

SILENT SUFFERERS: TOLL OF MARITAL BREAKDOWN ON CHILDREN

By: -Adv Mahima Mehta

B .com LL. B, Senior Executive Legal, Crime Check

ABSTRACT

Traditionally, marriage in Indian society was considered a sacred and lifelong union, deeply rooted in cultural, spiritual, and moral values. It was seen not merely as a bond between two human beings but as a foundational pillar of family and social stability. However, with the rise of modernization, urbanization, and changing societal norms, the concept of marriage has undergone a significant transformation. The institution of marriage has evolved, often leading to an increase in separations and divorces.

This research paper critically examines the physical and psychological impact of such broken marriages on children. It highlights how the dissolution of a marital relationship adversely affects a child's emotional development, mental health, and sense of security.

There is also an urgent need to develop awareness, emotional sensitivity, and the establishment of strong systemic support to safeguard the well-being of children caught in the turmoil of parental separation

Keywords - *Broken Marriage, Children's Mental Health, Divorce in India, Custody and Welfare of Child, Emotional and Physical Health, Parental Separation*

INTRODUCTION

In ancient India, marriage was not just a relationship between two individuals, but a sacred bond meant to last a lifetime and even beyond. It wasn't simply about falling in love or choosing to live together; it was about uniting two families into one. The bride and groom were not the only ones entering into the relationship; their parents, relatives, and entire extended families became connected as well.

Hindu marriages have rituals and traditions that carry deep meaning. Ceremonies like *Kanyadaan* (giving away the bride), *Panigrahan* (the groom accepting the bride's hand), and *Saptapadi* (taking seven sacred circles around the holy fire). They were promises made in the

presence of God, family, and society to respect, care, and stand by each other in both good and difficult times. Back then, even though most people weren't highly educated, they valued customs, morals, and family honor deeply. Marriage was seen as a lifelong commitment, not something to walk away from easily. Breaking that bond was rare and often considered a matter of great shame, not just for the couple but for the entire family. It was more than a personal choice it was a duty of the husband and wife to preserve family unity, uphold traditions, and live a life rooted in loyalty and respect. In the modern era, the approach towards marriage is changing. The concept of divorce or separation is adopted more quickly than before. Sometimes, issues that were previously considered insignificant or manageable are now leading to the end of marriages. Divorce has shifted from being the last option after every effort has been made to a quicker solution when things get difficult. In some situations, especially when a relationship is truly toxic or unsafe, separation can bring much-needed relief. However, it's essential to remember that divorce has significant emotional and social consequences. It doesn't just affect the husband and wife; it impacts the entire family, of which children are often the most vulnerable. They may feel confused, anxious, or insecure. The absence of one parent in their daily life can impact their emotional growth, academic focus, and even their future perspective on relationships. Adjusting to new living arrangements, altered routines, and family tensions can leave them feeling isolated or mistrustful. That's why, while divorce is sometimes necessary, it's a decision that should be made with care, keeping in mind not just personal happiness, but also the long-term well-being of the children and the harmony of the other family members.

LEGAL PROVISION

Marriage, in the eyes of the law, is not only a social and emotional bond but also a legally enforceable contract that creates rights and obligations between spouses. The relationship between the couple sometimes becomes strained due to certain circumstances. The law provides specific grounds for divorce and judicial separation to safeguard the dignity and well-being of the parties involved in the marriage. While divorce offers a legal remedy to end marital ties, its impact goes far beyond the spouses.

One of the consequences is seen in the emotional and psychological health of children, which leads to feelings of insecurity, anxiety, disloyalty, academic decline, and social withdrawal among children. However, how the divorce or separation is handled affects how the children cope and adjust to the process.

In addition, custody of children is governed by different provisions under laws such as the Guardians and Wards Act, 1890, and other relevant personal laws, where the court's primary consideration is the welfare of the child. Even custody battles can cause prolonged stress, emotional trauma, and confusion in children, as they are caught in the middle of parental conflict.

