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Divorce – Whether Healing the Feet or Regretting Things

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Marriage in India has always been considered one of the most responsible relationships between a man and a woman. By saying "responsible," we are referring to the equal rights and responsibilities to be held up by a man and his woman in their relationship. Marriage is often considered to be an unbreakable bond. Previously, in primitive societies, work was divided between the man and his wife based on their physical abilities, strengths, and roles in society. But with the change in factors like time, generation, technology, ideologies, etc., there is a need to reform these traditional beliefs relating to marriage. Nonetheless, due to the modern applicability of the resources, many conflicts arise within marriages in our Indian society. Many people still expect women to refrain from performing certain aspects of work, whereas men are always preferred for hard work. Why are we still fighting for our rights, and why can't society at large reform its ideologies? People in society still believe that divorce is the final stage of severing a couple's bond. But it is not true in any dimension. Society considers divorce but does not take its aftermath into account. There arises a need for divorce laws in India, as they safeguard the interests of the partners involved and also lessen the so-called male dominance in Indian society. As a result, there is a need to assess the consequences of divorce as well as the underlying causes.

Keywords: *marriage, rights, conflicts, divorce, aftermath, man-dominance.*

INTRODUCTION

Relationships that used to be the most sacred for couples are now becoming consensual ones. Partners are now approaching courtrooms for divorce instead of resolving disputes among

themselves. The reason for this is that they perceive it to be more practical and convenient both for themselves and for their children. In the past, divorces were the toughest decision to make, and the easiest thing to do is to compromise. Therefore, a compromise was the easiest choice in the past and the toughest option in the present. In the present time, marriage is often considered a consensual relationship. Until and unless there are no commitments, no emotional fulfillment, no education, no employment, and most importantly, no class, the marriage ends, i.e., fails.

In earlier times, this relationship was considered the purest of all relationships because it was extremely religious. A large number of divorce cases were filed, approved, and granted, and that too in exceptional circumstances. The main point we can draw from history is that women today are educated and self-sufficient, not reliant on men for their needs. A woman who is employed today is more likely to leave an unhappy marriage than an unemployed woman. Their expenses can be used to cover whatever they need or want. Yet, these perceptions of divorce and a lack of compromise between partners are dampening the traditional culture of the country. Not all marriages are indeed meant to succeed; some have ended. Furthermore, it is also not necessary for every second marriage to end in divorce as well.

It is felt that people will be discharged from their roles and responsibilities that they owe to each other if they desert. Divorce not only leads to broken relationships but also breaks families. The social trend of getting a divorce is increasing the overall divorce rate globally. The primary goal of a marriage is to develop and find love and respect between partners. In the current phase, the purpose of marriage is to achieve happiness for the spouse. If one is faced with struggles or stress rather than happiness, the outcome is divorce. In most cases, the economic independence of a woman is the basis for filing for divorce.

SOCIAL ASPECTS OF DIVORCE IN INDIA

In India, divorce still doesn't happen as frequently as it does in the West. As opposed to the United States, where half of all marriages end in divorce, India has a divorce rate of one in every 100 couples. The number of divorce cases is continuously rising as a result of many social and economic changes, even though India's divorce rate is lower than that of Western nations.

Moreover, divorce is not a big deal from a legal standpoint because everyone has the freedom to live their lives independently and follow their preferences.¹

A woman's function in contemporary Indian society extends beyond that of a housekeeper. Economic parity between men and women has been attained by women in the new generation. The notion of "compromise in marriage" is quickly fading as women grow more economically independent and autonomous. Contrary to the beliefs of our ancestors, modern Indian men and women do not advocate compromising in marriage. However, the subject of divorce is exaggerated by our patriarchal society. Women consequently endure the greatest suffering. They end up receiving either severe criticism or incomprehensible pity. Women who have gone through a divorce are socialized to believe that a guy is necessary for their survival in the harsh outside world.

