

CHANGING PERSPECTIVE OF MARRIAGE AND DIVORCE IN THE CONTEMPORARY ERA WITH SPECIAL REFERENCE TO THE HINDU LAW

AUTHOR – KOMAL KOTHARI, ASSISTANT PROFESSOR AT A.I.'S BARRISTER A.R. ANTULAY COLLEGE OF LAW

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Abstract

Marriage has held a prominent position under the Hindu law. Our culture acknowledges marriage as a sacrament and sacrosanct. They are believed to be eternal. But with the codification of the Hindu law and passing of the Hindu Marriage Act in 1955 it attained several new characteristics leading it to be a blend of sacrament and contract. Terms like divorce, judicial separation, etc took away the eternal feature of marriage and provided an opportunity to legally end the marriage. This article throws light on the changing trends of marriage as well as divorce under the Hindu Law in the contemporary era. It analyses the evolution of divorce jurisprudence through the Fault Theory, Breakdown Theory, and Mutual Consent Theory as embodied in the Hindu Marriage Act, 1955. It also speaks about the growing acceptance of divorce and the factors responsible for the same. The author recognises education, financial independence, changing gender roles, globalization, and growing awareness of mental health as key drivers of this transformation. The author also appreciates the proactive role of the judiciary through several case laws in stepping beyond the statutes and addressing social realities by invoking powers under article 142 of the Constitution. With transformation comes new challenges and concerns. The author discusses emerging challenges associated with changing marital relationships, including misuse of legal provisions, gender-related concerns, and criminal incidents arising from marital discord. The article concludes by emphasizing the need to balance individual autonomy with social responsibility through counselling, mediation, and child welfare measures, while advocating legal reforms that reflect contemporary realities without losing sight of the cultural and social significance of marriage in Indian society.

Key Words : Marriage, Sacrament, Divorce, Irretrievable Breakdown, Judicial Activism

Research Question –

1. What is the status of Irretrievable Breakdown of Marriage as a Theory of Divorce and its incorporation as a separate ground of divorce ?
2. What factors have contributed to the increasing acceptance of divorce under Hindu law in contemporary era ?
3. Whether the Hindu Marriage Act, 1955 effectively balance the traditional

sanctity of marriage with the individual autonomy of parties opting for divorce?

1.Introduction–

From the ancient sources of Hindu Law we find that the Hindu philosophy divides the life of a human into four different stages known as four Ashramas. These stages or Ashramas are categorised taking into account the age of the human and the duties or associated with each stage. The four stages may be enumerated as follows–

1. Brahmacharya- This is the first stage of a human life commencing from birth till the age of 25 years. It focuses on education knowledge and discipline building.
2. Grihastha- Next comes the Grihastha stage from 25–50 years which prioritises Family, work, social duty and a balance of Dharma, Artha, Kama
3. Vanaprastha- The third stage from 50–75 years is associated with detachment, meditation and spiritual growth
4. Sanyasa- The last stage of human life which is beyond 75 years throws light on renunciation, devotion and ultimately moksha or liberation which is the ultimate goal of human life.

Of all the Ashramas, the Gruhastha is the pillar. It represents the phase of life where a person enters into marriage, takes family responsibilities, and contributes to society through honest work and service.

The Gruhastha supports all other Ashramas (students, hermits, and renunciates) through their labour, wealth, and charity.

The Gruhastha stage allows one to pursue all four goals of life in a balanced manner:

Dharma – righteousness

Artha – wealth

Kama – desires

Moksha – liberation

Performance of Duties (Dharma):

Raising children and imparting moral, spiritual, and social values.

Earning wealth righteously (Artha) to sustain the family and perform Yajnas (sacrifices) and Daana (charity).

Hospitality (AtithiSatkar) – welcoming guests and the needy

Thus marriage which is an essential element of Grihastha stage is considered to be a sacrament. It is an eternal bond, a religious duty.

II. Marriage as a contract– Law relating to marriages among the Hindus was codified in the year 1955 with the coming into force of the Hindu Marriage Act, 1955. The Act specifies certain conditions for a valid Hindu Marriage.

