

MUSLIM LAW / ISLAMIC LAW / SHARIYA (ARBI)

- a it is a personal law
- b it is a civil law
- c it is un codified law
- d it is for Indian Muslim

Muslim marriage

HINDU MARRIAGE

IDDAT, DAWER, DIVORCE, SUCCESSION.

GIFT, SUCCESSION, WILL.

**Question** who is Muslim?

answer it is decided as by birth and by change of religion by his own will. not force fully.  
condition

**(a) यदि कोई मुस्लिम बच्चा मंदिर, गुरुद्वारा, चर्च आदि जाता है तो क्या वह मुस्लिम नहीं रहेगा?**

केवल किसी अन्य धर्मस्थल (मंदिर, गुरुद्वारा, चर्च) जाने से व्यक्ति का धर्म नहीं बदलता। धर्म परिवर्तन (Conversion) के लिए स्पष्ट इच्छा (intention) और संबंधित धर्म को स्वीकार करने की विधि आवश्यक होती है।  
इसलिए केवल भ्रमण या दर्शन करने से वह बच्चा मुस्लिम ही रहेगा।

**(b) यदि माता मुस्लिम है और पिता हिन्दू/सिख/ईसाई है तो बच्चे का धर्म क्या होगा?**

भारत में बच्चे का धर्म सामान्यतः परिवार की परंपरा, पालन-पोषण और माता-पिता की सहमति पर निर्भर करता है।  
जब बच्चा बालिग (18 वर्ष) हो जाता है, तब वह अपने विवेक से धर्म चुन सकता है।  
यह अधिकार भारतीय संविधान के अनुच्छेद 25 के अंतर्गत धार्मिक स्वतंत्रता से संबंधित है।

**(c) मुस्लिम धर्म में परिवर्तन (Conversion to Islam)**

इस्लाम स्वीकार करने के लिए सामान्यतः:

- कलमा पढ़ना (शहादा)
- इस्लाम को स्वेच्छा से स्वीकार करना
- मस्जिद या समुदाय के समक्ष घोषणा करना

परंतु भारत में कानूनी दृष्टि से केवल नाम दर्ज करवाना पर्याप्त नहीं है; धर्म परिवर्तन वास्तविक, स्वैच्छिक और ईमानदार होना चाहिए।

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### (d) भारतीय संविधान में धार्मिक स्वतंत्रता

#### Constitution of India – अनुच्छेद 25 से 28

- अनुच्छेद 25 – धर्म मानने, आचरण करने और प्रचार करने की स्वतंत्रता
- अनुच्छेद 26 – धार्मिक संस्थाओं को प्रबंध करने की स्वतंत्रता
- अनुच्छेद 27 – किसी विशेष धर्म के प्रचार हेतु कर देने के लिए बाध्य नहीं किया जा सकता
- अनुच्छेद 28 – शैक्षणिक संस्थानों में धार्मिक शिक्षा से संबंधित प्रावधान

इन प्रावधानों के अंतर्गत व्यक्ति को अपनी इच्छा से धर्म चुनने का अधिकार है।

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### (e) विवाह के उद्देश्य से धर्म परिवर्तन

Sarla Mudgal v. Union of India

इस मामले में उच्चतम न्यायालय ने निर्णय दिया कि:

- यदि कोई हिन्दू व्यक्ति केवल दूसरी शादी करने के लिए इस्लाम स्वीकार करता है,
- और पहली पत्नी जीवित है,
- तो वह दूसरी शादी वैध नहीं होगी।

ऐसी स्थिति में भारतीय दंड संहिता की धारा 494 (Bigamy) के तहत दंडनीय अपराध होगा।

न्यायालय ने कहा कि केवल दूसरी शादी करने के उद्देश्य से किया गया धर्म परिवर्तन वास्तविक (bona fide) नहीं माना जाएगा।

- a if any Muslim child visit temple, gurudwara, churches etc after that he will be at Muslim.
  - b if mother is Muslim and father can be hindu, sikh, christain, etc than the child who is chose his own religion he should be.
  - c by conversation Muslim. condition must be visit Mosque, read kalma, Islam kabool, name entery in Mosque.
  - d in Indian constitution art 25-28 give us freedom of religion. chose by own will.
- case Sarla mrudal v U O I 1995
- e if any hindu convert in to Muslim for perform another marriage. than it is no permittable.
- case Sarla mrudal v U O I 1995 IPC 494 punishable.
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**(a) If a Muslim child visits a temple, gurudwara, church, etc., does he remain Muslim?**

Yes. Merely visiting a temple, gurudwara, church, or any other religious place does **not** change a person's religion.

Religion changes only when:

- There is a clear intention to convert, and
- The person formally accepts another religion according to its practices.

Therefore, simply visiting another religious place does not affect the child's status as a Muslim.

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**(b) If the mother is Muslim and the father is Hindu/Sikh/Christian, what will be the religion of the child?**

In India, the religion of a child generally depends on:

- Upbringing,
- Family customs, and
- Parents' decision.

After attaining majority (18 years of age), the child has the right to choose his or her own religion.

This right is protected under Article 25 of the Constitution of India, which guarantees freedom of religion.

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**(c) Conversion to Islam**

To convert to Islam, generally:

- The person must voluntarily accept Islam,
- Recite the Kalma (Shahada),
- Declare acceptance of Islam before witnesses or a religious authority.

However, legally in India, conversion must be:

- Genuine,
- Voluntary, and
- Not done for fraudulent purposes.

Mere entry of name in a mosque register is not sufficient if there is no genuine intention.

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#### **(d) Freedom of Religion – Articles 25–28**

Under the Constitution of India:

- **Article 25** – Freedom to profess, practice and propagate religion.
- **Article 26** – Freedom to manage religious affairs.
- **Article 27** – No compulsion to pay taxes for promotion of a particular religion.
- **Article 28** – Freedom regarding religious instruction in educational institutions.

These Articles ensure that every person has the right to choose and practice religion freely.

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#### **(e) Conversion for Second Marriage**

Case: Sarla Mudgal v. Union of India

In this case, the Supreme Court held:

- If a Hindu man converts to Islam only to perform a second marriage,
- While his first wife is still alive,
- The second marriage is not valid.

Such a person can be punished under Section 494 of the Indian Penal Code (Bigamy).

The Court clarified that conversion merely to avoid the first marriage and contract another marriage is not a bona fide (genuine) conversion.

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sources of Muslim law.

- a primary source
- b secondary sources.

**Primary Sources of Muslim Law** मुस्लिम विधि के प्राथमिक स्रोत

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## 1. Qur'an (Kuran)

### Qur'an

#### English:

The Qur'an is the holy book of Islam. It is believed to be the word of Allah revealed to Prophet Muhammad (PBUH). It is the **first and supreme source** of Muslim law. All other sources must be consistent with it.

#### Hindi:

कुरान इस्लाम का पवित्र ग्रंथ है। इसे अल्लाह का वचन माना जाता है, जो पैगंबर मोहम्मद (सल्ल०) को प्रकट हुआ। यह मुस्लिम विधि का **सर्वोच्च और प्रथम स्रोत** है। अन्य सभी स्रोत कुरान के अनुरूप होने चाहिए।

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## 2. Sunna (Sunnah)

#### English:

Sunna means the traditions and practices of Prophet Muhammad (PBUH). It includes his sayings (Hadith), actions, and approvals. It explains and supplements the Qur'an.

#### Hindi:

सुन्नत से तात्पर्य पैगंबर मोहम्मद (सल्ल०) के कथनों, कार्यों और अनुमोदनों से है। यह कुरान की व्याख्या और पूरक का कार्य करती है।

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## 3. Ijma

#### English:

Ijma means the consensus or agreement of learned Islamic scholars (jurists) on a particular legal issue. When the Qur'an and Sunna do not provide a clear rule, scholars decide collectively.

#### Hindi:

इज्मा का अर्थ है विद्वान इस्लामी न्यायविदों की किसी कानूनी विषय पर सर्वसम्मति। जब कुरान और सुन्नत में स्पष्ट नियम न मिले, तब विद्वानों की सहमति को माना जाता है।

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## 4. Qiyas (Kyas)

#### English:

Qiyas means analogy or reasoning. When no rule is found in the Qur'an, Sunna, or Ijma, the law is derived by comparing with similar cases based on logic and principles.

**Hindi:**

कियास का अर्थ है तर्क या समानता के आधार पर निर्णय करना। जब कुरान, सुन्नत और इज्मा में नियम न मिले, तब समान परिस्थितियों के आधार पर तर्क द्वारा नियम निकाला जाता है।

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### Short Summary (Exam Point)

**English:**

The four primary sources of Muslim law are:

1. Qur'an
2. Sunna
3. Ijma
4. Qiyas

**Hindi:**

मुस्लिम विधि के चार प्राथमिक स्रोत हैं:

1. कुरान
  2. सुन्नत
  3. इज्मा
  4. कियास
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### Secondary Sources of Muslim Law

#### मुस्लिम विधि के द्वितीयक (गौण) स्रोत

Secondary sources are those sources which are used when the primary sources (Qur'an, Sunna, Ijma, Qiyas) do not provide a clear rule.

जब प्राथमिक स्रोत (कुरान, सुन्नत, इज्मा, कियास) से स्पष्ट नियम न मिले, तब गौण स्रोतों का उपयोग किया जाता है।

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#### 1. Custom (Urf)

**रिवाज या प्रथा**

**English:**

Custom (Urf) means long-established practices accepted by the community. If a custom is reasonable and not against the Qur'an, it may be recognized as law.

**Hindi:**

उर्फ (प्रथा) से तात्पर्य समाज में लंबे समय से प्रचलित रीति-रिवाजों से है। यदि कोई प्रथा कुरान के विरुद्ध नहीं है और उचित है, तो उसे मान्यता दी जा सकती है।

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**2. Judicial Decisions (Precedents)**

**न्यायिक निर्णय**

**English:**

Decisions of courts, especially higher courts, help in interpreting Muslim law. These decisions become guiding principles for future cases.

**Hindi:**

उच्च न्यायालयों के निर्णय मुस्लिम विधि की व्याख्या में सहायक होते हैं। ये निर्णय भविष्य के मामलों के लिए मार्गदर्शक सिद्धांत बन जाते हैं।

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**3. Legislation**

**विधि निर्माण (कानून)**

**English:**

Laws passed by the legislature relating to Muslim personal law are also secondary sources. For example:

- Muslim Personal Law (Shariat) Application Act
- Dissolution of Muslim Marriages Act

These Acts regulate matters like marriage, divorce, inheritance, etc.

**Hindi:**

विधायिका द्वारा बनाए गए कानून भी मुस्लिम विधि के गौण स्रोत हैं। उदाहरण:

- Muslim Personal Law (Shariat) Application Act
- Dissolution of Muslim Marriages Act

ये अधिनियम विवाह, तलाक, उत्तराधिकार आदि विषयों को नियंत्रित करते हैं।

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**4. Equity, Justice and Good Conscience**

## न्याय, समानता और सद्भाव

### English:

Where no rule is available, courts may decide cases based on principles of equity, justice, and good conscience.

### Hindi:

जहाँ कोई स्पष्ट नियम उपलब्ध न हो, वहाँ न्यायालय न्याय, समानता और सद्भाव के सिद्धांतों के आधार पर निर्णय दे सकते हैं।

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### Short Exam Summary

#### English:

Secondary sources of Muslim Law are:

1. Custom (Urf)
2. Judicial Decisions
3. Legislation
4. Equity, Justice and Good Conscience

#### Hindi:

मुस्लिम विधि के गौण स्रोत हैं:

1. प्रथा (उर्फ)
2. न्यायिक निर्णय
3. विधि निर्माण
4. न्याय, समानता और सद्भाव



**question**      **how many chapters and slogan in kuran?**

The holy book of Islam, the Qur'an, has the following structure:



#### Chapters in the Qur'an

- The Qur'an contains **114 Chapters**, called **Surahs** (सूरह).

Example:

- Surah Al-Fatiha (1st chapter)
- Surah Al-Baqarah (2nd chapter)

- Surah An-Nas (114th chapter)
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### Verses in the Qur'an

- The Qur'an contains **6,236 verses**, called **Ayahs (आयत)**.
  - Some scholars count **6,666 verses**, but the widely accepted number is **6,236**.
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### Simple Summary (Exam Point)

#### English:

- Total Chapters (Surahs): **114**
- Total Verses (Ayahs): **6,236**

#### Hindi:

- कुल अध्याय (सूरह): **114**
  - कुल आयतें: **6,236**
  - **in this 200 ayashs for law, and 80 ayasha for family law related item.**
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### **B** question **Sunna in kuran?**

Sunna (Sunnah) **सुन्नत** Meaning of Sunna

Sunna (Sunnah) means the traditions, practices, sayings, and approvals of Prophet Muhammad (PBUH). It is the second primary source of Muslim Law after the Qur'an.

Sunna explains, interprets, and supplements the Qur'an.

