

---

# WOMEN, DIVORCE, AND ACCESS TO LEGAL REMEDIES IN INDIA: A SOCIO-LEGAL STUDY

---

Dr. Rajni Kaushal, Assistant Professor at Starex University, Gurugram<sup>1</sup>

## ABSTRACT

Divorce in India represents not merely the dissolution of a marital relationship but a complex intersection of law, gender, and social norms. Women undergoing divorce often encounter structural inequalities, social stigma, and procedural challenges that limit effective access to justice. This research paper examines divorce through a socio-legal lens, focusing on the legal remedies available to women under various personal laws and secular statutes in India. The study adopts a qualitative socio-legal methodology, drawing upon statutory analysis, judicial decisions, and secondary literature. It critically analyzes provisions relating to maintenance, alimony, custody, residence, and protection from domestic violence, alongside judicial interpretations that shape their application. The study further explores the gap between legal entitlements and lived realities, highlighting issues such as economic dependence, delays in litigation, and enforcement failures. By integrating doctrinal analysis with social context and judicial trends, the paper underscores the need for a gender-sensitive and accessible matrimonial justice system. The study concludes by advocating for legal reforms, effective implementation mechanisms, and stronger institutional support to ensure meaningful protection of women's rights in divorce proceedings.

**Keywords:** Divorce, Women's Rights, Matrimonial Law, Maintenance and Alimony, Gender Justice

---

<sup>1</sup> Assistant Professor at Starex University, Gurugram.

## 1. Introduction

Marriage in Indian society has traditionally been regarded as a sacred and enduring institution, deeply embedded in social, cultural, and religious norms.<sup>2</sup> Divorce, therefore, continues to carry social stigma, particularly for women, who are often subjected to moral scrutiny, economic vulnerability, and social exclusion following the breakdown of marriage.<sup>3</sup> Despite significant legal developments aimed at protecting women's rights, the experience of divorce for women in India remains shaped as much by societal attitudes and power relations as by formal legal provisions.<sup>4</sup>

The Indian legal system provides multiple remedies for women in divorce and matrimonial disputes through personal laws, secular statutes, and judicial interventions.<sup>5</sup> Provisions relating to maintenance, alimony, child custody, residence rights, and protection from domestic violence are intended to mitigate the adverse consequences of marital breakdown. However, the effectiveness of these remedies is frequently undermined by procedural delays, inconsistent judicial application, lack of legal awareness, and difficulties in enforcement.<sup>6</sup> As a result, the gap between legal rights guaranteed on paper and the realities faced by women in practice continues to persist.<sup>7</sup>

This paper adopts a socio-legal perspective to examine the intersection of gender, divorce, and law in India. It seeks to analyze not only the statutory framework governing divorce and related remedies but also the social conditions that influence women's access to justice. By engaging with judicial pronouncements, legislative provisions, and social realities, the study highlights how law operates within a broader socio-cultural context.<sup>8</sup> The paper aims to assess whether existing legal remedies adequately address women's vulnerabilities in divorce proceedings and to identify areas where reform and institutional support are necessary to ensure substantive gender justice.<sup>9</sup>

---

<sup>2</sup> Bina Agarwal, *Gender and Family Law in India*, 42 Economic & Political Weekly 42 (2007).

<sup>3</sup> Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford Univ. Press 1999).

<sup>4</sup> Lotika Sarkar, *Women and Law: Contemporary Problems* (Vikas Publishing House 1988).

<sup>5</sup> Hindu Marriage Act, 1955; Muslim Women (Protection of Rights on Divorce) Act, 1986; Special Marriage Act, 1954.

<sup>6</sup> Law Commission of India, Report No. 252: Right of the Hindu Wife to Maintenance (2015).

<sup>7</sup> Kusum Sharma v. Mahinder Kumar Sharma, (2020) 17 SCC 628.

<sup>8</sup> Upendra Baxi, *The Crisis of the Indian Legal System* (Vikas Publishing House 1982).

<sup>9</sup> Indra Sarma v. V.K.V. Sarma, (2013) 15 SCC 755.

