

## RIGHTS OF WOMEN IN DIVORCE: A COMPARATIVE STUDY BETWEEN HINDU AND MUSLIM LAWS

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### ABSTRACT

*Religion plays a crucial role in the lives of most Indians. For centuries, we have found refuge in the texts of our religions when making crucial life choices. Religion guides its believers and helps them build their lifestyles. It includes duties and rights that the religions make us entitled to, both of which factor in when important decisions are being made. Through this research paper, the authors will discuss in detail one such important life decision, divorce. While there is still a significantly taboo atmosphere surrounding this concept in India, there are relevant laws that lay down its process in detail. When looking through a universal point of view, it can be said that a divorced woman in India is at a far more disadvantage when compared to a divorced man. The deterioration in the condition and reputation of a woman after a divorce is unfair as in most cases, she struggles with financial and mental stability. Considering the amount of influence religions hold in governing people's lives, it is important to analyze what they say about women's rights in a divorce. The paper will contemplate what religions and personal laws do when it comes to providing justice to women by giving them rights during the process of divorce. This research paper aims to conduct a comparative study between the two primary religions practised in India- Hinduism, and Islam.*

**Keywords:** Divorce, Women, Hindu Marriage Act, Muslim Marriage Act, Rights.

### INTRODUCTION

When two people come together and form a union in a marriage, the last thing that is given importance is divorce. When getting married with genuine intentions, no couple thinks of dissolving this bond. However, for a plethora of different reasons, whatever they may be, a pair comes to the end of their marriage. This dissolution and separation of the two people is divorce. In the contemporary context, divorce entails much more than just separation, there

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are different laws governing it, and a lot of complexity that goes behind it. Divorce is a process, it does not take place overnight, therefore, lawmakers have made the process comprehensive in matters of mutual misunderstandings.

However, different views have been held when only one party is willing to divorce.

Since as long as history has been recorded, it can be inferred that men are always in a dominating position. May it be the lack of opportunities available for women or the discouraging patriarchal environment, women have rarely found themselves on the receiving end of financial independence and stability. In the Indian context, the National Service Scheme (NSS) Time Use Survey (TUS) 2019 found that 90% of Indian women participated in unpaid domestic work at home compared to 27% of men. While only 22% of women participated in employment and related activities compared to 71% of men.<sup>1</sup> This data indicates that men are the breadwinner in most families, hence, when a couple decides to file for a divorce, the woman is not only sharing the same disadvantages that men face, such as loss of co-habitation and conjugation but her survival is also at stake. Considering all these factors, it becomes essential for us to be aware of the rights provided to women when both parties decide to end a marriage.

Since India is a diverse country and is known to uphold the rights of citizens to have religious beliefs, these matters are governed under religious and personal laws. Hinduism and Islam are predominantly practiced in India when compared to other religions; taking this into account, there are laws established to deal with divorces from both religions, Hindu Law and Islamic Law. Before we delve into further detail, we need to understand who is a Hindu and who is a Muslim. Along with understanding these words, the paper will analyze the aspects of the topic at hand.

## **DIVORCE IN HINDUISM AND HINDU LAW**

As there is an absence of the concept of divorce in Hinduism, it was eventually introduced under the Hindu Marriage Act in 1955<sup>2</sup>. The main reason for the non-existence of the concept of divorce in a Hindu marriage is that it's considered to be an eternal permanent bond, a gift

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<sup>1</sup> Santosh Mehrotra, 'Reconceptualising Women's Work in the National Sample Survey' (The India Forum, 25 July 2023) <<https://www.theindiaforum.in/article/reconceptualising-womens-work-national-sample-survey#:~:text=Mean%20while%20India's%20labour%20force%20statistics,compared%20to%2027%25%20of%20men>>

<sup>2</sup> Hindu Marriage Act, 1955

of God. Marriage is considered to be a sacrament; it has been advised in many ancient Hindu scriptures for it to be treated with utmost care and love.

