

Bibliography

1. Abdur Rahim, *Muhammadan Jurisprudence*
2. Aquil Ahmad, *Text Book of Mohammedan Law* (Central Law Agency, Allahabad 1982)
3. M.B. Ahmad, *Administration of Justice in Medieval India* (Aligarh 1941)
- 3-A K.N. Ahmad, *Muslim Law of Divorce* (1978)
4. J.N.D. Anderson, "Islamic Law in Africa: Problems of Today and Tomorrow", in *Changing Law in Developing Countries* (London 1963)
5. Anderson "Islamic Law of Testate and Intestate Succession and the Administration of Deceased Persons' Assets", in Tahir Mahmood (Ed.), *Islamic Law in Modern India*, ILI, 1972
6. Anderson, *Muslim Personal Law in India*, in Tahir Mahmood, *Islamic Law in Modern India*, ILI, 1972
7. Anderson, "Significance of Islamic Law in the World Today" at 9, *American Journal of Comparative Law* (1960)
8. Baillie's Digest
9. A.K. Bhandari, "Adoption Amongst Mohammedans — Whether Permissible in Law", (2005) 47 JILI 110
10. V.P. Bharatiya, *Religion-State Relationship and Constitutional Rights in India* (Deep & Deep, 1987)
11. Bharatiya *Religious Freedom and Personal Laws*, in Madhav Menon (Ed.), *National Convention on Uniform Civil Code for All Indians*, Bar Council of India Trust, New Delhi 1986

12. Carroll Lucy, "Religious Conversion and Polygamus Marriage" at p. 39 *Journal of the Indian Law Institute* (1997) at p. 272
13. Carroll Lucy and Harsh Kapoor, *Talak-i-Tafwid: The Muslim Woman's Contractual Access to Divorce — in 'an Information Kit', Readers and Compilations Series*, published by Women Living under Muslim Laws, 1996
- 13-A. Constituent Assembly Debates (CAD) Vol. VII
- 13-B. Noel J. Coulson, *Conflicts and Tensions in Islamic Jurisprudence* (University of Chicago Press, 1969)
- 13-C. *Delhi Law Review*, Vol. XXV (2003)
14. Vasudha Dhagamwar, "Towards Uniform Civil Code", in Menon, N.R. Madhava, (Edn.) *National Convention on Uniform Civil Code for All Indians*, Bar Council of India Trust, New Delhi 1986.
- 14-A. *Dharmayug*, 8th April, 1973
- 14-B. *Daily Bulletin*, Vol. XXVI, Session of the International Congress of Orientalists, 9th January 1964, New Delhi at p. 11
15. Paras Diwan, *Dowry and Protection to Married Women* (Deep & Deep, New Delhi 1987)
16. Paras Diwan, *Muslim Law in Modern India* (Allahabad Law Agency, 1985)
17. Paras Diwan, *The Law of Parental Control, Guardianship and Custody of Minor Children* (1973)
18. Asgar Ali, Engineer "Islam and Women", *The Indian Express*, 5th August 1993, New Delhi
19. A.A.A. Fyzee, *Outlines of Mohammedan Law* (3rd Edn., 1964)
20. A.A.A. Fyzee, *A Modern Approach to Islam* (Asia 1963)
21. A.A.A. Fyzee, "The Muslim Wife's Right of Dissolving her Marriage" (1936) 38 Bom LR, LJ 113
22. A.A.A. Fyzee, "Arabs" in *Encyclopaedia Britannica*, Vol. II (13th Edn.) at p. 284

