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DIVORCE AND SOCIAL CONSEQUENCES – AN EXPLORATION
ACROSS RELIGIOUS CULTURES

ABSTRACT

The article highlights divorce and its social consequences in India. It introduces the studies on divorce conducted in the East and West and the contrasting situations in the respective countries. This is followed by a brief commentary on divorce in ancient India and how it has evolved to the situation in modern India. The concept of family according to Indian standards is explored. Following this the impacts of a divorce are discussed at length specially highlighting how divorce affects the economic and social status of women in India. The article then focuses on the social consequences that divorce has on the parties to a marriage and then goes into an in-depth analysis of India's Divorce Laws across various religions. In conclusion the article aims to provide a holistic view of Divorce and its social consequences,

KEYWORDS

Divorce, Social Consequences, Economic Impact, Religious, Hindu, Christian, Muslim, Parsi, Marriage

INTRODUCTION

Numerous studies in the sociological literature in the west have examined and analyzed the phenomenon of divorce and its implications. In India, considerable research on divorce has been documented, albeit on a lesser scale compared to the west. The main reasons for the limited number of empirical studies on divorce in India, are the lower divorce rates, and lack of adequate data. As the studies, despite offering vital insights into the subject, circumscribed their scope to the demographic and causative factors of divorce, the "pre-divorce" stage, which is a crucial determinant of "divorce process", has not received adequate attention. Every family system, at all times had been relying on some kind of in-built mechanism that allows individuals to survive the pressures and exigencies of the system, among which 'divorce' is one. Divorce is "... the legal dissolution of a socially and legally recognized marital relationship that alters the obligations and privileges of the two persons involved. It is also a major life transition that has far-reaching social, pathological, legal, personal, economic and parental consequence"¹

DIVORCE IN ANCIENT INDIA

In the Vedic society marriage was regarded as indissoluble by human endeavor. Among the Smritis, those of Narada and Parasara, hold that marriage could be ended on the ground of husband's impotency, while the later Dharmasastras and Puranas (200- 1200 A.D.) forbade woman's claim for divorce even in the wake of desertion by her husband. The controversial and popular code of Manu, while repudiating the woman's right for divorce declared that a wife could remarry if the previous marriage was not consummated. The conditions, during the Buddhist period were more or less the same.

During the medieval period, the steady decline of egalitarian and progressive ethos in the Indian society resulted in denial of leverage to women. In the later centuries the British India Government, supported by enlightened Indians introduced several social reforms in the form of legislation that gave an impetus to the process of social change. The civil marriage act, 1872, which enforced monogamy is a milestone as far as laws meant to ensure social justice and equality were concerned. In addition to the special marriage act of 1926 individual states and presidencies enacted a number of laws from 1920 to 1952 to facilitate dissolution of marriages.

¹ Price, S. J., & McKenry, P. C. (1988). Divorce. Sage Publications, Inc.

The Special Marriage Act, 1954 and Hindu Marriage Act, 1955 accorded legal sanction to divorce, which prior to their enactment was purely customary. The amendment to the Hindu Marriage Act 1976, went further and facilitated availability of divorce by mutual consent, which in the west is known as 'no fault divorce'. Since the amendment there has been an increase in divorce in India². Owing to the realization of the need to expedite the disposal of increasing number of cases related to familial matters, Family Court act was passed in 1982. Subsequently family courts were established all over the country. A substantial portion of the literature on divorce deals with the pathological perspective of the problem by focusing on its demographic aspects rather than on the process of divorce per se and its consequences. Hence it is widely felt that this area of divorce ought to be adequately addressed.

