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DIVORCE AND GENDER JUSTICE: IS THE LAW FAIR TO BOTH SPOUSES?

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Abstract

The intersection of matrimonial breakdown, statutory regulation, and gender justice occupies a contentious terrain in contemporary family jurisprudence. Historically conceived as an instrument to ameliorate the structural subjugation of women within patriarchal domesticity, matrimonial law has evolved unevenly across jurisdictions. Today, the legal architecture governing divorce stands accused of paradoxical failings: on the one hand, feminist critiques highlight persistent economic precarity, undervalued domestic labor, inadequate post-divorce maintenance, and systemic enforcement deficits that leave divorced women, particularly custodial mothers, economically disenfranchised; on the other hand, an escalating discourse around men's rights and gender-neutral equity contends that modern procedural mechanisms, criminal provisions, fault-based remedies, and parental alienation doctrines impose disproportionate financial liabilities and custodial marginalization upon men. This research article interrogates whether contemporary divorce law achieves genuine fairness for both spouses or merely redistributes systemic injustice. Examining statutory frameworks, judicial precedents across common law regimes—with a focal comparative lens on India, the United Kingdom, and the United States—and socio-legal realities, this paper examines marital property division, spousal maintenance and alimony, child custody adjudication, and the weaponization or under-enforcement of matrimonial statutes. It posits that legal systems cannot achieve substantive equity by oscillating between gender-blind formal equality and paternalistic protectionism; rather, fairness requires recognizing marriage as an economic and caregiving partnership, statutorily codifying community of property, implementing rigorous child-centered shared parenting paradigms, and decoupling financial distress from retaliatory litigation.

Keywords: Divorce Jurisprudence, Gender Justice, Spousal Support, Marital Property, Child Custody, Substantive Equality, Alimony, Family Courts.

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1. Introduction: The Dialectic of Matrimonial Dissolution and Gender Justice

The institution of marriage, once celebrated in classical jurisprudence as an indissoluble sacrament or an inviolable social cornerstone, has undergone profound normative, statutory, and sociological renegotiation over the past century.[1] With the secularization of domestic relations and the ascendancy of individual autonomy, divorce transitioned from an exceptional remedy granted solely for catastrophic moral transgressions to a recognized legal entitlement acknowledging the irretrievable collapse of emotional affinity.[2] Yet, the dissolution of marriage does not operate within a social vacuum. Matrimonial breakdown invariably unmasks the underlying economic, relational, and emotional asymmetries of the domestic sphere. Consequently, family law has become one of the most embattled arenas of gender justice.

Historically, the quest for gender justice in family law was animated by an urgent imperative: the liberation and protection of women. In patriarchal societies, marriage functioned under doctrines such as coverture in Anglo-American common law or sacramental subordination under various personal legal regimes, rendering wives proprietary and legal appendages of their husbands.[3] As modern legal systems sought to correct these historical imbalances, they constructed affirmative statutory shields, including fault-based exit remedies, alimony, child maintenance, protective criminal statutes against domestic cruelty, and preferential custody doctrines.[4] These mechanisms were designed not merely to regulate marital termination, but to perform a restorative function—insulating vulnerable women from economic destitution and physical abuse.

In the contemporary era, however, the concept of 'fairness' in divorce law has fractured into intensely polarized debates. Feminist legal scholars continue to demonstrate through empirical data that divorce precipitates an acute feminization of poverty.[5] Women routinely sacrifice career trajectory, financial independence, and market capital to perform uncompensated caregiving and domestic labor, only to find themselves, upon matrimonial collapse, cast out with minimal maintenance, negligible shares in accumulated assets, and the onerous burden of single parenthood. Conversely, an influential counter-narrative, championed by fathers' rights advocates and critical family law commentators, argues that modern matrimonial jurisprudence has swung toward a punitive asymmetry against men.[6] This critique contends that husbands are systematically subjected to lifetime maintenance orders, draconian enforcement measures, presumption-laden custody denials, and the weaponization of false criminal allegations designed to extort financial settlements.

