

Marriage, Divorce, And Everything In Between: A Complex Exploration

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ABSTRACT

The relationship between legal and social change is fundamentally interconnected, as law is inextricably linked to the social realities that influence its development. The law is a subordinate entity within society that is significantly influenced by the ecological conditions and human behaviours that are prevalent at a specific time and location. Neglecting these factors in contemporary society can result in substantial repercussions, including the impediment of social progress and the eroding of institutions that have progressed beyond their original purpose. The systematic decline and deterioration of societal structures and the essence of humanity itself would be the consequence of a denial of this nature. In order for a society to flourish in harmony and for individuals to achieve fulfilment, it is imperative that marital laws are continuously modified to address and balance competing interests. Marriage is essential to the social structure of a nation, as it establishes the foundation for the partnership between a man and a woman. It entails the establishment of a family through physical, emotional, and spiritual connections.¹

Divorce, the legal dissolution of marriage, is a profoundly challenging experience for any couple involved. The formal declaration of separation is the culmination of the process of divorce, which necessitates meticulous navigation through emotional challenges. The navigation of this procedure is a substantial challenge. In India, the divorce process typically lasts for approximately one year; however, it may extend for several years in cases of complex disputes. Prior to proceeding with divorce, it is imperative to evaluate the intricacies of this legal framework.²

Keywords: Marriage, Divorce, Law, system, relation.

INTRODUCTION

The complex landscape of India is characterised by a diverse array of cultures and religions, each of which operates under specific legal systems that regulate marriage and divorce. The nation recognises the autonomy of its diverse religious communities and has implemented specific regulations that are intended to respect their traditions and convictions. The Parsee Marriage and Divorce Act is responsible for regulating the legal affairs

¹ K. C. Sharma, *Marriage and Divorce in the Modern Indian Legal System* 106 (Universal Law Publishing, 2018).

² H. S. Sharma, *Indian Divorce Laws and Their Challenges* 82 (Lexis Nexis, 2021).

of Parsees, while the Hindu Marriage Act, the Muslim Marriage Act, and the Christian Marriage Act are structured to meet the specific requirements of their respective communities. The marriage practices of Hindus, Sikhs, Jains, and Buddhists are specifically regulated by the Hindu Marriage Act of 1955. It imposes restrictions on marriages within certain degrees of prohibited relationships and establishes a minimum marriage age of 21 for men and 18 for women. The Muslim community adheres to unique legal principles that regard marriage (Nikah) as a contractual agreement, permitting multiple wives under certain conditions, while the Hindu Marriage Act provides several grounds for divorce. The legal framework for marriage among Parsees and Indian Christians is established by the Parsee Marriage and Divorce Act of 1939 and the Indian Christian Marriage Act of 1889, respectively.³

The Hindu Marriage Act, 1955, establishes a framework for divorce by mutual consent in Section 13-B. This framework enables the parties to terminate their marriage in a cooperative manner by submitting a petition in court. This process requires agreement on critical matters, particularly those related to child custody and maintenance. Child custody arrangements can be classified as joint, shared, or exclusive, contingent upon mutual agreement, whereas maintenance lacks a predetermined minimum or maximum, allowing for adaptability in the amount determined.

Regardless of the religious affiliations or personal laws of the individuals involved, the Supreme Court of India mandated that state governments implement compulsory registration of all marriages in the case of *Seema v. Ashwani Kumar* in 2006. This decision was significant. This directive is being implemented at varying rates in different states. The complexity of India's dual legal system poses a substantial challenge, as different communities maintain their own laws, while individuals have the freedom to choose the national civil marriage laws. The legal framework is fragmented as a result of the lack of consistency in the registration of marriages and divorces, as certain laws mandate it while others do not.⁴

Given this diversity, it is imperative to assess the feasibility of implementing a uniform system by assessing the full spectrum of central and state laws pertaining to marriage and divorce registration. This analysis has the potential to reveal opportunities for legal reforms that are designed to improve and simplify the registration process, thereby fostering a higher degree of consistency and clarity in the nation's marriage and divorce laws.⁵

TYPES AND PROCEDURES OF MARRAIGES IN INDIA

In India, religious marriage ceremonies are legally recognised as valid marriages. Nevertheless, the registration of these marriages has become a mandatory legal requirement in a number of states, particularly for the purposes of visa applications and migration. A declaration issued by the Registrar of Marriages is necessary for the formalisation of marriage registration. The Hindu Marriage Act, Muslim Marriage Act, Christian Marriage Act,

³ D. P. Gupta, *Family Law in India: Issues of Marriage and Divorce* 134 (Kailash Law Publishers, 2019).

