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Divorce Under Indian Laws

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Abstract

India, the country which is recognised all over the world for not only its vast size of land but also its rich culture and diversified community, stands as the best epitome of a secular and democratic land. Different communities, though united as Indians, abide by their customs and regulations. Hence, when it comes to the matter of divorce, our constitution facilitates us with a diverse set of laws based on religion. This research paper discusses a brief of multiple Indian statutes, including the Hindu Marriage Act, 1955; the Muslim Personal Law (Shariat) Application Act, 1937; the Indian Divorce Act, 1869; the Parsi Marriage and Divorce Act, 1936 and the Special Marriage Act, 1954. Not only does it provide information about the legal provisions, but it also gives us a great understanding of the reasons for the increasing rate of divorce in our country. This research has looked through both fault-based and no-fault divorce mechanisms, such as mutual consent, cruelty, desertion, adultery, and irretrievable breakdown of marriage. It also explores the role of the judiciary, gender justice, recent judicial interpretations, and the need for a Uniform Civil Code. Landmark cases such as Mohd. Ahmad Khan v. Shah Bano Begum, Saroj Rani v. Sudarshan Kumar Chadha, Naveen Kohli v. Neelu Kohli, Sureshta Devi v. Om Prakash, and Amardeep Singh v. Harveen Kaur are also briefed. Overall, this paper tries to answer many queries and provide a comprehensive understanding of Indian laws on divorce while including the cultural, historical, and global aspects involved.

Key words - Divorce; Grounds; Marriage; India; Hindu Marriage Act 1955; the Special Marriage Act, 1954; the Muslim Personal Law (Shariat) Application Act, 1937; the Indian Divorce Act, 1869; the Parsi Marriage and Divorce Act, 1936.

INTRODUCTION

Marriage, a sacred bond between two persons who are willing to spend the rest of their lives together. Formally, marriage is nothing but a union between two individuals which is recognised socially and legally. This leads to an association involving rights, obligations, as well as shared living and family.

Historically, Matrimony was considered unbreakable due to various ethical reasons. Indian society disapproved of divorce. It was highly discouraged, especially for women, as they were expected to remain in wedlock regardless of the circumstances. There was a very clear line drawn for divorced women in society. However, in post-independence India, statutes like the Hindu Marriage Act and the Special Marriage Act made divorce legally recognised and accepted, making a significant alteration in societal norms. India has evolved with time in all possible aspects and has acquired modern thinking. With their fair justice nature and progressive mindset, Indian courts have played a significant role in normalising divorce and changing the perspectives of many. This leads to changes in the traditional culture and norms. Though this shift has overall contributed a lot to the economic developmental processes, they have also served as fuel in the burning fire of increasing divorce rates. A combination of factors, such as changing social norms, women's empowerment, urbanisation, and economic shifts, has added to the plate.

As per recent data by the National Family Health Survey, urban areas are experiencing a rise in divorce rates, mostly among younger couples who also tend to be working professionals. In comparison to Western countries, numbers are still lower, however, the rising curve in the rate statistics reflects the changing mindset of Indian society, which can be looked upon as a sign for growth and development, but is also looked down upon by many who fear deterioration in individuals' ethical values.

RESEARCH QUESTIONS:

1. What are the key grounds for divorce under various personal laws in India?
2. How does the Special Marriage Act, 1954, address divorce differently from personal laws?
3. How does the law address issues like alimony, maintenance, and child custody in divorce cases?
4. What are the challenges women face in accessing legal remedies for divorce in India?

RESEARCH OBJECTIVE:

Here are the research objectives for studying divorce under Indian laws:

1. To analyse the legal terms and grounds for divorce provided under different religious and secular laws in India.
2. To evaluate the extent to which divorce laws in India promote gender justice and equality.
3. To analyse the divorce laws of different religions in India.
4. To analyse the impact of divorce on children.
5. To analyse the Legal provisions related to maintenance, alimony and other financial statements.

RESEARCH METHODOLOGY:

Doctrinal research was conducted to provide a better understanding of divorce under Indian laws. The findings of this study focused on analysing qualitative information that came through a variety of sources of information, like texts, court verdicts or decisions, web pages and legal journals. Databases available on the internet, including SCC online and other legal websites, were used to compile the information.

