



# **A STUDY OF LEGAL ASPECTS OF DIVORCE UNDER HINDU LAW**

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## **ABSTRACT**

The issue of divorce is complex. In Hinduism, marriage is more of a rite than an agreement between two people. Because of its status as a sanskaar in Hinduism, dissolving such an institution is difficult. The Hindu view on marriage and divorce has been scrutinized in this study. It's a look at how Hindu marriage and divorce laws have evolved over time. All of the grounds for divorce under Hindu law are examined, as is the current divorce law and its benefits and drawbacks. The study pays special attention to the Supreme Court's and the Law Commission of India's proposals for the recognition of irretrievable breakdown of marriage as a separate ground for divorce. We have weighed the benefits and drawbacks of having irretrievable collapse of marriage as a separate basis of Divorce. The implications of divorce on the sanctity of marriage are also discussed, as is the sacramental aspect of marriage.

**KEYWORDS:** Legal Aspects, Hindu Law, Hinduism, marriage, Supreme Court's, Law Commission of India

## **INTRODUCTION**

Divorce is a term that requires no definition. It describes a tumultuous and unpleasant breakup of a marital union. While technically speaking, a divorce is the end of a marriage, there is so much more to it than that. Divorce is a sad reality for many modern couples, and it may come as a surprise that most marriages fail in their early stages. People are becoming less interested in marriage as the divorce rate rises steadily. Divorce was historically taboo in Indian culture, but attitudes have changed in recent years, and many Indians now view divorce as a viable option for resolving minor disagreements within their marriage. This poses a threat to the institution of marriage and the stability of families generally. If the current trend in divorce rates continues, the institution of marriage will become obsolete. With the rise in popularity of the internet comes the

rise in the number of websites that actively encourage divorce by selling divorce-related products or providing divorce papers for download in order to generate revenue. Divorce is a social problem because it calls into question the value of relationships in general, but it also has negative personal consequences, especially for children born into divorced families. The effects of divorce on the lives of divorcees and their families are far-reaching and often devastating. The essential concept of marriage is the union of a man and a woman, and this has been recognized by the legal systems of all nations. Although the fundamental idea is universal, the nature of connection varies greatly among the many societies. Only Roman Catholics in the West view marriage as a sacrament and a permanent bond between a man and a woman; Hindus and members of certain other faiths view



marriage more simply as a contract. Marriage was viewed as a sacrament in ancient Vedic Hindu culture, rather than a legal agreement between two individuals. The union was held in such high esteem because it was thought to have been planned by a higher power. Therefore, neither divorce nor separation after marriage was permitted by ancient Hindu law. No disqualifying circumstances were found, not even the presence of polygamy in the system or the minority status of the bride or groom.

Marriage is seen as a private matter in India, and as such, the various faiths practiced there—including Hinduism, Islam, Christianity, Zoroastrianism, and Jainism—have their own rules and regulations regarding the institution. None of the territorial Laws apply to the internal affairs of the various religious communities. Citizens of India are not subject to different personal laws based on where they were born, as is the case in many Western states. For instance, a person's personal law or status in England depends on his domicile, while in France or Germany it depends on his nationality. In contrast, in personal or family matters in India, Hindus are governed by Hindu Law, Muslims by Mohammdan Law, Christians by Christian Law, and Parsis and Jains by Parsi Law and Jain Law, respectively.

## **MARRIAGE AND FAMILY**

Marriage has long been recognized as a crucial component of our social order since it is the foundation upon which all other relationships are built. Marriage and the family it creates are two of the most fundamental social institutions in any society. Marriage and the family system are inseparable, mutually supportive institutions. Marriage marks the beginning

of a lifelong commitment that bears fruit in offspring and in subsequent generations. When a man and a woman start a family, they create what is known as an extended family system, which consists of their offspring and the offspring of their offspring. Marriage is a socially sanctioned and encouraged means of bringing new life into the world and starting a family. Marriage is founded on the family rather than the other way around. Marriage is a specific partnership between a man and a woman in which they become legally and socially dependent on each other to start and raise a family. Marriage is recognized and supported by friends, family, and the law as a permanent union between a man and a woman. Consequently, both secular and religious laws impose upon spouses certain rights, responsibilities, and duties to one another and to their families as a result of their marriage. In India, weddings have always been celebrated as religious rituals. Marriage is revered in most cultures as a religious rite and a sacred contract between a man and a woman that cements a special bond between them. Therefore, it must be considered a place of worship. Wherever you see the word "institution," know that it refers to any formal organization set up for the benefit of others. Values, rules, regulations, laws, conventions, and traditions are upheld and followed inside an institution. A well-structured and functional institution is guided by a concern for the greater good, maintains a steady and unbroken connection to the natural world, and is subject to a set of rules and regulations. "The bond of Adam and Eve initiated life on earth," it says in the Old Testament of the Bible. Because of progress, people no longer need to wander from place to place



in search of food and shelter; instead, they may live in permanent communities. To meet these requirements, our ancestors undoubtedly established norms and regulations, which, with the passage of time, solidified into established customs and traditions.