The legal provision of grounds of divorce, custody of children, and its impact on the mental and physical health of children are as follows

Hindu Law - Hindu Marriage Act, 1955

The act of Hindu marriage is applicable for Hindus, Sikhs, Jains, and Buddhists:-

Section 9 of the Hindu Marriage Act deals with the Restitution of Conjugal Rights, where it allows the party to the marriage who has been aggrieved due to the other person's unreasonable desertion to file the petition in the court of law to return and complete the obligation of the marriage. Unlike most provisions under this Act, which talk about divorce, separation, or annulment. Section 9 makes an attempt to preserve the bond of marriage. It reflects the legislative intent to protect marriage by giving couples the chance to reconcile their differences before harsh decision of divorce. This section not only operates on legal remedies but also considers the social and cultural perspective to protect the institution of marriage¹.

Grounds for divorce according to section 13 of the Hindu Marriage Act are –

- Adultery - The situation where either of the persons in marriage is involved in intercourse with a person other than his/her spouse.
- Cruelty- When either of the individual in marriage causes physical violence, mental cruelty, or harm to their spouse
- Desertion – The person in marriage has abandoned the other individual for a minimum period of two years without reasonable cause.
- Conversion – The husband or wife ceases to be a Hindu by adopting another religion.
- Mental disorder – Either of the spouses is of unsound mind, making it unreasonable to live together in marriage
- Renunciation – When the parties in marriage decide to enter a religious order and renounce worldly life, in such a case, it becomes impossible to live in such a relationship for the other party.

¹ Hindu Marriage Act, 1955 - Section 9 - Restitution of conjugal rights

- Presumption of death – If one of the parties to a marriage has not heard from the other party for a minimum of seven years, such a situation can be the reason for the dissolution of the marriage².

Additional grounds available exclusively to a wife under Section 13(2)) of Hindu Marriage Act are:- Husband has an existing wife from before the marriage OR Husband has committed rape, sodomy, or bestiality OR Non-resumption of cohabitation with wife for one year after a maintenance decree OR Marriage solemnised before the wife attained the age of 15, and repudiated before she turned 18³.

Judicial Separation under Section 10

The grounds are the same as those for divorce; however, the marital tie remains legally intact, but the spouses are merely relieved from the obligation of marriage⁴.

Muslim Law - Muslim Marriage Act, 1939, and Muslim Personal Law

The grounds for dissolution of Marriage for the wife under Muslim Law are as follows:

- The husband's whereabouts have been unknown for a minimum of four years.
- The husband fails to provide maintenance for two years.
- The husband has been imprisoned for seven years or more for any crime.
- The husband has not been able to fulfil the marital obligation for three years.
- The husband is impotent - before or after marriage.
- The husband has been suffering from mental illness or any sexually transmitted diseases for two years.
- The husband has treated her wife with cruelty, including physical abuse, compelling immoral life, obstructing religious practice, or showing inequitable treatment among multiple wives⁵.

Christian Law – Indian Divorce Act, 1869 (as amended in 2001)

Grounds for Divorce under Sections 10 and 10A - Either spouse may seek divorce on the grounds as follows:-

² Hindu Marriage Act, 1956 - Section 13 - Grounds of divorce

³ Hindu Marriage Act, 1956 - Section 13(2) - Additional ground for divorce for wife.

⁴ Hindu Marriage Act, 1956 - Section 10 - Judicial separation

⁵ Muslim Marriage Act, 1939 - Section 2 - Ground for dissolution of marriage for wife

- Adultery where either of the persons in marriage is involved in intercourse with a person other than his/her spouse.
- Conversion to another religion.
- Cruelty in marriage caused by physical violence, mental cruelty, and harm to their spouse.
- Desertion for at least two years. Mental illness of two years' duration.
- Presumption of death after seven years' absence.
- Venereal disease (Sexually transmitted diseases) or leprosy (now largely repealed).
- Failure to resume cohabitation for two years following a restitution decree.
- Divorce by mutual consent where the party to the marriage, on common accord, decides to discontinue their married life (Section 10A)⁶

