

# **EU IndoPac Jean Monnet University Teaching Module**

## **Introduction to Muslim Law in India**

**UCLouvain, Brussels, Belgium**

**by**

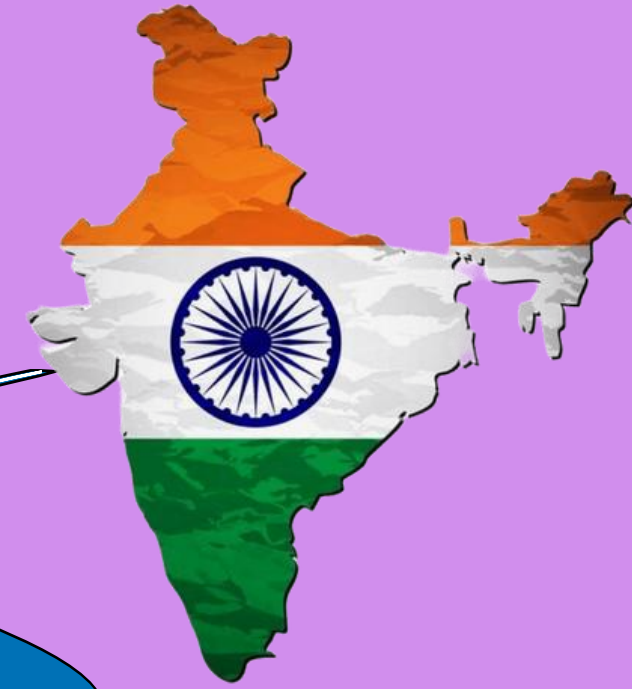
**Prof. Dr. Nicolas de SADELEER**  
**Full Professor, UCLouvain, Jean Monnet Chair**  
**&**  
**Dr. Sayed Qudrat Hashimy**



How has India, as a constitutionally secular State, accommodated diverse religious personal laws within its legal framework while maintaining the principle of secularism?

## Roadmap

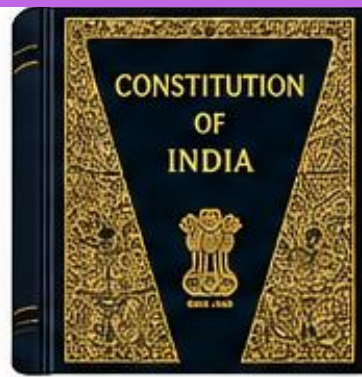
Hindus (~79–80%) → ~1.13 billion  
Muslims (~14–15%) → ~210 million  
Christians (~2.3%) → ~33 million  
Sikhs (~1.7%) → ~24 million  
Buddhists (~0.7%) → ~10 million  
Jains (~0.4%) → ~6 million



## A. Indian Constituent Assembly

The framing of the Indian Constitution by the Constituent Assembly completed over a period of **2 years, 11 months, and 18 days**, across 11 sessions and 165 days of sittings reflects a deliberate and meticulous effort to craft a legal framework capable of accommodating India's **vast social, cultural, and religious diversity**. Coming into force on **January 26, 1950**, the Constitution embodies a distinctive model of secularism that does not mandate a strict separation between religion and State but instead facilitates a balanced coexistence.





















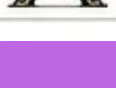



# GLOBAL INSPIRATIONS, INDIAN IDENTITY

The Indian Constitution draws inspiration from multiple global constitutions. Borrowed features allowed the framers to incorporate proven practices and principles while tailoring them to India's specific needs.

