

**Recent trends of divorce in India with special reference to Kashmir Valley****Muzamil Akther<sup>1\*</sup> and Asifa munjkhal<sup>2</sup>**

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**Abstract**

In India divorce and separation are perceived to be relatively rare events. While quantitative data are missing, there is a rich multi-disciplinary literature on various characteristics of marital stability in India. This article draws on this literature to contextualize the key aspects of marriage and the socio-cultural and legal systems that influence the durability of marriages in India. The article then presents estimates of prevalence, trends, and variations in divorce and separation. The finding reveals an upward trend and significant variations in divorce and separation by region, religion, rural and urban residence, and number and sex of children. Marriage among better educated women is more durable and the difference between less-educated and better-educated women has widened over time.

**Key words:** divorcee, marriage, separation

**Introduction**

In literal sense, "divorce" means a legal separation of two persons of the opposite sex who desire to respect and honor each other. Earlier the marriage under Hindu Dharma Shastra was considered a sacred bond and did not provide for divorce, until it was codified in the year 1955. The Hindu Marriage Act, 1955 which came into existence, eight years after the independence of India, under section 13 provided with the grounds on which the parties can seek a decree of divorce from a competent court having jurisdiction to entertain such petition.

In early Roman law, marriage and divorce were essentially private acts of parties. Whenever two persons wanted to marry they could do so; and whenever they wanted to put their marriage as under they were equally free to do so. No formalities or intervention of an agency was necessary

for either. In England before 1857, a marriage could be dissolved only by an Act of Parliament. After a considerable pressure, divorce was recognized under the Matrimonial Causes Act, 1857, but only on one ground i.e. adultery. This continues to be position in India in respect of the Christian marriage. Later on insanity was added as a ground of divorce

The inevitable consequence of this philosophy was that marriage came to be regarded as a special contract which cannot be put to an end like an ordinary contract. A marriage can be dissolved only if one of the spouses is found guilty of such an act and conduct which undermined the very foundation of marriage. This led to the emergence of the offence or guilt theory of divorce. Marriage as an eternal union was not altogether immune to rejection. However, earlier there was no systematic code to regulate divorce in specific.

In India, the focus of this article, despite wide social changes over the last three decades, marriage is still predominately caste endogamous, universal, and early and involves active participation of family and kin in spouse selection. Although changes have occurred in many aspects of the marriage system including marriage age and spouse selection these changes have not radically transformed the institution of marriage. While much is known about changes in marriage formation in India, there has been little socio-demographic research on marital dissolution. With the notable exception on son preference and marital dissolution, there has been no major quantitative study on divorce in India.

### **Objective of study**

1. To study various causes this led separation of Indian women.
2. To study Recent trends of divorces in Indian modern societies

### **Research Methodology**

The methodology undertaken in this research work includes historical and analytical methods. The historical records and official document were examined: primary as well as secondary sources that are available on the subject have been used. A primary source includes documents, reports, official statements and interview of divorced women . In the secondary sources, the major works of different distinguished authors in the field have also been included and analyzed.

**Discussion****Marriage and dissolution in India**

A key feature of the Indian socio-cultural and marriage system is the strict regulation of sexuality and the proscription of women's sexuality outside marriage. A woman who engages in pre-marital sex is considered as bringing shame to the family and corrupting the purity of her caste. Family and caste councils, therefore, have assumed the role of regulating women's. The regulation of sexuality is stricter among groups where consciousness of caste identity is stronger. The concern about sexuality has meant that unmarried daughters are seen as a threat to the existing marriage and social. This concern about sexuality, among other factors, has meant that marriage is relatively early and nearly universal. A second feature of the Indian marriage system that could influence marital stability is the nature of spouse selection. Marriages are typically arranged by parents or other family members (with varying degrees of consent and discussion with children) rather than based on pre-marital dating or relationships. Parents and family play an important role since marriage is seen as affecting the status of the family and lineage. Although arranged marriages have persisted, the degree of involvement of parents, families, and the young themselves has changed. There is now greater participation and a higher degree of involvement of young men and women in selecting their own spouses through negotiation with parents and families. The use of technology in matchmaking through matrimonial websites, while offering the potential to transgress traditional boundaries, seems to have re-entrenched traditional values in spouse selection. Even for young men and women choosing their own spouse, there is considerable pressure to choose the —right person who fits with the dominant patriarchal and parochial norms and caste identities. The shift toward greater choice in partner selection and companionate marriages in which the conjugal power relationship is less hierarchical could potentially affect marriage stability. for instance, argues that the stability of arranged marriages is the result of stronger material and emotional support provided by natal family and kin. Such support might promote reconciliation and help to resolve marital differences. Marriages in which family and kin do not play a major role might be less stable. on the other hand, draws attention to the destabilizing effect of family and kin in arranged marriages. She argues that marriages in which families had less say in selecting a spouse might be more stable, because women might not expect to receive support from the families nor access to natal homes in times of marital

conflict. Marriages in which partners have a greater choice might also engender stability through promotion of emotional bonds, conjugality, and intimacy. The third aspect of the marriage system that could influence marital stability is the status of remarriages. Remarriages are not unusual; however, they are gendered: accepted for men but questioned for women. While remarriage for women is not prohibited, the status of such marriages is lower within Hindu customary practices. Previously married women are considered impure, and remarriage for women does not hold the same customary and ritual significance. While remarriages and secondary unions (without marriage) for women do occur, the quality of matches (in terms of age, economic situation, marital status, and spouse's family structure) are unfavorable for most women, especially those with children. The possibilities of repartnering and the quality of potential matches might affect a woman's decision whether to leave or stay in a current marriage.

