

**INTERNATIONAL JOURNAL OF LEGAL AFFAIRS AND
EXPLORATION**

Volume 3 | Issue 1

2025

Website: www.ijlae.com

Email: editor@ijlae.com

**COMPARATIVE ANALYSIS OF THE INSTITUTION OF MARRIAGE
AND MATRIMONIAL RELIEFS UNDER HINDU AND MUSLIM
PERSONAL LAWS**

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INTRODUCTION

Healthy reproduction is vital for the survival of all organisms, including humans. Similar to animals, humans require the collaboration of at least two individuals with distinct sexual anatomies for procreation. This tendency in living organisms is termed sexual drive. Human culture established the institution of marriage to fulfil sexual wants. A man and a woman are formally and socially acknowledged as husband and wife upon entering into a legally sanctioned marriage, which also legitimises their offspring. Upon entering matrimony, specific rights and obligations are conferred upon spouses. The institution of marriage appears to have been absent during the primaeval era.¹ At that time, humans were not significantly distinct from other animals. Securing sustenance, accommodation, and a method of survival were his foremost considerations at this moment. Consequently, there was no cause for concern regarding refinement, as sexual life was unrestrained.

Over several days, both the fire and the cattle remains were revealed. Both discoveries significantly enhanced our capacity to distinguish humans from other animals. Individuals no longer needed to traverse various locations in pursuit of sustenance. The notions of possession and ownership arose concurrently with the increase of cattle herds. The individual commenced a more civilized existence thereafter. The unrestricted sexual encounter allowed for the determination of paternity, but not maternity. During the phase of human development when

¹ Naina Singh & Dola Gokul Sai Reddy, *Critical Analysis of Matrimonial Remedies Under Hindu and Muslim Laws*, *Int'l J. of Legal Research and Analysis* (2021)

the notion of ownership and possessions emerges, a parent appears to seek to recognise his progeny. It was untenable as long as sexual activity remained a primary requirement.

A man and a woman can only be legally recognized as fathers if they engage in a sexual relationship with one another. Consequently, men's quest to ascertain paternity prompted the formation of marriage as a social institution.² Marriage as an institution emerged significantly later. This was the fundamental cause of the process's intrinsic duration and delay. The demand for understanding art and industry prompted the establishment of sex regulation in some capacity. The inception occurred with collective nuptials. Consequently, marriage evolved in various forms. Initially, engaging in sexual intercourse with individuals outside one's group was considered forbidden, yet within tribes, diversity was prevalent. It appears that this 86-circle will continue to diminish in size. The preliminary phase is exclusion from sexual interactions within the tribe, particularly for the most close ties, such as those between a mother and son, and subsequently between a brother and sister. Upon marriage, all other relationships, regardless of their distance, were eradicated through this process of elimination.³

Initially, their union served merely to establish a tenuous connection, one that could be easily dissolved. The historical documentation of the Roman Empire verifies that marriage and divorce were prevalent throughout that period. Although male-to-male unions were not as rigorously exclusive as female unions, it was determined that marriage as an exclusive institution is firmly established when a man successfully establishes the male lineage. In a patriarchal culture, women possessed no agency and were entirely subordinate to men. This resulted in the formation of marriage as a social institution, signifying the commencement of a committed partnership between a man and a woman. The man's endeavor to idealize marriage aimed to sway the woman's perceptions and behaviour. Hindus regard marriage as a sacred institution, but Muslims perceive it only as a legally binding contract.

OBJECTIVE OF MARRIAGE UNDER HINDU AND MUSLIM LAWS

The objectives of a Hindu marriage include procreation, the performance of religious rites and sacrifices (which a man can only conduct with his wife), and the attainment of the highest degree of marital fulfilment and spiritual joy for oneself and one's forebears. The wife is essential for achieving all of these aims. Manu contends that a man is deemed unfit and deficient in character if he remains unmarried. According to Manu, a man's character can only

² *Comparative Study of Matrimonial Laws of Hindu and Muslim, Int'l J. of Creative Research Thoughts* (2022),

³ *Family, Marriage and Matrimonial Remedies, NalsarPro* (2019),

flourish and reach its full potential in the presence of his wife and children. Thus, it is imperative for a husband and wife to possess congruent character characteristics, as prescribed by Hindu law. Consequently, the Grihyasutras assert that marriage constitutes a spiritual bond and sacred relationship rather than merely a legal agreement.

"I command your heart, and your mind shall adhere to my will." This is the bride's residence following the saptapadi. For Hindus, marriage is a revered institution. Thus, it suggested a lasting, long-term alliance. Beyond the notion of indissoluble connections, they demonstrated that not even death could sever the couple's ties. This partnership was intended for this life and all subsequent incarnations. Hindus saw marriage as a sacred and sacramental bond rather than a simply contractual agreement. For Hindus, marriage is an essential sacrament as it enables the fulfilment of spiritual and religious obligations, honours their ancestors, and facilitates procreation of a male heir. Due to his financial obligation to his father, he is compelled to relinquish his son, Dharmaja Putra, to his legally wedded wife. Upon the demise of his parents or other forebears, it is traditional for the son to conduct burial rites and offer sacred animals in their honour.

