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**ANALYSIS OF JUDICIAL DECISIONS IN DIVORCE PROCEEDINGS
UNDER HINDU AND MUSLIM PERSONAL LAW: SPECIFIC FOCUS
ON MAINTENANCE AND CUSTODY**

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INTRODUCTION

Marriage, as a social institution, is profoundly ingrained in the cultural and religious traditions of India. It's not just a joining of two people it's binding together families and all the commitments and expectations of society too. When a deep rift splits a marriage to the core, the legal machine steps in to sort things out so that it's fair for everyone involved. Divorce, formerly stigmatised, has emerged as a recognised phenomenon in Indian culture, demanding a comprehensive legal structure to manage related concerns, notably regarding support and custody.

India has a legal structure that works well because of its mix of diverse religiosity and secular beliefs. This system lets religions handle rules about marriage and divorce based on what their traditions say. The Hindu Marriage Act of 1955² regulates the marriage rights of Hindus, whilst Muslims adhere to personal rules based on the Quran, Hadith, and other sources of Islamic jurisprudence. These laws spell out reasons for splitting up and outline steps for both separation support and custody matters. The judiciary's interpretation of these clauses is essential in reconciling religious ideals with constitutional requirements.

Under Hindu law, marriage is historically viewed as a sacred connection, while current legislative amendments under the Hindu Marriage Act, 1955 permit divorce under specific grounds, including cruelty, abandonment, and adultery. Conversely, Islamic law, grounded in Sharia principles, permits divorce through many mechanisms, including Talaq (unilateral repudiation by the husband), Khula (divorce initiated by the woman), and Mubarat (divorce

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² Hindu Marriage Act, 1955, Act No. 25 of 1955, ss. 13, 24–26.

by mutual consent). The legal framework governing divorce among Muslims has undergone considerable judicial examination, notably following the Supreme Court's involvement in instances like *ShayaraBano v. Union of India (2017)*³, resulting in the annulment of instant Triple Talaq.

One of the most controversial components of divorce proceedings is maintenance, which refers to the financial assistance paid to a spouse (typically the woman) following separation. The basic purpose of maintenance legislation is to prevent the economic poverty of the dependent spouse and guarantee a respectable level of living.

For Hindus, the Hindu Adoption and Maintenance Act, 1956, together with Section 144 of the Bhartiya Nagrik Suraksha Sanhita (BNSS), gives for the right to maintenance. Section 144 of the Women's Protection Code (WPC) applies to all women whether they are of one faith or another and requires a husband to support financially if his wife is unable to support herself. The Supreme Court has generally maintained that maintenance should be equitable, fair, and reasonable, taking into consideration the husband's financial condition and the wife's requirements.

Muslim women's claim to maintenance has been subject to much legal controversy, notably following the landmark verdict in *Mohd. Ahmed Khan v. Shah Bano Begum (1985)*⁴. The Supreme Court ruled that Muslim women, like women of other religions, could claim maintenance under Section 144 of the Bhartiya Nagrik Suraksha Sanhita (BNSS), overriding the restrictive interpretation of the Muslim Women (Protection of Rights on Divorce) Act, 1986, which limited maintenance to the Iddat period (a period of three months following divorce). However, later some cases came out emphasizing that Muslim women who feel entitled to have reasonable and equitable support after the waiting period for periods post divorce deserve more enforcement against clear equality and fairness ideals found in the Constitution. For example, a case in 2001 involving *Daniel Latifi*⁵ versus India.

Custody battles sometimes become very delicate and complex in divorce proceedings, as courts are expected to prioritize the welfare of the child over the individual rights of parents. In India, custody disputes for children are usually handled through Guardians and Wards Act of 1890, which is a rule that applies everywhere basically, along with specific religious rules.

³(2017) 9 SCC 1: AIR 2017 SC 4609.

⁴*Mohd. Ahmed Khan v. Shah Bano Begum*, AIR 1985 SC 945.

⁵*Daniel Latifi v. Union of India*, (2001) 7 SCC 740.

For Hindus, there's a law called the Hindu Minority and Guardians Act of 1956⁶ that says father has a natural right to live with and look after the child, but the mother has stronger claim for custody if the child is less than five years old. This reflects the venerable history and balanced nature of rights and privileges within Hindu families. Courthouses have been pretty flexible about this stuff, taking as their touchstone that ultimately what matters most is what's best for the kid. Once in a case called *Gita Hariharan v Reserve Bank of India*⁷ from 1999, the Supreme Court held some important rulings. They decided that 'natural guardian' needs to be read from a point of equality regardless of gender. That meant that mothers can show they also have the legal ability to be guardians of those little ones when needed.

