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Comparison of Marriage under Hindu Law and Muslim Law

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ABSTRACT

Marriage can be considered as an important and prime event in an individual's life. Irrespective of any beliefs, rules, regulations, faith, etc. every religion is having the concept of marriage. Both Hindu law and Muslim law irrespective of so many distinction in their respective religion, gives great importance to marriage. However, the approach that these two religions are having towards marriage is completely different from each other. In simple terms, we can say that both the religions are having same destination but are taking different paths to reach there. According to Hindu law, marriage is harmonizing the two-individual eternity, so they can pursue dharma, Arth and Kama. On the other hand, according to Muslim law, marriage is the legal contract between the two individuals with their consent and the own will. This research paper will do a comparative analysis on marriage under Hindu law and Muslim law. In comparative analysis, first, we will examine the aim and objective of both religious marriages according to their religious sources. Second, we will also explain how the aim and objective of the religious marriage is totally different from each other by comparing from their respective religious sources. Third, we will compare the nature of both the marriage and lastly, we will see how they are considering inter religious marriage under Hindu law and Muslim law. Also, this paper will deal with the validity of the Hindu and Muslim marriage. Both the religions are having a distinct approach towards marriage, which will be dealt with in this research paper.

Keywords: Dharma, Arth, Karma, legal contract, validity.

I. INTRODUCTION

Marriage is culturally recognized as a formal union of two individuals in a personal relationship which tie them with each other economically, legally and emotionally. Marriage is the beginning of the family and is considered as a lifelong commitment. Marriage establishes the concept of rights, obligation between the spouses as well with their children and in-laws. According to different religion the reason, tradition, and the nature of the marriage will differ

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but at the end it comes down to the union of two people.

Here, the comparative analysis of Muslim and Hindu marriage will show that how these two religions have different aims, traditions, reasons and conditions when it comes to marriage. Muslim marriage is called as 'Nikah' which is an Arabic meaning contract. The name itself says that marriage, according to the Muslim is a contract. The Nikah is defined to be a contract which has for its object the procreation and legalizing of children.³ Marriage according to Mahomed Law is not a sacrament but a civil contract. All the rights and obligations it creates arise immediately and, are not dependable on any condition precedent such as the payment of dower by husband and wife.⁴

According to Hindu's, marriage is a sacred tie and last of ten sacraments that can be never broken. And they also believe that marriage relationship established by birth to birth and they believe that even death can't separate the spouse relationship and it's a holy relationship.⁵ In ancient sources it said that woman is the better half of her husband while man is also incomplete without woman. This proves that how actually marriage is perceived in the Hindu religion. However, later on in the modern times the concept of marriage among Hindus has changed its nature from a sacrament to a Sacrosanct.

This proves how these two marriages are totally different from each other. So here we will compare these two religious' marriages in different aspects to get a better understanding as to what and how things exactly differ.

II. AIM OF THE RELIGIOUS MARRIAGE

Under Muslim Law

According to Muslims, marriage should only be undertaken after gaining an understanding of all that Allah has prescribed in terms of rights and obligations as well as gaining an understanding of the wisdom behind this institution.⁶

The two main aims of Muslim marriage are as follows:

1. Procreation

Procreation is the main purpose of marriage for the Muslim community. They gets married

³ Sir Dins haw Farunji Mullah, *Mullah Principles of Mahomedan Law* 338, (prof. Iqbal Ali Khan, 22nd edition 2017).

⁴ Abdul Kadir v. Salima (1886) (1886) ILR 8 All 149.

⁵ Nature of marriage under Hindu law, *toppr*, <https://www.toppr.com/guides/legal-aptitude/family-law-II/nature-of-marriage-under-hindu-law/>

⁶ Harshit Khare, *Muslim marriage in India*, LEGAL SERVICE INDIA, (27.11.2020), <http://www.legalserviceindia.com/article/1418-Muslim-Marriage.html>

with the purpose to continue their bloodline and to contribute in the total Muslim population. Although this purpose can be also achieved without the marriage, but such the actions are considered as disobedience to Allah and they believe that by doing so they won't receive the blessing of Allah. The law doesn't simply direct them to give birth to child but it says to produce a righteous child who is obedient to Allah.