Marriages are performed through religious ceremonies in the vast majority of the world's communities and cultures. Every faith has its own set of norms and regulations that adherents are expected to follow. The wedding takes place in front of several witnesses and follows specific rituals. All of these factors contribute to whether or not a marriage will last. The legal definition of marriage is "an agreement between one man and one woman for the purpose of starting and maintaining a family." Marriage requires a lot of selflessness from both husband and wife if it is to survive. Marriage and the relationships that develop from it are legally recognized since they are the foundation upon which families and procreation are built. Examples of significant family relationship traits include cohabitation, adoption, and economic dependency. Marriage is a sacred bond between two people. Mutual love, understanding, affection, trust, service, and self-sacrifice between spouses are crucial to the preservation, stability, and success of a married partnership. When this foundation is undermined, the foundation of a happy marriage crumbles. When families fall apart, it can lead to misery and emotional breakdowns for everyone involved.

## **CONCEPT OF DIVORCE**

Words like "divortiom" and "dis vertere" in Latin are the origins of the English word "divorce." "dis" means "apart" and

"vertere" means "to turn" in Latin. To disengage oneself from something or someone. Divorce refers to the formal process by which a marriage is formally terminated. Divorce occurs when spouses stop communicating with one another. Divorce, in its most basic definition, is the irrevocable separation of a married couple so that they can marry anybody else again. Divorce is shorthand for the judicial dissolution of a marriage. Divorce may seem straightforward to an attorney, but it wreaks havoc on the life of the divorcing couple. A divorce is a public acknowledgement that the marriage has failed and an end to the partners' expectations of each other. Divorce legally ends a marriage, and both former spouses are free to remarry at any time. When one spouse files for divorce, it's because the marriage has failed in some fundamental way that can't be fixed and the other spouse does not want to work to make it work. Divorce, in its broadest sense, refers to the final separation of a married couple. Divorce has been dubbed the most detestable of all legally sanctioned practices. Divorce is so despised because of the havoc it wreaks not just on children but also on parents, extended family members, and friends who are emotionally invested in the family's success. Divorce has a negative impact on Indian society because of how dependent it is on the family system. Women in India are increasingly able to stand on their own two feet in terms of their social and economic standing as a result of their education and employment choices. Women's aspirations for marriage have been largely influenced by Western culture, the internet, and media. In today's society, women don't have to rely on men to provide for their



basic requirements. Nowadays, women hold professional positions and have strong preferences and tastes of their own. Their newfound financial security has given them a sense of assurance that had before been lacking. The rising rates of divorce and separation in India, however, suggest that these developments may be jeopardizing the holy character of marriage and the Indian family system. Women used to be dependant on men and marriage used to be the focal point of their lives, but nowadays many are breaking out and becoming completely intolerable of their spouses. Women used to take whatever life threw at them for the sake of honor, family, and society, but nowadays it's common for unhappy wives to call it quits and start new lives apart. Women today simply have zero tolerance for abusive partners. The wives of violent and abusive spouses no longer put up with their treatment, and their family support their decision. Indian women nowadays are far pickier about their appearance, income, and sexual partners than their mothers and grandmothers were.

However, dissatisfied Indian men are increasingly choosing divorce or separation to satisfy their need for independence from the stress, tension, and pressure of modern marriages. As we've established, they are unhappy with and resistant to the previously mentioned changes in women. The gap in communication and infidelity between partners also contribute. Divorce is more common among men than women because women face greater social stigma in India after divorce. When men seek divorce, the reasons they give are often disregarded because they are the dominant partner. Women who have children from a previous

marriage have a more difficult time remarrying than men who have been divorced. However, the rising divorce rate in India is expected to change this trend.

## **HINDUISM MARRIAGE AND DIVORCE**

Marriage is revered as a holy institution in Hinduism. In Hinduism, the purpose of marriage is for the couple to live together in pursuit of the four virtuous goals of Dharma, Artha, Kama, and Moksha. These are seen as the concrete factors that shape the Hindu marriage idea in India. For Hindus, marriage is one of the most sacred sacraments, or sanskars.