As far as grounds of divorce are considered in Hinduism, they are not mentioned in the scriptures. Cruelty, which is one of the essential grounds for divorce under the Hindu Marriage Act, is not considered a sufficient reason for a woman to divorce her husband according to the scriptures of the religion. In the 54<sup>th</sup> Chapter of the Shiva Purana, it is clearly stated that “*A chaste lady shall never mention her husband’s name. If the husband scolds or rebukes her she shall not abuse him in return. Even when beaten by him she shall remain glad and say “I may even be killed, O lord. Be kind to me.”*”<sup>3</sup> It can be understood from this verse that even if a wife is facing cruelty from her husband and there exists a threat of death, the concept of divorce is absent. Impotence, another ground of divorce under the HMA<sup>4</sup> has been dealt with in Hinduism by way of *Niyoga*<sup>5</sup>. Manusmriti provides guidelines to carry out the process.<sup>6</sup> As there was no ground for divorce, it makes it clear that there were no rights for women during the process of divorce as well before the enactment of legal statutes. Although there has been mention of one instance in Bhagavata Purana where Kardama marries Devahuti but abandons her after the birth of their son Kapila to become ascetic, he considers himself obliged to maintain the child though he cuts off his relations with her.<sup>7</sup> This can be considered sufficient proof though there are no reliable rights for the maintenance of women, however, a child is supposed to be maintained by their father.

Looking at these scriptures it can be inferred that women were expected to continue their marriages irrespective of the struggles. If the same principles were followed to date, not only would these religious principles be an injustice to women but also would have violated their fundamental rights. Hence, owing to the gravity of the situation, the introduction of divorce through Section 13 of the Hindu Marriage Act, 1955<sup>8</sup> has been revolutionary in nature because it has provided women with the autonomy to make life decisions for themselves.

The term "Hindu" can be traced back to Old Persian, which derived this word from the Sanskrit name Sindhu, which refers to the Indus River. The Greek equivalents are "Indus"

<sup>3</sup> J.L Shastri, The Shiva Purana, Ch.57, 1950

<sup>4</sup> Hindu Marriage Act, 1955

<sup>5</sup> Getting pregnant with the help of other man on account of impotency of husband merely for the sake of procreating and not sexual pleasure

<sup>6</sup> Manu, Manusmriti, Ch.9, Verse. 59-63, 100 ce

<sup>7</sup> Devdutt Patnaik, ‘Is divorce permitted in Hinduism’ (Dailyo, 25 July 2023)

<<https://www.dailyo.in/lifestyle/hindu-marriage-divorce-puranas-dharmashastra-hinduism-19280>>

<sup>8</sup> Hindu Marriage Act, 1955, s. 13

(for the river) and "India" (for the land of the river). The term "Hindu" also referred to people who lived in the Indian subcontinent around or beyond the Sindhu (Indus) River. It is important to keep this definition in mind when looking into the applicability of the Hindu Marriage Act. Section 2<sup>9</sup> of the Act states that it applies not just to Hindus but to people of other religions domiciled in India except for Muslims and Christians. The Hindu Marriage Act while providing a platform of recognition to Hindu customs has also made amendments for the welfare of the community. Providing divorce and inheritance rights to women is one such example.

## **RIGHT TO DIVORCE**

Section 13(1) of the Hindu Marriage Act<sup>10</sup> provides for mutual grounds of divorce for both the husband and wife. The reasons are:

**Adultery:** Adultery by either party is considered a valid ground for divorce. It was even punishable under Section 497 of the Indian Penal Code<sup>11</sup> but this section was repealed through the judgment passed by the Supreme Court in the case of *Joseph Shine v. Union of India*<sup>12</sup>.

**Cruelty:** The cruelty here not just includes physical but mental cruelty as well.

**Desertion:** The term "desertion" refers to the abandonment of the petitioner by the other party to the marriage without reasonable cause or the consent of such party, as well as the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be interpreted accordingly.

**Conversion to another religion:** If either of the party changes their religion without the consent of their partner then it can be considered as a valid ground for divorce.

