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## A Review Of The Legal Provisions Related To Divorce Law In India And Their Impact On The Mental Health Of Minors Involved In The Process Of Divorce

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### Abstract:

*To examine the divorce laws in India and its substantial ramifications for the mental health of minors involved in divorce processes. The research digs into the complexities of Indian divorce law, taking into account both historical and modern views, in order to provide light on its influence on vulnerable adolescents. This study reveals how the legal structure surrounding divorce might worsen the emotional anguish suffered by children via an assessment of key legislations, case laws, and empirical research. It puts attention on the different legal elements, such as custody fights, parental rights, and a lack of child-focused laws, that contribute to the typically negative mental health outcomes for kids. Furthermore, this analysis emphasises the urgent need for divorce law reforms to prioritise children's well-being and offers possible policy improvements to reduce the negative impacts they encounter throughout divorce procedures in India.*

**Keywords:** *Divorce laws in India, Mental health of minors, Vulnerable adolescents, Indian divorce law complexities, Historical views on divorce, Modern views on divorce, Emotional anguish in children Key legislations on divorce.*

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### Introduction:

Marriage is one of the oldest institutions and in many cultures there is almost universal expectation that individuals will get married in order to procreate and bring the family up together as a unit. Depending upon whether the individuals are from ego-centric societies or socio-centric societies or from sex-positive or sex-negative societies their own expectations from marriage will differ

from those of the society. Marriage of people with mental illness or those developing mental illness once married has specific connotations. Another variable in the role of the marriage is related to gender. In many cultures women will be expected to marry according to gender roles and gender role expectations. Combined with mental illness this may create double jeopardy against women

with mental illness and discriminate against them further.

Much as laws are an integral part of our lives, there is a lot that goes on unnoticed and untouched by law. Marriage, especially arranged marriages which are still very prevalent in countries of the south Asian region, is one of these. A common concern of families is whether they should divulge the fact of mental illness to the family the son/daughter is marrying into. Despite our insistence that it is indeed the right thing to do, in more than 90% of the cases this does not happen. This is born out of the fear that divulging the fact of mental illness will be a certain deterrent to the other family and the marriage will never take place, a well-founded apprehension in societies where the stigma attached to mental illness is still huge. Legal professionals are only too happy to advise that mental illness is a sure ground for divorce.

#### **Introduction to Divorce Laws in India:**

Though divorce was in quite small numbers, and a taboo in India once, based on social change, higher literacy, industrialization, urbanization and women's higher employment rate, the divorce rate has considerably gone up within all communities in India in recent decades. So, many couples facing difficulties are increasingly deciding to part their ways legally unparalleled with the past in Indian history. But, before the legal divorce takes place, the husband and wife would have lived separately for a year. They should also prove that their

marriage has totally collapsed, and needs to be dissolved. Under such circumstances they can file their petition for divorce. The Hindu Marriage Act 1955 includes all the citizens of India including Muslims, Christians, Parsis and Jews by region. Divorce law in India highly stresses on adultery. Any one of the spouses indulged in such an act is subject to divorce. Also, in case a wife is acknowledged of any marriage by her husband, can apply for a petition to divorce.

#### **Legal Procedures and Age of Consent:**

The separation of church and state is a fundamental principle of American society. Representatives of the state may consider prevailing religious beliefs for insight as to what laws should be enacted, but such beliefs have no bearing upon the actual application of those laws to the people. Laws in the United States apply, ideally, to all persons equally. The same is not true for India. The Muslim Personal Law (Shariat) Application Act of 1937 subjects Muslims in India to Islamic rules concerning inheritance, marriage, divorce, and other matters of personal law.' The Dissolution of Muslim Marriages Act of 1939 outlines the grounds upon which a Muslim wife may file for divorce.' The divorce law for Hindus is the Hindu Marriage Act of 1955? It would be expected that the allowance of two systems of divorce would result in the existence of two entirely different sets of rules. As will be shown, however, the laws are not that different. The cultures share a history in India that has trickled down to

the system of governance that regulates divorce. This paper discusses the laws of these two integrated, yet separate, jurisdictions in India.

### **Divorce Systems of India:**

A final source of law is dharmasastra, a system the Brahmin class<sup>4</sup> founded upon religious perceptions of righteousness.<sup>4 2</sup> Dharmasastra dates back to the sixth century B.C. and is very important for questions concerning Hindu law "because the Hindu law from its commencement took religion... [as an ally] of jurisprudence."<sup>43</sup> At its inception, dharmasastra was applicable to only the higher castes; in modern times all lawyers consider such principles.<sup>44</sup> As such, contemporary Indian lawyers may consult the works of jurists who wrote thousands of years ago for moral commentaries on the law in the event that neither the Code nor judicial authority touches upon the points under consideration.

