

Original Research Article

A Comparative Analysis of Marriage, Divorce, and Maintenance Laws in Hindu and Muslim Personal Laws in India: Legal Frameworks and Gender Implications

Mangala T.P^{1*}, Dr. Prakash Kanive², Dr. B S Reddy³

¹Research Scholar, Alliance University Bengaluru, Karnataka

²Professor Research Guide, Alliance University Bengaluru, Karnataka

³Professor, Co-Guide, Alliance University Bengaluru, Karnataka

***Corresponding Author:** Mangala T.P

Research Scholar, Alliance University Bengaluru, Karnataka

Article History

Received: 16.07.2025

Accepted: 18.09.2025

Published: 10.10.2025

Abstract: Marriage, divorce, and maintenance laws in India are deeply rooted in the country's pluralistic legal framework, reflecting the diverse religious and cultural traditions. Hindu and Muslim personal laws, governed by distinct statutes and customs, exemplify this plurality. This article explores the legal frameworks governing marriage, divorce, and maintenance in Hindu and Muslim personal laws, highlighting their historical foundations, procedural aspects, and gendered implications. Marriage, as a socially sanctioned union, imposes rights and duties on spouses, influenced by customs, community traditions, and statutory laws. Divorce, historically more prevalent in Islamic traditions, is now legally recognized across religions as a remedy for irreparable marital breakdowns. Maintenance, ensuring the financial sustenance of a spouse post-divorce, varies significantly in its application under Hindu and Muslim laws, reflecting differences in religious doctrines and societal norms. The article also examines gender implications within these legal frameworks, including issues of child marriage, dowry-related violence, polygamy, and transnational marriage abandonment. While constitutional provisions like Article 14 advocate gender equality, the lived realities of women in India often reveal gaps between legal protections and actual experiences of inequality. Despite progressive reforms and feminist advocacy, discriminatory practices persist, especially within personal laws, underscoring the need for continued legal and societal transformation. By analysing marriage, divorce, and maintenance through legal, cultural, and gendered lenses, the study sheds light on the complexities of personal laws and their impact on women's rights and empowerment in India.

Keywords: Hindu laws, Muslim Laws, Marriage Law, Divorce Law, Maintenance Law, and Gender Implications.

1. INTRODUCTION

For India's teenage girls and young women, marital status serves as a significant determinant of their future health and happiness. This life transition often signals the beginning of motherhood and frequently involves moving into a marital home shared with in-laws. A woman's life trajectory is profoundly influenced by societal norms, including son preference and evolving cultural expectations. However, there is limited research on how adolescent girls and young women (AGYW) in India experience changes in empowerment during these critical transitions. [¹]

Marriage, governed by a combination of laws, customs, ideals, and societal attitudes, is traditionally recognized as a legally and socially sanctioned union, often between a man and a woman, prescribing mutual rights and responsibilities.

¹Sarfraz, M.A., & Bano Ajaz, A.S. (2023). Increasing Number of Cases of Divorce in India after Lockdown. Feb- Mar 2023.p 43

Copyright © 2025 The Author(s): This is an open-access article distributed under the terms of the Creative Commons Attribution 4.0 International License (CC BY-NC 4.0) which permits unrestricted use, distribution, and reproduction in any medium for non-commercial use provided the original author and source are credited.

CITATION: Mangala T.P, Prakash Kanive, B S Reddy (2025). A Comparative Analysis of Marriage, Divorce, and Maintenance Laws in Hindu and Muslim Personal Laws in India: Legal Frameworks and Gender Implications. *South Asian Res J Human Soc Sci*, 7(5): 239-251.

Article 14 of the Indian Constitution enshrines the "Right to Equality," ensuring all individuals are entitled to freedom from discrimination and equal treatment under the law [2].

Despite these legal safeguards, violence against women remains a pressing concern in Indian society. Traditional norms often perpetuate gender disparities, contributing to alarming rates of dowry-related deaths, human trafficking, rape, murder, abduction, and kidnapping. In 2021, 28.8% of women experienced physical or sexual violence from intimate partners during their lifetime, and 27.3% were affected by child marriage. India continues to grapple with these challenges, ranking 140th out of 156 nations on the Global Gender Gap Index, with a score of 0.63 [3].

India's tribal communities, constitutionally granted autonomy and self-governance, uphold their distinct cultural practices, including customary marriage, matrimonial rights, and inheritance laws. However, tribal women often face legal hurdles when customary norms deny them inheritance rights. Although Hindu inheritance laws do not explicitly apply to indigenous communities, courts have occasionally interpreted them favorably for women deemed "sufficiently Hinduized." [4]

In India's pluralistic legal framework, a woman's rights related to marriage, divorce, and inheritance are often dictated by her community of birth. Marriages outside the community frequently nullify these rights, creating ambiguities concerning marital property and access to sacred spaces. [5]

Societal modernization has introduced significant shifts in traditional gender roles and attitudes towards cohabitation. "Live-in relationships," where partners cohabit without marriage, exemplify these changing perspectives. [6] Simultaneously, divorce, the legal dissolution of marriage, has become increasingly common. Reports suggest that seven out of ten daily inquiries received by advocates pertain to divorce, with cases rising by 20% after courts reopened post-lockdown. [7]

Another emerging concern is the rise of transnational marriage abandonment, wherein husbands residing abroad exploit their citizenship or visa status to manipulate or abandon their immigrant wives. In some cases, women are left with in-laws while awaiting sponsorship for migration visas. [8]

Child marriage remains a critical issue in India, correlating with lower educational attainment, diminished female empowerment, and poor maternal health outcomes. Although global efforts have raised the legal marriage age in many countries, India, despite increasing the minimum age to 18 under the Child Marriage Restraint Act of 1978, still accounts for a significant number of child brides worldwide. [9]

Over the last fifty years, feminist advocacy has led to laws addressing sexual harassment, domestic violence, equal pay, maternity benefits, and more. However, the gap between these legal protections and women lived experiences continues to impede progress in achieving gender equality.

Despite significant legal advancements, a gap remains between the rights enshrined in legislation and the lived experiences of inequality among women in India [10] Traditional societal norms have long perpetuated the notion that

²Yalamarty, H., Anitha, S., & Roy, A. (2024). Im/mobility as a form of gender-based violence: the case of transnationally abandoned wives in India. *Journal of Gender-Based Violence* p 126 .

