



Original Article

Raising Some Issues/Problems in the Unhappy Marriages in India

Dr. Umesh Shrikrishnarao Aswar

Associate Professor of Law,

Government of Maharashtra's Government Law College, 'A' Road, Churchgate, Mumbai India

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Correspondence Address:

Dr. Umesh Shrikrishnarao Aswar
Associate Professor of Law, Government
of Maharashtra's Government Law
College, 'A' Road, Churchgate, Mumbai
India

Email: umeshaswar@gmail.com



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Abstract

Nowadays, the percentage of divorces has increased. One of the important reasons for the same is the incompatibility of the spouses. Incompatibility includes differences in nature, perceptions of life, lifestyle, food, clothing, mannerisms, and other allied aspects of day-to-day life. Differences, inconsistencies in sexual orientation, and feeling sexual pleasure are also important reasons that spouses are unhappy in their marriages because they are not able to have the requisite, desired sexual pleasure. It has nothing to do with the impotency of either spouse.

Keywords: Theories of divorce-sexual orientation mode, manner, and extent of seeking sexual pleasure of the spouses-hasty divorces-fall of the marriage institution.

1. Statement of Problem: Under the personal law of the different religious communities in India, marriage is a union of persons of opposite sexes, i.e., male and female. Satisfaction of sexual desires is an important objective of marriage. The sexual orientation, mode, manner, and extent of seeking pleasure differ from person to person. When spouses in a marriage are not taking care of each other's sexual needs, it results in issues in marital life. It could be identified as one of the aspects of the incompatibility of these spouses. As this issue is private and subtle, there is a need to explore it, which ultimately leads these spouses towards an unhappy marriage life, creating a base for divorce and the fall of the marriage institution.

2. Limitations of the Article: In the present research article, issues in Muslim marriages, if any, have not been covered due to the unavailability of data. Muslim personal law is largely uncodified, and as a matter of fact and reality, Muslim spouses in India are hardly inclined to reach out to the civil courts for the sake of enforcement of their matrimonial rights, including a remedy of the Talaq (Divorce).

3. Introduction

In modern times, the marriage institution in India is under threat. The percentage of divorce has increased in the communities, namely Hindus, Christians, and Parsis. In India, independent personal laws for all different religious groups do exist. In the personal laws of the Hindus, Christians, and Parsis, theories of divorce are under implementation. The divorce, as one of the matrimonial remedies, is granted by the family courts/ district courts in conformity with the provisions of the personal laws of these religious communities on the basis of the relevant theory of divorce. In the Democratic countries, the theories of divorce that are under implementation are the fault theory of divorce, the consent theory of divorce, and the irretrievable breakdown theory of divorce. However, in India, two theories of divorce, namely the fault theory of divorce and the consent theory of divorce, are under implementation. The irretrievable breakdown theory of divorce, indirectly, (in a subtle form) to the limited extent, has been adopted under Hindu law. Under it, non-resumption of the cohabitation for one or more years after passing of the decree of the restitution of conjugal rights, similarly, non-resumption of the cohabitation for one or more years beyond the period prescribed in the decree of the judicial separation has been made available as the ground of the divorce. In the former case, the decree holder and in the latter case both of the spouses are entitled to seek divorce by the trial courts. The prerogative to grant a remedy of divorce in matrimonial cases which have reached the appellate stage under the irretrievable breakdown theory of divorce has been reserved by the high courts and the Supreme Court.

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According to the fault theory of divorce, marriage can be dissolved only if one of the parties to the marriage has, after the solemnization of the marriage, committed some matrimonial offence/fault. This offence/fault must be one that is recognized as a ground of divorce. This implies that the parties, though free to enter into a wedlock, are not equally free to get out of it. The marriage could be dissolved only on certain grounds prescribed by law. It stipulates the existence of two things, namely: (a) a guilty party, i.e., the party who has committed one of the specified matrimonial offences/faults, and (b) an innocent party, who has been outraged and who has played no role in the criminality or the matrimonial offence committed by the other party. The commission of the matrimonial offence/fault under the present theory includes commission of adultery, cruelty, desertion, or having been contracted with insanity, incurable/ contagious and virulent forms of the diseases of either spouse, including STDS (sexually transmitted diseases) & leprosy.

