APPENDIX X

DIVORCE

1. Introductory—About the time of promulgation of the Baroda Divorce Act in 1931 His Highness the Maharaja Gaekwad expressed a desire that the existing practices of divorce among castes which permit it, should be enquired into. This note is an attempt to analyse the data made available by the enquiry which was conducted along with the census. It must be clearly understood at the outset that the census proper never attempts to enquire into the question of divorce, as it treats divorced persons as widowed, and further, that divorce is not a subject which lends itself to a proper statistical survey. The data obtained are of a descriptive nature and have few homogeneous aspects which could enable their tabulation; the material cannot be grouped into well-defined categories and few general conclusions can be drawn. An idea of these difficulties can be had when it is seen that there are nearly a hundred castes returning information which is not alike in any two. The ramifications of sub-castes which are again disintegrated by localities, multiply the varieties of social customs to an extent which almost defies analysis in a survey so modest as this. In such circumstances the second best line for the statistician is to deal with typical examples and the most frequently occurring aspects, to determine some common factors for a rough grouping and to view the data serially rather than in its cumulative perspective. The treatment of divorce practices in these pages therefore will be more in the nature of a series of loose-knit observations with the single common thread of the theme than a compact bird's-eye view.

2. Marriage and Divorce—Divorce has come as a corollary only after the axiom of marriage was established. The nature of divorce therefore varies according as the nature of marriage is considered institutional or as a phase of human relations. The institutional aspects of marriage and divorce are mainly social, religious and legal in their order of evolution, because in the beginning cognate societies codified their social tenets and called it religion and subsequently law. Yet it is not always that social custom, religious rulings and legal clauses harmonise, as the present Hindu Society illustrates, on the point of divorce. All the three aspects are present side by side—first, social custom renders marriage a utilitarian agreement and divorce is easy if the agreement proves unsatisfactory; secondly religion considers marriage a sacrament and does not conceive of its dissolution, while law fluctuates between social practice and religious edicts. The aspects of marriage as a phase of human relationship are physical and psychological. Human relations and particularly those between husband and wife are not hidebound by any set of rules and therefore are simple. If the marriage is neither a proper biological mating nor a temperamental harmony, it fails and it fails in spite of any custom, religion or law which may refuse to concede of such a failure. It is the impossibility of continuation of marital relations between two discordant parties which led society first to provide for a release from marriage ties. As said above, at the evolution of social rules into religion this provision was also accepted, but the founders of the Hindu religion like the later Roman Catholics, have set such a hyperidealistic premium on the sanctity of the marriage institution that its nullity is almost impossible. Other religions however perhaps being much younger, have appreciated and made due allowance for the want of universal perfection. Law has generally followed the line of least resistance, favouring the opinion of the majority—be it for social or religious sanction. It is evident, therefore, that it is human relations that ultimately determine social custom, modify or override religion to suit their convenience and force law into recognition of human needs; and it is only because Hindu religion has been a monopoly in the safe keeping of an oligarchy for hundreds of years that human pressure has not hitherto succeeded in modifying it. Many communities have however wisely shelved religion in inconvenient matters like divorce, which must sooner or later receive universal legal sanction as it has already done in Baroda State.

3. Divorce and Society—In the meanwhile as far as Hindu society is concerned, the further away from religious ritual a community is, the more human its customs appear; in other words convenience in social customs seems to vary inversely with contiguity to religion. This explains why a man of the depressed classes, a Raniparaj, or a Koli, who is beyond the pale of strict Brahmanic influence freely allows divorce. As the strata of society go higher the aspects of divorce get more complicated. If the agreement proves unsatisfactory; secondly religion considers marriage a sacrament and does not conceive of its dissolution, while law fluctuates between social practice and religious edicts. The aspects of marriage as a phase of human relationship are physical and psychological. Human relations and particularly those between husband and wife are not hidebound by any set of rules and therefore are simple. If the marriage is neither a proper biological mating nor a temperamental harmony, it fails and it fails in spite of any custom, religion or law which may refuse to concede of such a failure. It is the impossibility of continuation of marital relations between two discordant parties which led society first to provide for a release from marriage ties. As said above, at the evolution of social rules into religion this provision was also accepted, but the founders of the Hindu religion like the later Roman Catholics, have set such a hyperidealistic premium on the sanctity of the marriage institution that its nullity is almost impossible. Other religions however perhaps being much younger, have appreciated and made due allowance for the want of universal perfection. Law has generally followed the line of least resistance, favouring the opinion of the majority—be it for social or religious sanction. It is evident, therefore, that it is human relations that ultimately determine social custom, modify or override religion to suit their convenience and force law into recognition of human needs; and it is only because Hindu religion has been a monopoly in the safe keeping of an oligarchy for hundreds of years that human pressure has not hitherto succeeded in modifying it. Many communities have however wisely shelved religion in inconvenient matters like divorce, which must sooner or later receive universal legal sanction as it has already done in Baroda State.
relations are necessarily common to all classes. In Hindu society as it stands at present, grounds for divorce tend to assume a more institutional aspect as a community gets 'advanced.' In the ascent towards the higher social level, as custom becomes more stringent, religious ritual more exacting and ethics more ruthless, offences against the institution of marriage appear to be considered graver than offences against the human relations of man and wife. It was with a view to remedy this state of affairs that His Highness the Maharaja Gaekwad launched the latest bold experiment of offering legal redress to those whom it castes have

