

Marz-ul-Maut

Introduction

In Islamic law, a person who is near death is said to be in a state known as marz ul Maut. As it has substantial relevance for matters like inheritance, testamentary gifts, and end-of-life decisions, it is a crucial legal topic in Islam.

Marz-ul-Maut is made up of 2 main words- ‘Marz’ and ‘Maut’. Marz means illness or disease and Maut means death. When the person is under apprehension of death due to some illness, he is said to be suffering from Marz-ul-Maut. A person’s physical health rather than their subjective experience determines their Marz ul Maut. It specifically refers to a state in which there is little chance of recovery and a person’s death is near. A medical practitioner usually makes this decision.

History and current applicability of Marz-ul-Maut

Muslims are permitted to follow their own personal civil law because India, with the exception of the state of Goa, does not have a unified civil code. The British Raj, which let all religions to have their own private civil laws, left behind this legacy. The Shariat is the guiding principle of Muslim civil law. One of the provisions concerns Marz-ul-Maut. This can only be carried out if there is a genuine fear that the testator won’t survive.

The rules concerning Marz-ul-Maut inculcate the ideas of the gift as well as will. But these transfers aren’t like the two. Only in situations where the transferor truly fears death are these transfers permitted to be carried out. A sort of testamentary succession known as transfer during Marz-ul-Maut combines several key characteristics of both Hiba (gift) and will. If a person is seriously ill and on the close to passing away, his donation will be considered made on Marz-ul-Maut. A gift that is given at a time when the transferor reasonably anticipates dying is distributed in accordance with Shariah law’s general principles. Such gifts are valid only if the testator dies after executing the will.

Essential elements of Marz-ul-Maut

All the following elements are required in order to be a valid Marz-ul-Maut (death-bed transaction)

1. The illness or disease must result in death.
2. A genuine apprehension of death must be present in the patient’s thoughts as a result of this sickness. Age alone does not constitute a sufficient reason for Marz-ul-Maut. Hence, a man dying of natural causes as a result of his advanced age is not covered by this regulation.
3. There should be a visible sign of the disease or significant illness on the outside.
4. The receiver of the property must be granted delivery of possession.

Along with the above points following restrictions are also crucial-

1. In case a person does not die, the will made by him will be null and void.

2. There is no basis present, that disqualifies an heir or successor.
3. The net value of the property that can be disposed of must not be greater than 1/3rd of the total value of the assets, except with the consent of the heirs, hence, during Marz-ul-Maut, no Muslim acting alone is permitted to disown any heir.

Some of the above points are discussed below-

Disease must result in death

Any transfer under Mar-ul-Maut must be made by a person who has a life threatening illness or other critical condition. The transfer will not be taken into consideration if the person does not pass away. An essential component of a Marz-ul-Maut is the death of the donor; if the transferor does not pass away, the gift is not regarded as a Marz-ul-Maut and the only issue is whether a legitimate Hiba (gift) happened. If it is a legitimate Hiba, it will become effective as a Hiba.

Genuine apprehension of death

A genuine apprehension of death can be analysed by the following pointers-

1. an impending danger of dying that increases the likelihood of apprehension of death.
2. a few visible signs, most noticeably the person's incapacity to engage in regular activities.

When the transferor has a terrible illness with a high likelihood of impending death, they are under pressure to make the donation while feeling a feeling of approaching death. Only the transferor must be aware of his impending death; not those who are trying to care for him. Hence, the transaction made under Marz-ul-Maut is valid if the individuals caring for him or even the doctor do not recognize his impending death.

If the disease has been present for an extended period of time, but the patient suddenly develops worse symptoms that may even force him to stay in bed, this becomes a new illness that would be considered to be more likely to make the sufferer fear death, and as a result, his act of giving under such conditions can have the same effect as a transfer made under Marz-ul-Maut.

