

# Marriage Under Muslim Law

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## Abstract

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## Introduction

Marriage under Islam is a matrimonial relation and an institution that legalises the sexual activities between a male and female for the object of procreation of kids, promotion of love, mutual support, and creation of families, which are considered essential units in a society. Just like Hinduism, Islam is also a strong advocate of marriage. However, the Muslim conception of marriage differs from the Hindu conception, according to which marriage is not a mere civil contract but a sacrament. According to many philosophers, marriage in Islam is a religious duty. Everyone must marry in order to fulfil one's desire for the legal procreation of kids.

Muslim law has been derived from various codified and uncodified sources, like the *Quran*, *Ijma*, *Qiyas*, customs, *Urf*, precedents, equity, and various legislation. There are four major *Sunni* schools of thought: *Hanifa*, *Hambali*, *Maliki*, and *Shafi*. These four schools recognise each other's validity, and they have interacted in legal debate over the centuries. In India, the *Hanifa* school of Islamic law is dominant.

Marriages among Muslims, for instance, are not just wedding ceremonies but formal contracts known as *Nikah*, where the details of the marriage and other aspects are well negotiated and said in the presence of an *Imam*. These contracts consist of an offer and acceptance commonly referred to as *Ijab* and *Qabul* by either the spouses or their guardians willingly. *Mahr* is a sum of money that the groom has to pay to the bride, helping to express respect and hope on the groom's side. Even though the *Nikah* may be conducted in secret, witnesses are mandatory, usually two males who are Muslims. Marriages that are recognized in Islamic law include other types other than the known "*Sahih*" (valid) marriage. Although many will disagree with the policy, polygamy permits a man to have up to four wives, but only on the condition that he can provide for all of them. Additionally, *Muta* or temporary marriage, is legal only among some Shia sects, while Sunnis do not admit it. Lastly, divorce in Islamic marriages is permitted, but it is preferred to seek a solution in order to save the marriage.

## Background

Marriage under Muslim law cannot be seen as alien to the culture within which it is practised, as it has developed and matured over several centuries. It is important to note that the problems associated with Muslim marriages are not a peculiar notion. They are based on traditions that have been followed for centuries to the present day, where particular emphasis is placed on the fact that marriage is one of the most sacred unions in humane society, along with any religious affiliations that a person may have.

In pre-Islamic Arab society, women's rights were highly suppressed in the socio-legal context, particularly to suit male dominated or patriarchal systems. Child marriage was also prevalent, and it was open to contract marriage with any woman without any restrictions. Moreover, marriages were allowed with some of the relatives but not with close relatives, that is, with the mother, sister, or any close family member. Intermarriages with other relatives were also permissible to some extent, but not with everyone.

Divorce was quite simple and seemed like a masculine affair, and men had the exclusive privilege to end a marriage without the consent of the woman. While men enjoyed their limited rights and owned property, and some passed over inheritance, women did not have any rights at all and were considered to be the property of their male kinsmen.

The change in the status and rights of women occurred with the emergence of Islam and with the help of the Islamic prophet, the Prophet Muhammad. Islam treats women with honour and esteem, is *de jure* equal with men in many civil law matters, and is more or less equal in legal rights and roles. In *Sharia*, marriage, or '*Nikah*', is equivalent to a civil contract that acknowledges the personality and identity of women even in their married lives. The objective of this contract is to eliminate forceful consent, legally address procreation, and offer stability and honour in the union of matrimony.

The term '*Nikah*' literally translates to the marriage of the sexes and has the connotation of a civil contract that shall seek to legitimise the relationship and maintain order in society. In addition to empowering women, it becomes the husband's duty to respect his wife with a '*Mahr*' (dower), a symbolic and mandatory payment proving due respect to the woman.

The injunctions found in Islamic law regarding the encouragement of marriage can be startling when compared with other religions that allow, and sometimes encourage, their clergy not to marry, like the Roman Catholic Church. Marriage is one of the most significant pillars of Islam, and it is considered the utmost necessity for producing a harmonious society and seeking happiness in personal life, while celibacy is not approved by any Islamic law. The change that Islam introduced further acknowledged marriage as one of the main pillars of society's structure and also upheld the fact of women's equality and dignity in this context.