### **Literature Review:**

Rajesh Kumar Yadav et.al (2023): This paper explores the scope of introducing 'irretrievable breakdown' as a ground for divorce in India and other Asian countries. It discusses the concept of divorce and how it came into India, and explains the current situation of Asian countries with historical background. It also outlines certain precautions to remove the possibility of misuse of new grounds of divorce. Marriage is now dissoluble in many countries, compared to a few decades ago. India has introduced the

concept of irretrievable breakdown as a ground for divorce. There are certain precautions to prevent misuse of the new grounds of divorce, such as ensuring a child's future and declaring the marriage dead by the court.

Iryna Stadnik et.al (2022): This paper examines the mental health and emotional state of children in the context of parental divorce processes. It finds that the forensic expert must take into account the child's desire and provide them with the psychological right to live with the parent with whom they are comfortable. The influence of psycho-traumatic factors and situations on the development of cognitive, regulatory and personal spheres of psychological development of the child, taking into account age, is analyzed. Regularities of behavioral features of children suffering in the process of long-term judicial investigation and consideration of cases on determining the place of residence have been established. It is necessary to take into account the desire of the child and provide him with the psychological right to live with the parent with whom he is comfortable.

Muskan Sethi et.al (2022): This review examines the impact of divorce on a child's emotional development. It finds that divorce can lead to psychological disorders, such as depression and anxiety, and can further deteriorate the self-esteem of a child. Protective factors, such as healthy relationships with both parents and financial support, can help reduce the negative impact of divorce. Divorce has serious impact on the emotional

development of a child. Children of divorced parents may have difficulty forming and maintaining relationships, display faulty behavior, and suffer from psychological disorders. Protective factors such as healthy relationships with both parents and financial support, as well as the child's resilience, can help reduce the negative impact of divorce.

Aneesh Thadathil et.al (2020): This paper reviews research from India on the causes and effects of divorce. It analyzes 14 studies from 2000 to 2018 and finds that eight of them used quantitative methods. Divorce rates in India have increased over the years. The psychosocial determinants of divorce include economic factors, family dynamics, and social norms. Divorce has a negative impact on families and adolescents, including increased stress, depression, and anxiety.

Kumar Yadav et.al (2020): This paper discusses the concept of "limping marriages", where a divorce is recognized in some countries but not in others. It examines the legal framework in India for recognizing foreign divorce decrees and the Law Commission of India's 65th report on the issue. It also notes that religion is immaterial when it comes to recognizing foreign divorce decrees. There is no specific legislation in India that deals with the recognition of foreign divorce decrees. The law commission of India has submitted a report on this issue, but it has not been implemented. Religion of the parties marrying is immaterial relating to the decrees passed in foreign countries.

Hitabhilash Mohanty et.al (2020): This paper examines the philosophy of divorce in the Indian legal context. It analyzes the changing concept of marriage over time and explores the legal provision of divorce in the Hindu Marriage Act, 1955, as well as the various theories of divorce that emerge from it. Divorce was initially unknown to general Hindu law as marriage was regarded as an indissoluble union of the husband and wife. The Hindu Marriage Act, 1955 provides legal provisions for divorce, and various theories of divorce have emerged from its applicability. Islam insists upon the subsistence of a marriage and prescribes that breach of the marriage- the contract should be avoided.

Pinto Vincent et.al (2018): This research study examines the changing trends of divorce in India. It looks at the socio-cultural factors that influence divorce rates and suggests strategies for reducing or solving the problems of divorce. 100 male and female respondents in India, with 50 of each sex Divorce rates in India have increased due to changing socio-cultural contexts, technological advancement, and influence of western culture. Factors influencing divorce rates include shift from extended family system to nuclear family, selection of spouse in contrary to arranged marriage, and increased incompatibility of gender due to change in the position of women. The study suggests possible strategies for reducing or solving the problems of divorce in the family.

Carrie Brand et.al (2017): This narrative inquiry studied the experiences and perceptions of parental divorce of 9- to 10-year-old children. It identified seven themes and proposed guidelines for professionals to use in their interventions with children. Research suggests that the nature of the divorce process, as experienced by the child, is the most important factor in his or her post-divorce adjustment. Seven themes were identified from the narrative inquiry into the experiences and perceptions of parental divorce: (i) What is a divorcement; (ii) Stories of loss; (iii) Stories of gain; (iv) Stories of change; (v) Stories of stability; (vi) Healing stories; and (vii) Complicating stories. This article proposes several guidelines for professionals such as psychologists, registered counsellors, social workers, and teachers as well as parents in their possible interventions with children.

