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Muslim Marriage and Dissolution

Family Law-I (LLB 201) | GGSIPU | Unit-II

→ Muslim marriage is called NIKAH. It creates a lawful family relationship, reciprocal rights, and duties between spouses.

→ In this unit we study: meaning and nature of Nikah; essentials and kinds of marriage; Muta; restitution; divorce and judicial dissolution.

→ Main statutes: Dissolution of Muslim Marriages Act, 1939 and Muslim Women (Protection of Rights on Marriage) Act, 2019.

→ Learning goal: identify the correct legal rule, apply it to facts and mention a relevant case.

REMEMBER —

NIKAH + VALIDITY + DIVORCE + WOMEN'S REMEDIES

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Meaning of Nikah

→ Nikah is the Muslim law term for a marriage contracted between two legally competent persons.

→ Its central purpose is to establish a lawful marital relationship and a framework for family life.

→ Marriage brings personal rights, obligations of support, legitimacy of children and inheritance consequences.

→ It requires a valid proposal and acceptance; mere living together is not, by itself, proof of every legal requirement.

→ Example: A proposes in a lawful marriage setting and B freely accepts. Their marriage must still satisfy other legal conditions.

REMEMBER:
NIKAH IS A LEGAL RELATIONSHIP WITH MUTUAL DUTIES

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Unit II : Muslim Marriage and Dissolution

Objects of Muslim Marriage

→ 1. To recognise a lawful marital union based on mutual consent.

→ 2. To provide companionship, affection and stability in family life.

→ 3. To protect the interests of children and recognise parent-child responsibilities.

→ 4. To establish enforceable rights such as maintenance and dower (mahr).

→ 5. To provide rules governing dissolution when the relationship cannot continue.

→ The objects are legal and social, not merely ceremonial. A marriage cannot be reduced to a purchase or sale.

REMEMBER:
CONSENT, COMPANIONSHIP, CHILDREN, RIGHTS

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Nature: Contract and Social Institution

→ Muslim marriage is commonly described in Indian law textbooks as having a contractual foundation.

→ Offer (ijab), acceptance (qubul), competence and lawful conditions are important elements.

→ However, it is also a religious and social institution with moral, family and legal responsibilities.

→ It is not an ordinary commercial bargain: the spouses are persons with independent rights.

→ Abdul Kadir v Salima (1886) ILR 8 All 149 discusses marriage, dower and reciprocal obligations.

REMEMBER:

NIKAH HAS CONTRACTUAL FORM AND FAMILY CHARACTER

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Offer and Acceptance

→ IJAB means a clear proposal of marriage by one side.

→ QUBUL means the other side's clear acceptance of that proposal.

→ In the classical rule, offer and acceptance should correspond and occur in the same meeting or transaction.

→ The words or conduct must show an intention to create a marriage, not a casual promise of future marriage.

→ Example: An engagement is a promise to marry later. Nikah requires the actual marriage offer and acceptance.

REMEMBER: IJAB + QUBUL = CORE FORMATION STEP

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Capacity and Free Consent

→ Persons must have legal capacity and be able to understand the nature of marriage.

→ Classical personal law uses puberty as a capacity concept ; Indian child-marriage legislation also applies and must be considered.

→ Consent obtained through coercion, fraud or lack of real understanding can lead to legal dispute.

→ A guardian's role in traditional law must be examined with the person's rights and present statutory protections.

→ Exam tip: distinguish the traditional personal-law rule from statutory age protections.

REMEMBER :
CAPACITY AND GENUINE CONSENT BOTH MATTER

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Witnesses and Marriage Ceremony

→ Sunni traditions generally require witnesses for Nikah, often two adult male Muslim witnesses or one male and two female witnesses in the Hanafi school.

→ Shia rules on witnesses for the marriage contract differ; avoid treating one school's rule as universal.

→ The Qazi may officiate, but the validity question depends on applicable legal essentials.

→ A written nikahnama helps prove terms, including dower, even where writing is not itself the essential ceremony.

