

**INTERNATIONAL JOURNAL OF LAW**  
**MANAGEMENT & HUMANITIES**

**[ISSN 2581-5369]**

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**Volume 5 | Issue 2**

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**2022**

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# Critical Analysis of Marz-ul-Maut

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## ABSTRACT

*In the religion of Muslim, each and every aspect of the life, to the miniscule detail is listed in their own personal laws i.e., Muslim Personal Law (Shariat) Application Act, 1937. One such thing is “Marz-ul-maut” which simply means gift in death bed. Here, when a person has reasonable apprehension of death, he is allowed to gift his property (to an extent) to a person. Death bed gifts are recognised under most of the personal laws, but they differ due to the circumstances and facts in each case. Marz-ul-maut gift, derives its nature from both “Hiba” (law of gifts) and the law of wills. Due to this, it is not exactly a gift nor a legacy, it is a hybrid of the both will and gifts. Marz-ul-maut differs in various sects, like the Malikis regard it as void and the Hanafis and the Shias hold it to be good till an extent of 1/3rd of the property.*

**Keywords-** Gift, Personal Law, Deathbed, Marz, Will.

## I. INTRODUCTION

Donatio Mortis Causa, a legal maxim, which simply means “is a gift of personal property in contemplation of death” or simply a deathbed gift. This kind of a “gift” is given by the person who is sick and in the anticipation of death. This kind of gift is only valid upon the death of the giver by the existing illness. The main ingredients of this kind of gift are that the gift should be made in contemplation of his/her death. Section 191 of the ISA<sup>2</sup> deals with the requirements of the gifts made in the contemplation of the death. In the case of Commissioner of Gift Tax v. Abdul Karim Mohammad<sup>3</sup>, the conditions in Section 191 were upheld.

In India, Citizens are allowed to follow their personal laws (Civil). This especially applies to the Muslims of our Country, they follow the Shariah, which is an Islamic religious law which governs their religious matters and their day-to-day life. The sources of the Shariah are the Quran, the Sunnah, the Ijma and Qiyas. In their personal law, every aspect of life is listed as to make their lives easier. One such aspect of their personal law is that of the “Marz- ul- Maut”, which simply means “Deathbed Gifts”. Marz- ul- Maut is their own Donatio Mortis Causa but with a touch of their own tradition and practices. It is generally presumed that the Muslims

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<sup>2</sup> Indian Succession Act, 1925 § 191, No. 39, Acts of Parliament, 1925 (India).

<sup>3</sup> Commissioner of Gift Tax of Ernakulam v. Abdul Karim Mohammad, (1991) 3 SCC 520.

should make a Will (Wasiyat) before their death or else the estate of the person would spiral through the intestate succession in conformity with the Shariah. In the case, that a Muslim person has not made a will, and while in the anticipation of death, makes a gift to a person, then it will be called a Marz- ul-Maut. Like any other laws in the Shariah, Marz- ul- Maut too has stringent conditions which it should fulfil to be effective. The Gift of Marz- ul- Maut can only be made till 1/3<sup>rd</sup> extent<sup>4</sup> of the property<sup>5</sup> without the consent of the heirs, the rest of the estate will go according to the testamentary or intestate succession.

The concept of Marz- ul- Maut originates from the hybrid mixture of the Hiba (law of gifts) and Wasiyat (the law of wills) in Islamic law. The Marz- ul- Maut is a gift made to a person by the person who is in contemplation of his/her death, but it does not come under the purview of the gift law hence so, the gift taxes won't apply to this particular act of Marz- ul- Maut. Section 129 of the Transfer of Property Act, 1882<sup>6</sup> exempts the Properties made in the contemplation of a Muslim person's death will not come under the purview of gift laws in India. In the above-mentioned case of Commissioner of Gift Tax v. Abdul Karim Mohammad, it was also held by the Supreme Court that the Gift Tax<sup>7</sup> will not be levied upon the property which was transferred during the Marz- ul- Maut. Both Will and Marz- ul- Maut is only executed after the death of the Donor, but it should be noted that a Will can be made any time during his lifetime but a Marz- ul- Maut can only be made under the apprehension of imminent death. This is the only considerable difference in the case of will and Marz- ul- Maut.

