# MUSLIM LAW COURSE

## COMPLETE MUSLIM LAW NOTES

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# 1. THE MUSLIM PERSONAL LAW (SHARIAT) APPLICATION ACT, 1937

## A. HISTORY AND ORIGIN OF THE LAW

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- Talking about the history of Muslim Personal Law it was seen that during the colonial era, the British Courts would consult Hidayah, written by Mirghayani, a Hanafi Scholar, and then have it translated into English by Hamilton.
- This choice of Hanafi Law was rooted in the fact that the ruling class before the British, was the Mughals, who were Hanafis.
- In order to make the masses most adaptable to their rule, the British followed the procedure that followed English Law and the substantive part was based on Hidayah, which later came to be known as Anglo-Mohammedan Law, now called as Muslim Personal Law (Shariat law).
- The Shariat law has not remained static over centuries. Since the period when the Prophet was alive, the legislation mentioned in the Quran kept developing in response to practical problems faced by the Prophet and his community. Modern time Islamic Nation States have responded to the needs of modernity by embracing the Shariat in ways suiting their social and political needs. Consequently, there are four different schools of Islamic law, each of which interprets the writings in the Quran in different ways and consists of varying rules and regulations for the Islamic community all over the world.
- The four schools of Islamic law are (Hanafiyya, Malikiyya, Shafiyya and Hanabaliyya) which were developed in four different centuries.

### ➢ Origin of the Law

- Before Islam was introduced as a religion to Arabia, a tribal social structure was prevalent.
- The tribe as a whole held the duty to determine what law was. The rules were unwritten. These laws made by the tribe were modified with time, as and when society felt the need for change.

- In the seventh century, the Muslim community was established in Medina, after Prophet travelled to Medina after being ousted by the people of Mecca, but as the luck would have it, Prophet became very popular in Medina and Islam soon started spreading to the surrounding regions. The establishment of Islam, the will of God, as transmitted in the Quran as the revelations of Gabriel in the Hira cave to Muhammad, came to supersede every tribal custom which was created prior.
- The writings in the Quran along with unwritten customs, are also known as the Shariat. That is what governs the Islamic society. In addition to this, the Shariat is also based on the Hadith (actions and words of the Prophet as recorded by his companions). Originally, they were very broad and general solutions to practical problems in society but later on they have become more specific.
- The Shariat Act officially came into force on 7th October, 1937, until when the law was unwritten as a statute.



### ➢ Preamble of the Act

This is an Act to make provision for the application of the Muslim Personal Law (Shariat) to Muslims. It is expedient to make provision for the application of the Muslim Personal Law (Shariat) to Muslims to avoid the injustice and the chaos.

### ❖ <u>Short title and extent as mentioned</u>

- (1) This Act may very well be called The Muslim Personal Law (Shariat) Application Act, 1937.

  (2) It extends to the whole of India.
- All the Muslims living in India are governed by the Muslim Personal Law (Shariat) Application Act, 1937.
- The Shariat can be simply explained as being the provisions in the Quran as well as the teachings and practices of Prophet Mohammad.
- Accordingly, we can see that Article 14 of the Indian Constitution grants “equal protection of law” to all its citizens, but when it comes to personal issues (marriage, divorce, inheritance, custody of children, etc), Muslims in India are governed by their

very own laws, that is, the Muslim Personal Law which came into force in 1937, and that the State shall not interfere.

## B. APPLICATION OF THE LAW

"Notwithstanding any custom or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula (type of divorce) and mubarat, maintenance, dower, guardianship, gifts, trusts and trust properties, and wakfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat)."

**Note: The laws mentioned above will not be applicable to Muslims who married under the Special Marriage Act, 1954.**

- ❖ **<u>Section 2 of the Act: Explained</u>**

- **Section 2** of the Shariat Act provides that in the case where both the parties are Muslims the ultimate rule for decision *shall* lie under the Muslim Law, if the case of the parties involves any of the following matters:

a. Intestate succession (i.e. inheritance),
b. Special property of the females,
c. Marriage (including all incidents of marriage),
d. The Dissolution of Marriage (including all kinds of divorce),
e. Maintenance,
f. Dower,
g. Guardianship,
h. Gift: Any type of property can be given as gift,
i. Trust and trust properties, and
j. Wakf.

- Consequently as seen above, if both the parties to a case are Muslims, the Courts shall apply only the Muslim personal law and nothing else in the case.

- It is to be noted that a custom or usage contrary to Muslim law cannot be applied for such cases thereon. The word '*shall'* means that it is mandatory, meaning thereby that the Courts are not bound to administer only Muslim personal law in the situations mentioned above.
- In the cases handling Adoption, Wills and Legacies, the Courts have consequently no authority to apply Muslim law under **Section 2** of the Act (except in the exception clause mentioned herein under), as these subjects are not included in the said Section.
- Although, we may take note that **Section 3** of the Shariat Act which mentions that Courts may apply the rules of Muslim law in cases of Adoption, Will and Legacies, provided that a Muslim *expressly* declares that he wants to be governed by Muslim law in respect of such matters in addition to the aforesaid (bullets mentioned above) ten matters.
- **Section 5** of the Shariat Act of 1937 is concerned with Muslim women seeking divorce. **Section 5** was subsequently deleted and replaced by Dissolution of Muslim Marriages Act 1939.

## C. POWERS

### ➢ Power to make a declaration

- Any person who satisfies the prescribed authority:

  (a) That he is a Muslim, and

  (b) That he is competent to contract within the meaning of **Section 11** of the Indian Contract Act, 1872 (9 of 1872), and

  (c) that if he is a resident of [the territories to which this Act extends to], he may then by the mode of declaration in the prescribed form and filed before the prescribed authority declare that he desires to obtain the benefit of [the provisions of this section], and thereafter the provisions of **Section 2** shall apply to the declarant and **all his minor children and their descendants** as if in addition to the matters enumerated therein adoption, wills and legacies were also specified.

- Where the prescribed authority refuses to accept a declaration under sub-section:

(1), the person desiring to make the same may appeal to such office as the State Government may, by general or special order, appoint in this behalf, and such officer may, if he is satisfied that the appellant is entitled to make the declaration, order the prescribed authority to accept the same.

❖ **Explanation of Section 3**

**(1) Any person who satisfies the prescribed authority (as stated above)** may by only a declaration in the prescribed form and filed before the prescribed authority declare that he desires to obtain the benefit of the provisions of this section, and thereafter the provisions of Section 2 shall apply to the declarant and all his minor children and their descendants as if in addition to the matters enumerated therein, adoption, wills and legacies were also specified.

- It should be made absolutely clear that since adoption, wills and legacies are not mentioned under Section 2, therefore the Courts will not apply Muslim law to all the Muslims in these three matters unless they desire to be governed by Muslim law in these matters as well. This desire must only be expressed through a declaration to that effect.
- It is to be noted that the effect of such a declaration is that not only the declarant but, also his children and all the descendants shall be governed by Muslim law in these three additional subjects.
- It must also be noted that if there is no such declaration by a Muslim, the Courts are not bound to apply Muslim personal law on these matters and they may freely apply customs and usages or the local enactments, if any.

## ➢ Rule-making power

(1) The **State Government** is allowed to make rules to carry into effect the purposes of this Act.

(2) Especially in particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:

(a) For the duty of prescribing the authority before whom and also for the form in which declaration under this Act shall be made;
(b) For the duty of prescribing the fees to be paid for the filing of declarations and also for the attendance at private residences of any person in the discharge of his duties under this Act; and for prescribing the times at which such fees shall be payable and the manner in which it shall be levied.

(3) Rules made under the provisions held in this section shall be published, in the Official Gazette and shall thereupon have effect as if enacted in this Act.

(4) Every rule henceforth made by the State Government under this Act shall be laid, as soon as it is made, before the State Legislature.

**D. INCORPORATION IN STATES**

- This law extends to the whole of India. All the Muslims living in India are governed by the Muslim Personal Law (Shariat) Application Act, 1937.
- It can be seen that Muslim-majority countries have incorporated Shariat Law at some level in their legal framework and so on.
- Although, Muslim personal laws are not applicable in the State of Goa, where the Goa Civil Code is applicable for all persons irrespective of religion.
- These laws are also not applicable to Muslims who married under the Special Marriage Act, 1954.
- Section 6 of the Shariat Act repeals certain provisions of those earlier enactments which gave authority to the Courts to apply Muslim law before the commencement of the Shariat Act. Take for instance, Section 26 of Bombay Regulation Act, 1827, Section 16 of the Madras Civil Courts Act, 1873, Section 3 of Oudh Law Act, 1876, Section 5 of Punjab Laws Act, 1872 and the Central Provinces Laws Act, 1875, have been actually repealed and are now not in force any more.

**E. CASE REFERENCES**

- **Abdur Rahim Undre (Dr.) vs Padma Abdur Rahim Undre (Smt.) on 9 July, 1981-** The Shariat Act makes personal law applicable uniformly to all Muslims notwithstanding any custom or usage to the contrary.

- **A.S. Parveen Akthar vs The Union Of India on 27 December, 2002 -** Muslim Personal Law (Shariat) Act, 1937 provides for the application of Muslim Personal Law to all questions regarding, inter alia, “marriage, dissolution of marriage, including talaq, ila, zihar, lian, Khula and mubaraat.”

- **Shayara Bano vs Union of India and Ors. Ministry Of on 22 August, 2017-** It was held by the Court that the questions and subjects (including ‘talaq-e-bidat’), would have to be in conformity (-and not in conflict), with the provisions of Part III – Fundamental Rights, of the Constitution.

- **Khuran Sunnath Society & Others vs Union Of India And Another -** here the petitioner’s prayer is to direct the respondents not to enact Shariat Act in respect of those adversely affecting the dignity and rights of Muslim women and against their protection. Based on this prayer, the Court dismissed the writ petition as it cannot legislate in such matters.

## 2. <u>THE MUSLIM DISSOLUTION OF MARRIAGE ACT, 1939</u>

### A. GROUNDS FOR DISSOLUTION OF MARRIAGE

- Under **Muslim Law,** Marriage is a **contractual relationship** between two parties.
- All the essentials that are needed for a contract are available under Muslim Marriage.
- The purpose of such a form of marriage is to legalise sexual intercourse and the Procreation of children.
- A Muslim marriage may be dissolved by the Courts of India under **Section 2 of the Dissolution of Muslim Marriage Act, 1939** under certain circumstances which are as follows: -
  - <u>Long absence of Husband</u>: The whereabouts of the husband has not been known for a period of four years.
  - <u>Failure to maintain wife</u>: If a husband fails to provide maintenance to his wife for a period of two years then there is no protection available to the husband on the ground of poverty, failing health or unemployment.
  - <u>Imprisonment of Husband</u>: If the husband is detained for seven years or more.
  - <u>Failure to perform marital obligation</u>: If, with no sensible reason, the spouse can't play out his marital obligations for three years.
  - <u>Impotence of Husband</u>: Husband was impotent at the time of marriage and keeps on being so.
  - <u>Insanity, Leprosy or Venereal disease</u>: If the spouse is crazy or experiencing sickness, or any venereal sickness for a time period of two years, legal separation by wife can be asked for on such ground.
  - <u>Option of Puberty</u>: If a girl is married before the age of 15 years by her father or guardian, then she has been provided with a right to repudiate such marriage after attaining the age of majority that is 18 years of her age provided that marriage is not consummated. She is qualified for legal separation for the equivalent.
  - Cruelty: Remorselessness by spouse assuming the husband treats his better half with mercilessness, she can move towards the Court and case for an announcement of legal separation on similar ground.
  - <u>Other grounds of dissolution in Muslim law</u>: The wife is also entitled to obtain a divorce on the ground recognised valid under the law.

- **Case References**

- In the case of **Gul Mohd. Khan v. Hasina;** the wife documented a suit for the disintegration of marriage on the ground of impotency. The husband made an application under the steady gaze of the court looking for a request for demonstrating his strength. The court permitted him to demonstrate his potency.
- In the case of **Itwari v. Asghari**; the Allahabad High Court saw that Indian Law doesn't perceive different kinds of cruelty, for example, 'Muslim cruelty', 'Hindu cruelty, etc, and that the trial of cruelty depends on universal and humanitarian guidelines; in other words, lead of the husband which would cause such bodily or mental agony as to imperil the wife's security or wellbeing.
- In the case of **Aboobacker v. Mamu koya**; the husband used to urge his wife to put on a sari and see pictures in the film. The spouse would not do so in light of the fact that as per her convictions this was against the Islamic lifestyle. She looked for separation on the ground of mental remorselessness. The Kerala High Court held that the lead of the spouse can't be viewed as brutality since simple take-off from the guidelines of choking out universality doesn't establish un-Islamic conduct.

## B. FAITH CONVERSION

- **Section 4 of the Muslim Dissolution of Marriage Act**

Under Section 4 of this act, if both husband and wife renounce Islam, their marriage is not dissolved but remains intact.

- In the case of a Muslim Husband

  If a Muslim husband renounces Islam, his marriage with his Muslim wife stands dissolved ipso facto.

- In the case of a Muslim Woman

  If a married Muslim woman renounces Islam, her conversion to another faith shall not by itself operate to dissolve her marriage.

- Provided that after her conversion to another religion the woman shall be entitled to get a divorce on the grounds mentioned under section 2 of this act.
  - Provided that this section will not apply to such a woman who converted to Islam from some other religion **but re-embraces her former faith.**

### ➢ Effects of Apostasy/ Faith Conversion

- If a Muslim woman converts to another faith remarries without dissolution of marriage, she can be prosecuted for bigamy.
- It is to be noted that a husband's conversion to another religion is not a ground for a Muslim woman to seek divorce.
- Before the enactment of this act, conversion by any of the one spouse resulted in the automatic dissolution of marriage.
- Conversion by Muslims is forbidden as per many Sharia law interpretations and such converts are called apostates.
- In some nations, **conversion to another faith is considered a sin and can be punishable with death. For example, countries like Iran & Saudi Arabia.**

### ➢ CASE REFERENCE

- **MUNNAVAR-UL-ISLAM v. Rishu Arora**: In this case, the wife at the time of marriage converted to Islam but re-embraced her original faith I.e. Hinduism. **Hence, her marriage stood dissolved.** Hence her case attracted the provisions of section 4 of this act.
- **Abdul Ghanni v. Azizul Haq:** In this case, both the husband and wife were Muslims but the husband converted to Christianity. However, he again re-embraced Islam but the wife before the expiry of Iddat remarried another man. The husband filed a case against his ex-wife, her father & her new husband for bigamy u/s. 494. It was held that no offence has been committed.

## 3. THE WAKF ACT, 1955

### A. Auqaf

- The donees of an ordinary gift are mortals. Waqf is the permanent dedication of property to God with the object of using the property's usufruct for religious, pious, or charitable purposes.

- The corpus is owned by God and therefore cannot be consumed. Only the profits produced by the property can be used for the purposes desired. While the primary motivation is religious, the entire property, including the corpus and any revenue, can be used for the desired purpose in the case of Sadaqah, while property settled by Waqf is in the nature of permanent commitment and thus is irrevocable.

- Auqaf (also written awkaf, singular waqf/wakf) is an Arabic term that refers to properties that are donated, bequeathed, or bought for the purpose of being kept in perpetual trust for socially beneficial charitable causes.

- The idea of waqf is close to the Western concept of endowment in several respects. The strong focus on the perpetuity of Auqaf has resulted in a significant accumulation of societal resources over time, to the point where Auqaf has become an important economic field dedicated to improving the socio-economic welfare of Muslim communities/populations in many countries.

- Anyone who wishes to establish a Waqf must meet only two requirements. They must be of sound mind and have a clear ownership claim to the asset or property. Interestingly, the person who establishes a Waqf or a 'Waqif' **does not have to be a Muslim as long as he or she professes belief in Islamic values.**

#### ➢ Board of Auqaf

- Chapter IV of the Waqf Act, 1955 talks about the establishment of Boards and their functions.

- Section 13 of the act talks about the incorporation of the board. A Board of Auqaf under such name as may be stated in the notification shall be constituted with effect from such date as the State Government may appoint in this regard by notification in the Official Gazette.

- If a Board of Waqf has not been appointed as is necessary under this sub-section, a Board of Waqf shall be established within six months from the date of commencement of the Wakf (Amendment) Act, 2013, without prejudice to the provisions of this Act or any other law currently in force.

- Members of the Board of Waqf constituted under sub-section (2) of Section 13 must be **Shia Muslims in the case of Shia waqf and Sunni Muslims in the case of Sunni waqf.**

- The Board shall be a **corporate body with perpetual succession and a common seal,** with powers to purchase, retain, and sell property subject to such conditions and restrictions as may be specified, and shall sue and be sued under the said name.

- Waqf Boards ensure that Waqfs are properly managed and that any revenue received is used in accordance with Islamic values and law.

- A Waqf board is a legal entity that ensures that Waqf is properly administered. This entails ensuring that every Waqf is properly maintained and controlled, with any rent or revenue produced by the asset or property being used in accordance with Mohammedan law, depending on whether a Waqf board is Sunni or Shia, these laws can differ.

- Every Waqf board must appoint custodians, whose duty it is to make sure that the waqf, as well as any revenue it produces, is utilized or used for its intended purpose.

- The most well-known Waqf board is India's Central Waqf Council (CWC), which was established in 1964 which advises and supervises state-level Waqf boards across the country. **Mukhtar Abbas Naqvi, the Minister of Minority Affairs in Prime Minister Narendra Modi's Cabinet, is the new Chairperson of the CWC.**

### ➢ Registration process

- Chapter V of the Act deals with the registration of the Auqafs. Section 36 talks about the registration of Waqfs and Section 37 talks about the registration of Auqaf. Any two Waqfs, whether formed before or after the effective date of this Act, must be registered with the Board.

