



Marriage and Divorce: Women's experiences with the Legal System, Socio-cultural Norms and Religion

Name : Olivia Tito

Affiliation : Genesis Global School

Email ID : oliviaticito2008@icloud.com

Contact number : +91 9899129057

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Introduction and Research Objectives

- Despite societal advancements, divorce remains a heavily stigmatized topic, with divorced women often facing harsh criticism and being unfairly labelled as the primary cause of marital breakdown.
- In the present context, despite the existence of legal provisions, factors such as limited financial independence, illiteracy, societal pressures, and patriarchal beliefs about female inferiority often prevent women from freely pursuing divorce or escaping abusive marriages.
- This paper seeks to examine these issues while substantiating their presence through qualitative research. The primary objective of this study is to explore the legal, cultural, religious, and economic factors that influence a woman's decision and experience of seeking a divorce and influence their experiences of the same in India.

An overview of my background research

Societal norms and culture. Traditionally, the role of women in Indian societies has been defined as being a daughter, wife and mother, all of which were in relation to someone else - primarily a man. Even with the progression of time, this orthodox thought process of how a woman's utmost responsibility is to serve her father, husband and children remains deeply embedded in society, gradually forming a common sense of co-dependency on their male counterparts, which in turn resulted in the restrictions of opportunities for women to live an independent life.

Religions ranging across Islam, Christianity, Hinduism, Sikhism, etc depict assorted beliefs and ambiguous views on the matter of divorce, which make it rather challenging to impose a uniform set of laws that promote inclusivity of their religious practices while also ensuring fair treatment of women by banishing the gender hierarchy.

The legal system in India provides various legal provisions that define the liberal rights of women vis-a-vis a divorce. This can be explored through different frameworks including the Hindu Marriage Act, the Muslim Personal Law (Shariat) Application Act, the Indian Divorce Act & The Christian Marriage Act and lastly, the Special Marriage Act.

Literature review- The theoretical frameworks of divorce

Under the Hindu Law, there are three predominant theories of Divorce -

1. **The Guilt Theory** - This permits divorce on the grounds of :

- “Adultery, Cruelty, Two years' desertion, conversion to a non-Hindu religion, incurable insanity or mental disorder, virulent and incurable leprosy, venereal disease in a communicable form, and presumption of death.”
- The wife can apply for a one-sided divorce if the husband has been caught for “rape, sodomy and bestiality, cohabitation has not been resumed for one year or more

2. **Mutual Consent Theory** - Mutual consent for divorce is recognized across The Hindu Marriage Act, 1955, The Special Marriage Act, 1954, The Parsi Marriage and Divorce Act, 1936 , and even the Muslim Law.

- Under the Hindu Marriage Act, section 13B and under the Special Marriage Act, section 28, clearly mention the criterions under which mutual consent for a divorce can be given- if they haven't been residing together for more than a year, or if they have collectively agreed to dissolve the marriage

3. **Theory of the Irretrievable Breakdown of Marriage** - Due to the absence of a concept of divorce in Hindu scriptures, the dissolution of a Hindu marriage is rather obscure. However, this is only till a point where peace between the two partners cannot be maintained, and the last resort is divorce.

Methodology

- Using a qualitative approach, my study attempts to understand the experience of divorce among urban educated women residing in the National Capital Region (NCR) of Delhi
- Over 20 women, aged between 30-45 years of age were interviewed (both in person and virtually over telephone and zoom calls). However, responses of 10 have been analyzed to maintain reliability and objectivity since not all participants were willing to share their experiences, choosing to either skip some questions or refraining from responding to others
- Snowball Sampling technique- While the initial respondents were accessed through personal and familial networks, each of these correspondents then connected me to others through their personal, family and legal connections.
- Anonymity has been managed and informed consent was taken from all participants to ensure ethical standards are being met
- Following the fundamental right to information (RTI), a petition was filed to gain insight on the number of divorce cases in Delhi districts. The govt. did not respond, but frequent field visits were made to Saket District to interview civil law practitioners who gave a rough estimate of the numbers: 2500-3000 divorce cases were observed in the South and Southeast district of Delhi. Among the many reasons behind seeking divorce, practitioners reported majorly observing adultery and cruelty (mostly emotional abuse), as the leading ones.

SUB: - REQUEST FOR INFORMATION UNDER RTI-ACT 2005-APPLICATION REG.

PARTICULARS OF INFORMATION SOUGHT: -

QUESTION 1: What is the total number of cases that have been filed pertaining to divorce in all districts within jurisdiction of Delhi between 2017-23.

QUESTION 2: what is the total number of divorce cases filed between 2017-2023, wherein judgment has been pronounced?

QUESTION 3: What is the total number of divorce cases filed between 2017-2023 under The Hindu Marriage Act, 1955.