→ Example: A dispute about witnessing requires identifying the parties' school and the facts.

REMEMBER: ASK WHICH SCHOOL OF LAW APPLIES

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Prohibited Relationships

→ Marriage cannot be contracted within certain prohibited family relationships.

→ Consanguinity = blood relationships, such as parent-child or siblings.

→ Affinity = relationships created by marriage, such as certain in-law relationships.

→ Fosterage = traditional prohibitions arising from milk relationships under applicable Muslim law.

→ Other impediments may be temporary, e.g., a woman observing iddat or a marriage prohibited by an existing marital relationship.

→ Always distinguish a permanent prohibition from a temporary bar.

REMEMBER:

CONSANGUINITY / AFFINITY / FOSTERAGE

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The Concept of Mahr

→ Mahr (dower) is an obligation arising from Muslim marriage and a right belonging to the wife.

→ It is not the purchase price of the woman and is not the same as dowry demanded from the bride's family.

→ It may be specified in the marriage agreement or assessed under the applicable principles when unspecified.

→ Payment may be immediate or deferred according to the arrangement.

→ Abdul Kadir v Salima explains that dower has an important legal place within Muslim marital obligations.

REMEMBER: MAHR BELONGS TO THE WIFE

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Prompt and Deferred Dower

→ **PROMPT MAHR**: payable on demand according to the applicable arrangement and legal rules.

→ **DEFERRED MAHR**: normally payable at the agreed time or on an event such as dissolution or death.

→ Specified dower is an agreed amount; proper dower is determined from relevant circumstances when an amount was not fixed.

→ A husband cannot assume that marriage becomes invalid merely because dower was not fixed beforehand.

→ Example: Rs 20,000 prompt and Rs 80,000 deferred can both form parts of an agreed mahr.

REMEMBER: PROMPT = DEMAND; DEFERRED = AGREED EVENT

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Kinds of Muslim Marriage

→ Traditional textbooks explain three categories: SAHIH (valid), FASID (irregular) and BATIL (void).

→ A valid marriage fulfils essential conditions and carries normal marital legal effects.

→ An irregular marriage has a defect that may be removable under the applicable Sunni school.

→ A void marriage suffers a fundamental legal prohibition and cannot be treated as valid merely by ceremony.

→ Not every school of Muslim law uses these categories in exactly the same way.

REMEMBER: SAHIH / FASID / BATIL

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Sahih: Valid Marriage

→ A sahih marriage is lawful and free from an applicable permanent or temporary bar.

→ Its effects may include cohabitation rights, maintenance obligations, dower rights, legitimacy of children and inheritance between spouses.

→ The particular entitlement depends on facts and the governing legal rules.

→ Example: Adults freely enter a lawful Nikah with proper requirements satisfied.

→ Write in an exam: definition → essentials → effects → short illustration.

REMEMBER: VALID NIKAH CREATES ORDINARY MARITAL RIGHTS

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Fasid: Irregular Marriage

→ In traditional Sumni law, fasid describes a marriage affected by a removable or temporary irregularity.

→ Possible examples discussed in textbooks include an issue concerning witnesses or an otherwise temporary bar.

→ Effects before and after consummation can differ; do not assume all rights equal a valid marriage.

→ Removal of the relevant obstacle may allow a lawful fresh or regularised arrangement under the applicable rule.

→ Important: eome rules are school-specific; state the Sunni-law context when answering.

REMEMBER: FASID = A DEFECT TO EXAMINE, NOT AUTOMATICALLY SAHIH

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Batil: Void Marriage

→ Batil is a marriage void because it violates a fundamental prohibition under the applicable law.

→ Examples include marriage within an absolutely prohibited degree of consanguinity.

→ The purported union generally fails to create the ordinary legal, effects of a valid marriage.

→ A court must assess the legal status carefully because questions about children and other consequences may require separate rules.

→ Quick comparison: Sahih = lawful; Fasid = irregular; Batil = fundamentally void.

