



The Indian Journal for Research in Law and Management

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Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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Indian Family Law- Marriage, Divorce, and Maintenance

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Abstract:

The blog involves a conceptual and legal review of how Indian family Law in India govern. It analysis the concept of family law. This blog provides a detailed examination of Indian family law concerning marriage, divorce, and maintenance, highlighting the applicable statutes, judicial principles and recent development.

Introduction:

Navigating the landscape of Indian Family law can feel like walking through a living legal museum. Unlike many countries governed by a single, uniform civil code. India operates on a pluralistic personal law system where an individual' s legal right regarding marriage, divorce, and maintenance are fundamentally determined by their religion.

Different religious communities are governed by their respective personal laws, while certain secular laws apply across religions. The Constitution of India guarantees equality before law and protection of fundamental rights, yet family laws often reflect religious traditions and cultural practices. This creates a dynamic legal landscape where courts continuously strive to balance tradition with constitutional values.

The Legal Tapestry: India' s Personal Law System;

To understand how family conflict are resolved in India , one must understand the parallel tracks of its legal framework. India has separate codified and uncoded statutes tailored to specific religious communities, alongside a secular alternative.

- Hindu Law: Governs Hindu, Buddhists, Jains and Sikhs. It is primarily codified under four major statutes enacted in 1955 and 1956, with the Hindu Marriage Act(HMA), 1955 leading matrimonial regulation.

- Muslim Law: Governs Muslim and is predominantly uncodified, drawing from classical Islamic jurisprudence (Shariat), the Quarn, hadith, and selective statutory intervention like the Muslim Personal law (Shariat) Application Act, 1937.
- Christian Law: Governed primarily by the Indian Christian Marriage Act, 1872 and the Divorce Act, 1869.
- Secular Law: The Special Marriage Act (SMA), 1954 provides an alternative pathway, allowing any two Indian Citizen- regardless of religion or caste- to marry without converting or forfeiting their secular legal status.

Marriage Laws: Requirements, Conception and Validation:

Marriage is recognised as a legally and socially sanctioned union between two individual. Traditionally, Hindu law regarded marriage as a sacrament, whereas modern law also treats it as a legal institution involving rights and obligation.

Marriage creates:

- Mutual rights and duties
- Legitimacy of children
- Right of inheritance

What makes a Marriage Valid ?

A valid marriage in India must satisfy the condition prescribed under the applicable personal law. There is no single universal marriage law-through the Special Marriage Act, 1954 provides a civil option available to all citizens of religion.

Hindu Marriage

The Hindu Marriage Act, 1955 governs marriages among Hindus.

Essential Conditions;

Section 5 of the Act prescribes:

1. MONOGAMY

Neither party should have a living spouse at the time of marriage.

2. Mental Capacity

Both parties must be capable of giving valid consent and should not suffer from mental disorder rendering marriage unsuitable.

3. Age Requirements

- Groom - 21 year
- Bride - 18 year

4. Prohibited Relationships

Parties should not fall within prohibited degree of relationship unless custom permit.

5. Sapinda Relationship

Marriage within sapinda relationship is prohibited unless sanctioned by custom.

Special Marriage Act, 1954

The SMA acts as a progressive sanctuary, for inter-faith and inter-caste couples. It requires no religious rituals, relying instead on a civil registration process overseen by a government Marriage Officer.

While lauded for its secular utility, the SMA contains distinct procedural hurdles. Parties must give a 30-day public notice before solemnization. This notice is displayed publicly at the marriage office, exposing vulnerable couples to potential societal backlash, family surveillance, or intervention by moral vigilantes.

Muslim Personal Law:

In sharp contrast to the Hindu sacramental view, a Muslim marriage (Nikah) is entirely a civil contract designed for the legalization of sexual intercourse and the procreation of children.

Essential elements of a valid Nikah

- Proposal and Acceptance (Ijab and Qubool):** There must be a declaration of offer from one party and a corresponding acceptance from the other, made in a single meeting.
- Capacity:** The parties must have attained puberty (traditionally presumed at 15 years) and be of sound mind.

iii. Witnesses: sunni law requires the presence of two competent male muslim witnesses. Shia law does not strictly require witnesses at the time of marriage but demands them during divorce.

iv. Consideration: The husband must commit a specified sum of money or property to the wife as a mark of respect. Mahr is a strict legal obligation of the marriage contract, divided into prompt (payable immediately) and deferred (payable upon divorce or the husband's death).

