

---

**INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH**

---

**FROM STATUTORY REMEDY TO FUNDAMENTAL RIGHT: THE  
CONSTITUTIONAL EVOLUTION OF DIVORCE IN INDIA**

- Ms Savitri Suthar<sup>1</sup> & Dr Kaptan Chand<sup>2</sup>

**HISTORICAL FOUNDATIONS OF DIVORCE IN INDIA**

The Indian tradition of marriage has long been rooted in the idea of a sacrosanct and indissoluble union, a concept deeply embedded in the country's religious and cultural customs. In the pre-colonial Hindu cultures, marriage between two people was seen as a sacrament and not a contract; divorce was very difficult, with few customary clauses that were followed in some form or another in some societies. In the same regard, Islamic jurisprudence acknowledged the event of divorce but controlled it by implementing strict procedural practices that favour reconciliation and fair outcomes. Other faiths, including Christianity and Zoroastrianism (also known as Parsi), practised different paradigms regarding doctrines, which often restricted the allowable reasons for severing marital bonds. Therefore, the pre-modern era in India was dominated by theological principles, traditional regulations, and patriarchal establishments, thus giving women little control over the process of marriage dissolution.<sup>3</sup>

The epoch of colonialism marked the beginning of legal intervention in marital life. Initially hesitant to interfere with the law of personal action, the British rule gradually introduced acts to meet the soaring demand for codified remedies. The Indian Divorce Act of 1869, which applied to Christians, was one of the first statutory instruments. Still, it was pervaded by the spirit of Victorian moralism and offered only a few reasons for divorce, often to the advantage of male litigants. Until the mid-twentieth century, Hindus had a lifelong commitment to marital indissolubility, until the 1955 Hindu Marriage Act provided a formal

---

<sup>1</sup> Research Scholar, Tania University, Sri Ganganagar.

<sup>2</sup> Associate Professor of Law, Faculty of Law, Tania University, Sri Ganganagar.

<sup>3</sup> Publisher, THE EVOLUTION OF DIVORCE LAWS IN INDIA: FROM GROUNDS TO PROCESS TO MODERN CHALLENGES » Lawful Legal, Lawful Legal (2024). <https://lawfullegal.in/the-evolution-of-divorce-laws-in-india-from-grounds-to-process-to-modern-challenges/>.

For general queries or to submit your research for publication, kindly email us at [ijalr.editorial@gmail.com](mailto:ijalr.editorial@gmail.com)

justification of divorce. Though the Act was groundbreaking in recognising a dissolution, it limited divorce to certain reasons such as cruelty, desertion, adultery, and conversion, thus imagining it as a special right in place of an inherent right. Similarly, the Special Marriage Act of 1954 provided a secular framework for interfaith marriages and divorce, albeit in a parallel, limited statutory design. The Muslim personal law continued to accept the existence of divorce, including talaq; however, the praxis often created issues of fairness and gender equity, which subsequently became matters of constitutional concern.

The legal image of divorce in this interregnum was characterised by inflexibility and limited availability. It was presented as a legal exemption from marital sanctity, which is available only in specific situations and following lengthy court hearings. This was a style that echoed the colonial and early post-independence culture, prioritising social stability and religious sensitivities over an individual's needs. Divorce was not interpreted as an act of individual freedom but rather seen as a regulated legal solution, carefully delimited to avoid alleged abuse. Therefore, the institution of marriage was given priority instead of addressing the rights of people trapped in abusive or unsustainable marriages.<sup>4</sup>

Simultaneously, the evolution of family law in other nations around the globe has started shifting towards understanding the concept of divorce as an integral part of individual freedom. Other nations like the United States and the United Kingdom gradually broadened the grounds of divorce and leaned towards the teachings, such as the irretrievable breakdown of marriage. These comparative tendencies highlighted the growing awareness of personal independence and respect in the context of marital relations, thereby paving the way for constitutional discussion in India. However, the Indian legal system was still cautious in nature, reflecting the conflict between traditionalism and modernity, as well as the tension between collective and individual morality and rights.

