

# COMPARATIVE STUDY OF MARRIAGE IN MUSLIM AND JEWISH LAW

*by*

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## ABSTRACT

*Marriage is an individual's inherent purpose, which allows an individual to find calm and serenity. As considered from the point of view of sociologists many things such as reproduction, protection, socialization, emotional support etc are fulfilled with marriage. The social and self-functions can be examined under material and immaterial criteria to understand the functions of family. The traditions and rituals of marriage differ from culture to culture. All the cultures and society even in the historical period have considered marriage to be a very important part for the formation of any society, population is necessary. Even religion makes marriages as one of the most important and sacred act. This research paper aims to compare and analyze the marriage laws in Muslim and Jewish tradition to have a better understanding of the hidden and root layers in the individual and societal outlook of human life. The following research will analyse the provisions of marriages, divorce and conditions of a valid marriage under Muslim and Jewish Law. The research will try to put some light on the cases dealing with marriages in both laws. The research will also include the judicial interpretations of the above- mentioned laws and will try to conclude the research with some recommendations.*

**Keywords:** Muslim Law, Jewish Law, Marriage, Divorce, Women.

## **INTRODUCTION**

Society and the legislation are very much interconnected to each other, one serves the purpose of the other and vice-versa. With the passage of time, the society needs different laws, so the change in society is automatically dependent on the change in laws. Marriage is a social phenomena.<sup>1</sup> The changes in society or we can say the society affects the concept of marriage. Marriages are seen as a universal social institution and is one of the essential component of humanity. The state has governed all the areas of human life since the dawn of the civilization and marriage is no exception. There is no one legal framework in India that governs the institution of marriage, primarily with the goal of protecting the ideals of religious freedom and safeguarding the core traditions of the country's diverse faiths and beliefs. The nuptial relationship of two individuals is legitimised only after it has been sanctioned by the country's existing laws, which are commonly referred to as matrimonial or marriage laws. The liveliness and diversity of India's current marriage law, in keeping with the country's diverse population, is a distinguishing aspect. The paper talks about the marriages in Muslim and Jewish Law. Marriages in Muslim Law are quite different from other laws. "It is because Muslim law has classified their marriages not only into legal and illegal marriages but also in intermediate kind of irregular marriages. By the term intermediate marriages it means - some marriages which are not valid but which are not wholly void. Marriages of this kind are defective or irregular but are not entirely without any effect."<sup>2</sup> One of the similarities between Muslim and Jewish Law is that both the laws are uncoded laws and that is why it is difficult to understand.<sup>3</sup> Most of the concepts in the Jewish law is derived from Mosaic Law through analogy and deduction. In Muslim marriages there are certain conditions which are provided in different statutes meaning by the conditions of a valid marriage are provided similarly there are certain requirements which needs to be followed in the Jewish marriage like free consent, mental capacity and legal age etc. These all will be discussed thoroughly later in this research. In the following research paper there is the use of **Doctrinal Methodology**. So basically laws that already exists and different statutes and related cases have been followed and then analytically discussed. Following are the **research questions** of this particular study:

- What are the conditions in which the Muslims and Jews can marry ?

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<sup>1</sup> Sharda Prasad, *Polygamy and The Indian Law*, LAWYERSCLUB INDIA, September 20, 2017.

<sup>2</sup> Ahmadpanahi Ali, *Marriage in Islam: A Look at its educational and Psychological Functions*, MARIFAT, pp 34-44, 2014.

<sup>3</sup> Zinat Ali, *The Philosophy of Marriage in Islam and Jews*, WOMEN STRATEGIC STUDIES, pp 197-227, 2017.

- What are the forms of divorce in the above mentioned laws?
- What are the changes or the cases that have been brought up in the recent years regarding Marriages in both the laws?
- What is the response of Judiciary on the Marriages in both the laws?

Given below are the **research objectives** of the study:

- To analyse in detail the various provisions and laws pertaining to divorce of Muslims and Jews.
- To conduct a brief study of the problems faced by Muslims and Jews while performing the rituals of marriages.
- To gather the views of the scholars and jurists regarding the marriages in Muslims and Jewish law.
- To map out the most suitable solutions and suggestions as to the marriages in the Muslim and Jewish Law.