LITERATURE REVIEW

India's rich literature also showcases some of the phenomenal works in this subject. Here are some examples.

- Paras Diwan- His book "Family Law" is all about Indian family laws, which covers various laws regarding marriage and divorce under personal laws.
- Mulla- One of India's oldest scholars. He has written multiple legal books. One of which is "Principles of Hindu Law", which mainly focuses on divorce under Hindu law. It is also used frequently in Indian courts.
- Dr Kusum- Her book "Marriage and Divorce Law in India" comprehensively provides details regarding marriage and divorce laws, mostly known for gender justice and evolving interpretations.
- Flavia Agnes- She is a well-known lawyer and women's rights activist. She has many works on personal laws and their impact on women. Criticising its male-dominant nature and fighting for reform.
- Siyaram Sinha- Wrote "Law of Marriage and Divorce", which gives an elaborate account of the personal laws along with the Special Marriage Act.

GROUND FOR DIVORCE:

The term "secular" was added to the Preamble by the 42nd Amendment Act in 1976. The Indian state practices a form of “principled distance”, which means recognising and acquiring the diverse religious practices of its citizens while upholding constitutional values, rather than excluding the concept of religion from public life. This concept leads to various personal laws which apply to their respective religious communities. These laws act as a guideline which states the conditions under which a marriage can be considered dissolved. The following are some major personal laws prevailing in India:-

1. Hindu Marriage Act, 1955¹

This law applies not only to Hindus but also to Buddhists, Jains, Sikhs and anyone who does not belong to the Christian, Muslim, Parsi or Jewish community and is governed under the Hindu law. Under sections 10 and 13 of this act, grounds for judicial separation and divorce are mentioned.

Here are some fault-based grounds of divorce:

- Adultery, i.e sexual involvement with any individual other than a spouse.
- Cruelty, i.e causing any physical or mental issues which make the pleader unsafe.
- Desertion, i.e abandoning the partner for a period of at least two years.
- Conversion, i.e the accused partner has converted his/her religion from Hinduism.
- Mentally unsound, i.e suffering from mental illness, which makes it unreasonable for one to continue living with the respondent.
- Venereal disease, i.e accused suffering from communicable STD.
- Renunciation of the world, i.e claiming to reject worldly happiness and entering into a religious spiritual order.
- Presumption of death, i.e spouse is not been heard from for a period of seven years or more.

The no-fault-based or mutual consent divorce is also mentioned under section 13B of this act. Wherein, both parties can appeal for a divorce provided the individuals have lived separately for at least a year and mutually agree to separate ways.

2. Muslim personal law

¹ Hindu Marriage Act 1955, ss 10, 13, 13B, 24, 25.

Divorce laws for the Muslim community are generally derived from the Quran, Hadith and are based on Sharia (Islamic laws). These laws are governed by the Muslim Personal Law (Shariat) Application Act, 1937² and the Dissolution of Muslim Marriages Act, 1939.³

The type of divorce can be classified based on who initiated it, that is, the husband, wife or mutually.

- Talaq- preserved right of the husband. Talaq-e-Ahsan, Talaq-e-hasan, Talaq-e-sunnat are recognised and revocable, whereas talaq-e-biddat (triple talaq) was considered invalid by the Supreme Court in 2017 and announced as a criminal offence under the Muslim Women Act, 2019.
- Talaq-e-Tafweez or Faskh- this procedure is initiated by the wife or can approach to court under the Dissolution of Muslim Marriages Act, 1939, on facing conditions such as Husband's cruelty, desertion, failure to provide maintenance, impotency, husband's disappearance for 4 years, etc.
- Khula- Initiated by the wife with the consent of her husband, offering to return mahr or part of it in exchange for divorce.
- Mubarat- both spouses mutually agree to dissolve the wedlock.

3. Indian Divorce Act, 1869⁴

The laws under this act govern divorce, judicial separation, annulment, alimony, and custody for only Christians of India. They can only be implemented if both individuals are Christians. Either the husband or the wife can file a divorce appeal.

Similar to the grounds of divorce under the Hindu Marriage Act, 1955, this act also provides like conditions under section 10 of the act.

- Adultery
- Conversion to another religion
- Cruelty
- Desertion for at least 2 years
- Incurable insanity for at least 2 years
- Communicable venereal disease
- Presumption of death (absence for 7 years)

² Muslim Personal Law (Shariat) Application Act 1937.

