
FAMILY LAW IN INDIA: AN ANALYSIS

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ABSTRACT

In today's world we know that for the formation of any society, village, town, city, state, country, etc. We need one thing; a family without a happy family there is nothing. Because of the family there is need of the products in the market and the cultures, customs are followed on the earth, because of that we feel the fragrance of the happiness, brotherhood, sisterhood etc., for the developing of city, state, country, nation, we need to first develop the family and make sure that in the family there is a peace, silence, happiness and all existed or not. After that we need maintain the peace, happiness, silence, in the country for obtaining a healthy environment. So, we are here for talking about the family law in India and try to know the how the family law works in our country. This paper deals with the two-family laws; Hindu law and second is the Muslim law. In Hindu law we deal with the history, sources, marriages under Hindu law, adoption, maintenance, guardianship, etc., and in the Muslim law we deal with the history, sources, marriages, guardianship, wakf, talaq, schools, dower, Hiba, age of puberty, wasiyat, hizarat, mutawali, etc.

INTRODUCTION

The family is the bonding of understanding relation of the blood, relation of marriage, by adoption, etc. Constitutes a tie between them and lives under the same roof that relation named as family. The word family is derived from the Latin word 'Famulus' which means "household" a place where both the servants and relatives live. Family is divided on the basis of different aspects like on the basis of place, on the basis of authority, on the basis of marriage, etc. There is different family like polygamy, monogamy, polyandry, patriarchal, matriarchal, etc. But if we talk about the family in the respect of law, we have to discussed here about the family law, in the family law we talk about the Hindu law and second one is the Muslim law, special marriage act, Hindu succession act, Hindu minorities & guardianship act, Hindu adoption & maintenance act, Hindu marriage act, etc. The ancient source of the Hindu law was smritis, shrutis, customs, Digest & commentaries etc., and in modern sources they consist of justice, equality, & good concise, judicial precedents, legislation, etc. When we talk about the Muslim law they believe only on Allah, they all assume that the Allah is all, Allah is supreme in their religion. Muslims can be divided in two categories one is Sunni and second one is Shia. Sunni believes in Allah, and they considered prophet Muhammad as a messenger of the Allah. Later after the death of the prophet Muhammad the Shia believes on the son-in-law of the prophet Muhammad named as Ali. In the Muslim law we talk about the sources, schools, marriage, dower, talaq, age of puberty, Hiba, guardianship, Wasiyat, Hizarat, wakf, mutawali, etc. The ancient and first source of Muslim of law is Quran, and after that there are also many other sources that tells about the Muslim law.

RESEARCH METHODOLOGY

To understand the legal provision of the family law in India, descriptive, and the secondary qualitative based data used through the proper analysis is carried out by me. Most of the data was gathered from the various sources of online and by some books related to the family law; Hindu law and the Muslim law, various journals, articles, and some annual reports published by the government of India.

HISTORY OF HINDU LAW

Before the arrival of the Hindu marriage act, Hindu succession act, Hindu minority & guardianship act, Hindu adoption & maintenance act, etc., the Hindu religion govern and run on the basis of 'Dharma'. Whatever mentioned in our Dharma we follow all these instructions, rules, laws, etc. Later the Dharma was modified and seen as in the format of codified law in India. How the Dharma reaches to codified law we can know about that through the sources.

SOURCES OF HINDU LAW

The sources of the Hindu law are defined as two ways first one is Ancient Source and second one is Modern source. The ancient sources include the Shruti which means to be heard in simple words we can say that what can be heard we write this on the paper or anywhere, the shruti contains all the four Vedas (Rigveda, Yajurveda, Samaveda, Atharvaveda) next one is Smriti which means to be remembered, Digest & Commentaries there is two main sources of Hindu law which comes under the Digest & Commentaries which named as Mitaksara & Dayabhaga, Customs are also the ancient source of the Hindu law. The modern sources include the Justice, Equality, & Good concise this is used by Judges when the present law cannot be applied on the given cases or circumstances etc., Judicial precedents this is used as law to create new decisions by observing the past decision of the cases in new cases, Legislation also the part of the modern source of the Hindu law.

