

Introduction to Muslim Law

Introduction

Muslim Law is a body of legal principles and rules that govern the personal, family, and property relations of Muslims. It deals with matters such as marriage, divorce, maintenance, guardianship, inheritance, wills, gifts, and religious obligations. Unlike many modern legal systems, Muslim Law is not merely a set of legal rules; it is also a religious and moral code of conduct derived from the teachings of Islam.

Meaning of Muslim Law

Muslim Law refers to the rules and principles that regulate the conduct of Muslims in their personal and social life. It is commonly known as **Shariat (Islamic Law)**.

According to Mulla: "Muslim Law consists of those rules and principles which regulate the conduct of Muslims and are derived from Islamic sources."

Nature of Muslim Law

1. **Religious Law** Muslim Law is primarily based on religion. Its rules are derived from Islamic teachings and religious sources.
2. **Personal Law** It mainly governs personal matters such as marriage, divorce, maintenance, inheritance, succession, wills, and gifts.
3. **Divine Law** Muslims believe that the fundamental principles of Muslim Law originate from **Allah (God)** and are therefore divine in nature.
4. **Combination of Law and Morality** Muslim Law contains both legal and moral obligations. Many acts are regulated not only by legal consequences but also by religious duties.
5. **Universal Character** The basic principles of Muslim Law apply to Muslims throughout the world, although local customs and legislation may modify its application.

Historical Development of Muslim Law

The development of Muslim Law may be divided into four stages:

- (1) **The Period of Prophet Muhammad (610–632 A.D.)** During this period, the foundations of Islamic Law were laid through divine revelations and the teachings of the Prophet.
- (2) **The Period of the Caliphs (632–661 A.D.)** The successors of the Prophet interpreted and applied Islamic principles to new situations and disputes.
- (3) **The Period of Islamic Jurists** Great jurists and scholars developed legal doctrines and established various schools of Muslim Law.
- (4) **The Modern Period** Many Muslim countries introduced legislative reforms and adapted traditional principles to modern conditions.

Muslim Law in India

Muslim Law came to India with the establishment of Muslim rule. During British rule, Muslim personal matters continued to be governed by Muslim Law.

A significant legislation in India is:

- Muslim Personal Law (Shariat) Application Act, 1937

Under this Act, matters relating to marriage, divorce, inheritance, succession, gifts, and waqf are generally governed by Muslim Personal Law.

Importance of Muslim Law

1. It regulates the personal and family life of Muslims.
2. It provides rules regarding marriage and divorce.
3. It governs inheritance and succession to property.
4. It protects family relationships and social order.
5. It forms an important part of India's plural legal system.

Conclusion

Muslim Law is a comprehensive system of personal law based on the teachings of Islam. It governs various aspects of the life of Muslims, including family relations, property rights, and religious obligations. In India, it continues to play a significant role in matters relating to marriage, divorce, inheritance, wills, and gifts.

Short Definition for Revision - "Muslim Law is a body of legal principles derived from Islamic sources that governs the personal, family, and property relations of Muslims."

Key Topics to Study Next

1. Sources of Muslim Law
2. Schools of Muslim Law
3. Marriage (Nikah)
4. Dower (Mahr)
5. Divorce (Talaq)
6. Maintenance
7. Guardianship
8. Gifts (Hiba)
9. Waqf
10. Inheritance and Succession

Sources of Muslim Law

Introduction - The term **Sources of Muslim Law** refers to the origins from which the rules and principles of Muslim Law are derived. Muslim Law is based primarily on divine revelations and the teachings of Islam. Over time, Islamic jurists developed additional methods to interpret and apply these principles to changing circumstances.

The sources of Muslim Law are generally divided into **Primary Sources** and **Secondary Sources**.

I. Primary Sources of Muslim Law

1. Quran - The **Quran** is the most important and authoritative source of Muslim Law. Muslims believe it to be the word of Allah revealed to Prophet Muhammad through the angel Gabriel.

Importance

- Supreme source of Muslim Law.
- Contains rules relating to marriage, divorce, inheritance, contracts, and family relations.
- No other source can override the Quran.

Example -The Quran lays down detailed rules regarding inheritance and the rights of women and children.

2. Sunnah (Traditions of the Prophet) Sunnah refers to the practices, sayings, and approvals of Prophet Muhammad. Where the Quran is silent or ambiguous, the Sunnah provides guidance.

Types of Sunnah

- (a) **Sunnat-ul-Qaul** -The sayings of the Prophet.
- (b) **Sunnat-ul-Fail** The actions of the Prophet.
- (c) **Sunnat-ul-Taqrir** -Practices approved by the Prophet.

Importance

- Explains and supplements the Quran.
- Second most important source of Muslim Law.

3. Ijma (Consensus) - Ijma means the consensus or agreement of qualified Islamic jurists on a legal question. After the death of the Prophet, new issues arose for which neither the Quran nor Sunnah provided clear answers. In such situations, jurists arrived at a consensus.

Importance

- Helps in the development of Islamic law.
- Provides solutions to new legal problems.
- Ensures uniformity in legal interpretation.

Example Consensus among jurists regarding many commercial and social practices.

4. Qiyas (Analogical Deduction) Qiyas means reasoning by analogy. (When a new issue is not directly covered by the Quran, Sunnah, or Ijma, jurists compare it with an existing rule and apply the same principle.)

Importance

- Makes Muslim Law adaptable to changing circumstances.
- Helps resolve modern legal issues.

Example

The prohibition of narcotic drugs is derived by analogy from the Quranic prohibition of alcohol because both cause intoxication.

II. Secondary Sources of Muslim Law

1. **Custom (Urf)** Custom refers to long-established practices accepted by society.

A custom may be recognized if:

- It is ancient.
- It is certain and reasonable.
- It is not contrary to the Quran or Sunnah.

Importance Custom plays a significant role in matters where religious texts are silent.

2. **Judicial Decisions** - Court decisions help in interpreting and applying Muslim Law.

Importance

- Clarify legal principles.
- Resolve ambiguities.
- Provide precedents for future cases.

Indian courts have contributed significantly to the development of Muslim Personal Law.

3. **Legislation** - Modern statutes enacted by legislatures also constitute a source of Muslim Law.

Important Indian enactments include:

- Muslim Personal Law (Shariat) Application Act, 1937
- Dissolution of Muslim Marriages Act, 1939
- Muslim Women (Protection of Rights on Divorce) Act, 1986

Importance - Legislation modernizes and clarifies traditional Muslim Law.

4. **Justice, Equity and Good Conscience** - Where no clear rule exists, courts may apply principles of justice, fairness, and good conscience.

Importance

- Prevents injustice.
- Helps courts decide difficult cases.
- Promotes fairness in legal administration.

Classification of Sources

Primary Sources Secondary Sources

Quran

Custom (Urf)

Primary Sources Secondary Sources

Sunnah	Judicial Decisions
Ijma	Legislation
Qiyas	Justice, Equity and Good Conscience

Conclusion

The sources of Muslim Law provide the foundation of the Islamic legal system. The **Quran** is the supreme source, followed by **Sunnah**, **Ijma**, and **Qiyas**. Secondary sources such as custom, judicial decisions, legislation, and principles of justice help adapt Muslim Law to changing social conditions. Together, these sources form a comprehensive legal framework governing the personal and family affairs of Muslims.

Examination-Oriented Definition - "The sources of Muslim Law are the authorities from which the rules and principles of Islamic law are derived. The primary sources are the Quran, Sunnah, Ijma, and Qiyas, while the secondary sources include custom, judicial decisions, legislation, and justice, equity, and good conscience."

Schools of Muslim Law Introduction

After the death of Prophet Muhammad in 632 A.D., differences arose among Muslims regarding the interpretation of Islamic teachings and the succession to the Prophet. As a result, different schools of Muslim Law developed. These schools interpreted the Quran, Sunnah, Ijma, and Qiyas in different ways and contributed significantly to the development of Islamic jurisprudence.

The two principal schools of Muslim Law are:

1. **Sunni School**
2. **Shia School**

I. Sunni School - The Sunni School represents the majority of Muslims throughout the world. Most Muslims in India belong to this school. **The Sunni School is divided into four major sub-schools:**

1. **Hanafi School** - The Hanafi School was founded by Abu Hanifa (699–767 A.D.).

Characteristics

- Oldest and most widely followed school.
- Gives considerable importance to reason and analogy (Qiyas).
- Liberal and practical in approach.
- Most Indian Muslims follow the Hanafi School.

Areas of Influence - India, Pakistan, Bangladesh, Turkey, Central Asia, and parts of the Middle East.

2. **Maliki School** The Maliki School was founded by Imam Malik (711–795 A.D.).

Characteristics

- Relies heavily on the customs and practices of the people of Medina.
- Gives importance to public welfare and social customs.
- Conservative but practical.

Areas of Influence - North and West Africa, including Morocco, Algeria, Tunisia, and Libya.

3. **Shafi School** - The Shafi School was founded by Imam Al-Shafi'i (767–820 A.D.).

Characteristics

- Emphasizes the Quran and Sunnah.
- Developed systematic principles for Islamic jurisprudence.
- Recognizes Ijma and Qiyas within defined limits.

Areas of Influence - Indonesia, Malaysia, Egypt, East Africa, and parts of South-East Asia.

4. **Hanbali School** - The Hanbali School was founded by Ahmad ibn Hanbal (780–855 A.D.).

Characteristics

- Most conservative among Sunni schools.
- Strict adherence to the Quran and Sunnah.
- Limited use of personal reasoning and analogy.

Areas of Influence - Saudi Arabia and parts of the Arabian Peninsula.

II. **Shia School** - The Shia School developed from the belief that leadership of the Muslim community should remain within the family of the Prophet.

The major Shia sub-schools are:

1. **Ithna Ashari (Twelver School)**

Characteristics

- Largest Shia sect.
- Believes in twelve Imams as spiritual and political successors of the Prophet.
- Most Shias in India belong to this school.

Areas of Influence - Iran, Iraq, India, Pakistan, and Lebanon.

2. **Ismaili School**

Characteristics

- Developed due to a dispute regarding succession after the sixth Imam.
- Emphasizes spiritual leadership and esoteric interpretation of Islam.

Areas of Influence - India, Pakistan, East Africa, and parts of Central Asia.

3. **Zaidi School**

Characteristics

- Considered the most moderate Shia school.
- Similar in many respects to Sunni jurisprudence.
- Gives greater importance to reasoning.

Areas of Influence - Mainly Yemen.

Difference Between Sunni and Shia Schools

Basis	Sunni School	Shia School
Succession	Leader (Caliph) elected by the community	Leadership belongs to the Prophet's family
Majority	Largest Muslim community	Minority Muslim community
Sources of Law	Quran, Sunnah, Ijma, Qiyas	Quran, Sunnah, teachings of Imams
Major Schools	Hanafi, Maliki, Shafii, Hanbali	Ithna Ashari, Ismaili, Zaidi
Presence in India	Majority of Muslims	Minority of Muslims

Importance of Schools of Muslim Law

1. They helped in the systematic development of Islamic jurisprudence.
2. They interpreted Islamic principles according to changing social conditions.
3. They provided solutions to legal issues not expressly covered by the Quran.
4. They continue to govern matters relating to marriage, divorce, inheritance, gifts, and wills among Muslims.

Position in India - In India, the majority of Muslims follow the **Hanafi School**. Therefore, most principles applied by Indian courts in matters of Muslim Personal Law are based on Hanafi jurisprudence. Shias are governed by the principles of their respective schools, particularly in matters of inheritance and succession.

Conclusion - The Schools of Muslim Law represent different interpretations of Islamic legal principles. The two major branches are Sunni and Shia, each having several sub-schools. Although they differ on certain legal and theological issues, all schools derive their authority from Islamic teachings and contribute to the rich tradition of Muslim jurisprudence.

Examination Definition - "Schools of Muslim Law are the various juristic systems that developed through different interpretations of Islamic sources of law. The two principal schools are Sunni and Shia, each having several sub-schools."

Important LL.B. Questions

1. Explain the different Schools of Muslim Law.
2. Discuss the Sunni Schools of Muslim Law.
3. Explain the Shia Schools of Muslim Law.

4. Distinguish between Sunni and Shia Schools.
 5. Discuss the importance of the Hanafi School in India.
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Applicability of Muslim Law - Introduction

The term **Applicability of Muslim Law** refers to the circumstances and persons to whom Muslim Law applies. In India, Muslim Law is primarily a **personal law** governing matters such as marriage, divorce, maintenance, guardianship, gifts, wills, waqf, inheritance, and succession among Muslims.

The application of Muslim Law is mainly governed by the Muslim Personal Law (Shariat) Application Act, 1937.

Meaning of Applicability - Applicability means the extent to which Muslim Law is applicable to individuals and legal matters. It determines who is governed by Muslim Law and under what circumstances.

Persons to Whom Muslim Law Applies

1. **Muslims by Birth** - Muslim Law applies to every person born to Muslim parents. - A child born to Muslim parents is presumed to be a Muslim and is governed by Muslim Personal Law in matters of personal status.

Example - If both parents are Muslims, their child will generally be governed by Muslim Law regarding marriage, inheritance, and succession.

2. **Converts to Islam** - A person who embraces Islam voluntarily becomes subject to Muslim Law. After conversion, matters relating to marriage, divorce, inheritance, and other personal affairs are generally governed by Muslim Law.

Example - A Hindu or Christian who converts to Islam becomes subject to Muslim Personal Law.

3. **Illegitimate Children** - An illegitimate child generally follows the religion of the mother. If the mother is Muslim, the child may be governed by Muslim Law in certain personal matters.

Matters Governed by Muslim Law - Under the Shariat Act, Muslim Law applies to:

1. **Marriage (Nikah)** - Rules relating to the formation and validity of marriage.
 2. **Divorce (Talaq)** - Rights and procedures relating to dissolution of marriage.
 3. **Maintenance** - Maintenance rights of wife, children, and parents.
 4. **Dower (Mahr)** - Obligation of the husband to provide dower to the wife.
 5. **Guardianship** - Appointment and rights of guardians.
 6. **Gifts (Hiba)** - Rules regarding transfer of property by way of gift.
 7. **Wills (Wasiyat)** - Testamentary disposition of property.
 8. **Waqf** - Dedication of property for religious or charitable purposes.
 9. **Inheritance and Succession** - Distribution of a deceased Muslim's property among heirs.
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Matters Not Governed Exclusively by Muslim Law

Certain matters are governed by general Indian laws and not solely by Muslim Law.

Examples

- Criminal Law
- Law of Contracts
- Law of Evidence
- Transfer of Property
- Commercial Transactions
- Constitutional Rights

These matters are governed by statutory laws applicable to all citizens irrespective of religion.

Muslim Personal Law (Shariat) Application Act, 1937 - The purpose of the Muslim Personal Law (Shariat) Application Act, 1937 was to ensure that Muslims are governed by Islamic law rather than local customs in personal matters.

The Act provides that in matters relating to:

- Marriage
- Divorce
- Maintenance
- Dower
- Guardianship
- Gifts
- Waqf
- Succession

the rule of decision shall be Muslim Personal Law (Shariat).

Exceptions - Muslim Law may not apply in the following situations:

1. **Special Marriage Act** - Where a Muslim marries under the Special Marriage Act, 1954, certain consequences regarding succession and matrimonial matters may be governed by statutory law rather than traditional Muslim Law.
2. **Statutory Modifications** - Where Parliament has enacted a law on a subject, the statutory provisions prevail.
3. **Judicial Interpretation** - Courts may interpret Muslim Law in light of constitutional principles and legislative reforms.

Importance of Applicability of Muslim Law

1. Determines the persons governed by Muslim Personal Law.
2. Regulates family and personal relations among Muslims.
3. Protects religious and cultural identity.
4. Provides legal certainty in matters of marriage and inheritance.
5. Ensures uniform application of Islamic personal law.

Conclusion

Muslim Law applies primarily to Muslims by birth and to persons who convert to Islam. In India, it governs personal matters such as marriage, divorce, maintenance, guardianship, gifts, wills, waqf, inheritance, and succession. Its application is mainly based on the provisions of the **Muslim Personal Law (Shariat) Application Act, 1937**, while matters such as criminal law, contracts, and constitutional rights are governed by general laws applicable to all citizens.

Examination Definition - "Applicability of Muslim Law means the extent to which Muslim Personal Law governs Muslims in matters relating to marriage, divorce, maintenance, guardianship, gifts, wills, waqf, inheritance, and succession."

Marriage (Nikah) under Muslim Law

Introduction

Marriage under Muslim Law is known as **Nikah**. It is one of the most important institutions in Islam and forms the foundation of family life. Unlike the traditional Hindu concept of marriage as a sacrament, Muslim Law regards marriage primarily as a **civil contract**, though it also has religious and moral significance.

The institution of marriage aims to regulate the relationship between a man and a woman, legitimize children, and promote a stable family structure.

Meaning of Marriage (Nikah) - The word **Nikah** literally means "union" or "conjunction."

According to Mulla: - "Marriage under Muslim Law is a contract which has for its object the procreation and legalization of children."

According to Ameer Ali: - "Marriage is an institution ordained for the protection of society and for the regulation of sexual relations."

Nature of Muslim Marriage

1. **A Civil Contract** - Marriage in Muslim Law is essentially a contract between two parties.
2. **Religious Significance** - Although contractual in nature, marriage is considered a sacred and recommended institution in Islam.
3. **Legalizes Sexual Relations** - Marriage provides lawful recognition to the relationship between husband and wife.
4. **Legitimacy of Children** - Children born from a valid marriage are considered legitimate and acquire inheritance rights.

5. Creates Mutual Rights and Duties - Marriage gives rise to rights and obligations between spouses.

Essentials of a Valid Marriage (Nikah) - For a valid Muslim marriage, the following conditions must be satisfied:

1. Proposal and Acceptance (Ijab and Qubul)

One party must make a proposal (Ijab) and the other must accept it (Qubul).

The proposal and acceptance must occur:

- At the same meeting.
- In the presence of witnesses where required.

Example - If a man offers marriage and the woman immediately accepts it, the condition is fulfilled.

2. Competency of Parties - The parties must be competent to marry.

A person is competent if:

- He or she has attained puberty.
- Is of sound mind.

A guardian may contract marriage on behalf of a minor under certain circumstances.

3. Free Consent - The consent of both parties must be free and voluntary.

Marriage obtained through:

- Coercion,
- Fraud,
- Undue influence,

may be challenged.

4. Witnesses - Under Sunni Law:

- Two male witnesses, or
- One male and two female witnesses

are generally required. Under Shia Law, witnesses are not essential for the validity of a marriage.

5. No Legal Disability - The parties must not be subject to any legal prohibition.

Examples:

- Marriage within prohibited degrees of relationship.
- Marriage during certain prohibited periods.

Mahr (Dower) - Mahr is an amount of money or property that the husband agrees to give the wife in consideration of marriage.

Importance of Mahr

- It is an obligation of the husband.
- It provides financial security to the wife.
- It is one of the important incidents of marriage.

Classification of Marriage

1. **Sahih Marriage (Valid Marriage)** - A marriage fulfilling all legal requirements is called a Sahih marriage.

Effects

- Creates mutual rights and obligations.
- Children are legitimate.
- Husband and wife inherit from each other.

2. **Fasid Marriage (Irregular Marriage)** - A marriage suffering from a temporary defect is called an irregular marriage.

Examples

- Marriage without proper witnesses (under Sunni Law).
- Marriage with a fifth wife while four wives are already living.

Effects

- The defect may be removed.
- Children remain legitimate.

3. **Batil Marriage (Void Marriage)** A marriage prohibited by law from the beginning is void.

Examples

- Marriage within prohibited blood relationships.
- Marriage with a married woman.

Effects

- No legal rights arise.
- No inheritance rights between parties.

Rights and Duties of Husband and Wife

Rights of Wife

1. Right to Mahr.
2. Right to maintenance.
3. Right to respectful treatment.
4. Right to inherit from the husband.

Rights of Husband

1. Right to consortium.
2. Right to fidelity.
3. Right to inheritance from the wife.

Objects of Marriage in Islam

1. Regulation of sexual relations.
2. Procreation and upbringing of children.
3. Preservation of morality.
4. Establishment of family life.
5. Promotion of social stability.

Importance of Marriage

- Protects society from immorality.
- Provides legal status to children.
- Creates a family unit.
- Promotes social and emotional security.
- Ensures continuity of the human race.

Conclusion

Marriage (Nikah) under Muslim Law is a civil contract with religious significance. It creates legal rights and duties between husband and wife, legitimizes children, and serves as the foundation of family life. A valid marriage requires proposal and acceptance, competency of parties, free consent, witnesses (under Sunni Law), and the absence of legal prohibitions.

Examination Definition - "Nikah is a civil contract under Muslim Law between a man and a woman for the purpose of legalizing sexual relations, procreation of children, and establishing a family."

Important LL.B. Questions

1. Define Nikah and explain its nature under Muslim Law.
2. Discuss the essentials of a valid Muslim marriage.
3. Explain the different kinds of Muslim marriages.

4. Discuss the legal effects of a valid Muslim marriage.
 5. Is Muslim marriage a contract or a sacrament? Discuss.
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Mahr (Dower) under Muslim Law

Introduction - Mahr (Dower) is one of the most important incidents of a Muslim marriage. It is an amount of money, property, or any other valuable thing which the husband undertakes to pay or give to the wife in consideration of marriage.

Mahr is a legal obligation imposed upon the husband and is regarded as a mark of respect for the wife. It is the exclusive property of the wife, and she has full control over it.

Meaning of Mahr - The word **Mahr** literally means a reward or consideration given to the wife.

According to **Mulla**: - "**Dower is a sum of money or other property which the wife is entitled to receive from the husband in consideration of marriage.**"

According to **Ameer Ali**: - "**Dower is an obligation imposed upon the husband as a mark of respect to the wife.**"

Nature of Mahr

1. **An Essential Incident of Marriage** - Mahr is a legal consequence of every Muslim marriage.
2. **A Right of the Wife** - The wife acquires an absolute right to receive Mahr from her husband.
3. **Not the Price of the Wife** Mahr is not consideration in the contractual sense nor the price of the wife; it is a symbol of respect and financial security.
4. **A Debt Against the Husband** - Once Mahr becomes payable, it is treated as a debt due from the husband to the wife.
5. **Exclusive Property of the Wife** - The wife alone has ownership and control over the Mahr.

Objects (Purpose) of Mahr

1. To provide financial security to the wife.
2. To show respect and honour to the wife.
3. To discourage arbitrary divorce by the husband.
4. To strengthen the institution of marriage.
5. To ensure economic protection of women.

Classification of Mahr

1. **Specified Dower (Mahr-i-Musamma)** When the amount of Mahr is fixed by the parties at the time of marriage, it is called specified dower.

Example - If the husband and wife agree that ₹1,00,000 will be paid as Mahr, it is specified dower.

2. **Proper Dower (Mahr-i-Misl)** - When no amount of Mahr is fixed at the time of marriage, the wife is entitled to proper dower. The amount is determined by considering:

- Status of the wife,

- Family customs,
- Dower received by female relatives.

Types of Mahr According to Time of Payment

1. **Prompt Dower (Mu'ajjal)** - Prompt dower is payable immediately after marriage or on demand by the wife.

Features

- Wife may refuse cohabitation until it is paid.
- Payable immediately upon demand.

2. **Deferred Dower (Mu'wajjal)** - Deferred dower becomes payable:

- Upon dissolution of marriage by divorce, or
- Upon the death of the husband.

Features

- Acts as financial protection for the wife.
 - Most common form of dower.
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Wife's Rights Regarding Mahr

1. **Right to Sue for Recovery** The wife can file a suit to recover unpaid Mahr.

2. **Right to Refuse Cohabitation** Before payment of prompt dower, the wife may refuse to live with the husband.

3. **Right Against Husband's Estate** If the husband dies, the wife can recover unpaid Mahr from his estate before distribution among heirs.

4. **Right of Retention** A widow in possession of her deceased husband's property may retain possession until her unpaid dower is satisfied.

Remission of Mahr The wife may voluntarily remit (forgive) the whole or part of the Mahr.

Conditions

- The remission must be voluntary.
- The wife must be competent to make the remission.
- There should be no coercion or undue influence.

Effect of Non-Payment of Mahr - Non-payment of Mahr does not make the marriage invalid.

However:

- The debt remains enforceable.
- The wife can claim recovery through legal proceedings.

- She may refuse cohabitation in case of unpaid prompt dower.

Difference Between Mahr and Consideration in Contract

Mahr	Consideration
Arises from marriage	Arises from a contract
Paid to the wife	Paid to the contracting party
Symbol of respect and security	Essential element of a contract
Legal obligation of husband	Reciprocal promise between parties

Importance of Mahr

1. Protects the financial interests of the wife.
2. Ensures dignity and respect for women.
3. Acts as a deterrent against arbitrary divorce.
4. Provides economic security upon dissolution of marriage.
5. Strengthens marital responsibilities.

Conclusion

Mahr is a mandatory obligation imposed upon the husband in a Muslim marriage. It is a legal right of the wife and serves as a means of financial security and social protection. Although non-payment of Mahr does not invalidate the marriage, the wife can legally enforce her claim and recover the amount due.

Examination Definition - "Mahr or Dower is a sum of money or property which the husband is legally bound to give to the wife in consideration of marriage under Muslim Law."

Important LL.B. Questions

1. Define Mahr and explain its nature under Muslim Law.
2. Discuss the different kinds of Mahr.
3. Explain the rights of a Muslim wife regarding Mahr.
4. Distinguish between Prompt and Deferred Dower.
5. Is Mahr the price of the wife? Discuss.