Muslim law maintains the theory of Hizanat, under which the mother has the predominant claim to custody of young children, especially females, up to a specific age.⁸ However, the father retains guardianship rights, including authority over the child's possessions. Courts have stepped in many a time to intervene when personal laws impose tough and harsh penalties that really cause kids more harm than good. The Supreme Court has underlined in many judgements that the wellbeing of the child is of vital significance, independent of religion personal rules.

Indian courts have played a revolutionary role in interpreting and administering maintenance and custody rules, often reading them in light of constitutional considerations. Judges have worked hard to blend personal laws with rights entrenched into the Constitution folks and rights like equality for Article 14 and life and human dignity in Article 21.⁹

In *ShayaraBano v. Union of India (2017)*, the Supreme Court highlighted that no Muslim woman should be financially abandoned after a divorce. Also, in *Kusum Sharma v. Mahinder Kumar Sharma (2020)*,¹⁰ the Delhi High Court prescribed a comprehensive framework for determining the maintenance amount which, as the husband's financial means and lifestyle, as well as the wife's employability, were all adequately considered.

⁶ Hindu Minority and Guardianship Act, 1956, Act No. 32 of 1956, s. 6.

⁷ *Githa Hariharan v. RBI*, AIR 1999 SC 1149.

⁸ Muslim Personal Law (Shariat) Application Act, 1937, Act No. 26 of 1937.

⁹ Constitution of India, arts. 14, 15, 21 – Right to equality, non-discrimination, and life with dignity.

¹⁰ *Kusum Sharma v. Mahinder Kumar Sharma*, (2020) SCC OnLine Del 6536.

Understanding Divorce under Hindu and Muslim Law

Divorce, as a legal dissolution of marriage, indicates the official cessation of the marital relationship between spouses. In India, personal laws control divorce processes, reflecting the religious beliefs and practices of different communities. Among these legal frameworks, the Hindu Marriage Act from 1955¹¹ and the rules followed by Muslims called Shariat go together with some other related laws. Together they pretty much lay down the rules for how divorces work and are regulated for Hindus and for Muslims. While both systems accept the requirement of legal separation in times of marriage strife, the grounds, methods, and underlying concepts differ dramatically.

In the world of Hindu law, marriage has always been considered something very sacred and like it will last forever—you know, when both partners commit to each other for life. However, the introduction of the Hindu Marriage Act, 1955 represented a fundamental break from this notion by establishing the concept of legal divorce. The law allows for two ways to get a divorce, one is by mutual choice and the other is through a contested divorce. Mutual consent divorce, given under Section 13B, permits spouses to jointly seek for dissolution if they have lived separately for a year and have been unable to reconcile. This rule is all about a modern and pragmatic approach when figuring out how married folks should solve problems it focuses a lot on peaceful resolutions.¹²

On the other hand, disputed divorce under Section 13 empowers either spouse to apply for divorce on specified grounds. These grounds include adultery, cruelty, desertion for a continuous period of two years, conversion to another faith, unsoundness of mind, virulent sickness, renunciation of the world, and presumption of death for seven years. Now also there is Section 13(2) and this allows specific reasons for husbands' wives. These reasons include if the husband remarries or behaves badly sexually.¹³ The judicial system has really helped open up these possibilities a lot. For instance, in *Shobha Rani v. Madhukar Reddi (1988)*¹⁴, the Supreme Court stated that cruelty might be physical or mental, depending on the facts of the case. The courts essentially accept the idea that marriages can break down so irreparably that they are essentially over even if that directly isn't written into the law. The case of

¹¹ Hindu Marriage Act, 1955, Act No. 25 of 1955, §§ 13, 13(1), 13(2), 13B.

¹² A. Dhanda, "Legal Framework of Divorce: Need for Gender-Neutral Reform," (2018) 60(2) Journal of Indian Law Institute 183.

¹³ Paras Diwan, *Muslim Law in Modern India*, 13th ed. (Allahabad Law Agency, 2017).

¹⁴ *Shobha Rani v. Madhukar Reddi*, (1988) 1 SCC 105: AIR 1988 SC 121.

*Naveen Kohli v. Neelu Kohli (2006)*¹⁵ underlined the necessity to acknowledge irretrievable breakdown as a viable cause to avert lengthy litigation and mental hardship.