After the installation of fault theory as the basis of divorce, it was realized that a marriage very often fails not because of the fault or guilt of any party to the marriage, but it may fail for no fault of either party. It may happen that two parties who have entered into a marriage with free consent, later on, realize that they made a mistake, and, for one reason or another, are finding it difficult to pull together smoothly and to live together harmoniously. It is not because they are wicked, bad, or malicious people. They are just ordinary, average human beings, but it has just happened that their marriage has turned out to be a bad bargain, and they find it impossible to continue to live together. Should they have no right to correct their error, to cast off a burden which has become onerous, intolerable? In short, continuance of such a marriage is neither in the individual's nor in the social interest.

Accordingly, the consent theory of divorce originated where spouses, in a mutually agreed manner, without charging any accusation against each other, dissolve their marriage. Thus, it is argued that freedom of marriage implies freedom of divorce. It could also be argued that the consent theory has brought chaos to family life, resulting in hasty divorces.

The basic postulate of breakdown theory is that if a marriage has broken down without any possibility of repair (or irretrievably), then it should be dissolved, without looking to the fault of any party. The breakdown theory of divorce is indirectly prescribed for Hindus, as referred above; similar provisions are there in the Special Marriage Act, Parsi Marriage and Divorce Act 1936. The Indian law commission also recommended it as an additional ground of divorce, that a marriage could be dissolved based on 'three years' separate and apart living. The Supreme Court on 21 March 2006 in Naveen Kohli v. Neelu Kohli, AIR 2006 SC 1675, recommended that the central government should amend the Hindu Marriage Act to include 'irretrievable breakdown of marriage' as an independent ground for divorce.

But so far, Parliament has not enacted any law or initiated any amendment in the personal laws, making implementation of the theory of divorce, namely, irretrievable breakdown of marriage. The fault theory of divorce doesn't allow spouses to break a matrimonial relationship on trivial grounds. However, even though the spouses are not fighting with each other, if they are unhappy in their sexual and/marital life, then they could easily resort to the consent theory or irretrievable breakdown theory of the divorce (excluding Indian Christians) to put an end to the marriage. Similarly, being unsatisfied, unhappy, either of them may be committing any matrimonial offenses/faults, where the other spouse could file a divorce petition. Thus, this sexual /marital unhappiness in many cases proves to be the root cause of a divorce.

4. Unhappy spouses in marriages in India: It is needless to state that traditionally marriages in the society are contemplated between persons of opposite sex, that is, male & female. In Indian society, there is no way to explore one's sexual orientation; rather, it has always been attached to sex and gender. Sexual activity of the person in Indian society generally commences on the solemnization of the marriage. Persons in India who are adolescents or young, even though they are indulging in sexual activities/intercourse before marriage, hardly get the opportunity to understand their sexual orientation and sexual desires. Males and the females even though they have some experience of sexual activity/intercourse before marriage or males and the females who not at all have any exposure to the sexual activity/intercourse till marriage; on solemnization of the marriage many times finds themselves in their sex life in awkward situation. Sexual activities/intercourse after marriage have always been performed by such spouses with the traditional notions attached to their respective sexes and genders.

It could be understood with the help of the following instances: i) On the Solemnization of the marriage, spouses are supposed to consummate their marriage on the first night only. At many places, elderly people in the family immediately on the next morning try to ascertain said fact by making a physical inspection of the bedroom of the spouses. They do not even hesitate to talk with the spouses regarding the same. Thus, this newly married couple has always been under pressure to consummate the marriage based on societal and gender norms. Their friends and neighbors also become party of this process with their family members & relatives. ii) In most of the families, married couples do not get the opportunity to explore themselves physically and emotionally by going away from home on honeymoon. iii) While at the matrimonial home, married couples do not get enough private space wherein they, with the help of each other, can understand their respective sexual orientation, mode, manner, and extent of seeking pleasure in sex; rather, they are indulged in penetrative intercourse only. iv) Most couples do not enjoy the liberty to plan their family, and they are compelled to immediately start their family after marriage under pressure from their relatives, friends, and neighbors. v) Pregnancy, childbearing and delivery of the child result in suspension of the sexual activities, intercourse between the married spouses before they could delve into their personal realm of sexual pleasure. vi) On the birth of the child, this married couple, particularly the female, has been oriented in the society in such a manner that they are supposed to control their sexual desires. vii) The situation is worsened when couple gives birth to more than one child where because of the responsibility of the children, spouses can not enjoy their private space. viii) Day by day so called moral burden on the married couple of the upbringing of children increases to such an extent that spouses gradually start losing, first of all, their mental and later on their physical capability to engage in Sexual activities, intercourse. ix) When children grow up and when they are eventually married, now their parents (this elderly couple) do step into the shoes of their parents, relatives, friends, etc., and start enforcing the same expectations and pressure on the married life of their children, thus this vicious cycle continues. x) Many times, either spouse, after

fifty years of age, starts practicing certain religious rituals, carrying the personal perception of having cessation of sexual activities/ intercourse. Thus, such a spouse does not care about the sexual feelings of his/ her partner.