### **(A) Research Methodology**

The research work is done by following doctrinal type of research method in which the data is collected from various sources such as case laws, online journal articles, books and online websites.

## **II. COMPONENTS OF MARZ- UL- MAUT**

The concept and the law regarding the Concept of Marz- ul- Maut is a very twisted topic, which has both the aspects of Gifts and Will, in conformity to the Muslim law. It is often said that Marz- ul- Maut is of an “**Amphibious or a hybrid**” nature which contains the essentials of both Gift and a Will. It is first presented as a Hiba or a Gift, with all the necessary elements but after the death of the Donor, it becomes a Wasiyat, hence this is why “Gift Tax” is not levied, but the legal consequences of the Property relating to Wills takes place after the passing of the

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<sup>4</sup> Nazar Husain v. Rafeeq Husain, (1911) 8 A.L.J. 1154.

<sup>5</sup> The Muslim Personal Law (Shariat) Application Act, 1937, § 2, No. 26, Act of Parliament, 1937 (India).

<sup>6</sup> Transfer of Property Act, 1882, § 129, No. 4, Acts of Parliament, 1882 (India).

<sup>7</sup> The Gift Tax Act, 1958, § 5 (1) (xi), No. 18, Acts of Parliament, 1958 (India) [Repealed].

donor.

To truly understand the concept of Marz- ul- Maut, it is essential to understand the concept of Hiba (Gifts) and the concept of Wasiyat (Wills) in short.

### III. CONCEPT OF HIBA (GIFT).

Transfer of the interest of property from “one living person to another living person” without any consideration is called a Gift. A Gift is always of a gratuitous or/ and *intervivos* nature. Under Muslim Law, “a gift is an immediate and an unconditional transfer of the ownership of the ownership of the property without any consideration”<sup>8</sup>. A Muslim can either gift the property to another person either by *Intervivos*, meaning while the person is alive and by will (testamentary disposition). The Shariah allows both, but in a gift by *intervivos* disposition, a man can gift the whole of the property whereas, in testamentary disposition, only 1/3<sup>rd</sup> of the property can be disposed of<sup>9</sup>. The concept of Hiba differs from sects to sects of the Muslim community. In the sect of Hanafi, the Hiba is an act where the right of the property is conferred to someone without something in return. In the sect of Shia, it is held that Hiba is an “obligation” where the right of the property is transferred without any religious or pious obligation. Hiba can also be used to give away the whole of the property thus effectively disinheriting his/her heirs. In India, the gift subject is governed by the Transfer of Property act, 1872.

#### (A) Essentials of the HIBA.

##### 1. Clear and unambiguous declaration-

The first condition for the validity of the Hiba is the clear and unequivocal declaration of intention by the donor. The declaration can be either maybe be orally made or can be written, such forms are not immaterial. The declaration can be made by the donor himself or the agent of the donor. The purpose of the gift should be *bona fide* and not defraud creditors, if the intention *mala fide*, then the declaration will be rendered invalid. In the case of *Sultan Miya vs. Ajibakhaton Bibi and ors.*<sup>10</sup>, it was held that,

“Though a gift might be purported to be made and every overt act appears to have been taken, which this law requires for the completion of the gift, yet, if there is no **bona fide intention** to make the gift, the transfer will not take effect.”

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<sup>8</sup> Samarth Trigunayat, *Concept of Gift Under Muslim Law*, Lawctopus (Oct. 29, 2020, 10.30 AM), <https://www.lawctopus.com/academike/concept-of-gift-under-muslim-law>

<sup>9</sup> David S Powers, *The Islamic Family Endowment (Waqf)*, 32 Vand J Transnat'l L, 1167 (1999).

