
DIVORCE: A MYTH OR A FREEDOM? A CRITICAL ANALYSIS WITH SPECIAL REFERENCE TO INDIA

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ABSTRACT

Marriage has traditionally been regarded as one of the most significant social institutions in India, deeply rooted in religious beliefs, cultural traditions, and familial values. It has historically been viewed as a lifelong commitment, with divorce carrying considerable social stigma. However, changing socio-economic conditions, increasing education, urbanization, women's financial independence, and constitutional recognition of individual rights have transformed societal perceptions of marriage and divorce. Divorce is no longer seen solely as the dissolution of a marital relationship but also as a legal mechanism to protect individual dignity, autonomy, and equality.

This paper critically examines whether divorce in India represents genuine freedom or whether it remains a myth due to persistent social, economic, and legal barriers. The study analyses the historical evolution of divorce, the statutory framework governing matrimonial disputes, constitutional principles, judicial interpretations, and the social realities experienced by divorced individuals. It argues that although Indian law has progressively recognized divorce as a means of safeguarding personal liberty and human dignity, societal stigma, lengthy litigation, economic dependence, and patriarchal norms continue to restrict the effective realization of this freedom. The paper concludes that divorce should not be viewed as the failure of marriage but as a legal remedy that enables individuals to escape irretrievably broken relationships while preserving their constitutional rights.

Keywords: Divorce, Marriage, Family Law, Gender Justice, Constitutional Rights, Personal Laws, Human Dignity, India.

Introduction

Marriage is one of the oldest and most respected social institutions, serving as the foundation of family life and social organization. In India, marriage has traditionally been regarded not merely as a legal contract but as a sacred union involving emotional, cultural, religious, and social obligations. Particularly within Hindu law, marriage has historically been viewed as a *sanskara* (sacrament), intended to endure throughout the lifetime of the spouses. Similar importance is accorded to marriage in other personal laws, although the legal nature of the institution differs across religious communities.

For centuries, divorce was considered socially unacceptable, especially for women. The continuation of marriage was often prioritized over the emotional well-being and personal safety of the spouses. Individuals experiencing domestic violence, emotional abuse, incompatibility, or neglect were expected to preserve the marital relationship to protect family honour and societal expectations. Consequently, divorce became associated with failure, shame, and social exclusion rather than legal protection.

The constitutional framework established after India's independence has significantly transformed this perspective. The Constitution of India guarantees equality before the law (Article 14), prohibits discrimination (Article 15), and protects life and personal liberty (Article 21). These constitutional principles have influenced the development of matrimonial laws by recognizing that marriage should promote mutual respect and dignity rather than compel individuals to remain in oppressive relationships.

Despite legislative reforms and progressive judicial decisions, divorce continues to generate conflicting opinions. One school of thought argues that increasing divorce rates threaten the stability of families and weaken traditional values. Another perspective maintains that divorce is an essential legal remedy that protects individuals from abusive, exploitative, or irretrievably broken marriages. The debate, therefore, extends beyond legal doctrine and encompasses broader questions of morality, social change, gender justice, and human rights.

This paper seeks to examine whether divorce in India has truly become an instrument of freedom or whether it remains a legal right constrained by social realities.

Research Objectives

The objectives of this research are:

- To examine the historical development of divorce laws in India.
- To analyse the legal framework governing divorce under different personal laws.
- To evaluate divorce from constitutional, social, and gender perspectives.
- To critically assess whether divorce provides genuine freedom or merely legal relief.
- To recommend reforms that strengthen access to justice while preserving individual dignity.

Research Methodology

This paper adopts a **doctrinal research methodology**, relying primarily on statutes, constitutional provisions, judicial decisions, Law Commission reports, and scholarly literature. Secondary sources such as books, journal articles, government reports, and sociological studies have also been consulted to provide a comprehensive understanding of the legal and social dimensions of divorce in India.

Historical Evolution of Divorce in India

The institution of divorce has undergone a remarkable transformation throughout Indian legal history.

Under **ancient Hindu law**, marriage was considered an indissoluble sacrament. Classical texts such as the Manusmriti emphasized the permanence of marriage and imposed strict moral obligations on spouses, particularly women. Divorce was generally unknown except under limited customary practices recognized in certain communities. The primary objective was to preserve family lineage and social order rather than individual choice.

In contrast, **Muslim law** recognized marriage as a civil contract and provided mechanisms for its dissolution. Various forms of divorce, including *Talaq*, *Khula*, *Mubarat*, and judicial divorce under the Dissolution of Muslim Marriages Act, 1939, acknowledged that marital

relationships could legitimately end when reconciliation became impossible.

During the colonial period, separate statutes such as the **Indian Divorce Act, 1869**, and the **Parsi Marriage and Divorce Act, 1936**, regulated matrimonial disputes among Christians and Parsis respectively.

The most significant reform occurred after independence through the enactment of the **Hindu Marriage Act, 1955**, which introduced statutory grounds for divorce among Hindus. The Act recognized cruelty, adultery, desertion, conversion, mental disorder, and other specified grounds. The **Marriage Laws (Amendment) Act, 1976** further introduced divorce by mutual consent under Section 13-B, reflecting the recognition that unwilling spouses should not be forced to continue a failed marriage.

