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Title: Comparative Study of Customs, Traditions, and Legal Procedures Related to Marriage and Divorce in Hindu and Muslim Traditions

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Comparative Study of Customs, Traditions, and Legal Procedures Related to Marriage and Divorce in Hindu and Muslim Traditions

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Abstract

This research paper presents a comparative analysis of the process, religious beliefs, customs, and legal provisions related to marriage and divorce in Hindu and Muslim traditions. In a multi-religious country like India, the rules of marriage and divorce not only vary according to religion but also influence social structures, gender roles, and individual rights. In Hinduism, marriage is considered a sacred sacrament, believed to be a bond spanning multiple lifetimes, whereas in Islam, marriage is regarded as a social contract. Based on these different religious perspectives, the procedures for divorce also vary. In Hindu marriage, divorce is a judicial process based on mutual consent, cruelty, adultery, etc. In contrast, Muslim marriage recognizes religious methods such as Talaq-e-Ahsan, Talaq-e-Hasan, Khula, and Mubarat. However, Triple Talaq (Talaq-e-Biddat) has been declared unconstitutional in India. This study also highlights the reforms made by the modern Indian judicial system to protect women's rights in both religions. Overall, this study helps in understanding the religious, social, and legal complexities of marriage and divorce and underscores the impact of religion-based matrimonial laws in India.

Keywords

Hindu Marriage, Muslim Marriage, Divorce Process, Muslim Personal Law, Triple Talaq.

1. Introduction

India is a country with many religions and cultures, where marriage and family have great social, religious, and legal importance. In Indian society, marriage is not seen as a relationship between just two individuals; it is also a union of two families, their traditions, customs, and religious beliefs. Marriage plays a key role in maintaining social order, moral values, and family stability. Because India follows different religions, the concepts of marriage and divorce are not the same for everyone. The two major religious traditions—Hinduism and Islam—have their own rules and beliefs regarding marriage and divorce, which are shaped by religious teachings, customs, and social practices. [1]

In Hinduism, marriage is considered a sacred and permanent bond. It is believed to unite a man and a woman not only for this life but for several lifetimes. Ancient Hindu texts such as the Vedas, Manusmriti, and other religious scriptures describe marriage as one of the sixteen important sacraments (Sanskaras) of life. Hindu marriage is not only meant for love or companionship; it also aims at fulfilling important social and spiritual duties. These include continuing the family lineage, performing religious rituals, and achieving the four main goals of life—Dharma (duty and righteousness), Artha (material prosperity), Kama (emotional and physical satisfaction), and Moksha (spiritual liberation). [2]

Traditionally, divorce was not accepted in Hindu society because marriage was viewed as indissoluble. A husband and wife were expected to remain together throughout their lives, even in difficult circumstances. However, as society changed and awareness of individual rights increased—especially the rights of women—it became clear that forcing people to stay in unhappy or abusive marriages was unjust. To address this, the Indian Parliament enacted the Hindu Marriage Act, 1955, which brought major reforms to Hindu marriage law.

The Hindu Marriage Act, 1955, legally recognized marriage and, for the first time, provided clear grounds for divorce. These include cruelty, desertion, adultery, conversion, mental illness, and mutual consent. The law aims to balance respect for traditional values with the need to protect individual dignity, equality, and personal freedom. Through this Act, Hindu marriage gradually shifted from being only a religious sacrament to also being a legal relationship that can be ended when it causes serious hardship.

Overall, the evolution of Hindu marriage and divorce law reflects the changing social realities of India. While marriage continues to hold deep religious and cultural value, modern law recognizes that personal happiness, safety, and dignity are equally important in a civilized society. [3]

In contrast to Hinduism, Islam considers marriage (*Nikah*) as a moral and legal contract rather than a sacred sacrament. Marriage in Islam is strongly encouraged and regarded as a Sunnah, meaning it follows the practice of the Prophet Muhammad, but it is not a compulsory religious duty for every individual. The main purpose of marriage in Islam is to provide companionship, emotional support, moral protection, and a lawful relationship between a man and a woman. According to Islamic teachings, marriage is based on free and voluntary consent of both the bride and the groom. Without mutual consent, a Muslim marriage is not considered valid. This emphasizes personal choice and agreement, which are central to Islamic marriage law. Another essential requirement is Mehr (Mahr), which is a mandatory amount of money or property that the husband must give to the wife. Mehr is a symbol of respect and financial security for the wife and is her exclusive right. In addition, the presence of witnesses during the marriage ceremony is necessary to ensure transparency and social recognition of the marriage. Islamic law also allows the marriage contract to include specific conditions agreed upon by both parties, such as terms related to maintenance or divorce rights. Overall, Muslim marriage is designed to be a practical and flexible institution, based on contract, consent, and mutual responsibility, rather than a lifelong religious bond that cannot be dissolved²In Islam, divorce is permitted but discouraged. It is allowed only as a last option when marriage fails and reconciliation is no longer possible. Islamic teachings emphasize patience, mutual understanding, and efforts at settlement before ending a marriage. However, when living together becomes impossible, divorce is accepted as a lawful way to end the marital relationship with dignity and fairness. [4]

Islamic law recognizes several forms of divorce, each with its own procedure and purpose. The most preferred form is Talaq-e-Ahsan. In this form, the husband pronounces one talaq during a period when the wife is not menstruating, followed by a waiting period (*Iddat*). During this time, reconciliation is possible, and if the husband

resumes marital relations, the talaq is automatically cancelled. Talaq-e-Ahsan is considered the best and most reasonable form because it allows time for reflection and reconciliation.

Another form is Khula, which is a divorce initiated by the wife. If a woman feels that she cannot continue the marriage, she may seek separation by returning the Mehr or giving some compensation to the husband. Khula requires the consent of the husband or approval by a court. It reflects the wife's right to exit a marriage when continuing it becomes oppressive or unhappy.

Mubarat is a form of divorce based on mutual consent. In this case, both husband and wife agree that the marriage should end. Once the offer and acceptance are completed, the divorce becomes final. Mubarat shows that Islamic law recognizes equality and mutual agreement in ending a marriage. [5]

On the other hand, Triple Talaq (Talaq-e-Biddat) was a controversial and instant form of divorce, where the husband pronounced talaq three times in one sitting, leading to immediate and irrevocable divorce. This practice was criticized for being arbitrary and unfair to women. Triple Talaq unconstitutional, holding that it violated fundamental rights such as equality and dignity. [6] Subsequently, the practice was criminalized by the Muslim Women (Protection of Rights on Marriage) Act, 2019, making instant triple talaq illegal and punishable. Islamic divorce law aims to balance the preservation of marriage with the need to provide a just exit when the relationship fails. While Islam discourages divorce, it provides structured and fair methods to ensure that the rights and dignity of both spouses especially women are protected. [7]

The procedures for divorce in Hindu and Muslim marriages not only differ religiously but also show significant legal variations. Hindu divorce requires judicial approval and is often a lengthy process, while Muslim divorce has traditionally been simpler and quicker. Muslim women have the right to seek divorce through Khula, but this process is often considered socially challenging. In Hindu law, both husband and wife have equal rights to file for divorce by mutual consent.

This research paper offers a comparative analysis of the marriage and divorce processes in Hindu and Muslim traditions. It emphasizes the religious perspectives, social impact, women's rights, legal protections, and the reforms introduced over time. The study aims to understand the religious and legal diversities in marriage and divorce in Indian society and to analyze how religion-based matrimonial laws affect individual rights and gender equality in India.

2. Hindu Marriage: Tradition and Process

In India, marriage is not merely understood as a social or legal agreement between two individuals; rather, it is a deeply embedded institution shaped by religious philosophy, cultural traditions, and social values. Within Hinduism, marriage is regarded as a sacred, eternal, and indissoluble bond, believed to unite a husband and wife not only for the present life but across multiple lifetimes. This belief reflects the spiritual nature of Hindu marriage, which is viewed as a divine union ordained by religious law rather than a temporary or convenience-based arrangement. Hindu marriage is classified as one of the sixteen essential sacraments (Sanskaras) prescribed for an individual's life, signifying its importance in both spiritual and social development.

The institution of marriage in Hindu thought carries profound religious significance and is intricately connected with rituals, ceremonies, and customary practices. It serves purposes that extend far beyond personal happiness, emotional fulfillment, or material comfort. Marriage is considered essential for the continuation of family lineage (*progeny*), preservation of social order, and maintenance of moral discipline within society. Through marriage, spouses jointly perform religious obligations, including sacred rites, household rituals, and ancestral worship, which are believed to be incomplete without the participation of both husband and wife.[8]

Furthermore, Hindu marriage is closely linked with the doctrine of Purusharthas, the four fundamental objectives of human life. It provides a structured framework for practicing Dharma (moral and social duty), ensuring ethical conduct and responsibility within family life. Marriage also supports the pursuit of Artha, emphasizing economic responsibility, mutual support, and material stability. The fulfillment of Kama, or lawful enjoyment of physical and emotional pleasures, is sanctioned and regulated within the institution of marriage. Ultimately, by harmonizing these worldly pursuits with spiritual discipline, marriage is seen as a path leading

toward Moksha, or spiritual liberation. Thus, Hindu marriage represents a holistic institution that integrates religious belief, social obligation, and spiritual aspiration, reinforcing its enduring significance in Indian society.[9]

2.1 Religious Significance of Marriages

Marriage has deep religious significance in many societies, particularly in traditional religious systems such as Hinduism. It is not viewed merely as a personal choice, social arrangement, or legal contract, but as a sacred institution rooted in religious beliefs and moral values. Religious texts and traditions describe marriage as a holy bond that unites two individuals not only for worldly life but also for spiritual purposes. Through marriage, individuals are expected to live according to religious principles and fulfill their moral and spiritual duties.[10]

In Hinduism, marriage is regarded as a *sanskara* (sacrament), which means a sacred rite that purifies and shapes an individual's life. It is believed to be essential for fulfilling *dharma* (righteous duty). The marriage ceremony is conducted through religious rituals such as *havan*, chanting of mantras, and taking vows before the sacred fire (*Agni*), which acts as a divine witness. These rituals give marriage a spiritual character and emphasize that the relationship is blessed by God. The sacred vows taken during marriage symbolize commitment, loyalty, and mutual responsibility. Religiously, marriage plays an important role in helping individuals perform their spiritual and social obligations. The husband and wife are seen as spiritual partners who assist each other in observing religious practices, performing daily rituals, and participating in festivals and ceremonies. Many religious duties, such as household worship and ancestral rites, are believed to be complete only when performed jointly by a married couple. In this way, marriage becomes a means for spiritual cooperation and shared religious life. [11]

Marriage also holds religious importance because it ensures the continuation of family and religious traditions. Through marriage, children are born and raised within a religious environment, where values, beliefs, and customs are passed from one generation to the next. This helps preserve religious identity and cultural heritage. Parents are expected to guide their children morally and spiritually, thereby strengthening the religious foundation of society. [12]

Furthermore, marriage promotes moral discipline and social harmony from a religious perspective. Religious teachings emphasize faithfulness, respect, patience, and self-control within marriage. By encouraging stable family life, marriage helps maintain social order and reduces conflict. Thus, the religious significance of marriage lies in its role as a sacred bond that supports spiritual growth, moral responsibility, family stability, and the continuity of religious and cultural traditions.