HINDU MARRIAGE ACT, 1955

Hindu marriage act, 1955 states that the how the marriage and other rituals related to marry perform under the Hindu law, who is competent to enter into a marriage, who is not competent to enter into a marriage etc.

WHO IS HINDU?

When we talk about the Hindu law the first question arise in everyone's mind is who is Hindu? So here we can talk about the person who is Hindu? The person who fulfills some condition which are mentioned under the Hindu law called as Hindu. • The persons who are not Muslims, Parsis, Jews, Christians are all considered as Hindu.

- All those persons whose both parents are Hindus, Sikhs, Buddhists, Jains are also considered as Hindu.
- If the one parents is Hindu, Sikhs, Buddhists, Jains, are considered as Hindu.
- The person who converts or reconvert his/her religion in Hindu are considered as Hindu.¹

Section 3(C) define the full blood, half blood, uterine blood relation. Full blood relation means by the same mother relation means brother and sister etc., Half-blood relation means by different mother but same father relation we called as stepmother, Uterine blood relation means by same mother but different father relation we called as stepfather.²

SAPINDA RELATIONSHIP

The Sapinda relationship is considered as a void marriage. Under this relationship a male member side **till 5th generation** marriage is void with female relation member, and a female member side **till 3rd generation** marriage is void with male relation member. Under the sapinda relationship the marriage is prohibited unless the custom which allows them to do so. If someone violates this relationship, they should be charged fine with Rs. 1000/- or with imprisonment up to 1 month or with both **U/S 18(b)** of the act.³

Section 5 states that the conditions which are required for the valid marriage under the Hindu marriage act, 1955.

- Both members which are going to marry should be Hindu.
- The wife of the man should not alive, or he has not another marriage before if he has marriage then all procedures should be done before entering into the second marriage.
- Both the members are capable of giving consent.

¹ Section 2(1)(a) of the Hindu Marriage Act, 1956

² Section 3 clause C of the Hindu marriage act, 1956

³ under section 18 (b) of the Hindu marriage act, 1956

- The age of boy should be completed 21 years of age and the female should be completed the 18 years of the age.
- The relation should not be under the prohibited degree.
- The relation should not be under the sapinda relation.⁴

Section 11 states that the status of the marriage which marriage is void under the Hindu marriage act, 1955.

- If the person has a living spouse during the time of the marriage.
- If the person is incapable of giving consent.
- If the person is under the age of marriage.
- If the parties are under the sapinda relationship.
- If the parties are under the prohibited degree.
- If the person is under the impotency of respondent.

The marriages are void ab initio, if the marriages are conducted under **section 5(i), 5(iv), 5(v)**.⁵

Section 12 of the Hindu marriage act, 1955 states about the voidable marriage.

- The marriage solemnized before the commencement of this act is voidable and annulled by a decree.⁶
- If the person is not capable of giving birth to child by anyone side.⁷
- If the consent is obtained through force or fraud etc.⁸

⁴ section 5 of the Hindu marriage act clearly mentions the conditions of the valid marriage

⁵ mentioned under the Hindu marriage act, 1956

⁶ section 12(1)

⁷ Section 12(1)(a)

⁸ Section 12(1)(c)

- If the female member is pregnant during the time of the marriage by the other person not by the person to whom she's going to marry.⁹

Section 13 states about the Divorce under the Hindu marriage act, 1955.

- 13(1) has given the right to both the husband and wife to file a petition for divorce on the grounds of relevant facts.¹⁰
- 13(2) only the wife has the right to file a petition for divorce.
- 13B the divorce petition can be filed by the mutual consent of both husband and wife.

There are many grounds for divorce but here we discussed some grounds for filing a petition for the divorce.