- 22-A. A.A.A. Fyzee, *Cases in the Muhammadan Law of India, Pakistan & Bangladesh* (2nd Edn. by Oxford University Press, New Delhi 2005)
23. Ibrahim Abdel Hamid, "Dissolution of Marriage", *Islamic Quarterly* Vol. III (1956) at p. 166 and Vol. IV (1957) at p. 3
24. S.M. Hasan, "Muslim Law of Legitimacy and Section 112 of the Indian Evidence Act", in Tahir Mahmood (Ed.), *Islamic Law in Modern India*, New Delhi, ILI, 1972.
25. Athar Hussain, *The Prophet of Islam*, Hamdard National Foundation, Delhi
26. S. Jaffer Hussain, "Judicial Interpretation of Islamic Matrimonial Law in India", in Tahir Mahmood (Ed.), *Islamic Law in Modern India*, ILI, 1972.
27. Ikram, *Muslim Civilisation in India*, edited by A.T. Ambric (Columbia University Press, 1964)
28. Mohammad Imam (Ed.). *Minorities and the Law*. ILI, 1972
- 28-A. *Indian Express*, 29th June 1986 and 17th May 1985, and 10th October 1993 (New Delhi Edn.)
29. M.U.S. Jung, *A Digest of Anglo-Muslim Law* (Allahabad 1932)
30. S.A. Kader, *Muslim Law of Marriage and Succession in India* (Eastern Law House, Calcutta 1998)
31. Harsh Kapoor, Lucy Carroll and Harsh Kapoor – *see supra*
32. S.A. Karim, "Muslim Polygamy and Special Marriage Act" (1992) 1 KLT 3 at p. 6
33. Danial Latifi, "Law of Family *Wakf*; Need for Reconsideration", in Tahir Mahmood (Ed.), *Islamic Law in Modern India*, ILI, 1972 at p. 34
34. Tahir Mahmood, *An Indian Civil Code and Islamic Law* (Tripathi, Mumbai 1976)
35. Tahir Mahmood, *Family Law Reform in the Muslim World*

36. Tahir Mahmood, *The Muslim Law of India* (2nd Edn., 1982 Law Book Co., Allahabad)
37. Tahir Mahmood, *Islamic Law in Modern India*, ILI, 1972
- 37-A. Tahir Mahmood, "Common Civil Code, Personal Laws and Religious Minorities", in Mohammed Imam (Ed.), *Minorities and the Law*, ILI, 1972
38. Vijay Malik, *Muslim Law of Marriage, Divorce and Maintenance* (Eastern Book Co., Lucknow 1988)
39. D.F. Mulla, *Principles of Mohammedan Law* (18th Edn. by M. Hidayatullah, N.M. Tripathi, Mumbai 1977)
40. N.R. Madhav Menon (Ed.), *National Convention on Uniform Civil Code for All Indians*, Bar Council of India Trust, New Delhi 1986
41. B.N. Sampath, "Uniform Civil Code: Judicial Separation and Divorce", in Madhav Menon (Ed.), *National Convention on Uniform Civil Code...*, Bar Council of India Trust, New Delhi 1986
42. K.P. Saksena, *Muslim Law* (1963)
43. Schacht, *An Introduction to Islamic Law* (Oxford 1964)
44. K.P. Sharma, *Muslim Vidhi* (Rajasthan Hindi Granth Academy, Jaipur 1983)
45. Nejatullah Siddiqui, "Restraints on Polygamy and Muslim Personal Law", in Tahir Mahmood, *Islamic Law in Modern India*, ILI, 1972
46. B. Sivaramayya, "Marriage, Registration of Marriages and Decrees of Nullity", in Madhav Menon, *National Convention on Uniform Civil Code...* BCI Trust, N.D. 1986
47. Tyabji, *Muslim Law*
48. Kamila Tyabji, "Polygamy, Unilateral Divorce and Mahr in Muslim Law as Interpreted in India", in Tahir Mahmood (Ed.), *Islamic Law in Modern India*, ILI, 1972 at p. 142

49. B.R. Verma, *Mohammedan Law* (6th Edn., 1991)
50. M. Afzal Wani, "Maintenance of Women and Children under Muslim Law: Legislative Trends in Muslim Countries", (2003) 45 JILI 409
51. M.R. Zafar, "Unilateral Divorce in Muslim Personal Law", in Tahir Mahmood, *Islamic Law in Modern India*, ILI, 1972

Subject Index

Acknowledged kinsman, 381

Acknowledgement

- comparison with adoption, 160
- conditions of valid, 155-157
- effects of, 157
- of paternity (*Iqrar*), 152-155
- rebuttal of, 157

Administration of estates

- functions of legal representatives, 350-351
- legal representatives of a deceased Muslim, 348-349
- principles governing the, 344-346
- recovery of credits to the property of the deceased, 351-352
- requirement of Probate and Letters of Administration, 350
- suit by creditor, 357-360
- vesting of estate, 346-348

Adoption, unknown to Muslim Law, 157-160

Alienation

- before payment of debt, 354-355
- by co-sharer before partition, 355-357
- for payment of debts, 360-361
- guardians
 - certified, 175-177
 - legal, 173-175
 - de facto, 177-178

Apostacy, as ground of divorce, 121-126

Application of Muslim Law in India

- dissolution of Muslim Marriages Act, 37-38
- early contacts of the Arabs with India, 31
- East India Company, 33-34
- historical, 31

Application of Muslim law in India (contd.)

