



সত্যমেব জয়তে  
অসম চৰকাৰ  
Govt of Assam

HANDBOOK ON

# A Primer on Muslim Law of Marriage



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ARTPPG Department, GoA

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মুখ্যমন্ত্রী, অসম  
Chief Minister, Assam



## FOREWORD

The work environment across the globe is undergoing rapid changes, and the utilization of human resources is evolving accordingly, with Assam being no exception. To keep pace with these changes, it is imperative that the Assam government focuses on empowering its human resources with a global outlook while remaining grounded in Indian values.

To achieve this vision, our government is implementing effective changes in work culture and striving to instill new ideas and a broader perspective in the minds of the officials. In line with this effort, the ARTPPG Department of the Government of Assam is introducing a set of training manuals and handbooks. Our Government is ensuring the smooth functioning of the daily administration with the help of these Training Manuals/ Handbooks for the Grade-3 officials. To effectively cater to the requirements of Grade-3 officials, experts have meticulously drafted the training manuals and handbooks, aiming to cover a wide range of relevant topics. Moreover, focused attempts have been made to embed the books with relevant case studies, examples and FAQs on different topics to enable the users to adapt to the procedural yet divergent needs of today's dynamic administration.

True to the objective of our Government in creating a spirited workforce, introduction of multifaceted learning and training programme have been thought of to enable our officials realize their true potential. This would help them to reorient themselves to the day-to-day administrative developments while performing their duties with honesty and transparency.

I believe the Training Manuals / Handbooks will hold immense value as a guiding light on diverse professional trajectories. They will also serve as a roadmap to steer capacity building of the Grade-III officials in a systematic and coherent manner.

(Dr. Himanta Biswa Sarma)

**Dr. Ravi Kota, IAS**  
Chief Secretary  
Government of Assam



ড° ৰবি কোটা, ভাঃ প্ৰঃ সেঃ  
মুখ্য সচিব  
অসম চৰকাৰ



Preparation of a Training policy of a State and aligning it with the needs of the variegated workforce which has to constantly prove its relevance in this era of transition towards technology forms the very backbone of the administration in the form of a challenging task. In this due course of action, capacity building of Grade-III officials not only requires them to remain efficient in their daily official duties but also must be able to motivate them to work, learn and evolve in a comprehensive manner.

The present District training manuals for Grade-III officials have been prepared under the aegis of the Administrative Reforms Training Pension and Public Grievances Department (ARTPPG) and the Assam Administrative Staff College (AASC), who were aided by renowned experts and stakeholders from all the concerned fields. The manuals are a product of much detailed and multiple deliberations on the requisite subjects and it also includes valuable inputs from The Institute of Secretariat Training and Management (ISTM), Delhi in certain applicable topics. The Training Needs Assessment (TNA) was diligently conducted by AASC to chalk out an inclusive need based approach suited for a bottom up perspective for the Grade-III officials and also to ensure that no vital subject has been overlooked.

I believe that the Training manuals will help the Trainers and the trainees as well in a holistic manner and I earnestly request all concerned to send us feedback which would be of great help when we take up further revisionary exercises.

(Dr. Ravi Kota)  
Chief Secretary, Assam

Shantanu Gotmare, IAS  
Commissioner & Secretary  
to the Govt. of Assam  
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### MESSAGE

The Department of Administrative Reforms, Training, Pension and Public Grievances (ARTPPG) plays a vital role in the formulation of the State Training Policy and training its civil servants to build capacity for improving 'Ease of Living' for people of Assam.

The content of the district training manuals aims to bolster capacity of the Grade-3 employees in an elaborate and lucid manner. We have worked meticulously to prepare content of the manuals by collaborating with experts and have actively collated through appropriate stakeholders, which objectively present a comprehensive picture for the officials, covering a broad spectrum of their daily official duties.

I express my sincere thanks to the Committee for vetting the full content. ARTPPG acknowledges the contributions of Committee Members in the preparation of the training manuals. Special mention must be made to the Assam Administrative Staff College, Khanapara and my team in ARTPPG Department for relentless work to get the training manuals.

I sincerely hope that these manuals will be extremely useful to the trainers, trainees and as well as the officials.

(Shantanu Gotmare)





## **Foreword**

The District Training Manuals for Grade-III officials of the Government of Assam have been designed by the Assam Administrative Staff College (AASC) with the help of renowned guest faculty and experts under the able guidance of the Administrative Reforms, Training, Pension and Public Grievances (ARTPPG) Department and inputs from the Institute of Secretariat Training and Management (ISTM), New Delhi.