<sup>10</sup> AIR 1932 Cal 497.

## **2. Acceptance by the Donee-**

The second condition to be fulfilled for the Gift to take effect is the acceptance of the gift by the donee or his agent. Such acceptance should be express or implied<sup>11</sup>. Exceptions for this condition are, when the gift is made to his ward<sup>12</sup> (acceptance not necessary by the ward) and when the gift is made to a debtor for the debt the donor owes to him, the acceptance is not necessary.

## **3. Delivery of Possession-**

The gift is only actually complete after the actual physical delivery of the possession. The delivery is one of the most important conditions of the gift, and the delivery should be complete whether if the property is movable or immovable. A gift where the delivery of the position has not taken place renders the gift void ab initio. In the case of *Maqbool Alam Khan v. Mst. Khodija and Ors*<sup>13</sup>, it was stated that “The three pillars of a valid gift under the Mohammedan Law are declaration, acceptance and delivery of **possession**”.

## **IV. CONCEPT OF WASIYAT (WILL)**

A Wasiyat or a will is an instrument with which the person can dispose of his properties to someone after his death. This instrument is used by the testator to manage how his properties will be distributed; this instrument gives her/him the power to regulate his properties instead of intestate succession where the properties will be fragmented way more due to the existing conditions of the intestate succession. Since there is no codified law regarding the wills of a Muslim, he/she can make wills as per their religious texts. A will is made under free consent, he/she can dispose of the property however one wants. But a Muslim cannot dispose more than 1/3<sup>rd</sup> of his/her property after the expenses for funeral expense and debts<sup>14</sup> so that the heirs are not deprived of their right to inherit<sup>15</sup>. The property can either be movable or immovable property. The bequeathing should be absolute and not with any conditions attached to them. If the property is not unconditional, the bequest will still be valid whilst the conditions alone will become void.

### **(A) Essentials of a Will.**

#### **1. The testator should be competent to make the will-**

The testator or the legator, who makes the will should be competent enough to make a will.

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<sup>11</sup>*Munni Bai v. Abdul Gani*, AIR 1959 MP 226.

<sup>12</sup>*Ebrahim v. Bai Asi*, AIR 1934 Bom 21.

<sup>13</sup>(1966) 3 SCR 479

<sup>14</sup>*Sajathi Bi v. Fathima Bi and others*, AIR 2002 Mad 484.

<sup>15</sup>*Hayat-un-Nissa v. Mohammad* (1890) 12 All. 290.

The testator should be a major of at least 18 years old at the time the will is made. At the time of execution of the will, the testator should be of a sound mind, the will should be made of free consent. The will made is just a mere declaration by the legator and can be changed/ revoked any time before the death of the testator. The will can be orally<sup>16</sup> made and writing is not a necessity.

## **2. The Legatee(receiver) must be competent to accept the bequest-**

Any person irrespective of his/her creed, religion, race, caste, age can be a legatee under the will. The person should legally exist, a bequest made to an unborn person is said to be void. The bequest can be made to any institution which does not promote any religion other than Islam. The person who caused the death of the testator will not be competent for a bequest. A bequest can also be made by the testator jointly by either mentioning their specific shares or equal shares.

In the *Ghulam Mohammad v. Ghulam Hussain*<sup>17</sup>, a general rule was held that the testator cannot “bequest in favour of an heir is not valid unless the other heir’s consent to it”. This became a general rule after this case laid down the rule.

## **3. The Subject (property) matter should be Valid-**

The property that the legator is disposing of should be his own property. The property should be in existence when the testator dies but not necessarily should be in existence at the time of making the will. The bequest should be unconditional, meaning that the bequest of property should not come with any conditions. Even if there is a conditional bequest, the conditions alone will become void and the bequest will still be valid.

