



# Gender Neutrality in Divorce Laws: A Need for Reform in Indian Matrimonial Legislation

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ARTICLE DETAILS	ABSTRACT
<b>Research Paper</b>	
<b>Keywords :</b>	
<b>Gender Neutrality, Divorce Laws, Matrimonial Legislation, Equality, Reform, India, Constitutional Rights.</b>	<i>The concept of gender neutrality in matrimonial laws, particularly in divorce, has emerged as a pivotal issue in the pursuit of equality and justice in modern India. While Indian law has evolved considerably since the enactment of the Hindu Marriage Act, 1955, the legislative framework continues to reflect deep-seated gender asymmetry. The law presumes women as victims and men as perpetrators in most matrimonial disputes, which does not always align with contemporary social realities where both genders may be equally vulnerable to marital breakdown. This paper examines the existing divorce laws in India, judicial trends, and comparative models from other jurisdictions to argue for the incorporation of gender-neutral principles in divorce legislation. It also identifies constitutional, ethical, and policy-based arguments supporting the reform and evaluates the challenges and implications of implementing gender-neutral matrimonial laws.</i>

## 1. Introduction

The institution of marriage, a cornerstone of Indian society, is legally protected and socially revered. However, as society evolves, the laws governing marriage and divorce must adapt to reflect changing values and gender roles. Indian matrimonial legislation, particularly divorce laws, remains largely gendered, premised on traditional assumptions of male dominance and female dependency.

Historically, legal provisions have been designed to protect women against exploitation and desertion, which were prevalent concerns during the mid-twentieth century. Yet, as gender roles shift and both men and women face complex forms of marital distress, it becomes imperative to ensure that divorce laws do not perpetuate gender bias.

In contemporary India, debates surrounding gender neutrality are expanding beyond the criminal justice system—where discussions on gender-neutral sexual offences and domestic violence are already prominent—into family and matrimonial law. The notion of gender neutrality in divorce emphasizes fairness, equal access to remedies, and impartial treatment by law, irrespective of sex.

This research critically analyses the extent to which Indian divorce laws remain gender-biased and advocates for reforms to align matrimonial legislation with constitutional guarantees of equality and non-discrimination under Articles 14, 15, and 21 of the Constitution of India.

## 2. Review of Literature

The subject of gender neutrality in matrimonial laws has drawn increasing academic attention, particularly as societal attitudes toward marriage, equality, and individual autonomy evolve.

Scholars such as Flavia Agnes (2011) have argued that Indian matrimonial law continues to reflect patriarchal assumptions, wherein legal provisions assume female subordination and dependency. According to her, while protective provisions serve a vital purpose, they often fail to account for cases where men are equally disadvantaged in matrimonial disputes.

Dr. Paras Diwan (2013) notes that the Hindu Marriage Act, 1955, though progressive at the time of its enactment, requires modernization to reflect a gender-equal perspective. He emphasizes that the law must serve as a neutral arbiter rather than a gendered protector.

In their comparative study, Agarwal and Tripathi (2018) highlight that Western jurisdictions such as the United States and the United Kingdom have adopted gender-neutral divorce statutes, focusing on equitable distribution of assets, maintenance, and custody irrespective of gender. They suggest India can draw valuable lessons from these reforms.

Further, the Law Commission of India's 71st Report (1978) and 217th Report (2009) both recognized the need for updating divorce laws in accordance with social changes, though they stopped short of explicitly recommending gender neutrality.

The National Commission for Women (NCW) and men's rights advocacy groups have also presented contrasting perspectives—while the former emphasizes continued legal protection for women due to systemic inequalities, the latter advocates for equal recognition of men's grievances in cases of false accusations and misuse of protective laws.

This literature collectively indicates a critical gap: while gender equality is constitutionally guaranteed, divorce laws remain largely unexamined from a gender-neutral lens, warranting a comprehensive legal and policy review.

