

A CRITICAL ANALYSIS OF DIVORCE LEGISLATION AND ITS SOCIAL ME EFFECT: THE LAW AND THE LIMITS OF AFFECTION

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ABSTRACT

India is known for its traditional values, great culture and strong family values, but one of the biggest concerns is the rate of divorce which has been rising on a day-to-day basis. Though the divorce rates in India is low as compared to the other nations (only 1%), but the picture cannot be considered to be absolutely true as divorce is discouraged in our society and there are various social stigmas attached to the term “divorce” amongst the people. The divorce rates in metropolitan cities are also increasing at a very fast pace. In this paper, the researcher discusses the impact of social media on married relationships. The researcher attempts to explain how social media is responsible for the increasing number of divorces.

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| <i>Key Words : India ,Marriage ,Family Law ,Social Media ,Sacrament, Adultery</i> |
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1.INTRODUCTION

With the rapid pace of technological progress in the past decade, our existence has become more and more enmeshed with cyberspace. Smartphones and social media sites now contain an enormous quantity of personal information and digital traces everything from daily routines to sentiments. These sites have not only become venues for social contact but also instruments of data gathering and behavioural observation. In this regard, social media has become a rich but complicated source of electronic evidence in criminal trials and civil cases.

India is known for its traditional values, great culture and strong family values, but one of the biggest concerns is the rate of divorce which has been rising on a day-to-day basis. Though the divorce rates in India is low as compared to the other nations (only 1%), but the picture cannot be considered to be absolutely true as divorce is discouraged in our society and there are various social stigmas attached to the term “divorce” amongst the people. The divorce rates in metropolitan cities are also increasing at a very fast pace. The main reasons that have come up in the past few decades include financial independence in females, increasing awareness amongst the youth, changing societal norms, changes in the laws, non-compatibility amongst the partners, infidelity, increasing number of frauds in the union, disputes because of in-laws, acceptance of divorces amongst the society, instances of physical or mental cruelty, abandonment by one spouse, lack of communication, rise in corporate culture, increase in substance abuse, alcohol addiction, financial differences, career related conflicts, religious differences, sexual incompatibility, dowry harassment and usage of social media for wrong purposes.

2. Issues and Challenges :- How Technology is Reshaping Divorce in India

An important issue that frequently arises before the courts is the evidentiary value of messages exchanged on social media platforms. Given that popular social networking applications like WhatsApp have become integral to daily communication, courts are increasingly faced with the question of how to treat such messages in legal proceedings. Initially, in the case of *Girwar Singh v. CBI*¹, the Delhi High Court held that WhatsApp messages were inadmissible as evidence.

¹ Crl. A. 263 and 279/2009

These days social media has become a major source for evidences. It has been held by the Court that the Whatsapp chats can be admissible in the court of law if the three conditions are met:

- i) The receiver has received the message which can be indicated by double ticks
- ii) the phone is in regular usage and has not been tampered with in any circumstances
- iii) the sender intended to send the message to the recipient.

However, in *Ambalal Sarabhai Enterprise Ltd. V. KS Infraspace LLP Ltd and Another*², the Supreme Court overruled this position, holding that WhatsApp dialogues could indeed be considered prima facie admissible evidence because such communications could be scrutinized, in terms of their intention and meaning, but it would be subject to verification through examination-in-chief and cross-examination. It made it clear that although WhatsApp messages are acceptable as evidence, those messages have to undergo what the court termed “cumulative deciphering” alongside context and content analysis of the messages to determine if they are reliable.

The term “evidence” has been defined under Section 2(e) of the Bhartiya Sakshya Adhiniyam, 2023 as:

"evidence" means and includes—

- (i) all statements including statements given electronically which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry and such statements are called oral evidence;
- (ii) all documents including electronic or digital records produced for the inspection of the Court and such documents are called documentary evidence;”

Section 63 explicitly lays down the rules regarding the admissibility of electronic records.