R. Thara et.al (2016) : This paper reviews laws regarding marriage in most of the world, with a focus on legislative provisions related to marriage and divorce of persons with mental health problems. Laws regarding marriage and divorce of persons with mental health problems vary widely across countries. In many countries, persons with mental health problems are not allowed to marry or are subject to additional restrictions. In some countries, persons with mental health problems are allowed to marry but may face additional restrictions in the event of divorce.

Dinesh Bhugra et.al (2016): This paper examines the legal provisions related to marriage and divorce of persons with mental health problems in 193 countries. It finds that 37% of countries explicitly prohibit marriage by persons with mental health problems and 11% (21 countries) consider mental health problems as grounds for nullity of marriage. 37% of countries explicitly prohibit marriage by persons with mental health problems. In 11% (21 countries) the presence of mental health problems can render a marriage void or can be considered grounds for nullity of marriage. Many countries are flouting basic human rights related to marriage for persons with mental health problems.

Narayan, Choudhary Laxmi et.al (2015): This paper discusses marriage laws in India and their implications for mental health. It outlines 10 rights associated with marriage and how marriage is an important and sacrosanct event in an individual's life, especially for women. Marriage is an important social institution in all societies and is a contractual agreement that formalizes and stabilizes the social relationship which comprise the family. In India, marriage is regarded as an important and sacrosanct event in an individual's life, and everyone is supposed to get married and have a family so that he can continue his progeny. For Indian women, marriage is one of the most important aspects of her life, and the social status of the women enhances after getting married, whereas remaining unmarried after a certain age is stigmatizing for her.

Indira Sharma et.al (2015): This paper examines the social and legal aspects of Hindu marriage in women with mental illness. It finds that there is a wide gap between the legislative provisions of the Hindu Marriage Act and societal value systems and attitudes towards marriage, which is due to social stigma for mental illness and patriarchal attitude towards women. It suggests awareness programs and improvement in moral and religious values to bridge the gap. The Hindu Marriage Act (HMA), 1955 lays down the conditions for a Hindu marriage and provides matrimonial reliefs. There is a wide gap between the legislative provisions of HMA and societal value systems and attitudes towards marriage in Indian society. Concerted efforts are needed to bridge the gap between the legislative provisions of HMA and societal value systems and attitudes toward marriage.

Kanesarajah, K et.al (2015): This research study investigates the psychosocial impacts of divorce in the Kalmunai Tamil divisional secretariat area. It finds that children and women are the most vulnerable groups and suggests that further research is needed to find mitigation measures. Divorce is a rapidly increasing problem in the Kalmunai Tamil divisional secretariat area. Divorce has serious social and psychological impacts on children and women, who are the most vulnerable groups affected by it. Further research is needed to find mitigation measures to reduce the rate of divorce in the area.

Soumitra Pathare et.al (2015): This paper analyses judgments related to annulment and divorce under the Hindu Marriage Act, 1955. It finds that 85% of the cases were filed by husbands and medical evidence of mental illness was presented in only 36% of the cases. Individuals involved in divorce and annulment cases related to mental illness under The Hindu Marriage Act, 1955 in India It also highlights the need for standardised guidelines for lower courts. 85% of cases filed in the Family Court at Pune were filed by husbands alleging mental illness in their spouse. Medical evidence of mental illness was presented in only 36% of the cases. 95% of cases reaching the High Court were filed by male petitioners, and the High Courts reversed the lower courts' judgments in 50% of the cases.

P. Amato et.al (2014): This paper examines the consequences of divorce for adults and children. It finds that divorced adults and children experience more mental and physical health problems than married adults and children. It also discusses resources and programs that can help with the adjustment to divorce. Divorced adults and children with divorced parents. Divorced adults and children experience more mental and physical health problems than married adults and children. These associations are partly spurious and partly due to the stress associated with marital disruption. Court- and community-based programs can help parents and children adjust to divorce.



