.
- Unlike the contract; it can't be done for a fixed period of time.

### Kinds of Marriage

Valid              Void              irregular              muta

Muta Marriage: The word muta literally means enjoyment and use. It is a marriage for pleasure for a fixed period of time also known as temporary marriage.

Goods

Condition of a muta marriage:

- The term and duration of marriage must be fixed. It may be for a day, week or a year.
- Mehr must be specified.

In this wife is not liable to get maintenance

### [Shahzada Qanum v/s Fakira Jahan]

The main distinction b/w permanent & muta marriage:

- The period of marriage is fixed or specified in muta.
- if the parties called there marriage a muta marriage & specify no term. then such a marriage will be treated as a permanent union like any other permanent muslim marriage. giving raise to all incident to such union including the right of mutual inheritance and ~~so~~ wife's right to maintenance.
- 3 months Iddat time

### Khyar-ul-Bulugh (Option of Puberty)

- The dissolution of marriage Act 1939

marriage b/w - 74 - 154 (cancel)

↳ minor has right to reject that marriage (15 years to 18 years of age)

\* 1939 - Dissolution of Muslim marriage Act (Muslim)

Girl child  
no need to  
"prove fraud".

Content of  
father & grand  
father → Minor want to  
reject marriage → prove fraud

"not to act or live as Husband wife"

→ under muslim law a minor on attaining the age of puberty has a right to approve or disapprove the marriage contract by a guardian where the marriage was contracted by the father or grandfather option of puberty is not available but in exceptional cases the option is available.

- i) Where the conduct of marriage guardian was fraudulent or negligent.
- ii) Where the marriage is to the manifest disadvantage of the minor.

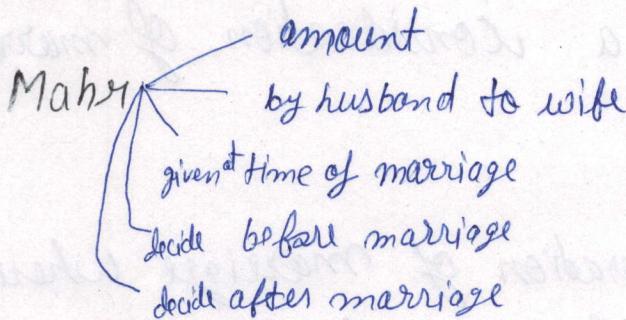
The dissolution of Muslim Marriage Act 19<sup>39</sup> has removed all restrictions on the exercise of the option of the puberty in the case of minor girl whose marriage has been arranged by her father or grandfather.

#### Sec 2 (III) of Dissolution of Muslim Marriage Act of 1939

→ The wife can claim dissolution of the marriage if she is able to prove the following facts.

1. The marriage has not been consummated
2. The marriage occurred before the woman attains 15 years.  
*(denial the validity of something)*
3. That the rebutiation (revoke) of the marriage has been done by her before attaining 18 years.

amount given as a mark of respect & love



Sanam Bewafa

Movie on  
Concept of Mahr

→ Mahr is not a consideration. It is a amount given as a mark of respect & love.

→ 10 diram was given by Prop. Mohd.

→ Given for the substance of women.

→ Check the Talag (ताला अंत ताला दूँ)

→ Decided by both husband & wife, and in case of minor guardian will decide a Mahr.

Due of marriage  
should be considered;  
marriage as a  
contract  
marriage is not a  
contract  
marriage as a  
sacrament

### Type of Mahr

Prompt Mahr  
(प्रीति)

Deferred Mahr

By death of Husband      Divorce

Ek Chadar Mailisi

movie

### Type of Mahr

Specified

Unspecified

→ Specified mahr ~~can't~~ may be prompt or Deferred mahr.

→ Prompt Mahr ~~is~~ should be given ~~at~~ when a lady demand the mahr.

→ Deferred mahr is given at the time of dissolution of marriage.

## ~~Misrepresentation~~ Dowry (Mahr)

- Acc. to ameer Ali Mahr is a consideration of marriage and absolute wife of right.
- Willson - Mahr is a consideration of marriage whereby wife surrenders herself to her husband.

[ Sabrunisa v/s Sadu Sheikh 1934 ]

Muslim marriage is like a contract where wife is the property and mahr is the price or consideration. However it is also true that ~~non~~ payment of mahr does not void the marriage so mahr is not purely a consideration.