2. Pleasure

According to Muslims the desire of man and woman for each other is an urge which needs to be fulfilled. Even they recognize the attraction between men and women. The prophet also says that this attraction is something natural and not something to be denied or suppressed. So, they consider this pleasure as 2nd aim of the Muslim marriage.

Under Hindu Law

1. Dharma

The main aim of Hindu marriage was 'dharma'. For a Hindu, marriage is meant for the fulfillment of his dharma or religious duties. As already mentioned, Hindu believes that man is incomplete without woman. Also, if the wife dies the house holder must get a second wife for performing the obligations because according to them wife is a religious necessity of the Hindu.

2. Progeny or praja

The second aim of the marriage is procreation of children, particularly male child. Hindu believes that son saves the father from going to hell. So, the birth of the male child has been elevated among the Hindus that became a religious duty.

3. Sex gratification or Kama

Even the sex gratification is one of the aims of the Hindu marriage, but it's a least desirable aim of the marriage according to them. Even though sex is important for the healthy development of personality of an individual, the Hindu thinkers didn't consider it to be the sole aim of the marriage.

4. Rina or debt

There are three debts which a man has to repay in his lifetime.

- i. Deva Rina- debt towards the god who created the universe
- ii. Rishi Rina-debt towards the teacher who enabled us to fulfill our obligations
- iii. Priti Rina-debt towards our ancestor who gave birth

5. Socio-cultural continuity

Under this concept, the Hindu marriage have two approaches. First, for the continuity of the society, it's an obligation of an individual to establish a house hold and procreate a new member to add to the society. Second, it is duty of every householder to pass on the cultural and traditions of his Kula to the next generation.

While comparing both religious marriages, it can be seen that procreation and sex are the two aims which are common between both of them. In Hindu law, they didn't give much importance to sex gratification and placed it in the third place, while in Muslim law it gets placed on the second place with a is reasonable and practical reason. When it comes to procreation both the law gives important place to it but the Muslim law insists and puts more emphasis on having righteous children. In Hindu law there a presence of discrimination against female child they are saying that 'only male child will prevent his father from going to hell'. But in Muslim law there is no such discrimination and its aim are very reasonable in every aspect. In Hindu law they gave three more aims in that dharma is considered to be highest aim of Hindu marriage and say that marriage is an obligation which is indirectly said when they talk about the procreation under Muslim marriage. Then comes the debts part which is not present under Muslim law when it comes to aims of marriage. Lastly, they talk about socio-cultural continuity which is about passing their tradition to their next generation and obligation of establishing family. This aims of establishing family is already mentioned in the procreation in Muslim marriage.

III. NATURE OF MUSLIM MARRIAGE AND HINDU MARRIAGE

According to Muslim law, marriage is a pure civil contract while some other jurists say that it's a religious sacrament in nature. But Muslim people consider Mohamed as the prophet which is sent by god according to him "Marriage among Mohamed is not a sacrament, but purely a civil contract; and though it is solemnized generally with the recitation of certain verses from the Quran, yet the Muhammad law doesn't positively prescribe any service peculiar to the occasion."⁷ The essential of the Muslim marriage is similar to the essential of the civil contract. A Muslim marriage cannot take place without a proposal, acceptance, consideration, free consent, lawful object and competency of the parties which are also essential when it comes to a civil contract.