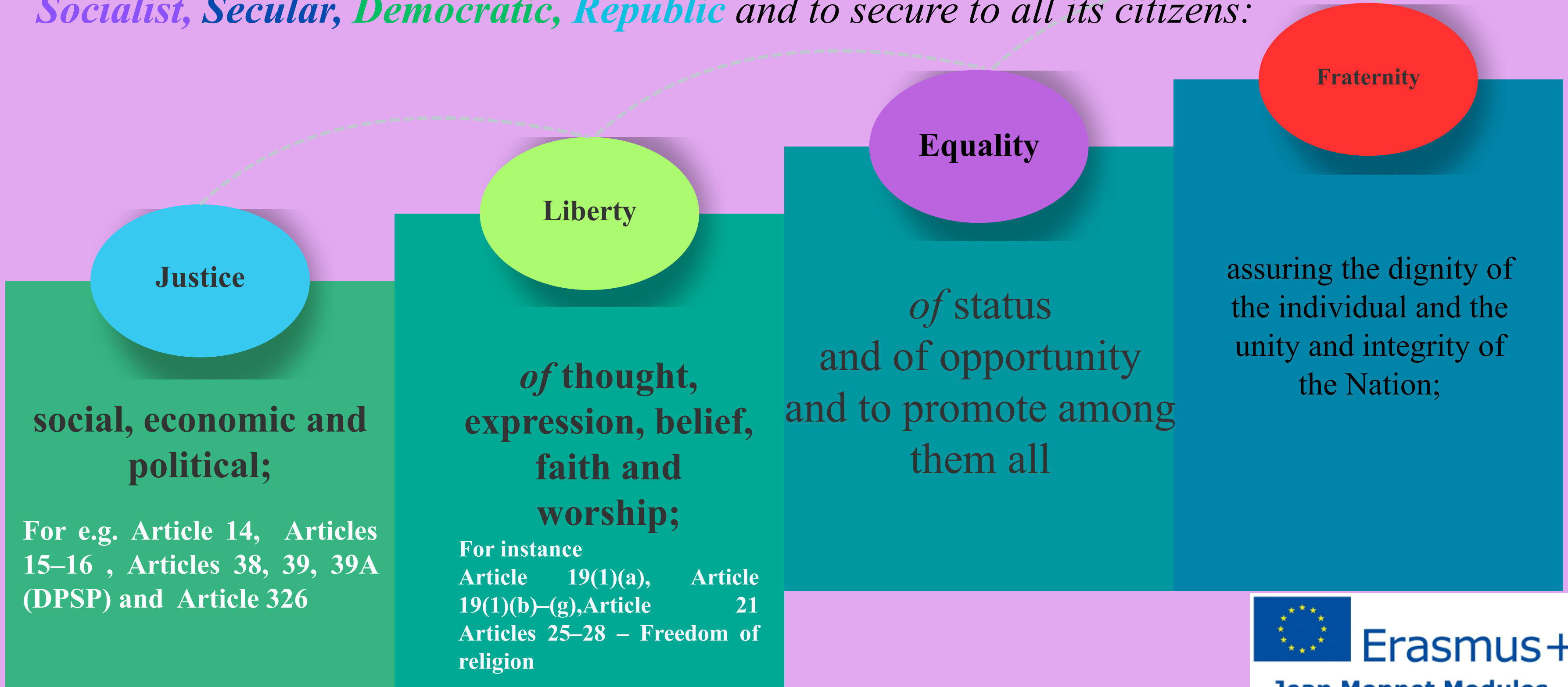


## BORROWED FEATURES OF INDIAN CONSTITUTION

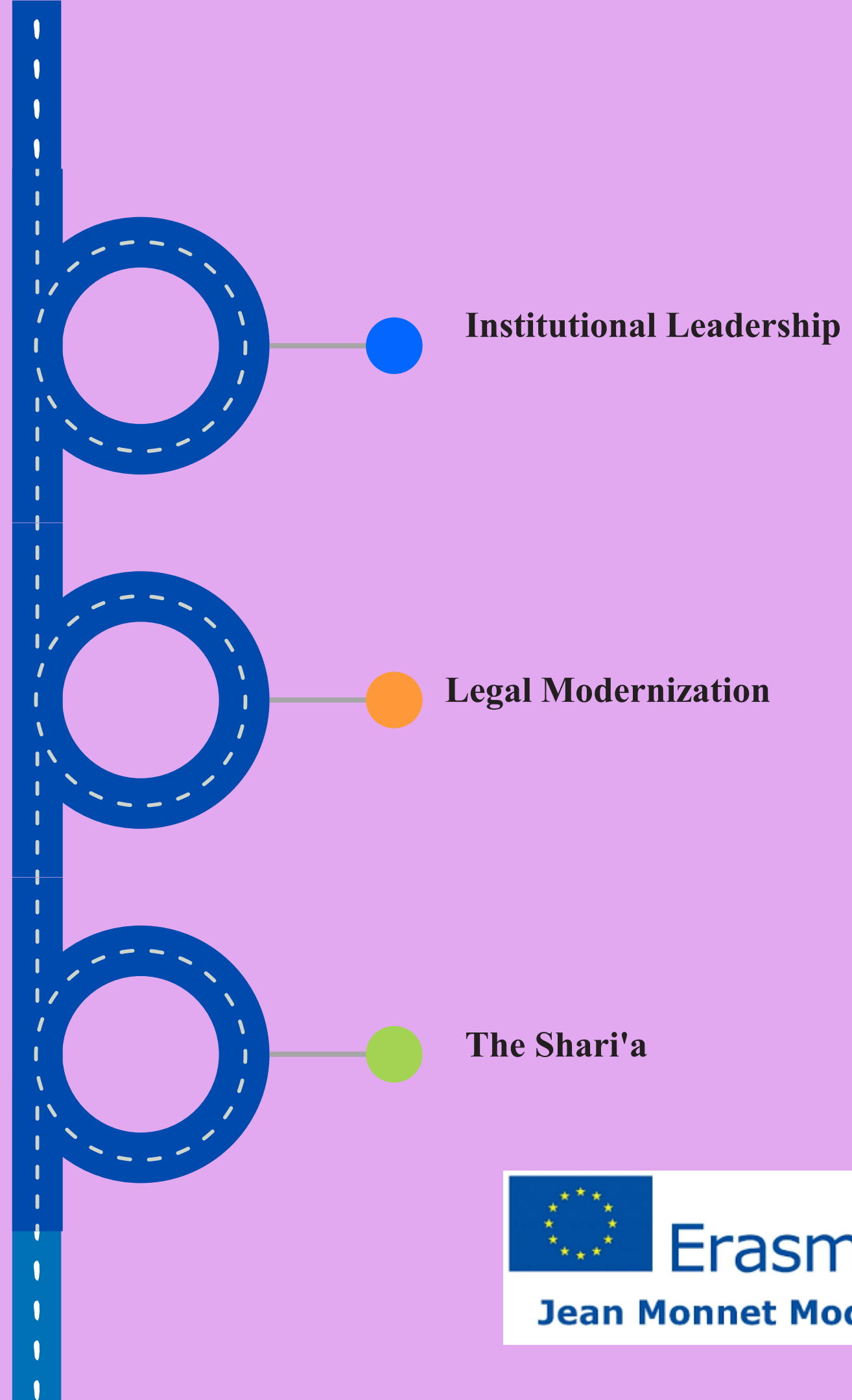
BORROWED FROM	YEAR	COUNTRY FLAG	FEATURES BORROWED
 <b>British Constitution</b>	<b>1689</b>		Parliamentary government, Rule of Law, legislative procedure, single citizenship, cabinet system, prerogative writs, doctrine of pleasure, parliamentary privileges and bicameralism.
 <b>American Constitution</b>	<b>1787</b>		Fundamental rights, independence of the judiciary, judicial review, impeachment of the president, removal of SC and HC judges and post of vice-president
 <b>Canadian Constitution</b>	<b>1867</b>		Federation with a strong Centre, vesting of residuary powers in the Centre, appointment of state governors by the Centre, and advisory jurisdiction of the Supreme Court.
 <b>Irish Constitution</b>	<b>1937</b>		Directive Principles of State Policy, nomination of members to Rajya Sabha and method of election of president.
 <b>Australian Constitution</b>	<b>1901</b>		Concurrent List, freedom of trade, commerce and intercourse, and a joint sitting of the two Houses of Parliament.
 <b>Weimar Constitution</b>	<b>1919</b>		Suspension of Fundamental Rights during Emergency
 <b>Soviet Constitution</b>	<b>1936</b>		Fundamental duties and justice (social, economic and political) in the Preamble.
 <b>Government of India Act, 1935</b>	<b>1935</b>		Federal Scheme, Office of Governor, Judiciary, Public Service Commissions, Emergency provisions and administrative details.
 <b>South African Constitution</b>	<b>1996</b>		Procedure for amendment of the Constitution and election of members of Rajya Sabha.
 <b>Japanese Constitution</b>	<b>1947</b>		Procedure Established by Law
<b>French Constitution</b>	<b>1958</b>		Republic & the ideals of liberty, equality and fraternity in the Preamble