They are refused permission to enter into a second marriage or partnership by the culture. In addition to other pejorative terms, they are called "damaged goods." However, after their divorce, men tend to live in a peaceful environment. Regardless of their age, they are still viewed as bachelors. This in no way suggests that suffering is exclusive to women. Men are also impacted. Their percentage is lower than that of women, nevertheless. Life inevitably involves marriage and divorce. Divorce teaches you to grow mentally stronger and more independent while marriage helps you adjust to a new partner and family. Adultery, cruelty, deserting, changing one's religion, mental illness, and venereal diseases are only a few of the grounds for which divorce may be granted. Divorce legislation used to be significantly biased in favor of women. This suggests that patriarchal ideologies and concepts have an impact on the law. However, after being changed, the law now treats men and women equally.

Divorce is almost always tragic because it frequently results in ruined faith, faltered truth, and extreme disillusionment. For all family members, it is a challenging and trying experience. Six

¹ Srishti Sinha, 'Social and legal aspects of divorce in India' (*iPleaders*, 27 August 2021) <<https://blog.iPLEaders.in/social-legal-aspects-divorce-india>> accessed 11 February 2023

overlapping experiences result after divorce, according to anthropologist Paul Bohannan (1970). They are referred to by Bohannan as the six stations of divorce.

- Emotional separation is a sign of a failing marriage².
- A legal divorce is based on the grounds for dissolving the marriage.
- Economic divorce deals with property and financial divisions.
- Co-parental divorce involves choices about a child's visitation and custody.
- Community divorce, the adjustments a divorced individual endures in their friendships and institutional ties.
- Psychic divorce focuses on the individual's efforts to reclaim their independence and self-worth.

DIVORCE SYSTEM IN THE TRIBAL SOCIETY OF INDIA

Marriage in a tribe is convenient for both partners. Because of this, divorce is a straightforward process. However, one cannot arbitrarily separate the other. Divorce must have some underlying cause or factors. In this regard, some laws and rules continue to be in place. The tribal groups do not, however, all follow the same divorce laws. From tribe to tribe, there are variations in the legal justifications for divorce. For instance, the Banjaras, one of the Indian tribes with the most color and vibrancy, have a distinctive culture all their own. A significant component of India's cultural mosaic is the Banjaras culture. Their lifestyle is distinct and has nothing in common with the people of the plains or the local tribes in terms of customs, traditions, language, food, or clothing preferences. The majority of tribes share several common causes, including female infertility, divorce, disinterest in domestic duties, refusal to live with the husband, adultery, sexual unwillingness, sloth, and financial inability. The majority of the

² 'Women and Divorce in Maryland (*JC Law*, 28 July 2022)

<<https://www.jamescrawfordlaw.com/blog/2022/07/women-divorce-in-maryland/>> accessed 14 February 2023

time, participants in a disaster agree to separate one another. Divorce is a straightforward process, but the panchayat, or tribal council, is closely involved.³

The husband is usually granted a divorce due to his illness, intoxication, impotence, extramarital sex relationships with other women, etc. A wife is typically given the excuse that she has turned nuts, a thief, a witch, or a runaway when she seeks a divorce. The tribal people of India, however, do not all follow the same divorce laws. The Gonds find the system to be highly intriguing. In this case, the second husband makes restitution to the first husband if the wife divorces her husband against his choice. The village panchayat determines the compensation sum. The reasons for divorce do differ between tribes. The following grounds are available in the Kharia tribe for filing for divorce: Ignorance, adultery, indulgence, and refusal to live with her husband are all reasons for this.⁴ However, the Hindu and Christian traditions have a significant influence on the tribal divorce practice today. The practice of divorce has been noticeably affected by detribalization.