**Unsoundness of Mind:** If their mental condition is in such a condition that it is affecting the other person or is threatening their life then they can file for a divorce. Schizophrenia can be considered a valid ground for divorcing the party on grounds of insanity.

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<sup>9</sup> Hindu Marriage Act, 1955, s. 2

<sup>10</sup>Hindu Marriage Act, 1955, s. 13 (1)

<sup>11</sup> Indian Penal Code, 1860, s. 497

<sup>12</sup> *Joseph Shine v. Union of India*, (2018) SC 1676

**Renouncement of the world:** If either party decides to become an ascetic then the other party can take divorce.

**Venereal Disease:** If either of the party is affected by a disease that can potentially cause harm to the other party then they can claim a divorce.

**Has not been seen or heard of for 7 years:** If a person is not in the same social setting as the person and has not tried to communicate and there is no trace of them existing then the aggrieved party can seek a divorce from the court.

While these grounds are provided for both parties, it is important to note that Section 13(2) of the Act<sup>13</sup> provides special grounds for divorce that are specific to women. It is a significant move if we compare it to the conditions of women before the existence of this act. The special grounds include:

**Bigamy:** If the husband is found to have more than one wife then it can be considered to be a valid ground for divorce by the wife. As Islam permits a Muslim man to have multiple wives, there are several instances of Hindu men converting to Islam solely to commit bigamy. This issue was addressed by the court in the case Sarla Mudgal v. Union of India<sup>14</sup>. The Supreme Court held in this case that even though the husband has converted he will still be punishable under the offense of Bigamy.

**Convict of Rape, Sodomy, or Bestiality:** The wife can seek a divorce from the court if it is known that her husband has been found guilty of committing the offense of rape, sodomy, or bestiality for that matter.

**Minor at the time of marriage:** If the wife was below the age of 15 years at the time of marriage, then she can seek a divorce as she did not consent to the marriage. However, this right is time-barred, and she'll have to seek divorce from her husband before she turns 18. Once she is a major, she cannot claim this as a ground for divorce.

## RIGHT TO MAINTENANCE

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<sup>13</sup> Hindu Marriage Act, 1955, s. 13 (2)

<sup>14</sup> Sarla Mudgal v. Union of India, AIR 1995 SC 1531

A wife is also entitled to get maintenance from her husband post-marriage under the special rights provided to women under Section 13(2)(iii) of the Hindu Marriage Act, 1955<sup>15</sup>. The amount for the maintenance will be based on judicial discretion and varies in different cases. Maintenance is further addressed under Section 24 of the Hindu Marriage Act<sup>16</sup> which is gender-neutral in nature, it effectively deals with the type of cases where the husband is dependent on the wife by going with the principle of pendent life<sup>17</sup>. This section provides that, when it appears to the court in a proceeding that a spouse does not have sufficient income for necessary expenses of the proceedings, the court may, on an application, order the respondent to pay for the petitioner's expenses, usually monthly. Section 25 of the Hindu Marriage Act<sup>18</sup> provides for permanent alimony and maintenance to the party who is dependent on the other till the life of the dependent party. This is only until the dependent party remarries or has sexual intercourse with someone other than their spouse, after which, the court amends the conditions.

### **CUSTODY OF CHILDREN**

However, the custody of children lies with both husband and wife naturally but in case of a conflict Section 28 of the Hindu Marriage Act<sup>19</sup> states that the custody will be based on judicial discretion. While financial soundness is an important factor in determining the custody of the child, it's not the sole factor. In a recent judgment by the Gujarat High Court, it was held that custody of a child cannot be denied to a non-earning mother.<sup>20</sup>

### **DIVISION OF PROPERTY**

As far as the division of a jointly owned property is concerned, the Hindu Marriage Act under Section 27<sup>21</sup> provides husband and wife with the authority to decide the share mutually or through the decision of the court. The court upheld the rights of both the husband and wife in the case of *Shukla v. Brij Bhushan*<sup>22</sup> by stating that they both jointly have rights over the property.