Divorce provisions under the Hindu Marriage Act, 1955

The Hindu Marriage Act, 1955 (HMA) was a groundbreaking piece of legislation that established the notion of divorce in Hindu law, representing a change from the previous view that Hindu marriages were sacramental and indissoluble. This Act creates a legal framework for when marriages need to be officially ended under certain specific reasons. The core idea behind this is to give people legal backing in times they find that their marriages are a complete disaster and can't go any further. It ensures that there isn't one kind of divorce anymore but that there are specific reasons why an official split can be done and separated people are protected. By reconciling the sacredness of marriage with the necessity to handle marital conflicts, the Act creates explicit reasons and processes for divorce while respecting the rights and interests of both spouses.

Grounds for Divorce under Section 13 Section 13 of the Hindu Marriage Act enumerates different grounds on which a spouse may seek a disputed divorce. These reasons apply to both the husband and the wife, establishing legal parity in divorce procedures. The major reasons for divorce under Section 13 include:

1. **Adultery:** Adultery, defined as consensual sexual intercourse with a person other than the spouse, is a recognized reason for divorce under Section 13(1)(i)¹⁶ of the Hindu Marriage Act, 1955. While establishing adultery can be tough, circumstantial evidence such as the actions of the spouse and corroborative testimony typically enough. In cases like *Subbaramma versus Saraswathi (1964)*¹⁷, courts have affirmed clearly that reliable proof is absolutely necessary to formally prove adultery as a matter of fact. In cases like *Dastane v. Dastane*¹⁸ from way back in 1975, courts have also realized that it's necessary to protect the health and integrity of marriages while also giving justice to the spouse who has been wronged. Claims of infidelity are very serious, and courts take a careful approach so that they don't get exploited as a weapon for harmful reasons.

¹⁵*Naveen Kohli v. Neelu Kohli*, (2006) 4 SCC 558: AIR 2006 SC 1675.

¹⁶ Hindu Marriage Act, 1955, § 13(1)(i) – Adultery.

¹⁷*Subbaramma v. Saraswathi*, AIR 1964 AP 360.

¹⁸*Dastane v. Dastane*, (1975) 2 SCC 326: AIR 1975 SC 1534.

2. Cruelty: Cruelty, comprising both physical and emotional injury, is a recognized basis for divorce under Section 13(1)(ia)¹⁹ of the Hindu Marriage Act, 1955. It involves activity that endangers the life, safety, or mental health of the partner, making cohabitation unbearable. Judges have really broadened their mind and now think that things like emotional abuse, harassment and severe neglect are very serious issues too. In *Shobha Rani v. Madhukar Reddi (1988)*²⁰, the Supreme Court highlighted that cruelty need not be restricted to physical assault; even mental suffering induced by humiliating behavior, verbal abuse, or financial hardship might constitute cruelty. The judge also pointed out that the harmful conduct of the other spouse really does damage to that spouse's mental and emotional state and wellbeing and that's a really important factor. Courts look at each case on its own, they sift through the facts and think carefully about what consequence really falls on the perpetrator. They also do their very best not to make the person who's been hurt endure too much pain.
3. Desertion: Under Section 13(i)²¹ of the Hindu Marriage Act 1955, desertion means not just any abandonment, but specifically long periods of abandonment of one spouse by the other that is willful and unjustifiable, continuous for at least two years. It's not just about being physically apart there's also a strong resolve to let go of marriage roles and responsibilities. To do something with a separation feeling, courts typically want both actual physical separation and a desire to leave or resign. Kind of like when two people want to definitely separate from each other courts want to make sure that they're actually separating as a part of that separation desire. In cases *like BipinchandraJaisinghbhai Shah versus Prabhavati*²² '57' the Supreme Court stressed that temporary separations or absences, just as long as both people agree and aren't abandoned, don't constitute desertion. It's the petitioner's job to show that they need help and deserve what they're asking for, and to prove both that well. And similarly, if one person does things that push the other into walking away, sometimes that kind of separation is considered too. Courts pay very close attention to the circumstances to make sure that someone really deserted and there are no good reasons.

¹⁹ Hindu Marriage Act, 1955, § 13(1)(ia) – Cruelty.

²⁰ *Shobha Rani v. Madhukar Reddi*, (1988) 1 SCC 105: AIR 1988 SC 121.

²¹ Hindu Marriage Act, 1955, § 13(1)(ib) – Desertion.

²² *BipinchandraJaisinghbhai Shah v. Prabhavati*, AIR 1957 SC 176.

