



LEGAL ASPECTS OF MARRIAGE AND DIVORCE IN INDIA: A COMPARATIVE VIEW ACROSS RELIGION

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INTRODUCTION

India is a country where multiple religions coexist, and this diversity is reflected in its laws. Unlike many nations that follow a uniform family law system, India permits different religious communities to regulate matters like marriage, divorce, maintenance, and inheritance according to their personal laws. These laws derive from religious scriptures, customs, and specific statutes enacted over time.

The legal framework governing marriage and divorce in India is deeply influenced by religious doctrines. Hindus, Muslims, Christians, Parsis, and others follow different rules, leading to a complex and often unequal treatment in matrimonial matters. While the Special Marriage Act, 1954 (SMA) provides a secular alternative, it remains underutilised due to social stigma and procedural hurdles. This article undertakes a comparative analysis of the legal aspects of marriage and divorce across major religions in India, highlighting key statutes, judicial trends, and the ongoing debate around the Uniform Civil Code (UCC).

LEGAL FRAMEWORK OF MARRIAGE IN INDIA

Hindu Law: The Hindu Marriage Act, 1955, applies to Hindus, Buddhists, Jains, and Sikhs. It treats marriage as a sacrament rather than a contract. Validity depends on conditions such as monogamy, mental capacity, and absence of prohibited relationships. Ceremonies like Saptapadi (seven steps) are essential for solemnisation.¹

Muslim Law: Muslim marriage, or nikah, is considered a civil contract. It requires an offer (ijab), acceptance (qubul), and consideration (mehr). There is no specific statutory law for

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¹ Hindu Marriage Act 1955, s 7.

Muslim marriages, although the Muslim Personal Law (Shariat) Application Act, 1937, governs various aspects indirectly.²

Christian Law: Christian marriages are governed by the Indian Christian Marriage Act, 1872. The law mandates that marriages must be solemnised by a licensed minister or priest and registered accordingly. The age of marriage is 18 for women and 21 for men.³

Parsi Law: Parsi marriages are governed by the Parsi Marriage and Divorce Act, 1936. The law requires religious ceremonies, including the ashirvad by a priest, and registration before a Parsi Marriage Registrar.⁴

Special Marriage Act, 1954: This secular statute allows any two individuals, regardless of religion, to marry without renouncing their faith. It also provides legal protection for interfaith couples. A 30-day public notice is required, which often invites social opposition.⁵

GROUND AND PROCEDURES FOR DIVORCE

Hindu Law: Under Section 13 of the Hindu Marriage Act, 1955, grounds for divorce include adultery, cruelty, desertion, mental disorder, conversion, and renunciation. Section 13B allows for a mutual consent divorce.⁶

Muslim Law: Muslim divorce is broadly classified into –

Talaq (by husband): Talaq-e-Ahsan, Hasan, and (now banned) Talaq-e-Biddat.

Talaq-e-Tafweez: Delegated divorce by wife.

Judicial divorce (Faskh): Granted by a qazi or court.

The Dissolution of Muslim Marriages Act, 1939, allows Muslim women to obtain a divorce under several grounds.⁷ The Supreme Court in Shayara Bano v. Union of India declared Triple Talaq unconstitutional in 2017.⁸

² Muslim Personal Law (Shariat) Application Act 1937.

³ Indian Christian Marriage Act 1872, ss 5–19.

⁴ Parsi Marriage and Divorce Act 1936, s 6.

⁵ Special Marriage Act 1954, ss 4, 5, 6.

⁶ Hindu Marriage Act 1955, ss 13, 13B.

⁷ Dissolution of Muslim Marriages Act 1939, s 2.

⁸ Shayara Bano v Union of India (2017) 9 SCC 1.

Christian Law: The Indian Divorce Act, 1869, as amended in 2001, provides grounds like adultery, cruelty, desertion, and conversion. Mutual consent divorce was recognised after the 2001 amendment.⁹

Parsi Law: The Parsi Marriage and Divorce Act, 1936, allows divorce on traditional fault grounds: adultery, cruelty, desertion, non-consummation, and insanity. The Parsi Chief Matrimonial Court handles these cases.¹⁰

Special Marriage Act: Divorce under Section 27 of the Special Marriage Act aligns closely with the Hindu Marriage Act. Grounds include adultery, desertion, cruelty, mental disorder, and mutual consent.¹¹

COMPARATIVE ANALYSIS OF PERSONAL LAWS

The legal approach to marriage and divorce in India varies significantly across religions, shaped by distinct personal laws and religious traditions.