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<sup>15</sup> Hindu Marriage Act, 1955, s. 13 (2)(iii)

<sup>16</sup> Hindu Marriage Act, 1955, s. 24

<sup>17</sup> Pending litigation

<sup>18</sup> Hindu Marriage Act, 1955, s. 25

<sup>19</sup> Hindu Marriage Act, 1955, s. 28

<sup>20</sup> *Monaben Ripalbhai Patel v. State of Gujarat*, C/FA/1959/2018

<sup>21</sup> Hindu Marriage Act, 1955, s. 27

<sup>22</sup> *Smt. Shukla v. Brij Bhushan*, AIR 1982 DEL.223



Other than the rights provided in the Hindu Marriage Act 1955<sup>23</sup>, a wife also has the right to claim her *Streedhan*<sup>24</sup> under Section 14 of the Hindu Succession Act 1956<sup>25</sup>. She has the absolute right to do whatever she wants to do with her *Streedhan*.

If we compare the position of Hindu women from ancient times to the modern, it has evolved for the better by giving them the right to divorce and sustenance. The incorporation of Hindu law has been fruitful and revolutionary for women and it's a perfect example of why law needs to evolve according to the needs of society.

## DIVORCE IN ISLAM

Islam considers marriage to be a civil contract that gives the parties the ability to end their partnership under specific conditions.<sup>26</sup> The ubiquitous conventional power of the husband to divorce his wife unilaterally was not abolished by Islamic law, but it is severely limited. A Muslim spouse cannot divorce his wife and then remarry her. Likewise, Muslim law stipulates a specific method and time frame for divorce, as well as responsibilities on the husband to pay dower and maintenance to the wife in the event of divorce. In reality, they are adequate limitations on the husband's decisive ability to divorce his wife. Divorce is frowned upon in Islam and is only authorized in extreme situations. It's only acceptable in Islam when the goal is not to disturb the wife, but rather in dire need and for legitimate reasons.<sup>27</sup> Divorce was likewise discouraged and condemned by the Prophet Mohammad (PBUH), other than in exceptional cases. He cautioned his followers that (i) "*the curse of God descends on him who arbitrarily renounces his wife,*" and (ii) "*divorce disturbs the throne of God*".<sup>28</sup>

Muslim law poses two issues for deliberation: the manner of divorce by triple pronouncement, and the issue of gender imbalance in regards to the right to divorce. These two topics are contentious and often misinterpreted. Divorce in Muslims of India may be categorized into:

1. Divorce by the husband
2. Divorce by the wife
3. Other none prevalent forms

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<sup>23</sup> Hindu Marriage Act, 1955

<sup>24</sup> Immovable and movable property received by the bride as gift at the time of marriage

<sup>25</sup> Hindu Succession Act, 1956, s. 14

<sup>26</sup> Mohammedan Law II 471 (1985)

<sup>27</sup> Ahmed A. Galwash, *The Religion of Islam* 117 (1945)

<sup>28</sup> Ahmed A. Galwash, *The Religion of Islam* 117 (1945)

## Divorce by Husband

**Talaq (Repudiation):** The term “*Talaq*” in Arabic means “untying or releasing from a knot.” Muslim jurists use it to symbolize a woman's freedom from matrimonial ties.<sup>29</sup> The divorce is effective as of the date of the *Talaq* and the wife's attendance is not required. Hanafi law requires no specific form, but Ithna Ashari law requires a rigid rule. *Talaq* can be reversible or irrevocable; revocable *Talaq* is regarded as ‘authorized,’ while irrevocable *Talaq* is deemed ‘unapproved.’ A changeable divorce decree grants the man locus penitential, but irrevocable decree results in an unfavorable outcome with no opportunity to rethink the issue. When this idea is kept in mind, the language becomes clear. Further, the law acknowledges *Talaq al-sunna* (by the Prophet Muhammad’s instructions) and *Talaq al-biddat* (innovation; therefore, not in conformity with the dictates of the Prophet Muhammad (PBUH)).

*Talaqal-sunna* is even further subdivided into *Ahsan* (most accepted) and *Hasan* (authorised) kinds. *Talaqal-biddat* can alternatively be separated into three pronouncements at the same time (the “triple divorce”) or one irreversible statement (generally in writing).