4. The Baroda Divorce Act: Its Purpose—It is a sad truism that Hindu advanced castes have occasion to seek relief from the law against their own religion which has completely pervaded their every-day life, and whenever such an occasion comes one can be sure that the aid of the law is invoked against some unnatural or inhuman edict, not of religion so much as of a cruel tradition which has displaced religion. In the present instance law in the Baroda State has come to the rescue of a people whose religion had once provided for divorce (of a kind) but whose traditions would not countenance it. The preamble of the Baroda Hindu Divorce Act (Act 22 of 1931) says:—

“The Parsis, Mahomedans and Christians are at liberty to dissolve marriage according to the law applicable to each of these communities. The Hindus in the present time are not allowed by any law to dissolve marriage; divorces are allowed by custom only in certain communities. It appears however that they were allowed by scriptures even in the higher communities in ancient times; but in course of time people lost sight of the fact and there is a traditional belief prevalent in certain communities that there can at the dissolution of marriage. But the communities in which divorces are allowed hy custom will be at liberty to dissolve marriage according to their customs; only such dissolutions will have to be registered in courts.”

5. The Provisions of the Act—The Act came into force on the 10th August 1931, and applied to Hindus including Jains, Buddhists and Sikhs of the State domicile. The definition of domicile varies slightly according as the suit is for dissolution, nullity of marriage, judicial separation, separate residence or restitution of conjugal rights. The parties can be husband or wife if they are majors and if they are minors, their next friend. Grounds for divorce briefly are (where it is possible for either party)—

1. disappearance for seven years,
2. becoming a recluse,
3. conversion to another religion,
4. guilt of cruelty,
5. desertion without reasonable cause for a period of more than three years after commencement of co-habitation,
6. addiction to intoxicants to the detriment of fulfilment of marital obligation,
7. adultery,
8. impotence (of husband), and
9. pregnancy of wife without husband’s knowledge or bigamy on part of the wife.

Suits are to be framed only on clearly stated grounds and in case of adultery the co-respondent also is to be hauled up. The court is to hear the suit in the presence of jurors of whom the majority will be of the parties’ caste. The jurors’ majority opinion is taken on points of fact and the court either gives judgment or refers the suit to a higher court according as it agrees or disagrees with the jurors. Nullity of marriages is granted upon either party discovering an infirmity or a different religion in the other. Judicial separation or separate residency can be granted upon all the above grounds with the following in addition:—Lunacy after marriage, cessation of conjugal relations for more than three years owing to incompatibility of temperament and bigamy on part of either party.

6. The Act and Existing Divorce Customs—As noted above, divorce according to existing social practices will be allowed so long as every such divorce is registered. The Act has not only refrained from infringing upon communal usages of divorce but on the contrary has been an additional convenience to caste custom, as well as an appeal over the caste’s decision. It is also expected to exercise a healthy check through its system of registration over divorces sometimes obtained among lower castes on frivolous grounds, and over those surreptitious agreements between the first and second husbands by which divorce custom is exploited for virtual trafficking in wives.
7. The Public Attitude towards the Divorce Act—The Divorce Act is yet too new to prove its utility to the general public although it is endorsed by members of Dhara Sabha. It is however hailed as a landmark of social legislation from distant places in India. Women have welcomed it as an escape from misalliance to which a coercive tradition had hitherto bound them. But its inauguration is not likely to show immediate results; provision is made for an occasional social need; it is not as if this flood-gate was opened to relieve the pressure of marital miseries, and a considerable period of time must elapse before the effect of this law will enable one to assign values to it.

8. The Enquiry: Preliminary Arrangements—The special enquiry into the practice of divorce in the State which forms the theme of this appendix was started as a result of the following cablegram received by me on the 20th December 1930 from His Excellency the Dewan Saheb, when he was in England with His Highness the Maharaja Saheb:

"His Highness desires you to collect information about existing customs in regard to divorce among communities in which divorce is permitted. Stop. After collection the information should be tabulated for each caste or community separately."

A questionnaire therefore was drawn up by the Census department and referred to the census committees appointed in connection with inquiries re: social, economic and general condition of the people for collecting information on this question too. This department also referred to the Registration, Judicial and Revenue departments for information relating to this subject.

9. The Questionnaire—The questionnaire consisted of 36 questions divided into the following main heads:

(1) whether the practice of divorce is old or newly introduced;
(2) whether the practice is unilateral or bilateral, i.e., which of the parties to a marriage can give divorce;
(3) what are valid grounds for divorce;
(4) what is the authority of the caste panchas in the matter;
(5) what ceremonies are performed at the time of divorce;
(6) what price, if any, has got to be paid for procuring a divorce;
(7) what is the practice as to reducing the consent to divorce to writing; whether it is registered or not;
(8) what is the practice in regard to the divorce of minors;
(9) whether resort to court is taken by the parties or not;
(10) whether a woman is taken in marriage while her first husband is living or not; and
(11) whether children of a divorced mother inherit the property of her second husband.

10. Special Additional Statistics called for—In addition to the subjects comprised in the foregoing questionnaire the following other data were collected:

(a) The Registration department was asked to furnish in regard to registered deeds of divorce details regarding:
(1) castes of the parties to divorce,
(2) reasons for the divorce,
(3) party executing the divorce deed,
(4) consideration for the deed, and
(5) whether divorce is compulsorily registrable.

(b) The Judicial department was asked to furnish information regarding:
(1) criminal complaints
(a) under Wife’s Possession Act,
(b) under Section 498 of the Penal Code re: adultery, and
(c) under Section 488 of Penal Code re: marrying again while the husband or wife is living.