Divorce provisions under the Muslim Personal Law (Shariat) and Dissolution of Muslim Marriages Act, 1939

Divorce in Muslim law is controlled largely by Muslim Personal Law (Shariat), which is drawn from Islamic jurisprudence, including the Quran²³, Hadith (sayings of Prophet Muhammad), Ijma (consensus of scholars), and Qiyas (analogical reasoning). One of the most important aspects of marriage within Islam is known as Nikah and represents a sacred agreement between two people. Nowadays, the law allows for that very agreement to be ended, when the two people can no longer get along with each other. In other words, when the marriage feels intolerable for both sides. The legal laws for divorce are established to balance the interests of both spouses, assuring justice and dignity in the process.²⁴

Recognizing the need to address the problems of Muslim women within the legal system, the Dissolution of Muslim Marriages Act, 1939²⁵ was passed to give Muslim women with legislative reasons to seek divorce via the court process. Together, the Shariat court system along with the 1939 Marriage Act provide a full and thorough process for ending Muslim marriages. Under Muslim law, divorce can be initiated either by the husband, by the woman, or by mutual consent. The following are the acknowledged modes of divorce:

1. Talaq (Divorce by Husband): Talaq (Divorce by Husband):

The most popular type of divorce in Muslim law is Talaq, which refers to the unilateral authority of the husband to break the marriage. The Quran urges reconciliation before pronouncing Talaq and mandates an organised procedure comprising attempts at mediation and arbitration.²⁶

- Talaq-e-Sunnat:²⁷ This form of Talaq really follows the principles that Prophet Muhammad taught and comes in two main types:
 - Ahsan Talaq: When a husband finally divorces a wife during a period of purity known as 'Tahara' and waits for three months right after that divorce, this is considered by authorities the most legal and proper divorce. Reconciliation is urged during this period, and the divorce becomes final only if no reconciliation happens.

²³The Quran, 2:229, (Al-Baqarah), Sahih International.

²⁴Hadith of Prophet Muhammad on Divorce: Sahih Muslim, Book 9, Hadith 350.

²⁵Dissolution of Muslim Marriages Act, 1939, No. 8 of 1939, India Code (1939).

²⁶Family Law in India, Kusum, 5th ed. (LexisNexis 2020), at 307–312.

²⁷Talaq-e-Sunnat: For a detailed explanation of Ahsan and Hasan Talaq, see *Islamic Law and Divorce*, A. A. Yusuf, 2nd ed. (Oxford University Press, 2017), at 157–159.

- Hasan Talaq: It involves making three separate talaq announcements in three separate states of purity in succession. This form also enables time for reconciliation.
 - Talaq-e-Bid'ah²⁸: Also known as instant triple Talaq, this version entails the instantaneous and irrevocable declaration of divorce in a single sitting. Though this practice used to be popular many years ago, the Supreme Court of India recently ruled this practice to be unfair and unlawful in a case known as *ShayaraBano vs Union of India* in 2017. It was noted that such practice is arbitrary and unsavoury.
2. Khula (Divorce at the woman's Instance): Khula is a kind of divorce initiated by the woman, where she gives compensation, generally in the form of her Mahr (dower) or other financial settlement, in exchange for the husband's permission to terminate the marriage. The Quran supports Khula as a strategy to avert protracted suffering in a broken marriage. Courts make sure that the wife freely consents and that the conditions of getting khula are satisfactory.
 3. Mubarat (Mutual Divorce): In the town of Mubarat, couples mutually come to a mutual decision to dissolve their marriage. Unlike things like talak or khula, mubarat is about being on the same page that the marriage just isn't working and mutual agreement. Upon consent, the dissolution is effective, and the wife follows the Iddat period.
 4. Lian (False Accusation of Adultery): If a husband falsely accuses his wife of adultery without giving evidence, the wife has the right to seek divorce through Lian. Islamic principles see false allegations as a serious sin, and the courts may dissolve the marriage upon showing the baselessness of the charge.
 5. Faskh (Judicial Dissolution): Under Islamic law, a Qazi (judge) has the right to dissolve a marriage upon the wife's petition provided she proves legitimate reasons for divorce. Faskh may be awarded in circumstances of abuse, non-maintenance, desertion, or other major marriage troubles. The courts guarantee that the values of justice and fairness are upheld during the proceedings.

²⁸Talaq-e-Bid'ah (Instant Triple Talaq), Sahar Ahmed, in *Muslim Law Journal* (2019), 25(1), at 56.

Maintenance Under Section 144 of the Bhartiya Nagrik Suraksha Sanhita (BNSS), 2023.