Altogether, the historical underpinnings of divorce in India trace the path of the religiously controlled indissolubility to the reluctantly codified statutory solutions. Despite the introduction of divorce legislation in the mid-twentieth century being a major legal change, it was still embedded in a remedial paradigm rather than a rights-based paradigm. This chapter highlights the understanding of divorce as a statutory concession, first established as a colonial legacy and influenced by religious sensitivities, and demonstrates

---

<sup>4</sup>Adv.B.S. Sharma, The evolution of divorce in India: From social taboo to legal reality, (2024).  
<https://www.linkedin.com/pulse/evolution-divorce-india-from-social-taboo-legal-reality-sharma-alex>.

For general queries or to submit your research for publication, kindly email us at [ijalr.editorial@gmail.com](mailto:ijalr.editorial@gmail.com)

how this understanding led to the subsequent reformulation of the matter within a constitutional discourse of autonomy, equality, and dignity.

## CONSTITUTIONAL DIMENSIONS OF MARRIAGE AND DIVORCE

The Indian constitutional framework provides a prism-like transformational lens through which individual laws and matrimonial solutions can be explored. Traditionally, the discourse has been largely oriented towards social and religious institutions, but with the Constitution in place, it now protects individual rights, equality, and dignity. Divorce, therefore, cannot be understood as a mere concession as a statute but needs to be challenged on the basis of the fundamental rights as stipulated in Part III of the Constitution. This chapter examines the interplay of divorce and the constitutional values- especially autonomy, equality, liberty and freedom of religion and outlines how these aspects have gradually transformed the legal concept of the dissolution of marriages in the Indian context.<sup>5</sup>

The key constitutional question in this case is the one in Article 14, which ensures equality under the law and equal protection of the laws. Laws regulating marriage that provide unequal conditions of divorce between men and women or favour certain religious groups are often attacked on the basis of their violation. Indeed, in the example of the Indian Divorce Act, historically, discriminatory terms gave men simpler access to divorce and put forward substantive equality issues. This argument is further strengthened by the broader non-discriminatory requirement of Article 15, as gender-based differences in divorce remedies undermine the commitment to equality in citizenship. In this regard, therefore, it is impossible to consider the constitutional aspects of divorce in isolation from the broader gender justice conflict.<sup>6</sup>

Article 21, which ensures the right to life and personal liberty, is also equally important. The Supreme Court has consistently expanded the scope of Article 21 to encompass the rights to live with dignity, privacy, and autonomy. In this context, the ability to escape a tyrannical or dysfunctional marriage emerges as a crucial aspect of individual freedom. The privacy confirmation in *K.S. Puttaswamy v. Union of India*<sup>7</sup>, and the stress on

---

<sup>5</sup>Reimagining the right to marry in India: From constitutional guarantees to the demand for No-Fault Divorce | International Journal of Law Management & Humanities, (n.d.). <https://ijlmh.com/paper/reimagining-the-right-to-marry-in-india-from-constitutional-guarantees-to-the-demand-for-no-fault-divorce/>.

<sup>6</sup>G. Ramaseshan, National Judicial Academy, Family court functioning; constitutional mandate, n.d. [https://nja.gov.in/Concluded\\_Programmes/2017-18/P-1028\\_PPTs/2.Family%20Court%20Functioning.pdf](https://nja.gov.in/Concluded_Programmes/2017-18/P-1028_PPTs/2.Family%20Court%20Functioning.pdf).

<sup>7</sup>AIR 2018 SC (SUPP) 1841,

For general queries or to submit your research for publication, kindly email us at [ijalr.editorial@gmail.com](mailto:ijalr.editorial@gmail.com)



dignity in *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*,<sup>8</sup> provides a constitutional basis for divorce on grounds other than statutory ones; it becomes an indispensable part of personal liberty. The changing jurisprudence in the judiciary implies that denying the available divorce solutions can be a breach of Article 21 because people are incarcerated in a relationship that undermines their dignity and their own will.

Article 19, which guarantees the freedoms of speech, association, and movement, is also a key component of the constitutional discourse. These freedoms are never suppressed by marriage, which is a social institution. The ability to end a marriage, especially one that has gone hopelessly wrong, is directly connected to the ability to choose whether to be associated with or not to be associated with another human being. Individual liberty is reflected in the constitutional guarantee of independence in personal decision-making, including the right to make marital choices. Thus, the issue of divorce is not a personal but a constitutional one of freedom and self-determination.<sup>9</sup>

There is another level of complication in religious freedom under Article 25. The laws governing marriage and divorce are sometimes defended by religious practices, although the Supreme Court has frequently ruled that these laws should not conflict with constitutional morality. The conflict between religious autonomy and constitutional rights is evident in discussions such as the prohibition of triple talaq in the case of *Shayara Bano v. Union of India*,<sup>10</sup> based on the breach of principles of equality and dignity. This landmark case is used to demonstrate how constitutional values can supersede religiously authorised practices when they infringe upon fundamental rights, thereby arguing that divorce must be contextualised within a constitutional framework rather than being limited to religious doctrine.