EFFECTS ON CHILD'S LIFE

In many places around the world, children suffer from family instability because their parents are divorcing or separating. Adolescent children and those who need both parents' care and support are at risk because of divorce and separation in recent years. The divorce system has severely affected the mental stability of children across the world and has created a major public health concern for children.⁵

³ K.M.Chandrakantha, 'Tribal Marriage System in India - A Sociological Analysis' (2014) 1(4) International Journal of Research and Analytical Reviews <<https://www.ijrar.org/papers/IJRAR19D1295.pdf>> accessed date 11 February 2023

⁴ *Ibid*

⁵ Dishaa Desai, 'How parents' divorce can be unsettling for kids' (*The Indian Express*, 27 August 2019) <<https://indianexpress.com/article/parenting/health-fitness/parents-divorce-can-be-unsettling-kids-5940676/>> accessed date 11 February 2023

There exist various reasons for the child being affected by all these circumstances -⁶

Emotional Imbalance - When parents part ways, children often feel emotional commotion that results in imbalanced lives, guilt, emotional distress, anger, and sadness. It is common for children to start blaming their parents for their behavior when they are young.

Academic Difficulties - Mental stress resulting from divorced parents has caused more difficulties in academics. Getting distracted from their study zone makes it difficult for children to focus much on their studies. Consequently, they will receive low grades, rank, or attend fewer classes. It is due to these reasons that children lose hope and cannot depend on their parents for support, which results in them going through depression and trauma.

Disruptive Behaviour - There is nothing more painful than disruptive behavior for a child. As a result, they are unable to understand the difference between right and wrong. They do not exhibit much of themselves because they used to suffer much at that time which results in creating disruptive behaviors in themselves.

More Effect on Teenagers - Teenagers experience or produce the most mood swings, anger, irritation, etc., at this age. It can even be more problematic if divorce is the reason for the same. A child can place all the blame on one or both parents, but he or she cannot just move on from the past. Because of this, they usually deviate from their path due to the lack of parental support.

An Undisciplined Lifestyle - Family issues and deep situations such as divorce cannot only affect a child's mental well-being and state, but they can also affect the child's ability to lead a well-balanced and disciplined life. Consequently, a distressed child may become undisciplined.

LEGAL PROVISIONS AND CHILD CUSTODY IN INDIA

Considering that India is a heritage country, it contains people from different religious backgrounds and with distinct customs and traditions within each religion or community. The

⁶ Amy Morin, LCSW, 'The psychological effects of divorce on children' (*Verywellfamily*, December 2022) <<https://www.verywellfamily.com/psychological-effects-of-divorce-on-kids-4140170>> accessed date 11 February 2023

historical facts of each religion have led to different separation laws based on this diversity. Besides being a group of people linked by blood, a family is also a group of people united by love, affection, and oneness. In the process of modernizing the minds of people, something has been lost in the family structure. The need for family laws exists to regulate and promote peace and harmony among family members. This is not only aimed at ensuring the stability of individual rights but also at ensuring the dignity and respect of the individual as a whole.

There is a Hindu Marriage Act, 1955 for Hindus, Sikhs, Jains, and Buddhists in India⁷. The Dissolution of Muslim Marriage Act, of 1939 governs the Muslim community; the Indian Divorce Act, of 1869 governs the Christian community; and the Parsi Marriage and Divorce Act, of 1936 governs the Parsi community. In India, all of this falls under the category of Family Law. There was a claim made earlier that Hindus did not have a term such as divorce. In marriage, the relationship between a husband and wife is sacred and can never be severed. Later, however, the Hindu Marriage Act of 1955 brought about a lot of changes. The following three core sections amply illustrate the same:

S.13⁸ - The reasons for divorce are outlined in this section.

S.14⁹ - According to this, couples cannot file for divorce until one year has passed since their wedding. However, in certain cases, such as where bigamy is involved or the petitioner's permission was obtained through deception or fraud, the petition may be considered.