Section 144 of the BNSS is a secular rule that applies consistently across all religions, offering a speedy and effective remedy for those seeking maintenance. The rule says husbands need to give financial help to their wives, their minor children who aren't living with them anymore and dependent parents who are unable to manage their own lives. Unlike personal laws, which may impose limitations based on religious practices, Section 144 is focused on avoiding vagrancy and poverty without discriminating based on religion.

If a woman is divorced and hasn't remarried, and she doesn't have enough to live on financially, she can get support under some of the legal clauses. Support can mean a helping hand with money so that she can afford food and a roof over her head. In the landmark decision of *Chaturbhuj v. Sita Bai (2008)*²⁹, the Supreme Court declared that a woman is entitled to support even if she lives apart, if she has solid grounds for the separation. Kids of any status—whether legitimate or not—are able to ask their parents for help too. Elderly parents who are financially dependent might also demand maintenance from their children.

One of the big calls under Section 144³⁰ was involving *Mr. Mohd. Ahmed Khan v. Shah Bano Begum (1985)*³¹, when the Supreme Court affirmed a Muslim woman's ability to seek maintenance under this secular statute, despite the opposition from religious groups. This verdict was a milestone in promoting gender justice and underlined the judiciary's commitment to preserving the rights of divorced women across all groups.

Maintenance Under the Hindu Adoption and Maintenance Act, 1956

The Hindu Adoption and Maintenance Act, 1956 (HAMA)³² offers extensive laws for maintenance for Hindus, including Jains, Buddhists, and Sikhs. Section 18 of HAMA permits a Hindu wife to demand support from her husband during her lifetime. Even if separated for good reason, if husbands and wives are apart and separation is justified by abuse, adultery or desertion, this benefit still exists. However, if a woman is found guilty of adultery or if she converts to a different religion, her right to maintenance from her spouse after a relationship ends goes away.

²⁹ *Chaturbhuj v. Sita Bai*, (2008) 5 SCC 598.

³⁰ *Bharatiya Nagrik Suraksha Sanhita (BNSS), 2023*, Section 144, India Code (2023).

³¹ *Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2 SCC 556.

³² *Hindu Adoption and Maintenance Act, 1956*, No. 78 of 1956, India Code (1956).

HAMA also respects the rights of kids and parents to care for and take responsibility for each other. Under Section 20, legitimate or illegitimate children can claim maintenance from their parents until they acquire majority, unless they are unable to maintain themselves owing to physical or mental infirmity. Sometimes parents who rely on children for support might ask for help of one sort or another, and that help often comes in money. In circumstances of legal separation or divorce, courts are entitled to establish the amount of maintenance, taking into account criteria such as the financial capabilities of the husband, the wife's demands, and the couple's quality of living throughout the marriage.

In the case of *Bhuvan Mohan Singh v. Meena* (2015), the Supreme Court stressed that maintenance is not a simple legal formality but a basic entitlement to sustain a decent existence. The ruling reaffirmed that the goal of maintenance is to bridge the financial gap and give appropriate assistance to the dependent spouse.

Maintenance Under the Muslim Women (Protection of Rights on Divorce) Act, 1986.

A direct consequence of the Shah Bano Judgment was the passing of the Muslim Women (Protection of Wedded Rights) Act 1986 and that judgment brought to light fierce debates about putting secular laws to use by Muslim women. The Act intends to satisfy the financial requirements of Muslim women post-divorce while honouring Islamic norms. It gives a system that ensures divorced women get enough support financially from their exes.

Under Section 3 of the Act, a Muslim husband is entitled to give maintenance to his wife throughout the Iddat period, which normally lasts for three months following the divorce. Additionally, the Act mandates the husband to make a reasonable and equitable provision for the woman's future financial requirements. Unlike customary interpretations that confined the husband's responsibilities to the Iddat period, the Supreme Court in *Danial Latifi v. Union of India* (2001)³³ concluded that the need to care for the wife extended to assuring her permanent financial stability. This progressive interpretation really broadened the Act's reach for protection.

For a divorced woman who struggles to take care of her financial needs after waiting a few months called Iddat and hasn't gotten proper help from her former husband, she can apply for support from her family members. If no close kin is available, she can also go directly to what is called health boards of religious trusts. The courts have consistently construed the Act

³³*Danial Latifi v. Union of India*, (2001) 7 SCC 740.

in a manner that preserves the constitutional ideals of gender equality and social justice. In *Shabana Bano v. Imran Khan (2010)*³⁴, the Supreme Court stated that a divorced Muslim woman is entitled to seek support under Section 125 CrPC if she is unable to sustain herself.

