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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

A STUDY OF THE IMPACT OF NO-FAULT DIVORCE ON MARRIAGE STABILITY IN DIFFERENT CULTURAL CONTEXTS.

AUTHORED BY - AMAN SHAIKH

INTRODUCTION

Laws are shaped by society, and as societal norms, ideologies, and behaviours evolve, laws that no longer serve their purpose must also adapt. The 1960s and 1970s were periods of profound social transformation. During this time, the second wave of feminism gained momentum alongside the civil rights movement, and there was a growing emphasis on individual fulfilment and self-realization. Traditional gender roles, which confined women to family responsibilities and men to breadwinning, were increasingly challenged as women sought personal growth outside of these established spheres. As these ideologies shifted, new opportunities emerged, granting previously marginalized groups access to historically excluded institutions.

At the macro level, this ideological shift around gender coincided with a legal movement in Western countries, transitioning from fault-based divorce to the more progressive concept of irretrievable breakdown (Phillips, 1988). By the late 1970s, most states had adopted no-fault divorce grounds; however, many still retained fault in determining alimony. This distinction may reflect variations in gender relations and the status of women at the state level, an area that has been largely overlooked in existing research. This paper will explore the link between state-level differences in gender-based opportunity structures and the implementation of a “pure” no-fault divorce system.

By the late 1970s, most states had moved away from traditional family and divorce laws, adopting some form of no-fault divorce. Two main perspectives dominate the literature on why these widespread divorce reforms occurred. The functionalist perspective, as presented by scholars such as Jacob (1988) and Weitzman (1985), argues that the reforms resulted from routine policy-making driven by family law experts rather than social activism or political conflict. According to this view, these experts aimed to reduce the gap between how divorce

law was applied in practice and how it was codified. In contrast, the conflict/feminist perspective suggests that these reforms were driven by the broader struggle for gender equality within the family unit and society and shifts in gendered opportunity structures (Allen, 1998; Fuchs, 1983). This perspective sees the reform as a result of social activism and the fight for equal rights, particularly for women.

RESEARCH QUESTIONS

1. How has the adoption of no-fault divorce laws impacted marriage stability across different cultural and legal contexts?
2. To what extent have gender dynamics and shifts in societal values influenced the implementation and outcomes of no-fault divorce legislation?

NO FAULT THEORY

Hindu Law, therefore, treats marriage as a sacred institution and views it in light of its philosophical and religious significance. For Muslim Law, marriage is merely a legal contract based on an agreement between the parties concerned. Marriage has social significance; this is where two persons competent to marry settle in life and assume their marital obligations.

The term 'divorce' means the legal separation of two individuals who were once married as per respective law. But when we dig into Indian history there is no existence of such a concept because as per hindu law, marriage is a sacred bond and they didn't have any concept of separation. Later when hindu law was codified the provision for divorce was enacted in it. The Hindu Marriage Act, 1955, played a pivotal role in this, introducing Section 13 which provided grounds on which parties could seek a decree of divorce from a competent court.¹

Marriage dissolution is a subject that has, in recent times, changed a lot in its legal and social context and no-fault divorce is one aspect that stands out. However, divorce was seen as a process where the couple accusing one spouse of any wrong acts such as adultery, or omission among other forms of wrongdoing, resulting to lots of fights in courts. The advent of no-fault divorce- where couples simply want to part ways for whatever reasons and so will not apportion blame against one another- has changed this practice in a number of countries around the world.

¹ The Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955 (India), § 13.

While no-fault divorce laws offer greater freedom and autonomy to individuals, they have also sparked debates about their impact on marriage stability. Critics argue that by making divorce more accessible, these laws may weaken the institution of marriage, leading to higher divorce rates and less commitment between partners. On the other hand, proponents suggest that no-fault divorce reflects evolving societal values and provides a necessary legal remedy for individuals trapped in unhappy or dysfunctional marriages.

