



COMPARE THE LAW OF DIVORCE OF HINDU, MUSLIM AND CHRISTIAN

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Abstract:-

According to Indian Preamble India is a Secular Country which means India have wide number of religions which are freely practised. Hinduism, Islam and Christianity are the major religion which are practised in India. People solemnise marriages in accordance with religious rituals and ceremonies, which are mostly set out by statutory personal laws. Therefore, the matrimonial laws in India, including laws on marriage, divorce and other connected issues, are essentially governed by the personal laws of the parties depending on their religion

- Hindu: Hindu Marriage Act 1955.
- Muslim: Muslim marriage is a contract under Muslim law
- Christian: Indian Christian Marriage Act 1872 and the Divorce Act 1869.

In addition, the Special Marriage Act 1954 applies to all persons of all religions. This is a civil legislation and parties from all religions, caste or community can elect to marry under it. In case of divorce, it would then be governed by the Special Marriage Act 1954.

Introduction:-

India is a home to different cultures and religions, and the personal law applicable to each religion is different as the customs and

practices of every religion are different. Personal laws are a set of laws that are applicable to personal issues of people, like succession, adoption, inheritance and marriage.

Divorce is the termination of marriage and dissolution of matrimonial rights and duties. Divorce maybe common among all religions and cultures, but the law relating to divorce is not the same in India. This is because the concept of marriage is different among different religions, for Hindus it's a sacrament and for a very long-time divorce was an unknown concept for Hindus. For Muslims, marriage is a contract.

Since India is the land of many religious communities which are having their personal marriage laws, the divorce procedure also varies according to the couples seeking divorce. Like all Hindu, Sikhs, Jains, Buddhists can seek divorce under Hindu Marriage Act 1955. For Muslims couple they can seek divorce under Muslims personal laws. And for Christians couple they can seek divorce under Divorce Act 1869. Some spouses belonging to different communities and castes can seek divorce under the Special Marriage Act, 1956.

This paper aims to analyse the various grounds for the divorce, it's difficulties and analysis. This paper also aims to look after the difference of methods and grounds on which a divorce can be seeker under various legislations.

Conditions Of Valid Marriage: -

Hindu :¹- According to Section 5 of Hindu Marriage Act, a valid marriage can be

¹ Concept of marriage and divorce law :- (By Subodh Asthana)

<https://blog.ipleaders.in/marriage-divorce-hindu-muslim-laws/> (Last Modified :- May15,2019)



solemnized between two people of Hindu caste if following conditions are fulfilled :-

- 1) **Monogamy (Section 5(1)):-** Hindu law does not allow polygamy. According to this section. A person should not be married to any other women before getting married or he/she must have a valid divorce from court before contracting any marriage.

If anyone found in contracting a bigamous marriage then he/she shall be punishable under section 494 of Indian Penal Code and that new marriage will be of void nature.

- 2) **Mental Capacity (Section 5(2)):-** The parties to the marriage should not suffer from unsoundness of mind, mental disorder or insanity. If parties are aware of that before marriage then the marriage will be valid but if they discover it later then it shall be of voidable nature at the instance of one party and he/she may validly annul the marriage. Unsoundness of mind should be of permanent nature to claim this defense as a ground.

- 3) **Age Of Parties (Section 5(3)):-** It has to be proved that at the time of marriage the bridegroom has completed the age of 21 years and the bride has completed the age of 18 years. If a marriage is solemnized in contravention of this condition, it is neither void nor voidable. It is also said to be a flaw in Hindu Marriage Act because in this parties have a right to approach the court before the age of 18 years to get their marriage annulled but what will happen if a boy contracts a marriage at the age of 20 years, he is not given the option to get his marriage rescinded.

- 4) **Degrees Of Prohibited Relationships :-** The parties to the wedding shouldn't come back among the degrees of prohibited relationship. 2 persons are said to be among the degrees of prohibited relationship
 - (i) if one could be a lineal ascendant of the other or
 - (ii) if one was the spouse or husband of lineal ascendant or descendant of the other or
 - (iii) if one was the spouse of the brother or of the fathers or mothers brother or of the grandfathers or grandmothers brother of the other or
 - (iv) if the 2 are brother and sister, uncle and kinswoman, auntie and kinsman, or kids of brother and sister or of 2 brothers or of two sisters.