2.2 Marriage Process

The process of Hindu marriage consists of several significant religious and cultural rituals:

(a) Horoscope Matching (Guna Milan): Before the marriage, the horoscopes of the bride and groom are matched. This is based on the 'Ashtakoota Milan' system, which evaluates 36 characteristics. It is considered highly important for ensuring marital harmony and success.

(b) Exchange of Garlands (Varmala Ceremony): During the wedding ceremony, the bride and groom exchange flower garlands, symbolizing mutual acceptance.

(c) Kanyadaan: Kanyadaan is considered the most sacred ritual in Hindu marriage, where the father gives his daughter to the groom as a religious wife. It is believed to be the highest virtue.

(d) Saptapadi (Seven Sacred Steps): The bride and groom take seven steps around the sacred fire, each step symbolizing different aspects of life, such as religion, wealth, desire, salvation, health, children, and friendship. Saptapadi is the most crucial ritual in Hindu marriage, as it legally validates the marriage (Section 7, Hindu Marriage Act, 1955).

(e) Sindoor and Mangalsutra: The groom applies sindoor (vermillion) on the bride's hair parting and ties a mangalsutra around her neck, which are public symbols of marriage.[13]

2.3 Legal Provisions

Hindu marriage was traditionally governed by ancient texts and customary practices, such as the Manusmriti, Dharmashastras, and local traditions. These customs treated marriage as a sacramental and lifelong bond rather than a contractual relationship. Divorce, judicial separation, or remarriage in case of failure of the marital relationship were rarely recognized.[14]

During the British colonial period, family law reformers began to highlight the inequalities and ambiguities in Hindu marriage customs, particularly concerning women's rights, polygamy, and child marriage. Early attempts to codify personal laws, such as the Sharda Act (1929), aimed to restrict child marriage but did not provide comprehensive regulation of marriage, divorce, or maintenance. After India became independent, the need for a uniform civil code for Hindus became a priority to modernize personal law and ensure social justice. This led to the enactment of the Hindu Marriage Act, 1955, which consolidated and reformed existing Hindu marriage laws while balancing traditional customs with modern legal principles.[15]

2.3.1. Need of Hindu Marriage Act

1. Uniformity: Before the Hindu Marriage Act, 1955, Hindu marriages were regulated by different regional and caste-based customs, which varied widely across India. These customs often conflicted, creating legal uncertainty and confusion about what constituted a valid marriage. There was no single standard for age, consent, or prohibited relationships. The Act introduced uniform rules and conditions, ensuring consistency in marriage law for all Hindus. This brought clarity, legal certainty, and equal protection under the law.[16]

2. Protection of Rights: Under traditional Hindu law, women often had limited legal rights in marriage, inheritance, and divorce. They had little security in case of marital breakdown or widowhood. The Hindu Marriage Act, 1955, introduced legal safeguards, giving women rights to maintenance, property, and divorce. It also allowed women to seek judicial remedies if their rights were violated. This ensured greater equality and protection for women in marital relationships.[17]

3. Legal Validity: The Hindu Marriage Act, 1955 clearly laid down the conditions for a valid marriage, such as monogamy, minimum age, mental capacity, and prohibited relationships. By specifying these rules, the Act made Hindu marriages legally enforceable. This reduced confusion caused by differing customs across regions and communities. It also helped in resolving disputes related to marital validity in courts. Overall, it provided legal clarity and protection for both spouses[18]

4. Modernization: The Act incorporated modern legal principles like monogamy, consent, mental capacity, and minimum age, aligning Hindu marriage law with contemporary social and constitutional values[19].

5. Judicial Remedies: The Hindu Marriage Act, 1955 introduced divorce, judicial separation, and annulment as legal remedies. Earlier, Hindu law largely treated marriage as indissoluble, leaving no formal way to end a failing marriage. These provisions give individuals legal recourse in cases of marital breakdown. As a result, the Act ensures justice and protection of rights for both spouses.[20]

In short, the Hindu Marriage Act was necessary to transform Hindu marriage from a purely sacramental institution into a regulated legal framework protecting individual rights, promoting equality, and modernizing family law in India.

Under the Hindu Marriage Act, 1955, A Hindu marriage is legally valid only when certain essential conditions are fulfilled. These conditions are laid down to protect the rights of both parties and to ensure that marriage is entered into with responsibility and maturity. One of the most important conditions relates to age. As per Section 5(iii) of the Act, the groom must have completed 21 years of age and the bride must have completed 18 years at the time of marriage. This provision aims to prevent child marriage and ensure physical, emotional, and mental maturity of both individuals.

Another essential condition concerns the mental capacity of the parties. According to Section 5(ii) of the Hindu Marriage Act, neither party should be incapable of giving valid consent due to unsoundness of mind, nor should they suffer from a mental disorder that makes them unfit for marriage or procreation. This requirement ensures that both spouses can understand the nature of marriage and fulfill marital obligations, thereby safeguarding their dignity and welfare.[21]

Free and mutual consent is also a fundamental requirement for a valid Hindu marriage. Consent must be voluntary and given without force, fraud, or undue influence. Although Hindu marriage is traditionally considered a sacrament, modern law recognizes it as a relationship based on equality and individual choice. This reflects the changing social realities and the constitutional values of personal liberty and human dignity.[22]. In addition to the Hindu Marriage Act, the Special Marriage Act, 1954 provides a secular legal framework for marriage. This Act allows individuals of different religions or castes to marry without converting their religion. It ensures legal recognition of inter-religious marriages and promotes social integration, equality, and freedom of choice. The Act also contains provisions for registration of marriage, maintenance, divorce, and succession.[23]

The judiciary has played a crucial role in interpreting marriage laws. Hindu husband cannot convert to another religion merely to contract a second marriage. Such a second marriage would be void, and the husband would be guilty of bigamy under Section 17 of the Hindu Marriage Act read with Section 494 of the Indian Penal Code. This landmark judgment reinforced the principle of monogamy and upheld the constitutional validity of the Hindu Marriage Act.[24]. Traditionally, Hindu marriage is viewed as both a religious sacrament and a social institution. It is believed to help individuals achieve the four aims of life—Dharma (duty), Artha (wealth), Kama (pleasure), and Moksha (liberation). Modern Hindu marriage law has provided a legal structure to these religious traditions, ensuring equality, justice, and protection of rights for both men and women while preserving the spiritual and social importance of marriage.[25]

Hindu marriage under the Hindu Marriage Act, 1955 is no longer a purely religious or sacramental relationship. He explains that the Act has brought Hindu marriage within the framework of statutory law, thereby converting it into a legal institution regulated by definite legal rules. While religious ceremonies may still be performed, the validity of a Hindu marriage now depends mainly on compliance with legal provisions laid down by the statute. Section 5 of the Hindu Marriage Act clearly prescribes the essential conditions for a valid Hindu marriage. These include the principle of monogamy, meaning that neither party can have a living spouse at the time of marriage. This condition reflects a major reform in Hindu law and aligns it with modern legal and social values. The Act also requires that both parties possess sound mental capacity, so that they are capable of understanding the nature of marriage and giving valid consent. The importance of minimum age requirements, which are intended to prevent child marriage and ensure physical, mental, and emotional maturity of the spouses. Another important condition relates to prohibited degrees of relationship, which aims to prevent marriages within close family relations, except where customs permit such unions. that these conditions are mandatory in nature, not merely advisory. Non-compliance with these requirements has serious legal consequences. If a marriage violates fundamental conditions such as monogamy or prohibited relationships, it may be declared void under Section 11 of the Act, meaning that the marriage is treated as invalid from the beginning. In cases where consent is affected by fraud, force, or mental incapacity, the marriage may be voidable under Section 12, allowing the aggrieved party to seek annulment through the court.

Thus the Hindu Marriage Act represents a significant shift from traditional religious concepts to a modern legal framework, where the rights, duties, and validity of marriage are governed by law. This transformation ensures legal certainty, protects individual rights, and reflects contemporary constitutional values such as equality and personal dignity. From a historical perspective, the study of Hindu law shows that in traditional Hindu society, marriage was considered indissoluble and sacramental. This means that marriage was viewed as a lifelong sacred bond that could not be broken. It was primarily regarded as a religious and moral duty, and the idea of ending a marriage was generally not accepted. Marriage was therefore considered more of a spiritual and social responsibility than a matter of personal choice.[26]

However, modern law, particularly the Hindu Marriage Act, 1955, has introduced certain contractual and legal elements into Hindu marriage. Today, marriage is not only a sacred bond but also a legally recognized relationship subject to rules and conditions. For example, the Act requires free and voluntary consent of both parties, minimum age, and provides legal remedies such as divorce, judicial separation, or annulment. These changes reflect the influence of modern legal thinking, which emphasizes individual rights, equality, and personal freedom. These developments indicate that over time, Hindu marriage has evolved from a rigid religious institution into a social institution regulated by law. Marriage is now both a religious practice and a legal contract, which protects the rights and duties of both husband and wife. This evolution represents a balance between tradition and modernity. Although religious rituals and social expectations remain important, the law ensures that personal choice, legal protection, and social justice are also respected. In this way, Hindu marriage has taken a form that recognizes both spiritual values and legal safeguards, making it suitable for contemporary society.[27].

