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The ripple effect: Societal and economic implications of divorce

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Abstract

Divorce is a significant societal phenomenon that extends far beyond the dissolution of marriage, triggering a ripple effect with profound societal and economic implications. This paper explores the multifaceted consequences of divorce, highlighting its impact on individuals, families, and broader communities. From an economic standpoint, the division of assets, financial instability, and changes in household income levels can create long-term financial struggles, particularly for single parents and children. On a societal level, divorce contributes to shifts in family structures, altering social norms and influencing child development, mental health, and well-being. Furthermore, the economic consequences of divorce can exacerbate inequality, particularly for women and marginalized groups. By examining these interconnected factors, this paper aims to provide a comprehensive understanding of the ripple effects of divorce, emphasizing the need for effective support systems, policies, and societal adaptations to mitigate its negative consequences.

Keywords: Divorce, societal impact, economic consequences, family structure, financial instability, single parents, child development, mental health, income inequality, social norms, family dynamics, economic inequality, divorce support systems, family policy, societal change

Introduction

Divorce is a deeply personal and transformative event that marks the legal end of a marriage, often bringing about a cascade of emotional, social, and financial changes for those involved. While the reasons for divorce vary widely, ranging from irreconcilable differences and infidelity to financial struggles and personal growth, the consequences are often far-reaching. For the individuals involved, divorce can represent both an end and a new beginning, though the journey through this transition is rarely straightforward. The process not only requires navigating complex legal procedures but also confronting emotional challenges, such as feelings of loss, guilt, and uncertainty about the future. Beyond the couple, divorce often impacts children, extended families, and even the broader social circle, making it a topic of significant concern in both personal and societal contexts.

Despite its prevalence, divorce carries a heavy stigma in many cultures, with individuals frequently facing judgment or misunderstanding about their decision. However, modern society is increasingly recognizing the importance of approaching divorce with compassion and a focus on the well-being of all parties involved, especially in situations where children are present. Understanding the nuances of divorce—from the reasons behind it, to its emotional and financial implications, and the long-term effects on individuals and families—is essential in offering support to those going through it, and in creating a more informed, empathetic societal approach to this life-changing event.

In examining the dynamics of divorce, it becomes evident that it is not just a legal matter but an intricate emotional and psychological journey. The decision to divorce often stems from deeply rooted personal issues, and while it may offer the possibility of freedom and a fresh start, it also requires individuals to confront and heal from the wounds that led to the dissolution of their marriage. Recognizing divorce as a multi-faceted experience, one that encompasses personal growth, legal challenges, and emotional recovery, is crucial for fostering a supportive environment for those affected. By understanding the complexities surrounding divorce, society can better address the needs of individuals undergoing this difficult transition, ultimately helping them rebuild and move forward in a healthier, more positive direction.

History of Divorce in India

The History of Divorce in India: A Journey Through Tradition, Law, and Social Change

Divorce, the legal dissolution of marriage, is a concept that has evolved significantly across time and cultures. In India, the history of divorce is complex, influenced by religion, colonialism, socio-economic factors, and changing societal norms. Understanding the history of divorce in India requires exploring the cultural, religious, and legal shifts that have shaped the current landscape.

Ancient and Medieval India: Divorce in Traditional Practices

In ancient India, marriage was viewed primarily as a social and religious duty rather than a personal choice. The concept of divorce was not explicitly recognized in most of the prominent religious texts like the Vedas, Mahabharata, or Ramayana, which emphasized the sanctity of marriage. In this period, women had limited autonomy and were expected to remain in marriages for life.

However, some early texts, such as the *Manusmriti* (circa 200 BCE - 200 CE), did mention the possibility of separation or remarriage in certain situations. But such instances were rare and often involved the woman's inability to bear children or fulfil her duties as a wife. Divorce, as we understand it today, was not a widely accepted or recognized practice in ancient Indian society.

During the medieval period, especially under Muslim rule, Islamic law (Sharia) allowed for divorce under certain conditions. For Muslim men, it was permissible to pronounce *talaq* (a form of divorce), but women also had the right to seek divorce in certain circumstances, like *khula* (a woman's right to initiate divorce). However, these provisions were often restricted and misunderstood, and the actual practice was subject to patriarchal interpretations and norms.

Colonial Period: The Introduction of Legal Frameworks

The British colonial era brought significant changes to Indian society, including the introduction of a legal system that formalized laws related to marriage and divorce. Before this period, divorce was largely unregulated and practiced informally within communities according to customs or religious laws.

Under the British, a legal framework began to emerge for managing marriages and separations. The *Hindu Marriage Act* of 1955 was one of the first major steps toward recognizing divorce in India for Hindus. Before this, Hindu marriages were largely governed by religious customs, with limited legal recognition of divorce. This act allowed for divorce on grounds such as cruelty, adultery, and desertion, offering a more structured process for ending a marriage.