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सुन्नत का अर्थ है पैगंबर मोहम्मद (सल्ल०) के कथन, कार्य और अनुमोदन। यह मुस्लिम विधि का दूसरा प्रमुख स्रोत है, जो कुरान के बाद आता है। सुन्नत कुरान की व्याख्या और पूरक का कार्य करती है।

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Types of Sunna **सुन्नत के प्रकार**

1. Sunna-ul-Qaul (Sayings) **कथन**

English: The words or statements of the Prophet.

Hindi: पैगंबर के कथन।

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## 2. Sunna-ul-Fail (Actions) कार्य

English: The actions performed by the Prophet.

Hindi: पैगंबर द्वारा किए गए कार्य।

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## 3. Sunna-ul-Taqrir (Approval) अनुमोदन

English: Acts done by others in the presence of the Prophet which he approved or did not object to.

Hindi: ऐसे कार्य जो पैगंबर की उपस्थिति में किए गए और उन्होंने उनका विरोध नहीं किया।

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## Importance of Sunna सुन्नत का महत्व

English:

- It clarifies the teachings of the Qur'an.
- It provides practical examples of Islamic law.
- It is binding on Muslims if authentic.

Hindi:

- यह कुरान की शिक्षाओं को स्पष्ट करती है।
  - यह इस्लामी कानून का व्यावहारिक स्वरूप प्रस्तुत करती है।
  - प्रमाणित होने पर यह मुसलमानों पर बाध्यकारी होती है।
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## Short Exam Point (5 Marks)

Sunna is the second primary source of Muslim law consisting of the sayings, actions, and approvals of Prophet Muhammad.

Hindi:

सुन्नत मुस्लिम विधि का दूसरा प्रमुख स्रोत है, जिसमें पैगंबर मोहम्मद के कथन, कार्य और अनुमोदन शामिल हैं।

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## **C** Question what is Ijma? Ijma **इज्मा** Meaning of Ijma

Ijma means the consensus or agreement of learned Islamic jurists (scholars) on a question of law. It is the third primary source of Muslim Law after the Qur'an and Sunna.

When a legal issue is not clearly mentioned in the Qur'an or Sunna, the agreement of qualified scholars becomes binding.

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इज्मा का अर्थ है इस्लामी विधि-विशेषज्ञों (विद्वानों) की किसी कानूनी प्रश्न पर सर्वसम्मति।

यह मुस्लिम विधि का तीसरा प्रमुख स्रोत है, जो कुरान और सुन्नत के बाद आता है।

जब कुरान और सुन्नत में स्पष्ट नियम न मिले, तब विद्वानों की सर्वसम्मति को मान्यता दी जाती है।

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### Basis of Ijma **इज्मा का आधार**

The authority of Ijma is based on the belief that the Muslim community will not agree upon an error.

Hindi:

इज्मा का आधार यह विश्वास है कि मुस्लिम समुदाय किसी गलती पर सर्वसम्मति नहीं करेगा।

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### Types of Ijma **इज्मा के प्रकार**

#### 1. Ijma of Companions **सहाबाओं का इज्मा**

Agreement of the companions of Prophet Muhammad.

#### 2. Ijma of Jurists **विधिवेत्ताओं का इज्मा**

Agreement of qualified Islamic scholars.

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### Importance of Ijma **इज्मा का महत्व**

- It ensures unity in Islamic law.
- It helps solve new legal problems.

- It maintains consistency in legal interpretation.

Hindi:

- यह इस्लामी कानून में एकरूपता बनाए रखता है।
- यह नए कानूनी प्रश्नों का समाधान करता है।
- यह विधि की स्थिरता बनाए रखता है।

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Short Exam Answer (5 Marks)

Ijma is the consensus of Islamic jurists on a legal issue and is the third primary source of Muslim law.

इज्मा इस्लामी विधि-विशेषज्ञों की किसी कानूनी विषय पर सर्वसम्मति है और यह मुस्लिम विधि का तीसरा प्रमुख स्रोत है।

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### **D** Question what is Qiyas?

answer **Qiyas (Kiyas) कियास** Meaning of Qiyas

**Qiyas** means **analogy or reasoning by comparison**.

It is the **fourth primary source** of Muslim Law.

When no clear rule is found in the Qur'an, Sunna, or Ijma, the rule is derived by comparing the new problem with a similar case already decided under Islamic law.

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**कियास का अर्थ है तर्क और समानता के आधार पर निर्णय करना।**

**यह मुस्लिम विधि का चौथा प्रमुख स्रोत है।**

जब कुरान, सुन्नत और इज्मा में किसी विषय पर स्पष्ट नियम न मिले, तब समान परिस्थिति के आधार पर तर्क द्वारा नियम निकाला जाता है।

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**Essential Elements of Qiyas कियास के आवश्यक तत्व**

There are four elements in Qiyas:

1. **Asl** - The original case mentioned in Qur'an or Sunna.

2. **Far** - The new case needing decision.
3. **Illat** - The effective cause or reason.
4. **Hukm** - The rule of law derived.

कियास के चार तत्व होते हैं:

1. **असल (Asl)** - मूल मामला जो कुरान या सुन्नत में वर्णित है।
2. **फर (Far)** - नया मामला जिस पर निर्णय देना है।
3. **इलत (Illat)** - कारण या आधार।
4. **हुकम (Hukm)** - निकाला गया नियम।

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### Importance of Qiyas **कियास का महत्व**

- It helps solve new legal issues.
- It keeps Islamic law flexible.
- It applies established principles to modern situations.
- यह नए कानूनी प्रश्नों का समाधान करता है।
- यह इस्लामी कानून को लचीला बनाता है।
- यह स्थापित सिद्धांतों को आधुनिक परिस्थितियों में लागू करता है।

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### Short Exam Answer (5 Marks)

Qiyas is reasoning by analogy and is the fourth primary source of Muslim law used when no rule is found in Qur'an, Sunna, or Ijma.

कियास समानता के आधार पर तर्क द्वारा निर्णय है और यह मुस्लिम विधि का चौथा प्रमुख स्रोत है, जिसका उपयोग तब किया जाता है जब कुरान, सुन्नत या इज्मा में नियम उपलब्ध न हो।

secondary sources of Islam.

Here is a clear explanation of the **Secondary Sources of Islamic Law** in both **English and Hindi** (useful for LLB exams):

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## Secondary Sources of Islamic Law **इस्लामी विधि के गौण (द्वितीयक) स्रोत**

Secondary sources are those sources which are applied when the primary sources (Qur'an, Sunna, Ijma, Qiyas) do not provide a clear solution.

जब प्राथमिक स्रोत (कुरान, सुन्नत, इज्मा, कियास) से स्पष्ट समाधान न मिले, तब गौण स्रोतों का सहारा लिया जाता है।

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### 1. Custom (Urf) **प्रथा (उर्फ)**

Custom means long-established practices accepted by the Muslim community. If the custom is reasonable and not against the Qur'an, it may be recognized as law.

उर्फ (प्रथा) का अर्थ है समाज में लंबे समय से प्रचलित रीति-रिवाज। यदि प्रथा कुरान के विरुद्ध नहीं है, तो उसे मान्यता दी जा सकती है।

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### 2. Judicial Decisions **न्यायिक निर्णय**

Court decisions, especially those of higher courts, help interpret and apply Muslim law. They guide future cases.

उच्च न्यायालयों के निर्णय मुस्लिम विधि की व्याख्या में सहायक होते हैं और भविष्य के मामलों में मार्गदर्शन प्रदान करते हैं।

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### 3. Legislation **विधि निर्माण (कानून)**

Statutory laws enacted by the legislature relating to Muslim personal law are also secondary sources. For example:

- Muslim Personal Law (Shariat) Application Act
- Dissolution of Muslim Marriages Act

These regulate marriage, divorce, inheritance, etc.

विधायिका द्वारा बनाए गए कानून भी मुस्लिम विधि के गौण स्रोत हैं। उदाहरण:

- Muslim Personal Law (Shariat) Application Act
- Dissolution of Muslim Marriages Act

ये विवाह, तलाक, उत्तराधिकार आदि विषयों को नियंत्रित करते हैं।

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#### 4. Equity, Justice and Good Conscience न्याय, समानता और सद्भाव

Where no clear rule is available, courts decide cases according to principles of equity, justice, and good conscience.

जहाँ स्पष्ट नियम उपलब्ध न हो, वहाँ न्यायालय न्याय, समानता और सद्भाव के सिद्धांतों के आधार पर निर्णय देते हैं।

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#### Short Exam Summary

Secondary sources of Islamic law include:

1. Custom (Urf)
2. Judicial Decisions
3. Legislation
4. Equity, Justice and Good Conscience

इस्लामी विधि के गौण स्रोत हैं:

1. प्रथा (उर्फ)
  2. न्यायिक निर्णय
  3. विधि निर्माण
  4. न्याय, समानता और सद्भाव
- 

=====\*\*\*\*\*=====\*\*\*\*\*=====\*\*\*\*\*=====\*\*\*\*\*  
**schools in muslim law.**

**question who can decide who will be next khalifa?**

**Who can decide who will be the next Khalifa?**

The question of who decides the next **Khalifa (Caliph)** depends on Islamic political theory and historical practice. There is no single uniform method mentioned directly in the Qur'an, so different approaches developed in history.

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According to Sunni theory, the next Khalifa is chosen by:

- **Ijma (consensus)** of the Muslim community, especially learned scholars and leaders.
- A council of qualified persons known as **Ahl al-Hall wal-Aqd** (people who loosen and bind).
- Sometimes nomination by the previous Khalifa, followed by public approval (Bay'ah – oath of allegiance).

Example:

- After Prophet Muhammad (PBUH), Abu Bakr was chosen through consultation and consensus.

सुन्नी मत के अनुसार अगला खलीफा चुना जाता है:

- मुस्लिम समुदाय की सर्वसम्मति (इज्मा) से
- योग्य व्यक्तियों की परिषद (अहल-हल-व-अक्द) द्वारा
- कभी-कभी पूर्व खलीफा द्वारा नामांकन और फिर बैअत (शपथ) से

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## 2 Shia View

According to Shia belief, the leader (Imam) must be:

- Directly appointed by Allah,
- Through nomination (Nass) by the Prophet or previous Imam.

Shias believe that leadership was divinely appointed to Ali and his descendants.

शिया मत के अनुसार नेता (इमाम):

- अल्लाह द्वारा नियुक्त होता है
- पैगंबर या पूर्व इमाम द्वारा नामित किया जाता है

शिया मत के अनुसार नेतृत्व हज़रत अली और उनके वंशजों को दिया गया।

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## Conclusion (Exam Point)

In Sunni Islam, the Khalifa is chosen by consultation and consensus.

In Shia Islam, the leader is divinely appointed through nomination.

सुन्नी मत में खलीफा का चयन परामर्श और सर्वसम्मति से होता है।  
शिया मत में इमाम का चयन ईश्वरीय नियुक्ति से होता है।

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### School in sunni

## Four Sunni Schools of Muslim Law सुन्नी मुस्लिम विधि के चार प्रमुख मत (मज़हब)

Sunni Islam has four main schools of jurisprudence. These schools differ mainly in interpretation and application of Islamic law, not in basic beliefs.

### 1 Hanafi School (हनाफ़ी मत) Abu Hanifa

- Founded by Imam Abu Hanifa (699–767 AD).
- It is the **oldest and most liberal** school.
- Gives importance to **Qiyas (analogy)** and personal reasoning (Istihsan).
- Widely followed in India, Pakistan, Turkey, and Central Asia.
- according to Hanafi kuran is the main source of law. and tradition is alos.
- इसकी स्थापना इमाम अबू हनीफ़ा (699–767 ई.) ने की।
- यह सबसे पुराना और अपेक्षाकृत उदार मत है।
- क़ियास (तर्क) और इस्तिहसान (व्यक्तिगत विवेक) को महत्व देता है।
- भारत, पाकिस्तान, तुर्की आदि में प्रचलित है। north india, arab, siria, turki, mishr.

### 2 Maliki School (मालिकी मत) Malik ibn Anas

- Founded by Imam Malik ibn Anas (711–795 AD).
- Gives importance to the **customs of the people of Medina**.
- Relies strongly on Hadith and traditions.
- Followed mainly in North and West Africa.
- इसकी स्थापना इमाम मालिक इब्न अनस (711–795 ई.) ने की।

- मदीना के लोगों की प्रथाओं को महत्व देता है।
  - हदीस और परंपराओं पर अधिक आधारित है।
  - मुख्यतः उत्तर और पश्चिम अफ्रीका में प्रचलित है। north Africa, morrecco, spain.
- 

### 3 Shafi'i School (शाफ़ई मत) Al-Shafi'i

- Founded by Imam Al-Shafi'i (767–820 AD).
  - Gave a systematic method of Islamic jurisprudence.
  - Balanced use of Qur'an, Sunna, Ijma, and Qiyas.
  - Followed in Indonesia, Malaysia, East Africa, and parts of the Middle East.
  - इसकी स्थापना इमाम अल-शाफ़ई (767–820 ई.) ने की।
  - इस्लामी विधि को व्यवस्थित रूप दिया।
  - कुरान, सुन्नत, इज्मा और कियास का संतुलित उपयोग करता है।
  - इंडोनेशिया, मलेशिया आदि में प्रचलित है। south india, lanka, arab.
- 

### 4 Hanbali School (हनबली मत) Ahmad ibn Hanbal

- Founded by Imam Ahmad ibn Hanbal (780–855 AD).
- Most conservative and strict school.
- Strong reliance on Qur'an and Hadith, less on reasoning.
- Followed mainly in Saudi Arabia.
- इसकी स्थापना इमाम अहमद इब्न हम्बल (780–855 ई.) ने की।
- यह सबसे अधिक रूढ़िवादी मत है।
- कुरान और हदीस पर अधिक निर्भर करता है, तर्क का कम उपयोग करता है।
- मुख्यतः सऊदी अरब में प्रचलित है।

- their thoughts is don't use Izma or minimum use izma.