### **Concept of marriage under Muslim law**

Marriage, referred to as *Nikah* in the Islamic context, is a recognised civil as well as religious ceremony in Islamic religion. One must address these biological necessities, like sexual activity and forming stable relationships, as these processes are considered essential for the functioning of societies. Thus, Islam is one of the religions that encourages everyone, including religious leaders, to get married. Regarding its beliefs, it posits that marriage is necessary to fulfil social roles and reduce the erosion of values. Consequently, religious leaders are also expected to get married due to the understanding that even for the clergy, it is good to marry and embrace it as a necessity in the provision of the needs of society and in the technicalities of reducing moral decay. Similar to any contractual relationship, mutual consent is also critical in Muslim marriages. It helps that both the bride and the groom must consent to the marriage willingly without any pressure exerted on them. This makes sure that the marriage in which the two individuals are entering is one of mutual respect, and that enhances respect for marriage structure. Equally important are the witnesses. They act as evidence of the ceremony that protects the rights of the couple, especially the wife. The witnesses prevent the fabrication of evidence and uphold the law and sanctity of a marriage contract. It is crucial for an Islamic marriage contract to be entered into with the

free consent of the parties involved after legal capacity emancipation and with witnesses, resulting in a legal, fair, and moral contract. It is important for the parties to a marriage to satisfy each other's needs emotionally and sexually, but within the frameworks of the given relationship, not act based on mere instinct. Another factor is the dissolution of the above-mentioned union because it is only through marriage that the children are given legal entities for their proper growth within a good framework of a family.

The legal capacity of the parties is crucial when they enter into a marriage without violating the degree of a prohibited relationship. Though Sunni and Shia laws are segregated, Shia law allows Muta, which is recognised temporarily. Sunni as well as Shia law both strive to promote legal and moral marriages, which need constant work to keep up with the ideal standard.

Marriage in Islamic law has implied or mutual covenants and responsibilities where the husband will provide for the necessities of his wife and children, whereas the wife is to receive Mahr, or dowry. This is also seen in areas such as inheritance and other family responsibilities within society. Based on the above-discussed principles, it will be plausible to state that Islamic marriage aims at fostering a deep bond and affection between the couple and should also be viewed as a means of effective social integration and ethical governance.

### **Essentials of Muslim marriage**

Preliminary considerations regarding the important fundamental components or elements of a valid Muslim marriage are:

A valid marriage in Islam is referred to as Nikah, and there are certain important conditions that must be met to provide legal recognition of such marriages. These conditions protect the responsibilities and privileges of both partners within the marriage.

### **Proposal and acceptance**

According to Sharia, the marriage process among Muslims begins with the proposal (Ijab) and acceptance (Qubul). An offer can be made by one party, and acceptance by the other has to follow the offer in a single meeting. It is important to note that if a proposal is made in one meeting, followed by its acceptance in another meeting, the given proposal is invalid.

### **Competency of parties**

For a marriage to be valid, both parties must meet certain competency criteria:

**Majority:** It is mandatory that both parties have attained puberty. At present, most people believe that puberty begins around the age of fifteen but may possibly start earlier. In the case that one of the parties involved is a minor, consent from a responsible guardian is also necessary. The next of kin in the frame of guardianship shall be the father, paternal uncle, brother, paternal grandfather, or any other male numerical of the family in terms of succession. In the absence of a suitable person to stand as a guardian, the Qazi or the government can perform the duties of a guardian.

However, in *Khaledur Rahman vs. State of Kerala (2023)*, it was held that marriages solemnised amongst Muslims under personal law are not excluded from the operation of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act). If one of the parties is a minor (below the age of eighteen), that is, he or she is a juvenile, irrespective of whether the marriage is legally valid or not, then the enforcement of the POCSO Act will prevail.

Sound mind: Ideally, both parties should not be of unsound mind, or if so, the agreement made with them must have been made with their full knowledge. Incompetent persons, such as idiots or those who are housing the transient disorder of the mind, cannot venture into a lawful marriage. But there are conditions for the lunatic to get married during their periods of sanity since they are considered to have a sound mind then.

