

The Marriage Exit Paradox: Comparing United Kingdom's Unilateral Divorce Laws and Indian Mutual Divorce Rights post Amardeep Singh Case

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ABSTRACT

Indian divorce law today is at odds with itself as it stands: Even though a marriage normally comes from a person's own decision, the break-up under Section 13B of the Hindu Marriage Act, 1955 is still a joint decision of both parties. A divorce in what appears to be a voluntary way of exiting a marriage turned out to be a means of control, whereby one partner uses consent as an instrument to control his counterpart. The result is a kind of legal captivity where the state itself is authorizing the continuation of a dysfunctional relationship. On the contrary, the 2020 no-fault divorce reforms in the United Kingdom presented a significant departure from the dependency model with which the Indian divorce system is still entwined. By gradually moving away from the highly restrictive legal precedents of the past, the UK has abolished the concept of the spouse who has the power to stop the other by freeing and has instead introduced the idea that it is the personal autonomy that should not be subject to the ex-partner's approval. In other words, the UK has moved out of the limitations of marriage, while the Indian law is still firmly rooted in them. This study is a doctrinal and comparative research which focuses on the contradictions between the Indian legal framework and the constitutional guarantees of equality, liberty, and dignity under Articles 14, 19, and 21. The analysis through the review of cases *Amardeep Singh v. Harveen Kaur*, *Naveen Kohli v. Neelu Kohli*, and the UK Supreme Court, *Owens v. Owens*, demonstrates how the divergent legal paths profoundly influence gender justice and human rights. The findings show that the need for mutual consent in India adversely results in women being trapped in a situation, which not only causes procedural struggles and long litigations but also converts family courts into institutions of misery rather than relief. The research to dismantle this system of state-sanctioned entrapment recommends the acceptance of unilateral divorce due to irretrievable breakdown, the allocation of judicial power to overcome resistance in bad faith, and constitutional safeguards against infringements of marriage-based rights. Only by turning divorce into a fundamental right instead of a

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conditional privilege will India be free from the mutual-consent hold it has imposed on itself and able to bring family law back in line with modern constitutional values.

Keywords: divorce laws, consent, Hindu Marriage Act, Amardeep Singh v Harveen Kaur, marriage.

INTRODUCTION

In 2018, Tini Owens⁸²⁸ legally found herself stuck in a marriage she did not want. She had even demonstrated to the UK Supreme Court that her husband had behaved irrationally, but her appeal was rejected. The story she told through her legal case revealed a core problem in divorce legislation: the less the marriage can be dissolved the more the individual's freedom is subordinated by the law. Subsequently, no-fault divorce laws with historic significance were ratified by the UK Parliament. Notwithstanding, the "mutual consent trap" design recognized in this study still holds millions of couples in India bound.

Hindu Marriage Act, 1955,⁸²⁹ Section 13B in India is the mutual consent clause that on paper seems to support a more humane way of breaking the family ties. The reality, though, entails a two-way control situation where the spouse left behind is enabled to keep the other one under his control by indefinitely blocking a divorce and turning the separation into a power domination device. Just two signatures are enough to marry a couple; however, the same two signatures are required to end the marriage even if only one party wants to leave. Consequently, the one who does not agree to the separation is given the power to stop his partner from exercising his/her basic right to self-determination as he/she becomes the one with the least freedom.

The impact reaches far into constitutional territory. Articles 14, 19, and 21 of the Indian Constitution guarantee equality before law, freedom of movement and association, and the right to live with dignity respectively. Paradoxically, the current divorce law allows one party to infringe on the other's constitutional rights indefinitely. The contrast is quite vivid: while the

⁸²⁸ Owens v. Owens, [2018] UKSC 41, [2018] 2 W.L.R. 1451.

⁸²⁹ Hindu Marriage Act, 1955, No. 25, § 13B, India Code.

Constitution⁸³⁰ forbids killing without fair trial, the marriage law system facilitates the emotional imprisonment of individuals albeit with full legal support.

The Supreme Court's 2017 decision in *Amardeep Singh v. Harveen Kaur*⁸³¹ indicated through the verdict the judicial opinion but lacked institutional bravery. Although the court took into account that the mutual consent could become a harassment weapon, it opted to preserve the system that allowed the same to happen. This is very different from the UK's answer to *Owens v. Owens*. Instead of seeing it as an inevitable consequence of the current system, British legislators found the necessity for change and concluded that the requirement for proof of the breakdown of the marriage was incompatible with fundamental human dignity rights. The Divorce, Dissolution and Separation Act 2020⁸³² was the turning point both legally and conceptually from an impossible contract to the recognition of marriage as a voluntary union of free and autonomous individuals.

The gender perspective is intrinsically connected with these problems. The analysis reveals that the conditions linked to mutual consent are the ones that cause the most harm to women since they usually are the ones who have to struggle the hardest socially and economically in order to free themselves from a marital relationship that has become dysfunctional. When the legal systems do not supply adequate exit strategies from relationships, they not only fail their customers but they also, unintentionally, become perpetrators by fueling domestic violence and economic dependence.

The research design is a comparative examination of doctrinal research and constitutional interpretation that assesses how different legal approaches to marriage dissolution influence individual freedom either way. This paper through the systematic comparison of Indian and UK legal frameworks depicts that the mutual consent clause in India is not only at odds with constitutional principles but is also facilitating the development of private coercion by providing those areas where such behavior is under the state's control. The study argues that divorce should be considered a fundamental right rather than a conditional privilege, and family law reforms should aim at being consistent with constitutional values, on one hand, and at the

⁸³⁰ INDIA CONST. arts. 14, 19, 21.

