



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

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### **Abstract**

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. Socio-cultural and economic factors, compounded by adherence to oppressive religious beliefs, frequently overshadow secular legal frameworks and personal religious laws, often under the guise of varied “interpretations.” 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. Using a 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. Additionally, many 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.

**Keywords:** *Marriage and Divorce: Women's Experiences; Legal System; Socio-cultural Norms; Religion*

### **Introduction**

The Oxford Dictionary defines marriage as “the legally or formally recognized union of two people as partners in a personal relationship” or a “legally identified union between a man and a woman”, as defined by the Oxford Dictionary (*Oxford English Dictionary*, n.d.); such a definition, however, is limited to the perspective of individualistic communities. Meanwhile, the term “family” in India refers to

a sacred bond between a group of people- “the basic building block of a society” (Vincent and D'Mello, 2018: 3).

In a country like India that is characterized by cultural diversity, multiple communities, ritual status and societal norms, marriage is not just a union of two people; in addition to being or a social or legal construct, it is also considered to be a sacred union of two families coming together who henceforth identify as members of a single familial unit, with shared norms, rituals and socio-cultural status. In fact, in a country like India, which witnesses both self-choice marriages as well as family-arranged marriages, the idea of this union goes a lot beyond a sentiment of love and affection between two individuals.

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, where they are able to take social, economic and political decisions for their personal and familial well-being by themselves. A good example of this practice is visible not just in rituals of marriage, but more so in the case of failures in marriage or divorce, wherein despite the existence of legal provisions for divorce, women are often found to face multiple forms of social, cultural, legal, economic restrictions while making the choice of walking out of a unhappy or unsuccessful marriage. Despite the current 'modern' society, divorce still remains to be a heavily stigmatized topic of conversation, often imposing harsh comments and stringent actions upon women who are divorced, in some cases being labelled as a culprit in a mutual decision, wherein often their desire for self-determination is depicted as going against the moral framework of Indian society.

India is a diverse country built on the foundation of a multiplicity of religions, caste, ethnicity, cultural practices and traditional values. As a multicultural society that upholds diversity and secularism as its fundamental ideals, the Indian legal system provides various legal provisions that define the liberal rights of women vis-a-vis a divorce, while simultaneously being considerate to religious prescriptions. However, such a framework also results in conflicts and creates ambiguity among individuals; as a result, it becomes imperative to clearly define the liberal rights of women vis-a-vis a divorce, to guarantee gender equality effectively. In addition to the existing legal framework, discrete factors like limited financial independence, illiteracy, lack of property ownership, etc often bound women from being able to freely get a divorce. Additionally, the patriarchal mindset that culturally stigmatizes a woman and blames her for trying to disrupt the social construct of a family, further makes it difficult for a woman to escape unhappy marriages, and tries to force them to continue being in abusive marriages in the name of religious scriptures. 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 following section will discuss the scriptures of these religions and how they contribute to women's rights in their traditional sense.

### **Religious Scriptures in India**

It is well established that Indian society has historically been characterized by a multitude of religions, including both Abrahamic and non-Abrahamic religions like Hinduism, Jainism, Buddhism, Sikhism that originated in the region alongside religions like Christianity and Islam that arrived in India as a result of India's history of foreign invasions. Irrespective of how they originate, all of these religious groups have significantly grown, expanded and modified themselves in the region, adapting with Indian socio-cultural norms of caste and ethnicity and have now emerged to form distinct Indianized versions of

the religion. Keeping in mind such changes, the political and legal system in India have embraced and incorporated these differences and created a legal framework that represents this diversity. For the same reason, an inquiry into the divorce rules of India should first begin with an exploration of the religious scriptures that govern each of the religions. Given the vastness in the scope, this paper looks more critically into the provisions of three of the most dominant religious groups in India - namely, Hinduism, Islam and Christianity, and seeks to explore how the idea of divorce, and women's rights within it, are defined in the religious scriptures.

## Hinduism

Hinduism, with its origins rooted in India, is known to be one of the oldest religions of the world. In fact it can be traced back to the time of the Indus Valley Civilisation (3rd-2nd millennium BCE) and now in the 21st century, has global recognition amongst other cultures as well. Hinduism can periodically be explored in 4 era's: the Vedic period, the post-Vedic period, the medieval period and the modern period.