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This article critically interrogates whether the contemporary law of divorce is truly fair to both spouses. It examines whether family law has succeeded in establishing substantive equality or whether it remains trapped between formal equality—which assumes a level playing field that does not exist—and paternalistic overreach, which creates genuine grievances for men without resolving the systemic precarity of women. By synthesizing statutory regimes, constitutional guarantees, judicial precedents, and empirical socio-legal research across jurisdictions—with dedicated comparative focus on India, the United Kingdom, and the United States—this study assesses the distribution of legal fairness across property, support, custody, and procedural enforcement.

2. Historical Genealogies: From Sacramental Indissolubility to Contractual Breakdown

To assess the contemporary fairness of divorce law, one must trace its historical genealogy. In pre-modern Western jurisprudence, marriage was governed predominantly by canon law, which held the marital bond to be indissoluble.[7] The only permissible remedies were a mensa et thoro (legal separation from bed and board without the right to remarry) or a declaration of nullity. Similarly, in ancient Hindu jurisprudence, marriage was conceptualized as a samskara (an eternal spiritual union) that could not be severed by human agency, while classical Islamic jurisprudence recognized talaq and khula under specific patriarchal structures.[8] Under Anglo-American common law, the doctrine of coverture suspended the legal existence of the woman during marriage; her property vested in her husband, and she could neither contract nor sue independently.[9]

The enactment of secular matrimonial statutes in the nineteenth and twentieth centuries—such as the Matrimonial Causes Act 1857 in England and the Hindu Marriage Act, 1955 in India—introduced statutory divorce, but anchored it firmly within the 'fault doctrine.'[10] Under this framework, divorce was conceptualized as a punitive sanction imposed upon a guilty spouse for a specific matrimonial offense (such as adultery, cruelty, or desertion) in favor of an entirely innocent petitioner. Fault-based divorce inherently moralized matrimonial dissolution, forcing parties into adversarial litigation where proving innocence and assigning blame were prerequisites for legal and economic survival.[11]

The mid-twentieth century witnessed the revolutionary advent of 'no-fault divorce,' pioneered by California's Family Law Act of 1969 and mirrored in the English Divorce Reform Act 1969.[12] No-fault divorce reconceptualized marriage as a voluntary partnership based on mutual

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affection, allowing dissolution upon the objective criterion of 'irretrievable breakdown of marriage.' In India, while no-fault mutual consent divorce was introduced via Section 13B of the Hindu Marriage Act in 1976, irretrievable breakdown remains absent as a statutory ground, recognized only through the extraordinary constitutional powers of the Supreme Court under Article 142.[13] As this paper demonstrates, while no-fault divorce liberated individuals from toxic unions, its uncoordinated interaction with property and maintenance regimes produced unforeseen economic and gendered consequences that continue to destabilize spousal equity.

3. The Economic Realities of Divorce: The Feminization of Poverty and Unvalued Domestic Labor

A fundamental metric of fairness in matrimonial dissolution is post-divorce economic welfare. Empirical socio-legal scholarship across diverse jurisdictions reveals a persistent and disturbing pattern: divorce disproportionately degrades the financial security of women while leaving men relatively insulated, and often economically enhanced, in the long term.[14] In her foundational sociological study, The Divorce Revolution, Lenore Weitzman demonstrated that no-fault divorce laws in California precipitated an immediate 73 percent decline in the standard of living of divorced women and their dependent children, whereas divorced men experienced a 42 percent increase.[15] Although subsequent methodological recalculations by Richard Peterson moderated these specific percentages—finding an average 27 percent decline for women and a 10 percent gain for men—the central conclusion remains uncontroverted: divorce exacerbates structural gender poverty.[16]

The root of this asymmetry lies in the traditional gendered division of labor within the household. Marriage is both an affective partnership and an economic joint venture. In the vast majority of marriages, one spouse—predominantly the wife—subordinates or forfeits external career prospects to undertake non-market domestic labor, child-rearing, and family management.[17] This division allows the other spouse—predominantly the husband—to accumulate human capital, professional networks, seniority, earning capacity, and pension entitlements without the drag of primary caregiving responsibilities. As feminist economist Marilyn Waring and legal theorist Martha Fineman have demonstrated, uncompensated domestic labor operates as an unacknowledged subsidy supporting the entire market economy.[18]