Muslim identity: While It is mandatory to be Muslim and of equal status within their communities. It is permissible for a marriage to be between sects in Islam so long as both are of the Islamic faith. However, religious classifications in the Islamic marriage agreements also bring out disparities between the spouses. Muslim men are allowed to marry women of other religions considered ‘Ahl al-kitab’ (People of the Book); they are Christians, Jews, and, according to some scholars before, Sabians. This reflects common core belief systems in Abrahamic religions. That said, Muslim women are generally prohibited from marrying non-Muslim men, regardless of the man’s faith. This is due to a fear of negation of a Muslim woman’s apostasy and her capacity to raise children in the Islamic faith. Also, Muslims are forbidden from marrying polytheists or idolaters.

### **Free consent**

The consent has to be mutual and free and not obtained either by force, fraud, or mistake. Whenever a marriage is contracted under force, coercion, or fraud, the marriage is said to be void.

### **Dower (Mahr)**

The dower is also known as the bride price in the sense that it is the gift given by the groom to the bride, which is compulsory and her source of financial security. It should be agreed on before their marriage and is required before they start living together. In this way, the bride or her guardians could take possession of the dower, especially if she is a minor.

### **Free from legal disabilities**

Certain legal disabilities can invalidate a marriage under Islamic law, categorised into absolute and relative prohibitions:

#### **Absolute prohibitions**

Consanguinity: There are restrictions on engaging in cohabitation with close-blood relatives, including mothers, daughters, sisters, aunts, and nieces.

Affinity: Marriage is prohibited with some close family relatives, such as mothers, daughters, sons’ wives, step-daughters, and stepmothers, among others.

Fosterage: Marrying close relatives is still unlawful where one party has been breast fed by the same woman.

### **Nature of Muslim marriage**

Marriage in Islam is one of the fundamental tenets of the Islamic way of life and has received much attention in Islamic jurisprudential reflections. As obscure as its nature, scholars have sought to divide it into a civil agreement in the civil law framework and a sacramental rite in the Indian law framework.

### **Contractual foundations**

Marriage among Muslims is a sacred social practice in line with the values upheld within their faith, and it bears a syncretic character, both being a contract and a sacral act. In its inception, Muslim marriage was primarily a civil affair, with consent and capacity being regarded as free, voluntary, and reciprocal, as in the case of any contract. This is observed in issues such as (Ijab) proposal and (Qubul) acceptance, the capacity of the parties involved, and the prenuptial and postnuptial contracts. Prenuptial agreements are contracts prepared and signed before marriage that determine how property and liabilities will be split in the event of a divorce. They also have the ability to handle issues of inheritance and maintenance. A postnuptial agreement, described as one written and signed after marriage, is similar in purpose but allows for more changes based on income or anything since the exchange of 'I do'. Both, however, are legally binding, but their enforcement depends on the jurisdiction where they are filed. They help to confirm the free consent in entering the marriage and may be adjusted in accordance with certain circumstances, which is considered to be one of the important characteristics of Islamic law.

### **Spiritual significance**

But unlike the conventional Western model of marriage, which is based purely on contractualism, Muslim marriage has much more religious and spiritual connotations. The usual rituals that are considered during marriage that are held among certain Muslims involve reciting some passages from the Quran during the rites of marriage, such as Ijab-e-Qubool (saying 'Qubool' three times, meaning 'I accept' in the presence of the Imam (Islamic leader)) and Dua (a prayer by the Imam for the happy and successful married life of the couple) that symbolised the sanctity of the union. Another rationale provided here accentuates the spiritual aspect, where a marriage is not only viewed as a legal union, but it also means comfort for two individuals.