## **LITERATURE REVIEW**

There have been a lot of researches on the marriages in Muslim and Jewish law. There are many articles, research papers, blogs etc on the internet. Following are some of the reviews of literature which helped in carrying this study:

A research paper titled “**Marriage in Islam and Judaism**”<sup>4</sup> has been published by Mansoureh Zarean. The author has gathered the concept of marriages in Islam, Christianity and Judaism at one place and then has analyzed it. The author has talked about the impediments of marriages in different laws and also talked about polygamy. Also the author has also given the limitations in all the different laws regarding the concept of marriages.

A blog is posted on “**Jewish Law of Marriage and Divorce**”<sup>5</sup> by Nikita Aggarwal on blogpleaders. The author has explained how the Jewish community in India has evolved and their form of marriages. This blog basically talked about the evolution of Jews in India. The author

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<sup>4</sup> Mansoureh Zarean, *Marriage in Islam and Judaism*, RELIGIOUS INQUIRIES, Vol 5, PP 67-80, June 2016.

<sup>5</sup> Nikita Aggarwal, *Jewish Law of Marriage and Divorce*, BLOGPLEADERS, January 30, 2017.  
<https://blog.ipleaders.in/jewish-law-marriage-divorce/>

for its readers has explained the important judicial decisions on Jewish law of Marriage and Divorce in India.

A thesis is found from the source of Shodhganga titled “ **A study of legislative and judicial trends with reference to Muslim and Jewish law**”<sup>6</sup>. The thesis has been made by Dinesh Singh Dhakad co-authored by Dinesh Singh. The thesis containing 7 chapters talked about various laws mentioned in Muslim and Jewish law and the nature of marriage along with its historical background and its various forms. The author has also written about the social implications.

A book titled “**Islamic and Jewish Legal Reasoning**”<sup>7</sup> authored by Anver Emon has helped in carrying the following research. In this book, the author for its readers has examined issues of marriages in Muslim and Jewish Marriages. The author has examined such issues as judicial authority and also talked about the status of women in both the laws. The author in its book has given several recommendations for improving the status of women in both the communities.

There is a lot of more research which are not mentioned here but has helped in the following study.

### **CONCEPT OF MARRIAGE**

The legislation and society are inextricably linked, with one contributing as a medium to the other's objective. When there are changes in society, this relationship is again principally responsible for the matching changes in legislation. Marriage as an entity is a societal event. It is mainly influenced by society.

When Islam was established, women were accorded adequate social position and were viewed as respectable members of society. The prophet was zealous about elevating the position of women. He advised individuals to meet their wives prior to marrying them, and he preached that the finest reason for getting married is her purity of spirit. The prophet brought forth social improvement through Islam. The Prophet established Nikah as a means for females to be placed

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<sup>6</sup> Dinesh Singh Dhakad, *A study of legislative and judicial trends with reference to Muslim and Jewish law*, SHODHGANGA, March 31, 2009. <https://shodhganga.inflibnet.ac.in/handle/10603/132606>.

<sup>7</sup> Anver Emon, *Islamic and Jewish Legal Reasoning*, ONEWORLD ACADEMIC PUBLICATIONS, 2016 ed.

on an equal level with males.<sup>8</sup> Marriage is a civil contract among Muslims. All rights and duties arise instantly and concurrently upon completion of the proposal and acceptance. A Muslim Marriage is a permanent kind of marriage as there is no duration fixed. Temporary marriages or “Muta” are recognized by Ithna Asharis<sup>9</sup>. As per the Sunnis Schools marriage is divided as Sahi (valid), Batil (Void) and Fasid (Irregular). During Pre- Islamic Arabia, unlimited polygamy was allowed and to restrict the same Prophet made it only till four wives whereas a Muslim woman could only have one husband at a time. Marriage under Muslim law can be dissolved either on the death of either party to the marriage or at the instance of one of the parties or both the parties or through court. In the religion of Islam marriage is considered to be the Allah’s sign and is considered as a “solemn covenant” Prophet is of the view that marriage is a good and kind act to God and is constant with the human behaviour. Prophet Muhammad says, “There is no foundation built in Islam dearer to God than marriage” (Majlisi 1403, 100:222). Marriage protects faith, so much so that the Prophet (s) said, “When a man marries, he has protected half of his religion” (Hurr al-‘Amili 1412 AH, 14:5). According to Qurran,<sup>10</sup> Marriage is said to be a natural activity with two aims :

