

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

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Volume 6 | Issue 6

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2023

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# Property Distribution and Rights Procured in Divorce

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## ABSTRACT

*The current socio-legal examination on the enhancement of laws on the Dissolution of Hindu Marriage and the degree for the junction is innovated on explorative and individual fact discovering. This examination gives a companion for choosing whether this pivotal part of individual laws of colorful religious networks can be made invariant or not. Decomposition of Hindu marriage, also called separation, is the final and legal end of marriage. It's viewed as one kind of instrument for managing the weights and issues brought about by marriage. The impact of this has a broader dynamic seen from the endpoint of the general society. The internal injury, the seed of a meddled-up home, or a broken-down marriage experience goes a long way toward a stable marriage. This was the situation before the Hindu Marriage Act, 1955 appeared when marriage was undoable among Hindus. Still, it's made solvent now in the Act of 1955 and indeed made decomposition precipitously simpler after the 1976 change of the Act. The Indian Hindu population did not have access to the concept of divorce until 1955. Divorce was only permitted in specific circumstances for Christians, while The Parsi Marriage and Divorce Act of 1936 allowed divorce under limited conditions which were later expanded in 1988. Muslim women were granted the statutory right to divorce in 1939 but under restrictive circumstances. Despite having the option to leave an abusive or unhappy marriage, women rarely exercised this choice due to the economic insecurity they would face if they were no longer married. In Hindu culture, a woman became a part of her husband's joint family upon marriage, and he was obligated to support her. If the husband passed away before the wife, the joint family was responsible for her well-being.*

**Keywords:** Divorce, Unification, Dissolution, Impact.

## I. INTRODUCTION

The extraordinary law provider Manu has given us the heavenly record of his God. As indicated by Manu Samhita, Brahmah having a legislated assemblage of laws communicated it to him at the onset, and a short time later he trained it fully to many other blessed pandits, therefore, the perfect root of Hindu Law uniquely concerning domestic relations among a couple lead to the

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end that the heavenly starting point is not just insolvable to miss to the Hindus. However, as laws conveyed by God to man, If we differ different laws with their Elysian root we realize that the Bible and Quran are accepted by the Christians and the Mohammedans collectively. The Greeks also saw the law as a disclosure and blessing.

Divorce is the lawful dissolution of a marriage, which can be done in court. Mentally, going through the process of divorce is tiresome and stressful for both mates. legit agreements like alimony, conservation, and property make the task trickier. A couple can veritably well be financially stable throughout their marriage but after separation, it can be altogether a dissimilar story. They need to understand and be mindful of the laws and procedures which live to figure out who gets what part of the property to resolve one of the most concerning problems.

Property rights are the lawful rights to gain, retain, vend, and transfer property, as well as the rights to admit rent, keep one's payment, enter into contracts, and train suits. One of the most exquisite issues during this time is women's property rights following divorce. The right of women to their hubby's property for a divorce property agreement relies on a variety of factors, including how the couple was promised and the reasons for the separation.

## **II. GROUNDS IN INDIA FOR DIVORCE**

In India, there are different divorce laws for different religions. Each religion has its own set of laws that are applicable within its community. Additionally, there are separate laws for inter-caste or inter-religion marriages. For Hindus (including Sikhs, Jains, and Buddhists), the Hindu Marriage Act of 1955 is applicable. Muslims follow the Dissolution of Muslim Marriages Act of 1939, while Christians follow the Indian Divorce Act of 1869. Parsis have their own set of laws under the Parsi Marriage and Divorce Act of 1936. Inter-caste or inter-religion marriages are governed by the Special Marriage Act.

## **III. DIVORCE AS A PROCEDURE - STAGES OF SEPARATION PROCESS**

Separation is a changeable social wonder and can be an awful close-to-home understanding. Since individuals constantly misdoubt the passions related to the decomposition of an association, they will in general pull back from the circumstance and permit the existence to go to their awareness. Socially, this propensity to escape the circumstance is reflected in deficient legislation, backing, and job rules for separating from people. Bohannan records the accompanying six phases of the separation procedure. These six phases aren't related consecutively, for any of them may be at the same time.