## **4. The testator and his/her testamentary powers-**

The Muslim testator has some restrictions as to how and what he can dispose of by a will. These restrictions are laid down to protect the birth rights of the heirs of the testator. By law, a testator **cannot, by will dispose more than 1/3<sup>rd</sup> of his property**<sup>18</sup> (but can do with the consent of the heirs) and also cannot give preference to one heir over other heirs, if any heir is excluded by the will, then it is said to be void.<sup>19</sup>

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<sup>16</sup> *Khairunnissa v. Karamatullah*, A.I.R 1933 Oudh 99

<sup>17</sup> (1932) 34 BOM 510

<sup>18</sup> *Mohammed Ali Nayyar v. Ahraz Hussain*, 2004 (6) A.L.D. 845.

<sup>19</sup> *Husaini Begum V. Mohd. Mehdi*, AIR 1927 All 340.

## V. TEST FOR MARZ- UL- MAUT

In the case, Shaik Nurbi v. Pathan Mastanbi and ors.<sup>20</sup>, the essential conditions which are needed for a valid deathbed gift (Marz- ul- Maut) was stated as follows:

“Mohammedan Law, three conditions have to be satisfied to establish Marz-ul-Maut, which are –

- (1) the illness of the malady must have caused the death of the donor;
- (2) some degree of subjective apprehension of death in the mind of the sick person or preponderance of death;
- (3) some **external indicia**, chief among which would be the inability to attend to ordinary avocations.”
- (4) delivery of the possession must be done (this rule is derived from Hiba).

(1) In each and every case of deathbed gift, the facts and the circumstances of the case will be interpreted separately to determine whether the malady or sickness which was gone through by the person is a Marz- ul- maut or not. It should also be noticed that the person should only die of the sickness or malady he/she was going through, if the person dies of any other thing, Marz- ul- Maut will be converted into a Hiba, if all the essentials of the Hiba are valid. It is also essential for the donee to prove<sup>21</sup> that the deathbed gift was made due to the apprehension of the death by the donor and should also prove that the death was caused by the sickness he was going through at the time of making the gift.

(2) For the second requirement, the person who is suffering from an illness should have made the gift to another person out of the fear or apprehension of death<sup>22</sup> from the sickness. This should be visibly seen and confirmed by the people who attend to him/her, including the physician. It is also stated that “the most valid definition of death- illness, is that it is one, which is highly probable, will issue fatally”.

(3) The third condition that is required to be fulfilled is that the sick person should have sickness as to not being able to attend to his day-to-day routines as such.

In the case of Mustak Ahmed v. Abdul Wahid<sup>23</sup>, the following was stated:

“Marz-ul-Maut (mortal sickness) is the kind of sickness, such that in the condition of the **sick**

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<sup>20</sup> (2004) 4 ALT 624.

<sup>21</sup> Safia Begum and ors. v. Abdul Rajak and ors., AIR 1945 Bom 438.

<sup>22</sup> Fatima Bibi v. Ahmed Baksh, (1904) 29 Bom. 85.

<sup>23</sup> (1987) 2 MLJ 449.

**person** there has generally been **fear of death** for him, and the sick person being **unable to attend** to his business, if he is a man, his business outside the house, if she is a woman, her business inside the house, has died before **a year has passed** on account of his condition, whether the person has been confined to his death-bed or not. And if when the illness of a sick person is prolonged, **one-year passes**, while he is always in one state, unless the illness of the sick person gets worse and his state is changed, he is like a man who is well, and his **transactions are like the transactions of a man who is well**. But if his illness gets worse and his state changes and he dies before a year passes, his state until he dies, calculating from the time of **change**, is mortal sickness.”

