

Muslim Law
Muslim Marriage

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Difference between hindu and Muslim marriage

This article deals with the Difference between Hindu and Muslim marriages. Hindu and Muslim marriage are similar in only one aspect. That is a religious aspect, where both the marriages are legalised by virtue of the togetherness and union of two souls. However, the major difference is that Muslim marriage is a civil contract between two parties.

I. Hindu marriage

Marriage in the Hindu religion is in the nature of Sacrosant which are also called samskaras, basically, the word denotes that it is in the form of a religious rite. Unless a Hindu man takes up a life of devoting it to the god which is called the 'Brahmachari or of a 'sanyasi', devotees of God. Samskaras, this word is taken from the word 'Sam' which means the significance of a set of religious rites.

Every person who is a Hindu man ought to marry. People following Hinduism perceived marriage as a sacrosanct union and a sacrament that is a holy togetherness. It connotes that the wife in a marriage is created to become a mother and the husband to be a father of a child; as given in the Manusmriti. Hence, it is often understood as a man and a woman can only be perfect when they join together in holy matrimony.

In this kind of marriage, there lies an obligation to have a child who can pay off the debt of the ancestors and to perform all the rituals of a son in the family. There lies great responsibility on the son because he has to perform many spiritual and religious rites. Wife in a Hindu marriage is given utmost respect in the family, she is called the 'dharampatni'. The word 'dharam' means religion.

More so that the man and woman are a sacred union and they are united in not only life which they live on earth but afterlife as well. In Hindus, the concept of remarriage in the older times was not recognized. Because there is a belief that a true woman, a wife to the husband shall preserve herself and will not lay another man in her husband's place. Because like already iterated the concept of togetherness not only limits itself to life but also to the afterlife. It is followed by the belief that the widow who does not sully the bed of her husband shall go to heaven even if she does not have a boy child to carry out the rites.

Hence, unlike a Muslim marriage which a contract between the man and the woman, a Hindu marriage is a sacrament union of two souls in religious rites. Be it

in the Manu period or the contemporary times it still hold goods, that marriage is a sacrament and a union of the two. Though there was a patriarchal society.

In the holy book called the Shastras, the man is the protector of the family and his wife and on the other hand the woman, the wife is the 'jaya' who is caused on herself. Another source of Hindu traditions is the dharma where it is believed that the man's half is the woman he marries.

And the wife is like a true friend of the man. She is also known to be the source of solace to the soul and the woman who runs the house. She is the friend, confidant and an ultimate supporter to her husband according to the Hindu scholars it is also believed that the man is also the master of his wife and she is to obey.

There is a difference of opinion amongst the Hindu scholars, one that there is no scope of remarrying, since it is believed that the wife is the constant support, householder and that she shall be his 'ardhanagi' for the next seven lives. Thereby, any Hindu woman shall not let another man lay in the place of her husband. However, parasra and Nadra state that a woman can leave or move on from her husband under a few circumstances namely;

- When he not alive anymore
- Under circumstances where he has been thrown out of his community
- When he is unable to conceive a baby/ heir
- When the woman was coerced into marriage by abduction
- If the man has died before consummation of the marriage

For the men in the society however, there are no such restrictions. He is allowed to marry another woman as soon as his wife is no more.

II. Muslim marriage

The concept of Muslim marriage and laws are very distinct. The major reason is because of the nature of the marriages are different. A Muslim marriage is often called a 'Nikka' the word denotes the 'togetherness of sexes'. Nikka basically means two things, firstly togetherness and secondly, a contract of marriage between two parties.

The Quran specifically prohibits the man to marry a woman who has been involved with his father and it is meant to be against nature and despicable.

The reason for marriage amongst Muslims is the uniting of two sexes to ensure a family and a lineage. A mutual sense of love and devotion amongst the partners who are bound by the contract. Therefore, it is not only about togetherness but a contractual obligation as well.

The man and woman when divorce cannot get together to marry again until the woman has married another man. Only after this marriage is there can they marry each other again.

The Quran states that the matrimony amongst them is to ensure that the man and woman can consummate the marriage.

Therefore a marriage would ensure that:

- That the union of the man and woman has meaning to it and not against the law.
- That the woman could then have her husbands' children and procreation is a very important aspect.
- That the lineage of the man can be carried forward by the child.

Therefore this clearly shows that this union of the man and wife is legalised by the way of marriage such that it clearly is a civil contract between the two. The marriage along with being a contract also is a sacred and a religious union.

In a legal sense the nature of a Muslim marriage also fulfils the conditions imposed by contract law that are:

- Offer and acceptance:

It states that the man may offer the woman the proposal of marriage by way of offering a dower. And once the dower is accepted by the woman or by someone who has been authorised by her then the marriage is deemed to be accepted by the woman. So here, we see the fulfilment of the basics of a contract.

- Consideration:

The consideration of the man is the offering of dower to her and her family and in return, the woman is offering herself. In contracts, the seller offers the goods to the consumer and the consumer in return pays a sum of money to attain the goods. Similarly here the man offers dower and the woman agrees to marry him. Hence, the second condition is met.

- Legal capacity of the parties

In contract law the persons who are minor (not attained majority) or insane persons are not allowed to enter into a contract. And such a contract becomes void ab initio. Similarly, the man and woman need to have attained majority if not should either be married by the consent of the guardians or are physically mature to consummate the marriage.

- There are certain terms and conditions which can be decided between the couple which is also called a pre-nuptial agreement between the parties, similar to terms and conditions imposed upon the buyer and seller while trade between the parties is carried out.
- Lastly, like there is a violation of such terms and conditions such that they are not observed by the agreeing parties then the marriage can be brought to an end. Similarly when there is a breach of contract between two parties.

This is one side of the belief system in Islamic law with regards to marriages interpreted strictly upon the writings in the Quran.

However, it is also believed that a Muslim marriage is also a religious and sacred act and are governed by Sunnas which means traditions.

The prophet advocated the position of woman and strongly encouraged the men to marry a suitable wife to ensure that the man has completed at least half of his duties by the virtue of being a Muslim man. Also that the man should avoid living an unmarried life without any proper explanation or devotion to Allah. The religious aspects of this marriage is that it also is for the society to accept the couple and to ensure that the mans' lineage is carried forward. It also qualifies a man to live a purposeful and a fulfilled life. And consummation and procreation are vital aspects of this marriage.

The matrimony further upholds the honour of the man and the woman in the society and gives rights to the baby out of the marriage to have rights over the property of the family. In older times, the woman was considered to be property or rather chattel. And it was the duty of the father to ensure that this chattel is handed over to another man by way of marriage. So the status of the consummation and procreation of children is legally recognized.

Therefore, as a whole, we understand the Muslim marriage is a civil contract between competent parties for consideration and can further have certain terms and conditions before entering into the contract but also has a certain religious aspect to

it. The consummation of marriage and the child is legitimized by virtue of such marriage, the matrimony further stabilises the status of the domestic life and legacy.

From the above explanation, we can understand that Hindu and Muslim marriage are similar in only one aspect. That is a religious aspect, where both the marriages are legalised by virtue of the togetherness and union of two souls. However, the major difference is that Muslim marriage is a civil contract between two parties.