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# **CRITICAL ANALYSIS OF MATRIMONIAL REMEDIES UNDER HINDU AND MUSLIM LAWS**

AUTHORED BY: NAINA SINGH & DOLA GOKUL SAI REDDY

## **ABSTRACT**

Marriage is often considered a sacred bond in Hindus and a legal contract in Muslim law as it brings together rights, responsibility, and conflicts. The quest for justice becomes dominant when this bond is broken or strained. In India, the path of resolving marital disputes is influenced by various religious traditions, including the laws that are offered by Hindus and Muslims laws for seeking matrimonial remedies. Matrimonial remedies emerge as a beacon of hope, offering tailored solutions to resolve conflicts and restore the parties' lost harmony. Hindu law, largely codified and uniform, offers a structured legal path, while Muslim law, rooted in the principles of Sharia, provides a flexible yet complex framework for addressing marital conflicts. Every system reflects the unique cultural and religious values that have shaped them, but this divergence also leads to significant differences in how matrimonial remedies are accessed and administered.

This paper aims to critically analyze the legal provisions and judicial decisions governing matrimonial remedies under Hindu and Muslim law in India. Through a comparative analysis, it seeks to identify the key differences between the matrimonial remedies under Hindu marriage and Muslim Marriage. Additionally, it provides the impact of matrimonial remedies under both laws, particularly focusing on women and marginalized communities. This paper also aims to provide insights into the effectiveness and fairness of matrimonial remedies in ensuring justice and equality within the societal context.

By the end of the paper, the readers will be able to understand the key differences between matrimonial remedies that are present under Hindu Law and Muslim Law and will also be able to deeply understand the remedies that are available under both laws and whether it is effective in nature or not.

### **Keywords**

**Matrimonial remedies, marriage, Hindu laws, Muslim laws, comparative analysis**

## **INTRODUCTION**

Marriage is a significant institution in both Hindu and Muslim traditions symbolizing a sacred bond or a legal contract that brings rights, responsibilities and potential conflicts. In India the resolution of marital disputes is influenced by the religious traditions of Hinduism and Islam which offer different provisions through Hindu and Muslim laws respectively to seek matrimonial remedies. Matrimonial remedies seek as a ray of hope for the people to resolve the conflicts and provide solutions to resolve such conflicts and restore love and affection between the parties. Hindu Law, which is largely codified offers structured matrimonial remedies. Whereas Muslim law on the other hand is deeply rooted with the principles of sharia which provides more of a flexible yet complex framework to resolve marital conflicts. This paper aims to undertake a critical analysis of the legal provisions and judicial decisions regarding the matrimonial remedies under Muslim and Hindu marriages. Furthermore, this paper will also explore the impact of matrimonial remedies under both the laws, with a particular focus on women and marginalized communities. In addition, this paper also lays down the various insights into the effectiveness and fairness of matrimonial remedies available under Hindu and Muslim Laws. Ultimately, this research paper seeks to shed light on the accessibility and effectiveness of these remedies, particularly in addressing the needs and concerns of women and marginalized communities. This paper also aims to identify the gaps within the current legal framework and suggests potential techniques for improving the inclusivity and fairness of matrimonial remedies under both the laws.

## **RESEARCH METHODOLOGY**

This research papers adopts a combination of two methods that are descriptive method and analytical method to critically analyze the legal provisions present in both the acts under Hindu Marriage and Muslim Marriage law and analyze the various judicial decisions regarding matrimonial remedies under both the laws. Along with that in this paper the author will also adopt the Doctrinal research method to delve into the complexities of these remedies with particular focus on women and marginalized communities. This method will also be used to analyze primary legal sources such as statutes, case laws, and legal commentaries offering a deep-rooted understanding of the existing legal framework. These sources provide additional insights into the real-world application of matrimonial remedies and the socio-legal challenges faced by women and the marginalized communities in seeking justice.

## **RESEARCH PROBLEM**

The current legal framework for matrimonial remedies under Hindu and Muslim law in India is intricate, creating confusion and uncertainty for those seeking relief. Disparities in these laws can lead to unequal treatment, particularly affecting women and marginalized communities. A critical evaluation is needed to enhance social justice and gender equality through reform. Hence, present research problem conceived has been titled as “Comparative analysis of Matrimonial remedies under Muslim and Hindu laws”.