REMEMBER — A PERMANENT PROHIBITION MAY MAKE NIKAH VOID

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Muta: Temporary Marriage

→ Muta is a fixed-term marriage form recognised in certain Shia legal traditions, particularly Ithna Ashari law.

→ The duration and dower are specifically agreed at the beginning.

→ The contract ends at the expiry of the stipulated term rather than by an ordinary divorce formula.

→ Sunni law generally does not recognise Muta as a valid form of marriage.

→ Exam caution: explain the school of law before describing Muta's effects.

REMEMBER — MUTA = SHIA FIXED-TERM MARRIAGE

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Features of Muta Marriage

→ 1. It has a specified period agreed by the parties.

→ 2. The mahr amount is fixed as part of the contract.

→ 3. The union ordinarily ends when the contractual period expires.

→ 4. The inheritance position between spouses differs from permanent Nikah under the traditional rules.

→ 5. Children of a valid Muta are recognised as legitimate under the applicable law.

→ Do not confuse this historical school-specific doctrine with an informal live-in relationship.

REMEMBER — TERM + MAHR + SCHOOL-SPECIFIC EFFECTS

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Nikah and Muta Compared

→ **NIKAH:** ordinarily intended as a continuing marriage, without a fixed expiry date.

→ **MUTA:** entered for a defined duration in the Shia tradition recognising it.

→ **NIKAH:** dissolution ordinarily requires a legally recognised mode of ending marriage.

→ **MUTA:** the stipulated period's expiry brings the arrangement to an end.

→ **MAHR:** important in both, with particular fixed-term requirements in Muta.

→ **MEMORY TRICK:** permanent versus fixed term; then discuss school and legal effects.

REMEMBER — ASK: PERMANENT OR FIXED TERM?

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Restitution of Conjugal Rights

→ Restitution is a remedy by which a spouse asks a court to restore marital consortium when the other spouse withdraws without sufficient cause.

→ The court considers whether a valid marriage exists and whether separation has a lawful or reasonable explanation.

→ This is a judicial remedy, not permission to physically force a spouse into cohabitation.

→ Cruelty, safety concerns and other equitable factors may affect relief.

→ Abdul Kadir v Salima is an important early decision on marriage rights and restitution.

REMEMBER — COURT REVIEWS VALIDITY, CAUSE AND EQUITY

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Defences to Restitution

→ A spouse defending a restitution suit may point to cruelty, danger, failure of marital obligations or other legally relevant grounds.

→ Courts examine the conduct of both spouses and the circumstances surrounding separation.

→ Itwari v Asghari, AIR 1960 All 684, considered the equitable character of restitution under Muslim law.

→ The right to marital consortium does not erase the wife's dignity and safety.

→ Example: A spouse who leaves after serious abuse has a substantial defence to an automatic return order.

REMEMBER — RESTITUTION IS NOT AN UNCONDITIONAL COMMAND

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Introduction to Dissolution

→ A Muslim marriage can end by death or by legally recognised dissolution of the marriage bond.

→ Traditional personal law discusses modes associated with the husband, wife, mutual agreement and judicial decree.

→ Husband-associated: talaq and certain historical forms such as ila and zihar.

→ Wife-associated or delegated: talaq-ul-tafweez, khula and judicial dissolution.

→ Mutual agreement: mubarat. Judicial intervention: faskh and the 1939 Act.

→ Today each mode must be studied alongside Indian statutes and constitutional decisions.

REMEMBER: HUSBAND / WIFE / MUTUAL / COURT

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Meaning and Conditions of Talaq

→ Talaq refers to divorce initiated through a recognised Muslim-law procedure.

→ Classical forms include revocable procedures allowing time for reconsideration and reconciliation.

→ Modern Indian law requires careful attention to proof and fairness; an unsupported statement that talaq occurred is not enough.

→ Shamim Ara v State of U.P., (2002) 7 SCC 518, stresses pronouncement, reasonable cause and reconciliation attempts.