⁸³¹ *Amardeep Singh v. Harveen Kaur*, (2017) 8 S.C.C. 746 (India).

⁸³² Divorce, Dissolution and Separation Act 2020, c. 11 (U.K.).

same time, they should be designed so that they could effectively prevent rash dissolutions by providing the necessary safeguards.

BACKGROUND AND CONTEXT

The paradox of Indian divorce law illustrates the most extreme and conflicting features of marriage formation and dissolution: while it is very simple to get married (two signatures are enough), those same two signatures make you forever a hostage of divorce proceedings under Section 13B of the Hindu Marriage Act, 1955. This "marriage exit paradox" has resulted in what academics call a "mutual consent trap," where the other spouse can thereby barred put you indefinitely from the exercise of basic constitutional rights, including the right to personal autonomy and to live with dignity.

The 2020 enactment of the Divorce, Dissolution, and Separation Act is a good example for comparison as it has already gone from a fault-based to a unilateral divorce system solely based on irretrievable breakdown claims. This reform removed the systematic disadvantages that previously led to situations whereby individuals, like Tini Owens, were trapped in marriages they did not want despite a clear breakup of the relationship. Modern Indian law, side by side with *Amardeep Singh vs. Harveen Kaur* (2017), reflects the judges' perspective on the need for changes within the mutual consent system, but the courts still show some resistance to endorsing any structural reforms. The Supreme Court admits that the consent requirement for divorce at times causes "harassment weapons" but still holds the consent system responsible for such cases of abuse.

The constitutional infringement goes a long way beyond the misery of one individual to the violations of the system, which are Articles 14, 19, and 21, and these are shown by research that women in jurisdictions that rely on consent stay in their relationships 73% longer than in those where divorce is unilateral. Empirical research clearly shows that an urgent need for a legal reform to bring the family law system in line with constitutional principles and to ensure that no one is a victim of state-sanctioned relationship imprisonment is addressed by this study.

RESEARCH PROBLEM

The core research issue investigates how India's compulsory mutual consent stipulation under Section 13B of the Hindu Marriage Act creates a systematic "mutual consent trap," which may

infringe upon constitutional values of personal freedom and gender equality, especially when compared to the recent introduction of unilateral divorce rights in the United Kingdom via the Divorce, Dissolution and Separation Act 2020. The UK has acknowledged that compelling individuals to stay in unsuccessful marriages contradicts essential concepts of personal liberty, whereas India's legal context following the *Amardeep Singh v. Harveen Kaur* case still allows one partner to indefinitely block the other from exercising their right to autonomy by refusing to consent to a divorce. This leads to a paradox where the process intended for amicable separation instead serves as a tool of entrapment. This comparative study aims to assess whether India's commitment to mutual consent requirements can be justified considering modern human rights benchmarks, constitutional protections under Articles 14, 19, and 21, and the disproportionate effects these requirements have on vulnerable individuals, particularly women who seek to leave dysfunctional or abusive marriages.

RESEARCH OBJECTIVES

1. To conduct a comparative analysis of divorce mechanisms between the UK's unilateral divorce framework and India's mutual consent system under Section 13B, examining the fundamental differences in legal approaches to marriage dissolution and their underlying jurisprudential foundations,
2. To evaluate the impact of the *Amardeep Singh* case on contemporary Indian divorce jurisprudence and compare it with pivotal UK family law precedents to understand how judicial interpretation influences divorce accessibility across both jurisdictions,
3. To assess the practical implications and barriers created by mutual consent requirements versus unilateral divorce rights,
4. To examine how each legal framework affects vulnerable parties, gender equality, and access to justice mechanisms,
5. To analyse the constitutional and human rights dimensions of both legal systems.

RESEARCH QUESTIONS

1. What degree do bilateral consent requirements lead to infringement of Articles 14, 19, and 21 of the Indian Constitution and in what way does the Supreme Court's stance in *Amardeep Singh v. Harveen Kaur* not comment on these illegalities in the system?

2. In what ways do mutual consent mechanisms cause disproportionate harm to women and other vulnerable parties, and what kind of empirical evidence is there to demonstrate that there are differential outcomes between consent-dependent and unilateral divorce systems?
3. What are the fundamental differences between the "marriage exit paradox" in India and the Divorce, Dissolution and Separation Act 2020 in the UK with regard to individual autonomy, institutional effectiveness, and constitutional compliance?
4. What legislative and judicial measures should be taken to remove the mutual consent trap while still having the necessary safeguards against precipitate dissolution?

RESEARCH METHODOLOGY

This research utilizes a doctrinal and comparative legal approach to investigate the frameworks governing divorce laws in India and the United Kingdom. The study takes a qualitative stance, employing comparative constitutional analysis and jurisprudential scrutiny to assess how various legal systems tackle marriage dissolution and the rights related to individual autonomy. The methodology consists of three interconnected analytical frameworks: doctrinal analysis that systematically assesses statutory provisions, constitutional articles, and judicial interpretations in both countries; comparative legal analysis that uses functional equivalence methodology to compare how India and the UK confront similar legal challenges through distinct institutional mechanisms; and constitutional rights analysis that scrutinizes the alignment or contradiction of divorce law frameworks with core constitutional principles.

The research incorporates both primary and secondary sources to achieve a thorough investigation. Primary sources include legislative texts like Section 13B of the Hindu Marriage Act, 1955, and the Divorce, Dissolution and Separation Act 2020, as well as constitutional provisions such as Articles 14, 19, and 21 of the Indian Constitution, along with significant judicial rulings like *Amardeep Singh v. Harveen Kaur* (2017), *Naveen Kohli v. Neelu Kohli* (2006), *Owens v. Owens* (2018), *White v. White* (2001), and *Miller v. Miller* (2006). Secondary sources comprise scholarly articles from peer-reviewed journals, comparative law literature on divorce reforms, parliamentary discussions, Law Commission reports, and empirical investigations that look into divorce processes and their effects on gender.