Combined, these constitutional aspects indicate a slow but steady shift in the legal understanding of divorce in India. Since its inception as a statutory measure limited to inflexible reasons, divorce is now being interpreted as a constitutional right based on equality, liberty, and dignity. The courts have been instrumental in this change by expanding the understanding of basic rights to protect individuals within the microcosm of the institution of marriage. This development highlights the larger constitutional initiative of aligning individual legislation with the privileges of primary rights, where matrimonial

---

<sup>8</sup>AIR 1981 SUPREME COURT 746

<sup>9</sup>G. Ramaseshan, National Judicial Academy, Family court functioning; constitutional mandate, n.d.  
[https://nja.gov.in/Concluded\\_Programmes/2017-18/P-1028\\_PPTs/2.Family%20Court%20Functioning.pdf](https://nja.gov.in/Concluded_Programmes/2017-18/P-1028_PPTs/2.Family%20Court%20Functioning.pdf).

<sup>10</sup>AIR 2017 SUPREME COURT 4609.

For general queries or to submit your research for publication, kindly email us at [ijalr.editorial@gmail.com](mailto:ijalr.editorial@gmail.com)

remedies are not solely based on statutory laws, but also reflect the values entrenched in the Constitution.

To summarise, the constitutional aspects of marriage and divorce exemplify the active interaction between tradition and modernity, collective morality and individual rights. This chapter demonstrates how the Constitution recharacterizes the scope of personal law by situating divorce within the context of Articles 14, 15, 19, 21, and 25, thereby transforming divorce from a limited statutory concession into a possible fundamental right. This reposition preconditions further judicial and legislative discussion on the question of whether the right to leave a marriage is to be considered as a necessary part of constitutional freedom, which will help to fill the gap between statutory solutions and fundamental rights.

## JUDICIAL EVOLUTION OF DIVORCE JURISPRUDENCE

The judiciary has taken a central position in defining the boundaries of the law of divorce in the Indian legal system, frequently intervening to fill legislative gaps and reformulating statutory provisions in harmony with constitutional values. Firstly, designed as a strictly limited statutory recourse, divorce, over time, with repeated judicial proclamations, has managed to broaden its scope to become consistent with the principles of equality, dignity, and individual autonomy. This chapter illustrates how landmark judgments have evolved to transform the jurisprudence of divorce, thereby highlighting the conflict between legislative inertia and judicial activism.<sup>11</sup>

The first attempt to challenge the courts was the inflexibility in the statutory bases of divorce under the Hindu Marriage Act, 1955, and the Special Marriage Act, 1954. Such enactments left divorce limited to specific reasons like cruelty, desertion, adultery and conversion, which provided a limited latitude of discretion of the courts. However, the judicial branch gradually extended these presuppositions. As an example, the notion of cruelty was broadened in its scope to include mental cruelty, emotional torture, and a lack of

---

<sup>11</sup>K.A. Khurana, Evolution of Hindu divorce laws: From sacred texts to modern gender justice, Khurana And Khurana (2025). <https://www.khuranaandkhurana.com/2025/05/16/evolution-of-hindu-divorce-laws-from-sacred-texts-to-modern-gender-justice>.

For general queries or to submit your research for publication, kindly email us at [ijalr.editorial@gmail.com](mailto:ijalr.editorial@gmail.com)

companionship. In *V. Bhagat v. D. Bhagat (1994)*<sup>12</sup>, the Supreme Court accepted that continuous humiliations and falsely made accusations may amount to mental cruelty. It thus provided the widest range of relief to the spouses trapped in oppressive marital conditions.