³Tomar, A.S. (2021). Interaction of Law and Gender in India: A jurisprudential analysis from Feminist Perspective

⁴Krishnaleela, S. (2020). Comparative Study of Personal Law in India.

⁵Islam, M. (2020). Muslim Personal Law and the Constitution of India: Women's Rights Perspective. *Anthropology of Religion eJournal*

⁶Chakrabarti, A., Mujeebu Rahman, K.C., & Ghosh, S. (2022). Of Marriage, Divorce and Criminalisation. *Journal of Legal Anthropology*

⁷Aggarwal, H.W., & Beriwal, U. (2021). The Dowry System: A booming economy with a booming rate of violence against women

⁸ Ms. Pooja, & Hooda, D.R. (2023). Wife's Right to Maintenance and Human Right: Concerns And Issues. *Journal of Namibian Studies: History Politics Culture*.

⁹Gayary, J. (2023). Gender Disparities in Religious Individual Law. *International Journal For Multidisciplinary Research*

¹⁰Deosthali, P., Rege, S., & Arora, S. (2022). Women's experiences of marital rape and sexual violence within marriage in India: evidence from service records. *Sexual and Reproductive Health Matters*, 29.

women should be subservient to their male guardians, undermining their inherent humanity [¹¹] Although attitudes and practices have evolved over time, religiously motivated discrimination against women persists [¹²].

In Islam, polygamy is a notable factor contributing to the systemic discrimination faced by Muslim women.[9] This has made the personal law rights of Muslim women in India a highly debated issue, particularly within the framework of human rights. [10] Despite constitutional provisions that explicitly protect the religious freedoms of Muslims, Muslim women often encounter both gender-based and religious discrimination within the personal law system.

2. Related Works

Examining the influence of adolescent girls and young women's (AGYW) transition into patrilocal homes households shared with in-laws sought to explore the relationships between AGYW empowerment, marriage, motherhood, and having a son. Using Kabeer's framework as a theoretical foundation, the study identified freedom of movement, decision-making power, and access to economic opportunities as key indicators of empowerment [¹³].

The findings revealed that marriage, particularly for those living with in-laws, often led to reduced mobility. In contrast, AGYW who did not reside with in-laws experienced greater autonomy in decision-making. Motherhood was associated with increased mobility, enhanced influence within the household, and improved access to financial resources. However, no statistically significant evidence emerged to suggest that having at least one son, as opposed to having daughters or no children, significantly enhanced women's economic empowerment, mobility, or decision-making authority within the home.

Gender discrimination deeply ingrained societal norms, and cultural practices perpetuate the alarming prevalence of female feticide, teenage pregnancies, child domestic labor, child marriage, exploitation, sexual abuse, and violence [¹⁴] Addressing these issues necessitates fostering greater respect and equality for women and girls. The referenced study evaluates the government's legal interventions to curb harmful practices such as female genital mutilation and immoral trafficking while analysing significant case law relevant to these crimes.

Data from the National Crime Records Bureau (2019) underscores the gravity of female feticide as a major factor contributing to higher mortality rates among girls compared to boys [20]. In Madhya Pradesh, maternal deaths occur in at least three pregnancies each month, with the state leading the nation in 2019 with 32 reported cases of female feticide. Rajasthan followed with 22 cases, Haryana with 17, and both Gujarat and Bihar with 15 cases each.

Examining the potential influence of AGYW (adolescent girls and young women) marriage into patrilocal households (living with in-laws) as a moderator, sought to understand the connections between AGYW empowerment and factors such as marriage, raising a son, and having children. Empowerment was assessed through indicators like freedom of movement, decision-making power, and access to economic opportunities, with Kabeer's thesis providing the theoretical foundation. The essay also critiques the legal system for inadequately addressing the complex social relationships within indigenous communities, particularly in light of the widespread displacement of indigenous peoples from their traditional lands. Rather than forcing tribal women to choose between their cultural identity and inheritance rights under the premise of "sufficient Hinduization," the article advocates for legal frameworks that uphold tribal women's identity while ensuring equal access to inheritance rights [¹⁵].

The study outlined in this article describes a community-developed approach to addressing violence against women (VAW). By adopting a 360-degree perspective, the research explored the intricate connections between VAW and various factors, including individual, interpersonal, community, and societal dynamics [¹⁶]. To gather insights, Focus Group Discussions were held to capture the community's perspectives on VAW in the Fatehgarh Sahib District of Punjab. This

¹¹ Senthil, N., Vajiram, J., & Nirmala.V (2023). The misuse of law by Women in India -Constitutionality of Gender Bias.

¹² Singh, S. (2023). Status of Muslim Women in India: A Critical Study. RESEARCH REVIEW International Journal of Multidisciplinary.

¹³ S. Nasrin & M. Bhattacharya, *Empowerment of Adolescent Girls and Young Women in Patrilocal Households: A Socio-Economic Perspective*, 32 *J. Gender Stud.* 45, 46 (2022).

¹⁴ Bhatt, M.N., & Upadhyay, D. (2024). Critical analysis of sex determination laws in India and Government policies to prevent Gender discrimination. GLS KALP: Journal of Multidisciplinary Studies

¹⁵ Murmu, P. (2023). Crime against women in India: A geographical appraisal. International Journal of Science and Research Archive.

¹⁶ Uma, S. (2023). Between the Devil and the Deep Sea: Tribal Women's Inheritance Rights in India. Indian Journal of Gender Studies, 30, 309 - 329.

district, with a population of approximately 20,000, served as the site for the design and implementation of the Joint Action for Gender Equality and Outreach (JAGO) intervention—a community-driven initiative [¹⁷].

The JAGO program featured activities such as house visits, community celebrations, pledge ceremonies, photography exhibitions, street plays, gender awareness seminars, and operational meetings. The intervention demonstrated promise in reducing VAW by leveraging community engagement and promoting the exchange of best practices and outcomes. The project highlighted the effectiveness of collective action and the necessity of fostering open discussions on culturally sensitive issues to create meaningful change.

