

HINDU LAW - INTRODUCTION**1. WHO IS A HINDU**

HINDU BY BIRTH		HINDU BY CONVERSION	
<i>Both parents Hindu</i>	<i>One parent Hindu</i>	<i>Convert to Hinduism</i>	<i>Re-convert</i>
The child is automatically Hindu	The child has been brought up as a Hindu	Jack converts to Hinduism and becomes Ramesh	Ramesh converts to Christianity, becomes Jack and again converts to Hinduism and becomes Ramesh

2. APPLICATION OF HINDU LAW

APPLIES UPON	NOT APPLICABLE TO
Hindus	Christians
Jains	Jews
Sikhs	Parsis
Buddhists	Muslims
✓ This is the extended application of Hindu law	×

3. TYPES OF HINDU LAW

THE HINDU MARRIAGE ACT	THE HINDU SUCCESSION ACT	THE HINDU ADOPTION AND MAINTENANCE ACT	THE HINDU MINORITY AND GUARDIANSHIP ACT
It contains all the provisions related to conditions of marriage , ceremonies, divorce, custody, maintenance etc.	It contains all the rules related to partition of property and devolution of property upon inheritance etc.	This is the primary rule for adoption containing rules as who can adopt, who can be adopted, who can give in adoption etc.	It contains rule related to custody and guardianship of child, child's property etc.

4. BLOOD RELATIONSHIPS UNDER HINDU LAW

FULL BLOOD	HALF BLOOD	UTERINE BLOOD
Father - SAME	Father - SAME	Father - Different
Mother - SAME	Mother - Different	Mother - SAME

THE HINDU MARRIAGE ACT

1. NATURE OF HINDU MARRIAGE

SACRAMENT	CONTRACT
✓ Hindu marriage is a religious bond between the parties	× Muslim marriage is said to be a contract between the parties

2. CONDITIONS FOR HINDU MARRIAGE

A. Both Hindus

Here, both Hindus means either Hindus, Jains, Sikhs or Buddhists.

GROOM	BRIDE	NATURE OF MARRIAGE
Raj (Hindu)	Seema (Hindu)	✓
Gurpreet (Sikh)	Simran (Sikh)	✓
Achint (Jain)	Annapurna (Buddhist)	✓
Sachin (Hindu)	Harpreet (Sikh)	✓
Rohan (Hindu – JAAT)	Chayvi (Hindu – PUNJABI)	✓ Hindu law allows inter-caste marriages
Samay (Hindu – Kashyap gotra)	Shivani (Hindu – Kashyap gotra)	✓ Sagotra marriage is allowed under Hindu law – The only requirement is both the parties must be Hindus
Abhishek	Sakeena	× For inter-religious marriage, the law is SPECIAL MARRIAGE ACT

B. Monogamy

Monogamy means marrying another person during the existence of a valid marriage

WHAT IS COVERED	WHAT IS NOT COVERED
Marrying another person during marriage	Marriage after death of the spouse
Marrying another during illness/unsoundness of spouse	Marriage after divorce
BIGAMY APPLICABLE	NO BIGAMY

C. Sound Mind

Sound mind for the purpose of marriage means capacity to understand the nature of marriage and to fulfill the obligations attached to marriage and mental fitness for procreation of children.

D. Legal Age

MALES	FEMALES
21 years	18 years

E. Parties Not Within Prohibited Degrees

ANCESTORS	IN-LAWS	BROTHER-SISTER	SOME OTHER CLOSE RELATIONS
Father-Daughter	Father-in-law & Daughter-in-law	Full blood, half blood, uterine blood	Uncle-Niece
Mother-Son	Mother-in-law & Son-in-law	Legitimate as well as illegitimate	Aunt-Nephew
Grandfather-Granddaughter		Adoption also covered	Cousins
Grandmother-Grandson			Brother's wife etc.
<i>Absolute Prohibition</i>			This is subject to <i>customs</i> which must be long-standing and reasonable

