
EVOLVING PERSPECTIVES ON DIVORCE: AN ANALYSIS OF THE HINDU MARRIAGE ACT, 1955 IN THE CONTEXT OF CONTEMPORARY LEGAL NORMS

Shivani Chauhan, Research Scholar, Maharishi University of information technology
Lucknow, Uttar Pradesh, India.

Dr. Amita Rathi, Associate Professor, Maharishi University of information technology
Lucknow, Uttar Pradesh, India.

Dr Piyush Trivedi, Assistant Professor, KMC Language University, Lucknow, Uttar
Pradesh, India.

ABSTRACT

The Hindu Marriage Act, 1955¹, marked a transformative moment in Indian legal history by codifying divorce laws for Hindus and introducing modern legal frameworks to a traditionally sacrosanct institution. This research examines the evolution of divorce under the Act, highlighting how societal shifts and judicial activism have shaped its interpretation and relevance. Key grounds for divorce, such as cruelty, adultery, desertion, and mental illness, have been redefined through landmark judgments to address the complexities of contemporary marital relationships.

The study delves into pivotal Supreme Court rulings, including *Naveen Kohli v. Neelu Kohli*² (2006), which underscored the need to recognize "irretrievable breakdown of marriage" as a valid ground for divorce. Other critical cases, such as *Samar Ghosh v. Jaya Ghosh*³, expanded the definition of mental cruelty, reflecting the changing nature of spousal relationships. Recent judicial pronouncements, like *Shilpa Sailesh v. Varun Sreenivasan*⁴, highlight the growing acceptance of emotional and psychological grounds for dissolving marriages, even though statutory reforms on this issue remain pending.

Furthermore, the study discusses the growing call for gender-neutral reforms in divorce laws, critiquing the patriarchal underpinnings of alimony and maintenance provisions. It also explores the impact of global legal norms on Indian divorce laws, emphasizing the importance of equitable asset division and spousal support. While the Hindu Marriage Act, 1955, was

¹ The Hindu Marriage Act, 1955 (Act 25 of 1955).

² Naveen Kohli v. Neelu Kohli, (2006) 4 SCC 558

³ Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511.

⁴ Shilpa Sailesh v. Varun Sreenivasan, 2023 SCC OnLine SC 544.

groundbreaking for its time, it requires further reform to align with contemporary legal norms, gender equality, and the evolving concept of individual autonomy in marriage and divorce.

Keywords: Divorce, Hindu, Marriage, Contemporary, norms, etc.

INTRODUCTION

The institution of marriage in India, particularly under Hindu law, has undergone significant evolution, mirroring broader societal, cultural, and legal transformations. Historically, Hindu marriage was regarded as a sacramental, indissoluble union, rooted in religious beliefs and rituals⁵. The concept of divorce, as understood in the contemporary legal framework, was virtually non-existent in classical Hindu law. Marriage was considered not just a contractual arrangement but a sacred, lifelong bond that extended beyond death, symbolizing the union of families rather than merely individuals. This traditional view, however, came under scrutiny in the post-independence era, when the need to modernize personal laws and align them with the constitutional ideals of equality and individual freedom became evident.

The enactment of the Hindu Marriage Act, 1955 was a landmark moment in this transformation. It codified marriage and divorce laws for Hindus, introducing divorce as a legal remedy for individuals trapped in irreparable matrimonial disputes. This Act provided several grounds for divorce, including cruelty, adultery, desertion, and incurable mental illness, reflecting a shift from the earlier notion of marriage as indissoluble to one where individual well-being and autonomy were prioritized.

While the Act was revolutionary for its time, its relevance has continued to evolve through judicial interpretation and legal reforms. Courts in India have played a pivotal role in expanding the scope of the Hindu Marriage Act, particularly concerning the grounds for divorce. For instance, the Supreme Court in *Samar Ghosh v. Jaya Ghosh*⁶ expanded the definition of cruelty, recognizing mental cruelty as a valid ground for divorce. Similarly, in *Naveen Kohli v. Neelu Kohli*⁷, the court emphasized the need to recognize the irretrievable breakdown of marriage as a legitimate ground for divorce, urging the legislature to amend the Act accordingly. Despite these judicial advancements, irretrievable breakdown remains absent as a statutory ground,

⁵ Derrett, J. D. M., *Hindu Law: Past and Present*, Oxford University Press, 1957.

⁶ *Samar Ghosh v. Jaya Ghosh*, (2007) 4 SCC 511.