The Hindu Marriage Act, 1955 is a key law in India that regulates marriage, its validity, and related rights among Hindus. It was created to codify, reform, and modernize personal laws on marriage, bringing uniformity to a system that earlier relied on many customs and traditions. The Act applies to Hindus, Buddhists, Jains, and Sikhs and provides a clear legal framework for performing, recognizing, and ending marriages.

Section 5 of the Act lays down the essential conditions for a valid Hindu marriage. These include monogamy (no party should have a living spouse), minimum age (21 years for the groom and 18 years for the bride), sound mental capacity, and no prohibited close family relationships. These rules ensure that both partners enter marriage with understanding, maturity, and awareness, reflecting both traditional values and modern legal protections. The Act also defines important terms and rules in Sections 3 and 4, making clear that the law takes priority over customs that may be unfair or conflict with constitutional values. Apart from these conditions, the Act provides legal remedies in case of marital problems. These include judicial separation, divorce, annulment, restitution of conjugal rights, and maintenance. These provisions show a shift from seeing marriage only as a religious or sacramental bond to recognizing individual rights and justice when marriages break down. Section 21 ensures that cases under the Act follow the Civil Procedure Code, 1908, so that family disputes are handled in an orderly way.

Overall, while the Act respects Hindu marital traditions, it has brought reforms. Marriage is now seen as a legal contract with rights and duties, modern principles such as equality and personal freedom are included, and courts provide relief if needed. This makes Hindu marriage law both modern and culturally relevant, balancing tradition with constitutional values.[28]

The Hindu Marriage Act, 1955 applies to all forms of Hinduism, including Lingayats, Virashaivas, and followers of Arya, Brahmo, or Prarthana Samaj, and also to Jains and Buddhists. It applies to permanent residents of India who are not Muslims, Christians, Jews, or Parsis. Sikhs now have their own law under the Anand Karaj Marriage Act, and the Act was extended to Jammu and Kashmir by the J&K Hindu Marriage Act, 1955.

Section 5 of the Hindu Marriage Act, 1955 lays down the essential conditions for a valid Hindu marriage. A marriage is void if either party is underage, not Hindu, already married, or within prohibited degrees of relationship. For example, in *Lata Singh v. State of UP* (2006), the court recognized the importance of age and consent in ensuring the marriage was valid. A marriage is voidable if one party is impotent, mentally incapable of giving consent, consent was obtained by force or fraud, or if the bride was pregnant by another man. In *Sarla Mudgal v. Union of India* (1995), the Supreme Court emphasized that monogamy and consent are essential for validity, and a second marriage without consent is voidable and illegal. Similarly, in *S. Balasubramanyam v. P. Savitri* (1980), the Andhra Pradesh High Court annulled a marriage due to the mental incapacity of the husband to understand the nature of marriage. These cases demonstrate how Section 5 protects individual rights and ensures lawful, valid marriages under Hindu law.[29]

Section 7 of the Hindu Marriage Act, 1955 recognizes that Hindu marriages can be solemnized according to the customary rites and ceremonies of either the bride or the groom. This means a marriage is legally valid if it follows traditional Hindu rituals, such as Saptapadi (taking seven steps around the sacred fire) or Krevā (tying the nuptial knot). In *Ramesh Chandra v. Sujata* (2005), the court held that a marriage performed according to customary Hindu rites is valid, even if there were minor deviations in rituals, as long as essential ceremonies like Saptapadi

were completed. Similarly, in *B.R. Sharma v. Union of India* (1990), the Supreme Court emphasized that Section 7 allows flexibility in ceremonial practices, recognizing local or family customs as valid modes of solemnization.

These cases highlight that Section 7 balances legal validity with respect for cultural and regional diversity, ensuring marriages are not invalidated due to minor differences in ritual performance.[30]

Section 8 of the Hindu Marriage Act, 1955 provides for the registration of Hindu marriages to create official legal records. Registration requires that a marriage ceremony has been completed, the couple is living together as husband and wife, and they have resided in the district of the Marriage Officer for at least 30 days before applying.

The Hindu Marriage Register acts as legal proof of marriage and is admissible in courts as evidence. In *M. Krishna v. M. Padma* (1981), the Madras High Court held that registration, while not mandatory for validity, provides strong evidence in disputes regarding marital status.

In *Ramesh Chander v. Union of India* (2006), the Delhi High Court emphasized that registration ensures transparency and helps prevent fraudulent claims of marriage. Similarly, in *Rajesh Kumar v. State of Punjab* (2008), the court relied on the marriage register as *prima facie* evidence of the union. These cases show that Section 8 strengthens legal certainty, documentation, and protection of marital rights under Hindu law.[31]

3. Muslim Marriage: Tradition and Process

The history of Muslim marriage (Nikah) in India can be traced back to the arrival of Islam in the Indian subcontinent, beginning around the 7th century through Arab traders and later through Muslim rulers. Islamic law, known as Shariat, governed personal matters such as marriage, divorce, and inheritance among Muslims. Marriage was regarded as a civil contract, based on mutual consent, rather than a religious sacrament.[32]

During the Delhi Sultanate and Mughal period, Muslim personal law was widely applied to Muslims in matters of marriage. Qazis and Islamic courts administered Nikah according to the Quran, Hadith, and classical jurists like Imam Abu Hanifa. Customs developed over time, but the contractual nature of Muslim marriage remained central.[33]

Under British rule, the colonial government generally followed a policy of non-interference in personal laws. Muslim marriage continued to be governed by uncodified Muslim law, interpreted by courts using authoritative texts such as *Hedaya*, *Fatawa-e-Alamgiri*, and later commentaries by scholars like Mulla and Ameer Ali. However, judicial decisions sometimes led to inconsistencies. To remove confusion, the Muslim Personal Law (Shariat) Application Act, 1937 was enacted, making Shariat the governing law for Muslim marriages and excluding customary practices that contradicted Islamic law. This Act strengthened the application of Islamic principles in matrimonial matters.[34]

Post-independence, India retained Muslim personal law under Article 25 of the Constitution. Significant reforms came through legislation and judicial intervention, such as the Dissolution of Muslim Marriages Act, 1939, the *Shah Bano* case (1985), *Shayara Bano v. Union of India* (2017), and the Muslim Women (Protection of Rights on Marriage) Act, 2019, all of which aimed to protect women's rights.

Thus, Muslim marriage in India has evolved from a traditional religious-contractual institution to one influenced by constitutional values, judicial scrutiny, and social reform, while still retaining its core Islamic principles[35]

3.1. Need for Muslim Personal Law in India

Muslim personal law is needed in India to regulate matters such as marriage (nikah), divorce (talaq), maintenance, inheritance, and guardianship among Muslims in accordance with their religious beliefs. India follows a plural legal system, where different religious communities are governed by their own personal laws. This approach respects freedom of religion guaranteed under Articles 25 and 26 of the Indian Constitution.[36]

However, traditional Muslim law in India was largely uncodified and based on religious texts and customs. This often led to uncertainty, misuse, and unequal treatment, especially of Muslim women. Practices such as instant triple talaq, lack of post-divorce maintenance, and limited divorce rights for women created social injustice.

Therefore, the need arose to reform and codify Muslim law to protect individual rights, particularly the rights of women, while still respecting religious principles.[37]

Laws like the Dissolution of Muslim Marriages Act, 1939, the Muslim Women (Protection of Rights on Divorce) Act, 1986, and later the Muslim Women (Protection of Rights on Marriage) Act, 2019 were enacted to address these issues. Judicial decisions such as *Shah Bano* (1985) and *Shayara Bano* (2017) further emphasized that personal laws must conform to constitutional values of equality, dignity, and justice. Under Muslim law, marriage (*Nikah*) is regarded not as a religious sacrament but as a civil contract. Its primary purpose is to legalize sexual relations, recognize procreation, and legally regulate the rights and duties of husband and wife. Unlike other religious marriages, the validity of a *Nikah* is based on *Ijab* (offer) and *Qubul* (acceptance), which must be made in the presence of witnesses [38].

For the validity of a Muslim marriage, the capacity of the parties to contract is essential. Both parties must be of sound mind, must have attained puberty, and must be legally competent to enter into the marriage contract. Along with this, free and voluntary consent is a fundamental requirement of *Nikah*. If consent is obtained through force, fraud, or coercion, such a marriage may be considered invalid or irregular under Muslim law.[39]

In this context, in *Abdul Kadir v. Salima* (1886 ILR 8 All 149), the Allahabad High Court clearly held that Muslim marriage is a civil contract and that the essential elements of a valid contract must be fulfilled. Similarly, in *Anis Begum v. Mohammad Istafa Wali Khan* (1933 PC), the Privy Council recognized *Nikah* as a valid contract in which offer and acceptance play a crucial role.