F. Parties Not Sapindas of Each-Other

Sapindas means persons made up of same blood and same flesh

FATHER'S SIDE	MOTHER'S SIDE
Persons upto 5 generations	Persons upto 3 generations
To be traced <i>upwards</i> with person of reference as the 1 st degree	

1. TYPES OF HINDU MARRIAGE

VALID MARRIAGE	VOIDABLE MARRIAGE	VOID MARRIAGE
This is a perfectly legal marriage	In this case, one party has an option to avoid the marriage	It is no marriage in the eyes of law – It is a nullity
The parties acquire the status of husband and wife	If the marriage is avoided, it is no marriage; If continued, it is a valid marriage	The parties do not become husband and wife – They are as good as unmarried
All 6 conditions of marriage are satisfied.	The grounds of voidable marriage are- a) Unsoundness of mind b) Child marriage c) Impotency d) Force/fraud e) Pre-marriage pregnancy	The grounds of void marriage are – a) Bigamy b) Marriage within prohibited degrees c) Marriage with sapindas

GROUND OF VOIDABLE MARRIAGE

A. UN SOUNDNESS OF MIND

If either party to marriage is of unsound mind, marital bliss is a remote possibility. Hence, the affected party is allowed to come out of marriage.

B. CHILD MARRIAGE

➤ **Meaning** – Child marriage means a marriage in which either party is a child – the girl is below 18 or the boy is below 21 or both are under-age

➤ **Nature of Child Marriage**

VOID	VOIDABLE
×	✓
Making it void would have affected the rights of several women	It is an avoidable marriage

➤ **Who Can Avoid** – The party who was child at the time of marriage – If both were minors, both have the right to avoid the marriage

➤ **Avoidance – When** – Upon attaining majority

MALES	FEMALES
21 years	18 years

➤ **Avoidance – Till When** – 2 years of attaining majority

MALES	FEMALES
23 years	20 years

➤ **Applicable Law** – The Prohibition of Child Marriage Act, 2006 – It is a secular law which is applicable to persons of all religions.

C. IMPOTENCY

MEANING		OF WHOM		REASON		TEST
Incapacity to produce children	Incapacity to have sexual intercourse	Males	Females	Physical	Mental	The marriage has not yet been consummated – no sexual intercourse has taken place between the parties
× (This is sterility)	✓	✓	✓	✓	✓	

D. FORCE/FRAUD

As shown in movie bala

- Force means physically compelling a person for marriage. For example, on gun point.
- Fraud must relate to a material fact of marriage such as age, health, wealth, marital status, family background, physical appearance, sexual orientation etc.
- ✓ **TIME LIMIT FOR AVOIDANCE OF MARRIAGE** – 1 year from cessation of force or discovery of fraud.

E. PRE-MARRIAGE PREGNANCY OF WIFE

PREGNANCY-WHEN	PREGNANCY - BY WHOM	KNOWLEDGE OF HUSBAND	TIME-LIMIT FOR AVOIDANCE
At the time of marriage	By any man other than the husband	The husband was not aware of such pregnancy at the time of marriage	1 year from marriage

2. LEGITIMACY OF CHILDREN

VALID MARRIAGE	VOIDABLE MARRIAGE	VOID MARRIAGE
The children born out of any such marriage are LEGITIMATE – This is a salutary provision of Hindu law which aims to prevent the <u>bastardization of children</u> .		
Such children inherit property not only from their parents but also from other relations	Such children can inherit property only from their parents and none else.	

