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FAMILY LAW-II: Muslim Law, Succession & Special Acts



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Paper -II: Family Law -II (Muslim Law and Other Personal Laws)

To visualize the entire Family Law-II syllabus for your final revisions, the heavy theoretical concepts are translated into linear, text-based mind maps.

UNIT-I: Foundations, Marriage, and Dower

Central Theme: The transition from pre-Islamic customs to a structured contractual legal system.

- **Sources of Law:** Primary (Quran, Sunnah, Ijma, Qiyas) → Secondary (Customs, Precedent, Legislation).
- **Schools of Jurisprudence:** Sunni (Hanafi, Maliki, Shafi, Hanbali) → Shia (Ithna Ashari, Ismaili, Zaidya).
- **Conversion:** Bona fide belief → Governed by Shariat → Cannot be used to commit fraud/bigamy (*Sarla Mudgal* case).
- **Marriage (Nikah):** Civil Contract → Essentials (Capacity, Single-meeting Ijab-o-Qubul, Free Consent, Witnesses).
- **Classification of Marriage:** Sahih (Valid & enforceable) → Batil (Void & illegal from start) → Fasid (Irregular & remediable).
- **Dower (Mahr):** Respect for wife/Unsecured Debt → Specified (Prompt/Deferred) → Proper/Customary.
- **Modern Legislation:** 2019 Act → Triple Talaq criminalized → Cognizable offense (3 years imprisonment).

UNIT-II: Divorce and Maintenance

Central Theme: The mechanisms for marital dissolution and the statutory battle for financial security.

- **Divorce by Husband (Talaq):** Approved (Ahsan, Hasan) → Disapproved/Void (Talaq-e-Biddat) → Constructive (Ila, Zihar).
- **Divorce by Wife / Mutual:** Delegated (Talaq-e-Tafweez) → Redemption (Khula) → Mutual Freeing (Mubarat).
- **Judicial Divorce (1939 Act):** Missing 4 yrs → Maintenance failure 2 yrs → Cruelty → Option of Puberty (*Khyar-ul-Bulugh*).



- **Post-Divorce Consequences:** Iddat observation → Deferred Mahr becomes payable → Mutual inheritance ceases.
- **Maintenance Principles:** Husband's absolute duty to wife → Father's duty to children → Shared liability in Shia law.
- **Maintenance Statutes Conflict:** Sec 125 CrPC/BNSS (Secular/Lifetime) → 1986 Act (Limited to Iddat) → *Danial Latifi* reconciliation (Fair provision for life paid *within* Iddat).

UNIT-III: Parentage, Guardianship, Gifts, and Wills

Central Theme: The structure of the family unit and the rules governing voluntary property transfers.

- **Parentage:** Maternity (Established by birth) → Paternity (Established by valid/irregular marriage only).
- **Acknowledgment (Iqrar):** Unknown paternity → Presumption of legitimacy → Cannot legitimize offspring of Zina.
- **Guardianship (Wilayat):** Natural (Father) → Testamentary (By Will) → Court-Appointed → Marriage (Jabr).
- **Custody (Hizanat):** Mother's primary right → Sunni (Age 7/Puberty) → Shia (Weaning/Age 7) → Lost upon marrying a stranger.
- **Gifts (Hiba):** Inter Vivos → Essentials (Declaration, Acceptance, Delivery of Possession) → 100% property allowed.
- **Kinds of Gifts:** Pure Hiba → Hiba-bil-Iwaz (With return/Sale-like) → Hiba-ba-Shart-ul-Iwaz (Stipulated return).
- **Wills (Wasiyat):** Testamentary → Limit (1/3rd of estate) → Sunni (Heir consent after death) → Shia (Heir consent before/after).



UNIT-IV: Waqf and Succession

Central Theme: The permanent dedication of property to the Almighty and the rigid mathematical distribution of an estate.

- **Waqf Definition:** Permanent dedication → Vesting in the Almighty → Irrevocable.
- **Kinds of Waqf:** Public (*fi-sabilillah*) → Private/Family (*alal-aulad*).
- **Waqf Administration (1995 Act):** State Waqf Board → Waqf Tribunals (Exclusive jurisdiction) → Bar on Civil Courts.
- **Mutawalli:** Manager (Not owner/trustee) → Duties (Protect, Lease with limits) → Removal (By Board for misappropriation).
- **Estate Administration (4 Steps):** 1. Funeral Expenses → 2. Debts (Including Mahr) → 3. Legacies (Up to 1/3) → 4. Distribution.
- **Succession Rules:** Tenants-in-Common → Proportionate liability for debts → Sunni (Per Capita) vs. Shia (Per Stirpes).

UNIT-V: Secular and Christian Laws

Central Theme: Territorial jurisdiction, secular exits from personal law, and the linear Christian succession model.

- **Special Marriage Act, 1954:** Secular exit → Monogamy/Age limits → Automatic HUF severance → ISA 1925 applies.
- **Domicile:** Jurisdiction basis → Factum (Residence) + Animus Manendi (Intent to stay) → Origin vs. Choice.
- **Indian Divorce Act, 1869 (Christian):** 2001 Amendment removes gender bias → Grounds (Adultery, Cruelty, Desertion) → Mutual Consent.
- **Christian Intestate Succession (ISA 1925):** Linear/Blood-based → No coparcenary.
- **Widow's Share:** 1/3rd (If descendants exist) → 1/2 (If only kindred exist) → 100% (If no descendants or kindred).
- **Descendants' Share:** Remaining 2/3rd → Divided Per Capita (Same degree) or Per Stirpes (By branch).



UNIT-I: Foundations, Marriage, and Dower

The 10-Mark Bank (Essay / Long Form)

Q1. Trace the origin and development of Muslim Law. Critically analyze its Primary and Secondary Sources.

1. Introduction & Origin

Muslim Law (Shariat) originated in the Arabian Peninsula in the 7th century, transforming a society governed by unwritten, often oppressive tribal customs into a community (Ummah) governed by divine revelation. Its development spans the Prophet's lifetime (direct revelation), the period of the Rightly Guided Caliphs (early consensus), and the subsequent formulation of the classical schools of jurisprudence (Fiqh).

2. Primary Sources (Divine and Foundational)

- **The Quran:** The paramount and absolute source of Muslim law. It is considered the direct word of God. While primarily a religious text, about 200 of its verses strictly lay down legal rules regarding marriage, divorce (Talaq), inheritance, and waqf.
- **Sunnah and Ahadis:** Where the Quran is silent, the Sunnah (practices/actions of Prophet Muhammad) and Ahadis (his sayings and silent approvals) provide the rule of law. They are the authoritative interpretation of the Quran.
- **Ijma (Consensus of Jurists):** The unanimous agreement of the Mujtahids (learned Muslim jurists) of a particular era on a specific legal issue. It ensures the law remains dynamic and adaptable.
- **Qiyas (Analogical Deduction):** The process of deducing a rule of law for a new situation by comparing it to an existing rule in the Quran or Sunnah, based on a common underlying cause (Illat).



3. Secondary Sources (Extrinsic and Modern)

- **Custom (Urf / Taamul):** Pre-Islamic customs that were not expressly abrogated by the Prophet are considered legally valid, provided they do not contradict the primary sources.
- **Judicial Precedents:** Rulings by the Privy Council, Supreme Court, and High Courts in India play a massive role in shaping "Anglo-Mohammadan Law."
- **Legislation:** Enactments like the Muslim Personal Law (Shariat) Application Act, 1937, which officially mandated the application of Muslim law to Muslims in India for personal matters.
- **Justice, Equity, and Good Conscience:** Derived from English common law, Indian courts use these principles to fill legal vacuums where classical texts offer no direct remedy.

Q2. Discuss the origin of the Schools of Muslim Law. Elaborate on the sub-schools of Sunni Law and highlight the major differences between the Sunni and Shia schools.

1. Origin of the Schism

The division into distinct schools (Madhhabs) was not religious but political. Following the Prophet's death in 632 AD, a dispute arose regarding his successor.

- **Sunnis:** Believed the Caliph (leader) should be elected by the community's consensus. They elected Abu Bakr.
- **Shias:** Believed leadership (Imamate) was a divine right belonging exclusively to the Prophet's bloodline, beginning with his cousin and son-in-law, Ali.



2. Sub-Schools of Sunni Law

- **Hanafi School:** Founded by Imam Abu Hanifa. It is the most widely followed school in India. It is highly progressive, relying heavily on Qiyas (reasoning) and equitable preference (Istihsan).
- **Maliki School:** Founded by Imam Malik. It strictly adheres to the traditions and practices of the people of Medina.
- **Shafi'i School:** Founded by Imam Shafi'i. He systematized Islamic jurisprudence, striking a balance between strict traditionalism and logical deduction.
- **Hanbali School:** Founded by Imam Ahmad bin Hanbal. It is the most rigid and orthodox, rejecting analogy and relying almost entirely on the literal reading of Ahadis.

3. Sub-Schools of Shia Law

- **Ithna Ashari:** (Twelvers) The vast majority of Shias in India.
- **Ismaili:** (Seveners) Includes the Khojas and Bohras in India.
- **Zaidya:** Not prominent in India; primarily found in Yemen.

