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**BALANCING RIGHTS AND DUTIES: A LEGAL EXAMINATION OF
CRUELTY AS GROUND FOR DIVORCE; CONJUGAL RIGHTS;
MAINTENANCE UNDER HINDU MARRIAGE ACT**

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ABSTRACT

The Hindu Marriage Act, 1955, marked a transformative moment in Indian legal history by codifying divorce laws; custody of children ; maintenance of a spouse after divorce and many more for Hindus and introducing modern legal frameworks to a traditionally sacrosanct institution. This research paper focus on how the act attempts to balance the rights and duties of spouses through provisions like divorce [section 13] ; restitution of Conjugal rights [section 9] ; maintenance [section 24-25] . The objective of this research is how does law define and treat cruelty as a ground for divorce ; does the concept of restitution of conjugal rights conflicts with personal liberty and how effectively does the maintenance ensure economic justice post- separation . Furthermore, the study discusses the growing call for gender-neutral reforms in divorce laws, critiquing the patriarchal underpinnings of alimony and maintenance provisions. It also explores the impact of global legal norms on Indian divorce laws, emphasizing the importance of equitable asset division and spousal support. The institution of marriage in India, particularly under Hindu law, has undergone significant evolution, mirroring broader societal, cultural, and legal transformations. Historically, Hindu marriage was regarded as a sacramental, indissoluble union, rooted in religious beliefs and rituals⁵ . The concept of divorce, as understood in the contemporary legal framework, was virtually non-existent in classical Hindu law. Marriage was considered not just a contractual arrangement but a sacred, lifelong bond that extended beyond death, symbolizing the union of families rather than merely individuals. This traditional view, however, came under scrutiny in the post-independence era, when the need to modernize personal laws and align them with the constitutional ideals of equality and individual freedom became evident. A key

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issue with the Act is the absence of "irretrievable breakdown of marriage" as a statutory ground for divorce, despite judicial endorsement of this concept in several landmark cases. The lack of explicit legal recognition for this ground results in prolonged litigation for couples whose marriages have effectively ceased to function, but who are unable to obtain a divorce without proving fault, such as cruelty or desertion.

KEY WORDS: Hindu marriage; cruelty; conjugal rights; divorce; custody of a child

INTRODUCTION

The Hindu Marriage Act 1955 is an act to amend and codify the law relating to marriage among the Hindus .According to law Hindus are Buddhist ; Jains; Sikhs . The Hindu marriage Act is applicable who are Hindus by birth ; by religion ; who are not Muslim; Christian ; Parsi ; Jew by religion . For a marriage to be solemnized between 2 Hindus , the few conditions need to be fulfilled which are :

- Neither party has a spouse living at the time of the marriage
- Neither party, is incapable of giving valid consent to marriage in consequences of unsound mind or suffering from any mental disorder of such kind or unfit for marriage and the procreation of children .
- Bridegroom has completed the age of 21 years for groom and 18 years for bride .
- The parties should not be in the degrees of prohibited relationship unless the custom or usage demand governing demand or permits them .
- The parties should be not be sapinda relationship which refers to any person extends as far as 3rd generation [inclusive] in the line of ascent through the mother or father .

A Hindu marriage will only be solemnized in accordance with the customary rites and ceremonies of either party . which such rites and ceremonies include the saptapadi [taking of 7 steps by the bridegroom and the bride jointly before the sacred fire] , the marriage became complete and binding when the seventh step is taken . For the purpose of facilitating the proof of Hindu marriage , the state government may make rules providing that the parties to any such marriage may have the particulars relating to their marriage entered in such manner and subject to

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such conditions as may be prescribed in a Hindu Marriage Register kept for the purpose . All rules made under this section shall be laid before the state legislature as soon as may be after they are made . The objective of this research paper is How does the law define and treat *cruelty* as a ground for divorce? Does the concept of *restitution of conjugal rights* conflict with personal liberty? How effectively does *maintenance* ensure economic justice post-separation?