(2) civil suits regarding
(a) restitution of conjugal rights, and
(b) fargati (release from the marriage bond).

(c) Lastly, the Revenue mahal officers were asked to furnish statistics re: divorces registered under the Marriage and Divorce Registration Act.

11. Volume and Variety of Data collected—We have already stated that the Indian Census does not deal with the question of divorce in any of its aspects. It cannot therefore help us in any way to study this subject. We have therefore to rely on the material received in response to our questions. The responses to the questionnaire related to 74 Hindu and 28 Muslim castes as also for the Parsi community. The names of the castes for which the returns were received are given on the next page along with their population strength.
The margin gives the population by religion for which returns have been received. It will be seen that divorce is allowed by all religions except the Hindu and the Jain. Amongst the Hindus, however, almost all castes practise it except the Vaiyas and the Brahmans, though stray cases are met with in both these classes also. Even amongst Brahmans, Tapodhan, Rajgar, and Vyas sub-castes are reported to be practise it. The last two castes were not separately compiled. But if we deduct the Tapodhan strength from the total of Brahmans we get 123,714 Brahmans and 86,425 Vaiyas not practising divorce. If we deduct the total of these Brahmans and Vaiyas from the remaining Hindu, Jain and Tribal strength we get 186,411 persons for whom returns are not received but they mostly belong to lower Hindu elements which generally practise divorce. Before however accepting as true the above strength of the population practising divorce, we have to reckon the fact sometimes happening that although a caste may allow divorce, yet the advanced or socially higher section may not be practising it, e.g., the Charoter section amongst Lewa Patidars does not allow this practice at all. Amongst Muslims, Christians, and Parsis, it is allowed by their religion and all members of those faiths practise it. But here too, the socially higher sections do not practise it. Some of the converted Rajput house who are considered kuls like the Makwanas and Khants and other higher groups of Moesalams forbid divorce as being contrary to good form. The following castes are reported to have given up the practice of divorce within recent years in the localities shown against their names:—

HINDU
1. Dhobi (Chanasma mahal).
2. Darji (Chanasma, Kheralu, Padra and Karjan).
3. Gola (Baroda City).
4. Lewa Patidar (Dhaban mahal).
5. Lunana (Okhandamand).
6. Pancholi Sutar (Baroda City).
8. Rajput (Kadi mahal).

9. Bhavsar (Kadi, Mahuva and Chanasma).
10. Saiyad (Padra).

12. Statistics relating to Divorce supplied by Other Departments—In order to know the extent of this practice in the State—

(i) The registration of divorces like that of marriages was made compulsory in the State under the Marriage and Divorce Registration Act in the year 1923-24. The following statement gives the number of divorces so registered by caste up to the end of February 1931, i.e., for a period of 7½ years since the Act came into operation.

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<td>25</td>
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(ii) Though the registration of divorce was introduced in the State in the year 1923-24, it was
customary with the parties to a divorce to reduce their consent to writing and get
it registered in order to avoid future complications in the matter. The Registration
department was asked to furnish such cases for the last 10 years and they
are given below by caste. It may be mentioned that no such cases were regis-
tered in the Amreli and Okhamandal prants at all.

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<th>Caste</th>
<th>No. of Divorces with deeds registered</th>
<th>Caste</th>
<th>No. of Divorces with deeds registered</th>
<th>Caste</th>
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</table>

(iii) It was further thought that the statistics regarding (1) divorce suits, (2) suits for resti-
tution of conjugal rights and of possession of wife, and (3) bigamy and adultery
cases would be instructive regarding the extent of resort to courts in such cases
and also of the offences which led to such a resort. The figures supplied by
the Judicial department for the last ten years are given below:—

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<tr>
<th>NAME OF CASTE</th>
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<th>Suits for possession of wife</th>
<th>Suits for bigamy</th>
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<td></td>
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<td>22</td>
<td>7</td>
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<td>25</td>
<td>278</td>
<td>54</td>
<td>84</td>
</tr>
</tbody>
</table>

13. The Divorce Rate—It might be helpful to a certain extent to study such figures as are available about this interesting social phenomenon. Since 1923-24 the Revenue department of the State started the registration of divorces and although it cannot be claimed that all divorces till now are registered, the available figures may be considered good enough to show us the trend of the practice of divorce among different castes. It might be mentioned in passing that whereas hitherto divorce registration was a mere note of the fact, it will henceforward be a legally solemnised record under the new Baroda Divorce Act. The actual number of divorces since 1923-24, for caste-groups arranged according to their
literacy standard are shown in column 2 of the marginal table. The divorce rate shown is calculated first for 100,000 persons living during the decade on the basis of the mean strength of each caste-group and then for 100,000 married persons on the same principle. It is evident from the table that the divorce rate tends to fall as literacy advances. In this connection it must be noted as an exception that the divorce rate of the Advanced Hindu and Jain castes is higher than that of the corresponding Intermediate castes. This is no doubt due to the bourgeoisie accretions to this group like Sutar, Chanchi and Kasbha who though advanced in literacy have not abandoned their wholesome social customs like divorce and widow remarriage as some other neo-advanced castes like Maratha Kshatriya and Lewa have done in imitation of the Brahmins and Varnas. The low rate among Muslims must be due to negligence in registration (since divorce is such an easy affair with them) unless the practice of polygamy which renders divorce unnecessary is responsible for it. Depressed classes show the highest rate which might be interpreted as an indication of their whole-hearted adoption of this national social custom—an adoption to which they are free owing probably to their safe distance from Brahmanic influence. The relatively low rate among tribes must certainly be due to want of registration since divorce is easy among them too. The Pardi and Christian figures are too small to be of any value. Another feature noticeable is in regard to the divorce rate worked out on the married population. Roughly half the strength of each caste is found to be in the married state: according as the married proportion fluctuates from this norm, this rate is inversely affected: thus in castes more addicted to marriage it is low, and high in castes where marriages are fewer.