## 2. Legal Framework, Judicial Interpretation, and Women's Remedies in Divorce: A Socio-Legal Analysis

The legal regulation of divorce in India reflects a pluralistic framework, wherein personal laws coexist with secular statutes and constitutional principles. While this framework aims to address the diverse religious and social realities of Indian society, its impact on women must be examined through a socio-legal lens that accounts for both legal provisions and lived experiences. Divorce, for women, is often accompanied by economic insecurity, social stigma, and procedural disadvantages, making legal remedies crucial for ensuring substantive justice.<sup>10</sup>

The constitutional framework further reinforces women's entitlement to effective legal remedies in divorce proceedings. Article 14 and 15 of the Constitution of India guarantee equality before law and prohibit discrimination on the ground of sex, thereby mandating that matrimonial laws and their application must conform to principles of gender equality.<sup>11</sup> Article 21, which protects the right to life and personal liberty, has been expansively interpreted by the judiciary to include the right to live with dignity, financial security, and autonomy.<sup>12</sup> In the context of divorce, courts have increasingly recognized maintenance, residence, and economic support as integral to a woman's right to dignity under Article 21.<sup>13</sup> Consequently, statutory provisions governing divorce and related reliefs must be interpreted in a manner that advances substantive equality and constitutional morality, ensuring that women are not rendered economically or socially vulnerable upon the dissolution of marriage.<sup>14</sup>

### a. Personal Laws and Women's Entitlements

Under Hindu law, the **Hindu Marriage Act, 1955** governs divorce and related reliefs. The Act recognizes multiple grounds for divorce and provides for maintenance pendente lite and permanent alimony under Sections 24 and 25, respectively.<sup>15</sup> These provisions are intended to prevent financial destitution of women during and after matrimonial proceedings. However, the discretionary nature of maintenance awards and prolonged litigation often undermine their

---

<sup>10</sup> Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford Univ. Press 1999).

<sup>11</sup> The Constitution of India, Art. 14, 15.

<sup>12</sup> *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

<sup>13</sup> *Kusum Sharma v. Mahinder Kumar Sharma*, (2020) 17 SCC 628; *Bhuwan Mohan Singh v. Meena*, (2015) 6 SCC 353.

<sup>14</sup> *Joseph Shine v. Union of India*, (2019) 3 SCC 39; *Shayara Bano v. Union of India*, (2017) 9 SCC 1.

<sup>15</sup> Hindu Marriage Act, 1955, Section 13, 24–25.

effectiveness.<sup>16</sup>

Muslim women's rights in divorce are shaped by both personal law principles and statutory intervention under the **Muslim Women (Protection of Rights on Divorce) Act, 1986**. Although the Act was initially perceived as restrictive, judicial interpretation has expanded its scope to ensure that divorced Muslim women receive fair and reasonable provision beyond the iddat period.<sup>17</sup> The Supreme Court, in *Danial Latifi v. Union of India*,<sup>18</sup> clarified that the husband's obligation extends to making adequate provision for the future of the divorced woman. Despite this progressive interpretation, social barriers and lack of legal awareness continue to impede effective enforcement.

Christian women seeking divorce are governed by the **Indian Divorce Act, 1869**, which has been amended to remove gender-discriminatory provisions and establish parity between spouses. Similarly, the **Special Marriage Act, 1954** provides a secular framework for divorce, maintenance, and alimony applicable irrespective of religion.<sup>19</sup> These legislations signify a gradual shift toward gender-neutral norms, though women continue to face disproportionate disadvantages due to socio-economic dependency.

### **b. Secular and Protective Legal Remedies**

In addition to personal laws, secular statutes provide important safeguards for women in divorce-related disputes. Section 125 of the **Code of Criminal Procedure, 1973** (and corresponding provisions under BNSS, 2023) offers a summary and speedy remedy for maintenance, reinforcing the principle that maintenance is a matter of social justice rather than personal charity.<sup>20</sup> This provision has been particularly significant for women who may otherwise be excluded under restrictive personal laws.

The **Protection of Women from Domestic Violence Act, 2005** further strengthens women's legal position by recognizing economic abuse and providing remedies such as residence orders, monetary relief, and protection orders.<sup>21</sup> The Act adopts a broad definition of domestic

---

<sup>16</sup> Law Commission of India, Report No. 252: Right of the Hindu Wife to Maintenance (2015).

<sup>17</sup> Muslim Women (Protection of Rights on Divorce) Act, 1986.

<sup>18</sup> (2001) 7 SCC 740.

<sup>19</sup> Special Marriage Act, 1954; Indian Divorce (Amendment) Act, 2001.