- The Mutawalli shall make the application for registration: Provided, however, that such applications may be made by the Waqf or his descendants, a beneficiary of the Waqf, or any Muslim belonging to the sect to which the Waqf belongs.

- An application for registration must be submitted in the form, manner, and location specified by the Board by regulation, and must include the following information: (a) a description of the two Waqf properties sufficient for identification; (b) the gross annual income from such properties; and (c) the amount of land revenue, cesses, rates, and taxes payable annually in respect of such properties.

- Any such application must be followed by a copy of the 2 Waqf deeds or, if no such deeds have been executed or copies thereof cannot be obtained, full particulars of the 2 Waqf's sources, existence, and objects, to the extent that they are known to the applicant.

- The applicant must sign and verify each submission made under subsection (2) in the manner prescribed in the Code of Civil Procedure, 1908 (5 of 1908) for the signing and verification of pleadings. (Order 6. Rule 15) The Board may require the applicant to include any additional details or information it deems relevant.

- When the Board receives an application for registration, it may make such inquiries as it deems necessary before registering the Waqf, including inquiries into the genuineness and validity of the application and the accuracy of any particulars therein, and when the application is made by anyone other than the person in charge of the Waqf property, the Board shall give notice before registering the Waqf.

- Any application for registration of Awqaf **created before the commencement** of this Act **must be made within three months of that commencement,** and any application for registration of Awqaf created after that commencement must be made within **three months of the date of the creation of the Waqf.** Where there is no Board at the time of the formation of the Waqf, the application must be made within **three months of the Board's establishment.**

- The Board shall keep an **Awqaf register**, which shall include, for each Waqf, **copies of the Waqf deeds,** when available, and the following information: (a) the Waqf class, (b) the name of the Mutawallis; (c) the rule of succession to the office of Mutawalli under the Waqf deed or by custom or by usage; (d) details of all Waqf properties and all title deeds and documents

- The Board shall notify the concerned land record office having jurisdiction over the Waqf property of the descriptions of the properties entered in the Awqaf registry.

- Upon receipt of the information described in subsection (2), the land record office must either make appropriate entries in the land record or communicate its objections to the Board within six months of the date of registration of Waqf property under Section 36, according to the existing procedure.

### ➢ Maintenance of accounts

- Chapter VI talks about the maintenance of the account of the Waqfs. Section 44 says about the budget and section 46 talks about the submission of the accounts of Waqfs.

- Every Mutawalli of a Waqf shall prepare a budget for the financial year next ensuing in such form and at such time as may be specified, showing the expected receipts and expenditure during that financial year.

- The Mutawalli must submit such a budget to the Board **at least [thirty days] before the start of the financial year,** and it must include adequate provisions for the following: (i) carrying out the Waqf's objects, (ii) maintaining and preserving the Waqf's property, and (iii) discharging all liabilities and existing commitments binding on the Waqf under the Act.

- If the Board determines that any item in the budget is incompatible with the Waqf's objectives and the provisions of this Act, it may guide the addition or deletion of that item.

- If the Mutawalli determines during the financial year that the provisions made in the budget in regard to the receipt or allocation of the sums to be spent under the various heads need to be changed, he will send a supplementary or revised budget to the Board, and the provisions of sub-section (3) will apply to such supplementary or revised budget to the extent possible.

- The Chief Executive Officer shall prepare a budget for the financial year next ensuing, in such form and at such time as may be prescribed, showing the projected receipts and expenditure for each of the Awqaf under the direct control of the Board, and send it to the Board for approval.

- In submitting the budget under sub-section (1), the Chief Executive Officer must also prepare a statement detailing the rise, if any, in the income of each Waqf under the Board's direct control, as well as the measures taken to improve its management and the results obtained during the year.

- Every Mutawalli is required to keep accurate records. Every Mutawalli of a Waqf shall prepare and furnish to the Board a full and true statement of accounts, in such form and containing such particulars as the Board can provide by regulations, of all money received or expended before the [1st day of July] next following the date on which the application referred to in section 36 has been made, and thereafter before the [1st day of July] in every year.

➢ **Formation and Working of the Waqf Council**

- Chapter III of the act talks about the Waqf Council. Section 9 of the act gives the provision of the establishment of a Waqf Council.

- The CWC is an apex council that deals with Waqf and related issues. It is necessary to give priority to this topic because it is relevant and pertains to the welfare of the Muslim community. Initially, the CWC was formed to provide advice on Waqf and related matters to the Ministry of Minority Affairs, the Government of India, state Governments, and State Waqf Boards.

- Any dispute arising from a directive issued by the council under section 9 (4) must be referred to a Board of Adjudication, which must be formed by the central government and **presided over by a retired Supreme Court judge or Chief Justice of the High Court.**

- The Central Waqf Council is formed and constituted. (1) The Central Government may, by notification in the Official Gazette, create a Council to be known as the Central Waqf Council for the purpose of advising the Central Government, State Governments, and Boards on matters relating to the functioning of Boards and the proper administration of Awqaf. The Council referred to in subsection (1) shall issue instructions to the Boards on the issues and in the manner set forth in subsections (4) and (5).

- The Council shall be composed of the following members: (a) the Union Minister-in-charge of Waqf—ex officio Chairperson; (b) the following members to be appointed by the Central Government from among Muslims, namely:

1. three persons to represent Muslim organizations of all-India character and national importance;
2. four persons of national eminence, one each from the fields of administration or management, finance, and law;
3. three Members of Parliament, two from the House of People and one from the Council of States;
4. rotating Chairpersons of three Boards;
5. two Supreme Court or High Court Judges;
6. one national eminent Advocate;
7. one person to represent the mutawallis of the waqf with a gross annual income of rupees five lakhs and above;
8. Three eminent scholars in Muslim Law

- The term of office of members of the Council, the procedure to be followed in carrying out their duties, and the manner of filling casual vacancies among them shall be as specified by rules made by the Central Government.

- The State Government or, as the case may be, the Board shall provide information to the Council on the performance of Waqf Boards in the State, especially on their financial performance, survey, maintenance of waqf deeds, revenue records, encroachment of waqf properties, annual reports, and audit reports, in the manner and time as the Council may specify, and the Council may suo motu call for information.

- Any dispute arising from a directive issued by the Council under sub-section (4) shall be referred to a Board of Adjudication to be constituted by the Central Government, to be presided over by a retired Supreme Court Judge or a retired Chief Justice of a High Court, and the fees, travelling, and other allowances payable to the Presiding Officer shall be as specified by that Board.

- The Waqf Act of 1995 specifies the financial arrangements for the Central Waqf Council. According to Section 10 of the Act, each state Waqf board must pay the council 1% of the Waqf's net annual profits.

- The Central Waqf Fund will receive all funds raised by the council from the State Waqf boards, as well as all gifts, benefactions, and grants. The Central Waqf Council will have full control over the Central Waqf Fund and will be able to make guidelines for the Central Waqf Fund.

- The Central Waqf Council is required by Section 11 of the Waqf Act of 1995 to keep certain books of account in the form and manner prescribed by the Central Government. The Central Government's auditor is responsible for auditing and inspecting these books on an annual basis. The audit's costs will be covered by the Central Waqf Fund.

### B. Concept of Mutawalli

- According to Muslim law, once a Wakf is formed, all property rights pass from the Wakif to God. However, someone who can look after and maintain the property is needed. The person who supervises or takes over the management of a Wakf is known as a Mutawalli in Muslim law. A basic understanding of Wakf is needed before proceeding.

- Mutawalli is the person in charge of Wakf's management. **In Shia Law, the appointment of a Mutawalli is required. Sunni Law, on the other hand, does not impose any obligations.** Under Islamic law, a Mutawalli has no claim to the wakf's lands. He does not own the land. Under Muslim law, the status of Mutawalli is **distinct from that of a trustee. He is merely a boss or manager.**

### Who can be a Mutawalli?

- A Mutawalli can be someone of sound mind and one who is of the age of majority and is capable of performing the functions that must be performed under a specific wakf. **A minor, on the other hand, may be a Mutawalli if the office is hereditary or if the line of succession is established in the wakf-name and the office is held by a minor.**

- A woman may be appointed as a Mutawalli in most cases, but where the Mutawalli is also expected to perform religious duties, **a female, as well as a non-muslim, cannot be appointed.**

### Who can appoint a Mutawalli?

- Founder: The founder of a Wakf has complete appointment control. In addition, he has the power to **nominate himself as the first Mutawalli**. He may also develop guidelines for the appointment of Mutawalli in the future. He may also appoint a stranger as Mutawalli on his deathbed.

- Mutawalli: If the founder and wakif are both deceased and **there is no written succession plan in place, the current mutawalli will nominate his successor on his deathbed.** In terms of fitness, however, he lacks certain authority. Whether one of the joint Mutawallis dies and the wakf remains silent on what to do if one of them dies, the office would be **passed down by survivorship.**

- The court will appoint a Mutawalli in cases where the creator has not appointed a Mutawalli or cannot be appointed as mutawalli. **The District Court has the authority to designate.** The court follows a few laws, including the following:- The court disregards the settler's course. A settler member should be preferred over a stranger.

- Where a wakf is strictly local, such as a graveyard or a mosque, the Mutawalli may be appointed by a locality's collective decision.

### Duties of mutawalli

Mutawalli is in charge of Wakf property management and administration. He has complete control over the use of Wakf property for the reason for which it was developed. **He may only alienate property with the court's permission**. It is merely voidable even without prior court approval. Mutawalli could file a suit relating to a wakf before the Wakf Act, 1954 came into effect. However, the Wakf Board now wields this force.

- As the Wakf's manager, he is responsible for the property's usufruct. He is granted the following privileges:
- He has the power to use the usufructs in the Wakf's best interests. He is authorized to take all necessary steps in good faith to ensure that the Wakf's end beneficiaries receive all of the Wakf's benefits. He is not entitled to sell the property because he is not the owner of the property. The wakif, on the other hand, could bestow certain rights on him by explicitly mentioning them in the waqf name.
- By demonstrating the presence of sufficient grounds or urgency, **he may obtain court permission to sell or borrow money.**
- He will file a lawsuit to defend the wakf's interests.
- **He also has the authority to lease the land for less than three years for agricultural purposes and for less than one year for non-agricultural purposes**. With the proper approval from the judge, he **may have the term extended.**
- He is entitled to remuneration in accordance with the wakif's provisions. If the remuneration is insufficient, **he will petition the court to have it increased.**

- **Removal of Mutawalli**
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The creator cannot remove Mutawalli after he has been named unless such power has been granted under wakf-nama. Mutawalli may be removed by the court. A court can remove Mutawalli for any legitimate cause, including misfeasance, breach of confidence, or unfitness.

- By the Court – Once a mutawalli has been named, the waqif cannot dismiss him. The Mutawalli, on the other hand, can only be excluded by the Court on the following grounds.

- He disputes the property's waqf status and establishes an adverse title to it in his own name.

- He neglects to repair the waqf premises, despite having sufficient funds, and allows them to fall into disarray; he knowingly and deliberately causes harm or loss to the waqf land or commits a breach of trust.

- The Mutawalli is declared bankrupt.

- According to Section 64 of the Wakf Act, 1995, the **Wakf Board has the power to dismiss Mutawalli from his role if the said requirements are not met.**

- According to the Wakif – This definition is seen from a variety of perspectives. Even if the waqif has not claimed the right to delete the mutawalli in the wakf deed, the mutawalli may be removed, according to Abu Yusuf.

- Imam Mohammed, on the other hand, argues that the wakif cannot do so unless there is a reservation.

- Waqf Property Management - De Facto Mutawalli- If a person who has not been authorized to act as a mutawalli by the waqif or the Court assumes the status to manage the property, he becomes a "trustee de son tort" and is liable for the property.

- If there is a provision in the waqf deed exempting the mutawalli from liability, it must be followed. At any point, a beneficiary has the right to demand an account from a Mutawalli. A beneficiary of such rights has the right to assert his share of income and may sue for it.

➢ **Financial Records (Waqf Council and Board)**

- The mutawalli of any wakf with a net annual income of not less than five thousand rupees shall pay to the Board, out of the wakf's net annual income, such contributions, not exceeding **seven per cent of such annual income,** as may be prescribed, for the Board's services to the wakf. I. Explanation.— For the purposes of this Act, "net annual income" refers to the wakf's gross income from all sources, including Mazars and offers that do not contribute to the wakf's corpus, in a given year after deducting the following: 1. the land revenue paid to the Government;

2. the rates, cesses, taxes and licence fees, paid by it to the Government or any local authority;

3. expenditure incurred for all or any of the following purposes,

- expenditure on various repairs to leased houses, **not to exceed 5% of the annual rent arising from them, or actual expenditure, whichever is less;**
- The wakf's mutawalli may collect the contributions due him under subsection (1) from the various persons entitled to any pecuniary or other material benefits from the wakf, but the amount collected from any one of them shall not exceed the amount that bears the same proportion to the total contribution due as the value of the benefits due to such person.
- The contribution shall be paid out of any wakf income available in excess of the sum payable as dues under this Act, other than the contribution under sub-section (1), and in excess of the amount payable under the wakf deed.
- The contribution payable under sub-section (1) in respect of a wakf shall be a first charge on the wakf's income and shall be recoverable, subject to the payment of any dues to the Government or any local authority or of any other statutory first charge on the wakf property or income thereof, on a certificate issued by the Board after giving the mutawalli concerned an opportunity to object.
- If a mutawalli realizes the wakf's income and declines or fails to pay the wakf's contribution, **he is personally liable for the contribution that may be realized from his person or property in the manner aforesaid.**
- After the commencement of this Act, if the mutawalli of a wakf fails to submit a return of the wakf's net annual income within the time specified, or submits a return that, in the opinion of the Chief Executive Officer, is incorrect or false in any material particular, or does not comply with the provisions of this Act or any rule or order made thereunder, the Chief Executive Officer may impose penalties.

- Provided, however, that no assessment of net annual income or revision of a mutawalli's return shall be made unless the mutawalli has been given the notice to show cause, within the time specified in the notice, why such assessment or revision of the return should not be made, and that any such assessment or revision shall be made after considering the mutawalli's reply if any.

- Any mutawalli who is aggrieved by the Chief Executive Officer's assessment or revision made under sub-section (6) can file an appeal with the Board within thirty days of receiving the assessment or revision of return, and the Board can confirm, reverse, or modify the assessment or revision of the return after giving the appellant a fair opportunity to be heard.

- If the contribution or any portion thereof leviable under this section escaped assessment for any reason in any year, whether before or after the commencement of this Act, the Chief Executive Officer may, **within five years of the last date of the year to which such escaped assessment relates,** serve on the mutawalli a notice assessing him with the contribution or portion thereof which had escaped assessment.

- Regardless of any other law in force at the time, the Chief Executive Officer may, if he believes it is necessary and expedient, issue an order directing any bank in which, or any individual with whom, any money belonging to a waqf is deposited, to pay the contribution, leviable under section 72, out of any money standing to the credit of the waqf.

- Any payment made by a bank or other individual in accordance with an order issued under subsection (1) discharges the bank or other person's liability in relation to the amount so charged fully.

- Any bank or other individual who is ordered to make a payment under subsection (1) may **appeal the order to the Tribunal within thirty days of the date of the order**, and the Tribunal's decision on the appeal is final.

- Any bank officer or other individual who fails, without fair excuse, to comply with the order made under sub-section (1) or, as the case may be, under sub-section (3) is punishable by **imprisonment for a period not exceeding six months or a fine not exceeding eight thousand rupees, or both.**

## Powers

- The general supervision of all Waqfs in a State shall be vested in the Board established by the State, and it shall be the duty of the Board to exercise its powers under this Act in such a way that the Waqfs under its supervision are properly maintained, regulated, and administered, and their income is properly applied to the objects and purposes for which such Waqfs were created or established.

- The Board shall act in accordance with the directives of the Waqf, the Waqf's purposes, and any Waqf use or tradition sanctioned by the school of Muslim law to which the Waqf belongs when exercising its powers under this Act in respect of any Waqf.

- The board's power and duties are governed by Section 32 of the Act. The Board appointed by the concerned State has general supervision over all waqf in the state, and it is the board's responsibility to:

- To ensure that the waqf is properly administered, maintained, and regulated.

- The waqf was established to ensure that the profits and other assets of the waqf are applied to the items for the primary purpose.

- To provide guidance in the administration of the waqf and to develop management schemes for the waqf.

- To nominate and dismiss mutawallis, as well as to scrutinize and approve mutawallis' budget submissions.

- To take the requisite steps to reclaim the waqf land.

- Authorized to file and fight lawsuits involving waqf assets.

- To take care of the waqf fund.

- Waqf assets, accounts, records, and documents may be inspected and investigated.

- In addition, all activities related to the preservation, management, and control of waqf assets must be completed.

- Inspectors and superintendents of wakfs should conduct **frequent and surprise audits of the wakfs' accounts, and they must be kept accountable for any errors**. The board is given the authority to draft schemes for the management of wakfs, and this authority must be exercised with due notice to the Mutawalli and all parties affected, as well as enough opportunity to be heard.

- If the Board determines that the framing of a scheme for the administration of a wakf is required, it can do so on its own initiative or in response to a request from not less than 5 persons involved in that wakf. This is done in consultation with the mutawalli and the applicants.

