NOTES

Marriage under Muslim Law

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Concept and Nature of Marriage under Muslim Law

Muslim marriage, known as Nikah, operates as a civil contract rather than a sacrament, distinguishing it fundamentally from Hindu marriage. The contract requires a proposal, called **ijab**, made by one party and acceptance, called **qubul**, made by the other, **both occurring at the same meeting in the presence of witnesses.**

Since marriage is contractual in nature, it requires free consent, competent parties, and lawful consideration in the form of dower, making principles of contract law relevant alongside personal law rules. Under this topic of Marriage under Muslim Law, we will discuss all relevant topics for CLAT 2027.

Essential Conditions for a Valid Marriage under Muslim Law

A valid Muslim marriage requires both parties to possess the capacity to marry, meaning they must be of sound mind and have attained puberty, generally presumed at fifteen years unless proven otherwise.

The proposal and acceptance must occur at one sitting, in the presence of two competent *witnesses under Sunni law, though Shia law does not insist on witnesses for the marriage to be valid.*

The parties must also be free from any legal disability, such as being within prohibited degrees of relationship, since violation of these conditions affects the very validity of the marriage.

Classification of Marriages: Valid, Void, and Irregular

Sunni law recognises three categories of marriage, ***namely sahih, meaning valid, batil, meaning void, and fasid, meaning irregular***, while Shia law recognises ***only valid and void marriages without an intermediate irregular category.***

A void marriage, such as one contracted within prohibited degrees of consanguinity, creates no legal rights or obligations between the parties from its inception.

An irregular marriage, such as one contracted without witnesses under Sunni law or during the s*ubsistence of a wife's iddat period, remains curable if the irregularity is removed, and it produces limited legal consequences, including legitimacy of children born from it.*

Prohibited Degrees of Relationship

Muslim law prohibits marriage within degrees of consanguinity, meaning **blood relations such as mother, sister, or daughter, and affinity, meaning relations by marriage such as wife's mother or son's wife.**

It also prohibits marriage arising from **fosterage, meaning a child breastfed by a woman other than the birth mother, since such nursing creates a bar similar to blood relationship under most schools of Muslim law.**

A marriage contracted in violation of these absolute prohibitions is void, whereas marriage in violation of relative prohibitions, **such as marrying a fifth wife or marrying without proper witnesses, renders the marriage merely irregular.**

Mehr or Dower

Mehr represents a sum of money or property that the husband is obligated to pay or promise to the wife as a mark of respect and financial security arising from the marriage contract.

It may be classified as prompt, payable immediately on demand, or deferred, payable upon dissolution of marriage by death or divorce, and the parties may fix the amount by agreement or leave it to be determined by custom as proper dower.

In ***Abdul Kadir v. Salima***, the Allahabad High Court held that dower functions as consideration for the marriage contract and the wife acquires a right to claim it as an unsecured creditor against her husband's estate.

Muta Marriage under Shia Law

Shia law recognises a distinct form of temporary marriage called ***Muta, contracted for a fixed period and a specified dower, which automatically dissolves upon expiry of the term without requiring divorce.***

This form of marriage remains exclusive to the Ithna Ashari school of Shia law and is not recognised among Sunnis, and children born from a Muta marriage are *treated as legitimate with full rights of inheritance.*

The husband owes no obligation of maintenance beyond *the agreed period unless the marriage is expressly extended or converted into a permanent one.*

Restitution of Conjugal Rights

A Muslim spouse may seek restitution of conjugal rights when the other withdraws from cohabitation without lawful cause, and courts examine whether valid grounds justified such withdrawal, including non-payment of prompt dower or cruelty.

In ***Abdul Kadir v. Salima***, the court also recognised that a wife may lawfully refuse to live with her husband and resist a restitution suit until her prompt dower is paid, since her right to dower operates as a form of security for the marriage obligation.

Dissolution of Marriage under Muslim Law

A Muslim marriage *may be dissolved through Talaq*, meaning divorce pronounced by the *husband, Khula, meaning divorce initiated by the wife with the husband's consent through mutual settlement, or Mubarat, meaning divorce by mutual consent of both spouses.*

The **Muslim Personal Law (Shariat) Application Act, 1937 and the Dissolution of Muslim Marriages Act, 1939** further allow a wife to seek judicial divorce on grounds such as cruelty, failure to maintain, or the husband's impotence, providing statutory recourse beyond traditional extrajudicial methods.