### 3. Objectives of the Study

1. To examine the existing legal framework governing divorce in India from a gender perspective.
2. To identify gender-based disparities in the application and interpretation of divorce laws.
3. To analyze judicial trends concerning gender neutrality in matrimonial disputes.
4. To compare Indian divorce laws with gender-neutral systems in other jurisdictions.
5. To recommend reforms that can help achieve a gender-balanced matrimonial legal system in India.

### 4. Hypothesis

The present study proceeds with the following hypotheses:

1. Indian divorce laws are not entirely gender-neutral and tend to favor women through protective provisions.
2. Gender-specific laws, while initially necessary, may now contribute to reverse discrimination in certain cases.
3. A gender-neutral approach to divorce will better uphold constitutional guarantees of equality before law.
4. Comparative jurisdictions adopting gender-neutral legislation demonstrate more equitable outcomes.
5. Reforms introducing gender neutrality can enhance fairness and reduce misuse of matrimonial laws.

### 5. Research Methodology

This study adopts a doctrinal and analytical research methodology. Primary sources include statutory provisions such as the Hindu Marriage Act, 1955, Special Marriage Act, 1954, Indian Divorce Act, 1869, and relevant judgments of the Supreme Court and High Courts. Secondary sources include books, scholarly articles, Law Commission reports, and international legal frameworks.

The research follows a qualitative analytical approach, involving a critical examination of legal texts and judicial precedents to assess gender bias. A comparative method is also employed to analyze divorce laws



in selected jurisdictions such as the United States, United Kingdom, and Canada, where gender-neutral principles are more explicitly embedded in family law.

## **6. Legal Framework Governing Divorce in India**

Divorce in India is governed primarily by religion-specific personal laws, which inherently differ in grounds, procedures, and rights available to spouses. The key statutes include:

### ***6.1 The Hindu Marriage Act, 1955***

This Act governs divorce among Hindus, Buddhists, Jains, and Sikhs. Grounds for divorce under Section 13 include adultery, cruelty, desertion, conversion, unsoundness of mind, venereal disease, and renunciation of the world. Although these grounds appear gender-neutral, certain provisions such as Section 13(2) grant exclusive rights to the wife—for instance, the right to seek divorce if the husband has another wife or if he was guilty of rape, sodomy, or bestiality.

### ***6.2 The Indian Divorce Act, 1869***

Applicable to Christians, this Act was historically gender-biased, requiring higher proof from women seeking divorce. Subsequent amendments, including the Indian Divorce (Amendment) Act, 2001, sought to correct some of these imbalances, making the grounds for divorce more equal between men and women.

### ***6.3 The Muslim Personal Law (Shariat) Application Act, 1937***

Under Muslim law, the talaq system traditionally granted unilateral power of divorce to men, though subsequent judicial interventions—such as *Shayara Bano v. Union of India* (2017)—have curtailed the practice of instant triple talaq. Muslim women can seek divorce under the Dissolution of Muslim Marriages Act, 1939, but the grounds remain restrictive compared to male rights.

### ***6.4 The Special Marriage Act, 1954***

This secular law enables interfaith marriages and provides gender-symmetric grounds for divorce. However, its procedural requirements and social stigma limit its usage.

### ***6.5 The Parsi Marriage and Divorce Act, 1936***

While largely neutral, the Act contains provisions that may still reflect patriarchal assumptions, particularly regarding custody and maintenance.

### ***6.6 The Family Courts Act, 1984***

This Act promotes conciliation and settlement but lacks explicit gender-neutral safeguards. Despite being a procedural reform, it does not address the substantive gender bias embedded in personal laws.



The fragmented nature of matrimonial laws in India—each tied to religious identity—makes uniform gender neutrality difficult to achieve. The multiplicity of statutes creates inconsistencies, often leading to unequal treatment based on both gender and religion.