**(A) Emotional Divorce**

A marital breakdown is being given the underpinning driving force to allow for a chance of separation. Struggle as of now has caused significant damage and the cohorts, ever, have pulled back from paying themselves to one another. In malignancy of the fact that they may feel to work satisfactorily in social measures, they've stopped helping each other's development and are engaged with expanding measures of distant review. In passionate separation, in any case, two individuals grind upon one another just because they decrypt whatever reliance stays between them as despised evidence of reliance. Tragically, two individuals can remain unfeignedly separated from one another for a continuance while now getting a licit separation.

**(B) Legal divorce**

An unfeignedly separated couple may look for a legal separation. The courts in each state indicate the defense for separation; in other words, they've figured out what will be good reasons under the steady aspect of the law for getting a divorce. Since the legal grounds are habitually not quite the same as the genuine reasons a couple has for demanding a separation. Couples regularly need to deceive and exaggerate charges against one another to get legal separation.

**(C) Profitable Divorce**

Divorce must include a property agreement. The advantage of the couple must be insulated in two. Since the division is confused by charge laws, the separation legal counselor must know a lot about these guidelines. Outrage and disappointment constantly block a fair agreement. Changing feathers of passion and formerly in while unreasonable choices are made. Albeit utmost effects are clear as far as segregating the family products, different effects of significant worth to which either abettor may have an enthusiastic connection can get introductory, disaccord inciting issues. Associated with the fiscal agreement is, obviously, the matter of divorce agreement. As a rule, the partner is needed to pay the provision, the measure of which is set up by the court. Some ongoing choices, notwithstanding, maintain that in given financial circumstances the partner might be veritably fit for looking after herself. Support is typically innovated on the partner's requirements and hubby's capacity to pay.

**IV. RECENT TREND OF DIVORCE IN INDIA**

As of late an increasing number of wedded couples in India are leaving their marriages. Court numbers and information from the wrongdoing record department uncover that over the past decade, separate rates have multiplied and in certain civic communities indeed trebled. This pattern is egregious in metropolises as well as in smaller civic communities and semi-urban

regions. It's a print of India's evolving fiscal scene where this phenomenon is not confined to the prosperous, civic people as it used to be in the 1980s. numbers recommend that more individuals from the white-collar class and lower working class are quitting miserable coalitions. Delhi drives the route enrolling around 9,000 cases each time, a gigantic proliferation from the normal 1,000 cases that were enlisted during the 90s. A noteworthy consequence is that women are recording desires for the decomposition of marriage commodity that was incomprehensible during the 70s and 80s.

## **V. CAUSES OF DIVORCE**

The examination written on separate recommends that there are three general gatherings of factors related to marital decomposition. One relates to the characteristics of the individual cohorts, including different member and fiscal characteristics, which separate individualities as far as their inclination to separate. A posterior gathering relating to family structure and the inside rudiments of a relationship may prompt association breakdown. likewise, a third gathering of applicable factors that shape the structure of limitations, motivating forces, and openings that impact choices to end an association (South, 2001)

**Family Structure and Divorce** Common families or family units are set up in numerous networks in India. It has cases of marital interruptions in colorful positions and proportions.

The reasons for separation under the family unit are sexual or social holes between the consorts because of the exertion separation, issues in living together, occasion, crazy from their family, original status and revision issues, training, and awareness. There are colorful conventions, regarding fabrics, and job-performing practices rehearsed in a common family structure. New couples may not be fulfilled and feel uncomfortable altering and embracing the common family guided by customary practices and worth frame.