I hope these manuals will be used extensively by the trainers and trainees and will help the officials become more knowledgeable, competent and productive at their work places.

I would like to convey my gratitude to all the renowned guest faculty and to all the individuals associated with the successful publication of the manuals for their inputs and support throughout the process of designing and printing these manuals.

A handwritten signature in blue ink, appearing to read 'Riju Gogoi', written in a cursive style.

Riju Gogoi  
Director of Training  
Assam Administrative Staff College

# A PRIMER ON MUSLIM LAW OF MARRIAGE

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## **Applicability of Muslim Personal Law (*Shariat*) Application Act, 1937**

According to Section 2 of the Muslim Personal Law (*Shariat*) Application Act, 1937, notwithstanding any custom or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law. marriage, dissolution of marriage, including *talaq, ila, zihar, lian, khula* and *mubaraat*, maintenance, dower, guardianship, gifts, trusts and trust properties, and *wakfs* (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (*Shariat*).

In other words, regarding marriage, dissolution of marriage, dower etc., Muslims will be governed by the Muslim Personal Law (*Shariat*).

### **Essentials of a valid marriage under Muslim law**

The essentials of a valid marriage are as follows:

1. The parties to the marriage, i.e., husband and wife must be competent.
2. The consent of the parties, or of their guardians, should be free consent.
3. The required formalities should be duly completed.
4. There should not be any prohibition on contracting the marriage.

The above mentioned essentials have been discussed in detailed hereafter.

#### **1. Competency of parties**

At the time of marriage, both parties must be competent. The parties are competent if-

- a. they are Muslims.

Ideally, both parties to the marriage should be Muslims. However, there are certain exceptional situations that need to be considered at this juncture, which are as follows:

SUNNI		
Husband	Wife	Status of marriage
Muslim Male	Muslim Female	Valid ( <i>Sahih</i> )
Muslim Male	<i>Qitabia</i> <sup>1</sup> Female	Valid ( <i>Sahih</i> )
Muslim Male	Non- Muslim Female	Irregular ( <i>Fasid</i> )
Muslim Male	Non- <i>Qitabia</i> Female <sup>2</sup>	Irregular ( <i>Fasid</i> )
Muslim Female	Non- Muslim Male	Void ( <i>Batil</i> )
Muslim Female	Non- <i>Qitabia</i> Male	Void ( <i>Batil</i> )
SHIA		
Muslim Male	Muslim Female	Valid ( <i>Sahih</i> )
Muslim Male	<i>Qitabia</i> Female	Void ( <i>Batil</i> )
Muslim Male	Non- <i>Qitabia</i> Female	Void ( <i>Batil</i> )

Further, it must be noted that under the Special Marriage Act, 1954, a Muslim can marry any person belonging to any other religion. All such marriages are considered valid.

- b. they are of sound mind.
- c. they have attained the age of puberty. If actual age at which puberty is attained cannot be ascertained, it is considered to be fifteen years.

<sup>1</sup> *Qitabia* female means a female who follows a *Qitabia* religion, i.e., a religion which emanates from a Holy Book, e.g., Christians and Jews.

<sup>2</sup> Non-*Qitabia* female means a female who follows a non-*Qitabia* religion, i.e., a religion which does not emanate from a Holy Book such as idol worshippers or fire worshippers, e.g., Hindus, Parsis etc.



Even if parties have not attained the age of puberty, his or her guardian **can give** consent to their marriage. However, in the absence of such consent, marriage will be considered void. Under Sunni Law, the following persons are considered as guardians for contracting the marriage of those who have not attained the age of puberty:

- i. father
- ii. paternal grandfather hhs<sup>3</sup>
- iii. brother or other male members of the father's family
- iv. mother
- v. maternal uncle, aunt or other maternal relations.

The father has the first right. In his absence, it moves on to the paternal grandfather and so on. Under Shia Law, the following persons are considered as guardians for contracting the marriage of those who have not attained the age of puberty:

- i. father
- ii. paternal grandfather hhs

### **Option of puberty (*Khyar-ul-Bulugh*)**

Option of puberty means that on the attainment of the age of puberty, the minor has the right to approve or disapprove the marriage contracted by the consent of the guardian, except where the guardian is the father or the paternal grandfather.