### **Types of Muslim marriages**

#### ***Sahih Nikah (Valid Marriage)***

A *Sahih* marriage, referring to a marriage according to Islamic law, is an acceptable marriage as per the guidelines set by Islamic law regarding marriage customs and forms. The word "*sahih*" can be interpreted as "correct" or "valid" in Urdu, while "*Nikah*" stands for marriage. In order for that marriage to be classified as *sahih*, there are some basic requirements that must be met. First of all, it should be a voluntary act of two individuals, that is, a man and a woman, based on the contract, where offer and acceptance play a crucial role, and should take place in the presence of witnesses. Also, the man is to bring a marital gift to the woman, which is known as mehr, through which the woman will be secured and acknowledged as the man's wife. All these elements ensure that the marriage is not void or invalid but remains legal according to Islamic law to fulfil the necessities of legitimacy. Hence, a *sahih* marriage is one in which all the conditions are strictly followed in order to establish the marriage as lawful according to sharia law. When all the legal requirements are fulfilled and there are no prohibitions affecting the parties, then the marriage is correct, or '*sahih*'. The prohibitions can be permanent as well as temporary; in the case of permanent prohibitions, the marriage will be void, and if the prohibitions are temporary, then the marriage is irregular.

#### ***Batil Nikah (Void Marriage)***

A marriage that is void ab initio creates no rights or obligations, and the children born out of such marriages are illegitimate. A marriage forbidden by the rules of blood relationship, affinity, or fosterage

is void. Similarly, a marriage with the wife of another or a divorced wife during the Iddah period is also void.

A Batil marriage, or void marriage, refers to a marriage that, from its inception, did not possess the legal formalities that make a marriage valid and is without legal recognition. There are numerous situations in civil legislation that can bring a marriage into non-existence. These include consanguineous marriages, which are marriages between close relatives such as siblings, parents and children, uncles and nieces, and aunt and nephew marriages because of the genetic and social relationship between the couples. Marriages unlawful through affinity are those relational through marriage that separate or avoid because of their violation of social taboos, like marrying a stepchild or the siblings of a spouse. Although under Islamic law a man could not marry her natural mother or sister, there are three other types of forbidden relationships under Sunni laws, one of them being marriage with a foster mother or foster sister with reference to the relationship created by the act of breastfeeding. Also, marriage is declared void under Sharia law if a woman is involved in going through Iddah, which is the waiting period after the dissolution of marriage. It is impossible to marry a person who is already married to someone else, as it would lead to bigamy and would not allow any alterations to the first marriage contract.

#### ***Fasid Nikah (Irregular Marriage)***

Due to a lack of formality or the existence of an impediment that can be rectified, a marriage becomes irregular. However, this irregularity is not permanent in nature and can be removed. Thus, the marriage itself is not unlawful. It can be made valid once the prohibitions are rectified. Marriage in such circumstances or with the following prohibitions is called 'Fasid'.

- A marriage contracted without the required number of witnesses;
- A marriage with women during her Iddah period;
- A marriage with a woman without the consent of her guardian when such consent is considered necessary;
- A marriage prohibited on account of a difference of religion;
- A marriage with a woman who is pregnant, when the pregnancy was not caused by adultery or fornication;
- A marriage with a fifth wife.

#### ***Muta Marriage***

*Muta*, literally meaning 'enjoyment,' is a practice of marriage in which the couple is wed for a limited duration only. This type of marriage was common in the past in Arabia and is not accepted by several laws practised in India or by the *Hanafi*, *Maliki*, *Shafi*, *Jafari*, and *Hanbali* schools of the subjects of Muslim law except for the *Itha Asar Shia* School. But the practice and institution of *muta* marriage are no longer practised or supported in India to a large extent.

The notion of *Muta* marriage can be evidently seen in our country. In India, temporary marriage is not recognized, although there are a few who contract *Muta* marriage, but such marriages are not enforceable in court. In a Hyderabad case, it was held that there is no difference between a *muta* for an unspecified period and a *muta* for life; a permanent *nikah* marriage for life can be contracted by the use of the word *muta*, and the specification of the period for which a *muta* marriage is contracted alone makes a marriage a temporary marriage for the period specified.

The practice of temporary "*Muta*" marriage is widespread in modern times and often arranged by Imams and other Islamic leaders in Europe, America (including the Shia parts of Dearborn, Michigan), and the Middle East. It is commonly the destitute widows and orphaned girls that are within the clutches of

temporary marriage who are often sold to old men. For the women, there is no desire or pleasure that drives them into such misery; it is the extreme means to pay the rent and feed themselves and their children. As a result, this arrangement has received widespread criticism from various countries as it implies the legalisation of prostitution.