Section 5 mentioned under the Hindu marriage act, 1956, section 12(1) Section 12(1)(a) section 12(1)(c) section 12(1)(d) section 13(1) defines both have equal rights:

- If the person is found under adultery, then the second person should file a petition for divorce.
- If the person is under the cruelty, then the second person has the right to file a petition for divorce.
- If the person is under the desertion category if this is done by wife without any reason, then this is the ground for divorce.
- If he converts his religion, then this becomes the ground for divorce.
- If the person is found in an unsound mind or not capable of taking responsibility and all then this is the reason or ground for the divorce.
- If between the husband and wife there is no contact till 7 years, then this point includes for the divorce.

⁹ Section 12(1)(d)

¹⁰ Section 13(1) defines both have equal rights

Grounds for divorce **u/s 13(2)** under this only wife can file petition for a divorce

- If the husband is found under bigamy, then the wife should divorce.
- If the husband found under the rape, sodomy, etc., then wife has the right for divorce.
- If the female was 15 years old when the marriage was conducted but before completing the age of 18 years old, she repudiates the marriage or cancel the marriage.

Ground for the divorce **u/s 13B** under this the divorce petition can file by mutual consent.

- If the husband and wife both live separately for more than one year by mutual consent.
- If the husband and wife both do not live together by mutual understanding.
- If the husband and wife both are ready for divorce by mutual consent without any force, fraud, etc.

Section 14 states that when the person can file divorce petition under the Hindu marriage act, 1955.

No one can file divorce before the completing of one year of marriage. If someone wants divorce before this period, then he/she first goes to the concerned High Court and files the petition according to the rules of the particular high court then they can get divorce before the completing of one-year period of the marriage.

Section 15 states that when the divorce person remarriage.

The divorce can remarriage if there is no appeal against them or if the appeal is filed against him then the time period of the appeal is finished, in that case the divorce should be able to remarriage, or if the appeal was dismissed then the divorce person can be capable to remarriage.

Section 16 states the legitimacy of children.

If the birth of the child by the void marriage, then they considered as legitimacy children, or if the birth of the child by voidable marriage, then they considered as the legitimacy children.

Section 24 states about the maintenance.

If the proceeding of the divorce is going on at that time if the husband is not capable of earning money or does not have money in that case if wife earn good income, then husband has the right to take money from the wife. Same as if the wife has no money or husband earns good income than wife should take money from the husband.

Section 25 states permanent alimony.

If the decision was made after that court fixed the amount of maintenance on monthly basis or by onetime payment to the wife after divorce.

Section 27 states about the disposal of property.

During the proceedings of the divorce court has the right to divide the property which is owned by both the husband and wife.

HINDU MINORITY & GUARDIANSHIP ACT, 1956

Section 4 gives the definition.

4(a) defines the who is minor? Any person who is not completed the age of 18 years or the age majority according to the law can be considered as minor.¹¹

4(b) any person who takes care of the minor or the property of minor or both can be known as guardian.

Guardian can be considered as four types

- The parents who have their own child are called **Natural Guardian**.
- The person appointed for the take care of the child by his/her father/mother is called a **Testamentary Guardian**.
- The person can declare or appointed by the court for take care of the child called as **Guardian appointed by the Court**.

¹¹ section 4(a) of the Hindu minority & guardianship act, 1956 define minor

- A person empowered to work by the order of the court of wards called as **Guardian by court of wards**.

Section 6 states about the **Natural Guardian**

The natural guardian of the Hindu minor means the natural guardian has the duty to take care of the minor's as well as minor's property.

- If the boy or girl is not married, the father should act as a guardian after that the mother provides custody of the minor. The minor who is not completed the age of 5 years shall live with his/her mother.¹²
- If the boy or the girl is illegitimate or not married than the first his/her mother act as a guardian after her the father of the boy or girl act as a guardian.¹³
- If the girl is married, then only her husband can act as a guardian, no one can act as a guardian even her natural guardian has no right to act as a guardian.¹⁴

Section 7 states about the **Guardian of adoptive son**.