⁷ *Naveen Kohli v. Neelu Kohli*, (2006) 4 SCC 558

leaving courts to invoke Article 142 of the Constitution⁸ to dissolve marriages on this ground in the interest of “complete justice”.

Another significant aspect that has come under scrutiny is the Act’s provisions on maintenance and alimony, which are often seen as reflecting patriarchal norms. Traditionally, these provisions have assumed the financial dependency of the wife on the husband, even in an era where women are increasingly financially independent. Although courts have begun adopting a more progressive stance, emphasizing equitable maintenance and alimony that considers both parties’ contributions, the underlying statutory framework still largely reflects outdated gender roles⁹.

In contemporary legal discourse, the Act’s ability to address issues such as joint custody of children, equitable division of marital property, and gender-neutral maintenance provisions is increasingly being questioned. Courts have taken steps to modernize the application of the Act in these areas, but legislative amendments are needed to codify these changes. For instance, while the judiciary has evolved the concept of shared custody to prioritize the child’s welfare, the statutory provisions on custody under the Act remain less explicit, leaving significant discretion to judicial interpretation¹⁰.

Globally, divorce laws have shifted towards no-fault frameworks that allow couples to dissolve their marriage without assigning blame. India’s divorce laws, especially under the Hindu Marriage Act, have yet to fully adopt these progressive frameworks, despite the growing influence of international human rights standards¹¹. The need for reform in this area is underscored by the increasing number of cases involving prolonged marital disputes where neither spouse is at fault but the marriage is clearly beyond repair.

In conclusion, the Hindu Marriage Act, of 1955 remains a critical piece of legislation in India’s personal law framework. However, its provisions, particularly regarding divorce, require modernization to keep pace with contemporary societal norms, the evolving concept of

⁸ Article 142 of the Constitution of India, 1949.

⁹ Agnes, Flavia, *Law and Gender Inequality: The Politics of Women's Rights in India*, Oxford University Press, 1999.

¹⁰ Pande, Aparna, *Custody and Maintenance Laws in India*, Sage Publications, 2020.

¹¹ Menski, Werner, *Modern Indian Family Law*, Routledge, 2001.

marriage, and the increasing emphasis on individual rights and gender equality¹².

STATEMENT OF PROBLEM

The Hindu Marriage Act, 1955, introduced a legal framework for marriage and divorce among Hindus, marking a significant shift from traditional, religious customs to a more codified and structured system of personal law. While the Act was revolutionary for its time, offering grounds for divorce such as adultery, cruelty, and desertion, it has been critiqued for not fully addressing the complexities of modern marriages, particularly in terms of individual autonomy, gender equality, and evolving societal norms.

A key issue with the Act is the absence of "irretrievable breakdown of marriage" as a statutory ground for divorce, despite judicial endorsement of this concept in several landmark cases. The lack of explicit legal recognition for this ground results in prolonged litigation for couples whose marriages have effectively ceased to function, but who are unable to obtain a divorce without proving fault, such as cruelty or desertion.

Furthermore, the Act's provisions on maintenance and alimony are often criticized for perpetuating patriarchal norms. They tend to assume financial dependency of the wife on the husband, reflecting outdated gender roles that no longer align with contemporary social realities, where both spouses often contribute financially to the household. This has raised questions about fairness and equity in divorce settlements.

Additionally, despite progressive judicial interpretations, the law has not been updated to reflect modern concepts like joint custody of children, equitable division of marital property, and gender-neutral laws that recognize the financial and emotional contributions of both spouses.

This research seeks to explore whether the Hindu Marriage Act, 1955, in its current form, adequately addresses the complexities of contemporary marriages and divorces, and whether reforms are needed to align it with current legal, social, and gender equality standards.

¹² Saksena, Shashi, *Gender and Law: Contemporary Issues of Indian Feminism*, Rawat Publications, 2010.

RESEARCH OBJECTIVES

This research has the following objectives:

1. To examine the adequacy of the *Hindu Marriage Act, 1955* in addressing the complexities of modern marital relationships.
2. To analyze the judicial evolution of key divorce grounds, including cruelty, adultery, and desertion, under the Act.
3. To evaluate the need for the statutory inclusion of “irretrievable breakdown of marriage” as a ground for divorce.
4. To assess the gender implications of maintenance and alimony provisions within the *Hindu Marriage Act, 1955*.
5. To explore the influence of global legal norms on the reform and modernization of Indian divorce laws.