### • The Vedic Era

(Patil, 2021) During this era, society was fundamentally governed on the basis of the prescriptions of the four Vedas, namely *Rig*, *Samar*, *Yajur* and *Atharva*, and the *Puranas*, which guaranteed women a highly honoured role in society. While women were believed to remain under the protection of a male figure, upper class women were given formal education, were respected and married along the principles of "*Swayamvara*" (a marriage where the woman chooses her husband from a group of eligible suitors). In this society, widowed women were freely allowed to remarry. Although the role of a woman was defined as being a wife, they were nonetheless accorded a high degree of dignity and were considered to be equal partners in decision making and enjoyed authoritative societal sanction. With the idolisation of female goddesses as symbols of nourishment (Lakshmi), creativity (Saraswati), destruction (Durga), etc, women represented attributes of the Divine.(Patil, 2021) Unlike the rituals that came up in the later years, after the loss of her husband, a woman was not coerced to go through sacrifices like commit *sahagamana* (which required a widow to burn herself to death), live in solitude or cut her hair. Instead the origin of rites like *panigrahana* (taking the bride's hand) and *saptapadi* (walking 7 steps together to signify the marriage), collectively portrayed equality, rituals accepted at that time. (Ibid.)

However, even in the 'golden era' for women, inheritance rights were controlled and a woman's defined traditional status was to cater to her husband and bear children.

Drawing from the varna system, society during this time was divided into 4 castes defining their social status. Brahmins (like priests and gurus) and Kshatriyas (warriors, kings) at the highest rank, followed by Vaishyas and finally, Shudras (labourers), known to be the most inferior.

### • Post-Vedic Period

It was during this time that there was a significant decline in the respect and social class of women. The "manusmriti" was made and followed. During this period, caste, which persisted even during the earlier period, acquired stringency and rigidity. With the defeat of the Aryan race in wars, Aryan men married non-Aryan women, resulting in marriages outside of people's social caste of origin. This was viewed as degradation of society and through religious texts, the priestly class introduced several new provisions that aimed to introduce class endogamy and introduced restrictions on the social, economic and cultural rights of women. In other words, marital alliances outside one's caste were frowned upon by society. During this period, child marriage became more prevalent and women and girls were pressurized to marry early, within their caste groups, and were eventually expected to give birth to male children. The

brahmin culture and rigid laws of the *Manusmriti* restricted women from getting education and full-filling their basic rights.

### • Medieval Period

The further development of the caste-system rendered this as a troublesome era for women as they held the responsibility to keep their caste pure- as a direct result of which they were enslaved, and taken away from their liberal rights. To restrict any inter-caste and inter-racial marriages, child marriage was promoted (for kids as young as 7 years of age) in an attempt to continue the lineage through a male child, widow remarriage was banned, and the practice of sati (burning of widows) was made known. Due to the Islamic rule over India in this time period, Muslim women also faced extreme hardships as they were equally shunned by society and forced to live under their veils, confined in their households. Their only role here was to be perfect wives and mothers that can cater to the needs of their families as they were snatched of their independent identities.

### • Modern Period

*During the pre-independence period, with the rise of the social reform movement in India, several patriarchal laws that repressed women were demolished, such as the Sati practice which was demolished in 1829, and the groundwork for this law was defined with the help of the British. As a gesture to promote widow remarriage several social reformers married widowed women themselves. This era witnessed a sudden rise of women being educated, not just in schools, but many like Sarojini Naidu, Kadambini Ganguly, even pursued higher education and became the first league of women intellectuals, poets, doctors and scientists and later became active participants of the independence movement. Women were now educated in newly formed schooling systems and their participation in other political and social areas burgeoned. Nevertheless, they encountered several struggles in their everyday lives, and were constantly expected to fight for an equal status with the men in society (Vera Noriega & Zorrilla Abascal, 2021).*

*In the period post-independence, when India had a constitution of its own, legally women were accorded equal rights as men. While the Hindu Code Bill was introduced to achieve equality, it was neglected by society. However, situations changed over time. Today women are an active part of a legion of fields and their status in society keeps improving relative to the post-Vedic era.*

### Islam

Islamic scriptures also discuss the role of a woman as a mother and a wife, and argue that a woman is the source of comfort for a family, who provides nourishment and love and must be addressed with honour. In fact, the role of the mother is rather dignified according to the prophet in the Hadith. In the original scriptures, a woman's responsibility is clearly defined as equal to a man as it revolves around her faith in Allah. In fact according to the Surat Al-Nahl 16, ayah 97,