Talaq and its Kinds, Dissolution of Marriage, and Maintenance of Wives under Muslim Law.

Introduction

Under Muslim Law, marriage (Nikah) is considered a civil contract. Therefore, like any contract, it can be dissolved. The dissolution of marriage may take place through **Talaq (divorce by husband)**, **divorce by mutual consent**, **judicial divorce**, or under statutory provisions protecting the rights of Muslim women.

I. Talaq (Divorce) under Muslim Law

Meaning of Talaq The word **Talaq** means repudiation or dissolution of marriage by the husband.

According to Mulla: "Talaq is the dissolution of marriage by the husband in accordance with Muslim Law."

Kinds of Talaq

A. Talaq by Husband

1. Talaq-e-Ahsan (Most Approved Form) This is considered the best and most approved form of divorce.

Procedure

- A single pronouncement of Talaq during a period of purity (Tuhr).
- No sexual intercourse during the Iddat period.

Features

- Revocable during the Iddat period.
 - Considered the most proper form of divorce.
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2. Talaq-e-Hasan (Approved Form)

Procedure

- Three pronouncements of Talaq during three successive Tuhrs.

Features

- Revocable before the third pronouncement.
 - Becomes irrevocable after the third pronouncement.
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3. Talaq-ul-Biddat (Triple Talaq)

Procedure - Three Talaqs pronounced in one sitting.

Example: - "Talaq, Talaq, Talaq."

Legal Position in India - The practice of Triple Talaq has been declared unconstitutional by the Supreme Court.

Important Case—Shayara Bano v. Union of India

The Supreme Court held that instant Triple Talaq is unconstitutional and void.

B. Talaq by Wife - Talaq-e-Tafweez (Delegated Divorce)

A husband may delegate his power of Talaq to his wife through an agreement. Under specified conditions, the wife can exercise this right and dissolve the marriage.

C. Divorce by Mutual Consent

1. **Khula** - *Khula is a form of divorce initiated by the wife with the consent of the husband.*

Features

- The wife offers compensation to the husband.
 - Often the wife agrees to return her Mahr.
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2. **Mubarat** - Mubarat is a divorce by mutual consent where both husband and wife desire separation.

Features

- Mutual agreement.
 - Marriage ends upon acceptance by both parties.
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II. **Judicial Dissolution of Marriage** - Dissolution of Muslim Marriages Act, 1939

This Act gives Muslim women the right to obtain divorce through a court.

Grounds for Divorce

A Muslim wife may seek dissolution of marriage if:

1. Husband has been missing for four years.
2. Husband has failed to maintain her for two years.
3. Husband is sentenced to imprisonment for seven years or more.
4. Husband is impotent.
5. Husband is insane or suffering from a serious disease.
6. Husband treats her with cruelty.
7. Husband fails to perform marital obligations.

Importance - The Act significantly improved the legal rights of Muslim women by providing statutory grounds for divorce.

III. **Muslim Women (Protection of Rights on Divorce) Act, 1986**

Background - The Act was enacted after the famous case of: **Mohd. Ahmed Khan v. Shah Bano Begum**

Objectives

1. To protect the rights of divorced Muslim women.
 2. To provide maintenance and financial security after divorce.
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Rights of a Divorced Muslim Woman

1. **Reasonable and Fair Provision** The husband must make a reasonable and fair provision for the future of the divorced wife within the Iddat period.
 2. **Maintenance During Iddat** The husband must maintain the wife during the Iddat period.
 3. **Dower (Mahr)** The wife is entitled to receive the entire unpaid Mahr.
 4. **Return of Gifts and Property** The wife is entitled to all gifts and properties given to her before, during, or after marriage.
 5. **Maintenance of Children** The husband is liable to maintain children for a period of two years from their birth.
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Danial Latifi Case - Danial Latifi v. Union of India

Decision

The Supreme Court held that:

- The husband is not required merely to maintain the wife during Iddat.
- He must make a reasonable and fair provision for her future within the Iddat period.

Significance - The judgment expanded the financial protection available to divorced Muslim women.

IV. Maintenance of Wives under Section 125 Cr.P.C.

(Studied historically; now procedural law has been replaced by the Bharatiya Nagarik Suraksha Sanhita, 2023.)

Purpose - Section 125 Cr.P.C. was enacted to prevent destitution and vagrancy.

It provides maintenance to:

- Wife
- Children
- Parents

who are unable to maintain themselves.

Conditions for Maintenance - A wife is entitled to maintenance if:

1. She is unable to maintain herself.
 2. The husband has sufficient means.
 3. The husband neglects or refuses to maintain her.
-

Shah Bano Case - Mohd. Ahmed Khan v. Shah Bano Begum

Facts

Shah Bano, a 62-year-old Muslim woman, was divorced by her husband, who refused to maintain her.

Judgment

The Supreme Court held that:

- A divorced Muslim woman is entitled to maintenance under Section 125 Cr.P.C.
- The provision applies irrespective of religion.
- Maintenance is a matter of social justice.

Significance

1. Strengthened the rights of Muslim women.
2. Established that Section 125 Cr.P.C. applies to Muslims.
3. Led to the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986.

Important Cases

1. **Mohd. Ahmed Khan v. Shah Bano Begum** - Maintenance rights of divorced Muslim women.
2. **Danial Latifi v. Union of India** - Interpretation of "reasonable and fair provision."
3. **Shayara Bano v. Union of India** - Triple Talaq declared unconstitutional.

Conclusion

Talaq is the principal mode of dissolution of marriage under Muslim Law. It may be affected by the husband, the wife, mutual consent, or judicial intervention. Modern legislation and judicial decisions have strengthened the rights of Muslim women, particularly regarding divorce and maintenance. The **Shah Bano, Danial Latifi, and Shayara Bano cases** remain landmark developments in the evolution of Muslim Personal Law in India.

Examination Definition - "Talaq is the dissolution of a Muslim marriage in accordance with Muslim Law, either by the husband, wife, mutual consent, or through judicial intervention."

=====++=====

Wills (Wasiyat) under Muslim Law

Introduction

A **Will** (Wasiyat) is a legal declaration made by a person regarding the distribution of his property after his death. Under Muslim Law, a will enables a Muslim to dispose of a portion of his property according to his wishes, subject to certain limitations prescribed by law.

The law of wills under Muslim Law seeks to balance the freedom of the testator with the rights of legal heirs.

Meaning of Will (Wasiyat) - A **Will** is a declaration by a person (testator) of his intention regarding the disposal of his property after his death.

According to Mulla: - "A will is a legal declaration of the intention of a testator with respect to his property, which he desires to take effect after his death."

The person making the will is called the **Testator**, and the person in whose favour the will is made is called the **Legatee**.

Nature of a Will under Muslim Law

1. It takes effect only after the death of the testator.
2. It is revocable during the lifetime of the testator.
3. It is a voluntary act of the testator.
4. It transfers property without consideration.
5. It is subject to restrictions imposed by Muslim Law.

Essentials of a Valid Will

1. Competency of the Testator

The testator must:

- Be a Muslim.
- Be of sound mind.
- Have attained majority.
- Be capable of understanding the consequences of his act.

2. Competency of the Legatee - Any person capable of holding property may be a legatee.

A will may be made in favour of:

- A Muslim,
- A non-Muslim,
- A minor,
- An institution,
- A charitable organization.

3. Subject Matter of the Will - The property must:

- Belong to the testator.
- Be transferable.
- Exist at the time of death.

4. Free Consent - The will must be made voluntarily and without:

- Coercion,
- Fraud,
- Undue influence.

Formalities of a Will - Unlike many other legal systems, Muslim Law does not require any particular form. A will may be:

- Oral, or
- Written.

Registration is not compulsory, though a written and registered will is preferable for evidentiary purposes.

Limitations on Testamentary Power - One of the most important features of Muslim Law is the restriction on testamentary disposition.

1. One-Third Rule – (33% only) A Muslim can generally dispose of only **one-third (1/3)** of his property by will without the consent of heirs. The remaining two-thirds must devolve upon legal heirs according to Muslim inheritance law.

Example

If a Muslim leaves property worth ₹9,00,000:

- Maximum amount disposable by will = ₹3,00,000
- Remaining ₹6,00,000 goes to legal heirs.

2. Bequest to an Heir - A will in favour of a legal heir is not valid unless the other heirs consent after the death of the testator.

Principle - "No bequest to an heir without the consent of other heirs."

Revocation of a Will—A will may be revoked by the testator at any time before death.

Modes of Revocation

- 1. Express Revocation** - The testator expressly cancels the will.
- 2. Implied Revocation** - The testator performs an act inconsistent with the will.
- 3. Making a New Will** - A subsequent will may revoke an earlier will.

Abatement of Legacies - Where the bequests exceed one-third of the estate and heirs do not consent, the legacies are reduced proportionately. **This is known as abatement.**

Lapse of Legacy - A legacy lapses if the legatee dies before the testator. **In such a case, the bequest generally fails.**

Difference between Will and Gift (Hiba)

Will (Wasiyat)	Gift (Hiba)
Takes effect after death	Takes effect immediately
Revocable during lifetime	Generally irrevocable after completion
Subject to one-third limitation	No such limitation
Ownership passes after death	Ownership passes immediately

Will (Wasiyat)

Gift (Hiba)

Requires death of testator

Effective during donor's lifetime

Importance of a Will

1. Allows a person to distribute part of his property according to his wishes.
2. Helps provide for persons who are not legal heirs.
3. Facilitates charitable and religious bequests.
4. Reduces disputes regarding property.
5. Provides flexibility within the framework of Muslim inheritance law.

Conclusion

A will (Wasiyat) under Muslim Law is a legal declaration regarding the disposition of property after death. While a Muslim has the power to make a will, this power is restricted by the one-third rule and by the principle that a bequest to an heir requires the consent of other heirs. These restrictions ensure a balance between testamentary freedom and the rights of legal heirs.

Examination Definition - "A Will (Wasiyat) is a legal declaration by a Muslim regarding the disposition of his property after his death, subject to the limitations imposed by Muslim Law."

Important LL.B. Questions

1. Define a Will (Wasiyat) and explain its essentials under Muslim Law.
 2. Discuss the testamentary power of a Muslim.
 3. Explain the One-Third Rule under Muslim Law.
 4. Can a Muslim make a bequest in favour of an heir? Discuss.
 5. Distinguish between a Will (Wasiyat) and a Gift (Hiba).
-

Gifts (Hiba) under Muslim Law

Introduction

A **Gift** under Muslim Law is known as **Hiba**. It is a voluntary transfer of property made immediately and without any consideration by one person to another. Hiba is an important mode of transferring property under Muslim Law and is governed by principles derived from Islamic jurisprudence.

Unlike many other legal systems, Muslim Law does not generally require a written instrument or registration for a valid gift if all essential conditions are fulfilled.

Meaning of Hiba -The word **Hiba** literally means "gift" or "donation."

According to Mulla: - "A Hiba is an immediate and unconditional transfer of ownership of property, made without consideration by one person to another and accepted by or on behalf of the latter."

Definition of Gift (Hiba) - A gift is the voluntary transfer of ownership of property by a donor to a donee without consideration and with immediate effect.

Essentials of a Valid Hiba - For a valid gift under Muslim Law, three essential conditions must be fulfilled:

1. **Declaration of Gift by the Donor** - The donor must clearly express his intention to make a gift.

Example

A person says: "**I gift my house to my son.**" This amounts to a declaration of gift.

2. **Acceptance of the Gift by the Donee** - The gift must be accepted by the donee.

Important Point -If the donee is a minor, acceptance may be made by his or her guardian.

3. **Delivery of Possession** - The possession of the gifted property must be transferred to the donee.

Significance - Without delivery of possession, the gift is generally incomplete and invalid.

Possession may be:

- Actual possession, or
 - Constructive possession.
-

Parties to a Gift

1. **Donor** - The person who makes the gift. - **Competency of Donor** - The donor must:

- Be a major.
- Be of sound mind.
- Be the owner of the property.

2. **Donee** - The person who receives the gift. - **Who Can Be a Donee?** - A donee may be:

- A Muslim,
- A non-Muslim,
- A minor,
- A legal person such as an institution or organization.

Subject Matter of Gift The property gifted must:

1. Belong to the donor.
2. Be transferable.
3. Be identifiable and certain.
4. Exist at the time of the gift.

Kinds of Hiba

1. **Simple Hiba** - A pure gift made without any consideration.

Example - A father gifts his land to his daughter without receiving anything in return.

2. Hiba-bil-Iwaz - A gift made in consideration of something given in return.

Example - A person transfers property and receives money in exchange.

Nature - It resembles a sale transaction.

3. Hiba-ba-Shart-ul-Iwaz - A gift made subject to a condition that the donee will provide consideration later.

Features

- Gift is made first.
- Consideration is provided subsequently according to the agreement.

Revocation of Gift A gift may be revoked under certain circumstances.

However, revocation is generally not allowed in the following cases:

1. Gift between husband and wife.
2. Gift to close relatives within prohibited degrees.
3. Death of either donor or donee.
4. Destruction of the gifted property.
5. Transfer of gifted property by the donee to another person.
6. Where consideration has been received.

Difference Between Gift and Will

Gift (Hiba)	Will (Wasiyat)
Takes effect immediately	Takes effect after death
Delivery of possession is essential	Delivery of possession is not essential
Operates during the donor's lifetime	Operates after the testator's death
No one-third limitation	Subject to one-third limitation
Ownership transfers immediately	Ownership transfers after death

Importance of Hiba

1. Provides an easy method of transferring property.
2. Promotes family welfare and affection.
3. Facilitates charitable and religious purposes.
4. Enables immediate transfer of ownership.
5. Helps avoid future disputes regarding property.

Legal Effects of a Valid Gift

1. Ownership immediately passes to the donee.
2. The donor loses all rights over the gifted property.
3. The donee acquires full ownership rights.
4. The transfer becomes legally enforceable.

Conclusion

Hiba (Gift) is an important mode of transfer of property under Muslim Law. A valid gift requires a declaration by the donor, acceptance by the donee, and delivery of possession. Once these conditions are fulfilled, ownership passes immediately to the donee. Hiba reflects the Islamic principle of generosity and voluntary transfer of wealth.

Examination Definition - "Hiba is an immediate and unconditional transfer of ownership of property by a donor to a donee without consideration and accepted by the donee under Muslim Law."

Important LL.B. Questions

1. Define Hiba and explain its essentials under Muslim Law.
 2. Discuss the conditions necessary for a valid gift.
 3. Explain the different kinds of Hiba.
 4. Discuss the rules relating to revocation of gifts under Muslim Law.
 5. Distinguish between Hiba (Gift) and Wasiyat (Will).
-

Wakf (Waqf) under Muslim Law

Introduction - Wakf (Waqf) is a permanent dedication of movable or immovable property by a Muslim for purposes recognized by Muslim Law as **religious, pious, or charitable**. It is one of the most important institutions of Islamic jurisprudence and plays a significant role in promoting religious and charitable activities. Once a valid Wakf is created, the ownership of the property is considered to vest in Almighty Allah, and the property becomes inalienable.

Meaning of Wakf - The word **Wakf** literally means "detention," "confinement," or "dedication."

According to Mulla - "A Wakf is the permanent dedication by a person professing Islam of any property for any purpose recognized by Muslim Law as **religious, pious, or charitable**."

According to Abu Yusuf - "Wakf signifies the extinction of the owner's ownership in the thing dedicated and the detention of the property in the **ownership of God**."

Essentials of a Valid Wakf

1. **Permanent Dedication** - The dedication must be permanent and irrevocable. A temporary Wakf is invalid.
2. **Competency of the Wakif** - The person creating the Wakf is called the **Wakif**.

The Wakif must:

- Be a Muslim.

- Be a major.
- Be of sound mind.
- Be the owner of the property.

3. Subject Matter of Wakf The property dedicated must:

- Belong to the Wakif.
- Be identifiable.
- Be capable of being used permanently.

Both movable and immovable property may be dedicated.

4. Religious, Pious, or Charitable Purpose - The object of Wakf must be recognized by Muslim Law as **religious, pious, or charitable**.

Examples

- Construction of mosques.
- Maintenance of religious institutions.
- Education.
- Relief of the poor.
- Hospitals and orphanages.

5. Irrevocable and Unconditional - Once a Wakf is validly created, it cannot ordinarily be revoked.

Objects of Wakf

1. Promotion of religion.
2. Charity and welfare.
3. Education.
4. Relief of poverty.
5. Public utility and social welfare.

Types of Wakf

1. Public Wakf - A Wakf created for the benefit of the public.

Examples

- Mosque.
- School.
- Hospital.
- Graveyard.

2. Private Wakf (Wakf-alal-Aulad) - A Wakf created primarily for the benefit of the settlor's family and descendants.

Features

- Family members receive benefits.
- Ultimate benefit must be reserved for a **religious, pious, or charitable purpose**.

Validity in India - Recognized by the Mussalman Wakf Validating Act, 1913.

Creation of Wakf - A Wakf may be created:

1. **By Declaration** - Express dedication by the Wakif.
2. **By Will** - Property may be dedicated through a will, subject to limitations.
3. **By User** - Where property has long been used for religious purposes, Wakf may be presumed.

Mutawalli - The manager or administrator of a Wakf is called a **Mutawalli**.

Functions of a Mutawalli

1. Management of Wakf property.
2. Collection of income.
3. Application of income for Wakf purposes.
4. Protection of Wakf assets.

Position - A Mutawalli is not the owner of the Wakf property; he is merely a manager or superintendent.

Wakf and Trust: Difference

Wakf	Trust
Governed by Muslim Law	Governed by Trust Law
Ownership vests in Allah	Ownership vests in trustees
Religious element essential	Religious element not essential
Generally permanent	May be temporary
Managed by Mutawalli	Managed by Trustees

Extinction of Wakf -A valid Wakf generally does not come to an end because it is permanent in nature. However, its administration may be modified by law or court orders in certain circumstances.

Importance of Wakf

1. Promotes charitable activities.
2. Supports religious institutions.
3. Assists education and healthcare.
4. Helps poor and needy persons.
5. Contributes to social welfare.

Important Legislation - Waqf Act, 1995

The Act regulates:

- Registration of Wakfs,
- Administration of Wakf properties,
- State Waqf Boards,
- Protection of Wakf assets.

Mussalman Wakf Validating Act, 1913 - Validated family Wakfs (Wakf-alal-Aulad).

Conclusion

Wakf is a permanent dedication of property for **religious, pious, or charitable purposes** under Muslim Law. Once created, the property is dedicated to **Allah and becomes inalienable**. The institution of Wakf has played a vital role in supporting **religious, educational, and charitable activities** throughout the Muslim world and remains an important aspect of Muslim Personal Law in India.

Examination Definition - "**Wakf is the permanent dedication of property by a Muslim for a religious, pious, or charitable purpose recognized by Muslim Law.**"

Important LL.B. Questions

1. Define Wakf and explain its essentials.
 2. Discuss the different kinds of Wakf.
 3. Explain the position and functions of a Mutawalli.
 4. Distinguish between Wakf and Trust.
 5. Discuss the provisions of the Waqf Act, 1995.
-

Pre-emption (Shufa) under Muslim Law

Introduction

Pre-emption (Shufa) is an important concept under Muslim Law. It is a right that allows certain persons to purchase an immovable property in preference to an outsider when the property is sold. The person entitled to pre-emption can step into the shoes of the purchaser by paying the same price and accepting the same terms and conditions as agreed upon in the sale.

The doctrine aims to prevent the intrusion of strangers into joint ownership and to protect the interests of co-sharers and neighbors.

Meaning of Pre-emption (Shufa) - The word **Shufa** literally means "**joining**" or "**adding**."

In legal terms, it means the right of a person to acquire property that has been sold to another by substituting himself in place of the buyer.

According to Mulla: - "Pre-emption is a right which the owner of certain immovable property possesses to acquire another immovable property which has been sold to another person."

Definition - **Pre-emption is the right of a person to acquire immovable property sold to another by paying the same consideration and fulfilling the same conditions as the purchaser.**

Objects of Pre-emption

1. To prevent the intrusion of strangers into joint property.
2. To protect the interests of co-sharers.
3. To preserve neighbourhood harmony.
4. To reduce disputes relating to property.
5. To ensure peaceful enjoyment of property.

Essentials of Pre-emption

1. Sale of Immovable Property - The right of pre-emption arises only when there is a sale of immovable property.

Examples

- Land
- House
- Building

It does not apply to movable property.

2. Valid Sale - There must be a valid and completed sale. -If there is no sale, the right of pre-emption does not arise.

3. Claim by an Entitled Person - The person claiming pre-emption must belong to a recognized category under Muslim Law.

4. Compliance with Legal Procedure - The claimant must follow the prescribed legal formalities and make the necessary demands within a reasonable time.

Persons Entitled to Pre-emption -Muslim Law recognizes the following categories of persons entitled to claim pre-emption:

1. Shafi-i-Sharik (Co-sharer) - A person who is a co-owner in the property.

Example - If one co-owner sells his share to a stranger, the other co-owner has the first right to purchase it.

2. Shafi-i-Khalit (Participant in Amenities) - A person who shares certain rights or easements connected with the property.

Examples

- Common pathway
- Common water source
- Common drainage system

3. Shafi-i-Jar (Neighbour) - An owner of adjoining or neighbouring property.

Demands Necessary for Pre-emption - Under Muslim Law, three demands are traditionally required:

1. **Talab-i-Mowasibat (Immediate Demand)** - The claimant must immediately assert his right upon learning of the sale.
2. **Talab-i-Ishhad (Demand with Witnesses)** - The claimant must make a formal declaration of his intention to claim pre-emption in the presence of witnesses.
3. **Talab-i-Tamlik (Demand through Legal Action)** - If necessary, the claimant must file a suit in a competent court to enforce his right.

Cases Where Pre-emption Does Not Apply - The right of pre-emption generally does not apply to:

1. Gifts (Hiba).
2. Wills (Wasiyat).
3. Inheritance.
4. Wakf property.
5. Exchanges and certain non-sale transfers.

Loss of Right of Pre-emption - The right may be lost if:

1. The claimant fails to make the required demands.
2. There is unreasonable delay.
3. The claimant waives or abandons his right.
4. The claimant accepts the sale.

Nature of the Right of Pre-emption - The right of pre-emption is:

- A secondary or preferential right.
- Not a right to prohibit the sale.
- A right to substitute oneself in place of the purchaser.

Courts often describe it as a "**weak right**" because it restricts the freedom of transfer of property.

Important Case

Bhau Ram v. Baijnath Singh The Supreme Court observed that the right of pre-emption is a weak right and must be exercised strictly according to law.

Difference Between Pre-emption and Repurchase

Pre-emption	Repurchase
Arises by operation of law	Arises by contract
Available only to certain persons	Available to contracting parties
Operates after a sale	Depends upon agreement

Pre-emption

Based on legal right

Repurchase

Based on contractual right

Importance of Pre-emption

1. Protects co-sharers from strangers.
2. Preserves peaceful possession and enjoyment of property.
3. Reduces property disputes.
4. Protects common rights and amenities.
5. Maintains neighbourhood harmony.

Conclusion

Pre-emption (Shufa) is a preferential right recognized under Muslim Law that enables certain persons, such as co-sharers and neighbours, to purchase immovable property that has been sold to another person. The doctrine aims to protect property interests and preserve harmony among co-owners and neighbours. However, because it restricts the free transfer of property, courts interpret and enforce it strictly.

Examination Definition - "Pre-emption (Shufa) is the right of a person to acquire immovable property sold to another by substituting himself in place of the purchaser on the same terms and conditions."

Important LL.B. Questions

1. Define Pre-emption (Shufa) and explain its nature under Muslim Law.
 2. Discuss the essentials of a valid claim of pre-emption.
 3. Explain the categories of persons entitled to claim pre-emption.
 4. Discuss the three demands required for enforcing the right of pre-emption.
 5. Distinguish between Pre-emption and Repurchase.
-

Acknowledgement and Guardianship under Muslim Law

I. Acknowledgement under Muslim Law

Introduction

The doctrine of **Acknowledgement (Iqrar)** is a unique concept in Muslim Law. It is a method by which a person recognizes another person as his legitimate child, provided the child's legitimacy is uncertain and not already established.

The doctrine is based on the principle that where direct proof of marriage is unavailable, legitimacy may be established through acknowledgment.

Meaning of Acknowledgement - Acknowledgement means the admission by a person that another person is his legitimate child.

According to Mulla:- "Acknowledgement of legitimacy is the recognition by a man of another person as his legitimate child."

Essentials of Valid Acknowledgement - For a valid acknowledgement, the following conditions must be fulfilled:

1. **Acknowledgement by the father** - The acknowledgment must be made by the alleged father.
 2. **Child's Legitimacy Must Be Possible** - The child must be capable of being the legitimate child of the person acknowledging him.
- Example** - There must be a reasonable difference in age between the father and child.
3. **Child's Parentage Must Be Uncertain** - The legitimacy of the child should not already be conclusively established.
 4. **Child Must Not Be Known as Illegitimate** - The child must not be proved to be illegitimate.
 5. **Acceptance by Child** - If the child is an adult, he or she should accept the acknowledgment.

Effects of Acknowledgement

A valid acknowledgment:

1. Confers legitimacy on the child.
2. Creates rights of inheritance.
3. Establishes legal relationship between parent and child.
4. Gives the child the status of a legitimate offspring.

Importance of Acknowledgement

1. Protects children whose legitimacy is uncertain.
2. Prevents social injustice.
3. Establishes inheritance rights.
4. Preserves family relationships.

Conclusion

Acknowledgement is an important doctrine under Muslim Law through which a person may recognize another as his legitimate child. It helps establish legitimacy and inheritance rights where direct proof of lawful parentage is unavailable.