To reproduce, a man and a woman must engage into matrimony through marriage. For a Hindu to procreate, marriage is requisite to engage in religious ceremonies and festivities alongside their partner. It is asserted that a guy is incomplete without his wife, and it is quite accurate that she fulfils him.⁴ She is Ardhangini, his other half. This indicates that moksha, dharma, artha, and kama originate from a wife, who is regarded as the quintessence of purushartha.

Since its inception, Muslims have regarded marriage as a legally binding contract. Muslims perceive marriage as a legally binding contract that legitimises sexual relations and procreation. Reciting particular passages from the holy Quran is a prevalent method to formalise the marriage, which is primarily a contract rather than a sacrament. There is no mandatory religious ceremony for its formalisation under Muslim law.

Shama Charan Sirkar asserts that Muslim marriage constitutes merely a civil contract rather than a sacrament. While Muslims and other civilised societies esteem marriage, in Islamic jurisprudence it is fundamentally a business. Fyzee delineates several rationales for the institution of Nikah, including the safeguarding of species, the establishment of lineage, the

⁴ *Restitution of Conjugal Right: A Comparative Study Among Indian Personal Laws*, Indian Bar Association (2021),

promotion of chastity, the fortification of the marital bond, the deterrence of male immorality, the preservation of species, and the enhancement of mutual cooperation in wealth generation.⁵ A Muslim marriage is fundamentally a contract due to its structure and ceremonies. A civil ceremony is necessary to establish a marriage contract. This ritual entails an offer from one party and acceptance by another, witnessed by two individuals, omitting Shiyas. Incorporating religious ceremonies into a civil marriage enhances its sanctity; yet, the actual performance of these rituals does not influence the legitimacy of the marriage.

Nikah, the Arabic term for marriage, denoted various sexual unions between men and women in pre-Islamic Arabia. Before the emergence of Islam, women were subordinate to men, lacked agency in inheritance matters, and were regarded as insignificant. The prophet Mohammed instigated a profound transformation in the status of women. He attained near-equivalence between the genders in the execution of all judicial responsibilities and authorities.³⁶ A marriage is legally referred to as nikah, which translates to "union of the sexes" in Arabic. According to Baillie's Digest, marriage constitutes a compact that confers consent to engage in sexual intercourse and the capacity for procreation.⁶ By "nikah in its fundamental sense, refers to carnal conjunction," Hedaya signifies precisely that. However, it references a specific contract employed to validate reproduction in accordance with Islamic law.

VALIDITY OF MARRIAGE AMONG HINDUS

Section 5 of the Hindu Marriage Act, 1955 delineates the prerequisites for a Hindu marriage. According to Section 5(i) of the Hindu Marriage Act 1955, neither partner may be deceased at the time of the marriage. Prior to the enactment of the Hindu Marriage Act of 1955, it was not unlawful for a Hindu male to enter into a second marriage. The archaic, uncodified customary law stipulated that a woman could not remarry while her first husband was still living, unless a tradition allowed for such an exception. Bigamous weddings were permissible until certain states enacted legislation prohibiting them and establishing the principle of Hindu monogamy. Men were exempt from this law.

This section utilises the statement "neither party has a spouse living at the time of the marriage" to illustrate the concept. In accordance with Section 5(i), the term "spouse" must be interpreted in its legal context. Neither party may be legally wed to another individual at the time of the

⁵ *A Study on Women's Divorce Rights in Hindu and Muslim Laws, Int'l J. of Law Management & Humanities* (2021)

⁶ *Divorce: Comparative Analysis Between Hindu and Muslim Personal Law, The Legal Quorum* (2022)

marriage, as the term "spouse" suggests. Consequently, the term "spouse" has been employed herein. Due to the ruling in *Arjun v. Tihari Bai*⁷, the term "spouse" is deemed to signify "lawfully married."

Section 11 of the Hindu Marriage Act, 1955 stipulates that a Hindu marriage is null and void if it contravenes provision 5(i). To validate a second marriage notwithstanding this condition, two criteria must be established: first, that the first spouse was legally married and that the marriage remained valid on the day of the second marriage; and second, that the second marriage is legitimate notwithstanding this clause. Section 17 of the Indian Penal Code, when interpreted with Sections 494 and 495, renders it both null and void as well as punitive. To establish bigamy, both marriages must conform rigorously to legally prescribed rites.

The second marriage must be officially consummated through the requisite rites. Any individual seeking a declaration that a second marriage is null and void due to the existence of a live first spouse must provide evidence to substantiate their claim. Even if a man and a woman have been demonstrated to have cohabited for many years as spouses, it suffices to infer the validity of their marriage based just on their common residence. The parties to a null and void marriage may elect to disregard the contract for a legitimate marriage pursuant to section 11. If the first marriage is lawful, the court cannot approve the second wife's petition for her husband to remarry and formalise the second marriage.