### Essentials of Muta Marriage

- **Fixed period of cohabitation:** The duration of the marriage must be defined; it may be for a day, a month, a year, or so on.
- **Dower:** The dower (*mahr*) should be agreed upon and identified at the time of the marriage and would include the type, quantity, quality, and value of the item.
- **Clarity in terms:** That is, if the duration of marriage is stated but the amount of dower is not mentioned, it could be considered a recognised marriage. But if there is no specification of the duration of marriage and the amount of dower has not been determined, then it is regarded as an invalid marriage.

### Registration of marriage under Muslim Law

Registration of marriage among Muslims is compulsory and mandatory, as a Muslim marriage is treated as a civil contract. According to Section 3 of the Muslim Marriages Registration Act 1981, “Every marriage contracted between Muslims after the commencement of this Act shall be registered, as hereinafter provided, within thirty days from the conclusion of the *Nikah* Ceremony.” A *nikahnama* is a type of legal document in Muslim marriages that contains the essential conditions and details of the marriage.

According to this Act, a *Nikahnama* contains:

#### 1. Details of the Bridegroom

- Full Name: [Name of the Bridegroom]
- Age: [Bridegroom’s Age]
- Address: [Bridegroom’s Complete Address]
- Father: [Bridegroom’s Father’s Full Name]
- Status: [Living/Deceased]
- Marital Status: [Unmarried/Widower/Divorced]
- Number of Living Wives (if applicable): [Number]
- Signature/Thumb Impression: [Signed by the groom or marked with the thumb impression of the groom]

#### 2. In case the marriage is performed by a *Vakil* or Guardian)

- *Vakil*/Guardian Name: [Name of *Vakil* or Guardian Full]
- Signature: [Signature: *Vakil* or Guardian]

#### 3. *Nikah* Performer (*Nikah Khan*)

- Name: [*Nikah-Khan*’s full name] (*Nikah* Ceremony Performer)
- Signature: [*Nikah-Khan*’s Signature]

#### 4. Date: This account was written [Date of *Nikah* Ceremony].

#### 5. Dower (*Mehr*)

- Amount: [Agreed Dower Amount]

## 6. Witnesses

- Witness 1: First Name Middle Name Last name, Father's/Husband's Name, City, Street and House Number
- Witness 2: First Name, Second Name, Father/Husband's Name, Residence, Postal Address

## Dissolution of marriage under Muslim Law

For many years, the law provided that where a Muslim marriage has been contracted, the man has a greater right to divorce than the wife. He can even start the process of divorce and simply declare words that indicate that he wants to divorce her (*Talaq*). Other ways, like *Ila* and *Zihar*, serve the same purpose with additional but less formal procedures.

On the contrary, wives throughout history had almost no choices at their disposal, though the example above also clearly proves this point. They could only seek a divorce if the husband permitted it (through delegation) or if both parties agreed to separate by observing the Islamic legal procedure of *Khula* or *Mubarat*. Before 1939, there were not many ways to have a legal separation; the wife could not prove, in court, that her husband's adultery was false, or the husband was deemed mentally incapacitated or impotent, thereby unable to procreate.

Fortunately, however, the country saw the enactment of a statute that enhanced women's rights through the Dissolution of Muslim Marriage Act of 1939. Today, an Islamic wife can file for *khula* with reference to several additional grounds that were previously prohibited here.

There are two categories of divorce under Muslim law:

- Judicial
- Extra-Judicial

The extra-judicial mode of divorce can further be divided into 3 subdivisions:

1. By husband: *Talaaq, Ila, and Zihar*.
2. By wife: *Talaaq-i-Tafweez, Lian*
3. By mutual agreement: *Khula and Mubarat*

## Four ways of divorce under the Muslim law

*Talaq (tah-lak)* in Islamic law means divorce or the process of dissolution of marriage by the decision of the husband. Thus, it remains a unilateral decision, and the wife does not have to agree for the divorce to take place. This is where it presented the condition that Muslim women had little control over their decision-making in cases of divorce.