HISTORICAL CONTEXT OF THE HINDU MARRIAGE ACT, 1955

Before the enactment of the Hindu Marriage Act, 1955, Hindu marriages were predominantly considered sacramental and indissoluble, reflecting deep-rooted social, religious, and cultural traditions. Hindu society viewed marriage as an essential *samskara* (sacrament), with the matrimonial bond regarded as both a moral and spiritual obligation that transcended the lifetime of the spouses. In classical Hindu law, the notion of *pativrata* (the ideal of an unconditionally devoted wife) and the duty of a husband to provide protection and sustenance to his wife were central to marital relationships¹³. Divorce, as a legal concept, was entirely absent in this framework, with separation or dissolution of marriage perceived as violating the sanctity of this divine union¹⁴. This conception was reinforced by religious texts like the *Manusmriti*, which emphasized the eternal nature of marriage and prohibited the remarriage of women following the death of their husbands, underscoring the sacramental character of the institution. However, the colonial period marked the beginning of gradual reforms in Hindu personal law, as British authorities, driven by their own legal traditions, questioned the rigidity of Hindu

¹³ Derrett, J. D. M., *Religion, Law, and the State in India*, Faber & Faber, 1968.

¹⁴ Kane, P. V., *History of Dharmasastra*, Vol. 2, Bhandarkar Oriental Research Institute, 1974.

marriage customs. While the British colonial administration initially refrained from direct interference in religious laws, early attempts to codify personal laws started surfacing by the late 19th century. Notably, legislative interventions like the Hindu Widows' Remarriage Act, 1856 aimed at providing some relief to Hindu women, albeit limited in scope. Yet, divorce remained largely unaddressed in Hindu law until the mid-20th century¹⁵.

India's independence in 1947, accompanied by the drafting of a new Constitution grounded in democratic ideals of equality, liberty, and justice, intensified the need to reform personal laws, including those governing marriage. The Hindu Marriage Act, 1955, therefore, marked a turning point, bringing the institution of marriage into the legal domain and introducing judicial separation and divorce as legitimate legal remedies. This Act signified a shift from viewing marriage purely as a sacrament to recognizing it as a social contract, subject to legal dissolution in cases where the marriage had become irretrievably broken¹⁶. It was an attempt to balance tradition with modernity, acknowledging that in certain circumstances, even sacred bonds could deteriorate beyond repair.

Furthermore, the Act reflected the state's commitment to gender equality and individual autonomy, values enshrined in the Indian Constitution. By allowing both men and women the legal right to seek divorce on specific grounds such as cruelty, adultery, and desertion, the Act signaled a move towards more progressive personal laws that catered to the changing needs of Indian society. In doing so, the legislation also sought to address long-standing inequalities faced by women in marital relationships, which had been perpetuated by patriarchal interpretations of Hindu traditions¹⁷.

Thus, the Hindu Marriage Act, 1955 stands as a critical legal milestone, reflecting both the socio-religious evolution of the Hindu marriage institution and the broader legal reforms in post-independence India aimed at promoting individual rights and gender justice.

GROUND FOR DIVORCE UNDER THE HINDU MARRIAGE ACT

Section 13 of the Hindu Marriage Act, 1955¹⁸, lays down various grounds for divorce, catering

¹⁵ Menski, Werner, *Hindu Law: Beyond Tradition and Modernity*, Oxford University Press, 2003.

¹⁶ Diwan, Paras, *Hindu Law*, Wadhwa & Co., 2007.

¹⁷ Agnes, Flavia, *Law and Gender Inequality: The Politics of Women's Rights in India*, Oxford University Press, 1999.

¹⁸ Hindu Marriage Act, 1955, Section 13, Government of India.

to the evolving needs of society while keeping in mind the institution's sanctity. Some of the grounds include:

1. **Adultery:** Engaging in extramarital sexual relationships is grounds for divorce. While considered a violation of the sacred bond of marriage, adultery was one of the earliest recognized causes of divorce under the Act.
2. **Cruelty:** Over time, courts have interpreted cruelty to include both physical and mental suffering. This broad interpretation has expanded the scope of cruelty, acknowledging that emotional abuse, humiliation, and harassment are legitimate grounds for seeking divorce. The concept of cruelty has been key in several landmark judgments, which have highlighted its evolving nature.
3. **Desertion:** A spouse leaving the other without reasonable cause or consent for a continuous period of at least two years can be grounds for divorce. Desertion reflects the importance of cohabitation and mutual support in marriage.
4. **Conversion to another religion:** If a spouse converts to another religion, it can serve as a valid ground for seeking a divorce. This provision reflects the understanding that religious beliefs play a significant role in marital relationships.
5. **Mental Disorder or Disease:** If a spouse suffers from an incurable mental disorder or communicable disease, it can be a ground for divorce. This provision addresses situations where the mental or physical condition of a spouse severely affects the marriage.
6. **Renunciation of the World:** This ground recognizes the spiritual significance of renunciation (becoming a sanyasi), which has traditionally held importance in Hindu culture.