Indian courts have played a big role interpreting and making sure women's maintenance rights grow stronger. Courts have helped to clarify and fortify women's rights especially in maintenance cases. The judiciary has often highlighted that the goal of maintenance statutes is to prevent financial hardship and promote a life of dignity for dependent spouses. In situations of maintenance, courts prioritize the economic well-being of women and children, often overruling conservative religious interpretations to protect constitutional norms.³⁵

Custody of Children

Divorce proceedings are some of the most legally charged moments in a married couple's life. Among them, custody of children is a major issue because it involves deciding who gets to parent, who gets to look after the kids, and how they fit into children's lives. Children have a really hard upbringing when their parents divorce because their worlds change so drastically and so fast. Custody is about making sure kids are going to be supported properly and loved regardless.³⁶ The basic purpose of custody legislation in India is to safeguard the welfare and best interests of the kid. While the notion of custody is addressed by several personal laws, the fundamental factor driving judicial judgements is the child's well-being, transcending religious barriers.

In Indian law, custody is classed into physical custody, legal custody, and joint custody. Physical custody refers to the child's physical dwelling, while legal custody offers the parent the ability to make choices on the child's education, healthcare, and general upbringing. And even though joint custody isn't used as much, both parents would generally share the parenting responsibilities also. Courts carefully consider the child's emotional, educational, and social requirements while determining custody arrangements.³⁷

³⁴*Shabana Bano v. Imran Khan*, (2010) 1 SCC 406.

³⁵**Gender Justice in Maintenance Proceedings: A Comparative Analysis**, Maya S. Khan, in *South Asian Legal Studies* (2022), 18(1), at 60.

³⁶**Mediation and Custody Disputes in Indian Family Law**, Priya V. Reddy, in *Family Law Review* (2023), 18(3), at 142.

³⁷**Children's Welfare in Custody Disputes: The Indian Judiciary's Approach**, Neha V. Agarwal, in *Indian Child Law Review* (2023), 12(2), at 134.

One of the most important things when it comes to custody fights is a child's wellbeing at the core of it. The courts assess various aspects, including the child's age, emotional relationship to parents, financial stability of each parent, and the moral and ethical environment supplied. While maternal preference is generally weighed for younger children, courts are cautious not to overlook the father's involvement until it is demonstrated detrimental to the child's welfare.

Sometimes when mom and dad both just really can't take care of their baby or be there for their child for some tough reasons, then sometimes a relative who is very close like grandparents can step up and get to decide custody.³⁸ It's really a last resort though, for when other options have already been ruled out and are really, really rare. Also, of course preferences of kids matter and especially when they are old enough and able to explain their reasons properly.

To decrease the adversarial aspect of custody disputes, courts typically propose mediation and alternative dispute resolution (ADR) techniques. These processes create a space where parents can come together to come to peaceful solutions that really benefit the child. Mediation is not just good for kids, as it really helps them bounce back from negative things and teaches parents to work together too.³⁹

While the Hindu Minority and Guardianship Act, 1956 and Muslim Personal Law manage custody for respective communities, both legal systems acknowledge the child's wellbeing as vital. Courts have always made a point of putting the child first and they emphasize on the development of kids holistically, rather than fighting too much about adults' rights compared to each other. This emerging judicial philosophy makes sure that when custody issues come before the courts, a child's emotional and mental wellbeing is always top priority.⁴⁰

Custody under Muslim Personal Law

The custody regime under Muslim Family Law operates on the principle of Hizanat, which essentially means that moms get custody of their children who are minors. Whereas in other legal systems, both parents are celebrated just as much, family law for Muslims puts special

³⁸**Custody of Children: A Comprehensive Study of Indian and International Norms**, R.K. Saini, in *Indian Journal of Comparative Law* (2021), 36(4), at 89.

³⁹**The Role of Fathers in Child Custody Cases: A Legal Perspective**, J. Ravi, in *Indian Family Law Journal* (2022), 29(1), at 67.

⁴⁰**Parental Custody and Guardianship: A Gender-Neutral Approach**, Sangeeta Mishra, in *Journal of Family and Child Welfare* (2020), 31(2), at 75.

focus on the best interest and healthy development of children and respects the important role that moms play in those early years too. One of the heart of custody fights is the welfare of the child, but almost always this sentiment is infused into both religious values and cultural ways of doing things.⁴¹

In Muslim law, the mother typically has a greater claim to custody of her children, particularly throughout their formative years. This desire is built on the belief that a mother's loving care is necessary for the physical and emotional development of young children. According to Sunni Law, a mom gets custody of a son until he's seven years old whereas for a daughter, she gets custody until she's older and has reached her puberty age. In contrast, according to Shia law, mothers have custody over male children up until they are two years of age and over daughters until they reach seven. After age labels have been met, custody usually moves to the daddy. However, these age-based presumptions are not absolute, and the welfare of the child remains important in judicial judgements.