PREAMBLE

We, the people of India, having solemnly resolved to constitute India into a *Sovereign, Socialist, Secular, Democratic, Republic* and to secure to all its citizens:



# Muslim Law Development



01

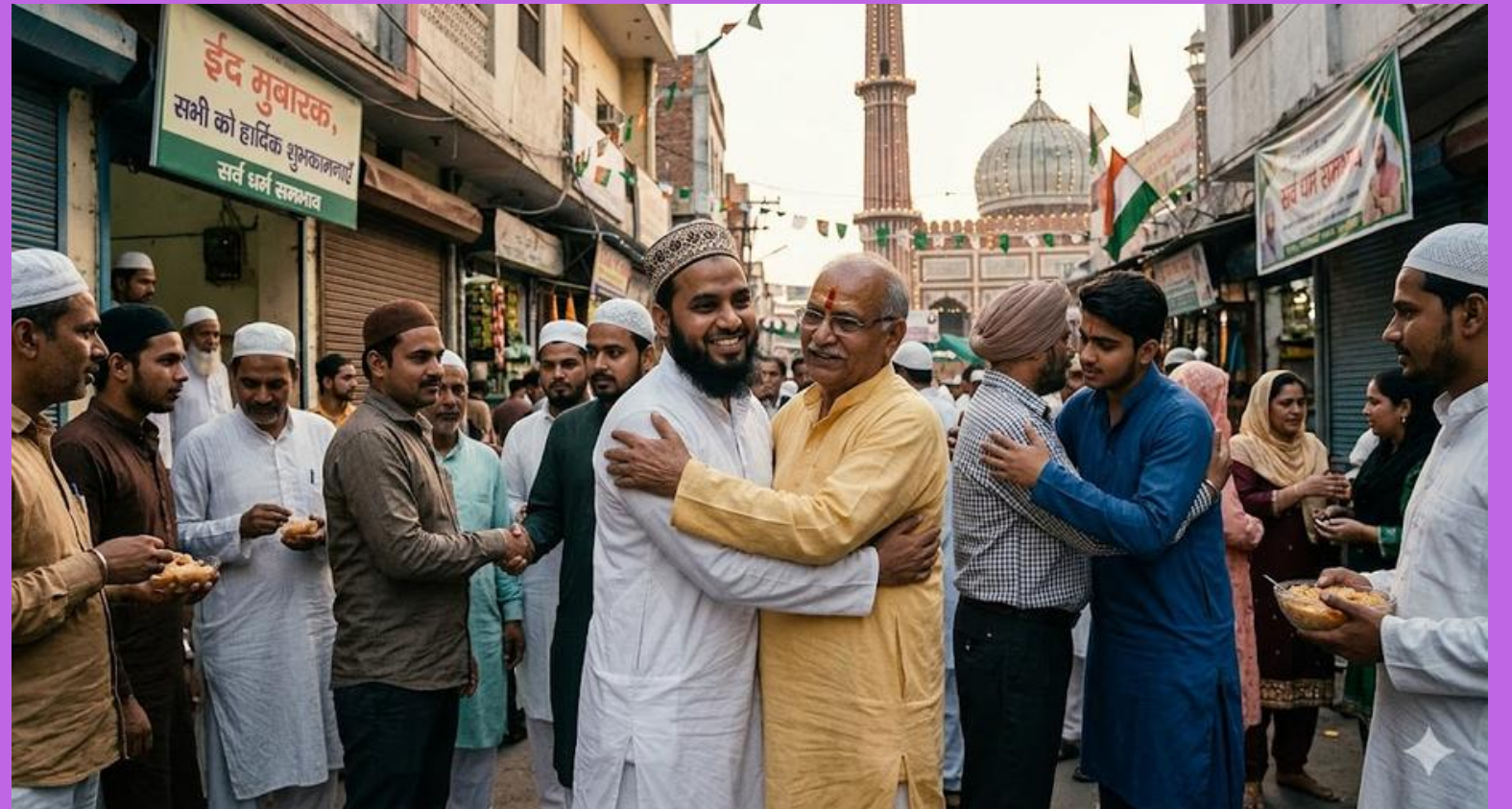
### Reforms by the British

- Shariat Act, 1937
- Dissolution of Muslim Marriages Act, 1939
- Waqf Act, 1913

02

### Reforms by the Indian Parliament (Post-Independence)

- Section 125, Criminal Procedure Code (CrPC)
- Muslim Women (Protection of Rights on Divorce) Act, 1986
- Muslim Women (Protection of Rights on Marriage) Act, 2019
- Waqf Act, 1954 (later amended in 1995 and 2013)



## Conceptualizations of Muslim indentity

**Bam Kumari v. Ram Lal (1891) 18 Cal 264**, where conversion followed by remarriage did not dissolve the first marriage, leading to conviction for bigamy.

**Sarla Mudgal v. Union of India (AIR 1995 SC 1531)**, where a Hindu husband converted to Islam to contract a second marriage. The Court held that such conversion does not dissolve the first marriage under Hindu law, and the second marriage constitutes bigamy under Section 494 IPC.

### (i) Muslims by origin

A person born to Muslim parents is presumed to be a Muslim, and this presumption does not depend on proof of religious practice.

### (ii) Muslims by conversion.

Muslims by conversion may be :

- (a) Persons who profess Islam, or
- (b) Persons who undergo the formal ceremony of conversion.

# SOURCES OF MUSLIM LAW

01

## I. Classical (Ancient) Sources

- a) Qur'an
- b) Sunna (Hadith)
- c) Ijma (Consensus)
- d) Qiyas (Analogy)

02

## II. 'Urf (Custom)

03

## III. Modern Sources

- (a) Equity, Justice, and Good Conscience
- (b) Judicial Precedent
- (c) Legislation

## I. CLASSICAL (ANCIENT) SOURCES

### 5. Ijtihād (Independent Juristic Reasoning)

05