The judges also struggled with the fact of irrevocably broken marriages- a basis that was not available in current laws. In *Naveen Kohli v. Neelu Kohli (2006)*.<sup>13</sup> The Supreme Court noted that these marriages cannot be forced to continue and prescribed a structural change in legislation to formalise this ground. Although Parliament has not taken any decisive action regarding this suggestion, the courts have occasionally applied Article 142 of the Constitution to declare marriages void on this basis, as observed in the case of *Amardeep Singh v. Harveen Kaur(2017)*. Such interventions highlight that the judiciary was ready to focus on personal dignity and autonomy rather than on rigid statutory paradigms.<sup>14</sup>

Divorce through consent has also undergone significant judicial changes. Although mutual-consent divorce in Section 13B of the Hindu Marriage Act stipulates a six-month cooling-off period before the divorce can be successful, the Supreme Court ruled in *Amardeep Singh v. Harveen Kaur* that it is during this period that prospects of reconciliation are not expected to be successful. Such a practical approach incorporates the judiciary's responsiveness to the realities of couples' lives and a commitment to delivering expeditious justice. The Court has strengthened the idea of divorce being not a statutory concession but a personal freedom by making the procedure less restrictive.<sup>15</sup>

The involvement of the judicial system in divorce goes beyond the appropriate aspects of gender justice and constitutional morality. In *Shayara Bano v. UOI(2017)*,<sup>16</sup> the Supreme Court struck down the practice of instant triple talaq in Union of India, as the court argued that it contradicted the equality and dignity provisions found in the Constitution. Although the case did not concern the invalidity of a given type of divorce, but instead its upholding, it represents a bigger trend in which the Court sought to make matrimonial law more consistent with constitutional principles. Likewise, in *Joseph Shine v. Union of India (2018)*, the Court was able to decriminalize adultery by arguing that marriage could never be interpreted as a patriarchal institution that inhibits the autonomy of individuals. All these rulings indicate a

---

<sup>12</sup>1994 SCC (1) 337.

<sup>13</sup>Naveen Kohli v. Neelu Kohli (2004), Drishti Judiciary (n.d.). <https://www.drishtijudiciary.com/landmark-judgement/hindu-law/naveen-Kohli-v-neelu-kohli-2004>.

<sup>14</sup>AIR 2017 SUPREME COURT 4417.

<sup>15</sup>Id.

<sup>16</sup>AIR 2017 SUPREME COURT 4609.

For general queries or to submit your research for publication, kindly email us at [ijalr.editorial@gmail.com](mailto:ijalr.editorial@gmail.com)



shift in recognising divorce and other marriage issues as constitutional issues, rather than statutory issues.<sup>17</sup>

Changes in judicial jurisprudence of divorce are a reflection, at the same time, of a fine balance between activism and restraint. Though the courts have expanded the term cruelty, accepted unremediable matrimonial breakdown, and eased procedural requirements, in many cases, they have avoided pronouncing divorce as a per se right. Such precaution is due to a recognition that family law is woven inextricably with religious and cultural mores, and that high-level judicial dicta can induce sociocultural pressure. However, by using the statutory statements based on Articles 14, 15 and 21, the judiciary has preconditioned a rights-based understanding of divorce.

To sum up, the legal history of divorce in India reflects a gradual but unquestionably significant shift in approaches to statutory provisions on divorce, which can now be characterised as a transition to constitutional interpretations based on the principles of dignity, autonomy, and equality. The courts have broadened the scope of divorce, criticised discriminatory approaches, and permeated matrimonial law with constitutional principles through the use of seminal decisions. As the process of legislative reform progresses at a gradual pace, judicial activism has ensured that divorce is increasingly viewed not as a compromise but as a fundamental aspect of individual freedom. This reform underscores the judiciary's pivotal role in implementing the constitutionalization of divorce, thereby bridging the gap between statutory law and fundamental rights.

## **DIVORCE AND GENDER JUSTICE**

The Indian divorce investigation should be placed within the broader framework of gender justice. Traditionally, the law on matrimony has been used as a channel through which patriarchal rules have been perpetuated at the expense of female independence. Divorce as a statutory relief was often not available to women, both legally and socially. Therefore, the constitutional revision of divorce has serious repercussions for gender equality in

---

<sup>17</sup>AIR 2018 SUPREME COURT 4898.