4. Key Differences: Sunni vs. Shia Law

- **Marriage Witnesses:** Essential in Sunni law (2 males or 1 male, 2 females); Not essential at the time of marriage in Shia law.
- **Muta (Temporary) Marriage:** Void (Batil) in Sunni law; Legally recognized in Shia law.
- **Talaq (Divorce):** Witnesses not required in Sunni law; Strictly requires 2 competent witnesses in Shia law.
- **Inheritance:** Sunni law strongly prefers Agnates (male lineage); Shia law treats Agnates and Cognates equally; closer blood excludes remoter.



Q3. Explain the Operation and Application of Muslim Law in India. Discuss the law relating to Conversion to Islam and its legal effects, citing relevant case laws.

1. Operation and Application

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

- Section 2 mandates that in matters of intestate succession, special property of females, marriage, dissolution of marriage, maintenance, dower, guardianship, gifts, trusts, and waqfs, the rule of decision for Muslims shall be the Muslim Personal Law (Shariat).

2. Who is a Muslim?

A person is a Muslim either by birth (if both or one parent is Muslim) or by conversion.

Requirements for Conversion:

- A person must be of sound mind and majority.
- There must be a bona fide declaration of faith (Shahada) – belief in the oneness of God and that Muhammad is His prophet.

3. Effects of Conversion to Islam

- **On Application of Law:** Upon valid conversion, the individual is immediately governed by Muslim Personal Law regarding marriage, divorce, and succession.
- **On Succession:** Under traditional Islamic law, a non-Muslim cannot inherit from a Muslim. However, in India, the Caste Disabilities Removal Act, 1850 protects the inheritance rights of the convert in their original family.

4. Landmark Judicial Scrutiny: Fraudulent Conversions

Indian courts strictly prohibit "colorable" conversions done solely to bypass secular or previous personal laws.

- **Sarla Mudgal v. Union of India (1995):** The Supreme Court held that a Hindu husband, married under the Hindu Marriage Act, cannot convert to Islam to solemnize a second marriage while the first marriage subsists. The second marriage is void, and he is punishable for bigamy under Section 494 IPC.
- **Lily Thomas v. Union of India (2000):** Reaffirmed *Sarla Mudgal*, stating that religion is a matter of belief, not a tool for marital convenience.

Q4. "A Muslim marriage is a civil contract, not a sacrament." Discuss the nature and essential requirements of a valid Nikah. Distinguish clearly between Void, Irregular, and Valid marriages.

1. Nature of Muslim Marriage (Nikah)

Under Muslim Law, marriage is a civil contract designed for the legalization of sexual intercourse and the procreation of children.

- **Case Law:** In *Abdul Kadir v. Salima* (1886), Justice Mahmood unequivocally stated that Nikah bears all the characteristics of a contract. It requires a proposal, acceptance, consideration (Mahr), and unlike a Hindu sacrament, it is not an indissoluble bond.

2. Essential Requirements of a Valid Marriage (Sahih Nikah)

1. **Capacity:** Both parties must be of sound mind and have attained puberty (Bulugh). In the absence of proof, the legal presumption of puberty is 15 years.
2. **Ijab-o-Qubul (Proposal & Acceptance):** Must be made in a single, continuous meeting (Ek-Majlis).



3. **Free Consent:** Consent must be absolute. If obtained by fraud or force, the marriage is invalid.
4. **Witnesses:** Under Sunni law, two sane, adult male witnesses (or one male and two females) must be present.
5. **No Impediments:** The parties must not fall within the prohibited degrees of Consanguinity (blood), Affinity (marriage), or Fosterage (Raza).

3. Classification of Marriages

- **Valid (Sahih):** A marriage where all essential conditions are met. Effects: Cohabitation becomes lawful; children are legitimate; mutual inheritance rights are established; Dower becomes payable.
- **Void (Batil):** A marriage that is unlawful from its very inception due to an absolute impediment (e.g., marrying one's mother, sister, or a married woman whose husband is alive). Effects: Creates no legal rights or obligations. It is a nullity. Children born are illegitimate. No right of dower or inheritance arises.
- **Irregular (Fasid):** A marriage that is not inherently unlawful but suffers from a temporary, remediable defect (e.g., marriage without witnesses in Sunni law, marrying a woman undergoing Iddat, or marrying a fifth wife). Effects: Before consummation, it has no legal effect. After consummation, children are legitimate, and the wife is entitled to Dower and must observe Iddat upon separation. However, there are no mutual rights of inheritance. If the defect is cured, the marriage becomes Sahih.



Q5. Define Dower (Mahr). Discuss its origin, nature, object, and detail the classification of dower under Muslim Law.

1. Origin and Nature

In pre-Islamic Arabia, men paid a bride-price (Sadaq) to the wife's father, treating women as property. Islam revolutionized this by introducing Mahr, a sum of money or property that a husband must pay directly to the wife as a mark of respect.

- **Nature:** It is an integral part of Nikah. Legally, it is an unsecured debt owed by the husband to the wife. Even if not mentioned in the marriage contract, the law implies it.

2. Object and Importance

- To impose an obligation on the husband as a mark of respect for the wife.
- To place a financial check on the husband's absolute, arbitrary power to pronounce Talaq.
- To provide for the wife's subsistence after the dissolution of marriage (by death or divorce).

3. Classification of Dower

1. **Specified Dower (Mahr-ul-Musamma):** The exact amount agreed upon by the parties at or before the time of marriage. It is sub-divided into:
 - **Prompt Dower (Muajjal):** Payable immediately upon demand by the wife. She can refuse cohabitation until it is paid.
 - **Deferred Dower (Muvajjal):** Payable only upon the dissolution of the marriage (by death or divorce).
2. **Customary / Proper Dower (Mahr-ul-Misl):** If the dower amount is not specified in the contract, the wife is still entitled to it. The court determines the amount by looking at the dower fixed for her female paternal relatives possessing similar qualities.

4. Landmark Case Law:

- **Maina Bibi v. Chaudhry Vakil Ahmad (1925):** The Privy Council established the "Right of Retention." If a husband dies leaving the dower unpaid, the widow, if she has obtained lawful possession of her husband's estate, has the right to retain that possession until her dower debt is fully satisfied by the heirs.

Q6. Critically analyze the legislative intent and core provisions of The Muslim Women (Protection of Rights on Marriage) Act, 2019.

1. Introduction & Context

For decades, Muslim women in India suffered under the arbitrary practice of Talaq-e-Biddat (Instant Triple Talaq), where a husband could irrevocably divorce his wife by uttering "Talaq" three times in a single sitting.

2. Judicial Prelude: Shayara Bano v. Union of India (2017)

In this landmark judgment, a 5-judge Constitution Bench of the Supreme Court struck down the practice of Talaq-e-Biddat by a 3:2 majority. The Court held the practice to be manifestly arbitrary, contrary to the basic tenets of the Quran, and violative of Article 14 (Right to Equality) of the Constitution. The Court directed Parliament to legislate on the matter.

3. Legislative Intent

The 2019 Act was passed to protect the rights of married Muslim women, to prohibit divorce by pronouncing Talaq-e-Biddat, and to provide for matters connected therewith.



4. Salient Features of the 2019 Act

- **Declaration of Voidability (Section 3):** The Act unequivocally declares that any pronouncement of talaq by a Muslim husband upon his wife, by words (spoken or written) or in electronic form (SMS, WhatsApp, Email), shall be void and illegal.
- **Criminalization (Section 4):** It makes the pronouncement of Triple Talaq a cognizable and non-bailable offense. A husband who commits this act shall be punished with imprisonment for a term which may extend to 3 years and shall also be liable to a fine.
- **Protection of the Wife's Rights:**
 - **Section 5 (Subsistence Allowance):** A married Muslim woman upon whom talaq is pronounced is entitled to receive an amount of subsistence allowance for herself and dependent children as determined by the Magistrate.
 - **Section 6 (Custody):** The woman is legally entitled to seek custody of her minor children, determined by the Magistrate.

5. Conclusion

The Act marks a significant shift from traditional interpretations of Hanafi law to a modern, codified standard of gender justice within the framework of Indian constitutional morality.



The 4-Mark Bank (Short Notes)

1. Hanafi School

The Hanafi school, founded by Imam Abu Hanifa, is the most widely followed Sunni school of jurisprudence globally and heavily dominates Anglo-Mohammadan Law in India. It is characterized by its progressive and highly logical approach, relying less on strict, literal traditions and heavily on *Qiyas* (analogical deduction) and *Istihsan* (juristic preference/equity) to adapt Islamic law to changing social realities.

2. Effect of Conversion to Islam

When an individual converts to Islam through a *bona fide* declaration of faith (*Shahada*), they are immediately governed by the Muslim Personal Law (Shariat) Application Act, 1937, for matters of marriage, divorce, and succession. However, courts stringently strike down "colorable conversions." As established in *Sarla Mudgal v. Union of India*, converting to Islam merely to bypass the Hindu Marriage Act and solemnize a second marriage is legally invalid, and the individual remains liable for bigamy under Section 494 of the IPC.