14. Antiquity of the Custom of Divorce—Voluntary or involuntary separation of a couple bound in ties of marriage is a custom prevalent in almost all castes in the State from very old times. But it is more or less in abeyance in certain kulin sections of particular castes while others have recently introduced it amongst themselves. The Golas in the Baroda City and the Darjis in Chanas, Padra, Khedal and Karjan do not now have it at all. On the other hand the Khatri in Amreli and Lubars generally had it for a very long time while the Gandevi Khatri practise it for last ten years and the Vansagar Lubars practise it for 50 years. The Rajputs have had it from very old days but in Kadi mahal, it is forbidden amongst them though the Nadoda section of them can dissociate from their wives at will. Among the Muslims, the Saiyads do not generally practise divorce while the Mommas have recently introduced it.

15. Who can sue for Divorce?—The next question that crops up is as to the competency of the party to sue for divorce. In certain castes both the parties to a marriage can move for it while in certain castes the practice is unilateral, i.e., one of the two parties—generally the male—can sue for it. Here again the practice varies in different localities, e.g., amongst Targalis the husband alone can give it but in Mehsana and in Khedal both the husband and the wife in their caste are competent to give it. On the contrary amongst Khambhars, the practice is bilateral but in Kadol the husband alone has the right to give it. Amongst Khatri in Gandevi, the right rests in the panchayat of seven villages of their circle, while amongst Koknas it can be valid only after endorsement by the panchayat. Sikligar is the only caste reported, in which the right to divorce is confined to the wife alone. Amongst Musalmans except the Ghanchis, Mochis and Khojas with whom it is bilateral, this practice is unilateral, i.e., the husband alone has the right to give it. The following statement gives details regarding
APPENDIX X—DIVORCE

Hindu and Muslim castes with their practice (whether unilateral or bilateral) and also the names of the places where one takes the other form for certain communities:—

<table>
<thead>
<tr>
<th>Castes that allow divorce only to the husband</th>
<th>Places where such practice becomes bilateral</th>
<th>Castes that allow divorce only to the husband</th>
<th>Places where such practice becomes bilateral</th>
</tr>
</thead>
<tbody>
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<td>2</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Hindu, Jain and Tribal</td>
<td></td>
<td>Hindu, Jain and Tribal</td>
<td></td>
</tr>
<tr>
<td>Anjana Chaudhari</td>
<td></td>
<td>Rabari</td>
<td>Patan, Navsari, Gandevi, Kheralu, Koli and Bhimkatta</td>
</tr>
<tr>
<td>Bajuna</td>
<td></td>
<td>Bajput</td>
<td>Atarsamba, Kheralu, Mehsana, Dehgam and Sinor City</td>
</tr>
<tr>
<td>Baran</td>
<td>Vaghoodia</td>
<td>Kiswal</td>
<td></td>
</tr>
<tr>
<td>Baria</td>
<td>Karjan and Sinor</td>
<td>Sadhu</td>
<td>Sarsan, Mahuva and Vismaghar</td>
</tr>
<tr>
<td>Barot</td>
<td></td>
<td>Sathwara</td>
<td></td>
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<tr>
<td>Barva</td>
<td></td>
<td>Soni</td>
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<tr>
<td>Bhangi</td>
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<tr>
<td>Bhil</td>
<td>Vaghoodia</td>
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<tr>
<td>Bhai</td>
<td>Vaghoodia</td>
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</tr>
<tr>
<td>Chambar</td>
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<td></td>
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<tr>
<td>Chamara</td>
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<td></td>
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<tr>
<td>Chamravali</td>
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<tr>
<td>Dalravi</td>
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<td></td>
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<tr>
<td>Dari</td>
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<td></td>
<td></td>
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<tr>
<td>Dhed</td>
<td>Mahuva, Siddpur, Dehgam, Navrari, Vandevi and City</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dhobi</td>
<td>City, Dehboi, Narsari, and Damnagar</td>
<td>Valsad</td>
<td>Vyas (Brahman)</td>
</tr>
<tr>
<td>Dubla</td>
<td>Narsari and Gandevi</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gandit</td>
<td>Songadh</td>
<td></td>
<td></td>
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<tr>
<td>Gandola</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ghanchi</td>
<td>City, Vismaghar and Mehsana</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kadia</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kadiw Patidar</td>
<td>Vismaghar</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kasira</td>
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<td></td>
<td></td>
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<tr>
<td>Khatari</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Kholi</td>
<td>Gandevi, Mehsana, Patan and Navsari</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kumbhar</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Lekkidafo</td>
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<td></td>
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<td>Lahen</td>
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<tr>
<td>Lahana</td>
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<td>Lajhar</td>
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<td></td>
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<tr>
<td>Machhi</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Matia Patidar</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Meghwal</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Mochni</td>
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<td></td>
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<tr>
<td>Od</td>
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<td></td>
</tr>
</tbody>
</table>