For general queries or to submit your research for publication, kindly email us at [ijalr.editorial@gmail.com](mailto:ijalr.editorial@gmail.com)

<https://www.ijalr.in/>

transforming the ability to terminate marriage as a concession to personal law into a right to dignity and independence.<sup>18</sup>

### **Historical Disparity between men and women in Divorce Law.**

The early statutory provisions faced severe challenges to divorce-seeking, as faced by women. The Indian Divorce Act of 1869, which applied to Christians, allowed men to take a divorce only based on adultery, but women had to show adultery along with cruelty or desertion. Similarly, in the pre-1955 Hindu law regime, marriage was deemed to be indissoluble, and, practically, this gave women no option. Even with the codification of the Hindu Marriage Act of 1955, grounds given in divorce were mostly male-centric, with a greater burden of proving placed on the woman. These legal injustices strengthened patriarchal dominion, putting women in abusive marriages and making them unequal citizens.<sup>19</sup>

### **Equality before the Law and Matrimonial Remedies.**

Articles 14 and 15 of the Constitution, which provide for equality, are a strong tool to attack the gender discrimination inherent in divorce legislation. It is a common theme among many courts that matrimonial remedies should be aligned with constitutional principles of non-discrimination.<sup>20</sup> In *Shayara Bano v. UOI 2017*,<sup>21</sup> the Supreme Court struck down the instant triple talaq provision and confirmed that unilateral divorce practices were against the dignity and equality of women. This was a historic ruling that personal law conformed to constitutional morality, and that gender justice cannot be subjugated to ideological assertion. Similarly, in *Mary Roy v. State of Kerala (1986)*, the Court ruled that when it decided in favour of equality of inheritance for Christian women, it thereby enhanced the bargaining power of Christian women in situations of divorce and marriage.<sup>22</sup>

### **Maintenance, Alimony and Custody Rights.**

---

<sup>18</sup>G. Jahan, H. Ali, Institute of Legal Studies & Research, Mangalayatan University, Aligarh -202146, Uttar Pradesh, India, The issue of divorce and gender justice under personal law in India, 2023.

<sup>19</sup>Atul, Divorce law reforms in India: changes and their impact, Experienced Divorce Lawyer in Pune | Family Law Advocate (2025). <https://advmayurg.com/divorce-law-reforms-in-india/>.

<sup>20</sup>Dhiman, Determining the constitutionality of the matrimonial remedy of restitution of conjugal rights under Hindu law.

<sup>21</sup>AIR 2017 SUPREME COURT 4609.

<sup>22</sup>AIR 1986 SUPREME COURT 1011.

For general queries or to submit your research for publication, kindly email us at [ijalr.editorial@gmail.com](mailto:ijalr.editorial@gmail.com)



Divorce is not only about the disintegration of marriage but also the economic and social aftermath of the same. Women who are often dependent upon their husbands economically experience significant problems in getting maintenance and alimony. The judiciary's interpretations of Section 125 of the Code of Criminal Procedure have expanded the rights of women to maintenance as a means of achieving social justice, rather than merely as a form of charity, in *Danial Latifi v. In the case of Union of India (2001)*, the Supreme Court confirmed the right to fair and reasonable provision of the Muslim women after the expiry of the period of iddat, to avoid making them penniless following divorce. Custodial conflicts have also been changed to give particular focus to the welfare of the child, but women still face systematic disadvantages in asserting their parental rights.<sup>23</sup>

### **Critique of Feminist and Social Reality.**

Numerous feminist scholars have criticised the legal restrictions of divorce law as being especially statutory and serving to reinforce patriarchal domination as well as stigmatise those women seeking dissolution. Divorce is not a social norm, but it is a socially stigmatised process, especially among women who are usually accused of causing a marital breakdown. Both legal challenges and the stigmatisation of divorce make it a daunting task, which contributes to gender inequality. Feminist arguments contend that genuine gender justice necessitates not only legal reform but also socio-cultural transformation, in which the autonomy of women in choosing partners is not only accepted but also established as the norm.<sup>24</sup>

Nevertheless, divorce is becoming an empowerment mechanism, despite the prevailing issues. Divorce supports the Constitution to allow women to live dignified lives by enabling them to get out of repressive marriages. Courts have acknowledged mental cruelty, irretrievable breakdown and procedural dexterity, and this has expanded access of women to remedies, thus reducing the obstacle of dissolution. The previously understood social failure is gradually reintroduced as a statement of freedom and equality. This paradigm shift is indicative of the broader constitutional project of transforming family law into an area of rights rather than a matter of concessions.

