

Chapter Sixteen

Death-illness or *Marz-ul-Maut*

1. Definition of *Marz-ul-Maut*

The Words '*Marz-ul-maut*' consist of two Arabic terms '*Marz*' which means illness and '*maut*' which means death. *Marz-ul-maut* is, therefore, stands for an illness which induces an apprehension of impending death in the mind of the person suffering from it, and which actually results in his death.³⁹ The person suffering from the disease is known in Arabic as '*Mariz*' means patient. Not every disease can be regarded as *Marz-ul-maut*, though it is serious and of long standing. It must be a malady causing the apprehension of death and it must be the cause of death.

2. What constitutes *Marz-ul-maut*

In order to constitute a *marz-ul-maut*, the following conditions must be present:

(i) There must be proximate danger of death, so that there is a preponderance of apprehension of death. If the malady is of long continuance, as for example, asthma, diarrhoea, paralysis, general debility due to old age, where there is no immediate apprehension of death, it does not constitute *marz-ul-maut*. An illness is to be considered "long standing", if it lasts for one year.⁴⁰ But this limit is not to be treated as hard and fast rule.⁴¹ It depends on the situation prevailing during *marz-ul-maut*. Child birth is a *prima facie* death illness provided the pains have begun and death is caused.⁴²

(ii) The illness must cause some degrees of apprehension of death in the mind of the deceased. There must be pressure of the sense of imminence of death. A sudden heart attack resulting in death is not death-illness or *marz-ul-maut*.

³⁹ Hedaya, P. 685; PLD 1964 S.C. 143; 16 DLR S.C. 330.

⁴⁰ Hedaya, P. 687.

⁴¹ Fatima Bibi V. Ahmad Baksh, ILR 31 Cal. 319.

⁴² Syed Shamsul Hassan V. Syed Hassan, AIR 1923 All. 183.

(iii) There must be some external *indicia* of a serious illness. It means the person suffering from the illness will be unable to attend to ordinary avocations or to stand up for saying prayers.¹ Without external *indicia*, mere evidence of actual apprehension of death is not sufficient.²

(iv) Ultimately, the illness must cause the death of the deceased.³

Whether a person was expecting death and was in fear of it is a question of fact. If the ailment is for a long period and the person suffering from it has become accustomed with it, it is not death-illness, though the disease may end fatally in the long run. But if the disease has become very much aggravated which may result in the death within an appreciable time, the person should be considered to suffering from *Marz-ul-maut*.⁴

3. Effects of *Marz-ul-maut*

Marz-ul-maut has effects on marriage, dower, divorce, debts, waqfs and gifts, which are stated below:

(i) Effects of death-illness or *marz-ul-maut* on marriage

A marriage contracted during *marz-ul-maut* is *fasid* or irregular marriage. The consent given by the woman in death-illness is not valid and the wife is not entitled to dower and there is no mutual right of inheritance, if the husband dies before consummation. But the marriage becomes valid if consummation takes place or if the party in health predeceases the party who is suffering from death-illness. Under this situation, the wife is entitled to dower and the mutual rights of inheritance exists, though there is conflict of opinion about the husband's right where he is suffering from death-illness and the wife who is in health predeceases him.⁵

(ii) Effects of *marz-ul-maut* on dower

If the marriage is contracted during *marz-ul-maut*, the amount of dower payable shall be the specified or proper whichever is less unless

¹ Abdul Ahad V. Ahmad Nawak, AIR 1932 Lah. 229.

² Fatima Bibi V. Ahmad Baksh, Supra.

³ Sakina Begum V. Hafiz-ud-Din, AIR 1941 Lah. 58.

⁴ Rashid-ud-Din-ud-Din V. Nazir-ud-Din, AIR 1929 Lah. 721.

⁵ B.R. Verma, Islamic Law, Allahabad, 1991, P. 834.

the heirs consent. Where a guardian contracts a minor husband into marriage and stands as a surety for dower while he is suffering from *marzul-maut*, the contract would be invalid if either the husband or the wife is an heir of such guardian. His liability would be to the extent of one-third of his assets if they (husband and wife) are not heirs.

(iii) Effects of *marz-ul-maut* on divorce

(a) If the husband pronounces an irrevocable *talaque* during *marz-ul-maut* or makes a vow of continence (*I'la*) or brings a charge of adultery against his wife (*lian*) or the marriage is dissolved on the ground of impotency, the divorce would be effective. In that case, the wife would be entitled to inherit during *iddat* and the husband would lose the right of inheritance from her.

(b) But if the husband pronounces *talaque* at the instance of the wife (*khul'a*) who is suffering from *marz-ul-maut*, the husband can inherit from her.

(c) If *talaque* takes place by mutual consent (*mubarat*) during *marz-ul-maut* of the wife the husband is entitled to inherit from his wife, but the share of the other heirs of the wife, is to be ensured after deduction of his own share of inheritance.

(d) Where the wife apostatizes during her death-illness, the husband would inherit from her but not others. But if the husband apostatizes during death-illness, the wife would be entitled to inherit from him in each case.⁶

(iv) Effect of *Marz-ul-maut* on debts due from the deceased

Where the *only* proof of a debt is an acknowledgement by the debtor during his death-illness such debt-

(a) shall be paid only after debts are satisfied;

(b) shall not take effect at all if it is made in favour of one who is an heir at the time of the acknowledgement unless the other heirs give their consent; and

⁶ B.R. Verma, Islamic Law, P. 836, Supra.

(c) shall be valid, in the case an acknowledgement of a debt to a wife who has been divorced thrice, to the extent of the amount of debt of acknowledgement or the share of inheritance to which the wife should have been entitled, which is less.⁷

(v) Effect of *marz-ul-maut* on waqfs

(a) A *Waqf* created during *marz-ul-maut* is valid only to the extent of one-third of the whole property of the deceased.

(b) A *waqf* cannot be created in favour of an heir during *marz-ul-maut*.

(vi) Effect of *marz-ul-maut* on gift

A gift made during *marz-ul-maut* is subject to all the conditions and formalities necessary to constitute a gift *intervivos*. For example, if a gift is intended to be made by the donor and possession is not delivered, which is one of the conditions of a valid gift, the gift does not take effect.⁸ Gift during *marz-ul-maut* is considered as bequest and it takes effect to the extent of one-third of the property of the donor suffering from *marz-ul-maut*, after payment of funeral expenses, debts etc. But it may be more than one-third, provided other heirs give their consent.⁹

Again, a gift made in favour of one of the heirs is invalid, unless other heirs give their consent to it after the death of the donor.¹⁰

According to Shiya law, bequest in favour of an heir to the extent of one-third of estate is valid even without the consent of other heirs and a gift during *marz-ul-maut* to the same extent is valid without the consent of the rest of the heirs.¹¹

⁷ Hedaya, P. 438.

⁸ PLD 1964 S.C. 143; 16 DLR S.C. 330.

⁹ Hedaya, P. 685.

¹⁰ Salima Begum V. Hafiz-ud-Din AIR 1941, Lah. 58.

¹¹ AIR 1934 All. 71; Ameer Ali, Muhammedan Law, Vol. I, P. 56, Reprint 1985.