One of the issues concerning the dissolution of marriage was caused by triple *talaq*, when three words of *talaq* were pronounced at the same sitting and immediately became effective in dissolving the marriage. The practice of obtaining a divorce through this method was received relatively negatively due to various pressing issues, such as possible misuse and the absence of procedural fairness.

Nevertheless, the legal context changed in 2017. A commendable judgement of the Supreme Court declared instant triple *talaq* unconstitutional; therefore, those divorced through this method have no lawful divorce. It was a goal for the purpose of reducing the issues of gender inequality and the lack of protection for women within Muslim marriages.



## Different kinds of talaq in Muslim law

### *Talaq-e-sunnat*

This is regarded as the most preferable form, performed while on the woman's menstrual purity (*tuhr*) with the intention of continuing to live together within the period of *Iddah*. They can revoke it during this period of suspension.

### *Talaaq-i-ahsan*

This form of divorce is regarded as the most considered. A single pronouncement of divorce is made during the period of *tuhr* (the period of purity between two menstrual cycles), followed by abstinence from sexual intercourse during the period of *iddah*. Here, the husband does not have sexual relations with his wife but permits her to complete the period of *iddah*. This stage of the procedure is temporary and requires both parties to abstain from each other; however, they are allowed to inherit from each other. Here, the divorce can be revoked at any time before the completion of *Iddah*, thus preventing hasty and unreasonable divorces.

Hedaya also supports this type of divorce since it is the best that is recommended and approved since it was approved by the companions of the Prophet. The husband also has a right to rescind the divorce during the time of the *iddat*, which ranges from three months to the delivery of the child if the wife is pregnant. This school of thought explains that in the case of *Ahsan talaq*, divorce can be granted even if it is during the wife's menstrual period, provided the marriage has not been consummated.

The condition of *Tuhr* does not relate to the situation when the husband and wife live separately, the wife has reached menopausal age, or in cases of written *talaq*. This form of *talaq* can only be done through the act of intimacy during the *iddat* period or by expressing words. In this case, if the *iddat* period has elapsed and it has not been reverted, then the *talaq* is considered to be complete and the man can no longer revert it back.

### *Talaaq-i-hasan*

In the *Hasan* method of *talaq*, a man says *talaq* three times in continuation during the period of *Tuhr*, or the period of purity, when the wife is not menstruating. The first and second utterances are rescissible, while the third one confirms the divorce and makes it non-rescissible. This is because, as already mentioned, each pronouncement within this method takes place during the *Tuhr* with no contact between the couple at all. To put the matter simply, the husband utters *talaq* during *Tuhr*, withdraws it orally or by sexual intercourse, and does this during the subsequent *Tuhr* as well. Otherwise, if he pronounces *talaq* for the third time during the *Tuhr*, it is irrevocable. If the wife does not have menstruation, then a period of 30 days should elapse before the next mention. This method was introduced in order to give protection to the women by not allowing the husbands to keep on divorcing and taking back their wives time and again without any penalty for their continuous and indefinite ill-treatment of wives. The matter of divorce was limited to three attempts as an effort to control those who would like to misuse it. It is important that pronouncements are made when no intercourse takes place during any period of *Tuhr*. The marriage is dissolved irrevocably, regardless of the period of *Iddah*.

### *Talaaq-i-biddah*

It is a form of Islamic divorce that is instant in nature. It allows any Muslim man to legally divorce his wife by stating the word "*Talaq*" three times in oral, written, or, more recently, electronic form. This is prevalent among the Muslims in India, especially among the adherents of the Hanafi school of Islam. This is also known as "*Triple Talaq*" and has been a subject of debate and controversy.

This practice is in contrast with *talaq-us-sunnat*, where the process is more gradual and does not permit

non-reversible repudiation. *Talaq-ul-Biddat* does not have any relation to days of *Tuhr* or non-intercourse, and therefore it is a less desirable method of divorce and not taken in high regard. It has been criticised on the grounds that there is a tendency to misuse it and that it doesn't have room for any form of reconciliation at all. This practice is repealed in many nations, including India, because it is unconscionable and wives suffer many difficulties due to triple talaq.