QUESTION 4: What is the total number of divorce cases filed between 2017-2023 under The Indian Christian Marriage Act, 1872.

QUESTION 5: What is the total number of divorce cases filed between 2017-2023 under The Muslim Marriage Act, 1934.

QUESTION 6: What is the total number of divorce cases filed between 2017-2023 under The Special Marriage Act, 1954.

**OFFICE OF THE PRINCIPAL JUDGE, FAMILY COURTS
DWARKA, NEW DELHI**

First Appellate Authority
Ms. Nisha Saxena,
I.d. Principal Judge (South)
Family Courts, Saket.

Link Appellate Authority
Sh. Kuldeep Narayan
I.d. Judge (South-East)
Family Courts, Saket.

ID No. -51/2024

No. 7861 /RTI/FC/DWK/2024

Dated 13 MAY 2024

To,

Ms. Shivani Pruthi,
H-18, Basement, Kailash Colony,
New Delhi-110048.

Sub:- **Reply to RTI application bearing this office ID No. 51/24 Dt: 08/05/24.**

The information sought by you vide your RTI application which was received by this office on 08.05.2024. The reply of the same is exempted and cannot be supplied as per the notification by Hon'ble High Court of Delhi vide No. 162 and 163/Rule/DHC dated 06/05/2009. This notification is available on the website of District Courts, Delhi i.e. delhicourts.nic.in and official website of Delhi High Court. The relevant Rules are reproduced as under :-

Rule 7 Exemption from disclosure of information

Rule (vi) : The information to be sought relates to a judicial proceedings, or judicial or the matters incidental or ancillary thereto.

Rule (vii) : The information is non-existent and will be necessary to create it for supplying it to the applicant.

Rule (ix) : Do not expect the Public Information Officer or the Assistant Public Information Officer to analyze facts and provide the information unless such an analysis is a part of any record.

Further, creation and compilation of data would adversely affect the resources of the public authority. Hence, it is not possible to provide information in terms of section 7 (9) of RTI Act, 2005. This provision protects the case where supply of information may lead to creation of a disproportionate charge on the resources available to a Public Authority, as also held by the Worthy CIC in the matters of Shri Praveen Agarwal Vs SEBI (Order dated October 1, 2008) and Shri Santosh Mathew Vs. Department of Personnel and Training (Order dated September 11, 2006) and decision No. 216/IC (A) 2006 dated 31st August 2006 titled as Sh. Jai Kishan Vs Reserve Bank of India.

In this context, also please go through the relevant extracts of judgment of Hon'ble Supreme Court of India in the matter of Central Board of Secondary Education & Anr. V/s Aditya Bandopadhyay & Ors, given below :-

"The right to information is a cherished right. Information and right to information are intended to be formidable tools in the hands of responsible citizens to fight corruption and to bring in transparency and accountability. The provisions of RTI Act should be enforced strictly and all efforts should be made to bring to light the necessary information under clause (b) of section 4 (1) of the Act which relates to securing transparency and accountability in the

*working of public authorities and in discouraging corruption. But in regard to other the Act), equal importance and emphasis are given to other public interests (like confidentiality of sensitive information, fidelity and fiduciary relationships, efficient operation of governments, etc). Indiscriminate and impractical demands or directions under RTI Act for disclosure of all and sundry information (unrelated to transparency and accountability in the functioning of public authorities and 52 eradication of corruption) would be counter-productive as it will adversely affect the efficiency of the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information. **The Act should not be allowed to be misused or abused, to become a tool to obstruct the national development and integration, or to destroy the peace, tranquility and harmony among its citizens. Nor should it be concerted into a tool of oppression or intimidation of honest officials striving to do their duty. The nation does not want a scenario where 75% of the staff of public authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties.** The threat of penalties under the RTI Act and the pressure of the authorities under the RTI Act should not lead to employees of a public authorities prioritizing information furnishing at the cost of their normal and regular duties.*

In the above circumstances, the information asked by you, is not possible to be given.

Your instant application seeking information under RTI Act, 2005 stands replied. No further correspondence in the matter will be entertained in the RTI Cell.

In terms of Section 19 of the Right to Information under RTI Act 2005, in case you are not satisfied with the information given above, you are at liberty to file an appeal to the Appellate Authority as mentioned above, within thirty days of the report of this letter, as per rules.

Enclosed: copy of RTI application.



Assistant Public Information officer
Family Courts, Dwarka, New Delhi

Figure 1.1 - RTI documents filed to get a glimpse of the statistical data available on the number of divorce cases, along with the response from the government

Findings & Discussion

The takeaways of the interviews and its major content was divided and analysed on the basis of the following factors:

- **Reasons for divorce:**

Two cases - Dominating parents-in-laws who sought to impose antiquated laws on the women.

