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## Have Divorces become easier to Get?

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*According to our country, all laws should be applied to everybody as it is if necessary. But there is an exception for FAMILY LAWS compared to other laws of the territory. We can go for compromise in family law but we could not compromise in any other laws of our territory. Family is an institution that is formed as a result of a sacred institution namely MARRIAGE. But the contemporary generation is not serving proper respect to the marriage institution and easily takes divorce as a decision and they fought to get it. Divorces became common in India nowadays celebrities are getting divorced which became an indirect promotion of divorce. We could see the news daily saying that people are getting divorced for silly reasons. Modernization and urbanization also are some of the fact factors that are aiding get forces. Because people are earning for themselves and want to lead their lives independently, they go for divorce easily. If their spouse is restraining their independence, the first and foremost option they choose is to get a divorce. People of this generation consider divorce as a common and casual thing. Statistics say that is witnessing a rise of 50% to 60% in divorce rates, especially in urban areas. According to the United Nations report, divorce rates in India were relatively lower but the numbers have doubled over the past two decades. Majority of the divorce cases are initiated by women. Divorce rates are expected to continue to rise as now couples are making use of no-fault divorce in a greater surge.*

**Keywords:** *divorce, family laws, united nations, celebrities, marriage.*

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## INTRODUCTION: REASONS FOR DIVORCE

The most common reasons for divorce are conflict between husband and wife, argument, irretrievable breakdown in the relationship, lack of commitment towards life, infidelity, and lack of physical intimacy. Rarely we could see some reasons such as a lack of shared interests and incompatibility between the partners. Unexpectedly, divorces amongst 50+ years old people are increasing. The reasons for these divorces are still puzzles. In Hindu Marriage Act, 1955, grounds for divorces are listed. They are voluntary sexual intercourse with another person other than their spouse, treated the partner with cruelty, deserted the petitioner for 2 years without any reason, ceased to be a Hindu, has been of unsound mind or being suffered by any mental disorder, has been suffering from any venereal disease of communicable form, has renounced the world by entering any religious order and has not been heard of as being alive for more than 7 years.

## EVOLUTION OF DIVORCE CASES

To provide efficient and commendable suggestions made by the Law Society, it is proposed to alter the system in the **REGISTRY OF DIVORCE**. At present, the system is **LEXICOGRAPHICAL** according to the names of the petitioner and respondent. Here lexicographical refers to mentioning the names of the petitioner and the respondent in alphabetical order.

## HISTORY OF DIVORCE

“Divorce” comes from the **Latin word “divortium”** which means separation. It is also equivalent to the word “divort” or “divortere.” “Di” means apart and “vertere” means to turn in different ways. Divertere has also referred to the meaning of divert, turn aside, separate, or leave one's husband. Irretrievable breakdown in the relationship plays a major role in the divorce. Usually, the elder people in the family say “Marriage is made in heaven”, but a modern marriage being complex and vulnerable, the divorce institution is as important today as the marriage institution itself. Divorce rates are increasing these days showing silly and petty reasons. Some people think, even though it is a matter of nothing to show as a reason for divorce,

they want to get a divorce as they think life is too short to live and they want to get out of the marriage and wanted to live their life independently. In April 1978, **The Law Commission** prepared an article. In that, they have mentioned that whoever comes to get a divorce by showing an irretrievable breakdown relationship as a ground, with no hopes for reconciliation and no hopes for living together again after the dispute, should be dissolved at the instance irrespective of their fault or innocence.

### **IMPORTANCE OF JUDICIAL SEPARATION**

Judicial separation can be given based on the grounds of cruelty, adultery, or any compatibility issues. If the petitioner and respondent, who have children through their marriage, filing a petition to get a divorce, would be often given the decree of Judicial Separation by considering the child and to protect the interest of the child and also to provide an opportunity for both spouses to seek reconciliation between them. But nowadays, people are not interested in judicial separation as they think the period of judicial, that is one year, is not necessary as they are neither ready to live together again nor ready for reconciliation. During the period of judicial separation, they remain as the husband and wife in the eyes of law. People in contemporary society think that the period of one year of judicial separation is a waste of time. As already said the rate of divorce are increasing because women want to live independently and now there exists women empowerment. Because of this, women are voicing out their issues by making a bold move irrespective of thinking about the family and the value of the institution of marriage.