Castes that allow both parties freedom to divorce | Places where such bilateral practice becomes unilateral (husband alone) | Castes that allow both parties freedom to divorce | Places where such bilateral practice becomes unilateral (husband alone) |
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>4</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>Hindu</td>
<td></td>
<td>Mali</td>
<td>Sinor, Baroda, Mehsana and Damnagar</td>
</tr>
<tr>
<td>Bhandari</td>
<td></td>
<td>Nayka</td>
<td></td>
</tr>
<tr>
<td>Chodhara</td>
<td></td>
<td>Otara</td>
<td></td>
</tr>
<tr>
<td>Dehgar</td>
<td></td>
<td>Sagar</td>
<td></td>
</tr>
<tr>
<td>Dhoodia</td>
<td></td>
<td>Tamboli</td>
<td></td>
</tr>
<tr>
<td>Gandha</td>
<td></td>
<td>Teli</td>
<td></td>
</tr>
<tr>
<td>Geosai</td>
<td>Ratapur and Mehsana</td>
<td>Varsoda</td>
<td></td>
</tr>
<tr>
<td>Kochhia</td>
<td>Karjat, Talavada, Dehboi and Sankheeda</td>
<td>Persi</td>
<td></td>
</tr>
<tr>
<td>Khambhar</td>
<td></td>
<td>Musalman</td>
<td></td>
</tr>
<tr>
<td>Kharew</td>
<td>Kadi, Koli and Mehsana</td>
<td>Khoja</td>
<td></td>
</tr>
<tr>
<td>Khok (with the help of Panch)</td>
<td></td>
<td>Mochi</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Vohra (Ghanchi)</td>
<td></td>
</tr>
</tbody>
</table>
16. Parties to Release Deeds—In the majority of cases, the release deed is executed by the husband and given to the wife. In certain cases however, mutual deeds are passed, each party keeping one to ensure against betrayal of the other party. The marginal table shows that of 287 cases of divorce registered in the Sub-Registrar’s office in the State, no less than 285 were signed by the husband alone. Only in one case, it was signed by both. It will be noted that the release deeds were signed by the guardians of the husband in 10 cases in Mehsana division and by the woman alone in an equal number of cases.

17. Divorce and the Minors—Where marriage is a sacrament, the divorce of minors is unthinkable. But the irony of fate is that it exists and owes its existence to the custom of child marriages in India. Its prevalence however is not universal. There are certain castes which forbid it while there are others which freely allow it. There are again certain castes in which it is allowed for the boy and not for the girl and vice versa. The margin sets out the causes which do or do not allow it at all. There are curious customs in this matter too. Amongst Oda, if the minor girl is pregnant, the husband cannot divorce her. Amongst Kolis, the guardians of a minor party can move for divorce but the practice is that the boy is required to hold the pen in his hand and then if he cannot write the release deed, he puts it down so as to allow somebody else to write it out on his behalf. Amongst Kansara divorces are allowed to minors, only for indispensable reasons. The Vaghirs in Dehgam have the practice of putting Rs. 13 on the laps of both the minors before divorce is given. The Musalmans also have a varying practice but amongst Vohra Ghanchis, the minor wife has to pay Rs. 127-8-0 before she can sue for divorce.

18. Reasons for Divorce—The following are reported to be the reasons which occasion divorce :

<table>
<thead>
<tr>
<th>Common grounds of divorce for both parties</th>
<th>Grounds of divorce for the husband alone</th>
<th>Grounds of divorce for the wife only</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Incompleteness of temperament</td>
<td>(1) Wife’s sterility</td>
<td>(1) Cruelty</td>
</tr>
<tr>
<td>(2) Mutual dislike</td>
<td>(2) Refuse to begin marital life</td>
<td>(2) Ruthless beating by husband</td>
</tr>
<tr>
<td>(3) disparity of age between the pair</td>
<td>(3) Not working well, i.e.,to husband’s desire</td>
<td>(3) Vagabondism on the part of the husband</td>
</tr>
<tr>
<td>(4) Quarrels between relatives</td>
<td>(4) Family quarrels</td>
<td>(4) Addiction to vices</td>
</tr>
<tr>
<td>(5) Conversion of one to other religion</td>
<td>(5) Disclosure of relation between prohibited degrees</td>
<td>(5) Impotency</td>
</tr>
<tr>
<td>(6) Insanity after marriage</td>
<td>(6) Bigamy on the part of the wife</td>
<td>(6) Husband not calling the wife to keep house for him</td>
</tr>
<tr>
<td>(7) Chronic disease</td>
<td>(7) Woman given to thieving habits</td>
<td>(7) Continuous sickness of husband</td>
</tr>
<tr>
<td>(8) Mutual consent to divorce</td>
<td>(8) Married only for the sake of marriage, e.g., a defective woman</td>
<td>(8) If exchange promised not given by the husband</td>
</tr>
<tr>
<td>(9) Licentiousness on either side</td>
<td>(9) Woman having bad looks</td>
<td>(9) Husband having turned into an ascetic</td>
</tr>
</tbody>
</table>

But the most common causes are (1) incompleteness of temperament; (2) constant domestic quarrels; (3) ill-treatment; (4) sterility and (5) adultery or bigamy on either side. Where the woman has no right to divorce, she has recourse to a court of law either for maintenance or for
APPENDIX X—DIVORCE

release on account of more or less the same reasons as above indicated. The following statement is illustrative of the reasons which occasioned divorces during the last ten years in the State, amongst different communities:

<table>
<thead>
<tr>
<th>Serial No.</th>
<th>Causes Leading to Divorce</th>
<th>Number of Registered Deeds of Divorce by their Causes</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Total</td>
</tr>
<tr>
<td>1</td>
<td>Incompatibility of Temperament</td>
<td>237</td>
</tr>
<tr>
<td>2</td>
<td>Breach of pacts made at marriage</td>
<td>240</td>
</tr>
<tr>
<td>3</td>
<td>Discovery of the wife’s earlier marriage</td>
<td>1</td>
</tr>
<tr>
<td>4</td>
<td>Divorce of sister who was given in exchange of the wife to a person of wife’s party</td>
<td>1</td>
</tr>
<tr>
<td>5</td>
<td>Absconding husband</td>
<td>2</td>
</tr>
<tr>
<td>6</td>
<td>Tender age of husband in comparison to the wife’s age</td>
<td>3</td>
</tr>
<tr>
<td>7</td>
<td>Marriage having caused disruption among relatives</td>
<td>1</td>
</tr>
<tr>
<td>8</td>
<td>Mutual dislike</td>
<td>4</td>
</tr>
<tr>
<td>9</td>
<td>Sterility</td>
<td>1</td>
</tr>
<tr>
<td>10</td>
<td>Want of equal family status of both parties</td>
<td>1</td>
</tr>
<tr>
<td>11</td>
<td>Husband refusing wife’s maintenance</td>
<td>4</td>
</tr>
<tr>
<td>12</td>
<td>Wife’s desertion in favour of a fresh husband</td>
<td>4</td>
</tr>
<tr>
<td>13</td>
<td>Husband’s inability to support wife</td>
<td>4</td>
</tr>
<tr>
<td>14</td>
<td>Either party catching some disease</td>
<td>2</td>
</tr>
<tr>
<td>15</td>
<td>Either party being rendered unfit for continuation of the marital state</td>
<td>1</td>
</tr>
<tr>
<td>16</td>
<td>Physical defect in either party</td>
<td>2</td>
</tr>
<tr>
<td>17</td>
<td>Lunacy in either party</td>
<td>3</td>
</tr>
<tr>
<td>18</td>
<td>Absence of ordinary marital relations</td>
<td>3</td>
</tr>
<tr>
<td>19</td>
<td>Husband and wife belonging to different castes</td>
<td>1</td>
</tr>
<tr>
<td>20</td>
<td>Wife refusing to stay at husband’s house</td>
<td>2</td>
</tr>
<tr>
<td>21</td>
<td>Husband’s refusal to treat wife as such</td>
<td>1</td>
</tr>
<tr>
<td>22</td>
<td>Marriage having not turned out to be happy</td>
<td>2</td>
</tr>
<tr>
<td>23</td>
<td>Inviduality of either party</td>
<td>2</td>
</tr>
<tr>
<td>24</td>
<td>Husband taking Sunga</td>
<td>1</td>
</tr>
</tbody>
</table>

19. Authority of the Caste Panchas—The next question is whether the permission of the caste panch is necessary for divorce or not? It is generally necessary but in certain castes at certain places it is not necessary. The marginal table gives the names of the castes in which it is absolutely necessary and not at all necessary to seek permission of the panchas before a divorce is given. If both parties are willing to divorce, the permission of the panch is dispensed with but in cases of unwillingness on the either side, the panch is called upon to decide the matter. It is generally called by the party suing for divorce who bears the expenses but at certain places in certain castes it has to be borne by the defaulting party, e.g. Kharwa in Beyt and Ghanchi in Kheralu. In certain castes it is borne by both the parties, e.g. Raval in Petlad and Mehsana and Vaghr in Kadi, Mehsana, Padra, etc. It has sometimes to be borne by the husband even though he may not be at fault, e.g. Chunvalia in Damnagar, Bava in Baroda, Sankheda and Vagdhia talukas, and Luhanas in Amreli. Amongst Bharwad and Dheda, it is customary for the people of the village to invite panchas in groups at their places, and feed them so that no expenditure is incurred.
The general usage is that the *punch* cannot give divorce if the husband is not willing to give it; of course where both parties are willing, the permission or the interference of the *punch* is not necessary, but in certain marginally noted Hindu castes, the *punchas* are competent to give divorce for unavoidable reasons against the will of the husband, but such cases are very rare. Amongst Muslims, the *punch* interferes only if the woman is at fault; amongst Khojas, their council after weighing the reasons pro and con pronounces in the matter of divorce while in the Muslim Ghanchis in Atarumbia and Mochis generally, the *punchas* do sanction divorce against the will of the husband. But these occasions are very rarely to be found. The general principle seems to be that the organisation of the *punch* is only set in motion in defence of the weaker party.

The Khojas have the most methodical form of *punch* government amongst their community. They have a council called "Rajhot Sarhukami Shia Ismail Imami Council" with whose permission the divorces take place. The Council has powers to grant divorce even against the will of the husband or the wife and its decree is appealable, the Aga Khan having the right to hear it. Instead of the release deed, it is usual in this case to give a copy of the council’s decision to the parties. If the husband does not respond to the summons of the Council he is given three months’ time, at the end of which the case is decided by Council.