Case Laws on Marz-ul-Maut

1. Shaik Nurbi v. Pathan Mastanbi and ors., 2004 (4) ALT 624

In this case, the essential conditions which are needed for a valid deathbed gift were stated as follows-

- a. the illness of the malady must have caused the death of the donor;
- b. some degree of subjective apprehension of death in the mind of the sick person or preponderance of death;
- c. some external indicia, chief among which would be the inability to attend to ordinary avocations."
- d. delivery of the possession must be done (this rule is derived from Hiba).

- Mustak Ahmed v. Abdul Wahid, (1987) 2 MLJ 449

In this case, it was stated that Marz-ul-Maut is a type of illness that prevents the patient from attending to his or her duties, including, if he is a man, duties outside the home, and, if she is a woman, duties inside the home, due to the patient's condition generally causing fear of death for him or her.

- Fatima Bibee v. Ahmad Baksh, (1904) ILR 31 Cal 319

It has been held in this case that Marz-ul-Maut is death illness or the patient is suffering from such disease which induces in the person suffering, belief that death would be caused thereby.

Difference between Marz-ul-Maut and Donatio mortis causa

A gift under Marz-ul-Maut in Islamic law and a donatio mortis causa under Section 191 of the Indian Succession Act, 1925 are quite similar. A few differences are given below-

Basis	Marz-ul-Maut	Donatio mortis causa
Applicability	Only Muslims	All non muslims
Type of property	Both movable and immovable property.	Movable property only
Limitations	Subject to limitations	No limitation
The transferor recovers	It can still take effect as hiba (gift), if it has all the elements	It doesn't take effect. It becomes void.

Comparison of applicability of Marz-ul-Maut in shia and sunni law

A. What is shia and sunni law-

The majority of Muslims identify as Sunni. The term Sunni is derived from the term Sunnah, which refers to the Islamic prophet Muhammad's religiously higher conduct or, taken literally, the teachings, deeds, or examples of Muhammad. As a result, "Sunni" refers to someone who supports or follows Muhammad's sunnah.

Shia is the second-largest branch of Islam, accounting for 10–13% of all Muslims worldwide. Shia Muslims mainly differ from Sunni Muslims, who hold the viewpoint that Muhammad did not name a successor. They believe that Abu Bakr, was the right Caliph.

The debate over Muhammad's successor led to disagreements between Sunni and Shia Muslims, which later took on wider political significance as well as theological and legal dimensions.

- **Applicability of Marz-ul-Maut**

Basis	Sunni law	Shia law
Bequests to an heir	Consent of all heirs is a must.	Bequest up to 1/3 rd of the property is valid even without consent.
Bequests to an unborn child	Bequest to unborn child is valid only if the child is born within 6 months of making the will (Marz-ul-Maut).	Valid if the child is born within 10 months of making the will (Marz-ul-Maut).
Giving birth to a child	Considered under Marz-ul-Maut.	Not considered to be under Marz-ul-Maut.
Acknowledgement of debt	A death bed acknowledgement of debt in favour of an heir is completely non effective.	Such acknowledgement is recognised and binding up to 1/3 rd of the property.

Some other legal effects of Marz-ul-Maut

A. Marriage contracted on death bed

A marriage contracted on death bed is invalid. But there is a way to make it valid- if the person survives the illness and is alive, then the consummation will make the marriage valid.

- **Death-bed waqf**

A waqf is a concept in Islam and is governed by the Waqf Act, 1995. It basically means an endowment made by a Muslim to a religious, educational, or charitable cause.

A death bed waqf is subject to same rules that govern other death bed dispositions i.e., it will take effect only to the extent of 1/3rd of the property unless the heirs consent to it.

Conclusion

Marz ul Maut is an important legal concept in Islam that has significant implications for issues related to inheritance and end-of-life decisions. While the determination of Marz ul Maut is based on a person's physical condition, its legal implications are complex and require careful consideration. It is important for Muslims to be familiar with the relevant laws and guidelines related to Marz ul Maut in order to make informed decisions about their estate plans and end-of-life care.