“Whoever works righteousness, whether male or female, and has faith, verily, to him will We give a life that is good and pure, and We will bestow on such their reward according to the best of their actions.” (El Guindi, 2012)

Therefore, it is actually the interpretation of the people and their prevalent biases that makes the differentiation between teachings of the Quran and their personal faith undifferentiated. Unlike societal norms adapted over time, the Quran states that the woman have equal control over finances, and has the right to her own share of wealth without the consent of a male figure. One of the sayings mentions that “women are less than men in mind, deen and fortune”, which is forwarded to argue that she is not required to carry out all rituals such as fasting during menstruation (the ha'id) or bleeding time after her delivery (called *nifaas*). With regards to mind, this refers to a man having a higher status in matters of debts, punishments or purchase contract. (El Guindi, 2012) Finally, in terms of fortune, this refers to

lower inheritance rights of women over a man in some cases. However, people often tend to generalize this to all contexts without the clear understanding and criterias under which they have originally been implied in the Quran. Therefore, causing women to be perceived as “inferior” to men. For example, in the Surat Al-Nisa (4), ayah 34, “men are the protectors and maintainers of women ”, this is often misunderstood as having complete control of the husband over his wife. Over the years, this has been interpreted as the woman having to take permission from her husband to carry out certain things and never be able to acquire freedom. On the contrary, the original scripture simply explains this for women to be protected under all men, in the name of dignity, and not in the context of a marriage. Childbearing and motherhood, is a role that has been directed towards women as a task of nobility. In practice however, attached with attributes of sensitivity, love and care, this role is often coerced upon women in current times in a relatively repressive manner. (University of Oslo, n.d.)

### Christianity

The Bible, divided into the old as well as the new testament drops several mentions of numerous women in an optimistic, hopeful undertone. With regards to the Old Testament, there is thorough discussion around how women are known as the prophetesses, proven by Eve being the recipient of the first redemptive promise by God in the book of Genesis (chapter 3, verse 15). These scriptures, define women as a role model to look up to with utmost respect. The mention of Queen Esther (who was brought by God to save the people), being clear evidence for this (Lewis, 2018).

Women in the Bible like Deborah (Judges 4:4-7) openly discuss their thought processes, in an influential manner, their intellect clearly being defined throughout the course of these narratives. Additionally, amidst the rule of Josiah, the five leaders were shown to turn to Huldah (a woman) to seek help in understanding a certain book, thereby accentuating a sense of equality and portraying regard that was given to women. Similarly, the New Testament maintains this image, as portrayed by when Jesus spoke to women, taught them, permitted them to cater to the financial needs of the group, as well as kept them as his trustworthy disciples:

*The Twelve were with him, and also some women who had been cured of evil spirits and diseases: Mary (called Magdalene) from whom seven demons had come out; Joanna the wife of Chuza, the manager of Herod's household; Susanna; and many others. These women were helping to support them out of their own means. [8:1–3 NIV]*

### Society, Culture and Stigma

It is often argued that in an ideal situation, an individual should be married, colloquially referred to as being “settled” in life; in this arrangement, a woman is often viewed to be living in the home of their in-laws, with a ‘secure future’. Transitioning from being a daughter, the identity of a woman is generally described as stemming from her married life and motherhood. Yet, the daughter-in-law in the married household is considered to be at the bottom of the familial ladder of power and decision-making. Consequently, it is only post her marriage and giving birth to a preferably male child, that a woman manages to receive a worthy social status and a degree of respect in her surroundings as she epitomizes the continuation of a lineage; birth to a girl child does not always guarantee a similar social recognition. Thereby, the controversial idea in society of a woman, who is not married, yet alone divorced, impedes the image of women in society (Kapadia, 1958).