Every Hindu must get married," Manu says. Women were made for childrearing and men for fathering; the Veda commands that a man's Dharma duties be shared with his partner in life , There are three key implications of viewing marriage as a sacrament: first, that the spouses, once married, are responsible for each other's religious and spiritual well-being; second, that marriage is a permanent union of the married couple and they cannot separate from each other; and third, that marriage cannot be dissolved. Third, marriage is a bond that lasts not only for this life but also for any other lifetimes a person may have. According to Manu, a married pair remains together even in the afterlife. Because Hindus view marriage as a sacred and permanent bond, there is no record of widows remarrying. "Once is a maiden given in marriage," Manu said. After her spouse dies, a faithful woman has just as much of a responsibility to remain celibate as she did before<sup>3</sup> It's crystal evident that marriage's monogamous nature only applied to women. A woman who lacked the legal right to marry could not file for divorce or remarry if her husband was a



eunuch, insane, or deceased. Although marriage was generally held to be unbreakable, there were exceptions in which a wife may leave her husband for another man. According to Vashishtha, "a damsel betrothed to one lacking in character and good family or afflicted with impotence, blindness, and the like or an out caste or an epileptic or an infidel or incurably diseased... should be taken away from him and married to another."

Traditional Hindu law did not permit divorce because it viewed marriage as an unbreakable commitment. However, custom accepted it. In rare situations, certain smritikars would permit a wife to leave her husband. The legendary smritikars Narada and Parasara listed five scenarios in which a wife could legally leave her husband for another man:

- (1) When the husband is missing;
- (2) When he is dead;
- (3) When he has become an ascetic;
- (4) When he is impotent; and
- (5) When he is an out-caste.

According to Derret, before the Hindu Marriage Act of 1955 took effect, the courts, "viewed themselves as restricted in marital and divorce proceedings.... The judges now argue that "we are not living in the time of Manu and the other Rishis, and that what they said does not apply as law to-day." In another work, he writes, "Divorce was introduced into Hindu Law for the protection of helpless women when they were ill-treated." Parliament never intended for husbands to be able to choose between several wives as long as they retained a pleader. The number of divorce filings appears to be increasing steadily, and the blame is often laid at the feet of the law. Even the highest court in the land has admitted that the Hindu Marriage Act of

1955 has caused more divorces than it has helped to heal. Arijit Pasyat and G.S. Singhvi, JJ., ruled on a custody matter involving a married couple and their eleven-year-old child, "When a marriage takes place, the two parties each have a petition for dissolution of marriage waiting in the wings," said someone. It's probably true that people today just want to live their lives without any kind of interference because their feelings of love, respect, and tolerance for one another have dwindled away.

## **CAUSES OF DIVORCE**

Divorce cases are overwhelming Indian courts, and this has many scared. Everyone is worried that, in a few years' time, this institution will be gone forever. Although the law provides a suitable avenue for divorce, it should not be seen as the panacea for all marital problems. Divorce is a last choice when other options have failed and the situation has become intolerable. Meanwhile, it's instructive to be familiar with the most common triggers for divorce in the United States. In India, a married Hindu couple can legally file for a decree of divorce under section 13 of the Hindu Marriage Act, 1955 for the grounds of adultery, cruelty, conversion, insanity, renunciation of world, desertion, domestic violence, leprosy, or non-restoration of conjugal rights. Now, however, couples often split up for a variety of social and lifestyle-related reasons. The following are examples of some of them:

### **1. Extra-marital affairs**

Most marriages that fail and end in divorce do so because of one partner's infidelity. This is a major contributor to couples deciding to separate. The decision to engage in an extramarital affair is often



motivated by frustrations within a marriage that the individual feels they are unable to resolve alone. There are many emotions that might lead to infidelity, including anger, resentment, sexual appetite, and a lack of emotional connection. Expert on infidelity Ruth Houston says extramarital relationships typically start off as harmless friendships. An emotional affair that develops into something more physical.

## **2. Women Empowerment**

It's possible to misinterpret this as a justification for splitting up. But now that women have been given more opportunities to learn and earn on their own, no one can silence them when they stand up for what they believe in or defend their rights. The loss of her freedom at this point is intolerable to her. Women today simply refuse to accept the traditional role of a housewife; instead, they are increasingly interested in and capable of pursuing careers outside the home. Women today may prefer to divorce than to remain in an unhappy marriage because they want to live a more fulfilling life.