- impact of Shariat Act, 37
- introduction, 30
- present position, 38-42
- rules of interpretation, 45-48
- Shariat Act, 34-37
- Sultanate and Mughal period, 32-33
- who is a Muslim, 42-45

Ariya, distinguished from Hiba, 287**Aul or Increase**

- doctrine of (among Shias), 411
- doctrine of (among Sunnis), 387-388

Bequests

- acceleration of, 341
- alternative, 339
- conditional, 339
- consent of legatee, 338
- contingent, 339
- death of legatee, 338
- future, 339
- to any person, 336
- to apostates, 337
- to heirs, 336
- to institutions, 337
- to manslayer, 337
- to unborn person, 336

Categories of Muslims, 45**Concept and background of Muslim Law, 1****Conditions in pre-Islamic Arabia, 3****Conjugal rights, restitution of**

- conditional restitution, 76-79
- defence of cruelty, 74-75
- neglect of matrimonial obligations, 75-76
- other grounds, 76

Consideration under, See Gift**Constitution of India**

- Art. 19(1)(f) and Cl. (5) and Art. 15 and pre-emption, 308-309
- Art. 25 and Art. 44 and Muslim Law, 38-42
- Art. 26 and Art. 19(1)(f) and VIIth Schedule and *wakf*, 225-227

Conversion, as ground of divorce, 129-135

Creditor, suit by, against heirs, 357-360

Criminal Procedure Code, 1973

S. 125 as remedy to cruelty by husband

as remedy to bigamy by husband, 86-87

plea of talak by husband to thwart wife's suit

for maintenance under, 106

right to maintenance, 98-102

Ss. 125, 127 and 128—Maintenance under, 187-192

S. 127—Dower or sum under customary law as a

defence to maintenance suit under, 98-102

Custom, as a source of Muslim law, 14-15

Customary Law

contrary to Islam, 34

Cy pres doctrine, 248-249

Death-illness (*maraz-ul-maut*)

gift made during such illness, 282, 334

will made during such illness, 282, 334

Development of Muslim law

Period I, 25

Period II

a review of the first century of Islam, 26-27

Period III

important aspects of the second century of Islam, 28

Period IV, 29

Divorce

after the advent of Islam, 104-105

ahsan, 107

apostasy and conversion as grounds of, 129-135

by act of parties, 106

by death of husband or wife, 105-106

by husband, 105, 106-112

by judicial process, 116-123

by mutual consent, 114-116

by wife, 112-114

classification of, 105

dissolution of foreign marriages, 137

divorce through agreement, 137-138

effect of compulsion, intoxication or jest, 109-111

Divorce (contd.)

- effects of, 128
- faskh*, 106, 118-119
- formalities necessary for remarriage, 129
- grounds for decree, 119-123
- hasan, 108
- husband's unilateral power to divorce, 123-128
- Iddat, 104, 106-108
- Ila*, 105, 111
- Khula*, 105, 114-115
- Lian*, 106, 116-118
- modes of, *See* classification
- Mubarat*, 105, 115-116
- one irrevocable divorce, 109
- pre-Islamic background, 103
- retraction of charge, 117-118
- Talak*, 105, 106-111
- Talak-ul-Biddat*, 105, 108-111
- Talak-us-Sunnat*, 105, 107-108
- Talak-e-Tafwid*, 105, 112-114
- Zihar*, 105, 112

Dower or *Mahr*

- amounts of, 94
- and maintenance, 98-102
- conditions of payment (of amounts of dower), 94
- deferred, 91-92
- definition, 88-89
- kinds of, 90-92
- maximum amount of dower, 93
- minimum amount of dower, 93
- nature of, 89-90
- pre-Islamic background, 88
- prompt, 91-92
- specified dower, 90-91
- subject-matter of, 92-93
- unspecified dower, 92
- widow's right of retention, 94-98

Equality, doctrine of (*Kafaa*), 71**Escheat, 382****Estate, administration of, 344-352****Executor, appointment of Mutawalli by, 251**

Family (private) wakfs

- exclusively for family, 241
- position of in India, 225-227
- substantially for charity, 242
- substantially for family with some provision for charity
 - law after 1913, 242
 - law before 1913, 242