NOTE: The children born out of affairs, adultery, prostitution etc. are deemed to be *illegitimate* (They are entitled to inherit property only from their mother and not the father)

3. CEREMONIES FOR HINDU MARRIAGE

- The ceremonies for marriage depends upon the customs and rituals of the parties.
- The law insists only upon one ceremony – *Saptapadi*

SAPTAPADI		
Meaning		When Essential
7 Phere	7 steps after phere	When it is a part of customs of either party. If not, this ceremony is not required
×	✓	

4. REGISTRATION OF HINDU MARRIAGE

- A. *Registration – Whether Optional or Compulsory* – It depends upon the **discretion** of the state government
- B. *Benefits of registration* – It helps to create proof of marriage which prevents hardship to women in particular. Also it helps in preventing child marriage, bigamous marriage, trafficking etc.
- C. *Effect of non-registration*

It affects the nature of marriage – the marriage becomes invalid	It attracts penalty
×	✓

D. *Classical Case – SEEMA V. ASHWANI KUMAR* - The Supreme Court issued directions to the state governments to take steps to make marriage registration compulsory.

5. RESTITUTION OF CONJUGAL RIGHTS

- A. *Meaning* – Marriage is a social institution which is of importance not only to individuals but also to society as a whole. Restitution of conjugal rights is a positive remedy which seeks to bring together the estranged spouses and re-build their broken home.
- B. *Essential Ingredients*

One spouse has withdrawn from the society of the other i.e. abandonment of one spouse by the other		Such withdrawal must be without reasonable cause		There is no fault on the part of the abandoned spouse	
<i>Nature of abandonment</i>		<i>Meaning of reasonable cause</i>		<i>Who can avail the remedy</i>	
PHYSICAL	MENTAL	WHAT IS REASONABLE CAUSE	WHAT IS NOT REASONABLE CAUSE	The spouse who has abandoned the other	The abandoned spouse
✓	✓			×	✓
It means that the spouse is living separately	Even if the parties are living together but one has mentally abandoned the other	Cruelty, extra-marital, abusive etc.	In-laws staying together, financial difficulty, mere fight etc.	The rule of law is that you must go to the court with clean hands	

6. MODES OF SEPARATION UNDER HINDU LAW

JUDICIAL SEPARATION	DIVORCE
This is temporary suspension of marriage	This is the dissolution/end of marriage

7. DIVORCE [SECTION 13]

A. MODES OF DIVORCE

CONTESTED DIVORCE	DIVORCE BY MUTUAL CONSENT	IRRETREIVABLE BREAKDOWN OF MARRIAGE
This is divorce on the ground of fault where one party fights for divorce against the other by proving a particular ground	This is the form of divorce where both the parties are mutually willing to end the marriage amicably	No such ground is mentioned in the Hindu Marriage Act rather this is a judicially developed concept

B. GROUND OF CONTESTED DIVORCE

➤ **Adultery**– It means voluntary sexual intercourse by a spouse with any third person after the marriage. This is said to be the biggest matrimonial offence which is likely to cause deep emotional pain and suffering to the other spouse. Hence, it is a ground of divorce.

NOTE: Though adultery has been decriminalized, it continues to be a ground of divorce.

➤ **Cruelty** – Cruelty can be either physical or even mental. In fact, mental cruelty is now one of the most common grounds for divorce. It includes such conduct on the part of one spouse which causes suffering to the other or which is injurious to his/her life or health. Examples of mental cruelty would include persistent demand for dowry, extra-marital affair, constant neglect and indifference, abusive or disrespectful attitude, lack of sexual intercourse, unilateral decision not to have children etc.

CLASSICAL CASE: Dastane v. Dastane

➤ **Desertion**– It means abandonment of one spouse by the other. However, for desertion to be a ground of divorce, it must continue for a **minimum period of 2 years**. Also, desertion can be either physical or even mental. The test is not that the parties must be living separately rather the real test is that one spouse has abandoned the other mentally i.e. there is no interest in discharge of matrimonial duties, there is no **conjugal affection** left between the parties etc. – This would amount to desertion even if the parties are living under the same roof.