The Marriage Laws Amendment Act of 1976 eliminated the prior language stating, "neither party is an idiot or a lunatic at the time of the marriage," by introducing Section 5(ii). The previous legislation saw mental impairment as a conditional obstacle to marriage, contingent upon the severity of the individual's mental instability. According to the Indian Lunacy Act, 5 of 1912, an individual who is mentally ill or irrational is classified as a "lunatic." In contrast to insanity, "unsound mind" encompasses a wider range of mental disorders. In *Latha v. Damodar Reddy*⁸, the court determined that stupidity is not synonymous with low IQ. The presence of schizophrenia symptoms prior to and following marriage does not necessarily indicate that the individual was afflicted with the disorder during the marriage itself. If a spouse suffers from an incurable mental disease or a serious mental abnormality rendering cohabitation unreasonable, the other spouse may file for divorce under Section 13 (1) (iii).

⁷ *Arjun v. Tihari Bai*, AIR 2007 SC 677.

⁸ *Latha v. Damodar Reddy*, AIR 2009 SC 186.

Section 3 (1) (iii) defines a mental disorder as any ailment or impairment of the mind, encompassing mental disease, psychopathic disorder, and stunted or incomplete mental development. Schizophrenia is characterised as a mental disorder that, irrespective of the necessity for or efficacy of medical intervention, leads individuals to exhibit overly aggressive or profoundly irresponsible behaviour. Even if an individual is capable of providing valid permission, they may nevertheless be deemed unfit for marriage or procreation under Section 5(ii), which considers both the incapacity to offer valid consent and the severity of mental disease.

The wording of the two subclauses implies varying levels of cognitive impairment in individuals. Either the first individual is incapable of providing consent, or the second individual may grant valid consent but is afflicted by a mental disorder that inhibits their ability to marry and procreate. In *Alka Sharma v. Abhinesh Chandra Sharma*⁹, the court determined that "procreation" encompasses both the capacity to conceive offspring and the obligation to rear them.

According to Section 5(iii) of the Hindu Marriage Act, 1955, revised by the Child Marriage Restriction Amendment Act, 2 of 1978, Hindu marriages mandate that the bride and groom be a minimum of 18 and 21 years old, respectively. Prior to this Act, a Hindu could lawfully marry any individual if they were of legal marriageable age. The Indian Majority Act of 1875, Act 9, did not address marriage, and this omission persisted following its enactment. Under Mitakshara, an individual may marry as early as sixteen years of age, while under Dayabhaga, the minimum age is fifteen. Any person, including the bride, deemed culpable of violating this condition shall face penalties under the Hindu Marriage Act of 1955, particularly clause 18. For a couple to be legally married, they must fulfil the requirements specified in section 5(iii) of the Hindu Marriage Act, 1955.

In *Harwinder Kaur v. Gursewak Singh*¹⁰, the husband asserted the nullity of the marriage on the basis that both the bride and groom were underage at the time of the ceremony, constituting a violation of section 5(iii). The court determined that a marriage failing to adhere to clause 5(iii) is not null and void, but voidable, and the husband is obligated to provide maintenance. Despite being prohibited under section 18, a marriage that fails to satisfy the age requirement cannot be declared null and void or voidable. The union of two Hindus of equivalent age is not

⁹ Alka Sharma v. Abhinesh Chandra Sharma, AIR 2010 SC 502.

¹⁰ Harvinder Kaur v. Harmander Singh Choudhry, AIR 1984 Del 66.

deemed invalid or unlawful just due to one party's conviction under the Child Marriage Restriction Act. Failing to acknowledge a marriage does not exempt an individual from the rights and obligations inherent in a legitimate marriage.

According to Section 15 clause (iv) of the Hindu Marriage Act, 1955, the parties involved in a Hindu marriage shall not have any banned relationship. This is contingent upon the traditions or customs of each side permitting marriage. Conversely, pursuant to clause (v), the parties must not be sapindas of one another. The concepts of degrees of banned relationship and sapinda relationship must be understood as defined in subclauses (f) and (g) of section 3 of the Hindu Marriage Act, 1955. In *Shakuntala Devi v. Amarnath*¹¹, the Supreme Court determined that a marriage may be deemed valid if it is founded on a custom or practice that allows it to occur between individuals in "prohibited degrees of relationship" or "sapinda relationship," as defined in sections 3(f) and (g) of Act No. 87. Section 3(a) of the Hindu Marriage Act of 1955 stipulates that any practice revealed must possess legal validity.

Traditionally, one is permitted to marry the niece of one's maternal uncle. The Reddiar community in Tirunelveli District formerly practiced the marriage of a granddaughter, but this custom was prohibited owing to moral indignation, despite its prevalence among them. Any tradition invoked concerning the rule of forbidden degrees for marriage or a sapinda connection shall obligate each partner in accordance with these restrictions. Consequently, it is irrelevant if one partner fails to comply with the norm; the marriage will remain unrecognised as valid. A null and invalid marriage is delineated in section 11 and condemned in section 18 of this Act if it contravenes either of these two clauses (b).