1. Attaining calmness, peace and Stability
2. For the continuation of human race

The religion of Islam stresses on the necessity of sexual wants , existing in human behaviour and is of the view that it is the Allah’s wisdom of creating it and making marriage the means to satisfy the same. According to Jewish Law , marriage is a spiritual and religious act as the God’s first order for the human race was the act of marriage In the Jewish Law regulations, doctrines regarding key legal institutions related to marriage are known as Halakhic. The basis for marriage and divorce In Jewish Law are The Mishnah and The Talmud.<sup>11</sup> However, throughout the Middle Ages and into modern era they have been creatively interpreted. In the entire region of Diaspora, the Talmud and its rules were spread by “The Babylonian Geonim” who lived and worked within the Islamic Empire. As per this law, marriage can be performed only between a Jewish man and unmarried Jewish woman without close blood relation or

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<sup>8</sup> Supranote 4.

<sup>9</sup> Wahid al-Qasim, *Temporray Marriages in Islam*, Islam.org, 2021. <https://www.al-islam.org/truth-about-shia-ithna-ashari-faith-asad-wahid-al-qasim/muta-temporary-marriage>

<sup>10</sup> Mohammad Ali, *A Comparative Study of Status and Significance of Marriages in Muslims*, MARIFAT ADYAN, pp 19-39, 2017.

<sup>11</sup> Supranote 5.

relative links and generally both adults. The consent of both the parties to marriage is mandatory until and unless the girl is less than Twelve Years of age and is being married off by her father or if the woman is a widow whose husband died without descendants.<sup>12</sup> In the Jewish law engagement is known as “Shiduchin” ie the stage prior to marriage which is merely an act of modesty and the skipping of same has no effect on the validity of the marriage. Marriage is inclusive of two different stages Kiddushin (betrothal) and nissuin ( the real act of marriage ).<sup>13</sup> In Kiddushin the main effect is on the women as after kiddushin the couple is in a matrimonial bond and the woman cannot marry any other man until and unless there is an act of separation or divorce from the groom’s side or in case of the death of the groom. Earlier kiddushin was an act with a contractual and ritual aspect and was a private act with the main participants being the groom, bride and two witnesses . In this the woman was given a ring by the groom or a sum of money which could be replaced by a sexual intercourse. .In all cases, there is a demand to say the phrase "you are betrothed" to the woman, although no single formula exists, and the kiddushin may be valid even if the saying is omitted altogether. Kiddushin is only the first stage of marriage which is completed when nissuin happens ie the groom takes the woman to his house and does all the rituals after which the couple can be called as husband and wife.

### **AGE OF MARRIAGE**

Like all the other natural needs, marriage is also an act which should be performed in a proper and timely manner. In some cultures marriage is either performed late or too soon which further leads to several societal issues as well as issues at an individual level. The Muslim Law believes that, the sexual desires come with the physical maturation of an individual. According to Islam, girls mature by the age of nine and boys by the age of fifteen when they attain puberty.<sup>14</sup> However, along with the onset of puberty it is also essential to have mental maturity in order to have a good married life.

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<sup>12</sup> William Kentridge, *The Marriage Issue*, Association for Jewish Studies, Spring 2013.  
[https://www.associationforjewishstudies.org/docs/default-source/ajs-perspectives/ajsp13sp.pdf?sfvrsn=13fadb06\\_2](https://www.associationforjewishstudies.org/docs/default-source/ajs-perspectives/ajsp13sp.pdf?sfvrsn=13fadb06_2)

<sup>13</sup> *Id.*

<sup>14</sup> Najafi Hossein, *Islam and Family Sociology*, UNIVERSITY RESEARCH INSTITUTE, pp 61-67, 2013.

Islam discourages marriages before time but at the same time also looks down upon late marriages. This can be seen when The Prophet says, “If someone whose child reaches the age of marriage is financially able to have him/her get married but does not do so, any sin committed by the child would be recorded for him” (Hindi 1397 AH, 16:442).

Hence, it can be stated that according to the various sayings and views of prophets, in other islamic books early youth is the appropriate age for marriage. In the Jewish law the natural maturation age for men and women is considered as the valid and proper age for marriage. Hence, the basic age criteria for girls is thirteen and for boys it is twelve.<sup>15</sup> In situations where the girl marries before attaining her natural maturity the consent of the guardian is essential and this consent cannot be held invalid or expired even after the girl attains maturity until and unless the girl is taking a divorce or if the husband dies.