## **RESEARCH OBJECTIVES**

The objectives of the present study are:

1. To critically analyze the legal provisions and judicial decisions governing matrimonial remedies under Hindu and Muslim law in India.
2. To identify the key differences in the matrimonial remedies available under both laws and their impact on the rights and interests of individual seeking remedies.
3. To evaluate the impact of matrimonial remedies under both the laws on the social and economic well-being of individuals, particularly women and marginalized communities.

## **MATRIMONIAL REMEDIES AVAILABLE UNDER HINDU LAW**

Under the Hindu Marriage act 1955 there are five types of matrimonial remedies which are available these are Restitution of conjugal rights (section 9); Judicial Separation (section 10), For void marriages (section 11); Voidable marriages for nullity of legally irregular marriages (section 12) and Divorce (section 13).

### **1. Restitution of conjugal rights**

Section 9 of the Hindu marriage act states that When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.<sup>1</sup> Hence, it simply means that the person who has withdrawn from society without any reasonable excuse shall have to prove his/her withdrawal. The basic ingredient of this provisions is:

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<sup>1</sup> Hindu marriage act,1955

- The withdraw or the respondent from the company of the petitioner.
- Such withdrawal is without any lawful ground.
- The court must be satisfied with the statements made in the petition.

The basic rule of this section is that the court can only grant this decree for a restitution of conjugal rights after either spouse has abandoned the company of the other spouse. In *Sushila bai vs prem Narayana* (1985), the wife sought restitution of conjugal rights after her husband had deserted her. The court granted her request, stating that if a spouse has a valid reason for withdrawing from the marital relationship, it can serve as a defense against these provisions.<sup>2</sup>

## 2. Judicial separation

Section 10 of the HMU allow either spouse to file for judicial separation on special grounds for divorce, as outlined in section 13 of the Hindu marriage act. While traditional English law cites adultery, cruelty and desertion as grounds, the Hindu marriage act treats desertion and cruelty as reasons for judicial separation but not for divorce. In *Subbarama Reddiar v. sakaswathi Ammal* (1966), the madras high court thoroughly examined judicial separation on the grounds of adultery. The court noted that under section 13 of the Hindu marriage act,1955, judicial separation can be granted if the spouse seeking it proves the other spouse's adulterous relationship.<sup>3</sup> Wherein, in *Rohini Kumari vs Narendra singh* (1971), the supreme court ruled that if a spouse deserts their partner, the other spouse can file for the judicial separation if they don't wish to live together. The court also held that after judicial separation wife is entitled to seek maintenance under both the Hindu Marriage act and under Hindu Adoptions and Maintenance Act.<sup>4</sup>

## 3. For Void marriages

Under Hindu marriage act,1955 a marriage can be declared void on the grounds -

- Bigamy: if either party has a living spouse at the time of the marriage.
- Prohibited degrees of relationship- a marriage between parties who are within prohibited degrees of relationship is void unless a custom permits such marriages.

<sup>2</sup> *Sushila Bai v. Prem Narayana*, A.I.R. 1985 M.P. 123.

<sup>3</sup> *Subbarama Reddiar v. Sakaswathi Ammal*, A.I.R. 1967 Mad. 85.

<sup>4</sup> *Rohini Kumari v. Narendra Singh*, A.I.R. 1972 S.C. 459.

- Sapinda Relationship: Marriages between parties who are “sapindas” are also void unless their customs permit them.

In the case of Yamunabai Anantrao Adhav vs Anantrao Shivram Adhav (1988) the court held that a marriage solemnized while one of the parties had a living spouse is void under section 11 of the Hindu Marriage act,1955 as it violates the conditions of monogamy under section 5 (i) of the act.<sup>5</sup>

#### 4. Voidable marriages for nullity of legally irregular marriages.

A voidable marriage is considered valid until it is annulled by a decree of nullity. The grounds for annulling avoidable marriage under section 12 of the Hindu Marriage Act,1955 include:

- Impotency: If either party is impotent and unable to consummate the marriage
- Unsound Mind: If either party was incapable of giving valid consent due to unsoundness of mind or was suffering from a mental disorder of such a kind or to such an extent as to be unfit for marriage and procreation of children.
- Force or fraud: If the consent of the petitioner was obtained by force or fraud.
- Pregnancy: if at the time of the marriage the women is pregnant then the marriage will result to be void.