Family settlement, 302**Faskh, 106, 118****Fiqh distinguished from Shariat, 25****Fosterage**

- prohibition to marry on account of, 69

Funeral expenses, 345**Gift or Hiba**

- acceptance, 271
- Bye mukasa (Bay'al-Muqasal)*, 295
- conditional, 289
- constitutional validity of oral gifts, 278-282
- contingent, 290-291
- declaration, 270-271
- definitions, 267-268
- delivery of possession, 271-273
- essentials of a valid gift, 268-273
- exceptions to the rule of delivery of possession
 - donor and donee reside in the same house, 273-274
 - father to child; mother to son; guardian to ward, 276-277
 - husband to wife, 274-276
- future gift, 291
- of *Mushaa*, 287-289
- to donee in possession, 277
- Hiba* and *Ariya* distinguished, 287
- Hiba-bil-ewaz*
 - why Indian form is recognised, 296
- Hiba-ba-shart-ul-ewaz*, 296-297
- in the form of *Hiba-bil-ewaz*, 294-296
- introduction, 267
- in whose favour (donee)
 - any living person, 283
 - child in the womb, 283
 - juristic persons, 283

Gift or Hiba (contd.)

- non-Muslims, 283
- two or more persons, 283
- unborn persons, 283
- is the doctrine of *musha* unadapted to progressive society, 289
- life estate, 297-299
- life interest, creation of, 299-302
- life interest distinguished from life estate, 297-299
- musha*, gift of, 287-289
- registration, 277-278
- revocation of, 292-294
- Shiite law of life interests, 302
- trusts
 - gifts in the form of, 291-292
 - what may be given in gift
 - equity of redemption, 284
 - gifts of corpus and usufruct, 285-286
 - insurance policy, 284-285
 - property held adversely to donor, 285
 - who can make gifts, 282-283

Grandfather

- False, 380
- True, 380

Grandmother

- False, 380
- True, 380

Guardians

- alienation by legal guardians, 173-175
- appointed by the Court, 175
- appointment of, 162-163
- certified guardians—alienations by, 175-177
- de facto guardians, 177-178
- kinds of, 164

Guardianship

- age of majority, 163-164
- appointment of guardian, 162-163
- alienation by
 - certified guardians, 175-177
 - de facto guardians, 177-178
 - legal guardians, 173-175

Guardianship (*contd.*)

- concept of in Islam, 161-162
- custody of minor wife, *etc.*, 170
- definition, 161
- disqualifications of guardians, 171-172
- guardians appointed by Court
 - alienations by, 173-178
 - legal guardians, 173-175
- Hizana*, 165
- in marriage, 72-73
- kinds of, 165-172
- legal guardians, 173-175
 - alienations by, 173-178
- male relations, 170
- mother, 165-169
- of person, 165-172
- of property
 - alienations by, 172-178
 - categories of guardians of property, 172-178
 - de facto guardians, 177-178
- other female relations, 169-170
- purchase of immovable property by, 178
- termination of, 172

Hadith (Tradition), 7-8**Heirs**

- alienation by, 354-355, 360-361
- cannot be legatees, 336
- extent of liability for debts, 352-354
- suit by creditors against heirs, 357-360

Heirs (in Hanafi Law)

- agnatic heirs (residuaries), 390
- classes of, 380-381
- Koranic heirs (Sharers), 381

Heirs (in Shia law)

- by consanguinity, 402
- by marriage, 402
- rules of succession among heirs of Class I, 405
- rules of succession among heirs of Class II, 406-408
- rules of succession among heirs of Class III, 408-411

Hiba, See Gift

Hizana, See under Guardianship

Homicide, an excluding factor in inheritance, 376

Husband

divorce by, 123-128

divorce by the death of, 129-130

embraces Islam, 130

renounces Islam, 130

Iddat

definition of, 135

different periods of, 135

rationale, utility & periods, 135-137

reasons for observing of, 135

valid retirement, effect of, 135

Ijtihad and Taqlid, 13

Ila (vow of continence), 111

Illegitimate child

custody of, 165-169

exclusion of, from inheritance, 377-378

maintenance of, 214

Imamat, 15

Inheritance (General)

birthright, not recognised, 369-370

distinctions between Shia and Sunni Law of, 411-415

doctrine of representation, 372-375

dual basis of Muslim law of, 363

excellence of Muslim law of, 362-363

explanation of important terms used, 379-380

importance of pre-Islamic customs, 363

improvements introduced by Islam, 364

partial or imperfect exclusion, 375

pre-Islamic rule of succession, 364

primogeniture, no rule of, 368-369

relinquishment of, 378-379

rules of total and partial exclusion, 375-379

some general rules, 367-372

some objections: Their answers, 364-366

Inheritance (General)