VALIDITY OF MARRIAGE AMONG MUSLIMS

Marriage in Islam is a straightforward legal matter. No religious rites or ceremonies are necessary for the occurrence of a marriage. The formation requires solely the consummation of a legally binding marriage contract. One cannot exist without the other. Marriage contracts are legally enforceable when both parties provide their declarations and mutually accept them during the same meeting. The declaration and acceptance may be executed by any party or their authorised agent, provided they possess the requisite competence. If a minor or an

¹¹ Shakuntala Devi v. Amar Nath, AIR 1982 SC 1272.

individual with a mental condition is incapable of lawfully entering into a marriage contract, their guardians may validly do so on their behalf.¹²

The following conditions are necessary for a valid Muslim marriage.

1. “Declaration or offer (Ijab) on the part of the one
2. Acceptance (Qabul) by the other (or by the guardians as the case may be).
3. Before sufficient witnesses (In Hanafi law, two and in Shiite law not necessary).
4. The words must indicate with reasonable certainty that a marriage has been contracted. There must be no ambiguity, no question of an intention to marry, or a mere promise to marry at a future time.
5. The proposal and acceptance must both be expressed at one meeting. A proposal made at one meeting and an acceptance at another meeting does not constitute a valid marriage. A mere betrothal does not create any rights in Muhammadan law”

A Muslim may lawfully engage into a marriage contract if they are of legal age and possess sound mind. The majority of individuals attain puberty. The Hedaya asserts that a girl attains majority at nine years and a boy at twelve, despite the common belief that majority is reached at fifteen. A nine-year-old girl is deemed an adult based on a verdict by the Privy Council in a case concerning Shiites. Marriage arrangements for minors may only be conducted by their legal guardians.¹³ Despite its legality, one can still annul such a marriage. A marriage consummated by a girl before reaching puberty was deemed automatically invalid under the law. Nonetheless, there are seven constraints on a Muslim's otherwise unfettered freedom to marry an individual of the opposite gender.

Under Islamic law, a Muslim man may have a maximum of four wives, although he is permitted to have an unlimited number of additional wives, contingent upon certain conditions. A Muslim woman, however, is permitted to marry only once. While rare, a Muslim's marriage to multiple wives is not deemed invalid. A Muslim woman is prosecuted for bigamy under Section 494 of the Indian Penal Code, 1860, if she enters into a second marriage. Children born from such a marriage cannot be acknowledged as legitimate by any subsequent recognition. Interfaith marriage is allowed among Muslims of all legal schools, including Sunni, Shia, Hanafi, Shafi'i, and others. A wife is not legally required to attend her husband's educational institution, and

¹² *A Comparative Ground for Divorce and Annulment Under Hindu, Muslim, and Christian Personal Laws, Int'l J. of Advanced Research in Science, Communication and Technology* (2022),

¹³ *Ibid*

both partners maintain their marital status. This case does not pertain to emergence, unlike the law of domicile.

A male may wed either a Kitabiyya or another Muslim lady, whereas a Muslim woman is permitted to marry solely another Muslim, as to Hanafi jurisprudence. Kitabiyya denotes a lady who possesses a Divine Book and adheres to a revealed faith. This designation is solely employed in India to denote Jews and Christians, as they are the only religions possessing a revealed text (Kitab). The Privy Council's examination of Buddhist teachings indicates that Buddhists are equivalent to Christians and Jews, with whom Muslims are permitted to marry. This verdict emphasised the question of whether a Buddhist can be considered scriptural. Their Lordships chose not to consider that matter given the circumstances of the case. A Muslim shall not wed an idolatress or a fire worshipper.¹⁴ A Muslim woman may only marry a Kitabi if she resides in India, where the Special Marriage Act of 1954 forbids such unions. An individual who holds a Divine Book and follows a revealed religion is referred to as a Kitabi.

The Shiite regulations are more stringent. Shiites, regardless of gender, are prohibited from marrying non-Muslims in their nikah ceremony. In a Muta marriage, a man is permitted to marry a Kitabiyya, regardless of her worship of fire. A Fatimid man is permitted to marry a Zoroastrian lady, however a Fatimid woman is prohibited from marrying a Fatimid man. This is attributable to the Fatimid conviction that Zoroastrians (Majus) are ahl al-Kitab. The current consensus appears to be that a Muslim man's Nikah with an individual who venerates fire or idols is not invalid, but rather unusual. Mulla asserts that the marriage of a Muslim woman to a non-Muslim is deemed irregular rather than null and void. Marriage between a Muslim woman and a non-Muslim is not only rare but also deemed batil (invalid) in the Quran.¹⁵ In India, a Muslim may legally marry a Christian or Jewish woman in accordance with Muhammadan law.

The second prerequisite for marriage is a consanguineous relationship. The subsequent categories of individuals are prohibited from marriage to men: (i) mothers and grandmothers, irrespective of status; (ii) daughters and granddaughters, irrespective of status; (iii) sisters, irrespective of status, whether full, consanguineous, or uterine; (iv) nieces and great-nieces, irrespective of status; and (v) aunts and great-aunts, irrespective of status, whether maternal or

¹⁴ *Unity and Division in the Pursuit of Happiness: A Comparison of Marriage and Divorce Laws in India and the United States*, GWU Int'l Law and Policy Brief (2023),