Triple Talaq and Shayara Bano

In ***Shayara Bano v. Union of India***, a five-judge bench of the Supreme Court examined the practice of ***talaq-e-biddat, commonly called instant triple talaq, where a husband could pronounce divorce in a single sitting without any possibility of reconciliation.***

The majority held this practice ***unconstitutional, holding that it violated the fundamental rights of Muslim women under Article 14 by permitting an arbitrary and irrevocable form of divorce that lacked any opportunity for mediation.***

Parliament subsequently enacted the Muslim Women (Protection of Rights on Marriage) Act, 2019, criminalising the pronouncement of instant triple talaq by a Muslim husband.

Maintenance and the Shah Bano Legacy

In ***Mohd. Ahmed Khan v. Shah Bano Begum***, the Supreme Court held that a divorced Muslim woman unable to maintain herself could claim maintenance from her former husband under **Section 125 of the Code of Criminal Procedure**, treating this secular remedy as available regardless of personal law provisions.

This ruling triggered significant political controversy, leading Parliament to **enact the Muslim Women (Protection of Rights on Divorce) Act, 1986, which initially appeared to limit maintenance to the iddat period.**

In ***Danial Latifi v. Union of India***, the Supreme Court upheld the 1986 Act's constitutional validity while interpreting it to mean that a husband must make reasonable and fair provision for his divorced wife's future within the iddat period, ***effectively preserving her right to adequate maintenance beyond that period as well.***

Marriage under Muslim Law

1 Concept and Nature of Nikah

- Nikah is a civil contract, not a sacrament.
- Proposal (ijab) by one party and acceptance (qubul) by the other, both at the same meeting in presence of witnesses.
- Requires free consent, competent parties and lawful consideration (dower).
- Principles of contract law apply alongside personal law rules.



2 Essential Conditions for a Valid Marriage

- Both parties must be of sound mind and have attained puberty (15 years presumed).
- Proposal and acceptance at one sitting, in presence of 2 witnesses (Sunni law – mandatory, Shia law – not required).
- Must be free from legal disabilities (e.g., prohibited degrees of relationship).



3 Classification of Marriages: Valid, Void and Irregular

- Sunni law: Sahih (valid), Batil (void), Fasid (irregular).
- Shia law: Only valid and void (no irregular category).
- Void: e.g., within prohibited degrees – no legal rights/obligations.
- Irregular: e.g., without witnesses (Sunni law) or during iddat – curable, limited consequences (e.g., legitimacy of children).



4 Prohibited Degrees of Relationship

- Consanguinity: mother, sister, daughter.
- Affinity: wife's mother, son's wife, etc.
- Fosterage: child breastfed by a woman other than birth mother (creates bar similar to blood relationship).
- Violation of absolute prohibitions → void.
- Violation of relative prohibitions (e.g., 5th wife, no witnesses) → irregular.



5 Mehr or Dower

- Sum of money/property by husband to wife as a mark of respect and financial security.
- Can be prompt (immediate) or deferred (upon dissolution by death/divorce).
- Amount fixed by agreement or custom.
- Abdul Kadir v. Salim: Dower = consideration for marriage; wife can claim it as an unsecured creditor against husband's estate.



6 Muta Marriage under Shia Law

- Temporary marriage for a fixed period and specified dower.
- Automatically dissolves on expiry (no divorce needed).
- Exclusive to Ithna Ashari Shia law (not recognised among Sunnis).
- Children are legitimate with full inheritance rights.
- No maintenance beyond agreed period (unless extended or converted to permanent).



7 Restitution of Conjugal Rights

- Granted when one spouse withdraws without lawful cause.
- Courts examine reasons (e.g., non-payment of dower, cruelty).
- Abdul Kadir v. Salima: Wife may refuse to live with husband and resist suit until prompt dower is paid (dower = security for marriage obligation).



8 Dissolution of Muslim Marriage

- Talaq (husband), Khula (wife with husband's consent), Mubarat (mutual consent).
- Muslim Personal Law (Shariat) Application Act, 1937 & Dissolution of Muslim Marriages Act, 1939 allow judicial divorce (cruelty, failure to maintain, impotence, etc.).



9 Triple Talaq and Shayara Bano

- Talaq-e-biddat (instant triple talaq) struck down as unconstitutional in Shayara Bano v. Union of India.
- Violated Article 14 (arbitrary & irrevocable).
- Parliament enacted the Muslim Women (Protection of Rights on Marriage) Act, 2019, criminalising it.



10 Maintenance and the Shah Bano Legacy

- Mohd. Ahmed Khan v. Shah Bano Begum: Divorced Muslim woman can claim maintenance under Section 125 CrPC (secular remedy).
- Led to the 1986 Act (initially limited maintenance to iddat period).
- Danial Latifi v. Union of India: Court upheld the Act, interpreting it to ensure reasonable and fair provision for the wife's future within iddat, protecting her right to adequate maintenance beyond that period.

