



Some Aspects of Divorce in Hindu Law and Scriptures

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ABSTRACT:

The process of ending a marriage is called divorce. It usually dissolves the bonds of matrimony between a married couple. There are several contradictions within Hindu Scriptures regarding divorce and its legalization as well as implementation. Similar to early Christianity, Hinduism believed that marriage was an unbreakable bond. However, *Dharmashastra* permitted divorce before the beginning of the Christian era. According to *Kautilya's Arthashastra*, judicial permission was inevitable before the second marriage, which indicates the practice of divorce must have prevailed in Ancient Indian Society. Recorded cases of divorce are not found in Brahmanical tradition, while Buddhist literature has references. The Hindu Marriage and Divorce Act of 1955 allows divorce on the basis of some grounds like a change of religion, cruelty, suffering from venereal disease, rendering staying with the other party unsafe etc. A modest effort has been made in this study to concentrate on the many elements of divorce under Hindu law and its benefits and drawbacks.

Keywords: Divorce, Hindu law, Scriptures

The process of ending a marriage or marital union is known as divorce or dissolution of marriage. The legal obligations and responsibilities of marriage are often canceled or rearranged as part of a divorce, which dissolves the bonds of matrimony between a married couple under the laws of the specific nation or state.¹

General Hindu law did not recognize divorce since it was believed that marriage was an unbreakable bond between a husband and woman, much like early Christianity. Divorce is legal under Hindu civil law under specific conditions. But since divorce is not a part of Hinduism as a whole, the religion as a whole does not support it. Hindu scriptures claim that marriage is a sacrament, a heavenly bond, and a holy union. Marriage is not a place for sexual gratification; it's a place for procreation and the continuance of family lines. It must be done; it is a duty. A principle of Hinduism that, if accepted, both partners must uphold for the rest of their lives. Therefore, marriage is a holy bond that cannot be broken by divorce for selfish or personal reasons.

Women had little independence in Hindu culture in the past. Women were kidnapped, sold, forced into marriage, forced into prostitution, and kidnapped and sold. In Hindu civilization, there was no such thing as a divorce or a formal separation. When a woman left her parent's house, she was entirely at the mercy of her partner or his parents. If he thought she was unsightly or unsuitable and left her, there wasn't much she could do. She lacked the legal authority to get a divorce, get remarried, go outside or speak to anybody without her husband's consent.²

The situation was different for males. Men possessed various rights and advantages that came with their role as defenders of dharma, which they exercised for reasons of convenience, expediency, or even their own personal beliefs. An instance in point was Sita's anguish in the epic **Ramayana** when her husband left her for the sake of righteousness. Lord Ram, a shining example of integrity, devotion, and morality, deserted his wife, whom he loved, at the slightest suspicion that she could have been unfaithful. Despite the fact that he lacked evidence, he moved quickly to protect dharma and exiled her into the jungle despite the fact that she was innocent and pregnant. As the monarch and defender of dharma, Rama was thus obligated and had no alternative but to do his duty unless he wanted to seem hypocritical.³

Manu said that a woman might not be freed by her husband either by sale or by abandonment, meaning that the marital relationship cannot be dissolved in any manner. However, if we carefully review the older **Dharmashastra** literature, we discover that divorces were legal prior to the advent of Christianity in certain cases. It's noteworthy to note that even Manu himself says in another chapter of his book that a woman is not at fault if she leaves a husband who is sterile, demented, or afflicted with an infectious or incurable disease. This husband's departure amounted to a virtual divorce since Manu allows such a woman to remarry if her first marriage was not legally completed.⁴ Here lies the self-contradiction in Manu's statement.

In accordance with **Kautilya's Arthashastra**, an unrecognized type of marriage may be ended by mutual agreement. Manu, however, rejects the idea of ending a marriage. In a nutshell, this might be seen as the ultimate dharma of the husband and wife. He says, "Let mutual fidelity continue till death."⁵ **Kautilya** provides comprehensive divorce guidelines for couples who are unable to coexist as a pair. However, they were only applicable to marriages between Asuras, Gandharvas, Kshatriyas, and Paisachas. Even though these marriages were more frequent among the lowest layers of society, they were also prevalent among Brahmanas and Kshatriyas; consequently, divorce must have been somewhat common among the upper castes as well.⁶

A lady remarries in the Atharvaveda at one point, most likely within the previous husband's lifespan. Of course, her second marriage implied a divorce. Writers of the **Dharmasutra** (400 BC to 100 AD) stipulate that a Brahmana lady must wait for her husband to return after a long voyage for five years;

Kautilya shortens this time to only ten months. Arthashastra of Kautilya, which requires judicial permission before contracting the second marriage. The potential of a divorce from the prior marriage is plainly implied by **Parasara's** permission to remarry granted to the wife of a person who is impotent or has become a religious hermit in seclusion.