<sup>20</sup> Code of Criminal Procedure, 1973, Section 125; *Shah Bano Begum v. Mohd. Ahmed Khan*, (1985) 2 SCC 556.

<sup>21</sup> Protection of Women from Domestic Violence Act, 2005, Section 17–23.

relationships and remains applicable even after separation or divorce, thereby addressing the immediate needs of women during matrimonial breakdown.

### c. Judicial Interpretation and Emerging Trends

The judiciary has played a pivotal role in expanding and harmonizing women's remedies in divorce. Courts have consistently emphasized that maintenance is an essential component of dignity and equality guaranteed under Article 21 of the Constitution.<sup>22</sup> In *Bhuwan Mohan Singh v. Meena*, the Supreme Court underscored that delays in maintenance proceedings defeat the very purpose of the law.<sup>23</sup> More recently, in *Rajnish v. Neha*, the Court issued comprehensive guidelines to streamline maintenance proceedings, promote uniformity, and reduce judicial delays.<sup>24</sup>

Judicial trends also indicate increasing recognition of women's unpaid domestic labour, economic dependence, and care giving responsibilities while determining maintenance and alimony. However, enforcement remains a persistent challenge, with non-compliance and procedural hurdles limiting the real-world impact of progressive judgments. This disconnect between legal intent and social reality highlights the need for institutional reform and effective implementation mechanisms.

## 3. Comparative Perspective on Women's Divorce Rights

A comparative examination of divorce laws demonstrates that several jurisdictions have adopted more uniform and gender-neutral frameworks aimed at reducing women's post-divorce vulnerability.<sup>25</sup> In the United Kingdom, courts apply the principle of "fair financial provision," wherein both financial and non-financial contributions—such as caregiving and domestic labour—are considered while determining maintenance and asset distribution.<sup>26</sup> Similarly, many states in the United States follow the doctrine of equitable distribution, prioritizing economic fairness over fault-based considerations, thereby minimizing prolonged litigation.<sup>27</sup> In contrast, the Indian legal framework governing divorce remains fragmented across religious personal laws, often resulting in inconsistent and unequal outcomes for

---

<sup>22</sup> *Kusum Sharma v. Mahinder Kumar Sharma*, (2020) 17 SCC 628.

<sup>23</sup> (2015) 6 SCC 353.

<sup>24</sup> (2021) 2 SCC 324.

<sup>25</sup> Werner Menski, *Comparative Law in a Global Context* (2d ed. 2016).

<sup>26</sup> *White v. White*, [2001] 1 AC 596 (HL).

<sup>27</sup> June Carbone, *Family Law and the Indissolubility of Parenthood*, 40 Fam. L.Q. 639 (2006).

women. Although Indian courts have attempted to harmonize personal laws with constitutional values through progressive interpretation, the absence of a uniform civil framework continues to pose structural challenges.<sup>4</sup> this comparative insight underscores the need for reformative approaches that shift the focus from fault-based dissolution to equity-based relief mechanisms, ensuring dignity and financial security for divorced women.

#### 4. Socio-Legal Challenges Faced by Women in Divorce Proceedings in India

Despite the existence of multiple legal remedies, women in India continue to face significant socio-legal challenges during divorce proceedings. These challenges stem not only from gaps in the law but also from entrenched social norms, economic dependency, and institutional constraints that shape women's access to justice. Divorce litigation, therefore, often becomes a site where formal legal rights collide with social realities.<sup>28</sup>

One of the most pervasive challenges is **economic vulnerability**. Many women enter marriage with limited financial independence and are engaged primarily in unpaid domestic and caregiving work. Upon divorce, the lack of independent income places them at a structural disadvantage, making them dependent on maintenance and alimony claims that are frequently delayed or inadequately enforced.<sup>29</sup> Courts have increasingly acknowledged women's unpaid labour, yet valuation of such work remains inconsistent and discretionary.<sup>30</sup>

**Social stigma** associated with divorce further compounds women's difficulties. Divorced women are often subjected to moral judgment, familial pressure, and social exclusion, which discourages them from pursuing legal remedies or continuing prolonged litigation.<sup>31</sup> In many cases, societal expectations compel women to opt for unfair settlements or informal compromises to avoid public scrutiny and emotional distress. This stigma operates as an informal barrier to justice, particularly in rural and semi-urban contexts.