Simultaneously, the *Indian Christian Marriage Act* of 1872 and the *Special Marriage Act* of 1954, which applied to people of all religions, also paved the way for more formal legal mechanisms for divorce in India. These laws gave individuals the right to file for divorce under specific conditions, but they were still quite restrictive, with social stigma attached to divorce being strong.

Post-Independence India: Legal and Social Reforms

After India gained independence in 1947, the country's legal system underwent a significant transformation, influenced

by the country's diverse religions, social norms, and changing perceptions of marriage. The *Hindu Marriage Act* of 1955, as mentioned, played a pivotal role in offering legal grounds for divorce, but it was initially restrictive. For instance, a woman could not file for divorce unless the husband had committed adultery, cruelty, or desertion. The idea of mutual consent divorce, which allows both partners to seek separation amicably, did not exist.

Over the decades, divorce laws for Hindus have undergone progressive changes. In 1976, the law was amended to include *irretrievable breakdown of marriage* as a ground for divorce, which allowed individuals to divorce without proving fault by the other party. However, divorce proceedings were still lengthy, expensive, and socially stigmatized, particularly for women.

For Muslims, the *Dissolution of Muslim Marriages Act* was enacted in 1939, which allowed Muslim women to seek divorce on grounds such as neglect, cruelty, or failure to provide maintenance. However, the practice of *talaq* continued to be controversial and legally complex for both men and women, leading to debates on the rights of women in Muslim marriages.

In 1986, the *Special Marriage Act* was amended to include provisions for the divorce of interfaith couples, though it remained an exception to the general rules governing marriage and divorce.

Modern-Day India: Growing Acceptance and Challenges

As India transitioned into the 21st century, the number of divorces began to rise, especially in urban areas where individual autonomy and women's rights were gaining more recognition. Changes in attitudes toward marriage, evolving gender roles, and economic independence for women have contributed to a growing acceptance of divorce as a legitimate option for people in unhappy or unfulfilling marriages.

The *Divorce Bill* introduced in 2019 proposed the introduction of no-fault divorce (mutual consent divorce) as an option, where both parties agree to end the marriage without assigning blame. This shift was aimed at reducing the strain on the judicial system and alleviating the social stigma attached to divorce.

However, challenges remain, especially in rural India and among certain conservative communities, where divorce is still seen as a taboo. Social stigma, economic dependence, and legal hurdles continue to prevent many individuals, particularly women, from filing for divorce.

Moreover, the rise of matrimonial websites and changing attitudes among younger generations have also made divorce more accessible and normalized in the digital age. Younger people are increasingly open to the idea of ending a marriage that no longer serves their interests, reflecting a broader global trend.

Supreme Court's Power to Directly Grant Divorce^[1]

On May 1st, 2023 a Constitution Bench delivered a unanimous judgment in the *Shilpa Sailesh v Varun Sreenivasan* case. The Bench held that the Supreme Court can directly grant a divorce on grounds of 'irretrievable breakdown of marriage' under Article 142 of the Constitution.

¹ T.P. (C) No. 1118 of 2014 & Ors.

Background

Article 142 of the Constitution enables the SC to issue or pass any order that it feels is necessary to provide “complete justice” in a case before it. Section 13B of the Hindu Marriage Act, (1955) (HMA) lays down the procedure for divorce if both partners consent to it. The parties must initiate divorce proceedings before a Family Court. However, parties often visit the Supreme Court under Article 142 citing delays by Family Courts.

In 2014, the parties, in this case, moved the SC to grant them divorce as their marriage was ‘irretrievably damaged’—not a ground for divorce under the HMA. In 2015, the SC granted them divorce. The Court however observed that there were many similar petitions pending before it. So, while the divorce was granted, the case was kept pending to decide the following issues:

1. Can Article 142 be used to decide divorce cases at all?
2. If yes, what rules should the Court follow to dissolve a marriage between the consenting parties without referring them to Family Court?

In June 2016, a 2-judge bench of the Supreme Court referred the case to a Constitution Bench. The 5-Judge Bench led by Justice S.K. Kaul delivered the judgement on May 1st, 2023.

Power of the Supreme Court under Article 142

1. The Bench stated that the exclusive power granted to the SC under Article 142 is to uphold justice, equity and good conscience. Article 142 is a unique provision that lets the SC do ‘complete justice’ in any ‘cause or matter’. Thus, the SC may go beyond the bounds of procedural and substantive law to achieve the ‘ends of justice’. However, the Bench cautioned that such exercise is expected to be carried out with due restraint. The Bench stated that powers under Article 142 should be exercised responsibly while protecting ‘fundamental general and specific principles.
2. Here, the fundamental general conditions of public policy refer to the fundamental rights, secularism, federalism, and other basic features of the Constitution of India. Specific public policy principles should be understood as those expressed in a statute.