S.15¹⁰ - When a marriage is dissolved by a divorce judgment and there is no right of appeal against the decree, the deadline for appealing has passed, or an appeal was presented but dismissed, then the divorced person may marry again. It also lays out the limitations that apply to these, which state - When a divorce decree dissolves a marriage and neither party has the

⁷ Bahrami-Rad Duman, 'Keeping it in the family: Female inheritance, inmarriage, and the status of women' (2021) 153 Journal of Development Economics

⁸ Hindu marriage Act 1955, s 13

⁹ Hindu Marriage Act 1955, s 14

¹⁰ Hindu Marriage Act 1955, s 15

right to appeal the decree, the appeal period has passed, or an appeal was filed but denied, both parties may legally remarry.¹¹

In the aftermath of a recognized marriage breaking down, the innocent child that suffers both mentally and emotionally is likely to be the one who gets affected both mentally and emotionally. A child needs proper care and attention from both parents. What a mother can provide for a child might not be provided by the father and vice-versa. Consequently, couples separate because of sufficient reasons to resist living peacefully in a happy married life. They got divorced and separated. But what about that innocent child for whom both parents will be fighting in court custody? The laws are made in such a way that they would help in providing better support and welfare to the child. The crucial factor in the custody decision of the child is his preferences plus his welfare.

For legal custody, both parents have equal rights over a minor child. But still, the key question inevitably arises before the court about who will be given custody of a child. But it is not like if the court decided to carefully assign the child's custody to his mother, then his father cannot meet him or is not in connection with him. As already said, both responsible parents naturally possess equal rights to the child even after the custody of one of his parents. As a minor child, he needs care and affection from both parents, a father, and a mother. In any case, they will be awarded certain rights over the child.¹²

KINDS OF CUSTODY

Primarily there are 3 forms of custody of a child:¹³

¹¹ Angad, 'Laws Regarding Divorce In India' (*Legal Service India*)
<<https://www.legalserviceindia.com/legal/article-3051-laws-regarding-divorce-in-india.html>> accessed 11 February 2023

¹² *Ibid*

¹³ Vidhikarya, 'Child Custody Laws In India' (*Legal Service India*)
<https://www.legalserviceindia.com/legal/article-710-child-custody-laws-in-india.html>> accessed 11 February 2023

Physical custody - It refers that when the minor is in the guardianship of one parent the other parent has the right to interaction and periodical visitation with the other parent. This type of custody ensures a safe and better environment for the child.

Joint custody - It means that both parents will be given custody of the child, and they will in turn be responsible for keeping the child in their custody. A turn may take place every week, month, or whenever specified. The purpose of this is to ensure that the child will be given both parents' full attention.

Legal custody - It means that the child is legally assigned to one of the parents. This parent is in charge of the child's upbringing, education, and medical care. It occurs when the divorce is very complex between both partners. In a landmark judgment¹⁴ of Child custody, it was held that 'A parent, guardian, or another person who is legally entitled to the custody of a minor can regain that custody when wrongfully deprived of it using the writ of habeas corpus.'

CONCLUSION

Divorce could be a frequent event in the West. The eastern world is one of the most outspoken antagonists of this family dilemma. The topic of divorce is still taboo in modern society. A couple may get married in a lovely ceremony and seem to be the happiest people in the world, but it's not always clear what happens after that. They might either lead fairy-tale-like lives or have the worst nightmares. The pair will seek a divorce if things go worse. There is no single law that governs divorce; rather, each religion follows its own set of laws that regulate marriage and divorce. Either the husband or the wife may file one of two different divorce petitions. A divorce petition with unanimous understanding is filed if they decide to have a divorce. A contested divorce is one in which one of the spouses wants to file for divorce. The grounds for such a divorce include cruelty, adultery, infectious disease, psychological disease, and others, either the husband or the woman may file the petition in court.

¹⁴ *Gohar Begam v Suggi Alias Nazma Begam & Ors* AIR (1960) SC 93

Moreover, a lot of people understand divorce to be the last step in any relationship, but most of them do not know about the consequences that will guide their lives afterward. Specifically, the lives of the children will be more affected by it and might also hamper their upbringing and the status they are assigned in society. Therefore, it is beneficial for partners to get a divorce when they are aware of all the consequences and have agreed to face them in the future. Lacking the same will not end the relationship, but despite that, it will give rise to unforeseen events in their lives.