In Hindu law marriage in "a religious sacrament in which man and woman are bound in a

⁷ *Marriage Under Muslim Law*, ACADEMIKE (07.12.2014), <https://www.lawctopus.com/academike/marriage-under-muslim-law/>

permanent relationship for the physical, social and spiritual need of dharma, procreation and sexual pleasure.”⁸ According to Hindu law, in a marriage the husband and wife has an enduring bond which is permanent in nature and won't break even after their deaths. There is a belief that once a couple get tied in the bond of marriage then that tie cannot be untied. Also, Hindu marriage is a religious and holy union of the bride and groom which is necessary to be performed by the religious ceremonies. But this concept changed when Hindu marriage act came into picture. According to Hindu marriage act there were conditions for marriage like mental capacity, free consent and legal age for marriage. These terms which are added to the Hindu marriage through the Act made it sounds like a contract. The characteristics of Hindu marriage was defined as permanent dissoluble union, eternal union and holy union but this was demolished.⁹ Firstly, the divorce was got a recognition. Secondly, the widow remarriage also came into picture and thirdly, even though marriage is considered to holy act it went to extent the legal character had more importance in the marriage. After the Hindu Marriage Act, 1955 the Hindu marriage became a sacrosanct which is the combination of a contract and sacrament. The nature of both religious marriages is totally different from each other. Muslim people believe that it's a pure civil contract between two people to legalize the sexual intercourse and procreation of the child, which indirectly says it's a contract to support each other within their limits bound by their rights and obligation. When it comes to Hindu marriage, it considered to be the most important sacrament out of 16 sacraments which are present in Hinduism. Even though the nature changed after the introduction of Hindu Marriage Act to regulate the Hindu marriage but for a long-time people still considered it to be a pure sacrament.

In Muslim marriage people are bound by the contract but when it comes to Hindu marriage, they believe that it's kind of relationship which can't be broken even after the death of the either party of the marriage and they also believe that man is incomplete without women. The aim and the main idea of Hindu marriage is considered as holy act which is to complete one's life while on the other hand, the Muslim marriage is consider to be a contract from the beginning and its nature has not changed even after many changes in the legal aspect. So, it can consider that the Muslim marriage had a practical approach about the marriage from the starting while the Hindu's had spiritual approach to marriage by considering it as a holy act.

⁸ *Nature of Hindu marriage under Muslim law*, IPLEADER, (03.03.2020), <https://blog.ipleaders.in/nature-hindu-marriage-hindu-law/>

⁹ Dr.Paras Diwan, *Modern Hindu law*,68 (Peeyushi Deewan, 24th ed. 2020)

IV. ESSENTIALS OF MARRIAGE

Under Muslim Law

The following are the components which are necessary to validate a Muslim marriage:

1. Proposal and acceptance

As already discussed, Muslim marriage is a civil contract. So, the proposal and acceptance are a must. Proposal is referred as 'ijab' and acceptance is referred as 'qubul'. A proposal should be made by the other party or behalf of one party and the same should be accepted by the other party. Also, the proposal and acceptance should be done in same meeting.

2. Competency of the parties

(a) Major- for the Muslim marriage, the age of marriage is considered when an individual reaches the age of puberty. According to hedyā, the age of puberty is 9 years for female and 12 years for the male. The Privy Council in the case of Muhammad Ibrahim v. Akita begum & Anr Muslims¹⁰ held that age of obtaining puberty should 15 years. At this age the individual can give their own consent without depending on their guardian.

(b) Soundness of mind- both the parties should be of sound mind when entering into the marriage contract because an unsound mind has no capacity to enter into the contract.

3. Free consent

For a valid marriage, the free consent should be present. If the consent is obtained by means of fraud, mistake or coercion it's considered to be invalid. Free consent of adult parties is absolutely necessary in order to validate the marriage. Especially under Sunni school presence of two male witnesses during marriage is compulsory.

4. Dower

It's also referred as 'Mahr'. It's the amount of money or the property which a husband gives to his wife while getting married. It's the right of the wife to get dower from her husband. In case the groom is poor, then he can teach Quran to his wife as a dower.

5. Under Muslim law, there are marriages that can't be permitted under certain circumstances. Those prohibited categories are divided into four parts:

- Absolute incapacity.
- Relative incapacity

¹⁰ Muhammad Ibrahim Rashid v. Atkita BEGUM and Anr. (1912),16 Ind Cas 597.