- **(Ijma (Short Answer))**

- Ijma means the **consensus (agreement) of learned Islamic scholars** on a question of law.

It is the **third primary source** of Islamic law after the Qur'an and Sunna.

When no clear rule is found in the Qur'an or Sunna, the agreed opinion of scholars becomes binding.

- **इज्मा का अर्थ है इस्लामी विद्वानों की किसी कानूनी विषय पर सर्वसम्मति।**

यह कुरान और सुन्नत के बाद इस्लामी विधि का तीसरा प्रमुख स्रोत है।

जब कुरान और सुन्नत में स्पष्ट नियम न मिले, तब विद्वानों की सहमति मान्य होती है।

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\*\* shiya first school is asna ashariya.

## **A Shia Asna Ashriya School शिया इसना अशरिया मत (बारह इमामी मत)**

The **Shia Asna Ashriya** (also called **Twelver Shia**) school is the largest branch of Shia Islam.

"Asna Ashriya" means "**believers in twelve Imams.**"

**शिया इसना अशरिया** (बारह इमामी) शिया इस्लाम की सबसे बड़ी शाखा है।

"इसना अशरिया" का अर्थ है **बारह इमामों को मानने वाले।**

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## **Belief in Twelve Imams "इसना अशरिया one dozen"**

This school believes that after Prophet Muhammad (PBUH), leadership (Imamat) was divinely appointed to twelve Imams starting from:

- Ali (Hazrat Ali)

The twelfth Imam is believed to be in occultation (hidden) and will return as Mahdi.

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यह मत मानता है कि पैगंबर मोहम्मद (सल्ल०) के बाद नेतृत्व (इमामत) ईश्वर द्वारा नियुक्त बारह इमामों को दिया गया, जिसकी शुरुआत:

- Ali (हज़रत अली) से होती है।

बारहवें इमाम को ग़ैबत (अदृश्य अवस्था) में माना जाता है, जो महदी के रूप में पुनः आएंगे।

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### Sources of Law

The sources of law in the Asna Ashriya school are:

1. Qur'an
2. Sunna (including traditions of the Imams)
3. Ijma
4. Aql (reasoning/intellect)

इसना अशरिया मत के विधि स्रोत हैं:

1. कुरान
  2. सुन्नत (इमामों की परंपराएँ भी शामिल)
  3. इज्मा
  4. अकल (तर्क/बुद्धि)
- 

### Important Features

- Leadership must be from the family of Prophet (Ahl al-Bayt).
  - Imams are considered infallible (Ma'sum).
  - Followed mainly in Iran, Iraq, and parts of India.
  - नेतृत्व पैगंबर के परिवार (अहल-ए-बैत) से होना चाहिए।
  - इमामों को निष्पाप (मासूम) माना जाता है।
  - मुख्यतः ईरान, इराक और भारत के कुछ भागों में प्रचलित है।
- 

**philosopher amir ali view shia is conservative people.**

### Philosopher Amir Ali's View on Shia

The reference is generally to **Syed Ameer Ali**, a well-known Muslim jurist, scholar, and author of *The Spirit of Islam*.

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### English Explanation

According to Syed Ameer Ali, the **Shia school** is often described as more conservative in certain legal and theological matters because:

1. **Strict belief in Imam**at – Shias strongly believe that leadership must remain within the family of the Prophet (Ahl al-Bayt).
2. **Doctrine of Infallible Imams** – They consider the Imams as divinely guided and free from error (Ma'sum).
3. **Limited acceptance of political rulers** – They do not recognize the legitimacy of early Caliphs accepted by Sunnis.
4. **Strong attachment to tradition** – They emphasize religious authority and continuity through the line of Imams.

However, it is important to understand that "conservative" here refers to **firm adherence to doctrinal principles**, not social backwardness.

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सैयद अमीर अली के अनुसार शिया मत को कुछ मामलों में रूढ़िवादी (Conservative) कहा जाता है क्योंकि:

1. **इमामत का कठोर सिद्धांत** – नेतृत्व केवल पैगंबर के परिवार (अहल-ए-बैत) में होना चाहिए।
2. **इमामों की निष्पापता (मासूमियत)** में विश्वास।
3. **प्रारंभिक खलीफाओं की वैधता को स्वीकार न करना।**
4. **धार्मिक सिद्धांतों पर दृढ़ता और परंपरा के प्रति गहरा लगाव।**

यहाँ "रूढ़िवादी" शब्द का अर्थ सामाजिक रूप से पिछड़ा होना नहीं, बल्कि **धार्मिक सिद्धांतों के प्रति दृढ़ निष्ठा** है।

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### Short Exam Point (5 Marks)

Syed Ameer Ali viewed Shia Muslims as conservative because of their strict belief in the doctrine of Imam and adherence to the authority of the twelve Imams.

सैयद अमीर अली ने शिया मत को रूढ़िवादी बताया क्योंकि वे इमामत के सिद्धांत और बारह इमामों की प्रामाणिकता पर दृढ़ विश्वास रखते हैं।

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### Short Exam Answer (5 Marks)

The Shia Asna Ashriya (Twelver) school believes in twelve divinely appointed Imams beginning with Hazrat Ali. It recognizes Qur'an, Sunna, Ijma, and Aql as sources of law.

शिया इसना अशरिया मत बारह ईश्वरीय नियुक्त इमामों को मानता है, जिसकी शुरुआत हज़रत अली से होती है। इसके विधि स्रोत कुरान, सुन्नत, इज्मा और अक्ल हैं।

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### **B Ismailiya School इस्माइलीया मत**

#### Meaning

The **Ismailiya** (Ismaili) school is a branch of Shia Islam. It separated from the main Shia (Twelver/Asna Ashriya) group after the death of the sixth Imam, Ja'far al-Sadiq, due to a dispute over succession.

Ismailis believe that the rightful successor was **Ismail ibn Ja'far**, the elder son of Ja'far al-Sadiq.

**इस्माइलीया** शिया इस्लाम की एक शाखा है।

छठे इमाम जाफर अल-सादिक की मृत्यु के बाद उत्तराधिकार के विवाद के कारण यह मत मुख्य शिया (इसना अशरिया) से अलग हो गया।

इस्माइली लोग मानते हैं कि जाफर अल-सादिक के बड़े पुत्र **इस्माइल इब्न जाफर** ही सही उत्तराधिकारी थे।

**जाफर अल-सादिक की मृत्यु के बाद उसके दो बेटे थे इस्माइल इब्न जाफर और मूसा उल काजिम।**

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इस्माइल इब्न जाफर के फोल्लोवेर ही इस्माइलिया कहलाये।

इनकी भी २ ब्रांच बनी खोजा और बोहरा यानि व्यापारी

खोजा ४९ इमाम को मानते थे ये साउथ अफ्रीका सेंट्रल एशिया और सेरिआ में मिलते हैं।

और जो बोहरा व्यापारी थे वो सेरिआ , यमन , एंड साउथ अरब में मिलते हैं।

#### Important Features

1. They believe in a living Imam (present spiritual leader).
2. They give importance to **esoteric (inner) interpretation** of the Qur'an.

3. The Imam has spiritual as well as religious authority.
4. Law is interpreted with flexibility under the guidance of the Imam.
1. वे वर्तमान (जीवित) इमाम में विश्वास करते हैं।
2. कुरान की आंतरिक (गूढ़) व्याख्या को महत्व देते हैं।
3. इमाम को धार्मिक और आध्यात्मिक दोनों प्रकार का अधिकार प्राप्त है।
4. इमाम के मार्गदर्शन में कानून की व्याख्या लचीले रूप में की जाती है।

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### Sub-divisions of Ismailiya

Major branches include:

- Nizari Ismailis
- Musta'li Ismailis

The Nizari branch is led today by the Aga Khan.

इस्माइलीया के प्रमुख उप-मत हैं:

- निजारी इस्माइली
- मुस्तअली इस्माइली

निजारी शाखा का नेतृत्व वर्तमान में आगा खान करते हैं।

### Short Exam Answer (5 Marks)

The Ismailiya school is a branch of Shia Islam that recognizes Ismail ibn Ja'far as the rightful Imam and believes in a living spiritual leader.

इस्माइलीया मत शिया इस्लाम की शाखा है जो इस्माइल इब्न जाफर को वैध इमाम मानता है और जीवित इमाम में विश्वास करता है।



### Zaidiyya (Jediya) School ज़ैदिया (जेदिया) मत

Note: "Jediya" generally refers to Zaidiyya (Zaidi), a branch of Shia Islam.

4<sup>th</sup> Imaam चौथे इमाम को मानने वाले, ये शिया और सुन्नी दोनों को मानते हैं।  
ये दमन में मिलते हैं।

जो लोग बारह इमामों को मानते हैं उन्हें शिया इसना अशरिया (बारह इमामी) कहा जाता है। यह शिया इस्लाम की सबसे बड़ी शाखा है।

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### Meaning

The **Zaidiyya** school is a branch of Shia Islam that follows **Zaid ibn Ali**, the grandson of Husayn ibn Ali. It differs from the Twelver (Asna Ashriya) and Ismaili branches in its concept of Imamate (leadership).

**ज़ैदिया मत** शिया इस्लाम की एक शाखा है, जो **ज़ैद इब्न अली** (हुसैन इब्न अली के पौत्र) को अपना इमाम मानती है।

यह इमामत के सिद्धांत में इसना अशरिया और इस्माइली मत से भिन्न है।

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### Beliefs about Imamate

- The Imam must be a descendant of Ali and Fatima.
- The Imam does not have to be divinely appointed.
- Any qualified descendant who rises against injustice can become Imam.
- They do not believe the Imam is infallible (Ma'sum).
- इमाम अली और फातिमा के वंश से होना चाहिए।
- इमाम का ईश्वरीय नियुक्त होना आवश्यक नहीं।
- जो योग्य वंशज अन्याय के विरुद्ध संघर्ष करे, वह इमाम बन सकता है।
- वे इमाम को निष्पाप (मासूम) नहीं मानते।

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### Legal Approach

Zaidiyya school is considered closer to Sunni law in many legal matters. It accepts Qur'an, Sunna, Ijma, and Qiyas as sources of law.

ज़ैदिया मत कई कानूनी मामलों में सुन्नी विधि के निकट माना जाता है।

यह कुरान, सुन्नत, इज्मा और क़ियास को विधि स्रोत के रूप में स्वीकार करता है।

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### Area of Practice

Zaidiyya followers are mainly found in Yemen.

ज़ैदिया मत के अनुयायी मुख्यतः यमन में पाए जाते हैं।

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### Short Exam Answer (5 Marks)

The Zaidiyya school is a branch of Shia Islam that recognizes Zaid ibn Ali as Imam. It does not consider the Imam infallible and is closer to Sunni law in legal principles.

ज़ैदिया मत शिया इस्लाम की शाखा है जो ज़ैद इब्न अली को इमाम मानती है। यह इमाम को निष्पाप नहीं मानता और कई मामलों में सुन्नी विधि के निकट है।

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**new subject nikah in muslim (this is a contract) not a ceremony.**

as per writer Beli says this is a contract

and

Justise Mohammad says nikah is a civil contract.

**Essential Elements of a Valid Nikah वैध निकाह के आवश्यक तत्व**

### 1 Proposal and Acceptance (Ijab and Qubool) प्रस्ताव और स्वीकृति (इजाब व कबूल)

There must be a clear proposal (Ijab) by one party and acceptance (Qubool) by the other in the same meeting.

एक पक्ष द्वारा प्रस्ताव (इजाब) और दूसरे पक्ष द्वारा उसी बैठक में स्वीकृति (कबूल) होना आवश्यक है।

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### 2 Free Consent स्वतंत्र सहमति

Both parties must give free and voluntary consent. Marriage under force, fraud, or coercion is not valid.

दोनों पक्षों की स्वतंत्र और स्वैच्छिक सहमति होनी चाहिए। जबरदस्ती या धोखे से किया गया विवाह अमान्य है।

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### 3 Competency of Parties पक्षों की योग्यता

The parties must:

- Be of sound mind

- Have attained puberty (generally presumed at 15 years under Muslim law)  
दोनों पक्ष:
  - स्वस्थ मस्तिष्क के हों
  - बालिग (आमतौर पर 15 वर्ष की आयु) हों
- 

#### 4 Presence of Witnesses गवाहों की उपस्थिति

In Sunni law, at least two male witnesses or one male and two female witnesses are required.  
सुन्नी विधि में दो पुरुष गवाह या एक पुरुष और दो महिला गवाह आवश्यक हैं।

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#### 5 Dower (Mahr) मेहर

Mahr (dower) is a mandatory amount given by the husband to the wife as a mark of respect.  
मेहर वह धनराशि है जो पति पत्नी को सम्मान के रूप में देता है।

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#### Short Exam Answer (5 Marks)

The essential elements of Nikah are Ijab and Qubool, free consent, competency of parties, witnesses, and Mahr.