Marriage related

- **Conversion** – Here, conversion means abandonment of Hinduism and embracement of another religion **after formal ceremonies**.
- **Unsoundness of Mind** – Here insanity must be of grave nature – Either it is in incurable form such as schizophrenia or the mental disease is such that the other spouse cannot reasonably be expected to continue with the spouse affected by unsoundness of mind.

UNSOUNDNESS OF MIND	
<i>At the time of marriage</i>	<i>After marriage</i>
Ground for voidable marriage	Ground for divorce

- **Leprosy**– Leprosy means Hansen’s disease which used to be serious skin disorder. It was initially made a ground of divorce because the disease used to be incurable. **However, in 2019, leprosy was removed as a ground of divorce.** It now stands deleted.

Venereal Disease – Venereal disease means disease related to **sexual organs**. The disease must be grave and serious and it must be in communicable form. For example, HIV AIDS

- **Renunciation of World** – This means **sanyas** i.e. where a person abandons the world by entering a religious order.
- **Spouse Not Heard of for 7 Years** – This refers to a case where a spouse is missing for 7 years or more and nothing has been heard about him/her by the near and dear ones.

NOTE:

TOTAL GROUNDS		AVAILABLE TO WHICH SPOUSE		AVAILABLE TO WHICH PARTY	
<i>Earlier</i>	<i>Now</i>	<i>Husband</i>	<i>Wife</i>	<i>Aggrieved Party</i>	<i>Party in default</i>
9	8	✓	✓	✓	×

C. SPECIAL GROUNDS AVAILABLE TO WIFE

4 special grounds of divorce have been granted to the wife. These grounds are over and above the 8 grounds which are available to both husband and wife. One ground which deserves mention is **conviction of husband for a sexual offence committed after marriage.**

D. DIVORCE BY MUTUAL CONSENT

The procedure for divorce by mutual consent is as follows –

- Both the parties have to mutually file a petition for divorce by mutual consent – **1st motion**
- After this, the next 6 months will be dormant – this is called the **COOLING PERIOD** which has been designed to give an opportunity to the parties to re-consider their decision, seek advice from friends and family and explore all possibilities of re-conciliation.
- After the end of 6 months, now again the parties have to approach the court for divorce – **2nd motion**
- Now after **2nd motion, divorce will be granted.**

E. IRRETRIEVABLE BREAKDOWN OF MARRIAGE

- Every marriage rests on the foundation of mutual love, affection, kindness and liking between the spouses. If the marriage has completely broken down in the sense that the parties have reached the point of no return, the marriage is emotionally dead and beyond salvage, then though public interest demands preservation of marriages, individual liberty and justice requires that marriage cannot be a forceful union. Hence, if the court finds that the marriage has broken down beyond repair and there is no possibility of any re-conciliation between the spouses, the court can grant divorce on the ground of irretrievable breakdown even if one spouse is unwilling.

It is to be noted that such ground has not been mentioned in the Hindu Marriage Act rather it has been created by the Supreme Court under **Article 142** under its power to do complete justice.

- The Law Commission in its **217th Report** recommended inclusion of irretrievable breakdown as a ground of divorce

➤ **CLASSICAL CASE: Neelu Kohli v. Naveen Kohli**

F. SOME OTHER FACTS RELATED TO DIVORCE

- Divorce can be applied for only **after 1 year of marriage**. The **exception** to this rule is the case of extreme depravity on part of the other spouse
- In case of petition for divorce, every possible effort will be made to bring about a re-conciliation between the parties and in this regard, **mediation** will play an important role.

8. JUDICIAL SEPARATION

- The grounds for judicial separation are *same as divorce*.
- Also, in a petition for divorce, the court can grant the *alternative relief* of judicial separation.