20. The Mode of Divorce—There is no ceremony of a religious nature attached to the act of divorce. But custom has taken the place of religion and prescribed certain ceremonies which are required to be observed in fullment of the act. Before detailing the different observances, it would be better first to refer to the practice common to almost all castes to reduce in writing the act of divorce for avoiding future troubles. These deeds are mostly executed on an unstamped paper and are rarely registered, though registration is resorted to if stamp paper is used. They are usually written in the presence of the caste *panchayat* concerned and are witnessed by them. Turning now to the customary ceremonies, it would be convenient to study them by groups of castes for which returns have been received. We shall therefore divide them into the following groups:

<table>
<thead>
<tr>
<th>Serial No.</th>
<th>Name of Groups</th>
<th>Number of cases included in the groups</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Advanced</td>
<td>Barot, Bharesar, Ghanchi, Khambar, Lewa Patidar, Lahana, Soni, Sutar, Tapodhan and Vyas Brahmanas.</td>
</tr>
<tr>
<td>2</td>
<td>Intermediate</td>
<td>Anjana Chaundhari, Barad, Baria, Rava, Darji, Gosai, Kadka, Kalal, Kadwa Patidar, Kansara, Khatri, Kharwa, Kumbhar, Machhi, Mali, Rajput, Sathwara, Tamboli, Targals and Valsand.</td>
</tr>
<tr>
<td>3</td>
<td>Depressed classes</td>
<td>Bhangi, Chamadia, Geroda, Hadi, Mighwai, Turi, Vankar (Dhod) and Vanfoda.</td>
</tr>
<tr>
<td>4</td>
<td>Primitive and Forest Tribes</td>
<td>Gamis, Chhadha, Dhodis, Dubla, Kukna, Nayaka, Tadvi, Talavi, Vaswa.</td>
</tr>
<tr>
<td>5</td>
<td>Rest</td>
<td>Bajaran, Chanderi, Bharathai, Bhoi, Dhuhi, Charan, Daggar, Gonda, Khawas Lakkadoda, Od, Sads, Sagaria, Barnani, Teli, Vagher, Vaghti.</td>
</tr>
<tr>
<td>6</td>
<td>Muslim</td>
<td>Bhadela, Chawan, Fakir, Ghanchi, Hazam, Kasai, Khatri, Khoja, Malek, Memon, Mochi, Moleismam, Monna, Pathan, Pinaja, Raajgra, Shaikh, Sopoy, Sindhi, Tai and Vohra.</td>
</tr>
</tbody>
</table>

(i) Amongst the Advanced section, the release deed is executed in all the castes through amongst Sonsis, oral divorce is operative. Amongst Lahanas and Tapodhan Brahmanas the deed is mutually executed. The Bhavars and the Sathwara women in Kalal taluka have to take off their bangles in token of the divorce. The Khambhars in Vimagar have the practice of tearing the end of their women’s gow (upper garment) in the presence of the *punchas*. On the other hand, the Lewa Patidars in Hari have to tear off an end piece of the husband’s julia (turban cloth) which has to be given to the wife. The Sutars in Mehala and the Lewa Patidars in Vyaara allow the divorced woman to retain an ornament of her choice from amongst those given to her by the husband.

(ii) In the Intermediate class too, the *fargati* takes the form of a written deed though amongst Kadis, it takes the oral form, i.e., the husband orally asks the woman to go away—(chakijia). The Kumbhars in Patan also do not require a written divorce deed. The Anjana Chaundhari execute it mutually and the Kumbhars and Darjas have to do it in the presence of
the panchas. The Rajput execute it on the village boundaries. The Anjansas and Kadwas, and Darjis in the Kadal mahal, and the Sathvaras in Mehsana, and the Targalas require the woman to remove her bangles; amongst the Barias in Petlad, both the husband and wife tear off the ends of their garments in addition. The Khavas in Beyt have the practice for the husband to utter to his wife the words "tu tare raste thi ja" (you can now go your own way). Amongst the Gosains in Mehsana and Kumbhars in Kambha mahal, it is customary for the husband to tear off an end of his turban and give it to the woman in token of her release; the Kumbhars in addition have to utter to the woman, the words "tu mari ma baken chhe" (you are my mother or sister); the Valand husband in Kambha also has to call her "ma baken".

(iii) Over and above the written fargati, there is, in the Depressed Class castes, a practice for the woman to remove her bangles and return them to the husband or sometimes, as amongst the Bhangis in Bhadran to break or throw them away. Amongst these classes in the Ratnapur mahal, the deed is always written on the boundary of the village. Amongst the Dheas in the Dammagar mahal, it is usual to write in the divorce deed, the words "bannene kati less deva nahi" (either of them has nothing to do with the other).

(iv) As in the other classes, amongst the Forest Tribes too, the release is given in writing. The Dhodias in Gandevi and the Nayakdas generally execute it mutually. Amongst the Ganjis in Songadh taluka and the Vaswas in Mangrol, the panch is called together and offered wine to drink. But amongst the former it is the practice for the husband to give to the wife a new garment, of which an end is torn afterwards to signify the act of separation. The Dhodias in Mahuva remove the mangalsutra from the woman's neck and an end of her gown is torn. But the most curious practice prevails amongst the Bhils in Baroda district. In Baroda mahal, the Ebl husband and wife wishing to have a divorce are made to sit on the two banks of a koter by the panch who then fix the amount of divorce and ask one of the parties to deal a blow to the tree nearby in token of separation. In Sinor, however, it is the practice to cut the very tree under which the fargati is written. Amongst Chodhas in Songadh the husband is required to give in writing an undertaking that he would not object to the woman taking another husband.