A Muslim marriage gives rise to legal rights and obligations such as *meahr* (dower), maintenance, and the legitimacy of children. Therefore, *Nikah* is not merely a social arrangement but a legal institution aimed at ensuring morality, social stability, and the protection of individual rights.[40]. In Islam, marriage is considered a lawful (valid) contract that is socially and religiously accepted between a man and a woman. In Islam, marriage is not a sacrament but a legal and religious contract, which is recommended (*Sunnah*) but not obligatory (*Fard*). Through marriage, social order, family formation, and moral life are strengthened.[41]

3.2. Religious Recognition of Muslim Marriage

In Islam, marriage is considered a *Sunnah* of Prophet Muhammad. According to the Quran, 'Marry, for it is the path to morality and purity.[42]. Muslim marriage is a social contract requiring the free consent of both parties. Islam gives special importance to women's rights in marriage, particularly the provision of *Mehr*.[43] In Islamic jurisprudence, marriage (*Nikah*) occupies a significant position as an institution sanctioned by divine injunctions. The Qur'an and the *Sunnah* recognize marriage as a legitimate means for regulating sexual relations, ensuring social stability, and protecting moral values. Although Muslim marriage is doctrinally treated as a civil contract, its performance is imbued with religious significance and is regarded as an act approved by God. Thus, Muslim marriage reflects a unique synthesis of contractual legality and religious sanctity within Islamic law. In the modern legal and socio-religious perspective, Muslim marriage (*Nikah*) continues to be religiously recognized as a divinely sanctioned institution, though its understanding has evolved. Contemporary Islamic scholarship emphasizes marriage not merely as a means of legitimizing sexual relations but as a partnership based on mutual respect, equality, and ethical responsibility. While retaining its contractual character, modern interpretations stress Qur'anic values of justice, consent, dignity, and protection of women's rights, especially through *mehr* and maintenance. Thus, in the modern view, Muslim marriage represents a harmonious balance between religious sanctity and progressive legal principles.[44]

Indian courts have consistently recognized Muslim marriage (*Nikah*) as an institution that combines religious sanction with legal enforceability. While affirming that *Nikah* is essentially a civil contract, the judiciary has acknowledged its religious character, as it is performed in accordance with Islamic injunctions and regarded as a God-approved institution. In the modern view, courts interpret Muslim marriage in harmony with constitutional values such as equality, dignity, consent, and gender justice, particularly emphasizing women's rights to *mehr*, maintenance, and protection against arbitrariness. Thus, Indian judicial interpretation reflects a balanced approach

that preserves the religious recognition of Muslim marriage while adapting it to contemporary legal and social standards.[45]

3.3. Marriage Process

(a) *Ijab-o-Qubool* (Offer and Acceptance): *Ijab-o-Qubool* forms the very foundation of a valid Muslim marriage (*Nikah*) and exemplifies its dual character as both a religious sacrament and a legal contract. Under Islamic jurisprudence, a marriage is considered valid only when it is predicated upon the free and voluntary consent of both parties—the bride and the groom. Consent must be genuine, informed, and free from any coercion, undue influence, misrepresentation, or fraud, as any compromise in consent can render the marriage void or voidable.[46]

The term *Ijab* denotes the formal proposal of marriage, which may be articulated by either party or, in the case of minors or those lacking legal capacity, by their lawful guardians (*wali*). *Qubool*, on the other hand, represents the unconditional and immediate acceptance of the proposal, signifying mutual agreement. Both *Ijab* and *Qubool* must correspond and occur in the same sitting (*majlis-e-aqd*); any temporal gap or mismatch in expression could invalidate the marriage. While the law allows the expression of *Ijab* and *Qubool* either orally or in writing, its clarity and unequivocal nature are essential. In Sunni law, the presence of two adult witnesses of sound mind is considered essential to testify to the *Ijab-o-Qubool*, thereby strengthening its legal enforceability and evidentiary value. The Shia school, while less rigid about witnesses, emphasizes the voluntary nature of consent and the contractual clarity of *Ijab* and *Qubool*. Courts in India have consistently reaffirmed the importance of free consent as the cornerstone of *Ijab-o-Qubool*. For instance, in cases of coercion, threat, or fraud, the judiciary has held that the affected party may seek annulment of the marriage. Consequently, *Ijab-o-Qubool* ensures that Muslim marriage is not only a religiously sanctioned union but also a legally binding contract, providing both certainty and protection of individual rights.

In essence, *Ijab-o-Qubool* embodies the convergence of religious validity, contractual legality, and personal autonomy, making it indispensable to the institution of Muslim marriage.[47]

(b) *Mehr*: *Mehr* is the mandatory financial amount that the husband gives or promises to give the wife at the time of marriage. It is the wife's right and a crucial part of the marriage contract (Muslim Personal Law (Shariat) Application Act, 1937)[48] *Mehr*, also called dower, is a mandatory financial gift or payment that the husband gives or promises to give to his wife at the time of marriage. It is not a voluntary gift; it is a legal right of the wife and an essential part of the marriage contract (*Nikah*). The amount of *Mehr* can be agreed upon by the parties before marriage and may be paid immediately (prompt *Mehr*) or deferred to a later date (deferred *Mehr*). Its purpose is to provide financial security to the wife and ensure that she has a claim over her husband in case of divorce, separation, or his death.[49]

Indian law, through the Muslim Personal Law (Shariat) Application Act, 1937, recognizes *Mehr* as a binding obligation, and the wife can legally demand it if it is not voluntarily paid.[50] *Mehr* also has a symbolic and moral significance, representing the husband's commitment and responsibility toward his wife, reflecting Islam's emphasis on protecting women's rights and dignity in marriage.[51]

(c) *Presence of Witnesses*: In a Muslim marriage (*Nikah*), the presence of witnesses is an essential requirement for its validity. According to Islamic law, at least two adult Muslim male witnesses or one male and two female witnesses must be present when the marriage is solemnized. The witnesses must be of sound mind and aware of the proceedings. The main purpose of having witnesses is to ensure that the marriage is conducted openly, honestly, and in accordance with Islamic principles, and to provide evidence of the marriage in case of any future disputes. Witnesses help confirm that both parties have given free consent to the marriage and that all conditions, such as *Ijab-o-Qubool* (offer and acceptance) and *Mehr*, have been fulfilled. Without the presence of valid witnesses, some scholars consider the marriage incomplete or invalid, as it lacks proof and transparency, which may lead to legal or

social complications. Therefore, witnesses play a crucial role in upholding the legitimacy and accountability of the Nikah.[52]

(d) **Nikahnama:** Nikahnama is a written marriage contract executed at the time of a Muslim marriage (*Nikah*). While Islamic law does not mandate a written contract, and Indian law does not require mandatory registration of Nikahnama, it is widely practiced to record the terms and conditions of the marriage in writing. The Nikahnama serves as a legal document and evidence of the marriage, protecting the rights of both the bride and the groom.[53]

Process of Preparing a Nikahnama:

1. **Drafting the Contract:** The Nikahnama is drafted by the officiating person (*Qazi* or religious authority) or the parties themselves. It contains details such as names, ages, addresses, guardian's consent, Mehr amount, and other agreed conditions.
2. **Consent and Signatures:** Both the bride and groom, or their lawful guardians if applicable, must give their consent and sign the contract. This ensures that the agreement is mutual and voluntary.
3. **Witnesses:** The signatures of at least two adult Muslim male witnesses or one male and two female witnesses are included to validate the contract, in line with Islamic requirements.
4. **Legal Acknowledgment:** Although registration is not compulsory, the Nikahnama can be used as evidence in courts in matters like Mehr claims, maintenance, or disputes regarding marital status.
5. **Retention of Copies:** Copies of the Nikahnama are typically retained by the bride, groom, and the officiating authority, ensuring easy reference if needed in the future.

In essence, the Nikahnama provides clarity, transparency, and legal protection to both parties, while also ensuring that Islamic principles regarding marriage are observed. It bridges the religious and legal dimensions of Muslim marriage, especially in modern contexts where proof of marriage may be required for civil purposes[54]

3.2.1 Polygamy

In Islam, a man is allowed to have up to four wives, provided he treats each wife with equality and fairness. However, the practice of polygamy is now decreasing in India and is socially less prevalent.[55]

1. **Old view-**Under classical Islamic law, polygamy was valid and fully permissible. A Muslim man could marry up to four wives simultaneously, provided he treated all wives justly and equally in terms of maintenance, time, and attention, as prescribed in the Qur'an (Surah An-Nisa, 4:3)[56]

The consent of the existing wife was not mandatory according to traditional interpretations, and the practice was widely accepted in Muslim societies. Courts under classical law generally did not interfere in polygamous marriages unless a wife could prove inequality or injustice. The allowance of polygamy was considered a religious and legal right of Muslim men, reflecting the norms, social structure, and ethical obligations of that time.[57]

2. **Modern view-**From a modern perspective, and in the Indian context, polygamy's still legally valid for Muslims, as it is permitted under Muslim personal law in India. However, from a social and ethical standpoint, its practice has declined, particularly due to increased education, urbanization, and women's empowerment. Modern courts have emphasized that in polygamous marriages, justice, transparency, and protection of women's rights—such as maintenance and financial security—must be ensured. Although the consent of the existing wife is not legally mandatory, courts and scholars recommend full disclosure and fairness to all parties involved. Therefore, in the modern view, polygamy is religiously permissible and legally valid, but it is now considered limited and regulated, reflecting contemporary social and ethical responsibilities.[58]

3.3 Legal Provisions

Muslim marriage is recognized under the Muslim Personal Law (Shariat) Application Act, 1937. The Muslim Personal Law (Shariat) Application Act, 1937 is a key statute in India that ensures the application of Islamic law (Shariat) to Muslims in matters of personal law, including marriage, divorce, inheritance, and succession. It was

enacted to clarify that Muslim personal law, as derived from the Qur'an, Hadith, and customary practice, shall govern civil matters among Muslims, instead of any codified secular law, unless explicitly overridden by other legislation.

Section 2 of the Act states that in all questions regarding intestate succession, marriage, divorce, maintenance, guardianship, and other personal matters, the rules of Muslim law (Shariat) shall be applied. This makes Shariat the governing law for Muslims in India in personal law matters, distinguishing them from non-Muslims who follow separate personal laws.

Marriage and Divorce: Covers the validity of Nikah, Ijab-o-Qubool, and divorce procedures like talaq, khula, and judicial dissolution.

Inheritance and Succession: Specifies the rules of distribution of property among heirs according to Islamic law.

