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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

SIMILITUDE AND CONTRASTS UNDERNEATH **HINDU MARRIAGE LAW AND MUSLIM** **MARRIAGE LAW**

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BBA.LLB 2nd Year²URN: 2371008 OBJECTIVES

- ❖ The Objective is to get knowledge about both the regional marriages in India.
- ❖ To know about laws related to both religions.
- ❖ To determine its relevance in the current situation.
- ❖ To study the problem faced by both the acts.
- ❖ Most importantly to compare them.

RESEARCH METHODOLOGY

The research methodology used in this study is based on primary and secondary information.

Primary information sources like books, journals, bare acts and other online publications.

Secondary information by real life information.

ABSTRACT

Marriage is considered as a vital and important occasion in an individual's life. Independent of customs, rules, arrangements, controls, etc, each religion has the concept of marriage. Both Hindu law and Muslim law are independent of numerous qualifications in their individual religion, giving incredible significance to marriage. Be that as it may, the approach that these two religions are having towards marriage is totally diverse from each other. In basic terms, ready to say that both the religions are having the same goal but are taking distinctive ways to reach there. Agreeing to

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Hindu law, marriage is harmonising the two person endlessness, so they can seek after dharma, Arth and Kama. On the other hand, agreeing to Muslim law, marriage is the legitimate contract between the two people with their assent and the claim will. This paper will do a Similitude and contrasts underneath on marriage beneath Hindu law and Muslim law. In comparative examination, to begin with, we are going to examine the point and objective of both devout relational unions concurring to their devout sources. Now, we are going to clarify how the point and objective of the devout marriage is completely different from each other by comparing them from their particular devout sources. Third, we will compare the nature of both marriages and finally, we'll see how they are considering connecting devout marriage beneath Hindu law and Muslim law. Too, this paper will bargain with the legitimacy of the Hindu and Muslim marriage. Both the religions are having an unmistakable approach towards marriage, which will be managed within this paper.

INTRODUCTION

Marriage is socially recognized as a formal union of two people in an individual relationship which ties them with each other financially, legitimately and candidly. Marriage is the starting of the family and is considered as a deep rooted commitment. Marriage sets up the concept of rights, commitment between the companions as well with their children and in-laws. Concurring to distinctive religion the reason, convention, and the nature of the marriage will vary but at the conclusion it comes down to the union of two individuals.

Here, the comparative investigation of Muslim and Hindu marriage will show how these two religions have distinctive points, conventions, reasons and conditions when it comes to marriage. Muslim marriage is called 'Nikah' which is an Arabic meaning contract. The title itself says that marriage, agreeing to the Muslim may be a contract. The Nikah is characterised to be a contract which has for its protest the reproduction and legalising of children³. Marriage agreeing to Mahomed Law isn't a holy observance but a respectful contract. All the rights and commitments it makes emerge instantly and, are not tried and true on any condition point of reference such as the instalment of dower by spouse and spouse⁴.

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

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

Agreeing to Hindu's, marriage could be a sacrosanct tie and final of ten holy observances that can be never broken. And they moreover accept that marriage relationship set up by birth to birth and they accept that indeed passing can't partition the companion relationship and it's a heavenly relationship⁵. In old sources it said that a lady is the better half of her spouse whereas a man is additionally inadequate without a lady. This demonstrates how marriage is really seen within the Hindu religion. Be that as it may, afterward on within the advanced times the concept of marriage among Hindus has changed its nature from a holy observance to a Consecrated.

This demonstrates how these two relational unions are completely diverse from each other. So here we'll compare these two religious' marriages in numerous viewpoints to induce a higher understanding as to what and how things precisely contrast.

THE MAIN AIM OF THE RELIGIOUS MARRIAGE

Hindu Law

1. Dharma

The most important point of Hindu marriage is 'dharma'. For a Hindu, marriage is implied for the fulfilment of his dharma or devout obligations. As of now, Hindu accept that man is fragmented without a lady. Moreover, in the event that the spouse passes on the house holder must get a moment spouse for performing the commitments since according to them spouse could be a devout need of the Hindu.

2. praja

The second important point of marriage is the multiplication of children, especially malechildren. Hindu accepts that the child spares the father from reaching hell. So, the birth of the male child has beenlifted among the Hindus that got to be a devout obligation.

3. Sex gratification

Indeed the sex delight is one of the important points of the Hindu marriage, but it's a slightest alluring point of the marriage agreeing to them. Indeed in spite of the fact that sex is vital for the

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

solid improvement of the identity of a person, the Hindu scholars didn't consider it to be the sole point of the marriage.