Unfortunately, due to the Indian socio-cultural and marriage system, the blame of a divorce frequently comes to the woman, garnering negative descriptions like ‘flawed’ ‘rigid’, ‘adamant’, ‘non-adjusting’ etc., regardless of the partner or partner’s family’s behaviour where the woman lives that might have potentially contributed to the divorce. (Uberoi, 1994) In India, post marriage, women are expected to shift into the groom’s house, sharing living spaces with his family. Under such an arrangement, often

unsupportive or disrespectful family members also become an important concern for divorce. “Inauspicious” or “too westernized” are just some of the labels attached with divorced women, making the decision to divorce, a provocative one in the first place. Tagged for life as one who broke away from her destined role of a wife responsible for keeping the family happy and healthy, often becomes a critical reason due to which the idea of divorce becomes a highly controversial decision for women. This is especially significant as it underscores the prevalence of gender roles. (Kapadia, 1958)

The concept of family, across Asian communities is defined along the lines of a close-knit community, where individual identities are interdependent on each other. Under this system, the image of a woman is impaired not only in society, but also in her natal home, and for many, the return to the parents’ house might be disguised under a blanket of shame and fear of hurting the pride and public opinion or ‘name’ of the family, in front of society. This is also why divorced women in many Indian households are shunned from being able to participate in sacred ceremonies due to the fallacious mindsets in rural India of how bad luck might be brought upon the house. (Lakshmi, 2021) The married Indian woman is hyper visible in public spaces - if she is Hindu, then core rituals of religious ceremonies like Karva Chauth, or the traditional acts of wearing a *mangal sutra* or *sindoor*, makes her distinctly visible, if she is Christian, then the wedding ring on the ring finger is a sign of visibility. . With a deep sense of social acceptance and pride associated with such rituals, the divorced women also becomes hyper visible as someone who once bore these symbols but does not anymore, and these women are often accrued lower social status and prestige and excluded from social and cultural activities.

### Theoretical Frameworks On Divorce

While there are several legal provisions that guide legal provisions for divorce, the study of divorce also encompasses a wide range of theoretical perspectives that helps in the understanding of the complexities and multifaceted nature of marriage and divorce. These frameworks provide critical insights into the factors like the reasons for divorce, processes involved, impact on individuals and society. This section aims to explore the more predominant theories of divorce, offering a unique lens to understand the phenomenon of divorce.

Under the Hindu Law, there are three predominant theories of Divorce (Singh, n.d.) -

1. **The Guilt Theory** - This permits divorce on the grounds of either one of the parties committing an offense against the marriage which is often limited to the following 7:

“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, taking of *sanyasa* (renunciation of world by entering into a holy order), 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 after the passing of an order of maintenance under Section 125 CrPC or a decree for maintenance under Section 18 HAMA, 1956”.

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 3 criterions under which mutual consent for a divorce can be given:

- a. Both parties have been living individually for one year, or more.
- b. Both parties have not been able to live together
- c. Both parties have agreed together to get the divorce and 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.

Marriage, while being a social contract is also a legal agreement between two parties, only recognised post a legal registration in the court of law.

*Divorce procedure in India, from a legal perspective are based on the following legislations due to the diversity of religions, and the lack of a universal code being followed:*

1. The Hindu Marriage Act, 1955
2. The Dissolution of Muslim Marriage act, 1939
3. The Indian Divorce Act, 1869
4. The Christian Marriage Act, 1872
5. Special Marriage Act, 1954

### **Hindu Marriage Act 1955**

Enacted in 1955, the Hindu marriage act is responsible for guiding marriage proceedings amongst Hindus, Buddhists, Jains, and Sikhs. According to the conditions of receiving alimony and maintenance post-divorce (Ezylegal, n.d.), a financial sum of money must be made by the wife or the husband (depending on who earns a greater amount) to pay for the spouse's maintenance of support on a monthly basis- the intricate details of which, can be negotiated in the court depending on the contextual situation.

In cases where children are involved, the question of custody, maintenance, and education is also taken into account and ensured. As per the provisions of this Act, for a child under the age of 5 years, it is deemed legally necessary for them to stay with the mother due to the tenderness of the age. Till the age of 18, the section 6 of Hindu Minority and Guardianship Act of 1956 lays down the framework of how the right of the child is then the father's. (This clearly accentuates the sense of patriarchy and prejudice there in religious acts and how they conflict with the constitution that exercises equal rights of women.) Regardless of this law, once a child attains 9 years of age, their willingness is taken into account as they are posed the question of who they would like to stay with, as the ultimate reason behind this is to ensure the welfare of the minor involved. In other cases, joint, legal or sole custody is also taken into account. Additionally, maintenance for the child can be claimed from the father, or the mother till the age of 18

With regards to property rights, (Ezylegal, n.d.) contrary to the knowledge of a lot of women in India, the legal system promotes equality with regards to the extent to which they get a share of the property. Until these rights have been clearly defined, the wife has legal rights to reside in her husband's matrimonial home, regardless of whom the property is named after. She also has the right to claim maintenance from her husband and claim a share of his property. In cases of ancestral properties, the wife can ask for an equal share in the court of law, according to the Hindu Succession Act of 1956. However, the proceedings and final order by the court depends on different circumstances. However, for properties that have been self-acquired by the husband, the laws slightly differ in accordance with their divorce agreements and the share of the property that can be received by the wife is relatively less guaranteed.