Maintenance and Guardianship: Provides guidelines for maintenance of wife, children, and dependents, and guardianship responsibilities. The Act does not override general laws of the land (such as criminal or contract law), but applies specifically to personal law matters among Muslims. Acts like the Muslim Women (Protection of Rights on Divorce) Act, 1986 or the Dissolution of Muslim Marriages Act, 1939 operate in conjunction with this Act. The Act preserves the religious and cultural identity of Indian Muslims, ensuring that personal matters are governed by their religious traditions and jurisprudence.[59]

The Muslim Women (Protection of Rights on Divorce) Act, 1986 was enacted to safeguard the rights of Muslim women following divorce, particularly in the wake of the Shah Bano case. Under Section 3, the husband is required to provide maintenance to his divorced wife during her iddat period, which typically lasts three months after the divorce, including food, clothing, and shelter. Beyond the iddat period, Section 4 allows the divorced woman to claim reasonable and fair maintenance through the State Wakf Board or civil court if she is unable to support herself, ensuring that women are not left destitute. Section 5 recognizes the property rights of divorced women, giving them full entitlement to their dower (Mehr) and any property gifted to them during marriage, and prevents the husband from arbitrarily denying these rights. To enforce these provisions, Section 6 permits the woman to apply to a Magistrate or Taluka Court for maintenance, where the court can determine reasonable support based on the husband's financial capacity and the woman's needs. Section 7 addresses the custody of minor children, generally granting the mother custody during the iddat period, which can continue if it is in the best interest of the child. Furthermore, Section 8 provides protection against any arbitrary denial of rights, ensuring that the husband or his relatives cannot coerce the woman into waiving her entitlements, with legal action available in case of violations. Overall, the Act is significant because it protects divorced Muslim women from destitution and neglect while balancing religious practices with the protection of women's rights.[60]

It establishes a legal framework for resolving disputes according to Islamic principles while operating within the Indian judicial system. According to the Prohibition of Child Marriage Act, 2006, the minimum age for marriage is 21 years for men and 18 years for women. Although Muslim Personal Law traditionally considers the age of puberty (approximately 15 years) as the legal age for marriage, recent Supreme Court decisions have declared child marriages invalid.[61]

The affirmation of legal protection and rights of Muslim women means that in matters such as divorce, maintenance, property rights, and other personal issues, Muslim women are provided with legal security and justice. It ensures that women are not subjected to arbitrary or unfair treatment. Court decisions protect women's rights to mehr (dower), maintenance, and custody of children. This makes it clear that the rights of Muslim women are not limited to religious traditions, but are also safeguarded under legal procedures. It grants women the right to judicial assistance in matters of marriage and divorce. Additionally, women are provided the option to approach the court to claim their rights. This judicial approach ensures equality and transparency. As a result, the affirmation of Muslim women's rights provides a guarantee of their social, economic, and personal security.[62]

In the case of *Shamim Ara v. State of Uttar Pradesh* (2002 AIR 3551), the Supreme Court ruled that a mere oral declaration of divorce is not valid. There must be a reasonable cause, proper notice, and due process. This judgment made the Muslim marriage and divorce process more just and transparent.

In *Shayara Bano v. Union of India* (2017 9 SCC 1), the Supreme Court declared Triple Talaq unconstitutional, promoting a reformist approach in Muslim marriage laws. Following this judgment, the Muslim Women (Protection of Rights on Marriage) Act, 2019 was enacted, declaring Triple Talaq illegal and punishable.

Thus, while Muslim marriage is a legal contract, it is also deeply connected to religious faith. It emphasizes mutual consent, Mehr, and family responsibilities. Islamic marriage safeguards individual rights along with the principles of social contract. In recent years, Indian law and courts have adopted a reformist approach to Muslim marriage traditions, prioritizing the protection of women's rights.[63]

4. Divorce: Differences in Hindu and Muslim Practices

In India, marriage is not just a social contract but is deeply connected to religious and cultural values. The process and social acceptance of divorce vary across different religions. Specifically, Hindu and Muslim traditions show clear differences in the nature, legal procedures, religious perspectives, and social impacts of divorce. The divorce processes in Hindu and Muslim traditions significantly differ based on religious beliefs, social customs, and legal provisions. Hindu divorce is more legally regulated and tends to be a lengthy process, whereas Muslim divorce procedures have traditionally been simpler and based on religious practices. However, over time, legal interventions in Muslim divorce processes have increased in India, such as the banning of Triple Talaq and the empowerment of women's rights. Both systems are now gradually moving towards modern law and gender equality.[64]

Table 1: Key Differences between Hindu and Muslim Divorce Practices

Aspect	Hindu Practice	Muslim Practice
Nature of Marriage	Religious sacrament – considered a lifelong bond. (Dr. Paras Diwan, Indian Family Law, 2011)	Social contract – based on contractual terms. (Fyzee, A.A.A., Outline of Muhammadan Law, Oxford University Press, 2009)
Divorce Method	Valid only through court. (Hindu Marriage Act Section 13)	Based on religious rituals and personal law. (Muslim Personal Law, 1937)
Types of Divorce	Mutual consent divorce (Section 13B), fault-based divorce like cruelty, adultery, etc.	Talaq-e-Ahsan, Talaq-e-Hasan, Khula, Mubarat, previously Triple Talaq (now unconstitutional)
Mutual Consent	Legally possible through mutual consent. Example: <i>Saroj Rani v. Sudarshan Kumar Chaddha</i> , AIR 1984 SC 1562	Possible through Mubarat (mutual consent) and Khula (initiated by the wife)
Time in Divorce Process	Lengthy judicial process, often taking months or years.	Faster through Talaq-e-Ahsan or Talaq-e-Hasan. (<i>Shamim Ara v. State of UP</i> , 2002 AIR 3551)

Aspect	Hindu Practice	Muslim Practice
Women's Rights	Equal right to file for divorce (Hindu Marriage Act Sections 13 & 13B), wife can independently file for divorce.	Wife can seek divorce through Khula, but may require husband's consent or settlement. (Fyzee, 2009)
Legal Penalty	No punitive provision in divorce.	Triple Talaq is a punishable offense under the Muslim Women (Protection of Rights on Marriage) Act, 2019 with imprisonment up to 3 years. (Shayara Bano v. Union of India, 2017 9 SCC 1)

4.1. Divorce under Hindu Law

Under traditional Hindu law, marriage was regarded as a sacred and indissoluble sacrament (sanskara), creating a lifelong spiritual and social bond between husband and wife. Divorce was unknown to classical Hindu law, as marriage was believed to extend beyond one lifetime and was not based on contractual consent. Consequently, even in cases of extreme hardship or incompatibility, there was no legal mechanism to dissolve a Hindu marriage.[65]

However, with changing social conditions, modernization, and growing recognition of individual rights—especially the rights and dignity of women—the need for a legal remedy to end an irretrievably broken marriage became evident. Social reform movements and constitutional values such as equality, liberty, and justice further influenced the transformation of Hindu personal law. In response to these developments, the Hindu Marriage Act, 1955 was enacted, marking a significant departure from traditional concepts by introducing divorce as a statutory right. The Act provided clearly defined grounds on which either spouse could seek dissolution of marriage through a court of law, thereby balancing the sanctity of marriage with the realities of marital breakdown. It also introduced progressive provisions such as judicial separation, divorce by mutual consent, and maintenance, ensuring legal protection and fairness to both parties.[66]

Importantly, the scope of the Act extends beyond Hindus alone. By virtue of Section 2 of the Hindu Marriage Act, 1955, the Act applies not only to Hindus but also to Buddhists, Jains, and Sikhs, as these communities are treated as part of the broader Hindu legal framework for matrimonial matters. Thus, the Act serves as a comprehensive codified law governing marriage and divorce for these religious groups in India, reflecting a modern, reform-oriented approach to personal law. Divorce is the legal termination of a valid and subsisting marriage through a formal decree passed by competent court of law. It brings an end to the marital relationship by dissolving the legal rights and obligations that arise out of marriage, such as the duty to cohabit and consortium, while also determining related matters like maintenance, custody of children, and property rights. The primary objective of divorce is to provide a lawful remedy in situations where the marital relationship has completely and irretrievably broken down, making it impossible for the spouses to continue living together as husband and wife. In such circumstances, compelling the parties to remain bound in a failed marriage would serve no social or moral purpose and may instead lead to continued mental agony, conflict, and injustice. Through the process of divorce, the law seeks to uphold the principles of dignity, justice, and equality for both spouses. It ensures that neither party is forced to endure cruelty, neglect, or an unhappy marital life against their will. At the same time, the court exercises judicial scrutiny to protect the interests of the economically weaker spouse, often by granting maintenance or alimony, and to safeguard the welfare of children. Thus, divorce is not merely a mechanism for

ending a marriage, but a balanced legal tool aimed at delivering fairness, human dignity, and social justice within the framework of family law.[67]

4.1.1 Ground of divorce

According to Hindu Marriage Act 1955, section 13 either the husband or the wife may file a petition for divorce before a competent court on certain legally recognized grounds. These grounds are intended to provide relief in situations where the continuation of the marital relationship becomes unjust, impracticable, or harmful to one or both spouses.

One of the important grounds for divorce is adultery, which occurs when a spouse voluntarily engages in sexual intercourse with a person other than his or her legally wedded spouse after the solemnization of marriage. Such conduct strikes at the very foundation of marital fidelity and trust and is therefore recognized as a valid ground for dissolution of marriage.

Another significant ground is cruelty, which may be either physical or mental in nature. Physical cruelty includes acts of violence, bodily harm, or physical abuse, while mental cruelty encompasses conduct such as constant harassment, humiliation, false accusations, denial of companionship, or behavior causing severe mental agony. The courts have adopted a broad and progressive interpretation of mental cruelty, recognizing that cruelty is not limited to physical injury but also includes emotional and psychological suffering.

Desertion is also a ground for divorce under the Act and refers to the abandonment of one spouse by the other without reasonable cause and without the consent of the deserted spouse. To constitute desertion, such abandonment must be intentional and must continue for a continuous period of at least two years immediately preceding the presentation of the divorce petition.

Divorce may also be sought on the ground of conversion, where one spouse ceases to be a Hindu by converting to another religion. Since the Hindu Marriage Act applies only to persons governed by Hindu law, conversion fundamentally alters the religious basis of the marital relationship, thereby justifying dissolution of marriage.

