

CHAPTER VII

THE DIVORCEE AS A PERSON, NOT A CASE

(An Analysis of the Empirical Study conducted in the Siliguri Sub divisional Town of West Bengal)

Divorce can be the most painful, traumatic and shattering experience for a person. People tend to equate post divorce pain with the pain of widowhood. Many divorcees feel that widowhood is easier to bear because one knows that the person is deceased and not living a life of intimacy with another person. In death, one does not have to hear all those awful allegations from the persons who were once loved very dearly. But the post event loneliness can be equally nerve shattering, more so in cases of divorce. To this is added the need for adjusting one self with the new problems, the new status of being a divorcee gives rise to.

The difference between the law as it ought to be and the law as it is more acutely felt in the matrimonial laws and litigations. The law as it is reflects the true life beyond the four walls of the court rooms. If the bar and the bench pause a while and cast a look beyond the window, they would discover a mass of humanity staring at them with a question in their eyes. It is that question which leads one to differentiate between law as it is and law as it ought to be. About seventy one cases for interview were collected. Interview of forty six men and women with conflicts have been used¹.

1. The names of the persons and a sample of the questionnaire is given for reference.

The questionnaire for the interview are divided into six parts, A. Identification B. Migration C. Socio-economic background, D. History of divorce (Marital conflict), E. Attitude to divorce and remarriage, F. Post divorce status and comments.

The Identification of the persons are not used in the body of the thesis. Except the name and address other details are taken for analysis. This chapter is divided into four parts. I. Background history, II. Marriage, III. Marital Conflict, IV. Attitude to divorce and remarriage V. Post divorce status and comments.

I. THE BACKGROUND HISTORY

In order to interview the divorcees the first task was to find them. Some of the addresses were taken from the case reports obtained from the court. The advocates were informed, friends and acquaintances were asked for information. Once a general publicity to the desire to interview the subjects were made, some of them came forward on their own to narrate their story. In this manner seventy one names and addresses were obtained of which twentytwo were men and forty-nine (69%) persons were women.