A marriage between 2 persons who come back among the degrees of prohibited relationship shall be void. However, if there's a legitimate custom or usage governing each the parties permits they will marry although they are available among the degrees of prohibited relationship. everywhere, Bharat, there is such custom that validates wedding between persons who come back among the degrees of prohibited relationship.

- 5) **Sapinda Relationship :-** The parties to the marriage should not be related to each other as Sapindas. A marriage between sapindas is void.

Under Section Sapinda relationship with reference to any person which extends as far as the third generation (inclusive) in the line of ascent through the mother, and the fifth (inclusive) in the line of ascent through the father, the line being traced upwards in each case from the person concerned, who is to be counted as the first generation.

- (ii) Two persons are aforementioned to be



sapindas of each other if one could be a lineal ascendant of the opposite inside the bounds of “sapinda” relationship, or if they need a standard lineal ascendant who is among the bounds of “sapinda” relationship with relation to every of them.

No such marriage would be permitted if it has been proved that the same is allowed by a particular custom and traditions of one party
Muslims :-²

- 1) **Capacity To Marry :-** Every Muslim of sound mind who has attained the age of puberty is free to enter into a contract of marriage. Puberty means an age where the adult becomes capable of procreation of a child. The age of puberty in Muslim law is normally presumed to be 15 years but if it is proved that a male or female is capable of procreation of child then marriage could be legally solemnized in cases of Muslim marriages. However the Child Marriage restraint act specifically states the age of marriage as 21 years in cases of male and 18 years in cases of female, then also the provisions of Muslim Marriage act would overrule the Child restraint Act 1929 and thus Muslims, in this case, are not liable to be punished.
- 2) **Proposal and Acceptances :-** Since Marriages in Muslim law are of contractual nature. So, there must be a proposal and acceptance at the same meeting. The proposal and acceptance must both be expressed at one meeting; a proposal made at one meeting and acceptance made at another meeting does not make a valid Muslim marriage. Neither

writing nor any religious ceremony is essential.

Under the Sunni law, the proposal and acceptance must be made in the presence of two male Muslims who are of sound mind and have attained puberty or one male and two female witnesses who are sane, adult and Muslim. Absence of witnesses does not render marriage void but make it irregular

Under the Shia law, the proposal and acceptance need not be made in writing. Where the offer and acceptance are reduced into writing, the document is called Nikah nama or Kabin-nama. Also, there is no such provision of witnesses required but the same is required at the time of divorce.

- 3) **Free Consent :-** Free consent of the parties is absolutely necessary for a valid marriage. If there is no free consent a Muslim marriage is void. Under the Muslim Law, when the consent to the marriage has been obtained by force or fraud, the marriage will be invalid, unless it is ratified. When a marriage was consummated against the will of the women, the marriage is void. Lunatics and Minors can freely contract their marriage if they contract it through their legal guardians because a minor and lunatic is unable to give free consent. The specification of guardians is different in cases of Shias and Sunnis.
- 4) **No Legal Disability:-** Under Muslim Law, marriage under certain circumstances is prohibited or not permitted. The prohibitions can be classified into two classes:
 - Absolute Prohibition

² Concept of marriage and divorce law :- (By Subodh Asthana)

<https://blog.ipleaders.in/marriage-divorce-hindu-muslim-laws/> (Last Modified :- May15,2019)



- Relative prohibition

Christian³ :- Section 60 of : Indian Christian Marriage Act 1872 specifies the following condition for a valid Christian marriage :-

- 1) The groom must not be 21 year of age and the bride must not be below 18 years of age.
- 2) Neither of the parties must have a spouse still living at the time of marriage
- 3) The marriage ceremony must take place in the presences of the person licensed under section 9 and there should be at least two credible witness.

What Is Divorce?

Divorce means to legally dissolve one's marriage with (someone) because there has been an irretrievable breakdown of marriage and both the parties don't want to continue their marital ties with each other.

