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## WHY DIVORCE RATES ARE INCREASING IN INDIA: A SOCIO-LEGAL ANALYSIS

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### ABSTRACT

In India, marriage has always been viewed as traditionally endured and sacrosanct institution. However, in recent years, India has significantly witnessed the rising trend in divorce rate, especially in urban areas. This paper highlights socio-legal analysis and factors contributing to this trend. It examines factors like urbanisation, Communication failure, Changing Role and Status of Women economic independence, Shift in the Role of Marriage changing gender roles, Impact of Education and Awareness, Impact of Technology and social media and Shifts in Lifestyles. The paper also presents legal perspective, some of the key legislations like the Hindu Marriage Act, 1955, the Special Marriage Act, 1954, and the Indian Divorce Act, 1869, along with landmark judgements that expands the scope of divorce. The paper concludes by giving an idea that divorce should not be viewed solely as a breakdown of traditional values but as a reflection of growing individual autonomy, individual legal rights. It also advocates balanced legal and social response that safeguards both the integrity of marriage and the dignity of individuals.

**Keywords:** Divorce in India, Socio-legal analysis, Urbanisation, Women's empowerment, Mutual consent divorce, Mental cruelty, Marriage laws, social change.

## **Introduction**

Marriage in India has been and continues to be considered as a sacrosanct union and not a contract relationship. It is highly influenced by religion, customs as well as traditions. On the other hand, divorce was frowned upon and was a social stigma particularly in women. The past few years have however seen a drastic rise in the cases of divorce in India and in the metropolis cities in particular. The overall rate of divorce in India is still low compared to other countries, but the rise shows a change in attitude of the society as well as the expectations the individual has from a marriage. Divorce is a term that is used to describe the legal termination of a marriage union. It can happen due to many reasons, such as adultery, desertion, cruelty, mutual consent and incompatibility. The rise in divorce rates cannot be attributed to a single factor but a combination of social, psychological, economic and legal changes. This paper thoroughly analyses all these factors and the reasons for this growing trend.

## **Research Methodology**

This research paper analyses socio-legal research methodology to examine the rising trend of divorces in India. The research is focused on existing legal principles, judicial decisions, and statutory provisions governing divorces in India. The research paper also highlights some of the key legislations such as the Hindu Marriage Act, 1955<sup>1</sup>, the Indian Divorce Act, 1869<sup>2</sup>, and the Special Marriage Act, 1954<sup>3</sup> etc which helps us to understand the evolution of divorce laws and its impact during the dissolution of marriage. Also, landmark case such as Samar Ghosh v. Jaya Ghosh, have been examined to evaluate how courts have broadened the interpretation of grounds of divorce which includes various elements in the definition of cruelty; promoting significant shift towards consensual and autonomous dissolution of marriage. It examines factors such as urbanisation, Communication failure, Changing Role and Status of Women economic independence, Shift in the Role of Marriage changing gender roles, Impact of Education and Awareness, Impact of Technology and social media and Shifts in Lifestyles to understand how societal changes are impacting marital relationships.

## **Understanding Divorce in The Indian Context**

Divorce refers to the legal termination of a marriage by a court of law. In India, divorce is

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<sup>1</sup> Hindu Marriage Act, 1955

<sup>2</sup> Indian Divorce Act, 1869

<sup>3</sup> Special Marriage Act, 1954

regulated by personal laws according to religion as well as by secular laws. Primary laws regulating divorce include: the Hindu Marriage Act 1955<sup>4</sup>, Special Marriage Act, 1954<sup>5</sup> Indian Divorce Act, 1869. These laws provide for various grounds of divorce, like cruelty, adultery, desertion, mental disorder, and conversion. Legal reforms and judicial interpretation have increased the grounds for divorce, and the court has also toughened the access to divorce.

### **Understanding Divorce Rate in India**

In recent years, the number of divorces in India has increased considerably. Though there are far fewer divorces than in Western countries, divorces are becoming a trend in metropolitan cities and among the younger generation. The divorce rate in India is only 1 per cent, as per surveys and studies, but it is not so. For over a decade now, the divorce rate has been said to rise by almost 30-40 per cent in the urban areas. However, the divorces recorded in official statistics do not paint a full picture, since the Indian culture's shaming of divorce discourages some people from seeking divorces, thereby hiding a significant number of divorces from statistics. It is also good to know that the divorce rate has a lot of fluctuations in one region, one income group or one religious group compared to other regions, income groups, or religious groups.