DIVORCE IN MODERN INDIA

In India, marriage has always been treated as sacrosanct. However, in modern times, due to social and technological advancements, increase in awareness levels, and increase in the availability of options, the inadequacies in marriage are being sought to be eliminated. In the same manner, unhappy marriages are also being terminated with the help of 'divorce' which is a viable and effective alternative initiated by legislative action and strengthened by legal sanction. Divorce of late has emerged as a 'rational choice' and has been acquiring greater acceptability. Divorce by mutual consent is normally obtained in relaxed atmosphere. This indicates the longing of the spouses for relief from turbulent marital life. It reflects the changing scenario in which an understanding that divorce is a social arrangement to end acrimonious marriages, is gradually increasing. In the light of the fact that the Indian family system which is yet to fully undergo the process of modernization, divorce by mutual consent has to be seen as a positive phenomenon.

In Indian society parents exercise enormous influence in securing matrimonial alliances for the offspring. The freedom of women with regard to selection of spouse is severely restricted. In the rural areas where the social life is predominantly governed by conservative norms, than by law, it is quite common to find girls being married off immediately after attaining puberty. The more years the girl remains unmarried after maturation, the more the social ridicule her parents are to bear.

² AMATO, P. R. (1994). The Impact of Divorce on Men and Women in India and The United States. *Journal of Comparative Family Studies*, 25(2), 207–221. <http://www.jstor.org/stable/41602321>

CONCEPT OF FAMILY IN INDIA

In India, the joint family household, consisting of a man, his sons, and their dependents (wives and children), is the dominant family form. A debate has taken place over whether the joint family is giving way to the nuclear family under the influence of industrialization and modernization. Regardless of the extent of change, however, the joint family is still the ideal to which people aspire and is quite common; 46 percent of households in Indian were "extended" in some fashion in 1981 ³(Census of India, 1981), and it is estimated that most Indians spend some portion of their lives in a joint family. The great majority of marriages are arranged. The median age at first marriage has increased during this century; current estimates are 18.3 years for women and 23.3 years for men.

IMPACT OF DIVORCE

Marital disruption creates serious economic problems for women in India - especially if they have children. Studies of divorced, separated, and deserted women show that many live at a bare subsistence level and face continuing difficulties in providing food, clothing, and shelter for themselves and their children⁴. Divorced men experience relatively few economic problems.

Indian courts follow a "tender years" principle in which children under the age of 6 are given to mothers. Because Indian divorces tend to occur within the first few years of marriage (when children are young), Indian women usually obtain custody of children. Noncustodial fathers rarely pay adequate levels of child support. Many Indian women forego child support because they do not want to maintain contact with abusive husbands or because they are afraid that fathers will try to gain custody of children. In addition, women rarely receive a share of the matrimonial property because it is assumed to belong to the husband and his family. Public assistance is available for divorced women and their children in some states - primarily in urban areas. However, these benefits are meager, and many eligible women are not aware of their existence or do not know how to obtain them. One might assume that single mothers and their children are cushioned from economic hardship by their kin. In fact, studies show that most divorced women turn to their parents, siblings, or other relatives for accommodation and economic assistance - at least initially. However, several factors limit the amount of support women receive from kin. For one thing, the

³ Census of India, 1981 1989. Social and Cultural Tables. Series 1. New Delhi

⁴ Choudhary, J.N., 1988 Divorce in Indian Society. Jaipur: Rup

families of divorcees may be poor and therefore unable to offer help. Also, parents are likely to feel that they have discharged their obligations to a daughter by arranging her marriage and providing a dowry. (Dowrys, incidentally, are not returned in cases of divorce). Consequently, they may view her (and her children) as a burden and may be reluctant to provide economic aid over a long period of time. Because of these factors, the majority of divorcees in India eventually set up their own households and attempt to become economically self-sufficient. But it is difficult for divorced women to attain economic self-sufficiency. Divorced women have limited education and few job skills. Consequently, these women are disproportionately clustered in relatively poor-paying jobs with few benefits and little security. Remarriage is one route out of economic hardship for divorced women. However, due to negative community attitudes toward the remarriage of women, most divorcees do not remarry. Many resign themselves to remaining single for the rest of their lives, especially if they have children.

SOCIAL CONSEQUENCES OF DIVORCE.