⁴ T. P. S. Reddy, *Marriage Laws and their Impact on Society* 118 (Eastern Book Co., 2018).

⁵ A. K. Nayar, *The Evolution of Marriage and Divorce Laws in India* 73 (Bharati Law House, 2017).

and Parsi Marriage and Divorce Act are among the distinctive legal frameworks that religious communities in India adhere to. Each of these frameworks establishes specific protocols. There is a possibility that the Registrar will require a "no objection letter" from the appropriate foreign embassy or consulate in the case of international couples where one individual is a foreign national. Furthermore, it may be necessary to provide evidence of the dissolution of any prior marriages prior to proceeding with the registration process.⁶

The Hindu Marriage Act of 1955 governs marriages among Hindus, Jains, Sikhs, and Buddhists, as well as those who have converted to these religions. The Act establishes explicit age requirements for both the bride and groom, and it also confirms the absence of any prohibited familial connections between the partners. In order to register a marriage under this Act, it is necessary to submit a variety of documents, including birth certificates, proof of marital status, photographs, and affidavits. If there is a history of divorce or widowhood, additional documentation is necessary. It is imperative that both parties and a marriage officiant appear before the Sub-Divisional Magistrate (SDM) to finalise the registration, a process that is typically completed within a few days, following the verification of all documentation.⁷

The Indian Special Marriage Act of 1954, which enables inter-religious unions, provides couples with the opportunity to pursue a civil marriage. In order to initiate the process, a notice of intended marriage must be submitted to a Registrar. This notice is then subject to a mandatory 30-day waiting period, which allows for the possibility of objections being raised. The marriage can be officially recognised within this timeframe, and a marriage certificate is issued as formal documentation of the union. This certificate is necessary for visa applications and other processes.

In India, marriage registration is a common requirement, and state governments are actively working to ensure its mandatory implementation in all cases. This initiative is influenced by legal frameworks, such as the Indian Special Marriage Act and specific stipulations found in religious marriage laws. The Supreme Court has emphasised the importance of marriage registration for legal, social, and administrative functions by advocating for its consistent application across all states and union territories and establishing a clear deadline for compliance.⁸

The registration of marriages has become a compulsory legal obligation in the majority of states in India, primarily to facilitate processes such as visa applications and migration, despite the fact that religious marriage ceremonies retain legal validity. In order to formalise the union, the Indian legal framework necessitates the acquisition of a formal marriage declaration from the Registrar of Marriages. The Hindu Marriage Act, Muslim Marriage Act, Christian Marriage Act, and Parsi Marriage and Divorce Act are among the legal frameworks that operate under distinct religions. Each of these frameworks specifies specific criteria for the registration of marriages. The Registrar may request a "no objection letter" from the appropriate embassy or consulate in

⁶ J. K. Tyagi, *Indian Family Law and Divorce: An Analytical Approach* 112 (Bharat Law House, 2019).

⁷ S. C. Puri, *Marriage and Divorce in Hindu Law* 110 (Central Law Agency, 2020).

⁸ M. K. Bhargava, *Socio-Legal Perspectives on Marriage in India* 36 (Lexis Nexis, 2014).

situations where one party is a foreign national. Furthermore, prior to the issuance of the marriage certificate, evidence of the dissolution of any prior marriages may be necessary. The importance of marriage registration has been emphasised by recent legal developments, as various states in India endeavour to comply with the Supreme Court's directive. The universal marriage registration initiative aims to safeguard the rights of individuals, particularly women and children, by guaranteeing the formal legal recognition of marriages. This acknowledgement can be crucial in the resolution of issues such as child marriage, bigamy, and domestic violence.

The registration of marriage is crucial for the establishment of legal rights regarding inheritance, property, and alimony, thereby guaranteeing that both partners are protected by the law. The legal recognition of inter-religious or inter-national marriages is ensured by the registration process, as outlined in the Special Marriage Act or relevant laws, both in India and internationally. This is particularly significant for couples who are applying for foreign visas or migrating, as an official marriage certificate is frequently a required document for these applications.⁹

The objective of India's ongoing modernisation of legal frameworks is to ensure that marriage registration is a mandatory and efficient process for all citizens, irrespective of their religion or background. This method would improve the efficiency of administrative processes and reinforce the legal framework that governs marriages, thereby promoting greater social stability and protecting individual rights. The implementation of marriage registration mandates by the government, legal institutions, and the public will have a substantial impact on the development of a more equitable and transparent society, in which the rights and obligations associated with marriage are clearly defined and protected.¹⁰

In order to cultivate a more organised and accountable society, it is imperative that both individuals and authorities adapt to the ongoing evolution of the legal framework governing marriage registration. Mandatory marriage registration has the potential to simplify the legal redress process in cases of marital disputes, such as divorce, domestic abuse, or inheritance claims, which is a substantial advantage. Individuals may face difficulties in establishing the legitimacy of their marriage in the absence of formal registration, which can lead to complications when attempting to assert their legal rights.