IMPACT ON MARRIAGE STABILITY

No-fault divorce emerged in the late 1960s and 1970s, where couples could just say "irreconcilable differences" to dissolve a marriage. While the policy liberated people from unhappy marriages, researchers have noted that it is in close association with a dramatic surge in the number of divorces since it made it very easy to get a divorce. Critics say that no-fault divorce corrodes the commitment that marriage should ideally hold, allowing free rides for people to leave each other and avoid the trials of partnership. It led to a decline in the number of happy marriages, instead of reducing the number of unhappy ones. More importantly, the policy did not help post-divorce conflicts decrease as Wallerstein's research points out that even as many as half of divorced couples remained in conflict five years after the separation. Arguably, by reducing the barriers to divorce, no-fault divorce made marriages less stable and lowering the cost while making divorce more available when relationships became challenging. Marriage requires, opponents say, effort and the promise to work through troubles rather than away from them. Tougher divorce laws, like a waiting period or counselling mandate, may promote family stability as it forces couples to address their problems rather than hastily dissolving the union, an even more urgent cause for stability when children are concerned.²

THE ADVENT OF NO-FAULT DIVORCE: GAPS LEFT BY FORMAL EQUALITY

Many lawmakers around the world argued for the end of fault-based divorce law to stop the legal hoop-jumping that comes with assigning blame.³ Where one party had to commit an enumerated fault to secure a divorce, often times spouses would actively engage in perjury to

² Spaht, K.S. (2002) 'Louisiana's covenant marriage law: recapturing the meaning of marriage for the sake of the children', in A.W. Dnes and R. Rowthorn (eds.) *The Law and Economics of Marriage and Divorce*. Cambridge: Cambridge University Press, pp. 92–117.

³ See, e.g., THE LAW COMMISSION, REFORM OF THE GROUNDS OF DIVORCE: THE FIELD OF CHOICE, 1966, Cmnd. 3123, at 5.

fulfil the legal requirement."⁴ Feminists also advocated no-fault divorce laws as part of a "gender-neutral paradigm for reform."⁵ Such a paradigm attempted to eliminate characterizations of women as inferior to men by eliminating laws that cast the legal rights of women and men in different lights.⁶

No-fault divorces gave both spouses the opportunity to leave the marriage unilaterally—a change that many liberal feminists viewed as a victory for equal opportunity.⁷ With the advent of no-fault divorce, however, came a recognition of the gap between the ideal and the reality. The "rhetoric" of formal equality presumed that men and women, once given equal opportunity, would achieve equal success.⁸ No-fault divorce law quickly drew attention to the still pervasive "culturally constructed and socially maintained positions of inequality" that relegated women to an inferior social status.⁹

Although many critics of no-fault divorce law have argued that the reform has a negative impact on the financial well-being of divorced women,¹⁰ the issue of causation remains questionable.¹¹ (see also Katharine T. Bartlett, *Saving the Family from the Reformers*, 31 U.C. DAVIS L. REV. 809, 835 (1998).) This move towards no-fault divorces did make the legal aspect of dissolving marriage relatively easy, but it has brought to light certain inherent inequalities at home, at marriage, and in the workplace that usually place women at a point of financial disadvantage after divorce. The inequality keeps going on even after divorce because of these inequalities, such as lower pay and domestic imbalances, exist post-divorce also and thus add vulnerability to women's economic position. In spite of the fact that the divorce is not based upon any fault, societal and structural inequalities between two sexes remain a pertinent factor in determining a financial outcome for women.

⁴ See NORMAN A. KATrER, CONDUCT, FAULT AND FAMILY LAW 68 (1987).

⁵ FINEMAN, *supra* note 9, at 3; see also Deborah L. Rhode & Martha Minow, *Reforming the Questions, Questioning the Reforms*, in DIVORCE REFORM AT THE CROSSROADS 191, 195 (Stephen D. Sugarman & Herma Hill Kay eds., 1990).

⁶ See FINEMAN, *supra* note 9, at 20-21.

⁷ Erin R. Melnick, *Reaffirming No-Fault Divorce: Supplementing Formal Equality with Substantive Change*, 75 IND. L.J. 335 (2000).

⁸ See Rhode & Minow at 193

⁹ *Id*

¹⁰ See LENOREJ. WEITZMAN, THE DIVORCE REVOLUTION: THE UNEXPECTED SOCIAL ANDECONOMIC CONSEQUENCES FOR WOMEN AND CHILDREN IN AMERICA (1985).

