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Marriage Files: In Defence of Divorce

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In India, despite ample legal reforms, marriage remains stubbornly sacramental, and divorce, a social stigma. Marital death is not an outlier but a social fact. By giving the institution of divorce its due dignity, it is possible to save the institution of marriage and the lives of married.

The institution of marriage is in the news these days, and for the wrong reasons. It is two recent cases-the tragic deaths of [Twisha Sharma](#) and [Ketan Agarwal](#)-that have caught our collective eye and conscience. The death of a woman judge's educated daughter-in-law within five months of marriage, and the death of a wealthy business family's son, allegedly at the hands of his fiancée, within four months of engagement, are at the eye of the current storm.

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Social media is agog with the disastrous consequences of parental control on young people's lives in matters of partner selection. As the media trial rages on and new cases pile up every other day, we (unwillingly) take note that death by marriage is not an outlier but a social fact. This news is not new. The National Crimes Record Bureau (NCRB) recorded more than 22,000 suicides by housewives and 5,737 dowry deaths in 2024 (NCRB 2024).

A question that logically comes to mind is: why does homicide/suicide seem a preferred way to end a marriage rather than divorce or breaking off an engagement? These cases echo a macabre twist to the marital vow that says "till death us do part". Why choose death over divorce?

A lot has been written on the sacramental sanctity of a Hindu marriage in India and how a woman-a *paraya dhan* (the marital family's treasure)-belongs, both physically and metaphysically, to her husband's family. Moreover, in India, marriage is what Mary E. John describes as a "compulsory institution" for women (John 2021). While our attention remains firmly fixed on marriage, I argue that we take a closer look at the social life of divorce in India.

In 1955, the Hindu Marriage Act introduced divorce for Hindus. Marriage among Hindus is considered a sacrament, one of the sixteen *samaskaras*. Before 1955, two Hindus, once married, could not legally dissolve their marriage. How we worked around unhappy or unworkable marriages before 1955 is a sociological mystery.

Failed marriages were just individual hard luck, not a comment on the institution itself. Men who could afford to remarried. Polygamy was legal before 1955. Some women returned to their *maike* (natal home), and the matter mostly ended there. The relationship failed, but the marriage continued. Moreover, the bar for a "good" marriage was rather low. Bollywood was yet to peddle unachievable ideals of "*amar prem*" (everlasting love) as the foundational building block of a happy marriage. The birth of progeny (in most parts of India, a male one) was the gold standard of a successful marriage.

All this changed in 1955 with the Hindu Marriage Act, when a Hindu marriage legally metamorphosed from a sacrament to a contract. The Hindu Marriage Act 1955 made it possible for two Hindus to dissolve their marriage on several grounds, ranging from cruelty to impotence. In 1976, an amendment to the Act under Section 13B introduced mutual consent divorce. But despite legal emancipation, marriage firmly remains a societal sacrament. (It is interesting to note that despite all the clamour for reviving the glorious past, no one wants to reinstate marriage as a non-dissoluble sacrament!)

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If a divorced daughter returns, it is a family disaster. Divorce is legally quaint but socially abhorred. The impact of divorce on Indian families, especially women, is very different from that in countries where high rates of female labour participation, social welfare

measures, and women's mobility are basic facts of life.

Though the law is gender neutral, most divorces are initiated by men. Often, as a response to the wife's claim for maintenance or allegation of domestic violence/cruelty. The notoriously slow and paternalistic family courts in India, legal scholars and experienced lawyers in the field have shown, are more concerned with saving the marriage than saving the woman.

Sylvia Vatuk's study of family courts documents their inherent paternalistic attitude. Vatuk writes: "Fears related to the stigma of divorce combine with fears of its material consequences to produce the rhetorical questions that I heard repeatedly during the course of my research: 'Where will she go, what will she do, if she and her husband cannot be reconciled?'" (Vatuk 2001: 226-248). Lawyers, court-appointed social workers, and judges use delays, mediation, and pressure to reconcile; their sincere attempt is to save the women by saving their marriage. For these women, the social and economic pros of marriage outweigh the cons of domestic violence and marital cruelty.

However, one must add that divorce is not a uniformly doomsday event across class and caste in India. Unlike Brahmanical ideals of sacramental marriage, a wide range of marriage practices have always been present in India. Even the Manusmriti offers the possibility of eight different types of marriage, arranged in a hierarchical order. Anthropologists have drawn our attention to the vastly different marriage practices in India and to that women who belonged to the lower rungs of the class and caste ladder wielded much greater freedom in matters of marriage and its dissolution.

As more money exchanges hands, the stakes in marriage get significantly higher. In a country where close to 90% of businesses are family-owned, younger generations barter compliance for their share in the collective kitty. But at times, the cost of compliance is tragically high as the recent cases suggest.