³ Dissolution of Muslim Marriages Act 1939.

⁴ Indian Divorce Act 1869, ss 10, 10A, 22, 36, 37.

Mutual consent divorce is also facilitated under section 10a of the Act, provided the couple has lived separately for a year and both spouses mutually agree on getting a divorce, are mentioned.

However, another privilege that is given by this act is "judicial separation" under section 22 of the act, which means a couple can remain married but can live separately.

4. Parsi Marriage and Divorce Act, 1936⁵

Marriage and divorce-related laws are taken by this act for the Zoroastrians of India. This act is applicable to individuals who are and have married in Parsi community. Section 32 gives a clear understanding of the grounds on which either of the spouse can file for a divorce.

- Mental disorder.
- Adultery.
- Bigamy (one person is in a marriage is already married).
- Cruelty referring to behaviour which makes it unfit to live together.
- Desertion that is abandonment for at least two years.
- Imprisonment for seven years or more.

THE SPECIAL MARRIAGE ACT, 1954⁶

The personal acts govern laws regarding individual religious communities. This makes the procedure inconvenient and sometimes unfair for either the appellant or the respondent. The special marriage act, 1954 overcomes such hurdles and provides laws regarding marriage, divorce and other related issues for Indian citizens, regardless of their religion only if they choose to marry under this act. This is necessary for couples who incorporate non- religious beliefs and modern culture. This act safeguards one's liberty and freedom. The Special marriage act plays a vital role in showcasing India's secularism and impartial judicial system. The marriage procedure as well as the divorce procedure under this act, are formalized and simplified.

Conditions for marriage under the Special Marriage Act:

- The groom must be 21 years old and the bride should be 18 years old.
- Both parties should be mentally sound.
- They must hold the mental strength of giving consent.

⁵ Parsi Marriage and Divorce Act 1936, s 32.

⁶ Special Marriage Act 1954, ss 27, 28, 36, 37.

- Neither of the individuals should be married to someone else.

Procedure of marriage under the Special Marriage Act:

- The couple gives a public notice prior to 30 days of marriage.
- This notice is published by the marriage officer of the district (either of them must have lived in this district for at least a month).
- Anyone can raise objection during this notice period.
- If the office finds no valid objection, then the couple signs declaration in the presence of marriage officer and minimum three witnesses.
- They are then provided with a legal marriage certificate and enjoy rights like other married couples.

Divorce by mutual consent- This is governed by laws under section 28 which states as follows:

- The couple must have lived separately for at least one year.
- They both agree to the divorce without any complications.
- The parties involved must be mentally sound enough to give their consent.

Procedure for mutual divorce under the Special Marriage Act, 1954:

- File a joint appeal in the district court.
- The court gives a directive cooling period, usually, of 6 months.
- If they agree to part ways even after the cooling period, the court grants it.

Contested divorce: This means either the wife or husband wants the divorce and can file a petition on following grounds (similar to Hindu Marriage Act) under section 27.

- Adultery- partner had an affair with some other person.
- Cruelty- mental or physical abuse by any means.
- Desertion- stranded for at least 2 years without reason.
- Mental illness- abnormal mind
- Venereal disease- partner suffering from serious STD.
- Forcing one to convert to another religion.
- Imprisonment for 7 years or more.

- No info of being alive for 7 years.

Procedure for contested divorce:

The procedure is the same as filing a mutual consent divorce, only difference here is that either the wife or the husband can file an appeal against the other.

The special marriage act also facilitates judicial separation meaning the couple live separately without ending the marriage.

In both cases, the court can waive off the cooling period based on the circumstances. Legal provisions like alimony, maintenance and child custody can be decided by the court or negotiated between both parties. If the opposite party is not satisfied with the decision, whatsoever, they can file an appeal in the higher court.

LEGAL PROVISIONS AFTER AND DURING DIVORCE PROCEDURES

The Indian judicial system takes care of subjects such as alimony, child custody and maintenance. Secular laws, as well as, personal laws deal with the same. Section 24 & 25 of the Hindu Marriage Act, 1955; Section 36 & 37 of the Indian Divorce Act, 1869; Section 36 & 37 of the Special Marriage Act, 1954; Section 125 of the Criminal Procedure Code, 1973;⁷ enlighten us with the provisions related to divorce.