Four cases – Infidelity

Three cases - Domestic violence

Three cases - Emotional cruelty, one of them due to the spouse having NPD (narcissistic personality disorder).

All causes were often coupled with underlying reasons of deception, financial pressures from the husband, and a series of false promises in the marriage.

- **Culture and Stigma:** While describing their experience of divorce, respondents explicitly mentioned that they encountered traditional social pressures, stigma and moral judgements on their decision to divorce, which they argued were the product of a deeply patriarchal mindset.
Two cases - jeering comments by relatives labeling them as women of a “modern thought process” (closer to western cultures and frowned upon within their communities)
Six cases – being married young due to factors like social pressures surrounding the ideal age for women to get married, or the stigma around ‘having affairs’ before marriage which often carried social judgment.

Hence, post marriage, women found it challenging to seek divorce as a result of numerous factors:

Two cases – Held a deeply embedded belief of how ‘marriage improves after kids’ . While they faced challenges with the marriage from the beginning, they chose to have kids. Many Indian households induce women to believe that a broken marriage can easily be mended post kids- not only does this put the burden of keeping a family on them, but gives them a falsified sense of hope about how situations might improve, whereas they often only tend to deteriorate and impact the children to a great extent.

For almost all women, leaving a safe haven, not just from a financial perspective but having a pillar of support, lead them to often ponder about “who will take care of them?”. Financial dependency on their male counterparts in most cases, and the forced belief imposed by surrounding communities of how these women won't be able to survive without a man, further demoralizes the thought of a divorce.



- **Support and guidance:**

Two cases - Women did not receive support at all and faced comments like, “marriage is all about learning to adjust” and how the “failure” of their marriage was their fault.

One case – The women filed a domestic violence case and was discouraged to do so by her family through condescending comments of how she should “deal with it because that is how marriage is.”

Two cases – Mentioned that religion played a role in their experience. Some women mentioned the anti-divorce teachings of religion and how it does not provide much space for divorce as a moral right of a woman. However, some women argued that their religious beliefs offered helped create a spiritual sanctum in their challenging times.

While the respondents largely confirmed receiving support from their parents, one exception was the case where a respondent reported receiving encouragement from her daughters but found the taboo of divorce prominent in her natal home, thereby restricting the support from her parents.



- Legal Framework and Theoretical Perspectives of Divorce:

Guilt theory

1. adultery (present in 7 cases)
2. emotional and physical cruelty (present in 7 cases)
3. insanity (present in 1 case)

Mutual Consent Theory

(Recognised by section 13B of the Hindu Marriage Act)

Women did not reside with their spouse for over a year (1 year in one case and 3 years in another case).

Theory of the Irretrievable Breakdown of Marriage

All ten women spoke about divorce being their last resort, after trying other methods of counselling or separation

Property rights associated with the legal framework of divorce : while the legal system does encourage equality in granting shares of the property to either party (in theory), when the properties are solely the husband's, it's a greater challenge to get a share by the women.

Intersection of other laws, like permission of the 'gift deed' that had restricted one of the women from being able to get the property, and instead having to contest the motion in court for a prolonged time period.

Complications along the process including the spouse fleeing to another country, made the process of getting the property, or even getting maintenance a lengthy one- This barred three of the women to even be willing to apply for financial aid or property ownership in the first place.

A concise summary

- Semi-structured questionnaire, this research collected responses from women across different socio-economic backgrounds who have experienced divorce to gain insight into their journeys and experiences.
- The findings indicate that religion had minimal influence on their decision-making.
- Instead, cultural and economic factors played a significant role in their considerations when seeking divorce.
- Participants expressed concern over the extensive challenges and limitations posed by legal procedures in court, highlighting that, contrary to popular belief, India's legal system is not women-centric and often places undue blame on women for what is typically a mutual decision.

References

1. Law4u.in. (n.d.). How are marital assets divided during a divorce in India? Retrieved from <https://law4u.in/answer/3777/How-are-marital-assets-divided-during-a-divorce-in-India> (Law4u.in, n.d.)
2. Sandeep, A. (n.d.). Christian marriage and property rights: Understanding legal entitlements. Retrieved from <https://aishwaryasandeep.in/christian-marriage-and-property-rights-understanding-legal-entitlements/> (Sandeep, n.d.)
3. Economic Times. (2022, July 9). Who gets child's custody after a divorce? Under Muslim law. Retrieved from <https://economictimes.indiatimes.com/wealth/legal/will/who-gets-childs-custody-after-a-divorce/under-muslim-law/slideshow/92761560.cms> (Economic Times, 2022)
4. Ezylegal. (n.d.). Wife's property rights in India: Quick overview. Retrieved from <https://www.ezylegal.in/blogs/wifes-property-rights-in-india-quick-overview> (Ezylegal, n.d.)
5. Singh, N. (n.d.). Theories of divorce. Legal Service India. Retrieved from <https://www.legalserviceindia.com/legal/article-8703-theories-of-divorce.html> (Singh, n.d.)
6. Lewis, R. (n.d.). Is Christianity oppressive or liberating for women? C.S. Lewis Institute. Retrieved from <https://www.cslewisinstitute.org/resources/is-christianity-oppressive-or-liberating-for-women/> (Lewis, n.d.)