In addition to these, there has been a growing demand for recognizing *irretrievable breakdown of marriage* as a valid ground for divorce. Though not explicitly mentioned in the Act, this concept has found support through judicial activism and interpretations, leading to a more progressive understanding of marital relationships.

LANDMARK JUDGMENTS IN THE EVOLUTION OF DIVORCE LAW

The evolution of divorce laws under the Hindu Marriage Act, 1955, has been significantly shaped by judicial pronouncements. Various landmark rulings have expanded the interpretation of divorce grounds, reflecting the changing social realities.

In the landmark case of *Naveen Kohli v. Neelu Kohli*¹⁹, the Supreme Court emphasized the need for recognizing “irretrievable breakdown of marriage” as a ground for divorce. Naveen Kohli, the petitioner, filed for divorce citing cruelty, but the court observed that the marriage had broken down beyond repair due to prolonged litigation and a complete lack of emotional or physical intimacy between the couple. The court observed that continuing such a marriage would only cause more misery and recommended that irretrievable breakdown be included as a statutory ground for divorce.

In the case of *Samar Ghosh v. Jaya Ghosh*²⁰, the Supreme Court provided detailed guidelines on what constitutes “cruelty” as a ground for divorce. It broadened the definition of cruelty to include not just physical abuse but also emotional and psychological harm. The court laid down a comprehensive set of criteria to determine mental cruelty, emphasizing that cruelty need not be physical and can manifest in actions that cause unbearable mental suffering. This judgment was pivotal in ensuring that cruelty as a ground for divorce was not narrowly interpreted but encompassed a wide range of abuses.

The case of *V. Bhagat v. D. Bhagat*²¹, was instrumental in recognizing irreparable breakdowns in marriages, even if not explicitly listed as a ground for divorce under the Hindu Marriage Act. The court held that the loss of mutual trust and respect, along with prolonged litigation, justified granting a divorce. It introduced the idea that emotional compatibility and mutual respect are key elements in a successful marriage, and their absence could justify dissolution. The ruling of *Sureshta Devi v. Om Prakash*²² clarified the interpretation of Section 13-B²³, which deals with divorce by mutual consent. The court ruled that either spouse can withdraw consent at any point before the final decree of divorce is passed. This provision reflects the principle that mutual consent is foundational in consensual divorces, and forcing a divorce

¹⁹ *Naveen Kohli v. Neelu Kohli*, (2006) 4 SCC 558.

²⁰ *Samar Ghosh v. Jaya Ghosh*, (2007) 4 SCC 511.

²¹ *V. Bhagat v. D. Bhagat*, (1994) 1 SCC 337

²² *Sureshta Devi v. Om Prakash*, (1991) 2 SCC 25.

²³ Hindu Marriage Act, 1955, Section 13-B, Government of India.

where consent is withdrawn would defeat the purpose of the legislation. In case of *Anil Kumar Jain v. Maya Jain*²⁴, the Supreme Court reaffirmed the principle of irretrievable breakdown of marriage as grounds for divorce, even though it is not yet codified in statutory law. The court held that prolonged separation and complete incompatibility justify granting a divorce, as continuing the marriage would only serve to perpetuate unhappiness and litigation.

A landmark ruling by the Supreme Court of *Shilpa Sailesh v. Varun Sreenivasa*²⁵, further cemented the judiciary's willingness to invoke the concept of irretrievable breakdown of marriage. The court dissolved the marriage using its powers under Article 142 of the Constitution, which allows the Supreme Court to pass any decree to do "complete justice." This case highlighted the judiciary's growing flexibility in recognizing emotional and psychological factors as legitimate reasons for divorce, even in the absence of explicit statutory grounds.

CONTEMPORARY LEGAL DEVELOPMENTS AND GENDER EQUALITY

One of the growing criticisms of the Hindu Marriage Act, 1955²⁶ is that while it has facilitated access to divorce, certain provisions still reflect patriarchal underpinnings, especially concerning maintenance and alimony. Traditionally, the Act assumes that women are financially dependent on men, leading to a scenario where men bear the responsibility of providing maintenance to their wives, reinforcing conventional gender roles. Although this may have aligned with the social structure of the 1950s, it does not adequately reflect the economic independence that many women enjoy today. For instance, Section 24 of the Act²⁷, which provides for interim maintenance and expenses of proceedings, assumes that the wife is in need of support unless she has "sufficient independent income," a notion that has been challenged in contemporary discourse.