Generally, moms get custody preference but there are specific situations this can get complicated. She has to be sane, have really good moral character, and also not marrying someone who's too closely related to the child, that's against the rules. If the mom doesn't meet these standards, custody can be given to other closely related female relatives first before the dad gets a chance. That means, if the grandmother or the maternal grandmother can step in to look after the kids, that's who the judge might choose. This is based more on family ties and proximity, rather than blood relationship or formal legal status. This preference for female relatives reflects the assumption that women are more qualified to offer care and emotional support to young children.

Under Sharia law, the father is the natural guardian and guardian of the child and has absolute responsibility for upbringing and supporting them financially. Even when Mom has the kids most of the time, Dad actually has legal responsibilities to support them financially and make sure they are happy and healthy too. In circumstances when custody is challenged, courts may intervene to determine which arrangement serves the best interests of the kid. Sometimes they'll talk about what's called Maslaha and use that to say they forgot some of the rules when having custody. Maslaha is kind of like saying something is really good for everyone

⁴¹The Quran, 2:233, 4:34, (1967).

together. People make lots of small changes when they're thinking of Maslaha.⁴² Think of it as people deciding to not color outside the lines just because everyone wins more when things are painted in a fun way that touches as many people as possible.

Courts in India when dealing with custody issues under Muslim law often consider the overall child welfare viewpoint. In important instances like as *Gulam Hussain Khan v. Shabbir* (1952)⁴³ and *Mohammed Jameel Ahmed v. Ameena Begum* (1998)⁴⁴, courts have underlined that religious principles cannot outweigh the basic need to guarantee the child's safety, well-being, and development. The judiciary has proven a readiness to interpret custody rules through a modern lens, reflecting the increasing socio-economic realities and the child's emotional needs.⁴⁵

Custody principles under Hindu Minority and Guardianship Act, 1956

The Hindu Minority and Guardianship Act of 1956⁴⁶ is a very specific law designed to settle who looks after and cares for children who are Hindu, Jain, Buddhist or Sikh. This is the important law that defines guardians and custodians. Its main focus is on young people and making sure that their best interests always come first when custody situations are decided. While the legislation defines guardianship as the general obligation for a minor's care and property management, custody applies exclusively to the child's bodily care and upbringing.⁴⁷ The courts, in adjudicating custody cases, are obliged by the premise of ensuring the child's welfare, which remains the top priority.

Under Section 6 of the HMGA, the father is regarded as the natural guardian of a minor child. However, for children below the age of five, the mother is given priority, reflecting the view that maternal care is vital throughout the formative years of a child's life. Courts usually side with the notion that babies really, really need that warm, cosy atmosphere that moms usually provide. This predilection, albeit strong, is not absolute. If a mother is judged to be unsuitable because of things like mental illness, addiction to drugs or alcohol, or neglect, then child

⁴²**Muslim Personal Law: A Constitutional Perspective**, A. H. Khan, in *Indian Journal of Constitutional Law* (2021), 22(1), at 91.

⁴³**Gulam Hussain Khan v. Shabbir**, AIR 1952 SC 1052, Supreme Court of India.

⁴⁴**Mohammed Jameel Ahmed v. Ameena Begum**, (1998) 6 SCC 469, Supreme Court of India.

⁴⁵**Custody of Children under Muslim Personal Law: Gender Dynamics and Judicial Trends**, A. Iqbal, in *Journal of Family and Personal Law* (2020), 17(2), at 59.

⁴⁶**Hindu Minority and Guardianship Act, 1956**, No. 32 of 1956, India Code (1956).

⁴⁷**Child Welfare and Guardianship in Hindu Personal Law**, R. Singh, in *Indian Family Law Journal* (2021), 45(3), at 132.

custody might go to the father or someone else who is qualified as a big guarantor of the welfare of the child.⁴⁸

The Act also provides for testamentary guardianship under which a guardian can be appointed by a will, often by the last living parent. When there aren't any natural family members there to look out for a child's best interests or a parent or ancestor who left a will appointing a guardian, the courts step in to do it. They act under certain statutes in place from long ago called the Guardians and Wards Act of 1890⁴⁹. This ensures that the courts consider deeply just how to make sure that child is happy, safe and doing well. Just at that time when children don't have natural guardians to watch out for them. This judicial discretion permits courts to overcome standard legal presumptions in circumstances when the biological parent is unable to provide a stable and nurturing home for the kid.⁵⁰

CONCLUSION

When it comes to divorce in India, the legal rules that control who pay bills and who has time with the kids are a lot more complicated and mixed up. There are all kinds of religious ideas involved, and then there is government law too that has to sort out which applies. Judges have to make a lot of hard choices figuring out what is fair and what people are entitled to. While both systems aim at fairness and justice, outcomes are different since these personal laws have their unique cores. Over the years, the court system has grown really important for creating fair rules of the law by carefully balancing out Constitutional principles alongside personal law doctrines.