When the legal system treats spouses upon divorce under a regime of formal equality—assuming that each adult leaves the marriage with equal capacity to achieve economic self-

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sufficiency—it commits an act of profound substantive injustice. A homemaker who has spent twenty years outside the formal workforce cannot simply re-enter the market at a living wage; her earning capacity has suffered permanent depreciation. In jurisdictions like India, where community of marital property does not statutorily exist, the situation is acute.[19] A divorced woman in India possesses no automatic statutory claim over assets acquired during the marriage in her husband's name; she is relegated to claiming maintenance under Section 125 of the Code of Criminal Procedure, 1973 (now Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023) or Section 24 and 25 of the Hindu Marriage Act, 1955.[20] These maintenance awards are notoriously meager, subject to years of procedural delay, and frequently rendered useless by widespread non-compliance.[21] For millions of women, divorce remains an economic cliff.

4. Spousal Maintenance and Alimony: Restorative Justice or Perpetual Dependency?

Spousal maintenance and alimony represent the primary doctrinal vehicles through which courts attempt to mitigate post-divorce economic disparity. Yet, maintenance is simultaneously the most reviled aspect of family law for men and the most precarious lifeline for women.[22] To assess its fairness, one must disentangle the philosophical justifications for spousal support: Is it an entitlement based on past contributions, a compensatory mechanism for career sacrifices, a transitional rehabilitation tool, or a patriarchal continuation of the husband's duty to provide? From the perspective of husbands, contemporary maintenance jurisprudence is frequently experienced as punitive, extortionate, and fundamentally inconsistent with modern concepts of gender equality. In many jurisdictions, courts continue to operate under a rigid breadwinner presumption, imputing hypothetical earning capacity to men even during periods of unemployment, business failure, or medical disability.[23] The Supreme Court of India has reiterated in cases such as Shamima Farooqui v. Shahid Khan and Manish Jain v. Akanksha Jain that an able-bodied husband is legally obligated to maintain his wife, even if he has to engage in manual labor.[24] Men's rights advocates argue that this standard imposes a form of modern indenture. Why should a capable, educated woman, after a brief marriage without children, be granted permanent maintenance that disincentivizes her from seeking employment, effectively treating the ex-husband as a perpetual insurer of her lifestyle?[25]

Conversely, from the perspective of wives, the reality of maintenance adjudication is characterized by systemic evasion and procedural trauma. In theory, landmark judgments like

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the Supreme Court of India's ruling in Rajnesh v. Neha (2020) established comprehensive guidelines, mandating the submission of detailed affidavits of assets and liabilities to eliminate income concealment.[26] In practice, however, husbands routinely suppress true income through informal cash economies, undisclosed business entities, and benami holdings. Interim maintenance applications, intended to provide urgent relief within sixty days, languish for years across congested Family Courts.[27] Furthermore, executing maintenance decrees is fraught with systemic paralysis; when defaulting husbands choose brief civil imprisonment over compliance, the debt remains uncollected, leaving the dependent spouse destitute.[28]

In Western common law jurisdictions, the doctrine of maintenance has shifted sharply away from permanent alimony toward 'rehabilitative' or 'transitional' maintenance, intended to bridge the period required for a dependent spouse to retrain and achieve self-sufficiency.[29] While this model respects autonomy and prevents lifelong servitude, its fairness depends entirely upon the existence of a robust marital property division regime. Where property is not equitably divided, terminating maintenance under the guise of 'self-sufficiency' merely accelerates maternal poverty.