Supreme Court Can Grant Divorce under Article 142

Section 13B of the Hindu Marriage Act, 1955 (HMA), lays down the procedure for divorce by mutual consent of both parties. This includes a cooling period of 6-18 months after making a joint application for divorce. If the application is not withdrawn during this period, the concerned court will continue proceedings and grant divorce. The Bench held that under Article 142 the SC is not bound by these procedural requirements and can grant the decree before such period, even when the main case is pending before a Family Court. Further, the SC can also grant divorce on the ground of ‘irretrievable breakdown’ in the interest of justice even if one party opposes it.

The Bench was of the view that the cooling-off period is an impediment in instances where there is an ‘irretrievable breakdown of marriage’ i.e. where divorce is inevitable. However, they emphasised that the time gap is necessary as it allows the parties to evaluate and reconsider their decision to divorce. The period can only be waived when the Court finds that the marriage is beyond repair.

Some factors to be considered before determining whether a marriage is irretrievably broken down are:

1. Duration of cohabitation after marriage
2. Last time the parties cohabited
3. Nature of allegations made by the parties against each other
4. Attempts to settle disputes between the parties
5. A sufficiently long period of separation

Administrative Law: A New Approach for Divorce in India

Divorce in India, though a legal and judicial matter, has often been encumbered by lengthy court procedures, social stigma, and complex laws across different religions. While legal reforms have made significant strides, there is still a need for a simpler, more accessible, and effective framework to handle divorce cases, particularly in the context of administrative law. Administrative law, a branch of public law dealing with the regulations and actions of administrative agencies, presents a potential new approach to the divorce process that could streamline proceedings, reduce the burden on the judicial system, and provide quicker resolution to parties seeking separation.

This article explores the concept of using administrative law as a new approach for divorce in India and the potential benefits and challenges it could present.

Current Divorce Process in India: A Brief Overview

Currently, divorce in India is primarily governed by personal laws, which differ according to religion, such as the *Hindu Marriage Act* (1955), *Muslim Personal Law* (Sharia), the *Special Marriage Act* (1954), and the *Christian Marriage Act* (1872). The legal grounds for divorce, such as cruelty, desertion, adultery, and irretrievable breakdown of marriage, are outlined under these laws. In most cases, divorce is a lengthy and expensive process that requires judicial intervention.

The current divorce process typically involves:

- Filing a petition in court.
- Multiple hearings to provide evidence and witness testimony.
- Prolonged court proceedings due to a backlog of cases in Indian courts.
- Lengthy waiting periods, especially for mutual consent divorce, where the couple must wait for a certain period (typically six months) before the divorce can be finalized.

This process has been critiqued for its inefficiency, complexity, and emotional toll on the individuals involved. Moreover, the legal and emotional burdens are often exacerbated for women, particularly those from lower-income or rural backgrounds, who may not have access to legal resources or financial support.

Administrative Law: A New Approach for Divorce

Administrative law refers to the body of law that governs the activities of administrative agencies of government. It typically involves the creation of regulations, the enforcement of rules, and the adjudication of disputes through specialized, non-judicial bodies or tribunals. In the context of divorce, administrative law could offer a more efficient, less adversarial approach by allowing administrative agencies or tribunals to handle divorce cases,

bypassing the traditional judicial system.

This new approach would focus on creating an administrative framework that simplifies divorce proceedings, provides faster resolutions, and reduces the burden on courts. Here's how administrative law could be applied to divorce:

Possible Mechanisms for Administrative Divorce Establishment of Divorce Tribunals or Agencies

Instead of going through the court system, divorce cases could be heard by a specialized administrative tribunal or agency. These tribunals would focus solely on marital dissolution, allowing for quicker hearings and decisions. The tribunal could:

- Handle both contested and uncontested divorce cases.
- Operate with simplified procedures to speed up the process.
- Provide a less formal, less intimidating setting compared to traditional courts.
- Empower trained officers or mediators to assess the situation, facilitate reconciliation where possible, and grant divorce without the need for prolonged litigation.

Online Divorce Platforms and Administrative Procedures

In today's digital age, the use of technology could also play a role in simplifying the divorce process. Administrative law could support the development of an online platform for mutual consent divorces, where couples can file for divorce, upload necessary documents, and follow a streamlined administrative procedure. The platform could:

- Offer accessible resources and guidance on the legal requirements for divorce.
- Allow couples to submit forms and pay fees electronically.
- Expedite the process for mutual consent divorces, allowing individuals to obtain a divorce without appearing in court.
- Provide a space for mediation and counselling services, potentially resolving marital conflicts before resorting to dissolution.