In legal terms, it denotes the exertion of intellectual effort to determine the implications of the Qur'an and Sunnah in cases where no explicit rule exists.

### 4. Qiyās (Analogy)

04

Qiyās plays a crucial role in maintaining the continuity and adaptability of Islamic law. Given the limited number of explicit legal provisions in the primary sources, analogical reasoning enables jurists to develop rules for emerging issues while preserving doctrinal consistency

### 3. Ijmā' (Consensus)

03

Ijmā' constitutes the third principal source of Islamic law and refers, in its technical sense, to the unanimous agreement of qualified Muslim jurists (mujtahids) of a particular generation on a legal rule (ḥukm).

### 2. The Sunnah

02

The Sunnah constitutes the second principal source of Islamic law, subordinate only to the Qur'an. In legal terms, it refers to the normative practices, statements, and tacit approvals of the Prophet Muhammad, which serve to interpret, supplement, and operationalize Qur'anic provisions.

### 1. The Qur'an

01

The legal content of the Qur'an encompasses several core areas. It includes rules relating to family law, such as marriage, divorce, and inheritance; criminal law, particularly the prescribed punishments (hudud) for offences such as theft, illicit sexual relations, false accusation, and consumption of alcohol; and commercial law, including the prohibition of riba (usury) and the regulation of contractual relations. Additionally, it sets out evidentiary standards, dietary prohibitions, and broader ethical directives that inform legal reasoning.

# Modern Sources

## (b) Judicial Precedent

- Historically, *fatāwā* (juristic opinions) served as persuasive authorities, guiding judicial decision-making without being strictly binding.