In the case of *Shayara Bano vs. Union of India and Ors. (2017)*, it was submitted that “this practice of *Talaq-e-bidat* (unilateral triple-talaq), which practically treats women like chattel, is neither harmonious with modern principles of human rights and gender equality nor an integral part of Islamic faith, according to various noted scholars. Muslim women are subjected to such gross practices that treat them as chattels, thereby violating their fundamental rights enshrined in Articles 14, 15, 21, and 25 of the Constitution of India. The practice also wreaks havoc on the lives of many divorced women and their children, especially those belonging to the weaker economic sections of society.”

There have been many cases in the High Court and the Supreme Court where the Court invalidated the instant triple talaq. In *Shamim Ara vs. State of U.P. (2002)*, the Court observed that:

The correct law of Talaq as ordained in the Holy Quran is that:

### **Divorce by Wife (Delegated or Mutual Consent)**

The ground for dissolution of marriage in Islam used to be primarily in the hands of the husband through a process known as *Talaq*. But marriages involving Muslim women are salvageable since wives can apply for divorce power in two ways: delegated or by consent. Here's a detailed breakdown of these options:

#### ***Talaq-e-Tafweez: Delegated divorce***

*Talaq-e-tafweez* allows a wife to give her husband a notice of divorce in certain circumstances that have first been agreed upon and discussed by both parties. Basically, this kind of marriage is *Talaq barter*, where the husband gives up his right to pronounce *Talaq* to his wife when they make an agreement before or during the marriage. Here's a closer look:

#### **Conditions for delegation**

As for any other customary right granted to the wife with respect to marital dwelling, the agreement defines conditions under which the wife can exercise this right. These conditions can vary widely, such as:

- The practice of polygamy, wherein a man takes another wife, is widely recognised and practised in some cultures.
- It has been established that a lack of maintenance for a given period of time is unallowable.
- Cruelty or physical abuse
- Any other conditions that should be legal, moral, and not violate the general good of the public.

### **Divorce by mutual consent**

Previously, Muslim law had no legal provision that enabled the parties to apply for a talaq with the mutual consent of both husband and wife. This meant women could only seek an annulment, and they were few; if at all, they could find one if they were willing to end their marriage with the consent of the husband. However, the position changed with the passing of the Dissolution of Muslim Marriage Act in 1939. This Act provided legal rationales by which the wife could seek a divorce, which included the option of dissolving the marriage mutually with her husband.

### **Khula**

Khula constitutes a form of divorce that depends only on the mutual agreement of the partners. At this stage, the couple decides to annul the marriage and may even discuss the payment of some amount. The wife might bring back the amount given to her as Mahr or some other amount for the husband to agree and grant the divorce. This method is non-confrontational, and both partners have the right to make decisions concerning their separation.

Khula, on the other hand, is a type of divorce where the wife seeks the husband's action by returning the dowry. However, unlike *Talaq-e-Tafweez*, which is a form of divorce instituted by the husband, *Khula* allows the wife to approach her husband honestly and with some sort of dowry.

### **Compensation**

The nature and degree of compensation can differ depending on the marriage contract signed by the spouses. This could be in the form of money, where the wife repays the dower or other valuables given during marriage, or by relinquishing some rights that the partners enjoy during the marriage setup.

### **Essentials of Khula**

- **Wife's offer of compensation:** The wife explains to her husband in detail that she wants *Khula* and offers to compensate the man to grant her the divorce. This compensation can be in the form of returning *Mahr*, relinquishing other marital rights, or any other valued item.
- **Husband's acceptance:** The essence of the *Khula* process rests on the husband's approval of his wife's offer.
- The non-fulfilment of *Iddah* does not form part of the conditions for *Khula*.