Mediation and Conciliation by Administrative Agencies

Mediation could become a central feature of the administrative law approach. Administrative agencies, such as specialized family law offices or social service agencies, could play a role in facilitating mediation sessions between the parties. This approach would encourage amicable settlements, reduce court congestion, and help the couple navigate through emotional and financial challenges. The mediation process could:

- Be mandatory before granting a divorce, with the aim of reconciliation.
- Help couples arrive at mutually agreed-upon terms regarding property division, child custody, and spousal support.
- Be overseen by trained professionals with expertise in family law and conflict resolution.

Streamlined Documentation and Simplified Procedures

Under an administrative law approach, divorce processes could be made more transparent and accessible through clear documentation and simplified procedures. This would

include:

- Standardized divorce forms, guidelines, and checklists that are easy for the public to understand.
- Simplified requirements for evidence submission, especially in uncontested divorces.
- Clearly defined timelines and expectations to avoid delays.
- Administrative officers or tribunals capable of processing paperwork more efficiently than courts, ensuring that the process does not drag on for years.

Benefits of an administrative law approach to divorce Reduced Court Backlog

India's judicial system is burdened with a massive backlog of cases, which often results in long delays for divorce petitions to be heard. By moving divorce cases to specialized administrative bodies, the judicial system can be relieved of the strain, ensuring that family courts and regular courts focus on more complex cases. Administrative divorce tribunals could process cases more swiftly.

Accessibility and Convenience

Administrative law would help make the divorce process more accessible, especially for people from marginalized or low-income backgrounds. Online platforms, simplified procedures, and easily accessible administrative offices would make the process more user-friendly and less intimidating for individuals who might otherwise find the legal system overwhelming.

Cost-Effectiveness

Divorce proceedings under the traditional judicial system can be expensive, especially if lawyers' fees and court costs are involved. Administrative procedures could significantly lower the cost of divorce by reducing the need for expensive litigation, making it more affordable for a larger segment of the population.

Speed and Efficiency

The administrative approach could dramatically reduce the time it takes to finalize a divorce. Many contested divorces and mutual consent cases are delayed for years due to procedural issues in courts. A specialized, streamlined administrative system could help deliver quicker, fairer outcomes for divorcing parties.

Focus on Mediation and Reconciliation

Rather than a purely adversarial process, administrative law could emphasize mediation and conciliation, potentially offering better outcomes for families. Reconciliation efforts, especially in cases involving children, could be prioritized to help couples reach amicable agreements and avoid further emotional trauma.

Challenges and Considerations

While the administrative law approach offers several advantages, there are also challenges and concerns that must be addressed:

- **Legal Oversight:** Divorce involves significant legal consequences, particularly when it comes to property division and child custody. Any administrative system would need to ensure that its decisions are legally sound and fair, and that it respects the rights of both parties.

- **Social and Cultural Acceptance:** The concept of administrative divorce is relatively new in India. It may take time for people to accept this approach, especially in more traditional or rural settings where divorce remains taboo.
- **Implementation and Infrastructure:** The successful implementation of an administrative law system for divorce would require significant investment in infrastructure, technology, and training for administrative officers or mediators.

12. Narendra V/s K. Meena, 2016 SCC Online SC 1114

Conclusion

Administrative law presents a compelling new approach to handling divorce in India, with the potential to simplify, expedite, and make the process more accessible for individuals seeking marital dissolution. By introducing divorce tribunals, online platforms, and mediation services, administrative law could alleviate the burden on India's overburdened courts, while providing a more efficient and user-friendly divorce process.

However, careful consideration must be given to the legal, cultural, and infrastructural challenges involved in implementing such a system. If these obstacles can be overcome, administrative law could significantly transform the divorce landscape in India, offering a faster, fairer, and more inclusive process for individuals navigating the difficult and emotional journey of marital separation.

Case Laws

In Anil Kumar Jain V/s Maya Jain (2009) 10 SCC 415,

Hon'ble apex court has held "Supreme court can, in exercise of its extraordinary power under article 142 of the constitution, convert a proceeding under Section 13 of the Hindu Marriage Act, 1955, into one under Section 13B and pass a decree for mutual divorce, without waiting for the statutory period of six months; none of the other court can exercise such powers."

The Hon'ble Supreme Court in *Sanjeeta Das V/s Tapan Kumar Mohanti (2010) 10 SCC 222* has observed that: "No Court can assume jurisdiction to dissolve a Hindu Marriage simply on the basis of the consent of the parties dehors the grounds enumerated under Section 13 of the Act, unless of course the consenting parties proceed under Section 13B of the Act."

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