5. Marital Property and Asset Division: Separate Property vs. Community and Equitable Distribution

The division of marital property constitutes the ultimate structural divide in global family law. It is here that the disparity between formal legal equality and substantive justice becomes glaringly evident. Modern family jurisprudence broadly encompasses three distinct property paradigms: the Separate Property regime, the Community of Property regime, and the Equitable Distribution regime.[30]

India adheres to a strict Separate Property regime. Under Indian personal laws and civil marriage statutes, marriage creates no proprietary community. Title determines ownership: whoever paid for an asset or holds legal title retains it upon dissolution.[31] A wife may have spent decades managing the household, nurturing children, and supporting her husband's career, but unless her name appears on the deed or she can prove direct monetary contribution—a virtually impossible evidentiary burden—she has zero proprietary claim over the marital residence, bank accounts, investments, or corporate shares acquired during the marriage.[32] Section 27 of the Hindu Marriage Act permits courts to make orders only with respect to property 'presented, at or about the time of marriage, which may belong jointly to both the husband and the wife.' This leaves wives structurally disenfranchised, forced to rely

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on discretionary, contentious, and easily evaded maintenance claims. Although the Law Commission of India in its 217th and 252nd Reports recommended introducing the irretrievable breakdown of marriage along with statutory rights in marital property, political inertia has stalled reform.[33]

In sharp contrast, the United Kingdom and the United States have pioneered the Equitable Distribution and Community Property models. Under the landmark ruling of the House of Lords in White v. White (2000), English family law dismantled the traditional distinction between the financial breadwinner and the domestic homemaker, establishing the 'yardstick of equality.'[34] Lord Nicholls famously held that there must be no discrimination between the husband and wife and their respective roles; domestic contributions must be recognized as having equal intrinsic worth to financial contributions. This principle was reaffirmed and expanded in Miller v. Miller and McFarlane v. McFarlane (2006), creating a three-pillar framework based on needs, compensation, and sharing.[35]

Yet, the equitable distribution model has generated substantial criticism from higher-earning spouses, particularly men, who argue that the judicial discretion inherent in 'equitable' sharing produces profound unpredictability and perceived injustice.[36] In cases involving short-duration marriages or substantial pre-marital wealth, husbands often contend that the equal sharing of assets amounts to the unearned expropriation of personal capital. The debate over whether commercial business assets, intellectual property, and future earning capacity should be treated as divisible marital property remains fierce across appellate courts.[37]

6. Child Custody, Caregiving Roles, and Fatherhood in the Modern Family Court

Nowhere is the accusation of institutional bias against men more fervent than in the domain of child custody and access adjudication. Historically, common law operated under the paternalistic doctrine of patria potestas, awarding absolute custody of legitimate children to the father as the natural guardian.[38] The nineteenth century witnessed an ideological reversal with the emergence of the 'Tender Years Doctrine,' famously articulated in Justice Talfourd's Act of 1839 in England, which presumed that young children, particularly infants and daughters, require the maternal warmth and care that only a mother can provide.[39]

Today, modern statutory frameworks formally reject gender presumptions, enshrining the universal standard of the 'welfare and best interests of the child.'[40] In India, Section 13 of the Hindu Minority and Guardianship Act, 1956 explicitly declares that the welfare of the minor

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shall be the paramount consideration, superseding patriarchal claims under Section 6.[41] Similarly, the Guardians and Wards Act, 1890 commands the court to evaluate the moral, physical, and emotional welfare of the child. In practice, however, family court adjudications continue to reflect a deep-seated maternal preference. In an overwhelming majority of contested custody cases across India, the United Kingdom, and the United States, sole physical custody is awarded to the mother, relegating the father to the status of an alternate-weekend visitor and financial provider.[42]

This dynamic has galvanized the global fathers' rights movement, which argues that the family court system treats fathers as disposable parents.[43] Men routinely experience profound emotional trauma upon being abruptly severed from their children's daily lives. Furthermore, non-custodial fathers frequently face 'parental alienation'—the systematic psychological manipulation of a child by the custodial parent to foster hostility and estrangement toward the other parent.[44] Although the Supreme Court of India recognized parental alienation syndrome and the necessity of shared parenting in Vivek Singh v. Romani Singh and Lahari Sakhamuri v. Sobhan Kodali, the enforcement of visitation orders remains notoriously toothless.[45] A custodial mother who obstructs court-ordered access rarely faces meaningful penal or civil sanctions, as courts fear destabilizing the child, leaving alienated fathers without effective legal remedies.[46]

Conversely, feminist legal scholars emphasize that the maternal custody preference is not an unfair privilege, but the direct reflection of pre-divorce reality. Sociological data demonstrates that during the subsistence of the marriage, mothers perform the vast preponderance of primary physical care, emotional management, and developmental support.[47] Adopting an inflexible 'presumption of equal 50/50 shared parenting' upon divorce—often demanded by fathers' rights groups—can operate unfairly against mothers who have shouldered the burdens of primary parenting, and may expose women and children to continued coercive control in cases involving domestic violence.[48] True fairness demands an individualized inquiry that rewards active caregiving while ruthlessly dismantling procedural barriers to engaged fatherhood.