3. Batil (Void) Marriage

A *Batil* marriage is one that is unlawful and illegal from its very inception because it violates absolute prohibitions in Muslim law. Examples include marrying within prohibited degrees of consanguinity (blood relations), affinity, or fosterage, or marrying a woman whose husband is still alive. A *Batil* marriage is a legal nullity: it creates no marital rights or obligations, the wife has no claim to Dower (*Mahr*), mutual inheritance rights do not arise, and any offspring from the union are considered illegitimate.



4. Fasid (Irregular) Marriage

Unlike a void marriage, a *Fasid* marriage is not intrinsically unlawful but suffers from a temporary, remediable defect. Examples include a Sunni marriage solemnized without the required two witnesses, marrying a woman currently observing her *Iddat*, or marrying a fifth wife. If the defect is removed (e.g., divorcing the 5th wife), the marriage becomes fully valid (*Sahih*). If consummated, a *Fasid* marriage entitles the wife to her Dower and renders the children legitimate, though it does not create mutual rights of inheritance between the spouses.

5. Deferred Dower (Mahr-e-Muwajjal)

Deferred Dower is a specific portion of the *Mahr* that is payable to the wife only upon the dissolution of the marriage, either by the death of the husband or by divorce. It serves two critical legal functions: it acts as a structural and financial deterrent against the husband's arbitrary use of *Talaq*, and it functions as a post-marital safety net to prevent the destitute condition of the divorced wife or widow.

6. Puberty (Balugh)

Under classical Muslim law, puberty determines the legal capacity of an individual to independently contract a marriage, with a legal presumption that it is attained at the age of 15. However, this classical presumption is now heavily overridden by secular Indian statutes. The Prohibition of Child Marriage Act, 2006, mandates a strict legal age of 18 for females and 21 for males. A marriage contracted by a guardian before the age of 15 allows the minor to exercise the Option of Puberty (*Khyar-ul-Bulugh*) to repudiate the marriage upon turning 18.



UNIT-II: Divorce and Maintenance

The 10-Mark Bank (Essay / Long Form)

Q1. Discuss the classification of Divorce under Muslim Law. Elaborate on the different modes of Talaq at the instance of the husband, the wife, and by mutual consent.

1. Introduction & Nature of Divorce

Unlike the sacramental nature of Hindu marriage, a Muslim marriage (Nikah) is a civil contract. Consequently, it can be dissolved. However, the Prophet declared divorce to be the most "abominable before God of all permitted things." Thus, classical law provides specific mechanisms for dissolution when the marital breakdown is irretrievable.

2. Divorce at the Instance of the Husband

A husband of sound mind who has attained puberty has the right to pronounce Talaq.

- **Talaq-e-Sunnat (Approved/Revocable):** This conforms to the Prophet's teachings, allowing time for reconciliation.
 - **Ahsan (Most Approved):** A single pronouncement of Talaq during a Tuhr (period of purity/non-menstruation), followed by abstinence from intercourse during the Iddat period. It is revocable at any time before the completion of Iddat.
 - **Hasan (Approved):** Three successive pronouncements made during three consecutive Tuhrs, with no intercourse in between. It becomes irrevocable on the third pronouncement.
- **Constructive Divorce:**
 - **Ila:** The husband takes an oath not to have sexual intercourse with his wife for four months. If he observes the oath, the marriage is dissolved.

- **Zihar:** The husband compares his wife to a woman within his prohibited degrees (e.g., "You are like my mother's back"). The wife can refuse cohabitation and seek judicial divorce unless he performs penance (Kaffara).

3. Divorce at the Instance of the Wife

- **Talaq-e-Tafweez (Delegated Divorce):** A Muslim husband can delegate his power to pronounce Talaq to his wife (or a third party) either at the time of marriage or later. This is often written into the Nikahnama (e.g., "If I take a second wife, you have the right to pronounce Talaq").

4. Divorce by Mutual Consent

- **Khula (Redemption):** Initiated by the wife. She offers a consideration (usually relinquishing her right to Mahr) to the husband to release her from the marriage. Once accepted by the husband, it acts as an irrevocable divorce.
- **Mubarat (Mutual Freeing):** Both husband and wife mutually desire separation due to deep aversion. The offer can proceed from either side. No consideration is strictly required, and it results in an immediate, irrevocable divorce.

Q2. Trace the judicial interpretation and legislative response regarding the validity of Triple Talaq (Talaq-e-Biddat) in India.

1. The Concept of Talaq-e-Biddat

Talaq-e-Biddat is an instant, irrevocable divorce effected by pronouncing "Talaq" three times in a single sitting (e.g., spoken, written, or electronic). Under classical Hanafi law, it was considered "sinful in theology but valid in law." This created immense misery, as it left no room for reconciliation and was frequently abused.



2. Judicial Interpretation: Shayara Bano v. Union of India (2017)

- **Issue:** Whether Talaq-e-Biddat is an essential religious practice protected under Article 25, or if it violates the fundamental rights of Muslim women under Article 14 (Right to Equality).
- **Ratio Decidendi:** A 5-judge Constitution Bench struck down the practice by a 3:2 majority.
- **Analysis:** The Supreme Court held that the practice is fundamentally arbitrary. Justice Nariman observed that an irrevocable tie broken capriciously without any attempt at reconciliation violates Article 14. Furthermore, the Court noted that it is not an essential religious practice, as it goes against the Quranic mandate of attempted arbitration.

3. Legislative Response: The Muslim Women (Protection of Rights on Marriage) Act, 2019

Following the Supreme Court's mandate, Parliament enacted this defining legislation.

- **Declaration (Section 3):** It explicitly declares any pronouncement of Talaq-e-Biddat as absolutely void and illegal.
- **Penal Consequence (Section 4):** It criminalizes the act, making it a cognizable and non-bailable offense punishable with imprisonment up to 3 years and a fine.
- **Protection (Sections 5 & 6):** It secures the wife's right to claim a subsistence allowance and demand the custody of minor children, ensuring she is not left destitute by an invalid pronouncement.



Q3. Critically analyze the grounds for divorce under the Dissolution of Muslim Marriages Act, 1939. How does the Act address the effect of apostasy (conversion)?

1. Historical Context and Objective

Prior to 1939, women governed strictly by Hanafi law faced extreme hardship, as they could not seek judicial divorce even in cases of severe cruelty or abandonment. The legislature intervened, adopting the more liberal Maliki school principles, to grant Muslim women the statutory right to seek a decree of divorce.

2. Grounds for Judicial Divorce (Section 2)

A Muslim wife may obtain a decree for the dissolution of her marriage on any of the following grounds:

- **Missing Husband:** Whereabouts of the husband are unknown for 4 years.
- **Failure to Maintain:** Husband has neglected or failed to provide maintenance for 2 years.
- **Imprisonment:** Husband is sentenced to imprisonment for 7 years or upwards.
- **Failure of Marital Obligations:** Without reasonable cause, for a period of 3 years.
- **Impotency:** The husband was impotent at the time of marriage and continues to be so.
- **Insanity/Disease:** Husband has been insane for 2 years or suffers from a virulent venereal disease.
- **Repudiation of Marriage (Khyar-ul-Bulugh):** If she was given in marriage by her guardian before the age of 15, she may repudiate the marriage before attaining 18, provided the marriage has not been consummated.
- **Cruelty:** This broad and crucial ground includes physical assault, making her life miserable by cruel conduct, forcing her to lead an immoral life, disposing

of her property, or, in the case of polygamy, failing to treat her equitably according to Quranic injunctions.

3. Amendment / Effect of Conversion (Apostasy) under Section 4

- **The Classical Rule:** Under strict uncodified Islamic law, if a Muslim apostatizes (converts to another religion), the marriage is automatically and instantly dissolved.
- **The Statutory Override (Section 4):** The 1939 Act amended this. It explicitly states that the renunciation of Islam by a married Muslim woman, or her conversion to a faith other than Islam, shall not by itself operate to dissolve her marriage.
- **Exception:** However, after such conversion, she retains the right to sue for divorce on any of the grounds mentioned in Section 2.

Q4. What are the legal consequences that follow the dissolution of a Muslim marriage?

1. Introduction

Once a divorce becomes irrevocable (whether by Talaq, Khula, Mubarat, or Judicial Decree), the legal relationship between the parties undergoes a complete transformation.

2. Primary Legal Consequences

- **Observation of Iddat:** The wife is legally bound to observe Iddat (a period of waiting). If the marriage was consummated, the period is 3 menstrual courses (or 3 lunar months). If pregnant, the Iddat lasts until the delivery of the child.
- **Settlement of Dower (Mahr):** If the Dower was "Deferred" (Muvajjal), it becomes immediately payable. If the divorce occurs before consummation, the wife is entitled to half of the specified Dower.



- **Cessation of Inheritance Rights:** Mutual rights of inheritance between husband and wife are completely extinguished the moment the divorce becomes irrevocable (Bain).
- **Cohabitation & Paternity:** Continued cohabitation becomes unlawful (Zina). Any child born beyond the recognized gestation period post-divorce is generally considered illegitimate unless paternity is otherwise established.
- **Right to Remarry:** The wife can lawfully marry another man only after the completion of her Iddat. The husband may remarry immediately, unless he already has four wives, in which case he must wait for his divorced wife's Iddat to end before taking a new fourth wife.