9. MAINTENANCE

a) *To whom*

WIFE	HUSBAND
✓	✓
The wife can also claim maintenance under Section 125, CrPC and the Hindu Adoption and Maintenance Act.	Even the husband can claim maintenance from wife under the Hindu Marriage Act. He cannot do so other Section 125, CrPC

b) *Till when*

DURING MARRIAGE	AFTER DIVORCE
✓	✓ (Upto re-marriage)

c) *Forms of maintenance*

ALIMONY	MAINTENANCE
It means a lump sum amount paid once (The amount paid to a live-in partner is called <i>palimony</i>)	It means monthly allowance which can be allowed even during proceedings - maintenance <i>pendent lite</i>

10. SOME MISCELLANEOUS FACTS RELATED TO THE HINDU MARRIAGE ACT

PROCEEDINGS IN WHICH COURT	NATURE OF PROCEEDINGS
District Court (Family Courts constituted under the Family Courts Act, 1984)	The proceedings are held <i>in camera</i> (in private)

THE HINDU ADOPTION AND MAINTENANCE ACT

1. WHO CAN ADOPT

MALES		FEMALES				
✓		✓				
<i>Eligibility Conditions</i>						
HINDU	MAJOR	SOUND MIND	MARITAL STATUS			
			Unmarried	Married	Widowed	Divorced
			✓	✓ (The consent of other spouse must be obtained)	✓	✓

2. WHO CAN BE ADOPTED

The child must be a <i>Hindu</i>	<i>Below 15 years</i>	<i>Not married</i>	<i>Not already adopted</i> – A child cannot be given in adoption twice
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3. WHO CAN GIVE IN ADOPTION

PARENTS		OTHER GUARDIANS	
<i>Father</i>	<i>Mother</i>	<i>General Rule</i>	<i>Exception</i>
✓	✓	×	✓

Cases in which the guardian can give the child in adoption

- Where both the parents are **dead**
- Where **parentage of the child is not known**
- Where both the parents have **abandoned** the child
- Where both the parents have **renounced the world**
- Where both the parents have become of **unsound mind**

NOTE: In such cases also, the guardian can give the child in adoption only with the **permission of the court**. Before granting permission, the court will ensure that the adoption is not for money and that the welfare of the child is ensured.

4. SOME OTHER CONDITIONS FOR ADOPTION

LIMIT ON ADOPTION		AGE-GAP	
<i>Adoption of son</i>	<i>Adoption of daughter</i>	<i>Adoption of child of same sex</i>	<i>Adoption of child of opposite sex</i>
A person cannot adopt a son if he already has a son, son's son, son's sons' son	A person cannot adopt a daughter if he already has a daughter or son's daughter	For example, a male adopting a male child. No minimum age gap is mandatory.	For example, a male adopting a female child. A minimum gap of 21 years must be there otherwise the adoption will be VOID

EXAMPLES –

- Mahesh aged 30 years adopts Raju aged 12 years – the adoption is valid
- Rajan aged 25 years adopts Mohini aged 10 years – the adoption is void
- Sandeep aged 40 years adopts Roshni aged 1 year – the adoption is valid
- Sanjana aged 28 years adopts Joy aged 12 years – the adoption is void

5. EFFECTS OF ADOPTION

As soon as adoption is made, all ties of the child in the family of birth are severed	New ties will be created in the family of adoption.
It will be deemed as if the child never took birth in that family	It will be presumed as if the child took birth in this family – An adopted child is a reflection of a natural child

6. NATURE OF ADOPTION

Adoption once made is **final and conclusive**

The adoptive family cannot cancel the adoption	The adopted child cannot renounce the adoptive family and return to family of birth.
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NOTE: No religious ceremony or documentation is required for adoption. Rather what needs to be proved is that the child was actually given and taken in adoption.