### **Muslim Personal Law (Shariat) Application Act of 1937**

In Islam, men tend to own twice as much property as women do. Whereas, when discussing maintenance, in cases of divorce, a woman receives financial support during the iddat period (3 months). Post this, the responsibility of this money is given to her birth parents, natal family, or even her children (if they are not minors). However, if she has children under the age of 18, section 125 of the CrPC permits her to continue this maintenance until her next marriage or until the time she has a steady income source.

Thereby rendering the Muslim Personal Law at a lower regard. (The Shah Bano case was a clear example of these conflicting laws and the final decision made)

This was further defined in the Muslim Women (Protection of Rights on Divorce) Act of 1986.

Custody of children (Economic Times, 2022) is governed by this act too. Unless the mother is unfit, the boy child's custody until the age of 7, remains with the mother, according to the Muslim Personal Law (Hizanat). Whereas, if the child is a girl, this age is extended up until the time of puberty. The mother is given higher preference to the child's custody with regards the Islamic divorce cases.

### **The Indian Divorce Act of 1869 & The Indian Christian Marriage Act of 1872**

While the Christian Personal Law does not present a specific provision for custody of children, section 41 of the Indian Divorce Act clearly states that the right to custody is determined as per the welfare of the child and up to the court of law (as further justified by sections 42 and 43 in this act). In terms of maintenance, section 37 of the Indian Divorce Act (1869) allows the woman to apply for alimony or a monetary sum of maintenance that the husband is liable to pay, for a certain period of time (declared by the court). Finally, as for property rights (Sandeep, n.d.), there are no religion-specific laws and the court decides the division of property and financial assets depending on the nature of the case, and in relation to The Indian Succession Act of 1925

### **The Special Marriage Act (1954)**

Section 37 of this act clearly outlines the decree of permanent alimony and maintenance that can be passed in inter-religion marriages that are governed by this act. It is the husband's duty to financially support his spouse through a monthly-sum payment, or by a charge on his property for a time-period. Additionally, (Law4u.in, n.d.) Section 38 discusses the custody of children to be supported by the spouse in terms of their education and other financial requirements, however with no defined laws clearly indicating which parent has more rights.

### ***Research Method***

Using a qualitative approach, this study attempts to understand the experience of divorce among urban educated women residing in the National Capital Region (NCR) of Delhi. For this purpose, using a semi-structured interview schedule, in-depth interviews and focus group discussions were conducted among ten Hindu women who had experienced divorce in the last five years. Given the particularly niche area of inquiry, a snowball sampling technique was used to identify potential respondents. While the study reached out to over 20 women, not all participants were willing to share their experiences, choosing to either skip some questions or refrained from responding to others; in order to maintain objectivity and reliability, the responses of only ten women have been exhaustively analyzed in this paper. 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. The interviews were conducted both in person and virtually over telephone and zoom calls, depending on the availability and comfort of the respondents. Given the sensitive nature of this study, careful attention was dedicated to ensure that respondents were respected, and their comfort and personal boundaries were respected at all points of time during the interview process. For the same reason, anonymity has been both promised and maintained through this paper. Additionally, informed consent was taken from all participants to record the conversations.

Since Delhi NCR was chosen as the principal site for this study an attempt to learn about the background in terms of the number of divorce cases and progression in the same was pursued. For this purpose, frequent field visits were made to Saket District, wherein conversations with civil law



practitioners helped me gain an understanding of the average divorce rates and the common reasons behind seeking divorce. Following the fundamental right to information (RTI), a petition was filed to gain insight on the number of divorce cases in Delhi districts (check appendix). While the government did not respond with the numbers, a rough estimate was gathered through local courts. A positive correlation had been observed in the number of divorce cases and progression of years, especially a rough 25% increment post the pandemic. Currently a rough estimate of 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.