**(A) Essential Conditions for Marz- ul- Maut.**

The gifts which are made in one’s deathbed do not go unrestricted as it is hard to prove by the parties (the heirs and the donee) of the gift and since oral bequeathing is a difficult task to prove. The nature of the Marz- ul- Maut is more of a gift and due to this, it has to fulfil all of the conditions mentioned for the Hiba. The conditions which needed to be fulfilled are,

- i) There must be an explicit declaration of gift by the donor- Clear and unambiguous;
- ii) The declaration should be either oral or written;
- iii) The donee should accept the gift by the donor either explicitly or implied;
- iv) Actual or constructive delivery of the possession of the subject matter should take place;

It can be said Marz- ul- Maut is a gift due to its conditions which are similar to the Hiba itself. Although a gift *intervivos*, can be made to the donee with the whole of the property, this is contradictory in Marz- ul- Maut. According to the law, only 1/3<sup>rd</sup> of the property can be bequeathed to the donee during the Marz- ul- Maut. This brings us to the concept of Wills or Wasiyat. In a Wasiyat, only 1/3 of the property can be given away as to protect the rights of the heirs. The same principle is followed in Marz- ul- Maut unless with the consent of the heirs. This principle of the Will has explained above.

Hence, due to its unique crossovers between the Law of Wills (Wasiyat) and the Law of Gifts (Hiba), it can be said that a Marz- ul- Maut is a gift but with the requisites of Will under the Mohammadan Law, which accurately describes its “Hybrid or Amphibious” nature.

In *Cain v. Moon*<sup>24</sup>, The Judicial Committee held that the test which was treated as decisive on

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<sup>24</sup> (1893) 2 Q.B. 283.



the point of the validity of the gift was whether the deed of gift was executed by the donor under the apprehension of death.

## VI. APPREHENSION OF DEATH

In the previous judgement, it clearly states the second and the third conditions and explains them in detail. With these conditions, the sickness or the malady should also not last for more than a year, if it does, it will no longer be considered a Marz- ul- Maut<sup>25</sup>. Although if the condition of the existing sickness gets worse, then the period of one year will start again from the day the situation of the donor gets worse. In another scenario, when the sickness is long-standing, like Tuberculosis<sup>26</sup>, and if and when the sickness aggravates suddenly and the donor is unable to continue his daily tasks and fulfils all the above-mentioned conditions, then it would be treated as a new sickness, from which the donor will have about a year for Marz- ul- Maut.

One of the crucial aspects of Marz- ul- Maut, which differentiates from others is the factor of “Apprehension of Death<sup>27</sup>” by the donor. There are two angles to view the apprehension from, one from the view of the donor and the other from the view of the others. The apprehension of death is **subjective** for everyone. In the case of *Hassarat Bibi v. Golam Jaffar*<sup>28</sup>, the definitions and the indications of a death- illness is mentioned:

- “i) The donor should be suffering from a sickness or a malady which ultimately will cause the death of the donor;
- ii) The sickness should cause the person to fear or apprehend his death and thereby making him think that he is going to die;
- iii) the illness should make him or her, unable to attend to their day- to- day businesses as mentioned in the case of *Mustak Ahmed v. Abdul Wahid*<sup>29</sup> and in the case of *Karimamssa Bibi v. Hamidua*<sup>30</sup>;
- iv) a person with a long continuing sickness suddenly taking a serious turn where he/she spirals into the apprehension of death<sup>31</sup>.”

In the case of *Mumtaz Ahmed v. Wasi- un- Nissa*<sup>32</sup>, it was held that the doctrine of Marz- ul- Maut will only apply in the case where the gift is made under the imminent pressure of death.

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<sup>25</sup> Muhammad Gulshere K. V. Mariyam B., (1881) 3 All 73.

<sup>26</sup> Musi Imran v. Ibn Hasan, (1933) 31 All 53.

<sup>27</sup> Fatima Bibi v. Ahmed Baksh, (1907) 35 IA 67.

<sup>28</sup> (1899) 3 C.W.N. 57.

<sup>29</sup> Supra note 22 at 10.

<sup>30</sup> (1923) 3 C.W.N., 129

<sup>31</sup> Sajjad Husain v. Muhammad Sayid Hasm, AIR 1934 All 71.

<sup>32</sup> AIR 1948 Oudh 301.

It is more like an intuition for the patient that he/she is going to die and has no chance of recovery at all.