“63. (1) Notwithstanding anything contained in this Adhiniyam, any information contained in an electronic record which is printed on paper, stored, recorded or copied in optical or magnetic media or semiconductor memory which is produced by a computer or any communication

²AIR 2020 SC (Civil) 738

device or otherwise stored, recorded or copied in any electronic form (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and Cases in which secondary evidence relating to documents may be given. Special provisions as to evidence relating to electronic record. Admissibility of electronic records. computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible.”

Indian Evidence Act, 1872 (Now Bhartiya Sakshya Adhiniyam, 2023) has laid down provisions related to admissibility of electronic evidences. Social media can be admitted in the courts of law in India as evidence. If certain chats, photos, or comments indicate the cruelty or adultery of the spouse, the same can be used as evidence in the courts.

2.1. Challenges in Treating Social Media as Evidence

The social media can be used as evidence in the courts of law, however, there are several challenges in the same.

The first and the foremost challenge that has been faced by the courts is that the accuracy and reliability of such evidences cannot be trusted. The main reason behind the same is that such data can be easily tampered with and be manipulated in favour of one party. With the increasing number of editing tools available easily on the internet, it is very easy to change any text, image, video, document, or any social media post. With the increasing usage of deepfakes, it has become extremely risky to rely on such evidence solely. It is required that the same evidences are being scrutinized by the courts and proper evidences for its corroboration are being presented in the courts.

The next major issue faced by the courts in admitting the social media as evidence is that the source of information might not be identified and the identity of the person cannot be established in some cases. There are a large number of social media platforms available to the users nowadays. To name a few, the most popular ones are Facebook, Instagram, LinkedIn, Snapchat, Telegram, X, etc. These platforms allow an anonymous person to have an account without any concrete background verification. This in turn poses a serious threat for the victims whose accounts have been impersonated and false or offensive messages are being sent to the third parties. This anonymity can lead to several problems as it becomes impossible to verify the ownership and check the authenticity of the account. The posts can be made from public

places such as libraries, hotels, airports, restaurants, malls etc, which further complicates the attribution of the content to a specific individual. The courts need to apply strict standards while admitting such evidences and the link between the content and the author must be established.³

Another major problem that arises with presenting and admitting the social media as evidence is the difficulty in defining the boundaries between primary and secondary evidences. Section 57 of the Bhartiya Sakshya Adhiniyam, 2023 defines primary evidence as- “Primary evidence means the document itself produced for the inspection of the Court”.

Secondary evidence is defined under Section 58 which is an inclusive definition-

“Secondary evidence includes—

- (i) certified copies given under the provisions hereinafter contained;
- (ii) copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies;
- (iii) copies made from or compared with the original;
- (iv) counterparts of documents as against the parties who did not execute them;
- (v) oral accounts of the contents of a document given by some person who has himself seen it;
- (vi) oral admissions;
- (vii) written admissions;
- (viii) evidence of a person who has examined a document, the original of which consists of numerous accounts or other documents which cannot conveniently be examined in Court, and who is skilled in the examination of such documents”

In the context of computer-generated content, it is difficult to analyse whether the same is primary evidence or secondary evidence. For e.g. A word document stored in a computer is primary evidence, but the print-out of the same or having copies of the document can be known as secondary evidence. The issue becomes more complicated because if such an electronic record is being produced in the court without its original device, then it might affect the evidentiary treatment given to the same.