At the same time, as family scholars point out, marriage in different parts of the world, has become deinstitutionalised, meaning that marriage as formalised and long-term companionship is steadily losing importance. According to historian Stefanie Coontz, what for so much of western history was a universal and enduring institution, changed fundamentally when the individual relationship of "love" replaced the prior economic and political functions of marriage (Coontz 2005). It is part of a historical process that sociologist Max Weber had indexed as "rationalisation", and predicted it would be the fate of the modern world.

The process of rationalisation that introduced calculable rationality, codified, legal, bureaucratic systems in domains that were earlier guided by traditional values, was not a smooth ride in Western Europe, and on the mud roads of South Asia, it has been an especially bumpy ride. The codified Hindu Marriage Act 1955 might have stripped marriage of its mystic but not of its socio-economic logic. Marriage has undergone prescribed legal-bureaucratic treatments (a codified ban on polygamy, introduction of divorce, criminalisation of dowry, pro-women laws on domestic violence and cruelty), yet its current malaise is both hard to diagnose and treat. It is undergoing deinstitutionalisation but still remains in denial.

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The current tragic events should make us think about how the age-old institution of marriage can undergo a modern makeover. Not a quick fix Botox, but a serious surgery to change its basic features. Contrarian as it may sound, perhaps the best way to save the institution of marriage is by strengthening its exit option: namely, divorce.

A word with no real equivalent in Indian languages-divorce-needs to be given its due dignity. Can we begin by introducing the provision of no-fault divorce, where one party can unilaterally file for and get divorced when s/he comes to realise that their marriage has "irrevocably broken down"? Divorce need not always be a matter of spousal fault, but the end of a phase in one's life. One might feel like moving beyond the boundaries of *gruhashth* (being a householder), just as Gautam Buddha did, for no spousal fault but for the sake of the faulty world marred by *dukkha*.

The argument against no-fault divorce is that if we offer such laissez-faire choice, half of India's husbands will unfairly divorce their wives. Well, then, what about solid guard-rails, such as a 50% split of all material possessions as a condition of the no-fault split? I am sure many spousal faults will look less like a fault if no-fault divorce comes with such a high price tag. It is worth taking note that provisions such as "irretrievable breakdown of marriage" (invoked under the powers of the Supreme Court under Article 142 of the Constitution) and customary divorce (Section 29[2] of the Hindu Marriage Act 1955) that make room for no-fault divorce do exist in

Hindu family law, but they remain rarely evoked.

One can also think of introducing prenuptial contracts that clearly spell out the division of assets, finances, and custody. To date, prenuptial contracts are not legally valid in India. The reason is again our beliefs, not legal inadequacies. The very act of drawing such a contract, we fear, can set the ball of bad karma rolling.

How could we think of separation even before the nuptial knot is tied? "*Subh, subh bolo*" (speak auspiciously), we say, and stay quiet. We work on dowry calculations (garbed as gifts), but not on the economics of divorce. But if marriage is to become a contract, we need to make a better contract. Or maybe, elevate divorce as a new sacrament (*samaskara*).

Writing about her own divorce, author Ann Patchett once argued for upgrading divorce as the eighth sacrament. "Like Communion, it is a slim white wafer on the tongue. Like confession, it is forgiveness ... Family, friends, God, whoever loves us forgives us, takes us in again. They are thrilled by our life, our possibilities, our second chances. They weep with gladness that we did not have to die" (Patchett 2014). It is not 'death that us do part' but the civil ceremony of divorce.

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For a vast majority of women who are victims of marital violence, death (be it suicide or homicide) remains the only exit option. In India, dowry death is the shorthand for such marital fatalities. Moreover, the NCRB records that 27.2% of all the cases of crimes against women were registered as "cruelty by husband or relatives". Why our much-valourised familial love does not extend to the young bride is another sociological mystery.

Now, with the recent cases, men have also joined the ranks of marital victims. But this is not the idea of gender neutrality we signed up for. Any sensible society should fortify civil options and civilised termination when marriages do not work. A failed marriage can be a failure of the institution—a sign that it is undergoing deinstitutionalisation—and not of failed individuals. As marriage remains stubbornly sacramental, we need to elevate divorce as the optional seventeenth sacrament, somewhere between *vivah samaskara* (sacrament of marriage) and *antim samaskara* (sacrament of death). If we are successful, it will definitely save many lives from untimely last rites.

It is not that the institution of marriage will crumble if divorce gains social acceptability. On the contrary, it will strengthen the institution in this turbulent time of dating apps, sologamy, polyamory, and situationship. By desacralising marriage and giving the institution of divorce the respectability it deserves, we will give both the institution and the individual a better chance to survive with dignity.

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