From historical, socio-legal, feminist, and human rights perspectives, the article traces the origins, development, and eventual repeal of India's penal statute on adultery. In 2018, the Indian Supreme Court declared the adultery law unconstitutional. The essay examines both the events leading up to and the aftermath of this landmark ruling. At its core, it explores how the criminal justice system understands and addresses personal relationships, emphasizing the significance of monogamy in marriage and the consequent disregard for women's sexual autonomy within this context. The article advocates for the abolition of criminal penalties for adultery, drawing on legal precedents, international law, human rights treaties, and feminist theory. It further argues that family laws, rooted in egalitarian and inclusive principles, should be expanded to recognize nontraditional marriages and partnerships [¹⁸].

The study examines the differences and similarities between Hindu and Muslim personal laws, focusing on the cultural and legal aspects of divorce in India. According to the report, the five most common grounds for divorce in India are adultery, cruelty, abandonment, religious conversion, and irreversible mental illness. The study's comparative analysis highlights distinct differences in divorce laws between Hindu and Muslim personal laws and explores how religious beliefs influence these laws. Additionally, the research investigates the cultural factors that contribute to marital dissolution in India, such as gender norms, economic challenges, and societal views on divorce. It reveals that gender roles and cultural perceptions of divorce play a significant role in shaping divorce rates in India, with women facing more obstacles in obtaining a divorce than men. The essay concludes with policy and practice recommendations, emphasizing the need to address gender inequality and cultural attitudes toward divorce, as well as advocating for more flexible divorce laws [¹⁹].

In this article the author argues that current legal remedies for marital rape are inadequate and that stricter laws are necessary to protect women's dignity and self-esteem. The study critically examines the legal status of marital rape, citing legislative actions and judicial decisions. Recognizing spousal rape as a crime is essential for various reasons, including its violation of the Indian Constitution and numerous national and international accords. However, some argue against the criminalization of spousal rape in India, citing the cultural and legal sanctity of marital relations, the importance of marital privacy, and the sacredness of marriage in Indian society. The author concludes that despite these cultural and legal challenges, India must promptly criminalize spousal rape, as the country's social and cultural norms should not override women's fundamental rights to privacy and dignity [²⁰].

3. Statement of the Problem:

The issue of gender inequality within marriage, divorce, and maintenance laws in India remains a significant challenge, particularly when examining the divergent legal frameworks of Hindu and Muslim personal laws. Despite the constitutional guarantees of equality, the personal laws of these two major religious communities present distinct, often gendered, implications for women's rights and access to justice. Hindu law, influenced by historical patriarchal structures, limits women's property rights and fails to safeguard their financial interests within marital property. Similarly, while Muslim personal law, specifically Shariat, has made strides in improving women's status through reforms in inheritance, it still upholds traditional practices like polygamy, which contribute to systemic gender discrimination. Furthermore, both legal systems often leave women vulnerable in cases of divorce and maintenance, with societal norms and cultural practices exacerbating their difficulties. This disparity is compounded by the persistence of discriminatory practices such as dowry, child marriage, and domestic violence, which undermine women's autonomy and empowerment. The challenge, therefore, lies in reconciling these personal laws with the constitutional promise of gender equality, ensuring that women's rights

¹⁷ K, M., K, N., Khanna, P., Tu, C., Talboys, S., Singh, T.P., Sandhu, A.K., Panesar, H., & Rastogi, H. (2021). Community Action: A 360° Approach to Understand and Prevent Violence against Women and Child Marriage in Punjab, India. *World Journal of Social Science Research*.

¹⁸ Uma, S. (2021). Fidelity, Male Privilege and the Sanctity of Marriage: Examining the Decriminalization of Adultery in India. *Women & Criminal Justice*, 33, 28 - 45.

¹⁹ Gupta, D. (2024). Exploring the Legal and Socio-Cultural Dimensions of Marriage Dissolution: A Comparative Analysis of Hindu and Muslim Personal Laws. *International Journal For Multidisciplinary Research*

²⁰ Singh, H., Kumar, V., & Naruka, R. (2023). Criminalization of Spousal Rape in India: An Interference into the Marital Sphere of Spouse, Culture and Social Structure of the Indian Society. *Evergreen*

within marriage and family are fully protected and that the legal frameworks evolve to reflect modern principles of justice and equality.

4. Hypothesis:

The legal frameworks governing marriage, divorce, and maintenance under Hindu and Muslim personal laws in India, despite constitutional guarantees of gender equality, perpetuate gender-based discrimination and fail to adequately protect women's rights. Specifically, Hindu personal laws hinder women's property rights and financial autonomy within marriage, while Muslim personal laws, despite improvements in inheritance, continue to endorse practices like polygamy and fail to address gender inequities in divorce and maintenance. Thus, reforming these personal laws to align with constitutional principles of equality and justice is essential for enhancing women's empowerment and ensuring their legal protection in marital relationships.

5. Research Objectives

- I. Compare and contrast the key aspects of Hindu and Muslim personal laws that shape the concept of equality within the context of marriage, divorce, and maintenance.
- II. Interpret legal principles in a manner that ensures remedial actions are taken, even when individuals' religious beliefs conflict with their rights to privacy and livelihood.
- III. Identify the specific design and implementation of exceptions and religious limitations within the relevant personal laws.
- IV. Assess whether the legal frameworks outlined above support or contradict the Equality clause under the Indian Constitution.
- V. Analyze the impact of the country's increasing preference for majoritarianism on the rights and protections of vulnerable groups.

6. Research Questions

- I. Can constitutional protections for ethnic and religious groups coexist with the provisions of Articles 14 and 15 of the Indian Constitution?
- II. Is there any assurance of legal recognition or protection of assets when religious practices conflict with the principles of justice and fairness in courts of law?
- III. Have the personal laws of the Hindu and Muslim communities evolved over time to become more equitable, particularly in terms of benefiting women?
- IV. Are the measures designed to promote equality intended to bypass constitutional scrutiny, especially in light of violations related to gender equality?
- V. Has the government overstepped by modifying laws that directly impact religious practices, and have certain demographic groups faced negative consequences, either overtly or implicitly?