Q5. Discuss the principles of Maintenance (Nafaqa) under Muslim Law. Outline the persons entitled to maintenance and highlight the effect of conversion and differences between Shia and Sunni Law.

1. Principles of Maintenance (Nafaqa)

Under Muslim Law, maintenance encompasses food, raiment (clothing), and lodging. It is a legal obligation arising out of marriage and blood relations.

2. Persons Entitled to Maintenance

- **The Wife:** A husband is bound to maintain his wife of a valid (Sahih) marriage, regardless of her independent means, provided she is faithful and accessible to him (Tamkeen). A wife in an irregular (Fasid) or void (Batil) marriage has no strict right to maintenance.
- **Children:** A father is primarily responsible for the maintenance of his minor legitimate sons (until puberty) and unmarried daughters.
- **Parents & Relatives:** Children who have means are obligated to maintain their aged or infirm parents who are destitute.

3. Effect of Conversion on Maintenance

- Under classical Islamic law, if a Muslim wife apostatizes (converts to another religion), she completely forfeits her right to maintenance under Muslim Personal Law.
- **Note on Secular Law:** However, Indian courts have often held that she may still seek maintenance under secular statutes like Section 125 of the CrPC if she remains a "wife" under the law and is unable to maintain herself.

4. Differences Between Shia and Sunni Law

- **Maintenance of Relatives:** In Sunni law, liability falls on the father; if he is poor, it falls on the mother, then the paternal grandfather. In Shia law, liability is shared; if the father is poor, liability falls jointly on the mother and the paternal grandfather based on inheritance shares.
- **Wife's Right to Arrears:** In Sunni law, a wife cannot claim past arrears of maintenance unless fixed by an agreement or court order. In Shia law, a wife can claim arrears of maintenance even without a prior agreement or order.

Q6. Reconcile the conflict between Section 125 CrPC and the Muslim Women (Protection of Rights on Divorce) Act, 1986.

1. The Root of the Conflict

Under classical Hanafi law, a divorced Muslim wife is entitled to maintenance from her former husband only during the period of her Iddat (roughly 3 months). Section 125 of the Code of Criminal Procedure (CrPC), however, is a secular law designed to prevent vagrancy, mandating maintenance for a divorced wife until she remarries.

2. The Shah Bano Catalyst (1985)

In *Mohd. Ahmed Khan v. Shah Bano Begum*, the Supreme Court held that Section 125 CrPC overrides personal law. The Court ordered the husband to pay maintenance to his destitute divorced wife beyond the Iddat period, sparking massive orthodox protests.

3. The Legislative Override: The 1986 Act

Parliament enacted the Muslim Women (Protection of Rights on Divorce) Act, 1986. Section 3(1)(a) stipulated that a divorced woman is entitled to a "reasonable and fair provision and maintenance to be made and paid to her within the Iddat period by her former husband." The intent was to restrict the husband's liability to the Iddat period.

4. Judicial Reconciliation: *Danial Latifi v. Union of India* (2001)

- **Issue:** Did the 1986 Act violate Articles 14 and 21 by leaving destitute Muslim women without long-term support?
- **Analysis & Conclusion:** The Supreme Court upheld the constitutional validity of the 1986 Act but gave it a progressive interpretation. The Court ruled that the word "within" in the Act means that the husband must finalize and pay the maintenance amount *during* the Iddat period. However, the amount itself must be substantial enough to act as a "reasonable and fair provision" for her *entire future life* or until she remarries.
- **Current Status:** The husband's financial obligation extends beyond the Iddat period, successfully harmonizing Islamic principles with the constitutional mandate for gender justice.

The 4-Mark Bank (Short Notes)

1. Talaq-ul-Biddat (Triple Talaq)

An irregular and heavily criticized mode of divorce where the husband pronounces "Talaq" three times in a single sitting, making the divorce instant and irrevocable. Although traditionally considered "sinful but valid" under Hanafi law, the Supreme Court of India struck it down in *Shayara Bano v. Union of India* (2017) as arbitrary and unconstitutional. Subsequently, the 2019 Act criminalized it, declaring it completely void and punishable by up to three years of imprisonment.

2. Khula

Khula is a form of divorce initiated by the wife, allowing her to seek release from the marital tie. In this process, she offers a consideration—typically relinquishing her right to Dower (Mahr)—to her husband. Once the husband accepts this proposal, it operates as an irrevocable divorce (*Talaq-e-Bain*), and she must observe the Iddat period.

3. Mubarat

Mubarat represents divorce by mutual consent. It occurs when both the husband and wife develop a deep, mutual aversion to each other and mutually agree to dissolve the marriage. The offer can originate from either party. Once accepted, it results in an immediate and irrevocable dissolution of the marriage, with no strict requirement for financial consideration, unlike Khula.

4. Iddat Period

Iddat is a mandatory period of waiting that a Muslim woman must observe following the dissolution of her marriage, either by divorce or the death of her husband. Its primary legal purpose is to ascertain whether she is pregnant, thereby preventing confusion over paternity. The period is typically three menstrual courses (for divorce) or four months and ten days (for widowhood). During this time, the husband is obligated to maintain her, and she is prohibited from remarrying.

5. Mohd Ahmed Khan Vs Shahbano Begum

A watershed 1985 Supreme Court judgment that declared Section 125 of the CrPC—a secular provision for maintenance—applicable to divorced Muslim women. The Court ruled that a husband's obligation to maintain a destitute divorced wife extends beyond the Iddat period. The judgment faced intense orthodox opposition, leading to the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986, which was later harmonized by the *Danial Latifi* judgment.



UNIT-III: Parentage, Guardianship, Gifts, and Wills

The 10-Mark Bank (Essay / Long Form)

Q1. Discuss the concepts of Maternity and Paternity under Muslim Law. How does the doctrine of Acknowledgment (Iqar) differ from Legitimacy?

1. Introduction

Under Muslim law, parentage is the legal relationship between a child and their parents. It is divided into Maternity (legal relationship with the mother) and Paternity (legal relationship with the father). The rules governing these differ significantly between the Sunni and Shia schools.

2. Maternity and Paternity

- **Maternity:** In Sunni (Hanafi) law, maternity is established strictly by the fact of birth, irrespective of whether the child is legitimate or illegitimate. An illegitimate child can inherit from the mother and her relations. In Shia law, an illegitimate child has no legal parentage at all—neither maternity nor paternity is established, and they inherit from no one.
- **Paternity:** Paternity can only be established by a valid (Sahih) or irregular (Fasid) marriage between the parents at the time of conception. Paternity cannot be established through a void (Batil) marriage or Zina (fornication/adultery).

3. Legitimacy vs. Acknowledgment (Iqar)

- **Legitimacy:** This is the status of a child born during a lawful wedlock. Muslim law presumes legitimacy if a child is born after 6 months of marriage and within 2 years (Hanafi) or 10 months (Shia) after the dissolution of marriage.
- **Acknowledgment (Iqar):** When the paternity of a child is unknown or uncertain, a Muslim man can legally acknowledge the child as his legitimate offspring.

- **Crucial Rule:** Acknowledgment is not "adoption" or "legitimation." It cannot make an illegitimate child (born of Zina) legitimate. It merely provides a legal presumption of a valid marriage where the marriage is unproven but not disproved.

4. Requisites of a Valid Acknowledgment (Case Law)

In the landmark case of *Habibur Rahman v. Altaf Ali* (1921), the Privy Council laid down the essentials:

1. The acknowledgment must be of legitimate paternity, not merely of biological descent.
2. The ages of the acknowledger and the child must admit of a father-child relationship (minimum 12.5 years gap).
3. The child must not be the known legitimate child of another man.
4. The child (if of mature age) must not repudiate the acknowledgment.

Q2. Define Guardianship (Wilayat). Discuss the different kinds of guardianship and the legal grounds for the removal of a guardian. Highlight the Shia-Sunni differences.

1. Meaning of Guardianship (Wilayat)

Guardianship refers to the legal right and duty to care for the person and property of a minor (under 18, or under 21 if a court appoints a guardian).

2. Kinds of Guardianship

Muslim law recognizes several distinct types of guardianship:

- **Natural Guardian (Wilayat-e-Mala):** The legal guardian of the property. The father is the first natural guardian, followed by the executor appointed by the father's will, then the paternal grandfather, and his executor. The mother is never a natural or legal guardian of property.



- **Testamentary Guardian:** A guardian appointed through a Will (Wasiyat) by the father or paternal grandfather.
- **Guardian Appointed by Court:** Under the Guardians and Wards Act, 1890 (GWA), the District Court can appoint a guardian for the welfare of the minor if natural guardians are absent or unfit.
- **Guardianship in Marriage (Jabr):** The power to give a minor in marriage (Father, then paternal grandfather).
- **Guardianship of Person / Custody (Hizanat):** The right to physically raise the child. This right belongs primarily to the mother.

3. Shia vs. Sunni Differences in Custody (Hizanat)

- **Mother's Right:** In Sunni law, a mother retains custody of a male child until age 7, and a female child until puberty. In Shia law, a mother retains a male child until weaning (approx. 2 years), and a female child until age 7. In both, custody then reverts to the Father.
- **Loss of Hizanat:** A Sunni mother loses custody if she marries a "stranger" (outside prohibited degrees to the child). A Shia mother loses custody if she marries any person.