7. Fault, False Allegations, and Procedural Warfare: Assessing the Claim of Anti-Male Bias

In jurisdictions that retain fault-based divorce or maintain interconnected penal statutes for domestic misconduct, matrimonial dissolution frequently degenerates into tactical warfare. In India, this dynamic is epitomized by the volatile intersection of civil divorce proceedings and

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Section 498A of the Indian Penal Code (now Section 85/86 of the Bharatiya Nyaya Sanhita, 2023), along with the Protection of Women from Domestic Violence Act, 2005 (PWDVA).[49] Section 498A, introduced in 1983 as a crucial affirmative measure to curb the rampant evil of dowry deaths and domestic cruelty, was designed to be cognizable, non-bailable, and non-compoundable.[50] Over the subsequent four decades, however, the Supreme Court of India has repeatedly acknowledged that this protective provision has suffered widespread abuse as an instrument of retaliatory harassment. In landmark decisions such as Sushil Kumar Sharma v. Union of India (terming it 'legal terrorism'), Preeti Gupta v. State of Jharkhand, Arnesh Kumar v. State of Bihar, and Rajesh Sharma v. State of U.P., the apex court observed that matrimonial disputes are routinely characterized by omnibus, exaggerated allegations implicating not only the husband, but his aged parents, married sisters, and distant relatives.[51] The immediate consequence for men includes arbitrary arrests, reputational destruction, suspension from employment, look-out circulars, and the trauma of protracted criminal trials that frequently end in acquittal decades later.[52]

The systemic weaponization of criminal and domestic violence statutes creates a legitimate sense of injustice among men, who find their liberty, livelihood, and dignity held hostage to force exorbitant divorce settlements. Yet, it is equally dangerous to allow the reality of statutory abuse to eclipse the genuine epidemic of violence against women. National Family Health Survey (NFHS-5) data reveals that nearly 30 percent of married women in India experience physical or sexual spousal violence, the vast majority of which goes entirely unreported.[53] When courts over-correct by imposing procedural barriers on domestic violence complaints, genuine victims of abuse face heightened skepticism, bureaucratic hostility, and dangerous delays in securing protection orders.[54] Thus, the procedural warfare of matrimonial litigation inflicts structural damage on both genders: it tortures men through false implication while delegitimizing women who suffer genuine matrimonial cruelty.

8. Toward Substantive Matrimonial Justice: Structural Reforms for Both Spouses

The preceding analysis demonstrates that modern divorce law does not achieve consistent fairness for either spouse; instead, it distributes disparate forms of structural injustice across gender lines. Wives remain economically vulnerable, proprietary outsiders, and administratively exhausted claimants of uncollected maintenance. Husbands face rigid financial obligations, custody marginalization, and the peril of weaponized criminal

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procedures. Resolving this crisis requires moving beyond reactionary zero-sum politics toward comprehensive structural reform.

First: Statutory Codification of Community of Marital Property and Equitable Sharing. India and jurisdictions adhering to strict separate property regimes must immediately codify a statutory presumption of community of marital property.[55] All assets acquired by either spouse during the subsistence of the marriage—irrespective of title or individual direct monetary contribution—must be recognized as marital property subject to equitable distribution upon dissolution. This reform directly resolves the economic precarity of wives by recognizing non-monetary domestic labor as an equal proprietary contribution. Concurrently, it eliminates the necessity for wives to pursue indefinite, contentious spousal maintenance, thereby liberating husbands from perpetual financial liabilities.