7. RESEARCH METHODOLOGY

The central focus of this discussion the right to equality within the individual traditions of Hinduism and Islam requires a doctrinal investigation for a clearer interpretation and analysis. To better understand its exceptions, the researcher evaluates judicial precedents relevant to the current legal framework, paying particular attention to abstract terms and definitions. This involves interpreting the diverse concepts of personal laws developed by various jurists, alongside the fundamental right to freedom of speech and expression enshrined in the Indian Constitution. Since the concept of "gender justice" falls within the scope of both religious traditions and is also protected by constitutional principles, referencing these principles will help demonstrate that family law statutes should aim to establish standards of gender justice.

8. HINDU LAW

8.1 Females' Property Rights in the Male-controlled Family

Similar to ancient Roman fathers, Hindu fathers in male-dominated households held absolute authority. Historical texts, such as the Bible, provide evidence that the father was regarded as the supreme authority in the family. According to Manu, a wife, son, or slave shared equally in a man's wealth; they were often entrusted with acquiring their respective master's riches. Narada believed that a son could only become self-reliant once his parents had passed away; while they were alive, he remained dependent, even in their old age. In households where men held all the power, women and children had no legal claim to family property. The wife, along with the property and slaves, was considered the husband's possession. Within traditional patriarchal households, women endured a stifling and oppressive existence [²¹]

²¹ 21 Alim, A. (2021). Towards the Uniform Civil Code and Personal Laws in India: Gender Equality Perspective. *Annals of Bioethics & Clinical Applications*

8.2 Matrimonial Property

The traditional view assigns a woman's primary role to managing the household and caring for her family. A man could only achieve financial independence with his wife's support. By taking care of the household, she allowed him to focus on expanding his financial ventures. However, her contributions were seldom acknowledged. Any property jointly purchased by the husband and wife is typically recorded in the husband's name, making him the sole legal owner of the property. While the wife may have a legal right to seek maintenance upon divorce, India's legal system does not adequately protect women's rights concerning marital assets, in contrast to the legal frameworks of other countries.

9. MUSLIM LAW

9.1 Shariat and the Property Rights of Muslim Women

Hereditary rules were highly valued by Muslim jurists, and they frequently cited the Prophet's sayings. Modern scholars have praised the framework for its effectiveness and inherent worth, with the Prophet himself emphasizing that the rules of inheritance should be learned and passed on, as they constitute half of useful knowledge. According to Macnaghten, these laws give special consideration to the needs of individuals whom we naturally hold in the highest regard, and it is difficult to imagine a system with more equitable and just regulations. Islamic inheritance law consists of two main components: the customs of ancient Arabia and the instructions provided by the Quran and the Prophet Muhammad. The early tribal laws served as the foundation for the Quranic reforms. Given the numerous changes made to address contemporary social and economic issues, the Quran can be seen as a revisionist act. The rise of Islam and the spread of prophetic teachings led to a gradual improvement in women's status. The belief in women's inferiority to men, which had been imposed in earlier times, was gradually dismantled. The Quran upholds the dignity of women, asserting that men and women are equal and mutually supportive. In his teachings, the Prophet emphasized the importance of treating female children with the same respect and dignity as male children [22]

9.1 Marriage under Different Personal Laws

A marriage is a socially recognized union or legal contract between individuals that establishes rights and duties for the spouses, their offspring, and future in-laws. Through marriage, legal or normative obligations are often defined between spouses and their children. Many view it as a contract. Individuals can enter into marriage through either a civil or religious ceremony. As stated in Article 21 of the Indian Constitution, "No person can be deprived of his life or autonomy except according to procedure prescribed by law," which guarantees fundamental rights, including the right to marry. This right is also recognized in Article 1 of the United Nations Declaration of Human Rights, 1948 [23]

9.1.1 Hindu Marriage

In Hinduism, the bond between a husband and wife is considered eternal and unbreakable, even in the event of the husband's death. According to the renowned Hindu jurist Manu, a woman is under her father's authority when she is young, her husband's authority when married, and her sons' authority after her husband's death. Throughout her life, she is not to have complete freedom. This view portrays a woman as being in a state of tutelage from conception until death, protected by her father or his representative before marriage, and by her husband after marriage.

While Hindu marriage is no longer solely seen as a sacrament, the religious rites associated with it have been maintained. The Hindu Marriage Act of 1955 granted legal rights and remedies previously unavailable to Hindus. The Marriage Laws (Amendment) Act of 1976 further altered the sacramental view by introducing provisions such as divorce by mutual consent. Section 7 of the 1955 Act indicates that while the sacramental nature of Hindu marriage has been diminished, the religious rituals remain significant.

The Child Marriage Restraint Act of 1978 established the minimum marriage age for brides and grooms at 18 and 21, respectively. A key outcome of this legislation is that brides cannot be legally married until reaching adulthood, allowing them to make an informed choice regarding their life partner. This Act also led to the repeal of Section 6 of the Hindu Marriage Act, making marriage without the guardian's consent invalid. The legal system now requires Hindu marriages to be formally registered, and the conditions for a valid marriage are outlined in Section 5 of the Hindu Marriage Act of 1955. According to Hindu marriage law, a marriage is not legally binding until the Saptapadi and Kanyadan rituals are completed.

9.1.2 Marriage under Muslim Personal Law

In Islamic law, marriage (Nikah) is considered a legally binding contract with the primary purpose of establishing a family. Unlike a sacrament, it is defined as a legal agreement shaped by legal, social, and religious factors. There are three central aspects of marriage in Islam: first, Islamic law raises the social status of women upon marriage; second,

²² Bedi, S. (2022). Comparing Matrimonial Laws in India and Vietnam: Is a Uniform Civil Code Necessary? Vietnamese Journal of Legal Sciences, 7, 101 - 114.