4. Removal of a Guardian

A guardian can be removed by the Court under Section 39 of the Guardians and Wards Act, 1890 on several grounds:

- Fiduciary abuse or breach of trust regarding the minor's property.
- Continued failure to perform duties.
- Ill-treatment or neglect of the minor.
- Immoral character or conviction for an offense implying moral turpitude.
- Having an interest adverse to the faithful performance of duties.



Q3. Define "Hiba" (Gift). Discuss the essential requisites, formalities, and kinds of gifts. When can a valid gift be revoked?

1. Definition of Gift (Hiba)

A Hiba is the immediate, unconditional, and absolute transfer of the ownership of property by one living person (Donor) to another (Donee) without any consideration (Iwaz).

2. Requisites of a Valid Gift

In *Maqbool Alam v. Khodaija* (1966), the Supreme Court reiterated the "Three Pillars" of a valid Hiba:

1. **Declaration (Ijab):** Clear and unambiguous expression by the donor to transfer the property.
2. **Acceptance (Qubul):** Acceptance of the gift by or on behalf of the donee.
3. **Delivery of Possession (Kabza):** The donor must completely divest themselves of all ownership and physical control. For immovable property, this means handing over keys or mutating the name in revenue records.

3. Formalities of a Gift

Unlike the Transfer of Property Act (TPA), which requires written and registered documents for immovable property, Section 129 of the TPA specifically exempts Muslim gifts. An oral Hiba of immovable property is perfectly valid provided the three requisites (Ijab, Qubul, Kabza) are strictly followed.

4. Kinds of Gifts

- **Hiba (Pure Gift):** No consideration involved.
- **Hiba-bil-Iwaz (Gift with Return):** A transaction made up of two mutual gifts. It functions like a sale. (e.g., Husband gives property to wife, wife releases her Dower debt in return). Once completed, it is irrevocable.



- **Hiba-ba-Shart-ul-Iwaz (Gift with a Stipulation for Return):** A gift where the donor stipulates that the donee must give something in return. It remains a pure gift until the return is made, after which it becomes irrevocable.

5. Revocation of Gift

- **Before Delivery of Possession:** Can be revoked at any time by the donor simply declaring so.
- **After Delivery of Possession:** Can only be revoked by a Decree of the Court. However, certain gifts are absolutely irrevocable after delivery:
 - Gifts between husband and wife.
 - Gifts between persons related within prohibited degrees of consanguinity (e.g., father to son).
 - When the donee or donor dies.

Q4. Explain the concept of Wills (Wasiyat). Discuss its requisites, the rules of revocation, and distinguish between a Will and a Gift. Highlight Shia-Sunni differences.

1. Meaning of Will (Wasiyat)

A Will is the legal declaration of a Muslim's intentions with respect to their property, which they desire to take effect after their death. It is an instrument that allows a person to alter the strict Quranic rules of intestate succession, but only to a limited extent.

2. Requisites of a Valid Will

- **Capacity:** The testator must be a major (18 years) and of sound mind.



- **Formality:** A Muslim Will can be oral or written. If written, it does not require attestation by witnesses (unlike the Indian Succession Act).
- **The Bequeathable Third Rule:** A Muslim cannot bequeath more than 1/3rd of their total net assets (after paying funeral expenses and debts). This rule exists to protect the legal heirs from being disinherited.

3. Revocation of Will

A Will is ambulatory by nature, meaning it can be revoked by the testator at any time before death.

- **Express Revocation:** By writing or oral declaration tearing/destroying the document.
- **Implied Revocation:** By an act showing a contrary intention (e.g., the testator bequeaths a house to A, but sells the house to B before dying).

4. Distinction between Will (Wasiyat) and Gift (Hiba)

- **Operation:** Gift operates Inter Vivos (takes effect immediately). Will operates Testamentary (takes effect after death).
- **Extent of Property:** A person can gift 100% of their property during their lifetime. A person can only bequeath up to 1/3rd of their property via Will.
- **Revocability:** Gifts are difficult to revoke after delivery of possession. Wills are highly revocable at any time before death.

5. Shia vs. Sunni Differences in Wills

- **Bequest to an Heir:** Invalid in Sunni law unless the other heirs give their consent after the testator's death. Valid up to 1/3rd in Shia law without the consent of other heirs; consent is only needed for the excess.
- **Timing of Consent:** Sunni heirs must give consent after the testator dies. Shia heirs can give consent either before or after the testator dies.



- **Suicide of Testator:** In Sunni law, a Will remains valid even if the testator commits suicide afterward. In Shia law, if a person performs an act of suicide and then makes a Will, the Will is void.

The 4-Mark Bank (Short Notes)

1. Hiba

Hiba refers to an absolute, unconditional gift made by a Muslim during their lifetime (*inter vivos*). To be legally binding, it must unequivocally satisfy three essential pillars: a clear declaration of intent by the donor, acceptance by the donee, and the immediate physical or constructive delivery of possession. Notably, oral gifts of immovable property are completely valid, overriding the registration requirements of the Transfer of Property Act.

2. Hiba-Shart-ul-Iwaz

This is a specific classification of a gift made with an explicit stipulation (*shart*) for a return (*iwaz*). In its initial phase, it operates purely as a gift. However, the moment the donee fulfills the condition and provides the stipulated return, the transaction legally transforms. It sheds the characteristics of a gift and assumes the irrevocable legal nature of a sale.

3. Acknowledgement of Paternity

Also known as *Iqrar*, this is a legal mechanism where a father acknowledges a child as his legitimate offspring. It is invoked when there is no direct proof of a valid marriage, but a marriage was legally possible. If validly executed (requiring a 12.5-year age gap and the child not being the known offspring of another), it creates an irrebuttable presumption of legitimacy and inheritance rights. It cannot be used to legitimize a child proven to be born out of wedlock (*Zina*).



4. Kinds of Guardianship

Muslim law broadly categorizes guardianship into four classes:

1. *Natural Guardianship* (Wilayat-e-Mala), which vests the right to manage the minor's property strictly in the father and paternal grandfather.
2. *Testamentary Guardianship*, appointed via a Will.
3. *Guardianship appointed by the Court* under the Guardians and Wards Act, 1890.
4. *Custody* (Hizanat), which is the right to the physical upbringing of the child, a right that belongs primarily and paramountly to the mother.

5. Wasiyat

Wasiyat is the Arabic term for a Will. It is a testamentary document or oral declaration dictating how a Muslim's property should be distributed after their death. While it allows an individual to alter the strict Quranic rules of intestate succession, it is uniquely bounded by the "bequeathable one-third" principle to prevent the arbitrary disinheritance of legal heirs.

6. Bequeathable One Third Principle

A fundamental restriction in Islamic testamentary law stating that a Muslim cannot bequeath more than one-third of their net estate (after the deduction of debts and funeral expenses) via a Will. Furthermore, a bequest made directly to an existing legal heir is generally invalid. To exceed the one-third limit, or to bequeath property to an heir, the explicit consent of the remaining legal heirs is required (post-death for Sunnis, pre-or-post death for Shias).



UNIT-IV: Waqf, Mutawalli & Succession

The 10-Mark Bank (Essay / Long Form)

Q1. Define "Waqf". Discuss the essential requirements for a valid Waqf, the modes of its creation, and the circumstances under which it can be revoked.

1. Definition and Concept

In Islamic jurisprudence, Waqf means the permanent tying up of property in the ownership of God Almighty, with the usufruct (benefits) applied toward pious, religious, or charitable purposes.

- **Statutory Definition:** Section 3(r) of the Waqf Act, 1995 defines it as the permanent dedication by any person of any movable or immovable property for any purpose recognized by Muslim law as pious, religious, or charitable.
- **Landmark Precedent:** In *Vidya Varuthi v. Baluswami Ayyar* (1921), the Privy Council clarified that once a Waqf is created, the ownership of the property passes out of the dedicator (Waqif) and vests absolutely in the Almighty.

2. Essential Requirements of a Valid Waqf

1. **Permanent Dedication:** The dedication must be perpetual. A Waqf for a limited period (e.g., 20 years) is void.
2. **Competency of the Waqif:** The founder must be a major, of sound mind, and own the property at the time of dedication.
3. **Lawful Object:** The purpose must be recognized as pious or charitable by Islam (e.g., building mosques, maintaining orphans, establishing educational institutions).
4. **Absolute Vesting:** The property must vest in God. The Waqif cannot retain the right to sell or revoke the property (except in specific testamentary Waqfs).

3. Kinds of Waqf

- **Public Waqf (Waqf-fi-sabilillah):** Created for public, religious, or charitable purposes.
- **Private Waqf (Waqf-alal-aulad):** Created for the maintenance and support of the Waqif's own family, children, and descendants. Under the Mussalman Wakf Validating Act, 1913, this is perfectly valid provided the ultimate benefit is reserved for the poor or a religious purpose upon the extinction of the family line.