In India, divorce is highly stigmatizing. Although surveys reveal a general acceptance of the idea that divorce should be legally available⁵ most people find it objectionable. Community disapproval, however, is stronger for women than for men. Traditionally, wives are expected to follow the principle of "*pati vratya*", that is, a woman is supposed to devote herself completely to her husband and sacrifice her own needs for those of her husband and his family.⁶ Therefore, when a marriage breaks up, people are inclined to feel that it is the wife's fault. This occurs not only in cases of divorce by mutual consent, but also in fault-based cases in which the wife sues for divorce because of her husband's infidelity or cruelty. In other words, people assume that her deficiencies must have caused the husband's problematic behavior in the first place. Furthermore, many people believe that a wife should not divorce her husband, no matter how bad he is. For these reasons, divorced women report receiving more disapproval from others than do divorced men.

Both men and women receive emotional support from their families following marital disruption. However, men probably receive more support than women do, especially if they live in a joint

⁵ Desai, Murli 1991 "Research on Families with Marital Problems: Review and Implications." Pp. 337-373 in Murli Desai (ed.), Research on Families with Problems in India. Volume II. Bombay: Tata Institute of Social Sciences.

⁶ Kapadia, K.M. 1966 Marriage and Family in India. London: Oxford University Press.

family. Men in joint family households are surrounded by kin both prior to and following separation, and members of a man's household can be counted on to take his side and be supportive in any marital dispute. Although women generally live for a period of time with their parents and/or siblings following marital disruption, it is common for tension to arise. Parents may be concerned that the divorced daughter's presence in the household lowers the status of the entire family and compromises the marriage chances of any remaining daughters. And family members may doubt that the woman has done everything possible to save her marriage. Furthermore, the divorced daughter and her children place, an economic burden on her family. So, although a woman is usually admitted into her parental home, she may not be welcome with open arms. Consequently, the divorcee has low status in her parent's household and is often given the most menial and unpleasant tasks to perform⁷.

In relation to friends, most are sympathetic and supportive following marital dissolution. Because divorce is rare, women have difficulty finding other single women in the community who are available for companionship and mutual support. Furthermore, Indian women are reluctant to make friends with men (either single or married), because of a concern that their friendliness might be interpreted in sexual terms. In fact, a large proportion of divorcees report problems with sexual harassment, both in the work place and elsewhere⁸. Most Indians consider sexual relations outside of marriage as unacceptable, at least for women, so a divorcee's sexual needs largely go unmet unless she remarries - which is uncommon. Given these circumstances, it is not surprising that the majority of divorced women (but only a minority of divorced men) report problems with loneliness.

Predictors of social adjustment in India relating to divorce include education, urban residence, and being childless. Furthermore, the degree of social acceptance of divorce appears to vary with social class and caste. It is found that upper-middle class women experienced more approval from others than did lower-middle class women following marital separation. This is consistent with studies showing that people in higher socioeconomic groups in India are more accepting of nontraditional ideas.⁹ On the other hand, some of the lower castes in India have traditionally allowed divorce and

⁷ Leela, D. Satya 1991 "Women-headed Families - Problems, Coping Patterns, Support Systems, and Some Related Policy Matters." Pp. 88-102 in Shalini Bharat (ed.), Research on Families with Problems in India. Volume I. Bombay: Tata Institute of Social Sciences.

⁸ Mehta, Rama, 1975 Divorced Hindu Women. Delhi: Vikas Publication

⁹ Srivastava, A.K. 1986 Social Class and Family Life in India. Allahabad: Chugh Public

been tolerant of it, and at least one study shows that poor and low caste individuals experience relatively little rejection from others following marital dissolution. Presumably, people at the bottom of the social hierarchy have little to lose by occupying a deviant status. These considerations suggest that being divorced may be particularly problematic for the social adjustment of those in the middle of the status hierarchy in India.