- Prohibitory incapacity
- Directory incapacity

Under Hindu Law

The components to validate a Hindu marriage are as follows:

1. Free consent

The free consent is the main essential to validate a marriage. The consent should not be given by the coercion or threat.

2. Competent parties

- (i) Majority- the groom should attain the age of 21 and the bride should attain the age of 18 at the time of marriage then only it will be considered as a valid marriage.
- (ii) Sound mind- the person shall not be suffering from any insanity or mental disorder during the time of marriage.

3. Monogamy

According to the Hindu marriage, the act of having two living wives without finalizing the divorce from the first wife or death of the first wife is considered to be illegal.

4. Sapinda relationship

The marriage should not fall under the sapinda relationship or within the degree of any prohibited categories unless it's allowed by their tradition or customs.

While comparing the validity of the religious marriages, the free consent and sound mind during the marriage is common between both the religions. There is no such concept of proposal and acceptance under Hindu law because marriage is not a contract as per their beliefs. The concept of Dower is only present in Muslim law. It is seen as an obligation which is imposed on the husband to show the respect to his wife. So, according to Muslims, it must be given and there is a minimum amount for it but there is also exception for the people who can't do. However, in Hindu law there is no such concept. The age of majority is also common element between both of the religious marriage but the age which is mentioned as majority is different in both the marriages. According Hindu marriage only monogamy is allowed if they are doing another marriage it considered to be illegal while in Muslim law, a man is allowed to have up to four marriages and the fifth marriage is considered to be polygamy which falls under relative incapacity. Also, in both the religious marriages there are certain relationship in which an individual cannot get married which are sapinda relationship in Hindu marriage and

absolute incapacity in Muslim marriage.

V. INTER-RELIGIOUS MARRIAGE

Under Muslim Law

Inter-religious marriage is not something uncommon in society at present. Muslim law has its own set of rules and regulations when it comes to inter-religious marriage. According to Muslim law, apart from a Mahomedan woman, a Mahomedan man can also enter into a valid marriage with a kitabia (Jewess or Christian). However, if he gets married to a fire worshipper or idolatress then it will not be regarded as a void but an irregular marriage.

When it comes to a Mahomedan woman, unlike Mahomedan man she cannot enter into a valid marriage with anyone but only with a Mahomedan man. If she gets married to a non- Muslim, be it kitabi or non-kitabi it will be considered as irregular marriage and not void.

Under Shia law, no distinction is recognised between void and irregular marriage. They recognise marriage either as valid or void and there is no such thing as irregular according to that law. Also, the marriage that are considered as irregular under Sunni law are considered as void under Shia law.

Under Sunni law although they recognise irregular marriage and does not declare it to be void, still such marriage has its own disadvantages. An irregular marriage does not create mutual rights of inheritance between husband and wife, as well as can be terminated at the will of either of the party of the marriage.

Under Hindu law

The marriages between the person from Hinduism, Jainism and Sikhism were valid. In some cases, it was held that marriage between and non-Hindu was valid. There was no such rule in Hindu law that forbade the substance of marriage between the Hindu and non-Hindu but under Hindu marriage act the marriage between Hindu and non-Hindu which is not under four main categories of Hindu is not possible and if such marriage is performed in India will be invalid. According to the Hindu marriage act marriage between Hindu and non-Hindu is void. If the *lex loci* permits marriage between a Hindu and non-Hindu happening in foreign country is valid¹¹. But, under special marriage act 1954, the marriage between and non-Hindu is valid.

VI. APPROACH IN RELIGIOUS MARRIAGE

Both the religious marriages went through lot of changes with regard to legal aspect. When it

¹¹ Dr.Paras Diwan, Modern Hindu Law,94-95 (Peeyushi Deewan, 24th ed. 2020)

comes to nature of marriage the Muslim law has always portrayed it as contract from the starting, while Hindu law went through major changes which changed the nature of Hindu marriage from sacrament to sacrosanct. There is a presence of a common assumption among the people that Muslim law is giving very less rights to the women compare to the women in other religion but there are no major differences between the rights of Muslim women and rights of Hindu women available after marriage except in polygamy, inter religious marriage and dower.