→ Instantaneous irrevocable triple talaq is prohibited under the 2019 Act.

REMEMBER: PRONOUNCEMENT + RECONCILIATION + LEGAL PROOF

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Talaq-i-Ahsan

→ Ahsan is traditionally regarded as a more approved form of talaq.

→ It involves one pronouncement during a suitable period of purity (tuhr), followed by abstinence during the waiting period, under the classical description.

→ The procedure allows an opportunity for reconciliation and possible revocation before finality.

→ If reconciliation occurs in time, the divorce does not become final in the ordinary manner.

→ Example: One pronouncement is made; the spouses then genuinely attempt reconciliation during the waiting period.

REMEMBER: AHSAN = ONE PRONOUNCEMENT + WAITING PERIOD

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Talaq-i-Hasan

→ Hasan is another traditionally approved form of talaq involving separate pronouncements over successive relevant periods.

→ The classical procedure requires intervals between pronouncements, rather than three words in one sitting.

→ The intervals give time for reconsideration and reconciliation.

→ The complete legal result depends on the applicable law and whether the proper process was followed.

→ Compare: Ahsan uses a single pronouncement and waiting period; Hasan uses spaced pronouncements.

REMEMBER: HASAN = SEPARATED PRONOUNCEMENTS

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Talaq-e-Biddat: Historical Rule

→ Talaq-e-biddat is the historical practice of instant and irrevocable divorce, often called instant triple talaq.

→ It was traditionally treated differently by some schools, but this history is NOT the present legal position in India.

→ The Supreme Court set aside the practice in Shayara Bano v Union of India, (2017) 9 SCC 1.

→ The Muslim Women (Protection of Rights on Marriage) Act, 2019 expressly makes this form void and illegal.

REMEMBER: INSTANT TRIPLE TALAQ DOES NOT DISSOLVE MARRIAGE

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2019 Act: Key Provisions

→ Section 2(c): the prohibited talaq is talaq-e-biddat or a similar instantaneous and irrevocable form.

→ Section 3: such pronouncement, whether oral, written, electronic or otherwise, is void and illegal.

→ Section 4: punishment may extend to three years of imprisonment and fine.

→ Section 5: provision for subsistence allowance for the married woman and dependent children.

→ Section 6: custody of minor children is determined by the Magistrate.

→ Section 7: special rules address cognizability, bail and compounding.

REMEMBER: SEC. 3 VOID; SEC. 4 PUNISHMENT

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Case: Shayara Bano (2017)

→ CASE: Shayara Bano v Union of India, (2017) 9 SCC 1.

→ ISSUE: whether the practice of instantaneous irrevocable triple talaq could continue as a valid form of divorce.

→ HOLDING: by a 3:2 majority, the Supreme Court invalidated talaq-e-biddat.

→ IMPORTANCE: protects women from the legal consequences of a unilateral instant divorce announcement.

→ Later Parliament enacted the Muslim Women (Protection of Rights on Marriage) Act, 2019.

→ Exam: give facts, issue, holding and statutory follow-up.

REMEMBER: SHAYARA BANO → 2019 LEGISLATIVE PROTECTION

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Case: Shamim Ara (2002)

→ CASE: Shamim Ara v State of U.P., (2002) 7 SCC 518.

→ The husband claimed in litigation that an earlier talaq had already taken place.

→ The Supreme Court explained that a bare assertion in pleadings does not prove a valid talaq.

→ The judgment emphasised an actual pronouncement, reasonable cause and prior efforts at reconciliation.

→ VALUE: mere paperwork or unsupported claims cannot casually destroy marital rights.

→ Example: 'I divorced her years ago' is insufficient without legally required proof.

REMEMBER: A CLAIM OF TALAQ IS NOT PROOF OF TALAQ

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Ila and Zihar

→ ILA: in classical doctrine, an oath by the husband to abstain from intercourse with his wife for at least four months.