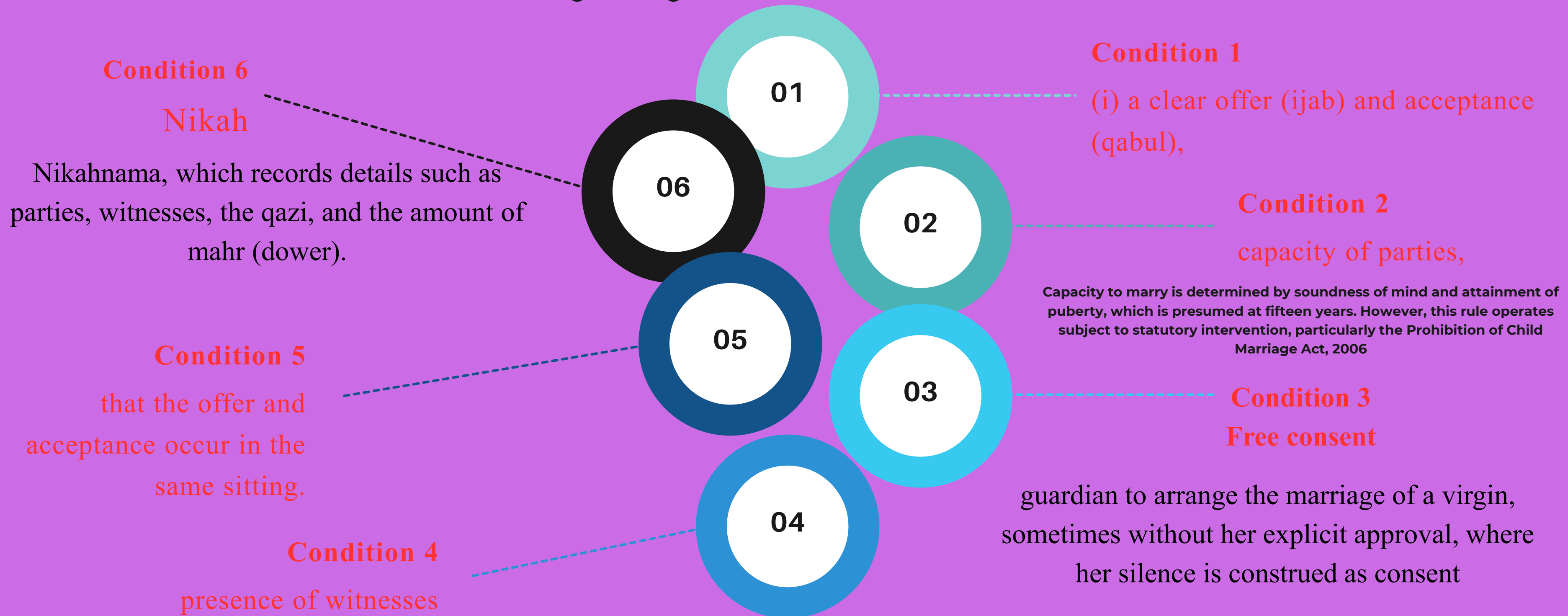
(a) Equity, Justice, and Good Conscience

## (c) Legislation

- the Muslim Personal Law (Shariat) Application Act, 1937 in India, which affirms the application of Islamic law in personal matters, and the Muslim Family Laws Ordinance, 1961 in Pakistan, which introduces reforms in areas such as marriage registration, polygamy, and inheritance. In other jurisdictions, such as Egypt and Morocco, codified family laws incorporate principles derived from Islamic jurisprudence while adapting them to contemporary legal standards.

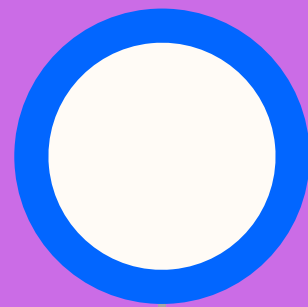
# INSTITUTION OF MARRIAGE

Abdul Kadir v. Salima (1886), where Justice Mahmood observed that Muslim marriage is “not a sacrament, but purely a civil contract,” albeit one imbued with religious significance.