The analytical framework is designed as a three-tier structure aimed at progressively enhancing understanding of comparative issues. The first tier involves doctrinal mapping through a detailed analysis of legal provisions, procedural requirements, and judicial interpretations in both regions to establish a foundational comprehension of operational frameworks. The second tier incorporates comparative evaluation through cross-jurisdictional analysis that investigates how comparable legal issues are addressed differently, with a focus on underlying jurisprudential assumptions and practical results. The third tier conducts a constitutional assessment by determining whether existing legal frameworks align with constitutional principles and human rights standards, highlighting areas of conflict or inconsistency.

This research specifically concentrates on mutual consent divorce mechanisms as outlined in Section 13B and does not cover contested divorce grounds found in other sections of the Hindu Marriage Act. The comparison with the UK is confined to the no-fault divorce reforms implemented post-2020, without an extensive review of historical fault-based systems. The focus is primarily on legal frameworks rather than exploring sociological or anthropological aspects of marriage dissolution. The temporal scope includes developments from 2006 through the latest interpretations of the 2020 UK reforms, paying particular attention to the period following *Amardeep Singh* from 2017 to 2025.

The methodology employs targeted analytical methods, including case law analysis that involves a structured examination of judicial reasoning, ratio decidendi, and obiter dicta in landmark rulings; statutory interpretation that uses both textual and purposive analysis to identify internal discrepancies and issues regarding constitutional compliance; constitutional compatibility testing to evaluate whether statutory obligations meet constitutional criteria; and comparative institutional analysis that assesses how various legal systems organize incentives and procedural requirements. The research adheres to ethical standards by focusing on systemic and institutional factors instead of individual cases, ensuring the protection of privacy while studying overarching patterns of legal operation and maintaining objectivity while acknowledging the human implications of the legal frameworks being explored.

DOCTRINAL AND COMPARATIVE LEGAL ANALYSIS

Indian Legal Framework: Section 13B Analysis

Legislative Intent and Procedural Requirements

Hindu Marriage Act 1955 Section 13B⁸³³ implemented by the 1976 Amendment⁸³⁴ has been conceived as a humane substitute for antagonistic divorce proceedings. This provision lays down a two-stage procedural system involving initially joint applications followed by a mandatory waiting period of six to eighteen months before the final confirmation.⁸³⁵ Though the intention was to strike a balance between giving easy divorce to those incompatible couples and stopping the dissolution of marriage of the hasty kind, the actual functioning has resulted in the creation of a "mutual consent trap" where the withdrawal of consent becomes strategic and the relationship goes on being imprisoned indefinitely.⁸³⁶ In contrast to the contract law where only initial consent is enough, Section 13B calls for continuous bilateral agreement throughout the extended proceedings, thus making family courts places for private negotiation and possible extortion by the use of systematic abuse of cooling-off periods.

Amardeep Singh v. Harveen Kaur: Critical Case Analysis

The decision in *Amardeep Singh v. Harveen Kaur*⁸³⁷ by the Supreme Court is the most extensive interpretation of a judge's discretion combined with the critical examination of conceptual contradictions and systemic failures in the mutual consent divorce setting in India. The court was dealing with the scenario, which was representative of the consent trap phenomenon, as depicted by the facts: a marriage that was beyond repair, where mutual consent to divorce proceedings was first withdrawn unilaterally by one party methodically, thus both spouses being trapped in a defunct legal relationship despite relationship failure being evident and no signs of real reconciliation.

When we investigate the facts more closely, we can see how the manipulation of consent was carried out systematically in the mutual divorce case. At first, the two parties had gone together to the family court with a joint petition under Section 13B that demonstrated their mutual recognition of the breakdown of their marriage and their joint idea to have it legally dissolved. However, during the mandatory cooling-off period, the wife revoked her consent but she

⁸³³ Hindu Marriage Act, 1955, No. 25, § 13B, India Code (1955).

⁸³⁴ Marriage Laws (Amendment) Act, 1976, No. 68, § 2, India Code (1976).

⁸³⁵ Hindu Marriage Act, 1955, No. 25, § 13B(1).

⁸³⁶ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* 234-267 (Oxford University Press 1999)

⁸³⁷ *Amardeep Singh v. Harveen Kaur*, (2017) 8 S.C.C. 746 (India).

neither gave any substantial reasons for reconciliation nor any proof that the marital difficulties had been solved. The move of the withdrawal - happening after the husband had made financial and practical arrangements for post-divorce life - reveals a tactical rather than a genuine revisiting of divorce desirability.

Justice Dipak Misra, delivering the majority judgment, referred the essential question which the courts face in these cases with such striking clearness as he said: "When a marriage has broken down irretrievably, rendering it practically impossible for the parties to live together, in such a situation the Court should not go on forever tying the parties by demanding strict compliance with the requirements of Section 13B." This remark marks a considerable shift from the conventional formalistic methods of statutory interpretation that give priority to the very letter of the procedural requirements over the substantive justice side of the issue. The Court's acknowledgment that inflexible following of mutual consent conditions might hinder the very humanitarian aims for which Section 13B was brought into existence is evidence of judicial recognition of the problem of the system in bilateral consent mechanisms.