---

<sup>23</sup>AIR 2001 SUPREME COURT 3958.

<sup>24</sup>V.N. Mhamane, A critique of twentieth century feminist criticism, (2021).  
<https://www.redalyc.org/journal/7038/703873550018/html/>.

For general queries or to submit your research for publication, kindly email us at [ijalr.editorial@gmail.com](mailto:ijalr.editorial@gmail.com)

The intersection of divorce and gender justice explains how constitutional values can be reinterpreted to transform the law of marriage. Since statutory inequalities have discriminated against women and judicial interventions have predetermined the dignity and equality, the history of divorce legislation in India highlights the primacy of gender justice in that history. As long as social stigma and financial insecurity exist, the legalisation of divorce as a constitutional right provides a feasible avenue to empowerment and equality. In this way, divorce is not merely a legal solution, but an essential component of a woman's right to independence, dignity, and equal citizenship.

### **TOWARDS A FUNDAMENTAL RIGHT TO DIVORCE**

The history of the development of divorce law in India reveals a progressive shift from statutory concessions to a constitutional right. Although the Hindu Marriage Act, the Special Marriage Act, and similar individual legislations originally limited divorce as a method of last resort and applied it only in very limited conditions, judicial rulings and constitutional interpretations have increasingly recognised autonomy, dignity, and will as the basis for marital separation. This line of thought provokes the question: Is it possible to recognise divorce not only as a statutory remedy but as one of the fundamental rights stipulated in the Indian Constitution?<sup>25</sup>

The central point in this argument is the doctrine of individual autonomy. The Constitution documents the fact that all citizens have the freedom to make their own choices in matters of life and liberty. Although marriage is an institution in society, it does not diminish the autonomy of the individual in shaping their life course. A natural ability to exit a marriage that has become abusive, unsustainable, or uncompanionate is part and parcel of exercising autonomy. Denial or unreasonable denial of access to divorce is tantamount to confining people in relationships that undermine their dignity and is therefore unlawful to the constitutional promise of liberty as mentioned in Article 21.

Thoroughly connected with autonomy is the notion of dignity, a domain that the Supreme Court has consistently maintained was a necessary element of the right to life. In

---

<sup>25</sup>B. Indulia, Beyond Traditional Grounds under Hindu Law: Supreme Court's Power to Grant Divorce on Ground of Irretrievable Breakdown of Marriage | SCC Blog, SCC Times (2024).  
<https://www.scconline.com/blog/post/2024/02/23/beyond-traditional-grounds-hindu-law-supreme-court-power-grant-divorce-ground-of-irretrievable-breakdown-of-marriage/>.

For general queries or to submit your research for publication, kindly email us at [ijalr.editorial@gmail.com](mailto:ijalr.editorial@gmail.com)

monumental cases like *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*,<sup>26</sup> and *K.S. Puttaswamy v. Union of India*, the Court emphasised that dignity was not a value, but rather the essence of constitutional morality. In the marriage scenario, dignity requires that people have the freedom to leave relationships that undermine self-respect or those that expose them to abuse. Divorce is therefore a constitutional protection against the loss of dignity, which considers marriage as a place of equals and not a place of oppression.<sup>27</sup>

The fact that divorce has been acknowledged as a fundamental right also aligns with the concept of equality stated in Articles 14 and 15. Traditionally, divorce laws have been gendered asymmetrically, with men's preferential treatment and a greater rise in the standard of proof against women. Courts intervened, as exemplified by the case of *Shayara Bano v. Union of India*, in which the practice of triple talaq was struck down. Attempts have been made to correct these imbalances, but structural obstacles have arisen. The Constitution would have ensured that the right to divorce is not a privilege that only comes to light when such a statute is discriminatory, but is guaranteed to all citizens regardless of gender or religion.

There is a second aspect of this discussion that relates to the constitutional estimation of choice, as seen in *Navtej Singh Johar v. Union of India*.<sup>28</sup> The Supreme Court ensured that personal relationships are personal arenas of choice that the Constitution safeguards. With this argument, the decision to terminate a marriage should also be considered as one that is constitutionally protected. In this respect, divorce is not a breakdown of the marriage institution, but rather a confirmation of a person's right to self-determination.