4. Rina

There are three obligations which a man should reimburse in his lifetime.

- ★ Deva Rina- obligation towards the god who made the universe
- ★ Rishi Rina-debt towards the educator who empowered us to fulfil our commitments
- ★ Priti Rina-debt towards our predecessor who gave birth

5. Socio-cultural progression

Beneath this concept, the Hindu marriage has two approaches. To begin with, for the progression of the society, it's a commitment of a person to set up a household and multiply a modern part to include the society. Moment, it is the obligation of each householder to pass on the social and conventions of his Kula to the following era.

Whereas comparing both devout relational unions, it can be seen that reproduction and sex are the two points which are common between both of them. In Hindu law, they didn't donate much significance to sex gratification and put it within the third put, whereas in Muslim law it gets put on the moment with a sensible and down to earth reason. When it comes to multiplication both the law gives imperative put to it but the Muslim law demands and puts more emphasis on having honest children. In Hindu law there is a nearness of separation against female children. They are saying that 'only male child will avoid his father from progressing to hell'. But in Muslim law there's no such segregation and its points are exceptionally sensible in each perspective. In Hindu law they gave three more points in that dharma is considered to be the most elevated point of Hindu marriage and say that marriage is a commitment which is by implication said when they talk about the multiplication beneath Muslim marriage. At that point comes the debts part which isn't shown beneath Muslim law when it comes to points of marriage. In conclusion, they talk about socio social coherence which is around passing their convention to their another era and commitment of setting up family. This point of establishing family is as of now said within the reproduction in Muslim marriage.

Muslim Law

Agreeing to Muslims, marriage ought to as it were to be embraced after picking up an understanding of all that Allah has endorsed in terms of rights and commitments as well as picking up an understanding of the shrewdness behind this institution.⁶

1. Reproduction

Multiplication is the main reason for marriage for the Muslim community. They get hitched with the reason to proceed with their bloodline and to contribute within the add up to Muslim populace. In spite of the fact that this reason can be too accomplished without the marriage, such activities are considered as noncompliance to Allah and they accept that by doing so they won't get the favouring of Allah. The law doesn't basically coordinate them to allow birth to a child but it says to deliver an equitable child who is respectful to Allah.

2. Delight

Agreeing to Muslims the want of man and lady for each other is an encouragement which must be satisfied. Indeed they recognize the fascination between men and ladies. The prophet moreover says that this fascination is something normal and not something to be denied or smothered. So, they consider this delight as the 2nd point of the Muslim marriage.

NATURE OF BOTH THE MARRIAGES

Agreeing to Muslim law, marriage could be an unadulterated respectful contract whereas a few other law specialists say that it's a devout holy observance in nature. But Muslim individuals consider Mohamed as the prophet which is sent by god according to him "Marriage among Mohamed isn't a holy observance, but simply a respectful contract; and in spite of the fact that it is solemnised for the most part with the recitation of certain verses from the Quran, however the Muhammad law doesn't emphatically endorse any benefit unconventional to the occasion."⁷ The fundamental of the Muslim marriage is comparable to the basis of the respectful contract. A Muslim marriage cannot take out without a proposition, acknowledgment, thought, free assent, legal

⁶ Harshit Khare, Muslim marriage in India, LEGAL SERVICE INDIA, (27.11.2020), <http://www.legalserviceindia.com/article/I418-Muslim-Marriage.html>

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

question and competency of the parties which are moreover fundamental when it comes to a respectful contract.

In Hindu law marriage is “a devout holy observance in which man and lady are bound in a changeless relationship for the physical, social and otherworldly requirements of dharma, multiplication and sexual pleasure.”⁸ Concurring to Hindu law, in a marriage the spouse and spouse has an persevering bond which is lasting in nature and won't break indeed after their passings. There's a conviction that once one or two get tied within the bond of marriage at that point that tie cannot be loosened. Too, Hindu marriage could be a devout and heavenly union of the bride and prep which is fundamental to be performed by the devout ceremonies. But this concept changed when Hindu marriage act came into picture. Agreeing to Hindu marriage act there were conditions for marriage like mental capacity, free assent and legitimate age for marriage. These terms which are included in the Hindu marriage through the Act made it sound like a contract. The characteristics of Hindu marriage was characterised as lasting dissoluble union, unceasing union and sacred union but this was annihilated.⁹ Firstly, the separation was acknowledged. Furthermore, the dowager remarriage moreover came into picture and thirdly, indeed in spite of the fact that marriage is considered to be a heavenly act it went to the degree the legitimate character had more significance within the marriage. After the Hindu Marriage Act, 1955 the Hindu marriage got to be a hallowed which is the combination of a contract and holy observance.