### **CONDITIONS FOR MARRIAGE**

In the Muslim Law, Consent and freedom to choose is one of the most important requirements of marriage. The consent obtained should be totally with free will and without any kind of fear or influence. If there is lack of consent or a reluctant attitude from either side of the parties the consent is considered as void. The Sigha, i.e. the marriage contract, is the other most important condition for marriage.<sup>16</sup> It can be made either by the groom's side or the bride's side or by someone else on their behalf. Considering that marriage is a contract proposal and acceptance both are also necessary. Proposal is known as Ijab and acceptance is known as Qabul.<sup>17</sup> The marital gift known as Mahr is given by the bridegroom side to the bride and is the next requirement for marriage.

The conditions for marriage under jewish laws are satisfaction and sanctity, Ketubah ie A Marriage Contract and blessing prayer. Satisfaction and Sanctity deals with the obtaining of consent with at least two witnesses and marital gift. The Ketubah is a document of trust and assurance with detailed information on the obligation of both the parties as well the legal provisions relating to the same. The blessing prayer should be done by the parties publicly.

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<sup>15</sup> *Supranote 5.*

<sup>16</sup> *Supranote 4.*

<sup>17</sup> *Id.*

## **DIVORCE**

In the Muslim Law, divorce also known as talaq means the ending or dissolution of a marriage and the marital contract between the parties. It is considered to be a negative act however there are strict provisions and detailed procedures for the same. This has been done in order to facilitate the process of divorce and at the same time to avoid the negative social impact on the family. The Quran states that in case of drift between a married couple two mediators from both the sides should try to resolve the differences between the parties in order to keep the family together and to avoid separation. The muslim law allows divorce on certain conditions such as in situations where the parties cannot live with each other under any given circumstance and there is no other option left other than divorce, rather than completely calling it as unlawful. It does not allow divorce on the grounds such as hatred, or when the parties set traps for each other etc.

The religion of Judaism is very open to the concept of divorce. However, the rights and power to ask for a divorce totally lies in the hands of the man and not the woman .The consent of woman is not considered , with the handing in of the divorce papers by the husband to the wife the divorce is applicable and valid<sup>18</sup>. As soon as the husband decides to divorce his wife, she is forbidden to him and the contract of marriage comes to an end. However during divorce the husband has to pay for the gift of the wife during marriage, until and unless the wife failed to discharge her duties under the religious jewish laws.

## **CONCLUSION AND RECOMMENDATIONS**

After going through the above study it is concluded that marriage is an institution that dates back to the start of humanity. It is the practice through which the bride and groom's legal bond is created in the community. Marriage has been described as a religious ceremony, a union that is "an irrevocable bond of humanity with blood and bone with bone to be perpetuated even in the next life." The thought for this was to establish the marriage an everlasting alliance, to keep the household together, to conduct religious ceremonies, and to protect the matrimonial bond from external temptations and interruptions. The legal circumstances of marriage in Islam are notable for their brevity. Marriage can be formed without any ceremony, specific ceremonies,

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<sup>18</sup> Samuel Daiches, *Divorce in Jewish Law*, JOURNAL OF COMPARATIVE LEGISLATION AND INTERNATIONAL LAW, Vol.8, pp 215-224, 1926.



or vexing procedures. The two most important requirements are an offer (Ijab) and acceptance (Kabul). Wedding is lawfully established when one contracting party makes a statement, which is followed by a similar acceptance from the other at the similar session in front of competent spectators. Two male witnesses are required under Hanafi law; these facts demonstrate that marriage under Muslim law is solely contractual. Marriage is seen as one of the most popular legal ways to procreate and satisfy sexual demands in Islam and Judaism. Marriage, according to these Abrahamic religions, is a holy and spiritual act. It is highly valued in Islam (mustahab mu'akkad), yet it is seen as a sin in Judaism (sanctification). A marriage is done with distinct rites in each of these religions, and a precise agreement is recited in a sacred language. Marriage, according to Islam and Judaism, aids to religious growth, and so monasticism is not tolerated. In Islam, a man's love for his wife is consistent with the Prophets' behaviour and strengthens faith. Both Islam and Judaism oppose abstinence and require marriage shortly after hitting puberty. Marriage is viewed as a remedy to financial concerns in Islam, and the impoverished are encouraged to marry by pledging God's blessings. However, Judaism does not advocate marriage for individuals who are not financially stable.

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