Conceptual Framework: Marriage, Rights, and Duties

- Explain the Hindu view of marriage as a *sacrament* vs. a *contract* post-1955.

The sacramental view of Hindu marriage emphasizes its religious character, indissolubility, and the absence of exit options like divorce. Key features include: Performance of sacred rituals (e.g., saptapadi, homa, kanyadaan). Lifelong bond between spouses. Emphasis on family and societal obligations over individual will. In contrast, the contractual view, endorsed through legislative reforms, regards marriage as a social contract, granting: Legal rights to enter or exit the relationship. Access to divorce, maintenance, and custody. Autonomy to individuals, especially women, to challenge marital injustice. The Hindu Marriage Act, 1955 seeks to balance both approaches by preserving rituals and customs while providing statutory remedies for matrimonial dispute.

Conjugal rights = enforcement of duty to cohabit. It is intended to facilitate reconciliation and preserve the marriage institution by enforcing the fundamental right to consortium (society and comfort of a spouse).

Controversy and the Balance: Critics argue RCR infringes upon the fundamental rights to privacy, personal liberty (Article 21), and equality (Article 14) by potentially coercing a person into an unwanted cohabitation, even in abusive marriages.

Interconnectedness: A key implication is its link to divorce and maintenance: a decree of RCR can be a ground for divorce if cohabitation is not resumed for a period of one year or more after the decree is passed (Section 13(1A)). It also enables an aggrieved spouse to apply for maintenance under Section 25 HMA. This link reveals a complex legal mechanism where a duty (cohabitation) can transition into a right (divorce or maintenance).

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Maintenance = continuation of duty of support.: It is intended to facilitate reconciliation and preserve the marriage institution by enforcing the fundamental right to consortium (society and comfort of a spouse).

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Cruelty as a Ground for Divorce

- **Statutory Provision:**

“Divorce is an institution only a few weeks later in origin than marriage.” – Voltaire. All major religions have their own laws, which govern divorces within their own community, and there are regulations regarding divorce in inter-faith marriages. Hindus, including Buddhists, Sikhs and Jains, are governed by the Hindu Marriage Act, 1955; Christians by the Indian Divorce Act, 1869; Parsis by the Parsi Marriage and Divorce Act, 1936; and Muslims by the Dissolution of Muslim Marriages Act, 1939. Civil marriages and inter-community marriages and divorces are governed by the Special Marriage Act, 1954. Under all the Indian Personal laws, dissolution of marriage is based on guilt or fault theory of divorce. It is only under the Hindu Marriage Act, 1955, the Special Marriage Act, 1954 and the Parsi Marriage and Divorce Act, 1936 that divorce by mutual consent and on the basis of irretrievable breakdown of marriage are also recognized. Further, under Muslim law, the husband has the right to unilateral divorce. In order, to make the law more equitable the Dissolution of Muslim Marriages Act, 1939 provides a woman married under Muslim law with the option of seeking divorce on certain fault grounds.

- As the field of Personal Law is a vast field so I have restricted the scope of this research paper to the fault ground theory of divorce under Indian personal law. The

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research paper analyzes the common aspects between the provisions of the various personal law statutes and further look at the legal implications of these.

- This research paper will also look at the elements of difference between the various statutes, keeping in mind the feasibility of trying to resolve such differences in order to come up with a single, comprehensive law, at least as regards divorce .

Physical vs. mental cruelty; evolution of the concept.