II. Guardianship under Muslim Law

Introduction - A **Guardian** is a person who has the legal authority to care for the person or property of a minor. Under Muslim Law, guardianship is known as **Wilayat**. The law distinguishes between custody of a child and guardianship of a child.

Meaning of Guardianship Guardianship means the legal authority over the person or property of a minor.

According to Mulla:- "Guardianship is the authority to protect and manage the person or property of a minor."

Kinds of Guardianship

1. **Guardianship of the Person** This relates to the care, upbringing, education, and welfare of the minor.
2. **Guardianship of Property** This relates to the management and protection of the minor's property.
3. **Guardianship in Marriage** This concerns the authority to contract a valid marriage on behalf of a minor.

Types of Guardians

1. **Natural Guardian** Under Sunni Muslim Law, the following are natural guardians:

1. Father
2. Executor appointed by the father
3. Paternal grandfather
4. Executor appointed by the paternal grandfather

Important Point The mother is not considered a natural guardian under traditional Muslim Law, though she has custody rights.

2. **Testamentary Guardian** A guardian appointed by will. Such appointment may be made by:

- Father
- Paternal grandfather

3. **Court-Appointed Guardian** - A guardian appointed by the court under the provisions of law when necessary for the welfare of the minor.

4. **De Facto Guardian** - A person who voluntarily takes care of a minor without legal authority.

Example An elder brother managing the affairs of a minor. A **de facto guardian has limited powers** and generally **cannot transfer the minor's property**.

Custody (Hizanat) Custody refers to the physical care and upbringing of a child. Under Muslim Law, custody generally belongs to the mother during the child's early years.

Sunni Law

- Son: Mother's custody up to approximately 7 years.
- Daughter: Mother's custody until puberty.

The welfare of the child is always the paramount consideration.

Powers of a Guardian

1. Protection of the minor.
2. Management of the minor's property.
3. Representation of the minor in legal matters.
4. Protection of the minor's interests.

Duties of a Guardian

1. To act in the best interests of the minor.

2. To protect the minor's property.
3. To provide proper education and care.
4. To avoid misuse of the minor's property.

Important Case - Imambandi v. Mutsaddi - The Privy Council held that a mother is not the natural guardian of a minor's property under traditional Muslim Law.

Difference Between Guardianship and Custody

Guardianship	Custody (Hizanat)
Legal authority over minor	Physical care of minor
Includes property management	Does not include property management
Usually vested in father or legal guardian	Usually vested in mother during early years
Broader concept	Narrower concept

Conclusion

Guardianship under Muslim Law refers to the legal authority over the person or property of a minor. Different categories of guardians are recognized, including natural, testamentary, court-appointed, and **de facto guardians**. While the father is traditionally the natural guardian, **the mother is generally entitled to custody of young children**. In all matters relating to minors, the welfare of the child remains the most important consideration.

Examination Definitions Acknowledgement - "Acknowledgement is the recognition by a person of another as his legitimate child, thereby conferring legitimacy and inheritance rights."

Guardianship - "Guardianship is the legal authority to care for and manage the person or property of a minor."

Important LL.B. Questions

1. Explain the doctrine of Acknowledgement under Muslim Law.
2. Discuss the essentials and legal effects of Acknowledgement.
3. Define Guardianship and explain its various kinds under Muslim Law.
4. Distinguish between Guardianship and Custody (Hizanat).
5. Discuss the powers and duties of a guardian under Muslim Law.

full course completed.

मुस्लिम विधि का परिचय (Introduction to Muslim Law)

प्रस्तावना

मुस्लिम विधि (Muslim Law) उन नियमों और सिद्धांतों का समूह है जो मुसलमानों के व्यक्तिगत जीवन, पारिवारिक संबंधों, विवाह, तलाक, उत्तराधिकार, वसीयत, उपहार तथा धार्मिक कर्तव्यों को नियंत्रित करते हैं। यह विधि मुख्यतः इस्लाम धर्म की शिक्षाओं और धार्मिक ग्रंथों पर आधारित है।

मुस्लिम विधि को केवल कानूनी नियमों का संग्रह नहीं माना जाता, बल्कि यह एक धार्मिक, नैतिक तथा सामाजिक व्यवस्था भी है, जो मनुष्य के जीवन के प्रत्येक पक्ष को प्रभावित करती है।

मुस्लिम विधि का अर्थ (Meaning of Muslim Law)

मुस्लिम विधि से आशय उन सिद्धांतों और नियमों से है जो इस्लाम धर्म के अनुयायियों पर लागू होते हैं। इसे "शरीयत (Shariat)" भी कहा जाता है।

प्रसिद्ध विधिवेत्ता **मुल्ला (Mulla)** के अनुसार—

"मुस्लिम विधि उन नियमों का समूह है जो मुसलमानों के जीवन में उनके व्यवहार को नियंत्रित करते हैं तथा जिनका स्रोत इस्लाम धर्म है।"

मुस्लिम विधि की प्रकृति (Nature of Muslim Law)

मुस्लिम विधि की प्रमुख विशेषताएँ निम्नलिखित हैं—

1. धार्मिक विधि (Religious Law)

मुस्लिम विधि का आधार धर्म है। इसके अधिकांश नियम इस्लाम की धार्मिक शिक्षाओं से उत्पन्न हुए हैं।

2. व्यक्तिगत विधि (Personal Law)

यह मुख्यतः विवाह, तलाक, भरण-पोषण, उत्तराधिकार, वसीयत तथा उपहार जैसे व्यक्तिगत विषयों को नियंत्रित करती है।

3. ईश्वरीय विधि (Divine Law)

मुस्लिमों का विश्वास है कि यह विधि ईश्वर (अल्लाह) द्वारा प्रदान की गई है और इसके मूल सिद्धांत अपरिवर्तनीय हैं।

4. नैतिक एवं कानूनी नियमों का मिश्रण

मुस्लिम विधि में कानूनी कर्तव्यों के साथ-साथ नैतिक कर्तव्यों को भी महत्व दिया गया है।

5. सार्वभौमिकता

इस्लाम के अनुयायी विश्व के किसी भी भाग में हों, उनके लिए मुस्लिम विधि के मूल सिद्धांत समान रहते हैं।

मुस्लिम विधि का विकास (Development of Muslim Law)

मुस्लिम विधि का विकास मुख्यतः चार चरणों में हुआ—

(1) पैगम्बर काल (610–632 ई.)

इस काल में इस्लाम धर्म की स्थापना हुई तथा धार्मिक नियमों का प्रतिपादन हुआ।

(2) खलीफा काल (632–661 ई.)

पैगम्बर की मृत्यु के बाद खलीफाओं ने मुस्लिम विधि के विकास में महत्वपूर्ण योगदान दिया।

(3) विधिशास्त्रियों का काल

इस काल में विभिन्न मुस्लिम विद्वानों ने विधिक सिद्धांतों का विकास किया और विभिन्न विधि-विद्यालयों (Schools) की स्थापना हुई।

(4) आधुनिक काल

विभिन्न देशों ने मुस्लिम विधि में समयानुकूल सुधार किए तथा अनेक विषयों को विधायी कानूनों द्वारा नियंत्रित किया।

भारत में मुस्लिम विधि

भारत में मुस्लिम विधि का विकास मुस्लिम शासन के साथ प्रारम्भ हुआ। ब्रिटिश शासन के दौरान भी मुसलमानों के व्यक्तिगत मामलों में मुस्लिम विधि लागू की जाती रही।

भारत में मुस्लिम व्यक्तिगत विधि को मान्यता देने वाला प्रमुख अधिनियम है:

- Muslim Personal Law (Shariat) Application Act, 1937

इस अधिनियम के अनुसार विवाह, तलाक, उत्तराधिकार, वसीयत, उपहार आदि मामलों में मुस्लिम व्यक्तिगत विधि लागू होती है।

मुस्लिम विधि का महत्व

1. मुसलमानों के व्यक्तिगत जीवन को नियंत्रित करती है।
2. पारिवारिक संबंधों को व्यवस्थित करती है।
3. संपत्ति के वितरण एवं उत्तराधिकार के नियम प्रदान करती है।
4. धार्मिक एवं सामाजिक जीवन में अनुशासन स्थापित करती है।
5. भारत की बहुविधिक (Pluralistic) कानूनी व्यवस्था का महत्वपूर्ण अंग है।

निष्कर्ष

मुस्लिम विधि इस्लाम धर्म की शिक्षाओं पर आधारित एक व्यापक व्यक्तिगत विधि है। यह केवल कानूनी नियमों का संग्रह नहीं बल्कि धार्मिक, नैतिक एवं सामाजिक जीवन का मार्गदर्शन करने वाली व्यवस्था है। भारत में विवाह, तलाक, उत्तराधिकार, वसीयत तथा उपहार जैसे विषयों में इसका विशेष महत्व है।

परीक्षा हेतु संक्षिप्त परिभाषा

"मुस्लिम विधि उन नियमों एवं सिद्धांतों का समूह है जो इस्लाम धर्म की शिक्षाओं पर आधारित होकर मुसलमानों के व्यक्तिगत, पारिवारिक एवं संपत्ति संबंधी मामलों को नियंत्रित करते हैं।"

मुस्लिम विधि के स्रोत (Sources of Muslim Law)

प्रस्तावना

मुस्लिम विधि के स्रोत (Sources of Muslim Law) से अभिप्राय उन आधारों या स्रोतों से है जिनसे मुस्लिम विधि के नियमों और सिद्धांतों की उत्पत्ति हुई है। मुस्लिम विधि का मूल आधार इस्लाम धर्म की शिक्षाएँ हैं। समय के साथ मुस्लिम विद्वानों एवं न्यायविदों ने इन सिद्धांतों का विकास एवं व्याख्या की।

मुस्लिम विधि के स्रोतों को मुख्यतः दो भागों में विभाजित किया जाता है—

1. प्राथमिक स्रोत (Primary Sources)
2. द्वितीयक स्रोत (Secondary Sources)

I. प्राथमिक स्रोत (Primary Sources)

1. कुरान (Quran)

कुरान मुस्लिम विधि का सर्वोच्च एवं सबसे महत्वपूर्ण स्रोत है। मुसलमानों के अनुसार यह अल्लाह का वचन है, जो Prophet Muhammad को फरिश्ता जिब्रईल के माध्यम से प्राप्त हुआ।

महत्व

- मुस्लिम विधि का सर्वोच्च स्रोत।
- विवाह, तलाक, उत्तराधिकार, अनुबंध एवं पारिवारिक संबंधों से संबंधित नियम प्रदान करता है।
- कोई भी अन्य स्रोत कुरान के विरुद्ध नहीं हो सकता।

उदाहरण

कुरान में उत्तराधिकार तथा महिलाओं के अधिकारों के संबंध में विस्तृत नियम दिए गए हैं।

2. सुन्नत (Sunnah)

सुन्नत से अभिप्राय Prophet Muhammad के कथनों, कार्यों एवं अनुमोदनों से है।

जहाँ कुरान मौन है या स्पष्ट मार्गदर्शन नहीं देता, वहाँ सुन्नत मार्गदर्शक का कार्य करती है।

सुन्नत के प्रकार

(क) सुन्नत-उल-क़ौल (Sunnat-ul-Qaul) पैगम्बर के कथन।

(ख) सुन्नत-उल-फ़ैल (Sunnat-ul-Fail) पैगम्बर के कार्य।

(ग) सुन्नत-उल-तक्रीर (Sunnat-ul-Taqrir) ऐसे कार्य जिन्हें पैगम्बर ने स्वीकार या अनुमोदित किया।

महत्व

- कुरान की व्याख्या करती है।
- मुस्लिम विधि का दूसरा सबसे महत्वपूर्ण स्रोत है।

3. इज्मा (Ijma)

इज्मा का अर्थ है योग्य मुस्लिम विधिवेत्ताओं (Jurists) की किसी विधिक प्रश्न पर सर्वसम्मति।

पैगम्बर की मृत्यु के बाद अनेक नई समस्याएँ उत्पन्न हुईं, जिनका समाधान कुरान या सुन्नत में प्रत्यक्ष रूप से उपलब्ध नहीं था। ऐसे मामलों में विद्वानों की सर्वसम्मति को मान्यता दी गई।

महत्व

- मुस्लिम विधि के विकास में सहायक।
- नई परिस्थितियों के समाधान प्रदान करता है।
- विधि में एकरूपता स्थापित करता है।

4. कियास (Qiyas)

कियास का अर्थ है 'तुलनात्मक तर्क' या 'सादृश्य द्वारा निष्कर्ष'।

जब किसी विषय पर कुरान, सुन्नत अथवा इज्मा में स्पष्ट नियम उपलब्ध नहीं होता, तब उस विषय की तुलना किसी समान विषय से करके नियम निर्धारित किया जाता है।

महत्व

- मुस्लिम विधि को समयानुकूल बनाता है।

- नई समस्याओं का समाधान प्रदान करता है।

उदाहरण

मादक पदार्थों (Drugs) पर प्रतिबंध क़ियास के आधार पर लगाया गया क्योंकि वे शराब की तरह नशा उत्पन्न करते हैं।

II. द्वितीयक स्रोत (Secondary Sources)

1. प्रथा या रूढ़ि (Custom or Urf)

प्रथा या रूढ़ि ऐसे व्यवहार को कहते हैं जो लंबे समय से समाज में प्रचलित हो और जिसे लोग स्वीकार करते हों।

वैध प्रथा की शर्तें

- प्राचीन हो।
- निश्चित एवं स्पष्ट हो।
- युक्तिसंगत हो।
- क़ुरान एवं सुन्नत के विरुद्ध न हो।

महत्व जहाँ धार्मिक ग्रंथ मौन हैं, वहाँ प्रथा को मान्यता दी जा सकती है।

2. न्यायिक निर्णय (Judicial Decisions)

न्यायालयों द्वारा दिए गए निर्णय मुस्लिम विधि की व्याख्या एवं विकास में महत्वपूर्ण भूमिका निभाते हैं।

महत्व

- विधिक सिद्धांतों को स्पष्ट करते हैं।
- विवादों का समाधान करते हैं।
- भविष्य के मामलों के लिए मार्गदर्शन प्रदान करते हैं।

3. विधायन (Legislation)

आधुनिक युग में संसद एवं विधानमंडलों द्वारा बनाए गए क़ानून भी मुस्लिम विधि का महत्वपूर्ण स्रोत हैं।

भारत में प्रमुख अधिनियम—

- Muslim Personal Law (Shariat) Application Act, 1937
- Dissolution of Muslim Marriages Act, 1939
- Muslim Women (Protection of Rights on Divorce) Act, 1986

महत्व

- मुस्लिम विधि को आधुनिक आवश्यकताओं के अनुरूप बनाते हैं।
- विवादास्पद विषयों पर स्पष्टता प्रदान करते हैं।

4. न्याय, समता एवं सद्बिवेक (Justice, Equity and Good Conscience)

जहाँ कोई स्पष्ट नियम उपलब्ध नहीं होता, वहाँ न्यायालय न्याय, समता एवं सद्बिवेक के सिद्धांतों के आधार पर निर्णय देते हैं।

महत्त्व

- न्याय सुनिश्चित करता है।
- विधि की कमियों को पूरा करता है।
- निष्पक्ष निर्णय देने में सहायता करता है।

स्रोतों का वर्गीकरण

प्राथमिक स्रोत द्वितीयक स्रोत

कुरान	प्रथा (Custom)
सुन्नत	न्यायिक निर्णय
इज्मा	विधायन
कियास	न्याय, समता एवं सद्बिवेक

निष्कर्ष

मुस्लिम विधि के स्रोत इस्लामी विधि व्यवस्था की नींव हैं। कुरान सर्वोच्च स्रोत है, जबकि सुन्नत, इज्मा और कियास उसके पूरक स्रोत हैं। प्रथा, न्यायिक निर्णय, विधायन तथा न्याय, समता एवं सद्बिवेक जैसे द्वितीयक स्रोत मुस्लिम विधि को समयानुकूल एवं व्यावहारिक बनाते हैं। इन सभी स्रोतों के संयुक्त प्रभाव से मुस्लिम विधि एक व्यापक एवं विकसित विधिक प्रणाली के रूप में स्थापित हुई है।

परीक्षा हेतु संक्षिप्त परिभाषा

"मुस्लिम विधि के स्रोत वे आधार हैं जिनसे मुस्लिम विधि के नियम एवं सिद्धांत प्राप्त होते हैं। इसके प्राथमिक स्रोत कुरान, सुन्नत, इज्मा और कियास हैं, जबकि द्वितीयक स्रोत प्रथा, न्यायिक निर्णय, विधायन तथा न्याय, समता एवं सद्बिवेक हैं।"

महत्वपूर्ण प्रश्न (LL.B. 3rd Semester)

1. मुस्लिम विधि के स्रोतों का विस्तारपूर्वक वर्णन कीजिए।

2. कुरान और सुन्नत का मुस्लिम विधि में क्या महत्व है?
3. इज्मा और कियास में अंतर स्पष्ट कीजिए।
4. मुस्लिम विधि के प्राथमिक एवं द्वितीयक स्रोतों की तुलना कीजिए।
5. प्रथा (Custom) को मुस्लिम विधि के स्रोत के रूप में समझाइए।

मुस्लिम विधि के संप्रदाय (Schools of Muslim Law)

प्रस्तावना

पैगम्बर Prophet Muhammad की मृत्यु के पश्चात् मुस्लिम समाज में धार्मिक तथा विधिक प्रश्नों की व्याख्या को लेकर मतभेद उत्पन्न हुए। परिणामस्वरूप मुस्लिम विधि के विभिन्न संप्रदाय (Schools) विकसित हुए। इन संप्रदायों ने कुरान, सुन्नत, इज्मा और कियास की अपनी-अपनी व्याख्या प्रस्तुत की तथा विधि के अनेक सिद्धांतों का विकास किया।

मुस्लिम विधि के दो प्रमुख संप्रदाय हैं—

1. सुन्नी संप्रदाय (Sunni School)
2. शिया संप्रदाय (Shia School)

1. सुन्नी संप्रदाय (Sunni School)

सुन्नी मुस्लिम विश्व की सबसे बड़ी शाखा है। अधिकांश भारतीय मुसलमान सुन्नी संप्रदाय का अनुसरण करते हैं। सुन्नी विधि चार प्रमुख विद्यालयों (Schools) में विभाजित है।

(क) हनफी संप्रदाय (Hanafi School)

इस संप्रदाय की स्थापना Abu Hanifa ने की थी।

विशेषताएँ

- यह सबसे प्राचीन और सबसे व्यापक रूप से मान्य संप्रदाय है।
- तर्क (Reasoning) और कियास (Qiyas) को विशेष महत्व देता है।
- भारत, पाकिस्तान, बांग्लादेश, तुर्की आदि देशों में प्रचलित है।

महत्व

भारत में अधिकांश न्यायालयीय निर्णय हनफी विधि के सिद्धांतों पर आधारित हैं।

(ख) मालिकी संप्रदाय (Maliki School)

इसकी स्थापना Imam Malik ने की थी।

विशेषताएँ

- मदीना के लोगों की प्रथाओं को महत्व देता है।
- कुरान और सुन्नत के अतिरिक्त स्थानीय परंपराओं को भी मान्यता देता है।

प्रचलन-- उत्तरी एवं पश्चिमी अफ्रीका में अधिक प्रचलित।

(ग) शाफ़ई संप्रदाय (Shafii School)

इस संप्रदाय के संस्थापक Imam Al-Shafi'i थे।

विशेषताएँ

- कुरान और सुन्नत को सर्वोच्च महत्व देता है।
- इज्मा और कियास के प्रयोग के स्पष्ट नियम निर्धारित किए।

प्रचलन - इंडोनेशिया, मलेशिया, मिस्र और पूर्वी अफ्रीका में प्रमुख रूप से प्रचलित।

(घ) हनबली संप्रदाय (Hanbali School)

इसकी स्थापना Ahmad ibn Hanbal ने की थी।

विशेषताएँ

- अत्यंत रूढ़िवादी (Conservative) संप्रदाय।
- कुरान और सुन्नत का कठोर पालन।
- कियास एवं व्यक्तिगत मत को कम महत्व।

प्रचलन--- मुख्यतः सऊदी अरब में।

2. शिया संप्रदाय (Shia School)

शिया मुसलमानों का विश्वास है कि पैगम्बर के उत्तराधिकारी केवल उनके परिवार से होने चाहिए थे। शिया विधि भी कई उपसंप्रदायों में विभाजित है।

(क) इथना अशरी (Ithna Ashari School)

विशेषताएँ

- इसे 'बारह इमामिया संप्रदाय' भी कहा जाता है।
- शिया मुसलमानों का सबसे बड़ा संप्रदाय।
- बारह इमामों को मान्यता देता है।

प्रचलन भारत, ईरान, इराक आदि देशों में।

(ख) इस्माइली संप्रदाय (Ismaili School)

विशेषताएँ

- सातवें इमाम के उत्तराधिकार के प्रश्न पर विकसित हुआ।
- धार्मिक नेतृत्व को विशेष महत्व देता है।

प्रचलन - भारत, पाकिस्तान तथा पूर्वी अफ्रीका में।

(ग) जैदी संप्रदाय (Zaidi School)

विशेषताएँ

- शिया एवं सुन्नी सिद्धांतों के मध्य सामंजस्य रखने वाला संप्रदाय।
- अन्य शिया शाखाओं की अपेक्षा अधिक उदार।

प्रचलन -- मुख्यतः यमन में।

सुन्नी और शिया संप्रदायों में अंतर

आधार	सुन्नी	शिया
उत्तराधिकार का सिद्धांत	खलीफा का चुनाव समुदाय द्वारा	इमाम पैगम्बर के परिवार से होना चाहिए
प्रमुख शाखाएँ	हन्फ़ी, मालिकी, शाफ़ई, हन्बली	इथना अशरी, इस्माइली, जैदी
भारत में संख्या	अधिक	अपेक्षाकृत कम
विधिक दृष्टिकोण	इज्मा को अधिक महत्व	इमामों की व्याख्या को अधिक महत्व

भारत में महत्व

भारत में अधिकांश मुसलमान **हन्फ़ी संप्रदाय** का अनुसरण करते हैं। इसलिए भारतीय न्यायालयों में मुस्लिम व्यक्तिगत विधि से संबंधित अधिकांश मामलों का निर्णय हन्फ़ी सिद्धांतों के आधार पर किया जाता है। शिया समुदाय पर उनके अपने संप्रदाय के नियम लागू होते हैं, विशेषकर विवाह, उत्तराधिकार और वसीयत के मामलों में।

निष्कर्ष

मुस्लिम विधि के विभिन्न संप्रदाय इस्लामी विधि के विकास का परिणाम हैं। सुन्नी और शिया दो प्रमुख शाखाएँ हैं, जिनके अंतर्गत अनेक उपसंप्रदाय विकसित हुए। यद्यपि इनके बीच कुछ मतभेद हैं, फिर भी सभी का मूल आधार

कुरान और इस्लाम की शिक्षाएँ हैं। इन संप्रदायों का अध्ययन मुस्लिम विधि के सही एवं व्यापक ज्ञान के लिए अत्यंत आवश्यक है।

परीक्षा हेतु संक्षिप्त परिभाषा

"मुस्लिम विधि के संप्रदाय वे विधिक विद्यालय हैं जो कुरान, सुन्नत, इज्मा और कियास की विभिन्न व्याख्याओं के आधार पर विकसित हुए। इनके दो प्रमुख वर्ग सुन्नी और शिया हैं।"

मुस्लिम विधि की प्रयोज्यता (Applicability of Muslim Law)

प्रस्तावना

मुस्लिम विधि की प्रयोज्यता (Applicability of Muslim Law) से अभिप्राय उन व्यक्तियों एवं विषयों से है जिन पर मुस्लिम विधि लागू होती है। भारत में मुस्लिम विधि मुख्यतः एक **व्यक्तिगत विधि (Personal Law)** है, जो मुसलमानों के विवाह, तलाक, भरण-पोषण, संरक्षकता, उपहार, वसीयत, वक्फ, उत्तराधिकार एवं संपत्ति संबंधी मामलों को नियंत्रित करती है।

भारत में मुस्लिम विधि की प्रयोज्यता का प्रमुख आधार **Muslim Personal Law (Shariat) Application Act, 1937** है।

मुस्लिम विधि किन व्यक्तियों पर लागू होती है?

1. जन्म से मुसलमान (Muslims by Birth)

जो व्यक्ति मुस्लिम माता-पिता से जन्म लेता है, वह मुस्लिम माना जाता है और उस पर मुस्लिम व्यक्तिगत विधि लागू होती है।

उदाहरण

यदि माता-पिता दोनों मुसलमान हैं, तो उनके बच्चे पर विवाह, उत्तराधिकार एवं अन्य व्यक्तिगत मामलों में मुस्लिम विधि लागू होगी।

2. इस्लाम धर्म ग्रहण करने वाले व्यक्ति (Converts to Islam)

जो व्यक्ति स्वेच्छा से इस्लाम धर्म स्वीकार कर लेता है, वह मुस्लिम विधि के अधीन हो जाता है।

उदाहरण

यदि कोई हिंदू, ईसाई या अन्य धर्म का व्यक्ति इस्लाम स्वीकार करता है, तो उसके व्यक्तिगत मामलों पर मुस्लिम विधि लागू होगी।

3. मुस्लिम स्त्री से उत्पन्न अवैध संतान

सामान्यतः अवैध संतान अपनी माता का धर्म ग्रहण करती है। यदि माता मुस्लिम है, तो कुछ व्यक्तिगत मामलों में मुस्लिम विधि लागू हो सकती है।

मुस्लिम विधि किन विषयों पर लागू होती है?