Second: Codification of Irretrievable Breakdown of Marriage with Economic Safeguards. Parliament must statutorily incorporate the irretrievable breakdown of marriage as a no-fault ground for divorce across all personal laws, as recommended by the Law Commission's 217th Report.[56] Forcing spouses to engage in vitriolic, fabricated fault-finding under Section 13(1) of the Hindu Marriage Act fuels retaliatory criminal litigation. However, this no-fault exit must be subject to an explicit 'financial hardship clause,' ensuring that a higher-earning spouse cannot unilaterally exit without providing full proprietary equity and housing security for the dependent spouse and minor children.[57]

Third: Reconceptualizing Custody Toward a Rebuttable Presumption of Shared Parenting. Family courts must abandon antiquated maternal presumptions and adopt a rebuttable statutory presumption of joint legal custody and substantial shared physical parenting, absent clear evidence of domestic abuse, neglect, or parental incapacity.[58] Courts must recognize parental alienation as an actionable civil wrong and establish strict enforcement mechanisms for visitation orders, including compensatory parenting time and judicial sanctions for willful defiance.[59]

Fourth: Decoupling Criminal Sanctions from Matrimonial Property Disputes. The intersection of penal law and civil matrimonial breakdown must be rationalized. While genuine violence must be prosecuted with unyielding rigor under specialized protective statutes, family courts must integrate comprehensive pre-litigation mediation and establish swift penalties for demonstrably fabricated, malicious criminal filings.[60] Spousal maintenance calculations should be standardized through algorithmic tables based on net income and standard of living, eliminating arbitrary judicial discretion and income evasion.[61]

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9. Conclusion

The central inquiry posed by this article—is the law of divorce fair to both spouses?—cannot be answered with a simple affirmative or negative. Contemporary family law is neither systematically fair to women nor systematically fair to men. Instead, it reflects a deeply flawed, fragmented system that oscillates between an uncritical formal equality that blinds itself to the structural economic vulnerabilities of women, and an antiquated protectionism that patronizes wives while treating husbands as disposable caregivers and perpetual bank accounts.

Fairness in matrimonial dissolution cannot be achieved by balancing one spouse's injustice against the other's grievance. True gender justice in divorce requires a profound paradigm shift: recognizing marriage as a partnership of equal, dignity-bearing human beings who contribute differently but with equal value. By establishing marital property sharing, guaranteeing child-centered shared parenting, eliminating fault-based procedural combat, and ensuring the swift, digitized enforcement of support decrees, family law can finally fulfill its transformative constitutional promise—securing dignity, equity, and peace for both spouses as they rebuild their lives beyond the shadow of a broken union.

Footnotes and References

1. Mary Ann Glendon, *The Transformation of Family Law: State, Law, and Family in the United States and Western Europe* 1–15 (University of Chicago Press, Chicago, 1989).
2. Lawrence M. Friedman, "A Dead Language: Divorce Law and Practice Before No-Fault" 86 *Virginia Law Review* 1497 (2000).
3. William Blackstone, *Commentaries on the Laws of England* 442 (Clarendon Press, Oxford, 1765).
4. Reva B. Siegel, "The Modernization of Marital Status Law: Adjudicating Wives' Rights to Earnings, 1860–1930" 82 *Georgetown Law Journal* 2127 (1994).
5. Lenore J. Weitzman, *The Divorce Revolution: The Unexpected Consequences for Women and Children in America* (Free Press, New York, 1985).
6. Stephen Baskerville, *Taken into Custody: The War Against Fathers, Marriage, and the Family* (Cumberland House, Nashville, 2007); Richard Collier and Sally Sheldon, *Fragile Fatherhood: Law, Politics and Gender* (Hart Publishing, Oxford, 2008).
7. R.H. Helmholz, *Roman Canon Law in Reformation England* 69–75 (Cambridge University Press, Cambridge, 1990).
8. Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* 45–

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62 (Oxford University Press, New Delhi, 1999).