Parsi Law - Parsi Marriage and Divorce Act, 1936

Reasons for divorce under Section 32 of the Parsi Marriage and Divorce Act are as follows:

- The marriage has not been consummated within one year due to wilful refusal.
- Either spouse suffers from mental illness.
- At the time of marriage, the wife was pregnant with another person.
- The spouse has committed adultery, rape, or unnatural sexual offences.
- There has been cruelty.
- Desertion has persisted for two years.
- The spouse has not been heard of for seven years.
- There has been non-compliance with a decree for restitution of conjugal rights⁷.

Judicial Separation under Section 34 of the Parsi Marriage and Divorce Act is granted on the same grounds as divorce⁸.

Secular or Intercaste Marriage - Special Marriage Act, 1954

Grounds for Divorce under Section 27 - Applicable to marriages solemnized under this Act are as follows:

- Adultery
- Desertion for a continuous period of two years.
- Imprisonment for seven years or more.
- Cruelty.

⁶ Indian Divorce Act, 1869 - Section 10 and 10A - Ground for divorce

⁷ Parsi Marriage and Divorce Act, 1936 - Section 32 - Ground for divorce

⁸ Parsi Marriage and Divorce Act, 1936 - Section 34 - Judicial separation

- Mental illness for at least three years.
- Presumption of death after seven years' absence.
- Non-resumption of cohabitation for one year after judicial separation⁹.

Section 28 of the Special Marriage Act deals with divorce by mutual consent. It allows both husband and wife, if they have been living separately for one year or more, to jointly file a petition to end their marriage. This provision makes the process of separation less complicated and gives couples a chance to part ways respectfully¹⁰.

Additional grounds available to a wife:

- Husband has committed rape, sodomy, or bestiality.
- The husband was already married at the time of the wedding.

Judicial Separation under Section 23 - Grounds are identical to those for divorce under the said Act¹¹.

Legal Provision for the Custody of Children

1. Guardians and Wards Act, 1890

This Act applies in the absence of specific personal law provisions or where parties belong to different religions. The court authority to appoint a guardian for the person or property of a minor. Section 17 directs the court to consider the child's welfare as essential, considering age, sex, religion, preference (if the child is old enough), and the character and capacity of the guardian¹².

2. Hindu Marriage Act

Father is the natural guardian of a minor boy or unmarried girl, but after the age of five, custody is generally with the mother for young children. Section 26 of the said Act mentions that in case of the breaking of a marriage, the court can go against the natural principle mentioned before and decide considering the welfare of the child¹³.

⁹ Special Marriage Act, 1954 - Section 27 - Ground for divorce

¹⁰ Special Marriage Act, 1954 - Section 28 - Divorce by mutual consent

¹¹ Special Marriage Act, 1954 - Section 23 - Judicial separation

¹² Guardians and Wards Act, 1890 - Section 17

¹³ Hindu Marriage Act, 1955 - Section 26 - Custody of children

3. Muslim Law

A mother is normally entitled to custody of young children where the age of the child is up to 7 years for boys and until puberty for girls, but the rules may differ slightly for Shia and Sunni law. However, the court may deny custody to either parent if the welfare of the child is compromised.

4. Christian Law

Section 41 of the Indian Divorce Act gives the right to the court to make a decision relating to custody, maintenance, and education in the process of divorce for the welfare of a child¹⁴.

5. Parsi Law

Under Section 49 of the Parsi Marriage and Divorce Act, the court has the power to pass orders related to the custody of a child concerning his welfare¹⁵.

6. Special Marriage Act

Section 38 of the said Act grants the power to the court to make a judgment regarding the custody, maintenance and education of children¹⁶.

ANCIENT V/S MODERN - VIEWS ON DIVORCE

Marriage in Traditional Indian Society

In ancient Indian society, marriage was not merely a personal relationship between two individuals but a sacred union between two families. It was regarded as a lifelong bond, and in religious scriptures, it was seen as a divine commitment that is meant to follow even after death. In the Hindu scriptures, such as the Manusmriti explains the value of marriage and separation is discouraged. The concept of divorce was practically absent in many communities, and even when permitted legally, it carried a heavy social stigma.