³<https://taxguru.in/corporate-law/admissibility-social-media-messages-evidence-court-law.html> last accessed on 29-08-2025 at 4:23 PM

3. Role of Social Media in Divorce Proceedings

Social media can be used as concrete evidence in the divorce proceedings in various ways. If a spouse is able to prove that the spouse is threatening the other person, or abusing him/ her, using derogatory language, or inflicting mental cruelty in other forms through chats, posts or comments, the same can be taken into consideration by the Court. Social media can be used to establish the adultery of the spouse as in this digital era the spouses usually use the social media apps to chat or call. Sometimes suspicious check-ins, intimate photos or videos, tagged photographs can be used to establish the guilt of the person. The social media can also help the spouse in contradicting the facts related to alimony, division of assets and maintenance to be given to them. If the social media accounts reflect their luxurious lifestyle or purchase/ sale of any asset, the same can be used as a ground to establish valid claims. Social media can also establish the fact that the spouse has deserted the other person. If he/ she is active online, but does not contact the spouse, it can be used to establish the desertion of the partner.

3.1.Social Media as a Ground of Divorce

Social media has become very popular amongst the people of all the age groups. It has become an intrinsic part of our lives and everyone is highly dependent on the same for their day-to-day activities.

Digital media has transformed the way we have communication, the way we meet new people, the way marriages are taking place and also the way how relationships are ending these days. Social media was a platform which was created to share special moments of life, giving updates, sharing celebrations and connecting with people. However, nowadays it is becoming an important player in the modern-day relationships. We can see people making their accounts on platforms like Facebook, Instagram, X (earlier known as Twitter), snapchat, telegram and they interact with numerous people through these platforms only. It has become extremely convenient and easy for people to come into contact with people throughout the world. However, we fail to see that social media has become a silent witness, source of conflict, and also acts as trigger in marital breakdowns. The growing influence of social media is marking a socio-legal profound on the matrimonial disputes. In the Hindu culture, marriage was known to be a sacrament, however we see a major shift in the meaning of marriage.

In the last decade, the courts have witnessed an undeniable rise in the number of divorce cases in which the litigants have cited social media related issues. The major issues taken into

consideration by the courts were allegations of infidelity based on chats and comments; online surveillance; the growing desire of virtual validation, emotional disconnectivity due to excessive screentime, altered expectations from partners, constant monitoring of each other's activities, increasing passive aggression amongst the youth, etc.

3.2. Social Media and Divorce Laws in India

The legal framework for divorce in India includes Special Marriage Act, 1956; Hindu Marriage Act, 1955; Dissolution of Muslim Marriage Act, 1939; Indian Divorce Act, 1869; Parsi Marriage and Divorce Act, 1936; Muslim Personal Law (Shariat) Application Act, 1937 and Foreign Marriage Act, 1969.

The Acts do not provide any law related to social media explicitly, however through the interpretation of the courts, the same can be put under the following categories:

1. Cruelty:

The term "cruelty" has not been defined in the HMA or DOMM, 1939. The term "cruelty" takes into purview both physical and mental cruelty. Social media can be used by the people to inflict mental cruelty on the spouse.

Social media has become a significant reason for increase in marital conflicts these days. There have been instances in India where the spouse has filed for divorce within 15 days of marriage as the wife spent too much time on her cell phone.⁴ Spending too much time on the social media or being a phone addict has been a major issue amongst the people of all age groups. In another instance, the wife filed for divorce as the husband spent most of time in chatting with online friends at night. In another case, the husband was seeking divorce from the wife as he was troubled by the fact that the wife used to chat online with her male friends at night and did not give him time. Moreover, for many days their marriage was not consummated as the wife was addicted to online chatting. When the husband tried to stop her from doing the same, she threatened him of serious consequences. The husband filed a case and the same was accepted by the court. The couple was directed to go for counselling sessions.⁵ The marriage counsellors are also alarmed by the increasing number of divorce cases due to social media addiction. The

⁴<https://www.thehindu.com/news/cities/Visakhapatnam/Cellphone-social-media-destroying-marriages/article14024484.ece> last accessed on 19-08-2025 at 11:13 AM

⁵<https://www.newsbytesapp.com/news/india/husband-seeks-divorce-from-social-media-addict-wife/story> last accessed on 19-08-2025 at 11:56 AM

