CHAPTER-VI

POINT OF SIMILARITIES AND DISSIMILARITIES
(IN THE BOTH RELIGIOUS LAWS) IN THE ABOVE FIELDS

(1) In Hindu Religion, Marriage being a sacramental union was an inviolable and immutable union—thus even death did not dissolve the marriage. Where as under the Hindu shastric Law, marriage is deemed to be a sacramental bond continuing up to heaven. The Dharmashastra did not recognised divorce.

But Islam takes a realistic and sympathetic view of human affairs and therefore it attaches great importance to the happiness of both the spouses. In Islam marriage in the ordinary course is to last till one of the spouses dies. But if a husband and wife can not live happily together so that the very objects of marriage are defeated and it becomes more farce, then its continuance is no longer considered desirable. Under such circumstances, divorce and dissolution of marriage are allowed under Islamic law.

(2) In Hindu law, totally, modes of divorce and grounds of divorce and causes are from Preliminary Acts, causes, Amendment, ordinance and judicial rules, not from dharmashastra, that for divorce.

But In Islam, modes of divorce, grounds of divorce and causes are from Religious view, that for divorce but some causes are modifications in Muslim Law.
(3) In Hindu Law, no iddat (menstrual period) is mentioned. But in Islam, iddat must have to be observed and necessary. This iddat is the period for which a woman must wait before marrying again whether, in the event of divorce or death.

(4) In Hindu Law, no dower system, but in Islam the dower system is necessary. ("Dower, under the Muhammadan Law, is a sum of money or other property promised by the husband to be paid or delivered to the wife in consideration of marriage, and even where no dower is expressly fixed or mentioned at the marriage ceremony, the law confers the right of dower upon the wife as a necessary effect of marriage. To use the language of the Hedaya,'the payment of dower is enjoined by the law merely as a taken of respect for its object (the woman), wherefore the mention of it is not absolutely essential to the validity of a marriage; and, for the same reason, a marriage is also valid although a man were to engage in the contract on the special condition that there should be no dower." (1))

(5) In Hindu Law, there is no oral system of divorce or pronouncement of divorce, but in Islam it is oral divorce recognised as valid as stated in the Holy Qur'an (1a) and Hadith.

(6) In Hindu Law, only ther is one way or system for divorce, that only petition, But in Islam three are many
ways for divorce.

(7) In Hindu Law and Act time to time changed by judicial committee with social change and demand of people or Hindu community. And the Muslim main law I is unchangable can change but the opinions of Muslim Jurists can be changed.

(8) After divorce a Muslim woman (Qur'an and Hadid) is entitled to maintenance from her husband during the period of iddat. But also for the time, if any, that elapsed after the expiry of the period of iddat? and her receiving notice of talaq. Adoptions Act 1955 Subject to the provisions of this section a Hindu wife, whether married before or after the pronulagation of this Act shall be entitled to be maintained by her husband with the selond marriage or her life time of she doesnot marry.

(9) A Muslim widow is not entitled to mainternance out of the estate of her late husband in addition to what she is entitled to by inheritance or under his will. A Hindu wife, whether married before or after the commencement of this Act, (Adoptions Act) shall be entitled to be maintained often the death of her husband by her father-in-law.

(10) Ahsann talaq, in the case of Ahsa talaq, three pronouncements have to be made in three different tuhurs or
(10) Ahsan talaq, in the case of Ahsan talaq, three month pronouncements have to be made in three different tuhrs or in the case of a non menstruating, woman at interval of month.

Hedaya brands it as the most laudable divorce, where husband repudiates his wife by a single pronouncement in a period of during which he has not had intercourse with her, and then leaves her to observance of IDDAT. The divorce remain revocable during the IDDAT, and the parties relain the right of inheritance. According to the Hedaya this method divorce is the most approved because the companions of the Prophet approved of it, and secondly, because it remains within the power of husband to revokes the divorce during IDDAT, which is three menstrual periods or till delivery.

Such form of divorce is in Islam but the Hindu law has no conception of such form of divorce, so this point may, noted be as a dissimilarity between Islam and Hindu Law.

(11) Hasan,-In talaq, Hasan, th husband successivily pronounces divorce three times during consecutive periods of purity ( tuhrs ). It is therefore "a divorce upon a divorce" when the first and second pronouncements are revoked and followed by a third, laonly the talaq becomes irrevocable. It is also essential that no intercourse
should have taken place during that particular period of purity in which the pronouncement has been made.

Where the wife is not subject to menstrual courses an internal of 30 days is required between each successive repudiation. Talaq Hasan to put an end to a barbarous pre-Islamic practice to divorce a wife and take her back several times in order to ill treat her. Through this method of talaq the husband has been given to chances of divorcing and then taking the wife back but the third time he does so, the talaq becomes irrevocable. In this way, the process of divorcing and repudiating cannot be continued indefinitely.

This divorcing is in Islam but the Hindu Law has no conception of such wonderfull divorce.

(12) Triple divorce:- Hedaya defines it as a divorce where the husband repudiates his wife by three divorces in one sentences or where he repeats the sentence separately, three within tuhr such a divorce is lawful, although sinful, in Hanafi law; but in Shia law it is not permissible. Such divorce is lawful in Islam but in sinful and it is not permissible Shia law inspite of this; such form of as be mentioned divorce is not in Hindu law.