²³ Saxena, S. (2022). Divorce and Democracy

Prophet Muhammad (PBUH) emphasized the significance of marriage both through his teachings and actions. He encouraged all who were able to marry, stating that marriage is a manifestation of Allah's blessing. In Islam, marriage is solemnized through the recitation of specific Quranic verses. Though it holds spiritual significance, it is regarded primarily as a legal contract rather than a sacrament. In India, Muslim weddings are typically officiated by Kazis or Mullas, who serve as religious leaders across various Muslim sects. The marriage contract involves the appointment of two representatives for each party, and the presence of witnesses is mandatory. The Quran conveys that "They are your apparels while you are their apparels," symbolizing intimacy, mutual respect, and shared support between the spouses [24]

Gender Discrimination under Different Marriage Laws

9.1 Gender Discrimination under Hindu Marriages

- Child marriages remain prevalent in rural and tribal communities, with most marriages occurring without the consent of the girls involved. Instead, marriage decisions are often made by the elders of the family or clan, with considerations such as status, caste, wealth, and horoscopes taking precedence over compatibility and mutual understanding. The legal marriage age is not consistently enforced, allowing individuals to marry at any age. Despite stringent laws against dowry and female foeticide, remarriage continues to be a significant issue, often viewed as a social taboo. Many women face immense pressure to remain in abusive relationships, especially when in-laws are involved. Additionally, women often encounter significant barriers when attempting to access inheritance or divorce, due to social stigma and a lack of financial independence.
- After marriage, women are typically relegated to a subordinate role, with far less authority and autonomy compared to their husbands. Even if the state government mandates marriage registration, Hindu marriages that are not registered will still hold legal validity.

9.2 Gender Discrimination in Muslim Marriages

- Although Islam mandates the agreement of women in marriage, their consent is often overlooked in a society that remains predominantly traditional and patriarchal. This is compounded by the fact that many Muslim women lack the awareness needed to prevent mismatched marriages.
- Men frequently misuse the provision of polygamy, and its strict adherence to Sharia law often becomes a source of marital conflict. Women are typically financially dependent on their husbands, leading to an unequal partnership in the marriage contract. In many cases, the agreement to marry is more of a ritual than an expression of choice; often, there have been imbalanced justifications for marital regulations. Women are expected to relinquish their identity, leave their homes to join their husbands, and dedicate their lives to raising children, supporting their husbands' success, and caring for the family. This creates an unequal relationship in which one partner relies on the other, giving the non-dependent partner more power, thereby ensuring the marriage's continuity. It is not the strength but the vulnerability of this dynamic that sustains it [25]

Divorce under Different Personal Laws

Divorce refers to the dissolution of a marriage, wherein a couple decides to end their marital relationship and nullify the vows exchanged during the marriage ceremony. In India, divorce remains socially stigmatized, particularly for women, and is often considered taboo. Divorce laws vary significantly across countries, but in most cases, the final decree must be sanctioned by a court or relevant statutory authority.

In industrialized nations, divorce rates have risen significantly as societal attitudes toward family and relationships have evolved, with marriage increasingly viewed as a partnership based on mutual understanding. However, persistent conflicts can turn daily life into a struggle, and divorce may become necessary. That said, divorce should be treated as a last resort, pursued only after all other avenues for reconciliation have been exhausted.

In India, marriage and divorce are governed by the 1954 *Special Marriage Act*, an interfaith statute providing a legal framework across all religions and cultures. The *Hindu Marriage Act* of 1955 legalized divorce for Hindus and other communities married under its provisions. Separate divorce laws exist for other cultural and religious groups, reflecting the diverse personal laws in India, including:

- The *Parsi Marriage and Divorce Act*, 1936
- The *Dissolution of Muslim Marriages Act*, 1939
- The *Indian Divorce Act*, 1869

²⁴ Satyam, K. (2023). The Uniform Civil Code: Paving the Way for Gender Justice in India? BSSS Journal of Social Work.

²⁵ Vevaina, L. (2023). Mergers and Legal Fictions: Coverture and Intermarried Women in India. Law and History Review, 41, 387 - 404

10.1 Divorce under Hindu Law

Traditionally, the concept of divorce was not recognized under the rules of *Dharma Shashtra*, as marriage was considered an unbreakable bond between a husband and wife. A key ritual in Hindu marriage, the *Saptapadi*, involves the bride and groom taking seven sacred steps around a holy fire while chanting mantras, symbolizing the sanctity and permanence of the union.

However, divorce has historically been acknowledged under Hindu law in certain contexts, even if it contradicts traditional beliefs. Early regional laws like the *Hindu Divorce Act of 1947* (Saurashtra), the *Hindu Polygamy Prevention by Divorce Act of 1949* (Madras), and the *Hindu Divorce Act of 1952* (Maharashtra) provided some legal grounds for divorce. These laws were eventually unified under the *Hindu Marriage Act of 1955*, which superseded earlier statutes and established comprehensive provisions for divorce [26]

10.2 Hindu Marriage Act, 1955

The *Hindu Marriage Act, 1955* introduced divorce as a legal recourse to protect vulnerable individuals, particularly women, from abuse and exploitation. While the Act was designed to safeguard individuals in marriage, it was not intended to provide an unrestricted right to dissolve the marital bond arbitrarily.

Significant reforms in Hindu marriage and divorce laws have been achieved through this Act. Section 13 outlines specific grounds for divorce, such as cruelty, desertion, and adultery, while Section 14 restricts the filing of divorce petitions within the first year of marriage unless exceptional hardship or depravity is proven by the petitioner.

Additionally, Section 15 regulates the right to remarry after divorce, ensuring that legal formalities and the finality of the divorce decree are respected. These provisions, while progressive, highlight the balance between individual rights and the sanctity of marriage under Hindu law.

10.3 Marriage Laws Amendment Act, 1976

The *Marriage Laws Amendment Act of 1976* introduced significant revisions to divorce laws in India. It emphasized the *breakdown theory* of marriage, which asserts that keeping partners bound in a failed marital relationship serves no constructive purpose. Under this theory, if a marriage has irretrievably broken down, legal provisions allow individuals to dissolve the union and move on with their lives. This amendment reflects a progressive shift toward recognizing personal freedom and the right to happiness within marital relationships.

10.4 Divorce by Mutual Consent

Section 13(B) of the *Hindu Marriage Act, 1955*, as amended by the 1976 Act, introduced the provision for divorce by mutual consent. This provision enables both spouses to dissolve their marriage amicably, provided they mutually agree that the relationship has broken down beyond reconciliation. It requires the filing of a joint petition by both parties and a stipulated waiting period, ensuring that the decision is well-considered and not impulsive.

10.5 Divorce under Islamic Law

Islamic law provides unique provisions for divorce. A notable feature is the husband's unilateral right to divorce (*Talaq*), which does not require justification or the wife's consent. In Sunni law, the husband can pronounce *Talaq* at his discretion, even in jest or under the influence of alcohol, without the need for witnesses or the wife's presence. Shia law, however, mandates the presence of two witnesses.