निकाह के आवश्यक तत्व हैं — इजाब व कबूल, स्वतंत्र सहमति, पक्षों की योग्यता, गवाह और मेहर।

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#### Batil and Fasid Marriage बातिल और फासिद विवाह

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##### 1 Batil Marriage (Void Marriage) बातिल विवाह (शून्य विवाह)

A **Batil marriage** is a **void marriage**.

It is unlawful from the very beginning and has **no legal effect**.

Such a marriage is treated as if it never existed.

##### Grounds of Batil Marriage:

- Marriage within prohibited degrees (e.g., mother, sister, daughter)
- Marriage with a married woman
- Marriage without consent (in some cases)

##### Legal Effects:

- No mutual rights and duties
  - No inheritance rights
  - Children are generally illegitimate (except some protection under law)
- 

**बातिल विवाह पूर्णतः शून्य (अमान्य) विवाह है।**

यह शुरु से ही अवैध होता है और इसका कोई कानूनी प्रभाव नहीं होता।

**बातिल विवाह के आधार:**

- निषिद्ध संबंधों में विवाह (जैसे माँ, बहन, बेटी)
- विवाहित स्त्री से विवाह
- आवश्यक शर्तों का पूर्ण अभाव

**कानूनी प्रभाव:**

- पति-पत्नी के अधिकार उत्पन्न नहीं होते
- उत्तराधिकार का अधिकार नहीं
- सामान्यतः संतान अवैध मानी जाती है

**in blood relation chain the marriage is not allowed.**

like mother, grand mother, sister, brother's daughter and grand daughter, mother's or father's sister.

**in inlaws relation chain the marriage is not allowed.**

like wife's mother and grand mother, daughter of would be wife, father's or grand father's wife, son's grand son's wife etc.

**in milk feeder mother relation chain the marriage is not allowed.**

like any woman who feed her milk to a child below 2 years age, he can't marry with her daughter.

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**2 Fasid Marriage (Irregular Marriage) फासिद विवाह (अनियमित विवाह)**

A **Fasid marriage** is an **irregular marriage**.

It is not completely void but suffers from some temporary defect.

If the defect is removed, the marriage becomes valid.

**Grounds of Fasid Marriage:**

- Marriage without proper witnesses (under Sunni law)
- Marriage with a fifth wife (when four wives already exist)
- Marriage during Iddat period

**Legal Effects:**

- If consummation takes place, the wife is entitled to Mahr
- Children are considered legitimate
- It can be regularized by removing the defect

**फासिद विवाह अनियमित विवाह है।**

यह पूर्णतः शून्य नहीं होता, बल्कि इसमें कोई अस्थायी दोष होता है।

यदि दोष दूर कर दिया जाए, तो विवाह वैध हो सकता है।

**फासिद विवाह के आधार:**

- गवाहों का अभाव (सुन्नी विधि में)
- चार पत्नियों के रहते पाँचवीं से विवाह
- इद्दत की अवधि में विवाह
- शिया गैर मुस्लिम से निकाह नहीं कर सकता। हाँ सुन्नी कितबिया से निकाह कर सकता है।

**कानूनी प्रभाव:**

- सहवास होने पर पत्नी मेहर की हकदार होती है
- संतान वैध मानी जाती है
- दोष दूर करने पर विवाह वैध हो सकता है

<b>Batil (Void)</b>	<b>Fasid (Irregular)</b>
Completely void	Defective but not void
Cannot be validated	Can be validated
No legal effects	Some legal effects

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### **1 Irregular Marriage (Fasid Marriage) फासिद (अनियमित) विवाह**

A **Fasid marriage** is an irregular marriage. It is not totally void but suffers from a temporary or removable defect. If the defect is removed, the marriage becomes valid.

**फासिद विवाह अनियमित विवाह है। यह पूर्णतः शून्य नहीं होता, बल्कि इसमें अस्थायी दोष होता है। दोष दूर करने पर विवाह वैध हो सकता है।**

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#### **◆ Grounds of Fasid Marriage (Under Sunni Law)**

Marriage is irregular in the following cases:

1. Marriage without proper witnesses
2. Marriage during the woman's Iddat period
3. Marriage with a fifth wife (when four wives already exist)
4. Marriage with a woman belonging to another religion (other than "Kitabia" — Jew or Christian)
5. Marriage prohibited due to temporary reasons

#### **Legal Effects:**

- If consummation takes place, wife is entitled to Mahr
  - Children are legitimate
  - No mutual inheritance unless valid
- 

निम्न स्थितियों में विवाह फासिद होता है:

1. गवाहों के बिना विवाह (सुन्नी विधि में)
2. इद्दत अवधि में विवाह
3. चार पत्नियों के रहते पाँचवीं से विवाह

4. ऐसी स्त्री से विवाह जो अहले-किताब (यहूदी/ईसाई) न हो
5. अस्थायी निषेध के कारण विवाह
6. शिया गैर मुस्लिम से निकाह नहीं कर सकता। हाँ सुन्नी कितबिया से निकाह कर सकता है।

### कानूनी प्रभाव:

- सहवास होने पर पत्नी मेहर की हकदार
- संतान वैध
- वैध होने तक उत्तराधिकार का अधिकार नहीं

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### 2 When Islam Completely Denies Marriage (Batil Marriage)

#### जब इस्लाम पूर्णतः विवाह को निषिद्ध करता है (बातिल विवाह)

##### ✓ Batil (Void) Marriage

A **Batil marriage** is void from the beginning and has no legal effect.

##### Situations Where Marriage is Completely Prohibited:

1. Marriage within prohibited blood relations (consanguinity)
  - Mother, daughter, sister, aunt, etc.
2. Marriage by affinity (relationship by marriage)
  - Mother-in-law, step-daughter (after consummation), etc.
3. Marriage by fosterage (milk relationship)
4. Marriage with a married woman
5. Polyandry (a woman having more than one husband)

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**बातिल विवाह** शुरू से ही अमान्य होता है और इसका कोई कानूनी प्रभाव नहीं होता।

#### पूर्ण निषेध की स्थितियाँ:

1. रक्त संबंध में विवाह (माँ, बहन, बेटी आदि)

2. विवाह से उत्पन्न संबंध (सास, सौतेली बेटी आदि)
3. दूध का रिश्ता (रज़ाई संबंध)
4. विवाहित स्त्री से विवाह
5. एक स्त्री के अनेक पति (पॉलिगैमी)

### Difference (Exam Table)

Batil (Void)	Fasid (Irregular)
Completely prohibited	Temporarily defective
Cannot be validated	Can be validated
No legal effect	Limited legal effect
Children illegitimate (generally)	Children legitimate

### Short Exam Conclusion (5–10 Marks)

Islam prohibits marriage either permanently (Batil) or temporarily (Fasid). Batil marriages are absolutely void, while Fasid marriages are irregular and may become valid after removing the defect.

इस्लाम विवाह को या तो स्थायी रूप से (बातिल) या अस्थायी रूप से (फासिद) निषिद्ध करता है। बातिल विवाह पूर्णतः अमान्य होते हैं, जबकि फासिद विवाह दोष दूर होने पर वैध हो सकते हैं।

**Case: Abdul Latif v. Niyaz Ahmad (1909)** (Privy Council decision – Muslim Law)

### Explanation

In **Abdul Latif v. Niyaz Ahmad (1909)**, the main issue before the court was regarding the validity of a Muslim marriage and its legal consequences.

### Issue:

Whether a marriage contracted without fulfilling certain essential conditions under Muslim law would be valid, irregular (fasid), or void (batil).

### Held:

The Court held that:

- If essential requirements of a valid Nikah are not fulfilled, the marriage may be treated as **irregular (fasid)** rather than completely void, depending upon the nature of the defect.
- Where the defect is temporary and removable, the marriage is not void but irregular.
- Legal consequences like legitimacy of children and entitlement to dower (mahr) may still arise if consummation has taken place.

#### **Importance:**

This case clarified the distinction between:

- **Void (Batil) marriage**, and
- **Irregular (Fasid) marriage**

It emphasized that not every defective marriage is void under Muslim law.

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**अब्दुल लतीफ बनाम नियाज अहमद (1909)** में न्यायालय ने मुस्लिम विवाह की वैधता पर विचार किया।

 **प्रश्न:** यदि निकाह की आवश्यक शर्तें पूरी न हों, तो विवाह बातिल (शून्य) होगा या फासिद (अनियमित)?

 **निर्णय:** न्यायालय ने कहा:

- यदि दोष अस्थायी और सुधार योग्य है, तो विवाह फासिद (अनियमित) होगा, पूर्णतः शून्य नहीं।
- सहवास होने पर पत्नी मेहर की हकदार होगी।
- संतान वैध मानी जा सकती है।

#### **महत्व:**

इस मामले ने बातिल और फासिद विवाह के बीच अंतर को स्पष्ट किया।

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#### **Short Exam Line:**

The case of Abdul Latif v. Niyaz Ahmad (1909) clarified the distinction between void (batil) and irregular (fasid) marriages under Muslim law.

अब्दुल लतीफ बनाम नियाज अहमद (1909) ने मुस्लिम विधि में बातिल और फासिद विवाह के अंतर को स्पष्ट किया।

**Case: Ahsan Hasan Khan v. Panna Lal (1929)**

*(Privy Council – Muslim Law of Marriage)*

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 **Explanation**

 **Issue:**

Whether a marriage contracted in violation of certain prohibitions under Muslim law is **void (Batil)** or merely **irregular (Fasid)**.

 **Held:**

The Court held that:

- A marriage prohibited due to **temporary reasons** is not void but **irregular (Fasid)**.
- Such a marriage can become valid if the temporary defect is removed.
- If consummation takes place in an irregular marriage:
  - Wife is entitled to **dower (Mahr)**
  - Children are considered **legitimate**

 **Importance:**

This case is important because it clearly distinguished between:

- **Void marriages (Batil)** – absolutely invalid
- **Irregular marriages (Fasid)** – defective but capable of becoming valid

It strengthened the principle that temporary prohibitions do not make a marriage completely void.

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 **प्रश्न:**

क्या मुस्लिम विधि में अस्थायी निषेध के कारण किया गया विवाह पूर्णतः शून्य (बातिल) है या केवल फासिद (अनियमित)?

 **निर्णय:**

न्यायालय ने कहा:

- यदि निषेध अस्थायी है, तो विवाह **फासिद (अनियमित)** होगा, बातिल नहीं।

- दोष हटाने पर विवाह वैध हो सकता है।
- सहवास होने पर:
  - पत्नी मेहर की हकदार होगी
  - संतान वैध मानी जाएगी

### महत्व:

इस निर्णय ने बातिल और फासिद विवाह के बीच अंतर को स्पष्ट किया और अस्थायी निषेध को फासिद श्रेणी में रखा।

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### Short Exam Note (3–4 lines)

In *Ahsan Hasan Khan v. Panna Lal* (1929), the Privy Council held that marriages prohibited due to temporary reasons are irregular (fasid) and not void (batil), and may become valid upon removal of the defect.

अहसान हसन खान बनाम पन्ना लाल (1929) में प्रिवी काउंसिल ने निर्णय दिया कि अस्थायी निषेध वाला विवाह फासिद होता है, बातिल नहीं, और दोष हटने पर वैध हो सकता है।

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**Muslim nikah is a contract not ceremony.**

**Abdul Kadir v. Salima**

*(Often mistakenly written as 1846 — the correct year is 1886.)*

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 **Principle: Muslim Nikah is a Contract, Not a Sacrament**

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### Explanation

In *Abdul Kadir v. Salima* (1886), the Privy Council clearly stated that:

**Marriage (Nikah) under Muslim law is a civil contract and not a religious sacrament.**

### Court Observations:

- Muslim marriage is based on **offer (Ijab)** and **acceptance (Qubul)**.
- It requires **free consent** of parties.

- It creates **legal rights and obligations**, especially:
  - Right to **Mahr (Dower)**
  - Mutual duties between husband and wife.
- It is governed by **contractual principles**, not sacramental Hindu law principles.

#### **Importance:**

This case is a landmark authority to prove:

- Muslim marriage is contractual in nature.
- It differs from Hindu marriage, which is traditionally considered a sacrament.
- Civil courts apply contractual rules in Muslim marriage disputes.

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**Abdul Kadir v. Salima (1886)** में प्रिवी काउंसिल ने कहा:

मुस्लिम विवाह (निकाह) एक सिविल कॉन्ट्रैक्ट है, धार्मिक संस्कार (Sacrament) नहीं।

#### **न्यायालय की मुख्य बातें:**

- निकाह में प्रस्ताव (इजाब) और स्वीकृति (क़बूल) आवश्यक है।
- पक्षों की स्वतंत्र सहमति जरूरी है।
- यह मेहर और वैवाहिक अधिकारों का कानूनी संबंध स्थापित करता है।
- यह अनुबंध के सिद्धांतों पर आधारित है।

#### **महत्व:**

- इस मामले ने स्पष्ट किया कि मुस्लिम विवाह धार्मिक संस्कार नहीं बल्कि कानूनी अनुबंध है।
- परीक्षा में यह सबसे महत्वपूर्ण केस माना जाता है।

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#### **Short Exam Point (2–3 lines)**

In *Abdul Kadir v. Salima (1886)*, the Privy Council held that Muslim marriage is a civil contract requiring offer and acceptance, not a sacrament.