Objection I, 364

Objection II, 365

total exclusion

on account of custom or statute, 377-378

on account of homicide, 376

on account of illegitimacy, 377

on account of religion, 376

on account of slavery, 377

principles governing, 375

vesting of, 370

Inheritance (Hanafi Law)

Classes of heirs

principal classes, 381

subsidiary classes, 381

Class I of distant kindred

allotment of shares, 396

order of succession, 396

principles of distribution and exclusion, 396

Class II of distant kindred

rules of distribution, 399

Classes III and IV of distant kindred, 399-400

distant kindred, 395

doctrine of *Aul* (increase), 387-388

doctrine of *Radd*, 389-390

note on residuaries, 392

principal classes of heirs, 381

residuaries, 390

sharers, table of, 382-384

sharers who become residuaries, 392-395

subsidiary classes of heirs

acknowledged kinsman, 381

sole legatee, 381

State, by escheat, 382

successor by contract, 381

universal legatee, 381

table of residuaries, 390-395

uterine heirs, *See* distant kindred

Inheritance (Shia law)

Classes of heirs:

Inheritance (Shia law) (contd.)

- Class I, 402
- Class II, 402
- Class III, 402
- doctrine of 'Increase', 411
- doctrine of 'Return', 410
- exceptions of doctrine of 'Return'
 - mother, 410
 - spouse, 410
 - uterine brother and sister, 411
- heirs by marriage, 402
- mode of distribution among sharers of Class I, 405
- principles of distribution of property, 404
- rules of succession among heirs of Class I, 405
- rules of succession among heirs of Class II
 - ancestors plus collaterals, 408-409
 - ascendants, without collaterals, 406-407
 - collaterals, without ascendants, 406-407
- rules of succession among heirs of Class III, 408-409
- table of sharers, 403-404

Interpretation of Muslim Law

- comparative authority of Hanafi Jurists, 48
- general rules, 45-46
- interpretation of Koran, 46
- interpretation of *Hadith* and ancient texts, 46-47

Intoxication, divorce pronounced under, 110

Ismailiya Shias, 20

Khanqah, 241

Khojas, 35

Khula, 105, 114-115

Khyar-ul-bulugh, 73

Kitabiya, 70

Koran, as a source of Muslim law, 6

Koranic heirs, 380

Legatee, consent of, 338

Legatee, death of, 338

Legitimacy

meaning of, 146-148

pre-Islamic background, 144-145

Legitimacy (contd.)

presumptions of

- possible rationales behind these presumptions, 148-149
- whether S. 112 overrides law of legitimacy, 149-152

Lian (mutual imprecation), 116-118**Life estate, 297-299****Life interests (Hanafi law) creation of**

- by family *wakfs*, 299-300
- by *Nawazish Ali Khan's case*, 301
- by the rule in *Ashraf Khan's case*, 300-301
- by the rule in *Umjad Ali Khan's case*, 300
- by will, 300

Life interest (Shia Law), 299-302**Mahr, See dower****Maintenance (Nafaqa)**

See also CrPC, 1973, 219

amount of, 218-219

by agreement, 184-187

definitions of, 180-181

introduction, 179-180

of children

illegitimate children, 214

legitimate children, 213

right to, ceases, 214

of other relations, 218

of parents, 217

of wife

by agreement, 184-187

during the continuance of marriage, 182-184

under the CrPC, 192-204

under the Muslim Women Protection of Rights on Divorce) Act, 1986,
192-204

Majority, age of

in guardianship, 163-164

Maliki School, 18**Marriage or Nikah**

classification of marriages

irregular, 65-66

valid, 64

void, 64-65

Marriage or Nikah (contd.)