Nature of Marriage –

Hindu: A sacrament.

Muslim: A civil contract.

Christian: A religious sacrament.

Parsi: A mix of custom and civil process.

Special Marriage Act (SMA): Purely civil contract.

Applicability –

Hindu: Hindus, Buddhists, Jains, Sikhs.

Muslim: Muslims (Sunni & Shia).

Christian: Indian Christians.

⁹ Indian Divorce Act 1869, amended by Act 51 of 2001.

¹⁰ Parsi Marriage and Divorce Act 1936, ss 32–34.

¹¹ Special Marriage Act 1954, s 27.

Parsi: Parsis only.

SMA: All Indian citizens, irrespective of religion.

Registration –

Hindu & Muslim: Optional.

Christian, Parsi & SMA: Mandatory.

Consent: All require free consent, though Muslim law stresses explicit consent.

Divorce Grounds –

Hindu, Christian, Parsi, SMA: Fault-based + mutual consent.

Muslim: Talaq (husband), Tafweez/Faskh (wife), based on custom and Shariat.

Codification –

Hindu, Christian, Parsi, SMA: Fully codified.

Muslim: Partially codified; largely based on customary law.

Gender Equality –

- SMA is the most progressive.
- Muslim law still allows polygamy and gives unilateral divorce power to men (though Triple Talaq is now illegal).

Muslim personal law remains uncoded, leading to inconsistencies. Hindu and Christian laws are more structured but rooted in traditional values. SMA provides a uniform civil framework, but is avoided due to the 30-day notice requirement, which poses a threat to interfaith couples.¹²

THE UNIFORM CIVIL CODE (UCC) DEBATE

The Uniform Civil Code, mentioned under Article 44 of the Constitution, aims to replace personal laws with a common code applicable to all. However, it remains a contentious issue.

¹² Law Commission of India, Consultation Paper on Reform of Family Law (2018).

Arguments For UCC –

- Promotes gender equality.
- Reduces discrimination in personal laws.
- Reinforces secularism.

Arguments Against UCC –

- May undermine cultural autonomy.
- Risks majoritarian imposition.
- Requires careful balancing of diverse religious sentiments.

In *Sarla Mudgal v. Union of India*, the Supreme Court observed the urgent need for UCC to curb misuse of conversion for polygamy.¹³ In *Jose Paulo Coutinho v. State of Goa*, the Court praised Goa for following a uniform family law irrespective of religion.¹⁴

JUDICIAL TRENDS AND KEY CASES

Shayara Bano v. Union of India (2017): Declared Triple Talaq unconstitutional as arbitrary and violative of Article 14.¹⁵

Sarla Mudgal v. Union of India (1995): Conversion to Islam for second marriage held invalid.¹⁶

Danial Latifi v. Union of India (2001): Interpreted the Shah Bano ruling and upheld maintenance for Muslim women under Section 125 CrPC.¹⁷

Joseph Shine v. Union of India (2018): Decriminalised adultery under Section 497 IPC.¹⁸

Amardeep Singh v. Harveen Kaur (2017): Waived cooling-off period in mutual consent divorce under HMA.¹⁹

¹³ *Sarla Mudgal v Union of India* (1995) 3 SCC 635.

¹⁴ *Jose Paulo Coutinho v State of Goa* (2019) 16 SCC 601.

¹⁵ *Shayara Bano v Union of India* (2017) 9 SCC 1.

¹⁶ *Sarla Mudgal v Union of India* (1995) 3 SCC 635.

¹⁷ *Danial Latifi v Union of India* (2001) 7 SCC 740.

¹⁸ *Joseph Shine v Union of India* (2018) 2 SCC 189.

¹⁹ *Amardeep Singh v Harveen Kaur* (2017) 8 SCC 746.

CONCLUSION

India's personal law regime reflects its religious and cultural diversity, but it also gives rise to legal inconsistencies and unequal protections. While efforts have been made to reform personal laws, especially regarding gender justice, much remains to be done. The growing acceptance of mutual consent divorce shows a shift toward individual autonomy over tradition. However, procedural safeguards, codification, and judicial oversight vary significantly across religions. The Special Marriage Act stands as a viable model for a future Uniform Civil Code, though its implementation needs strengthening. Reforms must carefully balance religious freedom, individual rights, and constitutional values, especially gender equality and dignity.