## Judicial Proceedings

- The Waqf Act of 1995, Section 83, allows the State Government to create as many tribunals as they see fit for the administration of waqf and waqf property by notifying the Official Gazette.
- The Tribunals, as far as their powers and functions are concerned, are considered to be Civil Courts and must exercise all of the powers and duties that a civil court does. The Tribunal's decision is definitive and binding on the parties. No civil court shall have jurisdiction over any suit or legal action that this act needs to be decided by a Tribunal. (Read 323 A and 323 B of the Constitution)
- Members of the Tribunals: The Tribunals will be made up of the following individuals: One member of the State Judicial Service who is not below the rank of District, Session, or Civil judge, one member of the State Civil Services who is equal to the rank of District Magistrate, and one person with knowledge of Muslim Law and Jurisprudence.
- When a mutawalli fails to perform his duties as prescribed by Muslim Law or is unable to discharge the duties to which he is obligated, the board must file a complaint with the Tribunal, and the Tribunal can take appropriate action.
- If the waqf land is subject to the jurisdiction of two or more tribunals, the claim must be made to **the tribunal in whose local jurisdiction the mutawalli resides**.
- Where an application made under subsection (1) relates to waqf property that falls within the territorial limits of the jurisdiction of two or more Tribunals, the application may be made to

the Tribunal within whose local limits the mutawalli or any one of the mutawallis of the waqf actually and voluntarily resides, carries on business, or personally works for gain.

- Provided, however, that the State Government may, if it believes it is in the best interests of the waqf or any other person interested in the waqf or waqf property, transfer such application to any other Tribunal having jurisdiction for the determination of the dispute, question, or other matter relating to such waqf or waqf property, transfer such application to any other Tribunal having jurisdiction for the determination of the dispute, question, or other matter relating to such waqf of waqf property.

- The Tribunal would be treated as a trial court and will have the same powers that a federal court will have while trying a case or enforcing a decision or order under the Code of Civil Procedure, 1908.

- The Tribunal shall observe such procedure as may be prescribed, notwithstanding anything in the Code of Civil Procedure, 1908.

- The Tribunal's decision is definitive and binding on the parties to the application, and it has the legal force of a civil court order.

- The civil court to which the Tribunal's decision is submitted for execution shall carry out the decision in accordance with the rules of the Code of Civil Procedure, 1908.

- No appeal shall be allowed against any decision or order issued by the Tribunal, whether interim or final:

- A High Court may, on its own motion or on the application of the Board or any person aggrieved, order and examine the records relating to any dispute, issue, or other matter decided by the Tribunal for the purpose of ascertaining the correctness, legality, or propriety of such determination (Similar to 397 CrPC), and may confirm, reverse, or modify such determination or pave the way for further proceedings.

- Whenever an application is made to a Tribunal for the resolution of any conflict, issue, or other matter relating to a waqf or waqf land, the Tribunal shall conduct its proceedings as quickly as possible and shall, as soon as practicable, give its decision in writing and provide a copy of such decision to each of the parties to the dispute.

- No suit may be brought against the Board for any act purporting to be done by it in pursuance of this Act or any rules made thereunder **until two months have passed after notice in writing has been sent to**, (Read S.80 of CPC for an exemplary reference) or left at, the Board's office, stating the cause of action, the plaintiff's name, description, and place of residence, and the relief sought.

### C. CASE REFERENCES

### ➢ Definition of Waqf

- In the case of **M Kazim v. A Asghar Ali**, it means the dedication of a particular property for a religious reason or the secession of religious purposes. Wakf, according to Muslim jurists such as Abu Hanifa, is the detention of a particular item in the waqif's or appropriator's possession, and the dedication of its revenues or usufructs to charity, the needy, or other good things, in order to accommodate a loan. Waqf literally translates to "detention" or "tying up," implying that the owner of the dedicated property is taken away from the individual who makes waqf and transferred to God. Details about the prophet's wakf can be found in old documents.

- **Abdul Hannan v. Fateh Mohammad**, 1958, waqf means tying up the corpus and devotion and the usufruct to some pious object and the waqf property is not to be sold or made the subject of the gift and inheritance.

### ➢ Condition for a valid waqf

- If a condition is imposed in the waqf deed, that the **wakif reserves to himself the power of revoking a waqf, the waqf is void ab-initio**.
- In **Abdul Satar v. Advocate General of Bombay**, two settlors proposed to create a Waqf by a deed which contained a clause enabling one of them by deed, enabling the alter of trust wholly, declared by the deed and by the same deed to declare new trust. It was held by the Court that the power of revocation reserved in the favour of settlers rendered the whole deed void. It is impossible to contemplate whole property transferable to the Almighty God subject to a condition enforceable by anyone in a Court for recovering that property for the benefit of the settler.

### ➢ Who can be a Muttawali?

- The Privy Council held in **Shahar Bano v. Aga Mohammad** that there is no legal bar to a woman being a Mutawalli **if the wakf's duties do not include religious activities**. A mutawalli may be named if he or she is a major, of sound mind, and capable of performing the wakf's functions as the wakif desires. A male or female of either faith may be chosen for the role. If the wakf includes religious responsibilities, a female or non-muslim cannot be named.

- **Office of Mutawalli**

- In **Ahmad Arif v. Wealth Tax Commissioner**, the Supreme Court held that a mutawalli does not have the authority to sell, mortgage, or lease wakf property unless the Court has given him that authority or unless the mutawalli has been given that authority expressly in the waqf nama. Mutawalli is the owner and operator of a wakf. He is not the property's owner or even a trustee. He is merely a supervisor whose duty it is to ensure that the property's usufructs are being used for the purposes intended by the wakif. He must ensure that the benefits are being received by the intended recipients. As a result, he just has a small amount of power over the usufructs.

## 4. THE HAJ COMMITTEE ACT, 2002

### A. CENTRAL HAJ COMMITTEE

### ➢ Constitution of the Haj Committee

- The constitution is incorporated under Section 3 of the Act.
- Committee is a corporate body having the power to acquire, hold and dispose of any movable or immovable property or creating a charitable trust and to sue and be sued.
- **The headquarters are situated in Mumbai.**

#### ➢ Composition of the Committee

- The required composition of the Committee is laid down under Section 4 of the Act.
- Three members are to be nominated from the Muslim members of the Parliament and Council of States.
- The two members from the Parliament are to be nominated by the Speaker of the House of People and the one member from Council of States by the Chairman.
- The member will cease to be a member once he retires from the Parliament or the Council of States.
- 3 out of the 9 members are to be elected from the States sending largest pilgrims during previous three years and one each from zones specified in the Schedule as prescribed.
- 4 members nominated above the rank of Joint Secretary to represent Ministries of External Affairs, Home, Finance and Civil Aviation as *ex-officio* members.
- 7 members nominated by Central Government; 2 women; 2 people who have special knowledge of public administration, finance, education, culture or social work; 3 members who have special knowledge of Muslim theology and law and one member should be Shia Muslim in each category.
- Under Section 5, names of the members should be published in the Official Gazette as soon as nominations are done.

#### ➢ Chairperson and Vice-Chairperson

- The appointment of Chairperson and Vice-Chairperson is prescribed in Section 7 of the Act.

- The first meeting of the committee, which must be held within 45 days of the notification, is when the Chairperson and the Vice-chairperson are elected.
- The Ministers or the *ex-officio* members are not to be elected for the positions.
- If the Committee fails to elect, the Central Government appoints a member as the Chairperson or Vice-Chairperson.
- The Chairperson exercises powers and duties as prescribed, whereas the Vice-Chairperson exercises the powers and duties as prescribed by the bye-laws made by the Committee and prior to making such bye-laws, as prescribed by the Chairperson.
- The election is to be notified in the Official Gazette and any vacancy is to be filled as prescribed in the sub-sections.

### ➢ Term of the Office

- Section 6 of the Act lays down that a member of the Committee, other than *ex-officio* members and members filling vacancy, will hold the office for 3 years from the day of notification.
- The term can be extended to a maximum of 1 year (6months at once) by an Official Gazette.
- The term for the Chairperson and the Vice-Chairperson is co-terminus with the Committee and a person cannot hold office for more than 2 terms.

### ➢ Reconstitution of the Committee

- The steps for reconstitution of the Committee should be initiated at least 4 months before expiry of the term as specified under Section 8.
- Renomination of a member can be done for not more than 2 years but only 50 percent of the members can be renominated for a second term.

### ➢ Duties of the Committee

- The duties of the Committee have been iterated in Section 9 of the Act.
  - Collecting and providing information to the pilgrims and training them.
  - Advising and assisting the pilgrim in all matters as well as liaising with the local authorities concerned.
  - Giving relief to pilgrims.

- Approving the budget estimates and submission to the government 3 months before the starting of the financial year.
- Finalising the plan for approval of arrangements including accommodation facilities and travelling arrangements.
- Looking after the welfare of the pilgrims.
- Publishing the proceedings of the Committee as prescribed by the bye-laws.
- Discharging duties as prescribed by the Central government.

- The Central government is to provide all assistance required in fulfilling the duties of the Committee.

## Meetings of the Committee

- Section 10 of the Act prescribes the details regarding meetings of the Committee.
- The Committee meets 3 times a year to finalize the plan and once for review.
- The meetings can be held when one-third of the members deem necessary or when the Chairperson deems fit.
- One-third is the quorum of the meeting and matters are to be decided by majority vote and by the vote of the Chairperson in case of equal votes.
- The procedures as prescribed by the bye-laws are to be followed.

## Appointment of Standing Committees and subcommittees

- Two standing Committees are to be appointed with the Vice-Chairperson as the head with the members as prescribed by the bye-laws for matters related to finance. The Chairperson presides the meeting when present.
- Sub-Committees as determined by the bye-laws can be appointed.
- Section 11 of the Act deals with this provision.

## Disqualification to become a member of Committee

Section 12 of the Act deals with the disqualification of members. A person is disqualified if he is -

- Not a citizen of India.
- Not a Muslim, other than *ex-officio* members.

- Less than 25 years.
- Of unsound mind.
- Undischarged insolvent.
- Convicted of an offence of moral turpitude.
- Removed from his office as a member or by a competent authority.

➢ **Resignation of Chairperson, Vice-Chairperson and members**

- The resignation can be signed and addressed to the Central Government under Section 13.

➢ **Removal of Chairperson, Vice-Chairperson and members**

- Under Section 14 the Central government may remove any member of the Committee -
  - Subject to disqualification under Section 12.
  - If he/she refuses to act for the Committee or acts in a manner prejudicial to the interests of the pilgrimage.
  - If such member fails to attend three consecutive meetings without reasonable excuse.

- Removal from the post of Chairperson or Vice-Chairperson leads to removal from being a member.

➢ **Filling of a casual vacancy**

- Vacancy upon removal, resignation or death of a member requires to be fulfilled by nomination or election as required and the office would be held till the time the original member would have held.
- This provision also applies for filling of casual vacancy under Section 15.

➢ **Chief Executive Officer and other employees**

- Under Section 16, a person above the rank of Deputy Secretary to the Government from the Muslim Officers panel shall be appointed as the Chief Executive Officer.
- He shall be the *ex-officio* Secretary of the Committee and be appointed for 3 years and may extend up to 1 year.

- He should work according to the functions prescribed, and in case of difference in opinion of the CEO and the Committee it should be brought to the notice of the Central government.
- Any other employees can be appointed with sanction from the government with conditions as prescribed by law.

**B. STATE HAJ COMMITTEE**

➢ **Establishment and Incorporation**

- The Central Government by notification authorizes a State Government to constitute a State Haj Committee as laid under Section 17. The name of the committee would be [Name of the State] Haj Committee.
- If in any case, the Central Government thinks that a State or Union Territory does not need a separate Haj Committee then it may empower the Haj Committee of any nearby state to deal with the issues of pilgrims of the former state and give representation on behalf of that state.
- Committee is a corporate body having the power to acquire, hold and dispose of any movable or immovable property or creating a charitable trust and to sue and be sued but the provisions of this act would be above all these rights.
- The joint committees of two or more States/Union Territories can be constituted subject to an agreement between (1). two or more nearby states (2). Central Government with two or more states. These Joint Committees would exist for a specified period in the agreement and would require renewal for further period, if any.
- These agreements would be published in the Official Gazette of the respective States/Union Territories, as the case may be.
- Any reference made in the present act in the context of a State Haj Committee would include Joint Committees.

➢ **Composition**

- The State Government shall nominate a batch of 16 members for the state committee as prescribed under Section 18.
    - 3 Muslim members

        a) Member of Parliament from the State

b) State Legislative Assembly

c) Legislative Council, if exists

- 3 Muslim member from local bodies of the State
- 3 experts on the Muslim law, one of whom must be a Shia Muslim
- 5 members from various Muslim organizations
- Chairperson of the Wakf Board
- Executive Officer would be an ex-officio member of the committee

The above mentioned rule for number would not be applicable to committees for a U.T. or Joint Committees. The composition of such committees would be as prescribed.

- In case of not having any Muslim member in clause (a) and (b) in above-mentioned part or no legislative assembly exists, nomination can be made in manner prescribed.

### ➢ Notification of members

- The State Government shall compulsorily publish names of the individual nominated for State Haj Committees in its Official Gazette according to Section 19.

### ➢ Term of Office

- Except ex-officio members and members filling casual vacancies, the term of office would be 3 year for all members. The period would commence from the date of publication of their names in the Official Gazette of the State.
- Section 20 states that the allowances and other terms and conditions in regard to Chairperson and member would be as prescribed.

### ➢ Chairperson

- The State Government shall within 45 days of publication of names, organize the first meeting of the Committee. In this meeting, a Chairperson would be elected from the members of the Committee under Section 21.

The ex-officio member would not be entitled to take part in the election.

- The power to elect a Chairperson lies with the State Government in case the Committee is not able to elect its Chairperson.
- The election of Chairperson would be notified by the State Government in the Official Gazette.
- The term of a Chairperson would be 3 years and not more that 2 consecutive terms

- A casual vacancy of office of Chairperson would be filled in terms of sub-section 1 and 2 of section 21 of the Act.

### ➢ Reconstitution

- The steps for reconstitution of the Committee should be initiated by the State Government at least 4 months before expiry of the term of present Committee under Section 22.
- Re-nomination of a member can be done for not more than 2 years but only 50 percent of the members can be re-nominated for a second term.

### ➢ Disqualification to be a member of the State Committee

Disqualification of members of the State Committee is dealt in Section 23 of the Act. A person is disqualified if he is,

- Not a citizen of India.
- Not a resident of that State
- Not a Muslim, other than *ex-officio* members u/s 18(1)(vi).
- Less than 25 years.
- Of unsound mind.
- Undischarged insolvent.
- Convicted of an offence of moral turpitude.
- Removed from his office as a member or by a competent authority.

### ➢ Resignation of Chairperson and members

- The resignation can be signed and addressed to the State Government under Section 24.

### ➢ Removal of Chairperson, Vice-Chairperson and members

- Under Section 25 the State government may remove any member of the Committee,
  - Subject to disqualification under Section 23.
  - If he refuses to act for the Committee or acts in a manner prejudicial to the interests of the pilgrimage.

- If he fails to attend three consecutive meetings without reasonable excuse.

Removal from the post of Chairperson or Vice-Chairperson leads to removal from being a member.

- **Filling of a casual vacancy**

- Section 26 states that vacancy upon removal, resignation or death of a member is to be fulfilled by nomination or election as required and the office would be held till the time the original member would have held.

This provision also applies for filling of casual vacancy under Section 15.

- **Duties of the State Committee (Section 27)**

- To implement the policy in the interest of pilgrims.
- To assist pilgrims in the transportation from their home state and exit point in India and accommodation at the exit point.
- To discharge all duties prescribed by the State Government.

- **Meetings of State Committee**

- Section 28 of the Act prescribes the details regarding meetings of the State Committee.
- The Committee meets thrice a year, twice before Haj day and once after it.
- The meetings can be held when one-third of the members deem necessary or when the Chairperson deems fit.
- Matters are to be decided by majority vote and by the vote of the Chairperson in case of equal votes.

- **Executive Officer and other employees**

- Under Section 29, a Muslim (preferably) person above the rank of Deputy Secretary to the State Government shall be appointed as the Chief Executive Officer.
- He shall be the Secretary of the Committee.
- He should work according to the functions prescribed and in case of difference in opinion of the Executive Officer and the Committee, he shall bring it to the notice of the

State government and the decision of the State Government would be final in such scenario.

- Any other employees can be appointed with sanction from the State government who are fit to fulfil the objectives of the Act.
- The terms of office of officers and other employees would be as prescribed.

## C. FINANCE, ACCOUNTS AND AUDIT

### ➢ Central Haj Fund

- Committee has its own fund as laid under Section 30.
- The proceeds of following would be credited to this fund:
  - Fees and Service Charges for
    - Registration of Application for Haj
    - Travel passes to Pilgrims
  - Money collected for performance of Hajj
  - Income from deposits and investment
  - Sale of effects and unclaimed money of deceased pilgrims.
  - Loan by Central/State Government or any other source approved by Central Government.
  - Amount present at the commencement of this Act in the Haj Fund and Indigent Pilgrims Fund under this Act.

### ➢ Application of Central Haj Fund

- Fund is Subject to provisions of this Act and under the control and management of the Committee under Section 31.
- The fund shall be applied for following purposes:
  - Pay and allowances to CEO and other employees.
  - Payment of charges and expenses incurred in fulfilling section 9.
  - Any other expense of the Committee or State Committee approved by the Central Government.

### ➢ State Haj Fund

- The State Committee also has its own fund under Section 33.

- The proceeds of following would be credited to this fund:
  - Money paid or granted by the Committee.
  - Loan or any other source approved by the State Government.
  - Amount legally due from any source.
  - Amount present at the commencement of this Act in the State Haj Fund.

### ➢ Accounts and Audit

- According to Section 34, the Committee/State Committee as under shall be to:
  - Maintain proper accounts.
  - Other relevant records.
  - Annual statement in the manner prescribed by Central/State Government, as the case may be.
- Examination and audit by Auditors approved by the Central/State Government, as the case may be.
- Audit report to be presented before Parliament in case of Central Haj Fund and before State Legislature in case of State Haj Fund.

## D. POWERS

### ➢ Pilgrim Passes and Levy Fees

- A travel document called 'Pilgrim pass' is issued to all the pilgrims under Section 35 which exempts them from the provision of Section 3 of the Passports Act, 1967.
- Fees are levied for registration and other related matters in consultation with the Committee, by the Central Government.