All the rights, liabilities, duties etc. are transferred or accepted by the parents who adopt the child.

Section 9 states the **Testamentary Guardian**.

When the father/mother can appoint a person by his/her will to take care of his/her child after his/her death, this type of guardian called as Testamentary Guardian.

Section 11 tells us about the **Defacto Guardian**.

Defacto guardian are these guardians who become the guardian by circumstances or by some other situation. But they have no right to deal with the minor's property.

¹² section 6(a) of the Hindu minority & guardianship act, 1956

¹³ section 6(b) of the Hindu minority & guardianship act, 1956

¹⁴ section 6(c) of the Hindu minority & guardianship act, 1956

DISQUALIFICATION OF THE GUARDIAN

- If the person ends the Hindu religion or converts into another religion, this is ground for disqualification of the guardianship.
- If the person goes Himalaya or renounce the world, then this also becomes the ground for disqualification of the guardianship.
- Please find enclosed the PO and confirm in revert mail.
- If the person does not provide proper maintenance or care for the child.¹⁵

HINDU ADOPTION & MAINTENANCE ACT, 1956

Section 3 gives the definitions.

3(b) states about the maintenance, maintenance can be classified in two ways first one is in all other cases and second one is when the girl child is unmarried. In the case of an unmarried girl child, she asks for the maintenance even for the expenses of her marriage also, but in all other cases basic maintenance should be given to the members of the family.

Section 6 of the Hindu adoption & maintenance act, 1956 states the **Necessities for the adoption.**

Section 7 of the Hindu adoption & maintenance act, 1956 tells us about the **capacity of the male Hindu person** who is going to adopt the child.

Section 8 of the Hindu adoption & maintenance act, 1956 talks about the **capacity of the female Hindu person** who is going to adopt the child.

Section 10 of the Hindu adoption & maintenance act, 1956 mentioned the **which person is capable to adopted** or given to adoption a child.

- A person who is Hindu,

¹⁵ section 13 of the Hindu minority & guardianship act, 1956

- not adopted before,
- he/she was not married before the adoption,
- he/she did not complete the age of fifteen years.

Any person who fulfills the conditions which are mentioned above is able to be adopted.

Section 11 tells us about the **other conditions for a valid adoption** of the Hindu adoption & maintenance act, 1956.

Adoption of:

- ◆ If you wish to adopt a son then make sure that you should not have a Hindu son, son's son, or son's son's son alive at the time of adoption.
- ◆ If you wish to adopt a daughter, then make sure that you should not have a Hindu daughter or son's daughter alive at the time of adoption.

Adoption by:

- ❖ If the male member wish to adopt a daughter, then the age difference between the male and the adopted girl is at least 21 years of the age.
- ❖ If the female member wish to adopt a son, then the age difference between the male and the adopted boy is at least 21 years of the age.
- ❖ One child cannot be adopted more than one time.

Section 12 states about the **Effect of adoption.**

After the adoption of the child the adoptive parents should be treated the child as the is born by his/her. The rights of the child should be fully replaced by the adoptive parents in compared to their natural parents. He/she cannot marry these relatives to whom he/she cannot marry if he/she continues to his birth home. The property which is vests in an adoptive child before the adoption of the child shall continue to vest in such person.

Section 13 talks about the **rights of the adoptive parents to dispose of their properties.**

Adoptive parents cannot be restricted from transferring their property to the adopted child, they are free to transfer their property to anyone according to his/her will.

Section 14 speaks about the **determination of the mother.**

- If the person has one wife, then this mother called as adopted mother,
- but in case a male has more than one wife then the senior most mother considered as an adopted mother and rest of the considered as the stepmother.
- If a male is bachelor or widower or he wish to adopt a child after adoption if he marries then his wife considered as a stepmother,
- if the female is bachelor or widow or she wish to adopt a child after the adoption she marries then her husband considered as a stepfather.