Cruelty is defined as conduct that causes such mental suffering or physical pain that it endangers the life, limb, or health of the petitioner or makes it impossible for the petitioner to carry on living with the respondent. Physical cruelty refers to any act or conduct that causes bodily harm or poses a threat to the life, limb, or health of one spouse by the other spouse. It includes physical violence, assault, or any other form of harmful behavior that endangers the physical well-being of the victim. In cases of physical cruelty, a spouse can file for divorce or seek legal protection. Mental cruelty refers to the infliction of emotional or psychological distress on one spouse by the other spouse. It includes behavior or conduct that is of such a nature that it makes it impossible for the victim spouse to live with the other spouse. Mental cruelty can take various forms, such as constant humiliation, verbal abuse, harassment, neglect, threats, or persistent indifference towards the well-being of the other spouse. The concept of mental cruelty is subjective and depends on the facts and circumstances of each case. There is no exhaustive list of acts or behaviors that constitute mental cruelty, as it can vary based on individual experiences and cultural contexts. However, some common examples of mental cruelty recognized in Hindu matrimonial law include:

1. Verbal abuse and humiliation: Persistent use of derogatory language, insults, or constant berating of the spouse.
2. Threats and intimidation: Regularly subjecting the spouse to threats of physical harm, emotional blackmail, or other forms of intimidation.
3. Emotional abandonment: Neglecting the emotional needs of the spouse, showing complete indifference, or engaging in emotional detachment.
4. Harassment and stalking: Stalking, monitoring, or excessive surveillance of the spouse, causing fear and distress.
5. Constant criticism and ridicule: Regularly belittling or mocking the spouse's abilities, appearance, or character.

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6. Social isolation: Deliberately isolating the spouse from family, friends, or social support networks, leading to feelings of loneliness and exclusion.
7. Unreasonable demands and control: Exerting excessive control over the spouse's actions, decisions, or freedom, leading to a loss of individuality and autonomy.
8. Denial of basic rights and amenities: Withholding financial support, denying access to basic amenities, or intentionally causing living conditions that are detrimental to the spouse's well-being.

It's important to note that the courts consider the cumulative effect of various acts and behaviors when determining mental cruelty. The severity, frequency, and duration of the conduct are also taken into account. The spouse seeking divorce on grounds of mental cruelty must provide evidence and demonstrate that the cruelty has reached a level where it has made the continuation of the marriage intolerable.

- **Judicial Interpretation:**

Shobha Rani vs MadhukarReddi (1988) 1 SCC 105

In this case, the Hon'ble Supreme Court held that the test for cruelty is whether the conduct of the respondent is of such a nature that the petitioner cannot reasonably be expected to live with the respondent. It noted that the concept of cruelty is ever-changing and cannot be defined with precision.

Samar Ghosh vs. Jaya Ghosh (2007) — guidelines for mental cruelty.

The Hon'ble Supreme Court held that, cruelty can be physical as well as mental:- If it is physical, it is a question of fact and degree. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to the impact of such treatment on the mind of the spouse. Whether caused reasonable apprehension that it would be harmful or injurious to live with the other, ultimately, is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse.

V. Bhaqat vs. D. Bhaqat (1994) — mental cruelty and breakdown of marriage.

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The Hon'ble Supreme Court held that the mental cruelty may be caused by a number of factors, including false accusations of adultery or unchastity, unjustified denial of sexual intercourse, unjustified refusal to have children, and excessive demands for dowry

Shri Rakesh Raman vs Smt. Kavita

Civil appeal No. 2012 of 2013 The Hon'ble Supreme Court held that, In our considered opinion, a marital relationship which has only become more bitter and acrimonious over the years, does nothing but inflicts cruelty on both the sides. To keep the façade of this broken marriage alive would be doing injustice to both the parties. A marriage which has broken down irretrievably, in our opinion spells cruelty to both the parties, as in such a relationship each party is treating the other with cruelty. It is therefore a ground for dissolution of marriage under Section 13 (1) (ia) of the Act .

Restitution of Conjugal Rights (Sec. 9)

Legal right to cohabitation — when one spouse withdraws without reasonable cause.: Critics argue RCR infringes upon the fundamental rights to privacy, personal liberty (Article 21), and equality (Article 14) by potentially coercing a person into an unwanted cohabitation, even in abusive marriages.