### ➢ Supersession of Committee

- Section 36 of the Act gives the Central Government powers to supersede the Committee for a period specified in the order if the performance is defaulted or powers are abused.
- The Government has to give the Committee a reasonable opportunity to show cause.
- When the Committee is superseded:
  - The members are required to vacate the office.

    - During the supersession, the government appoints an Officer who is conferred with all the powers and duties of the Committee.
    - The properties of the Committee vest with the government.
- The order and reasons of the supersession is laid before the House of Parliament as soon as the order has been made.
- The State Government is entitled to the powers as mentioned in this Section to be exercised at the state level for the State Haj Committees.

### ➢ Office of Profit

- The Central and the State Committees shall not hold any office of profit as laid under Section 37.

### ➢ Vacancies not to Invalidate Proceedings

- According to Section 38, the proceedings of the Committee would not be invalid merely because of a vacancy in the position of the members or any defect.

### ➢ Public Servants

- According to Section 39, the members of the Committee are deemed to be public servants under the meaning laid down in Section 21 of the IPC.

### ➢ Indemnity (Section 40)

- No legal proceedings can be held against any member of the Committee including the Chairperson and the Vice-Chairperson for any act done in good faith under the Act except without prior permission from the Government.

### ➢ Power to Amend Schedule

- The schedule can be amended with a notification in the Official Gazette, if the Government deems fit under Section 41.
- A copy of the notification is laid before the House of Parliament.

### ➢ Redressal of Grievances

- As laid under Section 42, any pilgrim has the right to seek redressal from the Committee by making a representation.

- **Properties and Other Rights**

- Under Section 43, the assets, rights, leaseholds, powers, authorities and privileges and all properties and all other rights and interests in or arising out of such properties that were in the ownership, power or control of Haj Committee, Mumbai, constituted under the Haj Committee Act, 1959 (51 of 1959) vest with the Committee in both the Central and the State Haj Committees.
- The liabilities of the previous Committee are also transferred to the Central and State Committees, as the case may be.
- The Committee substitutes the previous Committee as a party to any contract or legal proceedings.

- **Rule Making Powers**

- The Government has the powers to make any rules in furtherance of the Act without prejudice to the foregoing powers and make rules for any matters as prescribed under Section 44 of the Act.
- These rules are presented before the House of Parliament and the changes as recommended by the Houses are to be incorporated.

- **Bye-Laws Making Powers**

- The Committee has the power under Section 45 to make bye-laws that are consistent with the provisions of the Act for:
  - Powers and duties of the Vice-Chairperson.
  - Providing for the publication of the proceedings or any matter of pilgrim interest.
  - Rules of procedure for business transaction.
  - Powers and functions of the Standing Committee.
  - Any matter necessary consistent with the provisions of this Act
- The bye-laws are to be submitted to the Central Government and come into force only after their confirmation and shall be published in the Official Gazette.

- **Delegation Powers**

- The Section 46 lays down that the Committee by general or special order can delegate to the members or CEO with conditions and limitations specified in the order.

- **Rule Making Powers of the State Government**

- According to Section 47, the State Government in consultation with the Central government can make rules in respect of State Committees.
- The rules provide for the various matters laid under sub-section 2 of the Section.
- The rules are to be laid before the legislature as soon as they are made.

➢ **Employees**

- The officers and employees of the existing Committees are transferred to the Committees incorporated under this Act with designation and remuneration as decided by the Committee, provided that it is not disadvantageous to the employee, but under the rules and conditions of the previous Committee.

➢ **Good Faith Action**

- Any action taken under this Act by any officer or employee, done with good faith, will not be made subject to any legal proceedings.

➢ **Removal of Difficulties**

- The Government has the power to remove any difficulties arising, that are not consistent with the provisions of the Act and would not be made after the expiry of 2 years of commencement of the Act as provided under Section 50.
- The order made under this Section is to be laid down before the House of Parliament.
- Giving Directions
- The Central Government has the power to issue direction for the Central and the State Committees under Section 51 of the Act.

**E. Repeal**

- The Haj Committee Act of 1959 has been repealed by this Act under Section 52 and the Committee had to function, till it is dissolved, as it would have if the Act had not been repealed.
- The actions taken under the Act would not stand invalid after the commencement of the new Act.

**F. CASE REFERRENCE**

In the case of **Union of India v. Rafique Shaikh Bhikan and Ors**., issues regarding the accommodation in Saudi Arabia, Constitution of the Committee and vacancy of the Chairman post.

The proceedings were initiated under Articles 27, 25 and 26 of the Constitution. Long-term accommodation on lease basis for a term of not less than 5 years had been directed to be taken. A Committee constituted by government officials had failed to secure such long-term accommodation. Therefore, a committee with some non-official members was constituted and given the said task. Joint Secretary of Gulf and Haj were directed to give information in regard to formation of said Committee. Since, the post of Chairman of the Committee was vacant, other members were directed to continue work without waiting for said appointment and the Central Government was directed to bear expenses of members.

## 5. THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE) ACT, 2019

- This Act is divided into three chapters and comprises eight sections.
- Chapter I talks about the extent of this act and consists of Section 1 and Section 2.
- Chapter II speaks of the declaration of Talaq by the Muslim husband to be void and illegal and consists of Section 3 and Section 4.
- Chapter III deals with the Protection of the rights of married Muslim women. It consists of Sections 5, 6, and 7.

### A. History of the Legislation

- The Supreme Court on 22 August 2017, in the case of Shayara Bano v. Union of India and other related matters, in a majority judgment of 3:2, set aside the practice of *talaq-e-biddat* **(**three pronouncements of talaq, at the same time) practiced by some husband to divorce their wives.
- This judgment gave a boost to liberate Indian Muslim women from the age-old practice of the capricious and whimsical method of divorce, by some Muslim men, leaving no room for reconciliation.
- The petitioner in the case challenged, inter alia, talaq-e-bidat on the ground that the said practice is discriminatory and against the dignity of women. The judgment vindicated the position taken by the Government that talaq-e-bidat is against constitutional morality, the dignity of women and the principles of gender equality, as also against gender equity guaranteed under the Constitution.
- Despite the Supreme Court setting aside talaq-e-bidat, there were reports of divorce by way of talaq-e-bidat from different parts of the country. It could be seen that setting aside talaq-e-bidat by the Supreme Court did not work as any deterrent in bringing down the number of divorces by this practice among certain Muslims.
- It was then felt that there is a need for the State to take an action and give effect to the order of the Supreme Court and to redress the grievances of victims of illegal divorce.
- Therefore, to protect the rights of married Muslim women who are being divorced by triple talaq, a Bill, namely, the Muslim Women (Protection of Rights on Marriage) Bill, 2017, was introduced, and passed by, the Lok Sabha on the 28th December 2017 and was pending in Rajya Sabha.

- As the Bill was pending for consideration in Rajya Sabha and the practice of divorce by triple talaq (i.e., talaq-e-bidat) was continuing, there was an urgent need to take immediate action to prevent such practice by making stringent provisions in the law.
- Since both Houses of Parliament were not in session and circumstances existed which render it necessary for the President to take immediate action in the matter, the Muslim Women (Protection of Rights on Marriage) Ordinance, 2018, with some new changes was promulgated on the 19th September 2018.
- In order to replace the said Ordinance, the Muslim Women (Protection of Rights on Marriage) Bill, 2018 was introduced in Lok Sabha on the 17th December 2018 and was passed by that House on the 27th December 2018. However, the Bill could not be taken up for consideration in Rajya Sabha and both Houses were adjourned.
- As both Houses of Parliament were again not in session and the practice of divorce by triple talaq (i.e. talaq-e-biddat) was continuing, to give continued effect to the provisions of the aforesaid Ordinance, the Muslim Women (Protection of Rights on Marriage) Ordinance, 2019 was promulgated on the 12th January 2019.
- Subsequently, to replace the Muslim Women (Protection of Rights on Marriage) Ordinance, 2019, necessary official amendments to the Muslim Women (Protection of Rights on Marriage) Bill, 2018 were moved in Rajya Sabha. However, the Bill could not be taken up for consideration in Rajya Sabha and both Houses were adjourned.
- Since both the Houses of Parliament were not in session, to give continued effect to the provisions of the aforesaid Ordinance, the Muslim Women (Protection of Rights on Marriage) Second Ordinance, 2019 was promulgated on the 21st February 2019.
- Thereafter, the Sixteenth Lok Sabha was dissolved on the 25th May 2019 and the Muslim Women (Protection of Rights on Marriage) Bill, 2017 and the Muslim Women (Protection of Rights on Marriage) Bill, 2018 pending in Rajya Sabha lapsed.
- Accordingly, to replace the Muslim Women (Protection of Rights on Marriage) Second Ordinance, 2019, the Muslim Women (Protection of Rights on Marriage) Bill, 2019 was introduced in the parliament.
- The Bill was finally passed by both the houses and received the assent of the president and it became an act on 31st July 2019.

## B. Talaq under this Act

Chapter II of the Act deals with the Talaq with the heading- Declaration of Talaq to be void and illegal.

- Section 3 of this Act says, that, any pronouncement of talaq by words either spoken or written or in electronic form or in any other manner by a Muslim husband upon his wife should be void and illegal.
- Section 4 of this Act talks about punishment for pronouncement of talaq.
  It says any husband who pronounces talaq upon his wife as it is referred to in section 3 of this act then he will be punished for a period of time with imprisonment which may extend to three years and will also be liable for fine.

**C. Protection of Rights under this Act**

Chapter III of this Act talks about the Protection of Rights of Married Muslim Women.

- Section 5 of the Act talks about the Subsistence allowance for the married Muslim women on whom talaq is pronounced.
  It says that a married Muslim woman who is divorced (talaq) by her husband is entitled to get an amount of subsistence allowance from her husband for herself and her dependent children as may be determined by the Magistrate.
- Section 6 of the Act speaks of the Custody of the Minor children
  This section says that in case the divorced is pronounced by the husband then the married Muslim woman shall be entitled to have the right to have custody of her minor children, in such manner as may be determined by the Magistrate.
- Section 7 of the Act, in accordance with the Code of Criminal Procedure, 1973, elucidates that:
  **a)** It says that if any information related to an offense punishable under this act is given to the officer-in-charge of the police station by the married Muslim woman upon whom the talaq is pronounced or any person related to her by blood or marriage, then such offense shall be considered as a cognizable offense.
  **b)** It says that an offense punishable under this act shall be considered as a compoundable offense at the instance of the married Muslim women upon whom talaq is pronounced with the permission of the Magistrate on the terms and conditions that he may determine.

**c)** This section says that if a person is accused of an offense under this Act, then he shall not be released on bail unless the magistrate after hearing, the married Muslim woman upon whom talaq is pronounced, is satisfied that there are reasonable grounds for granting bail to the accused on an application filed by the accused.

Muslim Law of Marriage

## SCHOOLS OF MUSLIM LAW

## KEY TAKEAWAYS

- The two major schools of Islam are Sunnis and Shias, who each have their schools. Even though these schools have differing viewpoints, the Muslim world finds them all to be right. As a result, no school is more prominent than the others.
- Sunni Muslims consider themselves to be the most conventional and common branch of Islam. In Sunni sect, there are four major schools of Muslim law which are Hanafi School, Maliki School, Shaffie School, Hanbali School.
- Hanafi School relied heavily on rational arguments to find solutions to social issues that also fit in with their interpretation of Islam.
- The Maliki school originates from Sunna and Hadis. These two important sources give importance to the sayings, teachings, customs and traditions of Prophet Mohammed.
- The Shafi school is simply a blend of the Maliki and Hanafi schools. The sources of law under this school are Ijma, Qiyas, Customs, and traditional law.
- Hanbali School is the most recent and least followed. Hanabali School adherents consider five primary sources- Quran, Sunnah, Ijma, Qiyas and Mursal traditions.
- The Shia believe that Muhammad's son-in-law, Ali, and his descendants were the sole inheritors of Muslim leadership. No tradition is accepted by the Shia. According to them, the final interpreter of the law is the Imam. In Shia School, there are three schools of Muslim law which are Zaidiyah School, Ashriyah School and Ismailyah School.
- Zaidiyah School was founded on the principles of personal responsibility and political activism. They also claimed that Muslims should follow the Prophet Mohammed's true successor, and that since Faithma was the only surviving daughter, only her sons should be true Imams of the Muslim community.
- Ashriyah School, also known as the Imamiyah School believed in the existence of a Muta. The term 'Muta' refers to a 'temporary marriage.' They also believe that the last of these Imams has vanished and will reappear as Mehdi (Messiah).

- Ismailiyah School can be divided into two groups in India- Kohojas( who serve the followers of the current Aga Khan) and the western Ismailis (who are known as merchants)
- Besides the schools under Shia and Sunni sects, there are some other schools which are also present which are- Mortazila School, Ahmadiya School and Ibadi School.
- Mortazila School has no link to the Sunni or Shia school. The followers of this sect believed in absolute divine justice and harmony.
- Ahmadiya Muslims claim to be Muslims, but they do not believe in Prophet Muhammed. No Muslim government has recognised them as Muslims because they believe this school's beliefs are opposed to Muslims' beliefs.
- Ibadi is a school that does not belong to either the Shia or Sunni sects. One of the most critical aspects of this school is that, in addition to the Quran, it has given significant weight to Ijtihad (personal reasoning), which is partly accepted by Sunnis but fully opposed by Shias.
- Even though there are many schools of Muslim law, they all lead to the same direction.

## INTRODUCTION

We must dive into the depths of Islamic culture to comprehend the division of Schools of Muslim rule. Prophet is the greatest interpreter of Muslim law. Muslims believe that Islam has always existed and that the religion was revealed to them through the Prophet Muhammad.

The problem began when it came to figuring out the successor to Prophet Mohammed. The death of the prophet Mohammad resulted in a tumultuous situation in the Muslim religion's spiritual leadership. Members of the Muslim religion were divided over who should succeed as the prophet. The main point of contention was the method for selecting the Immamat.

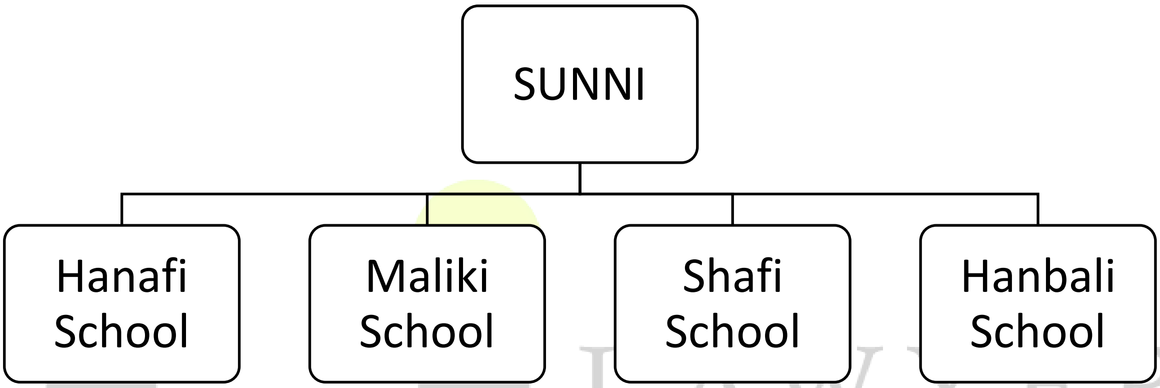
The majority sect believed that the jamaat should be pursued and that the principle of election in the jamaat should be based on the required method (A jamaat is a gathering of Muslims who pray together). Ayesha Begum, the prophet's wife, was the driving force behind this idea. This sect also intended to elect the Imam through the electoral process. Fatima, the prophet's daughter, led a minority sect that wanted to name a new Immamat from the prophet's family. The new spiritual leader was chosen following the majority sect's viewpoint. Abu Bakr, Ayesha Begum's father, was named the Sunni School's first Caliph and appointed leader. The Shia school was founded by a minority sect. Ali, Fatima's husband, was appointed Imam of the Shia Muslim.

Schools of Islamic jurisprudence founded their doctrines on the same foundation, and they only differ in matters of secondary nature. These contradictions are from their differing approaches to interpreting the Holy Quran and the Sunna, the two most important sources of Islamic law. All Schools recognized the superiority of these essential sources and built their systems around them, each with their interpretation and understanding. Thus, they are a stream flowing into the ocean, and they aim to lead people to a better understanding of Islam and to follow the right direction, thereby obeying Allah's Commands, which are for the individual's and society's benefit.

The main aim of Muslim schools was to interpret the general principles of the Quran and Sunnah which was done by renowned scholars.

## **SUNNI SCHOOL**

Sunni Muslims consider themselves to be the most conventional and common branch of Islam. The first four caliphs are regarded by Sunnis as the Prophet Muhammad's legitimate successors. Sunnis have long regarded Muhammad's polity in Medina as an earthly, temporal dominion, and thus regard Islam's leadership as being dictated by the predominant political realities of the Muslim world rather than by divine order or inspiration. Sunnis made up the majority of Muslims in all countries in the early twenty-first century.




### **1 The Hanafi School or Kufah School**

The Hanafi School was established by Imam Abu Hanifa (80 A.H. to 150 A.H). In the year 80 A.H., Abu Hanifa an-Nu'man-ibn-Thabit, also known as Imam Abu Hanifa, the founder of the most prominent Sunni sects, was born in Kufa. He began his studies in scholastic divinity but soon switched to jurisprudence. At the age of 12 or 13, he had the opportunity to meet Anas, a popular companion of Prophet Muhammed (PBUH), and he attended Imam Jaffar's lectures as Sadiq.

He entered Imam Hammad's college, where he learned Hadith from as many Scholars as possible since he believed that studying fiqh without studying Hadith was impossible. He was a self-sufficient, wealthy person who made his living as a clothing merchant. He went to Hajj on many occasions. After his teacher, Hammad, died in 120 A.H., he succeeded him and began offering fiqh discourses to other people who wanted to learn fiqh from him.