HINDU MINORITY AND GUARDIANSHIP ACT

TYPES OF GUARDIANS

NATURAL GUARDIANS	TESTAMENTARY GUARDIANS	STATUTORY GUARDIANS	DE-FACTO GUARDIANS
This means parents – Father and Mother. Primarily the father is the guardian of the child. However, if the father is incapable, unsound etc. then the mother becomes the guardian.	This means guardians appointed by the will	This means guardians appointed by the court	De-facto guardian means that person who on his own assumes the guardianship of the child. For example, where after the death of the parents, the grandmother starts looking after the child

NOTE: Generally, the custody of *child below 5 years* is given to the **MOTHER**

THE HINDU SUCCESSION ACT

- In **2005**, females were made entitled to an equal share in the joint family property upon partition. They became **COPARCENARS** (Coparcenar means a person who is entitled to a share in the joint family property)
- Rules of succession – Division of property upon death of a person

If the deceased had prepared a will , then the division of his property will be as per the will	If a person dies INTESTATE i.e. without making a will, then the division of property will be between class I heirs and class II heirs (if required)	
	CLASS I HEIRS	CLASS II HEIRS
	Mother Widow Children	Father Brother Sister

MUSLIM LAW

1. WHO IS A MUSLIM

<i>Muslim by Birth</i>		<i>Muslim by Conversion</i>	
Both parents muslim – the child is automatically muslim	One parent muslim – the child has been brought up as a muslim	Convert to Islam	Re-convert to Islam

2. TYPES OF MUSLIMS

<i>Shias</i>	<i>Sunnis</i>
Less population in India	If there is any muslim in India, he is automatically presumed to be a sunni – Hanafi Sunni

3. ESSENTIALS OF NIKAH

A. IJB-O-QUBOOL

- Ijb – Offer – by the husband
- Qubool – Acceptance – by the wife
- It results into abd – contract
- Ijb-o-qubool is the central feature of nikah
- It is necessary that ijb-o-qubool must be in the same sitting

<i>Same Sitting</i>	
Parties must be physically present before each other	Offer and acceptance must form part of the same transaction.
×	✓
(Internet and telephonic nikah are permissible)	

B. MEHR

Mehr is a promise made by husband at the time of marriage to pay a fix sum of money, property, dresses, jewellery etc to the wife at the time of divorce or after his death. Mehr is an important legal right of a muslim wife and there cannot be a nikah without mehr. Mehr is given as a sign of respect to the wife.

C. WITNESSES

<i>Shias</i>	<i>Sunnis</i>
×	✓
The witnessed are not required at the time of nikah	2 Male/2 females + 1 male The witnesses must be muslims, bulugh and of sound mind

D. RELIGIOUS CEREMONIES

No religious ceremony is prescribed for nikah under muslim law but generally a qazi is present who recites qalma from Koran.

Non-insistence on religious ceremonies has lent **CONTRACTUAL STATUS** to muslim nikah as opposed to hindu wedding which is considered SACRAMENT.

E. AGE FOR MARRIAGE

<i>Below 7</i>	<i>Between 7-15 years</i>	<i>Above 15 years (Bulugh)</i>
Marriage by child - ×	Marriage by child - ×	Marriage by child - ✓
Marriage by guardian - ×	Marriage by guardian - ✓	a) Under muslim law, children can marry once they attain the age of 15 years b) 15 years has been chosen as the age of marriage because that is the age of puberty i.e. when a person becomes capable of sexual intercourse and procreation. c) However, it is to be noted that in India, the age of marriage is 18 years for females and 21 years for males and any marriage of any person below this age will be treated as a child marriage.
	a) Under muslim law, the guardians can contract the marriage of their children b) This has given birth to the concept of <i>khyar-ul-bulugh</i> — This is an option given to the muslim child whose marriage was contracted during minority by the guardians to avoid that marriage upon attaining puberty. This option is available to both males and females.	

F. NOT WITHIN PROHIBITED DEGREES

For nikah, it is essential that the parties to marriage must not be within prohibited degrees.

The prohibited degrees under muslim law are same as Hindu law.

Exception – Marriage between **cousins** is allowed under muslim law.

Addition – Muslim law recognizes one more prohibited degree – **FOSTERAGE** i.e. relationship through milk – If any child below 2 years is breast-fed by any woman, now she becomes her foster mother and now the prohibited relationship arises.