Couples of earlier generations often saw marriage as a lifelong journey, with patience, tolerance, and compromises. Differences were addressed within the family or community framework, and the well-being of children, family honour, and societal stability were prioritised over personal complaints. The extended family system also acted as an extra pillar to strengthen the value system and solve the problem between the couple. Many times, grandparents, uncles, aunts, and cousins all contributed to childcare, reducing stress on the

¹⁴ Indian Divorce Act, 1869 - Section 41 - Custody, maintenance, and education of children

¹⁵ Parsi Marriage and Divorce Act, 1936 - Section 49 - Custody of children and welfare

¹⁶ Parsi Marriage and Divorce Act, 1936 - Section 49 - Custody of children and welfare

nuclear couple. Divorce was considered a last resort, undertaken only when the marriage became completely unsustainable; still, it was seen as a significant social shame in India.

Marriage in - 21st Century

In today's world, marriage means something very different from what it once did. Globalisation is making the new generation adopt Western lifestyles and values, often at the cost of forgetting their own rich Indian culture. Even better education, financial independence, especially among women, and the fast pace of urban life have changed the way we look at it. For most people, marriage is no longer an unbreakable relationship for life; it's seen as a partnership built on personal compatibility, emotional connection, and the freedom to live a life as individuals. This change has empowered people to leave toxic or abusive marriages and prioritize their well-being, breaking past societal stigma. However, it has also led to more separations over issues earlier seen as minor or manageable, such as lifestyle differences, habits, or family involvement.

REASONS FOR BROKEN MARRIAGE

Marriages often break down due to lack of communication, constant conflicts, or unresolved misunderstandings between partners. Financial stress and disagreements over responsibilities can further strain the relationship. Infidelity, lack of trust, and emotional or physical abuse are also major causes of separation. In some cases, differences in values, lifestyle, or family pressures create distance between spouses. Over time, the absence of mutual respect, support, and compatibility weakens the bond, leading to a broken marriage.

Marriage, in the eyes of the law, is a binding relationship that carries both rights and responsibilities. But sometimes, circumstances lead to its end. These changes, whether through divorce, death of a spouse, judicial separation, annulment, or remarriage, come with their legal processes, emotional consequences, and social impacts, especially on children.

Divorce - Complete dissolution of Marriage

Divorce in Indian is still not very common compared to many other countries in the world; the overall divorce rate in India is below 2%. But things are changing drastically in big cities like Mumbai, Delhi and Bengaluru - divorce rate in these cities has gone up by 30% - 40% in the last decade. Nowadays, people are least concerned about the social stigma that revolves around divorce. The individuals are financially independent and know more about their legal rights. Divorce laws in India differ based on religion; for example, Hindus follow the Hindu Marriage

Act, Christians the Indian Divorce Act, and Muslims the Dissolution of Muslim Marriages Act. While divorce gives people a chance to leave unhappy marriages and start fresh, it also brings stress, financial challenges, and social judgment, which can be difficult for an individual as well as the children involved in that marriage. For children, the effect of divorce can be very challenging. Growing up in a broken household may cause confusion, insecurity, and a sense of instability, especially when they see constant arguments or are caught between custody disputes. Many children experience stress, anxiety, or sadness, sometimes even blaming themselves for the separation of their parents. This can affect their studies, self-confidence, and ability to trust relationships in the future. Physical health of a child is also affected, causing stress that can lead to sleep disturbances, eating disorders, or a weakened immune system. While divorce might be necessary for the well-being of parents in certain situations, it undeniably reshapes a child's emotional world and leaves lasting effects on their mental and social development.