His public lectures in Kufa quickly established him as a great jurist, and his words acquired a lot of clouts; people flocked to hear him and question him about the rituals and law on a daily basis.
Abu-Hanifa was a devout and fair man with a strong sense of self-determination. He refused to take any government role and became a prisoner of both Umayyad and Abbasid rulers. He formed a committee of 40 members to codify Islamic law in the year 132 A.H., and it took the committee 22 years to complete its work. Kutub Abu Hanifa was compiled after he learned 5 lakh legal problems.

Ibn Hubaira, the governor of Iraq, offered Abu-Hanifa the position of Kazi near the end of the Ummayad Caliphate, but he refused and was flogged by the Governor for his refusal. Al-Mansur imprisoned him for the same cause during the Abbasid dynasty, and he died in the year 150 A.H. His funeral prayers were held for ten days, with about 50,000 people in attendance on each occasion.

His school has gained so much prominence among Islamic jurists that the Hanafi School is now followed by the majority of the Muslim world's population. This community relied heavily on rational arguments to find solutions to social issues that also fit in with their interpretation of Islam. The sources of law under this school are Quran and Ijma.
Iraq was the birthplace of this school, which was later adopted by India, Pakistan, and Egypt. Hanifa's contribution was also in the fields of Ijma and Ithesan, so he was well-known and well-liked.
Main features of this School:

- Less dependency on tradition unless their authority is unquestionable. (Abu Hanifa was more adamant about upholding the customs than others.)
- A slight expansion of the scope of Ijma. (Abu Hanifa argued that Ijma was applicable in all ages, even though it was theoretically limited to prophet's companions.)
- Notable reliance on Qiyas
- Emerging the doctrine Istihsan. (It refers to the alteration of a legal theory's application to real facts.)
- Emphasizing the importance of local customs and practices.

## 2. The Maliki School or Madina School

The Maliki School was founded by Malik ibn Anas in 8th century. Imam Malik began giving discourses on fiqh and Hadith. "I did not begin giving discourses in law and religion until 70 teachers of Hadith and jurisprudence declared me qualified for it," he said. He dedicated his whole life to the study of Hadith and Jurisprudence. He used to deliver his speeches in the Prophet's mosque (PBUH). Masjid-e-Nabavi (Masjid-e-Nabavi) Scholars and laymen gathered around him to study fiqh and Hadith, as well as to solve legal problems related to Muslim Law: Schools of Muslim Law.

He was meticulous in his decision-making, and if he had the slightest doubt about the wisdom of his decision, he would say, "I don't know." His book, the Muwatta, is a great work of its kind, and one of the most authoritative, despite being a relatively small collection of Hadith and practices of people of Madina.

He was also a devout man with a strong personality who never bowed to political authority and made decisions without regard for prejudice. He studied Jurisprudence and Hadith for 50 years before dying at the age of 85 in the year 179 of the Islamic period and being buried in al-Baki.
After his death, his followers continued to work in the same direction, spreading the school's doctrine around the world.

The biggest contribution of Imam Maliki is his book Muwatta. "Beneath the heavens, on the planet, no book after the Holy Quran is more authentic than Muwatta-e-Imam Malik," Imam Shafi said of the significance of this book. He is regarded as the most ardent follower of the traditions and a leading authority on Hadith. He was a natural-born jurist and a staunch traditionalist.

Al-Muwatta, which contains about 300 traditions, was written by Imam Malik. This book serves as a bridge between earlier fiqh literature and the later Hadith collection. Imam Malik's contribution is of such significance and eminence. The sources of law under this school are customs and Ijma.
In places like Spain and North Africa, this school was quite popular. Malik argued that a wife in marriage was incapable of owning and maintaining her personal property, and as a result, all of the wife's property in the marriage should be owned and maintained by her husband.

Main features of this school:

- Acceptance of traditions that, in Imam Malik's view, were real, even though the tradition only had one narrator.
- Acceptance of Madina's traditions, usages, and customs, as well as prophet's companions' sayings (PBUH).
- Only in the absence of an explicit test, a resource to Qiyas is available.
- As a justification for the deduction, the principle of public welfare is recognized.
- One more source, Istidial, or the theory of logical deduction, is added to the four key sources of Muslim law.

**3. The Shafi School**

The founder of the Shafi School of Islamic Jurisprudence, Imam Abu Abd Allah Muhammad ibn Idris Ash Shafi, was born in Ghazza in the year 150 A.H. (Palestine). He belonged to the Quraish tribe and was distantly related to the Prophet (PBUH). He had both paternal and maternal links to Prophet. His father died when he was two years old, and he was raised in the holy city of Mecca in very modest circumstances.

He studied Hadith and fiqh in Mecca with Muslim ibn Khalid Zindji (d. 180 A.H.) and Sufyan ibn Aina (died 198 A.H.). At the age of ten, he memorized the Holy Quran and Muwatta, and at the age of about twenty, he went to Madina to Malik Ibn Anas, learned fiqh under him, and remained there until his master died in 179 A.H. He founded a school of jurisprudence influenced by both Hanafi and Maliki fiqh and wrote numerous books, which he dubbed Imam Shafi's Madhab-e-Qadeem (old School of Jurisprudence). As a result, he mastered both Hanafi and Maliki jurisprudence.

Imam Shafi is widely regarded as one of the greatest jurists in Islamic history. He is also known as a crucial jurist by modern critics. He is the founder of the Science of Unusual Science and the author of the classical theory of Islamic Jurisprudence. Imam Shafi was more critical of rituals and used Qiyas than Imam Malik, and he perfected the doctrine of Ijma. Shafi was also a student of Imam Mohammad, who was one of Abu Hanifa's disciples. His master, Imam Malik, passed down his knowledge of customs to him.

He also received a legacy of talents and discretion from his other master, Imam Mohammad, as a result of which his School took on the style and influence of both the Hanafi and Maliki schools. He not only studied the legal materials available but also looked into the principles and methods of jurisprudence in his Risala.

He was the first to collect legal sources. In his popular treatise al-Risala, he writes about the history of Jurisprudence in a systematic manner. Al-umm is another work by Shafi that was compiled by his pupil al-Rabi ibn Sulayman and contains seven volumes. Imam Shafi's other works include Iktilaf-al-Hadith and Musanad-al-Imam Shafi.

The Shafi school is simply a blend of the Maliki and Hanafi schools. The sources of law under this school are Ijma, Qiyas, Customs, and traditional law. The wife in matrimony, according to this school, is not a free tool or gadget. However, even though she is an adult, she must obtain the permission of her parent or guardian to direct her in such matters.

Egypt and a few Southeast Asian countries are strongholds of the Shafi school. In India, this school is mostly followed by Muslims from Kerala's Malabar area.

Main features of Shafi School:

- Acceptance of four legal sources: the Quran, Sunnah, Ijma, and Qiyas.
- Acceptance of Istidial as the fifth source of law
- Non-acceptance of Hanafi School's Ishithsan and Maliki School's al-Malih al-mursalah.

**4. The Hanbali School**

The Hanbali School of Islamic Jurisprudence was founded by Imam Abu Abdullah Ahmed ibn Muhamad Hanbal, also known as ibn Hanbali. On Rabi 1-164 A.H., Ibn Hanbal was born in Bagdad. He studied Hadith and Fiqh under various masters and traveled extensively to study them.
He learned Fiqh from Imam Abu Yousuf and heard Hadith from Hisham and Sufyam ibn Aina, as well as other traditionalists when he was young. His attention was drawn to the study of Hadith, so he did a thorough study of it and traveled to Mecca and Yemen, among other places, to hear Hadith from local traditionalists. He took fiqh lessons from Imam Shafi after he returned home. His learning, piety, and justice attracted a large number of followers and admirers to him. He was more of a traditionalist than a jurist, in reality. On the 12th of Rabi 241 A.H., he died in Baghdad.

Imam Ahmed Hanbal was unquestionably more of a traditionalist than a jurist. However, it is incorrect to say that he had no contributed to the advancement of Islamic law. The system used by Imam ibn Hanabal to formulate legal principles was straightforward. He turned to the Holy Quran for answers to legal questions, followed by Hadith. However, he learned more about Hadiths.

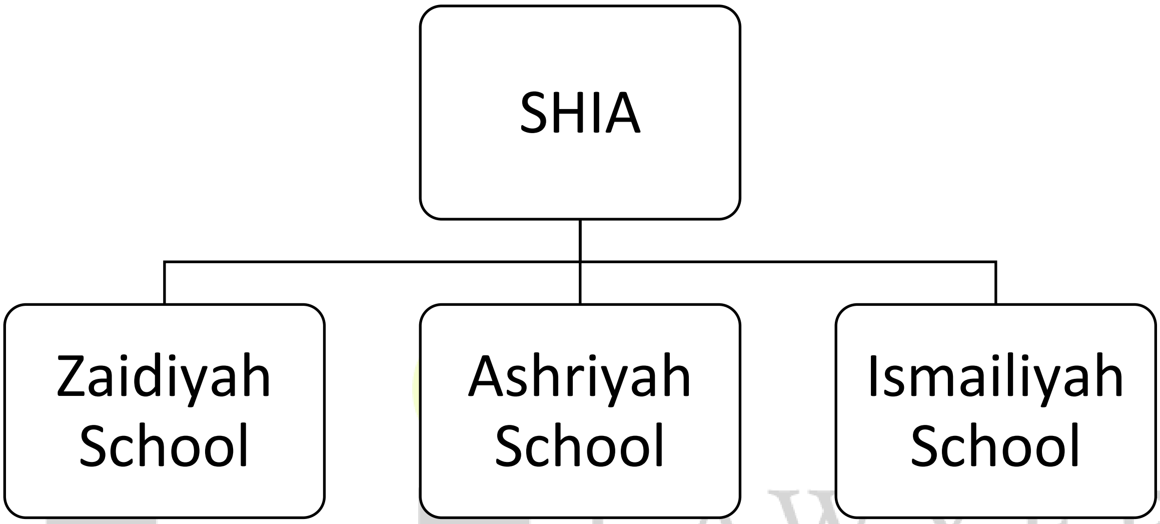
Imam ibn Hanabal was more of a traditionalist than a jurist, and he relied heavily on this source (traditions). His Hadith interpretation was literal and unyielding. He relied so heavily on Hadith that it is said he embraced weak Hadith and disobeyed the strict precept of scrutinizing Hadith transmission. Musnad Ahmed, which comprises nearly thirty thousand Hadiths and is compiled by Imam Hanbal, does not follow specific rules of criticism. Since he was almost entirely reliant on Hadith, it is clear that he made very little reasoning. As a result, he admitted even the weakest Hadith.

Imam Hanbal wrote several treatises, the most popular of which are Musnad al-Iman Hanbal (which includes 5000 traditions), Taat-urRusul, and Kitab-ul-Alal.
Imam Hanbal gathered thousands of Hadis and codified them in his book Musnath as a result. The Hanbali school is widely followed in Saudi Arabia, Syria, and the surrounding areas.

Main Features of Hanbali School are:
Hanabali School adherents consider five primary sources:
(a) The Quran
(b) The Sunnah
(c) The Ijma of the Prophet's companions, if nothing contradicts them, and some of the companions' sayings when they are consistent with the Quran and the Sunnah;
Muslim Law: Muslim Law Schools
(d) 'Zaief' and 'Mursal' traditions (traditions with a weak chain of transmission and missing the names of some of the transmitters); and
(e) Qiyas when necessary.

## SHIA SCHOOL

The Shia believe that Muhammad's son-in-law, Ali, and his descendants were the sole inheritors of Muslim leadership. Shia Muslims made up 10–13 percent of the world's 1.6 billion Muslims in the early twenty-first century. It is the second-largest group. No tradition is accepted by the Shia. According to them, the final interpreter of the law is the Imam.






## 1. Zaidiyah School

Following the death of the fourth Imam, Zaynul Abidin, one of his sons, Zaydi, was recognized as Imam by a Shia faction. As a result, the Zaidiyah school was created. Majmu-al-Fiah was written by Zayd, but it is only available in a forged version. In South Arabia, the Zaidis are mainly found in Yemen. This school was founded on the principles of personal responsibility and political activism.
It was thought that untrustworthy and non-divine leaders should be overthrown. The teachings of this school are somewhat close to those of Sunni Muslims. They also claimed that Muslims should follow the Prophet Mohammed's true successor and that since Faithma was the only surviving daughter, only her sons should be true Imams of the Muslim community.

This school's adherents are not found in India but are concentrated in South Arabia. This sect of the Shia school is the most dominant among all in Yemen. These schools' followers are regarded as political activists. They also oppose the philosophies of the Twelver Shia schools.

Main features of this school:

- Acceptance of the theory of election as the foundation for succession.
- Considering the Imam is nothing more than a 'right guide'.

## 2. Ashriyah School

This School's adherents can be found in India, Iran, Iraq, and Pakistan. This school was also known as the Imamiyah School. Unlike other schools, this one was one-of-a-kind. This school believed in the existence of a Muta. The term 'Muta' refers to a 'temporary marriage.'
This School was further divided into two groups:

1. Akbaris Sect- When an explanation is needed, the Akbaris Sect uses a modern form of legal deductions and reasoning. When following this Sect, the Imams' rituals are extremely important. As the name implies, this sect is named after the word Akhbari, which is derived from the words news and newspaper.
   On the contrary,
2. Usuli Sect- In comparison to the Akbaris, the Usuli Sect has a stronghold. This school was founded on the belief that the true origins of Muslim law were the Quran and the Hadith. The Quran, Hadiths, and Ijmas are all sources of knowledge. Usuli is a Latin term that roughly translates to "jurisprudence theory." That is, the School is driven by jurisprudential concepts.

The main feature of this school:

- Believing that the last of these Imams have vanished and will reappear as Mehdi (Messiah).

### 3. Ismailiyah School

After Imam Jafar's death, a small group of Shias refused to recognize Musa-al-Kazim and instead pursued his elder brother, Ismail, who was known as Ismailis. They are also known as "Sabiyya" or "Seveners" since they only accept seven Imams.

They are divided into two groups in India:

(1) the Kohojas or Eastern Ismailis, who serve the followers of the current Aga Khan, who is thought to be the Prophet's 49th Imam, and

(2) the western Ismailis, who are known as Bohoras and can be divided into Daudis and Sulaymanis, as well as other small groups. It is important to note that the term "bohora" simply means "merchant," and does not refer to any specific school of Islamic law.

This school was originally popular in Egypt, where it was favored by the Fatimid Kings. As a result, it is often referred to as the " Fatimid School," and it has a limited number of followers in countries such as Central Asia, East Africa, South Arabia, Iran, Syria, and Pakistan.

## OTHER SCHOOLS

Besides the schools under Shia and Sunni sects, there are some other schools which are also present which are:

### 1. Mortazila School

This School's adherents are in the minority and can be found in Iran. This school originated from another sect. It has no links to the Sunni or Shia sects. These Muslims, however, were Shia sect defectors. Al-Gazzal was the founder of this sect.

The followers of this sect believed in absolute divine justice and harmony, and that evil could be overcome by good, with the Quran being the only true and divine source for overcoming evil in society.

## 2. Ahmadiya School

Ahmadiya Muslims claim to be Muslims, but they do not believe in Prophet Muhammed. This school is relatively new, and its adherents are followers of a man named Ahmed who lived in the nineteenth century. This school is said to have a British-Indian background, and its founder, Mirza Ghulam Khadiani, served in the British government. Despite the fact that this school claims to be an adherent to Islam, no Muslim government has recognized them as Muslims because they believe this school's beliefs are diametrically opposed to Muslims' beliefs.

Because of the many distinctions between the Ahmadiya School and Muslims, they are not considered to be part of Islam. The following are the main points of distinction between them:

1. Muslims claim that Prophet Mohammad was God's Messenger on Earth and that he was the last Prophet to communicate with God. His teachings are therefore an integral part of Muslims' lives, but Ahmadiya Muslims claim that God continues to interact with his holy servants after Prophet Mohammad.
2. The Ahmadiyans argue that Buddha, Krishna, Zoroaster, and Ramchandra are among the Prophets before Mohammad, and that this is according to the Quran, but non-Ahmadiyans reject such claims and refuse to recognize them as Prophets.
3. Unlike Muslims, Ahmadiyans do not recognize the Sultan of Turkey's claim to the Caliphate, and they believe that every Muslim should remain loyal to their country's government.
4. Although Muslims believe Mahdi will wage holy war or Jihad and spread Islam through the sword, Ahmadiyas believe it will be spread through reason and divine signs rather than bloodshed.

## 3. Ibadi School

- Ibadi is a school that does not belong to either the Shia or Sunni sects and claims to have a tradition dating back to the time of the 4th Khaleefa Ali. The Quran is given greater weight by the Ibadi school, while the Sunna is given less weight. In Oman, this school has followers.
- One of the most critical aspects of this school is that, in addition to the Quran, it has given significant weight to Ijtihad (personal reasoning), which is partly accepted by Sunnis but fully opposed by Shias.

## CONCLUSION

The teachings of the Quran and the Prophet Mohammad rule Muslim law. On points where the Quran is silent, several different schools have followed their own interpretations of these teachings. Although Muslims main schools can be divided into two sects: Shia schools and Sunni schools, even these sects' schools have been further divided into different schools.

Since there is no fixed rule regarding matters on which the Quran is silent, each school has its own beliefs and practices, and because there is no set rule regarding matters on which the Quran is silent, one school cannot be said to be better placed than the others. As a result, even though there are many schools of Muslim law, they all lead in the same direction. As a result, these schools' lessons can be linked to various paths that all lead to the same destination.