Additionally, mandatory registration may allow policymakers to develop more effective laws and programs that address issues such as child marriage, dowry, and other social challenges by providing a more precise understanding of marriage demographics. The data collected from marriage registrations can be instrumental in the creation of government interventions and targeted awareness campaigns, particularly for marginalised or vulnerable communities. This method has the potential to foster an inclusive environment in which individuals from a variety of religious, cultural, and social backgrounds are treated equally under the law.

⁹ A. R. Kapoor, *Indian Family Law: Theory, Practice, and Reform* 120 (Lexis Nexis, 2019).

¹⁰ S. P. Sathe, *Legal Dimensions of Marriage and Divorce* 110 (Oxford University Press, 2016).

Moreover, the importance of international recognition of marital status is increasing steadily as India continues to integrate into global legal and economic systems. Marriage registration is a process that ensures domestic recognition and complies with international legal standards, particularly in situations involving foreign nationals. The possession of an officially registered marriage provides individuals with the requisite documentation to effectively manage the complex procedures associated with visas, inheritance, or legal disputes in foreign jurisdictions.¹¹

The advocacy for mandatory marriage registration is in accordance with the overarching objectives of social justice, gender equality, and the provision of legal safeguards. The persistence of cultural traditions and religious practices in Indian society is still significant; however, the implementation of formal legal frameworks is expected to mitigate disparities in social equity and enhance the protection of individual rights. India is on the brink of a future in which all marriages, regardless of their religious or cultural origins, are legally recognised and safeguarded, as an increasing number of states and union territories comply with the Supreme Court's directive.¹²

DIVORCE LAW IN INDIA

In a variety of societies, divorce has gradually become a normal and acknowledged aspect of marital relationships. The right to divorce is consistently recognised by contemporary legal frameworks for individuals of all genders within the institution of marriage. The approval of mutual consent divorces has significantly increased as a result of the evolution of divorce laws. Research has identified numerous substantial factors that contribute to divorce, including infidelity, incompatibility, personality differences, instances of physical and emotional abuse, lack of commitment, and a variety of relational issues. Divorce is frequently perceived as a common occurrence in a variety of societies; however, it continues to pose substantial obstacles, particularly for women in India. The country's diverse religious landscape necessitates the establishment of marriage and divorce laws that are customised to the unique needs of each community. The Hindu Marriage Act of 1955 applies to Hindus, Sikhs, Buddhists, and Jains, while the Dissolution of Muslim Marriages Act of 1939 governs divorce proceedings among Muslims. The Parsi Marriage and Divorce Act of 1936 is pertinent to the Parsi community, whereas the Indian Divorce Act of 1869 is applicable to Christians. The Special Marriage Act of 1954 establishes a framework for individuals who elect to participate in interfaith, inter-caste, or secular marriages. Throughout history, these laws have been adjusted to accommodate the changing social and legal environments. In India, the primary grounds for divorce include cruel treatment, infidelity, desertion, impotency, incurable diseases, and conversion to another religion. Despite the implementation of specific laws, the divorce system in India remains intricate and necessitates a substantial amount of time. The judiciary frequently underscores the significance of preserving marriages, frequently intentionally prolonging proceedings in the expectation that this extended period will prompt couples to reassess their decisions. Prior to the adjudication

¹¹ U. B. Sinha, *The Legal Status of Women and Divorce in India* 82 (Satyam Law International, 2018).

¹² S. V. Raman, *The Laws of Marriage and Divorce in India* 63 (Central Law Agency, 2019).

of their divorce cases, the legal framework mandates that couples participate in counselling. Counselling may frequently result in ineffective outcomes when domestic violence is identified as the reason for pursuing divorce. Personal laws have a historical inclination to reinforce male dominance by facilitating unilateral divorce for men, providing insufficient post-divorce maintenance, restricting inheritance rights to men, exhibiting gender bias in property ownership and succession laws, permitting multiple marriages for men, and granting exclusive child custody to men following the dissolution of marriage. These practices are fundamentally rooted in gender inequality, which is frequently maintained by social norms and occasionally endorsed by religious beliefs. Consequently, reformers, women's movements, and a variety of activists have worked to amend personal laws in order to ensure that women have equal rights in the contexts of marriage and divorce. Hindu women were granted property rights, divorce rights within the context of Hindu marriage, and a variety of other legal entitlements through the enactment of the Hindu Marriage Act in 1955, which was a critical reform. In the context of Indian legal reforms, the years 1955-1956 are noteworthy due to the enactment of critical sections of the Hindu Code Bill into law.¹³