¹¹ see also Katharine T. Bartlett, *Saving the Family from the Reformers*, 31 U.C. DAVIS L. REV. 809, 835 (1998).

While women largely bear the majority of child-rearing responsibility at home, fault-based divorce gave them a bargaining power that no-fault divorce relinquished.¹² Under fault-based divorce, husbands at fault seeking divorces could only obtain one if their wives consented; under such a system, wives could use the husbands' desire to divorce as a bargaining chip for better divorce settlements.¹³ No-fault divorces, while easing the legal means of ending a marriage have more clearly laid bare issues that exist in homes, marriages, and workplaces as concerns how women are often left vulnerable in financial matters after a divorce. Many of these imbalances - lack of fair household chores, fewer chances for income - can and do persist even after a divorce, with this contributing to increasing women's economic insecurity. Even though the courts do not apportion fault in divorce, societal and structural disparities between the genders will still largely dictate the situation of women in terms of their financial scenario at the time of divorce. Early feminist reformers, while focused on gender-neutral laws, did not totally ignore this void created by no-fault divorce law. In line with the goals of gender neutrality, early reformers proposed equal division of property between husband and wife at divorce.¹⁴

The proposed property division scheme in no-fault divorce reforms aimed to give economic value to the work of homemakers, focusing primarily on the stereotypical image of the "victimized homemaker." While this approach intended to create equality, critics argued that dividing property equally assumed that women held equal social and economic standing, an ideal far from reality for many. A homemaker might receive an equal share of the marital assets, but would often enter the job market without the skills needed to support herself. Furthermore, the reform failed to address the diverse circumstances of women who didn't fit the "homemaker" mold, leaving their unique needs largely ignored.

The dynamics within individual marriages made equal property division an insufficient solution for women's financial security post-divorce. A gender-neutral rule of equal division didn't account for the varying contributions in each marriage. For instance, women who had dedicated themselves entirely to domestic duties were granted the same share of property as those with higher education and better job prospects. Similarly, women balancing both work

¹² See ALLEN M. PARKMAN, NO-FAULT DIVORCE: WHAT WENT WRONG? 79-80 (1992).

¹³ See *id*

¹⁴ See FINEMAN, , at 33.

and household responsibilities were awarded equal shares despite often contributing more than their spouses. The equal property division model overlooked the differences in marriages across cultural, educational, and economic lines, undervaluing the contributions of many women and leaving them vulnerable.

FRAMEWORK OF FREEDOM: THE LEGAL LANDSCAPE OF NO-FAULT DIVORCE

The 1976 amendment of Hindu Marriage Act, inserted two additional grounds of divorce by new section 13-B for divorce by mutual consent.¹⁵ Parties to a marriage can seek dissolution if they have been living separately for at least one year and have mutually agreed that the marriage should end. The court will decide on the application after six months, provided it has not been withdrawn within 18 months.¹⁶

In Muslim law, marriage is inherently contractual and can be dissolved, making consent divorce readily accepted. There are two forms of divorce by mutual consent: *khula* and *mubarat*. In *khula*, the wife initiates the divorce by returning the dower she received from her husband. In *mubarat*, both spouses agree to dissolve the marriage; however, if the wife seeks to release her husband, she forfeits her dower.

The Special Marriage Act incorporated this ground of mutual divorce in section 28 wherein both the parties together have to make a petition to the District Court on the ground that they have been living separately for a period of one year or more and it will be decided after six months of its presentation before 18 months.¹⁷

Similarly in the Divorce Act, 1869 through an amendment in 2001 Section 10-A has been inserted by adding the ground of dissolution of marriage by mutual consent.¹⁸ Both the parties together have to make petition to the District Court on the ground that they have been living separately for a period of two years or more and it will be decided after six months of its presentation before 18 months.¹⁹

¹⁵ The Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955 (India), § 13 B.

¹⁶ *Id*

¹⁷ The Special Marriage Act, 1954, No. 43, Acts of Parliament, 1954 (India), § 28.

¹⁸ The Divorce Act, 1869, No. 4, Acts of Parliament, 1869 (India), § 10A.

¹⁹ The Divorce Act, 1869, No. 4, Acts of Parliament, 1869 (India), § 10A.