This provision, while rooted in historical context, has faced significant criticism in modern India for its potential to undermine gender equality. The unilateral nature of *Talaq* disproportionately impacts women and perpetuates social inequities in marital relationships, raising concerns about its compatibility with constitutional principles of justice and equality [27]

10.6 Gender Discrimination under Divorce Laws

10.6.1 Gender Discrimination and Social Ills in Hindu Divorce

Hinduism traditionally views marriage as a sacred and indissoluble covenant. This perspective often stigmatizes divorce, especially for women, who face societal pressures to endure marital challenges through compromise rather than separation. Divorce for Hindu women is frequently seen as a last resort, used primarily to escape abusive relationships.

Alimony provisions under Hindu law have been criticized for their inconsistencies and the challenges women face in accessing financial support. Historically, Hindu philosophy has maintained an ambiguous stance toward women, often

²⁶ Puniyani, R. (2020). Uniform Civil Code and Conflicts of Personal Laws. SSRN Electronic Journal.

²⁷ Krishnaleela, S. (2020). Comparative Study of Personal Law in India.

presenting a dichotomy between religious ideals and societal practices. While religious doctrines elevate women to a revered status, social realities have relegated them to subordinate and dependent roles.

This tension is reflected in the stance of the ancient lawgiver Manu, who opposed divorce and proclaimed that "mutual faithfulness should continue till death," emphasizing the permanence of marital ties as the pinnacle of marital *dharma*. Such traditional views continue to influence societal attitudes, perpetuating gender inequalities in divorce proceedings.

10.6.2 Gender Discrimination and Social Ills in Muslim Divorce

In Islam, divorce is recognized as a lawful option for dissolving a marriage. Women have the right to initiate divorce through a process known as *Khula*. In this process, the marital assets given by the husband to the wife are traditionally considered the husband's property after divorce. However, these gifts may be returned to the husband if the wife initiates the termination of the marriage.

Following a divorce, women are entitled to maintenance payments from their ex-husbands, provided they observe the period of *Iddat*. This raises questions regarding the maintenance of women, particularly those advanced in age or lacking support systems. The landmark case of *Mohammed Ahmed Khan v. Shah Bano* highlighted this issue, igniting a national debate across diverse communities and legal circles. It underscored the need for divorced spouses, especially elderly women, to be treated with dignity and compassion, advocating for a humanitarian approach to such cases.

A significant challenge faced by Muslim women is the lack of awareness regarding their legal rights under *Sharia* law and the Indian Constitution. Many women are uninformed about provisions such as Section 125 of the Criminal Procedure Code and the *Muslim Women (Protection of Rights on Divorce) Act, 1986*.

In many cases, marriage consent is often reduced to a ceremonial formality rather than an exercise of free will. Women frequently have no meaningful say in the selection of their spouse, even when the choice is made by their parents. This lack of agency highlights the persistent inequality and social challenges faced by Muslim women in marital and divorce proceedings [28].

11. Maintenance

The term "maintenance" encompasses a broad spectrum of support. Women's rights to maintenance vary across different religious codes concerning private law matters such as marriage, divorce, and maintenance. Under personal law, an individual is entitled to claim maintenance. According to the *Code of Criminal Procedure, 1973* (Act No. 2 of 1974), not only wives and dependent children but also indigent parents and divorced wives have the right to claim support.

There are multiple avenues for claiming maintenance based on religion and legal framework. However, proceedings initiated under Section 125 of the *Criminal Procedure Code* (CrPC) are summary in nature and apply universally, regardless of caste, creed, or religion, distinguishing them from personal laws. Indian law permits individuals to seek maintenance through the judiciary even before the filing of a divorce petition.

11.1.1 Maintenance under Hindu Law

The *Hindu Marriage Act, 1955* specifically addresses spousal support through Section 24, which provides for interim maintenance during matrimonial proceedings. Under this provision, maintenance requests must be processed within sixty days from the date the husband or wife, as applicable, receives notice. This time frame was established under the *Marriage Laws (Amendment) Act, 2001*.

The *Hindu Adoption and Maintenance Act, 1956* defines maintenance as provisions for food, clothing, medical attention, and treatment. It also includes reasonable expenses for an unmarried daughter's marriage. Hindu wives inherently possess the right to seek maintenance.

Under Hindu law, individuals bear an inherent responsibility to support their immediate family, including spouses, children, and parents. The following statutes govern maintenance under Hindu law:

- *Hindu Marriage Act, 1955* (Section 24)
- *Hindu Adoption and Maintenance Act, 1956* (Section 25)
- *Criminal Procedure Code* (Section 125)

²⁸ MADhukar Zanje, M. (2023). Integration of Uniform Civil Code and Personal Law Disputes. International Journal for Multidisciplinary Research

Additionally, *Section 20 of the Protection of Women from Domestic Violence Act, 2005* addresses financial relief and maintenance for women.

Key Provisions:

- Maintenance includes necessities such as food, clothing, housing, education, and medical care.
- In the case of an unmarried daughter, reasonable expenses for her marriage must also be covered.
- A person is considered a minor until they reach the age of eighteen.

Maintenance under Muslim Law

The right to maintenance for Muslim women is governed by two key personal law statutes: the *Dissolution of Muslim Marriage Act, 1939* and the *Muslim Women (Protection of Rights on Divorce) Act, 1986*. Muslim law differs from other legal systems regarding maintenance, particularly in its specific provisions for wives. Generally, the obligation to provide maintenance arises only when the claimant is unable to sustain themselves financially.

Under Muslim law, a husband is obligated to provide for his wife, regardless of her financial situation. No one other than the husband holds the right to claim maintenance. Maintenance, referred to as "Nafqah," encompasses essential provisions such as food, clothing, housing, and other necessities for survival. A divorced wife is entitled to maintenance as a right [29].

- A Muslim father is responsible for supporting his daughters until their marriage.
- A Muslim widow is only entitled to the portion of her husband's estate inherited by her. However, during the *iddat* period, the husband must provide her with reasonable and fair maintenance.

11.2 Assessment of Hindu and Muslim Personal Laws

Hindu and Muslim personal laws derive from fundamentally different scriptures the Vedas and the Quran. Hindu philosophy, rooted in the concept of *Atma* (the essence of God), views all humans as one and the same. In contrast, Islam distinguishes between believers (*Muslims*) and non-believers (*Kafirs*).