Thus, marriages contracted by the consent of the other guardians is voidable at the option of the minor. On attaining the age of puberty, if he or she approves the marriage, it is considered a valid marriage. However, if he or she repudiates the marriage, it is dissolved with immediate effect. Under Sunni law, on attaining age of puberty, one may or may not exercise option of puberty. If they choose to not exercise the option of puberty, the marriage is considered valid. But, under Shia

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<sup>3</sup> hhs means how highsoever.

law, unless the marriage is approved on the attainment of age of puberty, the marriage is considered invalid.

Apropos the husband, he cannot exercise option of puberty if the marriage has been contracted by the consent of his father or paternal grandfather unless it is proved that they did so either negligently or fraudulently.

Apropos the wife, she can exercise option of puberty even if the marriage has been contracted by the consent of her father or paternal grandfather pursuant to Section 2(vii) of the Dissolution of Muslim Marriages Act, 1939.

## **2. Free consent of parties**

Free consent of the parties to the marriage is required. If they have not attained the age of puberty, the consent given by their guardians has to be free. Under Sunni and Shia law except Hanafi law, consent to marriage secured by compulsion renders it void. Further, if consent to marriage is obtained by fraud, it is voidable at the option of the party that was defrauded. Lastly, if consent is vitiated by mistake of fact, the marriage is void.

## **3. Formalities of marriage**

The formalities of Muslim marriage are discussed hereafter:

### **a. Offer (*Ijab*) and Acceptance (*Qabool*)**

The offer of marriage is generally made by the groom or his guardian which has to be accepted by the bride or her guardian. Although specific words are not prescribed for offer and acceptance, they must be expressly made and convey a clear intention to marry. The offer and acceptance may be made orally or in writing.

### **b. Witnesses**

The offer and acceptance has to be made in the presence of two competent witnesses. A Muslim male or female who has attained age of puberty and is of

sound mind is a competent witness. However, two Muslim females are not **counted** as two witnesses. One witness has to be male and the second witness comprises of two females. However, this does not mean that four females can comprise two witnesses.

#### **4. Absence of Prohibitions**

Prohibitions are of two types, viz., absolute and relative.

##### **a. Absolute prohibition**

A marriage contracted in violation of the absolute prohibitions is void. There is an absolute prohibition on a Muslim to contract marriage with a person who is within his or her prohibited relationship i.e. related to them either by consanguinity, affinity or fosterage.

##### **i. Consanguinity (Relation by blood)**

A Muslim cannot marry the following:

- One's ascendants or descendants, hhs, e.g., father, mother, grandfather, grandmother, son, daughter, grandson, granddaughter etc.
- Descendants of one's father and mother, hls,<sup>4</sup> e.g., brother or sister (full, consanguine or uterine), children of such brother or sister etc. However, it must be noted that one can marry their cousin brothers and sisters.
- Brothers or sisters of one's ascendants, hhs, e.g., father's brother and sister, mother's brother and sister.

##### **ii. Affinity (Relation by marriage)**

A Muslim cannot marry the following:

- Ascendants, hhs, or descendants, hls, of one's husband or wife, e.g. wife's mother, wife's grandmother, husband's father, husband's grandfather, wife's daughter, wife's granddaughter, husband's son, husband's grandson etc.

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<sup>4</sup> hls means how lowsoever.

- Husband or wife of one's ascendants, hhs, or descendants, hls, e.g. **wife of** one's father or grandfather, husband of mother or grandmother, **wife of son** or grandson, husband of daughter or granddaughter etc.

### iii. **Fosterage (Relation by Milk)**

Where a child has sucked the milk of any woman, she is the foster mother of that child. One cannot marry their own foster mother or her daughter or granddaughter etc.

## b. **Relative prohibition**

A marriage contracted in contravention of relative prohibitions is irregular, not void, under Sunni law. However, as Shia law does not have the concept of irregular marriage, such marriages are considered void. The relative prohibitions are discussed hereafter:

### i. **Unlawful Conjunctions**

Under Sunni law, a Muslim man cannot have two wives at the same time when these wives are related to each other (either by consanguinity, affinity or fosterage) in such manner that if they had been of different sexes, they could not have married each other. E.g. sister of one's wife, aunt of one's wife and niece of one's wife.

However, under Shia law, a Muslim can marry his wife's aunt. Further, he can also marry his wife's niece but with his wife's consent.

### ii. **Marriage with fifth wife**

Under Sunni law, marriage with fifth wife is irregular. However, under Shia Law, marriage with fifth wife is void.