### **Revocation**

There are differences in prejudice between *Shia* and *Sunni* legal schools regarding the permanent nature of the process of *Khula* (wife-initiated divorce). According to *Shia* law, once the husband accepts the offer made by the wife in *Khula*, the dissolution of marriage is permanent. This is consistent with the strict contractual perspective, where the acceptance of the consideration by the husband puts an end to the marital relationship. On the other hand, *Sunni* law gives the husband more rights on this issue. Thus, while he agreed to the *Khula*, the husband has the right to withdraw his agreement within the *Iddah* period and return the compensation given to the wife. This is a mechanism similar to the right of redemption, implying that a party may reconsider his/her actions within a prescribed period of time. Therefore, *Sunni Khula* is by far less rigid than the definitive retention of *Shia Khula*.

### **Mubarat**

The only difference between *Mubarat* and *Khula* is that the husband does not make any payment to prize money to secure a decree of *Mubarat*. One or both of the spouses come to the mutual decision of ending the marriage without going through any form of financial trading.

### **Essentials of Mubarat**

- Either spouse can initiate the process of *Mubarat* by offering a separation. The consent of the spouses is a must.
- The offer must be accepted by the other spouse.
- Following the acceptance of the offer, the wife must perform the *Iddah* period.

- No exchange of consideration is required for *Mubarat*.

### Benefits

Therefore, *Mubarat* is a dignified method that allows the parties to end an unworkable marriage by mutual consent.

### Uniform Civil Code and its impact

Personal laws in India cover marriage, divorce, and succession and are regulated according to the religious persuasion of the parties involved. This leads to complications and possibly prejudice. For instance, there are provisions in Hindu law that are apparently different from the provisions in Muslim law, and the rights of inheritance can also be very variable depending on religion.

The Uniform Civil Code (UCC) suggests a significant change by proposing one civil code that would apply to all Indians, irrespective of their religion. This UCC would regulate issues concerning marriage and divorce, inheritance, adoption, and maintenance. The supporters argue that when implemented, the UCC would help realise a cultural shift and make society fairer. It could:

- Foster a common civil identity for national integration.
- Continue the progress of gender equality, whereby provisions for women shall be progressive in aspects like inheritance.
- Modernization of the legal system by trying to make it less complex and easier to understand.

However, tackling this issue is not easy, and the management sought to implement a UCC. It is quite important to ensure equality by providing an equal amount of work, while also being careful not to offend people with different religious views. As to the opponents of the UCC, some worry that the attempt to create a uniform law may result in prejudice against various traditions.

What is far more unusual is that Goa already has a live example of it. The civil law is derived from Portuguese law and remains in practice today for all Goan citizens without the distinction of religion. This shows that it is possible to operate a UCC within the framework of Indian laws.

Recently, Uttarakhand became the first Indian state to pass a comprehensive UCC bill, which was passed on 7th February 2024, and became the Uniform Civil Code of Uttarakhand, 2024, creating a potential model for further reform at the country level. That is why, even though the outcomes of the Uttarakhand UCC are not clear yet, they might be used for further successful implementation across the country. With the national execution of the UCC still a subject of discussion, these developments in Goa and Uttarakhand give an idea of the likelihood of the UCC in India's legal structure.

The Uttarakhand UCC has been made applicable to all the citizens of Uttarakhand, irrespective of their religion, to have standardised rules and laws in affairs like marriage, divorce, succession, and live-in relationships.

### Conclusion:

The validity of Muslim personal law in light of constitutional changes reflects ongoing tensions between tradition and modernity. Continued dialogue, legal reforms, and judicial interventions will be essential to ensure that personal laws evolve in tandem with constitutional values and societal norms.

The constitutional validity of Muslim personal law, particularly in relation to the Hindu Marriage Act (HMA), highlights a complex interplay between religious traditions and the evolving norms of Indian society. As societal values shift toward greater emphasis on gender equality and individual rights, there

is a growing need for personal laws, including Muslim law, to adapt in ways that align with constitutional principles.

While Muslim personal law retains its legitimacy within the constitutional framework, ongoing judicial scrutiny and societal advocacy are crucial for ensuring that it aligns with the core values of equality, justice, and non-discrimination. Ultimately, fostering a legal environment that respects religious practices while promoting fundamental rights will be essential for achieving a harmonious balance in a pluralistic society. Continued reforms and dialogues are necessary to ensure that personal laws reflect contemporary societal values and constitutional mandates.