Procedural delays and **institutional inefficiencies** within the legal system pose additional obstacles. Matrimonial disputes often involve prolonged hearings, repeated adjournments, and delayed execution of maintenance orders.<sup>32</sup> Such delays defeat the purpose of interim reliefs

---

<sup>28</sup> Upendra Baxi, *The Crisis of the Indian Legal System* (Vikas Publishing House 1982).

<sup>29</sup> Law Commission of India, Report No. 252: Right of the Hindu Wife to Maintenance (2015).

<sup>30</sup> *Rajnesh v. Neha*, (2021) 2 SCC 324.

<sup>31</sup> Flavia Agnes, *Law, Ideology and Female Sexuality* (Oxford Univ. Press 1999).

<sup>32</sup> *Bhuwan Mohan Singh v. Meena*, (2015) 6 SCC 353.

and disproportionately affect women who require immediate financial support. Although judicial guidelines have been issued to streamline maintenance proceedings, effective implementation remains uneven across jurisdictions.<sup>33</sup>

Lack of **legal awareness and access to legal aid** also limits women's ability to assert their rights. Many women remain unaware of the full range of remedies available under personal laws, criminal procedure, and protective legislations such as the Domestic Violence Act.<sup>34</sup> Even where legal aid is available, inadequate counselling, poor quality representation, and social pressure often undermine its effectiveness.

Finally, **enforcement of judicial orders** continues to be a persistent challenge. Non-compliance with maintenance and alimony orders, coupled with weak enforcement mechanisms, renders legal remedies ineffective in practice.<sup>35</sup> This enforcement gap highlights the limitations of a purely formal legal approach and underscores the need for stronger institutional support systems, including monitoring mechanisms and social welfare integration.

## 5. Empirical Realities and Implementation Challenges

Despite the existence of multiple statutory safeguards, empirical evidence reveals a persistent gap between legal entitlements and actual access to justice for divorced women in India.<sup>36</sup> Reports by the National Commission for Women and various legal aid organizations indicate that many women abandon claims for maintenance due to prolonged litigation, procedural delays, and social pressure.<sup>37</sup> Economic dependence—particularly among women engaged in unpaid domestic and caregiving work—further aggravates post-divorce insecurity. Ineffective enforcement of maintenance orders and limited institutional support systems often compel women to accept unfavorable settlements. Additionally, intersectional factors such as caste, class, rural-urban divide, and educational status significantly influence women's ability to assert their legal rights.<sup>38</sup> These empirical findings highlight that legal reform alone is insufficient unless supported by administrative efficiency, legal awareness, and broader socio-economic empowerment initiatives.

---

<sup>33</sup> *Kusum Sharma v. Mahinder Kumar Sharma*, (2020) 17 SCC 628.

<sup>34</sup> National Commission for Women, Report on Access to Justice for Women (2018).

<sup>35</sup> *Indra Sarma v. V.K.V. Sarma*, (2013) 15 SCC 755.

<sup>36</sup> Upendra Baxi, *Law and Poverty in India* (1988).

<sup>37</sup> National Commission for Women, Annual Report (latest ed.).

<sup>38</sup> Flavia Agnes, *Law and Gender Inequality* (1999).

## 6. Need for Legal Reform and Policy Recommendations

While India's legal framework provides multiple remedies for women in divorce, persistent socio-legal challenges reveal the need for structural reforms that go beyond doctrinal changes. Legal reform must aim not only at expanding rights but also at ensuring their effective realization through accessible, timely, and gender-sensitive mechanisms.<sup>39</sup>

First, there is a pressing need to **streamline maintenance and alimony proceedings**. Despite judicial guidelines mandating expeditious disposal, delays continue to undermine women's financial security. Statutory timelines for interim and final maintenance, coupled with standardized criteria for assessment of income and unpaid domestic labour, would promote consistency and reduce judicial discretion.<sup>40</sup>

Second, **strengthening enforcement mechanisms** is essential. Maintenance and alimony orders should be backed by effective execution procedures, including wage garnishment, attachment of property, and penalties for wilful non-compliance.<sup>41</sup> Integration of maintenance enforcement with digital court monitoring systems can further improve accountability and compliance.