(v) Amongst the castes grouped under the Rest also, the fargati is generally given in writing. Amongst the Charans and Sagarias it is executed mutually. Amongst Vaghers, the written document is entrusted to a respectable third party to preserve. Amongst Dhis, it is required to be witnessed by two or three persons on the husband's side. The Vaghis go to the Simada of the village and write it there. Amongst Ods, it is the practice to write the words "a kanya tene Bayne marjinnau ave te thekane valave: a kanya veper have maro koi pan prakarno hak rahyo nathi." (This girl can be sent to any place her father fancies; I have now no kind of right upon her.) Amongst the Telis, the death ceremonies are performed as if the woman is dead. The Khavas in Beyt have the practice for the husband to utter to his wife the words, "tu tare raste that ja" (you can now go your way) or "tare one mare ajethi fargati chhe" (you and I are separated from today). Amongst Sadhus, after breaking her bangles, the woman has to bathe before she can marry again. Amongst the Hindu divorce practising castes in Dhari mahal, the deed of release is executed in a solitary place, outside the village, by the hands of one who is not of good repute in the village (gam man saro na ganayo hit eva manaena hathe).

(vi) Amongst Muslims, it is customary amongst all castes thrice orally to utter the words signifying the act of separation in the presence of at least two panchas or other witnesses, though fargati is also passed in writing generally. The Memons in Harij and Musalmans generally in Bhadran say to the wife "tu mari ma baken chhe", while in Sinor, the Memons declare before the panchas "mhe hak ochhavyo chhe" (I waive my right over her). The Vohras in Sinor make such a declaration before the Mulla while those in Vijapur have to bathe and then utter words signifying tallak with Kurane Sharif in their hands. The Sindhis in Kambha ask the woman to go away (chali ja). Other castes follow the general usage of a document and an oral tallak.

21. The Price of Divorce—When a wife is divorced or sues for divorce, she, her relatives or her new spouse is required to give a certain amount in exchange for her release to her first husband in almost all castes, the only exception being the Khatri, Dabgar, Tapodhan, Tamboali, Luhana and Vyas Brahman castes in which nothing is given to the husband. The amount so given is called "ved" and the fixing of the amount depends on (i) the age of the woman, (ii) the expenditure incurred by the divorced husband in marriage, (iii) social circumstances of the parties, and (iv) the need for her on the part of her new spouse. This amount varies from Rs. 10 in the Nayakdas to Rs. 5,000 amongst the Lewa Patidars. This amount is fixed by the panchas in certain castes, e.g., Newsari Kachchias, Luhanas, Dhisos, Vaghirs, Talavins and Garodas. During the last ten years, 287 cases of divorce were registered in the Sub-Registrar's offices. In 100 out of those, no price was given to husband for divorce, but in the remaining cases, various
The marginal table gives these cases by the amount of money given. It gives a very good idea of the price that is paid for it. Moreover it is usual in all castes to exact a certain amount (varying according to the conditions of the parties) as fine from either of the parties, the new spouse or the defaulting party. The amount varies from Re. 1 to Rs. 125. Amongst Kachhias and Ootaras, the caste has got to be feasted.

Besides this, the woman is required to return all ornaments that she might have received from the husband to be divorced and also any consideration received by her father in exchange for her. Amongst Bharwads in Harij, it is one of the conditions of divorce that woman cannot be given in marriage in the neighbouring villages or to the relatives of the divorced husband. Amongst Muslims, however when a woman is divorced, the husband has to give her some amount in the form of meher. This is to maintain her during the time (which is generally four months) she cannot marry again. The amount varies from a rupee and a quarter amongst Charanas to Rs. 600 amongst Pujars. Amongst Ghanchias in Atarumbha, the panchas sometimes prevail upon the woman to forgo the amount of meher. Amongst Fakirs, if the woman wants to have a divorce against the will of the husband she has to give an amount fixed by the panchas to her husband. Amongst Shikhias, if she suits for divorce, nothing is given to her.

22. Divorce and Resort to Courts—It is only when the panchas fail to bring about a divorce, the parties resort to courts for separation. The marginal table gives the number of suits and appeals filed in the different courts with their results in all such suits during the decade (1921-30). But we have seen already that no less than 2,884 divorces were registered under the Act up to the end of February 1931, i.e., 7½ years since the Marriage and Divorce Registration Act came into force. It would be interesting in this connection to know the grounds for which the parties had to go to the court. These grounds are given in the margin along with the number of cases. It may be noted that of the 224 cases, in no less than 220 the wife had to go to the court as a plaintiff while the husband figured as such in only 4 cases. This shows that it is only the weaker sex that is obliged to resort to court for separation.

23. Divorce and Inheritance—It is the general practice that the children of the divorced mother remain with their legitimate father and inherit his property. Only where the husband waives his right over the children the latter go with the mother and inherit the step-father’s property, e.g., amongst Chunuvalias in Kodinar. In Beyt amongst Baras and in Rabaris in Kodinar, if the suckling child accompanies the mother and does not return to his or her legitimate father, it inherits the step-father’s property. Amongst Mochias in Khamrha if the woman has no children by her second husband those of the first get benefit of inheriting the second husband’s property.

24. Conclusion—The discussion can now be brought to a close with a final word of caution; the heterogeneous mass of information, an analysis of which is attempted in these pages, does not give any solid ground to build theories upon—nothing short of clear tabulable figures can give that. Yet the descriptive material may be of some use to study tendencies of different communities, their racial characteristics and the effect of literacy upon their social customs—as revealed by their divorce practices. It may be mentioned here at the risk of repetition that divorce customs will shed more light on the ways of thinking of the various communities if studied in conjunction with marriage customs. However such as the material was available, its treatment on the present lines was the only possible one. It is to be hoped that after an interval of years the operation of the new Act will give the student enough reliable statistics capable of more definite analysis.
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