Section 15 states that the **no valid adoption can be cancelled.**

A valid adoption made through legally cannot be cancelled or nor the child renounce his or her status and not back to their natural home or previous home.

Section 18 when wife demand for maintenance.

- If the wife lives separately,
- if the cruelty happened with him by husband,
- if the husband lives separate with another women,
- if husband converts his religion.

All the above cases the wife demands the maintenance from her husband.

Section 19 when widowed daughter-in-law demand for maintenance.

- Widowed Daughter-in-law can demand for the maintenance by her father-in-law.
- If she has not sufficient property,

- if her husband has not any property or not sufficient,
- if her father, mother, son, daughter, also has no property or not has in sufficient amount,
- if she is unable to take maintenance from her father, mother, son's, daughter's, property.

After all that she is entitled to demand for the maintenance by her father-in-law.

Section 20 when children, aged, infirm parents, demand for maintenance.

The Hindu is bound for his or her lifetime to give maintenance to their legitimate or illegitimate children aged or infirm parents. If the stepmother/father does not have their own child, then they ask for maintenance by his/her stepson or daughter.

HINDU SUCCESSION ACT, 1956

When we talk about the joint Hindu family it involves the many generations of families. But when we talk about the coparcenary family it involves only three generations of families. In Hindu succession act, 1956 the persons who are under the coparcenary family must have the right for the property.

Further property considered as two types:

1. Ancestral property
2. Self-owned property

Under the Hindu succession act, 1956 the only ancestral property can be divided, and the self-owned or self-acquired property cannot be divided under the Hindu succession act, 1956. Because this property was built with his own earned money. But if the son proved that the property which is considered as self-acquired should be built by my contribution then he will have the right for this property also.

WHO IS KARTA?

In Hindu joint family there was a Karta, who represents the family.

Who will become Karta...

- He holds a unique position in the family.
- He should be major.
- He should be senior most male member of the family.
- He should be of a sound mind.
- He was born in a coparcenary family.

Karta holds the all-business transactions all finance related issues; he maintains the family in good manner. He has the right to alienate the property but only when the family needs it or when it is done for the benefit of the family with the consent of all the family members.

Section 6 of the Hindu Succession Act, 1956 states that the Devolution of the property. Before 2005 there is no right of the property to the girl or daughter in her father's property. But after the amendment of 09/09/2005 under the Hindu Succession act, 1956 in the devolution of the property.

- This amendment gives the right to the girl or daughter **u/s 6(1)** that they have right in her father's property. If she's born in a coparcenary family.
- And also, she holds the same rights as the son, and also, she has the same liabilities as the son.
- **U/S 6(2)** she has the right to alienate her property if she gets under clause **(1)** of this act.
- **Clause (3)** represents the **Notional partition of the property.**
- Means the division of the property should be held through the Notional partition. In this partition if the father or any other person was died before making the will or before division of the property, then the property should be divided between them as suppose the death person is alive at the time of division of the property.¹⁶

¹⁶ section 6(1)(a), (b), (c), (2), (3)(a), (b), (c), of the Hindu Succession act, 1956

In the 2005 amendment there was a question that arises that it is necessary that the father is alive till 09/09/2005 or after that, let's discuss this and understand with the help of some case laws.

Prakash vs. Phulavati, 2016

In this case the case was heard by two Judges bench, and they held that the yes, it is necessary that the father should live till 09/09/2005.

Danamma vs. Amar, 2018

In this case, the case was heard by two Judges bench, and they held that no, it is not necessary that the father is alive till 09/09/2005.

Vineeta Sharma vs. Rakesh Sharma, 2020

In this case, this case was heard by three Judges bench, and they held that the, if the daughter was born in the coparcenary family, then she has the right in the father's property from the birth.