4. Creation and Revocation

- **Creation:** A Waqf can be created Inter vivos (during lifetime) by an express dedication, or by Will (Testamentary Waqf). A Testamentary Waqf cannot exceed 1/3rd of the estate without the consent of the heirs. It can also be created by User (if a piece of land has been used as a graveyard or mosque since time immemorial, it is deemed a Waqf).
- **Revocation:** An Inter vivos Waqf is absolute and irrevocable. If a Waqif reserves a right to revoke it, the Waqf is void. A Testamentary Waqf can be revoked by the Waqif at any time before their death, as a Will only takes effect upon death.

Q2. Examine the role of a Mutawalli. Discuss who can be appointed as a Mutawalli, their powers, duties, and the procedure for their removal under the Waqf Act, 1995.

1. The Legal Position of a Mutawalli

A Mutawalli is the manager or superintendent of the Waqf property.

- **Crucial Distinction:** A Mutawalli is not a trustee in the English legal sense. A trustee holds legal ownership of the trust property; a Mutawalli holds no ownership. The property vests entirely in God. The Mutawalli is merely a caretaker.



2. Who can be a Mutawalli?

Any person who is of sound mind, a major, and capable of performing the duties can be appointed.

- A non-Muslim or a female can legally be appointed as a Mutawalli.
- **Exception:** If the Waqf involves performing religious duties (like an Imam leading prayers in a mosque or a Khatib), a non-Muslim or a female cannot hold that specific office.

3. Powers and Duties of the Mutawalli

- **Management:** To protect, manage, and administer the Waqf property in accordance with the Waqif's directions and the Waqf Act.
- **Leasing:** They can lease agricultural land for up to 3 years and non-agricultural land for up to 1 year. Any lease beyond this requires the prior sanction of the State Waqf Board.
- **Restriction on Alienation:** A Mutawalli has no absolute power to sell, mortgage, or exchange Waqf property. Any such alienation without the prior approval of the Waqf Board is completely void.

4. Removal of a Mutawalli

Under Section 64 of the Waqf Act, 1995, the State Waqf Board has sweeping powers to remove a Mutawalli on several grounds, including:

- Misappropriation or fraudulent dealing with Waqf funds.
- Unexplained failure to submit annual accounts to the Board.
- Physical or mental unfitness.
- Conviction of an offense involving moral turpitude.
- **Due Process:** The Board must issue a show-cause notice and hold an inquiry before removal.



Q3. Critically analyze the salient features of the Waqf Act, 1995, focusing on the jurisdiction of Waqf Tribunals and recent legislative impacts on Waqf management.

1. Legislative Intent and Salient Features

The Waqf Act, 1995 was enacted to provide better administration and supervision of Waqfs in India. It created a hierarchical administrative structure to prevent the chronic mismanagement and encroachment of Waqf properties.

- **Central Waqf Council:** An advisory body at the Central Government level.
- **State Waqf Boards:** Corporate bodies at the state level vested with immense powers to register Waqfs, direct Mutawallis, and sanction alienation.
- **Registration:** Mandatory registration of all Waqfs at the office of the State Waqf Board.

2. Waqf Tribunals and Jurisdiction (Sections 83 & 85)

- **Constitution (Sec 83):** The State Government constitutes Waqf Tribunals to determine any dispute, question, or other matter relating to a Waqf or Waqf property.
- **Bar of Civil Court Jurisdiction (Sec 85):** This is the most litigated section. No suit or other legal proceeding shall lie in any civil court in respect of any dispute, question, or other matter relating to any Waqf property, Mutawalli, etc., which is required to be determined by the Tribunal.
- **Impact:** This exclusive jurisdiction ensures specialized, speedy adjudication and prevents mischievous litigants from stalling Waqf administration via endless civil court injunctions.

3. Recent Changes and Impact in Waqf Laws

- The **Wakf (Amendment) Act, 2013** significantly tightened the noose on encroachers. It made the alienation of Waqf property without prior Board



approval a cognizable and non-bailable offense. It also strengthened the machinery for the eviction of unauthorized occupants.

- **Note on Contemporary Debates:** Recent legislative pushes and debates have centered on increasing governmental oversight, restructuring Tribunal compositions, and mandating non-Muslim representation on Boards, reflecting an ongoing struggle between maintaining religious autonomy and enforcing strict state accountability.

Q4. Discuss the principles governing the Administration of the Estate of a deceased Muslim. Outline the legal position of heirs as representatives.

1. Introduction to Administration

When a Muslim dies, their property does not immediately become available for partition among the heirs. The estate must first be "administered." There is no concept of a "joint family property" or "survivorship" (like the Hindu Mitakshara system) in Muslim law.

2. Application of the Property (The 4-Step Process)

Under classical law and the Indian Succession Act, 1925, the estate of a deceased Muslim must be applied in the following strict statutory order:

1. **Funeral Expenses:** Reasonable expenses for the deathbed and funeral ceremonies.
2. **Debts:** Payment of wages for services rendered to the deceased within 3 months of death, followed by the payment of all other debts. (*Crucial: The widow's unpaid Dower/Mahr ranks as an unsecured debt and must be paid at this stage*).
3. **Legacies/Wills (Wasiyat):** Executing the Will, which can only be executed up to 1/3rd of the remaining estate after paying debts.



4. **Distribution:** The final residue is then distributed among the legal heirs according to the strict Quranic rules of intestate succession (Sunni or Shia).

3. Legal Position of Heirs as Representatives

- **Vesting of Estate:** Immediately upon the death of the ancestor, the estate vests in the heirs in specific fractional shares. They inherit as Tenants-in-Common, not as joint tenants.
- **Liability for Debts:** Heirs are not personally liable for the debts of the deceased beyond the value of the assets they inherit.
- **Proportionate Liability:** In the landmark case of *Jafri Begum v. Amir Muhammad Khan* (1885), the Allahabad High Court laid down the fundamental rule: If the heirs partition the property before paying off the debts, each heir is liable for the deceased's debts only in proportion to the share of the estate they received.
- **Alienation:** An heir has the right to sell or mortgage their specific share of the estate even before the debts of the deceased are fully paid. The creditor cannot follow the property into the hands of a bona fide purchaser; they can only claim against the heir's personal assets.

The 4-Mark Bank (Short Notes)

1. Essentials of Waqf

A valid Waqf requires a permanent and irrevocable dedication of property by a competent adult of sound mind. The purpose of the dedication must be strictly recognized by Muslim law as pious, religious, or charitable (such as establishing a mosque or maintaining orphans). Most importantly, upon creation, the ownership of the property passes entirely out of the hands of the founder and vests absolutely in God Almighty.



2. Mutawalli

A Mutawalli serves strictly as the superintendent or manager of a Waqf property. Unlike a trustee in English law, a Mutawalli holds no legal ownership over the estate, as the property vests in God. A Mutawalli's powers are largely administrative; they cannot sell, mortgage, exchange, or issue long-term leases on Waqf property without obtaining explicit, prior statutory approval from the State Waqf Board.

3. Waqf Tribunal

Waqf Tribunals are specialized, fast-track adjudicatory bodies constituted under Section 83 of the Waqf Act, 1995. Their primary function is to resolve disputes regarding Waqf properties, the appointment or removal of Mutawallis, and eviction of encroachers. Under Section 85, civil courts are completely barred from entertaining suits that fall within the jurisdiction of the Tribunal, ensuring specialized and uninterrupted administration.

4. Doctrine of Aul (Increase)

A mathematical correction mechanism utilized in Sunni intestate succession. It is applied when the total sum of fractional shares assigned to Quranic Sharers exceeds unity (1) (e.g., the fractions add up to $9/8$). To resolve this deficit equitably, the common denominator is increased ("Aul") to match the total of the numerators, which proportionally reduces the share of each heir without disinheriting anyone.

5. Doctrine of Rad (Return)

The exact inverse of the Doctrine of Aul. It is applied when there is a residue of property remaining after distributing all the specific fractions to the Quranic Sharers, and there are no Residuaries (Agnates) alive to claim the leftover portion. In this scenario, the remaining property "returns" to the existing Sharers in proportion to their original fractional allotments, rather than escheating to the State.



UNIT-V: Secular and Christian Laws

The 10-Mark Bank (Essay / Long Form)

Q1. "The Special Marriage Act, 1954 is India's closest approximation to a Uniform Civil Code." Discuss the salient features of the Act and the essential conditions for a valid marriage under it.

1. Introduction & Legislative Intent

The Special Marriage Act (SMA), 1954, is a purely secular, territorial piece of legislation. It provides a special form of marriage available to any two citizens of India (and Indian nationals living abroad), irrespective of the religion or faith followed by either party. It is the "exit ramp" from personal religious laws.