Supreme Court has, in recent times, recognized the detrimental impact of social media on matrimonial relationships. In a recent judgment annulling a marriage, the Court directed both parties to refrain from posting any photographs or content related to each other on social media platforms. It was observed that both parties had engaged in the exchange of abusive and vulgar messages online, thereby aggravating the matrimonial discord. The Court's observations underscore the urgent need for individuals to exercise restraint on social media in order to safeguard and preserve personal relationships.⁶

According to counsellor Pooja Mehta⁷, the reasons for marital disputes were property disputes, dowry issues or family arrangements. However, now the scenario has changed drastically as the couples are spending excessive time on social media and there is a communication gap between the partners, which ultimately leads to weakening their relationship. She also pointed out that social media leads to unrealistic expectations from spouses which further strains marriages.

In a significant judgment⁸ by the Telangana High Court⁹, Justice Moushumi Bhattacharya and M.G. Priyadrashini recognized that restricting a spouse's access to social media platforms such as Facebook and Instagram could constitute mental cruelty in today's digital era. In this case, a couple got married in the year 2010, however the relationship soon deteriorated, which ultimately led to the wife leaving the matrimonial home. After that she filed five criminal cases against her husband including charges under Section 498A¹⁰ of IPC. However, in 2015, she returned for some time and then left again. She took the litigation further but the husband was acquitted in some of the cases. The trial court dismissed the husband's petition for divorce in

⁶ <https://www.livelaw.in/dont-put-others-photos-anywhere-including-social-media-sc-tells-couple-dissolving-marriage-read-order> last accessed on 21-08-2025 at 12:36 PM

⁷ <https://mentalzon.com/en/therapist/11778/poojamehta#:~:text=I%20believe%20in%20holistic%20development,are%20constantly%20evolving%20and%20growing>, last accessed on 21-08-2025 at 11:49 AM

⁸ D. Narsimha, INARSIMLU V. SMT D ANITA VAISHNAVI CMA NO. 68 OF 2022

⁹ C.M.A. No.68 OF 2022

¹⁰ Section 498A. Husband or relative of husband of a woman subjecting her to cruelty-Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purposes of this section, "cruelty means"—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

2021, stating that he had not proven cruelty sufficiently to obtain divorce. However, the husband filed an appeal in the High Court arguing that the continuous filing of criminal cases and his deprivation from using the social media by the wife has amounted to cruelty. The High Court allowed the appeal and held that this might actually amount to cruelty as mental cruelty must be evaluated in terms of the modern realities. The Court also stated that the concept of cruelty has to evolve as per the societal needs as denial to the social media platforms can contribute to mental suffering of the person. This case marked a progressive interpretation of the term “cruelty” under the Hindu Marriage Act, 1955.¹¹

In *Divya v. M. Rajesh* (2017)¹², the Madras High Court ruled out that Whatsapp messages can be considered as an evidence of cruelty. In this case, the court accepted the derogatory and abusive messages sent by her husband as evidence of mental cruelty.

2. Adultery

Adultery can be cited as grounds for divorce under the Hindu Marriage Act, 1955, the Special Marriage Act, 1954, and the Indian Divorce Act, 1869. Earlier, Adultery was a criminal offence under section 497¹³ of IPC, however the same has been decriminalised by the Supreme Court in the case of *Joseph Shine vs Union of India*¹⁴. However, it continues to be a ground of divorce till date. Even a single act of adultery can be a ground of divorce under the law. Social media plays a very important role in committing adultery as a person has many options available on the various platforms, and people fall into such traps without realising the impact of the same on their marriages. The instances of online infidelity also pose a serious threat to the marriage. Nowadays, it has become very easy for the people to approach or talk to any person, especially on social media. Online infidelity has become very common nowadays. People can easily reconnect with their past relationships and they can meet new people only on one click, which can lead to emotional and physical infidelity. It is usually easier to maintain secret relationships

¹¹ <https://www.lawweb.in/2024/06/telangana-hc-depriving-spouse-of-being.html> last accessed on 25-08-2025 at 11:11AM

¹² <https://www.casemine.com/judgement/in/6581c55c86838c62d2fc3c31> last accessed on 26-08-2025 at 01:56 PM

¹³ Section 497 of IPC: Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.