A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely :

- (i) Neither party has a spouse living at the time of the marriage
- (ii) At the time of the marriage, neither party-
 - (a) Is incapable of giving a valid consent to it in consequence of unsoundness of mind; or
 - (b) Though capable of giving a valid consent, has been suffering from mental disorder of such a kind and to such an extent as to be unfit for marriage and the procreation of children; or
 - (c) Has been subject to recurrent attacks of insanity
- (iii) The bridegroom has completed the age of 21 years and the bride the age of 18 years at the time of marriage;
- (iv) The parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;
- (v) The parties are not Sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two.¹⁴⁷

Moreover the Act also makes provisions for Judicial Separation and Divorce between the parties. Introduction of these provisions deviate from the concept of marriage as an eternal bond. Thus marriage like any other contract can come to an end by the act of the parties.

Presently it can be safely concluded that marriage is a mix of both a sacrament and a

¹⁴⁷ Section 5 of the Hindu Marriage Act, 1955

contract. It has features of sacrament as well as a contract.

III.Divorce under the Hindu law- Divorce literally means the legal end of a marriage. As our culture suggests marriages to be eternal there never existed anything called divorce until the codification of Hindu Law.

The term was first introduced under the Hindu Marriage Act, 1955. The law gave an option to the parties to put an end to their marriage depending on various theories and grounds as discussed below-

A.Theories of Divorce –

1.Fault Theory- The literal meaning of Fault as per the Oxford Dictionary is "Something wrong or not perfect in a person's character or in a thing. Fault Theory of Divorce recognises fault in any of the spouse as a ground for the other spouse to file for a Divorce petition. So divorce could be obtained if one of the parties to the marriage was guilty of a matrimonial offence and the other party was innocent.

Section 13(1) of the Hindu Marriage Act stated certain grounds of Divorce which were mainly based on fault in any of the parties to the marriage. These grounds are as follows-

1. Adultery i.e. Voluntary Sexual Intercourse with a person other than his or her spouse
2. Treating with Cruelty
3. Desertion for a continuous period of not less than 2 years
4. Conversion to another Religion
5. Incurable Unsoundness of Mind or suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot be reasonably expected to live with the respondent
6. Venereal Disease in Communicable Form
7. Renunciation from World
8. Presumption of Death i.e. not been heard of as being alive for a period of 7 years by those who would have naturally heard of him had he been alive

2.Breakdown Theory of Divorce- When the charm of marriage is lost and the parties to the marriages have not been able to live together peacefully or happily it is considered as a breakdown of their marriage. In 1964, the Hindu Marriage Act, 1955 was amended and a new clause (1A) was inserted in Section 13 to give effect to the irretrievable breakdown of marriage. The new clause was again modified in 1976 by the Marriage Laws (Amendment) Act, 1976. The provisions of Section 13(1A) of the Hindu Marriage Act, 1955 considers the following two grounds as irretrievable breakdown of marriage-

1. No Resumption of Cohabitation between the parties to the marriage for a period of one year or upwards after the passing of a decree for Judicial Separation
2. No Restitution of Conjugal Rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights

3.Mutual Consent Theory of Divorce- Mutual consent implies that both the parties to the marriage have agreed to live separately and that they do not want to continue their marriage.

The Hindu Marriage Act, 1955 also makes a provision for divorce in such a situation. Section 13-B provides that a petition for dissolution of marriage may be presented by both the parties together on the ground-

- that they have been living separately for a period of one year or more ,
- that they have not been able to live together and
- that they have mutually agreed that the marriage should be dissolved.

IV.Changing Trends of divorce- Divorce trends have changed in the contemporary times. From the Fault Theory people are shifting towards Mutual Consent Theory. They do not wait for any fault in their partners or they even accept that they are perfect and the best; just that they are not the best for them. Compatibility has become an important parameter. Divorce which

was considered to be a stigma is seen from a different aspect in the contemporary world. Instead of thinking and stressing about what the society will think, what the parents will think individuals are more concerned about their own actual needs. People have started to focus more on their happiness, peace and what they actually want in their marital life, social and individual life. And nobody is ready to compromise.

In urban areas divorces are increasingly being accepted. The reasons which can be associated with this are-

A.Impact of education- The high level of education which most of the people in urban areas achieve have given them a broader perspective. They prefer to take the decisions of their lives on their own after analysing the situations, pros and cons.