**Ahsan:** This form comprises a single utterance of one phrase made during the wife's *tuhr* when there is no bar to conjugal relations, followed by three *tuhrs* or the period of *iddah*, the abstinence from conjugal rights. The *Talaq* becomes irrevocable when three *tuhrs* have passed. The requirement of *tuhr* is unnecessary when the parties have been apart for a long time or when the wife is old and past the age of puberty.<sup>30</sup> During *iddah*, a declaration issued in the *Ahsan* form is reversible. This time lasts three months, beginning with the date of the announcement and ending with the child's birth if she is pregnant. During the *iddah*, the husband may annul the divorce at any moment. Such renunciation may be spoken or implied.

**Hasan:** Under this permitted form, three announcements are made during three consecutive *tuhrs*, the 3 successive times outside her wife's menstrual cycle. Each of these utterances should be made during a moment of pureness when no intercourse had occurred. *Talaq* becomes irrevocable when the last declaration is made. In between these three successive menstrual cycles of the wife, the husband has the option to revoke the divorce. From the pronouncement of this form of *Talaq*, the spouses separate for the three menstrual cycles. The husband gets three chances to restore the marriage over the period of these three months. But

<sup>29</sup> Ibn Qudamah, *al-Mughni* 96 (Cairo 1376 A.M.)

<sup>30</sup> Chand Bibi Badesha v. Badesha Balwant (1969) 62 Bom LR 866



when the husband for the third time enunciates the divorce ritual, this acts in law as a definitive and irrevocable breakdown of marital ties. The marriage is terminated, sexual relations become illegal and the *iddah* period starts. Re-marriage between the couple is prohibited except if the wife legally marries another person and goes through another divorce, only after this can the couple remarry.<sup>31</sup>

***Talaq-al-biddat*:** This practice originated during the second century of Islam when Omayyad rulers discovered that the constraints set by the prophet Muhammad (PBUH) on the convenience of denunciation, clashed with their indulging of capriciousness and sought an exemption from the rigidity of law. It should be remembered that it was not Islam but Omayyad procedures that gave this form of divorce legitimacy. As a result, *Talaq-al-biddat* is not a part of Islam. Fyzee calls such *Talaq* "absurd and unfair," and believes that the right response ought to be to abolish it through legislation.<sup>32</sup>

This form is also called the triple *Talaq*, three declarations are given in a consecutive *tuhr* in this form, in a single sentence, or in three continuous phrases. Such a *Talaq* is sinful, under Hanafi law, but not in Ithna Ashari or Fatimid law.<sup>33</sup> Triple *Talaq* has now been amended by the law as unconstitutional after the case of Shayara Bano v Union of India.<sup>34</sup> Supreme Court made this practice of *Talaq-e -biddat* as a criminal act, punishable with three years of imprisonment.

**A single irrevocable declaration:** Another type of rejected divorce is a single, irreversible declaration made any time during or after the time of *tuhr*.<sup>35</sup> This form, also known as *Talaq-al-bain*, can be provided in writing. A 'bill of divorcement' takes effect instantly and dissolves the marital bond. As a result, in *Ahsan* form, divorce is complete upon the expiration of the *iddah*. The divorce is finalized on the third announcement in the *Hasan* form. The divorce is effective under the *Talaq-al-biddat* from the time the divorce is declared or executed in writing as a *Talaqnama*.

## SOME NON-PREVALENT FORMS OF DIVORCE

<sup>31</sup> Faiz Badruddin Tayabji, Muslim Law Ss. 126&127 at 146-147(1968).

<sup>32</sup> Asaf A.A. Fayzee, Outlines of Mohammedan Law 152(1974).

<sup>33</sup> Cadi Numan, Daa'im II S. 978

<sup>34</sup> Shayara Bano Vs Union of India and Ors. (2017) 9 SCC 1

<sup>35</sup> Sheikh Fazlur Rahman v. Mst. Aisha (1929) 8 Pat 690.