The **Special Marriage Act, 1954** established a secular framework allowing individuals of different religions to marry and obtain divorce without reference to personal laws. More recently, the **Muslim Women (Protection of Rights on Marriage) Act, 2019** declared instant triple talaq (*talaq-e-biddat*) void and illegal, reinforcing constitutional commitments to gender equality and dignity.

These developments demonstrate the gradual transition of Indian matrimonial law from preserving marriage at all costs to balancing the institution of marriage with individual rights.

Legal & Constitutional Framework Governing Divorce in India

India follows a pluralistic system of family law, with different statutes governing divorce based on the religion of the parties.

The **Hindu Marriage Act, 1955**, provides several grounds for divorce, including cruelty, adultery, desertion, conversion, mental disorder, renunciation, and presumed death. Section 13-B allows divorce by mutual consent, reflecting the principle that marriage should continue only when both spouses are willing participants.

The **Special Marriage Act, 1954**, provides a secular legal framework and grants equal rights to both spouses regarding divorce and judicial separation.

The **Indian Divorce Act, 1869**, applicable to Christians, has undergone amendments to ensure

gender equality in divorce proceedings.

The **Parsi Marriage and Divorce Act, 1936**, similarly recognizes various matrimonial offences and provides remedies through designated matrimonial courts.

The **Dissolution of Muslim Marriages Act, 1939**, grants Muslim women statutory grounds to seek judicial divorce, including cruelty, desertion, failure to maintain, and imprisonment of the husband.

Collectively, these laws indicate that Indian legal policy no longer treats marriage as absolutely indissoluble. Instead, it recognizes that the continuation of an irretrievably broken marriage may violate the dignity and well-being of the spouses.

The Constitution of India has profoundly influenced the evolution of matrimonial law by placing the individual at the centre of legal protection.

Article 14, which guarantees equality before the law, requires that matrimonial legislation operate without arbitrary discrimination. Judicial interpretation has increasingly emphasized substantive equality, particularly in matters affecting women's rights.

Article 15 prohibits discrimination on grounds of sex and has supported legislative measures aimed at eliminating gender-based inequalities in family law.

Article 21, guaranteeing the right to life and personal liberty, has emerged as the constitutional foundation for recognizing dignity, privacy, autonomy, and mental well-being. The Supreme Court has repeatedly observed that the right to live with dignity cannot be sacrificed merely to preserve the formal existence of a marital relationship.

The judiciary has therefore moved towards a rights-based understanding of marriage, recognizing that constitutional morality must prevail over social morality where the two come into conflict.

The central question of this research is whether divorce in India constitutes genuine freedom or merely creates the illusion of liberation.

From a **legal perspective**, divorce undoubtedly represents freedom. It provides a lawful mechanism for ending marriages characterized by cruelty, violence, abandonment, or

irretrievable breakdown. The availability of mutual consent divorce reflects respect for individual autonomy and recognizes that marriage should be based upon free and continuing consent rather than compulsion.

From a **human rights perspective**, divorce safeguards personal liberty and dignity by enabling individuals to escape abusive relationships. It affirms that the law values the well-being of individuals above the mere preservation of social appearances.

However, the legal availability of divorce does not necessarily translate into practical freedom. Many individuals, especially women, continue to face significant social, economic, and emotional obstacles after the dissolution of marriage. These realities raise important questions about whether divorce in India is truly emancipatory or whether freedom remains incomplete.

Key Factors which are associated with this perspective

- **Sociological Perspective: Divorce as a Reflection of Social Change**

From a sociological perspective, divorce is not merely the termination of a marriage but a reflection of changing social structures and individual aspirations. Traditional Indian society viewed marriage as a union between two families rather than two individuals. Consequently, maintaining the marriage, irrespective of personal happiness, was considered a social obligation.

Modern Indian society has undergone significant changes due to education, industrialization, urbanization, migration, and globalization. These developments have encouraged greater individualism and recognition of personal rights. According to Anthony Giddens, modern relationships are increasingly based on emotional satisfaction rather than social compulsion. When mutual respect, trust, and companionship cease to exist, divorce becomes a rational legal solution rather than a moral failure.

Nevertheless, Indian society continues to stigmatize divorce. Divorced women often face prejudice regarding remarriage, employment, housing, and social acceptance. Even educated families may perceive divorce as bringing dishonour to the family. Such attitudes demonstrate that although the law recognizes divorce, society has not fully embraced it as a legitimate exercise of personal autonomy.

Thus, divorce symbolizes both social progress and the continuing conflict between traditional family values and constitutional ideals.

- **Feminist Perspective**

The feminist movement has significantly influenced the development of matrimonial law in India. Historically, women remained financially dependent upon their husbands and were expected to tolerate domestic violence, emotional abuse, and neglect to preserve the institution of marriage.

Legal reforms have sought to address these inequalities by introducing maintenance rights, residence rights, protection against domestic violence, and equal access to divorce. Statutes such as the Protection of Women from Domestic Violence Act, 2005, and judicial recognition of women's dignity have strengthened their legal position.