HISTORY OF MUSLIM LAW

Before the arrival of the modern sources of the Muslim law, the Muslim law can only be governed and run based on their ancient sources which are Quran. Quran is the first and the oldest source of the Muslim law, also this book is considered as the 'Holy Book' of the Muslim law. After that the Sunna which called as Hadis which means 'what has been heard' or we can say that the Sunna means tradition. Then follows Qiyas and then Ijma. Qiyas means comparing of the present scenario with previous laws, and Ijma means the Jurists Opinion. After the ancient laws some modern law comes and make the place in the existing Muslim laws. So, we can discuss the sources all sources of Muslim law and understand the concept of Muslim laws.

SOURCES OF MUSLIM LAW

The **ancient sources** of Muslim laws:

- Quran (first and oldest source of Muslim law) ('Holy Book' of Muslim law)

- Sunna (Hadis) (What can be heard) (Tradition)
- Qiyas (comparing the present scenario with the previous laws or with previous decisions)
- Ijma (jurists Opinion)

The **modern sources** of the Muslim laws:

- Isti Hasan (in this source the preference can be given to the jurists first)
- Isti Salah (public interest)
- Ijtedar (person himself gives the reason to deduce the law)
- Taqlid (precedents) • Fatwa (judge's opinion or judge's decision)

WHO IS MUSLIM?

- A person who has faith in Allah.
- Profess the Islamic religion or follow the customs of Islam.
- Believes in the Islam.
- Also believes in Allah.
- A person whose both parents are Muslim or whose one parent is Muslim.
- A person who born in Muslim family.
- A person who converts his/her religion.
- A person who believes that Allah is everything.

SCHOOLS OF MUSLIM LAW

There is the school is classified on the basis of their category, Sunni school and the Shia school.

Sunni school

- Hanafi School (the founder of this school was Imam Abu Hanifa the word Hanifa takes from his name and formed the name of the school called as the Hanafi School)
- Maliki School (the name taken for this school from the name of Malik-bin-Anas)
- Shafi School (this school named on the name of Muhammad Ibn Idris-ash Safi)
- Hanbali School (named on the name of the Abu Abdullah Ahmed Ibn Hanbal, he was a disciple of Imam Shafi)

Shia School

- Ithna Asharias School (the people who believes in the Ithna Asharias School would be believe that the Imam was disappeared while returning Macca-medina and he was a Messiah)
- Ismailis School (In India the Ismailis school consists of two groups; the Khojas & the Bohras. They are the followers of the present aga khan)
- Zaidys School (the person who follows the Zaidi school are considered as the or they called as the political activism, and the followers of the Zaidy school are the maximum number in the South Arabia)

MARRIAGE IN MUSLIM LAW

In the Muslim law marriage is considered as civil contract because they fulfill all the conditions related to the contract during the marriage. Such as offer & acceptance, consideration, etc.

CONDITIONS REQUIRED FOR MARRIAGE

- There should be an offer & acceptance in the same meeting. Where the offer is named 'Ijab', and the acceptance is named as 'Qubool'.
- There must be presence of witnesses required two male witnesses, if there is not available two male witnesses than there should be one male and two female witnesses

required.

- There should be the parties are capable of the contract, they are major and in sound mind etc. (in Muslim law the age of majority is 15 years)
- There should not be prohibited relationships. Prohibited relationship considered in the two forms; the prohibited degree and the relatives.
- Prohibited Degree deals with;
- Blood relation,
- Marriage,
- Milk (if any women breast feed the child, then you should not marry her)

Relatives deals with;

- Unlawful conjunction is not present at the time of marriage,
- the person should not marry to fifth wife because till fourth wife marriage is only allowed,
- Marriage is not conduct without the presence of witnesses because there are witnesses required,
- the marriage should not conduct during the Iddat period (the period of menstruation cycle we called as by different names; menses, periods, etc.),
- there should be both members are from the same religion.