→ ZIHAR: an injurious comparison of one's wife with a woman within prohibited degrees, such as the husband's mother.

→ The historical consequences differ by school and involve waiting, retraction or expiation rather than the instant triple-talaq rule.

→ Both are studied as traditional doctrines; their modern application must be assessed carefully.

→ Do not confuse these with a free-standing power to ignore current Indian law.

REMEMBER: ILA = OATH OF ABSTINENCE;
ZIHAR = PROHIBITED COMPARISON

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Talaq-ul-Tafweez

→ Tafweez means delegation of the authority to pronounce talaq, usually from husband to wife, within agreed limits.

→ A delegation can be recorded in a nikahnama or other legally effective arrangement.

→ Conditions may be attached, such as breach of an agreed marital obligation.

→ The wife exercises the delegated authority if the specified legal and contractual conditions are met.

→ Example: a marriage contract gives a wife an option to exercise a delegated divorce power upon a specified event.

REMEMBER: TAFWEEZ = DELEGATED DIVORCE AUTHORITY

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Khula: Wife-Initiated Separation

→ Khula is a recognised mode through which a wife seeks release from the marriage bond.

→ Traditional accounts describe agreement and often a return or relinquishment of part of mahr or other consideration.

→ Modern legal questions about consent and judicial enforcement depend on the governing school, jurisdiction and facts.

→ A wife who cannot obtain consensual release may also examine statutory grounds for judicial divorce.

→ Important: do not treat khula and Section 2 of the 1939 Act as the same procedure.

REMEMBER: KHULA = WIFE SEEKS RELEASE

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Mubarat: Mutual Separation

→ Mubarat is dissolution arising from the desire of both spouses to separate.

→ Unlike khula's traditional wife-initiated description, mubarat is based on reciprocal willingness to end the marriage.

→ The spouses agree on the separation and relevant terms, subject to applicable law.

→ It is useful to distinguish agreement-based dissolution from unilateral forms and a court decree.

→ Example: both spouses conclude that marriage should end and mutually communicate agreement.

REMEMBER: MUBARAT = BOTH SPOUSES WANT SEPARATION

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Lian and Faskh

→ LIAN: a traditional doctrine relating to a husband's accusation of adultery against his wife and the connected process of marital dissolution.

→ FASKH: dissolution by a judicial authority on a legally recognised ground.

→ Indian statutory law gives Muslim women an important route to judicial dissolution in the 1939 Act.

→ Do not describe lian as ordinary talaq or faskh as an unrestricted private announcement.

→ Illustration: the wife asks a court to dissolve marriage for proved cruelty → statutory judicial remedy.

REMEMBER: LIAN = ACCUSATION-BASED DOCTRINE; FASKH = COURT

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Why the 1939 Act Matters

→ The Dissolution of Muslim Marriages Act, 1939 clarifies grounds on which a Muslim woman can obtain a judicial decree ending marriage.

→ It addresses situations such as abandonment, failure to maintain, serious ill-treatment and other legally recognised hardships.

→ Section 2 contains the principal grounds for a decree.

→ Section 4 deals with renunciation of Islam or conversion and its effect on the marriage bond.

→ The Act is a key protection because a wife does not have to depend only on extra-judicial agreement.

REMEMBER — 1939 ACT = WOMAN'S JUDICIAL REMEDY

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1939 Act: Grounds I to IV

→ SECTION 2(i): husband's whereabouts not known for FOUR years.

→ SECTION 2(ii): husband neglected or failed to maintain her for TWO years.

→ SECTION 2(iii): husband sentenced to imprisonment for SEVEN years or more, subject to finality of sentence.

→ SECTION 2(iv): husband failed without reasonable cause to perform marital obligations for THREE years.

→ Example: maintenance refused for two years may engage Section 2(ii), subject to judicial assessment.

REMEMBER — 4 YEARS / 2 YEARS / 7 YEARS / 3 YEARS

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1939 Act: Grounds V to VII

→ SECTION 2(v): husband was impotent at the time of marriage and continues to be so; special procedure can allow a period to prove cessation.