मुस्लिम व्यक्तिगत विधि (शरीयत) अधिनियम, 1937 के अनुसार मुस्लिम विधि निम्नलिखित विषयों पर लागू होती है—

1. विवाह (Nikah)

विवाह की वैधता, शर्तें तथा अधिकार एवं कर्तव्य।

2. तलाक (Talaq)

विवाह-विच्छेद के विभिन्न प्रकार एवं नियम।

3. मेहर (Dower/Mahr)

पति द्वारा पत्नी को दिया जाने वाला धन या संपत्ति।

4. भरण-पोषण (Maintenance)

पत्नी, बच्चों एवं माता-पिता के भरण-पोषण के नियम।

5. संरक्षकता (Guardianship)

अल्पवयस्कों के संरक्षण एवं देखरेख से संबंधित नियम।

6. उपहार (Hiba) HABIBI = HIBA

उपहार देने एवं प्राप्त करने के नियम।

7. वसीयत (Wasiyat)

मृत्यु के पश्चात संपत्ति के वितरण संबंधी इच्छाएँ।

8. वक्फ (Waqf)

धार्मिक या परोपकारी उद्देश्यों हेतु संपत्ति का समर्पण।

9. उत्तराधिकार एवं विरासत (Inheritance and Succession)

मृतक की संपत्ति का उत्तराधिकारियों में वितरण।

ऐसे विषय जिन पर मुस्लिम विधि लागू नहीं होती

कुछ विषय ऐसे हैं जिन पर सभी भारतीय नागरिकों के लिए समान कानून लागू होते हैं—

1. फौजदारी विधि (Criminal Law)

हत्या, चोरी, धोखाधड़ी आदि अपराधों पर भारतीय दंड कानून लागू होता है।

2. संविदा विधि (Law of Contract)

अनुबंधों से संबंधित मामलों पर सामान्य कानून लागू होता है।

3. साक्ष्य विधि (Law of Evidence)

न्यायालय में साक्ष्यों से संबंधित नियम सभी नागरिकों पर समान रूप से लागू होते हैं।

4. संपत्ति हस्तांतरण (Transfer of Property)

संपत्ति के हस्तांतरण संबंधी सामान्य कानून लागू होते हैं।

5. वाणिज्यिक एवं व्यापारिक विषय

व्यापारिक लेन-देन पर सामान्य कानून लागू होते हैं।

मुस्लिम व्यक्तिगत विधि (शरीयत) अधिनियम, 1937 का महत्व

इस अधिनियम का उद्देश्य यह सुनिश्चित करना था कि मुसलमानों के व्यक्तिगत मामलों में स्थानीय प्रथाओं के स्थान पर मुस्लिम विधि लागू हो।

अधिनियम के अनुसार निम्नलिखित विषयों में निर्णय का आधार शरीयत होगा—

- विवाह
- तलाक
- मेहर
- भरण-पोषण
- वक्फ
- उपहार
- उत्तराधिकार
- वसीयत

मुस्लिम विधि की प्रयोज्यता के अपवाद

1. विशेष विवाह अधिनियम, 1954

यदि कोई मुस्लिम विवाह **Special Marriage Act, 1954** के अंतर्गत करता है, तो कुछ मामलों में सामान्य कानून लागू हो सकता है।

2. वैधानिक संशोधन

जहाँ संसद ने विशेष कानून बना दिया हो, वहाँ वही कानून लागू होगा।

3. न्यायालयीय व्याख्या

न्यायालय संविधान एवं आधुनिक सामाजिक आवश्यकताओं के अनुरूप मुस्लिम विधि की व्याख्या कर सकते हैं।

मुस्लिम विधि की प्रयोज्यता का महत्व

1. यह निर्धारित करती है कि किन व्यक्तियों पर मुस्लिम विधि लागू होगी।
2. पारिवारिक एवं व्यक्तिगत संबंधों को नियंत्रित करती है।
3. धार्मिक एवं सांस्कृतिक पहचान की रक्षा करती है।
4. विवाह एवं उत्तराधिकार के मामलों में निश्चितता प्रदान करती है।
5. मुस्लिम समुदाय के लिए एक संगठित विधिक व्यवस्था उपलब्ध कराती है।

निष्कर्ष

मुस्लिम विधि मुख्यतः मुसलमानों एवं इस्लाम धर्म स्वीकार करने वाले व्यक्तियों पर लागू होती है। यह विवाह, तलाक, मेहर, भरण-पोषण, संरक्षकता, उपहार, वसीयत, वक्फ तथा उत्तराधिकार जैसे व्यक्तिगत मामलों को नियंत्रित करती है। भारत में इसकी प्रयोज्यता का प्रमुख आधार **मुस्लिम व्यक्तिगत विधि (शरीयत) अधिनियम, 1937** है।

परीक्षा हेतु संक्षिप्त परिभाषा

"मुस्लिम विधि की प्रयोज्यता से अभिप्राय उन व्यक्तियों एवं विषयों से है जिन पर मुस्लिम व्यक्तिगत विधि लागू होती है। यह मुख्यतः विवाह, तलाक, मेहर, भरण-पोषण, संरक्षकता, वक्फ, उपहार, वसीयत तथा उत्तराधिकार के मामलों में मुसलमानों पर लागू होती है।"

महत्वपूर्ण LLB प्रश्न

1. मुस्लिम विधि की प्रयोज्यता का विस्तारपूर्वक वर्णन कीजिए।
2. मुस्लिम व्यक्तिगत विधि (शरीयत) अधिनियम, 1937 का महत्व स्पष्ट कीजिए।
3. किन व्यक्तियों पर मुस्लिम विधि लागू होती है?
4. मुस्लिम विधि किन विषयों को नियंत्रित करती है?
5. मुस्लिम विधि की प्रयोज्यता के अपवादों का वर्णन कीजिए।

मुस्लिम विधि में विवाह (Marriage / Nikah)

प्रस्तावना

मुस्लिम विधि में विवाह को **निकाह (Nikah)** कहा जाता है। निकाह मुस्लिम समाज की एक महत्वपूर्ण संस्था है, जो परिवार की स्थापना और सामाजिक व्यवस्था का आधार है। मुस्लिम विधि में विवाह को मुख्यतः **एक नागरिक संविदा (Civil Contract)** माना गया है, यद्यपि इसका धार्मिक एवं नैतिक महत्व भी है।

विवाह का उद्देश्य स्त्री और पुरुष के मध्य वैध संबंध स्थापित करना, संतानोत्पत्ति, बच्चों को वैधता प्रदान करना तथा परिवार की स्थापना करना है।

विवाह (निकाह) का अर्थ - "निकाह" शब्द का शाब्दिक अर्थ है "मिलन" या "संयोग"।

प्रसिद्ध विधिवेत्ता मुल्ला (Mulla) के अनुसार—

"निकाह एक ऐसा संविदात्मक संबंध है जिसका उद्देश्य संतानोत्पत्ति एवं संतान को वैधता प्रदान करना है।"

अमीर अली (Ameer Ali) के अनुसार—

"विवाह एक ऐसी संस्था है जिसका उद्देश्य समाज की रक्षा करना तथा स्त्री-पुरुष संबंधों को नियंत्रित करना है।"

मुस्लिम विवाह की प्रकृति (Nature of Muslim Marriage)

1. एक संविदा (Contract)

मुस्लिम विधि में विवाह एक संविदा (Contract) है, जिसमें प्रस्ताव और स्वीकृति आवश्यक होती है।

2. धार्मिक महत्व

यद्यपि विवाह एक संविदा है, फिर भी इस्लाम में इसे पवित्र एवं अनुशंसित संस्था माना गया है।

3. वैध यौन संबंध

विवाह पति-पत्नी के बीच यौन संबंधों को वैधता प्रदान करता है।

4. संतानों की वैधता

वैध विवाह से उत्पन्न संतान वैध मानी जाती है तथा उसे उत्तराधिकार के अधिकार प्राप्त होते हैं।

5. अधिकार एवं कर्तव्यों का सृजन

विवाह पति-पत्नी के मध्य अनेक अधिकार एवं कर्तव्यों को जन्म देता है।

वैध विवाह (सहीह निकाह) की आवश्यक शर्तें

1. प्रस्ताव एवं स्वीकृति (Ijab and Qubul)

एक पक्ष द्वारा विवाह का प्रस्ताव (इजाब) और दूसरे पक्ष द्वारा उसकी स्वीकृति (कुबूल) होना आवश्यक है।

शर्तें

- प्रस्ताव और स्वीकृति एक ही बैठक में हो।
- दोनों पक्षों की सहमति स्पष्ट हो।

2. पक्षकारों की क्षमता (Competency of Parties)

विवाह करने वाले पक्षों को सक्षम होना चाहिए।

क्षमता के लिए आवश्यकताएँ

- बालिग (Puberty) होना।
- स्वस्थ मस्तिष्क (Sound Mind) का होना।

कुछ परिस्थितियों में अवयस्क का विवाह उसके संरक्षक द्वारा कराया जा सकता है।

3. स्वतंत्र सहमति (Free Consent)

विवाह के लिए दोनों पक्षों की स्वतंत्र सहमति आवश्यक है।

यदि विवाह—

- बलपूर्वक,
- धोखे से,
- अनुचित प्रभाव के कारण,

किया गया हो, तो उसे चुनौती दी जा सकती है।

4. गवाह (Witnesses)

सुन्नी विधि में

- दो पुरुष गवाह, या
- एक पुरुष एवं दो महिला गवाह आवश्यक हैं।

शिया विधि में

विवाह की वैधता के लिए गवाह अनिवार्य नहीं माने जाते।

5. विधिक निषेध का अभाव

विवाह ऐसे व्यक्तियों के बीच नहीं होना चाहिए जिनके बीच विवाह निषिद्ध हो।

उदाहरण

- निकट रक्त संबंधियों के बीच विवाह।
 - **विवाहित स्त्री से विवाह। ?????**
-

मेहर (Mahr / Dower)

मेहर वह धनराशि या संपत्ति है जो पति विवाह के प्रतिफल स्वरूप पत्नी को देने के लिए बाध्य होता है।

मेहर का महत्व

1. पत्नी का वैधानिक अधिकार है।
 2. पत्नी को आर्थिक सुरक्षा प्रदान करता है।
 3. विवाह का एक आवश्यक परिणाम है।
-

विवाह के प्रकार

1. सहीह विवाह (Sahih Marriage) . सहीह=. सही

जो विवाह सभी कानूनी शर्तों को पूरा करता है, वह सहीह विवाह कहलाता है।

प्रभाव

- पति-पत्नी के बीच अधिकार एवं कर्तव्य उत्पन्न होते हैं।
 - संतान वैध होती है।
 - दोनों को उत्तराधिकार का अधिकार प्राप्त होता है।
-

2. फासिद विवाह (Fasid Marriage) **फासिद=फ़साद**

जिस विवाह में कोई अस्थायी दोष हो, उसे फासिद विवाह कहते हैं।

उदाहरण

- सुन्नी विधि में गवाहों के बिना विवाह।
- चार पत्नियों के रहते पाँचवीं पत्नी से विवाह।

प्रभाव

- दोष दूर किया जा सकता है।
 - संतान वैध मानी जाती है।
-

3. बातिल विवाह (Batil Marriage) **बातिल= "बातों में बहला लिया"**

जो विवाह प्रारंभ से ही अवैध हो, वह बातिल विवाह कहलाता है।

उदाहरण

- निषिद्ध रक्त संबंधों में विवाह।
- किसी विवाहित स्त्री से विवाह।

प्रभाव

- कोई वैधानिक अधिकार उत्पन्न नहीं होते।
 - उत्तराधिकार का अधिकार प्राप्त नहीं होता।
-

पति-पत्नी के अधिकार एवं कर्तव्य

पत्नी के अधिकार

1. मेहर प्राप्त करने का अधिकार।

2. भरण-पोषण (Maintenance) का अधिकार।
 3. सम्मानपूर्वक व्यवहार का अधिकार।
 4. पति की संपत्ति में उत्तराधिकार का अधिकार।
-

पति के अधिकार

1. वैवाहिक सहचर्य (Consortium) का अधिकार।
 2. पत्नी की निष्ठा का अधिकार।
 3. पत्नी की संपत्ति में उत्तराधिकार का अधिकार।
-

इस्लाम में विवाह के उद्देश्य

1. स्त्री-पुरुष संबंधों को वैध बनाना।
 2. संतानोत्पत्ति एवं पालन-पोषण।
 3. नैतिकता की रक्षा।
 4. परिवार की स्थापना।
 5. सामाजिक स्थिरता को बढ़ावा देना।
-

मुस्लिम विवाह का महत्व

- समाज को अनैतिकता से बचाता है।
 - बच्चों को वैध दर्जा प्रदान करता है।
 - परिवार की स्थापना करता है।
 - सामाजिक एवं आर्थिक सुरक्षा प्रदान करता है।
 - मानव जाति की निरंतरता बनाए रखता है।
-

निष्कर्ष

मुस्लिम विधि में विवाह (निकाह) एक **नागरिक संविदा (Civil Contract)** है, जिसका धार्मिक महत्व भी है। यह पति-पत्नी के मध्य वैधानिक संबंध स्थापित करता है, संतानों को वैधता प्रदान करता है तथा परिवार की स्थापना का

आधार बनता है। वैध विवाह के लिए प्रस्ताव एवं स्वीकृति, पक्षकारों की क्षमता, स्वतंत्र सहमति, गवाह (सुन्नी विधि में) तथा विधिक निषेधों का अभाव आवश्यक है।

परीक्षा हेतु परिभाषा

"निकाह मुस्लिम विधि के अंतर्गत स्त्री और पुरुष के मध्य किया गया एक नागरिक संविदा है, जिसका उद्देश्य वैध यौन संबंध स्थापित करना, संतानोत्पत्ति करना तथा परिवार की स्थापना करना है।"

महत्वपूर्ण LLB प्रश्न

1. मुस्लिम विधि में निकाह की परिभाषा एवं प्रकृति का वर्णन कीजिए।
2. वैध मुस्लिम विवाह की आवश्यक शर्तों का वर्णन कीजिए।
3. सहीह, फासिद एवं बातिल विवाह में अंतर स्पष्ट कीजिए।
4. मेहर का अर्थ एवं महत्व समझाइए।
5. क्या मुस्लिम विवाह एक संविदा है या संस्कार? विवेचना कीजिए।

मेहर (Mahr / Dower) : मुस्लिम विधि में

प्रस्तावना

मेहर (Mahr) मुस्लिम विवाह (निकाह) का एक अनिवार्य एवं महत्वपूर्ण अंग है। यह वह धनराशि, संपत्ति या मूल्यवान वस्तु है जिसे पति विवाह के प्रतिफलस्वरूप पत्नी को देने के लिए बाध्य होता है।

मेहर पत्नी का वैधानिक अधिकार है तथा पति का कानूनी दायित्व। इसका उद्देश्य पत्नी को आर्थिक सुरक्षा प्रदान करना तथा उसके सम्मान को मान्यता देना है।

मेहर का अर्थ (Meaning of Mahr)

मेहर का शाब्दिक अर्थ है "प्रतिफल", "उपहार" या "सम्मान राशि"। **मेहर = मेहरारू**

मुल्ला (Mulla) के अनुसार—

"मेहर वह धनराशि या संपत्ति है जिसे पत्नी विवाह के प्रतिफलस्वरूप पति से प्राप्त करने की अधिकारी होती है।"

अमीर अली (Ameer Ali) के अनुसार—

"मेहर पत्नी के सम्मान के प्रतीक के रूप में पति पर लगाया गया एक दायित्व है।"

मेहर की प्रकृति (Nature of Mahr)

1. विवाह का आवश्यक परिणाम

मेहर प्रत्येक मुस्लिम विवाह का आवश्यक अंग है।

2. पत्नी का वैधानिक अधिकार

पत्नी को मेहर प्राप्त करने का पूर्ण अधिकार है।

3. पत्नी का मूल्य नहीं

मेहर पत्नी का मूल्य (Price) नहीं है, बल्कि उसके सम्मान एवं सुरक्षा का प्रतीक है।

4. पति पर ऋण (Debt)

मेहर देय होते ही पति पर ऋण के समान हो जाता है।

5. पत्नी की विशिष्ट संपत्ति

मेहर पर केवल पत्नी का अधिकार होता है और वह इसका स्वतंत्र रूप से उपयोग कर सकती है।

मेहर के उद्देश्य (Objects of Mahr)

1. पत्नी को आर्थिक सुरक्षा प्रदान करना।
2. पत्नी के सम्मान एवं प्रतिष्ठा की रक्षा करना।
3. पति को मनमाने तलाक से रोकना।
4. वैवाहिक संस्था को सुदृढ़ बनाना।
5. महिलाओं के आर्थिक हितों की रक्षा करना।

मेहर के प्रकार (Kinds of Mahr)

1. निश्चित मेहर (Specified Dower / **Mahr-i-Musamma**)

जब विवाह के समय मेहर की राशि निश्चित कर दी जाती है, तो उसे निश्चित मेहर कहते हैं।

उदाहरण

यदि निकाह के समय ₹1,00,000 मेहर तय किया जाए, तो यह निश्चित मेहर होगा।

2. उचित मेहर (Proper Dower / **Mahr-i-Misl**)

जब विवाह के समय मेहर की राशि निर्धारित नहीं की जाती, तब पत्नी उचित मेहर पाने की अधिकारी होती है।

उचित मेहर निर्धारित करने के आधार

- पत्नी की सामाजिक स्थिति
 - परिवार की परंपराएँ
 - निकट महिला रिश्तेदारों को प्राप्त मेहर
-

भुगतान के आधार पर मेहर के प्रकार

1. सत्त्वर मेहर (Prompt Dower / Mu'ajjal)

यह वह मेहर है जो विवाह के तुरंत बाद या पत्नी की मांग पर देय होता है।

विशेषताएँ

- पत्नी इसकी मांग तुरंत कर सकती है।
 - भुगतान होने तक पत्नी सहवास से इंकार कर सकती है।
-

2. स्थगित मेहर (Deferred Dower / Mu'wajjal)

यह मेहर विवाह-विच्छेद (तलाक) या पति की मृत्यु पर देय होता है।

विशेषताएँ

- पत्नी को भविष्य की आर्थिक सुरक्षा प्रदान करता है।
 - व्यवहार में सबसे अधिक प्रचलित प्रकार है।
-

मेहर के संबंध में पत्नी के अधिकार

1. वसूली का अधिकार

पत्नी मेहर की वसूली के लिए न्यायालय में वाद दायर कर सकती है।

2. सहवास से इंकार का अधिकार

सत्त्वर मेहर का भुगतान न होने पर पत्नी पति के साथ रहने या सहवास से इंकार कर सकती है।

3. पति की संपत्ति से वसूली का अधिकार

पति की मृत्यु होने पर पत्नी उसका बकाया मेहर उसकी संपत्ति से प्राप्त कर सकती है।

4. प्रतिधारण का अधिकार (Right of Retention)

यदि विधवा पति की संपत्ति पर कब्जे में है, तो वह अपना बकाया मेहर मिलने तक उस संपत्ति को अपने कब्जे में रख सकती है।

मेहर का परित्याग (Remission of Mahr)

पत्नी स्वेच्छा से अपने मेहर का पूर्ण या आंशिक त्याग कर सकती है।

आवश्यक शर्तें

- त्याग स्वेच्छा से किया गया हो।
- पत्नी सक्षम हो।
- कोई दबाव या अनुचित प्रभाव न हो।

मेहर का भुगतान न होने का प्रभाव

मेहर का भुगतान न होने से विवाह अवैध नहीं होता।

किन्तु—

- मेहर पति पर ऋण बना रहता है।
- पत्नी उसकी वसूली के लिए मुकदमा कर सकती है।
- सत्वर मेहर के मामले में सहवास से इंकार कर सकती है।

मेहर और प्रतिफल (Consideration) में अंतर

मेहर	प्रतिफल (Consideration)
विवाह से उत्पन्न होता है	संविदा से उत्पन्न होता है
पत्नी को दिया जाता है	संविदा के पक्षकार को दिया जाता है
सम्मान एवं सुरक्षा का प्रतीक	संविदा का आवश्यक तत्व
पति का कानूनी दायित्व	पक्षकारों का पारस्परिक वचन

मेहर का महत्व

1. पत्नी को आर्थिक सुरक्षा प्रदान करता है।
2. महिला की गरिमा एवं सम्मान की रक्षा करता है।
3. पति को मनमाने तलाक से रोकता है।
4. वैवाहिक उत्तरदायित्व को मजबूत करता है।
5. विवाह-विच्छेद या पति की मृत्यु की स्थिति में पत्नी के हितों की रक्षा करता है।

निष्कर्ष

मेहर मुस्लिम विवाह का एक अनिवार्य परिणाम है। यह पति द्वारा पत्नी को दिया जाने वाला धन या संपत्ति है, जो पत्नी के सम्मान, सुरक्षा और आर्थिक हितों की रक्षा के लिए निर्धारित की जाती है। मेहर पत्नी का वैधानिक अधिकार है और पति का कानूनी दायित्व। मेहर का भुगतान न होने पर भी विवाह वैध रहता है, परन्तु पत्नी उसकी वसूली के लिए कानूनी उपाय अपना सकती है।

परीक्षा हेतु परिभाषा

"मेहर वह धनराशि या संपत्ति है जिसे मुस्लिम विधि के अंतर्गत पति विवाह के प्रतिफलस्वरूप पत्नी को देने के लिए कानूनी रूप से बाध्य होता है।"

महत्वपूर्ण LLB प्रश्न

1. मेहर की परिभाषा एवं प्रकृति का वर्णन कीजिए।
2. मेहर के विभिन्न प्रकारों का वर्णन कीजिए।
3. सत्वर मेहर एवं स्थगित मेहर में अंतर स्पष्ट कीजिए।
4. मेहर के संबंध में पत्नी के अधिकारों का वर्णन कीजिए।
5. क्या मेहर पत्नी का मूल्य है? विवेचना कीजिए।

1. तलाक (Talaq) और उसके प्रकार (Kinds of Talaq)

प्रस्तावना

तलाक (Talaq) मुस्लिम विधि में विवाह-विच्छेद (Dissolution of Marriage) का एक माध्यम है। मुस्लिम विधि में विवाह एक संविदा (Contract) है, अतः उसका विघटन भी संभव है। तलाक का अर्थ है पति द्वारा विवाह संबंध को समाप्त करना।

तलाक (Talaq) की परिभाषा

मुल्ला (Mulla) के अनुसार — औशौ का मुल्ला

"तलाक विवाह संबंध का तत्काल अथवा भविष्य में प्रभावी होने वाला विघटन है।"

तलाक के प्रकार

A. पति द्वारा तलाक

1. तलाक-अहसन (Talaq-e-Ahsan)

यह तलाक का सबसे उत्तम एवं मान्य रूप है।

प्रक्रिया

- पत्नी की तुहर (पवित्रता) अवधि में एक बार तलाक का उच्चारण।
- इद्दत अवधि (तीन मासिक चक्र) तक सहवास न करना।

विशेषता

- इद्दत अवधि में तलाक वापस लिया जा सकता है।
 - सबसे उचित एवं मान्य तरीका।
-

2. तलाक-हसन (Talaq-e-Hasan)

प्रक्रिया

- लगातार तीन तुहर अवधियों में एक-एक बार तलाक का उच्चारण।

विशेषता

- तीसरे उच्चारण के बाद तलाक पूर्ण हो जाता है।
 - तीसरे उच्चारण से पहले वापसी संभव।
-

3. तलाक-उल-बिद्दत (Triple Talaq)

प्रक्रिया

- एक ही बैठक में तीन बार तलाक कहना।

उदाहरण:

"तलाक, तलाक, तलाक"

स्थिति

यह प्रथा भारत में असंवैधानिक घोषित की जा चुकी है।

महत्वपूर्ण निर्णय **Shayara Bano v. Union of India**

इस निर्णय में सर्वोच्च न्यायालय ने तीन तलाक को असंवैधानिक एवं अवैध घोषित किया।

B. पत्नी द्वारा तलाक

1. तलाक-ए-तफवीज (Talaq-e-Tafweez)

जब पति विवाह अनुबंध के माध्यम से तलाक का अधिकार पत्नी को सौंप देता है।

C. पारस्परिक सहमति द्वारा तलाक

1. खुला (Khula)

पत्नी पति को प्रतिफल देकर विवाह-विच्छेद प्राप्त करती है।

विशेषता

- पति की सहमति आवश्यक।
 - सामान्यतः मेहर वापस किया जाता है।
-

2. मुबारत (Mubarat) . मुबारत="मुबारक हो, आप आज़ाद हो गए!"

