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DIVORCE LAWS IN INDIA: A QUESTION OF FAITH OR JUSTICE?

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ABSTRACT

In India, marriage signifies a bond between two people that is tied through a sacred thread, either as seven circles around sacred fire, or three words spoken in a mosque, or vows before a cross; these threads carry different faiths of society and can sometimes end up broken in courts, either painfully or swiftly, as Divorce. We see that divorce in India is not just personal; it is also social, emotional, and legal. Thus, it's difficult to maintain the balance between the sacred traditions of society and to serve with justice. This blog explores how broken marriages in India often become a clash between faiths and the quest for fairness, raising questions about what prevails first.

INTRODUCTION

As Akshay Khanna, in the movie Section 375, says, “**We are not in the business of justice but in the business of law,**” which defines how laws do not always serve justice. In India, divorce was a rare social phenomenon if we look a few years back, but now we see a rise in divorce cases, 30% to 40 % in urban cities¹, which defines the change in culture and society now. While we see the famous divorce case of cricketer Yuzvendra Chahal, which gained a lot of public attention, it highlights how divorce is now a matter of public debate, which alone cannot be governed solely by personal laws. India is a secular nation, which comprises people from different religions such as Hindus, Muslims, Sikhs, Christians, Parsis, Jews, Jains, etc., where each have their own right to perform and dissolve the marriage with accordance to different laws such as **The Hindu Marriage Act, 1955, The Divorce Act, 1869, The Dissolution of Muslim Marriage Act, 1939, The Parsi Marriage and Divorce Act, 1936 or The Special Marriage Act, 1955** while with these laws governing divorce in India, the supreme court in recent years has also led to the push to the Uniform Civil Code in conflict

¹ Harish Bajaj, *Divorce Rate in India: Trends, Causes, and Legal Insights [2025]*, *Thelegalcrusader* (Jan. 20, 2025), <https://thelegalcrusader.in/divorce-rate-in-india-trends-causes-and-legal-insights-2025/>.

with these personal laws highlighting how legal system is trying to maintain the respect for all religions while keeping the need of just society in mind.

IS MARRIAGE JUST A BOND BETWEEN TWO PEOPLE IN INDIA?

Marriage in India is more than just laws; it is governed by society and religion. In Hinduism, it is called a *Sanskrit*, in Islam, it is called *nikah*.² While Christianity defines it as a commitment of a lifetime is still a matter of societal norms and rituals, where a daughter is still reminded of marriage as her family's reputation. Divorce is said to be just more than a legal separation, but a cultural shock where traditions often disagree with personal sentiments of individuals, and in fact, becomes more than just a legal battle, but rather how to live up to the cultural expectations of society.

MANY BELIEFS, MANY LAWS: THE LEGAL FRAMEWORK

The Indian Constitution maintains stability between different religions and the law by providing fundamental rights and safeguarding the religious rights of citizens, where Articles 25-28 describe the fundamental right to religion, while Articles 14, 21, and 15 define equality before law.³, which often contradicts different personal laws. Marriages in India are governed by different laws; each religion has its own beliefs and practices. Whereas India's divorce laws are governed by multiple statutes that are explained as follows:

1. *The Hindu Marriage Act, 1955*⁴, applies to Hindus, Buddhists, Jains, and Sikhs, and one can only file for divorce on several fault-based grounds like adultery, cruelty, or desertion, which can drag cases for a longer period of time.
2. *The Muslim (Shariat) personal law of 1937* is uncodified and has gone through different legislative changes. It defines divorce as *talaq*, which finds balance in the dissolution. Of the Muslim Marriage Act 1939 and the Supreme Court ban on triple talaq in 2017
3. While Christians are bound by *the Divorce Act of 1869*, enacted in the colonial era, it defines the same grounds for divorce as per Hindu laws, while Parsis have their own specialised legislation to govern marriages within their community.
4. Later, *the Special Marriage Act 1954* was introduced for interfaith couples' divorce and marriage, either mutually agreed or contested.

Beyond personal laws, criminal laws also play a crucial role. Section 498A of the IPC protects against cruelty⁵. While Section 125 of the CrPC ensures maintenance for wives

² Search, Quran.com <https://quran.com/search?page=1&query=nikah>., Vivah Sanskar - Arya Samaj, Arya Samaj - (July 20, 2023), <https://www.aryasamaj.co.in/vivah-sanskar/>.

³ Part III Archives, Constitution of India <https://www.constitutionofindia.net/parts/part-iii/>.

⁴ Hindu Marriage Act, No. 25 of 1955, § 13, INDIA CODE (1993).

⁵ Section 498-A IPC: A Double-Edged Sword — Protecting Dignity or Enabling Misuse? Supreme Court Rulings explored, SCC Blog (June 30, 2025), <https://www.scconline.com/blog/post/2025/06/30/498-aipc-ipc498-a-supremecourtjudgments-supremecourt/>.

and children regardless of religion. These laws influence the end of marriage rather than dissolving it.

FAITH VS JUSTICE: THE TENSION

The Indian legal system consists of different personal laws that show the country's rich religious mosaic. As these laws uphold the sanctity of marriage, they often clash with constitutional mandates like equality and justice. For example, cases like *Mohd. Ahmed Khan vs Shah Bano Begum 1985*, which challenged the Muslim personal law, while *Shayara Bano v. Union of India 2017*,⁶ Where triple talaq was banned and gender justice was served. Both cases carefully show how personal faiths should not undermine the fundamental validity of the Constitution by upholding the rights of individuals.

A WAY FORWARD: CAN THE IDEA OF UNIFORMITY LEAD TO JUSTICE?

Recently, the case of *Hamid Raza v. State of NCT of Delhi*⁷, where the major conflict arises with the personal law of Muslims, since it allows that the girl can be married once she attains puberty, which is criminalised under the **BNS (Section 63) and the POSCO Act** here the dilemma arises whether society should be punished for adhering to their personal laws or should we allow these laws to violate the fundamental right of individual? While the Constitution of India, Article 44, calls for a *Uniform Civil Code*⁸ For all citizens, aiming to standardise laws related to marriage, divorce, inheritance, and adoption for every religious community, it is often seen that uniformity can override the religious freedom of individuals, and this freedom can also lead to criminal activities in the shadow of personal religious laws. So, what is the solution? It is to strengthen and modify the divorce laws to make it less time-consuming, protecting religious laws, while keeping in mind that they do not override the fundamental rights of individuals. By empowering the judicial system not only legally but socially and emotionally, so that divorce will not be viewed as a social stigma or against any faith, but as a personal choice of an individual.

⁶ <https://www.hindustantimes.com/india-news/from-shah-bano-to-shayara-bano-the-evolution-of-indian-society-and-polity/story-S9VYNxOdYIdVHTYSejDw5L.html>.

⁷ Prashant Jha, *Delhi High Court bats for Uniform Civil Code; cites conflict in personal laws and criminal law*, (Sept. 26, 2025), <https://www.barandbench.com/news/delhi-high-court-bats-for-uniform-civil-code-cites-conflict-in-personal-laws-and-criminal-law>.

⁸ *Ind. Const. Directive principles of state policy (Part IV of the constitution) PART IV, § 44.*