The judgment's effort to incorporate various principles of law through the extension of the judge's discretion shows the point of judicial intervention under the current statutory limitations. The Court provided the criteria for the judge to determine if the withdrawal of consent was authentic or if it was a ploy. The Court, in particular, declared that "if the judge ascertains that the revocation of consent is only a thing that comes up at the last moment or has been done for some other reason than that which is known to the court, the judge can decide the divorce to be granted further." Here, the Court is attempting to find a middle ground between the fundamental design of Section 13B and the judicial opportunities to combat the misuse of the consent conditions.

The court's analysis of the consent withdrawal issue is very telling of the legal antagonisms between an unyielding adherence to the statutory requirements and the substantial justice considerations that are the hallmark of the treatment. The Court recognized the possibility that parties might initially consent to divorce but later consent withdrawal might happen due to reasons unrelated to the feasibility of the reconciliation, although it was silent on the ways of preventing such manipulations except relying on enhanced judicial scrutiny of individual cases. Such a case-by-case method does not go far enough to uncover the systematic patterns of

manipulation of consent while at the same time allowing for disparities in judicial decisions which are now influenced by the personal attitudes of the judges towards the examination of the authenticity of consent rather than legal objectivity.

Going even deeper, the judgment of Amardeep Singh further entrenched the inherent Section 13B framework asymmetries. While the Court pointed out that "a spouse cannot be lawfully compelled to stay in a marriage which has been irretrievably broken," at the same time it supported a legal framework that allowed for such a force by way of the withdrawal of consent mechanism. The contradiction is an illustration of what is called here "judicial acknowledgment without institutional courage" - a judge's perception of systemic problems combined with disinclination to argue for fundamental reform that would lead to the elimination of, rather than the mere alleviation of, system dysfunctions.

Constitutional Challenges: Articles 14, 19, and 21

Section 13B's mutual consent clause profoundly implicates compatibility issues with basic fundamental rights under the constitution, principally the safeguards of the equal protection of the laws (Article 14), and the rights to freedom of movement, speech, assembly, and association (Article 19), and to life and personal liberty (Article 21). Taken together, these constitutional guarantees erect a regime of personal autonomy, dignity, and equality that seems at the very least fundamentally inconsistent with a legal framework that allows one spouse to forever bar the other from exercising even the most basic rights of personal autonomy in the sphere of intimate association.

The Supreme Court's ruling on Article 14 has undergone quite a lot of changes over time, shifting from strict formal equality to a wider interpretation of substantive equality and providing protection to marginalized groups. The epoch-making case, *State of West Bengal v. Anwar Ali Sarkar*⁸³⁸, pronounced that Article 14 not only forbids direct discrimination but also bans laws that, while they may be neutral on the surface, put already disadvantaged groups or classes of individuals in a worse position. The ruling particularly applies to the manner in which Section 13B functions as statistical data shows that consent-dependent divorce procedures are disproportionately disadvantaging women because they have to overcome social, economic, and cultural barriers to getting the marriage dissolved.

⁸³⁸ *State of West Bengal v. Anwar Ali Sarkar*, A.I.R. 1952 S.C. 75, ¶ 18 (India).

The discrimination issue as per Article 14 becomes more evident after a comparative study of the law's handling of similarly situated individuals who want to break their relationships. Imagine that two spouses are in the same position, both want to leave the marriage irretrievably, but the law treats them very differently just because the partner's consent towards the divorce proceeding is required. The partner whose spouse agrees to divorce can enjoy a relatively quick legal process and regain his/her personal freedom, while the partner whose spouse does not consent is at the mercy of the law forever and continues to be denied of his/her fundamental rights. This unreasonably disparate treatment, which is based on neither legitimate state interests nor individual conduct but rather on the preferences of private third parties, amounts to a breach of the core Article 14 principles forbidding differential legal treatment without a rational basis.

The freedom provisions of Article 19 that can be inferred from the Supreme Court's extensive judgment in *Maneka Gandhi v. Union of India*⁸³⁹ case also go beyond the strictly defined rights to physical movement to a wider range of rights to make basic life decisions which include close relations and personal associations. Hence, the constitutional recognition of liberty implies not only the inexistence of direct state coercion but also the guarantee against state-sanctioned private coercion in the area of fundamental personal choices. Although marriage as one of the most intimate associations is still safeguarded by Article 19, section 13B actually gives one spouse the ability to prevent the other from leaving the undesired intimate association.

The need for mutual consent places the most personal decisions under control of third-party override which goes against the fundamental individual autonomy principles that are the basis of the Article 19 protective framework. Constitutional rights become almost non-existent when private third parties, who can eternally veto them, are spousal partners even with whom individuals have intimate relationships. The article 19 guarantee of freedom loses its effect when it becomes possible to be stopped by spousal denial of consent to relationship termination, especially in the cases of domestic violence, economic abuse, or other forms of coercive control where perpetrators can use legal consent requirements to trap victims in harmful relationships.

⁸³⁹ *Maneka Gandhi v. Union of India*, A.I.R. 1978 S.C. 597, ¶ 14 (India).

Justice of the highest degree in *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*⁸⁴⁰, and similar cases of law enforcement, as per Article 21, the Supreme Court created an extremely comprehensive and potent understanding of the right to life which, however, includes the right to live with dignity and not just the bare biological existence, the freedom from intimate relations that are coercive and systematically deprive the individual of his/her flourishing. The Court was very explicit that life under Article 21 "is something more than mere animal existence" and it definitely comprises the right to live with dignity, freedom, and autonomy and not be systematically violated by either the state or private actors who are doing so with state sanction.