Legal and conjugal stability of marriage in India. The need to distinguish between legal and conjugal stability is especially important in the context of India. It has been observed that in India physical separation may not end the legal relationship, and the absence of legal separation does not guarantee that the couple will remain together. The reasons for and extent to which the two forms of stability differ need to be placed in the legal, customary, socio-cultural, and religious contexts of India.

### **Legal stability of marriage**

The Indian legal system on matters related to marriage and divorce is plural in two senses of the word. First, there are different sets of laws for different groups; second, there is plurality of venues for resolution of marital disputes. This plurality is historically rooted in the need for consensual legislation and stands in contrast to legal centrism and a single legal code for family matters in much of the West. There are several family laws (known as personal laws in India) based on religion and legislated by the central (federal or national) government. Different religious groups are governed by their respective codes and by customary laws of their communities. Hindu marriages and divorces are governed by the Hindu Marriage Act (HMA), which also applies to Buddhists, Jains, and Sikhs. Separate laws govern family matters for Muslims and Christians. <sup>5</sup> The Special Marriage Act (SMA) permits marriage between members of any or no religious affiliation and governs divorces for marriages under the SMA.

The Hindu and Special Marriage Acts have similar grounds for granting divorce. The main grounds can be summarized as matrimonial fault, special circumstances, and mutual consent.

Matrimonial fault includes adultery (with stringent proof), cruelty, desertion for not less than two years, unsound mind, communicable venereal disease, incurable leprosy, renunciation of the world by entering religious orders, and not having been seen alive for seven or more years. For wives there are additional grounds of divorce under special circumstances, such as if the husband has been found guilty of rape, sodomy, or bestiality or if the marriage was solemnized before the woman turned 15 and she repudiates the marriage before age 18. Finally, divorce can be granted by mutual consent.

For Muslims in India, Sharia remains largely un-codified, allowing for plural interpretations. The basic tenet underlying Islamic law is that marriage is considered a contract<sup>8</sup> and can be terminated if the contract is valid or annulled if it is not. Repudiation of the marriage by a husband pronouncing (in oral or written form) talaq (—I divorce you!) three times, for any or no cause, in the presence or absence of his wife, is binding. A wife can repudiate a marriage only if the husband grants her the power to do so or if she has negotiated to have such powers in the marriage contract. Wives and husband can initiate divorce through mutual consent known as Khul (or Khula). Wives can also seek divorce known as faskh from a qazi (religious teacher) or third parties if there is no mutual consent. Women can also seek unilateral divorce under the 1939 Dissolution of Muslim Marriages Act under specified conditions (Jain 2005). These include apostasy, failure to provide maintenance, unknown whereabouts, cruelty, failure to perform marital obligation without reasonable cause, impotence, insanity, severe disease, or any grounds recognized by Muslim law.

### **Increasing cases of divorce in India**

Divorce, a subject which was once a social stigma, has become increasingly popular in recent years. It is seen that married couples are walking away from their marriages for varied reasons. Earlier, there were very few cases of divorce and the main causes were adultery and domestic violence. In most cases, the women continued with their broken marriage for the sake of fear, kids and money. But, nowadays, women do not hesitate to call off their marriages. The rising trend is seen not only in the metropolises but also in the semi-urban and smaller cities, including the rural areas, where there may not be divorce in legal terms but women are seen living separately. What are the main causes of increase in divorce rates in India?

Recent years more and more married couples in India are walking away from their marriages. Court figures and data from crime record bureau reveal that over the past decade, divorce rates

have doubled and in some cities even trebled. This trend is evident not just in metropolises but in smaller cities and semi-urban areas as well. It is a reflection of India's changing socio-economic landscape where this phenomenon is not restricted to the affluent, urban populace as it used to be in 1980s. Figures suggest that more people from middle class and lower middle class are opting out of unhappy alliances.

Delhi leads the way registering about 9,000 cases every year, a huge increase from the average 1,000 cases that were registered in the 90s. Kolkata and Chennai have also recorded a rise of 200 % in divorce rates. Kerala has seen a quantum leap of 350%. Punjab and Haryana have seen an increase of 150% in divorce cases.

Incompatibility and adultery are among the most cited reasons by those filing for divorce, a substantive number of young couples. A combination of factors -nuclear family structure, professional ambitions, mismatched expectations and modern life styles is contributing to the increase in the number of couples that decide to part their ways. Youth today do not subscribe to the rigid notions of the sanctity of marriage as an institution.