¹⁵ *First Indian State Bans Polygamy in 'Anti-Muslim' Marriage Reforms*, *The Times* (2023)

paternal. The marriage is null and the offspring are illegitimate if it is to a woman prohibited due to consanguinity. (ii) Attachment: Marriage is prohibited for men in specific affinity relationships, including (a) those with a woman's direct or indirect descendants, and (b) those with the wife of an ascendant or descendant. A man may legally wed a female descendant of a woman, even if their marriage is not yet finalised, pursuant to an exemption. A marriage rendered illegal due to consanguinity is typically unacknowledged.¹⁶

Muhammadan law prohibits marriage within the boundaries established by a foster relationship. An individual is prohibited from marrying any member of his foster family, including his foster mother, her daughter, or foster sister. A marriage that cannot be legally conducted due to foster care is null and void. Moreover, a man cannot legally marry multiple wives simultaneously unless they are related to him by blood, affinity, or fosterage; intermarriage between males and women would be deemed invalid. Consequently, a man cannot marry two sisters or an aunt and her niece. Disregarding the prohibition of illicit unions does not invalidate a marriage under Hanafi jurisprudence, even if it is unconventional.

Following the dissolution of a marriage through divorce or death, a woman is restricted from remarrying for a designated period as stipulated by Muhammadan law. The term "iddat" refers to this specific period. A woman must remain entirely childless for a specified duration following the conclusion of her marriage to establish paternity. During this period, she is required to reside in isolation and refrain from engaging in specific activities she desires. Observance of iddat is required when cohabitation has occurred. Cohabitation may be either legal (such as formalising a marriage) or illicit (such as participating in clandestine sexual relations). If engaging in sexual intercourse without legal authorisation results in a pregnancy, the iddat period must be adhered to. For consummated and divorced marriages, the iddat period lasts for three menstrual cycles; for pregnant women, it persists until childbirth occurs. Moreover, if the marriage concludes owing to the decedent's death, or until the woman delivers during her pregnancy, whichever transpires first, the iddat period is four months and ten days. Marriages involving women in iddat are uncommon, however not invalid. Under Fatimid law, such unions are deemed invalid.

¹⁶ *Ibid*

REMEDIES AVAILABLE TO HINDUS AND MUSLIMS

Equal protection under the law is a fundamental principle of our nation's foundational charter. This privilege is founded on the principle that like entities should get analogous treatment. Therefore, individuals who are distinctive may receive preferential treatment. This concept underpins the freedom of religion and the right to self-governance specifically granted to the populace by the constituent assembly.¹⁷ Subsequent to India's independence, the Hindu majority instituted legislation safeguarding monogamy and affording equitable divorce rights to both husbands and wives. The Islamic faith lacks explicit marital regulations. They are permitted to marry according to their own legal framework. According to personal law, Muslim men are permitted to enter into four marriages, however Muslim women are restricted to a single marriage. The significant disparities between the two faiths result in prejudice among its adherents. According to legislation enacted by the British government prior to independence, only women are permitted to obtain a divorce lawfully.

The Hindu Marriage Act of 1955 delineates the legal stipulations governing marriage, irrespective of the norms upheld by the community about the ceremony. The Act contains particular provisions pertaining to divorce. The provisions for Hindu divorce are included in Section 13 of the legislation. Section 13 delineates two primary grounds for divorce: those applicable to any spouse and those exclusive to the wife. The Hindu Marriage Act, 1955, delineates equivalent grounds for divorce under Sections 13 (1), 13 (1-A), and 13 (B), applicable to both partners. Sections 13, 1-A, and 13-B delineate the following justifications. Engaging in infidelity Involuntary sexual intercourse with a third party constitutes adultery for a spouse under Section 13.¹⁸ The victim spouse may petition the court for a divorce to terminate the marriage. Reprehensible behaviour The Act did not include this foundation upon its enactment. A corporation was established in 1976.

If one spouse abuses the other, the victim spouse may petition the Competent/District Court for a divorce, as outlined in Section 13 (1) (ia). Declining to provide service Section 13(1)(ib) of the Hindu Marriage Act was revised in 1976 to incorporate this ground. If one spouse departs without providing a valid rationale, the other spouse may be eligible to petition for divorce under this provision. Divorce decrees are not issued until two years have elapsed according to this regulation. There are two distinct types of desertion: constructive and actual, which will

¹⁷ *Critical Analysis of Matrimonial Remedies Under Hindu and Muslim Laws, Int'l J. of Legal Research and Analysis* (2021).

¹⁸ *Comparative Study of Matrimonial Laws of Hindu and Muslim, Int'l J. of Creative Research Thoughts* (2022),

not be elaborated upon here. Conversion Apostasy constitutes a legitimate ground for divorce for any Hindu. If one spouse ceases to adhere to their faith, the aggrieved spouse may terminate the marriage pursuant to Section 13 (1) (ii).

This is predicated on the premise that the Hindu Marriage statute is applicable just to Hindus, granting a spouse the ability to terminate the marriage if the other party declines to convert to a religion not encompassed by the statute. The mind is utterly disoriented. The validity of a marriage is contingent upon the mental capacity of both parties; if either lacks such competence, the union is invalid. The impairment of mental capacity subsequent to the ceremony does not, however, invalidate the marriage. The marriage is deemed legitimate, and the other spouse possesses the right to petition the court for its dissolution. When one partner is afflicted with a severe and incurable form of leprosy, the other partner is entitled to divorce pursuant to Section 13 (1) (iv) of the Twelve Leprosy Act.