## ***Overview of Respondents***

The respondents included in this study were primarily educated, professionally employed women residing in the city for several years. Belonging to an age bracket of 30-45 years, these women were not just graduates in their respective fields of work, but many were also trained in additional vocational courses for fashion designing and retail. Although not all respondents were originally from the city, the respondents nonetheless spent more than twenty years in the city, some having moved to the city in their childhood and associated the city as their primary residence. Eight out of these ten women had ‘love’ or self-choice marriages, which were supported by their families. Beginning with a ‘happy’ or amicable marriage situation, three women had children out of wedlock. Among these women, one had joint custody, another had complete guardianship (due to ex’s lack of willingness), and in the third case, the children, who were above the age of 9 and thereby eligible to choose who they want to live with, chose to be under the father’s guardianship due to lower financial burden. While in all these cases, divorce was mutually agreed upon, the initial decision to seek a divorce in 9 out of 10 cases was the women’s decision. The reasons behind the divorce in two cases consisted of dominating parents-in-laws who sought to impose antiquated laws on the women. Infidelity was the predominant cause among 4 women. Moreover, there were three cases of domestic violence and three cases of emotional cruelty, one of them due to the spouse having NPD (narcissistic personality disorder). These major clauses were often coupled with underlying reasons of deception, financial pressures from the husband, and a series of false promises in the marriage. When contextualized with the theories of divorce and the legal provisions on which it can be obtained, almost all cases investigated checked the criterias of the Guilt theory, mutual consent theory, along with the theory of the irretrievable breakdown of marriage, thereby validating the theoretical framework and the validity of the claims.

## **Support and Guidance**

The idea of a divorce involves strong social, economic and cultural considerations, where a woman chooses to make a sudden disruption in all her activities. Just as the idea of a marriage encompasses multiple factors, with families on both ends playing a critical role, similarly, structures of support and guidance from parents become extremely important for women seeking divorce, 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. In contrast, two respondents reported receiving jeers from their relatives, wherein they were told that “marriage is all about learning to adjust”, and how the “failure” of their marriage was their fault because they failed to live up to the expectations set for a marriage. In one instance, where a respondent filed for divorce on grounds of domestic violence, she reported receiving flak and condescending comments from both her family and especially friends who allegedly told her to “deal with it because that is how marriage is.” This highlights the complicated nature of marriage as a social construct held by Indian households that often tells a woman that for the sake of family name and prestige, that she must endure disrespect and abuse as an inherent part of marriage. Marriage, as a union of love, respect and lifetime companionship, is often

disguised as a forced companionship wherein one must learn to ‘tolerate’, ‘endure’ and ‘conform’ to whatever is being coerced on them.

In addition to socio-cultural norms, two women argued that religion also plays a critical role in their experience of divorce. Although they did not explicitly identify how particular religious teachings help or discourage divorce, they nevertheless mentioned that some teachings often adopt an “anti-divorce” or anti-separation stance, where in family members and relatives often refer to religious hymns, stories or sacred texts to argue that the role of a woman is spirituality defined within the contours of marriage, and any violation of the same is viewed as a religious non-compliance. Although a few respondents argued that their religious beliefs helped them in creating spiritual sanctum or refuge and find comfort in their challenging times, others nevertheless argued that by defining a woman’s identity within the boundaries of a family or marriage, religions do not provide much space for divorce as a moral right of a woman.

## 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 embedded in unequal and gendered socio-cultural standards. While two of them mentioned the jeering comments by relatives labeling them as women of a “modern thought process”, (closer to western cultures and frowned upon within their communities) there were common convictions discussed by all with regards to their view on marriage and subjective factors that contribute to being able to term it as ‘successful’. To begin with, in six cases, women spoke about being married young, much to their regret now. This was often 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. This led them to their early marriages due to their inability to be with their spouses outside the boundaries of this social construct (Uberoi, 1994). Hence, post marriage, women found it challenging to seek divorce as a result of numerous factors.

The deeply embedded belief of how ‘marriage improves after kids’ was a popularly held opinion, in two out of the seven cases, leading them to delay the divorce further. While they faced challenges with the marriage from the beginning, they chose to have kids and hoped that a family life would improve their marriages, however, eventually the challenges proved to be overwhelming and they were forced to seek separation or divorce. 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.