Various steps involved in seeking Contested Divorce :-

With a contested divorce, spouses will have to go through numerous steps before the divorce is finalised, including:

- prepare, file and serve (deliver) the divorce petition (legal paperwork asking for the divorce and stating the grounds for the breakdown of the marriage)
 - respond to the petition
 - interview and hire an attorney
 - engage in “divorce discovery” – the information gathering process, which involves various legal procedures to get information from your spouse and third-party witnesses (e.g., written questions, subpoenas, and depositions)
 - pre-trial legal motions and hearings

- settlement proposals and negotiations between attorneys if settlement fails, prepare for trial complete a court trial Appeal, if you dispute the trial judge's decision(s). During the settlement phase, spouses are often unable to resolve issues. Although the divorce judge may encourage spouses to work things out, when that doesn't happen the next step is divorce court.

During trial, both spouses present witnesses, and their lawyers cross-examine the witnesses and present closing arguments. After trial is over, the court will issue a final order memorialising all of the judge's decisions, and finalise the divorce.

Grounds For Divorce :-

Hindu :- Ground for divorce available under Hindu Marriage Act are :-

- 1) **Mutual Content** :- If the parties have been staying apart for at least 1 year and have not been able to resolve there issues and they want to end the marriage they can do so by way of approaching court by mutual content.
- 2) **Adultery** :- It is the act of indulging in voluntary sexual relationship/intercourse outside marriage that is termed as adultery. Though adultery is not a criminal offence but it is still a ground for divorce.
- 3) **Cruelty** : A spouse can file for a divorce when he/she is subjected to any kind of mental or physical cruelty by other spouse.
- 4) **Desertion**:- If one of the spouse voluntarily abandons his or her partner for at least two year then the abandoned spouse can file for divorce.
- 5) **Apostasy**:- In this case if any spouse converts himself/herself into any other religion then the other spouse can file for a divorce.

³ Essential of valid marriage (By LAWNN)

<https://www.lawnn.com/valid-christian-marriage/> (Last Modified :-June 6,2019)



6) **Incurable Mental Disorder:-** Metal disorder can become ground for filling a divorce if the spouse of the petition suffers from incurable mental disorder and insanity and therefore cannot be expected from couple to stay together.

But however a small mental ailments are not counted in the same.

7) **Venereal Diseases :-** If any of the spouse is suffering from any serious disease that is easily communicable a divorce can be filled by the other spouse.

8) **Renunciation Of the World:-** If any spouse renounced the world and all relationships then the other spouse can seek for divorce.

9) **Not Heard alive for seven years :-** If any person is not seen or heard alive by those who are naturally heard of the person for a continuous period of seven year the person is presumed to be dead. Then the other spouse can file for a divorce.

Provisions only women to file for divorce :-

- 1) If the husband has been found guilty of rape, bestiality and sodomy
- 2) If the marriage is solemnized before the Hindu Marriage Act and husband again married another women in spite of the first wife being alive the first wife can seek divorce
- 3) A girl can seek divorce if she was married before she turns fifteen and renounces the marriage before she attains eighteen years.

Muslims:- In Muslim marriage, husband does not need any reason to seek divorce. There are various method through which a Muslim can seek talaq from his wife. A Muslim male can no longer give talaq by way of triple talaq as same has been declared

unconstitutional by the Supreme Court of India in **Shayara Bano VERSUS Union Of India** (2017) and now its constitutes a punishable offence with imprisonment up to 3 years.

Various Methods through which Muslim male can pronounce talaq:-

1) **Talaq-ul-Sunnat/Talaq-ul-raje:**⁴- It is a revocable form of talaq because in this form the consequences of Talaq do not become final at once. There is possibility of compromise and reconciliation between husband and wife. It is regarded to be approved form of talaq. This mode of talaq is recognised by both Sunnis as well as by the Shias.

- **Talaq-e-Ahasan:-** Under this form, once the husband pronounces talaq, there has to be a three-month iddat period to factor in three menstrual cycles of the woman. This time is meant for reconciliation and arbitration. During this period, if any kind cohabitation occurs, the talaq is considered to have been revoked.