Third, **legal aid and counselling services** must be enhanced, particularly for economically and socially marginalized women. Legal literacy programmes focusing on matrimonial rights, maintenance, and protection laws should be institutionalized at the grassroots level. Family Courts must also be equipped with trained counsellors and gender-sensitive mediation mechanisms that prioritize women's autonomy and informed consent.<sup>42</sup>

Fourth, there is a need to promote **harmonization of personal laws** with constitutional principles of equality and dignity. While respecting religious diversity, reforms should ensure that women across communities receive comparable standards of protection and relief. Judicial interpretations grounded in constitutional morality must continue to guide this process.<sup>43</sup>

Finally, matrimonial justice must be linked with **social welfare measures**, including housing support, skill development, and employment opportunities for divorced women. A holistic

---

<sup>39</sup> Law Commission of India, Report No. 252: Right of the Hindu Wife to Maintenance (2015).

<sup>40</sup> *Rajnesh v. Neha*, (2021) 2 SCC 324.

<sup>41</sup> *Bhuwan Mohan Singh v. Meena*, (2015) 6 SCC 353.

<sup>42</sup> Family Courts Act, 1984; National Legal Services Authority, Legal Aid for Women.

<sup>43</sup> *Joseph Shine v. Union of India*, (2019) 3 SCC 39.

approach that integrates legal remedies with social support systems is essential for ensuring substantive gender justice in divorce proceedings.<sup>44</sup>

## 7. Feminist Jurisprudence, Constitutional Morality, and Divorce Law

Feminist jurisprudence provides a critical framework for analyzing divorce laws by foregrounding women's lived experiences and structural inequalities within matrimonial relationships.<sup>45</sup> Traditionally, law has treated marriage as a private institution, often overlooking power asymmetries and women's economic dependency.<sup>46</sup> Indian courts, however, have increasingly relied on the doctrine of constitutional morality to challenge patriarchal norms embedded in personal laws. The application of Articles 14, 15, and 21 of the Constitution has enabled a transition from formal equality to substantive justice, particularly in matters concerning maintenance and dignity.<sup>47</sup> Judicial recognition of unpaid domestic labour and care giving roles marks a progressive departure from conventional fault-based reasoning. Nonetheless, feminist scholars argue that genuine equality in divorce law requires dismantling entrenched socio-cultural stigmas and reimagining marriage as an economic partnership.<sup>48</sup> Integrating feminist jurisprudence with constitutional interpretation can thus strengthen divorce remedies as instruments of empowerment rather than mere procedural relief.

## 8. Conclusion

Divorce in India, particularly from the perspective of women, is not merely a legal event but a profound socio-legal phenomenon shaped by law, culture, and power relations. Although statutory provisions and judicial interventions have progressively expanded women's rights in divorce, the gap between formal legal entitlements and lived realities remains significant. This study, through a socio-legal analysis, has demonstrated that women's access to divorce remedies is constrained by economic dependence, social stigma, procedural delays, and weak enforcement mechanisms. While courts have increasingly adopted gender-sensitive interpretations, effective implementation continues to be a major challenge.

The paper argues that achieving meaningful justice for women in divorce requires a shift from

---

<sup>44</sup> UN Women, *Progress of the World's Women: Justice Systems* (2019).

<sup>45</sup> Catharine A. MacKinnon, *Feminism Unmodified* (1987).

<sup>46</sup> Martha Fineman, *The Illusion of Equality* (1991).

<sup>47</sup> *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248; *Rajnish v. Neha*, (2021) 2 SCC 324

<sup>48</sup> Ratna Kapur, *Gender, Alterity and Human Rights* (2018).

a purely formalistic understanding of law to a substantive and contextual approach. Legal reform must be accompanied by institutional strengthening, social support mechanisms, and continued judicial commitment to constitutional values of equality, dignity, and justice. Only through such an integrated approach can divorce law in India evolve into a truly empowering framework for women. Ultimately, addressing women's rights in divorce requires a multidimensional approach that harmonizes legal reform with social transformation. Strengthening enforcement mechanisms, expanding access to legal aid, and promoting gender-sensitive judicial training are essential to achieving meaningful justice. As Indian society continues to evolve, divorce laws must reflect constitutional commitments to equality, non-discrimination, and dignity while remaining responsive to ground-level realities. A socio-legal approach is therefore indispensable in bridging the gap between normative rights and lived justice, ensuring that divorce remedies function not merely as formal entitlements but as tools for restoring autonomy and dignity to women.