This right may only be utilised in instances where the responder is either terminally ill with leprosy or is not receiving sufficient treatment for the ailment. Venous pathology. Venereal disease is a significant contributor to divorce. A venereal disease is one that can be transferred between individuals through sexual intercourse or physical contact. Sexual contact between spouses is essential to marriage; hence, an illness may serve as grounds for divorce if it jeopardises the marital institution.¹⁹ Consequently, if one partner possesses a communicable venereal illness, the other partner may get a judgement of marital dissolution. Abandoning existence According to Section 13 (1) (vi), if one spouse elects to become a Sanyasi and neglects their familial obligations, the aggrieved spouse is entitled to dissolve the marriage.

Longevity When one partner has not met their duties and has been missing for seven years or more, the court may consider the other spouse deceased and issue a divorce decree, enabling them to live freely. Fourteen The arguments articulated above are grounded in fault theory. To invoke any of these grounds, the other spouse must have exhibited negligence towards the marital harmony. Consent theory posits that spouses in a marriage may initiate divorce proceedings based on either fault or mutual agreement. Separation by Consensus This is a significant issue that can be addressed by both parties. A married couple unable or unwilling to cohabit may seek for divorce on this ground.

¹⁹ *Restitution of Conjugal Right: A Comparative Study Among Indian Personal Laws, Indian Bar Association* (2021),

At the time of its enactment, the Act did not consider this foundation. This area was designated in 1976 under section 13(B) to facilitate the liberation of married individuals experiencing dissatisfaction in their union. However, the divorce order cannot be granted until the six-month time has expired, as stipulated in the rule. Besides the grounds accessible to both spouses in a marriage, Section 13(2) delineates four grounds that are unique to the lady. These rights are given to women only after the pre-independence conditions in India are taken into account. A woman is entitled to request the dissolution of her marriage under Section 13(2)(i) if her husband has other wives not recognised by her, provided their marriage was consummated prior to the enactment of the law. If a spouse is convicted of rape or other unnatural acts under the penal code, the wife may petition for a divorce under Section 13(2)(ii). She will not be obligated to cohabit with the offender, as stipulated by the law.

Every woman is entitled to spousal support from her husband, irrespective of her cohabitation status or whether a divorce has occurred. The wife is entitled to pursue a divorce decree if the husband has neglected to pay the maintenance sum for a minimum of two years following the issuance of a maintenance order in her favour under section 125 of the Cr.P.C. or section 18 of the Hindu Adoption and Maintenance Act. She can utilise this as proof that he is incapable of providing for her.²⁰ A woman is entitled to a divorce if the marriage was consummated prior to her fifteenth birthday, according to Section 13(2)(iv), provided she petitions for the decree before reaching eighteen. Initially, these four properties were exclusive to the wife; two additional grounds were incorporated in 1976.

Hindu and Muslim laws on marriage exhibit significant differences. In contrast to Hindus, Muslims are not required to adhere to monogamy. Furthermore, there are no prescribed laws or rituals that Muslims are obligated to adhere to. Muslim personal law stipulates that a Muslim woman may enter into marriage just once, whereas a Muslim man is permitted to marry up to four times concurrently.²¹ Upon reaching puberty, a Muslim is permitted to marry; there are no defined age restrictions. The onset of puberty is ascertained by evaluating the three components of age: shagir, shahriri, and kahyal ul bulug. Marriages between Muslim men and women are deemed invalid at reaching the age of shagir, and guardians are prohibited from facilitating these unions.

²⁰ *Ibid*

²¹ *A Study on Women's Divorce Rights in Hindu and Muslim Laws, Int'l J. of Law Management & Humanities* (2021)

Despite lacking the legal authority, guardians can nonetheless legally wed a child who has attained the age of maturity. Upon reaching the age of bulgugh, a man and a woman are legally permitted to marry. A marriage constitutes a legally binding contract for Muslims. The proposal operates akin to a contract, necessitating mutual consent from both parties prior to the husband disbursing Mahr to his wife. Muslim men possess the liberty to wed ladies of any religion, however Muslim women do not have this privilege. Membership in the Sapinds is restricted to individuals who are direct bloodline descendants. Marriages that violate specific restrictions are deemed invalid, such as when a Muslim man marries two legal sisters or when he is on pilgrimage. In the Muslim community, divorce lacks particular legislative regulation. Divorce is regulated by a distinct set of regulations. Divorce can be categorised as either judicial or extrajudicial according to Islamic law.

Within the domain of extrajudicial divorce, three separate categories exist. Consent to the dissolution of the marriage by both spouses, or only by the wife This right is solely reserved for the woman in a judicial divorce. In Islam, a husband can terminate his marriage using one of three methods: talaq, ila, or zihar.²² There are three distinct types of divorce: implicit (ila and zihar) and explicit (talaq). The husband's spoken pronouncement of divorce is termed talaq. There exist two additional forms of talaq. Talaq ul biddat and talaq ul sunnat are the designated terms for various forms of divorce. The Quranic verses delineate two forms of Talaq ul Sunnat: Ahasan and i-hasan. Talaq-i-ahasan is the most frequently acknowledged form of talaq. The husband pronounces talaq in a single statement under talaq-i-ahasan while the wife remains nude. This period is referred to as tuhr, during which, during the iddat, one must abstain from engaging in sexual interactions.