However, legal equality does not always translate into substantive equality. Women frequently experience prolonged litigation, delayed maintenance, inadequate financial support, and social ostracism following divorce. Single mothers often encounter additional challenges in securing employment and balancing childcare responsibilities.

At the same time, contemporary debates also emphasize the importance of fairness towards men. Concerns have been raised regarding misuse of certain matrimonial provisions, prolonged maintenance disputes, and emotionally draining litigation. The objective of family law should therefore be gender-sensitive rather than gender-biased, ensuring justice for both spouses while recognizing structural inequalities that disproportionately affect women.

From a feminist perspective, divorce is a means of empowerment only when accompanied by economic independence, effective legal remedies, and social acceptance.

- **Psychological and Economic Dimensions of Divorce**

The dissolution of marriage is frequently accompanied by significant psychological consequences. Feelings of grief, guilt, anxiety, depression, and uncertainty are common among both spouses. Children may also experience emotional distress arising from parental separation, changes in residence, educational disruption, and custody disputes.

However, psychologists increasingly recognize that remaining in a hostile, abusive, or emotionally destructive marriage may be more damaging than divorce itself. Children who regularly witness domestic violence or intense parental conflict may suffer long-term emotional and behavioural difficulties. Therefore, the quality of family relationships is often more important than the mere continuity of marriage.

Economic consequences constitute another important aspect of divorce. Women who have interrupted their careers to perform domestic responsibilities frequently encounter financial insecurity following divorce. Delays in maintenance proceedings further aggravate economic hardship. Conversely, men may experience significant financial obligations relating to maintenance, child support, and legal expenses. These realities demonstrate that divorce has complex financial implications requiring equitable judicial determination.

Government initiatives promoting women's education, skill development, employment opportunities, and accessible legal aid can reduce these economic vulnerabilities and make divorce a more meaningful exercise of freedom.

Landmark Judicial Decisions

The Indian judiciary has played a transformative role in balancing the sanctity of marriage with constitutional principles of dignity and equality.

In **V. Bhagat v. D. Bhagat (1994)**, the Supreme Court expanded the concept of mental cruelty, holding that conduct causing deep mental pain and suffering may justify divorce even in the absence of physical violence.

In **Naveen Kohli v. Neelu Kohli (2006)**, the Court observed that compelling parties to remain in a marriage that had irretrievably broken down served no useful purpose. The Court recommended that Parliament recognize "irretrievable breakdown of marriage" as an independent ground for divorce.

In **Samar Ghosh v. Jaya Ghosh (2007)**, the Supreme Court provided comprehensive guidelines regarding mental cruelty, emphasizing that cruelty must be assessed in light of the social background, education, and circumstances of the parties.

In **Shayara Bano v. Union of India (2017)**, the Supreme Court declared the practice of instant

triple talaq unconstitutional. The judgment reaffirmed constitutional values of equality, dignity, and non-discrimination, particularly in relation to Muslim women.

More recently, **Shilpa Sailesh v. Varun Sreenivasan (2023)** recognized the Supreme Court's power under Article 142 of the Constitution to dissolve marriages on the ground of irretrievable breakdown where justice so demands. The decision reflects the judiciary's willingness to prioritize substantive justice over rigid adherence to procedural technicalities.

These decisions collectively demonstrate the judiciary's evolving approach towards protecting individual dignity while respecting the institution of marriage.

The debate surrounding divorce cannot be answered in absolute terms. Divorce is neither entirely a myth nor complete freedom; rather, it exists within a complex legal and social framework.

It represents freedom because it enables individuals to escape abusive, violent, exploitative, or emotionally destructive relationships. It protects constitutional values of equality, dignity, liberty, and autonomy. It affirms that marriage should be based upon mutual respect rather than coercion.

At the same time, divorce remains a partial freedom because legal rights are frequently undermined by practical realities. Social stigma continues to discourage many individuals from seeking divorce. Economic dependence, particularly among women, limits meaningful choice. Judicial delays prolong emotional suffering, while custody disputes often intensify family conflict.

The contradiction between legal reform and social conservatism creates the perception that divorce offers theoretical freedom without always ensuring practical independence. Consequently, divorce in India should be understood as an evolving legal institution whose effectiveness depends not only upon statutory provisions but also upon broader societal transformation.

Recommendations

Several reforms can strengthen the effectiveness of divorce laws in India:

- Parliament should introduce **irretrievable breakdown of marriage** as an independent statutory ground for divorce.
- Family Courts should dispose of matrimonial disputes within a prescribed time frame to reduce prolonged litigation.
- Mediation and counselling should be encouraged where reconciliation is genuinely possible, while ensuring that victims of abuse are not compelled into unsafe settlements.
- Legal aid services should be strengthened to ensure access to justice for economically weaker spouses.
- Maintenance guidelines should be made more consistent to reduce uncertainty and avoid prolonged disputes.
- Awareness programmes should challenge the social stigma associated with divorce and promote acceptance of individual choice.
- Skill development and employment opportunities for divorced individuals, particularly women, should be expanded to promote economic independence.
- Child-centred approaches should be adopted in custody proceedings to prioritize the welfare and emotional development