## Marriage under Muslim law

### Key takeaways

- "Marriage is a contract underlying a lifelong partnership based on mutual consent on the part of a man and woman," says Ashabah in Abdul Kadir v. Salima.
- Muslim law is derived from several codified and uncodified sources, including the Quran, Ijma, Qiyas, customs, urf, precedents, equity, and various laws.
- The classification of marriages under Muslim laws are:
    1. Sahih Nikah (Valid Marriage)
    2. Batil Nikah (Void Marriage)
    3. Fasid Nikah (Irregular Marriage)
    4. Muta Marriage
- Iddat is a period of chastity that a Muslim woman must follow after her marriage has ended due to her husband's death or divorce before she can legally marry again.
- Dissolution of Muslim Marriage by husband, wife and by mutual consent

### Introduction

The laws in pre-Islam Arabia were patriarchal and skewed in favour of men. Just a few blood relationships, such as marriages to one's actual mother or sister, had to account for polygamy. There were various types of marriages, and divorce was simple and straightforward for men. Since men were still considered dominant, women were denied basic rights. Women were regarded as chattels, with no right of inheritance and were completely reliant on men. Prophet Mohammad was responsible for a complete shift in women's status.

In the exercise of all legal powers and duties, Prophet Mohammad put a woman on a nearly equal footing with men. A Muslim considers a law marriage to be a civil contract. Women do not lose their individuality after they marry. She is still a unique member of society.

The Arabic word Nikah means "union of sexes" in law and "marriage" in Arabic. Under Muslim rule, the word 'Nikah' is used to refer to a marriage. The word Nikah means "to bind together." It entails a specific contract to legalize generation.

In its most basic form, Nikah refers to carnal conjugation. It is both a matrimonial contract and an institution that grants women a unique and high social status. The Nikah aimed to ensure marital stability by binding both partners for an unspecified period and requiring the woman to be honoured with the mahr.

**"And one of His signs is that He made mates for you from yourself so that you could find peace in them; He put love and mercy amongst you. Indeed, there are signs for people who think like that." The Holy Quran (30:21)**

## Definition of Marriage

Marriage (Nikah) is characterized as a contract between two people for procreation and the legalization of children.

Contractual obligations: Marriage is a civil contract, not a sacrament, according to Mahomedan law. Many of the rights and duties it produces take effect immediately and are not subject to any conditions precedent, such as the payment of dower by a husband to his wife.

"Marriage is a contract underlying a lifelong partnership based on mutual consent on the part of a man and woman," says **Ashabah in Abdul Kadir v. Salima.**

The Privy Council stated in **Shoharat Singh v. Jafri Begum,** that Nikah (marriage) is a religious ceremony under Muslim law.

Outsiders have not fully comprehended or understood the sanctity attached to the institution of marriage in the Islamic system. Marriage is regarded as the foundation of society in Islam. It's a legal agreement, but it's also a spiritual covenant. Marriage, as an institution, promotes man's advancement and ensures the survival of the human race. The primary goal of marriage is to protect society from immorality and unchastity. It has also been said that marriage is such a sacred sacrament that it is an act of ibadat or worship.

Thus, according to Muslim Law, marriage is a contract to regulate intercourse, procreation, and social life in the interest of society by establishing the rights and responsibilities of the parties, as well as the children born from the union.

**"So Allah has made for you wives from yourself, and sons (i.e. sons and daughters; seeds) and grandchildren from your spouses and He has provided you with the good" (things). Is it then that they believe in deception while disbelieving in Allah's favour?" The Holy Quran (16:72)**

## Classification of Marriage

Sunni Muslims and Shia Muslims are two groups of Muslims that are separated by their views and customs all over the world. Since marriages in both sects are performed in various ways, with different rites and customs, Islamic law recognizes different types of marriage.
Furthermore, as previously said, Islamic marriages are social contracts that bind the parties legally.

Muslim law is derived from several codified and uncodified sources, including the Quran, Ijma, Qiyas, customs, urf, precedents, equity, and various laws. Hanifa, Hambali, Maliki, and Shafai are the four main Sunni schools of thought. These four schools acknowledge each other's legitimacy and have engaged in legal discourse for decades. In India, the Hanifa school of Islamic law is the most common.

**"And Allah created you from dust, then from a sperm-drop, then from pairs; and no female can conceive or give birth unless she has Allah's knowledge; no one can be granted a long age, (i.e., bear the burden of) nor is anyone's age diminished unless it is written in a Book. That must be simple for Allah." The Holy Quran (35:11)**

The classification of marriages under Muslim laws are:

1. Sahih Nikah (Valid Marriage)
2. Batil Nikah (Void Marriage)
3. Fasid Nikah (Irregular Marriage)
4. Muta Marriage

## Essential of Marriage

The following are the requirements for a legal marriage:-

1. A marriage proposal should be made by or on behalf of one of the parties to the marriage, and the proposal should be accepted by or on behalf of the other party.
2. Both the proposal and the approval must be made at the same time.
3. The parties must be competent.
4. Two male or one male and two female witnesses must be present and hearing during the marriage proposal and approval, and they must be sane and adult Mahomedans. (In Shia Law, this isn't necessary.)
5. There is no need for writing or another religious ritual.

## Capacity to Marry

The following are the general requirements for marriage in Islam:-

(i) Every Mahomedan of sound mind who has reached puberty is eligible to marry. The age of puberty is fifteen years where there is no proof or signs of puberty.
(ii) By their parents, a minor and insane (lunatic) who have not reached puberty may be validly married.

(iii) The consent of the parties is required. If there is no consent, a Mahomedan marriage that is of sound mind and has reached puberty is void.

## Registration of Marriage

Marriage registration is required in Muslims since a Muslim marriage is considered a civil contract. “Every marriage contracted between Muslims after the commencement of this Act shall be registered as hereinafter given, within thirty days from the end of the Nikah Ceremony,” according to Section 3 of the Muslim Marriages Registration Act 1981. Nikahnama is a form of legal document used in Muslim marriages that contains the marriage's basic conditions and information.

## Valid Marriage

The term Sahih is an Urdu term for the words "right" or "true," and Nikah means "marriage," as previously mentioned. A Sahih Nikah, or legitimate marriage, occurs when all of the basic requirements of a Muslim marriage are met. It means that if two Muslim individuals (one a man and the other a woman) enter into an arrangement by way of offer and acceptance, and the groom has paid the bride's Mehr, the marriage is legitimate.

- The partners are legally married, allowing them to legally consummate their union.
- The parties gain inheritance rights over the assets that can be inherited as a result of their marriage.
- But, according to Muslim law, the wife is not entitled to maintenance in the event of a divorce because it is assumed that the dower paid at the time of marriage is adequate for her well-being. Nonetheless, the Supreme Court has stated that the wife has the right to alimony and maintenance for herself and her children after a legal marriage.
- Apart from the right to earn the guaranteed dower, the right to maintenance is a separate right.
- Husband and wife must be respectful and obedient to one another. A Muslim man, on the other hand, is permitted to engage in polygamy. A Muslim woman is not allowed polygamy.
- If a man's wife is disobedient or unfaithful to him, the Quran enables him to reprimand or chastise her by fair means.
- If there are any children born as a result of a Sahih marriage, they are considered legitimate children.
- If the wife is a widow or has been divorced by her husband, she is required by Muslim law to perform the Iddat, which prohibits the wife from remarrying until a period of 90 days has passed after the husband's death. This is to ensure that the woman was not expecting a child when her husband died.

## Effects of a valid Marriage

The following are the legal consequences of a legitimate (Sahih) marriage:

(1) The husband and wife's cohabitation is recognized as legal.

(2) Children born from a legal marriage are legitimate and have the right to inherit their parents' assets.

(3) Inheritance rights are created for both the husband and the wife. That is, after the husband's death, the wife is entitled to inherit the husband's property, and after the wife's death, the husband is also entitled to inherit her property.

(4) A prohibited marriage relationship is established between the husband and wife, and each of them is prohibited from marrying the other's relations under prohibited degrees.

(5) The wife's right to dower is completely established only after the marriage is completed.

(6) With immediate effect, the marriage grants the wife the right to maintenance from her husband.

(7) After the dissolution of the marriage, the widow or divorced wife is required to observe the Iddat, during which time she is not permitted to remarry.

(8) Under Muslim law, a woman's legal status is unaffected by marriage. Her personality is distinct from her husband's. Even after marriage, a wife remains a member of the same school of law of which she was a member before the marriage. That is, if a Shia woman marries a Sunni, she retains her Shia status and is subject to Shia law after the marriage. Both the husband and wife have the right to buy and sell their property on their own.

**“It was He who made you from a single soul, as well as its mate so that he could live in peace with her. And when he covers her, she feels a lightweight lifted from her shoulders and continues on her way. When the going gets tough, they both pray to Allah, their Lord, saying, "If You should send us a good [child], we will surely be among the grateful." The Holy Quran (7:189)**

## Void Marriage

An arrangement that is not legally enforceable is invalid, according to the Indian Contract Act of 1872. A void arrangement is one in which a prospective bride and groom do not fulfil any of the requirements of a Muslim marriage, and any marriage that occurs in furtherance of a void agreement is referred to as a void marriage or Batil Nikah.

In **Munshi v. Mst. Alam Bibi**, the Court held that a marriage is invalid if there is a permanent or lifelong ban from marrying due to non-compliance with a condition.

A Muslim marriage is null and void in the following circumstances.

1. When a marriage takes place between two people who are completely incapable of cohabiting.
2. When a man marries the wife of another man while the lady's marriage is still going well.
3. Being married to more than four wives. In this case, the fifth and subsequent marriages are null and void.
4. Getting Married to a Non-Muslim.
5. In **Tangela Bibi v. Bajrul Sheikh**, the court ruled that a marriage with a woman who is pregnant from a previous relationship is null and void.

When one or more of the above-mentioned pre-requisites for a legitimate marriage are not met by the partners before marriage, the marriage is null and void.

The following are the most important social and legal ramifications of a void marriage:

1. The marriage is void-ab-initio, which means that it is void from the very first day of the marriage, even though it is consummated.
2. A void marriage does not give the parties any civil rights or bind them to any legal obligations.
3. The right to obtain maintenance after divorce is lost if the marriage is found to be invalid.
4. If any children are born from a void union, they are considered illegitimate and have no right of succession or inheritance.
5. In the case of void marriages, the partners are not required to receive a divorce decree. They will simply split up without having to go through any legal wrangling.

## Irregular Marriage

A marriage becomes irregular due to a lack of formality or the presence of an impediment that can be overcome. This irregularity, however, is not permanent and can be removed. As a result, marriage is not illegal in itself. Once the irregularities are removed, they can be made legitimate. Marriage in such cases, or with the restrictions that follow, is referred to as "Fasid."

When a marriage is temporarily forbidden but not necessarily limited, it is merely irregular or fasid and not invalid, according to **Ata Mohammed v. Saiqul Bibi**. There are many facets of irregular marriage, as well as different points of view.

Irregular marriages occur only among Sunni Muslims, while an irregular marriage is a void marriage under Shia law. An illegitimate marriage occurs when a marriage is performed by violating one or more of the provisions of a legal marriage. A marriage between a Muslim and a Christian or a Jew is the best example of an irregular marriage.

An irregular marriage is generally voidable rather than void-ab-initio. If an illegitimate marriage can be made legitimate by removing the irregularity, the marriage becomes valid. So, if a Sunni Muslim man marries a Jewish woman and converts her to Islam, the marriage is legitimate. The social and legal consequences of an irregular marriage are determined by whether or not the marriage was consummated.

The following are the ramifications:

1. Once the marriage is consummated, the wife has no right to dower from the husband if he divorces her.
2. The wife is not bound by the iddat law, which prohibits remarriage within three months of divorce if the marriage has not been consummated.
3. During the three-month iddat period, the wife has no right to maintenance from the husband.
4. If the irregular marriage is consummated and children are born, the children will be considered legitimate and will be entitled to all inheritance rights.

## Muta Marriage

Muta marriage is a temporary marriage between a Shia Muslim man and a woman of Islam, Judaism, or Christianity for a set period in exchange for the payment of a certain amount of dower when the marriage ends. The bride must also be told and agree on the period and dower.

Muta marriage is the fourth form of Muslim marriage that is only found among Shia Muslims and not among Sunni Muslims. It is necessary to consider the history of this marriage to comprehend it. The Shia sect of Muslims is prevalent in most Arabian countries, including Abu Dhabi and others. The people known as Sheikhs worked in the oil industry, mining, processing, and exporting it. They were forced to fly to distant locations and stay for several days or even months due to business agreements. The Sheikhs were required to fulfil their sexual needs and desires during this period, but Islam forbids cohabitation with any woman other than one's wife.

The phrase translates to "pleasure marriage." Muta marriage is a temporary arrangement between two people for a certain period. There is no set minimum or maximum length of time; it can be a day, a month, or a year (s). The marriage ends when the agreed-upon date expires; however, if no such time limit was stated or written, the marriage is assumed to be permanent. Sunni Muslims consider this form of marriage to be prostitution and therefore do not approve of it.

As a result, the Sheikhs used to marry the women for a limited time when they were in town, then divorce them when they left and pay the dower as compensation for marrying. The Shia sect accepted this definition of marriage in Muslim personal law, and it is known as Muta marriage.

Even though India has partly allowed live-in marriages, the Supreme Court would have a tough time legally invalidating this form of marriage. In today's world, feminists all over the world consider this arrangement to be prostitution. Many supporters of Nikah mut'ah claim that because it is a contract, this arrangement is preferable to live-in relationships.

## Iddat

Iddah, also known as Iddat, is an Arabic term that refers to a time of waiting observed by Muslim women. It is a period of chastity that a Muslim woman must follow after her marriage has ended due to her husband's death or divorce before she can legally marry again. The aim of observing the iddat period is to determine whether or not the woman is pregnant and to confirm paternity.

The iddat time varies depending on the situation.

- If the marriage was consummated or not, a divorced woman observes it for three months, while a woman whose husband has died observes it for four lunar months and ten days after her husband's death.
- For a divorced woman who is pregnant, the Iddat phase lasts until she gives birth or has a miscarriage.
- If a woman is pregnant when her husband dies, she must follow iddat for a full year, which includes nine months of pregnancy and three months of iddat.

Some Islamic scholars consider this timeframe to be a good compromise because it gives the widow enough time to mourn her husband's death while also shielding her from criticism for remarrying too soon after her husband's death. This time is primarily used to determine whether or not a woman is pregnant since four and a half months is half the length of a typical pregnancy. If the wives leave the house of their own free will, a Muslim husband must make a will in favour of their wives for the provision of one year's residence and maintenance.

In the form of chapters, the Quran lists the following facts regarding Iddah:

1. A widow's observing duration is four months and ten days.
2. During this time, she is not allowed to marry another man.
3. If a man wishes to marry a widow or divorced woman, he will do so in a socially appropriate manner while the iddat duration is in effect; however, there should be no hidden marriage commitment with the widow.
4. After four months and ten days have passed, a marriage contract with the time and location of the wedding ceremonies can be finalized.

## Commencement of Iddat

Iddah begins immediately after the death of the husband or the divorce of a Muslim wife. Despite her failure to follow iddah, she would not be held responsible or impacted in any way.

- If she did not receive news of her husband's death in time but learned of it during the prescribed iddah period, she is required to observe it for the remaining days of the iddat period.
- She is not obligated to perform iddat if she receives the news after the iddah time has passed. The clock starts ticking when the husband dies or when the divorce is granted.

## Maintenance during Iddat

The husband is responsible for the wife's maintenance during her Iddat time, regardless of how long it lasts. As a result, the wife is entitled to maintenance during Iddat in the following situations:

- When a marriage is dissolved by repudiation, regardless of whether the repudiation was revocable or irrevocable, perfect or imperfect, the marriage is dissolved.
- If she has not renounced her right to maintenance, the marriage is dissolved by Lien (oath of imprecation) or Ila (a pledge of continence) or by Khula.
- When the husband exercises his right of choice and dissolves the marriage after reaching puberty.
- When the marriage is dissolved because the dower is inferior, or because the husband is unequal or impotent.
- When a wife who is not subject to menstruation begins to menstruate before the end of the prescribed time while observing Iddat by months. Since she is required to remain in Iddat for three full months, she is entitled to additional Iddat maintenance.

## Dissolution of Muslim Marriage

A husband can divorce his wife without providing a reason by repudiating the union. It is sufficient for him to say those terms that indicate his intention to divorce his wife. This is usually achieved by talaq. He can, however, divorce by Ila and Zihar, which vary only in appearance and not in substance from talaq.

A woman can not leave her husband on her own. She can only divorce her husband if he has delegated his right to her or if they have reached an agreement. The wife may divorce her husband by Khula or Mubarat if they have reached an agreement. Before 1939, a Muslim wife had no right to divorce unless the husband was falsely accused of adultery, insanity, or impotency.

However, the Dissolution of Muslim Marriages Act of 1939 establishes several other grounds on which a Muslim wife may have her divorce decree granted by a court order.

## Dissolution of Marriage by Husband

Before a husband, there are four options for severing the marriage ties:

## 1. Talaq- ul- Sunnat

In reality, Talaq was regarded as evil, and if it becomes difficult to prevent it, the best method was Talaq-ul-Sunnat, which enabled the results of the evil to be reversed. Talaq is also known as revocable Talaq because it does not become final immediately and there is always the chance of a reconciliation between the husband and wife. During the Prophet's lifetime, only this form of Talaq was used. This form of Talaq is accepted by both Sunnis and Shias.

It is then subdivided into two sections:

- Talaq-Ahsan:

  As the name implies, it is considered the best type of talaq. The method that the husband follows is as follows:
  a. He must make a single-sentence divorce declaration, and this declaration must be done in a state of purity (when a woman is free from her menstrual cycle).
  b. If a husband engages in some kind of sexual activity during the iddat time (the period of chastity that a Muslim woman is required to follow after the breakup of her marriage, whether by death or divorce), it will be considered an implied revocation of talaq. It's important to remember that once the iddat time has passed, the divorce is final.
  c. Even if the wife is in her menstruation, talaq-e-Ahsan can be pronounced if the spouses have not consummated their relationship.