**Occupation and Divorce** The nature of occupations of the individualities decides the social and fiscal status. It influences the individual conduct. The word-related versatility of the consorts makes relations extensive." Separation is relatively high among people enthralled with occupation taking regular nonappearance from home, including, cozy contact with the contrary coitus, and controlled generally little by the network".

## **VI. PROPERTY IN MATRIMONY UNDER ENGLISH LAW VS INDIAN LAW**

Under English law compared to Indian law, before the 1950s, Indian women did not have full ownership of real estate such as land or houses, unless it was acquired as their personal property. Historically, Indian women did not have independent careers that generated significant income,

making it difficult for them to acquire or develop property for their matrimonial home.

The gifts received as dowry were somewhat identifiable, but in the event of a marriage breakdown, the wife had limited rights to claim or access the properties primarily owned by the husband. However, in recent times, there have been numerous cases where wives have their independent income, which they partially or fully use to acquire both immovable and movable properties. Additionally, matrimonial gifts are sometimes repurposed within the family. On the dissolution of marriage, the wife may acquire rights over the property jointly owned by both spouses. Similar provisions can be found in Section 42 of the Parsi Marriage and Divorce Act, of 1936. However, the provisions regarding the distribution of property in the event of a marriage breakdown are quite limited. This often poses challenges for the court, which frequently turns to English law for guidance to administer fair and just outcomes.

The English law on this matter is extensively discussed, although it is worth noting that it is presented concisely and has developed further through judicial decisions. Before the 1950s, Indian women were not fully entitled to own real estate, such as houses or land, under

English law as opposed to Indian law, unless it was obtained as personal property. In the past, Indian women did not have lucrative independent occupations, which made it challenging for them to build or buy land for their future marriages. The dowry presents could be identified to some extent, but in the case of a divorce, the wife's access to and claim over the husband's primary assets was restricted. Wives who earn their independent income, however, have been increasingly common in recent years and they either entirely or partially utilize it to purchase both moveable and immovable properties.

## **VII. JOINT PROPERTY PRESENTED AT OR ABOUT THE TIME OF MARRIAGE**

Only when the property is given at or around the time of marriage and is jointly owned by the parties to the proceedings under the Hindu Marriage Act, 1955, can orders under section 27 respecting its disposal be made. As previously stated, the clause does not apply to property or dowry objects that are given to and solely owned by the wife.

The phrase "belongs" in this section, however, merely refers to a link with the property in terms of possession and has nothing to do with the title of the item in terms of ownership.

If ornaments are delivered at the time of marriage and the locker is accessible to both the husband and the wife, the husband may be prohibited from taking anything out of it while actions under sections 9 to 13-B of the Act are pending." Although the section requires an application to be filed before the main petition for restitution of conjugal rights, judicial

separation, annulment of marriage, or divorce, the court may nonetheless use this authority in extraordinary circumstances even if the application is filed later. This part covers not just the property given at the time of marriage but also the attraction of the property given at that time.

As long as both parties jointly owned the same." However, in extraordinary circumstances, the parties may also use their inherent power under Section 151 of the Code of Civil Procedure to divide up property that is not covered by this section in a petition filed under this Act in the interest of justice. However, the husband retains the jewelry as a trustee and is obligated to return it to her following the divorce decision. The jewelry was presented to the woman by her father when they were married. Conversely, the dowry comprises items given to the wife in addition to property given to the husband during their combined marriage.

### **VIII. EXCLUSIVE PROPERTIES AS DEFINED BY HMA SECTION 27**

However, while such authority is inherent in the processes under the Act, the Allahabad High Court has decided that Section 27 does not exclude the authority to execute a decree related to property belonging exclusively to either the husband or the wife. The section's phrases "which may belong jointly to both the husband and wife" convey an enabling power to deal with jointly owned properties as well, but they do not limit the Court's authority to deal with just these properties.