Thus, there exist two categories of married couples: the first one where they or any one of them has some exposure to the sexual activities/ intercourse before marriage, or the second category of couples where they or any one of them has no experience of the same only till marriage. These both category of couples, after the solemnization of the marriage, perform their sexual activities/ intercourse in conformity with the above-discussed societal and gender norms. They do not get any opportunity to explore their pleasure areas, and they are not even in a position to respect the sexual expectations of his or her spouse. It ultimately results in an unsatisfactory sexual life, which is not due to impotency of either spouse, and consequently, the married life of the couple becomes unhappy. When spouses are unhappy in their sexual life it leads towards any of the following consequences, i) Commission of adultery: When sexual orientation/ perceptions/ feelings/ activities and nature of the sexual intercourse etc. of the spouse has been accepted/ respected by the male or female other than the spouse then it leads towards commission of the adultery which is an offence against marriage. It is the ground of a judicial separation and divorce for Hindus, Christians & Parsis. ii) Unhappy spouses often engage in lesbian, gay, bisexual relationships or perform the sexual activities against the order of nature as a part of their sexual orientation, and the same again happens through adultery and with a person who is not his/her spouse. iii) Spouses may also take resort to the paid sex because in this case such hired person takes care of the sexual perceptions, wishes and feelings of his or her customer. iv) Many times such a spouses may not gather courage to give way for their sexual orientation/wishes rather he or she can keep blaming other for his or her unhappiness in sexual life /marriage life. v) Such unsatisfied, unhappy spouses often resort to vices such as liquor consumption, chain smoking, consuming any of the narcotic drugs, etc. They are also susceptible to health problems such as obesity, PCUD, thyroid, blood pressure, an increase in triglycerides, diabetes, and also face psychological issues v) Such unsatisfied and unhappy spouses are neither able to discharge their marital duties nor able to enjoy their conjugal rights towards each other. They are not even in a position to give proper upbringing to their children, and they are also harsh and careless to their parents. These spouses, being unsatisfied and unhappy in their marriage, at the time, find it suitable opt for the divorce. Accordingly, nowadays there is a phenomenon of an increase in the number of divorces.

Conclusion (Raising the issues): Based on the above-mentioned analysis, the following conclusions are drawn: i) The Indian social system/ environment doesn't allow the married spouses to ascertain their sexual orientation, mode, manner, and extent of seeking sexual pleasure; rather, it has always been attached to the sex and gender of the spouses. Therefore, sexual activities/intercourse after marriage have always been performed by such spouses with the notions attached to their respective sex & gender. It results in unhappiness in sexual and marital life.

ii) Such unhappy spouses many times by committing adultery indulge in lesbian, gay, bisexual relationships or perform sexual activities against the order of nature as a part of their sexual orientation with the person who is not his/her spouse. iii) Such unsatisfied spouses keep blaming the other spouse for his or her unhappiness in sexual life /marital life and do contract vices such as liquor, narcotic drug consumption, chain smoking, etc. They are also susceptible to severe health problems, as mentioned above. iv) These unsatisfied and unhappy spouses are not able to discharge their duties, namely compliance with the marital obligations, ensuring proper upbringing of the children, and taking care of their old-age parents. v) Finally, such unsatisfied, sad spouses take recourse to the above-discussed theories of divorce to put an end to the marriage, resulting in the fall of the vital marriage institution of the country.

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Conflicts of interest

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References:

1. Sir Dinshaw Fardunji Mulla, Hindu Law, Updated 21st Edition, Satyajeet Desai, Lexis Nexis Publication.
2. B. M. Gandhi, Hindu Law, 4th Edition by Sumeet Malik, Eastern Book Company.
3. Dr. Paras Diwan, Modern Hindu Law, Edition 2019-2020, Allahabad Law Agency.
4. R. K. Agarwal, Hindu Law, Twenty-Fifth, 2016, 2016Central Law Agency.
5. Dr. S.R. Myneni, Hindu Law, Edition 1st 2017, Asia Law House.
6. Prof. G.G.V. Subba Rao, Family Law in India, 10th Edition, Narendar Gogia Company, Hyderabad
7. Tahir Mahmood, Family Law in India, Eastern Book Company.