- **Talaq-e-Hasan:-** In this form there is a provision for revocation. The words of Talaq are to be pronounced three times in the successive periods after menstrual cycles. The husband has to make a single declaration of Talaq and then await for another menstrual cycle to pronounce another declaration. The first and second pronouncements may be revoked by the husband. If he does so, either expressly or by resuming conjugal relations, the words of Talaq become ineffective as if no Talaq was made at all. But, if no revocation is made after the first or second declaration then lastly the husband is to make the third pronouncement in the third period

⁴ DNA:- Types of Talaq

<https://www.dnaindia.com/india/report-three-types-of-talaq-2538578> (Last Modified:- Aug23,2017)



the Talaq becomes irrevocable and the marriage dissolves.

- 2) **Talaq-ul-Biddat/Triple talaq:-** In this form men is allowed to pronounce talaq thrice in one sitting, sometimes scrawled in a written talaqnama, or even by phone or text message. Thereafter, even if the man himself perceives his decision to have been hasty in hindsight, the divorce remains irrevocable. But this form of divorce become unconstitutional after Shayara Bano VERSUS Union Of India.
- 3) **Ila:-** ‘Ila means “oath” or “vow. In this form of divorce the husband takes an oath not to engage in sexual intercourse with his wife. Following this oath, if the husband has abstained from sexual intercourse there is no consummation for a period of four months, then after the expiry of the fourth month, the marriage dissolves irrevocably. But if the husband resumes cohabitation within four months, Ila is cancelled and the marriage does not dissolve.

Zihar:- In this method he husband would say that from today the wife is like his mother or sister. After such an objectionable comparison, the husband does not cohabit with his wife for a period of four months.- Upon the expiry of the fourth month, the Zihar is complete. But the marriage as such does not dissolve. After completion of fourth month the wife has following rights:

- (i) She may go to the court for a judicial divorce or,
- (ii) She may go to the court for an order for restitution of conjugal rights.

Where the husband wants to revoke Zihar by resuming cohabitation within the said period, the wife cannot seek judicial divorce. But cohabitation with a wife who had been

compared with mother or sister is sinful. Therefore, in such a circumstance although the wife cannot claim a judicial divorce, yet she can compel the husband to perform penance for this sinful conduct of comparing her with his mother or sister.

Muslim Women can seek divorce on the following grounds for divorce in India:-

- 1) The husband is being missing for a period of four years
- 2) The husband has failed to provide maintenance to wife for at least two years.
- 3) The husband has been imprisoned for seven or more years.
- 4) Husband is unable to meet the marital obligations.
- 5) If the girl is married before fifteen and decided to end the relationship before she turns eighteen
- 6) Husband indulges in acts of cruelty.

Christians: -⁵

- 1) **Adultery:-** It is the act of indulging in voluntary sexual relationship/intercourse outside marriage that is termed as adultery. Though adultery is not a criminal offence but it is still a ground for divorce according to Christian laws.
- 2) **Apostasy:-** In this case if any spouse converts himself/herself into any other religion then the other spouse can file for a divorce
- 3) When one of the couple suffering from an unsound mind.
- 4) If any spouse is suffering from venereal disease for atleast two years before filling for the divorce.
- 5) If any person is not seen or heard alive by those who are naturally heard of the person

⁵ Shonee Kapoor :- Comparison of Hindu, Muslim and Christian divorce law in India

<https://www.shoneekapoor.com/comparison-marriage-laws-india/> (Last Modified 3June,2021)



for a continuous period of seven year the person is presumed to be dead. Then the other spouse can file for a divorce.

- 6) Failure in observing the restitution of conjugal rights for at least two years.
- 7) Inflicting cruelty and giving rise to mental anxiety that can be injurious to health and life.

Christian women can seek divorce on the following grounds :-

- 1) If the husband has been found guilty of rape
- 2) If the husband has been found guilty of sodomy
- 3) If the husband has been found guilty of bestiality

Maintenance Under Muslim Law:-⁶ Under Muslim law in India, maintenance is known as 'Nafqah'. 'Nafqah' is the amount that a man spends on his family. The right to maintenance of a Muslim woman is absolute and not conditional on whether she can maintain herself or not. Hence all the Muslim women earning or not earning are eligible for the right to maintenance which is contrary to most of the other religious acts where only dependent women are eligible for the maintenance. It is the duty and liability of the husband to provide adequate maintenance to his wife in all the circumstances irrespective of his financial condition where she elopes with some other man.