## VII. VIEWPOINT OF MARZ- UL- MAUT FROM VARIOUS ANGLES.

In this chapter, some study on the important topics such as the diseases which are included in Marz- ul- Maut, deathbed gifts in other religions and is Marz- ul- Maut a contract will be studied.

### (A) Diseases which come under Marz- ul- Maut.

The donor or the testator must be sick for him to award Marz- ul- Maut. The sickness varies from facts to facts. But then it should be taken into consideration that the apprehension of death is different for each and every one of us. One might die of common cold due to a bad immune system and one might die due to cancer, both being drastically different illnesses. However, it is not necessary that the person should be confined to his bed alone, the sickness should be as such that the person cannot do his day-to-day avocations. In today's world, due to the advancements of the medicine, people with certain life-threatening illness are prolonging their life for a period more than one year, due to this it should be taken into account that when the sickness becomes mortal again, from that point, a year will be considered to make a Marz- ul- Maut. The illness whether it is mortal or not should be determined case by case by a physician so that the doctrine of Marz- ul- Maut can be valid.

Simple diseases like diabetes and blood pressure do not come under the umbrella of mortal sickness, as in these times they can be managed with the use of modern medicine<sup>33</sup> and a proper lifestyle, due to this generally, the life illness cannot be considered a mortal illness. Diseases like paralysis<sup>34</sup>, diabetes, asthma<sup>35</sup> etc. cannot be considered a mortal sickness however if the diseases are too severe and there is a medical worry, then these diseases can be a reason for Marz- ul- Maut. In the case of Muhammad Gulshere K. V. Mariyam B.,<sup>36</sup> it was laid down that "long and lingering diseases which makes the person familiar to the effects over a period of more than one year, which ultimately dilutes the apprehension of death cannot be considered as a sickness for Marz- ul- Maut. While these are not considered the diseases for the mortal sickness, rapid consumption and galloping or pneumonia are covered under the doctrine of Marz- ul- Maut, where the disease brings in the thought of death and renders him/her helpless

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<sup>33</sup> Muhammad Akbar Khan, Zohaib Hasan Makwal, *The Legal Effects of Death-Illness on the Formation and Dissolution of Marriages in Islamic Law*, 5 Lums Law Journal (2018).

<sup>34</sup> Sarabai v. Rabiabai, (1905) 30 Bom. 531.

<sup>35</sup> Khurshed Hussain v. Faiyaz, (1914) ILR 36 All 289.

<sup>36</sup> Supra note 25 at 11.

and the death eventually becomes evident. In this case, if the person gifts anything, then it can be considered as a Marz- ul- Maut.

### **Deathbed Gifts in other religions.**

Under the Hindu law gifts due to the apprehension of death (called Donatio Mortis Causa) is valid too. This is governed by Section 191 of the Indian Succession Act, 1925. In the case of Deo Saran v. Deoki Bharathi<sup>37</sup>, the essential ingredient of what constitutes to a gift is laid down. The gift can either be a movable property or an immovable property, but the gift is contingent on the death of the donor due to the sickness.

## **VIII. DIFFERENCE BETWEEN MARZ- UL- MAUT AND DONATIO MORTIS CAUSA**

Donatio Mortis Causa and Marz- ul- Maut are pretty similar when compared with minor tweaks to the Marz- ul- Maut.

- Donatio Mortis Causa governed by the Indian Succession Act, 1925 whereas Marz- ul- maut is governed by Muslim Personal Law<sup>38</sup>.
- Under the ISA, 1925 only movable property can be disposed by the Donatio Mortis Causa, whereas in Marz- ul- Maut, the property can be either movable or immovable.
- In Donatio Mortis Causa, no terms are laid down as to which property can be disposed of, how much and to whom. But in the case, of Marz- ul- Maut, the gift is subject to limitation (only 1/3<sup>rd</sup> property only allowed to dispose of and is not valid when made to an heir).
- In the case of Donatio Mortis Causa, the gift will become invalid when the donor recovers, but in the case of Marz- ul- Maut, the proceeding of Hiba will take place<sup>39</sup>.