2. Salient Features of the SMA, 1954

- **Secular Nature:** Marriages can be solemnized between a Hindu and a Muslim, a Christian and a Parsi, or two individuals of the same faith who choose not to be governed by their personal laws.
- **Registration as Marriage:** Marriages performed under personal laws can also be officially registered under the SMA (Section 15), bringing them under the secular legal framework for future governance (like divorce and succession).
- **Severance from Coparcenary:** A critical feature for Hindu applicants: if a member of a Hindu Undivided Family (HUF) marries under the SMA, it results in their automatic statutory severance from the joint family.
- **Applicability of Succession Act:** Once individuals marry under the SMA, their property and inheritance are strictly governed by the Indian Succession Act, 1925, and not their religious personal laws (Section 21). *(Note: The 1976 amendment provided an exception if two Hindus marry under the SMA; they retain Hindu succession rights).*

3. Essential Conditions for a Valid Marriage (Section 4)

For a marriage to be solemnized under this Act, the following conditions must be met at the time of marriage:

1. **Monogamy:** Neither party has a spouse living.
2. **Mental Capacity:** Neither party is incapable of giving valid consent due to unsoundness of mind, nor suffering from mental disorders rendering them unfit for marriage and procreation.
3. **Age:** The male has completed 21 years and the female has completed 18 years of age.
4. **Prohibited Degrees:** The parties are not within the degrees of prohibited relationship (unless custom governing one of them permits such a marriage).

4. Procedure:

The Act requires a 30-day Notice of Intended Marriage to be published by the Marriage Officer, inviting objections from the public regarding any violation of the Section 4 conditions.

Q2. Explain the concept of "Domicile". Discuss its significance in determining jurisdiction under Family Law, particularly the Indian Divorce Act, 1869.

1. Meaning of Domicile

Domicile is the legal relationship between an individual and a specific territorial jurisdiction. It is the place a person considers their permanent home. Domicile is not merely "residence" or "citizenship." It requires two elements:

- **Factum:** Actual physical residence in a place.
- **Animus Manendi:** The intention to remain there permanently or indefinitely.

2. Kinds of Domicile

- **Domicile of Origin:** Acquired at birth (usually the domicile of the father). It remains attached until a new domicile is legally acquired.
- **Domicile of Choice:** Acquired by an adult residing in a new country with the clear intention of making it their permanent home.
- **Domicile of Dependence:** The domicile of a minor or a person of unsound mind generally follows that of the father or guardian.

3. Significance in Family Law & The Indian Divorce Act

Domicile is the fundamental touchstone for jurisdiction in matrimonial causes.

- Under Section 2 of the Indian Divorce Act, 1869, a court will grant relief (like a decree for dissolution of marriage or nullity) only if the parties are domiciled in India at the time the petition is presented.
- **Precedent:** In *Sondur Gopal v. Sondur Rajini* (2013), the Supreme Court extensively analyzed domicile, ruling that Indian courts hold jurisdiction in matrimonial disputes if the domicile criteria of the respective family law statutes are met, preventing parties from forum-shopping in foreign courts.

Q3. Critically analyze the salient features of the Indian Divorce Act, 1869. Highlight the grounds for dissolution of marriage and the impact of the 2001 Amendment.

1. Introduction

The Indian Divorce Act (IDA), 1869, governs the matrimonial disputes (divorce, nullity, restitution, and judicial separation) of persons professing the Christian religion in India. Originally based on Victorian English law, it was heavily criticized for being archaic and discriminatory against women.

2. The Historic Gender Bias & Judicial Intervention

Prior to 2001, Section 10 of the IDA was blatantly discriminatory. A Christian husband could divorce his wife simply on the ground of her adultery. However, a Christian wife had to prove "adultery coupled with cruelty" or "adultery coupled with desertion."

- **Case Law:** In *Ammini E.J. v. Union of India* (1995) and *Pragati Varghese v. Cyril George Varghese* (1997), the High Courts struck down these provisions as violative of Articles 14, 15, and 21, forcing legislative action.

3. Salient Features & Grounds for Divorce (Post-2001 Amendment)

The Indian Divorce (Amendment) Act, 2001 overhauled the law, removing the gender bias and making the grounds equitable. Under the amended Section 10, either spouse can seek divorce on grounds including:

- **Adultery:** Voluntary sexual intercourse with a third party.
- **Cruelty:** Treating the petitioner with such cruelty as to cause reasonable apprehension of harm to life or health.
- **Desertion:** For a continuous period of not less than 2 years.
- **Conversion:** Ceasing to be a Christian by conversion to another religion.
- **Incurable Unsoundness of Mind:** For a continuous period of not less than 2 years.
- **Venereal Disease:** Suffering from a communicable venereal disease for 2 years.
- **Presumption of Death:** Not heard of as being alive for 7 years or more.

4. Divorce by Mutual Consent (Section 10A)

Introduced in 2001, this allows Christian couples to file a joint petition for divorce if they have been living separately for at least 2 years (subsequently read down to 1 year by the Supreme Court in *Saumya Ann Thomas v. Union of India* to ensure parity with



the Hindu Marriage Act and SMA), and have mutually agreed that the marriage should be dissolved.

Q4. Discuss the rules of Intestate Succession for Christians under the Indian Succession Act, 1925.

1. Introduction

Unlike Hindu law (which relies on concepts like the Mitakshara coparcenary) or Muslim law (which rigidly separates sharers and residuaries), the succession of Christians in India is governed strictly by Part IV of the Indian Succession Act (ISA), 1925. It is highly linear and relies on the principle of consanguinity (blood relationship).

2. Rights of the Widow /Widower (Section 33)

The surviving spouse's share depends entirely on who else survives the deceased:

- **If Lineal Descendants (children/grandchildren) survive:** The widow/widower receives 1/3rd of the estate. The remaining 2/3rd goes to the lineal descendants.
- **If NO Lineal Descendants, but Kindred (e.g., father, mother, siblings) survive:** The widow/widower receives 1/2 (Half) of the estate. The remaining half goes to the kindred.
- **If NO Lineal Descendants and NO Kindred survive:** The widow/widower inherits the entire (100%) property.

3. Rights of Lineal Descendants (Sections 36–40)

After deducting the widow's 1/3rd share, the remaining 2/3rd is distributed among the descendants:



- **Per Capita (Equal Shares):** If all surviving descendants are of the same degree of relationship (e.g., all are children, or all are grandchildren), they divide the property equally.
- **Per Stirpes (By Branch):** If the descendants are of different degrees (e.g., one living son, and the children of a pre-deceased daughter), the property is divided according to the branches of the family tree. The grandchildren step into the shoes of their deceased parent and share that parent's portion.

4. Rights of Kindred (When there are no descendants) (Sections 41–48)

If the deceased leaves no children or grandchildren, the remaining half of the estate (after the widow's 50% share) goes to the kindred in this strict priority:

1. **The Father:** Inherits the entire remaining half.
2. **If Father is dead:** The Mother, Brothers, and Sisters share the property equally. (If a sibling is dead, their children take their share).
3. **If Father, Brothers, and Sisters are all dead:** The Mother inherits the entire remaining portion.

Q5. Examine the provisions relating to the Maintenance of Spouses and Dependents under the Indian Divorce Act and secular laws.

1. Maintenance under the Indian Divorce Act, 1869

The IDA provides specific mechanisms for financial support during and after matrimonial proceedings:

- **Alimony Pendente Lite (Section 36):** This is temporary maintenance granted during the pendency of the suit. Either the husband or the wife can apply. The court orders a sum it deems just, historically capped at one-fifth of the husband's average net income (though modern courts prioritize actual need and standard of living).



- **Permanent Alimony (Section 37):** Upon passing a decree of dissolution or judicial separation, the court may order the husband (or wife, post-amendments ensuring gender neutrality in some interpretations) to secure a gross sum or annual sum for the spouse's maintenance for their lifetime. The court considers the fortune of the wife, the ability of the husband, and the conduct of the parties.

2. Secular Law Overlay: Section 125 CrPC (Now Section 144 BNSS)

Irrespective of the personal law or the Indian Divorce Act, a Christian wife, minor children (legitimate or illegitimate), and aged parents who are unable to maintain themselves can directly file a petition before a Magistrate under secular criminal procedural law to claim swift, monthly maintenance to prevent vagrancy and destitution.

The 4-Mark Bank (Short Notes)

1. Special Marriage Act, 1954

The Special Marriage Act is a purely secular, territorial legislative framework enabling any two citizens, regardless of their respective religions or castes, to solemnize a civil marriage. Marrying under this Act provides a crucial "exit ramp" from religious personal laws. It requires monogamy, specific age parameters, and a 30-day public notice. Notably, it legally severs a Hindu from their Hindu Undivided Family (HUF) and mandates that the couple's future inheritance is governed strictly by the secular Indian Succession Act, 1925.

2. Domicile

Domicile is a foundational legal concept denoting an individual's permanent home and primary legal jurisdiction. Establishing domicile requires two components: *Factum* (actual physical residence) and *Animus Manendi* (the firm intention to remain there indefinitely). Under statutes like the Indian Divorce Act, 1869, establishing Indian domicile is an absolute jurisdictional prerequisite; Indian courts cannot grant a decree of dissolution or nullity unless the parties are legally domiciled in India at the time of petitioning.



REVISION TRACKER: FAMILY LAW-II

UNIT-I: Foundations, Marriage, and Dower

Focus: Evolution from custom to contract, and the strict formalities of Nikah.

Syllabus Checklist:

- [] Origin and development of Muslim Law.
- [] Sources of Muslim Law.
- [] Schools of Muslim Law & Sub-schools of Sunni Law.
- [] Operation and application of Muslim Law.
- [] Conversion to Islam and effects of conversion.
- [] Law of Marriage: Nature of Muslim Marriage.
- [] Essential requirements of a valid Marriage.
- [] Kinds of Marriages: Void (*Batil*), irregular (*Fasid*), and valid (*Sahih*).
- [] Dower (*Mahr*): Origin, nature, importance, object, and classification.
- [] The Muslim Women (Protection of Rights on Marriage) Act, 2019.