For example, a muslim cannot marry foster-mother, foster-sister, foster-brother etc.

4. INTER-RELIGIOUS MARRIAGE

<i>Shias</i>	<i>Sunnis</i>	
	FEMALES	MALES
× Shias can marry only muslims	× Sunni females can only marry muslims	✓ Sunni males can perform inter-religious marriage

INTER-RELIGIOUS MARRIAGE BY SUNNI MALES

<i>Kitabia</i>	<i>Non-Kitabia</i>	
Those religions which have their basis in a holy book – Muslims, Jews, Christians	Idol worshippers (Hindus including Jains, Sikhs, Buddhists)	Fire worshippers (Parsis)
✓	×	×

5. MUTA MARRIAGE

<i>Meaning</i>	<i>In Which Sect</i>		<i>Conditions</i>
Muta marriage is a temporary marriage contracted for a specified period. It is said to be a marriage for pleasure	<p>SHIAS ✓</p> <p>Only shias recognize muta marriage</p>	<p>SUNNIS ×</p> <p>For sunnis, this is a disapproved form of marriage</p>	Same conditions as in regular nikah

6. LIMITS OF MARRIAGE UNDER ISLAM

<i>Males</i>	<i>Females</i>
4 Marriages	Only 1 marriage
Muslim men can marry up to 4 times	For muslim women, only one marriage is allowed at a time
POLYGAMY i.e. practice of having more than one wife is permitted under Islam	POLYANDRY i.e. having more than one husband is prohibited

TALAQ UNDER MUSLIM LAW

TYPES OF TALAQ					
<i>Talaq by husband</i>			<i>Talaq by mutual consent</i>		<i>Talaq by wife through court</i>
Talaq-ul-sunnat – Approved form of talaq	Talaq-ul-biddat – Disapproved form of talaq – Triple talaq	Constructive modes of talaq a) Ila b) Zihar	Khula	Mubarrat	The Dissolution of Muslim Marriage Act, 1939

TALAQ BY HUSBAND

TALAQ-UL-SUNNAT

- This is the most approved form of talaq in muslim law.
- Under this mode of talaq, during the period of **tuhr** (the period of purity when a woman is free from menstruation), the husband pronounces talaq to the wife.
- After 1st pronouncement, he will have to refrain from cohabitation and sexual intercourse with the wife.
- Now during 2nd tuhr, the husband has to make 2nd pronouncement.
- In 3rd tuhr, 3rd pronouncement will be made.
- As soon as 3rd pronouncement is made in 3rd tuhr, divorce will become final and irrevocable.
- The approval of this form of talaq stems from the fact that this talaq is revocable till 3rd pronouncement is made by expressly taking it back or by resuming sexual intercourse with wife.

TALAQ-UL-BIDDAT

- This is the disapproved mode of talaq.
- Triple talaq is not recognized in shias. And in sunnis also, only HANAFI SUNNIS recognize this mode of talaq.
- In this talaq, as soon as the husband pronounces talaq three times continuously, talaq becomes final and irrevocable. The sacred marital relationship comes to an end in one stroke.
- The reason for non-acceptance of this mode of talaq is that it gives no opportunity for revocation and invests husband with uncontrolled power of divorcing wife.
- The Supreme Court in **Shayara Bano v. Union of India** held that the practice of talaq-e-biddat is manifestly arbitrary, and therefore, unconstitutional and violative of Article 14 of the Indian Constitution.
- In pursuance of the same, a new law, **The Muslim Women (Protection of Rights on Marriage) Act, 2019** was passed. This law declares that the practice of triple talaq is void and illegal and any Muslim husband who pronounces triple talaq upon his wife shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

ILA

- In this talaq, the husband takes a vow that he will not have sexual intercourse with his wife and then he refrains from sexual acts.
- This vow of abstinence from sexual intercourse clearly reflects disinterest of husband in marriage as healthy and happy sexual life lies at the base of a happy marriage.
- If sexual intercourse does not take place for 4 months after vow, then the divorce becomes final.
- The talaq can be revoked by resuming marital life.