Divorce Laws: Grounds, System, and judicial Discretion.

Meaning of Divorce

Divorce legally terminates a valid marriage and releases parties from marital obligation.

Historically, divorce was discouraged, but modern law recognizes individual autonomy and the right to exit an irretrievably broken marriage.

Divorce under the Hindu Marriage Act, 1955

Section 13 of the HMA provides extensive fault based grounds for either spouse, alongside specific grounds reserved exclusive for wives.

Contested Divorce Grounds (Section 13(1)):

1. Adultery: Engaging in voluntary sexual intercourse with any person other than their spouse.

2. Cruelty: Physical or mental conduct that generates a reasonable apprehension that living together is harmful or injurious. Over the years, Indian courts have expanded "mental cruelty" to encompass persistent insults, withholding sex without valid reason, or false criminal allegations against the spouse.

3. Desertion: Forsaking the spouse without reasonable cause and without consent for a continuous period of not less than two years immediately preceding the petition.

Conversion: Ceasing to be a Hindu by converting to another religion.

4. Unsoundness of Mind: Suffering from an incurable mental disorder or insanity of such a degree that the petitioner cannot reasonably be expected to live with the respondent.

5. Virulent Diseases: Leprosy or venereal disease in a communicable form (though legislative updates have consistently sought to dilute leprosy as a valid ground for divorce to eliminate social stigma).

Renunciation / Presumption of Death: Renouncing the world by entering a religious order, or not being heard of as alive for a period of seven years or more.

Mutual Consent Divorce (Section 13B):

Introduced by amendment, Section 13B allows a couple to jointly move a petition for divorce on the grounds that they have been living separately for a period of one year or more, have not been able to live together, and have mutually agreed to dissolve the marriage.

The Cooling-Off Period: The law requires a mandatory six-month waiting period (cooling-off period) after presenting the first motion, before the parties can move the second motion to finalize the divorce. However, in the landmark case of *Amardeep Singh v. Harveen Kaur* (2017), the Supreme Court ruled that this six-month period is directory, not mandatory. If the marriage has broken down past redemption and waiting further causes unnecessary misery, family courts can waive it.

Divorce Under Muslim Personal Law:

Divorce in Islamic law can occur via extra-judicial methods or through formal judicial intervention.

Extra-Judicial Methods Initiated by the Husband:

- Talaq-e-Ahsan: A single pronouncement of Talaq during a period of purity (Tuhr), followed by abstinence from sexual intercourse during the Iddat period (three menstrual cycles). It is the most approved form and remains revocable during Iddat.
- Talaq-e-Hasan: Three distinct pronouncements of Talaq made during three successive Tuhr periods, with no sexual intercourse in between. It becomes irrevocable upon the third pronouncement.

- Talaq-e-Biddat (Instant Triple Talaq): The practice of uttering "Talaq, Talaq, Talaq" in one single breath, instantly terminating the marriage irrevocably (Zikriandi, 2025).

The Death of Instant Triple Talaq: In the pathbreaking case of Shayara Bano v. Union of India (2017), the Supreme Court declared Talaq-e-Biddat unconstitutional, ruling it arbitrary and violative of a Muslim woman's fundamental right to equality under Article 14 (Singh, 2026). The parliament subsequently enacted the Muslim Women (Protection of Rights on Marriage) Act, 2019, criminalizing the practice with up to three years of imprisonment, eliminating this extra-judicial leverage (Singh, 2026).

Extra-Judicial Methods Initiated by the Wife or Mutually:

- o Khula: A divorce initiated by the wife, where she agrees to give up her Mahr or provide financial consideration to the husband to secure release from the marriage contract.
- o Mubarat: A mutual dissolution of the marriage contract where both parties desire separation and release each other from marital obligations.