Abdul Kadir v. Salima (1886) में कहा गया कि मुस्लिम विवाह एक सिविल अनुबंध है, संस्कार नहीं।

another case for muslim nikah is a contract not ceremony.

Anis Begum v. Muhammad Istafa Wali Khan

(Sometimes written as Aneesa Begam v. Malik Mohammad Istafa – 1933)

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#### Issue:

Whether a **minor Muslim girl's marriage contracted by her guardian** can be repudiated after attaining puberty under Muslim law.

#### Held:

The Privy Council held that:

- Under Muslim law, a minor's marriage contracted by a guardian (other than father or grandfather) can be repudiated by the minor on attaining puberty.
- This right is known as **Option of Puberty (Khyar-ul-Bulugh)**.
- If the minor does not repudiate the marriage within a reasonable time after attaining puberty, the marriage becomes binding.

#### Importance:

This case is an important authority on:

- Guardian's power in marriage
- Minor marriage under Muslim law
- Doctrine of Option of Puberty

It clarified that Muslim marriage, being a contract, allows repudiation in certain circumstances.

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#### प्रश्न:

क्या अभिभावक द्वारा नाबालिग लड़की का किया गया विवाह, बालिग होने पर लड़की द्वारा अस्वीकार किया जा सकता है?

#### निर्णय:

न्यायालय ने कहा:

- यदि विवाह पिता या दादा के अतिरिक्त किसी अन्य अभिभावक द्वारा किया गया हो, तो लड़की बालिग होने पर उसे अस्वीकार कर सकती है।
- इसे ख़ियार-उल-बुलूग (वयस्कता का विकल्प) कहते हैं।
- यदि बालिग होने के बाद समय रहते अस्वीकार न किया जाए, तो विवाह बाध्यकारी हो जाता है।

#### महत्व:

- यह मामला नाबालिग विवाह और अभिभावक के अधिकार से संबंधित महत्वपूर्ण निर्णय है।
- परीक्षा में Option of Puberty के लिए प्रमुख केस माना जाता है।

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#### Short Exam Note

In *Anis Begum v. Muhammad Istafa Wali Khan* (1933), the Privy Council recognized the minor wife's right to repudiate a marriage contracted by a guardian under the doctrine of Option of Puberty.

*Anis Begum v. Muhammad Istafa* (1933) में प्रिवी काउंसिल ने नाबालिग पत्नी के वयस्क होने पर विवाह अस्वीकार करने के अधिकार (ख़ियार-उल-बुलूग) को मान्यता दी।

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**E** **Option of Puberty (Khyar-ul-Bulugh)** ख़ियार-उल-बुलूग (वयस्कता का विकल्प)

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#### Meaning

**Option of Puberty** is the right of a minor (boy or girl) married by a guardian to **repudiate (cancel)** the marriage on attaining puberty.

It is called **Khyar-ul-Bulugh** under Muslim law.

Since Muslim marriage is a contract, a minor who was not capable of giving free consent is given a chance to accept or reject the marriage after attaining puberty.

---

**वयस्कता का विकल्प (ख़ियार-उल-बुलूग)** वह अधिकार है जिसके द्वारा नाबालिग का विवाह यदि अभिभावक ने किया हो, तो बालिग होने पर वह विवाह को अस्वीकार कर सकता/सकती है।

---

✔ **Conditions (English)**

1. Marriage must have been contracted during minority.
  2. It must have been contracted by a guardian **other than father or paternal grandfather** (under Sunni law).
  3. The minor must repudiate the marriage **after attaining puberty**.
  4. Repudiation must be done before or shortly after attaining majority (and before voluntary consummation in some cases).
- 

✔ **शर्तें**

1. विवाह नाबालिग अवस्था में हुआ हो।
  2. विवाह पिता या पितामह के अतिरिक्त किसी अन्य अभिभावक द्वारा किया गया हो।
  3. बालिग होने पर विवाह अस्वीकार किया जाए।
  4. उचित समय के भीतर अस्वीकार करना आवश्यक है।
- 

📌 **Important Case**

**Anis Begum v. Muhammad Istafa Wali Khan**

Privy Council recognized the doctrine of Option of Puberty and clarified that a minor wife may repudiate such marriage after attaining puberty.

---

⚖️ **Age of Puberty**

- Presumed at **15 years** if not proven otherwise.
- Under modern law in India, the age of majority is 18 years (but classical Muslim law presumes puberty at 15).

---

 **Short Exam Definition (3-4 lines)**

Option of Puberty (Khyar-ul-Bulugh) is the right of a minor married by a guardian to repudiate the marriage on attaining puberty. It applies when the marriage was contracted during minority by someone other than the father or grandfather.

खियार-उल-बुलूग वह अधिकार है जिसके तहत नाबालिग, बालिग होने पर अपने अभिभावक द्वारा किए गए विवाह को अस्वीकार कर सकता/सकती है।

**1 Saghir / Saghira (Minor) सगीर / सगीरा (नाबालिग)**

 **Meaning**

- **Saghir** = Minor boy
- **Saghira** = Minor girl

A person who has **not attained puberty** is called a minor under Muslim law.

In classical Muslim law:

- Puberty is presumed at **15 years of age**, unless proved earlier.

**Legal Position:**

- A minor cannot contract marriage on his/her own.
- Marriage is contracted by a **guardian (Wali)**.
- Minor has limited contractual capacity.

---

• **सगीर** = नाबालिग लड़का

• **सगीरा** = नाबालिग लड़की

जो व्यक्ति अभी वयस्क (बालिग) नहीं हुआ है, वह सगीर/सगीरा कहलाता है।

मुस्लिम विधि में:

- 15 वर्ष की आयु में वयस्कता मानी जाती है (यदि अन्यथा सिद्ध न हो)।

कानूनी स्थिति:

- नाबालिग स्वयं विवाह नहीं कर सकता/सकती।
- अभिभावक (वली) विवाह कराता है।

---

## 2 Bulugh (Puberty) बुलूग (वयस्कता)

**Bulugh** means attainment of puberty (physical maturity).

Under Muslim law:

- Puberty = Capacity to enter into marriage contract.
- Presumed at 15 years.
- After puberty, person gets:
  - Right to contract marriage
  - Right of Option of Puberty (if married during minority)

---

**बुलूग** का अर्थ है वयस्कता या यौन परिपक्वता की अवस्था।

मुस्लिम विधि में:

- 15 वर्ष की आयु में वयस्कता मानी जाती है।
- बुलूग के बाद व्यक्ति स्वयं विवाह कर सकता है।
- नाबालिग विवाह को अस्वीकार करने का अधिकार (खियार-उल-बुलूग) मिलता है।

**Saghir/Saghira**

**Bulugh**

Minor

Attainment of puberty

No independent capacity

Full marital capacity

Guardian contracts marriage Can contract marriage personally

---

 **Short Exam Note**

Saghir or Saghira refers to a minor under Muslim law who has not attained puberty. Bulugh means attainment of puberty, which gives the person full capacity to marry.

सगीर/सगीरा नाबालिग को कहते हैं, जबकि बुलूग वयस्कता की अवस्था है, जिसके बाद व्यक्ति विवाह करने में सक्षम हो जाता है।

---

 **Correct Terms in Muslim Law**

**1 Saghir (सगीर)**

- Means **minor (boy)**
  - For girl → **Saghira (सगीरा)**
  - Used for anyone **below puberty (Bulugh)**
- 

**2 Mumayyiz (मुमय्यिज़)**

- Child who can understand right and wrong
  - Usually **above 7 years**
- 

**3 Ghayr Mumayyiz (ग़ैर मुमय्यिज़)**

- Child **below 7 years**
- Cannot distinguish right and wrong

### ✦ Why You Heard “Samer”?

It may be:

- A pronunciation confusion of **Saghir**
  - Or confusion with an Arabic personal name like **Sameer**, which is **not a legal term**
- 

### 🌀 Final Clear Answer for Exam

- Below 7 years → **Ghayr Mumayyiz**
  - Below puberty → **Saghir / Saghira**
  - After puberty → **Baligh**
- 
- 

**Khyar-ul-Bulugh (Option of Puberty) ख़ियार-उल-बुलूग (वयस्कता का विकल्प)**

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### ✦ Khyar-ul-Bulugh means the “Option of Puberty.”

It is the right of a minor who was married by a guardian during minority to **repudiate (cancel)** the marriage on attaining puberty.

Because Muslim marriage is a **contract**, a minor who could not give valid consent is given the option to accept or reject the marriage after becoming mature.

---

**ख़ियार-उल-बुलूग का अर्थ है – वयस्क होने पर विवाह को स्वीकार या अस्वीकार करने का अधिकार।**

यदि नाबालिग का विवाह अभिभावक ने किया हो, तो बालिग होने पर वह उसे अस्वीकार कर सकता/सकती है।

---

### ✅ Conditions

1. Marriage was contracted during minority.
  2. It was contracted by a guardian **other than father or paternal grandfather** (under Sunni law).
  3. The minor must repudiate the marriage after attaining puberty.
  4. Repudiation must be done within reasonable time and before voluntary consummation (in some cases).
- 

### ✓ शर्तें

1. विवाह नाबालिग अवस्था में हुआ हो।
  2. विवाह पिता या पितामह के अलावा किसी अन्य अभिभावक ने कराया हो।
  3. बालिग होने पर विवाह को अस्वीकार किया जाए।
  4. उचित समय में अस्वीकार करना आवश्यक है।
- 

### Important Case

#### **Anis Begum v. Muhammad Istafa Wali Khan**

The Privy Council recognized the doctrine of **Option of Puberty** and allowed a minor wife to repudiate the marriage after attaining puberty.

---

### Short Exam Definition (3-4 lines)

#### **English:**

Khyar-ul-Bulugh is the right of a minor married by a guardian to repudiate the marriage on attaining puberty. It applies when the marriage was contracted during minority by someone other than the father or grandfather.

खियार-उल-बुलूग वह अधिकार है जिसके द्वारा नाबालिग, बालिग होने पर अपने अभिभावक द्वारा किए गए विवाह को अस्वीकार कर सकता/सकती है।

## Dissolution of Muslim Marriages Act, 1939

### Section 2(vii) - Option of Puberty

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#### Explanation

Under **Section 2(vii)** of the **Dissolution of Muslim Marriages Act**, a Muslim wife is entitled to obtain a decree for divorce on the ground of **Option of Puberty**.

#### What the Section Says:

A woman can seek divorce if:

1. She was given in marriage by her **father or other guardian before the age of 15 years**, and
  2. She repudiated the marriage **before attaining 18 years**, and
  3. The marriage has **not been consummated**.
- 

#### Important Points

- This section gives **statutory recognition** to the doctrine of **Khyar-ul-Bulugh**.
  - Unlike classical Sunni law (which excludes father and grandfather), this Act allows repudiation even if the marriage was contracted by the father.
  - Repudiation must be done before 18 years.
  - Marriage must not have been consummated.
- 

**Dissolution of Muslim Marriages Act, 1939 की धारा 2(7) के अनुसार:**

मुस्लिम पत्नी तलाक की डिक्री प्राप्त कर सकती है यदि—

1. उसका विवाह 15 वर्ष की आयु से पहले पिता या अन्य अभिभावक द्वारा किया गया हो,

- उसने 18 वर्ष की आयु से पहले विवाह अस्वीकार कर दिया हो,
- विवाह का सहवास (consummation) न हुआ हो।

---

### Difference from Classical Muslim Law

Classical Law	1939 Act
Father's marriage cannot be repudiated (Sunni law)	Even father's marriage can be repudiated
Puberty presumed at 15	Repudiation allowed till 18
Based on personal law	Based on statutory law

---

### Short Exam Note

#### English:

Section 2(vii) of the Dissolution of Muslim Marriages Act, 1939 allows a Muslim woman to repudiate a marriage contracted before she was 15 years old, provided she does so before 18 years and the marriage is not consummated.

#### Hindi:

धारा 2(7), 1939 अधिनियम के अनुसार, 15 वर्ष से पहले हुआ विवाह 18 वर्ष से पहले अस्वीकार किया जा सकता है, यदि सहवास न हुआ हो।

---

**If any female married before 15 and after 15 if she can withdraw from marriage contract, she can sue in court between 15-18 of the age. court will consider in new law Muslim marriages act 1939 section 2(7).**

### Under the Dissolution of Muslim Marriages Act

#### Section 2(vii) - Option of Puberty

---

### Correct Legal Position (English)

A Muslim woman can file a suit for divorce if:

1. She was married **before the age of 15 years**, and
2. She repudiates (rejects) the marriage **before attaining 18 years**, and
3. The marriage has **not been consummated**.