**Ila (Vow of Continenence):** Although this type of divorce is described in Section 2 of the Shariat Act of 1937<sup>36</sup>, it is extremely unusual in India and so has no real relevance. In *Ila*, the husband promises not to have sexual relations with his wife for four months or longer. Although the husband may rescind this vow by resuming married life. The marriage is terminated without legal procedure after four months under Hanafi law but in Ithna Ashari and Shafii laws, where judicial actions are required. In India, this format is no longer used.

**Zihar (injurious assimilation):** The Shariat Act, 1937<sup>37</sup> also acknowledges a wife's ability to divorce based on *Zihar*, it's a type of incipient divorce. Here, the husband vows that his wife is like his mother, this comparison of the wife directly to his mother, initiates divorce. If he wishes to rescind this proclamation, he must make restitution or fast for a specified length of time. Following the oath, the woman has the right to go to court and seek divorce or return of conjugal rights on exculpation.

## DIVORCE BY WIFE

**Talaq-e-tafwid (delegated divorce):** Each Muslim woman has the option to include her right to divorce in the marital agreement at the time of marriage. This is known as *Talaq-e-tafwid*, delegation of divorce. *Tafwid* is classified into three types: (i) *Ikhtiyar* (giving her the authority to *Talaq* herself), (ii) *Amr bi-yad* (leaving the matter in her own hands), and (iii) *Mashia* (providing her with the ability to *Talaq* and giving her option to the decision). Considering this, it boils down to one thing, the spouses have the opportunity to take their own decisions. However, this right of the wife to declare divorce is not absolute, a mere occurrence of a circumstance is an insufficient ground. A formal declaration of divorce must be made, either to the spouse or in the presence of others, the wife must explicitly show the facts that entitled her to use her choice, as well as the fact that she did so.<sup>38</sup> This type of delegated divorce is one of the most powerful tools in a Muslim wife's arsenal for obtaining her liberty even without the participation of a court, and it is very popular in India.

**Khula (redemption):** Regardless of whether a provision is included in the marriage contract, every Muslim wife has the right to *Khula*, which shares the same features as a man's right to *Talaq*. The freedom to divorce that Islam grants women is very liberating, especially during the age when oppressing women was widely popular. A wife who is subjectively decisive

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<sup>36</sup> Shariat Act, 1937, s. 2

<sup>37</sup> *ibid*

<sup>38</sup> *Mirjan Ali v. (Mst.) Maimuna Bibi AIR 1949 Ass 14.*

that she can no longer live with her husband must simply inform him that she wants to divorce him. He may try to persuade and reconcile with the wife, but he cannot compel her to reside. The one thing he may ask of his wife is that she pardon her dower, which, in the case of a *Talaq* divorce, must be paid. If the woman accepts and the husband gently relents, there will be a *khula*, which signifies a divorce at the wife's request. In contrast to the man who pronounces *Talaq*, a woman is obliged to go to court for a declaration of *khula*, if the husband attempts to retain marital connection against the wife's desire, she doesn't need to provide any grounds as to why she wants to divorce.

***Mubara'at* (mutual freeing):** The spouses split from the married relationship on their subjective satisfaction after expending the means of conciliation and arbitration. Not only this but they can also jointly conclude that they are unable to stay together and therefore part with common agreement. *Mubara'at* is the mutual permission of husband and wife to dissolve their marriage, it means to 'release.' In this method, a couple can dissolve their marriage extrajudicially on commonly agreed grounds. This notion, whose parent law is the Sharia, was included in the Special Marriage Act of India in 1954<sup>39</sup> and the Hindu Marriage Act in 1956<sup>40</sup>.