#### 5. Divorce

Divorce under Hindu law, primarily governed by the Hindu Marriage Act 1955 allows for both mutual consent and contested divorce. Section 13 outlines grounds for divorce, including cruelty,adultery,desertion and conversion.Notably,a couple can obtain a mutual consent divorce after living separately for a year, highlighting the law’s acknowledgment of irrevitable breakdown of marriage.

In the case of Laxmibai ward vs Pramod (2009), the wife contested the mutual consent divorce decree, claiming her signatures were fraudulent obtained and that the couple had not been separated for a year or more. The Bombay High court ruled that the lower courts must ensure, before granting a divorce by mutual consent, the consent is genuine and not obtained through force, coercion, undue influence or fraud.<sup>6</sup>

<sup>5</sup> Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav, A.I.R. 1988 S.C. 644.

<sup>6</sup> Laxmibai Ward v. Pramod, (2009) Bom HC.

## **MATRIMONIAL REMEDIES AVAILABLE UNDER MUSLIM LAW**

Under the muslim law there are the following remedies available which are Talaq, Talaq-ul-biddat, Talaq by the wife, Divorce by mutual consent, By the death of the husband or wife

### **1. Talaq (Divorce by Husband)**

Talaq means the dissolution of marriage in Islamic law. Under Hanafi law, no specific phrase is needed for talaq. In Ithna Ashari law, talaq must be pronounced in Arabic, in front of two male witnesses. The wife's presence isn't required, but she must be informed to observe iddat and claim dower.<sup>7</sup>

There are Four modes available before a husband for dissolving a marriage.

Further it is divided into two parts:

- Ahsan - The husband divorces his wife during her period of purity (tuhr), avoiding intercourse and the divorce remains revocable during the iddat and vice-versa
- Hasan- The husband pronounces divorce three times during three periods of tuhr.
- The first two are revocable, but after the third it becomes final.

### **2. Talaq-ul-biddat**

- Ila (Vow of Continence)- A husband who is of sound mind and has reached the age of majority is said to have made an Ila (Vow of Continence) when he vows in the name of God that he would not engage in sexual relations with his wife and leaves her to observe iddat. If the husband has another sexual relationship while the wife is observing the iddat period, Ila will be cancelled. It is important to remember that India does not practise ila.
- Zihar- To use this method of dissolving a marriage, a husband must be of sound mind and older than eighteen. The wife has the right to refuse to have sex with him if he makes any inappropriate comparisons between her and his mother or any other female. Such a rejection is permissible up until the point at which he has atoned for the legal penance. Zihar can dissolve a muta marriage, which is common among Shias and accepts no other type of divorce.

### **3. Talaq by the wife**

It is the only method through which a wife can initiate a divorce, provided that

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<sup>7</sup> Abdulaziz Sachedina, ed., *Islamic Family Law: Theory and Practice* 123 (Oxford Univ. Press 2013).

the husband delegates this power to her. This delegation is formalized through an agreement made either before or after marriage. The agreement specifies conditions under which the wife may divorce her husband, such as if the husband marries a second wife or fails to maintain her for a specified period. If these conditions are breached, the wife can dissolve the marriage. However, the delegation of this power does not strip the husband of his own right to pronounce talaq.

#### 4. Divorce by mutual consent

- a. Khula- Khula refers to the act of a husband relinquishing his rights over his wife, symbolizing the dissolution of marriage through compensation given by the wife, typically from her own property or dower. It is a form of mutual divorce initiated by the wife, in which she offers consideration to the husband in exchange for ending the marriage.

Essentials of Khula:

- The wife must initiate the offer.
- The husband must accept the offer along with the agreed compensation.
- The iddat (waiting period) must be observed.
- In Shia law, the husband cannot revoke the divorce once accepted, but the wife can reclaim the compensation during the iddat period.<sup>8</sup>

- b. Mubarat

It represents a mutual release from the bonds of marriage. The most important component is that in order to dissolve a marriage, both partners must give their consent. In this divorce mode: Both sides are able to make an offer. The divorce becomes final when the offer is accepted. Iddat is required. If a couple is unable to maintain their marriage through mubarat, they may choose to dissolve it in accordance with Shia law. Judicial separation is the final method of dissolution of marriage indicated in the above table.