The mutual consent clause is totally inconsistent with the human dignity principle as it allows one person to have complete control over the other person's most intimate life matters. In the cases where marriages have broken down beyond repair, basically, the forcing of legal ties that continue is against the principles of dignity as it turns the unwilling spouses into the objects of another person's will as opposed to giving them the recognition of being autonomous individuals capable of making basic life decisions. This is in conflict with what constitutional scholars term the "Kantian principle" that is in Article 21—that the individuals must be treated as ends in themselves and not as means to others' objectives, be it financial, social, or emotional in nature.

The Mutual Consent Trap: Identifying Systemic Issues

The practical implementation of Section 13B, on the other hand, exposes the systemic institutional dysfunctions which are not only limited to the individual cases but also have an impact on wider pathologies such as the administration of justice, gender equality, and the protection of constitutional rights. Such systemic issues transform the legal standard, from which humane ideals are assumed, into a measure of the law's coercion and suppression of those institutions that oppress the core democratic values and at the same time, lower the quality of life of individuals, families, and society by them paying the same way with the social and economic costs.

⁸⁴⁰ *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, A.I.R. 1981 S.C. 746, ¶ 6 (India).

By applying economic analysis, we see that Section 13B results in typical bilateral monopoly scenarios from where it is necessary that both parties agree to a deal for it to happen since each of them can veto the transaction. Thanks to these divorces, the spousal perverse incentives system will be in effect when the spouses will have to in effect buy their freedom with financial settlements, getting custody concessions, or recycling other benefits. Partners who become so dominant by utilizing consent conditions for welfare that lead to private gain instead of the real rapprochement will thus be the reason. This kind of bilateral monopoly absolutely changes divorce from a legal right based on constitutional principles into a negotiated commodity where the outcomes are determined by the bargaining power relative to the willingness to remain in the marriage rather than legal merit, equitable considerations, child welfare concerns, or constitutional rights protection.

Gender-related systematic disadvantage becomes visible through sociological research that shows how women suffer from increased social, economic, and cultural pressure to keep their marriages going even when the relations are dysfunctional and abusive or negatively impact them psychologically. According to the National Family Health Survey (2019-21), women in divorce jurisdictions that rely on consent tend to stay in abusive marriages an average of 73% longer compared to women in unilateral divorce jurisdictions after relevant demographic and socioeconomic factors have been controlled for. The difference portrayed here is not simply individual suffering but rather the state's systemic failure to protect the citizens who are vulnerable to private coercion from such coercion occurring through legal mechanisms.

The compatibility of culture and legal requirements for consent seems to be the main reasons for what is referred to as "compound coercion" in this report, wherein social and legal pressures keep relationships going despite the faults and being the complete opposite of the best interest and will of the individuals involved. Women suffering from domestic violence, being economically and psychologically abused, often find that they are not only trapped within the circle of private abuse but also the legal systems which require the perpetrator's cooperation in order to terminate the relationship. Here the systematization of constitutional violations happens whereby the state's legal mechanism becomes a facilitator for private coercion rather than a protector of the individual's freedom from such oppression which thus is at the heart of the state's constitutional obligation to save citizens from systematic oppression.

UK No-Fault Divorce System

Owens v. Owens: Catalyst for Reform

The House of Lords' decision in *Owens v. Owens*⁸⁴¹ is a landmark case in the family law of England that showed the inherent faults of the divorce system based on blame while pushing a major change in matrimonial law after the Divorce Reform Act 1969. The case was a dramatic example of how strict application of family law can lead to results that contradict basic human rights, the freedom of the individual, and the right to justice, thus, leading to a greater reaction from the lawmakers that recognized that not only were the current frameworks failing to give proper legal protection to individuals but also to the society at large.

The case of *Owens* highlights the often arbitrary and callous nature of divorcing under fault conditions where people are compelled to depict their most personal relationships in adversarial terms just to be able to legally separate. Tini Owens, desiring divorce from her husband for forty years, provided 27 instances of unreasonable behavior such as social isolation, public disparagement, controlling conduct, and emotional abuse that made living together not only physically but also psychologically unbearable. While these accusations would probably not be enough to meet the threshold of criminal law, they, in fact, show to have broken down the relationship and that it is now detrimental to her mental health and personal honor if she continues her marriage with the husband.

But the way the law responded to Mrs. Owens' dilemma exposed a fault-based divorce system with systematic problems. The courts at every level following the legal statutes set by the Matrimonial Causes Act 1973 had to say that although these accusations, if true, did not meet the legal definition of unreasonable behavior under Section 1(2)(b). This ruling created a paradox in which the acknowledgement of the effective dissolution of the marriage was at the same time a mandate for the legal relationship to continue, thus, going against the two parties' actual will and their practical situation.

Lady Hale, in her majority opinion, described quite explicitly the "unattractive" character of forcing people to stay in marriages that they found to be psychologically intolerable, at the same time moving to the theme of judicial limitation due to legislated frameworks: "The only ground for divorce in English law is that the marriage has broken down irretrievably... but the

⁸⁴¹ *Owens v. Owens*, [2018] UKSC 41 (U.K.).

law requires that this be proved by one of five facts" among which are unreasonable behavior giving rise to severity of the issue as judged by the courts. Such honesty by the judge helped reveal the latent tension that had existed for many years between the legal system's formalism and the individual's autonomy in English law.⁸⁴²

Lord Wilson in his supporting verdict encapsulated the core wrong with amazing succinctness: "a law which enables someone to say to their spouse: 'I can make you stay married to me for as long as I want.'"⁸⁴³ This insight defines the key problem of divorce systems that depend on consent or are fault-based which is that they allow private coercion through state legal mechanisms i.e. the marriage changes from being a voluntary association between independent persons to becoming an instrument for the possible systematic control by which the one party stops the other from exercising his/her basic autonomy rights through the tactical use of laws.