***Faskh* (judicial rescission):** In addition to the various kinds of divorce available to husband and wife, the court may intercede and decree the marriage to be dissolved under specific circumstances. Although Islam does not approve of courts interfering in the sacred union of husband and wife, under some dire circumstances, a *qadi* or judge may dissolve the marriage. The term '*faskh*' refers to an annulment or repudiation, it refers to the Muslim *qadi*'s authority to dissolve a marriage at the request of the woman. It is described as "the judicial separation or revocation of a marriage contract." The law of *faskh* is based on Quranic rulings and Prophetic teachings. The Quran commands "If you are concerned about a schism between them (the man and wife), appoint an arbitration from his tribe and an arbitrator from her tribe. If they want to change, Allah will unite them."<sup>41</sup>

## RECENT CASES ON DIVORCE LAWS

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<sup>39</sup> Special Marriage Act, 1954

<sup>40</sup> Hindu Marriage Act, 1956

<sup>41</sup> Mahammad bin Ismail Bukhari, *al- Sahih*

The developments that have taken place in recent years have affected the future of these personal laws drastically. Even though developments are often met with criticism, the dynamic law of the country provides what is needed in the society of today.



**Shayara Bano v. Union of India, (2017) 9 SCC 1<sup>42</sup>:** The constitutionality of the concept of triple *Talaq* that is practiced in society was challenged. By a 3:2 majority, this practice was held unconstitutional and the offender will be held liable. This practice of *Talaq-al-biddat* and instantaneous *Talaq* which was prevalent among a group of Muslims, was held unlawful by the court.

**Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 SCC 556<sup>43</sup>:** In this case, the divorce was done by the triple *Talaq* system. The issue that was raised was the maintenance was applied to be claimed under the Code of Criminal Procedure and not under personal law. The court held that a Muslim woman is entitled to be maintained by the spouse but only during the *iddah* period.

**Danial Latifi v. Union of India, (2001) 7 SCC 740<sup>44</sup>:** The matter of payment of maintenance during the *iddah* period was dwelled upon again in this case. When the act, The Muslim Women (Protection of Rights on Divorce) Act<sup>45</sup>, was challenged, and alleged that it violated articles 14<sup>46</sup> and 21<sup>47</sup> of the Constitution of India. The court held up the act and dismissed it because it did not violate any rights.

**Joseph Shine v. Union of India, (2019) 3 SCC 39<sup>48</sup>:** Under this case, the offense of adultery was decriminalized, but it remains a ground for divorce. The section of the Indian Penal Code that criminalized it, section 497<sup>49</sup> was struck down but divorce can be sought on this ground.

**Balram Prajapati v. Susheela Bai, 2003 SCC OnLine MP 886<sup>50</sup>:** Mental cruelty as the ground was affirmed by the court. The husband has sought divorce on the ground that the wife was aggressive towards his family and him, and the court granted a divorce.

## CONCLUSION

By the detailed analysis of the rights of women in divorce, it is most prevalent that as society moves forward and the law progresses as per its needs, women are being given their rights.

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<sup>42</sup> *Shayara Bano v. Union of India*, (2017) 9 SCC 1

<sup>43</sup> *Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2 SCC 556

<sup>44</sup> *Danial Latifi v. Union of India*, (2001) 7 SCC 740

<sup>45</sup> The Muslim Women (Protection of Rights on Divorce) Act, 1986

<sup>46</sup> The Indian Constitution, art 14

<sup>47</sup> The Indian Constitution, art 21

<sup>48</sup> *Joseph Shine v. Union of India*, (2019) 3 SCC 39

<sup>49</sup> Indian Penal Code, 1860, s. 497

<sup>50</sup> *Balram Prajapati v. Susheela Bai*, 2003 SCC OnLine MP 886

This comparative study showed how even though the concept of divorce lacked in Hinduism, this was rectified by the introduction of the Hindu Marriage Act, 1956, and other provisions. This inclusion and the innovative practice of triple talaq being held unconstitutional by the Indian judiciary, we look forward to a better society that does not deprive women of their rights. The rights that are provided for women under different Personal Laws are not too contrasting in nature. The interference of modern laws in the religion of Hinduism has widened the scope of the concept of divorce given in the scriptures. The laws and rights of women under Islam are comparatively vaster and more applicable in society today. The Hindu Marriage Act introduced rights for women during and after the process of divorce that were essential for Hindu women. Therefore, overall, we can witness society becoming more progressive and ready for the future.