### iii. **Marriage with non-Muslim and non-Qitabia**

Under Sunni law, marriage with non-Muslim and non-Qitabia is irregular. **However**, under Shia Law, such marriage is void.

**iv. Marriage without witnesses**

Under Sunni law, marriage without two competent witnesses is irregular. However, under Shia Law, as witnesses are not required, such marriage is valid.

**v. Marriage during Iddat**

*Iddat* is a period that a woman has to undergo after her divorce or death of her husband. Under Sunni law, marriage with a woman undergoing *Iddat* is irregular while under Shia Law, such marriage is void.

**Kinds of Marriage**

Sunni	Shia
<ul style="list-style-type: none"> <li>• Valid (<i>Sahih</i>)</li> <li>• Void (<i>Batil</i>)</li> <li>• Irregular (<i>Fasid</i>)</li> </ul>	<ul style="list-style-type: none"> <li>• Valid (<i>Sahih</i>)</li> <li>• Void (<i>Batil</i>)</li> <li>• Temporary (<i>Muta</i>)</li> </ul>

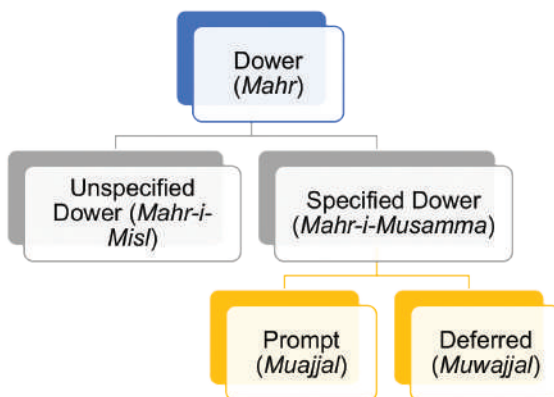
<b>Valid (<i>Sahih</i>)</b>	Marriage is lawful and valid.
<b>Void (<i>Batil</i>)</b>	Marriage is unlawful and void.
<b>Irregular (<i>Fasid</i>)</b>	Marriage is irregular i.e. not completely valid. As soon as the irregular situation is removed, marriage will become valid.
<b>Temporary (<i>Muta</i>)</b>	Marriage is contracted for a limited period of time. The marriage dissolves after the expiry of such time period.



## Dower (*Mahr*)

Dower (*mahr*) is money or property that the wife is entitled to receive for her husband as a token of respect. It is neither bride price nor a gift so that she allows sexual intercourse. There cannot be a marriage without dower even if the dame has not been discussed at the time of marriage or even if the wife has foregone it. The object of dower is to provide for it to be used exclusively by the wife for her benefit. Further, it is to ensure that she does not become destitute in case of divorce or death of husband. Lastly, an exorbitant dower acts as an indirect check upon the husband's right to pronounce *Talaq*.

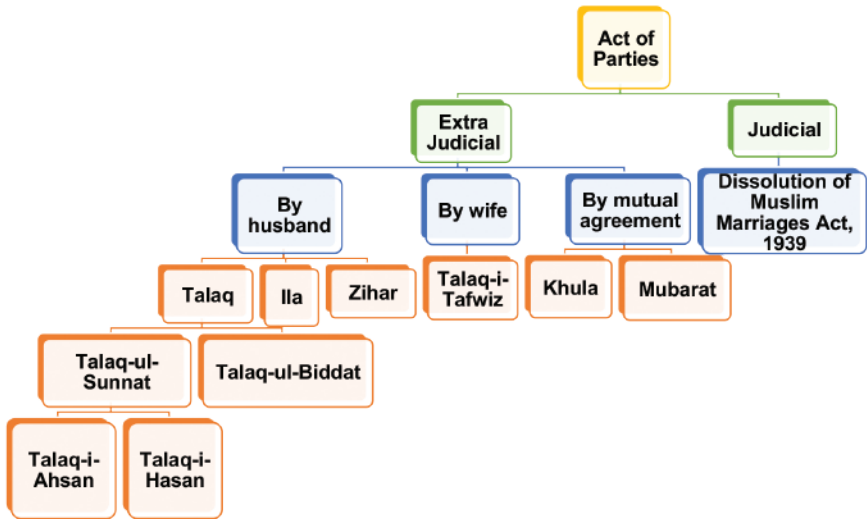
### Kinds of Dower (*Mahr*)



<b>Unspecified dower</b>	When dower has not been specified by the parties at the time of marriage.
<b>Specified dower</b>	When dower has been specified by the parties at the time of marriage.
<b>Prompt dower</b>	It may be demanded by the wife at any time after marriage.
<b>Deferred dower</b>	It can be demanded by the wife upon dissolution of her marriage.