## **7. Gender Bias in Divorce Laws: A Critical Analysis**

Despite the apparent equality of divorce provisions under various personal laws, practical realities and statutory wording continue to favor one gender over the other—most commonly, women. This bias, though well-intentioned to protect historically disadvantaged groups, can result in unequal legal consequences.

Under the Hindu Marriage Act, 1955, provisions such as Section 25 (permanent alimony and maintenance) allow the court to order the husband to pay maintenance to the wife, but reciprocal provisions for husbands are rarely invoked or granted. Judicial interpretation has reinforced this one-sidedness.

Similarly, the Protection of Women from Domestic Violence Act, 2005—while progressive—exclusively defines women as victims, which indirectly influences family court proceedings. Men, even when facing psychological or emotional abuse, are denied equal remedies.

Furthermore, the criminalization of marital desertion or cruelty is disproportionately directed against men. This asymmetry, when combined with societal stigmas, perpetuates a presumption of male culpability in marital failure.

Legal scholars argue that this gendered approach ignores the complex emotional, economic, and psychological realities that both partners experience in a failing marriage. True equality, therefore, demands neutrality not only in language but also in implementation and judicial attitude.

## **8. Judicial Interpretation and Emerging Trends**

Indian courts have played a significant role in shaping matrimonial jurisprudence. Through progressive interpretations, they have occasionally bridged the gender divide, yet inconsistencies persist.

In *Naveen Kohli v. Neelu Kohli* (2006), the Supreme Court recognized irretrievable breakdown of marriage as a legitimate ground for divorce and urged legislative action to incorporate it formally. This judgment reflects a shift toward recognizing human dignity and emotional autonomy over rigid gender presumptions.

Similarly, in *K. Srinivas Rao v. D.A. Deepa* (2013), the Court emphasized mental cruelty as a ground for divorce and noted that such cruelty could be inflicted by either spouse, indicating a gender-neutral judicial understanding.

In *Shayara Bano v. Union of India* (2017), the Court's decision to invalidate triple talaq was a milestone in advancing gender equality. However, the decision primarily addressed women's rights within Muslim personal law, leaving the broader discourse on gender neutrality underexplored.

Conversely, in maintenance-related cases, such as *Bhuwan Mohan Singh v. Meena* (2014), the Court reaffirmed the husband's duty to maintain his wife, reiterating gender-specific obligations.

Recent High Court judgments—such as *Rani Sethi v. Sunil Sethi* (Delhi HC, 2011)—have shown a willingness to consider maintenance for husbands, but such rulings remain exceptions rather than the norm.

Thus, while the judiciary has demonstrated openness toward equitable interpretations, the absence of statutory gender-neutral language continues to limit uniform application.

## **9. Comparative Study: Gender-Neutral Divorce Laws in Other Jurisdictions**

### ***9.1 United States***

The United States operates under a no-fault divorce system, introduced in California in 1969 and now followed across all states. Divorce can be granted based on irreconcilable differences, without attributing fault to either spouse. The law treats both partners equally concerning property distribution, maintenance, and custody.

### ***9.2 United Kingdom***

The Divorce, Dissolution and Separation Act, 2020 introduced a gender-neutral, no-fault divorce mechanism, eliminating blame and promoting mutual respect. The law prioritizes equitable distribution and welfare of dependents over gender-based roles.

### ***9.3 Canada***

Canada's Divorce Act, 1985 is entirely gender-neutral, focusing on the breakdown of marriage rather than fault. The Act ensures that both parties have equal rights to seek divorce and claim spousal support based on economic disparity, not gender.

### ***9.4 Australia***

Australia's Family Law Act, 1975 established a gender-neutral family court system emphasizing conciliation and mediation. Both partners can apply for divorce on equal grounds of marital breakdown, reflecting a balanced approach.

These jurisdictions demonstrate that gender-neutral laws do not dilute women's rights but rather promote fairness, reduce litigation, and enhance social harmony. India can draw significant lessons from these models while adapting reforms to its socio-cultural context.

