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Assignment: Islamic Personal Law 1

Topic: Marriage, Khula, Divorce, Iddat

1. Marriage - Nikah

- *Definition*: Nikah is a civil contract in Islam for the legalization of cohabitation and procreation.

- *Essentials of Valid Nikah*:

1. *Offer (Ijab) & Acceptance (Qabool)*: At one meeting, before witnesses.

2. *Parties*: Major, sound mind. Woman needs Wali in Hanafi school if minor/virgin.

3. *Witnesses*: 2 adult Muslim males or 1 male + 2 females.

4. *Dower (Mahr)*: Not essential for validity but wife gets right to claim it. Can be prompt or deferred.

5. *No Legal Impediments*: Not within prohibited degrees, not in Iddat, not already 4 wives for man.

- *Legal Effects*: Mutual rights of inheritance, legitimacy of children, maintenance, dower, obedience, conjugal rights.

2. Divorce - Talaq

- *Definition*: Unilateral repudiation of marriage by husband.

- *Types under Sunni Law*:

1. *Talaq-e-Ahsan*: One pronouncement in Tuhr, then Iddat. Revocable during Iddat. Most approved form.

2. *Talaq-e-Hasan*: Three pronouncements in three successive Tuhrs. Revocable after 1st & 2nd, irrevocable after 3rd.

3. *Talaq-e-Biddat*: Triple Talaq in one sitting. Controversial. Declared unconstitutional in India 2017, banned in Pakistan via MFLO 1961 Sec 7.

- *Shia Law*: Talaq must be oral, in Arabic, in presence of 2 witnesses, and in specific form. Triple Talaq not allowed.

- *Legal Requirements in Pakistan*: Muslim Family Laws Ordinance 1961 Sec 7 — Written notice to Chairman Union Council + copy to wife. 90 days for reconciliation. Talaq becomes effective after 90 days if no reconciliation.

3. Khula

- *Definition*: Divorce at the instance of wife with her consent to compensate husband, usually by returning dower. Based on Quran 2:229.

- *Grounds*: Not required to prove specific ground, but wife must satisfy court she cannot live with husband “within limits of Allah.”

- *Procedure in Pakistan*:

1. Wife files suit in Family Court under West Pakistan Family Courts Act 1964.

2. Court attempts reconciliation.

3. If fails, court grants Khula and wife generally returns dower/benefits received.

4. Dissolution of Muslim Marriages Act 1939 Sec 2 also gives 9 grounds for judicial divorce to women, separate from Khula.

- *Difference from Talaq*: Talaq = husband’s right. Khula = wife’s right but through court and usually with compensation.

4. Iddat

- *Definition*: Period of waiting a woman must observe after dissolution of marriage by death or divorce before she can remarry.

- *Purpose*: Ascertain pregnancy, mourning, reconciliation chance.

- *Duration*:

1. *Divorce*: 3 menstrual cycles if menstruating - Quran 2:228. If no menses, 3 lunar months.

2. *Pregnant*: Until delivery - Quran 65:4.

3. *Death of Husband*: 4 months 10 days - Quran 2:234.

4. *Before consummation*: No Iddat for divorce - Quran 33:49. But Iddat for death still required.

- *Rules during Iddat*: Cannot marry another man. Should reside in husband's house for revocable divorce. For death, mourning restrictions apply.

- *Maintenance during Iddat*: Husband liable to maintain wife during Iddat of divorce.

5. Important Case Law

1. *Mst. Khurshid Bibi v. Muhammad Amin PLD 1967 SC 97*: Landmark case — Khula can be granted even without husband's consent if court is satisfied.

2. *Mst. Balqis Fatima v. Najm-ul-Ikram PLD 1959 Lah 566*: Wife entitled to Khula if she cannot live with husband.

3. *Allah Rakha v. Federation PLD 2000 FSC 1*: Triple Talaq discussed under MFLO.

6. Conclusion

Islamic Personal Law balances rights of both spouses. Marriage is a contract, not sacrament. Talaq and Khula are modes of dissolution to avoid hardship. Iddat protects lineage and gives cooling period. MFLO 1961 and Family Courts Act 1964 codified these principles in Pakistan.

Assignment Structure:

1. *Introduction*: Nature of Islamic Marriage

2. *Nikah*: Essentials & Effects

3. *Talaq*: Kinds & Legal Procedure in Pakistan

4. *Khula*: Concept & Court Process

5. *Iddat*: Meaning, Duration, Rules

6. *Case Law*

7. *Conclusion*