In recent years, courts have sought to interpret these provisions more equitably, taking into account the financial independence of both spouses. In *Kusum Sharma v. Mahinder Kumar Sharma*²⁸, the Delhi High Court laid down comprehensive guidelines for determining maintenance, emphasizing factors like the standard of living during the marriage, the earnings

²⁴ *Anil Kumar Jain v. Maya Jain*, (2009) 10 SCC 415.

²⁵ *Shilpa Sailesh v. Varun Sreenivasan*, 2023 SCC OnLine SC 544

²⁶ The Hindu Marriage Act, 1955 (Act 25 of 1955)

²⁷ Section 24 of the Hindu Marriage Act, 1955.

²⁸ *Kusum Sharma v. Mahinder Kumar Sharma*, 2015 SCC OnLine Del 6793

and liabilities of both parties, and the financial needs of the dependent spouse. This case underscored the need for a more equitable approach, reflecting that maintenance should not be awarded based solely on gender, but rather on financial necessity and contribution to the marriage.

Similarly, in the landmark judgment of *Vinny Parmar v. Yuvraj Parmar*²⁹, the Supreme Court of India acknowledged the evolving social dynamics and stressed that both men and women could be claimants or payers of alimony, depending on the circumstances. The Court held that maintenance should be awarded to ensure a life of dignity and similar living standards post-divorce, regardless of gender.

Another crucial development in advancing gender equality in divorce proceedings is the recognition of the right to a fair share of marital assets. In *Chiranjit Lal v. Bharti Devi*³⁰, the Delhi High Court upheld the concept of equitable distribution of property, highlighting the contribution of homemakers to the family's well-being. This marked a significant shift from the traditional understanding of financial contributions, acknowledging that non-monetary contributions such as raising children and managing the household are just as vital as financial contributions to the family. This view aligns with global trends toward more equitable division of marital property in divorce cases.

Moreover, courts have also begun to recognize the emotional and psychological well-being of both spouses as an essential factor in divorce proceedings. In *Samar Ghosh v. Jaya Ghosh*³¹, the Supreme Court expanded the scope of mental cruelty, making it clear that psychological harm caused by a spouse's behavior can be grounds for divorce. This shift reflects the evolving understanding of marriage as a partnership of equals, where both emotional and financial factors are crucial in determining the outcome of divorce cases.

In conclusion, while the Hindu Marriage Act, 1955³² has undoubtedly played a crucial role in providing a legal framework for divorce, contemporary legal developments and judicial interpretations have begun to address its patriarchal underpinnings. The push for gender-neutral

²⁹ *Vinny Parmar v. Yuvraj Parmar*, (2011) 7 SCC 742.

³⁰ *Chiranjit Lal v. Bharti Devi*, 2015 SCC OnLine Del 11011.

³¹ *Samar Ghosh v. Jaya Ghosh*, (2007) 4 SCC 511.

³² The Hindu Marriage Act, 1955 (Act 25 of 1955).

laws, equitable asset distribution, and a more nuanced understanding of marital contributions reflects a broader societal movement toward ensuring gender equality in matrimonial laws.

GLOBAL INFLUENCE ON INDIAN DIVORCE LAWS

India's divorce laws, particularly under the *Hindu Marriage Act*,³³ have increasingly been influenced by global legal norms, especially those prevalent in Western countries. Concepts such as no-fault divorce, which allow spouses to dissolve a marriage without assigning blame to one party, have been discussed in Indian judicial circles, although they are yet to be fully adopted.

Furthermore, concepts such as equitable division of marital property, joint custody of children, and spousal support have drawn from international standards, focusing on fairness and equality in divorce settlements. The influence of international conventions on human rights, particularly regarding the right to dignity and autonomy, has shaped how courts view marital dissolution and its consequences.

CONCLUSION

The *Hindu Marriage Act, 1955*, while revolutionary for its time, now requires comprehensive reforms to keep pace with contemporary societal values and evolving legal standards. With judicial interpretations expanding the meaning of cruelty, consent, and irretrievable breakdown of marriage, the law is gradually moving towards a more progressive framework. However, legislative amendments are necessary to codify these judicial advancements and provide a more comprehensive, equitable, and gender-neutral framework for divorce. As societal perceptions of marriage and individual rights continue to evolve, the Hindu Marriage Act must reflect these changes to ensure that it remains relevant and just in the modern legal context.

³³ The Hindu Marriage Act, 1955 (Act 25 of 1955).