The trend of acknowledging divorce as a major right also reflects the overall constitutional endeavour of balancing the law of the populace and constitutional morality. Even though personal laws are based on religious and cultural traditions, they cannot supersede the fundamental rights enshrined in the Constitution. The judiciary has repeatedly held that the courts must give precedence to traditions that are contrary to constitutional values, in favour of higher values such as equality, liberty, and dignity. Divorce, therefore, needs to be redefined not as a concession offered by personal law but as a constitutional right among all citizens.

---

<sup>26</sup>AIR 1981 SUPREME COURT 746.

<sup>27</sup>AIR 2018 SC (SUPP) 1841.

<sup>28</sup>AIR 2018 SUPREME COURT 4321.

For general queries or to submit your research for publication, kindly email us at [ijalr.editorial@gmail.com](mailto:ijalr.editorial@gmail.com)



To recap, legal recognition of divorce as a constitutional right is the most logical outcome of the constitutional development of family law in India. Placing divorce in the framework of autonomy, dignity, equality, and choice, the Constitution transforms it from a statutory solution into one of the aspects of personal freedom. This is because such a reframing would not allow people to get caught in oppressive marriages, and marriage, as we know it, would be saved as a partnership based on mutual respect. It is in this direction that the fundamental right to divorce has been gathering momentum and thereby completing the guarantee of justice, liberty, and equality in the most personal domain of human life that the Constitution promised.

The constitutionalization of divorce as a right, which is a normative matter, is a complex issue. The shift between the statutory claim and the right is not a straight line; it is influenced by deeply rooted social, cultural, and institutional issues. In this chapter, the author examines the primary criticisms and challenges facing the constitutional evolution of divorce in India, including religious pluralism, legislative inertia in response to social stigma, and theoretical issues related to over-constitutionalization.

### **Uniformity of Constitutions and Religious Personal Laws.**

The coexistence of various personal laws in India is one of the most significant problems. Individual Hindu, Muslim, Christian and Parsi communities have their own matrimonial codes, which translate into the religious doctrines and the culture. The provisions for divorce in these models differ significantly; some are more liberal, while others are more restrictive. Constitutionalisation of divorce brings up the question of whether there should be a standardised approach taken in all communities. According to the advocates of the Uniform Civil Code, constitutional values of equality and dignity require harmonisation, and its opponents warn that introducing uniformity could violate religious freedom in Article 25. The dilemma between respecting religious freedom and imposing constitutional morality, therefore, has been a point of challenge.<sup>29</sup>

### **The Paralysis of Legislation and Judicial Activism.**

Another criticism is the issue of disproportion between legislative reform and judicial activism. Although courts have expanded the grounds that trigger divorce through ingenious

---

<sup>29</sup>R. Garg, Does the Uniform Civil Code brings uniformity in India - iPleaders, iPleaders (2023).  
<https://blog.ipleaders.in/uniform-civil-code-brings-uniformity-india/>.

For general queries or to submit your research for publication, kindly email us at [ijalr.editorial@gmail.com](mailto:ijalr.editorial@gmail.com)

interpretations, Parliament has taken a considerable amount of time to enact new grounds, such as the irreparable breakdown of marriage. Judicial activists argue that the use of Article 142 to dissolve marriages by the judiciary compromises the separation of powers, as it overrides the courts' discretion in favour of the transparency of the law. At the same time, this legislative inertia puts people in the standing of judicial goodwill, which brings doubts and inconsistency. The difficulty, therefore, is to strike a balance that maintains constitutional values without undermining democratic processes.<sup>30</sup>

Even in the countries that have divorce remedies, facilities are often hindered by real impediments. Prolonged court cases, expensive litigation processes and lack of access to legal services disproportionately impact women and disadvantaged communities. These structural barriers cannot be overcome without considering the constitutional promise of dignity and autonomy. These changes should be procedural reforms, streamlined procedures and legal assistance, so that the rights of divorce do not just exist on paper, but can be enforced in reality. In the absence of these, constitutionalisation of divorce could end up being a far-fetched concept instead of a transformational one.

Lastly, the issue is balancing individual rights against the stability of society as a whole. Marriage is not merely a social institution; it is also a private agreement that has significant consequences in relation to kinship, inheritance, and childcare. Divorce as a basic right should be supported with protective measures to ensure less fortunate parties are not at risk, especially the children and spouses who are economically dependent. The constitutionalisation of divorce cannot be done in isolation; it must be combined with other policies on maintenance, custody, and social security to provide holistic justice.