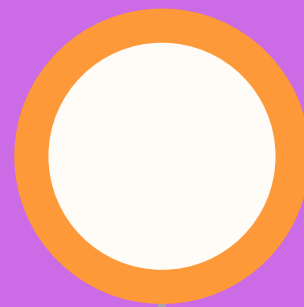




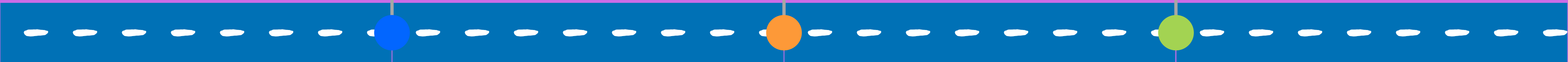
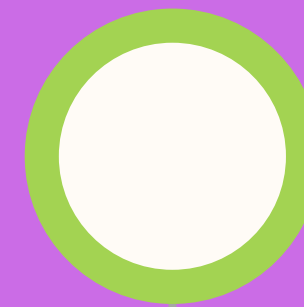
**Permanent Marriage  
( Perpetual Nikah)**



**Remarriage of Couple  
Nikah Halala**



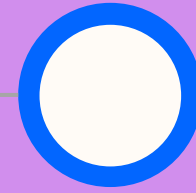
**Muta Marriage  
(Temporary Marriage)**



Marriage under Muslim law is also subject to substantive prohibitions. These include prohibitions based on consanguinity (blood relations), affinity (relations by marriage), and fosterage (relationships established through breastfeeding). Additional restrictions arise from unlawful conjunction (e.g., marrying two sisters simultaneously), numerical limits (a maximum of four wives, subject to equal treatment),

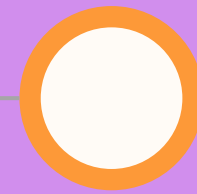


# Inter faith Marriage



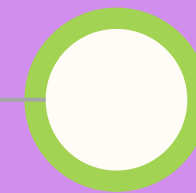
## Inter-Sect Marriages

Muslim law permits marriage between different sects (e.g., Sunni and Shia). Such marriages are valid and do not affect the religious identity of either party.



## Inter-Religious Marriages

Interfaith marriage rules further restrict Muslim women from marrying non-Muslims, while Muslim men may marry women from the “People of the Book” (Jews and Christians).



## Special Marriage Act, 1954

Lata Singh v. State of Uttar Pradesh (2006), where the Supreme Court affirmed that consenting adults are free to marry irrespective of religious differences.

# Modes of Dissolution of Marriage

**A. By Death**

**B. By Act of Parties**

**By Judicial Process**

# Divorces (Talq)

## Modes of Dissolution of Marriage

01

### A. By Death

- A widower may remarry immediately.
- A widow must observe iddat (4 months and 10 days, or until delivery if pregnant).

02

### B. By Act of Parties

#### 1. By the Husband

##### (i) Talaq (Divorce)

##### (a) Talaq-us-Sunnat (Approved Forms)

- Ahsan (Most Approved Form)
- Hasan (Approved Form)

##### (b) Talaq-ul-Biddat (Unapproved Form)

##### Triple talaq

**Shayara Bano & Ors. v. Union of India**

**(AIR 2017 SC 4609)**

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### Ila (Vow of Continence)

Ila refers to a situation where a husband takes an oath that he will abstain from sexual intercourse with his wife and continues such abstinence for a period of four months.

### (iii) Zihar (Injurious Comparison)

Zihar occurs when a husband compares his wife to a woman within the prohibited degrees of relationship, such as his mother or sister

03

### By Judicial Process

#### (1) Lian (Mutual Imprecation)

Lian is a form of judicial divorce available when a husband falsely accuses his wife of adultery. The wife may file a suit seeking dissolution on this ground.

#### (2) Faskh (Judicial Annulment)

Faskh refers to dissolution of marriage by a court at the instance of the wife, based on the principle that a harmful marriage should be ended

**K.C. Moyin v. Nafeesa (AIR 1973 Ker 176)** clarified that a Muslim woman cannot unilaterally repudiate a marriage through faskh without court intervention; judicial decree is essential.