Alimony and maintenance:

Alimony is the amount that is paid to a spouse after the divorce. Interim maintenance is given during the divorce proceedings. Whereas, Permanent maintenance is given after the divorce is granted. Usually, the court decides the amount payable and conditions with it, but sometimes, it is negotiated between the two parties. This depends on various factors such as the time period of marriage and income, age, health of the spouses involved. If the couple had been married for more than 10 or more years then the spouse is provided with lifelong maintenance. According to the Supreme Court, the alimony given to the spouse should satisfy and maintain the standard of living as it was during the marriage. Since the personal laws are conventional and gender biased, the Indian judiciary system came up with “Bharatiya Nagarik Suraksha Sanhita, 2023”, wherein unified laws are stated regarding maintenance for every individual.

Child custody:

Custody means the responsibility of the upbringing of the child. This is a very crucial aspect in the

⁷ Code of Criminal Procedure 1973, s 125.

divorce procedure as it decides the child's future. The decision is taken by the court, which is based on factors like the age of the child, which parent can provide well for the child and also the child's choice.

There are mainly three types of custody, which are as follows: -

- **Physical custody-** This defines where a child will live and with whom. It also determines who takes the child's daily care responsibilities, like housing, food, etc.
- **Legal custody-** This determines who between the two parents take decisions related to education, healthcare and religion.
- **Join custody-** This type of custody means both the have share the child's upbringing responsibilities. It may be physical or legal or both.

IMPACT OF DIVORCE ON CHILDREN

- **EMOTIONAL EFFECTS:** Emotionally, children are the most by their parents. Separation of parents may lead to disturbed mental state of their kids. This gives them trauma they will have to endure for life and hence become emotionally distant from almost everyone. Lacking the care and love of mother or protection and guidance of father may make the child feel loathsome. Many children feel guilty and blame themselves for the separation of their parents failing to understand the actual reasons whatsoever.
- **SOCIAL EFFECTS:** Such children whose parents are divorced tend to develop major trust issues and isolate from the society. They may find it difficult to make and maintain new relationships. They are often easy targets of bullies and end up feeling lonely and left out.
- **ACADEMIC EFFECTS:** Stress and anxiety leads to demotivation and lack of focus. Thus, distracting the children from academics and making them lose interest in other extracurricular activities as well. They face difficulties in character development. These children are more prone to getting involved in troublesome and delinquent acts.

In order to prevent the child's life from getting hampered due to divorce or separation, the parents should to be responsible enough for good upbringings. They should communicate well and avoid conflicts. Learning to prioritize the child's emotional and physical need is also very essential. Hence, before considering divorce, parents must give a deeper thought about their children's future.

CHALLENGES FACED BY WOMEN IN INDIA TO ACCESS DIVORCE

Though, India has stepped into a modern era, it fails to provide a smooth, safe and normalised

proceeding for women seeking divorce. The line of social shame drawn for divorcee in India still stands out. The social stigma that comes with many more challenges remains unshaken in many rural and also urbanized areas. Even after legal provisions like alimony, maintenance and child custody, ensured by our judicial system, many women fear the post-divorce subsistence.

Sometimes, in such times of difficulty when one is sure to be physically and emotionally drained because of the long, costly and tiring procedures of the court, the family of the appealing woman does not provide any support due to the humiliation society makes them face. With most of the in-laws taking their son's side, many women face difficulty in collecting proofs of cruelty, adultery, desertion or abuse etc.

Generally, Personal laws do not have a fixed interpretation and hence, worsen the case for the appealing party. Other laws like criminal law and Special Marriage Act also cannot ensure complete and fair justice owing to the lack of Uniform Civil Code. Gender biased legal systems, though not completely, weaken women's ability to fight for their rights. Urban areas may manage to be a little less overwhelming but the case is worst in semi-urban and rural regions where family courts show case gender inequalities without any concern.

CASE LAWS OF DIVORCE UNDER INDIAN LAW

1. Mohammad. Ahmad Khan vs Shah Bano Begum⁸ :-

The Shah Bano case has become a memorial case in the history of law as it represented secular laws versus personal laws.