¹⁴ *Joseph Shine v. Union of India* (AIR 2018 SC 4898)

on social media as the data can be erased easily. In some cases, it has been seen that people who have a tendency to cheat can be easily lured by the people on social media and can easily get distracted. Moreover, spouses are not honest about who they talk to on their social media.

¹⁵ In a few cases, it has also been seen that people find it difficult to communicate with their partners, and they tend to discuss their issues with random people on social media. In order to feel heard, they create a gap in the marriage themselves. Social media has also created a sense of jealousy and insecurity amongst the people which in turn spoils the marital bond. Sometimes the partners resort to snooping and tracking each and every activity of the other leading to conflicts.¹⁶ There have been reported incidents where people are spending more time on social media, instead of focusing on their marital bond.

In the landmark case of *Sunita v. Rajesh* (2018)¹⁷, the Punjab and Haryana High Court considered Facebook posts and photos as valid evidence to assess the wife's allegations of adultery against her husband. The wife presented social media content that suggested her husband's involvement in an extramarital affair. Recognizing the evolving nature of evidence in the digital age, the Court acknowledged the relevance and admissibility of social media posts in matrimonial litigation.

The Punjab and Haryana High Court delivered a landmark decision affirming that social media evidence is admissible in adjudicating adultery allegations during interim maintenance hearings.¹⁸ Justice Sumeet Goel of the Punjab and Haryana High Court emphasized that Family Courts possess the discretion to examine all relevant forms of evidence, including digital data and social media content from platforms like Facebook, Instagram, and Twitter. This recognition marks a significant shift toward acknowledging the evidentiary value of virtual interactions in adjudicating sensitive issues such as adultery and entitlement to maintenance in matrimonial disputes. The Court acknowledged that in an age dominated by digital communication, social media activity can reflect personal conduct, relationships, and financial

¹⁵<https://adamstotts.com/social-media/> last accessed on 27-08-2025 at 10:54 AM

¹⁶<https://adamstotts.com/social-media/> last accessed on 27-08-2025 at 10:56 AM

¹⁷<https://indiankanoon.org/doc/40775042/#:~:text=The%20first%20and%20foremost%20duty,arrears%20of%20maintenance%20of%20Rs.> last accessed on 28-08-2025 at 1:45 PM

¹⁸<https://lawtrend.in/social-media-evidence-valid-in-deciding-adultery-claims-for-maintenance-cases-ph-high-court/> last accessed on 28-08-2025 at 1:59 PM

status, thereby helping determine key aspects like infidelity, cruelty, or financial ability, which directly influence the outcomes of divorce, custody, and maintenance proceedings. This development underscores a growing trend in Indian jurisprudence, where courts are evolving to keep pace with technological realities and are willing to consider digital footprints as valid and probative pieces of evidence. This case marked a significant shift in Indian jurisprudence by demonstrating the judicial acceptance of digital evidence, especially in matters relating to adultery and marital misconduct.

3. Desertion

For deciding the cases of desertion, the Court refers to various decisions of the Supreme Court as well as other High Courts and observed the essence of 'desertion'- For the offence of desertion, two essential conditions must be there; (1) the factum of separation and (2) the intention to bring cohabitation permanently to an end (*animus deserendi*). Two elements are essential as far as deserted spouse is concerned; (1) the absence of consent and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial house to form the necessary intention. Mere severance of relation or separation without desertion is not sufficient. Desertion is not walking out of the house but is withdrawing from home.

In order to prove desertion, social media can be used to establish the guilt of the accused as the intention to desert can be easily seen in some cases. Courts can consider social media posts, messages, and online interactions to determine if one spouse has withdrawn from the marriage, even if physically present.