When it comes to interreligious marriage the Muslim women are not allowed to marry anyone apart from Muslim men whereas Muslim men are allowed to marry kitabi as well. This is a clear discrimination between Muslim men and women under Muslim law. However, when it comes to Hindu law both men and women are restricted to marry non-Hindu. There is no discrimination between men and women as both are subjected to same restrictions. Under Muslim law polygamy is allowed whereas it's illegal in Hindu law. When it comes to Muslim law women are getting some rights when the husband is having more than one wife however, these rights are totally irrelevant under Hindu law because polygamy is banned. Dower is like a trump card for Muslim women since it acts as monetary security for them. However, when it comes to Hindu law there is no thing such as dower that is given to women but in contrast to that there is dowry which the men get.

In Muslim law the procreation of child and pleasure is the aim of the marriage while in Hindu law dharma is the main aim followed by progeny, sex gratification and Rina. In Hindu the second most aim of the marriage is procreation of children, particularly a male child. It is believed that putra or son saves the father from going to hell.¹² Here Hindu law is making discrimination which is not there under Muslim law. So, here the Muslim law is having way more practical view of the marriage.

When it comes to same sex marriage, Muslim law has directly prohibited this kind of relationship while, under Hindu law there is no clarity about this. In historical times there were some art depiction which showcased the same sex relation. Also, there were certain books like Kamasutra which depicted this relation and we can assume that such relation was allowed during ancient days. In this aspect Hindu law is more progressive than Muslim law.

Muta marriage is a temporary marriage which is allowed under Muslim law, it is a temporary contract between the Muslim male and female. According to which they will stay together for

¹² Puja Mondal, *Main Aims of Hindu Marriage*, YOUR ARTICLE LIBRARY, (Feb 14, 2020, 10:36 PM), <https://www.yourarticlelibrary.com/marriage/5-main-aims-of-a-hindu-marriage-essay/4365>

a specific period of time then after the termination of time period they will get separated. Even though this marriage considered to be a practical for many but some it's against moral value of some people. However, there is no such temporary marriage is not there in Hindu law.

Muslim marriage can be considered as more practical marriage when the polygamy and bar against same sex marriage. While Hindu marriage is lacking in practicality in few aspects and his having more moral spiritual approach towards the marriage.

VII. CONCLUSION

Marriage is not only union of two people it also brings two different family together. These two religious marriages are totally opposite from each other. Through this research paper we made a comparison between Hindu law and Muslim law when it comes to marriage with regard to its nature, aim and objective, validity and rights. When we compared both the religious marriage with respect to its nature, we came to know that Muslim law with regard to marriage is having a practical approach since it's seen as a pure civil contract while Hindu law is having a spiritual approach since it sees marriage as a sacrosanct.

When we compared the aims of both the marriages, under Muslim law the main aim is legalizing sex and procreation of children while Hindu law not gave that much importance to sex gratification. Hindu marriage gave first preference to dharma which is considered to be primary religious duties and they also mentioned about socio cultural connectivity which says that married couple will influence the further generation also.

The validity of marriage is decided by its essential in both religious marriages we came across that free consent, sound mind and majority were common elements under both the laws. However, there is a difference in the age of the age of majority for marriage under both the laws. In both religious marriages there are certain circumstances which invalidate the marriage which under Muslim law is divided into four categories, while in Hindu law its Sapinda relation. Inter religious marriage in Muslim is having total restriction for woman whereas for man they are allowed to marry a kitabi woman and in Hindu law both are having same restriction as per the Hindu Marriage Act. Dower is must in Muslim marriage because it's a symbol of respect to wife whereas, in Hindu law there is no such thing as dower. Only monogamy is allowed in Hindu law but in Muslim law, a man can have up to four wives. Both the religious marriage is having their own unique approach. Muslim marriage is having a practical approach if we exclude the concept of polygamy from it and Hindu marriage have spiritual approach.