Upon the conclusion of the iddat period, talaq becomes irrevocable. This is the most efficient and permissible type of talaq, as it can be rescinded at any point prior to the conclusion of the iddat period. This type of talaq does not instantaneously terminate the marriage. The Hasan Talaq Husbands traditionally issue three talaq declarations during three consecutive tuhrs in talaq-i-hasan. After one month or thirty days, if the wife has not initiated menstruation or has reached a certain age, the husband may exercise the option to declare talaq. The current inability of the spouses to engage in sexual intercourse is a fundamental condition.

²² *Divorce: Comparative Analysis Between Hindu and Muslim Personal Law, The Legal Quorum* (2022)

The third and final declaration, in conjunction with the ban on sexual relations, is the talaq. This type of talaq is less commonly endorsed. If the couple chooses to cohabit again, the marriage may be annulled. Recitation of the Quran A version of talaq-ul-biddat is talaq-i-bain. This type of talaq is irrevocable as the husband articulates it in one or three statements. This type of talaq is irrevocable as the parties are unable to amend the repercussions of their error. Regardless matter whether the husband expressed it in rage, when drowsy, or as an inadvertent verbal misstep, it is still considered an undesired type of talaq as it terminates the marriage.²³

Ila is a nuanced or implied form of talaq. A guy who refrains from explicitly declaring talaq yet vows to abstain from sexual intercourse with his wife is participating in this type of talaq. If the husband refrains from sexual contact for four months after the oath, the marriage is completely dissolved, and the wife must observe the iddat time. If one partner resumes cohabitation with the other within four months, the marriage is deemed to have commenced anew. The conclusion of an ila divorce necessitates a judicial decree. Zihar is an implicit form of talaq. In this iteration, the husband compares his wife to his sister or mother, both of whom are engaged in illicit affairs. To the husband, "You resemble my mother or sister," and he explicitly states that he will not remain with her. If a husband and wife do not cohabit for four months following such a comparison, the marriage is deemed dissolved.

Divorce is a viable choice for Muslim wives. The woman may select between talaq-itafweez and lian. Afweez Talaq Tafweez is referred to as delegated talaq. In Islam, the husband possesses the exclusive authority to divorce his wife, however he may grant her this privilege with or without stipulations. In the event that the previously specified circumstance occurs, the wife is permitted to declare talaq to her husband under this specific kind of talaq. Lian Lian references the unfounded assertions. The wife is legally entitled to pursue a divorce if her husband levies baseless character charges of infidelity against her.²⁴ A divorce may be awarded to the woman if she can demonstrate that she has suffered emotional distress due to her husband's character accusations and that she is incapable of remaining married to him.

Both spouses has the right to terminate the marriage if they wish. When both parties consent to the divorce, it is referred to as Khula or Mubarat. Both documents require the consent of both spouses. In Khula, a husband's consent to a wife's petition for him to declare talaq denotes the

²³ *A Comparative Ground for Divorce and Annulment Under Hindu, Muslim, and Christian Personal Laws, Int'l J. of Advanced Research in Science, Communication and Technology* (2022),

²⁴ *Supra* note 54

dissolution of the marriage. In a Khula divorce, the wife must forfeit her entitlement to dower. The wife initiates the proposal, and the husband consents, a process known as khula. Conversely, in a Mubarata divorce, both partners consent to terminate the marriage, distinguishing it from a conventional divorce. To completely dissolve a marriage by mubarat, a divorce predicated on mutual consent, the court must render a decision, and the petitions must be submitted collaboratively by both spouses. In Mubarat, the woman may also be obligated to forfeit her dower rights.

Only the woman have the legal authority to petition the court for a divorce certificate to terminate the marriage, despite the provisions for divorce established by the Dissolution of Muslim Marriage Act of 1939. Section 2 of the Dissolution of Muslim Marriage Act, 1939 delineates a limited number of grounds upon which only women may initiate divorce proceedings. The wife and her husband's family are unaware of the husband's identity; hence, the woman may leverage this as a basis for divorce. The husband has failed to provide maintenance to his wife for the past two years. The spouse's conviction and ensuing seven-year prison sentence stemmed from a criminal trial.²⁵ The spouse has persistently failed to fulfil his responsibilities as a husband for the past three years. The partner was unable to consummate the relationship due to impotence. (vi) The spouse is either mentally ill, afflicted with a venereal disease, or has leprosy. The woman annulled the marriage before to turning eighteen, asserting that her guardians had orchestrated the union when she was fifteen years old. This right applies only if the marriage has not been consummated. (viii) Her partner has mistreated her and compelled her to live an unethical existence.