### **Factors Contributing to The Rise in Divorce Rates**

There are many reasons for the rise in the divorce rate in India. We observe the rise in trend even in a society where divorce is considered to be Taboo. India is a developing country, and due to urbanisation, societal norms, standard of living and changing gender roles, there is a surge in divorce rate. The following are some of the reasons:

#### **1. Urbanisation:**

Over time, the rapid urbanisation has led to the breakdown of traditional joint family systems and there is rise of nuclear families. In urban setting, due to lack of support system of extended family members, the chances of conflict resolution are low and making it easier for couples to end the marriage. It has also observed that many urban

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<sup>4</sup> Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955 (India)

<sup>5</sup> Special Marriage Act, 1954, No. 43, Acts of Parliament, 1954 (India).

women no longer depend on men or their spouses for financial stability as they are going to work, rising involvement in education, setting up their own businesses all these factors lead to economic freedom and enforces them to take their own decision such as leaving an unfulfilling marriage.

## **2. Communication failure:**

One of the causes for divorce is simply a failure to communicate clearly about your emotions, what you actually want and don't want. Sometimes unexpressed expectations go unmet and it leads to anger, frustration, ego grow. We often ignore our own faults and try to push that to our closest ones, viewing them responsible for our own happiness, which easily cripples the marriage.

## **3. Changing Role and Status of Women:**

Change in the status and role of women constitutes a very important factor behind the increasing trend towards divorce. The increased availability of educational and work opportunities for women has made women economically and socially independent. Historically speaking, women used to be economically dependent upon their husbands and, thus, had no choice but to stay in their marriages even if these were not happy and satisfying due to socio-economic factors. With independence, however, women have been able to exercise the power to make choices about themselves and their lives. Furthermore, consciousness about rights relating to equality and dignity, as well as freedom from marital violence and abuse, has grown. Therefore, women no longer wish to stay in marriages that feature cruelty, domestic violence or discrimination against women. Thus, more and more cases of divorce have begun taking place at the initiative of women. Hence, changing times and the new role of women have totally changed the concept of marriage itself.

## **4. Economic Independence and Changing Power Dynamics:**

Dual-income marriages have brought about many changes in the nature of marriage and the family dynamic. Financial independence not only brings about economic security and an improvement in standards of living but also causes a shift in the power dynamic between the spouses. During the olden days, it was the husband who was the main

provider, and therefore, there was a power imbalance in the family unit. In dual-income families, both partners contribute economically, and they are supposed to participate equally in decision-making, leading to occasional disagreements. Economic independence also lowers the economic constraints associated with marriage.

#### **5. Shift in the Role of Marriage:**

Indian social environment has been shifting towards individualistic instead of being collectivist. Whereas in previous marriages the marital relationship was founded on duty, adapting and the family prestige, in modern marriage, the relationship is founded on the happiness of a person, suitability and satisfaction. People today, besides anticipating financial support, seek emotional support and love on the part of their spouses. The inability to fulfil these needs leads to frustrations and thus arguments which can eventually lead to divorce. Individualism has also come into place, which implies that although there is not much emphasis on the adjustment, divorce has been an increasingly socially and psychologically acceptable alternative.

#### **6. Impact of Education and Awareness:**

Education is essential in determining the attitude toward marriage and divorce. Individuals with greater rates of education are better aware of their rights and are able to make decisions more effectively on whether to get married or get a divorce. Highly educated individuals also have higher expectations of marriage as compared to uneducated individuals. As an example, individuals seek intellectual mates who can value one another and have common values. Divorce is an easy option when such expectations are not met. Education also enables people to think rationally and not to conform to traditions.

#### **7. Impact of Technology and Social Media:**

Rapid technological advancement and social media have produced a huge impact on personal relationships. Though social media assists people to communicate, there are some problems that emerge with the use of social media. The examples are misinterpretation, suspicion, and jealousy that are brought about by social media. The commonness of people over the internet can lead to emotional or virtual affairs that can

strain marriages. Moreover, the observation of perfect relationships on the social media results in the formation of unrealistic expectations. Social media consequently causes reduced privacy in the relationships and increased surveillance.

## **8. Shifts in Lifestyles:**

Today's lifestyles, which involve strenuous working conditions and prolonged working hours, hardly allow time for developing any sort of interpersonal relations. The failure to achieve a work-life balance may result in a lack of emotional connection between spouses. The absence of proper communication, stress, and fatigue may cause an emotional gap between the partners and thus contribute to marital discord.

## **Legal Framework and Its Role in Increasing Divorce Rates in India**

### **1. Hindu Marriage Act, 1955**

The Hindu Marriage Act, 1955 (HMA)<sup>7</sup> remains the most prominent legislation governing marriage and divorce among Hindus. The main purpose of enactment of this Act was to stabilise the marriage as an institution. In this context, the only possible ground was restricted to adultery, desertion, and cruelty. With time, courts have also amplified the interpretation for grounds of divorce by including various elements into the definition of cruelty. Cruelty involves both physical and psychological context as per current judicial interpretation. The continuous humiliation, neglecting the needs of one spouse, incompatibility, verbal abuse all of these are considered to be valid grounds for divorce. Importantly, the introduction of section 13B through the 1976 amendment has legalised divorce on the ground of mutual consent. This marks a shift towards consensual and autonomous dissolution of marriage. One of the relevance of this act gives is the liberal definition of cruelty and granting divorce on mutual consent. It has become easier for couples to proceed with divorce. Therefore, the HMA has contributed greatly to the rising number of divorces.