In the Muslim law minor is allowed to marriage but the under guardianship of his/her parents. The minor also repudiates this marriage before the completion of the age of puberty.

In the Shia marriage there is no need for the witnesses during the marriage.

Types of marriage

Valid Marriage

In Muslim law valid marriage called as the 'Sahid Marriage', in this marriage all the conditions of the marriage should be completely followed during the time of marriage that's why this marriage called as the valid marriage or Sahid marriage.

Irregular marriage

In Muslim law irregular marriage called as the 'Fasid Marriage', in this marriage the marriage conducts during the Iddat period, without the presence of witnesses, marriage with fifth wife, marriage with fire worshipper, marriage by unlawful conjunction.

Void marriage

In the Muslim law void marriage called as the 'Batil Marriage', in this marriage if the marriage is conducted without the free consent, polyandry by wife, in the relation which are prohibited by consanguinity, affinity, fosterage.

MUTA MARRIAGE

- Muta marriage is recognize in the Shia community.
- This is a temporary marriage.
- This marriage is conducted only for the satisfaction of sexual desires.
- We can see that type of marriage in Ithana Asharias School.
- In this marriage there is no need for witnesses.
- This marriage is conducted with the Christians, Jews, Fore Worshipper, etc.

DOWER/ MAHR

Dower or mahr is the kind of the consideration for the marriage from groom family side to the bride.

Objectives;

- Mark of respect
- token of love
- obligation on husband to maintain wife
- subsistence of wife

Types of Dowers;

There are mainly two types of dowers mentioned; Specified Dower (Mahr-I-musama) and the Unspecified Dower (Mahr-I-missl).

Specified Dower (Mahr-I-musama)

This dower is called as the 'Mahr-I-musama', in this dower a specified amount is fixed before the marriage for giving to the bride. This dower is also classified in two ways; Prompt (Mu-ajjal) and the Deferred (Mu-awajjal).

Prompt (Mu-ajjal) in this dower the amount of dower is given immediately to the bride at the time of marriage.

Deferred (Mu-awajjal) in this dower the amount of dower is given at the time of the dissolution (divorce) of the marriage or at the time of the death.

Unspecified Dower (Mahr-I-missl) This dower is called 'Mahr-I-missl', in this dower the amount is not specified for the dower.

Limits of Dower

In Sunni the minimum limit for dower is 10 Dhiraams and the maximum limit is not mentioned.

In Shia the minimum limit for dower is not mentioned but the maximum limit for dower is 500 Dhiraams.

RIGHTS OF THE WOMEN WHEN THE NON-PAYMENT OF DOWER

- She refuses to cohabit
- She demands for the dower as the 'Debt'
- She has the right to lien the property or possess the property equal to the amount of the dower.

TALAQ

It is an Urdu word which means divorce.

Conditions;

- Free consent of the husband at the time of talaq.
- The words of the talaq should be in express form.
- The presence of the wife is necessary to whom he gives the talaq.
- The husband and wife both should be major.
- The talaq can be in oral or in written form.

In Sunni;

- The talaq can be in oral or in written form, both are accepted.
- There is no need for witnesses at the time of talaq.
- There is no form required.

In Shia;

- The talaq should be only in the oral form except the husband who is unable to speak.
- There should be witnesses present at the time of talaq.

- There is the form is required.

Types of Talaq;

Talaq by husband

This type of talaq consists of three types of talaq; Ila, Zihar, Talaq.

- In Ila the husband clarifies he is not having sexual intercourse with his wife since last 4 months or he is not interested in the sexual intercourse with her for the last four months.
- In Zihar the husband compares his wife with the prohibited degree of relation like he says to his wife she is like his mother, sister, etc.
- In Talaq it consists of two types; Talaq-e-sunnat and Talaq-e-Biddat.
- Talaq-e-Sunnat is considered a good talaq. It is considered as Hasan & Ahasan. In Hasan if the husband pronounced the word 'Talaq' three times at the stage of purity of the women, then this is considered as a divorce. In the Ahasan if the husband pronounced the word 'Talaq' one time at the stage of purity of the women, then this is considered as a divorce. This talaq is considered to be good talaq because it is revocable.
- Talaq-e-Biddat is considered a bad talaq. Because it is an irrevocable talaq. This is called triple talaq.