So yes ✓

If she withdraws from the marriage after attaining 15 but before 18, she can approach the court under Section 2(vii).

---

#### △ Important Clarification

- It is not automatic cancellation.
- She must file a **suit for dissolution in court**.
- Court will grant decree only if:
  - Marriage was before 15
  - Repudiation before 18
  - No consummation

If consummation has taken place, she cannot use this ground.

---

हाँ ✓ आपकी बात लगभग सही है।

यदि—

1. लड़की का विवाह 15 वर्ष से पहले हुआ हो,
2. वह 18 वर्ष से पहले विवाह अस्वीकार करे,
3. सहवास (consummation) न हुआ हो,

तो वह न्यायालय में वाद दायर कर सकती है और धारा 2(7) के अंतर्गत तलाक प्राप्त कर सकती है।

---

### Short Exam Answer (3-4 Lines)

Under Section 2(vii) of the Dissolution of Muslim Marriages Act, 1939, a Muslim woman married before 15 years of age may repudiate the marriage before attaining 18 years, provided the marriage has not been consummated.

---

#### condition for this act 2(7)

#### Section 2(vii) - Conditions Dissolution of Muslim Marriages Act

Section 2(vii) gives a Muslim woman the right to seek divorce on the ground of **Option of Puberty**.

---

#### Essential Conditions

A Muslim woman can obtain a decree of divorce under Section 2(vii) only if:

#### 1 Marriage before 15 years

She was given in marriage **before attaining 15 years of age**.

#### 2 Repudiation before 18 years

She repudiates (rejects) the marriage **before attaining 18 years**.

#### 3 Non-consummation

The marriage **has not been consummated**.

#### 4 Suit in Court

She must file a **suit for dissolution** in a competent court.

---

#### Important Notes

- The marriage may have been contracted by **father or any guardian** (unlike classical Sunni law).
  - Repudiation alone is not enough – **court decree is necessary**.
  - If consummation has taken place, this ground is not available.
-

धारा 2(7) के अंतर्गत तलाक पाने के लिए:

- 1 विवाह 15 वर्ष की आयु से पहले हुआ हो।
- 2 18 वर्ष की आयु से पहले विवाह अस्वीकार किया गया हो।
- 3 विवाह का सहवास (consummation) न हुआ हो।
- 4 न्यायालय में वाद दायर किया गया हो।

---

 **Short Exam Answer (4 Lines)**

Under Section 2(vii) of the Dissolution of Muslim Marriages Act, 1939, a Muslim woman may repudiate a marriage contracted before she attained 15 years of age, provided she does so before attaining 18 years and the marriage has not been consummated.

---

**Azeez Bano v. Muhammad** (*Often written as Ajeej Bano v. Mohamad - 1925*)

---

 **Issue:**

Whether a Muslim wife can refuse to live with her husband if her **prompt dower (Mahr)** has not been paid.

 **Held:**

The Allahabad High Court held that:

- If the dower is **prompt (Mu'ajjal)** and has not been paid,
- The wife has the right to **refuse cohabitation** (conjugal society) with her husband.
- The husband cannot compel her to live with him until the prompt dower is paid.

---

 **Legal Principle**

This case established that:

Payment of prompt dower is a pre-condition for the husband to demand restitution of conjugal rights.

Thus, non-payment of prompt dower is a valid defense against a suit for restitution of conjugal rights.

---

🔍 **प्रश्न:** क्या यदि पति ने तत्काल (prompt) मेहर अदा नहीं किया है, तो पत्नी उसके साथ रहने से इनकार कर सकती है?

⚖️ **निर्णय:**

न्यायालय ने कहा:

- यदि मेहर तत्काल (Prompt) है और उसका भुगतान नहीं हुआ है,
- तो पत्नी पति के साथ रहने से इंकार कर सकती है।
- पति उसे जबरदस्ती साथ रहने के लिए बाध्य नहीं कर सकता।

---

📌 **Short Exam Note**

In *Azeez Bano v. Muhammad* (1925), the court held that non-payment of prompt dower gives the wife the right to refuse cohabitation.

अज़ीज़ बानो बनाम मोहम्मद (1925) में निर्णय दिया गया कि तत्काल मेहर का भुगतान न होने पर पत्नी पति के साथ रहने से इंकार कर सकती है।

■ **Azeez Bano v. Muhammad Ibrahim**

🔍 **Real Issue in This Case**

The case involved:

- A **Shia Muslim girl**
  - Who was married according to **Sunni form of marriage**
  - Question arose whether the marriage was valid.
-

## Court's View

The Allahabad High Court held that:

- Marriage between **Shia and Sunni Muslims is valid**, because both belong to Islam.
  - But if the marriage is performed in a manner **not recognized by the personal law applicable to the girl**, issues may arise.
  - The marriage is **not automatically void just because one is Shia and the other is Sunni**.
- 

## Important Clarification

Sunni and Shia marriage between each other is generally valid.

However:

- If essential Shia law requirements are violated,
- Or if consent/guardian rules are breached,
- Then court may interfere.

It was **not simply broken because she was Shia and he was Sunni**.

---

इस मामले में:

- लड़की शिया थी
- विवाह सुन्नी तरीके से हुआ

न्यायालय ने कहा:

- केवल शिया-सुन्नी होने से विवाह अमान्य नहीं होता।
- दोनों इस्लाम के अंतर्गत आते हैं।

- लेकिन यदि संबंधित संप्रदाय के आवश्यक नियमों का उल्लंघन हो, तो समस्या हो सकती है।

---

### Final Correct Position for Exam

- ✓ Shia-Sunni marriage is generally valid.
  - ✓ It is not void merely due to sect difference.
  - ✓ Court will examine validity according to personal law principles.
- 

## Muta Marriage (Temporary Marriage) **मुत'आ विवाह (अस्थायी विवाह)**

---

### Meaning (English)

**Muta marriage** is a **temporary marriage contract** recognized only under **Shia (Ithna Ashari) law**.

It is a marriage for a **fixed period of time** in exchange for a specified **dower (Mahr)**. It is **not recognized under Sunni law**.

---

### Recognized In

- **Shia Ithna Ashari (Twelver) school**
  - Not valid under Sunni schools
- 

### Essential Conditions (English)

#### 1 Fixed Period

The duration must be clearly specified (e.g., 1 month, 1 year).

#### 2 Specified Dower (Mahr)

Mahr must be fixed at the time of contract.

#### 3 Offer and Acceptance (Ijab & Qubul)

There must be valid consent.

#### 4 No Witness Required

Under Shia law, witnesses are not essential.

If period is not mentioned → marriage becomes void.

If dower is not mentioned → marriage is void.

---

#### Legal Effects

- Ends automatically after fixed period.
- No divorce required.
- Wife is entitled to dower.
- Children are legitimate.
- No mutual inheritance (unless specifically agreed).

---

मुत'आ विवाह एक अस्थायी विवाह है जो केवल शिया कानून में मान्य है।

आवश्यक शर्तें:

- 1 अवधि निश्चित हो
- 2 मेहर निश्चित हो
- 3 प्रस्ताव और स्वीकृति हो
- 4 गवाह आवश्यक नहीं

यदि अवधि या मेहर निश्चित नहीं → विवाह अमान्य।

---

#### Difference: Muta vs Permanent Nikah

Muta Marriage	Permanent Nikah
Temporary	Permanent
Fixed period	No time limit

### **Muta Marriage**

Ends automatically

Only Shia law

No inheritance (normally)

### **Permanent Nikah**

Requires divorce

Sunni & Shia both

Inheritance allowed

---

### **Important Case**

#### **Shoharat Singh v. Jafri Begum**

Privy Council discussed validity and legal effects of Muta marriage under Shia law.

---

### **Short Exam Answer (5 Marks)**

Muta marriage is a temporary marriage recognized under Shia law for a fixed period with specified dower. It automatically dissolves after the period ends. It is not recognized under Sunni law.

---

muta means to use only for enjoyment.

### **View of Justice Tyabji on Muta Marriage**

Justice **Tyabji** (Bombay High Court judge and Muslim law scholar) gave an important opinion on **Muta marriage**.

### **His View (English)**

- Muta marriage is a **valid form of marriage under Shia law**.
- It is not merely prostitution or concubinage.
- It is a lawful contract recognized by Shia personal law.
- However, it differs from permanent Nikah because:
  - It is temporary.
  - No mutual inheritance (unless agreed).
  - It ends automatically after fixed time.

He emphasized that courts must respect Shia personal law where it applies.

---

न्यायमूर्ति तैयबजी के अनुसार:

- मुत'आ विवाह शिया कानून के अंतर्गत वैध है।
  - यह अवैध संबंध या व्यभिचार नहीं है।
  - यह एक वैध अनुबंध (contract) है।
  - लेकिन यह स्थायी निकाह से भिन्न है क्योंकि:
    - इसकी अवधि निश्चित होती है।
    - सामान्यतः उत्तराधिकार का अधिकार नहीं होता।
    - समय समाप्त होने पर स्वतः समाप्त हो जाता है।
- 

### Important Exam Point

Justice Tyabji clarified that:

Muta marriage is legally valid under Shia law and courts must recognize it where Shia personal law applies.

---

in this scenario the marriage is fix only for some time against for some payment.

it is allow in shiya (Ashna ashariy) community only. (who believe in 12 immam)

sunny is not allow this type of marriage.

now discussed historical background for this.

it is not allow in india.

**Muta Marriage - Essential Elements मुत'आ विवाह के आवश्यक तत्व**

*(Recognized only under Shia Ithna Ashari Law)*

---

## ✦ Essential Elements (English)

For a valid **Muta marriage**, the following essentials must be present:

### 1 Fixed Period (Time must be specified)

- The duration of marriage must be clearly mentioned.
  - Example: 1 month, 6 months, 1 year.
  - **!** If period is not specified → marriage is **void**.
- 

### 2 Specified Dower (Mahr must be fixed)

- Mahr must be clearly determined at the time of contract.
  - **!** If dower is not fixed → marriage is **void**.
- 

### 3 Offer and Acceptance (Ijab & Qubul)

- Clear proposal and acceptance in one sitting.
  - Free consent of both parties is required.
- 

### 4 Parties Must Be Competent

- Both must be Muslim (Shia male can marry Muslim, Jewish or Christian woman).
  - Must not fall within prohibited degrees of relationship.
- 

### 5 No Witness Required

- Under Shia law, witnesses are not essential for Muta marriage.
- 

## ✦ Legal Effects (Important for Exam)

- Automatically ends after fixed period.

- No divorce required.
  - Wife entitled to full dower if cohabitation occurs.
  - Children are legitimate.
  - No mutual inheritance (unless agreed).
- 

- 1 अवधि निश्चित हो।
  - 2 मेहर निश्चित हो।
  - 3 प्रस्ताव और स्वीकृति हो।
  - 4 दोनों पक्ष सक्षम हों।
  - 5 गवाह आवश्यक नहीं।
- 

#### Short Exam Answer (4-5 Lines)

A valid Muta marriage requires specification of the period and dower at the time of contract. Without fixing the duration or dower, the marriage is void. It is recognized only under Shia law and automatically dissolves after expiry of the fixed period.

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#### Legal Effects of Muta Marriage **मुत'आ विवाह के कानूनी प्रभाव**

*(Recognized under Shia Ithna Ashari Law only)*

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#### 1 Valid but Temporary Marriage

Muta marriage is a valid marriage under Shia law but it is temporary in nature. मुत'आ विवाह शिया कानून के अंतर्गत वैध है, लेकिन यह अस्थायी होता है।

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#### 2 Automatic Dissolution

It automatically ends after expiry of the fixed period.  
No divorce (Talaq) is required.

निर्धारित अवधि पूरी होने पर विवाह स्वतः समाप्त हो जाता है। तलाक की आवश्यकता नहीं होती।

---

### ✦ 3 Dower (Mahr)

- Wife is entitled to the specified dower.
  - If marriage is consummated → full dower payable.
  - If not consummated → half dower payable (if period not completed).
  - पत्नी मेहर की हकदार होती है।
  - सहवास होने पर पूरा मेहर देय।
  - सहवास न होने पर परिस्थितियों अनुसार आधा मेहर।
- 

### ✦ 4 Legitimacy of Children

Children born from Muta marriage are legitimate and have inheritance rights from parents.

मुत'आ विवाह से उत्पन्न संतान वैध होती है और माता-पिता से उत्तराधिकार का अधिकार रखती है।

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### ✦ 5 No Mutual Inheritance (Between Husband & Wife)

Husband and wife do not inherit from each other unless specifically agreed.

पति-पत्नी के बीच सामान्यतः उत्तराधिकार का अधिकार नहीं होता, जब तक विशेष समझौता न हो।

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### ✦ 6 No Right to Maintenance After Expiry

After the expiry of the term, wife is not entitled to maintenance (except during Iddat).

अवधि समाप्त होने के बाद पत्नी भरण-पोषण की हकदार नहीं होती (सिवाय इद्दत अवधि के)।

### Short Exam Table

Aspect	Legal Effect in Muta
Nature	Temporary
Divorce	Not required
Dower	Mandatory
Children	Legitimate
Inheritance (spouses)	Not allowed
Recognized in	Shia law only

### Short Exam Answer (5 Marks)

Muta marriage is a valid temporary marriage under Shia law. It automatically dissolves after the fixed period. The wife is entitled to dower, children are legitimate, but spouses do not inherit from each other unless agreed.