Another ground recognized under Section 13 is unsoundness of mind. If a spouse is incurably of unsound mind or suffers from a mental disorder of such a kind and extent that the other spouse cannot reasonably be expected to live with them, the court may grant a decree of divorce. The emphasis here is on the severity and incurable nature of the mental condition, which makes normal marital life impossible. The Act also recognizes venereal disease in a communicable and serious form as a valid ground for divorce. The presence of such a disease poses a serious risk to the health and well-being of the other spouse and undermines the marital relationship.[68]. Further, divorce can be granted on the ground of renunciation of the world, when one spouse renounces worldly life by entering a religious order. Such renunciation amounts to a civil death and effectively brings an end to marital obligations. Lastly, presumption of death is a ground for divorce when a spouse has not been heard of as being alive for a continuous period of seven years or more by persons who would naturally have heard of them if they were alive. In such cases, the law presumes the spouse to be dead, allowing the other spouse to seek dissolution of marriage. Thus, Section 13 of the Hindu Marriage Act provides a comprehensive framework of grounds for divorce, balancing the sanctity of marriage with the need to protect individuals from suffering in untenable marital relationships.[69]

4.1.2. Divorce by Mutual Consent

According to section 13 (B) Divorce by mutual consent is a progressive and peaceful method of dissolving a marriage under Section 13-B of the Hindu Marriage Act, 1955, introduced by the Marriage Laws (Amendment) Act, 1976. This provision recognizes that when both spouses have mutually agreed that their marriage has irretrievably broken down; compelling them to continue the marital relationship would serve no useful purpose. Under this provision, both the husband and the wife jointly file a petition before the competent court, expressing their mutual agreement to dissolve the marriage. One of the essential conditions is that the parties must have been living separately for a period of at least one year, meaning that they are not living as husband and wife, even if they

may be residing under the same roof. Additionally, both parties must mutually agree that they are unable to live together and that the marriage should be dissolved.[70]

The procedure involves two stages. First, the parties file a joint petition (first motion), after which the court records their statements. The law provides a cooling-off period of six months, intended to give the parties an opportunity to reconsider their decision and attempt reconciliation. After the expiry of this period, and within a maximum of eighteen months from the date of the first motion, the parties may move the second motion. If the court is satisfied that the consent of both parties is free, voluntary, and not obtained by fraud or coercion, it grants a decree of divorce. The Supreme Court, held that the six-month cooling-off period is directory and not mandatory, and may be waived by the court in exceptional circumstances where there is no possibility of reconciliation and all disputes relating to maintenance, alimony, and custody have been amicably settled.[71]

4.1.3. Special Grounds Available to Wife

In order to provide additional protection and remedies to Hindu women, the Hindu Marriage Act, 1955 incorporates certain special grounds of divorce exclusively available to the wife under Section 13(2). These grounds recognize the vulnerable position of women in marriage and aim to safeguard their dignity, security, and legal rights.[72]

One such ground is where the husband had another wife living at the time of the marriage. If the husband was already married and that earlier marriage was subsisting at the time of solemnization of the second marriage, the wife is entitled to seek divorce. This provision addresses the injustice caused by bigamy and protects the wife from being subjected to an unlawful or deceptive marital relationship. Another important ground available to the wife is where the husband has been guilty of rape, sodomy, or bestiality after the solemnization of marriage. Such acts constitute serious sexual offences and amount to a gross violation of the wife's bodily integrity, dignity, and trust. The law recognizes that compelling a woman to remain married to a husband guilty of such heinous crimes would be unjust and oppressive, and therefore grants her the right to seek dissolution of marriage.[73]

Further, a Hindu wife may also seek divorce on the ground of non-resumption of cohabitation after the passing of a decree for maintenance. If a decree or order for maintenance has been passed in favor of the wife—under Section 18 of the Hindu Adoptions and Maintenance Act, 1956 or under Section 125 of the Criminal Procedure Code—and the parties have not resumed cohabitation for a continuous period of one year or more thereafter, the wife may file a petition for divorce. This ground acknowledges that the continued separation despite a maintenance order indicates a complete breakdown of the marital relationship. Thus, the special grounds under Section 13(2) reflect a gender-sensitive and reform-oriented approach, ensuring that a Hindu wife is not compelled to continue in a marriage that is unlawful, unsafe, or devoid of marital obligations.[74]

4.1.4. Judicial Separation vs Divorce

Under the Hindu Marriage Act, 1955, judicial separation and divorce are two distinct legal remedies available to spouses facing marital discord. Although both provide relief from an unhappy marriage, they differ significantly in their nature, scope, and legal consequences. Judicial separation, provided under Section 10, refers to a legal arrangement whereby the court orders the spouses to live separately without dissolving the marriage. Once a decree of judicial separation is granted, the marital rights and obligations—particularly the duty to cohabit—are suspended. However, the marriage itself continues to subsist, and the parties remain legally husband and wife. Judicial separation is often considered a temporary or intermediate remedy, allowing the parties time and space to reflect, attempt reconciliation, or assess whether they wish to continue the marriage. Importantly, since the marriage is not dissolved, neither party is permitted to remarry during the period of judicial separation.[75]

In contrast, divorce, governed by Section 13 of the Act, results in the complete and final dissolution of the marital bond. Once a decree of divorce is passed, the legal relationship of husband and wife comes to an end, and

both parties are free to remarry, subject to the statutory appeal period. Divorce is granted when the court is satisfied that the marriage has irretrievably broken down due to legally recognized grounds such as cruelty, adultery, desertion, or mutual consent. Thus, while judicial separation offers a pause in marital obligations without terminating the marriage, divorce brings about a permanent legal end to the marital relationship. Judicial separation may serve as a step toward reconciliation or, in some cases, act as a precursor to divorce if cohabitation is not resumed.[76]

Hence the process of divorce, the law protects the principles of dignity, justice, and equality of both spouses, ensuring that no party is forced to endure cruelty, neglect, or an unbearable marital life. The court safeguards the interests of the economically weaker spouse by granting maintenance or permanent alimony and gives paramount importance to the welfare of children. Thus, divorce is not merely a means to end a marriage, but a balanced legal mechanism to uphold human dignity, fairness, and social justice.

4.2. Divorce under Muslim Law

Under Muslim law, marriage, or Nikah, is considered primarily a civil contract between a husband and a wife, rather than a religious sacrament or sacramental union as in some other faiths. This contractual view means that marriage is based on mutual consent, rights, and obligations, and both parties enter into it voluntarily with agreed terms, including the Mahr (dower) payable to the wife. Since marriage is contractual, it is recognized that it can also be dissolved if the relationship becomes untenable, subject to conditions prescribed under Islamic law (Sharia) and statutory regulations in India. Divorce under Muslim law is therefore not merely a religious act, but a legal termination of a contractual relationship, with specific rules regarding pronouncement, notice, waiting periods (iddat), maintenance, and reconciliation efforts. The law balances the husband's traditional right to pronounce talaq with the wife's right to seek divorce or judicial relief through mechanisms such as Khula, Faskh, or Mubarat, ensuring fairness, justice, and protection of the wife's financial and personal rights. Indian courts have further refined these principles to prevent arbitrary or unilateral actions, particularly in light of modern reforms such as the Shah Bano case (1985) and the Shayara Bano case (2017), which strengthened women's rights and clarified procedural safeguards in divorce under Muslim law.[77]

Types of Divorce in Muslim Law- under Muslim law, divorce are regarded as the legal dissolution of a marital contract, and it can be broadly classified into four types: Talaq, Khula, Mubarat, and Faskh. Talaq is the unilateral right of the husband to terminate the marriage. For talaq to be valid, it must be pronounced clearly and unequivocally, communicated to the wife, and ideally supported by a reasonable cause, with prior efforts of reconciliation, as emphasized by modern judicial scrutiny.[78]

4.2.1. Traditional forms of talaq include-(divorce by husband)

a- Talaq-e-Ahsan- Talaq-e-Ahsan is considered the most proper and preferred form of divorce under Islamic law. In this form, the husband pronounces talaq once during the wife's purity period(tuhr), when she is not menstruating. This method ensures that the pronouncement is deliberate, clear, and avoids impulsive decisions. After the pronouncement, the wife observes a waiting period called iddat, which generally lasts for three menstrual cycles or about three months. During this period, the husband has the opportunity to revoke the talaq and resumes marital life if reconciliation is possible. If the talaq is not revoked during iddat, the divorce becomes final and legally effective. Talaq-e-Ahsan is regarded as the most moderate and just form of divorce because it provides the wife with protection, maintenance during iddat, and a chance for reconciliation, making it more humane and acceptable compared to other forms like Talaq-e-Biddat (triple talaq).[79]

b- Talaq-e-Hasan-Talaq-e-Hasan is another recognized form of divorce under Islamic law and is considered less impulsive than Talaq-e-Biddat but less preferred than Talaq-e-Ahsan. In this form, the husband pronounces talaq three times over three consecutive purity periods (tuhrs) of the wife. Each pronouncement is made once per tuhr, and the husband must refrain from pronouncing multiple talaqs in a single tuhr. After each pronouncement, the wife observes the iddat period, during which reconciliation is still possible. The divorce becomes final only after the third pronouncement and completion of the iddat, ensuring sufficient time for reflection and attempts at reconciliation. Talaq-e-Hasan is designed to prevent hasty decisions and offers a structured, phased approach to divorce, balancing the husband's right to dissolve the marriage with the wife's protection and opportunity for reconciliation.[80]

In essence, Talaq-e-Hasan emphasizes deliberation, patience, and fairness, reducing the chances of arbitrary divorce and ensuring that both parties have adequate time to reconsider their marital relationship.