B.Financial Independence- Education has helped individuals achieve financial independence. Thus finance, maintenance, etc which used to be a major obstacle for those wishing to get out of a toxic relationship or a dead relationship is no more a deciding factor.

C.Changing Gender Roles- Contemporary world has witnessed changing gender roles; as in the females are not just confined to their kitchens or homes. Similarly males are also having the option of working from home as well as getting into professions which were earlier considered apt only for the females. So there has been empowerment. Moreover the consequences of divorce are equally faced by both the spouses and not just the wife. Gender-neutral perspectives have emerged.

D.Influence of Media & Globalisation- Media has a great role in moulding the thought process of individuals. And the youth today has been after the global trends following western culture, expecting “space” even in a relationship like marriage.

E.Mental Health- Mental health and peace has become the priority today. Not only the parties to the marriage but their families and even the society accepts that there is nothing more important than the mental health. And if a relation is causing stress, depression, anxiety or taking away the peace it is no more needed.

As regards rural areas, the rate of divorce may be less as compared to the urban areas but an acceptance of the same can be seen there too. Stigma is no more attached to divorce.

V.Judicial activism in recognising Irretrievable Breakdown of Marriage-

Although the Courts and Judges in India try their best to bring about a reconciliation between the parties to divorce they also recognise the concept of irretrievable breakdown of marriage. There are various cases wherein the Courts have stepped beyond the statute to address the social realities. Irretrievable breakdown of marriage is not a ground of divorce but time and again courts have invoked Article 142 of the Constitution in the interests of justice. A few of such cases are mentioned below-

1.R. Srinivas Kumar v. R. Shametha¹⁴⁸- The Supreme Court granted divorce using its powers under Article 142, holding that the marriage was dead for all purposes. It reiterated that continuing such a marriage would only lead to misery.

2.Naveen Kohli v. Neelu Kohli¹⁴⁹- The Supreme Court observed that the marriage between the parties had broken down irretrievably due to continuous quarrels and litigation. The Court recommended to the Parliament to amend the Hindu Marriage Act and include irretrievable breakdown as a ground for divorce.

3.Anil Kumar Jain v. Maya Jain¹⁵⁰- The Supreme Court accepted that where marriage has irretrievably broken down and the parties have been living separately for years the Court may in exceptional circumstances and in exercise of its

¹⁴⁸(2019) 9 SCC 409

¹⁴⁹ (2006) 4 SCC 558

¹⁵⁰AIR 2010 SC 229

extraordinary powers under Article 142 grant relief even where procedural difficulties arise.

as an eternal bond. This is in consonance with the Indian culture and our roots.

VI. Contemporary Challenges and Concerns

With the changing meaning of marriage several challenges have come up in the contemporary era. Financial, emotional, psychological threats to marriages exist now. False cases of cruelty, dowry, etc have become common. Gender bias is felt against the males as well.

Moreover criminal element is also added. There have been news of wives planning the murder of their husband so that they can live their life happily with their ex-partners or boy friend. One such case was the Meghalaya Honeymoon Case, 2025 wherein the wife, Sonam Raghuvanshi allegedly murdered her husband Raja Raghuvanshi in conspiracy with her boyfriend Raj Kushwaha.

Another case recently came up when the fiancée of Ketan Agarwal, Siya Goyal murdered him just a month before marriage so as to be with her boyfriend.¹⁵¹

VII. Conclusion and Suggestions

Having regard to the evolution of marriages and divorce balancing individual autonomy with social responsibility is the need of the hour. Emphasis should be laid on the need for counselling, mediation, and child welfare.

The 71st Law Commission Report (1978) recommended the inclusion of irretrievable breakdown as a ground for divorce. The 217th Report (2009) reinforced this recommendation, observing that in many cases, prolonging the legal battle served no purpose. Despite these recommendations, legislative amendments have not been passed yet. The Marriage Laws (Amendment) Bill, 2013, which proposed to add this ground, was introduced but later lapsed.

Marriages may be sacrament or contract but we need to reinstate the faith of people in marriages

¹⁵¹ The Hindu