Death - The either of a spouse ceases to exist

When either spouse passes away, the marriage ends automatically; there's no legal process required. The surviving partner becomes a widow or widower. Laws like the Hindu Succession Act, 1956, and the Indian Succession Act, 1925, determine inheritance rights and property distribution. The loss, however, is not just legal; it is deeply emotional. The surviving spouse may struggle with loneliness and grief, while children often face fear, sadness, and a sense of insecurity. In many cases, the surviving parent must shoulder both emotional and financial responsibilities, which can affect the child's well-being, education, and social life.

Remarriage (giving rise to step-parents)

Remarriage occurs when a divorced or widowed person marries again. While it can bring companionship and stability, it also changes family dynamics. A step-parent may offer emotional support, but children might feel resentment, insecurity, or divided loyalty, especially if they are still adjusting to the loss or separation of their biological parents. Courts generally grant legal rights to step-parents only if they are appointed guardians or legally adopt the child.

Each of these events, divorce, death, judicial separation, annulment, and remarriage, has its own legal framework, court procedures, and societal consequences. Legally, they affect inheritance rights, custody arrangements, and even the legitimacy of children. Beyond the legalities, these events can create a deep emotional and psychological impact on children who are involved in such a marriage. In all these situations stated above, the mental and physical

health of the child can suffer from stress-induced illnesses, headaches, and fatigue to more serious conditions like depression or anxiety. The absence of a stable family environment often disrupts their social development and may leave lasting emotional scars on the child's mind.

Judicial separation - The parties of a marriage do not live together in a marriage

Judicial separation allows married couples to live apart without ending the marriage, suspending certain marital rights and obligations. In India, it can be granted under personal laws on grounds like cruelty, adultery, or desertion. Courts may also decide matters of custody, maintenance, and property during this period. For children, it often brings confusion, insecurity, and emotional distress. The absence of one parent can weaken bonding and affect their academic and social development.

Annulment of Marriage

The marriage is considered invalid from the very beginning. Annulment is a legal process through which a marriage is declared null and void, as if it never existed. Unlike divorce, which ends a valid marriage, annulment is granted when the marriage itself was never legally valid due to certain defects existing from the very beginning of such a relationship. Under Indian law, provisions for annulment are found in the Hindu Marriage Act, 1955, the Special Marriage Act, 1954, the Indian Divorce Act, 1869, and other personal laws. Grounds for annulment include:

- Either of the spouses is already married to someone else - bigamy
- Marriage between close relatives is prohibited by law
- Mental incapacity of either party to consent to marriage
- Underage marriage
- Marriage obtained by fraud, coercion, or misrepresentation

Once a marriage is annulled, the law treats it as if the marriage never existed, and both parties return to their pre-marriage status. Legally, the rights of children born out of such a marriage are protected. However, in society, these children often face harsh judgment and discrimination. Without any fault of their own, they may suffer from mental stress, low self-esteem, and even physical health issues due to the stigma of being linked to a broken or annulled marriage. This highlights how social attitudes shape a child's well-being, even as courts prioritize custody, maintenance, and welfare in broken marriages.

EFFECTS ON CHILDREN'S HEALTH DUE TO BROKEN MARRIAGE

When a marriage breaks down, whether through divorce, death of a parent, judicial separation, annulment, or remarriage, children often bear the deepest and longest-lasting impact on their health. The family home, once a place of stability and love, can turn into a space of uncertainty, emotional turbulence, and even conflict. These changes not only affect the child's emotional world but also their overall health and development¹⁷.

Mental Health - The Effect on the mental health of a child due to a broken marriage is as follows:

Emotional Distress and Anxiety: Constant arguments between parents, ongoing divorce or custody battles, and sudden changes in living arrangements can leave children feeling fearful, insecure, and worried about the future. Some may even blame themselves for their parents' problems.

Low Self-Esteem: Witnessing the breakdown of their parents' relationship can make a child feel unloved or unwanted, which can seriously damage their self-confidence.

Depression and Social Withdrawal: Losing daily contact with one parent or dealing with strained relationships with step-parents can lead to sadness, depression, and withdrawal from friends and activities they once enjoyed.