जब पति और पत्नी दोनों विवाह समाप्त करने पर सहमत हों।

विशेषता

- पारस्परिक सहमति से तलाक।
-

D. न्यायिक तलाक

Dissolution of Muslim Marriages Act, 1939

इस अधिनियम के अंतर्गत पत्नी न्यायालय से तलाक प्राप्त कर सकती है।

प्रमुख आधार

1. पति 4 वर्षों से लापता हो।
 2. 2 वर्षों से भरण-पोषण न दिया हो।
 3. 7 वर्ष या अधिक कारावास।
 4. पति नपुंसक हो।
 5. पति पागल हो।
 6. क्रूरता (Cruelty)।
 7. विवाह के दायित्वों का पालन न करना।
-

2. मुस्लिम महिला (तलाक पर अधिकारों का संरक्षण) अधिनियम, 1986

(Muslim Women (Protection of Rights on Divorce) Act, 1986)

पृष्ठभूमि

यह अधिनियम प्रसिद्ध **Mohd. Ahmed Khan v. Shah Bano Begum** निर्णय के बाद पारित किया गया।

उद्देश्य

तलाकशुदा मुस्लिम महिलाओं के अधिकारों की रक्षा करना।

तलाकशुदा महिला के अधिकार

1. इद्दत अवधि के दौरान उचित एवं युक्तियुक्त प्रावधान (Reasonable and Fair Provision)

पति इद्दत अवधि के भीतर पत्नी के लिए उचित व्यवस्था करने हेतु बाध्य है।

2. मेहर (Dower)

तलाकशुदा महिला अपना पूरा मेहर प्राप्त करने की अधिकारी है।

3. उपहार एवं संपत्ति

विवाह के समय प्राप्त उपहार एवं संपत्ति पर उसका अधिकार बना रहता है।

4. बच्चों का भरण-पोषण

पति बच्चों के जन्म से दो वर्ष तक उनके पालन-पोषण हेतु उत्तरदायी होगा।

दानियाल लतीफी मामला Danial Latifi v. Union of India

सर्वोच्च न्यायालय ने निर्णय दिया कि—

पति को केवल इद्दत अवधि का खर्च नहीं देना है, बल्कि इद्दत अवधि के भीतर पत्नी के भविष्य के लिए भी उचित एवं युक्तियुक्त प्रावधान करना होगा। इस निर्णय ने मुस्लिम महिलाओं को व्यापक आर्थिक सुरक्षा प्रदान की।

3. पत्नी का भरण-पोषण (Maintenance of Wives)

धारा 125 दण्ड प्रक्रिया संहिता

अब यह प्रावधान Bharatiya Nagarik Suraksha Sanhita, 2023 में समाहित है, किंतु अध्ययन हेतु धारा 125 Cr.P.C. का महत्व बना हुआ है।

उद्देश्य-- ऐसी पत्नी, बच्चे या माता-पिता को भरण-पोषण दिलाना जो स्वयं अपना पालन-पोषण नहीं कर सकते।

भरण-पोषण की शर्तें

पत्नी भरण-पोषण पाने की अधिकारी है यदि—

1. वह स्वयं अपना भरण-पोषण नहीं कर सकती।
 2. पति के पास पर्याप्त साधन हों।
 3. पति उसे बिना उचित कारण छोड़ दे।
-

शाह बानो मामला (Shah Bano Case) Mohd. Ahmed Khan v. Shah Bano Begum

तथ्य -- 62 वर्षीय शाह बानो को उनके पति ने तलाक दे दिया और भरण-पोषण देने से इंकार कर दिया।

निर्णय

सर्वोच्च न्यायालय ने कहा—

- मुस्लिम महिला भी धारा 125 Cr.P.C. के अंतर्गत भरण-पोषण प्राप्त कर सकती है।
- भरण-पोषण का अधिकार धर्म से ऊपर एक सामाजिक न्याय का प्रश्न है।

महत्व

1. मुस्लिम महिलाओं के अधिकारों की रक्षा।
2. समान न्याय के सिद्धांत को बढ़ावा।
3. 1986 के अधिनियम की पृष्ठभूमि तैयार हुई।

तलाक एवं भरण-पोषण से संबंधित प्रमुख मामले

- | | |
|---|--|
| 1. Mohd. Ahmed Khan v. Shah Bano Begum | भरण-पोषण का अधिकार। |
| 2. Danial Latifi v. Union of India | उचित एवं युक्तियुक्त प्रावधान का विस्तृत अर्थ। |
| 3. Shayara Bano v. Union of India | तीन तलाक असंवैधानिक घोषित। |

निष्कर्ष

मुस्लिम विधि में तलाक विवाह-विच्छेद का महत्वपूर्ण माध्यम है। तलाक के विभिन्न रूपों में तलाक-अहसन, तलाक-हसन, खुला, मुबारत तथा न्यायिक तलाक प्रमुख हैं। आधुनिक भारतीय विधि एवं न्यायालयों ने मुस्लिम महिलाओं के अधिकारों की रक्षा हेतु महत्वपूर्ण कदम उठाए हैं। **शाह बानो, दानियाल लतीफी तथा शायरा बानो के निर्णयों ने मुस्लिम व्यक्तिगत विधि के विकास में ऐतिहासिक भूमिका निभाई है।**

परीक्षा हेतु संक्षिप्त परिभाषा

"तलाक मुस्लिम विधि में विवाह संबंध को समाप्त करने की प्रक्रिया है, जो पति, पत्नी, पारस्परिक सहमति अथवा न्यायालय के माध्यम से संपन्न हो सकती है।"

वसीयत (Wasiyat / Will) : मुस्लिम विधि में

प्रस्तावना

वसीयत (Will/Wasiyat) वह कानूनी घोषणा है जिसके द्वारा कोई व्यक्ति अपनी मृत्यु के बाद अपनी संपत्ति के वितरण के संबंध में अपनी इच्छा व्यक्त करता है। मुस्लिम विधि में वसीयत का विशेष महत्व है, क्योंकि इसके माध्यम से कोई मुस्लिम अपनी संपत्ति के एक भाग का निपटान अपनी इच्छा के अनुसार कर सकता है।

मुस्लिम विधि वसीयत करने की स्वतंत्रता तो देती है, परंतु उत्तराधिकारियों के अधिकारों की रक्षा के लिए उस पर कुछ सीमाएँ भी लगाती है।

वसीयत का अर्थ (Meaning of Will)

वसीयत वह घोषणा है जिसके द्वारा कोई व्यक्ति अपनी मृत्यु के पश्चात अपनी संपत्ति के संबंध में निर्देश देता है।

मुल्ला (Mulla) के अनुसार—

"वसीयत किसी व्यक्ति द्वारा अपनी संपत्ति के संबंध में की गई ऐसी कानूनी घोषणा है, जो उसकी मृत्यु के बाद प्रभावी होती है।"

वसीयत करने वाले व्यक्ति को **वसीयतकर्ता (Testator)** तथा जिसके पक्ष में वसीयत की जाती है उसे **वसीयतग्राही (Legatee)** कहते हैं।

वसीयत की प्रकृति (Nature of Will)

1. वसीयत मृत्यु के बाद प्रभावी होती है।
2. वसीयतकर्ता जीवनकाल में इसे कभी भी निरस्त (Revoke) कर सकता है।
3. यह एक स्वैच्छिक कार्य है।
4. इसमें कोई प्रतिफल (Consideration) नहीं होता।
5. यह मुस्लिम विधि द्वारा निर्धारित सीमाओं के अधीन होती है।

वैध वसीयत की आवश्यक शर्तें

1. वसीयतकर्ता की क्षमता

वसीयतकर्ता को—

- मुस्लिम होना चाहिए।
- बालिग (Major) होना चाहिए।
- स्वस्थ मस्तिष्क (Sound Mind) का होना चाहिए।
- अपने कार्य के परिणाम को समझने में सक्षम होना चाहिए।

2. वसीयतग्राही की क्षमता

कोई भी व्यक्ति जो संपत्ति प्राप्त करने में सक्षम हो, वसीयतग्राही बन सकता है।

उदाहरण

- मुस्लिम
 - गैर-मुस्लिम
 - नाबालिग
 - संस्था
 - धर्मार्थ संगठन
-

3. वसीयत की संपत्ति

वसीयत की जाने वाली संपत्ति—

- वसीयतकर्ता की स्वामित्व वाली हो।
 - हस्तांतरणीय हो।
 - मृत्यु के समय अस्तित्व में हो।
-

4. स्वतंत्र इच्छा

वसीयत बिना किसी—

- दबाव (Coercion)
- धोखाधड़ी (Fraud)
- अनुचित प्रभाव (Undue Influence)

के बनाई जानी चाहिए।

वसीयत की औपचारिकताएँ मुस्लिम विधि में वसीयत के लिए किसी विशेष प्रारूप की आवश्यकता नहीं है।

वसीयत—

- मौखिक (Oral) या

- लिखित (Written)

दोनों प्रकार से की जा सकती है।

यद्यपि पंजीकरण (Registration) अनिवार्य नहीं है, फिर भी लिखित एवं पंजीकृत वसीयत अधिक सुरक्षित मानी जाती है।

वसीयत करने की शक्ति पर सीमाएँ

1. एक-तिहाई नियम (One-Third Rule)

मुस्लिम व्यक्ति अपने उत्तराधिकारियों की सहमति के बिना अपनी कुल संपत्ति के केवल **एक-तिहाई (1/3)** भाग की ही वसीयत कर सकता है। शेष दो-तिहाई संपत्ति उत्तराधिकार के नियमों के अनुसार वारिसों में विभाजित होगी।

उदाहरण

यदि किसी मुस्लिम की संपत्ति ₹9,00,000 है—

- वसीयत द्वारा अधिकतम ₹3,00,000 का निपटान किया जा सकता है।
- शेष ₹6,00,000 वारिसों को मिलेगा।

2. वारिस के पक्ष में वसीयत सामान्य नियम यह है कि—

"किसी वारिस के पक्ष में की गई वसीयत अन्य वारिसों की मृत्यु के बाद दी गई सहमति के बिना वैध नहीं होती।"

सिद्धांत

"No bequest to an heir without the consent of other heirs."

वसीयत का निरस्तीकरण (Revocation of Will)

वसीयतकर्ता अपनी मृत्यु से पहले किसी भी समय वसीयत को निरस्त कर सकता है।

निरस्तीकरण के तरीके

1. **स्पष्ट निरस्तीकरण (Express Revocation)** वसीयतकर्ता स्पष्ट रूप से वसीयत रद्द कर दे।
 2. **परोक्ष निरस्तीकरण (Implied Revocation)** वसीयतकर्ता ऐसा कार्य करे जो वसीयत के विपरीत हो।
 3. **नई वसीयत बनाना** बाद की वसीयत पहले की वसीयत को निरस्त कर सकती है।
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वसीयत का लोप (Lapse of Legacy)

यदि वसीयतग्राही (Legatee) वसीयतकर्ता से पहले मर जाए, तो सामान्यतः वसीयत निष्फल (Lapse) हो जाती है।

वसीयत और हिबा (Gift) में अंतर

वसीयत (Will)	हिबा (Gift)
मृत्यु के बाद प्रभावी	तुरंत प्रभावी
जीवनकाल में निरस्त की जा सकती है	पूर्ण होने के बाद सामान्यतः निरस्त नहीं
एक-तिहाई सीमा लागू	ऐसी कोई सीमा नहीं
स्वामित्व मृत्यु के बाद हस्तांतरित	स्वामित्व तुरंत हस्तांतरित
मृत्यु आवश्यक	मृत्यु आवश्यक नहीं

वसीयत का महत्व

1. व्यक्ति को अपनी इच्छा के अनुसार संपत्ति का एक भाग वितरित करने की सुविधा देता है।
2. गैर-वारिस व्यक्तियों की सहायता की जा सकती है।
3. धार्मिक एवं धर्मार्थ कार्यों को प्रोत्साहन मिलता है।
4. संपत्ति संबंधी विवाद कम होते हैं।
5. उत्तराधिकार नियमों में लचीलापन प्रदान करता है।

निष्कर्ष

मुस्लिम विधि में वसीयत (वसियत) एक महत्वपूर्ण कानूनी व्यवस्था है, जिसके द्वारा व्यक्ति अपनी मृत्यु के बाद संपत्ति के वितरण के संबंध में इच्छा व्यक्त करता है। हालांकि मुस्लिम विधि वसीयत करने की स्वतंत्रता देती है, परंतु एक-तिहाई नियम तथा वारिसों के अधिकारों की रक्षा के लिए उस पर सीमाएँ भी लगाती है। इस प्रकार वसीयतकर्ता की इच्छा और उत्तराधिकारियों के अधिकारों के बीच संतुलन स्थापित किया जाता है।

परीक्षा हेतु परिभाषा

"वसीयत (Wasiyat) वह कानूनी घोषणा है जिसके द्वारा कोई मुस्लिम अपनी मृत्यु के पश्चात अपनी संपत्ति के वितरण के संबंध में अपनी इच्छा व्यक्त करता है।"

महत्वपूर्ण LLB प्रश्न

1. वसीयत (Wasiyat) की परिभाषा एवं आवश्यक तत्वों का वर्णन कीजिए।
2. मुस्लिम विधि में वसीयत करने की शक्ति एवं उसकी सीमाओं का वर्णन कीजिए।
3. एक-तिहाई नियम (One-Third Rule) की व्याख्या कीजिए।
4. क्या कोई मुस्लिम अपने वारिस के पक्ष में वसीयत कर सकता है? चर्चा कीजिए।

answer

वारिस के पक्ष में वसीयत का सामान्य नियम

मुस्लिम विधि का सामान्य सिद्धांत है कि कोई मुस्लिम अपने वैध वारिस (Heir) के पक्ष में वसीयत नहीं कर सकता। इसका आधार पैगंबर मोहम्मद के कथन पर आधारित वह नियम है जिसे इस प्रकार व्यक्त किया जाता है—

"There is no will in favour of an heir."
अर्थात् "वारिस के पक्ष में वसीयत नहीं की जा सकती।"

इस नियम का उद्देश्य यह सुनिश्चित करना है कि कुरान द्वारा निर्धारित उत्तराधिकार के नियमों में किसी प्रकार का अनुचित हस्तक्षेप न हो तथा अन्य वारिसों के अधिकारों की रक्षा की जा सके।

5. वसीयत (Will) एवं हिबा (Gift) में अंतर स्पष्ट कीजिए।

हिबा (Gift) : मुस्लिम विधि में उपहार

हिबा= हबीबी

प्रस्तावना

मुस्लिम विधि में उपहार को **हिबा (Hiba)** कहा जाता है। हिबा एक ऐसा स्वैच्छिक हस्तांतरण (Transfer) है जिसके द्वारा कोई व्यक्ति बिना किसी प्रतिफल (Consideration) के अपनी संपत्ति का स्वामित्व किसी अन्य व्यक्ति को प्रदान करता है।

मुस्लिम विधि में हिबा का विशेष महत्व है क्योंकि इसके लिए लिखित दस्तावेज या पंजीकरण सामान्यतः आवश्यक नहीं होता, यदि हिबा की आवश्यक शर्तें पूरी हो जाएँ।

हिबा (Gift) का अर्थ - हिबा का शाब्दिक अर्थ है "उपहार" या "दान"।

मुल्ला (Mulla) के अनुसार—

"हिबा किसी संपत्ति के स्वामित्व का तत्काल एवं बिना प्रतिफल के एक व्यक्ति द्वारा दूसरे व्यक्ति को किया गया हस्तांतरण है, जिसे प्राप्तकर्ता स्वीकार करता है।"

हिबा की परिभाषा

हिबा वह स्वैच्छिक और बिना प्रतिफल का संपत्ति हस्तांतरण है जो दाता (Donor) द्वारा प्राप्तकर्ता (Donee) को तत्काल प्रभाव से किया जाता है।

वैध हिंसा की आवश्यक शर्तें

मुस्लिम विधि में वैध हिबा के लिए तीन आवश्यक तत्व होते हैं—

1. दान की घोषणा (Declaration of Gift)

दाता (Donor) को स्पष्ट रूप से उपहार देने की घोषणा करनी चाहिए।

उदाहरण

यदि कोई व्यक्ति कहे—

"मैं अपना मकान अपने पुत्र को उपहार में देता हूँ।" तो यह घोषणा मानी जाएगी।

2. उपहार की स्वीकृति (Acceptance)

उपहार प्राप्त करने वाले व्यक्ति (Donee) द्वारा उपहार स्वीकार किया जाना आवश्यक है।

विशेष स्थिति - यदि प्राप्तकर्ता नाबालिग है, तो उसका संरक्षक उसकी ओर से स्वीकृति दे सकता है।

3. कब्जे का हस्तांतरण (Delivery of Possession)

उपहार की गई संपत्ति का वास्तविक या प्रतीकात्मक कब्जा प्राप्तकर्ता को सौंपना आवश्यक है।

महत्त्व - कब्जा हस्तांतरित किए बिना हिबा पूर्ण नहीं माना जाता।

हिबा के पक्षकार

1. दाता (Donor) वह व्यक्ति जो उपहार देता है।

दाता की योग्यता

- बालिग हो।

- स्वस्थ मस्तिष्क का हो।
 - संपत्ति का स्वामी हो।
-

2. प्राप्तकर्ता (Donee) वह व्यक्ति जो उपहार प्राप्त करता है।

प्राप्तकर्ता

- मुस्लिम या गैर-मुस्लिम हो सकता है।
 - नाबालिग भी हो सकता है।
 - संस्था या संगठन भी हो सकता है।
-

हिबा की विषय-वस्तु (Subject Matter)

उपहार की जाने वाली संपत्ति—

- दाता की स्वामित्व वाली हो।
 - हस्तांतरणीय हो।
 - निश्चित एवं पहचान योग्य हो।
-

हिबा के प्रकार

1. साधारण हिबा (Simple Hiba) सामान्य उपहार जिसमें बिना प्रतिफल के संपत्ति दी जाती है।

2. हिबा-बिल-इवाज (Hiba-bil-Iwaz)

यह ऐसा उपहार है जिसमें उपहार के बदले कुछ प्रतिफल दिया जाता है।

उदाहरण - एक व्यक्ति मकान देता है और बदले में धन प्राप्त करता है।

3. हिबा-बा-शर्त-उल-इवाज (Hiba-ba-Shart-ul-Iwaz)

ऐसा उपहार जिसमें प्रतिफल देने की शर्त पहले से निर्धारित होती है।

हिबा का निरस्तीकरण (Revocation of Gift)

सामान्यतः हिबा को कुछ परिस्थितियों में निरस्त किया जा सकता है।

न्यायालय के बिना निरस्त नहीं किया जा सकता यदि—

1. पति द्वारा पत्नी को उपहार।
2. पत्नी द्वारा पति को उपहार।
3. निकट संबंधियों को उपहार।
4. प्राप्तकर्ता की मृत्यु हो जाए।
5. उपहार की गई वस्तु नष्ट हो जाए।
6. उपहार के बदले प्रतिफल मिल चुका हो।

हिबा और वसीयत में अंतर

हिबा (Gift)	वसीयत (Will)
तुरंत प्रभावी	मृत्यु के बाद प्रभावी
कब्जा देना आवश्यक	कब्जा आवश्यक नहीं
जीवनकाल में प्रभावी	मृत्यु के बाद प्रभावी
एक-तिहाई सीमा लागू नहीं	एक-तिहाई सीमा लागू
प्राप्तकर्ता तुरंत स्वामी बन जाता है	मृत्यु के बाद स्वामित्व प्राप्त होता है

हिबा का महत्व

1. संपत्ति के स्वैच्छिक हस्तांतरण का सरल माध्यम।
2. पारिवारिक सद्भाव को बढ़ावा।
3. धार्मिक एवं सामाजिक उद्देश्यों की पूर्ति।
4. संपत्ति के तत्काल हस्तांतरण की सुविधा।
5. कानूनी विवादों को कम करने में सहायक।

प्रमुख न्यायिक निर्णय

Abdul Rahim Khan v. Fakhr Jahan Begum

न्यायालय ने कहा कि वैध हिबा के लिए घोषणा, स्वीकृति तथा कब्जे का हस्तांतरण आवश्यक है।

निष्कर्ष

मुस्लिम विधि में हिबा (Gift) संपत्ति के स्वैच्छिक एवं निःशुल्क हस्तांतरण का एक महत्वपूर्ण माध्यम है। वैध हिबा के लिए घोषणा, स्वीकृति तथा कब्जे का हस्तांतरण आवश्यक है। हिबा तत्काल प्रभाव से संपत्ति का स्वामित्व प्राप्तकर्ता को प्रदान करता है और मुस्लिम व्यक्तिगत विधि का एक महत्वपूर्ण अंग है।

परीक्षा हेतु परिभाषा

"हिबा (Gift) मुस्लिम विधि में किसी संपत्ति का बिना प्रतिफल और स्वेच्छा से एक व्यक्ति द्वारा दूसरे व्यक्ति को किया गया तत्काल हस्तांतरण है।"

महत्वपूर्ण LLB प्रश्न

1. हिबा (Gift) की परिभाषा एवं आवश्यक तत्वों का वर्णन कीजिए।
2. मुस्लिम विधि में वैध हिबा की शर्तों का वर्णन कीजिए।
3. हिबा एवं वसीयत में अंतर स्पष्ट कीजिए।
4. हिबा-बिल-इवाज तथा हिबा-बा-शर्त-उल-इवाज की व्याख्या कीजिए।
5. मुस्लिम विधि में हिबा के निरस्तीकरण के नियमों का वर्णन कीजिए।

वक्फ (Waqf / Wakf) : मुस्लिम विधि में**प्रस्तावना**

वक्फ (Waqf) मुस्लिम विधि की एक महत्वपूर्ण संस्था है। इसका अर्थ है किसी संपत्ति को स्थायी रूप से धार्मिक, पुण्य (Pious) या परोपकारी (Charitable) उद्देश्यों के लिए समर्पित कर देना। एक बार वैध वक्फ बन जाने पर संपत्ति का स्वामित्व ईश्वर (अल्लाह) को समर्पित माना जाता है और उसका उपयोग केवल वक्फ के उद्देश्य के लिए किया जाता है।

वक्फ का उद्देश्य समाज के धार्मिक, शैक्षिक एवं कल्याणकारी कार्यों को बढ़ावा देना है।

वक्फ का अर्थ (Meaning of Waqf)

"वक्फ" का शाब्दिक अर्थ है "रोकना", "स्थिर करना" या "समर्पित करना"।

मुल्ला (Mulla) के अनुसार—

"वक्फ किसी मुस्लिम द्वारा अपनी संपत्ति को स्थायी रूप से ऐसे उद्देश्य के लिए समर्पित करना है जिसे मुस्लिम विधि धार्मिक, पुण्य या परोपकारी मानती है।"

अबू यूसुफ (Abu Yusuf) के अनुसार—

"वक्फ का अर्थ है संपत्ति पर स्वामी के अधिकार का अंत कर उसे अल्लाह के स्वामित्व में स्थायी रूप से समर्पित कर देना।"

वक्फ की आवश्यक शर्तें (Essentials of a Valid Waqf)

1. स्थायी समर्पण (Permanent Dedication)

वक्फ स्थायी (Permanent) होना चाहिए। अस्थायी (Temporary) वक्फ वैध नहीं होता।

2. वक्फ बनाने वाले (वाकिफ) की क्षमता

वक्फ बनाने वाले व्यक्ति को **वाकिफ (Wakif)** कहा जाता है।

वाकिफ को—

- मुस्लिम होना चाहिए।
- बालिग होना चाहिए।
- स्वस्थ मस्तिष्क का होना चाहिए।
- संपत्ति का स्वामी होना चाहिए।

3. वक्फ की संपत्ति

समर्पित की जाने वाली संपत्ति—

- वाकिफ की स्वामित्व वाली हो।
- निश्चित एवं पहचान योग्य हो।
- स्थायी उपयोग योग्य हो।

चल एवं अचल दोनों प्रकार की संपत्ति वक्फ की जा सकती है।

4. धार्मिक, पुण्य या परोपकारी उद्देश्य

वक्फ का उद्देश्य ऐसा होना चाहिए जिसे मुस्लिम विधि धार्मिक, पुण्य या परोपकारी मानती हो।

उदाहरण

- मस्जिद का निर्माण
 - मदरसा या विद्यालय
 - अस्पताल
 - गरीबों की सहायता
 - कब्रिस्तान
 - धर्मार्थ संस्थाएँ
-

5. अपरिवर्तनीय (Irrevocable)

एक बार वैध वक्फ बन जाने पर सामान्यतः उसे वापस नहीं लिया जा सकता।

वक्फ के उद्देश्य (Objects of Waqf)

1. धर्म का प्रचार एवं संरक्षण।
 2. गरीबों एवं जरूरतमंदों की सहायता।
 3. शिक्षा का विकास।
 4. स्वास्थ्य सेवाओं का प्रोत्साहन।
 5. सामाजिक कल्याण।
-

वक्फ के प्रकार (Kinds of Waqf)

1. सार्वजनिक वक्फ (Public Waqf) ऐसा वक्फ जिसका लाभ आम जनता को प्राप्त हो।

उदाहरण

- मस्जिद
- विद्यालय

- अस्पताल
 - कब्रिस्तान
-

2. निजी वक्फ (Waqf-alal-Aulad)

ऐसा वक्फ जो मुख्य रूप से वाकिफ के परिवार एवं वंशजों के लाभ के लिए बनाया जाता है।

विशेषताएँ

- परिवार को लाभ प्राप्त होता है।
- अंतिम लाभ धार्मिक या परोपकारी उद्देश्य हेतु सुरक्षित रहता है।

वैधता-भारत में **Mussalman Wakf Validating Act, 1913** द्वारा इसे वैध मान्यता दी गई है।

वक्फ का निर्माण (Creation of Waqf)

वक्फ निम्न प्रकार से बनाया जा सकता है—

1. घोषणा द्वारा (By Declaration) वाकिफ द्वारा स्पष्ट घोषणा करके।

2. वसीयत द्वारा (By Will) वसीयत के माध्यम से भी वक्फ बनाया जा सकता है।

3. प्राचीन उपयोग द्वारा (By User) यदि कोई संपत्ति लंबे समय से धार्मिक उपयोग में रही हो तो उसे वक्फ माना जा सकता है।

मुतवल्ली (Mutawalli)