Conclusion and Suggestions

The changing scenario in divorce keeps pace with the law's attempts to evolve against the backdrop of changing social dynamics, such as the immense effects of technology and social media in matrimonial affairs. Although the laws have ensured to uphold the rights of the people, but it is also important to ensure the individualistic rights of people. It is important to understand that the legal framework, though detailed and progressive in nature, faces struggle to adapt to the nuances and realities in the digital age. Social media has become a strong force that reshapes the public discourse, personal relationships, emotional boundaries, and its impact on marriages. The main challenges faced by the married people include too much exposure to the private life of the people, raising unrealistic expectations amongst the people by keeping a check on celebrities and other people, emotional manipulation through social media, engaging

in adulterous relationships with multiple partners due to instantaneous communication on social media, and scrutiny over people at all times. Social media has become a major threat in marriages as they start feeling that it is the real world and everyone has a perfect life which is usually portrayed by them on social media. Courts have started to recognise these issues, but the psychological and reputational impact during and post-divorce still needs to be recognised.

However, it is to be noted that the laws can only give the guidelines for safeguarding the sanctity of marriage and granting the reliefs to the aggrieved person. The boundaries of affection, trust and emotional tolerance cannot be dictated by any law and it can only be understood by people themselves. The integration of legal reform, sensitization and prudent online behaviour is the only way to save the sanctity of personal relationship in the era of cyberspace.

Suggestions:

1. There is a need to strengthen the digital awareness in marriage counselling. It can be done by ensuring that people understand the responsible usage of social media before entering into marriage. Couples need to understand how dependence on social media can create mistrust, raise unrealistic expectations and also lead to emotional distancing between the partners. Certain awareness programs should be promoted to help the couples understand digital boundaries and create healthy communication patterns.
2. There is a need to introduce specific legal guidelines on digital misconduct. The divorce laws like Hindu Marriage Act, 1955; Special Marriage Act, 1954; Dissolution of Muslim Marriage Act, 1939; and other laws need to explicitly recognise the digital cruelty, online harassment by spouses, online defamation as the grounds of divorce. There is a need to include online adulterous relationships within the purview of the terms "Adultery". After the removal of Section 497 in Indian Penal Code, 1860; adultery is no more a punishable offence. However, it remains to be a ground of divorce under personal laws of the country. Guidelines need to be issued to clarify the rules of admissibility on the social media evidence and how the same can be proved in the court of law. Usage of social media platforms like Facebook, Instagram, Snapchat, Telegram and others have led to the increase in adulterous relationships, and sometimes the litigants face issues in proving the same. Law Commissions could be tasked to study matrimonial cases affected by social media and recommend necessary amendments.

3. Judges and Family Courts must be sensitized to the psychological and emotional nuances of social media related disputes. Specialised training must be provided to understand how digital communication patterns can amount to cruelty, miscommunication, lack of trust and mental harassment among the parties.
4. Matrimonial mediation should prioritize prompt resolving of issues arising from social media usage. The mediators must be trained to identify how the social media behaviour has exaggerated the marital conflicts and how the same has become a ground for separation between the spouses. Also, ADR mechanisms must attempt to guide reconciliation whenever possible.
5. There is a need for the couples to understand the importance of self- regulation as a preventive tool to avoid disputes from escalating into divorce proceedings. Couples need to set digital boundaries for themselves to ensure appropriate online behaviour, sharing of private content in a proper way and regulated third party interactions.
6. When divorce is triggered by social media conflicts, children are often secondary victims. Thus, there is a need to ensure mandatory counselling for children to mitigate the psychological impacts of witnessing parental conflicts.
7. Government and NGOs should collaborate to run digital literacy campaigns which focuses on safety, ethical and emotional aspects of online behaviour, and apprising about the consequences of excessive social media usage on the relationships.