The remedy of Restitution of Conjugal Rights is a new for the Indian matrimonial jurisprudence that finds its origin in the Jewish laws¹¹. The remedy was unknown to Hindu law till the British introduced. In fact it is the only matrimonial remedy which was made available under the British rule to all communities in India under the general law¹². Restitution of conjugal rights has its roots in feudal England, where marriage was considered as a property deal and wife was part of man's possession like other chattels¹³ .

1. The other spouse has withdrawn from the society of the petitioner.
2. There is no reasonable excuse for such withdrawal. Should the respondent allege reasonable excuse, the burden of proof lies on him or her.
3. The court satisfied as to the truth of the statements made in the petition.

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4. No legal grounds exist for refusing the decree. There is withdrawal from society when one of the spouses, without reasonable excuse, terminates an existing relationship with the intention of forsaking the other, and permanently or indefinitely abandoning such relationship.

Thus, while a husband and wife might be at times living apart, but maintaining a frequent and regular social and conjugal relationship, in such a case there would be no withdrawal from society. So after the solemnization of the marriage if either of the spouses without reasonable excuse withdraws himself or herself from the society of the other then aggrieved party has a legal right to file a petition in the matrimonial court for restitution of conjugal rights¹⁴.

CASE LAW

T. SAREETHA VS T. VENKATA SUBBAIAH

The constitutional validity of the provision for restitution of conjugal challenged before the Andhra Pradesh High Court in T.Sareetha V. T. Venkatasubbaiah. In this case sareetha claimed that section 9 of the Act is liable to be struck down as violative of the fundamental rights in part III of the Constitution of India, specifically Article 14 and 21. Justice Choudary¹⁷ held that section 9 is a savage and barbarous remedy, violating the right to privacy and human dignity guaranteed by Article 21 of the Constitution. It denies the women her free choice whether, when and how her body is to become the vehicle for the procreation of another human being. The woman loses her control over her most intimate decisions. Clearly therefore, the right to privacy guaranteed by Article 21 is flagrantly violated by a decree of restitution of conjugal right. As a result the section 9 of Hindu marriage act 1955 was unconstitutional.

Prevention of Domestic Violence and Interim Reliefs

Though the Protection of Women from Domestic Violence Act, 2005 is generally enforced by magistrate courts, many High Courts have allowed Family Courts to exercise concurrent jurisdiction, especially when domestic violence claims arise during divorce or custody proceedings. Reliefs that may be granted include:

Protection orders Residence orders

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Maintenance and Economic Justice

- **Statutory Basis:**

This section empowers either spouse (usually the economically weaker one) to seek interim maintenance and litigation expenses while the suit is pending. Courts ensure that: The claimant lacks independent income. The relief is just and reasonable. This provision is critical in safeguarding women's access to justice, especially in matrimonial litigation.

Section 26 ? Custody of Children

Section 26 allows courts to pass interim or final orders regarding the custody, maintenance, and education of minor children, keeping in mind the welfare of the child as the paramount consideration. In *Githa Hariharan v. RBI* (1999), the Supreme Court emphasized gender-neutral guardianship rights, promoting equal parental roles.

Protection of Children:

Custody and Welfare Principle In Hindu matrimonial disputes involving children, Section 26 of the Hindu Marriage Act empowers courts to make orders regarding custody, maintenance, and education of minors. The paramount consideration is the welfare of the child, as emphasized in *Gaurav Nagpal v. Sumedha Nagpal* (2009). Family Courts: Assess the child's emotional, educational, and physical needs. Consider parental behavior and stability. Encourage joint custody or visitation if appropriate

PARENTAGE AND RELATED RIGHTS OF WOMEN UNDER HINDU LAW

Parentage or parenthood is a concept which covers within its ambit the important rights exercised by a person as a parent. There are certain rights which flow from parenthood and are provided for in almost all legal systems. In the present *Journal of Pharmaceutical Negative Results* | Volume 13 | Special Issue 5 | 2022 44 context, the focus shall be upon the right of a mother to the custody and guardianship of her child and also the right to adopt a

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child and give a child in adoption under Hindu law²². Guardianship implies the ability to exercise rights over the child's person and property. Custody implies the responsibility of raising a child. It cannot be disputed that both the mother and father are equally important in the life of a child, still the father was favoured in issues of proprietary rights and the mother's role was that of a care taker of her children. The ancient Hindu society was organized on the basis of the joint family system which was more inclusive. Within this social organization, there was sufficient protection for all minors and dependants. The minors were always deemed to be in the care and protection of the Karta as well as the elders in the joint family. Within this social structure, even an orphan child was awarded protection.