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<sup>8</sup> S. M. Zafar, Muslim Law of Divorce (2008).

### 5. By the death of the husband or wife

- Lian occurs when a husband falsely accuses his wife of adultery. The wife can file for divorce on this ground, but the marriage doesn't end automatically. The court must pass a dissolution decree, and this method applies only to valid (Sahih) marriages. The husband can retract the accusation before the trial ends.
- Faskh allows the wife to approach a Qazi for divorce if she and her husband can't live together. Grounds include the husband's absence, failure to provide maintenance, imprisonment, impotence, insanity, or cruelty.
- Talaqnama refers to a written form of divorce, executed by the husband, without the wife's presence or the need for signatures from a Qazi or the wife's father.

### Impact of Social Norms and Stigma on Access to Matrimonial Remedies

Matrimonial remedies under Hindu and Muslim law offers legal recourse to individuals seeking to resolve marital conflicts, but societal norms and stigma significantly impact how these remedies are accessed, especially by women and marginalized communities. In India, where traditional and cultural norms often dictate personal lives, the application of matrimonial remedies is not immune to the influence of these entrenched societal values.

- Gendered expectations and marriage
- Role of community pressure and family
- Judicial Bias and societal Norms
- Impact on Marginalized Communities

Women from lower socio-economic backgrounds and those from tribal communities face multiple layers of discrimination for these women, the legal system is often inaccessible due to financial constraints, illiteracy, and geographical isolation. Additionally, the stigma attached to divorce is even more severe in these situations. Social norms and stigma can significantly influence an individual's access to matrimonial remedies. In many societies, social norms dictate the expectations and behaviors surrounding marriage and divorce, and cultural and religious beliefs can often influence these norms.

Social norms can affect an individual's decision to seek matrimonial remedies such as divorce or separation due to the stigma associated with these actions. For example,

in some societies, divorce is viewed as a shameful or taboo act, and individuals may be reluctant to seek a divorce due to fear of social ostracism or familial disapproval.<sup>9</sup>

Additionally, social norms can lead to individual's ability to access matrimonial remedies due to discriminatory and marginalized environments. For instances, individuals with mental illness face discrimination in accessing matrimonial remedies due to societal stigma and stereotypes.

### **Challenges Faced by Interfaith Marriages: Legal and Social Dimensions**

Interfaith marriages face a lot of discrimination in our country they have to go through a lot of legal and social challenges. Legally, interfaith couples may encounter difficulties when registering their marriage or obtaining official documents, as different religions have different laws and procedures governing marriage in addition, they may face opposition from their families and communities, who may not support them due to cultural and religious differences. Socially, interfaith couples may experience discrimination, prejudice, and social ostracism.

Under legal Dimensions, here are the following challenges :

- Different personal laws: Under Hindu law, marriage is considered sacramental, and the law applies to Hindus, Buddhists, Jains, and Sikhs. Interfaith marriages involving Hindus are not recognized unless they are converted to marrying under the special marriage law. In Muslim laws, it is governed by the Shariat, which requires that both parties be Muslim for the marriages to be valid. Conversion to Islam is often necessary for a non-muslim to marry under this law.
- Maintenance and custody: Under Hindu law, maintenance is typically awarded under the Hindu Adoption and Maintenance Act 1956. In contrast to Muslim law, maintenance obligations for divorced wives are limited, as seen in the case of Shah Bano, which led to significant legal reforms like the Muslim Women (Protection of Rights on Divorce) Act, 1986.<sup>10</sup>

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<sup>9</sup> Junichiro Ishida, The Role of Social Norms in a Model of Marriage and Divorce, 45 J. Econ. Behav. & Org. 227 (2001).

<sup>10</sup> Mohd. Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 945.

## CONCLUSION

In conclusion, matrimonial remedies under both Hindu and Muslim laws reflect the diverse cultural and legal frameworks governing marriage in India. While the Hindu Marriage Act of 1955 provides structured avenues for seeking restitution, separation, or divorce, Muslim law emphasizes individual rights through various forms of talaq and mutual consent. These remedies not only address personal grievances but also uphold the dignity and rights of individuals within marital relationships. As society evolves, the ongoing discourse surrounding these laws remains crucial to ensuring they meet contemporary needs, promoting justice and equity for all parties involved in the sacred institution of marriage.