Talaq by Wife;

This type of talaq consists of three types of talaq; Talaq-e-tafweez, Lian, Dissolution of Muslim Marriage under the act, 1939.

- Talaq-e-tafweez in this type of the husband delegates the power to wife at the time of marriage that she has the power to gets the talaq any time.
- Lian in this type if the husband files the case with charges of adultery against the wife and later all the charges prove false.

- Dissolution of muslim marriage is mentioned under the section 2 of the Dissolution of muslim marriage act, 1939.

Talaq by mutual consent;

This type of talaq also consists of two types; Khula & Mubarat.

- Khula says in this form of talaq a wife gives offer for talaq to the husband and acceptance, or rejection of the offer depends on the husband.
- Mubarat says in this form of talaq both the husband and wife can give the offer for the talaq.

MAINTENANCE

Before the case of ‘Shah Bano, 1985’, the wife is only entitled for the maintenance till the period of the Iddat.

After the case of ‘Shah Bano, 1985’, the wife is entitled for the maintenance after the period of Iddat under the Criminal procedure code section 125. Section 125 is secular in nature.

Hiba (Gift)

Hiba means the gift of the movable or immovable property.

Conditions;

- Offer
- Acceptance
- Declarations
- Delivery of possessions

Capacity of donor

- Donor should be major

- Donor should be in sound mind
- Donor should be the owner of the property
- Donor should have the free consent

Capacity of donee

- Person should be Muslim or either non-Muslim
- Major or may be minor
- Sound mind or may be in unsound mind

Gift may be considered as in the three forms;

- **Hiba-Bil-Iwaj** this is for some consideration.
- **Void gift** this is like future gift and contingent gift.
- **Hiba-Sharat-ul Iwaj** this is the gift as something in return or on the basis of some condition.

WASIYAT

In the Muslim law the person cannot be make the wasiyat for the complete property of his/her. They should only make the wasiyat for the one third share of his/her property.

WAKF

Wakf is the property which donate by the Muslim persons for the purpose of religious works.

MUTAWALI

Muatwali is the manager of the wakf property. He holds the office of wakf property, and he uses the property in good faith.

GUARDIANSHIP

In the Muslim law the guardianship should be considered in three forms; Natural Guardian, Testamentary Guardian, Guardian appointed by court. Natural guardian is the original guardian by which the child was born. Testamentary guardian is that guardian which is appointed by the father or by the mother of the child or by both father and mother of the child. Guardian appointed by court are considered as the guardian which is appointed by the 'Kazi'.

HIZARAT

Hizarat means custody. Custody of the child is under the mother, if the mother is not available or not capable for the custody of the child then this custody goes to the other female members of the family which are mentioned under the custody lists of the female. If the female members are not able, then the custody goes to the father and after the father custody goes to the other male members which are mentioned under the custody list of male members.

CONCLUSION

Family law is considered different laws according to the religion of the family in India. In India we need to make one law for family, and which is applicable in the all over India. By this the exploitation of the females in the society is reduced and the females can get a good living in her husband house. Many females do not raise the voice because of the fear of the society. All the laws are not followed by society in a good manner. As the above we discuss about the family law in India; Hindu law and the Muslim law. By which we can see and understand the concept of Muslim law and the concept of Hindu law is totally different. If someone wants the knowledge of the Muslim law and Hindu law, then they need to read both laws separately and understand without this they cannot understand both laws. Ancient Hindu law deals with the customs, Vedas, etc. And the Muslim law deals with their Quran, Sunna, etc. We do the complete research as best of my knowledge here and extract some information from the and provide that information here about the family law in India.

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