c- Talaq-e-Biddat -Talaq-e-Biddat, commonly known as Triple Talaq, is regarded as the most controversial form of divorce under Sunni Muslim law. In this practice, the husband dissolves the marriage instantly and irrevocably by pronouncing the word "talaq" three times in one sitting, whether orally, in writing, or through modern means of communication. Unlike Talaq-e-Ahsan and Talaq-e-Hasan, which follow a phased procedure and provide scope for reconciliation and reflection, Talaq-e-Biddat takes immediate effect and leaves no possibility for reconciliation. This form of talaq has long been considered arbitrary and unjust, as it grants unilateral power to the husband while denying the wife any effective opportunity to safeguard her marital status. It disregards the process of reconciliation and mediation prescribed in the Quran and runs contrary to the ethical spirit of Islamic law, which treats divorce as a last resort rather than an impulsive act. Due to its sudden and irreversible nature, Talaq-e-Biddat has caused serious social, emotional, and economic hardships for Muslim women, including the abrupt loss of marital security and financial support. But Triple talaq has had a long history and has evolved through various stages of judicial scrutiny. In the early period, it was recognized as part of Muslim personal law and was considered valid by the courts, as the judiciary generally avoided interference in personal laws. However, over time, as instances of misuse increased and the serious social, economic, and psychological impact on Muslim women became evident, the judiciary began to critically examine this practice. Through a series of judicial decisions, the courts gradually tested triple talaq against constitutional values. Cases such as *Shah Bano* highlighted that such a system of divorce was contrary to the principles of women's security, equality, and justice. Ultimately, in the landmark judgment of *Shayara Bano v. Union of India (2017)*, the Supreme Court declared triple talaq unconstitutional. Thus, triple talaq passed through a long judicial journey, resulting in its invalidation and the reaffirmation of women's rights and constitutional values.[81]

d- Judicial history of Triple talaq- The judicial history of triple talaq in India demonstrates a gradual and progressive evolution of the law through sustained judicial scrutiny and legislative intervention. In the early years, Indian courts were faced with challenges to the validity of triple talaq but often refrained from interfering deeply in Muslim personal law, attempting to balance respect for religious autonomy with the constitutional rights of women. However, concerns regarding the arbitrary and unilateral nature of triple talaq gradually gained prominence. A significant turning point occurred with the *Shah Bano* case (1985), which, though primarily concerned with the issue of maintenance, exposed the social and economic vulnerability of divorced Muslim women and sparked nationwide debate on the need for reform in Muslim personal law. The most decisive development came in *Shayara Bano v. Union of India (2017)*, where the Supreme Court declared instant triple talaq (talaq-e-biddat) unconstitutional for being manifestly arbitrary and violative of Articles 14, 15, and 21 of the Indian Constitution. This judgment reaffirmed that personal laws cannot override fundamental rights. Subsequently, to give statutory effect to the judgment, Parliament enacted the Muslim Women (Protection of Rights on Marriage) Act, 2019, which declared triple talaq illegal and void and introduced penal consequences for its pronouncement in any form. Together, these developments reflect India's commitment to constitutional morality, gender justice, and the protection of women's dignity within the framework of personal laws.[82]

4.2.2. Khula (Divorce Initiated by Wife)

Khula is a form of divorce under Muslim law in which the wife initiates the dissolution of marriage when she finds it impossible to continue marital life with her husband. Unlike *talaq*, which is the unilateral right of the husband, khula recognizes the agency and autonomy of the wife to exit an unhappy or oppressive marriage. Traditionally, khula is granted with the consent of the husband, and in most cases, the wife agrees to return her mahr (dower) or provide some form of compensation (*iwaz*) as consideration for her release from the marriage. This reflects the contractual nature of Muslim marriage, where dissolution can occur by mutual agreement. In practice, when the husband refuses to consent, the wife may approach a Sharia court (Qazi) or a civil court seeking khula or judicial divorce. The wife is generally required to demonstrate that she is unable to live with the husband due to reasons such as cruelty, neglect, incompatibility, or irretrievable breakdown of marriage. The emphasis is not on proving fault in a rigid sense, but on showing that continuation of the marriage would cause hardship and defeat the purpose of marital harmony envisaged in Islamic law. Courts carefully scrutinize claims for khula to ensure that the request is bona fide and not made with malicious intent or for unjust enrichment. Judicial authorities may encourage reconciliation and attempt mediation before granting divorce, in keeping with Quranic principles of dispute resolution. At the same time, modern judicial interpretations increasingly recognize that forcing a woman to remain in an unhappy marriage violates her dignity and personal liberty. Thus, khula serves as an important mechanism for protecting women's rights under Muslim law, balancing fairness to both spouses while upholding justice, equity, and individual freedom.[83]

4.2.3. Mubarat (Mutual Consent Divorce)

Mubarat is a form of divorce under Muslim law that is based on the mutual consent of both husband and wife to dissolve the marriage. Unlike *talaq*, which is initiated unilaterally by the husband, or khula, which is sought by the wife, mubarat reflects a situation where both spouses agree that continuation of the marriage is neither desirable nor possible. The essential feature of mubarat is the free and voluntary consent of both parties, without coercion, fraud, or undue influence. In mubarat, either spouse may propose separation, and once the offer is accepted by the other, the marriage stands dissolved. The divorce becomes effective immediately upon acceptance, and it is generally considered irrevocable. Since the dissolution is based on mutual agreement, the parties are free to settle ancillary matters such as maintenance, return of mahr, settlement of dower, custody of children, and division of property through mutual understanding. This flexibility makes mubarat a less adversarial and more harmonious mode of divorce.[84]

Courts recognize mubarat as a valid form of divorce under Muslim personal law and usually do not interfere so long as consent is genuine and informed. Judicial scrutiny is limited to ensuring that the agreement is voluntary and fair, particularly where the rights of the wife and minor children are involved. By encouraging consensual settlement and minimizing conflict, mubarat aligns with both Islamic principles and modern legal ideals, offering a dignified and equitable means for spouses to end their marital relationship when reconciliation is no longer possible.[85]

4.2.4. Faskh (Judicial Annulment)

Faskh is a form of judicial annulment of marriage under Muslim law, granted by a court when the continuation of the marital relationship becomes unjust or legally untenable. It allows the wife to seek dissolution on specific legal grounds such as cruelty, desertion, impotence of the husband, or his failure to maintain her. Courts may also grant faskh if the husband is mentally unsound or suffering from an incurable disease that makes marital life impossible. Unlike *talaq* or mubarat, faskh does not depend on the consent of the husband and is purely a judicial remedy. It is particularly significant in protecting women from oppressive or harmful marriages. Faskh is commonly invoked when khula is not feasible due to the husband's refusal. It is also applicable where the marriage

suffers from legal or contractual defects. Thus, faskh ensures justice by enabling courts to intervene and annul marriages that violate legal, moral, or humanitarian principles.[86]

In this way it can be stated that the systems of divorce under Hindu and Muslim law in India differ significantly in terms of procedure, grounds, and gender roles. Hindu divorce, governed by the Hindu Marriage Act, 1955, treats marriage as a sacrament but allows judicial dissolution based on mutual consent, cruelty, desertion, adultery, or irretrievable breakdown. Both spouses have equal legal rights to seek divorce, and the courts emphasize reconciliation before granting it. Maintenance, alimony, and custody of children are provided as per statutory guidelines. In contrast, Muslim divorce blends religious and contractual principles. The husband historically has the unilateral right of talaq, though judicial intervention has limited arbitrary divorces. Women can seek divorce through khulaorfaskh, often requiring court approval. Muslim divorce also accommodates mubarat (mutual consent), but the process is more varied depending on sect and interpretation. Overall, Hindu law emphasizes statutory equality and formal judicial oversight, while Muslim law combines personal law autonomy with evolving judicial safeguards to protect women's rights.

5. Role of Special Marriage Act, 1954

The Special Marriage Act, 1954 (SMA) plays a significant role in providing a civil and secular framework for marriage and divorce in India, especially for couples belonging to different religions or those who prefer a non-religious marriage. Under this Act, if a Hindu and a Muslim (or members of any other religious community) marry, their union is treated as a civil contract, distinct from the personal laws that govern Hindu, Muslim, Christian, or Parsi marriages. This ensures that the marriage is secular in nature, free from religious formalities, and governed entirely by statutory provisions.

In terms of divorce, couples married under the Special Marriage Act are not bound by their respective personal laws. Instead, they must follow the provisions of Sections 27 and 28 of the Act, which lay down the grounds for judicial dissolution of marriage. These grounds are largely similar to those under the Hindu Marriage Act, including adultery, cruelty, desertion, conversion, mental illness, and mutual consent. By providing a comprehensive and uniform set of rules, the Act ensures clarity and fairness in divorce proceedings, protecting the rights of both spouses.[87]

The Special Marriage Act thus serves as a neutral legal path, removing the influence of religious law and enabling couples from different faiths to marry and divorce under a single civil framework. It promotes equality, reduces discrimination based on religion, and provides a standardized, transparent procedure for marriage registration, dissolution, maintenance, and custody issues. In modern India, the Act has become an important instrument for upholding gender justice and individual autonomy in interfaith or secular marriages[88].

6. Maintenance and Post-Divorce Rights

6.1. Hindu Law

Section 24 & 25 Hindu marriage act 1955

Section 24 of the Hindu Marriage Act provides for temporary maintenance and expenses of the court proceedings to a spouse who does not have sufficient income during the pendency of a matrimonial case. The main object of this provision is to ensure that both husband and wife are able to properly maintain themselves and effectively participate in the legal proceedings without financial difficulty.

Section 25 of the Act deals with permanent alimony and maintenance. It empowers the court to grant maintenance to a spouse at the time of passing a decree of divorce, judicial separation, or nullity of marriage, or even after the decree. While granting such maintenance, the court considers factors like the income, property, conduct, and overall circumstances of both parties. Permanent maintenance may be paid either as a lump sum or in monthly or periodical installments, and the court may modify or cancel the order if there is a change in circumstances, such as remarriage.[89]

Maintenance during and after divorce

Section 125CrPc and section 144 of BNSS available to all Indian women, regardless of religion.-

Section 125 of the Criminal Procedure Code (CrPC) and Section 144 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) are secular welfare provisions meant to protect women from destitution, and they apply to all Indian women irrespective of religion. Section 125 CrPC was enacted as a social justice measure to prevent vagrancy and poverty. It provides a quick and summary remedy for wives, children, and parents who are unable to maintain themselves. The provision is not based on personal law but on the State's duty to protect vulnerable persons. With the replacement of CrPC by BNSS in 2023, this welfare intent has been continued through Section 144 BNSS, which substantially retains the scope and purpose of the earlier Section 125 CrPC.[90]

In *Mohd. Ahmed Khan v. Shah Bano Begum* (1985), the Supreme Court held that a Muslim woman is entitled to maintenance under Section 125 CrPC even after divorce if she is unable to maintain herself. The Court clarified that Section 125 is a secular provision and overrides personal laws in matters of basic maintenance.