definitions of, 52-53

formalities of a valid, 60-61

guardianship in, 72-73

irregular, 65-66

legal effects of, 65

Muta, 66-67

Muta compared with Nikah, 63-69

nature of Muslim, 53-60

option of puberty (Khyar-ul-bulugh), 73-74

pre-Islamic background, 51-52

polygamy in Islam, 80-87

prohibitions to marriage

affinity, 69

consanguinity, 69

difference of religion, 70-71

divorce, 70

fosterage, 69

iddat, 70

Kafa, 71

pilgrimage, 71-72

supervening illegality, 71

unlawful conjunction, 69-70

restitution of conjugal rights

conditional restitution, 76-79

defence of cruelty, 74-75

neglect of matrimonial obligations, 75-76

other grounds, 76

stipulations in marriage contract, 62-64

valid, 63-64

void, 65

who developed polygamy, 82

Maraz-ul-Maut, See Death—illness

Maternity defined, 145-146

Memons, 35

Mother

as guardian of her children, 165-169

gift to son by, 276-277

Mubarat, 115-116

Musha, 239, 287-289

Muslim Law

- applicability of, 30
- interpretation of, 45-46
- schools of, 18
- successive replacement of, 34-37

Muslim Women (Protection of Rights on Divorce) Act, 1986, 192-204

Muta, 66-67

Nafaqa, See Maintenance

Nikah, See Marriage

Option of puberty, See Khyar-ul-bulugh

Parentage, 145-146

Payment of debts

- alienation before payment of debt, 354-355
- alienation for payment of debts, 360-361
- extent of liability of heirs for debts, 352-353
- Mahmood, J. propositions regarding payment of debts, 353
- suit by the creditor against heirs, 357-360

Polygamy in Islam

- biological and psychological factors, 81
- individual factors, 80
- proper course of action, 82-87
- who developed polygamy, 82

Pre-emption

- advent of shufa in India, 304
- application of the law, 309-310
- benami transactions, 313
- characteristics of sale giving rise to, 313-315
- constitutionality of, 308-309
- definitions of, 304
- difference of religion or sect
 - difference in religion of buyer, seller and pre-emptor, 316-318
- difference of school, 319-320
- dominant and servient heritage, 311-313
- formalities to be observed
 - the first demand, 320-321
 - the second demand, 321
 - the third demand, 321

Pre-emption (contd.)

- how evaded, 323
- legal effects of, 322
- loss of the right of
 - death of pre-emptor, 322
 - forfeiture of right, 322-323
 - omission to claim, 322
- nature of the right of, 305-308
- no right of, 315
- origin, meaning and development, 303-304
- other transfers—no right in, 315
- Sunni-Shia — comparison, 323-324

Pre-emptor

- servient heritage, 311-313
- Shafi-i-jar, khaliit, Shareek*, 310-313
- subject-matter of pre-emption, 321-322
- whether transfer in lieu of dower is sale, 315

Pre-Islamic

- Arabian customs, 3-5
- background of divorce, 103
- background of dower, 88
- background of marriage, 51-52
- customs, importance of, 363
- rules of succession, 364

Presumption of legitimacy, 148**Probate, of will, 350****Property**

- corpus and usufruct (gift), 285-286
- forms of (that may be given in gift), 284-285
- gift of, held adversely to donor, 285
- that may be made as *wakf*, 238-239
- undivided share in (*Musha*), 287-288

Puberty, option of, 73**Qiyas**

- arguments against, 10
- arguments in support of, 10-11
- definition of, 9-11

Radd (Return)

- doctrine of, in Shia law, 410-411
- doctrine of, in Sunni law, 389-390

- Relevance of the study of Muslim Law, 1**
- Remarriage, formalities for, 129**
- Removal of mutawalli, 251-252**
- Representation, doctrine of, 372-375**
- Residuaries, See under Inheritance (Hanafi Law)**
- Restitution of conjugal rights, 74-79**
- Revocation**
- of gift, 292-294
 - of *wakf*, 233
 - of will, 339-340
- Rules of interpretation of Muslim Law, 45-46**
- Schools of Muslim Law**
- extinct schools (Sunni), 19
 - Hanafi, 18
 - Hanbali, 19
 - Maliki, 18
 - Shafi, 18-19
 - Shia, 20-22
 - Sunni, 18
- Sharers (Koranic heirs)**
- Hanafi law, 380-381
 - Shia law, 401-402
- Shariat Act, 26 of 1937**
- application of, 35-37
 - effect of, on customs, 35-37
 - objects and reasons of, 34
 - operations of, 34-37
 - whether retrospective, 37
- Shariat and Fiqh**
- distinction between Shariat and Fiqh, 25
- Shia and Sunni sects, the birth of, 15-17**
- Shufa, See under Pre-emption**
- Sources of Muslim Law**
- A. Shariah sources
 - Al-masalih al-Mursalah*, 12
 - equity and absolute good, 11
 - Hadith*, 7-8
 - Ijma*, 8-9