- Talaq Hasan:

  Hasan means "good" in Arabic, so divorces pronounced in Hasan mode is good but not as valuable as those pronounced in Ahsan mode.
  The husband must make three divorce declarations in a row.
  a. Such three pronouncements should be rendered in three consecutive Tuhr in the case of a menstruating wife (state of purity).
  b. Pronouncement should be made at three 30-day intervals in the case of a non-menstruating wife.
  c. There should be no sexual activity during these three times of pronouncements, and if there is, the divorce process will be revoked.
  d. On the third pronouncement, regardless of the iddat period, Talaq Hasan becomes irreversible.

## 2. Talaq-ul- Biddat

The “Umayyads” introduced this form of talaq to get around the strictness of the law. As far as the Hanafis are concerned, this is a sinful type of talaq. Sunni law recognizes this kind of talaq, though it is also considered sinful. Shias and Malikis, on the other hand, are unaware of this mode.

“Talaq, talaq, talaq” or “I divorce thee, I divorce thee, I divorce thee” are examples of three pronouncements rendered in a single Tuhr, either in a single sentence or in separate sentences. A single declaration expresses the desire to break a marriage and renders it irreversible. Partners who have been split by triple talaq are unable to remarry without the woman marrying another man and divorcing him, a procedure known as Nikah Halala.

The Supreme Court of India recently ruled in **Shayara Bano vs Union Of India And Ors. that the practice of triple talaq is unconstitutional since it violates the fundamental right to life guaranteed by Article 14 of the Indian Constitution.**

### 3. Ila (Vow of Continence)

It refers to the condition in which a husband of sound mind who has reached the age of majority swears in the name of God that he will not have sexual relations with his wife and leaves her to observe iddat. If the husband resumes sexual activity during the iddat period, the Ila will be cancelled and there will be no dissolution of the marriage. Ila is not practised in India, which is important to remember.

In Ila, the husband swears never to have sexual relations with his wife. After this oath, there is a four-month cycle of no consummation. The marriage is irreversibly dissolved at the end of the fourth month. Ila does not act as a divorce without a court order under the Ithna Asharia (Shia) School. The wife is entitled to a statutory divorce after the fourth month has passed. If there is no cohabitation after four months, the wife has the right to sue the husband for restoration of conjugal rights.

### 4. Zihar

The husband compares his wife to a woman from his forbidden relationships, such as his mother or sister. After such a contrast, the husband decides to live apart from his wife for four months. Zihar is observed when the time limit expires.

After the fourth month has passed, the wife has the following options:
(i) she may petition the court for a judicial divorce;
(ii) she may petition the court for a decree of restoration of conjugal rights.

The wife cannot pursue judicial divorce if the husband wishes to revoke Zihar by resuming cohabitation within the specified time. Cohabitation with a wife who has been compared to a mother or sister, on the other hand, is a sin. While the wife cannot obtain a judicial divorce in this situation, she may force the husband to perform penance for his immoral behavior in comparing her to his mother or sister. It may be revoked if the husband fasts for two months, or if he feeds at least sixty people, or if he frees a slave.

Zihar must be done in the presence of two witnesses, according to Shia law.

## Dissolution of Marriage by Wife

1. **Talaq-e-tafweez**

This is the only way for a woman to divorce her husband; however, the right to divorce must be delegated solely by the husband. It is a type of pre-marital or post-marital agreement that gives the wife the right to divorce her husband if certain conditions are met, such as:

a. If the husband marries a second time,
b. Any other requirement that must not be contrary to public policy is that the husband is unable to sustain her for a given period.

If the husband adheres to the terms of the arrangement, the wife may sever her marital relations without violating the law. The fact that the husband delegated power to the wife does not absolve him of his responsibility to issue talaq.

## Dissolution by Mutual Consent

While divorce by mutual consent was not recognized by Muslim law, it became available to Muslim women after the passage of the Dissolution of Muslim Marriages Act in 1939.

1. **Khula**

Khula means "to lie down" in front of the constitution. The husband places his right hand on top of his wife. It refers to an agreement made to end a sexual relationship in exchange for compensation paid by the wife to her husband out of her house, including all that can be offered as dower.

Khula is a divorce by mutual consent and at the request of a woman, upon which she decides to give her husband some consideration. It is essentially a "redemption" of the marital contract. The husband cannot cancel the divorce after it has been approved under Shia law, but the wife has the right to regain the consideration during the iddat period.

2. **Mubarat**

It denotes the mutual dissolution of marital relations. The most important factor is that all parties must agree to the breakup of the union.

In this divorce mode -

1. You can make an offer from either side.
2. Acceptance of the offer makes the divorce final.
3. Iddat is needed.

Parties may break their marriage under Shia law if they are unable to continue their marriage by mubarat.

## Dissolution of Muslim Marriage Act, 1939

- **Liam**

Lian may simply be described as a husband's false accusation of adultery against his wife. When a husband falsely accuses his wife of adultery, she will sue him and seek a divorce under the Act on the same grounds by filing a standard suit for dissolution of marriage.

In the case of **Zafar Husain v Ummat ur Rahman**, the Allahabad High Court held that a Muslim wife has the right to file a divorce suit against her husband and obtain a decree because she was wrongly accused of adultery by him.

The fundamentals of Liam are

a. A husband must be an adult and sane.
b. He accuses his wife of adultery.
c. This accusation must be false.
d. False charges do not dissolve the marriage ipso facto (by their existence); rather, they provide a basis for the wife to petition the court to dissolve the marriage.
e. The marriage will proceed until the court issues an order of dissolution of marriage.
f. The judicial separation via lian mode is irreversible.

This mode is only applicable to Sahih marriages, not fasid marriages. Before the conclusion of the trial, the husband will retract, admitting that he made the accusation of adultery against her wife and that it was false.

- **Faskh**

According to the Quran, husband and wife should honour each other, treat each other with respect, and follow each other's lawful orders. If they find that they can no longer live as husband and wife, they may approach the qazi, who, after a thorough inspection, can decide to end their marriage.

The Dissolution of Muslim Marriage Act of 1939, Section 2, lists nine grounds on which a Muslim wife can receive a divorce decree:

a. Husband's Absence– the husband's whereabouts have been unknown for the past four years. The decree of dissolution of marriage on this ground will take effect six months after it is issued, and during that period if the husband appears in person or by authority, the marriage is continued.

b. If a husband fails to provide maintenance to his wife for two years, he is considered to be in default. Poverty, deteriorating health, or unemployment are not valid defences in front of the husband.

c. If a husband is imprisoned for seven years or more, it is considered a felony.

d. Failure to perform marital duties- If the husband is unable to perform his marital obligations for three years without reasonable cause.

e. Husband impotency—the husband was and appears to be impotent at the time of marriage. If the husband proves to the Court that he is no longer impotent within one year of the date of the order obtained by the wife for dissolution of marriage on the grounds of impotency on application. If the husband satisfies the court, the court will not issue a decree on this basis.

f. Insanity, leprosy, or venereal disease- If the husband has been insane or has had leprosy or other venereal diseases for more than two years, the wife can seek judicial divorce on the same grounds.

g. If a girl is married by her father or guardian before the age of 15, she has the right under Muslim law to repudiate the marriage after reaching the age of 18, as long as the marriage is not consummated. For the same, she is entitled to a divorce decree.

h. The wife is also entitled to a divorce based on a legitimate legal ground recognized by Mohammedan law.

i. Cruelty by the husband- If the husband treats his wife cruelly, she may petition the court for a judicial separation order on the same grounds.

## Important case laws

1. **Mohammed Ahmed v Shah Bano and Anr.**

   **Facts -** The case's facts revolve around the concepts of dower and repair. Following the respondent's divorce through 'triple talaq,' when she requested maintenance from her husband, the problem emerged.
   In Muslim tradition, a woman is entitled to Mehr, or dower, which is offered to her as a token of gratitude and is intended for her to use after the marriage or if her husband dies.

   **Issue -** Whether personal law or Code of Criminal procedure apply?

   **Held -** the petition was brought under the code of Criminal Procedure and the court ruled that even after the ‘iddat' period, the Muslim woman is entitled to maintenance. This decision was reversed in 1986 when the Muslim Women (Protection of Rights on Divorce) Act was passed, reiterating that Muslim men are not obligated to support their wives after the iddat period.

2. **Shayara Bano v. Union of India and others**

   **Facts -** The case revolves around a woman from Uttarakhand who acted as a spokesperson for many Muslim women. Her marriage was a disaster, and she was divorced by her husband through triple talaq (Talaq-ul-biddat).

   **Issue -** If the practice of triple talaq is illegal because it violates the Constitution's Articles 14, 19, and 21.

   **Held -** The Supreme Court ruled that this practice is in violation of Article 14 because it can only be done by the man in the marriage and not by the woman, thereby violating the concept of equality. Article 19 states that a woman should be able to choose whether or not to divorce. Article 21 guarantees the right to life as well as personal liberty.

3. **Danial Latifi and another v. Union of India**

   **Facts -** The facts of this case is related to the Shah Bano case, in which the complainant filed a court petition challenging a parliament act. As a result of the Shah Bano decision, the Act was passed. The Muslim Woman Protection of Rights on Divorce Act of 1986 stipulated that the husband in a marriage is liable to pay the sum of dower and maintenance during the time of ‘Iddat' as specified by Muslim personal law, after which the husband is not liable or responsible to maintain his wife under any circumstances unless he prefers it.

   **Issue -** The question before the court was to declare Section 3 of the Act, which was passed, unconstitutional and in violation of Sections 14 and 21 of the Constitution.

Held - The court debated the claims presented by the petitioners. He claims that there is no excuse to deny a Muslim woman the protection guaranteed by the Criminal Procedure Code. Also, the woman should be entitled to spousal support from her husband. As a result, the court ruled in his favour, declaring the amendment to be unconstitutional.

4. **Shamim Ara v. the State of U.P.**

**Facts -** The complainant, in this case, requested maintenance from her husband for herself and two of her four children, claiming that he had abandoned her and treated her cruelly. The respondent believed that the dower had been paid and that the husband had agreed to pay Rs. 150 a month for the minor child's care. As a result, the repair proposal was denied, and an appeal was lodged with the Supreme Court. This appeal concerns the principle of maintenance in the case of a wife who was divorced by her husband and received the dower as well.

**Issue -** When the dower has been paid, may the court order the husband to pay maintenance to the wife?

**Held -** The Supreme Court ruled that the husband is liable to pay maintenance for the two sons they have from their marriage, and therefore ordered the husband to pay maintenance so that the wife, who has custody of the twins, can care for them.

5. **Sarla Mudgal vs. Union of India**

**Facts - T**he Supreme Court decided to dismiss two appeals. The husband flees from the first marriage, which was solemnized under the Hindu Marriage Act of 1955, in each of these petitions. Furthermore, the husband fled and converted to Islam solely for the purpose of remarrying, thereby circumventing Section 494 of the Indian Penal Code, which forbids remarriage when one marriage is still alive.

**Issues -** The validity of a second marriage after converting from Hinduism to Islam.
Whether or not the man is liable under Section 494 of the Indian Penal Code.

**Held -** The Supreme Court ruled that the man is attempting to infiltrate the first marriage and abandon the woman. As a result, the court ruled that a man cannot have two marriages at the same time under the Hindu Marriage Act of 1955. The court ruled that the second marriage is void in nature because the first marriage has not been dissolved, and that the conversion that took place solely to commit fraud and marry two women at the same time is invalid. The conversion is unaffected, but the second marriage is nullified.

6. **Chand Patel v. Bismillah Begum**

**Facts -** The plaintiff Chand Begum filed an application for maintenance for herself and her minor daughter before the Magistrate on the grounds that the respondent-husband married her niece, after which she was ignored and not sustained.

**Issues -** Whether a Muslim man's marriage to sisters is legitimate, invalid, or simply irregular, and whether the husband is responsible for the maintenance of both sisters.

**Held -** The Supreme Court ruled that a man's marriage to two sisters is not invalid. It was claimed that this marriage would be of a purely irregular nature. Also addressed was the fact that the child of such a marriage would be entitled to inherit from his father. It was also debated that a marriage in which the wife is Hindu, and the child born from such a marriage, would have the right to inherit. It claimed that marriages that took place without witnesses or during the former wife's "iddat" era are circumstances under which the marriage between the parties can be declared invalid.

7. **Ahmedabad Women Action Group (AWAG) v. Union of India**

**Facts -** As a Public Interest Litigation, this case was brought by a non-profit group dedicated to women's empowerment. It jolted the entire nation. In this case, the petitioners argued that many common Muslim personal law practices were unconstitutional.
First, polygamy was said to be in violation of Articles 14 and 15. Second, the practice of Muslim husbands using the unilateral talaq scheme as a violation of Articles 14 and 15. Third, to believe that remarriage, when a Muslim husband is already married, is cruel is to believe that remarriage is cruel in and of itself.
Last but not least, to declare the Muslim Women (Protection of Rights on Divorce) Act of 1986 unconstitutional.

**Held -** The court stated that this practice can only be carried out by the Muslim husband in a marriage, not the wife. As a result, it was also reported that this causes pain to the wife and can be considered cruel. The practise of triple talaq, which is the dissolution of a marriage by simply saying the word Talaq without giving the woman any recourse in court or elsewhere. When the guy decides he doesn't want to marry her, she is left high and dry. This is also a ritual that can only be carried out by the husband and not the wife. The rules of inheritance are patriarchal because they do not extend to female family members.

8. **Imambandi v. Mutsaddi**

**Facts -** In this case, the Bombay High Court was dealing with a property dispute involving three widows of a Muslim man who died intestate. The complainant argued that she was the child's mother and therefore the legal guardian, and as such, she was entitled to a share of the child's land. The principle of guardianship and the division of property based on guardianship are discussed in this case.

**Held -** It affirms that the man is the ultimate and sole guardian of the child from the union and that the mother is not considered the natural guardian of the child upon the death or demise of the man or the father of the child. The grandfather or the man's parent, on the other hand, is the child's natural guardian. In the absence of the grandfather, the father's brother takes over as a natural guardian.

9. **Gohar Begum vs. Nazma Begum**

**Facts -** The details of this case concern the father's guardianship over an illegitimate child. The applicant is the mother of an illegitimate child who has applied to have custody of her child transferred from her husband to her under Section 491 of the CrPC. In Mohammedan law, the illegitimacy of a child is a big problem that raises a number of legal issues, as in this case.

**Issue -** The question before the court is whether the husband or the father has natural guardianship of the minor illegitimate child under Mohammedan law.

**Held -** The court ruled that a woman or wife may only be a natural guardian of an illegitimate child. It was stated that in the case of an illegitimate child, the circumstances are different from those of a legitimate child and that even a woman or a wife may be a natural guardian to the illegitimate child, and that failure to pass custody of such a child will be considered unlawful detention of the child under Section 491 CrPC.

10. **Noor Saba Khatoon v Md. Qasim**

**Facts -** This case explicitly addresses the issue of child support for children born out of a marriage after the man and woman divorce. Md. Qasim married Noor Saba and they had three children together.
The respondent divorced the appellant and remarried another woman, leaving the appellant with her three children. Later, the wife filed an application for maintenance for herself and her three children under Section 125 CrPC, which was granted. The respondent divorced her and went to the High Court, arguing that because he had divorced her, the Muslim Women Protection Act of 1986 would apply, allowing him to stop supporting his wife and children after two years.

**Issue -** If the children born of a Muslim marriage are entitled to maintenance under the CrPC after the couple's divorce.

**Held-** According to the court, the child has the right to seek maintenance under Section 125 of the Code of Criminal Procedure as well as the Muslim Woman (Protection of Rights on Divorce) Act. The father is responsible for paying the son's maintenance before he reaches the age of majority and is able to stabilize and provide for himself. Furthermore, the father is responsible for his daughter's upkeep before she marries.

## Conclusion

Based on legal opinion, we can easily infer that under Muslim law, marriage is nothing more than a civil contract. It meets all of the contract's requirements, including proposal and approval, free consent, and consideration.

From a religious standpoint, however, Muslim marriage is a devotional act. There are religious and moral beliefs about marriage. It contains elements of a holy marriage of two souls for spiritual purposes, in addition to its secular component.

Husbands and wives are commanded to love and respect each other in the Quran and Hadith. It has been described as a noble act to enjoy oneself and shower one another with love and affection. Marriage is considered a sacrament in Islam, according to Quranic injunctions and customs.

In the end, it is possible to say that marriage in Islam is neither solely a civil contract nor a sacrament.



# <u>MEHAR</u>

### Key Takeaways

In the present article, we'll read about the background and how mehar originated. What is the actual definition of it? Thereafter we will study different mehar. What is the object behind this concept? Importance of Mehar under Muslim law and its features? Lastly, about the remedies available to a Muslim woman to recover dower.

### Origin

In the pre-Islamic Arabia period, the concept of the institution of marriage was not developed and they did not give many sexual relationships between women and men any name. They saw that many a time man uses his wives after throwing her out, ruining her, and leaving no means for her to continue a dignified life. The concept of giving any sum to the wife after her husband turned her out was disregarded in ancient customs. There was no proper law to provide support to women either financially or emotionally in this respect.

There was a concept of SHIGHAR marriage where the man who marries gives his sister or daughter to another person as consideration for marriage and similarly the latter also gives his sister or daughter to the former. In such a case, none of the wives get any dower. It was seen that many times false accusations of unchastity were used against wives to debar them from dower rights.

Beena marriage is a marriage in which the husband used to visit his wife but he did not bring her to the matrimonial home and the wife is called Sadiqa. Whatever gift given by him to her is called Sadaq, meaning by dower, which is synonymous with Mehar.