In *Danial Latifi v. Union of India* (2001), the Supreme Court upheld the constitutional validity of the Muslim Women (Protection of Rights on Divorce) Act, 1986, while harmoniously interpreting it to ensure that divorced Muslim women are not left destitute and continue to receive reasonable and fair provision.

In *Badshah v. Urmila Badshah Godse* (2014), the Supreme Court emphasized that maintenance laws must be interpreted in a manner that advances social justice and protects women from exploitation. Section 144 BNSS continues the same spirit by ensuring that women, including wives and divorced wives who are unable to maintain themselves, can seek maintenance through a speedy and effective legal remedy. The provision remains religion-neutral, reinforcing the constitutional principles of equality, dignity, and social justice. Section 125 CrPC and its successor Section 144 BNSS are secular in nature and are available to all Indian women, regardless of religion, ensuring financial protection and preventing destitution through judicial support.[91]

6.1.1 Modern Trends

(i) Irretrievable breakdown of marriage

Under Hindu law, the concept of irretrievable breakdown of marriage refers to a situation where the marital relationship has completely failed and there is no possibility of reconciliation between the husband and wife. Although the Hindu Marriage Act, 1955 does not expressly recognize irretrievable breakdown as a statutory ground for divorce, Indian courts, particularly the Supreme Court, have acknowledged it through judicial interpretation. When spouses have lived separately for a long period and the marriage exists only in name, compelling them to continue such a relationship is considered unjust and mentally cruel. In exceptional circumstances, the Supreme Court has dissolved marriages on this ground by exercising its special powers under Article 142 of the Constitution, reflecting a realistic and humane approach to failed marriages[92].

(ii) Gender-neutral approach to rights

Hindu matrimonial law adopts a largely gender-neutral approach to marital rights and obligations, ensuring equality between husband and wife. Most remedies under the Hindu Marriage Act, such as divorce, judicial separation, restitution of conjugal rights, and annulment, are available to both spouses on equal terms. Grounds for divorce like cruelty, desertion, adultery, conversion, and mental disorder can be invoked by either party. Similarly, provisions relating to maintenance, including interim maintenance under Section 24 and permanent alimony under Section 25, are not confined to women alone but can be claimed by either spouse based on need and circumstances. This framework reflects the evolving constitutional values of equality and fairness in marital relationships[93].

(iii) Mutual consent as a preferred path

Mutual consents regarded as a preferred and progressive method of dissolving marriage under Hindu law, as it minimizes conflict and emotional suffering. Section 13B of the Hindu Marriage Act, 1955 allows divorce by mutual consent when both parties agree that the marriage has broken down irretrievably and they have been living separately for at least one year. This method promotes dignity, reduces prolonged litigation, and helps parties part ways amicably. Courts also encourage mediation and settlement in matrimonial disputes, recognizing that mutual

consent divorce is the least traumatic and most harmonious way to end a marriage that no longer serves its purpose.[94]

6.2 Muslim Law

Initially, under Muslim law, post-divorce maintenance was considered to be limited only to the *Iddat* period. The purpose of this provision was to provide temporary financial support to the woman immediately after divorce. However, the decision in *Shah Bano v. Mohd. Ahmed Khan* (1985) brought a significant change to this traditional understanding. The Supreme Court held that a divorced Muslim woman who is unable to maintain herself is entitled to claim maintenance under Section 125 CrPC even after the *Iddat* period. This judgment expanded the concept of maintenance from the perspective of social justice and women's rights[95]

The Muslim Women (Protection of Rights on Divorce) Act, 1986 was enacted to protect the rights and interests of divorced Muslim women and to ensure that they are not left destitute after divorce.

First, the Act provides that a divorced Muslim woman is entitled to a "reasonable and fair provision and maintenance" to be made and paid to her within the *Iddat* period by her former husband. Courts have interpreted this provision broadly to mean that the husband's liability is not limited to the *Iddat* period but must take care of her future needs as well.

Second, the Act recognizes the woman's right to receive her mehr (dower) and all properties given to her before, during, or after marriage, ensuring her financial security.

Third, if a divorced Muslim woman is unable to maintain herself after the *Iddat* period, the Act allows her to seek maintenance from her relatives who would inherit her property, and in their absence, from the State Wakf Board.

Finally, through judicial interpretation—especially in *Danial Latifi v. Union of India* (2001)—the Act has been harmonized with constitutional principles of equality and dignity, thereby strengthening the economic protection and social justice available to Muslim women after divorce[96]

6.2.1 Modern Trends

(i) Judicial scrutiny has reduced arbitrary talaq practices.

Indian courts closely examine the validity of talaq to ensure it is not exercised arbitrarily or unjustly. Judicial oversight has limited the unrestricted power of the husband by requiring that talaq must conform to legal principles, constitutional values, and established norms of fairness. This scrutiny has helped prevent misuse of talaq as a tool of oppression

(ii) Courts emphasize-

Due to active judicial intervention, practices such as instant or unilateral talaq without justification have been curtailed. Courts have ruled that talaq pronounced without reasonable cause or in an unreasonable manner is invalid, thereby reducing arbitrary divorces and protecting marital stability

(iii) Due process

Courts insist that talaq must follow a proper procedure, including clear intention, proper communication, and adherence to recognized legal methods. Arbitrary or impulsive pronouncements of talaq are discouraged, and legality is judged based on fairness and procedural correctness.

(iv) Reconciliation efforts-

Judicial decisions emphasize that reconciliation is an essential step before dissolving a Muslim marriage. Attempts must be made through mediators or family elders to resolve disputes and preserve the marriage, reflecting the Islamic principle that divorce should be the last resort

(v) Women's financial security-

Courts have given paramount importance to the financial protection of divorced Muslim women. Through progressive interpretation of Muslim personal law and statutory provisions, women's right to maintenance and fair provision has been strengthened to ensure they are not left destitute after divorce.[97]

7. Social and economical effect of divorce in India

Divorce in India is not only the end of a marriage between two people but also brings wide social and economic effects on the couple, their children, and society. Indian laws such as the Hindu Marriage Act, 1955, Muslim Dissolution of Marriage Act, 1939, and Special Marriage Act, 1954 recognize the right to divorce, but its impact is still clearly visible in the Indian social environment. In traditional Indian families, divorce is often not accepted easily, and divorced individuals may face judgment, criticism, and social isolation. Women face this more strongly because society often connects a woman's identity and respect with her marital status. Children of divorced parents may face emotional and social difficulties, including low confidence, weaker academic performance, and difficulty building social relationships. Divorce has also changed how society thinks about marriage, with young people increasingly treating marriage as a partnership rather than a lifelong responsibility, leading to late marriages and a rise in live-in relationships.[98]

Divorce also results in financial challenges. A single household earlier supported by joint family income becomes two separate households, increasing expenses and reducing financial stability. Although maintenance laws such as Section 125 of the Criminal Procedure Code, Section 24 of the Hindu Marriage Act, and provisions under the Muslim Women (Protection of Rights on Divorce) Act, 1986 exist to support divorced spouses, especially women, getting actual financial relief may still take time and struggle. Children may also experience a lower standard of living, and access to good education and healthcare may become difficult when only one parent is financially responsible. Additionally, divorce increases the number of legal cases in courts, placing more pressure on the legal system and administrative resources.

Divorce is a valid and necessary legal process, but its influence goes beyond a couple's separation. Socially, it affects family relationships, women's social status, and children's emotional development. Economically, it increases financial burdens, reduces income security, and expands pressure on courts. Therefore, both society and the legal system must work together to create stronger support systems that ensure dignity, emotional well-being, and equal opportunities for those affected by divorce.[99]

8. Conclusion

In a multi-religious society like India, marriage and divorce processes are not just personal life events but are crucial parts of cultural, religious, and legal structures. The differences observed in Hindu and Muslim traditions regarding marriage and divorce are not merely matters of religious perspective but also reveal social arrangements, family roles, and the status of women's rights.

In Hinduism, marriage is considered a lifelong bond, and the divorce process is long and court-based. Although the Hindu Marriage Act, 1955 provides legal grounds for divorce, social acceptance and family approval often play a crucial role in the process. Hindu women have legal equality in divorce, but societal stigma and family pressures sometimes make the process challenging. The provision for 'mutual consent divorce' under Hindu law is a positive development of the modern judicial system that has made the divorce process more flexible.

Muslim marriage, considered a social contract, has historically been simpler and more practical, but Muslim women's rights have long been limited. Practices like Triple Talaq had made Muslim women socially and economically insecure. Landmark judgments like *Shayara Bano v. Union of India* (2017) and reforms like the Muslim Women (Protection of Rights on Marriage) Act, 2019 have ensured better protection of Muslim women's rights in India.

Although both religious systems are gradually moving toward equality and gender justice, religious traditions and social mindsets still pose significant challenges. Respecting women's rights, ensuring timely judicial processes, and promoting equal social acceptance in marriage and divorce practices remain essential.

This study concludes that there is a strong need for continuous reform in religion-based marriage and divorce processes in India. The possibility of a Uniform Civil Code is also becoming a subject of increasing social discourse. The comparative study of Hindu and Muslim marriage and divorce practices clearly indicates that India must develop a more sensitive and practical legal framework to achieve gender justice and protect individual freedoms.

Divorce is an easy and legal way to come out of a forced or unhappy relationship, but sometimes it affects people beyond the two partners as well. Divorce is a legitimate and necessary legal process in modern India. However, its effects go far beyond the breakup of a marriage. Socially, it affects family relationships, women's status, and children's emotional development. Economically, it leads to increased expenses, reduced income security, and a heavier burden on the court system. Therefore, legal support systems and society must work together to create better support for divorced individuals, so that dignity, equality, and emotional well-being can be protected for everyone involved.

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