Sources of Muslim Law (contd.)*Ijtihad and Taqlid*, 13*Istidlal and Istishab*, 12*Istihsan*, 11-12

Koran, 6

Qiyas, 9-11

arguments against, 10

arguments in support of *Qiyas*, 10-11**B. Extraneous Sources**

custom and usages, 14-15

legal fiction, 13-14

positive legislation, 14

Stirpital succession, 414**Talab-i-ish-had**, 321**Talab-i-mowasibat**, 320**Talab-i-tamlik**, 321**Talak**

talak not an arbitrary power, 138-140

Talak-e-Tafwid, 105, 112*Talak-ul-Bid'at*, 106-109, 127*Talak-us-Sunnat*, 105-107, 127

ahsan, 107

hasan, 108

triple talak, 109

under compulsion, intoxication and jest, 109-111

Trust, distinguished from wakf, 263-264**Universal legatee**, 381-382**Unlawful conjunction**, 69-70**Uterine heirs (Distant kindred) in Hanafi law**, 395**Valid retirement, explained**, 135**Vested remainder bequest of**, 330**Vicinage, Constitutionality of pre-emption on the ground of**, 308-309**Wakf**

administration of

non-statutory administration, 250-253

statutory administration, 253-259

application of income of, 261

conditional, 249

constitutional position of, 225-227

Wakf (contd.)

- contingent or conditional, 249
- creation of, 235-236
- Cy pres doctrine, 248-249
- definition of, 228-232
- delivery of possession (whether necessary), 237
- development of, 228
- distinguished from trust, 263-264
- essentials of a valid, 249
- foreign influence on, 228
- Imams*-Remunerations to, 261-263
- importance of, 225
- invalid objects of, 246-248
- in whose favour can be made
 - general public, 240
 - wakif's* family, 240
 - wakif* himself, 239-240
- kinds of
 - private, 232-233
 - public, 232
 - quasi-public, 232
- legal incidents of
 - inalienability, 235
 - irrevocability, 233-234
 - perpetuity, 234-235
- meaning of, 228-232
- mutawalli*
 - appointment by Court, 251
 - appointment by *mutawalli*, 251
 - appointment by *wakif's* executor, 251
 - appointment by *wakif* himself, 250-251
 - competence for appointment, 250
 - limitations on power, 252-253
 - removal of, 251-252
- objects of
 - invalid, 246-249
 - valid, 244-246
- origin of, 227
- position of family *wakfs* in India, 264-266
- private, 241
- statutory administration of, 253-259

Wakf (contd.)

- subject-matter of, 238-239
- tribunal, 260
- trusts and—distinguished, 263-234
- uncertain objects, 246-249
- valid objects, 244-246
- what can be made as, 238-239
- who can create (*wakif*), 237-238

Wakf Acts

- Bengal Wakf Act, 1934, 253
- Bihar Wakf Act, 1947, 253
- U.P. Wakf Act, 1950, 253
- Wakf Act, 1954, 253

Widow's right of retention

- explained, 94-98
- whether heritable and transferable, 97

Wife

- divorce by the, 112-114
- divorce effected by the death of, 106
- embraces Isiani, 130
- maintenance of, 182-187
- renounces Islam, 130

Wills

- a critique of the one-third rule, 335-336
- abatement of legacies, 332-333
- alternative bequest, 339
- bequests which are not absolute, 338-339
- compared with gift, 342
- concept and meaning, 325-327
- conditional bequest, 339
- consent of legatee necessary, 338
- contingent bequest, 339
- death of legatee, 338
- definitions of, 327
- during *maraz-ul-maut*, 333-334
- for whom bequest can be made, 336-338
- forms of, 327-328
- future bequest, 339
- interpretation of, 340-341

Wills (contd.)

- reasons for limits on testamentary powers, 334-335
- revocation of, 339-340
- what can be bequeathed, and how much, 329-332
- who can make, 328-329

Zihar, 105-112

Zina, offspring of, acknowledgement of, 156