The basic distinction between mehar and sadaq . Sadaq was a gift given to the wife in Beena marriage, and Mehar was a gift or compensation given to the parents of the wife in the Baal form of marriage. Thereafter came the new form of marriage called nikah mentioned in the Quran suspended the ancient customs and protested the unjust acts towards fair sex.

**Definition**

Mehar is an amount paid or property delivered by the groom to the bride in nikah and is paid either immediately after nikah on demand. It is a consideration for marriage only if marriage under Islamic law is purely a civil contract. This concept of mehar strengthens the position of a Muslim wife in society. If not paid, she has a right to hold or keep her husband's property. Mehar is a kind of financial support to the wives of their husbands. A court of law can enforce it. The primary aim behind mehar was to restrain a Muslim husband from arbitrarily using his power of talaq against his wife. Apart from this, it's a token of respect for wives. Under Islamic Law, wives are entitled to mehar even if entitlement of proper mehar is not specified.

In pre-Islamic Arabs times, there were diverse forms of marriage like Baal Marriage, Beena Marriage, and Shighar Marriage. In these different marriages, there is an exchange of different things as consideration. So, in one marriage when a person gives his sister or daughter to another person then in exchange for consideration the latter gives his daughter and sister in marriage with the former while in other forms of marriage any property or sum is paid to the parents of the bride as a form of compensation.

Wilson defined the term Mehar as a consideration for marriage whereby the wife surrenders herself to her husband. Ameer Ali defines it as a consideration of marriage and the absolute right of the wife. With ***Abdul Kadir vs. Salima Begum***[1]**,** the court held that mehar is consideration of marriage and is wife's absolute right, even if not specified the wife may proper (customary) dower.

However, in ***Saburunnessa v. Sabdu Sheikh***[2]**,** the court held that non-payment of consideration would not make the marriage void. So, we can say that Mehar is not purely a consideration.

Dower or mehar is given to the wife, but she vests with discretion to remit it. It is non-refundable after divorce unless remitted by her at her sole will and becomes the wife's property in perpetuity. It is immaterial whether marriage is consummated regarding payment of mehar. But if they do not consummate marriage, the amount paid is half off so fixed. Mehar extends a check on the whimsical exercise by the husband of his almost unlimited power of divorce. This sum of money would give stern cause for anxiety for a middle-class man for giving divorce.

**Nature of Dower**

The Prophet Mohammad announced the concept of Mehar and he made it mandatory for the husband to pay Dower to his wife in every marriage. Dower is alike to the donatio propter nuptias in Roman Law. But in Roman Law it was deliberate and in Muslim Law it is compulsory.

The nature of dower can be demarcated as a contract of dower and is constantly compared with the contract of sales. The wife is property and mehar as her price. Justice Mahmood in ***Abdul Kadir v. Salima*** compared marriage with a contract for sales and dower as the consideration for such contract and said that dower must be a consideration for connubial intercourse by analogy to the contract for

[1] Abdul Kadir vs. Salima Begum (1886) ILR 8 All 149
[2] Saburunnessa v. Sabdu Sheikh AIR 1934 Cal 693, 152 Ind Cas 422

sale. The right to resist her husband so long as the Dower remains unpaid is an analogy to the lien of a vendor upon the sold goods while they remain in his possession and so long as the price or any part of it is unpaid and her surrender to husband resembles the delivery of the goods to the vendee.

Similarly, in the case of ***Smt. Nasra Begum v. Rizwan Ali***[3], the well-known authority regarded dower as a consideration for conjugal intercourse. The right to claim prompt dower proceeds cohabitation held by Allahabad High Court.

In a marriage, dowers are an essential event and fundamental feature. Even though the dower is not fixed during or before marriage wife is still allowed to dower from her husband.

Judicial Committee in ***Hamira Bibi v. Zubaida Bibi***[4]**,** held dower as an essential event of marriage under Muslim Law and to such extent that even if it is unspecified, it will be considered that marriage is contracted.

**Aim of Concept of Dower**

1. Firstly, to impose compulsion on the husband as a mark of respect towards his wife.
2. Secondly, to place a check on the abuse of power of giving divorce by the husband,
3. Thirdly, to provide for her maintenance on the dissolution of her marriage, so that she can live a dignified life after the death of her husband or divorce.



**Mehar amount**

In Hanafi Law, Mehar amount is 10 Dirhams.
In Malaki Law, Mehar amount is Law 3 Dirhams.
In Shafi Law, Mehar amount not fixed.
In Shariya Law, Mehar amount not fixed.
A Prophet of Islam fixed the amount of Mehar for his favorite daughter Fatima, wife of Ali, and it was 500 Dirhams. A dirham is the name of a Silver coin of 2.97 grams in weight. However, it would be a sad gaffe to lay too great stress upon the monetary value of the Mehar amount. So, with an extremely poor man, the Prophet demanded him to teach the Quran to his wife. In Hedaya, the payment of Mehar charged by the law merely symbolic of respect for the woman.

**Right to Make A Legislation regarding Reasonable Dower**

According to Muslim Law, the wife claims for dower on the dissolution of her marriage, and the amount can be very high or very low. Most times they instituted that the husband has sufficient income but the amount of dower provided to wife by him used to very little and making it impossible for her to maintain herself. So, in this context legislature was given full power to make laws and the Courts will not be compelled to award the amount of dower which was stated in the marriage deed.

Section 5 of the Oudh Laws Act, 1876 provided that the Court will award the amount of dower which is rational according to the income of husband and iddat of the wife and not conferring to the amount so mentioned in the marriage deed.

**The general Mehar**

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[3] Smt. Nasra Begum v. Rizwan Ali AIR 1980 All 118
[4] Hamira Bibi v. Zubaida Bibi (1916) ILR 38 All 581

When a Mehar is paid or delivered by the husband to the wife and her family when the marriage takes place and after marriage, the woman used to not leave her father’s house. She used to stay at their house and therefore the husband is liable to pay mehar the husband to his wife to sustain and support herself since she lives at her father's house.
While when the wife leaves her father's house after the marriage and goes with her husband to his matrimonial house, then the husband bound to pay the sum amount of mehar to the family of the wife.
Prophet gave very high eminence to the woman of the house, wife. So, in his view, mehar is given to the woman after the marriage as a mark of great honor and respect which is given to her to marry into a new family and start a new life with her husband and his family. Hence, he never believed in the idea of ‘Mehr’ being a consideration paid or a selling price paid.

**Types of Mehar**

1. In Muta marriage, there is Muta Mehar for a specific period. If marriage is not consummated, then the woman is entitled to take only half the Mehar. And if otherwise, meaning by if the marriage has been consummated between the husband and the wife, then she is entitled to entire Mehar payable by the man. However, under situations, if the wife leaves the marriage before the duration or limitation of the marriage, then the woman shall not be entitled to the mehar.
2. Prompt mehar is precisely divided into two modes of payment, prompt payment, and deferred payment. Prompt mehar as the name suggests payment or delivery is to be made promptly, meaning the husband is liable to pay the mehar as soon as they make the demand for it. The prompt mehar is paid just before the marriage or as soon as the marriage is over. This mehar is mandatory to be paid before the consummation of marriage is made. Hence, it can be said that the man has the right to restitution of conjugal right only after the payment of the mehar is carried out. Therefore, it would not be wrong to conclude that the mehar is a pre-condition to the right to conjugal rights.
3. Next comes Specified mehar, in this, there is a payment of a specific amount of sum of money or property as made certain specifically between the parties to the marriage. The mehar paid under Sunni Law and Shia Law is different. Under Sunni law, the lesser amount which the woman is allowed is at least 12-13 Rupees which is at least 10 dirhams. But there is no upper limit of the mehar in this law. While Shia law does not recommend any specific lower amount to be paid to the woman. And the maximum mehar in both the Sunni and Shia la is not stipulated. But one that is to be looked into which fixing mehar amount is to consider the economic background of the man. And hence, a poor man shall be accountable to pay only as much amount of money or property as much he is capable of.
4. Proper Mehar, as suggested by the name is when the parties to a marriage, the husband and the wife have not predetermined the amount or the sum of mehar payable to the wife then, the woman or the wife can decide upon its payment which would be proper. Further, it believed that even if the parties had determined that no mehar shall be paid to the wife, later she can resolute what shall be the proper mehar to be payable to her. However, in the case of proper mehar it is not decided based on the earnings or the capacity of the husband.
Other ways to collect the Amount of Mehar required to be paid
Where mehar is decided for other family female members of the wife’s father's family, the amount to wife payable as mehar is decided after considering payment made to other ladies of the house to ensure fairness and equality for the wife.
Another way to settle the proper amount of mehar is based on the feature of the woman like their age, fortune, beauty, understanding, and virtue. All these are the features that make each person unique and what has been offered by her as a person. According to Shia law, the Mehr should not surpass more the 600 rupees, as proper mehar.

**Deferred mehar**

It is also known as Muwjjal. It's a payment form of any amount which occurs only at the time of dissolution of a marriage. Dissolution is under two mentioned below circumstances:

1. Death of the husband:

When the husband dies, the woman may receive an amount of mehar. Now, this can either prompt or specified. So, the wife can either choose the amount of payment which either the man or his heirs are accountable to pay to her by mehar. Sometimes this amount is fixed between the man and woman before or after the marriage. A woman has a right to lien over the property under situations where the legal heirs have failed to give the mehar. Hence, when there is non-payment of mehar by legal heirs on behalf of her deceased husband, she can carry out lien over the property and possess the property until the mehar is paid to her.

2. By divorce:

In the case where the marriage has not consummated between the couple. The wife is entitled to only receive half the mehar. While if they consummate the marriage, she may get the entire amount of mehar. It is further emphasized that mehar does not depend on exigency event or a happening of contingent event and woman may the entire amount of it.

**Presumption regarding prompt and deferred dower**

Where in marriage contract it is not specified that which portion of the amount will be a prompt mehar and which will be deferred, then same was considered by Allahabad High Court and it held that proportion of amount to be paid will be quantified according to the:

1. position of wife,
2. the custom of locality,
3. the total amount of dower,
4. status of the husband.

**Difference Between Sunni And Shia Law Relating to Dower**

| Shia Law | Sunni Law |
|---|---|
| The maximum amount of dower is specified under Shia Law. | The minimum amount of dower is specified which is 10 dhirams. |
| The maximum amount of proper dower that a wife under this law is entitled is 500 dhirams. | There is no maximum amount of proper dower is fixed. |
| The maximum amount of specified dower is also 500 dhirams. | No maximum amount of specified dower is provided. |

| | |
|---|---|
| No amount of dower will be due if the marriage has not been consummated between husband and wife. | In case of dissolution of marriage either by death of husband or by divorce, and payment of dower has not been made or specified or agreed upon, the amount will be paid whether or not marriage has been consummated |
| Agreement between the parties will be valid if the parties are sane and adults. | Any agreement that states no dower is due then that agreement shall be void. |
| In absence of agreement, a reasonable part of dower will be considered as prompt. | The whole amount of dower will be considered as prompt dower. |

**Remedies of a Muslim woman to recover dower**

Every Muslim wife has an inherent right to dower, but it is of no use unless effectively enforced. Under, Muslim law the right to dower is available to a wife or widow by considering the following means:

**Refusal of Conjugal Right**
Before the consummation of the marriage, the wife may refuse cohabitation to the husband till he gives her Prompt Dower on demand. Under Muslim law, a husband may cohabit with his wife and cannot repudiate the same with no rational excuse. But non-payment of Prompt Dower before consummation is lawful and is justified on part of the wife to refuse cohabitation. Muslim-wife can decline to live with her husband and repudiate sexual intercourse so long as the Prompt Dower is not paid to her.

Case- ***Nasra Begam v. Rizwan Ali***[5]
The Allahabad High Court held, right to dower comes into subsistence before cohabitation and they may command the same even before cohabitation. In the case where the wife is minor or insane, her guardian can repudiate to let the husband take his wife with him till the Prompt Dower has been paid. However, in the case where the minor wife is already in the custody of her husband, the guardian of her can take her back on the grounds of non-payment of Prompt Dower.
But, where the consummation has taken place even once, the wife's right to repudiate consummation is lost. In the case where marriage has already been consummated, the husband's right suit for restitution of conjugal right will not fail on the grounds of non-payment of Prompt Dower. Still, the court may pass a decree for restitution of conjugal rights subject to the condition of payment of Prompt Dower.

Case: ***Anis Begum v. Muhammad Istafa Wali Khan***[6]
In the present case, both husband and wife lived together for some time, and the daughter was born to them. In their marriage prompt dower worth Rs.15000 was paid but later on Anis Begum left her

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[5] Nasra Begam v. Rizwan Ali AIR 1980 All 118
[6] Anis Begum v. Muhammad Istafa Wali Khan AIR 1933 All 634

husband's house and repudiated to come back till her Prompt Dower was gratified. Md. Istafa, the husband, sued for the restitution of conjugal rights.
CJ Sulaiman held that there was no absolute right in the hands of a husband to claim conjugal rights unconditionally. We passed the decree for restitution of conjugal right in favor of the husband subject to his payment of Rs, 15,000/-. They were of the view that the courts have the option to make the decree of restitution of conjugal rights provisional on payment of a wife's unpaid Prompt Dower even where the marriage has already been consummated.

**Enforcement of Dower as debt:**
In the case where marriage has been consummated, the wife cannot carry out her claim by repudiating conjugal rights to the husband. In such a situation the wife can regain her unpaid dower by conserving an action in a court of law. She may realize it from her husband as creditors recover their loan. In the case where the husband dies, the widow may gain the amount by suing counter to the legal heirs of the deceased husband but his legal heirs are not personally liable to pay the dower. The dower is a debt against the estate of the deceased husband which is inherited by heirs.

**Widows Right of Retention**
After the husband's death, the most operative method of execution of dower exercises a right of retention. A widow, whose dower remains unpaid, has a right to hold the properties of the husband till her dower debt is paid off. It's a right of retention instead of unpaid dower and it is also available to a widow, whether there is any contract between the parties for this right or not.
The wife takes possession of her husband's properties lawfully with the free consent of the husband instead of unpaid dower, then she may hold the possession after the death of her husband until her dower is paid out of the properties held by her. The legal heirs of the husband cannot get ownership of the properties of the deceased until make payments towards unpaid dower in the ratio of their respective shares. Thus, it is a coercive method of recovery of unpaid dower from the husband's legal heirs.

**Importance of Dower**
According to Fatwa-i-Quazi Khan, mehar is a necessary event of marriage even if not mentioned at the time of marriage or contract concerning it.
Dower is so crucial under the Muslim Law of marriage that even if there is a contract made by the wife before marriage that she will repudiate her right of dower and will not prerogative for dower in future or she approves to marry with no dower, that agreement will be unacceptable according to law. This is done to guard the wife against the power of the husband to give divorce and to avert its misuse. Under Muslim Law, a husband can give divorce his wife as per his will so the object of dower is to avert the misuse of such power and also to avoid polygamy.

**Features of right to keep the possession**

***No right to keep the possession during the continuance of marriage:***
Wife not entitled to keep possession of her husband's property during the protraction of marriage. This right only arises after the dissolution of marriage either by divorce or death.

***Actual possession***:
The right of holding means to ensure the possession of the property until it paid the dower debt. Therefore, the wife or widow must be an indefinite proprietor of the property after the dissolution of the marriage and if the wife or widow is not in concrete possession of the property, then she cannot hold the possession.

***Right of holding not equivalent to a mortgage:***
The wife or widow does not have an interest in the property, she has reserved the property as a mortgage. But in the case of a mortgage, the mortgagee holds the property under a contract made between him and the owner of the property and in the case of holding by wife or widow, that right has been deliberated upon him by law.

***Not a charge:***
The right to preservation does not create a responsibility on the property as the wife or widow is not a protected creditor. And if they have mortgaged the property to somebody by the husband when the wife/widow was having possession of that property, then the mortgagee can sell the property and dispose of the possession of the wife/widow.

***A possessory lien on the property is no title:***
Wife or widow can only contain the amount of dower through rents and profits from the property, she does not get the title of the property. The title goes to the heirs of the husband, including the widow. She has no right to sell or mortgage the property to satisfy the amount of dower, she can only alienate her share in the property not the share of other heirs. And if she alienates the entire property, then the other heirs become entitled to recover the possession of their shares, and that share will be given to them without the payment of dower proportionate to their shares. A widow can gain possession of the property if she has been dispossessed by the heirs under Section 9 of the Specific Relief Act, within 6 months, and if she cannot do so, she loses her possession over the property and if the dispossession is caused by the trespasser, then she can file a case under Article 12 of Indian Limitation Act within 12 years.

***A widow in possession liable to account:***
The widow must account for the profits and rents received out the property to the other heirs of her deceased husband while she may charge interest on the dower, which is because of her, and to set it off against the net profit.

***Can sue heirs:***
A widow can sue the heirs of her deceased husband to recover the amount of dower out of their shares.
***Right of retention, whether heritable or transferable:***
There is a difference in the judicial opinion on the widow's right of retention is whether heritable or transferable.

**Effect of Apostacy On Dower**
The effect of dissolution of marriage through the decree of the court is under a statute. According to Section 5 of the Dissolution of Muslim Marriage Act, 1939, a married Muslim woman whose marriage has been ended through the Act shall have an equivalent right regarding dower as her marriage has been ended through talaq, fasqh, etc.

**Conclusion**

Under the situation, where the husband passes away the wife may the right to lien over the property. This aims to ensure that her mehar is paid by the legal heirs by their share of the property which is gained by them from her husband. Hence, there are several modes of payment of mehar to ensure that the Muslim woman does not undergo too many hardships in life and is properly supported after the marriage either when there is a divorce or the husband passes away. The principal object behind the concept of mehar is to mark great honor and respect which is given to her to marry into a new family and start a new life with her husband and his family. Hence, he never believed in the idea of ‘Mehr’ being a consideration paid or a selling price paid.