The petition for obtaining divorce by mutual consent has to be presented jointly by the husband and wife. Apart from the date of marriage and few basic personal details should be furnished, the petition should also contain that the husband and wife are living separately for a period of more than one year (two years in case of the Divorce Act) and they are not able to live together any longer. In *Smt. Suresta Devi v. Om Prakash* (AIR 1992 SC 1904) the Hon'ble Supreme court has defined the expression 'living separately' as not living like husband and wife, they have no desire to perform marital obligations. The petition should also contain a declaration that all efforts for reconciliation have failed and there is no possibility of resuming matrimonial cohabitation and that the spouses are desirous of obtaining a decree of divorce by mutual consent²⁰.

The general principle is that the divorce by mutual consent shall be granted only after a waiting period of 6 months. This rule is a protection to the spouse from fraudulent or deceptive representation before the court about the consent to obtain decree. However, in appropriate cases in exercise of its extraordinary powers under Article 142 of the Constitution²¹ the Supreme court can grant relief to the parties without waiting for the statutory period of 6 months.²²

CRITICISM

Early critics of no-fault divorce relied heavily on a study by Lenore Weitzman seeking to demonstrate the increased disadvantages women suffered under a no-fault divorce, equal property division regime.²³ Many of those disadvantages are enumerated in Part I. Any proposed return to fault-based divorce that values the well-being of women must acknowledge more current disputes regarding Weitzman's study.²⁴

Several critics observed that the allegation that no-fault divorce has adversely affected women's economic status had to withstand stern examination and debate. Critics were suggesting that

²⁰ *Smt. Suresta Devi v. Om Prakash* AIR 1992 SC 1904.

²¹ INDIA CONST. art. 142.

²² *Anil Kumar Jain v. Maya Jain* AIR 2010 SC 229

²³ See LENOREJ. WEITZMAN, THE DIVORCE REVOLUTION: THE UNEXPECTED SOCIAL AND ECONOMIC CONSEQUENCES FOR WOMEN AND CHILDREN IN AMERICA (1985).

²⁴ See Richard R. Peterson, *A Re-Evaluation of the Economic Consequences of Divorce*, 61 AM. Soc. REV. 528 (1996); Richard R. Peterson, *Statistical Errors, Faulty Conclusions, Midguided Policy: Reply to Weitzman*, 61 AM. Soc. REV. 539 (1996); see also Saul D. Hoffman & Greg J. Duncan, *What Are the Economic Consequences of Divorce?*, 25 DEMOGRAPHY 641 (1988); Lenore J. Weitzman, *The Economic Consequences of Divorce Are Still Unequal: Comment on Peterson*, 61 AM. SOC. REV. 537 (1996).

the relative economic condition of women during fault-based divorce systems was at least as poor as in no-fault regimes. In many cases, although some women attained enhanced bargaining power in a fault-based divorce, it was typically irrelevant because these women almost invariably did not wish the divorce; it was their husbands who wanted to get out of the marriage. The law of fault-based divorce frequently made it costlier and more complicated for women who wanted to divorce or whose conduct could be classified as "fault."²⁵ Many women in stable marriages also may fail to appreciate the full nature of the economic risks with which they might be threatened upon divorce, for their marital arrangements are highly protective.

CONCLUSION

The study of no-fault divorce delves into the intricate web of its effects on the stability of marriage and the dynamics between males and females in diverse cultural settings. The changes in societal values that underpin these laws have led to a shift from fault-based to no-fault divorce, revealing stark inequalities among those affected, with women bearing the brunt.

As we navigate this confluence of legal frameworks and social realities, the need for future reforms becomes increasingly apparent. These reforms should not only strive for legal equality but also provide practical support for individuals navigating the divorce process. It's crucial to acknowledge the diverse needs of women from different backgrounds and ensure the provision of resources that can empower them economically and socially. Understanding the implications of no-fault divorce on marriage stability and gender dynamics is a crucial step towards building a more equitable society that prioritizes the rights and welfare of all individuals.

²⁵ (See Amy L. Wax, *Bargaining in the Shadow of the Market: Is There a Future for Egalitarian Marriage?*, 84 VA. L. REV. 509, 639-40 (1998).)