COMPARISON BETWEEN THE LAWS OF HINDUS AND MUSLIMS

Muslims and Hindus adhere to separate personal laws. Marriage in Hinduism is founded on the notion of gender equality. Both the husband and the wife are equally obligated by the laws and rituals of marriage. Both spouses are bound by the monogamy principle, and any party has equal grounds for divorce. Muslim personal law, however, undermines the fundamental human right to equality. A Muslim man is permitted to marry up to four women simultaneously. He is at liberty to marry whoever he chooses at any time and may also declare talaq to any of his

²⁵ *Family, Marriage and Matrimonial Remedies, NalsarPro* (2019)

current wives. Divorce is not regulated by any particular Islamic rule. Husbands possess the authority to declare talaq to their wives during moments of anger or for trivial matters.²⁶

A Muslim wife is not entitled to maintenance from her husband post-talaq if she remains unmarried. A husband is prohibited by law from remarrying his wife after talaq, as the divorced lady is required to officially marry another individual and have the marriage consummated before she can legitimately remarry her former spouse. Despite secularism being a fundamental characteristic of India, the right to equality enshrined in the Indian Constitution is contravened by personal laws enacted in its name.

Marriage is seen as a sacred ritual and an indissoluble bond in Hinduism. The 129 contractual parts of marriage got minimal attention due to its sacramental significance. Hindus have never regarded marriage as a legally binding transaction. A Hindu ceremonial marriage possesses three essential attributes.²⁷ Once a bride and groom are married, the union is irrevocable. Secondly, it constitutes a spiritual relationship; and thirdly, it represents an enduring partnership. Marriage is not seen as a permanent union, as the Hindu Marriage Act of 1955 allows for divorce.

Some believe that remarrying after a widow's death has disrupted the enduring connection. It is indisputable that Hindu marriage has transcended its ceremonial essence, particularly when widow remarriages are regarded as a state reform initiative. Nonetheless, there is evidence indicating that the third character remains present. The predominant number of Hindu marriages continue to have a form of spiritual or religious ceremony. However, it is unequivocally false that marriage has evolved into more of a commercial transaction than a sacred rite.

Marriage in Hinduism has neither evolved into a contractual arrangement nor remained solely a sacramental institution, yet exhibiting traits of both. The institution of marriage is contingent upon the mutual consent of the bride and groom, rendering it analogous to a contract. The prevalence of sacramental ceremonies at weddings imparts a religious ambiance. What distinguishes Muslim law is that, in contrast to developments in the West following the Industrial Revolution, Muslim legal philosophy has consistently regarded marriage as a civil contract from its inception. Conversely, the husband ascended to a position of authority,

²⁶ *Critical Analysis of Matrimonial Remedies Under Hindu and Muslim Laws, Int'l J. of Legal Research and Analysis* (2021),

²⁷ *Ibid*

characteristic of human society at this distinctly patriarchal phase of its evolution. Nonetheless, individuals hold varying perspectives on what constitutes the uniqueness of a Muslim marriage.²⁸

Certain Islamic jurists regard marriage as a sacred institution, but others perceive it just as a legally binding contract. The judiciary maintains that marriage is both a civil transaction and a religious sacrament, representing an orthodox perspective. The Privy Council acknowledges the Nikah as a religious ceremony under Muslim law. Chief Justice Sir Shah Muhammad Sulaiman of Allahabad asserts a measured position by contending that Muslim marriage constitutes both a religious ceremony and a civil contract. Sulaiman stated, "It is pertinent to note that Maulvi Samiullah (D.J. Raibarielly) gathered various authorities indicating that marriage is perceived as a religious sacrament rather than merely a civil contract." The learnt Chief Justice implicitly conveys his agreement with Maulvi Samiullah's assertion that marriage is a sacrament. A Muslim marriage is fundamentally a contract at its inception; nevertheless, upon dissolution, the husband's authoritative role is acknowledged.

India commemorates its variety. There exists a differentiation in the domains of legislation as well as in the spheres of gastronomy, fashion, climate, agriculture, geography, and more. Secularism was incorporated into the constitution as both a fundamental right and a core characteristic upon its approval after independence. However, there exists a fundamental right and an essential aspect of equality that this right opposes. The disparities in personal law were the fundamental source of the gender gap affecting Muslim and Hindu women. The concept of a uniform civil code, as delineated in Article 44 of the constitution, has yet to be implemented.²⁹

The "Muslim Women (Protection of Rights on Divorce) Act, 1986," which criminalised the declaration of triple talaq or talaq-i-biddat, was abrogated by parliament in 2019, marking a significant advancement in this regard. The parliament's initiative to commemorate Muslim women by removing the outdated law and enacting a new one is truly laudable. Muslims would persist in recognising alternative types of talaq despite the illegality of talaq-i-biddat. Furthermore, Muslim women are required to adhere to the notion of halala. Given that perfect equality remains unachieved, Parliament should prioritise these matters. For India to advance

²⁸ *Exploring the Legal and Socio-Cultural Dimensions of Marriage in India: A Comparative Analysis of Hindu and Muslim Personal Laws*, 2 Int'l J. of Future Multidisciplinary Research 45 (2023),

²⁹ *Ibid*

collectively, the implementation of a standard civil code is recommended, alongside the assurance of equality rights for all citizens.