वक्फ की संपत्ति का प्रबंधक **मुतवल्ली (Mutawalli)** कहलाता है।

मुतवल्ली के कार्य

1. वक्फ संपत्ति का प्रबंधन।
2. आय एकत्र करना।
3. आय का उपयोग वक्फ के उद्देश्यों के लिए करना।
4. संपत्ति की सुरक्षा करना।

स्थिति - मुतवल्ली संपत्ति का मालिक नहीं होता, बल्कि केवल उसका प्रबंधक (Manager) होता है।

वक्फ एवं ट्रस्ट में अंतर

वक्फ	ट्रस्ट
मुस्लिम विधि द्वारा शासित	ट्रस्ट विधि द्वारा शासित
स्वामित्व अल्लाह में निहित	स्वामित्व ट्रस्टी में निहित
धार्मिक तत्व आवश्यक	धार्मिक तत्व आवश्यक नहीं
सामान्यतः स्थायी	अस्थायी भी हो सकता है
मुतवल्ली द्वारा प्रबंधित	ट्रस्टी द्वारा प्रबंधित

वक्फ का महत्व

1. धार्मिक संस्थाओं को सहायता।
2. गरीबों एवं जरूरतमंदों का कल्याण।
3. शिक्षा एवं स्वास्थ्य सेवाओं को बढ़ावा।
4. समाज सेवा को प्रोत्साहन।
5. धार्मिक एवं सामाजिक उद्देश्यों की पूर्ति।

प्रमुख अधिनियम (Important Legislations)

Waqf Act, 1995

इस अधिनियम के अंतर्गत—

- वक्फ का पंजीकरण,
- वक्फ संपत्तियों का प्रबंधन,
- राज्य वक्फ बोर्डों का गठन,
- वक्फ संपत्तियों की सुरक्षा

की व्यवस्था की गई है।

Mussalman Wakf Validating Act, 1913

इस अधिनियम ने **वक्फ-अलल औलाद** (Family Wakf) को वैध घोषित किया।

निष्कर्ष

वक्फ मुस्लिम विधि की एक महत्वपूर्ण संस्था है, जिसके अंतर्गत कोई मुस्लिम अपनी संपत्ति को स्थायी रूप से धार्मिक, पुण्य या परोपकारी उद्देश्यों के लिए समर्पित करता है। एक बार वक्फ बन जाने पर संपत्ति का स्वामित्व अल्लाह में निहित माना जाता है और उसका उपयोग केवल निर्धारित उद्देश्यों के लिए किया जाता है। वक्फ समाज कल्याण, शिक्षा, स्वास्थ्य तथा धार्मिक कार्यों के विकास में महत्वपूर्ण भूमिका निभाता है।

परीक्षा हेतु परिभाषा

"वक्फ किसी मुस्लिम द्वारा अपनी संपत्ति का स्थायी रूप से धार्मिक, पुण्य या परोपकारी उद्देश्यों के लिए किया गया समर्पण है।"

महत्वपूर्ण LLB प्रश्न

1. वक्फ की परिभाषा एवं आवश्यक तत्वों का वर्णन कीजिए।
 2. वक्फ के विभिन्न प्रकारों की व्याख्या कीजिए।
 3. मुतवल्ली की स्थिति एवं कर्तव्यों का वर्णन कीजिए।
 4. वक्फ एवं ट्रस्ट में अंतर स्पष्ट कीजिए।
 5. वक्फ अधिनियम, 1995 के प्रमुख प्रावधानों का वर्णन कीजिए।
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पूर्वक्रयाधिकार (Pre-emption / Shufa) : मुस्लिम विधि में**प्रस्तावना**

पूर्वक्रयाधिकार (Pre-emption) या **शुफा (Shufa)** मुस्लिम विधि का एक महत्वपूर्ण सिद्धांत है। इसके अनुसार किसी अचल संपत्ति (Immovable Property) के विक्रय की स्थिति में कुछ व्यक्तियों को यह अधिकार प्राप्त होता है कि वे उसी मूल्य और शर्तों पर उस संपत्ति को खरीद सकें, जिस मूल्य और शर्तों पर उसे किसी अन्य व्यक्ति को बेचा गया है।

पूर्वक्रयाधिकार का उद्देश्य अजनबियों के प्रवेश को रोकना तथा पड़ोसियों और सह-स्वामियों के हितों की रक्षा करना है।*****

पूर्वक्रयाधिकार (Shufa) का अर्थ

शुफा का शाब्दिक अर्थ है "मिलाना" या "संलग्न करना"।

कानूनी अर्थ में, यह वह अधिकार है जिसके द्वारा कोई पात्र व्यक्ति किसी संपत्ति के विक्रय के बाद उसी मूल्य पर उस संपत्ति को क्रेता से प्राप्त कर सकता है।

मुल्ला (Mulla) के अनुसार—

*"पूर्वक्रयाधिकार वह अधिकार है जिसके द्वारा कोई व्यक्ति किसी अचल संपत्ति के विक्रय के पश्चात क्रेता के स्थान पर स्वयं को स्थापित कर सकता है।"******

पूर्वक्रयाधिकार का उद्देश्य

1. अजनबियों के प्रवेश को रोकना।
 2. सह-स्वामियों के हितों की रक्षा करना।
 3. पड़ोसियों के अधिकारों का संरक्षण।
 4. संपत्ति संबंधी विवादों को कम करना।
 5. सामाजिक एवं पारिवारिक सौहार्द बनाए रखना।
-

पूर्वक्रयाधिकार की आवश्यक शर्तें

1. अचल संपत्ति का विक्रय होना - पूर्वक्रयाधिकार केवल अचल संपत्ति (भूमि, मकान आदि) के विक्रय पर लागू होता है।

2. वैध विक्रय- संपत्ति का वास्तविक और वैध विक्रय होना चाहिए।

3. पूर्वक्रयाधिकार का पात्र व्यक्ति - दावा करने वाले व्यक्ति को विधि द्वारा मान्यता प्राप्त श्रेणी में होना चाहिए।

4. विधिक प्रक्रिया का पालन - पूर्वक्रयाधिकार का दावा निर्धारित प्रक्रिया के अनुसार किया जाना चाहिए।

पूर्वक्रयाधिकार के पात्र व्यक्ति

मुस्लिम विधि में पूर्वक्रयाधिकार का अधिकार निम्नलिखित क्रम में प्राप्त होता है—

1. सह-भागी (Shafi-i-Sharik) - जो व्यक्ति संपत्ति में सह-स्वामी हो।

उदाहरण

दो भाइयों की संयुक्त भूमि में से एक भाई अपना हिस्सा बेच देता है। दूसरे भाई को पूर्वक्रयाधिकार प्राप्त होगा।

2. सुविधाओं में सहभागी (Shafi-i-Khalit) जो व्यक्ति संपत्ति से संबंधित अधिकारों में सहभागी हो।

उदाहरण - साझा रास्ता, पानी का स्रोत या नाली।

3. पड़ोसी (Shafi-i-Jar) - संपत्ति का निकटवर्ती पड़ोसी।
-

पूर्वक्रयाधिकार का दावा करने की प्रक्रिया

मुस्लिम विधि में शुफा के लिए तीन मांगें (Demands) आवश्यक मानी गई हैं—

1. तत्काल मांग (Talab-i-Mowasibat) - विक्रय की सूचना मिलते ही तुरंत दावा करना।
-

2. पुष्टि की मांग (Talab-i-Ishhad) -- गवाहों के समक्ष अपने अधिकार की घोषणा करना।
-

3. मुकदमे द्वारा मांग (Talab-i-Tamlík) - यदि आवश्यक हो तो न्यायालय में वाद दायर करना।
-

पूर्वक्रयाधिकार किन मामलों में लागू नहीं होता?

1. उपहार (Gift/Hiba) पर।
 2. वसीयत (Will) पर।
 3. उत्तराधिकार (Inheritance) पर।
 4. दान या धार्मिक समर्पण (Waqf) पर।
 5. ऐसे हस्तांतरण जिनमें विक्रय न हो।
-

पूर्वक्रयाधिकार का लोप (Loss of Right)

पूर्वक्रयाधिकार का अधिकार समाप्त हो सकता है यदि—

1. अधिकारधारी ने समय पर दावा न किया हो।
2. उसने अपने अधिकार का त्याग कर दिया हो।
3. आवश्यक विधिक प्रक्रिया का पालन न किया गया हो।
4. विक्रय को स्वीकार कर लिया गया हो।

पूर्वक्रयाधिकार और पुनर्खरीद में अंतर

पूर्वक्रयाधिकार	पुनर्खरीद
विधि द्वारा प्रदत्त अधिकार	संविदा द्वारा उत्पन्न अधिकार
विक्रय के बाद उत्पन्न होता है	संविदा पर आधारित होता है
केवल पात्र व्यक्तियों को प्राप्त	संविदा के पक्षकार को प्राप्त
मुस्लिम विधि का सिद्धांत	सामान्य संविदा सिद्धांत

भारत में पूर्वक्रयाधिकार

भारत में पूर्वक्रयाधिकार का अधिकार मुख्यतः मुस्लिम विधि तथा कुछ राज्यों के विशेष कानूनों द्वारा मान्यता प्राप्त है।

महत्वपूर्ण निर्णय - Bhau Ram v. Baijnath Singh

सर्वोच्च न्यायालय ने माना कि पूर्वक्रयाधिकार एक कमजोर अधिकार (Weak Right) है और इसका प्रयोग विधि के अनुसार ही किया जा सकता है।

पूर्वक्रयाधिकार का महत्व

1. सह-स्वामियों के हितों की रक्षा।
2. संपत्ति के शांतिपूर्ण उपयोग को सुनिश्चित करना।
3. बाहरी व्यक्तियों के अनावश्यक हस्तक्षेप को रोकना।
4. पड़ोस एवं सामाजिक संबंधों को बनाए रखना।

5. संपत्ति संबंधी विवादों को कम करना।

निष्कर्ष

पूर्वक्रयाधिकार (शुफा) मुस्लिम विधि का एक महत्वपूर्ण सिद्धांत है, जिसके द्वारा कुछ पात्र व्यक्तियों को किसी अचल संपत्ति के विक्रय की स्थिति में उसी मूल्य पर उसे खरीदने का प्राथमिक अधिकार प्राप्त होता है। इसका मुख्य उद्देश्य सह-स्वामियों और पड़ोसियों के हितों की रक्षा करना तथा संपत्ति संबंधी विवादों को कम करना है।

परीक्षा हेतु परिभाषा

"पूर्वक्रयाधिकार (Shufa) वह अधिकार है जिसके द्वारा कोई पात्र व्यक्ति किसी अचल संपत्ति के विक्रय के पश्चात उसी मूल्य और शर्तों पर क्रेता के स्थान पर स्वयं को स्थापित कर सकता है।"

महत्वपूर्ण LLB प्रश्न

1. पूर्वक्रयाधिकार (Pre-emption) की परिभाषा एवं प्रकृति का वर्णन कीजिए।
2. मुस्लिम विधि में पूर्वक्रयाधिकार की आवश्यक शर्तों का वर्णन कीजिए।
3. पूर्वक्रयाधिकार के पात्र व्यक्तियों की श्रेणियों का वर्णन कीजिए।
4. शुफा के दावे की प्रक्रिया (Talab) समझाइए।
5. पूर्वक्रयाधिकार के अधिकार के लोप के आधारों का वर्णन कीजिए।

मुस्लिम विधि में स्वीकृति (Acknowledgement / इकरार) एवं संरक्षकता (Guardianship)

I. स्वीकृति (Acknowledgement / इकरार)

प्रस्तावना

मुस्लिम विधि में स्वीकृति (Acknowledgement) या इकरार (Iqarar) एक महत्वपूर्ण सिद्धांत है। इसके अंतर्गत कोई व्यक्ति किसी अन्य व्यक्ति को अपना वैध पुत्र या संतान स्वीकार करता है, **जब उसकी वैधता (Legitimacy) संदिग्ध हो और उसका स्पष्ट प्रमाण उपलब्ध न हो।**

इस सिद्धांत का उद्देश्य संतान की वैधता तथा उत्तराधिकार संबंधी अधिकारों की रक्षा करना है।

स्वीकृति का अर्थ

स्वीकृति का अर्थ है किसी व्यक्ति द्वारा दूसरे व्यक्ति को अपनी वैध संतान के रूप में स्वीकार करना।

मुल्ला (Mulla) के अनुसार—

"स्वीकृति वह मान्यता है जिसके द्वारा कोई व्यक्ति किसी अन्य व्यक्ति को अपनी वैध संतान के रूप में स्वीकार करता है।"

वैध स्वीकृति की आवश्यक शर्तें

1. स्वीकृति पिता द्वारा की गई हो - स्वीकृति उस व्यक्ति द्वारा की जानी चाहिए जो स्वयं को पिता बताता हो।
2. संतान का वैध होना संभव हो - स्वीकृत व्यक्ति की आयु एवं परिस्थितियाँ ऐसी हों कि वह उस व्यक्ति की संतान हो सकता हो।
3. संतान की उत्पत्ति अनिश्चित हो - संतान की वैधता पहले से निश्चित न हो।
4. संतान अवैध सिद्ध न हो - *यह प्रमाणित न हो कि संतान अवैध (Illegitimate) है।*
5. वयस्क संतान की स्वीकृति - यदि संतान बालिग है तो उसे भी इस स्वीकृति को स्वीकार करना चाहिए।

स्वीकृति के प्रभाव

वैध स्वीकृति के परिणामस्वरूप—

1. संतान वैध मानी जाती है।
2. उसे उत्तराधिकार का अधिकार प्राप्त होता है।
3. पिता एवं संतान के बीच वैधानिक संबंध स्थापित होता है।
4. पारिवारिक अधिकार प्राप्त होते हैं।

स्वीकृति का महत्व

1. संतान की वैधता की रक्षा।
2. उत्तराधिकार अधिकारों की सुरक्षा।
3. सामाजिक न्याय की स्थापना।

4. पारिवारिक संबंधों का संरक्षण।

निष्कर्ष

स्वीकृति (Acknowledgement) मुस्लिम विधि का एक महत्वपूर्ण सिद्धांत है जिसके द्वारा किसी व्यक्ति को वैध संतान के रूप में स्वीकार किया जाता है। इससे संतान को वैधता एवं उत्तराधिकार संबंधी अधिकार प्राप्त होते हैं।

II. संरक्षकता (Guardianship / Wilayat)**प्रस्तावना**

संरक्षकता (Guardianship) से अभिप्राय उस विधिक अधिकार से है जिसके अंतर्गत कोई व्यक्ति किसी नाबालिग (Minor) के व्यक्ति या संपत्ति की देखभाल एवं प्रबंधन करता है।

मुस्लिम विधि में संरक्षकता को **विलायत (Wilayat)** कहा जाता है।

संरक्षकता का अर्थ

संरक्षकता वह विधिक अधिकार है जिसके द्वारा नाबालिग के व्यक्ति अथवा संपत्ति का संरक्षण किया जाता है।

मुल्ला (Mulla) के अनुसार— *"संरक्षकता नाबालिग के व्यक्ति या संपत्ति के संरक्षण और प्रबंधन का अधिकार है।"*

संरक्षकता के प्रकार**1. व्यक्ति की संरक्षकता (Guardianship of Person)**

यह नाबालिग के पालन-पोषण, शिक्षा एवं देखभाल से संबंधित है।

2. संपत्ति की संरक्षकता (Guardianship of Property)

यह नाबालिग की संपत्ति के प्रबंधन एवं संरक्षण से संबंधित है।

3. विवाह संबंधी संरक्षकता (Guardianship in Marriage)

यह नाबालिग के विवाह कराने के अधिकार से संबंधित है।

संरक्षकों के प्रकार

1. प्राकृतिक संरक्षक (Natural Guardian)

सुन्नी मुस्लिम विधि में प्राकृतिक संरक्षक निम्नलिखित हैं—

1. पिता
2. पिता द्वारा नियुक्त निष्पादक (Executor)
3. पितामह (Paternal Grandfather)
4. पितामह द्वारा नियुक्त निष्पादक

महत्वपूर्ण

परंपरागत मुस्लिम विधि में माता प्राकृतिक संरक्षक नहीं मानी जाती, यद्यपि उसे अभिरक्षा (Custody) का अधिकार प्राप्त होता है।

2. वसीयती संरक्षक (Testamentary Guardian)

वह संरक्षक जिसे पिता या पितामह अपनी वसीयत द्वारा नियुक्त करे।

3. न्यायालय द्वारा नियुक्त संरक्षक (Court-Appointed Guardian)

जब नाबालिग के हित में आवश्यक हो, तब न्यायालय संरक्षक नियुक्त कर सकता है।

4. वास्तविक संरक्षक (De Facto Guardian)*****

वह व्यक्ति जो बिना विधिक अधिकार के वास्तव में नाबालिग की देखभाल करता है।

उदाहरण बड़ा भाई या अन्य रिश्तेदार।

अभिरक्षा (Hizanat)

अभिरक्षा का अर्थ है बच्चे की शारीरिक देखभाल एवं पालन-पोषण।

सामान्यतः प्रारंभिक वर्षों में यह अधिकार माता को प्राप्त होता है।

सुन्नी विधि के अनुसार

- पुत्र की अभिरक्षा : लगभग 7 वर्ष तक माता को।
- पुत्री की अभिरक्षा : यौवन (Puberty) तक माता को।

सर्वोच्च सिद्धांत -- "बालक का कल्याण (Welfare of the Child) सर्वोपरि है।"

संरक्षक के अधिकार एवं कर्तव्य

अधिकार

1. नाबालिग की सुरक्षा।
 2. संपत्ति का प्रबंधन।
 3. विधिक कार्यवाहियों में प्रतिनिधित्व।
 4. हितों की रक्षा।
-

कर्तव्य

1. नाबालिग के सर्वोत्तम हित में कार्य करना।
 2. संपत्ति की सुरक्षा करना।
 3. उचित शिक्षा एवं पालन-पोषण देना।
 4. संपत्ति का दुरुपयोग न करना।
-

महत्वपूर्ण वाद

Imambandi v. Mutsaddi

इस मामले में प्रिवी काउंसिल ने निर्णय दिया कि परंपरागत मुस्लिम विधि के अनुसार माता नाबालिग की संपत्ति की प्राकृतिक संरक्षक नहीं है।

संरक्षकता एवं अभिरक्षा में अंतर

संरक्षकता (Guardianship)	अभिरक्षा (Custody/Hizanat)
व्यापक अवधारणा	सीमित अवधारणा
व्यक्ति एवं संपत्ति दोनों पर अधिकार	केवल बच्चे की देखभाल
सामान्यतः पिता या विधिक संरक्षक	सामान्यतः माता

संरक्षकता (Guardianship)	अभिरक्षा (Custody/Hizanat)
संपत्ति प्रबंधन शामिल	संपत्ति प्रबंधन शामिल नहीं

निष्कर्ष

मुस्लिम विधि में संरक्षकता (Guardianship) नाबालिग के व्यक्ति एवं संपत्ति के संरक्षण से संबंधित है। प्राकृतिक, वसीयती, न्यायालय-नियुक्त तथा वास्तविक संरक्षकों को मान्यता प्राप्त है। यद्यपि पिता पारंपरिक रूप से प्राकृतिक संरक्षक माना जाता है, किंतु छोटे बच्चों की अभिरक्षा सामान्यतः माता को दी जाती है। सभी मामलों में बालक का कल्याण सर्वोच्च महत्व रखता है।

परीक्षा हेतु परिभाषाएँ

स्वीकृति (Acknowledgement)

"स्वीकृति वह मान्यता है जिसके द्वारा कोई व्यक्ति किसी अन्य व्यक्ति को अपनी वैध संतान के रूप में स्वीकार करता है और उसे वैधता एवं उत्तराधिकार के अधिकार प्रदान करता है।"

संरक्षकता (Guardianship)

"संरक्षकता वह विधिक अधिकार है जिसके द्वारा किसी नाबालिग के व्यक्ति या संपत्ति का संरक्षण एवं प्रबंधन किया जाता है।"

महत्वपूर्ण LLB प्रश्न

1. मुस्लिम विधि में स्वीकृति (Acknowledgement) के सिद्धांत की व्याख्या कीजिए।
2. स्वीकृति की आवश्यक शर्तों एवं प्रभावों का वर्णन कीजिए।
3. संरक्षकता (Guardianship) की परिभाषा देकर उसके प्रकारों का वर्णन कीजिए।
4. संरक्षकता एवं अभिरक्षा (Hizanat) में अंतर स्पष्ट कीजिए।
5. मुस्लिम विधि में संरक्षक के अधिकार एवं कर्तव्यों का वर्णन कीजिए।

before Islam what was the dharma?

before Islam (Ayyam il Jahiliya) jahalat means age of Ignorance.

before 571 ad there was not Islam (than how can anyone say that Mohammad is the last prophet?

at the age of 40 he got Enlightened at (HEERA CAVE) means 611 ad near about. and he went Madeena on 622 ad.

KHADIJA

ABU BAKAR FIRST KHALEEPH

UMAR SECOND KHALEEPH

USMAN THIRD KHALEEPH

shiya says only ali relative is allow to khaleeph.

sunni says by election only

who is ali?

he is cosine, son in law, and first follower of Mohammad.

khaleeph title end in turkey on 1924

school shiya leader is only by ali blood relation.

school sunni leader is elected only.

sources of muslim law.

kuraan 6000 verses 200 legal topic

sunnah (sunnat) base of tradtion and path

sunnat ul qaul qaul to speak

sunnat ul fail action

sunnat ul tuqrir silent approval

Ijma religious guru

qiyas this is my opinion as per sunni

iddat waiting period basically want to know is she pregnant or not.

after her husband death 4m 10 days

divorce 3 cycle each cycle has 28 days and 5 days

after cycle stop 3 lunaar month

pregnant after delivery.

when iddat start

first day of death/divorce or court decree.

what is mehar?

this is the consideration of marriage agreement.

ijab kabool

minor also can marry under guardianship

void or valid marriage.

muslim man with non muslim woman.	valid	
muslim woman with non muslim man	void	
sunni man with kitabiya woman	valid	allowed
shiya man with kitabiya woman	void	not allowed

any person who convert in muslim can marry with muslim

witness for nikaha

2 male

1 male and 2 female

types of marriage

sahih	valid	sahih ai
batil	void	
fasid	fasad ki jad	irregular

Introduction to Muslim Law

Introduction

Muslim Law is a body of legal principles and rules that govern the personal, family, and property relations of Muslims. It deals with matters such as marriage, divorce, maintenance, guardianship, inheritance, wills, gifts, and religious obligations. Unlike many modern legal systems, Muslim Law is not merely a set of legal rules; it is also a religious and moral code of conduct derived from the teachings of Islam.

Meaning of Muslim Law

Muslim Law refers to the rules and principles that regulate the conduct of Muslims in their personal and social life. It is commonly known as **Shariat (Islamic Law)**.

According to Mulla: "Muslim Law consists of those rules and principles which regulate the conduct of Muslims and are derived from Islamic sources."

Nature of Muslim Law

1. **Religious Law** Muslim Law is primarily based on religion. Its rules are derived from Islamic teachings and religious sources.
2. **Personal Law** It mainly governs personal matters such as marriage, divorce, maintenance, inheritance, succession, wills, and gifts.
3. **Divine Law** Muslims believe that the fundamental principles of Muslim Law originate from **Allah (God)** and are therefore divine in nature.
4. **Combination of Law and Morality** Muslim Law contains both legal and moral obligations. Many acts are regulated not only by legal consequences but also by religious duties.
5. **Universal Character** The basic principles of Muslim Law apply to Muslims throughout the world, although local customs and legislation may modify its application.

Historical Development of Muslim Law

The development of Muslim Law may be divided into four stages:

- (1) **The Period of Prophet Muhammad (610–632 A.D.)** During this period, the foundations of Islamic Law were laid through divine revelations and the teachings of the Prophet.
- (2) **The Period of the Caliphs (632–661 A.D.)** The successors of the Prophet interpreted and applied Islamic principles to new situations and disputes.
- (3) **The Period of Islamic Jurists** Great jurists and scholars developed legal doctrines and established various schools of Muslim Law.
- (4) **The Modern Period** Many Muslim countries introduced legislative reforms and adapted traditional principles to modern conditions.

Muslim Law in India

Muslim Law came to India with the establishment of Muslim rule. During British rule, Muslim personal matters continued to be governed by Muslim Law.

A significant legislation in India is:

- Muslim Personal Law (Shariat) Application Act, 1937

Under this Act, matters relating to marriage, divorce, inheritance, succession, gifts, and waqf are generally governed by Muslim Personal Law.

Importance of Muslim Law

6. It regulates the personal and family life of Muslims.
7. It provides rules regarding marriage and divorce.
8. It governs inheritance and succession to property.
9. It protects family relationships and social order.
10. It forms an important part of India's plural legal system.

Conclusion

Muslim Law is a comprehensive system of personal law based on the teachings of Islam. It governs various aspects of the life of Muslims, including family relations, property rights, and religious obligations. In India, it continues to play a significant role in matters relating to marriage, divorce, inheritance, wills, and gifts.

Short Definition for Revision - "Muslim Law is a body of legal principles derived from Islamic sources that governs the personal, family, and property relations of Muslims."

Key Topics to Study Next

11. Sources of Muslim Law
12. Schools of Muslim Law
13. Marriage (Nikah)
14. Dower (Mahr)
15. Divorce (Talaq)
16. Maintenance
17. Guardianship
18. Gifts (Hiba)
19. Waqf
20. Inheritance and Succession

Sources of Muslim Law

Introduction - The term **Sources of Muslim Law** refers to the origins from which the rules and principles of Muslim Law are derived. Muslim Law is based primarily on divine revelations and the teachings of Islam. Over time, Islamic jurists developed additional methods to interpret and apply these principles to changing circumstances.