The history of the constitutional development of divorce in India is not an easy task. Although the concepts of autonomy, dignity, and equality are compelling reasons for accepting divorce as a basic right, serious issues exist. The road ahead is challenged by religious pluralism, social stigma, legislative inertia, and theoretical issues related to over-constitutionalization. These issues can only be addressed through a delicate balance that promotes the values of the constitution and social realities, ensuring that divorce is not only legal but also socially acceptable and practically accessible. Here, the arguments against

---

<sup>30</sup>Supreme Court Observer, SC's power to directly grant divorce: Judgement in plain English - Supreme Court Observer, Supreme Court Observer (2023). <https://www.scobserver.in/reports/divorce-under-article-142-judgement-in-plain-english/>.

For general queries or to submit your research for publication, kindly email us at [ijalr.editorial@gmail.com](mailto:ijalr.editorial@gmail.com)

constitutionalising divorce cannot be dismissed so easily, but rather constitute fundamental parts of the discussion, which can help enhance the discussion and steer towards a just and fair system of family law.

## CONCLUSION

The history of divorce law in India exemplifies the broader constitutional movement for individual rights in a highly traditional Indian society with significant religious plurality. The law, initially bound by strict statutory terms and procedural barriers, has gradually evolved into a discourse that focuses on autonomy, dignity, and equality. Such a change highlights the dynamism of the interplay between legislative acts, judicial interpretation, and constitutional morality in the redefinition of the intimate sphere of matrimonial dissolution.

The historical basis of divorce exposes the colonial legacies and post-independence codifications to put the dissolution as an exception to marital sanctity. Divorce was addressed as a curative measure, not a right, and could only be acquired under certain conditions, and was often out of reach for women. Nonetheless, the constitutional order introduced new aspects: Articles 14, 15, 19, 21, and 25 shifted matrimonial law into the context of personal freedom, equality, and dignity, thereby undermining discriminatory stipulations and extending individual freedom. With landmark decisions, the judiciary emerged as the major driver of this change, broadening the scope of issues such as cruelty, acknowledging irreversible breakdown, softening procedural shackles, and invalidating practices that did not conform to constitutional values.

The interplay between divorce and gender justice is yet another way to understand the emancipatory aspect of constitutional interpretation. Courts have revolutionised divorce as an empowering process, not an embarrassing one, by tearing down patriarchal traditions and redefining women as entitled to maintenance and custody, as well as to dignity. However, the way to the acceptance of divorce as a basic right is not easy, as there are such obstacles as religious pluralism, social stigma, legislative dysfunction, and theoretical fears of over-constitutionalization. These aspects make the discussion rather complicated and require an even-handed approach that could protect individual rights and maintain social stability.

Nevertheless, the constitutionalization of divorce can be seen as a significant shift in Indian law concerning the family. It acknowledges the fact that although marriage is a social institution, it cannot infringe on the basic rights of individuals. The ability to leave a marriage

For general queries or to submit your research for publication, kindly email us at [ijalr.editorial@gmail.com](mailto:ijalr.editorial@gmail.com)

<https://www.ijalr.in/>



is part of the constitutional pledge of liberty and dignity that makes relationships in personal life partnerships of equal but not places of domination. The acknowledgement of divorce would not undermine the institution of marriage as a basic right; on the contrary, it would be strengthened because marriage would be based on mutual respect and free association.

Ultimately, the development of divorce legislation in India illustrates how the Constitution can influence even the most intimate aspects of human life. It fills the void that exists between what is statutory and what exists in law, between tradition and modernity, and between the collective and the individual. The fact that divorce is recognised as a constitutional right is not just a simple legal amendment but a restatement of the values of justice, liberty and equality that lie at the heart of the Indian Constitution. The constitutionalization of divorce, as India continues to grapple with the intricacies of personal law, provides an avenue for a more inclusive, dignified, and rights-based system of family law, one that respects the sanctity of marriage and the autonomy of individual decision-making.

For general queries or to submit your research for publication, kindly email us at [ijalr.editorial@gmail.com](mailto:ijalr.editorial@gmail.com)

<https://www.ijalr.in/>