## Dissolution of Marriage

Dissolution of marriage under Muslim law can happen in many ways. They are discussed hereafter:



<b><i>Talaq</i></b>	<i>Talaq</i> means unrestricted right of husband to dissolve the marriage without providing any reason to his wife.
<b><i>Talaq-ul-Sunnat</i></b>	It is the approved form of <i>talaq</i> . It is pronounced either in <i>Ahsan</i> or <i>Hasan</i> form. They are approved forms because there is an option of revocation of the <i>talaq</i> .
<b><i>Talaq-i-Ahsan</i></b>	It is the most proper form of divorce. The husband has to make single pronouncement of <i>talaq</i> during <i>tuhr</i> period of wife, i.e., period of purity when she is not menstruating followed by three successive <i>tuhr</i> periods. Then, <i>talaq</i> is completed. However, if she is not menstruating due to age or pregnancy, it can be pronounced at any time.

<b>Talaq-i-Hasan</b>	The husband must make three declarations of <i>talaq</i> during three successive <i>tuhr</i> periods.
<b>Talaq-ul-Biddat</b>	This is irrevocable divorce. It can be done either by pronouncing <i>talaq</i> thrice during a single <i>tuhr</i> period or by one declaration during a single <i>tuhr</i> period expressing intention to divorce wife irrevocably. As per Muslim Women (Protection of Rights on Marriage) Act, 2019, such <i>talaq</i> is void and punishable.
<b>Ila</b>	Husband takes an oath to not have sexual intercourse with his wife. If there is no sexual intercourse for four months, marriage dissolves irrevocably at the end of four months.
<b>Zihar</b>	Husband compares his wife with a woman within his prohibited relationship, e.g., mother or sister. Thereafter, if he does not have sexual intercourse with her for four months, it is complete.
<b>Talaq-i-Tafwiz</b>	Husband delegates his right to divorce to his wife to be exercised by her.
<b>Khula</b>	Khula means divorce by wife with husband's consent and on payment of some consideration to him.
<b>Mubarat</b>	It is divorce by mutual consent. Either husband or wife can propose and the other can accept.

## Grounds for divorce under Dissolution of Muslim Marriages Act, 1939

A woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds:

that the whereabouts of the husband have not been known for a period of four years;

- a decree passed on this ground shall not take effect for a period of six months from the date of such decree, and if the husband appears either in person or through an authorised agent within that period and satisfies the Court that he is prepared to perform his conjugal duties, the Court shall set aside the said decree

that the husband has neglected or has failed to provide for her maintenance for a period of two years;

that the husband has been sentenced to imprisonment for a period of seven years or upwards;

- no decree shall be passed on this ground until the sentence has become final

that the husband has failed to perform, without reasonable cause, his marital obligations for a period of three years;

that the husband was impotent at the time of the marriage and continues to be so;

- before passing a decree on this ground the Court shall, on application by the husband, make an order requiring the husband to satisfy the Court within a period of one year from the date of such order that he has ceased to be impotent, and if the husband so satisfies the Court within such period, no decree shall be passed on the said ground.

that the husband has been insane for a period of two years or is suffering from a virulent venereal disease;

that she, having been given in marriage by her father or other guardian before she attained the age of fifteen years, repudiated the marriage before attaining the age of eighteen years :

- Provided that the marriage has not been consummated;

that the husband treats her with cruelty, that is to say, —

- (a) habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment, or
- (b) associates with women of evil repute or leads an infamous life, or
- (c) attempts to force her to lead an immoral life, or
- (d) disposes of her property or prevents her exercising her legal rights over it, or
- (e) obstructs her in the observance of her religious profession or practice, or
- (f) if he has more wives than one, does not treat her equitably in accordance with the injunctions of the Qoran;

on any other ground which is recognised as valid for the dissolution of marriages under muslim law :

## **About the Author**

**Dr. Gitanjali Ghosh** is an Associate Professor of Law at the Department of Law, Tezpur University. Previously, she has served as Assistant Professor of Law at NLUJA, Assam. She has completed doctoral and postgraduate degree in law from NLSIU, Bengaluru after obtaining undergraduate degree in law with a gold medal from NEHU, Shillong.