The sources of Muslim Law are generally divided into **Primary Sources** and **Secondary Sources**.

I. Primary Sources of Muslim Law

1. Quran - The **Quran** is the most important and authoritative source of Muslim Law. Muslims believe it to be the word of Allah revealed to Prophet Muhammad through the angel Gabriel.

Importance

- Supreme source of Muslim Law.
- Contains rules relating to marriage, divorce, inheritance, contracts, and family relations.
- No other source can override the Quran.

Example -The Quran lays down detailed rules regarding inheritance and the rights of women and children.

2. Sunnah (Traditions of the Prophet) Sunnah refers to the practices, sayings, and approvals of Prophet Muhammad. Where the Quran is silent or ambiguous, the Sunnah provides guidance.

Types of Sunnah

- (a) **Sunnat-ul-Qaul** -The sayings of the Prophet.
- (b) **Sunnat-ul-Fail** The actions of the Prophet.
- (c) **Sunnat-ul-Taqrir** -Practices approved by the Prophet.

Importance

- Explains and supplements the Quran.
- Second most important source of Muslim Law.

3. Ijma (Consensus) - Ijma means the consensus or agreement of qualified Islamic jurists on a legal question. After the death of the Prophet, new issues arose for which neither the Quran nor Sunnah provided clear answers. In such situations, jurists arrived at a consensus.

Importance

- Helps in the development of Islamic law.
- Provides solutions to new legal problems.
- Ensures uniformity in legal interpretation.

Example Consensus among jurists regarding many commercial and social practices.

4. Qiyas (Analogical Deduction) Qiyas means reasoning by analogy. (When a new issue is not directly covered by the Quran, Sunnah, or Ijma, jurists compare it with an existing rule and apply the same principle.)

Importance

- Makes Muslim Law adaptable to changing circumstances.
- Helps resolve modern legal issues.

Example

The prohibition of narcotic drugs is derived by analogy from the Quranic prohibition of alcohol because both cause intoxication.

II. Secondary Sources of Muslim Law

1. **Custom (Urf)** Custom refers to long-established practices accepted by society.

A custom may be recognized if:

- It is ancient.
- It is certain and reasonable.
- It is not contrary to the Quran or Sunnah.

Importance Custom plays a significant role in matters where religious texts are silent.

2. **Judicial Decisions** - Court decisions help in interpreting and applying Muslim Law.

Importance

- Clarify legal principles.
- Resolve ambiguities.
- Provide precedents for future cases.

Indian courts have contributed significantly to the development of Muslim Personal Law.

3. **Legislation** - Modern statutes enacted by legislatures also constitute a source of Muslim Law.

Important Indian enactments include:

- Muslim Personal Law (Shariat) Application Act, 1937
- Dissolution of Muslim Marriages Act, 1939
- Muslim Women (Protection of Rights on Divorce) Act, 1986

Importance - Legislation modernizes and clarifies traditional Muslim Law.

4. **Justice, Equity and Good Conscience** - Where no clear rule exists, courts may apply principles of justice, fairness, and good conscience.

Importance

- Prevents injustice.
- Helps courts decide difficult cases.
- Promotes fairness in legal administration.

Classification of Sources

Primary Sources Secondary Sources

Quran

Custom (Urf)

Primary Sources Secondary Sources

Sunnah	Judicial Decisions
Ijma	Legislation
Qiyas	Justice, Equity and Good Conscience

Conclusion

The sources of Muslim Law provide the foundation of the Islamic legal system. The **Quran** is the supreme source, followed by **Sunnah**, **Ijma**, and **Qiyas**. Secondary sources such as custom, judicial decisions, legislation, and principles of justice help adapt Muslim Law to changing social conditions. Together, these sources form a comprehensive legal framework governing the personal and family affairs of Muslims.

Examination-Oriented Definition - "The sources of Muslim Law are the authorities from which the rules and principles of Islamic law are derived. The primary sources are the Quran, Sunnah, Ijma, and Qiyas, while the secondary sources include custom, judicial decisions, legislation, and justice, equity, and good conscience."

Schools of Muslim Law Introduction

After the death of Prophet Muhammad in 632 A.D., differences arose among Muslims regarding the interpretation of Islamic teachings and the succession to the Prophet. As a result, different schools of Muslim Law developed. These schools interpreted the Quran, Sunnah, Ijma, and Qiyas in different ways and contributed significantly to the development of Islamic jurisprudence.

The two principal schools of Muslim Law are:

3. **Sunni School**
4. **Shia School**

I. Sunni School - The Sunni School represents the majority of Muslims throughout the world. Most Muslims in India belong to this school. **The Sunni School is divided into four major sub-schools:**

1. **Hanafi School** - The Hanafi School was founded by Abu Hanifa (699–767 A.D.).

Characteristics

- Oldest and most widely followed school.
- Gives considerable importance to reason and analogy (Qiyas).
- Liberal and practical in approach.
- Most Indian Muslims follow the Hanafi School.

Areas of Influence - India, Pakistan, Bangladesh, Turkey, Central Asia, and parts of the Middle East.

2. **Maliki School** The Maliki School was founded by Imam Malik (711–795 A.D.).

Characteristics

- Relies heavily on the customs and practices of the people of Medina.
- Gives importance to public welfare and social customs.
- Conservative but practical.

Areas of Influence - North and West Africa, including Morocco, Algeria, Tunisia, and Libya.

3. **Shafi School** - The Shafi School was founded by Imam Al-Shafi'i (767–820 A.D.).

Characteristics

- Emphasizes the Quran and Sunnah.
- Developed systematic principles for Islamic jurisprudence.
- Recognizes Ijma and Qiyas within defined limits.

Areas of Influence - Indonesia, Malaysia, Egypt, East Africa, and parts of South-East Asia.

4. **Hanbali School** - The Hanbali School was founded by Ahmad ibn Hanbal (780–855 A.D.).

Characteristics

- Most conservative among Sunni schools.
- Strict adherence to the Quran and Sunnah.
- Limited use of personal reasoning and analogy.

Areas of Influence - Saudi Arabia and parts of the Arabian Peninsula.

II. **Shia School** - The Shia School developed from the belief that leadership of the Muslim community should remain within the family of the Prophet.

The major Shia sub-schools are:

1. **Ithna Ashari (Twelver School)**

Characteristics

- Largest Shia sect.
- Believes in twelve Imams as spiritual and political successors of the Prophet.
- Most Shias in India belong to this school.

Areas of Influence - Iran, Iraq, India, Pakistan, and Lebanon.

2. **Ismaili School**

Characteristics

- Developed due to a dispute regarding succession after the sixth Imam.
- Emphasizes spiritual leadership and esoteric interpretation of Islam.

Areas of Influence - India, Pakistan, East Africa, and parts of Central Asia.

3. **Zaidi School**

Characteristics

- Considered the most moderate Shia school.
- Similar in many respects to Sunni jurisprudence.
- Gives greater importance to reasoning.

Areas of Influence - Mainly Yemen.

Difference Between Sunni and Shia Schools

Basis	Sunni School	Shia School
Succession	Leader (Caliph) elected by the community	Leadership belongs to the Prophet's family
Majority	Largest Muslim community	Minority Muslim community
Sources of Law	Quran, Sunnah, Ijma, Qiyas	Quran, Sunnah, teachings of Imams
Major Schools	Hanafi, Maliki, Shafii, Hanbali	Ithna Ashari, Ismaili, Zaidi
Presence in India	Majority of Muslims	Minority of Muslims

Importance of Schools of Muslim Law

5. They helped in the systematic development of Islamic jurisprudence.
6. They interpreted Islamic principles according to changing social conditions.
7. They provided solutions to legal issues not expressly covered by the Quran.
8. They continue to govern matters relating to marriage, divorce, inheritance, gifts, and wills among Muslims.

Position in India - In India, the majority of Muslims follow the **Hanafi School**. Therefore, most principles applied by Indian courts in matters of Muslim Personal Law are based on Hanafi jurisprudence. Shias are governed by the principles of their respective schools, particularly in matters of inheritance and succession.

Conclusion - The Schools of Muslim Law represent different interpretations of Islamic legal principles. The two major branches are Sunni and Shia, each having several sub-schools. Although they differ on certain legal and theological issues, all schools derive their authority from Islamic teachings and contribute to the rich tradition of Muslim jurisprudence.

Examination Definition - "Schools of Muslim Law are the various juristic systems that developed through different interpretations of Islamic sources of law. The two principal schools are Sunni and Shia, each having several sub-schools."

Important LL.B. Questions

6. Explain the different Schools of Muslim Law.
7. Discuss the Sunni Schools of Muslim Law.
8. Explain the Shia Schools of Muslim Law.

9. Distinguish between Sunni and Shia Schools.
 10. Discuss the importance of the Hanafi School in India.
-

Applicability of Muslim Law - Introduction

The term **Applicability of Muslim Law** refers to the circumstances and persons to whom Muslim Law applies. In India, Muslim Law is primarily a **personal law** governing matters such as marriage, divorce, maintenance, guardianship, gifts, wills, waqf, inheritance, and succession among Muslims.

The application of Muslim Law is mainly governed by the Muslim Personal Law (Shariat) Application Act, 1937.

Meaning of Applicability - Applicability means the extent to which Muslim Law is applicable to individuals and legal matters. It determines who is governed by Muslim Law and under what circumstances.

Persons to Whom Muslim Law Applies

1. **Muslims by Birth** - Muslim Law applies to every person born to Muslim parents. - A child born to Muslim parents is presumed to be a Muslim and is governed by Muslim Personal Law in matters of personal status.

Example - If both parents are Muslims, their child will generally be governed by Muslim Law regarding marriage, inheritance, and succession.

2. **Converts to Islam** - A person who embraces Islam voluntarily becomes subject to Muslim Law. After conversion, matters relating to marriage, divorce, inheritance, and other personal affairs are generally governed by Muslim Law.

Example - A Hindu or Christian who converts to Islam becomes subject to Muslim Personal Law.

3. **Illegitimate Children** - An illegitimate child generally follows the religion of the mother. If the mother is Muslim, the child may be governed by Muslim Law in certain personal matters.

Matters Governed by Muslim Law - Under the Shariat Act, Muslim Law applies to:

1. **Marriage (Nikah)** - Rules relating to the formation and validity of marriage.
 2. **Divorce (Talaq)** - Rights and procedures relating to dissolution of marriage.
 3. **Maintenance** - Maintenance rights of wife, children, and parents.
 4. **Dower (Mahr)** - Obligation of the husband to provide dower to the wife.
 5. **Guardianship** - Appointment and rights of guardians.
 6. **Gifts (Hiba)** - Rules regarding transfer of property by way of gift.
 7. **Wills (Wasiyat)** - Testamentary disposition of property.
 8. **Waqf** - Dedication of property for religious or charitable purposes.
 9. **Inheritance and Succession** - Distribution of a deceased Muslim's property among heirs.
-

Matters Not Governed Exclusively by Muslim Law

Certain matters are governed by general Indian laws and not solely by Muslim Law.

Examples

- Criminal Law
- Law of Contracts
- Law of Evidence
- Transfer of Property
- Commercial Transactions
- Constitutional Rights

These matters are governed by statutory laws applicable to all citizens irrespective of religion.

Muslim Personal Law (Shariat) Application Act, 1937 - The purpose of the Muslim Personal Law (Shariat) Application Act, 1937 was to ensure that Muslims are governed by Islamic law rather than local customs in personal matters.

The Act provides that in matters relating to:

- Marriage
- Divorce
- Maintenance
- Dower
- Guardianship
- Gifts
- Waqf
- Succession

the rule of decision shall be Muslim Personal Law (Shariat).

Exceptions - Muslim Law may not apply in the following situations:

1. **Special Marriage Act** - Where a Muslim marries under the Special Marriage Act, 1954, certain consequences regarding succession and matrimonial matters may be governed by statutory law rather than traditional Muslim Law.
2. **Statutory Modifications** - Where Parliament has enacted a law on a subject, the statutory provisions prevail.
3. **Judicial Interpretation** - Courts may interpret Muslim Law in light of constitutional principles and legislative reforms.

Importance of Applicability of Muslim Law

6. Determines the persons governed by Muslim Personal Law.
7. Regulates family and personal relations among Muslims.
8. Protects religious and cultural identity.
9. Provides legal certainty in matters of marriage and inheritance.
10. Ensures uniform application of Islamic personal law.

Conclusion

Muslim Law applies primarily to Muslims by birth and to persons who convert to Islam. In India, it governs personal matters such as marriage, divorce, maintenance, guardianship, gifts, wills, waqf, inheritance, and succession. Its application is mainly based on the provisions of the **Muslim Personal Law (Shariat) Application Act, 1937**, while matters such as criminal law, contracts, and constitutional rights are governed by general laws applicable to all citizens.

Examination Definition - "Applicability of Muslim Law means the extent to which Muslim Personal Law governs Muslims in matters relating to marriage, divorce, maintenance, guardianship, gifts, wills, waqf, inheritance, and succession."

Marriage (Nikah) under Muslim Law

Introduction

Marriage under Muslim Law is known as **Nikah**. It is one of the most important institutions in Islam and forms the foundation of family life. Unlike the traditional Hindu concept of marriage as a sacrament, Muslim Law regards marriage primarily as a **civil contract**, though it also has religious and moral significance.

The institution of marriage aims to regulate the relationship between a man and a woman, legitimize children, and promote a stable family structure.

Meaning of Marriage (Nikah) - The word **Nikah** literally means "union" or "conjunction."

According to Mulla - "Marriage under Muslim Law is a contract which has for its object the procreation and legalization of children."

According to Ameer Ali - "Marriage is an institution ordained for the protection of society and for the regulation of sexual relations."

Nature of Muslim Marriage

1. **A Civil Contract** - Marriage in Muslim Law is essentially a contract between two parties.
2. **Religious Significance** - Although contractual in nature, marriage is considered a sacred and recommended institution in Islam.
3. **Legalizes Sexual Relations** - Marriage provides lawful recognition to the relationship between husband and wife.
4. **Legitimacy of Children** - Children born from a valid marriage are considered legitimate and acquire inheritance rights.

5. Creates Mutual Rights and Duties - Marriage gives rise to rights and obligations between spouses.

Essentials of a Valid Marriage (Nikah) - For a valid Muslim marriage, the following conditions must be satisfied:

1. Proposal and Acceptance (Ijab and Qubul)

One party must make a proposal (Ijab) and the other must accept it (Qubul).

The proposal and acceptance must occur:

- At the same meeting.
- In the presence of witnesses where required.

Example - If a man offers marriage and the woman immediately accepts it, the condition is fulfilled.

2. Competency of Parties - The parties must be competent to marry.

A person is competent if:

- He or she has attained puberty.
- Is of sound mind.

A guardian may contract marriage on behalf of a minor under certain circumstances.

3. Free Consent - The consent of both parties must be free and voluntary.

Marriage obtained through:

- Coercion,
- Fraud,
- Undue influence,

may be challenged.

4. Witnesses - Under Sunni Law:

- Two male witnesses, or
- One male and two female witnesses

are generally required. Under Shia Law, witnesses are not essential for the validity of a marriage.

5. No Legal Disability - The parties must not be subject to any legal prohibition.

Examples:

- Marriage within prohibited degrees of relationship.
- Marriage during certain prohibited periods.

Mahr (Dower) - Mahr is an amount of money or property that the husband agrees to give the wife in consideration of marriage.

Importance of Mahr

- It is an obligation of the husband.
- It provides financial security to the wife.
- It is one of the important incidents of marriage.

Classification of Marriage

1. **Sahih Marriage (Valid Marriage)** - A marriage fulfilling all legal requirements is called a Sahih marriage.

Effects

- Creates mutual rights and obligations.
- Children are legitimate.
- Husband and wife inherit from each other.

2. **Fasid Marriage (Irregular Marriage)** - A marriage suffering from a temporary defect is called an irregular marriage.

Examples

- Marriage without proper witnesses (under Sunni Law).
- Marriage with a fifth wife while four wives are already living.

Effects

- The defect may be removed.
- Children remain legitimate.

3. **Batil Marriage (Void Marriage)** A marriage prohibited by law from the beginning is void.

Examples

- Marriage within prohibited blood relationships.
- Marriage with a married woman.

Effects

- No legal rights arise.
- No inheritance rights between parties.

Rights and Duties of Husband and Wife

Rights of Wife

5. Right to Mahr.
6. Right to maintenance.
7. Right to respectful treatment.
8. Right to inherit from the husband.

Rights of Husband

4. Right to consortium.
5. Right to fidelity.
6. Right to inheritance from the wife.

Objects of Marriage in Islam

6. Regulation of sexual relations.
7. Procreation and upbringing of children.
8. Preservation of morality.
9. Establishment of family life.
10. Promotion of social stability.

Importance of Marriage

- Protects society from immorality.
- Provides legal status to children.
- Creates a family unit.
- Promotes social and emotional security.
- Ensures continuity of the human race.

Conclusion

Marriage (Nikah) under Muslim Law is a civil contract with religious significance. It creates legal rights and duties between husband and wife, legitimizes children, and serves as the foundation of family life. A valid marriage requires proposal and acceptance, competency of parties, free consent, witnesses (under Sunni Law), and the absence of legal prohibitions.

Examination Definition - "Nikah is a civil contract under Muslim Law between a man and a woman for the purpose of legalizing sexual relations, procreation of children, and establishing a family."

Important LL.B. Questions

6. Define Nikah and explain its nature under Muslim Law.
7. Discuss the essentials of a valid Muslim marriage.
8. Explain the different kinds of Muslim marriages.

9. Discuss the legal effects of a valid Muslim marriage.
 10. Is Muslim marriage a contract or a sacrament? Discuss.
-

Mahr (Dower) under Muslim Law

Introduction - Mahr (Dower) is one of the most important incidents of a Muslim marriage. It is an amount of money, property, or any other valuable thing which the husband undertakes to pay or give to the wife in consideration of marriage.

Mahr is a legal obligation imposed upon the husband and is regarded as a mark of respect for the wife. It is the exclusive property of the wife, and she has full control over it.

Meaning of Mahr - The word **Mahr** literally means a reward or consideration given to the wife.

According to **Mulla**: - "**Dower is a sum of money or other property which the wife is entitled to receive from the husband in consideration of marriage.**"

According to **Ameer Ali**: - "**Dower is an obligation imposed upon the husband as a mark of respect to the wife.**"

Nature of Mahr

1. **An Essential Incident of Marriage** - Mahr is a legal consequence of every Muslim marriage.
2. **A Right of the Wife** - The wife acquires an absolute right to receive Mahr from her husband.
3. **Not the Price of the Wife** Mahr is not consideration in the contractual sense nor the price of the wife; it is a symbol of respect and financial security.
4. **A Debt Against the Husband** - Once Mahr becomes payable, it is treated as a debt due from the husband to the wife.
5. **Exclusive Property of the Wife** - The wife alone has ownership and control over the Mahr.

Objects (Purpose) of Mahr

6. To provide financial security to the wife.
7. To show respect and honour to the wife.
8. To discourage arbitrary divorce by the husband.
9. To strengthen the institution of marriage.
10. To ensure economic protection of women.

Classification of Mahr

1. **Specified Dower (Mahr-i-Musamma)** When the amount of Mahr is fixed by the parties at the time of marriage, it is called specified dower.

Example - If the husband and wife agree that ₹1,00,000 will be paid as Mahr, it is specified dower.

2. **Proper Dower (Mahr-i-Misl)** - When no amount of Mahr is fixed at the time of marriage, the wife is entitled to proper dower. The amount is determined by considering:

- Status of the wife,

- Family customs,
- Dower received by female relatives.

Types of Mahr According to Time of Payment

1. **Prompt Dower (Mu'ajjal)** - Prompt dower is payable immediately after marriage or on demand by the wife.

Features

- Wife may refuse cohabitation until it is paid.
- Payable immediately upon demand.

2. **Deferred Dower (Mu'wajjal)** - Deferred dower becomes payable:

- Upon dissolution of marriage by divorce, or
- Upon the death of the husband.

Features

- Acts as financial protection for the wife.
 - Most common form of dower.
-

Wife's Rights Regarding Mahr

1. **Right to Sue for Recovery** The wife can file a suit to recover unpaid Mahr.

2. **Right to Refuse Cohabitation** Before payment of prompt dower, the wife may refuse to live with the husband.

3. **Right Against Husband's Estate** If the husband dies, the wife can recover unpaid Mahr from his estate before distribution among heirs.

4. **Right of Retention** A widow in possession of her deceased husband's property may retain possession until her unpaid dower is satisfied.

Remission of Mahr The wife may voluntarily remit (forgive) the whole or part of the Mahr.

Conditions

- The remission must be voluntary.
- The wife must be competent to make the remission.
- There should be no coercion or undue influence.

Effect of Non-Payment of Mahr - Non-payment of Mahr does not make the marriage invalid.

However:

- The debt remains enforceable.
- The wife can claim recovery through legal proceedings.

- She may refuse cohabitation in case of unpaid prompt dower.

Difference Between Mahr and Consideration in Contract

Mahr	Consideration
Arises from marriage	Arises from a contract
Paid to the wife	Paid to the contracting party
Symbol of respect and security	Essential element of a contract
Legal obligation of husband	Reciprocal promise between parties

Importance of Mahr

6. Protects the financial interests of the wife.
7. Ensures dignity and respect for women.
8. Acts as a deterrent against arbitrary divorce.
9. Provides economic security upon dissolution of marriage.
10. Strengthens marital responsibilities.

Conclusion

Mahr is a mandatory obligation imposed upon the husband in a Muslim marriage. It is a legal right of the wife and serves as a means of financial security and social protection. Although non-payment of Mahr does not invalidate the marriage, the wife can legally enforce her claim and recover the amount due.

Examination Definition - "Mahr or Dower is a sum of money or property which the husband is legally bound to give to the wife in consideration of marriage under Muslim Law."

Important LL.B. Questions

6. Define Mahr and explain its nature under Muslim Law.
7. Discuss the different kinds of Mahr.
8. Explain the rights of a Muslim wife regarding Mahr.
9. Distinguish between Prompt and Deferred Dower.
10. Is Mahr the price of the wife? Discuss.

Talaq and its Kinds, Dissolution of Marriage, and Maintenance of Wives under Muslim Law.

Introduction

Under Muslim Law, marriage (Nikah) is considered a civil contract. Therefore, like any contract, it can be dissolved. The dissolution of marriage may take place through **Talaq (divorce by husband)**, **divorce by mutual consent**, **judicial divorce**, or under statutory provisions protecting the rights of Muslim women.

I. Talaq (Divorce) under Muslim Law

Meaning of Talaq The word **Talaq** means repudiation or dissolution of marriage by the husband.

According to Mulla: "Talaq is the dissolution of marriage by the husband in accordance with Muslim Law."

Kinds of Talaq

A. Talaq by Husband

1. Talaq-e-Ahsan (Most Approved Form) This is considered the best and most approved form of divorce.

Procedure

- A single pronouncement of Talaq during a period of purity (Tuhr).
- No sexual intercourse during the Iddat period.

Features

- Revocable during the Iddat period.
 - Considered the most proper form of divorce.
-

2. Talaq-e-Hasan (Approved Form)

Procedure

- Three pronouncements of Talaq during three successive Tuhrs.

Features

- Revocable before the third pronouncement.
 - Becomes irrevocable after the third pronouncement.
-

3. Talaq-ul-Biddat (Triple Talaq)

Procedure - Three Talaqs pronounced in one sitting.

Example: - "Talaq, Talaq, Talaq."

Legal Position in India - The practice of Triple Talaq has been declared unconstitutional by the Supreme Court.

Important Case—Shayara Bano v. Union of India

The Supreme Court held that instant Triple Talaq is unconstitutional and void.

B. Talaq by Wife - Talaq-e-Tafweez (Delegated Divorce)

A husband may delegate his power of Talaq to his wife through an agreement. Under specified conditions, the wife can exercise this right and dissolve the marriage.

C. Divorce by Mutual Consent

1. **Khula** - *Khula is a form of divorce initiated by the wife with the consent of the husband.*

Features

- The wife offers compensation to the husband.
 - Often the wife agrees to return her Mahr.
-

2. **Mubarat** - Mubarat is a divorce by mutual consent where both husband and wife desire separation.

Features

- Mutual agreement.
 - Marriage ends upon acceptance by both parties.
-

II. **Judicial Dissolution of Marriage** - Dissolution of Muslim Marriages Act, 1939

This Act gives Muslim women the right to obtain divorce through a court.

Grounds for Divorce

A Muslim wife may seek dissolution of marriage if:

8. Husband has been missing for four years.
9. Husband has failed to maintain her for two years.
10. Husband is sentenced to imprisonment for seven years or more.
11. Husband is impotent.
12. Husband is insane or suffering from a serious disease.
13. Husband treats her with cruelty.
14. Husband fails to perform marital obligations.

Importance - The Act significantly improved the legal rights of Muslim women by providing statutory grounds for divorce.

III. **Muslim Women (Protection of Rights on Divorce) Act, 1986**

Background - The Act was enacted after the famous case of: **Mohd. Ahmed Khan v. Shah Bano Begum**

Objectives

3. To protect the rights of divorced Muslim women.
 4. To provide maintenance and financial security after divorce.
-

Rights of a Divorced Muslim Woman

1. **Reasonable and Fair Provision** The husband must make a reasonable and fair provision for the future of the divorced wife within the Iddat period.
 2. **Maintenance During Iddat** The husband must maintain the wife during the Iddat period.
 3. **Dower (Mahr)** The wife is entitled to receive the entire unpaid Mahr.
 4. **Return of Gifts and Property** The wife is entitled to all gifts and properties given to her before, during, or after marriage.
 5. **Maintenance of Children** The husband is liable to maintain children for a period of two years from their birth.
-

Danial Latifi Case - Danial Latifi v. Union of India

Decision

The Supreme Court held that:

- The husband is not required merely to maintain the wife during Iddat.
- He must make a reasonable and fair provision for her future within the Iddat period.