A significant upshot is that more women are filing petitions for dissolution of marriage something that was unheard of in the 70s and 80s. Women have always had the legal option to walk out of abusive or unhappy marriages in India. But mere legal sanction means little where life is governed by patriarchal social mores. However while women are becoming empowered to take charge of their lives even now only women who are economically independent and have the backing of their families can afford to exercise the divorce option.

Divorce can have negative impact on families especially children who bear the brunt of failed marriages. The problem confronts people all over the world and there is no solution which can make everybody happy. It is a reality that calls for us as individuals and as a society to make adjustments to our ideas and expectations of marriage. There is need to have strong support system for people who decide to go for divorce.

### **Common grounds of divorce**

According to the Indian judicial system, the common grounds of divorces in which one of the partners can file for divorce are:

**Adultery:** When either of the two is involved in sexual relationship outside marriage.

**Cruelty:** When the man or the woman is subjected to any kind of physical and mental injury.

**Desertion:** When one partner abandons the other for at least a period of two years.

**Conversion:** Forced conversion of religion.

**Mental disorder/ venereal disease:** If one partner suffers from mental disorder/insanity or from serious communicable diseases.

**Leprosy:** If one of the partners suffers from incurable form of leprosy

**Renunciation:** If a spouse renounces all worldly affairs.

**Conjugal rights:** Failure in observing conjugal rights for 2 years or more.

### **Recent trends in divorces in Indian modern societies**

Divorce is not looked down upon in the society today. While initially divorce was a hush-hush matter, there is greater societal acceptance of divorcees in the modern families today. A divorced daughter is accepted with open arms by her parents and family. The very sanctity and importance of a relationship has gone down the drains. Young couples' attitude towards marriage has changed. Increased number of DINK families. They do not hesitate to separate as they do not have to worry on how the separation will impact children. Professional rivalry between the partners is another cause of divorce. Either the man files for a divorce due to ego issues when he sees his wife more successful than him professionally. Or a professionally successful woman files for a divorce when she sees that her husband's position is not at par with hers. Also there are chances of more extra-marital affairs in such cases and the end result is a divorce. Lack of compatibility and sluggish sex life between the two are also major causes of divorce.

### **Women empowerment: A major cause**

The sum and substance of all the causes mentioned above is Women Empowerment. With economic prosperity and rising incomes, with increased ego between the partners and professional competition, the number of divorce cases is increasing in India. Today, most young married couples have stopped giving value to marriages and for petty reasons, their married lives fall apart. On the basis of the grounds mentioned above as well as various other small reasons, young couples do not hesitate to file for divorce. Recent trend has shown that women are more upcoming in this matter.

Gone are those days when a woman stayed at home and tolerated all kinds of nonsense inflicted upon her by her husband and in-laws. She stayed in silence and did not walk away from her

marriage for the fear of society and also because she was not financially independent, her parents won't accept her and most important of all, who will look after the kids.

Things have changed now. Women have become more and more independent nowadays. More and more women have joined the professional bandwagon. With basic education and jobs in hand, they have become financially independent. In case of any marital discord, modern women do not hesitate to move away. Women are capable of sustaining themselves. It is reported that finance independence due to women empowerment is a major cause of increasing divorce rates in India.

**What is the solution?**

Does it mean that women should stay at home, give up their jobs and get busy in only household work? The answer is a big NO. Women empowerment needs to be encouraged. Our society has revolutionized with women empowerment. Empowering women does not mean competing with men. Empowering women means they have a right to freedom of speech and expression, they have a right to make decision in the family and if need be they have a right to earn for the family. There is no harm if a woman earns more than a man. She is earning for the family. There should not be any ego issues in that. A man should respect a woman who earns more than him and vice versa. Women empowerment has somehow played a role in increasing divorce rates but it cannot be the sole cause and the entire blame should not go to the women alone.

**Conclusion**

This study quantified the prevalence and variations in divorce and separation in India. The numbers show a rising trend of marital dissolution resulting from divorce or separation. The overall level of marital dissolution, however, remains low. The findings also revealed important differences by region and religion. The regional differences are attributable to differences in kinship, cultural, and marriage systems. The religious differences are underpinned by both legal and cultural norms of the respective communities. The findings also contribute to our understanding of the role of education in marital stability. In India education promotes marital stability. As discussed above, education might provide women with greater say in marriage, greater bargaining power, and greater gender equity—all of which could contribute to stronger marital bonds. the study's findings were based on survey data that recorded marital status information. A limitation of such data is that it views marital dissolution as an event. In India marital dissolution lacks the concreteness of a definite break granted by a legal authority.



Instead, marital dissolution is a process that is fluid and ambiguous with blurred boundaries. There is a need to collect data using survey instruments that are sensitive to the complexities and pluralities of marital dissolution in India. To provide a more complete and accurate understanding of marital dissolution would require abandoning the simple recording of current marital status, as in most major demographic surveys in India, and devoting more attention to marital histories and biographies of both men and women.

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