Another belief of how a woman needs to be independent and manage any problems in the marriage on her own, was a widely held viewpoint, as a result of which they chose to be ‘independent’ and not end the marriage. This was closely associated with the definition of a marriage being a life-long commitment, the breaking of which leads to a feeling of shame, embarrassment, and failure. Divorce being associated with lowered family’s pride and reputation in society, further made it seem like an unfavourable option for the interviewed women.

Leaving a safe haven, not just from a financial perspective but having a pillar of support, leads them to often ponder about “who will take care of them?” if they get a divorce, and therefore continue enduring abuse. This financial dependency on their male counterparts, and the forced belief of how these women won’t be able to survive without a man, further demoralizes the thought of a divorce.

### ***Legal Framework and Theoretical Perspectives of Divorce***

The cases investigated came under the ‘Guilt theory’, under which adultery (7 cases), emotional and physical cruelty (7 cases) and insanity (1 case) provided all 10 women with a rationale when they sought divorce. Meeting the criteria of not cohabiting with one another for over a year, further helped check the ‘Mutual Consent Theory’, which is clearly recognised under section 13B of the Hindu Marriage Act. This was applicable to two of the cases where the woman was separated from their spouse for 1 year in one case, and 3 years in another. The above-mentioned reasons thereby also lead to following the ‘Theory of the Irretrievable Breakdown of Marriage’, as all ten women spoke about divorce being their last resort, after trying other methods of counselling or separation. This was proven by the evidence of long-lasting marriages in all cases (with exceptions of the domestic violence ones) in an attempt to “patch up”, which can be explained by the prolonged periods of separation.

Under the criterias of grounds for granting a divorce, most of the women applied for divorce under the clauses of adultery, physical or mental cruelty. While there was a case of insanity (Narcissistic personality disorder) as well, the woman was unaware of a separate clause in this case, and mentioned that it simply came under the aspect of emotional cruelty. While the law states in theory about the presence of an independent clause for insanity, the awareness about NPD (Narcissistic personality disorder) falling under this was nebulous.

With regards to the property rights associated with the legal framework of divorce, (Ezylegal, n.d.) , 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. Furthermore, it was the 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. The delay in the proceedings, and complications along the process including the spouse fleeing to another country, further made the process of getting the property, or even getting maintenance a lengthy one- In fact the nature of this process barred three of the women to even be willing to apply for financial aid or property ownership in the first place.

Furthermore, in cases where children are involved, it is post the age of 9 that the children are given the option to choose which parent they would want to live with. In the cases investigated above, out of three cases of women with children, one of them had her daughters decide who they would want to live with. This was not applicable to the other cases due to their willingness of having joint custody in one, and reluctance to raise the kids by the father, in the other case.

### ***Conclusion***

Having identified the various factors influencing the rising divorce rates in India, as exemplified by the study above, it is majorly the role of stigma, and poor legal proceedings which make it immensely clear, why women often find themselves reluctant to seek divorce. Although this study is limited by the small sample size, nonetheless the in-depth interviews reveal that while the impact of religion seems to be limited with respect to the data gathered from the studies, the interconnectedness between religion and culture acts as a viable explanation behind the orthodox mindsets and thought processes of people, dating back to centuries ago that are deeply ingrained in the teachings passed on as generational values and beliefs. In terms of the Indian legal system, these biased viewpoints and embedded thought processes of those part of the judicial system including attorneys and judges, further makes divorce a distressing experience with lack of support and proper guidance. It can also be concluded that it is frequent for women to not be able to get a divorce in the designated, practical time frame of a year. Unfortunately, this time period is often extended and the framework of various laws and their criterias remain undefined and leveled as “varied by case-to-case”, further delaying the process.

Transitioning into a modern world where women's rights are taken solemnly is imperative and significant progress has been made in this domain with regards to loosening the phallogocentric mindsets restricting women. While a complete shift in the mindsets of people might be a long way to go, it is certainly an achievable intention and must be worked towards by the policymakers and society in general. Evidently, the collective support of the government and the legal system is equally pivotal in bringing about necessary change.

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**APPENDIX I: RTI Documents**

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, 1954.

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 Worthily 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 31<sup>st</sup> 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*

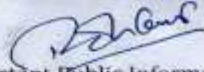
working of public authorities and in discouraging corruption. But in regard to other information, (that is information other than those enumerated in section 4 (1) (b) and (c) of the Act), equal importance and emphasis are given to other public interests (like confidentiality of sensitive information, 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

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