Significance - The judgment expanded the financial protection available to divorced Muslim women.

IV. Maintenance of Wives under Section 125 Cr.P.C.

(Studied historically; now procedural law has been replaced by the Bharatiya Nagarik Suraksha Sanhita, 2023.)

Purpose - Section 125 Cr.P.C. was enacted to prevent destitution and vagrancy.

It provides maintenance to:

- Wife
- Children
- Parents

who are unable to maintain themselves.

Conditions for Maintenance - A wife is entitled to maintenance if:

4. She is unable to maintain herself.
 5. The husband has sufficient means.
 6. The husband neglects or refuses to maintain her.
-

Shah Bano Case - Mohd. Ahmed Khan v. Shah Bano Begum

Facts

Shah Bano, a 62-year-old Muslim woman, was divorced by her husband, who refused to maintain her.

Judgment

The Supreme Court held that:

- A divorced Muslim woman is entitled to maintenance under Section 125 Cr.P.C.
- The provision applies irrespective of religion.
- Maintenance is a matter of social justice.

Significance

4. Strengthened the rights of Muslim women.
5. Established that Section 125 Cr.P.C. applies to Muslims.
6. Led to the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986.

Important Cases

1. **Mohd. Ahmed Khan v. Shah Bano Begum** - Maintenance rights of divorced Muslim women.
2. **Danial Latifi v. Union of India** - Interpretation of "reasonable and fair provision."
3. **Shayara Bano v. Union of India** - Triple Talaq declared unconstitutional.

Conclusion

Talaq is the principal mode of dissolution of marriage under Muslim Law. It may be affected by the husband, the wife, mutual consent, or judicial intervention. Modern legislation and judicial decisions have strengthened the rights of Muslim women, particularly regarding divorce and maintenance. The **Shah Bano, Danial Latifi, and Shayara Bano cases** remain landmark developments in the evolution of Muslim Personal Law in India.

Examination Definition - "Talaq is the dissolution of a Muslim marriage in accordance with Muslim Law, either by the husband, wife, mutual consent, or through judicial intervention."

=====++=====

Wills (Wasiyat) under Muslim Law

Introduction

A **Will** (Wasiyat) is a legal declaration made by a person regarding the distribution of his property after his death. Under Muslim Law, a will enables a Muslim to dispose of a portion of his property according to his wishes, subject to certain limitations prescribed by law.

The law of wills under Muslim Law seeks to balance the freedom of the testator with the rights of legal heirs.

Meaning of Will (Wasiyat) - A **Will** is a declaration by a person (testator) of his intention regarding the disposal of his property after his death.

According to Mulla: - "A will is a legal declaration of the intention of a testator with respect to his property, which he desires to take effect after his death."

The person making the will is called the **Testator**, and the person in whose favour the will is made is called the **Legatee**.

Nature of a Will under Muslim Law

6. It takes effect only after the death of the testator.
7. It is revocable during the lifetime of the testator.
8. It is a voluntary act of the testator.
9. It transfers property without consideration.
10. It is subject to restrictions imposed by Muslim Law.

Essentials of a Valid Will

1. Competency of the Testator

The testator must:

- Be a Muslim.
- Be of sound mind.
- Have attained majority.
- Be capable of understanding the consequences of his act.

2. Competency of the Legatee - Any person capable of holding property may be a legatee.

A will may be made in favour of:

- A Muslim,
- A non-Muslim,
- A minor,
- An institution,
- A charitable organization.

3. Subject Matter of the Will - The property must:

- Belong to the testator.
- Be transferable.
- Exist at the time of death.

4. Free Consent - The will must be made voluntarily and without:

- Coercion,
- Fraud,
- Undue influence.

Formalities of a Will - Unlike many other legal systems, Muslim Law does not require any particular form. A will may be:

- Oral, or
- Written.

Registration is not compulsory, though a written and registered will is preferable for evidentiary purposes.

Limitations on Testamentary Power - One of the most important features of Muslim Law is the restriction on testamentary disposition.

1. One-Third Rule – (33% only) A Muslim can generally dispose of only **one-third (1/3)** of his property by will without the consent of heirs. The remaining two-thirds must devolve upon legal heirs according to Muslim inheritance law.

Example

If a Muslim leaves property worth ₹9,00,000:

- Maximum amount disposable by will = ₹3,00,000
- Remaining ₹6,00,000 goes to legal heirs.

2. Bequest to an Heir - A will in favour of a legal heir is not valid unless the other heirs consent after the death of the testator.

Principle - "No bequest to an heir without the consent of other heirs."

Revocation of a Will—A will may be revoked by the testator at any time before death.

Modes of Revocation

- 1. Express Revocation** - The testator expressly cancels the will.
- 2. Implied Revocation** - The testator performs an act inconsistent with the will.
- 3. Making a New Will** - A subsequent will may revoke an earlier will.

Abatement of Legacies - Where the bequests exceed one-third of the estate and heirs do not consent, the legacies are reduced proportionately. **This is known as abatement.**

Lapse of Legacy - A legacy lapses if the legatee dies before the testator. **In such a case, the bequest generally fails.**

Difference between Will and Gift (Hiba)

Will (Wasiyat)	Gift (Hiba)
Takes effect after death	Takes effect immediately
Revocable during lifetime	Generally irrevocable after completion
Subject to one-third limitation	No such limitation
Ownership passes after death	Ownership passes immediately

Will (Wasiyat)

Gift (Hiba)

Requires death of testator

Effective during donor's lifetime

Importance of a Will

6. Allows a person to distribute part of his property according to his wishes.
7. Helps provide for persons who are not legal heirs.
8. Facilitates charitable and religious bequests.
9. Reduces disputes regarding property.
10. Provides flexibility within the framework of Muslim inheritance law.

Conclusion

A will (Wasiyat) under Muslim Law is a legal declaration regarding the disposition of property after death. While a Muslim has the power to make a will, this power is restricted by the one-third rule and by the principle that a bequest to an heir requires the consent of other heirs. These restrictions ensure a balance between testamentary freedom and the rights of legal heirs.

Examination Definition - "A Will (Wasiyat) is a legal declaration by a Muslim regarding the disposition of his property after his death, subject to the limitations imposed by Muslim Law."

Important LL.B. Questions

6. Define a Will (Wasiyat) and explain its essentials under Muslim Law.
 7. Discuss the testamentary power of a Muslim.
 8. Explain the One-Third Rule under Muslim Law.
 9. Can a Muslim make a bequest in favour of an heir? Discuss.
 10. Distinguish between a Will (Wasiyat) and a Gift (Hiba).
-

Gifts (Hiba) under Muslim Law

Introduction

A **Gift** under Muslim Law is known as **Hiba**. It is a voluntary transfer of property made immediately and without any consideration by one person to another. Hiba is an important mode of transferring property under Muslim Law and is governed by principles derived from Islamic jurisprudence.

Unlike many other legal systems, Muslim Law does not generally require a written instrument or registration for a valid gift if all essential conditions are fulfilled.

Meaning of Hiba -The word **Hiba** literally means "gift" or "donation."

According to Mulla: - "A Hiba is an immediate and unconditional transfer of ownership of property, made without consideration by one person to another and accepted by or on behalf of the latter."

Definition of Gift (Hiba) - A gift is the voluntary transfer of ownership of property by a donor to a donee without consideration and with immediate effect.

Essentials of a Valid Hiba - For a valid gift under Muslim Law, three essential conditions must be fulfilled:

1. **Declaration of Gift by the Donor** - The donor must clearly express his intention to make a gift.

Example

A person says: "**I gift my house to my son.**" This amounts to a declaration of gift.

2. **Acceptance of the Gift by the Donee** - The gift must be accepted by the donee.

Important Point -If the donee is a minor, acceptance may be made by his or her guardian.

3. **Delivery of Possession** - The possession of the gifted property must be transferred to the donee.

Significance - Without delivery of possession, the gift is generally incomplete and invalid.

Possession may be:

- Actual possession, or
 - Constructive possession.
-

Parties to a Gift

1. **Donor** - The person who makes the gift. - **Competency of Donor** - The donor must:

- Be a major.
- Be of sound mind.
- Be the owner of the property.

2. **Donee** - The person who receives the gift. - **Who Can Be a Donee?** - A donee may be:

- A Muslim,
- A non-Muslim,
- A minor,
- A legal person such as an institution or organization.

Subject Matter of Gift The property gifted must:

5. Belong to the donor.
6. Be transferable.
7. Be identifiable and certain.
8. Exist at the time of the gift.

Kinds of Hiba

1. **Simple Hiba** - A pure gift made without any consideration.

Example - A father gifts his land to his daughter without receiving anything in return.

2. Hiba-bil-Iwaz - A gift made in consideration of something given in return.

Example - A person transfers property and receives money in exchange.

Nature - It resembles a sale transaction.

3. Hiba-ba-Shart-ul-Iwaz - A gift made subject to a condition that the donee will provide consideration later.

Features

- Gift is made first.
- Consideration is provided subsequently according to the agreement.

Revocation of Gift A gift may be revoked under certain circumstances.

However, revocation is generally not allowed in the following cases:

7. Gift between husband and wife.
8. Gift to close relatives within prohibited degrees.
9. Death of either donor or donee.
10. Destruction of the gifted property.
11. Transfer of gifted property by the donee to another person.
12. Where consideration has been received.

Difference Between Gift and Will

Gift (Hiba)	Will (Wasiyat)
Takes effect immediately	Takes effect after death
Delivery of possession is essential	Delivery of possession is not essential
Operates during the donor's lifetime	Operates after the testator's death
No one-third limitation	Subject to one-third limitation
Ownership transfers immediately	Ownership transfers after death

Importance of Hiba

6. Provides an easy method of transferring property.
7. Promotes family welfare and affection.
8. Facilitates charitable and religious purposes.
9. Enables immediate transfer of ownership.
10. Helps avoid future disputes regarding property.

Legal Effects of a Valid Gift

5. Ownership immediately passes to the donee.
6. The donor loses all rights over the gifted property.
7. The donee acquires full ownership rights.
8. The transfer becomes legally enforceable.

Conclusion

Hiba (Gift) is an important mode of transfer of property under Muslim Law. A valid gift requires a declaration by the donor, acceptance by the donee, and delivery of possession. Once these conditions are fulfilled, ownership passes immediately to the donee. Hiba reflects the Islamic principle of generosity and voluntary transfer of wealth.

Examination Definition - "Hiba is an immediate and unconditional transfer of ownership of property by a donor to a donee without consideration and accepted by the donee under Muslim Law."

Important LL.B. Questions

6. Define Hiba and explain its essentials under Muslim Law.
7. Discuss the conditions necessary for a valid gift.
8. Explain the different kinds of Hiba.
9. Discuss the rules relating to revocation of gifts under Muslim Law.
10. Distinguish between Hiba (Gift) and Wasiyat (Will).

Wakf (Waqf) under Muslim Law

Introduction - Wakf (Waqf) is a permanent dedication of movable or immovable property by a Muslim for purposes recognized by Muslim Law as **religious, pious, or charitable**. It is one of the most important institutions of Islamic jurisprudence and plays a significant role in promoting religious and charitable activities. Once a valid Wakf is created, the ownership of the property is considered to vest in Almighty Allah, and the property becomes inalienable.

Meaning of Wakf - The word **Wakf** literally means "detention," "confinement," or "dedication."

According to Mulla: - "A Wakf is the permanent dedication by a person professing Islam of any property for any purpose recognized by Muslim Law as **religious, pious, or charitable**."

According to Abu Yusuf: - "Wakf signifies the extinction of the owner's ownership in the thing dedicated and the detention of the property in the **ownership of God**."

Essentials of a Valid Wakf

1. **Permanent Dedication** - The dedication must be permanent and irrevocable. A temporary Wakf is invalid.
2. **Competency of the Wakif** - The person creating the Wakf is called the **Wakif**.

The Wakif must:

- Be a Muslim.

- Be a major.
- Be of sound mind.
- Be the owner of the property.

3. Subject Matter of Wakf The property dedicated must:

- Belong to the Wakif.
- Be identifiable.
- Be capable of being used permanently.

Both movable and immovable property may be dedicated.

4. Religious, Pious, or Charitable Purpose - The object of Wakf must be recognized by Muslim Law as **religious, pious, or charitable**.

Examples

- Construction of mosques.
- Maintenance of religious institutions.
- Education.
- Relief of the poor.
- Hospitals and orphanages.

5. Irrevocable and Unconditional - Once a Wakf is validly created, it cannot ordinarily be revoked.

Objects of Wakf

6. Promotion of religion.
7. Charity and welfare.
8. Education.
9. Relief of poverty.
10. Public utility and social welfare.

Types of Wakf

1. Public Wakf - A Wakf created for the benefit of the public.

Examples

- Mosque.
- School.
- Hospital.
- Graveyard.

2. Private Wakf (Wakf-alal-Aulad) - A Wakf created primarily for the benefit of the settlor's family and descendants.

Features

- Family members receive benefits.
- Ultimate benefit must be reserved for a **religious, pious, or charitable purpose**.

Validity in India - Recognized by the Mussalman Wakf Validating Act, 1913.

Creation of Wakf - A Wakf may be created:

1. **By Declaration** - Express dedication by the Wakif.
2. **By Will** - Property may be dedicated through a will, subject to limitations.
3. **By User** - Where property has long been used for religious purposes, Wakf may be presumed.

Mutawalli - The manager or administrator of a Wakf is called a **Mutawalli**.

Functions of a Mutawalli

5. Management of Wakf property.
6. Collection of income.
7. Application of income for Wakf purposes.
8. Protection of Wakf assets.

Position - A Mutawalli is not the owner of the Wakf property; he is merely a manager or superintendent.

Wakf and Trust: Difference

Wakf	Trust
Governed by Muslim Law	Governed by Trust Law
Ownership vests in Allah	Ownership vests in trustees
Religious element essential	Religious element not essential
Generally permanent	May be temporary
Managed by Mutawalli	Managed by Trustees

Extinction of Wakf -A valid Wakf generally does not come to an end because it is permanent in nature. However, its administration may be modified by law or court orders in certain circumstances.

Importance of Wakf

6. Promotes charitable activities.
7. Supports religious institutions.
8. Assists education and healthcare.
9. Helps poor and needy persons.
10. Contributes to social welfare.

Important Legislation - Waqf Act, 1995

The Act regulates:

- Registration of Wakfs,
- Administration of Wakf properties,
- State Waqf Boards,
- Protection of Wakf assets.

Mussalman Wakf Validating Act, 1913 - Validated family Wakfs (Wakf-alal-Aulad).

Conclusion

Wakf is a permanent dedication of property for **religious, pious, or charitable purposes** under Muslim Law. Once created, the property is dedicated to **Allah and becomes inalienable**. The institution of Wakf has played a vital role in supporting **religious, educational, and charitable activities** throughout the Muslim world and remains an important aspect of Muslim Personal Law in India.

Examination Definition - "**Wakf is the permanent dedication of property by a Muslim for a religious, pious, or charitable purpose recognized by Muslim Law.**"

Important LL.B. Questions

6. Define Wakf and explain its essentials.
 7. Discuss the different kinds of Wakf.
 8. Explain the position and functions of a Mutawalli.
 9. Distinguish between Wakf and Trust.
 10. Discuss the provisions of the Waqf Act, 1995.
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Pre-emption (Shufa) under Muslim Law

Introduction

Pre-emption (Shufa) is an important concept under Muslim Law. It is a right that allows certain persons to purchase an immovable property in preference to an outsider when the property is sold. The person entitled to pre-emption can step into the shoes of the purchaser by paying the same price and accepting the same terms and conditions as agreed upon in the sale.

The doctrine aims to prevent the intrusion of strangers into joint ownership and to protect the interests of co-sharers and neighbors.

Meaning of Pre-emption (Shufa) - The word **Shufa** literally means "**joining**" or "**adding**."

In legal terms, it means the right of a person to acquire property that has been sold to another by substituting himself in place of the buyer.

According to Mulla: - "Pre-emption is a right which the owner of certain immovable property possesses to acquire another immovable property which has been sold to another person."

Definition - **Pre-emption is the right of a person to acquire immovable property sold to another by paying the same consideration and fulfilling the same conditions as the purchaser.**

Objects of Pre-emption

6. To prevent the intrusion of strangers into joint property.
7. To protect the interests of co-sharers.
8. To preserve neighbourhood harmony.
9. To reduce disputes relating to property.
10. To ensure peaceful enjoyment of property.

Essentials of Pre-emption

1. Sale of Immovable Property - The right of pre-emption arises only when there is a sale of immovable property.

Examples

- Land
- House
- Building

It does not apply to movable property.

2. Valid Sale - There must be a valid and completed sale. -If there is no sale, the right of pre-emption does not arise.

3. Claim by an Entitled Person - The person claiming pre-emption must belong to a recognized category under Muslim Law.

4. Compliance with Legal Procedure - The claimant must follow the prescribed legal formalities and make the necessary demands within a reasonable time.

Persons Entitled to Pre-emption -Muslim Law recognizes the following categories of persons entitled to claim pre-emption:

1. Shafi-i-Sharik (Co-sharer) - A person who is a co-owner in the property.

Example - If one co-owner sells his share to a stranger, the other co-owner has the first right to purchase it.

2. Shafi-i-Khalit (Participant in Amenities) - A person who shares certain rights or easements connected with the property.

Examples

- Common pathway
- Common water source
- Common drainage system

3. Shafi-i-Jar (Neighbour) - An owner of adjoining or neighbouring property.

Demands Necessary for Pre-emption - Under Muslim Law, three demands are traditionally required:

1. **Talab-i-Mowasibat (Immediate Demand)** - The claimant must immediately assert his right upon learning of the sale.
2. **Talab-i-Ishhad (Demand with Witnesses)** - The claimant must make a formal declaration of his intention to claim pre-emption in the presence of witnesses.
3. **Talab-i-Tamlik (Demand through Legal Action)** - If necessary, the claimant must file a suit in a competent court to enforce his right.

Cases Where Pre-emption Does Not Apply - The right of pre-emption generally does not apply to:

6. Gifts (Hiba).
7. Wills (Wasiyat).
8. Inheritance.
9. Wakf property.
10. Exchanges and certain non-sale transfers.

Loss of Right of Pre-emption - The right may be lost if:

5. The claimant fails to make the required demands.
6. There is unreasonable delay.
7. The claimant waives or abandons his right.
8. The claimant accepts the sale.

Nature of the Right of Pre-emption - The right of pre-emption is:

- A secondary or preferential right.
- Not a right to prohibit the sale.
- A right to substitute oneself in place of the purchaser.

Courts often describe it as a "**weak right**" because it restricts the freedom of transfer of property.

Important Case

Bhau Ram v. Baijnath Singh The Supreme Court observed that the right of pre-emption is a weak right and must be exercised strictly according to law.

Difference Between Pre-emption and Repurchase

Pre-emption	Repurchase
Arises by operation of law	Arises by contract
Available only to certain persons	Available to contracting parties
Operates after a sale	Depends upon agreement

Pre-emption

Based on legal right

Repurchase

Based on contractual right

Importance of Pre-emption

6. Protects co-sharers from strangers.
7. Preserves peaceful possession and enjoyment of property.
8. Reduces property disputes.
9. Protects common rights and amenities.
10. Maintains neighbourhood harmony.

Conclusion

Pre-emption (Shufa) is a preferential right recognized under Muslim Law that enables certain persons, such as co-sharers and neighbours, to purchase immovable property that has been sold to another person. The doctrine aims to protect property interests and preserve harmony among co-owners and neighbours. However, because it restricts the free transfer of property, courts interpret and enforce it strictly.

Examination Definition - "Pre-emption (Shufa) is the right of a person to acquire immovable property sold to another by substituting himself in place of the purchaser on the same terms and conditions."

Important LL.B. Questions

6. Define Pre-emption (Shufa) and explain its nature under Muslim Law.
7. Discuss the essentials of a valid claim of pre-emption.
8. Explain the categories of persons entitled to claim pre-emption.
9. Discuss the three demands required for enforcing the right of pre-emption.
10. Distinguish between Pre-emption and Repurchase.

Acknowledgement and Guardianship under Muslim Law

I. Acknowledgement under Muslim Law

Introduction

The doctrine of **Acknowledgement (Iqrar)** is a unique concept in Muslim Law. It is a method by which a person recognizes another person as his legitimate child, provided the child's legitimacy is uncertain and not already established.

The doctrine is based on the principle that where direct proof of marriage is unavailable, legitimacy may be established through acknowledgment.

Meaning of Acknowledgement - Acknowledgement means the admission by a person that another person is his legitimate child.

According to Mulla:- "Acknowledgement of legitimacy is the recognition by a man of another person as his legitimate child."

Essentials of Valid Acknowledgement - For a valid acknowledgement, the following conditions must be fulfilled:

1. **Acknowledgement by the father** - The acknowledgment must be made by the alleged father.
2. **Child's Legitimacy Must Be Possible** - The child must be capable of being the legitimate child of the person acknowledging him.
- Example** - There must be a reasonable difference in age between the father and child.
3. **Child's Parentage Must Be Uncertain** - The legitimacy of the child should not already be conclusively established.
4. **Child Must Not Be Known as Illegitimate** - The child must not be proved to be illegitimate.
5. **Acceptance by Child** - If the child is an adult, he or she should accept the acknowledgment.

Effects of Acknowledgement

A valid acknowledgment:

5. Confers legitimacy on the child.
6. Creates rights of inheritance.
7. Establishes legal relationship between parent and child.
8. Gives the child the status of a legitimate offspring.

Importance of Acknowledgement

5. Protects children whose legitimacy is uncertain.
6. Prevents social injustice.
7. Establishes inheritance rights.
8. Preserves family relationships.

Conclusion

Acknowledgement is an important doctrine under Muslim Law through which a person may recognize another as his legitimate child. It helps establish legitimacy and inheritance rights where direct proof of lawful parentage is unavailable.

II. Guardianship under Muslim Law

Introduction - A **Guardian** is a person who has the legal authority to care for the person or property of a minor. Under Muslim Law, guardianship is known as **Wilayat**. The law distinguishes between custody of a child and guardianship of a child.

Meaning of Guardianship Guardianship means the legal authority over the person or property of a minor.

According to Mulla:- "Guardianship is the authority to protect and manage the person or property of a minor."

Kinds of Guardianship

1. **Guardianship of the Person** This relates to the care, upbringing, education, and welfare of the minor.
2. **Guardianship of Property** This relates to the management and protection of the minor's property.
3. **Guardianship in Marriage** This concerns the authority to contract a valid marriage on behalf of a minor.

Types of Guardians

1. **Natural Guardian** Under Sunni Muslim Law, the following are natural guardians:

5. Father
6. Executor appointed by the father
7. Paternal grandfather
8. Executor appointed by the paternal grandfather

Important Point The mother is not considered a natural guardian under traditional Muslim Law, though she has custody rights.

2. **Testamentary Guardian** A guardian appointed by will. Such appointment may be made by:

- Father
- Paternal grandfather

3. **Court-Appointed Guardian** - A guardian appointed by the court under the provisions of law when necessary for the welfare of the minor.

4. **De Facto Guardian** - A person who voluntarily takes care of a minor without legal authority.

Example An elder brother managing the affairs of a minor. A **de facto guardian has limited powers** and generally **cannot transfer the minor's property**.

Custody (Hizanat) Custody refers to the physical care and upbringing of a child. Under Muslim Law, custody generally belongs to the mother during the child's early years.

Sunni Law

- Son: Mother's custody up to approximately 7 years.
- Daughter: Mother's custody until puberty.

The welfare of the child is always the paramount consideration.

Powers of a Guardian

5. Protection of the minor.
6. Management of the minor's property.
7. Representation of the minor in legal matters.
8. Protection of the minor's interests.

Duties of a Guardian

5. To act in the best interests of the minor.

6. To protect the minor's property.
7. To provide proper education and care.
8. To avoid misuse of the minor's property.

Important Case - Imambandi v. Mutsaddi - The Privy Council held that a mother is not the natural guardian of a minor's property under traditional Muslim Law.

Difference Between Guardianship and Custody

Guardianship	Custody (Hizanat)
Legal authority over minor	Physical care of minor
Includes property management	Does not include property management
Usually vested in father or legal guardian	Usually vested in mother during early years
Broader concept	Narrower concept

Conclusion

Guardianship under Muslim Law refers to the legal authority over the person or property of a minor. Different categories of guardians are recognized, including natural, testamentary, court-appointed, and **de facto guardians**. While the father is traditionally the natural guardian, **the mother is generally entitled to custody of young children**. In all matters relating to minors, the welfare of the child remains the most important consideration.

Examination Definitions Acknowledgement - "Acknowledgement is the recognition by a person of another as his legitimate child, thereby conferring legitimacy and inheritance rights."

Guardianship - "Guardianship is the legal authority to care for and manage the person or property of a minor."

Important LL.B. Questions

6. Explain the doctrine of Acknowledgement under Muslim Law.
7. Discuss the essentials and legal effects of Acknowledgement.
8. Define Guardianship and explain its various kinds under Muslim Law.
9. Distinguish between Guardianship and Custody (Hizanat).
10. Discuss the powers and duties of a guardian under Muslim Law.

full course completed.