Maintenance of the divorced woman

It can be discussed under the following heads

- Muslim personal law
- Section 125 Criminal Procedure Code 1973 and

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

1) Maintenance of divorced women under Muslim Personal Law :- A divorced wife can claim maintenance from the former husband only for that period during which she is observing her *Iddat*. The duration of *Iddat* on divorce is three menstruation periods or, if pregnant, till delivery of the child. The former husband's liability extends only up to the period of *iddat*, not beyond that.

2) Maintenance of divorced women under Section 125 of Criminal Procedure Code 1973 :- The term 'wife' includes a 'divorced wife'. Section 125 is applicable also to a divorced Muslim wife. Section 127(3) provides that the order of maintenance in favour of a divorced wife shall be cancelled, and such woman shall not be entitled to maintenance under the following circumstances:

- Where the divorced woman has remarried
- Where such woman has received the whole sum due to her on divorce under any customary or personal law, and
- Where the woman, after obtaining a divorce from her husband, has voluntarily surrendered the right to maintenance.

Case Law :- In **Mohd. Ahmad Khan v. Shah Bano Begum** AIR 1985 SC 945, the Supreme Court reiterated its stand and held that a divorced Muslim woman, so long as she has not remarried, is a wife for the purpose of section 125, and is entitled to maintenance from her former husband.

⁶ Law Octopus :- Maintenance under Muslim Law (By :- Harshita Gulati)

<https://lawctopus.com/clatalogue/maintenance-under-muslim-law/> (Last Modified October 31,2020)



3) Maintenance under The Muslim Women (Protection Of Rights On Divorce) Act 1986 :-

Maintenance during the Iddat: The divorced woman is entitled to a reasonable and fair amount of maintenance for herself during the Iddat period from her former husband

Maintenance after the Iddat: The divorced woman who remains unmarried after the Iddat, and is unable to maintain herself, is entitled to get maintenance from her such relatives who would inherit her properties upon her death. In the absence of any such relatives or, where they have no sufficient means, then ultimately the liability to maintain her is cast upon the Waqf Board of the state in which she resides.

Maintenances Under Christian Law :- In the case of Christian Law, the topic of maintenance is governed by the Indian Divorce Act. The quantum of maintenance is restricted by the act to not more than 1/5th of the husband's income. However, the wife would only be eligible for this maintenance amount if she does not remarry and "remains chaste". Other factors that courts may take into account include income and property of each spouse, behaviour of each spouse, the reason for divorce, etc.

Maintenances Under Hindu Law :- A divorced Hindu (includes Buddhists, Jains and Sikhs) woman is provided with the right to claim maintenance under both the Hindu Marriage Act of 1955 and the Hindu Adoption and Maintenance Act, 1956. The quantum and other specifics as to the

maintenance will be decided by the family courts on a case to case basis.

Grounds For Award For Maintenances :-

Only upon proving that at least one of the grounds mentioned under the Act, exists in the favour of the wife, maintenance is granted. These grounds are as follows:-

- a. The husband has deserted her or has willfully neglected her;
- b. The husband has treated her with cruelty;
- c. The husband is suffering from virulent form of leprosy/venereal diseases or any other infectious disease;
- d. The husband has any other wife living;
- e. The husband keeps the concubine in the same house as the wife resides or he habitually resides with the concubine elsewhere;
- f. The husband has ceased to a Hindu by conversion to any other religion;
- g. Any other cause justifying her separate living;

Conclusion :-

By virtue of judicial pronouncements and other steps, rights of women has been restored but it will become fruitful only when under lying thinking are changed, the women should emancipate themselves educationally, economically and socially for their well being only and then they can understand their rights and worth and thereafter the social upliftment of the whole community is possible. We should always remember that mother is the first teacher and mentor of his child. It is a historical fact that no society ever lived in peace until their women folk are at peace. Although Maintenance should be gender neutral and should be applicable both for husband and wife respectively for the greater perspective of the society but still many women are being denied to claim their



rights of maintenance. Proper implementation is necessary to abide by the Law of the Land and ultimately to make it a grand success.