### **2. Special Marriage Act, 1954<sup>8</sup>**

The Special Marriage Act, 1954 (SMA), is a secular law which provides framework for marriage and divorce that is independent of religious beliefs and applies to all communities of

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<sup>7</sup> Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955 (India).

<sup>8</sup> Special Marriage Act, 1954, No. 43, Acts of Parliament, 1954 (India).

all faith. The SMA, 1954 is especially useful in cases of inter-faith marriage or marriage between couple who has opted out of religious involvement. Some of the grounds listed in the Special Marriage Act for divorce include cruelty, desertion, and adultery. Moreover, the Act also includes divorce on the ground of mutual consent. Personal laws follow certain guidelines laid down in their respective religious books and texts. On the other hand, the SMA recognizes marriage as a civil agreement, which is based on the consent of both partners. With the rapid increase in urbanization, more couples choose Special Marriage Act, 1954 due to its speedy resolution in marriage. Divorce is no longer considered to be a Taboo, and its increased frequency can be linked to the popularity of the SMA.

### **3. Divorce Act of 1869<sup>9</sup>**

The Divorce Act of 1869 in India applies to divorces among Christians in India. When the law was formulated, it was particularly strict towards women who had to establish other grounds apart from adultery to obtain a divorce. Since then, there have been several amendments that have led to more equality for both the genders and also introduced new grounds of divorce, such as cruelty, desertion, and mutual consent.

Importance: With amendments of this act, it has largely addressed the inequalities which existed between the genders which eventually has led to more amicable divorces particularly between Christian couples.

### **4. Judicial expansion on divorce jurisdiction**

In *Samar Ghosh v. Jaya Ghosh*, (2007) 4 SCC 511<sup>10</sup>, the Supreme Court laid down comprehensive guidelines on mental cruelty, emphasizing that cruelty cannot be confined to physical harm but includes emotional distress, indifference, and denial of companionship. The Court recognized that modern marriages must be evaluated in light of changing social realities. Similarly, in *Joydeep Majumdar v. Bharti Jaiswal Majumdar*, (2021) SCC Online SC 1213<sup>11</sup>, the Court held that false criminal allegations made by one spouse against the other constitute mental cruelty, thereby justifying divorce. Significance:

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<sup>9</sup> Indian Divorce Act, 1869 (India).

<sup>10</sup> *Samar Ghosh v. Jaya Ghosh*, (2007) 4 SCC 511 (India).

<sup>11</sup> *Joydeep Majumdar v. Bharti Jaiswal Majumdar*, 2021 SCC Online SC 1213 (India)

With the rising trend of divorce rates in India, it becomes crucial to examine the situation, considering both the reasons behind the rising trend and its consequences. In this context, it is vital to strengthen counselling and mediation methods within families so that there is speedy resolution of conflict between spouses without going to court. Moreover, there is considerable need to ease the court proceedings and also its impact that affect the couples financially and mentally. There is also high time to create awareness about legal rights, especially among women. The social stigma towards divorce needs to be changed so that people do not suffer in an unhappy marriage.

### **Conclusion**

In reality, it has been observed that there has been rise in divorce rates in India due to many socio-economic and legal factors. As the Indian society shifts from traditional family system to more nuclear family or individualism, it has great impact on nature of marriages. Also, changes in laws that make it easier to obtain a divorce by introducing new grounds for divorce help in making this possible. Nevertheless, one cannot overlook the fact that increasing divorce rates have both positive and negative consequences. On the one hand, rising divorce rates point to an increasing awareness of rights, empowerment of women, and a lack of tolerance for violence and incompatible marriages. On the other hand, problems like social stigma, psychological trauma, and abuse of law remain prevalent. The right balance thus needs to be struck between the need to maintain the sanctity of the marital bond on the one hand and respecting the dignity and freedom of the individual on the other. The law has to develop according to the times, making sure that it does not infringe upon the personal liberty of an individual while at the same time not harming the sanctity of marriage.

## **References**

*Samar Ghosh v. Jaya Ghosh*, (2007) 4 SCC 511 (India).

*Joydeep Majumdar v. Bharti Jaiswal Majumdar*, 2021 SCC Online SC 1213 (India).

Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955 (India).

Special Marriage Act, 1954, No. 43, Acts of Parliament, 1954 (India).

Indian Divorce Act, 1869 (India).