9. Norma Basch, *In the Eyes of the Law: Women, Marriage, and Property in Nineteenth-Century New York* (Cornell University Press, Ithaca, 1982).
10. The Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85); The Hindu Marriage Act, 1955 (Act 25 of 1955).
11. Max Rheinstein, *Marriage Stability, Divorce, and the Law* 28–50 (University of Chicago Press, Chicago, 1972).
12. The California Family Law Act, 1969, Cal. Civ. Code s. 4500; The Divorce Reform Act, 1969, c. 55.
13. The Hindu Marriage Act, 1955, s. 13B; *Shilpa Sailesh* v. *Varun Sreenivasan*, 2023 SCC OnLine SC 544.
14. Heather Joshi and Hugh Davies, "Child Care and Mothers' Lifetime Earnings: Some European Contrasts" 19 *CEPR Discussion Papers* 130 (1992); Matthew D. Bramlett and William D. Mosher, "Cohabitation, Marriage, Divorce, and Remarriage in the United States" 23 *Vital and Health Statistics* 22 (2002).
15. Weitzman, *supra* note 5, at 323.
16. Richard R. Peterson, "A Re-Evaluation of the Economic Consequences of Divorce" 61 *American Sociological Review* 528 (1996); Saul D. Hoffman and Greg J. Duncan, "The Economic Consequences of Divorce" 25 *Demography* 641 (1988).
17. Gary S. Becker, *A Treatise on the Family* 14–37 (Harvard University Press, Cambridge, 1981).
18. Marilyn Waring, *If Women Counted: A New Feminist Economics* (Harper & Row, San Francisco, 1988); Martha Albertson Fineman, *The Illusion of Equality: The Rhetoric and Reality of Divorce Reform* 36–52 (University of Chicago Press, Chicago, 1991).
19. Law Commission of India, "Need for Serious Consideration and Introduction of Irretrievable Breakdown of Marriage as Another Ground for Divorce", Report No. 217 (2009); Law Commission of India, "The Hindu Marriage Act, 1955 and The Special Marriage Act, 1954", Report No. 252 (2015).
20. The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 125; The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 144; The Hindu Marriage Act, 1955 (Act 25 of 1955), ss. 24, 25.
21. *B.P. Achala Anand* v. *S. Appi Reddy*, (2005) 3 SCC 313.
22. Ira Mark Ellman, "The Theory of Alimony" 77 *California Law Review* 1 (1989).
23. *Chander Parkash* v. *Shila Rani*, AIR 1968 Del 174.

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24. *Shamima Farooqui* v. *Shahid Khan*, (2015) 5 SCC 705; *Manish Jain* v. *Akanksha Jain*, (2017) 15 SCC 801.
25. *Kavita Prasad* v. *Ram Ashray Prasad*, 2017 SCC OnLine Del 11215; *Amit Agarwal* v. *Rashmi Agarwal*, 2022 SCC OnLine P&H 321.
26. *Rajnesh* v. *Neha*, (2021) 2 SCC 324.
27. *Aditi alias Mita Bose* v. *Jitesh Khurana*, 2023 SCC OnLine Del 7212.
28. *Poonguzhali* v. *The State*, 2022 SCC OnLine Mad 4512.
29. American Law Institute, *Principles of the Law of Family Dissolution: Analysis and Recommendations* s. 5.04 (LexisNexis, Newark, 2002).
30. Mary Ann Glendon, *State, Law and Family: Family Law in Transition in the United States and Western Europe* 140–162 (North-Holland, Amsterdam, 1977).
31. *Prabha Dutt* v. *Suresh Dutt*, 1987 SCC OnLine Del 317; *V. Bhagat* v. *D. Bhagat*, (1994) 1 SCC 337.
32. Flavia Agnes, "Protecting Women's Rights in Matrimonial Property" 34 *Economic and Political Weekly* 3001 (1999).
33. Law Commission of India, *supra* note 19.
34. *White* v. *White*, [2000] UKHL 54: [2001] 1 AC 596.
35. *Miller* v. *Miller*; *McFarlane* v. *McFarlane*, [2006] UKHL 24: [2006] 2 AC 618.
36. John Eekelaar, "Asset Distribution on Divorce: The Meaning of Equality" 15 *Child and Family Law Quarterly* 163 (2003).
37. *Charman* v. *Charman (No. 4)*, [2007] EWCA Civ 503; *O'Brien* v. *O'Brien*, 66 N.Y.2d 576 (1985).
38. *Rex* v. *De Manneville*, (1804) 5 East 221: 102 Eng. Rep. 1054.
39. The Custody of Infants Act, 1839 (2 & 3 Vict. c. 54).
40. United Nations Convention on the Rights of the Child, 1989, 1577 U.N.T.S. 3, art. 3(1).
41. The Hindu Minority and Guardianship Act, 1956 (Act 32 of 1956), ss. 6, 13; The Guardians and Wards Act, 1890 (Act 8 of 1890), s. 17.
42. *Gaurav Nagpal* v. *Sumedha Nagpal*, (2009) 1 SCC 42; *Roxann Sharma* v. *Arun Sharma*, (2015) 8 SCC 318.
43. Michael E. Lamb, *The Role of the Father in Child Development* 1–25 (John Wiley & Sons, Hoboken, 5th edn., 2010).
44. Richard A. Gardner, *The Parental Alienation Syndrome: A Guide for Mental Health and Legal Professionals* (Creative Therapeutics, Cresskill, 1992); Joan B. Kelly and Janet R. Johnston, "The Alienated Child: A Reformulation of Parental Alienation