### Kinds / Types of Mahr

#### Specified

Prompt  
(Muajjal)

Deferred  
(Muvajjal)

#### Proper

(Customary)

1) Specified : The mahr is fixed during the time of marriage and well before the marriage. It is fixed by the mutual consent of the parties.

a) Prompt Mahr → A specified dowry which is payable immediately after the marriage or at any other time on the wife's demand called ~~for~~ prompt mahr.

6) Deferred: If a specified Mahr is not payable immediately  
(2 दिन तक) after marriage and is payable upon the happening  
of any event or after the ~~on~~ expiry of a particular  
period or upon the dissolution of marriage either by  
death or divorce.

2) Unspecified Mahr: (~~Proper~~ mahr)

If the amount of dower has not  
been fixed b/w the parties, before or at the time  
of marriage. The wife is entitled to get a reasonable  
amt from the husband as mahr.

The amount of proper mahr is generally fixed  
by the court.

If the marriage has been solemnized on the condition  
that the wife shall not claim the mahr. She is  
still entitled to claim proper mahr from the Husband.

Rights & Remedies of wife & widow on non payment  
of Mahr:

→ Refusal to cohabit: (~~मरि रहने का स्वाक्षर~~)

- Non payment of prompt mahr before ~~consummation~~  
is a lawful justification for the wife to refuse  
cohabitation.

[Anis Begam V/s Mohd. Istafa 1933]

There was no absolute right in a husband to claim conjugal  
right unconditionally. The court have discretion to  
make decree of restitution of conjugal rights conditional  
on payment of wife's unpaid prompt mahr.

## Enforcement of Mehar as debt

The wife can recover unpaid mehar by maintaining an action in court of law. She may realise it from husband in the same manner as a creditor recover his loans.

### Kaboorchand v/s Kadrunissa Begum 1950

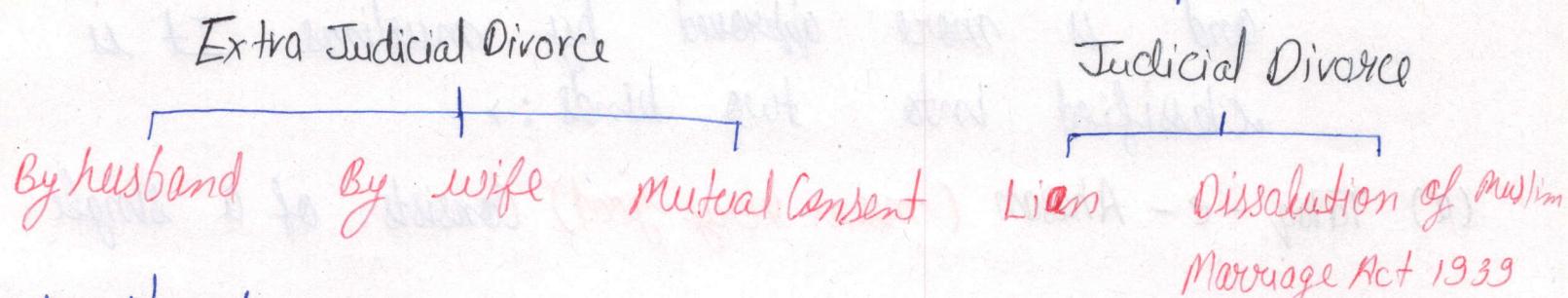
- Can not claim priority over creditors.
- Priority over the claim of heirs. (बचपन का अधिकार)
- Widow right of retention /lien. (विधवा का व्यापारिकार का अधिकार)  
-A widow whose mehar remains unpaid has a right to retain the properties of the husband till her mehar debt is satisfied.

### Menabibi v/s Chaudhary Vabil Ahmed 1923

- The possession of property in lieu of mehar amount doesn't give ownership to widow.
- The property can't be transferred by her.

[Essential points will be mentioned]

## Divorce



### By Husband

*talq-ul-sunnat*

*talq-ul-biddat*

*ila*

*zihari*

3 times in a day & it'll  
be immediate

if husband takes  
and is not talk  
to his wife & it'll  
4 months min.

if a husband confides with  
another women like mother  
or sister.

*Ahsan*

*Ahsan*  
(very good)  
one time said &  
3 month notice  
period

*hasan*  
(good)

In every month he has to say  
it'll 3 months.

### By Wife

*talaq-e-tafweez* (نافذ)

This right given by husband to wife or to 3rd party.

### Mutual Consent

*Khula*

wife propose for divorce

*Mubarat*

proposal of divorce can be given by any spouse.

1. Talq-ul-summat : It is kind of Talq which conforms to the traditions of the prophet and is more approved by muslims. It is classified into two kinds :-

(a) Talq-e-Ahsan (means very good) consists of a single