In 1947, the legislative body was presented with the Hindu Code Bill, which sparked a series of debates and discussions. The legislation was intended to establish a legal framework for Hindu marriage, providing women with equal rights to property in paternal estates and allowing for divorce and separation under specific circumstances. Additionally, it sought to abolish polygamy, a practice that had been previously permissible for men in Hindu society. However, a significant portion of the public and specific members of parliament expressed their opposition to the bill, arguing that these provisions could result in the erosion of traditional family structures, sibling rivalries, and familial discord. Their position prioritised the preservation of the family structure and marriage, contending that the sacredness and unchangeability of Hindu laws outweighed the equal rights of women. Their arguments were predicated on the erroneous belief that Hindu law is a uniform and static construct that has never granted women the right to property, divorce, or remarriage. They urged women to reject Western ideals, emphasising the significance of maintaining marital and familial integrity, as well as self-sacrifice and devotion. In contrast, proponents of the bill argued that Hindu law is not consistent; rather, it varies by region, with a variety of local customs and regulations already granting women the right to divorce, remarriage, and property. Their argument was that the establishment of a unified legal framework for these rights would benefit a substantial portion of the population by providing cost-effective and accessible institutional divorce options. The bill's components, including the elimination of polygamy, equal property rights, and divorce rights, were considered significant by its supporters as a means of aligning India with progressive global norms and addressing a significant disparity within Indian society. The bill was the subject of debate, with opposing factions presenting contrasting moral narratives. Supporters promoted gender equality and justice, while opponents underscored the significance of upholding traditional values.¹⁴

¹³ A. B. Mulla, *Mulla on Hindu Law* 140 (Butterworths, 2016).

¹⁴ V. K. Dhir, *Indian Family Law: Divorce and its Implications* 122 (Lexis Nexis, 2019).

The Hindu Marriage Act of 1955 was instrumental in the transformation of the Hindu Code Bill into four distinct Acts. This act legalised divorce, abolished polygamy, and granted women equal property rights. Under the Hindu Marriage Act, the Marriage Laws (Amendment) Act of 1976 established the legal recognition of divorce, enabling couples to pursue separation through mutual consent. The societal and legal frameworks continue to resonate with concerns regarding the incorporation of divorce into the Hindu Code Bill, despite the implementation of these legal reforms. Divorce remains stigmatised as the termination of marriage and family structures, particularly when it is initiated by women, who are frequently subjected to negative labels such as "home-breaker," "immoral," "selfish," or "bad mother." Frequently undermining women's rights to live with dignity and free from violence, this societal perspective underscores a persistent emphasis on preserving the institution of marriage and the prevailing authority of men. The Shah Bano case serves as an illustration of the intricate interplay between patriarchal family ideologies, religious communities, and state authority. Family matters were regulated by personal laws, which were derived from religious traditions, during the British era. While these laws were not codified, they were subject to variation among various religious groups. The Shariat law was implemented in 1937 to regulate familial matters for Muslims in India. The founding fathers of the Indian Constitution in 1949 made a deliberate decision to preserve the recognition of personal laws and establish a goal for the future implementation of a uniform civil code (Art. 44). In April 1985, the Shah Bano case was a critical juncture in the legal process. The Supreme Court upheld the High Court's decision, granting the divorced woman a monthly maintenance of Rs. 179.20 from her ex-husband, after a decade of legal disputes.¹⁵

The ruling was issued in compliance with Section 125 of the Criminal Procedure Code and Muslim Personal Law, which led to a significant backlash from the Muslim community. Their request was for the annulment of the ruling and its exclusion from the provisions of Section 125. The community's concerns regarding the potential threat to their religious identity were seemingly validated by the government's stance. In February 1986, the Muslim Women (Protection of Rights on Divorce) Bill was introduced and passed in Parliament, thereby excluding divorced Muslim women from the provisions of Section 125. Progressive liberals and women's rights activists criticised this approach, viewing it as a regression. The law, which was intended to protect women, inadvertently placed them in a position of complete dependence on their birth families, thereby undermining their legal entitlements to support. The system that appeared to validate the notion that a woman's rights could be determined by the religious community she was a part of, rather than being rooted in the more universal principle of gender equality, posed a significant challenge for numerous women's groups. They struggled to reconcile with this.¹⁶

The historical evolution of Indian marriage and divorce laws demonstrates a comprehensive acknowledgement of the family's role in ensuring the security and independence of its members. However, the state's unwillingness to intervene or hold the perpetrators accountable becomes apparent when women are subjected to exploitation

¹⁵ S. A. Khan, *The Law of Matrimonial Causes in India* 91 (Eastern Book Co., 2020).