7. University of Oslo. (n.d.). Women and motherhood: Material and ideological representations. Retrieved from <https://www.uio.no/studier/emner/hf/ikos/MONA4522/h12/women-mb.pdf> (University of Oslo, n.d.)
8. Anonymous. (n.d.). Unit 4: Normative theory I. Epgp.inflibnet.ac.in. Retrieved from https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/S000829IC/P001497/M015107/ET/14600120574ET.pdf (Anonymous, n.d.)
9. Mukhopadhyay, C. C. (1995). Family, kinship, and marriage in India. In P. Uberoi (Ed.), *Family, kinship and marriage in India* (pp. xx-xx). New Delhi, India: Oxford University Press. (Mukhopadhyay, 1995)
10. Kapadia, K. M. (1959). The family in transition. *Sociological Bulletin*, 8(2), 68-99. (Kapadia, 1959)
11. Thadathil, A., & Sriram, S. (2020). Divorce, families and adolescents in India: A review of research. *Journal of Divorce & Remarriage*, 61(1), 1-21. (Thadathil & Sriram, 2020)
12. Kapadia, K. M. (1954). Changing patterns of Hindu marriage and family. *Sociological Bulletin*, 3(1), 61-87. (Kapadia, 1954)
13. Patil, R. H. (2021). The social status of Indian women of different periods in the patriarchal society. *Redalyc*. Retrieved from <https://www.redalyc.org/journal/7039/703973410005/html/> (Patil, 2021)
14. Dommaraju, P. (2016). Divorce and separation in India. *Population and Development Review*, 42(2), 195-223. (Dommaraju, 2016)
15. Vincent, P., & D'Mello, L. (2018). Changing trends of divorce in India: Issues & concerns. *International Journal of Management, Technology and Social Sciences (IJMTS)*, 3(2), 151-157. (Vincent & D'Mello, 2018)
16. Garg, S. P. (1998). Law and religion: The divorce systems of India. *Tulsa Journal of Comparative & International Law*, 6(1), 1-xx. (Garg, 1998)
17. Oxford English Dictionary. (n.d.). Marriage. In *Oxford English Dictionary*. Retrieved from <https://www.oed.com/search/dictionary/?scope=Entries&q=marriage> (Oxford English Dictionary, n.d.)
18. JSTOR. (n.d.). Divorce and separation in India. *JSTOR*. Retrieved from https://www.jstor.org/stable/pdf/44015635.pdf?casa_token=CAv5ET-XRSEAAAAA:MIj4GT6J6-DF6V0AA2IjiID7m7kO5mqcrKG41tRA0fDNTupYoTuULnexxVyC0gUMaedPL-s0v09fOdgLUHvBLEXVmbq7umvB_OKMvItbLNCgG7B_xLQ (JSTOR, n.d.)

19. El Guindi, F. (2012). Veiling infitah with Muslim ethics: Egypt's contemporary Islamic movement. *University of Oslo*. Retrieved from <https://www.uio.no/studier/emner/hf/ikos/MONA4522/h12/women-mb.pdf> (El Guindi, 2012)
20. Saveh, L., & Morse, A. (1995). Islam and the treatment of women: An incomplete understanding of gradualism. *Tulsa Journal of Comparative & International Law*, 3(2), 315-332. Retrieved from <https://digitalcommons.law.utulsa.edu/cgi/viewcontent.cgi?article=1094&context=tjci> (Saveh & Morse, 1995)
21. Lakshmi, K. (2021, August 2). Why it's "inauspicious" to call single mothers, widowed or divorced women for a bangle ceremony. *Women's Web*. Retrieved from <https://www.womensweb.in/2021/08/why-inauspicious-to-call-single-mothers-widowed-divorced-women-for-bangle-ceremony-aug21wk1sc/> (Lakshmi, 2021)
22. Pinto, V., & D'Mello, L. (2018). Changing trends of divorce in India: Issues & concerns. *International Journal of Management, Technology and Social Sciences (IJMTS)*, 3(2), 151-157. (Pinto & D'Mello, 2018)
23. Kapadia, K. M. (1958). Marriage and family in India. *Oxford University Press*. (Kapadia, 1958)
24. Uberoi, P. (Ed.). (1994). Family, kinship and marriage in India. *Oxford University Press*. (Uberoi, 1994)

THANKYOU