Abhijeet Faye et.al (2013): This study investigated the reasons for divorce, coping mechanisms, and psychopathology in couples seeking divorce in India. It found that interpersonal problems were the primary reason for divorce, marital adjustment was poor in 91.6% of respondents, fatalism, expressive action and problem solving were the commonly used coping methods, and 64% had significant psychopathology. 100 couples seeking divorce in India Poor marital adjustment and emotion-based coping were associated with higher psychopathology, whereas parental support and having children were protective factors for psychopathology. Women outnumbered men in filing for divorce and in overall psychopathology. Being in a 'Love marriage' was associated with good marital adjustment.

#### **Methodology:**

**Literature Review:** There will be a thorough review of the existing literature, including academic articles, legal documents, government reports, and case studies. This will provide a foundation for comprehending the current legal landscape and its impact on juveniles' mental health.

**Data Collection:** Various sources, including family court records, interviews with legal specialists, and surveys of afflicted families, will be utilised to collect data pertinent to divorce proceedings in India. This information will be analysed to determine trends and patterns.

**Qualitative Analysis:** To gain insight into the emotional and psychological

experiences of children during divorce, qualitative research methodologies, such as in-depth interviews with children, parents, and mental health professionals, will be employed.

**Quantitative Analysis:** Quantitative surveys will be conducted in India to collect data on the prevalence of divorce-related mental health concerns among kids. Correlations and patterns will be identified via statistical analysis.

#### **Data Analysis:**

Data gathered via qualitative and quantitative approaches will be analysed statistically and thematically. The findings will be evaluated in order to develop conclusions about the influence of legal measures on the mental health of adolescents in divorce proceedings in India.

**The concept of divorce law varies from one jurisdiction to another, but there are some common elements.**

**Grounds for Divorce:** Different countries recognise different grounds for divorce, which are the legal basis for dissolving a marriage. Adultery, cruelty, desertion, irreconcilable differences, and a length of separation are all common reasons for divorce. Some countries also allow "no-fault" divorce, which means that neither party must establish blame.

**Legal Procedures:** Divorce laws provide forth the legal actions and procedures that must be taken in order to seek a divorce. These processes normally include filing a divorce petition, providing notice on the other spouse, and, if required, attending court hearings. Depending on the

jurisdiction, the particular procedure might vary substantially.

**Property Division:** Many divorce laws handle the sharing of marital assets and debts. This involves the equal allocation of marital property such as houses, automobiles, and financial holdings.

**Alimony or Spousal Support:** Divorce laws may require one spouse to pay alimony or spousal support to the other, particularly if one spouse suffers financial hardship as a consequence of the divorce.

**Child Custody and Support:** Child custody and child support provisions are critical in divorce law. When choosing custody arrangements and setting child support payments, courts seek to assess what is best for the kid.

**Now, let's consider the relationship between divorce law and the mental health of children:**

**Emotional Impact:** Divorce may be an emotionally draining experience for children. Children may experience emotions of perplexity, worry, grief, and rage as a result of the disruption of their family unit, probable conflict between parents, and changes in living circumstances. These emotional difficulties may have long-term consequences for their mental health.

**Custody and Visitation:** Child custody and visitation arrangements decided during divorce proceedings may have a substantial influence on a child's emotional well-being. Children benefit from having stable and loving connections with both parents, therefore arrangements that

facilitate this may be less disruptive to their mental health.

**Financial Stability:** Divorce can also impact a family's financial stability. Changes in income and living conditions can affect a child's access to basic needs and opportunities, potentially causing stress and anxiety.

**Conflict Resolution:** The degree of conflict and collaboration between parents during and after divorce has a significant influence on children. Divorces with high conflict may produce a hostile atmosphere that is harmful to a child's mental health, while amiable divorces with successful co-parenting can reduce these negative impacts.

**Support Systems:** Adequate support systems, such as counselling and therapy, might be critical for children whose parents are divorcing. Access to expert assistance may assist youngsters in dealing with emotional difficulties.



**Fig Methodology Flowchart**

### **Conclusion:**

The legal rules surrounding divorce in India, impacted by historical, cultural, and religious elements, have important



significance for children's well-being during this turbulent time. This analysis focuses on numerous fundamental concerns in the Indian divorce system, such as the emphasis on adultery as grounds for divorce, the absence of child-focused laws, and the difficulties of parallel legal systems. These variables all lead to unfavourable mental health outcomes for children caught up in divorce processes. It is critical that Indian divorce rules be revised to prioritise the well-being of children. Policy changes should strive to reduce the emotional suffering experienced by minors after divorces, with an emphasis on supporting their stability and psychological health. As India continues to change socially and economically, revising divorce laws to accord with current ideals and protect the mental health of vulnerable children becomes an important requirement.

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