The nature of both devout relational unions is completely diverse from each other. Muslim individuals accept that it's an unadulterated gracious contract between two individuals to legalise the sexual intercut and reproduction of the child, which by implication says it's a contract to back each other inside their limits bound by their rights and commitment. When it comes to Hindu marriage, it is considered to be the foremost imperative holy observance out of 16 holy observances which are displayed in Hinduism. Indeed in spite of the fact that nature changed after the presentation of Hindu Marriage Act to direct the Hindu marriage but for a long-time individuals still considered it to be an unadulterated holy observance.

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)

In Muslim marriage individuals are bound by the contract but when it comes to Hindu marriage, they accept that it's a kind of relationship which can't be broken indeed after the passing of either party of the marriage and they too accept that man is fragmented without ladies. The point and the most thought of Hindu marriage is considered as a heavenly act which is to total one's life whereas on the other hand, the Muslim marriage is considered to be a contract from the starting and its nature has not changed even after numerous changes within the legitimate viewpoint. So, it can be considered that the Muslim marriage had a down to earth approach around the marriage from the beginning whereas the Hindu's had an otherworldly approach to marriage by considering it as a heavenly act.

ESSENTIALS OF MARRIAGE

Hindu Law

The components to validate a Hindu marriage are as follows:

1. Free consent

Free consent is the main essential to validate a marriage. The consent should not be given by 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 finalising the divorce from the first wife or death of the first wife is considered to be illegal.

4. Sapinda relationship

The marriage ought to not drop beneath the sapinda relationship or inside the degree of any disallowed categories unless it's permitted by their convention or traditions. Whereas comparing the legitimacy of the devout relational unions, the free assent and sound intellect amid the marriage

is common between both the religions. There's no such concept of proposition and acknowledgment beneath Hindu law because marriage isn't a contract as per their convictions. The concept of Dower is as it was shown in Muslim law. It is seen as a commitment which is forced on the spouse to appear in regard to his spouse. So, agreeing to Muslim s, it must be given and there's a minimum sum for it but there's too much exception for the individuals who can't do. Be that as it may, in Hindu law there's no such concept. The age of the larger part is additionally a common component between both of the devout marriages but the age which is specified as the larger part is distinctive in both the relational unions. Concurring Hindu marriage as it were monogamy is permitted in the event that they are doing another marriage it is considered to be illicit whereas in Muslim law, a man is permitted to have up to four relational unions and the fifth marriage is considered to be polygamy which falls beneath relative inadequacy. Too, in both the devout relational unions there are certain relationships in which a person cannot get married which are sapinda relationship in Hindu marriage and outright inadequacy in Muslim marriage.

Muslim Law

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

1. Proposal and acceptance

As of now, Muslim marriage could be a gracious contract. So, the proposition and acknowledgment are a must. Proposition is alluded to as 'ijab' and acknowledgment is alluded to as 'qubul'. A proposition ought to be made by the other party for the sake of one party and the same ought to be acknowledged by the other party. Also, the proposition and acknowledgment ought to be exhausted by the same assembly.

2. Competency of the parties

- a) Major- for the Muslim marriage, the age of marriage is considered when a person comes to the age of adolescence. Concurring with hedy, the age of adolescence is 9 a long time for females and 12 a long time for the male. The Privy Board within the case of Muhammad Ibrahim
- b) v. Akita begum & Anr Muslims¹⁰ held that the age of getting adolescence ought to be 15 years. At this age the person can donate their claim assent without depending on their

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

gatekeeper.

- c) Soundness of intellect- both the parties ought to be of sound intellect when entering into the marriage contract since an unsound intellect has no capacity to enter into the contract.

3. Free consent

For a valid marriage, 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, the presence of two male witnesses during marriage is compulsory.

4. Dower

It's alluded to as 'Mahr'. It's the sum of cash or the property which a spouse gives to his spouse whereas getting hitched. It's the proper of the spouse to induce dower from her spouse. In case the prep is destitute, at that point he can educate the Quran to his spouse as a dower.