→ SECTION 2(vi): husband has been of unsound mind for TWO years, or suffers from virulent venereal disease as provided by the Act.

→ SECTION 2(vii): woman was married by guardian before age FIFTEEN, repudiated before age EIGHTEEN and marriage not consummated.

→ This last ground is often called the option of puberty.

→ Exam caution: note all statutory conditions and provisos.

REMEMBER — IMPOTENCE / UNSOUND MIND / OPTION OF PUBERTY

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1939 Act: Cruelty Ground

→ SECTION 2(viii) recognises cruelty in several forms, not only physical injury.

→ Examples: habitual assault or conduct making her life miserable; forcing her toward immorality; improperly disposing of her property or blocking property rights.

→ It also includes preventing her religious practice and, where there are multiple wives, failing to treat wives equitably as required by the provision.

→ The statutory list must be read as a whole when applying facts.

→ Remember: mental and economic abuse may also be legally relevant.

REMEMBER — CRUELTY CAN BE PHYSICAL, MENTAL OR ECONOMIC

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Provisos and Additional Grounds

→ Section 2(ix) also permits other grounds valid for dissolution under Muslim law.

→ For missing whereabouts, the decree normally does not take effect for SIX months; a returning husband can seek the relief specified in the Act.

→ For the imprisonment ground, the sentence must be final.

→ For impotence, the statute provides a chance, on the husband's application, to demonstrate within ONE year that impotence has ceased.

→ Section 4: conversion away from Islam does not by itself dissolve her marriage.

REMEMBER — CHECK PROVISOS, NOT ONLY THE MAIN GROUND

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Case: A. Yousuf Rawther

→ CASE: A. Yousuf Rawther v Sowramma, AIR 1971 Ker 261.

→ The Kerala High Court discussed the rights of a Muslim wife seeking dissolution and how the 1939 Act should be understood.

→ It is commonly cited on the meaning and remedial purpose of the wife's statutory right, including the maintenance ground.

→ LESSON: read the statute in light of the protection it gives to women, while applying the exact text and facts.

→ Also revise Abdul Kadir, Itwari, Shamim Ara and Shayara Bano for the full unit.

REMEMBER — CASE LAW HELPS EXPLAIN THE STATUTORY REMEDY

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Practice: Problem Questions

→ Q1. Husband says 'triple talaq' once in a WhatsApp message. Has the marriage ended? Apply Sections 2(c), 3 and 4 of the 2019 Act.

→ Q2. Husband fails to maintain wife for two years. Which judicial ground may apply? Discuss Section 2(ii) of the 1939 Act.

→ Q3. Wife invokes a written delegated-divorce clause. Name the doctrine: talaq-ul-tafweez.

→ Q4. Both spouses voluntarily agree to separate. Distinguish mubarat and khula.

→ Write answers with FACT → RULE → CASE → APPLICATION → CONCLUSION.

REMEMBER — PROBLEM ANSWERS NEED STATUTE + FACT APPLICATION

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Unit II: One-Page Revision

→ **NIKAH**: ijab + qubul + capacity + consent + lawful conditions.

→ **MAHR**: right of wife; prompt or deferred.
CLASSIFICATION: sahih, fasid, batil.

→ **MUTA**: fixed-term marriage recognised in some Shia traditions.

→ **DIVORCE**: Ahsan, Hasan, historical biddat; ila, zihar, tafweez, khula, mubarat, lian and faskh.

→ **2019 Act**: instantaneous irrevocable triple talaq is void and illegal.

→ **1939 Act**: wife's judicial grounds, including desertion-like absence, lack of maintenance, cruelty and others.

→ **KEY CASES**: Abdul Kadir (1886), Itwari (1960), Shamim Ara (2002), Shayara Bano (2017).

REMEMBER – REVISE DEFINITIONS, TIME PERIODS, CASES AND LAW

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