Judicial Divorce for Muslim Women:

Under the Dissolution of Muslim Marriages Act, 1939, a Muslim woman can approach a court for a decree of divorce on several specific grounds, including:

1. The husband's whereabouts being unknown for four years.
2. Failure of the husband to provide maintenance for two years.
3. The husband being sentenced to imprisonment for seven years or more.
4. Failure to perform marital obligations for three years without reasonable cause.
5. Cruelty (physical, mental, or disposal of her property against her will).

Maintenance and Alimony: Parallel Rights and Uniform Protections

Maintenance is the financial support provided by one spouse to another during marriage or after its dissolution to prevent destitution. In India, Maintenance is a dual-track right. You can claim it under individual religious personal laws or under secular, quasi-criminal law.

The Universal Shield: Section 125 CrPc/ Section 144 BNSS

Regardless of personal law, Section 125 of the Code of Criminal Procedure, 1973 (now enacted as Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023) provides a distinct, secular mechanism for maintenance. It is an enforceable, fast-track provision designed to prevent vagrancy and destitution among dependent wives, children, and parents.

A husband with sufficient means who neglects or refuses to maintain his wife (who is unable to maintain herself) can be ordered by a magistrate to pay a monthly allowance. If the husband fails to comply without a valid reason, the court can issue warrants to levy the amount as a fine, or sentences him to imprisonment.

Key features:

- No religious bar-applies to all
- The Magistrate can award interim maintenance pending final disposal.
- Maximum maintenance was unlimited; courts determine based on capacity and need.
- A wife who is divorced or whose divorce is under litigation can also claim maintenance under the section.

Key Case: Mohd. Ahmed Khan V. Shah Bano Begum (1985) 2 SCC 556- “Shah Bano Case”

This is perhaps the most politically significant family law judgment in India. Shah Bano, a 62-year-old divorced Muslim woman, claimed maintenance under Section 125 CrPc. The Supreme Court held that Section 125 applies to all citizens of India irrespective of religion and that a divorced Muslim woman is entitled to maintenance beyond the iddat period if she is unable to maintain herself. The Court observed that the obligation under section 125 is not superseded by personal law. Though subsequently diluted by the Muslim Women (Protection of Rights on Divorce) Act, 1986, the case fundamentally reshaped the debate on gender justice, personal law, and the Uniform Civil Code.

Maintenance under Hindu law:

The HMA provides a gender-neutral framework for maintenance, allowing either the husband or the wife to apply for financial assistance if they do not have independent income sufficient for their support.

- o Maintenance Pendent Lite(Section24): Temporary maintenance awarded during the pendency of the matrimonial lawsuit to cover living expenses and legal costs.

- o Permanent Alimony and Maintenance(section25); A long-term financial structure ordered at time of passing a decree of divorce at the time of passing a decree of divorce or judicial separation. It can be a lump_sum payment or a monthly payment for the lifetime of the applicant or until they remarry.

Permanent Alimony and Maintenance (Section 25,HMA)

Upon passing, a decree of divorce, nullity or judicial separation, the court can award permanent alimony as a lump sum or periodic payment. The amount can be subsequently modified if there is a material change in circumstance. Remarriage of the claimant extinguishes the right to permanent alimony.

Final Thoughts

Indian Family law remain a dynamic, evolving arena. While the statutory texts reflect historical division, the judicial trajectory- driven by Supreme Court-pivots clearly toward constitutional morality, gender justice and human rights.

The constitution' s guarantee of equality and dignity has pushed courts to progressively interpret these laws in favour of justice- particularly for women and children.

Landmark cases like Shah Bano, Shayara Bano, and Rajnesh v.Neha have not only shaped legal doctrine but sparked national conversation about what it means to be a just and equal society.

References-

- Basu,R. (2023).A tales of two laws: Special Marriage Act and anti conversion law in India. International Journal of Social and Economic Research, 8(9),2803-2808.
- Gomes,T.C.(2026). Same sex love and marriage; Understanding the special Marriage act,1954. Pubmed Central (PMC), ArticlePMC12827173.

- Zikriandi,A. (2025). Transformation of triple talaq (irrevocable divorce) law in Islamic Family law system of India. Familia: Jurnal Hukum Keluarga,6(2), 171-185

***THANK YOU ***