ZIHAR

- In zihar talaq, the husband makes an objectionable sexual comparison of his wife with such a woman with whom he stands in a prohibited degree. For example, his wife, sister, niece etc.
- After such comparison, sexual intercourse between spouses becomes zina i.e. sin and hence, after 4 months of comparison, divorce comes into effect.
- However, divorce can be revoked if the husband performs 'hadd' i.e. releases a slave, feeds 60 people or fasts for 60 days.

TALAQ BY MUTUAL CONSENT

<i>Khula</i>	<i>Mubarrat</i>
In this form of talaq, the wife desires divorce and the offer of separation comes from wife. Since the wife has no right of divorce under muslim personal law, she purchases talaq from husband by giving up her mehr i.e. the husband gives talaq to wife and in return, the wife forfeits her mehr.	In this case, both husband and wife are equally desirous of divorce and offer of separation may come from either party. Here, the wife is entitled to mehr.

TALAQ THROUGH COURT

The muslim personal law gives no right to talaq to wife while the husband enjoys uncontrolled power in this regard. This injustice has been cured by The Dissolution of Muslim Marriage Act, 1939 which gives right of divorce **exclusively** to wife. The grounds of divorce are cruelty, adultery, non-payment of maintenance etc. The total number of grounds are 9.

IDDAT

MEANING	PURPOSE	PERIOD	
		DEATH	DIVORCE
Iddat is the period of seclusion during which the muslim wife is prohibited from marrying again after divorce or death of the husband.	The purpose of iddat is to avoid any confusion about the paternity of the child (in case of conception) and in case of death, additional purpose of mourning.	4 months 10 days	3 months

HALALA

If after divorce, a muslim couple wishes to re-marry, they have to follow a very stringent procedure as follows –

- The wife will have to observe divorce iddat of 3 months
- Now she will have to marry another man
- The marriage between wife and third person must be consummated.
- After consummation, the second husband will divorce the wife.
- The wife will again observe divorce iddat of 3 months.
- Now the wife and first husband can re-marry each other.

The process of iddat is considered highly unjustified and its constitutional validity is in question.

MAINTENANCE UNDER MUSLIM LAW

MOHD. AHMED KHAN V. SHAH BANO BEGUM

In this landmark judgment, the Supreme Court held as follows –

- The muslim wife like wives of other religion is entitled to claim maintenance from her husband under Section 125, CrPC. Section 125 is a secular provision which applies to women of every religion including muslim wife.
- The muslim wife is entitled to maintenance till her re-marriage as allowed by Section 125 and not only upto iddat i.e. 3 months as provided in muslim personal law. When every wife is entitled to maintenance till re-marriage, allowing maintenance to muslim women only upto iddat would be against principles of equality and justice.

THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) ACT, 1986.

The Parliament tried to by-pass the Shah Bano judgment through this Act of 1986. It was provided in this law that though muslim women can claim maintenance under Section 125, CrPC, but they will be entitled to maintenance only upto iddat and not upto re-marriage. This provision was against the rights of muslim women.

DANIEL LATIFI V. UNION OF INDIA

The Supreme Court re-affirmed Shah Bano case and held that under 1986 Act also, muslim women will get maintenance upto re-marriage. This is the current position in India.

WAKF

1. **MEANING** -When a Muslim donates his property for a charitable, religious or pious purpose and for the benefit and upliftment of the society in the name of Allah, that is called waqf. Wakf are the muslim religious foundations.
2. **MANAGER OF WAKF** -Mutawalli is nothing but the manager of a wakf. He is not the owner or even a trustee of the property. He is only a superintendent whose job is the see that the property is being utilized for valid purpose as desired by the wakif.