

Muslim Law (Family Law II)

KSLU LL.B. — Complete Study Bundle (All Five Units)

KSLU LL.B. Study Bundle

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Notes Version: **v1.0**

June 2026

Read this first page, then go to your unit. This single file holds the whole subject: how to use the notes, the rules that win marks, and all units of content. Everything is in plain English, every Latin maxim is translated in [brackets], and every topic is built backwards from the real exam questions.

How to Use These Notes

What this is. A complete, exam-focused bundle covering all five units of KSLU Muslim Law (Family Law II). Every topic is built from one question: *what will the examiner ask, and how do I score full marks?* High-frequency questions get the most space; the years listed under each question tell you where to spend revision time.

Who it is for. The first-time learner (understand before memorising), the revision student (fast high-yield recall), and the last-week crammer (which questions repeat and how to answer them).

What is inside every topic — the same blocks, in the same order:

Block	Its job	The mark it earns
Previous Year Questions	Real questions + years asked	What to prepare and how often it repeats
The Hook	A true story / landmark-case opener	Memorable; a strong opening line
Jurist / Statutory Quotes	Exact definitions & sections	Examiners reward precise authority
In Simple Terms	Plain-English translation	Ensures you <i>understand</i>
The Visual (chart)	Maps the topic structure	Recall and structure at a glance
Case Laws	Landmark judgments + ratio	Case names with years are pure marks
□ Blueprint + □ Risk Alert	Answer plan + applied IRAC	Converts knowledge into a scoring answer

Each unit closes with a **Quick Revision & Case Law Table** for the final hour.

The 4-step study plan. (1) Read the PYQ box first. (2) Understand, then memorise. (3) Trace the chart from memory. (4) Rehearse the Blueprint and one Risk Alert.

The 10 Rules That Win Marks

1. **Lead with a definition + roadmap.**
2. **Follow the Blueprint Tracker** stage by stage.
3. **Name the case AND the year** every time.
4. **Quote the exact section / jurist** where given.
5. **Translate every Latin maxim in [brackets].**
6. **Use the four IRAC headings** for problems; spot the decoy fact.
7. **Always give a definite verdict.**
8. **Use the chart's structure** to organise the body.
9. **Close with a short, confident conclusion.**
10. **Manage time** so no high-mark question is left unwritten.

Exam Pattern (100-mark paper): Q9 = 20 marks (two problems × 10); Q1-Q8 = 16 marks each. Answer Q9 + any 5 from Q1-Q8. Always attempt Q9 first.

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UNIT 1 — Islamic Law: Origins, Schools, Marriage & Dower

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8. Quick Revision & Case Law Table

1. Sources of Islamic Law

Previous Year Questions

- **[16M]** Explain the various sources of Islamic/Mohammaden Law. (2011, 2014, 2015, 2016, 2017, 2019-100, 2025-100) □□□
- **[10M]** Explain different sources of Muslim Law. (2023-80, 2024-80, 2026-80) □□□
- **[6M]** Write a note on Quran. (2013-100, 2016-100) □□

The Hook

In 632 CE, when Prophet Muhammad died, he left no written code. Within two decades, jurists compiled the Quran into a single book under Caliph Uthman. This act of preservation gave Islamic law its most foundational text — and started a 14-century tradition of legal scholarship still shaping the lives of 200 million Indian Muslims today.

What are the Sources of Islamic Law?

Islamic law has four primary sources and several secondary ones. Think of them as a pyramid: the Quran sits at the top, and each layer below fills the gaps the one above leaves.

Al-Shafi'i (750-820 CE): *"The first source is the Book of Allah; the second is the Sunnah of the Prophet; the third is the consensus of the community; and the fourth is analogical deduction."*

In Simple Terms: Allah's revealed text comes first. If it is silent, the Prophet's practice applies. If both are silent, what all scholars agreed on governs. If even that is silent, a new situation is decided by logical comparison to a known rule.

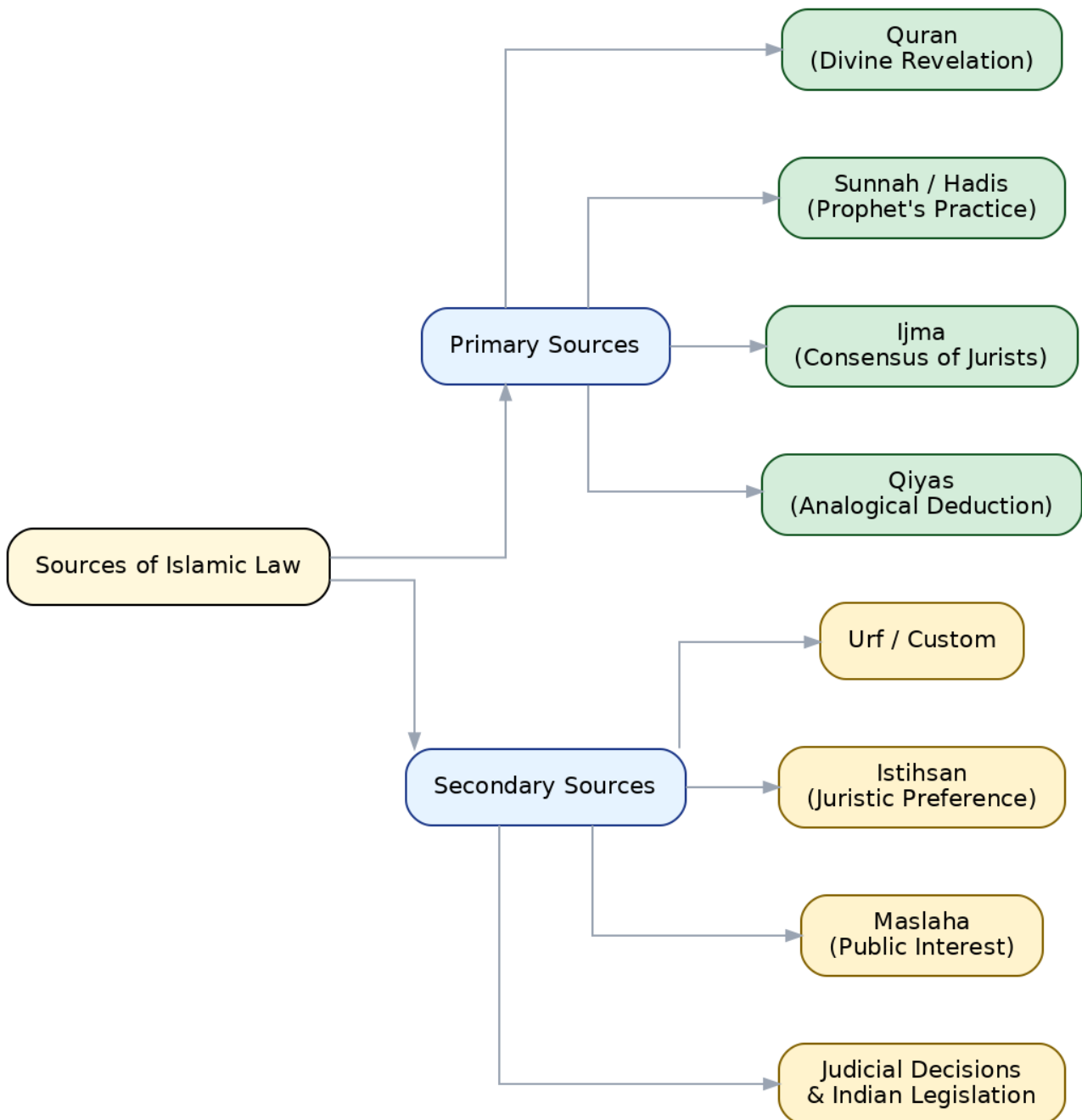
The Four Primary Sources

- 1. Quran (الكتاب):** The holy scripture revealed to Prophet Muhammad. It contains about 200 verses dealing with legal matters — marriage, divorce, inheritance, and contract. It is absolute and cannot be overridden.
- 2. Sunnah / Hadis:** The Prophet's sayings (*hadis*), acts, and silent approvals. Sunnah supplements the Quran. There are three types: Sunnah-ul-Qaul (words), Sunnah-ul-Fail (deeds), Sunnah-ul-Taqrir (approval by silence).
- 3. Ijma (Consensus):** Agreement of all Muslim jurists of a particular era on a legal question. Once formed, it becomes binding. It validates and supplements both Quran and Sunnah.
- 4. Qiyas (Analogical Deduction):** Applying a known rule to a new situation when the underlying reason (*illat*) is the same. Example: alcohol is prohibited; therefore synthetic intoxicants are also prohibited, by analogy.

Secondary Sources

- 5. Urf / Custom:** Local customs recognised by Muslim law if they do not contradict the Quran.
- 6. Istihsan (Juristic Preference):** Departure from strict analogy to achieve equity. Used mainly by Hanafi school.
- 7. Maslaha (Public Interest):** Decisions taken for the general welfare of the community. Used by Maliki school.
- 8. Judicial Decisions & Legislation in India:** Decisions of Indian courts (like the Supreme Court) and Acts like the Muslim Women (Protection of Rights on Divorce) Act, 1986 now form part of the applicable law.

The Visual



Case Laws

- **Collector of Madura v. Mootoo Ramalinga (1868)** — Privy Council held that where Quran and Hadis are silent, the Ijma of the jurists is binding.
- **Moonshee Buzlur Raheem v. Shumsoonissa Begum (1867)** — Custom must not violate clear Quranic text to be recognised.
- **Shamim Ara v. State of UP (2002)** — Supreme Court held that Talaq must be pronounced in a reasonable manner; reinforcing Quranic norms over bare custom.

□ 16-MARK ESSAY BLUEPRINT

- **STAGE 1** → **Hook + Roadmap:** Open with the Prophet's death in 632 CE leaving no written code; state you will cover all four primary and key secondary sources.
- **STAGE 2** → **Primary Sources (bulk of marks):** Quran → Sunnah → Ijma → Qiyas; for each: define, give example, and note which school relies on it most.
- **STAGE 3** → **Secondary Sources:** Urf, Istihsan, Maslaha, Judicial Decisions; link each to a school.
- **STAGE 4** → **Cases/Application:** Mootoo Ramalinga (Ijma), Shamim Ara (Quran > custom).
- **STAGE 5** → **Verdict:** Conclude that Islamic law is dynamic: the hierarchy of sources allows jurists to address new situations while staying rooted in divine text.

□ FACT-PATTERN RISK ALERT

Scenario: A Muslim husband pronounces talaq by a WhatsApp voice message without witnesses, claiming it is based on customary practice in his village. His wife challenges this.

- **I — ISSUE:** Whether a local custom can override the Quranic requirement of a proper, reasoned talaq.
- **R — RULE:** Quran is the supreme source of Islamic law. Custom (Urf) is a valid secondary source only if it does not contradict the Quran or Sunnah. (*Shamim Ara v. State of UP, 2002*) — an unilateral, instant triple-talaq is not a proper pronouncement.
- **A — ANALYSIS:** The “custom” here contradicts the Quranic directive requiring witnesses and reasoned divorce. The decoy is the word “customary” — it cannot override the Quran.
- **C — CONCLUSION:** The talaq is invalid. The wife can seek a declaration of continuing marriage and maintenance.

2. Schools of Muslim Law

Previous Year Questions

- **[16M]** State and explain the schools and sub-schools of Muslim Law. (2012-100, 2017-100, 2019-100) [111]
- **[16M]** Enumerate differences between Sunni and Shia regarding marriage, dower and divorce. (2015-100) [111]
- **[10M]** Explain different schools of Muslim Law. (2019-80, 2021-80, 2021-100, 2022-100, 2024-80) [111]
- **[6M]** Write a note on Muta marriage (Shia). (2013-100, 2016-100, 2021-80, 2022-80) [11]

The Hook

In 680 CE, Hussein ibn Ali — grandson of Prophet Muhammad — was killed at Karbala. His followers refused to accept the Umayyad caliphate. This political split crystallised into the Sunni-Shia divide. Two distinct schools of jurisprudence emerged, each interpreting the same Quran through a different lens, creating legal differences that affect marriage, divorce, and inheritance to this day.

The Two Main Divisions

SUNNI SCHOOLS (approx. 90% of Indian Muslims):

The Sunnis follow the Sunnah as interpreted by the four great Imams:

- 1. Hanafi School** — founded by Imam Abu Hanifa (699–767 CE). Most widely followed in India, Pakistan, and Turkey. Uses *Istihsan* (juristic preference) extensively. In India, governed largely by this school.
- 2. Maliki School** — founded by Imam Malik (711–795 CE). Dominant in North and West Africa. Relies heavily on Urf (custom of Medina) and *Maslaha* (public interest).
- 3. Shafi'i School** — founded by Imam Al-Shafi'i (767–820 CE). Followed in South India (Kerala, parts of Tamil Nadu), Southeast Asia. Introduced systematic legal theory.
- 4. Hanbali School** — founded by Imam Ahmad ibn Hanbal (780–855 CE). Most conservative; followed in Saudi Arabia. Rejects Qiyas and *Istihsan*; relies strictly on Quran and Hadis.

SHIA SCHOOLS (approx. 10% of Indian Muslims):

Shias recognise only the authority of Imams descending from Ali, the Prophet's cousin.

1. Ithna Ashari (Twelvers) — the main Shia school in India. Follows 12 Imams. Allows Muta (temporary) marriage. Inheritance: property goes only to blood relatives; widows and widowers excluded.

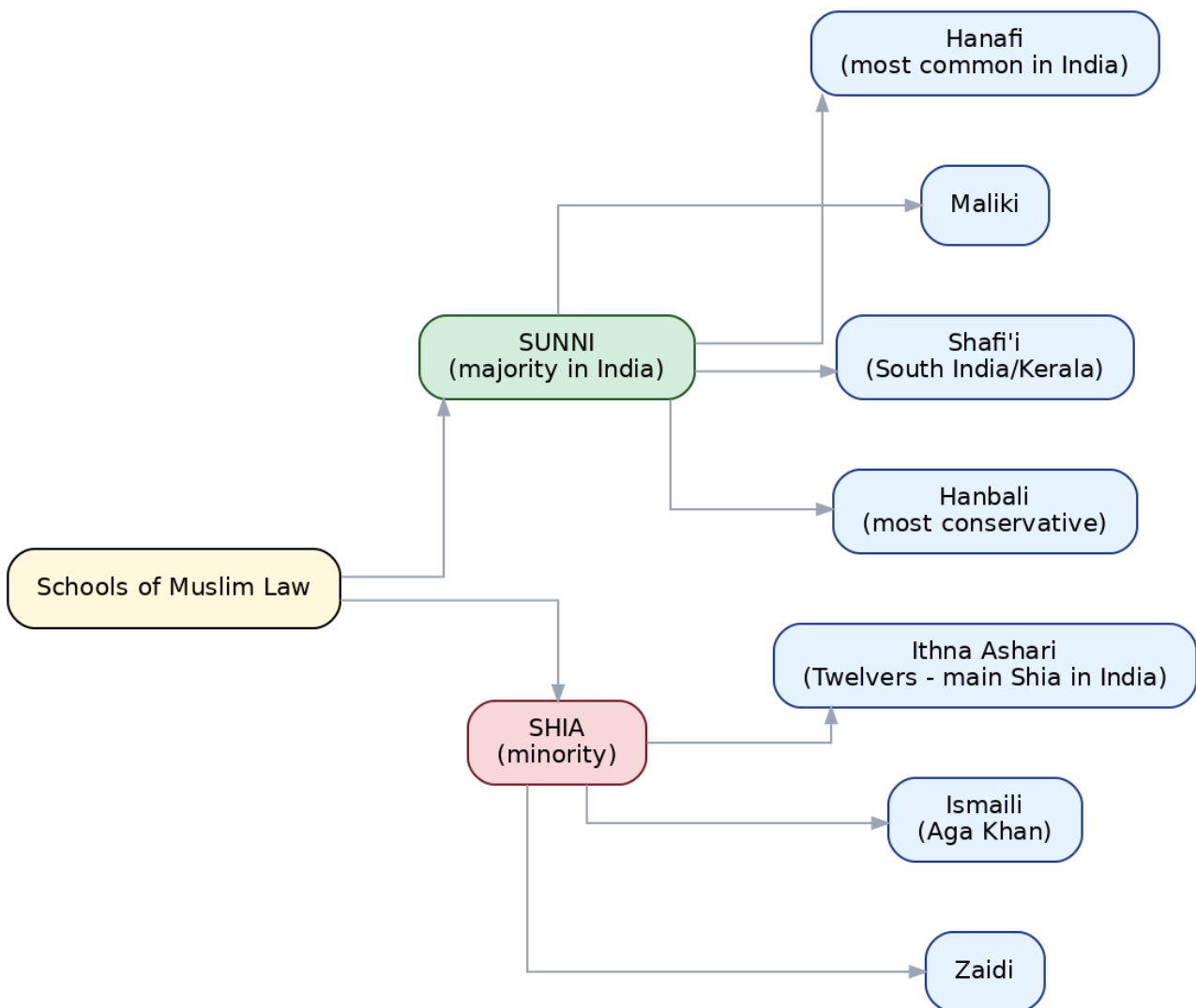
2. Ismaili (Seveners) — follow only 7 Imams. The Aga Khan community.

3. Zaidi School — followed in Yemen.

Key Differences: Sunni vs. Shia

Aspect	Sunni (Hanafi)	Shia (Ithna Ashari)
Marriage	Requires witnesses (2 male or 1M+2F)	No witnesses required for validity
Muta Marriage	Totally prohibited	Recognised as valid
Dower	Prompt dower payable on demand	No fixed rule
Divorce	Triple talaq in one sitting = 3 divorces	One sitting = one revocable divorce
Inheritance	Husband/wife are both sharers	Husband/wife inherit, but if blood relatives present, widow gets less
Doctrine of Aul	Applied when shares exceed estate	Not applied; proportional reduction

The Visual



Case Laws

- **Abdul Kadir v. Salima (1886)** — Allahabad HC (Mahmood J) held that Muslim marriage is a civil contract, applying Hanafi law.
- **Fyzee v. Fyzee (1946)** — Illustrates Shia inheritance rules; property goes to blood relatives over widow.
- **Mohd. Ahmed Khan v. Shah Bano Begum (1985)** — SC applied Hanafi principles of maintenance and then CrPC Section 125.

□ 16-MARK ESSAY BLUEPRINT

- **STAGE 1** → **Hook + Roadmap:** Karbala 680 CE; political split → legal schools. Cover Sunni (4 schools) and Shia (3 schools) with key differences.
- **STAGE 2** → **Sunni Schools:** Hanafi (India), Maliki, Shafi'i, Hanbali — founder, method, geography.
- **STAGE 3** → **Shia Schools:** Ithna Ashari (Muta marriage, different inheritance), Ismaili, Zaidi.
- **STAGE 4** → **Comparison Table:** Marriage, Dower, Divorce, Inheritance differences.
- **STAGE 5** → **Verdict:** In India, Hanafi law is the default; Shia law applies to Shia Muslims. Courts apply the personal law of the party.

□ FACT-PATTERN RISK ALERT

Scenario: A Sunni Muslim pronounces triple talaq in one sitting. His wife (Shia) argues the marriage is only once-revocably dissolved. Decide.

- **I — ISSUE:** Which school's law governs when husband is Sunni and wife is Shia?
- **R — RULE:** Personal law of the husband governs divorce. Under Hanafi (Sunni) law, triple talaq in one sitting = irrevocable dissolution (Talaq-ul-Biddat). But note: *Shayara Bano v. Union of India (2017)* — Supreme Court declared instant triple talaq unconstitutional and void.
- **A — ANALYSIS:** The decoy is the wife's Shia status. Divorce is governed by the husband's law. However, post-*Shayara Bano*, instant triple talaq is now illegal (*Muslim Women (Protection of Rights on Marriage) Act, 2019*).
- **C — CONCLUSION:** The triple talaq is void; husband can be prosecuted under the 2019 Act; wife remains married and entitled to maintenance.

3. Shariat Act, 1937 & Who is a Muslim

Previous Year Questions

- **[16M]** State the importance of Shariat Act, 1937 dealing with application of Mohammedan Law in India. (2013-100) □□
- **[10M]** Explain salient features of Shariat Act, 1937. (2025-80) □□
- **[6M]** Write a note on Shariat Act, 1937. (2019-80, 2024-80) □□
- **[16M]** Who is a Muslim? What are the consequences of colourable conversion? (2015-100, 2021-100, 2022-100) □□□

The Hook

Before 1937, Muslim women in many parts of India were governed by Hindu customary law of the region, not Muslim personal law. They could not inherit property they were entitled to under the Quran. The Muslim Personal Law (Shariat) Application Act, 1937 changed this — it brought all Muslims under one uniform personal law regardless of local custom.

The Shariat Act, 1937

Section 2, Shariat Act, 1937: “Notwithstanding any custom or usage to the contrary, in all questions regarding... intestate succession... marriage, dissolution of marriage... the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat).”

In Simple Terms: Custom cannot override Muslim personal law on matters of family and inheritance. The Shariat Act ensures that all Muslims in India are governed by Islamic personal law, not local practice.

Subjects covered: Marriage, divorce, dower, maintenance, guardianship, gift, wakf, inheritance, and succession.

Subjects NOT covered: Agricultural land in some states (Uttar Pradesh, Punjab), charitable endowments of a non-Muslim character.

Who is a Muslim?

A Muslim is a person who professes the Islamic faith. There are two ways to become a Muslim: 1. **By birth** — born to a Muslim father (or both Muslim parents under Sunni law). 2. **By conversion** — by sincerely reciting the *Kalima* (the declaration of faith: “There is no god but Allah, and Muhammad is his messenger”).

Conversion and its Consequences

Genuine conversion brings a person fully under Muslim personal law. Effects: - Marriage: A male convert can marry; a female convert can marry a Muslim. - Guardianship: Muslim personal law applies. - Succession: Convert inherits as a Muslim.

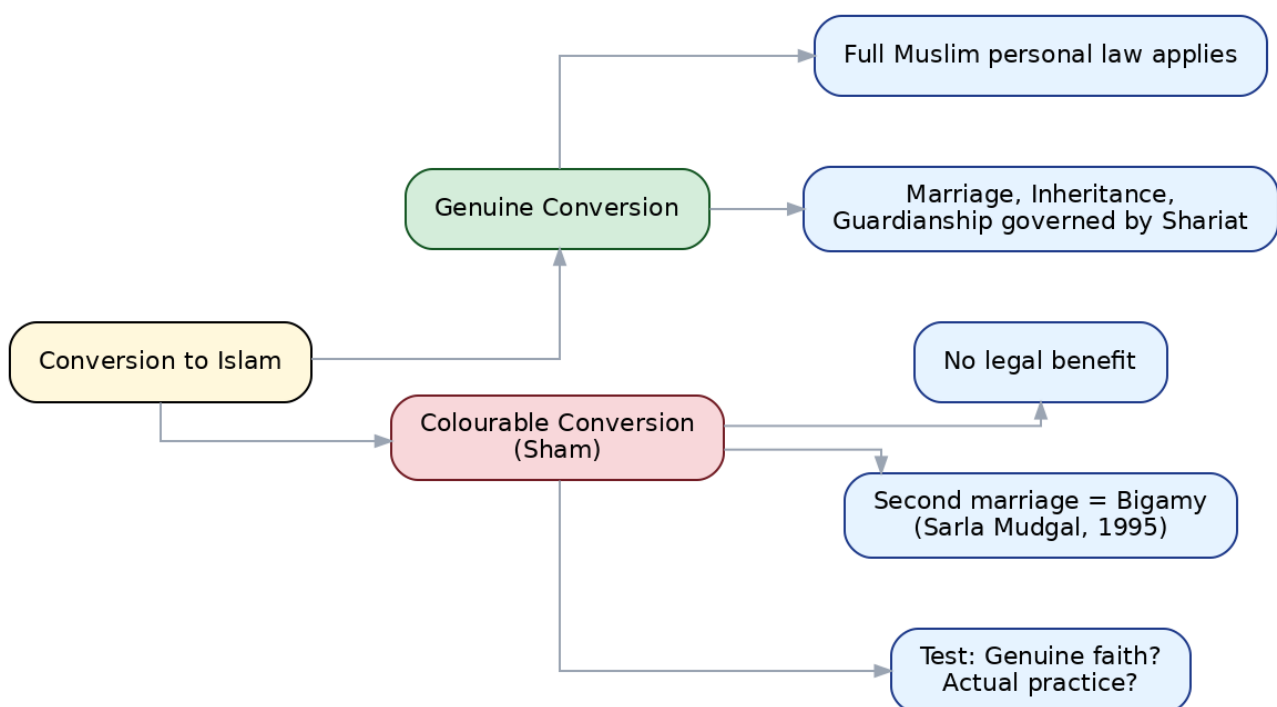
Colourable (sham) conversion — converting only to gain a legal advantage (e.g., to escape bigamy laws or to get a divorce easily) without genuine faith.

Courts look at the following to determine whether conversion is genuine: 1. Did the person actually learn and practice Islamic faith? 2. Was there genuine belief, or only paper conversion? 3. Did the person revert to earlier religion immediately after the legal purpose was served?

Case Laws

- **Noor Jehan Begum v. Eugene Tischenko (1942)** — A Russian man converted to Islam solely to marry a Muslim woman, then reverted. Court held conversion was not genuine.
- **Skinner v. Order (1871)** — A Christian woman converted to Islam and married a Muslim. Later she reconverted. Court held conversion and second marriage were invalid as she had a living husband under the first marriage.
- **Sarla Mudgal v. Union of India (1995)** — Supreme Court held that a Hindu husband who converts to Islam to take a second wife, while the first Hindu wife is alive, commits bigamy under Section 494 IPC. The second marriage is invalid.

The Visual



FACT-PATTERN RISK ALERT

Scenario: Dharmendra and Divya are married under Hindu law. He then marries Ranjitha. Divya files for bigamy. Both Dharmendra and Ranjitha then convert to Islam and claim the second marriage is valid under Muslim law. Is this valid?

- **I — ISSUE:** Can conversion to Islam validate a second marriage contracted by a Hindu while the first Hindu wife is alive?
- **R — RULE:** *Sarla Mudgal v. Union of India (1995)* — conversion to Islam does not dissolve a Hindu marriage. The first marriage subsists. The second marriage is void under Section 494 IPC (bigamy).
- **A — ANALYSIS:** The decoy is the conversion — students often think converting to Islam automatically allows polygamy. It does not. The first marriage under Hindu law is valid and undissolved.
- **C — CONCLUSION:** Dharmendra is guilty of bigamy. The conversion is colourable. The second marriage is void. Divya's complaint is valid.

4. Concept and Classification of Marriage

Previous Year Questions

- **[16M]** What are the essentials of a valid marriage under Mohammeden Law? (2014-100, 2016-100, 2021-100, 2022-100, 2025-100, 2026-80) [] [] []
- **[16M]** "Marriage under Muslim law is a civil contract" — critically examine. (2020-100, 2022-100) [] []
- **[16M]** Define and distinguish valid, void and irregular marriages. (2012-100, 2015-100, 2017-100) [] [] []
- **[10M]** When does a Muslim marriage become irregular and what are its effects? (2012-100, 2019-100, 2021-80, 2023-80) [] [] []
- **[5M]** Write a note on essentials of marriage. (2011-100) [] []

The Hook

In 1886, Justice Mahmood of the Allahabad High Court declared in *Abdul Kadir v. Salima* that Muslim marriage "is not a sacrament but a civil contract." This one sentence reshaped how Indian courts understand Muslim marriage — it can be contracted, subject to conditions, and dissolved by agreement.

Nature of Muslim Marriage

Muslim marriage (*Nikah*) is defined as a civil contract for the legalisation of sexual intercourse and procreation of children. It is not a religious sacrament like Hindu marriage. It has the following characteristics:

1. It is a **contract** — offer (*ijab*) and acceptance (*qubul*) are essential.
2. Both parties must be **competent** (adult, sane).
3. **Dower** (meher) is an essential consideration — it is the wife's right, not a bride price.
4. It creates **mutual rights and obligations** — cohabitation, maintenance, fidelity.

But it is not purely a contract: it cannot be entered for a fixed period (Sunni law); it creates status; it has religious significance; it cannot be transferred.

Abdul Kadir v. Salima (1886): *“Marriage is nothing more than a civil contract. According to Mohammaden law, it is a contract which has for its object the procreation and legalizing of children.”*

In Simple Terms: A Muslim marriage requires a formal offer and acceptance in the same meeting, in the presence of witnesses, with an agreed dower — much like a contract, but one that creates a lifelong personal status.

Essentials of a Valid Muslim Marriage

- 1. Proposal and Acceptance (Ijab and Qubul):** - Must be in the same sitting (*majlis*). - Must be clear, unambiguous, and unconditional. - Can be made by the parties themselves or through agents (*wakils*).
- 2. Competency of Parties:** - Both must have attained puberty (or be of marriageable age). - Must be sane at the time of marriage. - Cannot be under prohibited degrees of relationship.
- 3. Witnesses:** - Sunni law: Two male witnesses (or one male + two female). - Shia law: No witnesses required for validity (though desirable).
- 4. Dower (Meher):** - The wife's exclusive right to a sum of money or property. - May be fixed at the time of marriage (specified dower) or after (proper/customary dower). - Non-payment does not invalidate the marriage.
- 5. No Legal Impediments:** - Must not be within the prohibited degrees (consanguinity, affinity, fosterage). - Must not have an existing marriage beyond permissible number.

Classification of Marriage

A. Valid (Sahih) Marriage: All essential requirements fulfilled. Creates full legal effects — cohabitation rights, dower, maintenance, inheritance, legitimacy of children.

B. Void (Batil) Marriage: A marriage prohibited by absolute rules — e.g., marriage within prohibited degrees of consanguinity (mother, daughter, sister). No legal effects whatsoever. Children of a void marriage are illegitimate.

C. Irregular (Fasid) Marriage: Not void absolutely, but has an impediment that can be removed. Effects: - No *iddat* (waiting period) before consummation. - After consummation: dower is payable (at least proper dower), *iddat* must be observed. - Children born are **legitimate**. - But the marriage can be dissolved by either party at any time.

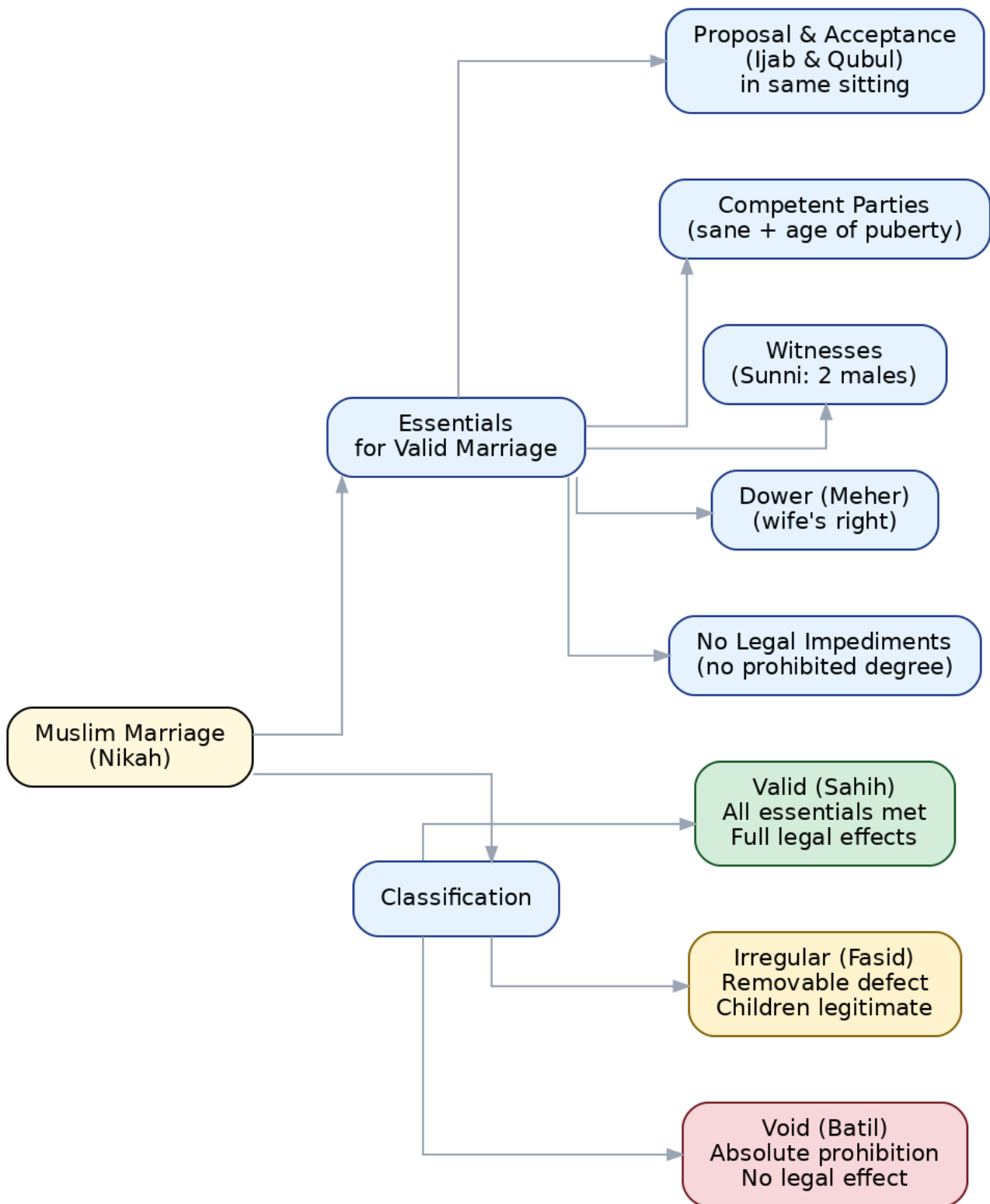
Type	Examples	Children	Dower	Inheritance
Valid (Sahih)	All essentials met	Legitimate	Full right	Yes
Void (Batil)	Marriage with mother, sister	Illegitimate	None	No
Irregular (Fasid)	5th wife, marriage without witnesses (Sunni), marriage during <i>iddat</i>	Legitimate	Proper dower after consummation	No

Grounds making a marriage Void vs. Irregular

Void marriages (Hanafi): Marriage with a woman prohibited due to consanguinity (blood relation — mother, daughter, sister, niece); affinity (mother-in-law, step-daughter); fosterage (a woman who suckled the man as a child).

Irregular marriages (Hanafi): Marriage with 5th wife; marriage with a woman undergoing *iddat*; marriage without witnesses; marriage with a non-Muslim woman of non-Kitabi faith.

The Visual



Case Laws

- **Abdul Kadir v. Salima (1886)** — Muslim marriage is a civil contract; not a sacrament.
- **Khurshid Bibi v. Baboo Mohd. Amin (1967)** — A Muslim wife can dissolve marriage by *khul'* even without husband's consent if the court is satisfied there are grounds.

- **Masroor Ahmed v. State (2008)** — Delhi HC held irregular marriage can be dissolved by either party unilaterally.

□ 16-MARK ESSAY BLUEPRINT

- **STAGE 1** → **Hook + Roadmap:** *Abdul Kadir v. Salima* — “civil contract not sacrament.” Cover nature, essentials, and all three classifications with effects.
- **STAGE 2** → **Nature of Muslim Marriage:** Contract features (*Ijab/Qubul*) vs. sacrament argument; dower as essential consideration.
- **STAGE 3** → **Essentials + Void/Irregular/Valid:** Define each class with examples from Hanafi law.
- **STAGE 4** → **Comparative Table:** Effects on children, dower, inheritance across three categories.
- **STAGE 5** → **Verdict:** Valid marriage gives full rights; irregular gives limited rights but protects children; void gives none. Courts protect children’s legitimacy even in irregular marriages.

□ FACT-PATTERN RISK ALERT

Scenario: A Hanafi Muslim who already has four wives contracts a fifth marriage. Two children are born. The fifth wife claims dower and the children claim inheritance.

- **I — ISSUE:** (a) Is the 5th marriage valid? (b) Are the children legitimate? (c) Is dower payable?
- **R — RULE:** Under Hanafi law, a 5th marriage while four wives are living is irregular (*fasid*), not void. Irregular marriage, after consummation, entitles the wife to proper dower. Children of an irregular marriage are **legitimate** and inherit.
- **A — ANALYSIS:** The decoy is the assumption that 5th marriage is void. Under Hanafi law it is only irregular. Under Shia law, it would be void. In India, most Muslims are Hanafi.
- **C — CONCLUSION:** Marriage is irregular and can be dissolved by either party. Dower is payable. Children are legitimate and inherit from their father.

5. Muta Marriage

Previous Year Questions

- **[16M]** Discuss Muta marriage under Mahomedan law. (2012-100) □□□
- **[8M/6M]** Write a note on Muta marriage. (2013-100, 2016-100, 2017-100, 2021-80, 2022-80) □□□

The Hook

Muta in Arabic means “enjoyment” or “benefit.” This temporary marriage was permitted in early Islam during long military campaigns so that soldiers could have legitimate companionship. Caliph Umar later banned it. The Sunni community treats Umar’s ban as definitive. The Shia community argues the Prophet never permanently prohibited it, and Umar had no authority to ban what the Quran permitted. This debate continues 1,400 years later.

What is Muta Marriage?

Muta marriage is a temporary marriage recognised only under **Shia (Ithna Ashari) law**. It is **absolutely prohibited under Sunni law**.

Ameer Ali on Muta: “*Muta is a marriage contracted for a fixed period of time, in consideration of a fixed dower.*”

In Simple Terms: Muta is like a contractual union — the parties agree to live together as husband and wife for a specific period (a day, a month, a year). At the end of the period, the marriage automatically terminates without any formal divorce.

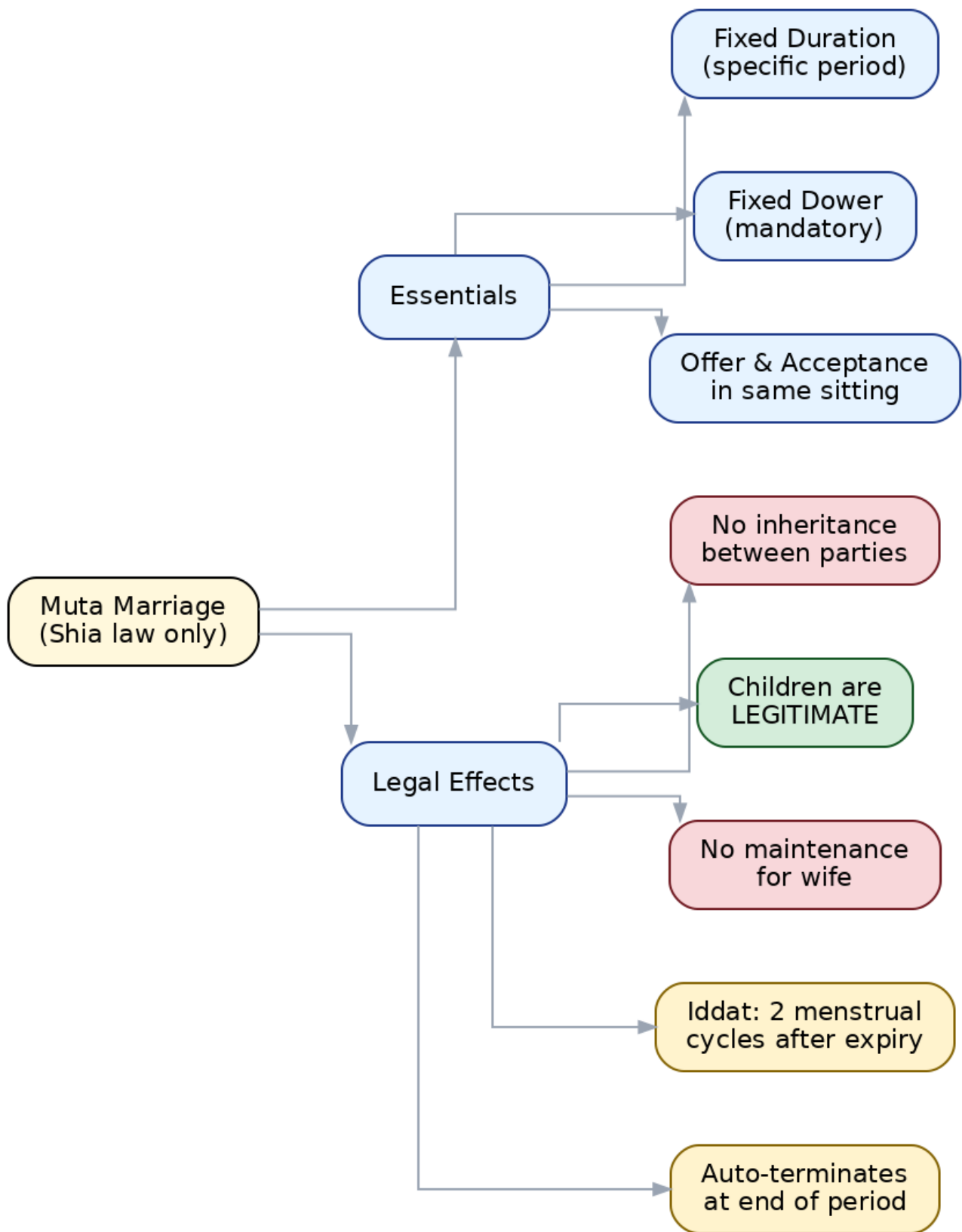
Essentials of Muta Marriage

1. **Duration must be fixed:** A specific period must be mentioned. If duration is not mentioned, the marriage is treated as a permanent (regular) marriage under Shia law.
2. **Dower must be fixed:** If dower is not mentioned, the contract is void.
3. **Offer and Acceptance:** Must be in the same sitting.
4. **No witnesses required** (unlike regular Sunni marriage).
5. **No restriction on the number of Muta wives** (unlike the 4-wife limit on regular marriages).

Legal Effects of Muta Marriage

Effect	Result
Status	Creates valid status only for the period
Dower	Full dower if marriage is consummated; half if not
Maintenance	Wife is NOT entitled to maintenance (unlike regular marriage)
Inheritance	Parties do NOT inherit from each other unless specified in contract
Children	Children are legitimate and inherit from both parents
Iddat	Wife must observe <i>iddat</i> of 2 menstrual cycles after expiry
Divorce	Not needed — marriage expires automatically
Extension	Can be extended by fresh agreement

The Visual



Case Laws

- **Nabobi v. Bebee (1879)** — Calcutta HC recognised Muta marriage and held children born of Muta are legitimate.
- **Mt. Rustam Ara Begum (1908)** — Held that Muta wife is not entitled to maintenance like a regular wife.
- **Gul Mohammed v. Hasina (1981)** — Children of Muta marriage have full inheritance rights from both parents.

□ 16-MARK ESSAY BLUEPRINT

- **STAGE 1** → **Hook + Roadmap:** Historical origin (military campaigns) → Caliph Umar's ban → Sunni/Shia split. Cover definition, essentials, effects, and comparison with regular marriage.
- **STAGE 2** → **Definition & Essentials:** Shia-only; fixed duration + dower; no witnesses; no cap on number.
- **STAGE 3** → **Legal Effects:** No mutual inheritance; children legitimate; no maintenance; auto-terminates; iddat of 2 cycles.
- **STAGE 4** → **Comparison with Regular Marriage:** Table format.
- **STAGE 5** → **Verdict:** Muta provides legal protection to children while limiting the wife's rights; it reflects the pragmatic approach of Shia jurisprudence. Courts protect children regardless of the type of marriage.

6. Polygamy, Child Marriage & Option of Puberty

Previous Year Questions

- **[Prob]** A Muslim with four wives contracts a fifth marriage. Is it valid? (2013-100, 2014-100, 2016-100, 2021-100, 2022-100, 2025-100) □□□
- **[6M]** Option of Puberty. (2023-80, 2025-80) □□

The Hook

In 1985, Shah Bano — a 73-year-old woman — was divorced by her husband after 43 years of marriage through triple talaq. He had taken a second wife years earlier. Her maintenance case went to the Supreme Court. The resulting judgment and the political storm it created led to the Muslim Women Act, 1986 — and put polygamy and women's rights in Muslim law at the centre of India's public debate.

Polygamy in Muslim Law

Under **Sunni law**, a Muslim man may have up to **four wives** simultaneously, provided he treats them equally. This is based on Quran 4:3.

Quran 4:3: “...then marry women of your choice, two or three or four; but if you fear that you shall not be able to deal justly (with them), then only one...”

In Simple Terms: Islam permits polygamy but conditions it strictly on equal treatment. Many scholars argue equal treatment is practically impossible, making polygamy effectively discouraged. Under Indian law, a Muslim marrying a 5th wife commits no crime (polygamy is not criminally prohibited for Muslims), but the 5th marriage is only irregular, not void.

Key point: Contracting a 5th marriage while 4 wives are living = **irregular (fasid)** under Hanafi law, **void** under Shia law.

Child Marriage

Muslim personal law recognises the capacity to marry at puberty (approximately 15 years). However, the **Prohibition of Child Marriage Act, 2006** applies to Muslims too and prohibits marriage below 18 (girls) and 21 (boys). If contracted: - The marriage is voidable at the option of the minor. - The minor may repudiate the marriage on attaining majority under the **Option of Puberty**.

Option of Puberty (Khyar-ul-Bulugh)

If a minor Muslim's marriage was contracted by someone other than the father or paternal grandfather, the minor can repudiate it on attaining puberty. The option must be exercised promptly — if the minor cohabits after knowing of the repudiation right, the option is lost.

Who can exercise: Minor girl (or boy) whose marriage was contracted by a guardian other than father/paternal grandfather.

When lost: On attaining puberty, if the minor does not repudiate promptly; on consummation with knowledge of the right.

Case Laws

- **Mohd. Ahmed Khan v. Shah Bano Begum (1985)** — Second wife; maintenance of first wife after divorce; CrPC S.125 applies.
- **Abdul Gafur v. Hanseraj (1883)** — Option of puberty: girl repudiated marriage immediately on attaining puberty — valid.
- **Bai Jina v. Khimji (1901)** — Option of puberty lost by cohabitation after attaining puberty.

□ **FACT-PATTERN RISK ALERT**

Scenario: A Muslim father arranges his daughter's marriage when she is 14. At 16, she repudiates the marriage but has been living with her husband for 6 months after learning of her right to repudiate. Can she still exercise the option?

- **I — ISSUE:** Whether the option of puberty is lost by cohabitation after the minor girl knew of her right.
- **R — RULE:** Under Muslim law, the option of puberty must be exercised promptly on attaining puberty. Cohabitation after knowing the right to repudiate = waiver of option. (*Bai Jina v. Khimji*, 1901)
- **A — ANALYSIS:** The decoy is the father's role — father can contract marriage without giving rise to option of puberty. But here the key fact is 6 months of cohabitation **after knowing** of the right. That waives the option.
- **C — CONCLUSION:** The option is lost. The marriage continues to be valid. The girl cannot now repudiate it.

7. Dower — Kinds & Legal Consequences

Previous Year Questions

- **[16M]** Define Dower. Explain the kinds of dower. (2013-100, 2016-100, 2017-100) □□□
- **[Prob]** Husband refuses to pay prompt/deferred dower — legal consequences. (2011-100) □□□
- **[Prob]** Muslim widow retains husband's house in lieu of unpaid dower. (2012-100, 2017-100, 2021-100) □□□
- **[6M]** Write a note on dower / kinds of dower. (2019-100, 2020-100, 2021-100, 2022-100, 2024-80, 2026-80) □□□

The Hook

In 1967, a widow in Lahore refused to leave her deceased husband's house until her unpaid dower of Rs. 5,000 was paid. The heirs went to court to evict her. The court ruled in her favour — a widow's right to retain possession of her husband's property for unpaid dower is one of the strongest protections Muslim law gives women. This is the *widow's lien* or right of retention.

What is Dower?

Dower (*Meher*) is a sum of money or property which the husband is obliged to pay to his wife as a mark of respect for the woman and as security for her. It becomes the wife's absolute property upon marriage.

Tyabji on Dower: "Dower is a sum of money or other property promised by the husband to the wife in consideration of the marriage, and even where no dower is expressly fixed or mentioned at the marriage ceremony, the law confers the right of dower upon the wife."

In Simple Terms: Dower is the wife's legal right to financial security. Even if no amount is agreed, the law gives her a right to "proper dower" (the amount customarily payable in her family/class).

Kinds of Dower

I. Specified Dower (Mahr-i-Musamma): Dower fixed at the time of or after marriage, but before consummation. Divided into:

(a) Prompt Dower (Mahr-i-Muajjal): Payable immediately on demand by the wife. The wife can refuse to live with the husband until it is paid. She can also seek divorce if it is not paid.

(b) Deferred Dower (Mahr-i-Muajjal): Payable on dissolution of marriage (by death or divorce). It is a debt on the husband's estate if he dies.

II. Proper Dower (Mahr-i-Misl): Where dower is not fixed, the wife is entitled to proper dower — the amount payable in similar circumstances to women of her family/class. Factors considered: father's family status, age, beauty, education, and the wealth of the husband.

III. Customary Dower: Where a custom in the community fixes the dower. Courts recognise this when it does not contradict the Shariat.

Legal Consequences of Non-Payment of Dower

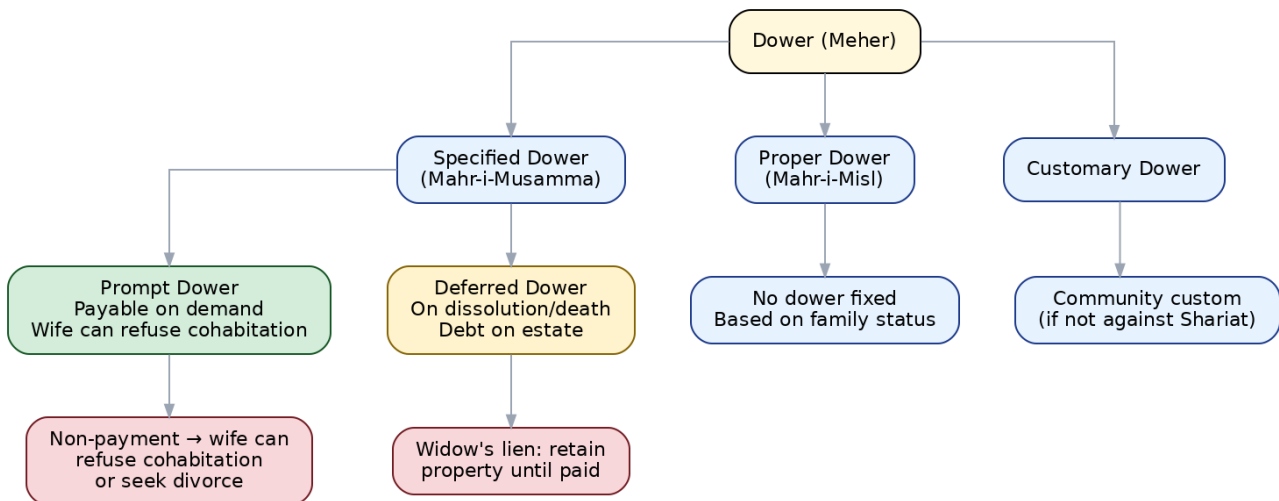
For Prompt Dower: - Wife can **refuse to cohabit** with the husband. - She retains this right even after consummation if prompt dower is unpaid. - She can seek **dissolution of marriage** on grounds of non-payment.

For Deferred Dower: - On husband's death: It is a **debt on his estate**, payable before other heirs receive their shares. - On divorce: It becomes immediately payable.

Widow's Right of Retention (Lien): A widow who has an unpaid dower can retain possession of the deceased husband's property until the dower debt is paid. This is known as the **widow's lien** or right of retention.

Key rules of the widow's lien: 1. The widow must have taken possession lawfully. 2. The right is possessory only — she cannot sell or transfer the property. 3. The heirs cannot evict her until the dower is paid. 4. The right applies to all property of the deceased, not just the marital home.

The Visual



Case Laws

- **Hamira Bibi v. Zubaida Bibi (1916)** — Privy Council held widow's right of retention is valid against all heirs; a debt due for dower is like any other debt.
- **Maina Bibi v. Chaudhri Vakil Ahmed (1924)** — Widow's lien applies to immovable property taken in lawful possession.
- **Sarabai v. Rabiabai (1905)** — Deferred dower is a debt on the husband's estate payable before distribution of inheritance.
- **Tyabji, F.B., Muslim Law (4th ed.)** — Classic authority on proper dower calculation.

□ 16-MARK ESSAY BLUEPRINT

- **STAGE 1** → **Hook + Roadmap:** Widow's lien example; cover all types of dower and legal consequences.
- **STAGE 2** → **Definition + Nature:** Dower as wife's absolute property; duty of husband; Tyabji's definition.
- **STAGE 3** → **All Kinds of Dower:** Specified (prompt + deferred), proper, customary — with examples.
- **STAGE 4** → **Legal Consequences:** Non-payment of prompt dower → refuse cohabitation, seek divorce; deferred dower → debt on estate; widow's lien details.
- **STAGE 5** → **Cases + Verdict:** Hamira Bibi (widow's lien); Sarabai (dower as debt). Conclude: dower is Islam's primary mechanism for women's economic protection.

□ FACT-PATTERN RISK ALERT

Scenario: A Mohammadan widow is in possession of her deceased husband's house in lieu of unpaid dower. The house is mortgaged to a bank. She refuses to give up possession to the bank or other heirs until her dower is paid. Can she do so?

- **I — ISSUE:** Whether the widow's right of retention over the mortgaged property takes priority over the bank's mortgage.
- **R — RULE:** Widow's right of retention (*Hamira Bibi v. Zubaida Bibi, 1916*) — a widow can retain possession of the husband's property until dower is paid. However, dower is an unsecured debt; a **registered mortgage** is a secured debt and takes priority.
- **A — ANALYSIS:** The decoy is that the widow's lien is absolute. But the bank's mortgage was created during the husband's lifetime and is a secured charge. The widow's possessory lien cannot defeat a prior valid mortgage.
- **C — CONCLUSION:** The widow can resist eviction by the heirs (unsecured claimants) until dower is paid. But the bank's mortgage, being a prior secured debt, has priority. She may have to surrender to the bank unless the heirs first pay her dower from other estate assets.

Quick Revision & Case Law Table

One-line Memory Hooks

- **Sources:** Quran → Sunnah → Ijma → Qiyas — “the four-step Islamic ladder of law.”
- **Schools:** Sunni = Hanafi/Maliki/Shafi’i/Hanbali; Shia = Ithna Ashari (12 Imams) — “4 Sunni, 3 Shia.”
- **Shariat Act 1937:** Custom cannot override Muslim personal law on family matters.
- **Conversion:** Genuine = full Muslim law applies; Sham = bigamy under IPC (*Sarla Mudgal*).
- **Valid Marriage:** Ijab + Qubul + competent parties + witnesses + dower + no impediment.
- **Irregular (Fasid) marriage:** Children legitimate; dower after consummation; can dissolve anytime.
- **Void marriage:** Prohibited degree → no legal effects, children illegitimate.
- **Muta:** Shia only; fixed duration + dower; auto-terminates; children legitimate; no wife-inheritance.
- **Polygamy:** 4 wives max (Sunni); 5th = irregular; equal treatment required.
- **Option of Puberty:** Exercise promptly; cohabitation after knowing right = waiver.
- **Dower:** Prompt → refuse cohabitation; Deferred → debt on estate; Widow’s lien → retain till paid.

Master Case List for Unit 1

Case	Topic	One-line Ratio
<i>Abdul Kadir v. Salima (1886)</i>	Nature of Marriage	Muslim marriage is a civil contract, not a sacrament
<i>Collector of Madura v. Mootoo Ramalinga (1868)</i>	Sources — Ijma	Ijma of jurists is binding where Quran/Sunnah are silent
<i>Shamim Ara v. State of UP (2002)</i>	Sources + Talaq	Quran norms override bare custom; talaq must be reasoned
<i>Sarla Mudgal v. Union of India (1995)</i>	Conversion	Hindu husband converting to contract 2nd marriage = bigamy
<i>Noor Jehan Begum v. Eugene Tischenko (1942)</i>	Colourable Conversion	Sham conversion for marriage has no legal effect
<i>Skinner v. Order (1871)</i>	Conversion + Marriage	Christian wife's conversion and second marriage invalid
<i>Khurshid Bibi v. Baboo Mohd. Amin (1967)</i>	Classification of Marriage	Muslim wife can seek dissolution of marriage through court
<i>Masroor Ahmed v. State (2008)</i>	Irregular Marriage	Irregular marriage can be dissolved by either party
<i>Nabobi v. Bebee (1879)</i>	Muta Marriage	Children of Muta marriage are legitimate
<i>Mt. Rustam Ara Begum (1908)</i>	Muta Marriage	Muta wife not entitled to maintenance
<i>Gul Mohammed v. Hasina (1981)</i>	Muta Marriage	Children of Muta inherit from both parents
<i>Mohd. Ahmed Khan v. Shah Bano Begum (1985)</i>	Polygamy / Maintenance	S.125 CrPC applies to divorced Muslim women
<i>Abdul Gafur v. Hanseraj (1883)</i>	Option of Puberty	Prompt exercise of option on attaining puberty = valid
	Option of Puberty	Cohabitation after knowing right = option lost

Case	Topic	One-line Ratio
<i>Bai Jina v. Khimji (1901)</i>		
<i>Hamira Bibi v. Zubaida Bibi (1916)</i>	Dower — Widow's Lien	Widow's right of retention valid against all heirs
<i>Maina Bibi v. Chaudhri Vakil Ahmed (1924)</i>	Widow's Lien	Lien applies to immovable property lawfully possessed
<i>Sarabai v. Rabiabai (1905)</i>	Dower as Debt	Deferred dower = debt on estate; paid before inheritance

End of Unit 1.