In *Narayan Ganesh Dustane v Sucheta Narayan Dustane*<sup>1</sup>, the petitioner filed for an annulment of marriage with the respondent. Before the marriage, the bride's father wrote letters to the father of the bridegroom saying that his daughter was affected by **sunstroke** which affected her mental health for some time she recovered and was also affected by **cerebral malaria** and she was cured and now she is absolutely fine. The Doctor of the bride also confirmed that this statement is true. After marriage, the husband filed a petition for annulment of his marriage by a decree of nullity under **section 12(1) (c)** of 'The Hindu Marriage Act,<sup>2</sup> on the ground that his

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<sup>1</sup> *Narayan Ganesh Dustane v Sucheta Narayan Dustane* AIR (1975) SCR (3) 967

<sup>2</sup> Hindu Marriage Act 1955, s 12(1)(c)

consent to the marriage was obtained by fraud. Alternatively, he asked for divorce under **section 13 (1) (iii)**<sup>3</sup> on the ground that the respondent was incurable of unsound mind for a continuous period of not less than three years immediately preceding the presentation of the petition. Alternatively, the appellant asked for Judicial separation under **section 10(1)**. But the contentions of the petitioner were rejected. But the judicial separation was given on the ground of cruelty. In an appeal to The Hon'ble Supreme Court, the appellant's case was wholly dismissed.

If the wife could claim maintenance on the ground that the husband had remarried it could not be said that she had deserted her husband without reasonable cause within the meaning of **section 10 (1) (a)** of the Act.<sup>4</sup> In *Hirachand Srinivas v Sunandha*<sup>5</sup>, the wife filed a petition for judicial separation on the ground of adultery on the part of her husband. The court also granted the decree of judicial separation. In this case, we can see that the judgement is fair enough to grant the decree of judicial separation as she cheated herself by committing adultery. But giving a decree of judicial separation just for speedy disposal of the case is not fair. One of the good things is, even though it is a period of judicial separation, the husband has to give maintenance to his wife.

Most of people thought that it is easy to get a divorce by filing the petition of judicial separation first. But the High Court of Uttarakhand held that "Allowing and rejection of petition under Section 9 will not create any impediment for Section 13 and Section 13A, as they are independent to Section 9. Adjudication under Section 9 prior in time, would not create a bar under Section 11 of the Code of Civil Procedure."<sup>6</sup>

## RESTITUTION OF CONJUGAL RIGHTS

All may have a question that, how restitution of conjugal rights paves way for divorce? Restitution of conjugal rights is the only remedy that could be used by the deserted spouse

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<sup>3</sup> Hindu Marriage Act 1955, s 13(1)(iii)

<sup>4</sup> Hindu Marriage Act 1955, s 10(1)(a)

<sup>5</sup> *Hirachand Srinivas v Sunandha* 2001 SC 1285, (2001) 4 SCC 125

<sup>6</sup> Code of Civil Procedure 1908

against the other. A husband or wife can file a petition for restoration of their rights to cohabit with the other spouse. A partner who is being deserted by the other partner may use restitution of conjugal rights as leverage against the other party. **A formal decree may require the guilty spouse to live with the aggrieved spouse.** It is a procedure used in both religious tribunals and courts for divorce and matrimonial matters. So to grant a decree of divorce after disrespecting the decree of restitution of conjugal rights, the guilty of the spouse of the aggrieved spouse must be proved. The Delhi High Court has held that though **denial of a conjugal relationship is a ground for divorce** and that amounts to cruelty, the same cannot be said to amount to "exceptional hardship" under Section 14 of the Hindu Marriage Act 1955<sup>7</sup>. By seeing the saying of the Delhi High Court, we can understand that restitution of conjugal rights easily leads to divorce.

