

UNIT - I

Development of Islamic Law & Muslim Marriage (Nikah)

Sources • Schools • Essentials of Marriage • Dower • Option of Puberty

Mohammedan Law + Shariat Act, 1937

Unit Structure

01

Development & Sources of Islamic Law

Advent of Islam, Quran, Sunnah, Ijma, Qiyas, Schools

02

Who is a Muslim & Conversion

Definition, Shariat Act 1937, effect of conversion on family rights

03

Muslim Marriage (Nikah)

Definition, essentials, classification – valid, void, irregular

04

Dower, Option of Puberty & Related Concepts

Mahr, Muta, Polygamy, Widow's right of retention

Advent of Islam & Development of Muslim Law

Islam originated in the 7th century CE in Arabia with the Prophet Muhammad. The primary sources of Islamic law (Sharia) developed over time.

Muslim law in India is a combination of:

- Pure Islamic principles derived from the Quran and Hadith
- Interpretations by various schools of jurisprudence
- Customary practices recognised in India
- Statutory interventions (Shariat Act 1937, Dissolution of Muslim Marriages Act 1939, Muslim Women Act 1986, etc.)

The law applies to Muslims in personal matters such as marriage, divorce, dower, maintenance, gifts, wills, inheritance and wakf.

Sources of Islamic Law

Quran

The primary and most authoritative source – the word of God revealed to the Prophet.

Sunnah / Hadith

Traditions and practices of the Prophet – sayings, actions and silent approvals.

Ijma

Consensus of opinion of the jurists / companions on a point of law.

Qiyas

Analogical deduction – applying a recognised principle to a new situation.

Schools of Muslim Law

Sunni Schools

- Hanafi (most prevalent in India)
- Maliki
- Shafi'i
- Hanbali

Hanafi school is followed by the majority of Indian Muslims. Differences exist mainly in inheritance, marriage formalities and certain rituals.

Shia Schools

- Ithna Ashari (Imamiya) – dominant Shia school in India
- Ismaili
- Zaydi

Major differences with Sunni law appear in inheritance (especially rights of the daughter and widow), muta marriage and certain rules of divorce.

Who is a Mohammedan / Muslim?

A person is a Muslim if he professes the religion of Islam – belief in one God and that Muhammad is the Prophet.

Muslim law applies to a person:

- Who is a Muslim by birth (both parents Muslim, or father Muslim in many cases)
- Who has converted to Islam

Conversion: A person who converts to Islam is governed by Muslim personal law from the date of conversion in matters of marriage, divorce, succession, etc., subject to the Shariat Act and other statutes.

Landmark: The courts look at the intention and profession of faith rather than mere performance of rituals.

Muslim Personal Law (Shariat) Application Act, 1937

The Shariat Act, 1937 was enacted to make Muslim personal law applicable to Muslims in preference to custom in specified matters.

Section 2: Notwithstanding any custom or usage to the contrary, in all questions regarding intestate succession, special property of females, marriage, dissolution of marriage, maintenance, dower, guardianship, gifts, trusts and wakfs, the rule of decision shall be the Muslim Personal Law (Shariat).

Effect: Customary practices contrary to Shariat in these areas were largely displaced. The Act strengthened the application of pure Muslim law over local customs.

Concept of Marriage (Nikah) under Muslim Law

Marriage (Nikah) under Muslim law is a civil contract. It is not a sacrament in the Hindu sense, though it has religious significance.

Definition (Hedaya / classic texts): A contract which results in the legalisation of sexual intercourse and the procreation of children.

Essential characteristics:

- Contractual in nature
- Requires offer (ijab) and acceptance (qabul)
- Consideration in the form of dower (mahr)
- Capacity of parties
- Free consent

Unlike Hindu marriage, it does not create a religious bond that cannot be dissolved; divorce is recognised.

Essential Requirements of a Valid Muslim Marriage

1. Proposal & Acceptance

Ijab (offer) and Qabul (acceptance) must be made at the same meeting in the presence of witnesses (Sunni) or without strict witness requirement (Shia).

2. Competent Parties

Parties must have attained puberty (presumed at 15) and be of sound mind. Guardians can contract marriage for minors.

3. Free Consent

Consent must be free. Marriage under coercion, fraud or mistake may be voidable.

4. No Legal Disability

Absence of prohibited degrees of relationship, existing marriage (for women), etc.

Classification of Muslim Marriages

Sahih (Valid)

All essential conditions fulfilled. Creates full legal rights – dower, maintenance, inheritance, legitimacy of children.

Batil (Void)

Prohibited degrees, polyandry, marriage with a woman undergoing iddat (in some views). No legal effect; children illegitimate.

Fasid (Irregular)

Absence of witnesses (Sunni), marriage during pilgrimage, marriage with a fifth wife, difference of religion in certain cases. Can be regularised; children are legitimate.

Muta Marriage

Muta is a temporary marriage recognised only by the Shia Ithna Ashari school.