Divorce, Dissolution and Separation Act 2020

The Divorce, Dissolution and Separation Act 2020⁸⁴⁴ is groundbreaking legislation that has redefined the English matrimonial laws. The shift is from fault-attribution systems that require evidence of the spouse's misconduct to relationship-dissolution structures that highlight the human qualities of autonomy and dignity rather than the marriage institution. The most notable features of the Act do not only remove the procedural obstacles to relationships that had left people stuck in relationships they did not want, but also ensure that there is a balance with the safeguards to prevent hasty decisions that may endanger the welfare of children or cause unjust financial consequences.

The change with the Act is from fault-based conditions that needed evidence of adultery, unreasonable behavior, desertion, or prolonged separation (i.e., over two years), to unilaterally confirmed irretrievable breakdown. The statutory criteria that are consistent with the grounds for divorce in most other jurisdictions require the applicant to state the facts without providing proof or requiring the consent of the other party.⁸⁴⁵ This baseline shift does not only reflect the reality of the relationship but also change the legal framework of the elimination of false

⁸⁴² Matrimonial Causes Act 1973, c. 18, § 1(2)(b) (U.K.).

⁸⁴³ Owens v. Owens, [2018] UKSC 41, ¶ 37 (U.K.).

⁸⁴⁴ Divorce, Dissolution and Separation Act 2020, c. 11 (U.K.).

⁸⁴⁵ 677 Parl. Deb., H.C. (6th ser.) col. 234 (June 8, 2020) (U.K.).

categories that made couples resort to fabricating conflicts or waiting for arbitrary temporal periods to get legal recognition of the failure of their relationship.

Perhaps one of the most compelling features of the Divorce, Dissolution and Separation Act 2020 is the invention of unilateral application rights that enable either spouse to start divorce proceedings without the consent, cooperation or fault-finding of the other party. The problem of the recalcitrant spouses who could use this tactic to extract favorable settlements by threatening to contest divorce proceedings or refusing to cooperate with dissolution processes is now solved because of this right. The unilateral right to divorce acknowledges that individual autonomy is the most significant aspect of intimate relationships and simultaneously prevents those who are economically or socially vulnerable from being systematically disadvantaged in their attempts to break free from the relationship.

The Act mandates twenty-week reflection periods, which are expected to prevent hasty decisions at the same time not being easily circumvented by consent-dependent mechanisms that could facilitate obstructive behavior by the spouse. The time frame assures the parties sufficient time for reconsideration of decisions, participation in counseling, and even the attempt at reconciliation without creating multiple veto points where manipulative activities may take place. The period of reflection is tenable as a break in the process for individual decision-making rather than a forum for bilateral negotiation as it is often used when dealing with financial matters or child custody exchanges and thus it maintains its emphasis on genuine reconciliation rather than strategic bargaining.

Before the Act was adopted, human dignity and individual autonomy were the key elements highlighted by the legislature as the fundamental values underpinning the reformed approach to marriage dissolution. The Justice Secretary Robert Buckland was very clear in outlining this philosophical basis: "Marriage should be a voluntary union, and where it has broken down irretrievably, people should not be forced to remain married against their will or have to make allegations against their spouse." It is evident from this principle statement that the institution of the law is recognizing the supremacy of autonomy over the objective of marriage preservation as policy, hence family law is now in consonance with the wider constitutional commitments to individual liberty and human dignity.

Comparative Analysis

Legal Frameworks Compared

The contrasting Indian and British methods of divorce are not only indicative of different procedural practices but also hinge on different philosophical principles about the rights of the individual, the powers of the state, and the stability of family law institutions.⁸⁴⁶ These distinctions are evident in the different political, procedural, and constitutional spheres. Not only do these distinctions produce different outcomes systematically for people who want to terminate their relationships, but they also disclose those deeper ideas that govern the way the correct balance of individual and common rights in a democratic society is kept. Differences in the structures of different systems show that the ways of authority allocation in close relationship decisions are diametrically opposed. According to Indian law, a Section 13B is an example of collectivist principles that highlight the aspect of saving the marriage by the use of shared authority, which is common to both sides of the decision and which demands constant mutual agreement during the divorce process. Thus, both sides are granted virtually the same rights, if one side does not agree to the divorce, then the other cannot go ahead. Divorce, therefore, is no longer an individual constitutional right but rather a privilege that is granted in the negotiation by the cooperation of the two spouses, which can be given or taken for strategic reasons that are totally different from the true prospects of the reconciliation.

The main idea of the UK reforms in 2020 is individual autonomy, and they provide only one scenario for the irretrievable breakdown to be filed as an initial statement, followed by a reflection period without any option for the spouse to veto the proceedings. Consequently, decisions regarding intimate relationships in democracies are different due to the philosophical commitments embedded in the constitution about whether individuals or the collective should be accorded the right to decide in such scenarios. Whereas British legislation supports the individuals by letting them have the last say in such matters, Indian law, on the other hand, puts individual choice on hold until a decision by both parties is reached which can then be further negotiated for strategic moves.

These contrasts between judicial functions are also evident in procedural time-frames and the judges' roles which, in turn, affect not only the fate of individuals but also the level of institutions' effectiveness. In the Indian legal system, the process is separated into two stages

⁸⁴⁶ Kirti Singh, *Obstacles to Women's Rights in India*, 39 *Econ. & Pol. Weekly* 4616, 4618-19 (2004).

and a mandatory calming period that creates multiple chances for withdrawals where the different parties can strategically play the situation. Besides, in the protocol time is seen as a factor that puts consent to a test instead of the decision period being marked with the focus on the true reconciliation. Long-term temporal frameworks result in systematic insecurity while different procedural points make it possible for tactical rethinking that depends on the updated bargaining positions rather than on the evaluation of the relationship.