Under Section 9, the court has the power to make a decree of restitution of conjugal rights which is the remedy available to enforce the return of the spouse who has withdrawn from cohabitation. The court held that "this remedy is aimed at preserving the marriage and not disrupting it as in the case of divorce or judicial separation. By this judgement, we can understand that the concept of restitution of conjugal rights is to reduce the increasing rate of divorces. But in this contemporary world, it is not possible.

## **DIVORCE**

Divorce is a legal separation of two persons who lived as husband and wife under the same roof. In other words, divorce is the legal end of a marriage. When the couples agree to a divorce, the courts will consider a divorce with mutual consent as per. Section 10A of the Indian Divorce Act, 1869,<sup>8</sup> requires the couple to be separated for at least two years, the couple only needs to provide that they have not been living as husband and wife during this period. Divorces became very common nowadays and people are there who even give parties for their friends and family by celebrating his/her divorce.

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<sup>7</sup> Hindu Marriage Act 1955, s 14

<sup>8</sup> Indian Divorce Act 1869, s 10A

Mostly divorce petitions are initiated and filed by women. **Family court** was established for the speedy disposal of family dispute cases. But now even family dispute cases, especially divorce cases, are coming in large numbers and so family courts cannot speedily dispose of the cases. People in the contemporary world do not know the value of the institution of marriage and they are playing with it. They do marriage just for their parent's words and come to court after one or two years seeking a divorce. Even for the small problem they come to the extent of divorce. In some families, the word **divorce** has been used as a threatening factor. People don't see the future of their children and they blindly want to get a divorce even for a matter of nothing.

In a recent survey, it was held that most of the divorce petitions are filed by women because they are living independently as they are getting equal education in this 21<sup>st</sup> century and they are earning to live their life independently. The divorce rate increases but not in full fledge it is increasing slowly. It changes according to the **marriage and cohabitation trends**. For example, during the COVID lockdown, divorce rates were not that much higher but slowly started to increase. As per data, 714,997 divorce cases were expected during 2020. However, only 630,505 divorce cases did so. There was a decline. But soon in 2021, the divorce rates started to increase.

The main reason behind the increasing divorce rates is the **lack of communication between spouses**. Our society is filled with a large percentage of the working population. When they enter into a marital relationship, they are not ready to do even small adjustments in their work to strengthen the tie with his/her spouse, and thus arises a lack of communication. They don't want to listen to each other in their disputes as they can live independently and not depend upon each other. First of all, they don't have time to listen to each other as they think that their career is more important than their marital relationship and their family.

We are complaining about the divorces done by young people by saying that they do not have the maturity to handle marital life. But, according to the information given by United Nations Centre Bureau, adults between the ages of 55 and 64 are the most likely to divorce out of any age group. When those who are close to or over the age of retirement choose to divorce, people call that a grey divorce.

An increase in the divorce rate can also be caused by the financial conditions of the spouses. Most men have an ego problem if their wife earns more than them. The divorce petitions filed by the husbands mostly have this income problem as a major factor saying that his/their wife is earning more than what he earns and because of this, she is not respecting him as well as his family members. As already said above, people are seeking divorce over petty issues and they are stubborn in their wrong decision. One of the inducing factors of increased divorce is the concept of **mutual consent divorce**. This concept is dealt with under **Section 13B** of the Hindu Marriage Act, 1955<sup>9</sup>. Instead of filing a divorce petition under **Section 13**, people filed for divorce under mutual consent so that they can easily get a divorce without any scrutinization and without any unwanted delay. The concept of mutual divorce became a trend among newly married couples and young married couples.

Justice Ragunath reveals that, when he was a Judge in Sessions court, a case came which was filed by the husband to get a divorce from his wife as she does not know to cook any foods other than **Maggi/Noodles**. Foods being prepared for breakfast, lunch, and dinner were always noodles-centric. They even got divorced with my mutual consent. Justice jokingly said, “even our favourite food may become a reason to end our married life”. He also said, while he was a Judge in Sessions Court in Mysuru, divorce cases come with weird reasons saying the wife has put too much salt in the food and so he wants a divorce from her. Another case came to like, a husband wanted a divorce from his wife as she is very dark skinned and they ended up getting a divorce.