DIVORCE ACROSS RELIGIOUS CULTURES

India has different divorce laws for different religions. In India, almost all the religions have their own divorce laws which are used among themselves. There are separate laws for inter-cast or inter-religion marriages. Here is the list of various divorce laws prevailing in India for various religions:

- Hindus (including Sikh, Jain and Buddhist): Hindu Marriage Act, 1955
- Muslims: Dissolution of Muslim Marriages Act, 1939
- Christians: Indian Divorce Act, 1869
- Parsis: The Parsi Marriage and Divorce Act, 1936
- Inter-Cast or Inter-Religion : Special Marriages Act, 1954

Hindu:

The divorce for people married under the Hindu Marriage Act, 1955 which is also the divorce law provides for the grounds of divorce on which divorce can be obtained in accordance with divorce laws which are as follows:¹⁰

Cruelty: Cruelty may be physical, emotional or mental cruelty.

Adultery: In India, if a man commits adultery (i.e. has consensual sexual intercourse outside of marriage) then other than being governed by divorce laws he can be charged with a criminal offense. The wife may, of course, file for divorce as a civil remedy. If on the other hand, a wife commits adultery, she cannot be charged with a criminal offense, though the husband can seek

¹⁰ The Hindu Marriage Act, 1955

prosecution of the adulterer male for adultery. It is provided as a ground of divorce to both under divorce laws.

Desertion: One spouse deserting the other without reasonable cause (cruelty, for example) is the ground for divorce.

Conversion: Divorce can be sought by a spouse if the other spouse converts to another religion as per divorce laws in India.

Mental Disorder: If the spouse is incapable of performing the normal duties required in marriage on account of mental illness, divorce can be sought under the Hindu divorce laws.

Communicable Disease: If the spouse suffers from a communicable disease, such as HIV/AIDS, syphilis, gonorrhoea or a virulent and incurable form of leprosy, the Hindu Divorce Laws in India say that the other party can obtain a divorce.

Renunciation of the World: If the spouse renounces his/her married life and opts for sannyasa, the aggrieved spouse may obtain a divorce under Hindu divorce laws.

Presumption of Death: If the spouse has not been heard of as being alive for a period of at least seven years, by such individuals who would have reasonably heard about such spouse, if he or she were alive, then the spouse who is alive can obtain a judicial decree of divorce under the Indian divorce law.

Apart from these grounds, divorce laws also provide additional grounds for divorce available to a wife. They consist of firstly, indulgence of the husband in rape or sodomy, secondly, if a marriage has been solemnized before the Hindu Marriage Act, and the husband has remarried in spite of the fact that the first wife was alive then the first wife can file a divorce petition, thirdly, if a girl has been married before the attainment of 15 years of age and renounces her marriage before she has attained 18 years of age, fourthly, in cases of non-cohabitation for a period of one year and the husband has neglected the judgement of fulfilling the maintenance awarded to the wife by the court. Considering any one of the above grounds, a wife can file a divorce petition in accordance with the divorce procedure provided in Indian divorce laws.

The divorce under the Hindu divorce law can be either Mutual Consent Divorce or the Contested Divorce. Divorce laws provide that in a Mutual Consent Divorce both parties submit a joint divorce petition for divorce whereas in a Contested Divorce either of the spouse files for divorce under

Section 13 of Hindu divorce law. The time period for mutual divorce is 1 to 1.5 years whereas the time period for a contested divorce is 3 to 4 years.