These are the differences between the two which makes the Marz- ul- Maut more complex and unique.

### **(A) Is Marz- ul- Maut a contract?**

Marz- ul- Maut is basically a gift (Hiba) with some of the characteristics of the Will (Wasiyat)

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<sup>37</sup> 80 Ind Cas 980.

<sup>38</sup> The Muslim Personal Law (Shariat) Application Act, 1937, § 2, No. 26, Act of Parliament, 1937 (India) reads that - Application of Personal law to Muslims.—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).

<sup>39</sup> Imam Al-Nawawi, Minhaj- et- Talibin, *A Manual of Muhammadan Law*, 540 (Adam Publishers & Distributors 2005).

after the death of the Donor. A gift is a mere transfer of property from one person to another without any consideration. In a contract, Consideration is essential for it to be called a contract. However, recognizing the needs for contracts without consideration, the Indian Contract Act, 1872 has exception under Section 25 of the act, which is an exception of consideration in the contract. Hence, Marz- ul- Maut can be considered a Contract if it satisfies the conditions and qualifies.

## **IX. CONCLUSION AND OPINIONS**

The deathbed gift is recognized by many religions and countries, but what makes Marz- ul- Maut a special doctrine is that the accuracy and the details laid down by the principles as to the extent to be disposed of, what is allowed to be disposed of, to whom it is to be disposed of etc. In other religions, the doctrine of deathbed illness exists, but it is not as in detail like the concept of Marz- ul- Maut. The deathbed gifts in other religions are just gifts with some conditions and have only the essentials of a gift to fulfil. It is also astounding how Marz- ul- Maut has the concept of both the Hiba and the Wasiyat. Its hybrid nature is of that it can change to one or the another if any one of the conditions is not met. This doctrine has the capacity to change the whole view on the law of inheritance in the Mohammadan law. Without the essentials of the doctrine, suffering from mortal sickness and the apprehension of death, a gift cannot be a Marz- ul- Maut. By fulfilling all of the above-mentioned essentials, a person can make a valid Marz- ul- Maut.

After a detailed study on the Doctrine of Marz- ul- Maut, it can be seen by the author how accurately and in a minuscule detail each and every rule and law were laid down in the Shariah. The concept of Marz- ul- Maut has a significant value in the Muslim Personal laws and can be understood easily with the help of two of its components, Hiba and Wasiyat with the help of case laws. Even though the materials on the topic were scarce the researcher has tried his best to answer all the questions laid out. The research conducted with limited materials was proved to be very lucrative and some assumptions were logically made with the help of the relevant case laws.

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**X. BIBLIOGRAPHY****• Books**

1. Imam Al-Nawawi, Minhaj- et- Talibin: A Manual of Muhammadan Law 540 (Adam Publishers & Distributors).
2. Paras Diwan, Family law Pg. 531. Allahabad Law Agency (10th edn., 2013).

**• Articles**

1. Samarth Trigunayat, Concept of Gift Under Muslim Law, Lawctopus (Oct. 29, 2020, 10.30 AM), <https://www.lawctopus.com/academike/concept-of-gift-under-muslim-law>
2. David S Powers, "The Islamic Family Endowment (Waqf)" 32 Vand J Transnat'l L, Pg. 1167 (1999).
3. Muhammad Akbar Khan, Zohaib Hasan Makwal, The Legal Effects of Death-Illness on the Formation and Dissolution of Marriages in Islamic Law, 5 Lums Law Journal (2018).

**• Statutes**

1. Indian Succession Act, 1925.
2. The Muslim Personal Law (Shariat) Application Act, 1937.
3. Transfer of Property Act, 1882.
4. The Gift Tax Act, 1958 (Repealed).

**• Webliography**

1. SCC ONLINE
2. Hein Online Database
3. Internet Archive Org.

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