The **Naradasmriti dharmasatra** (XII 97), a Hindu law book says: 'when her spouse is missing, or dead, becomes an ascetic, is impotent, or is exiled from caste, in these five cases, a woman may remarry.'⁷ According to **Katyana**, the woman may remarry if the husband turns out to be from a different caste, the same gotra, or if he has committed bad deeds. Can we interpret this scripture to mean that divorce was formerly permitted in Hinduism? Many more references are available. We must remember that the word "Hinduism" is a general one and cannot be limited to the "higher" castes. When Nala goes away in the Nala and Damayanti epic, Damayanti's father arranges a swayamvara so that she might find a new spouse. Is that only because Nala is referred to as a Nishadha or as being from a tribe?

The **Bhagavata Purana** describes how Kardama wed Devahuti but left her after she gave birth to his son Kapila. To make good on his obligation to his forefathers, he must father a child. To be a husband, though, is not what he wants. He prefers to live a hermit's life. The tale of Jaratkaru, who consented to marriage but left their husbands who tried to dominate them, is similar. As a result, Ganga left Shantanu, and Urvashi left Puruvara⁸. Can we classify this as divorce?

The Brahmanical tradition does not accept divorce cases that have been documented. However, we only encounter a handful in **Buddhist literature**. As a result, when she discovered that her husband had entered into a second marriage while she was away, a lady by the name of Kana reportedly refused to return to him. She was brought in for adoption at Buddha's suggestion and later married off to a nobleman.⁹ The nun Isidasi went through a number of divorces in her early years. The Majjhima Nikaya describes a household in which the older members were eager to divorce a disregarded wife, even against her will and remarry her. It seems that lower-class parents were not used to wasting their time pressuring their sons-in-law to take unsuitable women; instead, they preferred to arrange a second marriage, even if the prospective bride was not very excited about it.

However, there aren't many divorce instances that have been documented, and the Buddhist literature itself provides proof that divorce was uncommon in more cultivated parts of society. Thus, a lady tells her husband in the **Kanhadipayana Jataka** (No. 444) that even though she had no love left for him, she refrained from getting married again since it was against the rules of that household for a married woman to marry a new spouse. It is evident that women in higher social levels were adamantly opposed to abusing the practice of divorce, which was more common among the poorer classes.

Because of the unhappy marriage, divorcing one spouse and getting married to another started to seem like a grossly sensual act. Therefore, society believed that even if the husband was a moral failure or had severely mistreated his wife, she could not file for divorce. It should be noted that the Roman Catholic church, which sees marriage as indissoluble, still retains the same position today. Up until the middle of the 20th century, only a parliamentary act could grant a divorce in England.

There are essentially three divorce philosophies. 1. Fault theory, 2. Mutual Consent theory, 3. Irretrievable breakdown of marriage theory¹⁰ Under the fault theory or the crimes theory, or the guilt theory, marriage may be dissolved only when one or the other partner has acted immorally in the marriage. To pursue divorce as a remedy, both the innocent and the guilty parties must be present. The most notable aspect and disadvantage, however, is that there is no recourse if both parties are at fault.

Each theory contains aspects that are both good as well as bad. Their suitability varies according to the situation. Thus, it is imperative that our country's legislators handle the subject with the utmost prudence after carefully considering its possible long-term implications.

There are similarities to some extent in the basic reasons for divorce given by Manu and the other ancient lawmakers and the present-day's lawmakers. Permission for divorce for any of the aforementioned reasons would typically be harmful to the interests of women in Hindu society as it now exists. There is no question that it is in the best interests of society for the marital relationship to be seen as permanent and irrevocable. This is feasible only if the ideal of marriage is extremely high. Both the husband and wife have to learn self-control and a great sense of responsibility.

Due to cruelty or a change in faith, the Hindu Marriage and Divorce Act of 1955 now permits divorce if continuing a relationship with the other person would be dangerous. A divorce may be requested if one of the parties has been insane for five years or has had a contagious venereal illness during that time. Only Hindu law recognizes "renunciation of the world" as a basis for divorce since it is a common Hindu concept. According to modern Hindu law, a spouse may file for divorce if the other person has given up the world and joined a holy order.

Marriage is seen as a contract in many cultures. The breach of the contract is divorce. Some, like the Catholic Church, believe that marriage is a holy contract that should never be dissolved. Others do not. Marriage is not a contract, according to Hinduism. It is a rite of passage or samaskara. Samaskara is what gives your world form (akara) (samsara). You may live a complete life due to it.

Hindus see marriage as a holy union. On the other hand, we must remember that Hinduism's marriage laws have evolved over time. Divorce was not permitted until the Hindu Marriage Act of 1955. Divorce was a novel idea in the context of Indian culture at the time. However, things have changed through time, conditions have changed, and the social order has changed. The legislation now provides a way to exit an unhappy marriage by requesting a divorce from a judge.

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