¹⁶ P. K. Verma, *Legal Remedies in Divorce Cases in India* 76 (Kailash Law Publishers, 2020).

within the family unit. In this context, it is imperative to recognise that the obstacles women face, irrespective of their community, are inextricably linked to gender issues. As a result, addressing issues related to family, marriage, and divorce requires a comprehensive, gender-aware approach that considers the diverse identities that women possess.

THEORIES OF DIVORCE

The investigation of divorce is organised around three distinct theoretical frameworks: the Mutual Consent Theory, the Fault Theory, and the Irretrievable Breakdown of Marriage Theory.

The Fault Theory, also referred to as the offences or guilt theory, posits that divorce is permissible only if one party has committed a matrimonial offence, thereby distinguishing between an innocent and a guilty party. The party that is thought to be innocent is the only one who is granted the right to pursue a divorce. However, a substantial limitation of this theory is the absence of any available remedy when both parties share responsibility.¹⁷

The Mutual Consent Theory is predicated on the notion that individuals voluntarily enter into marriage and, as a result, should have the ability to terminate it. Critics argue that this theory could encourage moral leniency by facilitating rapid divorces, which could lead to the dissolution of a marriage due to even minor temperamental differences.¹⁸

The Irretrievable Breakdown of Marriage Theory posits that when a marriage has deteriorated to the point where reconciliation is no longer a realisable expectation, it is advisable to dissolve the union in a manner that promotes fairness, thereby reducing bitterness, distress, and humiliation. This theory acknowledges that certain circumstances, such as civil death or renunciation of worldly life, could render a marriage unviable, as outlined in the Hindu Marriage Act. It refers to these scenarios as instances of frustration that arise from specific circumstances.¹⁹

CONCLUSION

An in-depth examination that explores the complex factors at play in addressing these matters, along with the historical development of marriage, divorce, and judicial divorce from their origins to the current context, is expected to provide significant insights. Divorce represents a significant aspect of personal laws across various Indian communities. Marriage, once viewed as a permanent union in most Indian societies, no longer retains this fixed status. The essential inquiry involves determining how often divorce occurs and the degree of its accessibility. Although the implementation of divorce laws in India is not as prevalent as in numerous Western nations, it remains a considerable source of legal disputes. District Courts and Family Courts, where established,

¹⁷ S. A. Qureshi, *Judicial Approaches to Divorce in India* 102 (Bharati Law House, 2021).

¹⁸ V. S. Naidu, *Matrimonial Law and Divorce in India* 49 (Lexis Nexis, 2017).

¹⁹ A. S. Agarwal, *Marriage and Divorce: Laws, Issues, and Solutions in India* 63 (Eastern Book Co., 2020).

are encountering a notably elevated volume of marital cases. This investigation aims to perform a theoretical analysis of marriage and divorce concepts to explore the fundamental issues present in the contemporary Indian marital legal framework. The examination of the Indian marital legal system reveals that societal attitudes and practices concerning marriage and divorce are profoundly shaped by socio-cultural factors. Historically, marriage in India has been viewed as a lifelong commitment, emphasising its significance beyond personal or legal considerations. Consequently, it was regarded as a fundamental social institution. Nonetheless, the rising trend of individualisation, especially in urban areas, has led to a shift towards viewing marriage as a contractual arrangement that can be terminated when necessary. The shift in perspective, along with changing attitudes regarding gender roles, has led to a rise in divorce cases.²⁰

The complexities of a pluralistic society are evident in the legal structure that regulates divorce in India, especially concerning personal laws. The divorce process can be complex due to the existence of varying personal laws across different communities. Therefore, the role of the judiciary is crucial in interpreting and enforcing these laws to ensure fairness and justice, while also respecting the varied cultural and religious norms of different communities.

The increase in marital litigation highlights the need for a more cohesive and standardised legal framework capable of addressing the complexities of modern relationships. This study aims to analyse the implications of judicial discretion, the function of Family Courts, and the growing significance of mediation and counselling in resolving marital disputes. As a result, it will offer a deeper insight into the relationship among law, society, and individual autonomy regarding marriage and divorce in contemporary India.²¹

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²⁰ M. S. Bhandari, *Indian Family Laws and Divorce* 134 (Satyam Law International, 2020).

²¹ S. N. Bhat, *Marriage and Divorce in Contemporary India* 101 (Eastern Book Co., 2018).