Naresh Kumar, a divorce lawyer from Ghaziabad said that a couple had an arranged marriage in 2013 and were living happily and joyfully. The trouble started in their life because of the 2014 Lok Sabha Election when the husband confessed to be a big Modi fan but the wife is a follower of the Aam Aadmi Party. After BJP’s mass victory in the election, the husband used to tease his wife on her party’s poor working ability. Within 2 months they filed for divorce and they got the divorce.

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<sup>9</sup> Hindu Marriage Act 1955, s 13B

In the Maggi case and Election Divorce case, there is nothing to be done in their marital relationship because of external factors and unwanted factors. In the Election Divorce case, the reason shown to seek divorce was strange and it was an unwanted topic to be spoken about between husband and wife that drew them to the extent of divorce. **Opinion matters are** important but upon which you are putting forth your opinion. Political parties and other external factors have nothing to do with the marital relationship. But people are using such irrelevant things to end up their marital relationship without thinking about the consequences in the future.

“One Noida couple planned to watch a movie at night. During deciding the type of movie, they want to watch, the argument started. That argument was serious enough to initiate a divorce proceeding. Naresh Kumar says, “I had this client from Noida last year whose reason for seeking a divorce was that his wife did not like watching romantic films with him. It's men who don't like watching romantic flicks, but this guy said that his wife never showed any inclination towards watching such films with him and did not even appreciate the same actors as he did. According to him, this was a sign of incompatibility between the two and valid grounds for divorce.” The reason for divorce in this case is ridiculous. Concluding, there is no compatibility between the couple just because they don't like the same type of films. In another case, the wife filed a petition saying that her husband wanted her to touch his feet on **Karva Chauth**, but she is not interested in doing that. She got offended when she was compelled to touch her husband's feet.

So they decided that they better go their separate ways. In this case, the wife is not compelled to do anything which would disrespect her dignity or her prestige. She was just told to do the traditions and customary practices that are being followed in society for a long period. This prestige issue for the wife may have come because of the financial status of her husband, that is, maybe she is earning more than her husband so she would have thought why should we touch our husband's feet? There is also a chance that the wife would have thought that her husband is trying to control her. One takeaway from this case is that **ego** is the biggest problem that drives married couples to the extent of divorce. In another case, a couple went for divorce and got a



divorce after discovering that both had an online affair with each other under fake names on Instagram.

## **DIVORCE BY MUTUAL CONSENT**

The concept of mutual consent divorce is dealt with in **Section 13B** under Hindu Marriage Act, 1955<sup>10</sup>. A court can dismiss your mutual divorce petition if all issues regarding the child's well-being and custody are not sorted out. Even though it is a mutual consent divorce, the couple should wait for at least one year to get a divorce. The benefit of mutual consent divorce is that there will be not much scrutinization as it's been done in the divorce case petition filed by a single party. Divorce by mutual consent is quite advantageous as it saves both money and time. Three conditions are to be fulfilled and they can get a divorce by mutual consent. They are:

- The spouses should be living separately for at least one year precedent to the date of filing the divorce petition.
- They both should have felt that they could not live together for their entire life.
- They should have mutually agreed to get a divorce and wanted to part away.
- After filing the divorce petition with the mutual consent of both the husband and wife, if any one of them withdraws their consent given for divorce, then the case will not be considered as a mutual consent divorce.

If these conditions are fulfilled by the husband and wife, they can get a divorce easily less than the procedure. Nowadays couples prefer mutual consent divorce over normal divorce petition. But the mutual consent divorce case should not be disposed of before six months and it should not be kept after 18 months. That's why **FAMILY COURTS** were established in each and every district in Tamil Nadu as well as in India. The Court also pass the judgement by seeing the following circumstances:

- Custody and visitation rights of children.
- Lump sum maintenance amount of wife.

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<sup>10</sup> Hindu Marriage Act 1955, s 13B

- Litigation expenses.