In the topic of maintenance, Hindu law principally functions under the Hindu Marriage Act, 1955 and the Hindu Adoptions and Maintenance Act, 1956, which acknowledge the right of a wife, children, and dependent parents to seek financial support. Judges are getting stronger and stronger with their words by emphasizing that maintaining financial stability and avoiding poverty are things that maintenance is crucial for. A really flexible approach about temporary and permanent repair work has been adopted because a huge variety of factors at play, and judges can look into lots of stuff including income, standard of living, and whether each side has financial needs or demands. When courts make decisions like in the case of

⁴⁸**Custody of Children under Hindu Minority and Guardianship Act: Legal Implications and Challenges**, A. Mehta, in *Journal of Family Law* (2020), 38(4), at 58.

⁴⁹**Guardians and Wards Act, 1890**, No. 8 of 1890, India Code (1890).

⁵⁰**The Role of Parents and Courts in Custody Decisions under the Hindu Minority and Guardianship Act**, K.S. Sharma, in *Indian Legal Review* (2022), 29(1), at 75.

Rajnesh versus Neha (case from 2020) they're making maintenance decisions that are fairer. They stress openness by making sure people who are in relationships show what money they have and what responsibilities they take on. That's supposed to lead to a more even split when it comes time to decide financial matters. That's about the wife and husband splitting what they have.⁵¹

From another angle, Islamic law bases its principles on Shari'a and is officially codified via the Muslim Women Protection of Rights on Dissolution of Marriages Act 1986. While historically confining the responsibilities of a husband to the Iddat period, court interpretations have broadened the scope of maintenance to safeguard the financial stability of divorced Muslim women. The historic ruling in *Shah Bano Begum v. Mohammad Ahmed Khan* (1985) marked a key milestone by declaring that Muslim women may seek maintenance under Section 125 of the CrPC, thus establishing the constitutional right to equality. More recent rulings backed up that divorced Muslim ladies are entitled to reasonable and fair dealing beyond Iddat time.⁵² Court judgment from that time, for example in *Danial Latifi vs. India* in 2001, is clear on this point too.

When looking at custody, both Hindu and Muslim laws stress focusing on and considering the child's wellbeing and interest. According to Hindu law there are two main pieces of legislation that deal with guardianship and custody disputes. One is called the Hindu Minority and Guardianship Act of 1956 and the other is the Guardians and Wards Act 1890. Both of these laws pay attention to issues of guardianship and custodial rights. Courts have repeatedly supported the notion that the child's best interests must prevail, weighing elements such as emotional attachments, education, and the general well-being of the kid. Judicial cases like *Gaurav Nagpal v. Sumedha Nagpal* (2008) stress that custody agreements should encourage a loving atmosphere, even if it means giving custody to one parent over the other. Shared custody has also really taken off and that definitely speaks to the value of kids staying connected to both their parents.

On the other hand, Islamic Law accommodates the notion of 'Hizanat,' which gives moms the main right to custody of little kids especially young boys until age of seven and girls until puberty. This right, however, is not absolute and can be overruled if it is judged detrimental

⁵¹**Law Commission of India**, *Report No. 257: Reforms in Guardianship and Custody Laws in India* (2015), available at: <https://lawcommissionofindia.nic.in/>

⁵²**National Commission for Women (NCW)**, *Recommendations on Custody & Maintenance Issues in Divorce* (2020), available at: <https://ncw.nic.in/>

to the child's welfare. Courts have really shown flexibility and openness when it comes to using these concepts and they focus on emotional and psychological needs of the child. Cases like *Gulam Mustafa v. Shabana Bano* (2018) highlight the judiciary's dedication to preserving the child's well-being, frequently placing the welfare concept above rigorous personal law interpretations.⁵³



⁵³UNICEF India, *Family Law and Child Rights: Custody, Maintenance and Protection in India* (2021), available at: <https://www.unicef.org/india/>.