## Instant Divorces (Triple Talq)

*Ms. Shayara Bano was married to Mr. Rizwan Ahmed in 2002. In 2015, her husband unilaterally divorced her through talaq-e-biddat (instant triple talaq). Aggrieved, she filed a writ petition before the Supreme Court in 2016 challenging the constitutional validity of talaq-e-biddat, as well as related practices such as polygamy and nikah-halala, on the ground that they violated her fundamental rights.*

The core legal issue before the Court was whether talaq-e-biddat constitutes an essential religious practice protected under Article 25 (freedom of religion), or whether it is subject to constitutional scrutiny and liable to be struck down for violating Articles 14, 15, and 21 (equality, non-discrimination, and dignity).

### **Judiciary**

The Supreme Court of India, by a 3:2 majority, that the practice of talaq-e-biddat or instantaneous triple talaq is unconstitutional, ruling that the practice of pronouncing divorce three times in one sitting is arbitrary and violates gender equality.

➤ **Parliament of India**

Two years later, in July 2019, Parliament enacted the Muslim Women (Protection of Rights on Marriage) Act, 2019, criminalizing talaq-e-biddat with penalties of up to three years' imprisonment. The Act has 8 sections:

1. **Any pronouncement of talaq by a Muslim husband upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever, shall be void and illegal.**
2. **Any Muslim husband who pronounces talaq upon his wife shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.**
3. **A married Muslim woman upon whom talaq is pronounced shall be entitled to receive from her husband such amount of subsistence allowance, for her and dependent children, as may be determined by the Magistrate.**
4. **A married Muslim woman shall be entitled to custody of her minor children in the event of pronouncement of talaq by her husband, in such manner as may be determined by the Magistrate.**
5. **An offence punishable under this Act shall be cognizable, if information relating to the commission of the offence is given to an officer in charge of a police station by the married Muslim woman upon whom talaq is pronounced or any person related to her by blood or marriage;**
6. **An offence punishable under this Act shall be compoundable, at the instance of the married Muslim woman upon whom talaq is pronounced with the permission of the Magistrate, on such terms and conditions as he may determine;**
7. **No person accused of an offence punishable under this Act shall be released on bail unless the Magistrate, on an application filed by the accused and after hearing the married Muslim woman upon whom talaq is pronounced, is satisfied that there are reasonable grounds for granting bail to such person.**

# Dissolution of Muslim Marriages Act, 1939, No. 8 of 1939, § 2 (India).

## Grounds for Decree for Dissolution of Marriage

01

### DISAPPEARANCE OF HUSBAND

·If the husband's whereabouts have not been known for four years.

02

### Failure to Maintain

·If the husband neglects or fails to provide maintenance for two years.

03

### Imprisonment

·If the husband has been sentenced to imprisonment for seven years or more (sentence must be final).

04

### Failure of Marital Obligations

·If the husband, without reasonable cause, fails to perform marital duties for three years.

05

### Impotency

·If the husband was impotent at the time of marriage and continues to be so (the court may grant him time to prove otherwise).

06

### Insanity or Disease

If the husband has been insane for two years or suffers from leprosy or a serious venereal disease.

07

### Option of Puberty

·If the woman was married before 15, repudiates the marriage before 18, and the marriage was not consummated.

08

### Cruelty

·Includes physical or mental cruelty, immoral conduct, forcing an immoral life, disposing of her property, obstructing religious practice, or unequal treatment among co-wives.

# APOSTASY AND CONVERSION AS GROUNDS OF DIVORCE UNDER MUSLIM LAW

## I. APOSTASY AND ITS EFFECT ON MARRIAGE

### (1) Apostasy by the Husband

*Mst. Resham Bibi v. Khuda Baksh (1937 Lah 277)*  
clarified what constitutes apostasy.

### (2) Apostasy by the Wife

If a woman had originally converted to Islam from another religion and later re-embraces her former faith, the marriage stands dissolved.

## II. CONVERSION TO ISLAM AND ITS EFFECT ON MARRIAGE

### (1) Conversion of Husband to Islam

If a non-Muslim husband (e.g., Christian or Jew) embraces Islam, his marriage with a “Kitabiya” (woman of the Book) such as a Christian or Jewish wife remains valid.

### (2) Conversion of Wife to Islam

In *Noor Jehan v. Eugene Tischenko (1942) 2 Cal 165*, the Calcutta High Court held that a Christian marriage is not dissolved merely because the wife embraces Islam.

# THANK YOU