As Davis (2007) observes, one significant area of divergence between the two systems is their treatment of minorities, particularly women. This distinction underlines the differences in the principles governing maintenance and related rights under Hindu and Muslim personal laws.

11.3 Maintenance Rights of the Wife

The concept of maintenance arises from the fundamental principles of justice in an enlightened society. The *Badshah v. Urmila Badshah Godse and Anr.* case, decided by the Supreme Court, highlights the rationale behind granting maintenance, which includes supporting the downtrodden and promoting equality through fairness and respect. These ideals reflect societal values and the principles that govern interpersonal relationships.

In India, the right to maintenance is protected under both public and private laws and cannot be waived by negotiation. Maintenance can be sought during litigation (*pendente lite*) or as permanent relief after the conclusion of proceedings. Married women, their children, and other dependents are entitled to justice through maintenance. Additionally, personal laws provide support to spouses unable to sustain themselves.

11.4 Maintenance under the Criminal Procedure Code

The provisions for maintenance under the *Criminal Procedure Code (CrPC)* are democratic in nature, allowing any woman to appeal to the tribunal irrespective of her faith or beliefs. Sections 125–128 of the CrPC outline the legal framework for maintenance, providing remedies for spouses, minor children, and other dependents. These sections ensure corrective, comprehensive, and reasonably accessible solutions for those neglected or abandoned by their providers.

In summary, Sections 125–128 empower the legal system to address the needs of vulnerable dependents, reinforcing their right to dignity and support under the law [30].

Section 125 of the Code of Criminal Procedure

Under Section 125 of the *Code of Criminal Procedure (CrPC)*, a man may be required to provide financial support to his family if a woman is unable to sustain herself. The case of *Bhuwan Mohan Singh v. Meena & Ors.* underscored that the primary aim of Section 125 is to alleviate the mental and financial hardships women face after leaving their marital

²⁹ Ms. Pooja, & Hooda, D.R. (2023). Wife's Right to Maintenance and Human Right: Concerns And Issues. *Journal of Namibian Studies : History Politics Culture*

³⁰ Khan, S., & Sharma, D.S. (2021). *Dissolution of Muslim Marriage in India: An Analytical Study*. *Legal Research Development an International Refereed e-Journal*

homes. The provision is grounded in the idea that, through reasonable measures ordered by the Tribunal, a woman and her children (if residing with her) should receive adequate support.

The rationale behind this provision is not merely to provide comfort but to ensure that women are not subjected to undue suffering after separating from their spouses. A woman, having lived in her husband's home, retains certain legal rights to sustain herself.

Section 125 of the CrPC entitles a woman to both temporary and permanent maintenance. As per Clause 125(1)(b), a woman's status as a "wife" remains intact even after divorce, allowing her to claim maintenance. The case of *Sunita Kachwaha v. Anil Kachwaha* clarified that a woman's capacity to earn should not be used as a justification to deny her maintenance payments. This ensures that the law recognizes the broader socio-economic challenges women face, rather than narrowly focusing on their earning potential.

The Protection of Women from the Domestic Violence Act, 2005

Under Section 20 of the *Protection of Women from Domestic Violence Act, 2005* (PWDA), an aggrieved spouse can seek financial assistance beyond any maintenance order under Section 125 of the *Criminal Procedure Code* or other applicable laws. The court must consider the injured party's quality of life while determining a fair, equitable, and proportional level of support.

In the case of *Savitaben Somabhai Bhatiya v. State of Gujarat*, the Supreme Court clarified that under Section 125(1), the term "wife" primarily refers to a legally married woman. However, in *Chanmuniya v. Virendra Kumar Singh Kushwaha*, the Supreme Court recognized that even a live-in partner, though not legally married, is entitled to seek maintenance under the *Protection of Women from Domestic Violence Act, 2005*. This reflects the evolving judicial approach towards safeguarding the rights of women in diverse domestic arrangements.

11.6 Claim for Maintenance under Personal Laws

Traditionally, Muslim women could only claim maintenance under Islamic law as prescribed in the Quran, which limited a husband's obligation to providing financial support during the *iddat* period. The *iddat* period is an Islamic restriction during which a woman cannot remarry after her husband's death or the dissolution of her marriage. Under Islamic law, the obligation of *nafaqa* (maintenance) arises only if the claimant is financially incapable of supporting herself.

The landmark *Shah Bano case* expanded the scope of maintenance rights for Muslim women, with the Law Commission recommending that they could also seek maintenance under Section 125 of the *Criminal Procedure Code, 1973*, irrespective of the applicability of Muslim personal law [31].

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

The *Muslim Women (Protection of Rights on Divorce) Act, 1986* (MWA) was a controversial law enacted by the Indian legislature to address issues of marital separation, divorce, and their consequences for Muslim women. The Act was introduced in response to the *Mohd. Ahmad Khan v. Shah Bano Begum* case, which had upheld the right of Muslim women to seek maintenance under Section 125 of the *Criminal Procedure Code*. The ruling had faced backlash from sections of the Muslim community, leading the Rajiv Gandhi government to enact the MWA to overturn the Supreme Court's secular verdict.

Under Section 3 of the MWA, a Muslim man is obligated to provide reasonable and fair maintenance to his divorced wife during the *iddat* period. However, the traditional interpretation of this clause limits his obligation to the *iddat* period itself. The Supreme Court, in *Daniel Latifi v. Union of India*, clarified that male family members' responsibility to provide financial support persists even beyond the *iddat* period. Additionally, if a divorced woman is unable to sustain herself after the *iddat* period and has no family support, she can seek assistance from the State Wakf Board, as outlined in the MWA [32].

Preliminary Statistical Analysis

It is based upon a structured questionnaire designed to assess the responses given by the Judges, Advocates, Clients and the General Public. The questionnaire was designed keeping in mind the universal questions like what, why,

³¹ Misra, S., & Mishra, P.C. (2020). Origin of Parisian Laws and Regulations in India: "Fons et origo of Zoroastrianism". *Journal of Forensic Medicine*, 14, 687-691.