Case facts- Shah Bano was a Muslim lady who was divorced by her husband after a long marriage of 14 years without any concern of maintenance. She filed a Petition under Section 125 of the Code of Criminal Procedure. Mohammad Ahmad Khan, her husband refused to provide for her putting up the argument that he had already fulfilled his duty as per the Muslim personal law

Judgment- The judgment of the Supreme Court was in Shah Bano's favour as Section 125 (CrPC) overrides the personal laws and rules regardless of religion and applies to all Indian citizens. This case also served as an answer as to why the Uniform Civil Code was needed.

2. Saroj Rani vs Sudarshan Kumar Chadha⁹ :-

Case facts- After two years of marriage and birth of their second daughter, Sudarshan Kumar, the husband, had not only mistreated his wife, Saroj Rani, but also taken away their house from her to

⁸ Mohd. Ahmad Khan v Shah Bano Begum AIR 1985 SC 945.

⁹ Saroj Rani v Sudarshan Kumar Chadha 1984 AIR 1562, 1985 SCR (1) 303.

live in. In defence, Saroj Rani sued her husband to get back her conjugal rights.

Judgment- The Supreme Court granted a divorce under the condition that he had to pay maintenance to his wife until her remarriage and to the daughter till her marriage. It acknowledged section 9 of the Hindu Marriage Act, 1955, dealing with restitution of conjugal rights.

3. Naveen Kohli vs Neelu Kohli¹⁰ -:

Case facts- Naveen Kohli filed an appeal against Neelu Kohli with a claim of mental cruelty under Section 13 of the Hindu Marriage Act.

Judgment- The divorce was, at first, granted by the family court. Neelu Kohli again appealed to the Allahabad High Court and was able to reverse the judgment. However, the Supreme Court used those unfounded legal cases as evidence for mental Cruelty, which were filed by Neelu Kohli against her husband. Also, even though irreparable marriage breakdown is not a valid ground for divorce under the Hindu Marriage Act but the Supreme Court granted the divorce and also ordered Naveen Kohli to deposit ₹25 lakhs as permanent maintenance.

4. Amardeep Singh vs Harveen Kaur¹¹ -:

Case facts- Amardeep Singh and Harveen Kaur got married on January 16, 1994, and had two children. They started to live apart in 2008. Eventually, on April 28, 2017, they agreed on getting a divorce with mutual consent. As maintenance, the wife was to receive 2.75 crores. To leave off the six-month waiting period, they filed an appeal in the family court of New Delhi, as they had already separate living separately for more than one year with no way of repairing their marriage.

Judgment- The Supreme Court granted the divorce, holding up the argument that the six-month waiting period mentioned under Section 13B of the Hindu Marriage Act, 1955, is not mandatory. It also justified the decision of waiving off the waiting period by outlining the conditions, such as separation of the couple for more than one year, the waiting period would exacerbate their issues more and the settlement was genuine between the couple.

5. Suresta Devi vs Om Prakash¹² -:

Case facts- Suresta Devi and Om Prakash initially filed for a divorce mutually. Later, the wife claimed that her consent was forced and wanted to withdraw the appeal. The district court did favour her, but the high court again reversed this order, putting up the argument that mutual consent cannot be taken back by a single individual's wish.

¹⁰ Naveen Kohli v Neelu Kohli (2006) 4 SCC 558.

¹¹ Amardeep Singh v Harveen Kaur (2017) 8 SCC 746.

¹² Sureshta Devi v Om Prakash 1992 AIR 1904.

Judgment- Finally, the Supreme Court considered the wife's appeal, clarifying the fact that only filing a mutual divorce does not mean the divorce is finalised; rather, mutual agreement of both individuals is required till the end of the procedure, meaning the divorce stands cancelled if either of the spouse withdraws their consent.

CONCLUSION

Divorce in India is a multidimensional legal process affected by both personal and secular rules. While the legal structure includes provisions for alimony, maintenance, child custody, and rights protection, execution is frequently hampered by judicial delays, societal stigma, and gender biases. Women, in particular, face substantial challenges due to financial dependency, a lack of legal information, and societal pressure. Family courts have increased access to justice by providing a less confrontational and more sympathetic setting for settling marriage conflicts. However, institutional reforms, such as faster case resolution, more legal help for women, and increased understanding of legal rights, are still required. Finally, for Indian divorce laws to be truly effective. In addition to upholding human rights, they must advance equity, respect, and the mental health of all concerned parties.

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