### Comparison Between Nikah and Muta Marriage

#### निकाह और मुत'आ विवाह में अंतर

Basis	Nikah (Permanent Marriage)	Muta Marriage (Temporary Marriage)
Nature	Permanent marriage	Temporary marriage
Recognition	Recognized by Sunni & Shia law	Recognized only under Shia (Ithna Ashari) law
Duration	No fixed time	Fixed period must be specified

<b>Basis</b>	<b>Nikah (Permanent Marriage)</b>	<b>Muta Marriage (Temporary Marriage)</b>
<b>End of Marriage</b>	Ends by divorce (Talaq) or death	Ends automatically after fixed period
<b>Dower (Mahr)</b>	Dower is necessary but can be fixed later	Dower must be fixed at the time of contract
<b>If Period Not Mentioned</b>	Still valid	Void
<b>If Dower Not Mentioned</b>	Valid (proper dower applies)	Void
<b>Witnesses</b>	Required (especially in Sunni law)	Not required under Shia law
<b>Maintenance</b>	Wife entitled to maintenance	Generally no maintenance after expiry (except Iddat)
<b>Inheritance (Spouses)</b>	Husband and wife inherit from each other	No mutual inheritance (unless agreed)
<b>Children</b>	Legitimate	Legitimate
<b>Divorce Required?</b>	Yes	No (automatic expiry)

 **Short Exam Conclusion (4-5 Lines)**

Nikah is a permanent marriage recognized in both Sunni and Shia law, whereas Muta marriage is a temporary marriage recognized only under Shia law. In Muta, both duration and dower must be specified, and the marriage automatically dissolves after expiry of the fixed period.

**Shohrat Singh v. Musammat Jafri Bibi**

*(Privy Council - Important case on Muta marriage under Shia Law)*

## 🔴 English Explanation

### 🔍 Issue:

Whether a woman claiming to be a wife under a **Muta (temporary) marriage** was legally entitled to inheritance and other marital rights.

---

⚖️ **Held:** The Privy Council held that:

- 1 **Muta marriage is valid under Shia law.**
  - 2 It is a lawful form of marriage, not illicit cohabitation.
  - 3 However, in a Muta marriage:
    - The wife **does not inherit** from the husband.
    - The husband does not inherit from the wife.
    - 4 Children born from Muta marriage are **legitimate** and can inherit from parents.
- 

### 📖 Legal Principle Established

- Muta marriage creates a valid marital status under Shia law.
  - But it does **not give full matrimonial rights** like permanent Nikah.
  - Especially, **no mutual inheritance between spouses**.
- 

🔍 **प्रश्न:** क्या मुत'आ विवाह से पत्नी को उत्तराधिकार का अधिकार मिलता है?

### ⚖️ निर्णय:

- प्रिवी काउंसिल ने कहा कि मुत'आ विवाह शिया कानून में वैध है।
- यह अवैध संबंध नहीं है।
- लेकिन पति-पत्नी के बीच उत्तराधिकार का अधिकार नहीं होता।
- संतान वैध होती है और माता-पिता से उत्तराधिकार पा सकती है।

### Exam Importance

This case is important to prove:

- ✓ Validity of Muta marriage
  - ✓ No inheritance between spouses
  - ✓ Legitimacy of children
- 

### Short Exam Note (3-4 Lines)

In *Shohrat Singh v. Musammat Jafri Bibi* (1915), the Privy Council upheld the validity of Muta marriage under Shia law but clarified that spouses do not inherit from each other, though children remain legitimate.

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### **Amanullah Husaini v. Rajamma**

*(Andhra Pradesh High Court - Important case on Muta marriage)*

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### English Explanation

#### Issue:

Whether a woman claiming to be a wife under **Muta marriage** was entitled to maintenance.

---

 **Held:** The Andhra Pradesh High Court held:

- 1** A **Muta marriage is a valid marriage under Shia law.**
  - 2** A woman married under Muta is legally a wife for the fixed period.
  - 3** She is entitled to **maintenance during the subsistence of the Muta marriage.**
  - 4** After the expiry of the fixed term, she is not entitled to maintenance (except during Iddat).
- 

### Legal Principle

- Muta marriage is not immoral or illegal under Shia law.
  - It creates lawful marital rights for the duration of the contract.
  - Maintenance depends on the subsistence of the marriage.
- 

🔍 **प्रश्न:** क्या मुत'आ विवाह में पत्नी को भरण-पोषण (maintenance) का अधिकार है?

🏛️ **निर्णय:**

- मुत'आ विवाह शिया कानून में वैध है।
  - विवाह की अवधि तक पत्नी भरण-पोषण की हकदार है।
  - अवधि समाप्त होने के बाद सामान्यतः भरण-पोषण का अधिकार नहीं रहता (सिवाय इद्दत के)।
- 

🎯 **Importance for Exam**

This case clarified:

- ✓ Validity of Muta marriage
  - ✓ Right of maintenance during the fixed period
  - ✓ No permanent matrimonial rights after expiry
- 

📝 **Short Exam Note (3-4 lines)**

In Amanullah Husaini v. Rajamma (1977), the Andhra Pradesh High Court held that a woman in a valid Muta marriage is entitled to maintenance during the subsistence of the marriage, but not after its expiry.

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**\*\*\* shiya can marriage any KITABIYA follower girl KITABIYA means who can prayer only for book not any statue like hindu.**

**\*\*\* but any muslim girl has to be bound to marry with any muslim boy not any other.**

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## IDDAT      waiting period      शौक का समय , प्रतीक्षा की अवधि

3 types of iddat in muslim law

- a      after husband death
- b      when a man divorce to a woman
- c      after mutta marriage time over

**justice Mahmood says - after iddat period is allow any new marriage and it will count as legal marriage.**

**Iddat (इद्दत)** is the mandatory waiting period a Muslim woman must observe after dissolution of marriage (by divorce or death of husband). The period differs according to circumstances.

Below are the different scenarios:

---

### 1 In Case of Divorce (Talaq)

According to Muslim law:

- **Three menstrual cycles** → If the woman is menstruating.
- **Three lunar months** → If she is not menstruating (due to age or other reason).
- ◆ This rule is based on the Quran (Surah Al-Baqarah 2:228).

---

### 2 If the Woman is Pregnant (Divorce or Death)

- Iddat continues **until the delivery of the child**, whether it is:
  - Divorce
  - Death of husband

✓ Even if delivery happens shortly after divorce/death, iddat ends at childbirth.

---

### 3 In Case of Death of Husband (Widow)

- **Four months and ten days**

(4 lunar months + 10 days)

- ♦ This is prescribed in Surah Al-Baqarah 2:234.

✓ If pregnant → Iddat ends at delivery (even if before 4 months 10 days).

---

#### 4 If Marriage Not Consummated

If divorce occurs **before consummation (no cohabitation)**:

- **✗** No iddat is required.

(Recognized under classical Muslim law and also reflected in the Dissolution of Muslim Marriages Act, 1939 principles.)

---

#### 5 In Case of Judicial Divorce (Faskh)

If marriage is dissolved by court:

- Same iddat as divorce:
    - 3 menstrual cycles
    - or 3 lunar months
    - or till delivery (if pregnant)
- 

#### 6 In Case of Khula (Divorce at Wife's Instance)

- Majority Sunni view → Same as talaq (3 menstrual cycles).
  - Some Shia opinions → One menstrual cycle only.
- 

#### 7 In Case of Muta Marriage (Shia Law)

Under Shia law:

- Divorce of Muta → **Two menstrual periods**

- If not menstruating → **45 days**
- 

### **Purpose of Iddat**

1. To ascertain pregnancy.
  2. To maintain respect for the previous marriage.
  3. To prevent confusion of lineage.
- 

### **✦ When Does Iddat Period Start & How Is It Counted?**

The starting point and method of counting **iddat** depend on the mode of dissolution of marriage.

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### **1 In Case of Divorce (Talaq)**

- ◆ **Iddat begins from the date when talaq becomes effective.**
  - If talaq is pronounced clearly (Talaq-e-Ahsan or Hasan) → It starts **from the date of pronouncement.**
  - If talaq is communicated later → It starts **from the date the wife receives knowledge of talaq** (important in case law).

🕒 Example: If talaq is pronounced on 1st January → Iddat starts from 1st January.

### **✅ How to Count?**

- **Menstruating woman** → Count **three complete menstrual cycles.**
  - **Not menstruating** → Count **three lunar months** (Islamic months).
  - **Pregnant** → Till delivery.
- 

### **2 In Case of Death of Husband**

◆ Iddat begins **from the date of death**, NOT from the date when wife gets information.

- Period = **4 months and 10 days**
- If pregnant → Till delivery.

🕌 Even if wife learns about death later, iddat is counted from actual date of death.

---

### 3 Judicial Divorce (Faskh)

If marriage is dissolved by court:

- Iddat starts **from the date of decree** passed by the court.
- Period same as divorce (3 cycles / 3 lunar months / till delivery).

Relevant principles are discussed under the Dissolution of Muslim Marriages Act, 1939.

---

### 4 Khula (Mutual Divorce)

- Iddat starts from the **date of acceptance of khula**.
  - Period same as talaq (3 menstrual cycles - Sunni view).
- 

### 5 Muta Marriage (Shia Law)

- Iddat starts from the date of expiry of term or earlier termination.
  - Period:
    - 2 menstrual cycles
    - or 45 days (if not menstruating)
- 

### 12/34 Important Exam Point (LLB)

- ✓ Lunar month = 29 or 30 days (Islamic calendar).
  - ✓ Day of pronouncement/death is included in counting.
  - ✓ If pregnant → Delivery ends iddat even if it is the next day.
- 
- 

**MEHAR      DOWER      THIS law started by prophet Mohammad.**

### What Did Justice Wilson Mean?

**Justice Wilson observed that iddat is necessary because a woman has “given her body to her husband”, and therefore:**

- The law requires a waiting period
- To determine whether she is pregnant
- To prevent confusion of paternity
- To protect legitimacy of the child

This reflects the **classical juristic reasoning** behind iddat under traditional Muslim law.

---

### Legal Explanation

Under classical Muslim jurisprudence:

- Marriage creates a lawful sexual relationship.
- After dissolution, the law presumes possibility of pregnancy.
- Therefore, iddat ensures:
  1. Certainty of lineage (nasab)
  2. Protection of inheritance rights
  3. Social order

Justice Wilson’s wording reflects the **19th-century judicial language**, which today may sound gender-biased, but at that time courts were interpreting Muslim personal law based on traditional juristic texts.

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### Modern View

Modern courts explain iddat more neutrally:

- It is primarily for **ascertaining pregnancy**.
  - It also has religious and social significance.
  - It is not viewed as ownership of a woman’s body, but as a rule concerning lineage and marital status.
- 
- 

mehar dower allow because current law don’t allow triple talaq. and mehar is play a good role for stop this issue.

in this scenario we can check the given case

### Shayara Bano v. Union of India

### Citation:

(2017) 9 SCC 1 Decided by: **Supreme Court of India** Judgment Date: 22 August 2017

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### Facts of the Case

- Shayara Bano was divorced by her husband through **Triple Talaq (Talaq-e-Biddat)**.
- She challenged the constitutional validity of:
  1. Triple Talaq
  2. Polygamy
  3. Nikah Halala

The main issue before the Court was whether **Triple Talaq** was constitutional.

---

### Issues

1. Whether **Talaq-e-Biddat (instant triple talaq)** violates:
    - Article 14 (Equality)
    - Article 15 (Non-discrimination)
    - Article 21 (Right to life & dignity)
  2. Whether it is protected under Article 25 (Freedom of religion).
- 

 **Judgment (5-Judge Constitutional Bench)** The Court, by **3:2 majority**, held:

✓ **Triple Talaq (Talaq-e-Biddat) is unconstitutional.**

✓ It is arbitrary and violates Article 14.

✓ It is not an essential religious practice under Islam.

#### **Majority Judges:**

- Justice Rohinton F. Nariman
- Justice U.U. Lalit
- Justice Kurian Joseph

#### **Minority View:**

- Chief Justice J.S. Khehar
  - Justice Abdul Nazeer
- 

### Important Observations

- Instant divorce without reconciliation is arbitrary.

- Quran does not approve instant triple talaq.
  - Muslim women have fundamental rights like other citizens.
- 

### **Aftermath**

Following this judgment, Parliament enacted:

### **Muslim Women (Protection of Rights on Marriage) Act, 2019**

This Act:

- Declared triple talaq void.
  - Made it a punishable offence (up to 3 years imprisonment).
- 

### **Importance for LLB**

- Landmark case on **gender justice**.
  - Balance between **Personal Law and Fundamental Rights**.
  - Strengthened constitutional morality.
- 
- 

### **types of Iddat**

In Muslim Law, **Dower (Mahr)** is the amount of money or property which the husband agrees to give to the wife in consideration of marriage.

There are **mainly two broad types**, but they are further classified. 