Balancing Rights and Duties

Family Courts also hear applications under Section 125 CrPC (maintenance), and sometimes even Protection of Women from Domestic Violence Act, 2005, offering multi-dimensional legal reliefs in a single forum. Women often face financial and social vulnerabilities after separation. Family Courts mitigate these by: Speedy interim maintenance orders. Preventing economic destitution. Enforcing visitation and child support rights.

Protection of Women's Rights: Maintenance, Custody, and Residence Family Courts serve as vital platforms for protecting the rights of Hindu women, particularly those facing marital discord. Under the Hindu Marriage Act and Section 24?

Section 25, courts can grant: Maintenance pendente lite (during litigation). Permanent alimony post-separation or divorce. Right to reside in the matrimonial home.

Preventing Breakdown of Marriage:

The Conciliatory Role One of the core objectives of Family Courts is to preserve marriages where possible. Section 9 of the Family Courts Act mandates judges to attempt reconciliation before adjudication. The court may refer parties to counselors or mediation centers to facilitate dialogue and healing. This conciliatory approach is particularly significant in Hindu marriages, where cultural and religious norms often stigmatize divorce. Family Courts strive to: Address misunderstandings through counseling. Promote negotiated settlements. Delay litigation until alternatives are exhausted Courts have reiterated that reconciliation should not be a formality but a genuine effort to save marriages.

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CONCLUSION

Matrimonial Remedies and Reliefs Available The Hindu Marriage Act offers several remedial provisions that enable parties to address matrimonial grievances:

- a. Restitution of conjugal rights (Section 9)
- b. Judicial separation (Section 10)
- c. Divorce (Section 13 and 13B)
- d. Alimony and maintenance (Sections 24?25)
- e. Custody and guardianship (Section 26)

These remedies aim to balance personalliberty and social stability, allowing individuals to either seek reconciliation or exit a harmful marriage .NEED FOR CHANGE It has been seen that the Law of Guardianship and Custody was not free from gender bias. The Law Commission of India took note of the same first in 1980 and then again in 1989. However, changes to the law were made as late as 2010. The restitution of conjugal rights is one of the reliefs that are provided to the spouses in distress in the institution of marriage by law. Decree of restitution of conjugal rights could be passed in case of valid marriages only. Apart from legislation relating to matrimonial law, courts in India in case of all communities have passed decrees for restitution of conjugal rights. HINDU Section 9 of the Hindu Marriage Act, 1955 provides for the restitution of the conjugal rights. The aggrieved party may apply, by petition to the District Court, for the restitution of conjugal rights. One of the important implications of Section 9 of the Hindu Marriage Act, 1955 is that it provides an opportunity to an aggrieved party to apply for maintenance under Section 25 of the Hindu Marriage Act, 1955. The legal grounds for refusing to grant relief are: • For instance, any ground on which the respondent could have asked for a decree for • judicial separation or for nullity of marriage or for divorce;

- Reasonable excuse for withdrawing from the society of the petitioner;
- Any conduct on the part of the petitioner or fact tantamount to the petitioner taking • advantage of his or her own wrong or any disability for the purpose of such relief;
- Unnecessary or improper delay in instituting the proceeding.

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REFERENCE

- HINDU MARRIAGE ACT 1955
- THE INDIAN EVIDENCE ACT ,1872
- MANU PATRA
- LEGAL NEXIS



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