## **10. The Need for Gender-Neutral Reforms in India**

The call for gender-neutral divorce laws in India is grounded in the constitutional principles of equality (Article 14), non-discrimination (Article 15), and personal liberty (Article 21). The continued existence of gendered laws contradicts the spirit of constitutional morality and evolving jurisprudence on equality.

### ***10.1 Changing Social Realities***

Today, women contribute equally to family income, decision-making, and public life. Simultaneously, men face emotional distress, social stigma, and financial exploitation in certain marital disputes. The law must evolve to recognize these realities.

### ***10.2 Misuse of Protective Laws***

Although protective provisions like Section 498A (Section 86 of the Bharatiya Nyaya Sanhita, 2023 corresponding to Section 498A of the Indian Penal Code, 1860). and Dowry Prohibition Act were enacted to safeguard women, numerous cases have reported misuse. The Supreme Court in *Rajesh Sharma v. State of U.P.* (2017) acknowledged this issue, calling for balanced safeguards. Gender neutrality in matrimonial law would help restore faith in justice and reduce such misuse.

### ***10.3 Equality Before Law***

A gender-neutral divorce framework will ensure that relief and remedies are available to all, based on factual circumstances rather than gender stereotypes. It will also prevent the stigmatization of men while continuing to protect genuinely vulnerable spouses.

### ***10.4 International Obligations***

India, as a signatory to international instruments like CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women) and ICCPR, must ensure equality before law for all genders. Gender neutrality complements rather than contradicts these obligations.

## 11. Challenges in Implementing Gender-Neutral Divorce Laws

While the idea of gender neutrality is progressive, practical challenges remain:

1. **Socio-Cultural Resistance:** Patriarchal and traditional mindsets may resist change, interpreting neutrality as dilution of women's rights.
2. **Fear of Misuse:** Concerns persist that men may misuse neutral laws against women in maintenance or custody disputes.
3. **Legislative Inertia:** Personal laws are religion-based, and uniform reform requires political will and broad consensus, particularly concerning the Uniform Civil Code.
4. **Judicial Mindset:** Deep-seated gender assumptions in judicial interpretation could hinder consistent enforcement.
5. **Awareness and Access:** Gender-neutral laws must be accompanied by awareness campaigns and institutional training for family courts, counselors, and mediators.

Despite these challenges, reform is achievable through gradual legislative amendments, pilot implementation, and judicial advocacy.

## 12. Findings and Suggestions

1. **Codify Gender-Neutral Language:** Amend personal laws to explicitly use gender-neutral terms such as “spouse” instead of “husband” or “wife.”
2. **Introduce Irretrievable Breakdown as a Universal Ground:** This neutral ground will reduce adversarial litigation and ensure fairness.
3. **Equal Maintenance Rights:** Both spouses should have equal opportunity to claim maintenance based on economic dependency, not gender.
4. **Gender-Neutral Domestic Violence and Custody Laws:** Expand definitions in the Domestic Violence Act and Guardians and Wards Act to include all genders.
5. **Judicial Training:** Conduct regular sensitization workshops for judges, lawyers, and mediators to promote unbiased adjudication.
6. **Awareness Campaigns:** Encourage public understanding that neutrality ensures equality, not inequality.





7. **Law Commission Intervention:** A comprehensive report by the Law Commission on gender neutrality in matrimonial laws is urgently required.

### 13. Conclusion

Gender neutrality in divorce laws is not merely a legal reform—it is a moral, social, and constitutional necessity. Indian matrimonial legislation, rooted in traditional gender roles, must adapt to contemporary realities where equality transcends biological distinction. A gender-neutral approach will uphold fairness, reduce litigation abuse, and foster mutual respect between spouses.

The move toward neutrality does not negate women's protection but ensures balanced justice for all. As India moves toward modernity, its legal system must embody the constitutional vision of equality, ensuring that both men and women can seek relief without bias, stigma, or prejudice.

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