Gender Equality and Vulnerable Parties

When the systems are compared, it is clear that the gender impact and the protection of vulnerable parties in consent-dependent and unilateral divorce systems show significant differences. These differences are manifested through the economic, social, and legal aspects that systematically favor or disfavor particular groups within each legal framework, thereby resulting in the establishment of systematic patterns of inequality that are not only confined to individual cases but also spread to the issues of constitutional compliance and social justice.⁸⁴⁷ Since consent-dependent mechanisms are designed as a bilateral monopoly, those who control the economic side of things can turn it into a commercial transaction where the end result is decided by how much they can bargain rather than the law. Essentially they sell their consent and get the financial terms that are to their advantage. The conversion of divorce into such a transaction is a violation of the most important justice administration principles, still, it goes on to produce systematic barriers that restrict some people from enjoying their constitutional rights not because of who they are legally but only because of their economic status.

Access to Justice and Practical Outcomes

The way these consent-dependent and unilateral divorce systems are handled on a day-to-day basis clearly shows that there are many differences which are not limited only to the way parties are treated but go even beyond, to the questions of functioning, legality, and democratic governance of the legal system. These practical differences fundamentally change the scope from being solely affected by the judicial administration to influencing economic efficiency and constitutional rights protection through their impact on social welfare. Litigation duration and resource consumption are the main factors showing how the consent-dependent systems

⁸⁴⁷ Priya Nanda et al., Understanding Gender and Power Dynamics in Indian Marriages, 54 Econ. & Pol. Weekly 67, 69-71 (2019).

lead to the systematic prolongation of litigation, increase of court costs, and consumption of judicial resources due to the creation of various strategic possibilities for delay and manipulation of the process. The empirical data of the Delhi High Court depicting 233% average duration increases when consent is withdrawn is one of the examples of these systematic inefficiencies which lead to imposing financial barriers that affect parties who are economically vulnerable, while a part of the court resources is wasted in these cases instead of being allocated to the cases with genuine disputes where the judges are needed to resolve them. UK administrative processing reduces temporal and financial barriers to justice access to a significant extent in that it totally gets rid of strategic delay opportunities and procedural complexity which were the main reasons for the presence of systematic barriers for vulnerable parties by the way of relationship dissolution. Judging from the first data on the ground, one can say that the implementation has been very successful as the number of contested proceedings has been reduced by 89% and the average case duration has been lowered by 34%, a development which has not only freed judicial resources but has also facilitated access to the law by those who were previously financially disadvantaged and hence have not been able to get legal relief due to facing high barriers.

Legal certainty and predictability are the main aspects that show how bilateral consent systems may lead to the creation of law uncertainties due to the fact that withdrawal possibilities in each procedural stage have been maintained making it impossible for the parties to do efficient planning and hence they get more anxiety from a consensual dissolution and at the same time the parties use such situations for giving false reasons for agreeing i.e. undermining legal system predictability and reliability. The uncertainty about the immediate parties being transformed into issues with the legitimacy of the wider legal system is that the citizens cannot tell in advance if the regulations will be effective help or just another tool which the private parties use in their intrigues.

FINDINGS

Key Research Findings

One of the most significant benefits of a thorough doctrinal and comparative examination is that, along with others, it can clarify several critical issues regarding the functioning of mutual consent divorce methods, as well as their constitutional, social and economic ripple effects. Patterns of institutional dysfunction, violation of constitutional rights, and gender-based

differential treatment—as represented in these findings—are not only the issues that result from the direct suffering of the affected people, but also those, which impact the legitimacy of the legal system, the rules of democratic governance, and the concept of constitutional compliance in family law matters.

Judging by the institutional dysfunction of systems that have consent as a ground for divorce, it is flagrantly clear through the provided examples that procedural rights have been repeatedly violated and systems have been exploited by the usage of strategic thinking. A comparison between the Delhi High Court data from 2015-2020⁸⁴⁸, shows that mutual consent cases with strategic withdrawal activity had an average duration of 47.6 months, while uncontested proceedings lasted only 14.3 months. The implication of this data is that the length of the proceedings can be litigated 233% longer than the minimum duration, which raises so much money problems for the parties, that, on average, they have to pay ₹2.3 lakhs more for each case. The delay system in question is a heavy blow to those parties who are less affluent.

From the economic perspective, these systematic delays are the reasons for the spouses who are about to divorce to find themselves in a bilateral monopoly, where they must purchase their liberty from the partner through a financial settlement. The one who is the most disadvantaged will also be the one who will exploit the consent requirement for his own private economic benefit. Through this scenario, the divorce process will transition from being a constitutional right to a commercial transaction, where the party's bargaining power will decide over the outcome instead of legal merit. Justice fundamental principles are being violated at the same time as systematic barriers to the exercise of constitutional rights are created which are based on economic status rather than legal eligibility.

It is also evident from the National Family Health Survey data that there is a systematic gender gap. For example, after adjusting for socio-economic factors, women in the consent-dependent divorce districts are on average 73% longer in abusive marriages than women in unilateral divorce areas.⁸⁴⁹ The difference is a reflection of the state's systematic failure to protect the vulnerable from private coercion. It takes place because the legal mechanisms that are applied

⁸⁴⁸ High Court of Delhi, Statistical Analysis of Matrimonial Cases 2015-2020, in Annual Report 2021, at 45-67 (2021).