Additionally, it was decided that, in light of Section 21A, a civil court may use its authority to handle Act-related matters. Although the outcome reached is acceptable, the Allahabad High Court's perspective seems to go beyond the parameters of Section 27. In contrast to the Allahabad High Court, the Punjab High Court <sup>2</sup> has established certain standards for the issuance of an order under this clause. A matrimonial action under the Act must be underway before the Court, and an application must be submitted before the proceeding's conclusion. The court has the freedom to decide how to dispose of property; it is not required to include a clause in the decree. If such a provision is made, it must be as reasonable and proper as the court determines about the parties' adjustment of equity.

#### **(A) Insurance and investment**

Regarding the investments her husband has made in his name, the woman has no control over them. Additionally, she is not eligible to make any insurance claims for which the husband has paid.

Nonetheless, in the sad case of the husband's passing, the wife is entitled to the insurance payout if the marriage has not been formally dissolved and the couple has only begun to live together.

## **IX. THE HOME MAKER'S CONTRIBUTION: CHANGING JURISPRUDENCE**

The homemaker's contribution has also never been adequately measured by the Indian judiciary or personal laws. The assessment and quantification of women's unpaid domestic work and their inclusion in the GDP were the subjects of General Recommendation No. 17 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

In addition to recommending that state parties encourage and support research to evaluate the unremunerated domestic activities of women to quantify and include this in the gross national product, it affirmed that measurement and quantification of the unremunerated domestic activities of women that contribute to development in each country will help to reveal the de facto economic role of women.

It acknowledged that women carry out most of the unpaid labor worldwide.

In *Miller v. Miller*, the House of Lords made it clear that any shift of resources from one party to another requires some kind of justification. It was held that there are at least three rationales for redistribution: the need (greedily interpreted), recompense, and sharing. These rationales take a look at elements that were connected to the parties' relationship, either causally or temporally.

## **X. CONCLUSION**

Divorce advising." Esther Fisher fights that the job of companion is not constrained to perfecting the character and nature of the association's decomposition, for the counsel's job must move with the phases all the while. Before divorce, the issue is whether a divorce ought to be looked for. During the procedure of divorce itself, bolster must be given to one or the two cohorts with the thing that they will not manhandle each other under the steady aspect of the law and will not make captures of their kiddies. After licit divorce has been in all actuality, the job of the advocate is to enable the client to negotiate the change from partner mate to single existent. Fisher brings up that divorce itself can be viewed as a three-organized process. Enthusiastic divorce happens when the couple understands that their relationship is finished. Physical divorce follows separation from bed and board. Legal divorce is a let-down; it just records for descendants what has just been cultivated and allows the separated couple to marry legitimately. In each progression, applicable advising help can grease the battles.

### **(A) Suggestions**

The discoveries from this study hold significant implications for various fields, including social work practice, social professions, and the broader spectrum of helping scientists, particularly in



addressing issues related to family violence and marital stability. The identification and discussion of factors influencing divorce rates lead to the emphasis on two overarching strategies for tackling the problem: firstly, implementing measures to prevent divorce and fortify marriages; and secondly, employing strategies to enhance the resilience of post-divorce families.

In the prevention aspect, one proposed strategy involves encouraging couples to engage in premarital education before tying the knot. Policymakers advocate for strengthening marriages by reforming divorce laws, making divorces more challenging to obtain. On the other hand, in the post-divorce scenario, efforts focus on minimizing the negative impact on children. Couples going through a divorce are urged to participate in 'divorce mediation,' where a neutral third party, the mediator, facilitates discussions on issues like property division and child custody, fostering cooperation between the separating individuals.

Furthermore, various professionals, including social workers and psychologists, provide marriage or family counseling. This form of counseling aids individuals and families in understanding behaviors, developing effective communication patterns, resolving problems, and offering support during challenging times. Family counseling proves beneficial in diverse situations, such as coping with stress, substance abuse, family violence, rape, serious illness, the death of a family member, or experiences like divorce and remarriage. Overall, family counseling plays a crucial role in helping families reinforce positive changes and address negative patterns appropriately.

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