(13) Ila (vow of continence):- Ila is when a person swears that he will not have sexual intercourse with his
The Hanafi jurists argue that since the husband acted unjustly towards his wife, it is equitable that on the expiration of four months he should be deprived of the benefit of marriage.

This system of divorce is not in Hindu law but the Islam has recognized such form of divorce.

(14) Zihār (injurious comparison):- Zihār signifies a husband's comparison of his wife with his mother or any female relation within the prohibited degrees. In Zihar the usual phrase is "Thou art to me as the back of my mother."

This mode of talaq is very rare in India, Pakistan, Shri Lanka, and Bangladesh.

As above mentioned this is a very rare form of divorce is found in above mentioned countries. So it is the one form of divorce in Islam Law but in Hindu law there is no conception of such divorce in any situation. This is dissimler to mode of divorce in Hindu law.

(15) Talaq-i-tafweez (delegated divorce):- A mustion husband has got the power pronouncing a talaq in respect his wife. He is also entitled to delegate the power of his wife or any other person to effect a talaq, with his wife. As to difference in case of an agent to pronounce a talaq and the power pronounce it. The delegation of power is technically called "Tafweez" Tafweez means the making
another person owner of act which apertains to the person making the Tafweez. It is deligation by the husband of power of talaq to the wife desiring her to give the effective sentence.

Such mode of divorce is not in Hindu law, but Islam is recognize this form of divorce by Qur'an and Hadith.

**Point of Similarities in the following above fields, in the both Religious:**

In Hindu law, liberty to parties to marry again when six months often the date of an order of a High Court confirming the decree for a dissolution of marriage made by District Judge have expired.

In Islam, A Muslim wife is entitled to marry again other party after iddat from dissolution by mutual contract.

(2) A woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage.

A woman married under Hindu Law shall be entitled to obtain a decree for the dissolution of her marriage.

(3) Hindu law accepted any mutual contract for dissolution of marriage.
Muslim law too accepted any mutual contract for dissolution of marriage.

**By Mutual Consent:** Khula - (redemption) - If the mutual relationship between the husband and wife is not suitable the wife, if she so desires, may seek a Khula divorce, e.g. by relinquishing her claim to the dower. It, however, entirely depends upon the husband to accept the consideration of dower and to grant the divorce. A husband may similarly propa a Khula divorce; the wife may accept or refuse it. If she accepts, it means that she has relinquished the right to get dower from her husband. Khula may be for any consideration - dower, mooney, property etc.

Such system of divorce is, Hindu and Muslim but in In Hindu, with defferent condition.

Mubaraat. (mutual freeing):- Where there is a aversion to the marriage on the part of both the parties who are desirous of dissolving it, it is called mubaraat. A dissolution of marriage at the desire of the wife alone for consideration is called Khula. Thd Sunni law places mubarrat under the head of Khula. Khula may be effected by use of the word mubaraat, so that it comes under the definition of Khula. There is however some difference in effects in the use of dower.

Such system of divorce exists in both Hindu and Muslim Law.
**BY JUDICIAL PROCESS**

**Li’ān (mutual imprecation):** When the husband makes a charge accusing his wife of adultery (which term includes all cases of unlawful sexual connection whether incest, fornication, whoredom or adultery) the procedure for the settlement of the accusation by swearing and imprecating upon them the curse of Allah is technically called li'ān. They are testiconfirmed by oaths. In this perfouse Holy Qur'an said. "And those who accuse honourable women but bring not four witesses, scourge them (with) eighty stripes and vever (afterward) accept their testimony. They indeed are evil-doers".

"As for those who accuse their wives but have no witnesses except themselves; let the testimony of one of them be four testimonies (swearing) by Allah that he is of those who speak the truth; and yet a fifth, invoking the curse of Allah on and it shall avert the punishment from her if she bear witness before Allah four times that thing he saith is indeed false; and a fifth (time) that the wrath of Allah be upon her if he speaketh truth".

The wife is entitled to suit for a divorce on the ground that her husband has falsely charged her with adultery. At the hearing of the suit, the husband had two alternatives: (i) he may retract (withdraw) the charge before the end of the trial, in which case the wife could not get a divorce, or (ii) to persist in his attitude,
whereby he will be required to accuse his wife on oath. This is followed by oaths of innocency made by wife. After these "mutual imprecations", the Court dissolves the marriage.

Such mode of divorce is in Hindu Law by Judicial Act and Goverment Ordinance but in Islam is recognized this form of divorce by Holy Qur'an and Hadith.

**Faskh (Judicial annulment):**— Faskh means annulment. It refers to power of Qadi (in India, Law Court in Pakistan, under the Muslim family Laws Ordinance) 1961, the Chairman of the Union Council to annul a marriage on the application of the wife. The Law of Faskh is founded Holy Qur'an and Hadith "If a woman be prejudiced by a marriage, let it be broken off", (Bukhari). In India, such judicial annulments are governed by section 2 of the Dissolution of Muslim Marriage Act, 1939.

This form of divorce is in both the Hindu Law and Muslim religion.
REFERENCES

(1) Hedayah of Hamilton by Grady, p. 44; Durr al-Mukhtar p. 79.(1a). Qur'an, 11-229.


(6) Shami; p.244-45.


(8) Baill I, 335.

(9) Qur'an XXIV, 4.

(10) Qur'an XXIV, 6-9.

(11) Fyzee, 158; Citing Baill, (i) 338.