## **3. Communication Gap**

The easiest approach to grow closer to someone is to talk to them, and this is especially true in a marriage. Because of the frantic pace of modern life, people rarely have the opportunity to sit down and have meaningful conversations with one another. These days, people would rather spend their time on social networking or playing video games than talking to their partners about their thoughts. Lack of communication between partners leads to misunderstandings, which in turn lead to ego confrontations and, ultimately, divorce.

## **4. Lack of Commitment**

As we've already established, today's kids now have the freedom to pick a new way of life and abandon the old ones they formerly had thanks to the internet and social media. In India, many couples choose to live together. There used to be a societal shame associated with divorce, but these days there is none.

Anger and irritation are common responses to today's fast-paced, complex lifestyles and have the potential to shake even the strongest marriage. Some couples used to live in a married relationship because of children or to avoid social stigma.

## **5. Interference of family**

The collapse of the joint family system is imminent due to the increasing need for individuality and privacy in modern culture. The preference for nuclear families can be attributed to a desire to limit social interactions. It's easy to misinterpret the involvement of a spouse's family as an intrusion into a couple's private life. Family members of one or both partners have been blamed for the failure of a marriage in various situations.

## **6. Forced marriages**

Few exceptions aside, intercaste marriage is generally frowned upon in our country. When two people are deeply in love but come from different social classes, the pressure from their families to marry someone else often leads to emotional and psychological breakdown and, ultimately, divorce.

## **7. Section 498A of IPC**

Section 498A16 if her husband or his family has been unkind to her in the marital home, she has the legal right to file for divorce under section of IPC. There have been numerous cases of false charges, and the legal protection afforded



to women makes it easier for them to place the blame on the spouse and his relatives.

## **8. Homosexuality**

One of the hottest new causes for divorce is homosexuality. It is not uncommon for a straight person to be forced to marry a homosexual, and in the case of arranged marriages, the fact that one or both partners is homosexual may not be disclosed until after the wedding has been solemnized. N. Kirubakran, J., raised the question, "Why not the Central government amends marriage Laws to include the homosexuality as valid ground for divorce, as gays and lesbians cannot exhibit interest on the opposite sex which is required for consummation of Marriage?" It has been observed for at least two decades that the social institution of Marriage has suffered greatly due to the absence of statutory recognition and protection for LGBT persons.

## **EFFECTS OF DIVORCE**

Divorce is no longer stigmatized in the United States, but while it may help one troubled couple, it often has devastating consequences for others, especially the kids involved. Obtaining a divorce judgment can be emotionally liberating for both spouses, but it can also bring up a host of practical and social challenges, particularly for the woman. The following are only few of the many consequences of divorce:

### **1. Effects on children**

When parents divorce, the children are the ones who suffer the most. A kid or children may or may not be present at the time of a divorce, but in many circumstances they are. Children of broken homes have been through enough. Children are more profoundly impacted by their parents' divorce than by the divorce itself.

### **2. Financial Hardships**

The value of money in one's life cannot be overstated. These days, it's common for both partners in a marriage to have stable incomes and a comfortable standard of living, but a divorce can put an end to that. If the wife does not contribute financially, the divorce could be devastating.

### **3. Effects on Health**

Divorce and separation are among the most significant life events that may happen to anyone. Health and well-being are negatively impacted by life's abrupt shifts. Depression is the initial emotional response to divorce. Some of the after-divorce impacts include anxiety, mental health concerns, cardiovascular illness, insomnia, weight loss or gain, and the development of an addiction to drugs or alcohol.

### **4. Social Stigma**

Women in India were not permitted to leave the presence of their husbands, and divorce has been considered a sin in Hinduism for generations. Remarrying after a widower's death was also frowned upon. The social stigma associated with divorce is something that has not disappeared even if it has become more socially acceptable in recent decades. Among the victims of society's collapse, women suffer the most.

## **CONCLUSION**

Divorce is an extremely complex issue. In Hinduism, marriage is more of a sacrament than a legal agreement. The Hindu concept of a sanskaar makes it difficult to dissolve such an organization. The Hindu view on marriage and divorce has been scrutinized in this study. It's a look at how Hindu marriage and divorce laws have evolved over time. It examines all of the reasons for divorce available under Hindu law and



draws conclusions about the strengths and weaknesses of the current divorce laws. The study pays special attention to the Supreme Court's and the Law Commission of India's proposals for the recognition of irretrievable breakdown of marriage as a separate ground for divorce. It has been argued for and against the divorce issue of irretrievable disintegration of the marriage. The implications of divorce on the sanctity of marriage are also discussed, as is the sacramental aspect of marriage.

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