Earlier to the amendment of the Act, there was no such provision for divorce by mutual consent. But later, due to circumstances and judicial evolution, divorce by judicial consent is made possible. Earlier thinking was that there is no place for reconciliation and compromise in the matrimonial proceedings. However, these boundaries were thrown away by the amendment that brought divorce by mutual consent. The couples, irrespective of considering the life of their children, blindly go for divorce. That's why the court gives sometimes compromises and reconciliation. Because of such provisions, people disrespect the value of the institution of marriage and they think of marriage as a contractual relationship as they can come out of the marital relationship at any time.

People enter into the marriage by entering into the agreement that they will end up the marriage if they are not compatible with each other in their marital life. If they are not compatible with each other, they just end up their marriage easily without seeing the consequences of it and not thinking about the families on both sides, and not respecting their family values and traditions. They think that they are well advanced in making decisions in their own lives and they do that immaturely.

In one case, the couple filed a divorce petition in court with mutual consent. The court referred the case to mediation. The mediation was not successful. The respondent (wife) did not appear before the court to affirm her consent given to get a divorce. Despite this, the case was given adjournment many times. The revision petitioner to scrutinize her withdrawal from the given consent. The court finally dismissed the case as it was not a mutual consent divorce. In this case, the respondent had the fickle mind to give her consent. However, the case was dismissed. There is a chance of filing a divorce case gain as they have already been to the extent of getting a divorce and they cannot lead their life peacefully even after they have chosen to divorce which ended in vain.

In *Roopa Reddy v Prabhakar Reddy*<sup>11</sup>, the Hon'ble Supreme Court observed that the petitioner and respondent have been given a cooling period which may extend to 18 months. This cooling period is being given to get advice from their friends and family members and it is also given as a chance for the spouses to get rid of their problems and lead a peaceful and happy life. The Court should get the satisfaction that the divorce case filed by mutual consent given by the parties is **bonafide**. In this case, it is explicit that the husband and wife have not done any honest attempt to compromise or reconcile. They just want to get a divorce in a short period and they filed for divorce by mutual consent and they got a divorce.

## CONCLUSION

As stated before, divorce rates are increasing due to globalisation, and urbanisation even though they are not playing their role in a very direct manner. Daily we are witnessing cases like **a wife who wants to divorce her legal husband because she wants to marry her FaceBook boyfriend**. If she could not get a divorce, she would go to the extent of killing her husband and even sometimes kills her husband with the help of her illegal boyfriend. In this contemporary society, people want to get a divorce irrespective of their family situations, their family traditions and culture, and especially, not thinking about their family's reputation in society. They use to take decisions without thinking twice or thrice times.

Most of the divorce cases are being filed by women as they are earning enough to take care of themselves and they don't want to be dependent on their husbands. They want to be independent without any restrictions and commitments like marriage. In Uttar Pradesh, a girl named Bindhu has done **sologamy (marrying herself)**. But **Senior Advocate Krishnakanth Vakharia** said sologamy has no legal backup in India. Two members should be in a marriage. She could have done this just to live independently and with no commitments and without a life partner for her whole life. We know that same-sex marriage is legal in India and those couples also get a divorce.

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<sup>11</sup> *Roopa Reddy v Prabhakar Reddy* AIR (1994) Kant 12

Another important factor for the increase in divorce rates is divorce by mutual consent as already dealt with above. When this came in the amendment, everybody started preferring divorce by mutual consent under **Section 13B** rather than filing divorce under **Section 13** as it saves money as well as time. The scrutinization is also less compared to divorce in normal cases. If it is a mutual consent divorce, the cooling period given by the court is not being utilised properly by the petitioner and the respondent. Therefore divorce can be given if there is really a situation that demands a divorce. Divorce should not be considered as a take-it-for-granted thing. The couple should think about their family and the future of their child. They do need not to adjust their life but sometimes they can go for a compromise and settle disputes smoothly. They should honestly attempt to reconcile during the cooling period. I would like to conclude that divorce rates should fall down as the institution of marriage has not of value.