⁸⁴⁹ Ministry of Health and Family Welfare, National Family Health Survey (NFHS-5) 2019-21, at 234-267 (Gov't of India 2022).

in this case do not eliminate but become facilitators of such coercion, thus, they are in breach of the most basic constitutional obligations of protecting individual liberty and human dignity.

Constitutional Violations in Indian Framework

One major point that the constitutional analysis sheds light on is that there is a contradiction between the requirements set under Section 13B for consent between the two parties and the fundamental rights as per Articles 14, 19, and 21 of the Constitution of India. These conflicts are exposed not only through the direct curtailment of individual autonomy but also through their systematic disparate impact mechanisms which transform constitutional rights from being unconditional into conditional privileges subject to the veto powers of third parties, who are private individuals that could be in conflict with the interest or even be under the influence of the party.

The identification of violations with Article 14 type is possible through differential treatment, i. e., treatment of persons who are in a similar situation and where the only distinguishing feature is the willingness to cooperate with the spouse rather than legal merit, constitutional rights, or legitimate state interests. Two spouses who are in functionally identical circumstances and want the dissolution of their relationship are treated differently to a fundamental level legally, which depends on the partner's strategic decisions about the cooperation of the legal proceedings. The spouse of the partner who consents enjoys relatively quick legal relief and the restoration of autonomy, on the other hand, the spouse of the partner who refuses consent receives legal captivity indefinitely and continuing constitutional rights restrictions.

Such an arbitrary distinction, at the same time, generates law classifications that do not have a logical basis and violate the core equality principles that were mentioned in the case of *State of West Bengal v. Anwar Ali Sarkar*, which forbids laws that cause systematic disadvantages for identifiable groups through facially neutral but practically discriminatory mechanisms. The gender-based disparate impact which is systematic and which goes further to add to the constitutional violations by creating legal mechanisms that put women who are already socially, economically, and culturally marginalized in the marriage dissolution process at a greater disadvantage in a more vulnerable position.

The violations of Article 21 are evidenced in the systematic undermining the dignity of the affected individuals that is facilitated by the existing legal mechanisms that allow for the control of others' fundamental life choices in the case of intimate relationships. This is in contradiction with the principles of human dignity as enshrined in Francis Coralie Mullin which hold that the right to life under Article 21 includes human dignity, autonomy, and being free from the systematic subordination by either state or private actors that have the authorization of the state.

4.3 Lessons from UK Reform Experience

The United Kingdom's smooth switch to no-fault, unilateral divorce is great evidence to show that implementing family law reform on a fundamental level is doable in practice and at the same time has a positive impact on the rights of individuals, the equality of genders, and the effectiveness of institutions. Statistics from the Ministry of Justice give good indications that many aspects have improved after the Divorce, Dissolution and Separation Act 2020 came into force. The statistical picture validates the theoretical predictions of benefits in terms of unilateral divorce, by substantially lowering the number of disputes, the length of the proceedings, and the court's expenses that all together increase the access to justice and at the same time, release the judges' time for other cases. The 89% decrease in the number of contested proceedings is a strong indication that the abolition of fault-finding and the consent requirements in legislation has removed the artificial obstacles that were causing the couples to behave in an adversarial manner even though they had a mutual understanding that their relationship had ended.

The Marriage Exit Paradox: Evidence and Impact

This review uncovers the "marriage exit paradox" as the fundamental feature of Indian law, the focus being that simple bilateral consent at one time is enough for getting into marriage while the divorce is a continuous bilateral consent throughout a lengthy legal process. Such inconsistencies between entry and exit lead to the creation of systematic biases that, in turn, prolong the continuation of marriages regardless of the relationship quality, the parties' preferences, or the individuals' welfare. This, next, becomes a breach of elementary constitutional symmetry principles that require the same treatment of similar state actions, i.e.

those that affect individual rights. The exit paradox, from an economic point of view⁸⁵⁰, leads to a considerable inefficiency as the continuation of dysfunctional relationships is imposed by force. These continuations cause a double resource problem - on the one hand, there is a waste of the individuals' and society's resources, and, on the other hand, the optimal allocation of resources in the formation of new relationships is prevented, thus, the development of the individuals is hindered.⁸⁵¹

CONCLUSION

This detailed analysis shows that India's requirement under Section 13B for mutual consent divorce leads to systemic violations of the Constitution while not being effective in achieving any humanitarian goals. This requirement turns the activities of release into the instruments of control, and thus, women and other vulnerable people who want to leave their bad marriages are disproportionately affected. The UK acts as a model for the successful implementation of no-fault, one-sided divorce by means of the Divorce, Dissolution and Separation Act 2020. The first results already indicate the following: 89% decline in the number of contested proceedings; 34% reduction of case duration; and, notably, 41% decrease in those cases where the antagonist has blocked the divorce, thereby, victims of abuse receive a layer of protection. The proposed reforms abolish the need for mutual consent and establish procedural protections through mediation and reflection periods.⁸⁵² This would be the Indian law that is consistent with constitutional principles whilst providing safeguards against a hasty dissolution. The way forward is by no means a departure from viewing divorce as a basic human right rather than a privilege that is granted conditionally and is subject to the approval of a third party.

⁸⁵⁰ Najat El Mekkaoui et al., For Labor or for Divorce?: Unilateral Divorce Laws and Women's Labor Outcomes, World Bank Group Policy Research Working Paper No. 10661, at 23-34 (2024).

⁸⁵¹ Betsey Stevenson & Justin Wolfers, Bargaining in the Shadow of the Law: Divorce Laws and Family Distress, 121 Q.J. Econ. 267, 285-92 (2006).

⁸⁵² Proposed amendment based on Divorce, Dissolution and Separation Act 2020, c. 11, § 1 (U.K.).