Quick-Revision Table: Unit I Core Differences

Area of Law	Sunni (Hanafi) Law	Shia (Ithna Ashari) Law
Marriage Witnesses	Essential: 2 males (or 1 male, 2 females).	Not essential at the time of marriage.
Muta (Temporary) Marriage	Void (<i>Batil</i>). Not recognized.	Legally recognized.



UNIT-II: Divorce and Maintenance

Focus: Statutory overrides (1939 & 1986 Acts) and the modern constitutional interpretation of marital breakdown.

Syllabus Checklist:

- ☐ Classification of divorce & Different modes of *Talaq*.
- ☐ Legal consequences of divorce.
- ☐ Validity of Triple Talaq: Judicial Interpretation & Legislative Response.
- ☐ Dissolution of Muslim Marriages Act, 1939 (and Amendments).
- ☐ Maintenance: Principles and persons entitled.
- ☐ The Muslim Women (Protection of Rights on Divorce) Act, 1986.
- ☐ Effect of conversion on maintenance.

Quick-Revision Table: Unit II Core Differences

Aspect of Maintenance	Sunni (Hanafi) Law	Shia (Ithna Ashari) Law
Maintenance of Relatives	Liability falls on father. If poor, falls on mother, then paternal grandfather.	Liability is shared jointly between mother and paternal grandfather if father is poor.
Wife's Right (Arrears)	Cannot claim past arrears unless fixed by agreement/court order.	Can claim arrears even without prior agreement/court order.



UNIT-III: Parentage, Guardianship, Gifts, and Wills

Focus: The "Inter Vivos" vs. "Testamentary" property transfers and the strict rules of custody.

Syllabus Checklist:

- [] Parentage: Maternity and Paternity.
- [] Legitimacy and Acknowledgment (*Iqrar*).
- [] Guardianship (*Wilayat*): Meaning, Kinds, and Removal.
- [] Gift (*Hiba*): Definition, Requisites, Formalities, Revocation, and Kinds.
- [] Wills (*Wasiyat*): Meaning, Requisites, and Revocation.

Quick-Revision Tables: Unit III Core Differences

1. Custody (*Hizanat*)

Aspect	Sunni (Hanafi) Law	Shia (Ithna Ashari) Law
Mother's Right to Custody	Male child until age 7. Female child until puberty.	Male child until weaning (~2 yrs). Female child until age 7.
Loss of Hizanat	Loses custody if she marries a "stranger".	Loses custody if she marries <i>any</i> person.

2. Property Transfers: Gift vs. Will

Feature	Gift (Hiba)	Will (Wasiyat)
Operation	Operates <i>Inter Vivos</i> (takes effect immediately).	Operates <i>Testamentary</i> (takes effect after death).
Extent of Property	Can gift the entire (100%) property.	Can only bequeath up to 1/3rd .
Revocability	Extremely difficult after delivery of possession.	Highly revocable before death.

3. Wills (Wasiyat): School Differences

Area of Law	Sunni (Hanafi) Law	Shia (Ithna Ashari) Law
Bequest to an Heir	Invalid unless other heirs consent after testator's death.	Valid up to 1/3rd without consent.
Timing of Consent	Heirs must consent after death.	Heirs can consent before or after death.



UNIT-IV: Waqf and Succession

Focus: The statutory administration of dedicated property (1995 Act) and the fractional distribution of estates.

Syllabus Checklist:

- [] Waqf: Definition, Essentials, Kinds, Creation, and Revocation.
- [] Salient features of the Waqf Act, 1995 & Recent Changes.
- [] Mutawalli: Who can be appointed, Powers, Duties, and Removal.
- [] Succession: Application of the property of a deceased Muslim.
- [] Legal position of heirs as representatives & Administration.
- [] Waqf Tribunals and Jurisdiction.

UNIT-V: Secular and Christian Laws

Focus: Territorial jurisdiction, domicile, and the linear rules of Christian succession.

Syllabus Checklist:

- [] Special Marriage Act, 1954.
- [] Salient features of the Indian Divorce Act, 1869.
- [] Domicile and its significance.
- [] Maintenance to dependents/spouses under secular and Christian laws.
- [] Intestate succession of Christians under the Indian Succession Act, 1925.

Quick-reference guide for final revisions.

Table 1: Classification of Marriages (Unit-I)

Type of Marriage	Legal Status	Legal Effects & Consequences	Example
Sahih (Valid)	Perfectly legal from inception.	Cohabitation is lawful; children are legitimate; mutual inheritance rights arise; Dower becomes payable.	A marriage where all essential conditions (Capacity, Ijab-o-Qubul, Witnesses, Consent) are met.
Batil (Void)	Unlawful from the very beginning.	Creates no civil rights or obligations. Children are illegitimate. No right to Dower or inheritance.	Marrying someone within prohibited degrees (e.g., sister or mother).
Fasid (Irregular)	Suffers from a temporary or remediable defect.	Before consummation: No legal effect. After consummation: Children are legitimate, wife gets Dower, but no mutual inheritance.	Marrying a 5th wife, or a Sunni marriage without witnesses.

Table 2: Marriage & Divorce Differences (Units-I & II)

Area of Law	Sunni (Hanafi) Law	Shia (Ithna Ashari) Law
Marriage Witnesses	Essential: 2 males (or 1 male and 2 females) must be present at the time of marriage.	Not essential at the time of marriage.
Muta (Temporary) Marriage	Strictly Void (<i>Batil</i>). Not recognized.	Legally recognized.
Talaq (Divorce)	Witnesses are not required for pronouncement.	Strictly requires the presence of 2 competent witnesses.

Table 3: Maintenance Rules (Unit-II)

Aspect of Maintenance	Sunni (Hanafi) Law	Shia (Ithna Ashari) Law
Maintenance of Relatives	Liability falls on the father. If he is poor, it falls on the mother, then the paternal grandfather.	Liability is shared. If the father is poor, liability falls jointly on the mother and the paternal grandfather.
Wife's Right (Arrears)	A wife cannot claim past arrears of maintenance unless it was fixed by a prior agreement or court order.	A wife can claim arrears of maintenance even if there was no prior agreement or court order.

Table 4: Guardianship and Custody / *Hizanat* (Unit-III)

Aspect of Custody	Sunni (Hanafi) Law	Shia (Ithna Ashari) Law
Mother's Right to Custody	Male child: Until the age of 7. Female child: Until puberty.	Male child: Until weaning (approx. 2 years). Female child: Until the age of 7.
After Mother's Right Ends	Custody reverts to the Father.	Custody reverts to the Father.
Loss of Hizanat	Mother loses custody if she marries a "stranger" (a person outside the prohibited degrees to the child).	Mother loses custody if she marries <i>any</i> person.

Table 5: Gift (*Hiba*) vs. Will (*Wasiyat*) (Unit-III)

Feature	Gift (<i>Hiba</i>)	Will (<i>Wasiyat</i>)
Operation	Operates <i>Inter Vivos</i> (between living persons). Takes effect immediately upon delivery.	Operates <i>Testamentary</i> (takes effect only after the testator's death).
Extent of Property	A person can legally gift their entire (100%) property during their lifetime.	A person can legally bequeath only up to 1/3rd of their total net estate.
Revocability	Extremely difficult to revoke once possession is delivered (usually requires a Court Decree).	Highly ambulatory; can be revoked by the testator at any time before death.

Table 6: Rules of Wills / *Wasiyat* (Unit-III)

Area of Law	Sunni (Hanafi) Law	Shia (Ithna Ashari) Law
Bequest to a Legal Heir	Completely invalid unless the <i>other</i> legal heirs give their consent after the testator's death.	Valid up to 1/3rd without the consent of other heirs. Consent is only needed for the excess.
Timing of Heirs' Consent	Heirs must give their consent after the testator dies.	Heirs can give their consent either before or after the testator dies.
Suicide of Testator	If a person makes a Will and then commits suicide, the Will remains valid.	If a person does an act of suicide and <i>then</i> makes a Will, the Will is void.

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ABOUT THIS REVISION GUIDE

A definitive, **all-in-one resource** for mastering the complexities of **Family Law-II**. This guide provides a lucid and comprehensive overview of **Muslim Personal Law**, the intricate rules of **Succession**, and key **Special Acts**, all through the forward-thinking prism of **Legal-Tech** and **Media Research**. Designed to bridge traditional legal analysis with modern technological acumen, this guide is essential for students, legal professionals, and scholars.

KEY FEATURES & COVERAGE:

- ❖ In-depth analysis of Muslim Personal Law (Shariat).
- ❖ Comprehensive simplification of Complex Succession Rules.
- ❖ Essential insights into relevant Special Acts (e.g., Special Marriage Act, Guardians and Wards Act).
- ❖ Legal-Tech perspectives on digital records and privacy.
- ❖ Case studies integrating Cyber Law and Media impact.
- ❖ Visual aids and clear, structured language for efficient study.



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