Essentials:

- Fixed period (can be for a day, month, year, etc.)
- Fixed dower
- Offer and acceptance

Consequences:

- No mutual right of inheritance between the spouses (unless stipulated)
- Children are legitimate and inherit from both parents
- Woman is entitled to dower
- No obligation of maintenance after the term (except in some cases)

Sunni law does not recognise muta; such a marriage is void under Sunni law.

Polygamy and Child Marriage under Muslim Law

Polygamy

A Muslim man may have up to four wives at a time provided he can treat them equally.

A Muslim woman can have only one husband.

Polygamy remains legally valid under Muslim personal law in India, though it is subject to social and judicial criticism. The second marriage without the first wife's consent can be a ground for her to seek divorce under the Dissolution of Muslim Marriages Act.

Child Marriage

Under classical Muslim law, a minor can be contracted in marriage by the guardian.

The Prohibition of Child Marriage Act, 2006 applies to all communities, including Muslims. Child marriages are voidable and the parties have the option of puberty.

Option of Puberty (Khiyar-ul-Bulugh)

A minor contracted into marriage by a guardian (other than the father or father's father in certain schools) has the right to repudiate the marriage on attaining puberty.

Essentials:

- Marriage must have been contracted during minority
- The minor must exercise the option within a reasonable time after attaining puberty and after becoming aware of the marriage
- In the case of a girl, the option is generally available if the marriage has not been consummated

The Dissolution of Muslim Marriages Act, 1939 (S. 2(vii)) gives a statutory right to a woman married before 15 to repudiate the marriage before attaining 18, provided the marriage has not been consummated.

Dower (Mahr)

Dower (Mahr) is a sum of money or other property which the wife is entitled to receive from the husband in consideration of the marriage.

Types:

- Specified dower (fixed at the time of marriage) – prompt (mu'ajjal) or deferred (mu'wajjal)
- Proper dower (mahr-ul-mithl) – when not specified, fixed according to custom, status of the wife's family, etc.

Dower is an essential feature of Muslim marriage. Non-payment of prompt dower gives the wife the right to refuse consummation and, in some cases, to claim it as a debt.

Widow's right of retention: A widow lawfully in possession of her husband's property can retain it until her dower debt is satisfied.

Widow's Right of Retention

A Muslim widow who is lawfully in possession of her husband's estate is entitled to retain possession until her dower debt is satisfied.

This is not a charge or a lien in the strict sense, but a personal right to retain possession.

Key points:

- The right is available only if she has obtained possession lawfully (with the consent of the heirs or otherwise without force)
- She cannot alienate the property to satisfy the dower; she can only retain it
- The right is heritable and can be transferred
- It is extinguished when the dower is paid or the possession is lost

Landmark cases have clarified that the right is possessory and does not create a title in the widow.

Landmark Judgments – Muslim Marriage & Dower

Abdul Kadir v. Salima (1886)

Classic statement on the nature of Muslim marriage as a civil contract and the concept of dower.

Anis Begum v. Muhammad Istafa (1933)

On the wife's right to refuse consummation until prompt dower is paid.

Maina Bibi v. Chaudhri Vakil Ahmad (1925)

Privy Council on the widow's right of retention for unpaid dower.

Shah Bano case context & later developments

Maintenance and the interplay of personal law with secular statutes (foreshadowing Unit II).

Valid vs Void vs Irregular Marriage

Aspect	Valid (Sahih)	Irregular (Fasid)	Void (Batil)
Legal Effect	Full rights	Can be regularised	No legal effect
Children	Legitimate	Legitimate	Illegitimate
Inheritance	Yes	Yes (after consummation)	No
Example	All conditions fulfilled	No witnesses (Sunni)	Within prohibited degrees

Key Takeaways – Unit I

- Muslim law is derived primarily from the Quran, Sunnah, Ijma and Qiyas, interpreted by Sunni and Shia schools.
- The Shariat Act, 1937 made Muslim personal law applicable in preference to custom in specified matters.
- Nikah is a civil contract requiring offer, acceptance, capacity and free consent.
- Marriages are classified as valid (sahih), irregular (fasid) or void (batil) with different legal consequences.
- Dower is an essential feature; the widow has a right of retention of the husband's property for unpaid dower.
- Option of puberty allows a minor to repudiate a marriage contracted by a guardian on attaining puberty.

Quick Reference

Primary Sources	Quran, Sunnah, Ijma, Qiyas
Dominant School in India	Hanafi (Sunni)
Shariat Act	1937 – displaces custom
Nature of Nikah	Civil contract
Classification of Marriage	Sahih / Fasid / Batil
Muta	Recognised only by Shia
Dower	Essential; prompt or deferred
Option of Puberty	Right to repudiate on attaining puberty

End of Unit – I

Development of Islamic Law & Muslim Marriage

Proceed to Unit-II: Parentage, Divorce, Maintenance & Matrimonial Remedies