Muslim:

Under the Muslim Divorce Law, marriage can be dissolved either by the death of any of the parties to the marriage or by divorce. A husband may marry immediately after the death of the wife but the widow has to wait for the expiry of a specified time called Iddat as provided by Muslim divorce laws. Both parties have the option of calling for a divorce under divorce laws from the contract of marriage but the husband has an upper hand under Muslim divorce laws. The husband can dissolve the marriage at his will in the Muslim divorce laws. The divorce under the Muslim divorce law can also take place by mutual agreement. But the wife cannot divorce her husband without his consent in Muslim divorce laws. She can, of course, purchase her divorce from her husband and can have the marriage dissolved by Tafweez (delegation). A marriage may also be dissolved under the Dissolution of Muslim Marriage Act, 1955.¹¹

Christians:

The divorce proceedings for Indian Christians are held under their divorce laws which are known as the Indian Divorce Act, 1869. When husband may present divorce petition for dissolution – Any husband may present a petition to the District Court or to the High Court, praying that his marriage may be dissolved on the ground that his wife has, since the solemnization thereof, been guilty of adultery. When wife may present petition for dissolution- Wife may present a petition to the District Court or to the High Court, praying that her marriage may be dissolved on the ground that, since the solemnization thereof, her husband has exchanged his profession of Christianity for the profession of some other religion, and gone through a form of marriage with another woman.¹²

Parsis

The Parsi marriages come under The Parsi Marriage and Divorce Act, 1936. If a husband or wife shall have been continually absent from his or her wife or husband for the space of seven years, and shall not have been heard of as being alive within that time by those persons who would have naturally heard of him or her, had he or she been alive, the marriage of such husband or wife may,

¹¹ Dissolution of Muslim Marriages Act, 1939

¹² Indian Divorce Act, 1869

at the instance of either party thereto, be dissolved under the divorce laws governing Parsis. Any married person may sue for divorce as on any one or more of the following grounds given under divorce laws for Parsis.¹³

CONCLUSION

The share of separated women among Muslims is 6.7 per 1,000 ever married women. This is less than the rate among Hindu women (6.9) and almost half the rate for Christian and Buddhist women. Jain and Sikh women have the lowest separation or divorce rates at 6.3 per 1,000 ever married women. While there is no denying that the regressive practice of triple talaq needs to end, just how prevalent is it in the Muslim community and how are divorce and separation handled in other religious communities? The share of divorced women is indeed high among Muslims — 5 for every 1,000 ever married women, according to Census 2011¹⁴. This is twice the rate among Hindus, but almost the same as Christians and less than that among Buddhists. But a different picture emerges when one looks at separation, another common way in which legally married couples split up. This may or may not be followed by divorce. In our male-dominated society, it often means abandonment by the husband. The share of separated women among Muslims is 6.7 per 1,000 ever married women. This is less than the rate among Hindu women (6.9) and almost half the rate for Christian and Buddhist women. Combined, separated and divorced women make up 9.1 of every 1,000 ever married women among Hindus and 11.7 among Muslims. This gap has shrunk as it appears that among Hindus, separation is more easily embraced and socially acceptable than a complicated legal battle. For those concerned about injustice to women, this too needs to be considered. Among Christians and Buddhists, the combined rate of separation and divorce is 16.6 and 17.6 — almost 50% more than Hindus and Muslims. Among the six major religious communities in India, Jain and Sikh women have the lowest separation or divorce rates at 6.3 per 1,000 ever married women. This could be because of higher educational levels and better income among families of these two communities, or it could be the result of more social control. Comparing 2011 with 2001 shows that in Buddhist communities, the increase in share of separated and divorced women is the least at 34%, followed closely by Muslims with 39% and then Hindus at 40%. The most dramatic rise is shown in the Sikh community (108%), possibly due to

¹³ The Parsi Marriage and Divorce Act, 1936

¹⁴ Available at: <https://timesofindia.indiatimes.com/india/separation-more-common-than-divorce-in-all-religions-census-data-reveals/articleshow/58664119.cms>, (Last Accessed on: 08.11.2021)

breakdown or abandonment after marriages with partners settled abroad. From this decadal change, it does not appear that triple talaq is pushing an increasing number of Muslim women into divorce. Another dimension evident from Census data is that the total number of separated and divorced women among Hindus is almost five times that among Muslims. This is not really surprising because the population of Hindus is about five times that of Muslims. However, it highlights the need for better laws across all religious communities for separated/abandoned women who get no maintenance or support from



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