Behavioral Issues: Stress can cause some children to become aggressive, rebellious, or unusually quiet. Academic performance may drop as they lose focus on studies and extracurricular activities.

Identity and Trust Issues: In situations like remarriage or annulment, children may struggle with a sense of belonging and find it hard to trust relationships, sometimes doubting the idea of marriage itself.

Physical Health: The Effect on the physical health of a child due to a broken marriage is as follows:

¹⁷ How an unhealthy marriage affects children, The Times of India, Jul 22, 2021 14:29 IST

<https://timesofindia.indiatimes.com/life-style/parenting/toddler-year-and-beyond/how-an-unhealthy-marriage-affects-children/photostory/84630165.cms>

Sleep Disturbances: Due to anxiety and emotional stress in the household, where parents are going through the process of divorce, can lead to insomnia, nightmares, or restless sleep.

Appetite and Nutrition Problems: Stress can cause overeating or loss of appetite, which leads to malnutrition, weight issues, or other physical issues.

Stress-Related Illnesses: Stress can cause frequent headaches, stomach aches, fatigue, and weakened immunity in a child.

Chronic Health Risks: The emotional strain in childhood can have lasting effects, increasing the risk of issues like high blood pressure or obesity later in life.

REMEDIES FOR CHILDREN'S MENTAL AND PHYSICAL HEALTH

The physical and mental health is affected drastically due to the process of divorce between their parents. These issues faced by the children being part of such a broken marriage should be addressed with great concern and under the doctor's consultation. In this paper, the author is trying to suggest the remedies for children facing mental and physical problems, and they as follows:

Mental Health Remedies:

When children go through the pain of their parents' divorce, their emotional and mental health takes a big hit. To help them cope with emotional stress and anxiety a open communication is the key for such a situation. Parents should ensure that they assure their children that the divorce between them is not their fault and encourage them to express their feelings openly to their parents without any fear of being judged. Even the children can take professional counselling or therapy, which can provide a safe place for them to process and let out their emotions.

Children of broken marriages often struggle with low self-esteem, depression, or social withdrawal. Consistent love, appreciation, and involving them in small decisions can foster security and belonging. Regular contact with both parents, along with hobbies, sports, and peer interactions, helps keep them engaged and emotionally balanced. Any behavioral changes should be handled with patience, while schools and teachers must be informed to provide extra support. Parents should avoid negative talk about each other and instead focus on building a healthy, cooperative relationship for the child's well-being.

values even after separation for the sake of their child, which can gradually help restore a child's faith in family and rebuild their ability to trust other people. The only way to help a child

overcome their emotional and mental suffering that can be caused due to divorce can only be possible if parents work together with love, patience, and understanding for the sake of their child.

Physical Health Remedies:

The process of divorce and custody can take a huge toll on the physical health of the child, so parents need to create a healthy routine that can support the overall well-being of the child. To reduce sleep disturbance and to give a calming bedtime routine, limiting screen time and creating a stress-free environment can make a huge difference in a child's health. When it comes to appetite and nutrition, offering balanced meals, involving children in cooking, and avoiding emotional over or under-eating patterns help them develop a healthier relationship with food. Stress-related illnesses are another concern among parents, and that can be managed by encouraging regular exercise, outdoor play, yoga, or even simple relaxation techniques like deep breathing. Most importantly, parents should build long-term healthy habits—balanced nutrition, hydration, physical activity, and regular check-ups—while also providing emotional care, as even small, thoughtful efforts can help children cope with divorce and grow into healthier, happier individuals.

CONCLUSION

In this research paper, the breakdown of marriage, whether through divorce, separation, or any other reason, affects children's mental and physical well-being. While legal provisions address the rights and obligations of the spouse, the emotional and physical developmental needs of children often remain overlooked. But combining open communication, emotional support, a healthy routine, with professional support can help children cope with the challenges of a broken marriage more effectively. Ultimately, the key lies in prioritizing the child's welfare above personal differences, ensuring they can grow with stability in their life.