³² Singh Kabawat, K. (2024). REPRODUCTIVE RIGHTS OF WOMEN: A STUDY IN REFERENCE TO NEW SURROGACY LAW OF INDIA. *International Journal of Advanced Research*

when, which where, who and how about the adjudicatory methods of the Courts concerning the matrimonial cases. In this section the data was collected from 24 Judges, 24 Advocates and 56 responses were collected from the Clients and the General Public. The collected data from the overall 104 respondents further classified based on various attributes. The frequency and percentage of distribution under each category were obtained and preliminary statistical analysis was done. Chi-square test is used to test for independence of attributes using the SPSS package. Further, it is noted that the personal profile of the Advocates and Judges are not analysed due to the personal reasons cited by them.

Cases: Supreme Court of India

The Supreme Court of India has played a pivotal role in interpreting and safeguarding religious freedom while addressing issues related to personal laws. Here are some landmark Supreme Court decisions that have significantly shaped the legal landscape concerning these matters:

1. **Shah Bano Case (1985):** In the case of Mohammed Ahmed Khan vShah Bano Begum¹⁸, the issue of whether a divorced Muslim lady was eligible for maintenance under Section 125 of the Criminal Procedure Code (CrPC) was brought before the Supreme Court. The Court decided in Shah Bano's favour, concluding that Section 125 of the CrPC was applicable to everyone, regardless of faith. The Muslim Women (Protection of Rights on Divorce) Act, 1986 was passed in response to the intense debate this ruling generated and its intention to weaken the Supreme Court's ruling.
2. **Sabarimala Temple Entry Case (2018):** In the Indian Young Lawyers Association The State of Kerala¹⁹, the question of whether women between the ages of 10 and 50 are prohibited from entering the Sabarimala temple in Kerala was taken up by the Supreme Court. The restriction was declared unlawful by the court because it infringed upon women's rights to equality and freedom of religion. Discussions over the proper ratio between gender equality and religious practises were sparked by this ruling.
3. **Triple Talaq (2017):** In Shayara Bano vUnion of India²⁰, the Supreme Court looked at whether Muslim men's practise of triple talaq, or instant divorce, was lawful. In a landmark ruling, the Court ruled that triple talaq violates the fundamental rights of Muslim women and is unconstitutional. The Muslim Women (Protection of Rights on Marriage) Act, 2019, which made the practise illegal, was passed as a result of this ruling.
4. **Hindu Succession Act Amendment (2005):** In the case of Danamma Amar²¹, the Hindu Succession Act's 2005 revision, which gave daughters the same inheritance rights as sons, was declared to be retroactive by the Supreme Court. With thisruling, Hindu personal laws took a major step towards gender equality.
5. **Adultery Law (2018):** In the case of Joseph Shine Union of India²², the Indian Penal Code (IPC)'s Section 497, which made adultery illegal, was overturned by the Supreme Court. The Court ruled that the law was an obvious infringement on women's right to equality and privacy as well as their dignity and autonomy.
6. **Right to Privacy (2017):** In a landmark decision in K.S. Puttaswamy Union of India²³, the Indian Constitution's fundamental right to privacy was acknowledged by the Supreme Court. The protection of individual liberty and personal choices, including religious ones, is strengthened by this ruling, which has broad consequences for personal legislation.

CONTEMPORARY ISSUES AND CONTROVERSIES

Recent legal developments impacting personal laws and religious freedom:

1. **Triple Talaq Act (Muslim Women [Protection of Rights on Marriage] Act, 2019):** This Act, passed by the Indian Parliament in 2019, criminalized the practice of triple talaq (instant divorce) among Muslim men. It was a significant step toward protecting the rights of Muslim women and ensuring gender equality within the Muslim community.
2. **Ram Janmabhoomi-Babri Masjid Land Dispute Resolution (2019):** The Supreme Court of India rendered a landmark decision in the protracted Ayodhya property dispute issue in November 2019. The court decided to grant Hindus the disputed site in Ayodhya so they could build a Ram temple, and to give Muslims another five-acre tract so they could build a mosque. This ruling addressed a very contentious legal and religious matter, which had repercussions for both personal laws and religious freedom.

12. CONCLUSION

The right to maintenance plays a crucial role in ensuring fairness and justice across religious personal laws in India. Both Muslim and Hindu personal laws provide mechanisms for maintenance to uphold the welfare of dependents and the dignity of individuals, albeit with notable differences in scope and application. These provisions reflect the importance both systems place on familial stability and societal well-being, particularly for children's healthy development and care.

While both Hindu and Muslim personal laws have undergone significant evolution through legislative amendments and judicial interpretations, disparities remain in how they approach the concept of maintenance. Hindu law, for instance, provides divorced women with broader rights to claim maintenance, often extending this right until their own or their spouse's death. In contrast, under Muslim law, a husband's obligation is traditionally limited to the *iddat* period following a divorce. However, landmark cases like *Shah Bano Begum* and *Daniel Latifi* have pushed the boundaries of

Muslim personal law, recognizing a divorced woman's right to financial support beyond the *iddat* period in certain circumstances.

Hindu personal law is also more inclusive in its recognition of maintenance rights for illegitimate children and individuals in live-in relationships, thus reflecting a progressive adaptation to contemporary social realities. The *Protection of Women from Domestic Violence Act, 2005*, further strengthens these rights by extending maintenance provisions to women in domestic partnerships, even when not legally married. Muslim personal law, while historically more rigid in its interpretation, is gradually evolving, with ongoing legal reforms and judicial pronouncements addressing contemporary concerns. This dynamic nature of Muslim personal law indicates a growing alignment with broader human rights principles and the changing needs of society.

Both systems share a common goal: to foster societal harmony by preventing material hardship from undermining human dignity. They aim to ensure that vulnerable individuals, such as divorced spouses, children, and elderly dependents, are supported and cared for. Despite the differences in scope and execution, the underlying objective of maintenance provisions in Hindu and Muslim personal laws is to create a just and equitable society where no individual suffers indignity due to financial deprivation.

As jurisprudence continues to expand and adapt to modern challenges, personal laws in both Hinduism and Islam are likely to witness further transformations. These changes are expected to bridge existing gaps and align personal laws more closely with the constitutional principles of equality and justice, paving the way for a more inclusive legal framework that upholds the dignity and welfare of all individuals, regardless of their religious affiliations.