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### **Types of Dower (Mahr)**

#### **Specified Dower (Mahr-i-Musamma)**

This is the dower **fixed at the time of marriage** (Nikah).

It may be:

#### **(a) Prompt Dower (Mu'ajjal)**

- Payable **immediately on demand**.
- Wife can refuse cohabitation until it is paid.

#### **(b) Deferred Dower (Mu'wajjal)**

- Payable **upon dissolution of marriage** (death or divorce).
- Becomes payable after divorce or husband's death.

✓ Most marriages fix part as prompt and part as deferred.

## 2 Proper Dower (Mahr-i-Misl)

- When no dower is fixed at the time of marriage.
- The court determines it.
- It is decided based on:
  - Wife's social status
  - Family custom
  - Dower given to female relatives

### Summary Table

Type	Meaning	When Payable
Specified Dower	Fixed at marriage	As agreed
→ Prompt	Immediate	On demand
→ Deferred	Later	On divorce/death
Proper Dower	Not fixed, decided by court	As determined

### Exam Point (LLB)

- ✓ Dower is a **legal obligation**, not a gift.
- ✓ Even if not mentioned in Nikah, wife is entitled to proper dower.
- ✓ It is a debt against the husband.

 **Iddat amount is not fixed based on qualification, beauty, father's status, or husband's status.**

Iddat is a *waiting period*, not an amount.

You are probably asking about **maintenance during iddat** or about **proper dower (Mahr-i-Misl)** — because those can depend on status.

Let me explain clearly.

## 1 Maintenance During Iddat

Under Muslim law and also under:

- Mohd. Ahmed Khan v. Shah Bano Begum
- Muslim Women (Protection of Rights on Divorce) Act, 1986

A divorced Muslim woman is entitled to **reasonable and fair provision and maintenance** during iddat.

📌 **How is amount decided?**

Court considers:

- Husband's income and financial capacity
- Wife's needs
- Standard of living during marriage
- Number of dependents

❌ Beauty is NOT a legal factor.

❌ Father's wealth is generally irrelevant.

✓ Husband's earning capacity is important.

After the case of **Danial Latifi v. Union of India**, the Supreme Court held:

👉 Husband must make a **reasonable and fair provision within iddat period**, but it can cover her future needs also.

---

**2 Proper Dower (Mahr-i-Misl)**

If dower was not fixed, court fixes it.

Here the following may be considered:

- Wife's social status
- Education/qualification
- Family custom
- Dower given to her sisters or female relatives
- Husband's financial status

✓ Here, family background and social position matter.

❌ Physical beauty is not officially a legal ground, though classical jurists sometimes mentioned "age and personal qualities."

---

🎓 **Important Exam Difference**

Topic	Based on Beauty?	Based on Husband Income?
Iddat Period	❌ No	❌ No
Iddat Maintenance	❌ No	✓ Yes

Topic	Based on Beauty?	Based on Husband Income?
Proper Dower	Indirectly (classical view) ✓	Yes

---

### 🔑 Conclusion (LLB Point)

- Iddat is a **fixed religious period**, not money.
  - Maintenance is based on **reasonableness and financial capacity**.
  - Proper dower may consider **social status and family background**, not merely beauty.
- 

⚖️ **Hamira Bibi v. Zubaida Bibi** (1916) 43 IA 294 (Privy Council)

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### 📄 Facts of the Case

- The dispute was regarding **recovery of dower (Mahr)**.
  - The wife (or her representative) claimed unpaid dower from the husband's estate.
  - The question was whether dower is merely a religious obligation or a legally enforceable debt.
- 

### ? Issue

Whether **dower (Mahr)** is:

1. A moral/religious obligation only?  
OR
  2. A legally enforceable debt against the husband?
- 

### 🏛️ Judgment

The **Privy Council held**:

- ✓ Dower is **not a gift**.
  - ✓ It is a **debt owed by the husband to the wife**.
  - ✓ It is enforceable like any other civil debt.
  - ✓ Wife can sue for recovery of unpaid dower.
- 

### 📖 Important Principle Laid Down

“Dower is a sum of money or other property promised by the husband to be paid or delivered to the wife in consideration of marriage.”

This case clearly established that:

- Dower becomes payable immediately if prompt.
  - If deferred, it becomes payable upon divorce or death.
  - Wife has priority over other unsecured creditors in certain situations (especially in widow's claim).
- 

### Prompt Dower and Deferred Dower (Muslim Law)

In Muslim Law, **Dower (Mahr)** is a legal obligation imposed upon the husband as consideration for marriage. It is not a gift, but a **debt** payable to the wife.

The legal nature of dower was clearly explained in

 **Hamira Bibi v. Zubaida Bibi** — where it was held that dower is a legally enforceable debt.

---

### Prompt Dower (Mahr-e-Mu'ajjal)

#### Meaning:

- Dower which is **payable immediately** after marriage.
- It becomes payable **on demand** by the wife.

#### Features:

- ✓ Wife can demand it anytime after marriage.
- ✓ She can refuse cohabitation until it is paid.
- ✓ If unpaid, she can file a suit for recovery.

#### Important Point:

Even if no time is fixed, it is presumed to be prompt unless otherwise specified.

---

### Deferred Dower (Mahr-e-Mu'wajjal)

#### Meaning:

- Dower payable at a **future time**.
- Usually payable upon:
  - Divorce
  - Death of husband

#### Features:

- ✓ Not payable immediately.
- ✓ Becomes due when marriage is dissolved.
- ✓ Widow can claim it from husband's estate.

### Difference Between Prompt & Deferred Dower

Basis	Prompt Dower	Deferred Dower
Time of Payment	Immediately / On demand	On divorce or death
Right to Refuse Cohabitation	Yes	No
When Recoverable	After marriage	After dissolution
Nature	Immediate debt	Future debt

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### Anees Begum v. Malik Mohammad

#### Legal Issue

Whether a Muslim wife can **refuse to cohabit (deny conjugal rights)** with her husband if her **prompt dower (Mahr-e-Mu'ajjal)** has not been paid.

---

#### Facts (Brief)

- The husband filed a suit for **restitution of conjugal rights**.
  - The wife refused to live with him.
  - Her defence: **Prompt dower was not paid**, therefore she had a lawful right to refuse cohabitation.
- 

#### Issue Before the Court

Can non-payment of **prompt dower** be a valid defence against a husband's suit for restitution of conjugal rights?

---

#### Judgment

The Allahabad High Court held:

- ✓ If **prompt dower is unpaid**, the wife has a **legal right to refuse cohabitation**.
  - ✓ Non-payment of prompt dower is a **complete defence** to a suit for restitution of conjugal rights.
  - ✓ Dower is not a mere religious formality; it is a **legal debt**.
- 

#### Legal Principle Established

1. Prompt dower becomes payable **immediately after marriage**.

2. Wife can:

- Refuse to sleep with the husband
- Refuse to go to the matrimonial home
- Resist restitution of conjugal rights until prompt dower is paid.

However 🗨️

◆ If marriage is consummated voluntarily, the right to refuse cohabitation may weaken (though she can still sue for recovery of dower).

---

### 🎓 Exam Points (LLB – 5/10 Marks)

- Prompt dower = immediate obligation.
- Wife's refusal is legally justified.
- Strong authority supporting wife's financial rights.
- Often cited along with **Hamira Bibi v. Zubaida Bibi** (nature of dower as debt).

---

**is there right to recover mehar like a debt from husband property after his death or after talaq**

Yes ✅ — **Mehar (Dower) is a legally enforceable debt**, and the wife has a full right to recover it:

- ✓ After husband's death
- ✓ After divorce (Talaq)
- ✓ Even during subsistence of marriage (if prompt)

This principle was clearly established in

👉 **Hamira Bibi v. Zubaida Bibi**

The Court held that **dower is a debt, not a gift**, and can be recovered like any other civil debt.

---

### 📌 1 After Husband's Death

If husband dies:

- Deferred dower becomes immediately payable.
- Wife can claim it from the **husband's estate**.
- It is treated as a **debt against the estate**.
- It must be paid **before distribution of inheritance** among heirs.

⚖️ **Legal Position:**

Wife stands like a creditor.

- ✓ If property is insufficient → She gets proportionately like other unsecured creditors.
- ✓ She may retain possession of husband's property until payment (in some situations — doctrine of retention).

---

### 📌 2 After Divorce (Talaq)

- Deferred dower becomes payable immediately.
- Wife can file a civil suit to recover the amount.
- Prompt dower (if unpaid) can also be claimed.

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### 📌 3 During Marriage

If dower is **prompt (Mu'ajjal)**:

- Wife can demand it anytime.
- She may refuse cohabitation until it is paid.
- Supported by  
👉 **Anees Begum v. Malik Mohammad**

---

### 📊 Summary Table

Situation	Right to Recover?	From Where?
During marriage (Prompt)	Yes	From husband
After divorce	Yes	From husband
After husband's death	Yes	From his estate before inheritance

---

### 🎓 Important LLB Points

- ✓ Mehar = Legal debt.
- ✓ Payable even if not written in Nikah (Proper dower).
- ✓ Wife becomes creditor after husband's death.
- ✓ It has priority over inheritance distribution.

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🏛️ **Maina Bibi v. Chaudhary Vakil Ahmad** Allahabad High Court Year: 1924

---

### 📄 Facts (Brief)

- The husband filed a **suit for restitution of conjugal rights**.

- The wife refused to live with him.
  - Her defence: **Prompt dower (Mahr-e-Mu'ajjal) had not been paid.**
  - The question was whether non-payment of prompt dower is a valid ground to refuse cohabitation.
- 

### Legal Issue

Can a Muslim wife lawfully refuse to go to her husband or deny marital cohabitation if her **prompt dower is unpaid?**

---

### Judgment

The Allahabad High Court held:

- ✓ If prompt dower is unpaid, the wife has a **legal right to refuse cohabitation.**
  - ✓ Non-payment of prompt dower is a **complete defence** to a suit for restitution of conjugal rights.
  - ✓ However, this right exists particularly **before consummation of marriage.**
- 

### Important Principle

- Prompt dower is payable immediately.
  - Wife is not bound to live with husband until it is paid.
  - If marriage has already been consummated voluntarily, the court may still pass decree for restitution, but wife can claim unpaid dower separately.
- 

### Difference from Other Case

Similar principle was also affirmed in

#### **Anees Begum v. Malik Mohammad**

Both cases support the wife's right to insist on payment of prompt dower.

---

### Exam Points (LLB – 5/10 Marks)

1. Prompt dower gives wife right to refuse cohabitation.
  2. Non-payment is valid defence against restitution suit.
  3. Dower is enforceable as debt.
- 
- 

time period for demanding mehar

### Time Period for Demanding Mehr (Dower)

In Muslim Law, **Mehar (Dower)** is treated as a **debt**. Therefore, it is subject to the **law of limitation**, just like any other civil debt.

The legal nature of dower as a debt was established in:

👉 **Hamira Bibi v. Zubaida Bibi**

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### 📌 1 Prompt Dower (Mahr-e-Mu'ajjal)

#### ◆ When can it be demanded?

- Immediately after marriage.
- Wife can demand it at any time during marriage.

#### ◆ Limitation Period:

Under the Limitation Act (general rule for money recovery):

✓ **3 years** from the date when the dower becomes payable.

→ Since prompt dower is payable immediately, limitation generally starts from:

- Date of marriage  
OR
  - Date of demand and refusal (as interpreted in some cases).
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### 📌 2 Deferred Dower (Mahr-e-Mu'wajjal)

#### ◆ When does it become payable?

- On divorce  
OR
- On death of husband.

#### ◆ Limitation Period:

✓ **3 years** from:

- Date of divorce  
OR
  - Date of husband's death.
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### 📌 3 If Husband Dies

- Wife can claim from husband's estate.
- Limitation = **3 years from date of death**.

However 👉

If wife is already in possession of husband's property (Right of Retention), limitation may not strictly bar her defensive possession.

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### Summary Table

#### Type of Dower When Payable Limitation Period

Prompt	Immediately	3 years from demand/refusal
Deferred	Divorce/Death	3 years from dissolution
After Death	From estate	3 years from death

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### Important Exam Points

- ✓ Mehar is not automatically time-barred unless suit is filed after limitation period.
  - ✓ It is governed by the Limitation Act (money recovery rules).
  - ✓ Wife can also use unpaid dower as defence (e.g., against restitution of conjugal rights).
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abdul kadir v saleema 1886  **Abdul Kadir v. Salima** (1886) ILR 8 All 149  
Decided by: Allahabad High Court  
Judges: Justice Mahmood & Justice Straight

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### Facts of the Case

- Abdul Kadir (husband) filed a **suit for restitution of conjugal rights** against his wife, Salima.
  - The wife refused to live with him.
  - She pleaded that:
    - Her **prompt dower was unpaid**.
    - There were valid reasons for her refusal.
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### Main Legal Issue

1. Whether a Muslim marriage is a **religious sacrament** or a **civil contract**?
  2. Whether the husband has an absolute right to restitution of conjugal rights?
  3. Whether non-payment of prompt dower is a valid defence?
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### Judgment

Justice Mahmood delivered a landmark judgment and held:

