LAHORE LEADS UNIVERSITY

Assignment

Subject: Islamic Personal Law-I

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Detailed Note: Marriage, Khula, Divorce, and Iddat under Islamic Law

1. Marriage (Nikah)

Heading:

Marriage / Nikah

Meaning:

Nikah is a civil contract between a man and a woman for the purpose of legalizing sexual relations and establishing rights and obligations between them. It is considered a sacred covenant _Mithaq-e-Ghaliz_ in Islam.

Definition:

According to Hedaya, “Nikah is a contract which has for its object the procreation and legalizing of children.”

Essentials of a Valid Nikah:

1.*Proposal and Acceptance (Ijab-o-Qabool)*

Must be in one meeting and by free consent.

2. *Parties:*

Bride and groom must be of sound mind and have attained puberty.

3. *Witnesses:*

Two male or one male + two female adult Muslim witnesses required under Sunni law.

4. *Dower (Mahr):*

A sum of money or property the husband must pay to the wife. It can be prompt or deferred.

5. *Free Consent:*

No force, fraud, or coercion. A major girl cannot be married without her consent.

Legal Effects:

It creates mutual rights of inheritance, legitimacy of children, maintenance of wife by husband, and imposes restrictions on the wife regarding obedience and residence.

2. Divorce (Talaq)

Heading:

Talaq – Divorce by Husband

Meaning:

Talaq is the unilateral right of a Muslim husband to dissolve the marriage by pronouncing repudiation. It is the most common form of divorce in Islamic law.

Definition:

According to Ameer Ali, “Talaq is the absolute power which the husband possesses of divorcing his wife at all times.”

Kinds of Talaq:

Type **Explanation** **Revocability**

Talaq-e-Ahsan

EX: Single pronouncement during *tuhr* followed by abstinence till *iddat* ends. Most approved form.

Rev: Revocable during iddat

Talaq-e-Hasan

Ex: Three pronouncements in three successive *tuhrs*.

Rev: Revocable after 1st & 2nd, final after 3rd

Talaq-e-Biddat

Ex: Three pronouncements in one sitting. Triple Talaq. Disapproved but effective under Sunni law.

Rev: Irrevocable immediately

Legal Restrictions in Pakistan:

Under Section 7 of Muslim Family Laws Ordinance 1961, husband must give written notice to Chairman Union Council and supply copy to wife. Talaq does not become effective until 90 days after notice or delivery of child, whichever is later.

3. Khula

Heading:

Khula – Divorce at Instance of Wife

Meaning:

Khula is the right of a Muslim wife to seek dissolution of marriage from court by returning her dower or any other consideration to the husband. It is divorce with mutual consent but initiated by the wife.

Definition:

It is defined as “redemption of the marriage by the wife by giving some consideration to the husband for her release.”

Grounds for Khula:

Under Dissolution of Muslim Marriages Act 1939, a wife can seek Khula on grounds like: cruelty, non-maintenance, impotency, insanity, husband missing for 4 years, etc. The landmark case _Khurshid Bibi v. Muhammad Amin_ PLD 1967 SC 97 established that if spouses cannot live within limits of Allah, court must grant Khula.

Procedure:

Wife files suit in Family Court. Court tries reconciliation. If fails, court dissolves marriage on return of dower. _Iddat_ is compulsory after Khula.

4. Iddat

Heading:

Iddat – Waiting Period

Meaning:

Iddat is the period a Muslim woman must observe after dissolution of marriage by death or divorce before she can lawfully remarry. It ensures ascertainment of pregnancy and provides time for reconciliation.

Definition:

Literal meaning is “to count.” Technically, it is the period during which a woman is prohibited from remarrying.

Duration of Iddat:

Situation Period of Iddat

Divorce – Menstruating woman

Three menstrual courses. [Quran 2:228]

Divorce – No menstruation

Three lunar months

Widow

Four months and ten days. [Quran 2:234]

Pregnant woman

Until delivery of child. [Quran 65:4]

Rules During Iddat:

1. Woman cannot marry another man.

2. In case of revocable Talaq, husband can take her back without fresh Nikah.

3. Widow must not use perfume, ornaments, or leave house unnecessarily.

4. Husband is bound to maintain wife during iddat of divorce.

Purpose of Iddat:

To ascertain whether the woman is pregnant to avoid confusion of parentage, to give cooling-off period for reunion, and to mourn death of husband in case of widow.

Conclusion:

Marriage, Talaq, Khula, and Iddat form the core of Islamic family law. They balance the rights of husband and wife while protecting social morality and lineage. The Muslim Family Laws Ordinance 1961 and DMMA 1939 have codified these principles in Pakistan to prevent misuse and ensure justice.