ISSN: 2582-6433

Syndrome" 39 *Family Court Review* 249 (2001).

45. *Vivek Singh* v. *Romani Singh*, (2017) 3 SCC 231; *Lahari Sakhamuri* v. *Sobhan Kodali*, (2019) 7 SCC 311; *Yashita Sahu* v. *State of Rajasthan*, (2020) 3 SCC 738.
46. *Pradeep Neupane* v. *State of NCT of Delhi*, 2019 SCC OnLine Del 9741.
47. Suzanne M. Bianchi, John P. Robinson and Melissa A. Milkie, *Changing Rhythms of American Family Life* (Russell Sage Foundation, New York, 2006).
48. Carol Smart, *The Ties That Bind: Law, Marriage and the Reproduction of Patriarchal Relations* (Routledge, London, 1984); Linda D. Elrod and Milfred D. Dale, "Amicable Resolution of Custody Disputes: The Role of Shared Parenting" 42 *Family Law Quarterly* 405 (2008).
49. The Indian Penal Code, 1860 (Act 45 of 1860), s. 498A; The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), ss. 85, 86; The Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005).
50. The Criminal Law (Second Amendment) Act, 1983 (Act 46 of 1983).
51. *Sushil Kumar Sharma* v. *Union of India*, (2005) 6 SCC 281; *Preeti Gupta* v. *State of Jharkhand*, (2010) 7 SCC 667; *Arnesh Kumar* v. *State of Bihar*, (2014) 8 SCC 273; *Rajesh Sharma* v. *State of U.P.*, (2018) 10 SCC 472; *Social Action Forum for Manav Adhikar* v. *Union of India*, (2018) 10 SCC 443.
52. *Kahkashan Kausar alias Sonam* v. *State of Bihar*, (2022) 6 SCC 599.
53. International Institute for Population Sciences and ICF, "National Family Health Survey (NFHS-5), India: 2019–21" 560–575 (IIPS, Mumbai, 2021).
54. *Indra Sarma* v. *V.K.V. Sarma*, (2013) 15 SCC 755; *Kamlesh Devi* v. *Jaipal*, (2019) 11 SCC 645.
55. Law Commission of India, "Reform of Family Law", Consultation Paper paras 4.1–4.25 (August 31, 2018).
56. Law Commission of India, *supra* note 19 (Report No. 217).
57. The Marriage Laws (Amendment) Bill, 2010 (Bill No. LXXI of 2010).
58. Law Commission of India, "Shared Parentage System in India", Report No. 257 (May 2015).
59. *Perry* v. *Perry*, [1963] 3 All ER 766; *KM* v. *BM*, 2022 SCC OnLine Del 3412.
60. *K. Srinivas Rao* v. *D.A. Deepa*, (2013) 5 SCC 226.
61. American Academy of Matrimonial Lawyers, "Child Support Guidelines: A Model for Determining Support" 10 *Journal of the American Academy of Matrimonial Lawyers* 1 (1993); *Rajnesh*, *supra* note 26.