5. Beneath Muslim law, there are relational unions that can't be allowed beneath certain circumstances. Those precluded categories are isolated into four parts:

- Absolute incapacity
- Relative incapacity
- Prohibitory incapacity
- Directory incapacity

INTER-RELIGIOUS MARRIAGE

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 the special marriage act 1954, the marriage between and non-Hindu is valid.¹²

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 a 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 marriages that are considered as irregular under Sunni law are considered as void under Shia law. Under Sunni law although they recognise irregular marriage and do 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 parties of the marriage.

APPROACH IN DEVOUT MARRIAGE

Both the devout relational unions went through a parcel of changes with respect to legitimate angles. When it comes to the nature of marriage the Muslim law has continuously depicted it as a contract from the beginning, whereas Hindu law went through major changes which changed the nature of Hindu marriage from holy observance to hallowed. There's a nearness of a common presumption among the individuals that Muslim law is giving exceptionally less rights to the ladies compare to the ladies in other religion but there are no major contrasts between the rights of Muslim ladies and rights of Hindu ladies accessible after marriage but in polygamy, associate devout marriage and dower.

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

¹² [Comparison-of-Marriage-under-Hindu-Law-and-Muslim-Law.pdf \(ijlmh.com\)](https://www.ijlmh.com/Comparison-of-Marriage-under-Hindu-Law-and-Muslim-Law.pdf)

When it comes to interreligious marriage the Muslim ladies are not permitted to wed anybody separated from Muslim men though Muslim men are permitted to wed kitabi as well. Typically a clear segregation between Muslim men and ladies beneath Muslim law. In any case, when it comes to Hindu law both men and women are confined to wed non-Hindu. There's no separation between men and ladies as both are subjected to the same limitations. Beneath Muslim law polygamy is permitted though it's illicit in Hindu law. When it comes to Muslim law ladies are getting a few rights when the spouse is having more than one spouse in any case, these rights are completely unimportant beneath Hindu law since polygamy is prohibited. Dower is like a trump card for Muslim ladies since it acts as financial security for them. Be that as it may, when it comes to Hindu law there's no thing such as dower that's given to ladies but in differentiate to that there's share which the men get.

In Muslim law the reproduction of child and delight is the point of the marriage whereas in Hindu law dharma is the most important point taken after by offspring, sex satisfaction and Rina. In Hindu the moment most point of the marriage is reproduction of children, especially a male child. It is accepted that putra or child saves the father from reaching hell.¹³ Here Hindu law is making separation which isn't there beneath Muslim law. So, here the Muslim law is having way more viable see of the marriage.

When it comes to same sex marriage, Muslim law has straightforwardly denied this kind of relationship whereas, beneath Hindu law there's no clarity almost this. In verifiable times there were a few craftsmanship portrayals which showcased the same sex connection. Too, there were certain books like Kamasutra which delineated this relation and we are able to accept that such connection was permitted amid antiquated days. In this viewpoint Hindu law is more dynamic than Muslim law.

Muta marriage may be a brief marriage which is allowed beneath Muslim law, it could be a transitory contract between the Muslim male and female. Agreeing to which they will remain together for a particular period of time at that point after the end of the time period they will get

¹³ 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>

isolated. Indeed in spite of the fact that this marriage is considered to be practical for numerous but a few it's against the moral esteem of a few individuals. In any case, there's no such a brief marriage isn't there in Hindu law.

Muslim marriage can be considered as more down to earth marriage when the polygamy and bar against same sex marriage. Whereas Hindu marriage is missing in common sense in few angles and his having more ethical otherworldly approach towards the marriage.

CONCLUSION

Marriage isn't as it were a union of two individuals it moreover brings two distinctive families together. These two devout relational unions are completely inverse from each other. Through this term paper we made a comparison between Hindu law and Muslim law when it comes to marriage with respect to its nature, point and objective, legitimacy and rights. When we compared both the devout marriage with regard to its nature, we came to know that Muslim law with respect to marriage is having a down to earth approach since it's seen as a unadulterated gracious contract whereas Hindu law is having a otherworldly approach since it sees marriage as a consecrated.

When we compared the points of both the relational unions, beneath Muslim law the most important point is legalising sex and reproduction of children whereas Hindu law did not give that much significance to sex satisfaction. Hindu marriage began with an inclination to dharma which is considered to me essential devout obligations and they too specified an almost socio social network which says that hitched couples will impact the advanced era moreover.

When we compared the points of both the relational unions, beneath Muslim law the most important point is legalising sex and reproduction of children whereas Hindu law did not give that much significance to sex satisfaction. Hindu marriage gave to begin with inclination to dharma which is considered to me essential devout obligations and they too specified almost socio social network which says that hitched couple will impact the advance era moreover.