Table -1

Total number of cases interviewed

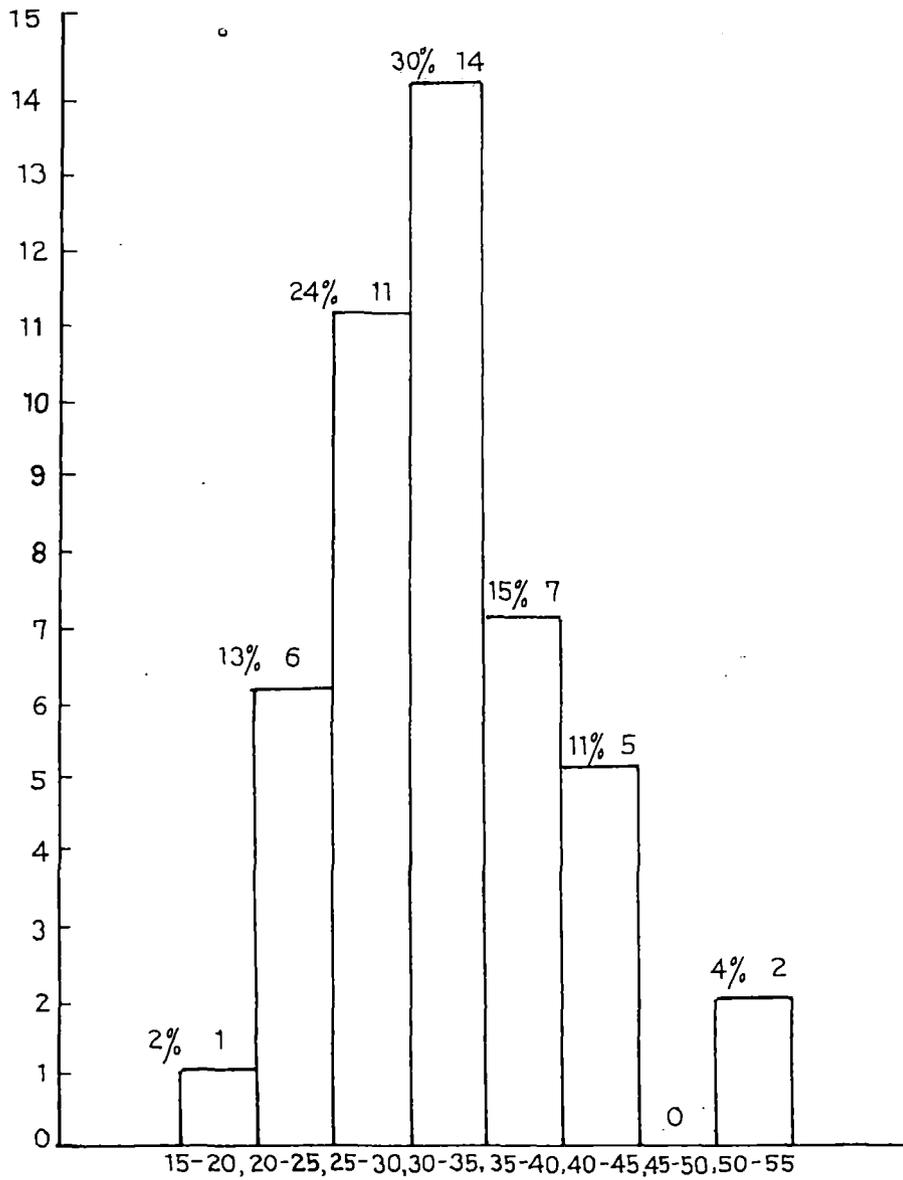
Total cases	Male	Female	Not available	Migrated	Declined	Interview	
						Male	Female
71	22 (31%)	49 (69%)	12 (17%)	10 (14%)	3 (4%)	10 +	36 (65%)

However all of the seventyone persons could not be contacted. Some were not available for interview. That is, about 12 (17%) persons were either out of station or made it a point not to be available. In short these twelve persons just did not want to talk about themselves. Ten persons (14%) had left town and migrated elsewhere. Out of these ten people, at least two of them had remarried and moved on, at least five had obtained employment outside the town and the other three just went away. This information was obtained from their friends, relatives and neighbours. Three persons (4%) declined to talk. One of them, a lady, said she was remarried and her husband did not know of her past and she did not want to say or do anything which will make him aware of it. Another gentleman whose divorce had just been granted said that his wounds were too green yet for him to speak. Another lady said her private life was hers alone. When she was suffering the society did not help her and now she would not do anything that will help the society. Forty six persons (65%) agreed to be interviewed of which ten (22%) were men and thirty six (78%) were women. In other words the ratio of men and women interviewed were 1 : 4 persons approximately.

A. Age

The age of the parties play an important role in any marriage and marital conflicts. With this end in view, an analysis regarding the age of the person was conducted.

- AGE -



GRAPH - VII - 1 .

Table - 2Age of the parties

Total	15-20	20-25	25-30	30-35	35-40	40-45	45-50	50-55
46	1	6	11	14	7	5	0	2
	(2%)	(13%)	(24%)	(30%)	(15%)	(11%)		(4%)

Most of the people (30%) belonged to the age group between 30 to 35 years, followed by 25 to 30 years (24%). It appears from the data that the age between 25-35 years is of the majority of persons (54%) when their marriage was ended. This is also the age when women and men become matured and well set in life. Sense of self respect, right and wrong, the determination to protest against anything that they consider as against their interest is at the peak at this age. Besides today women particularly middle class women tend to marry in their mid twenties and mid thirties.

B. Economic background

To understand the economic background of the parties, consideration is lent on the question of (1) educational qualification, (2) employment and (3) salary.

1. Educational Qualification

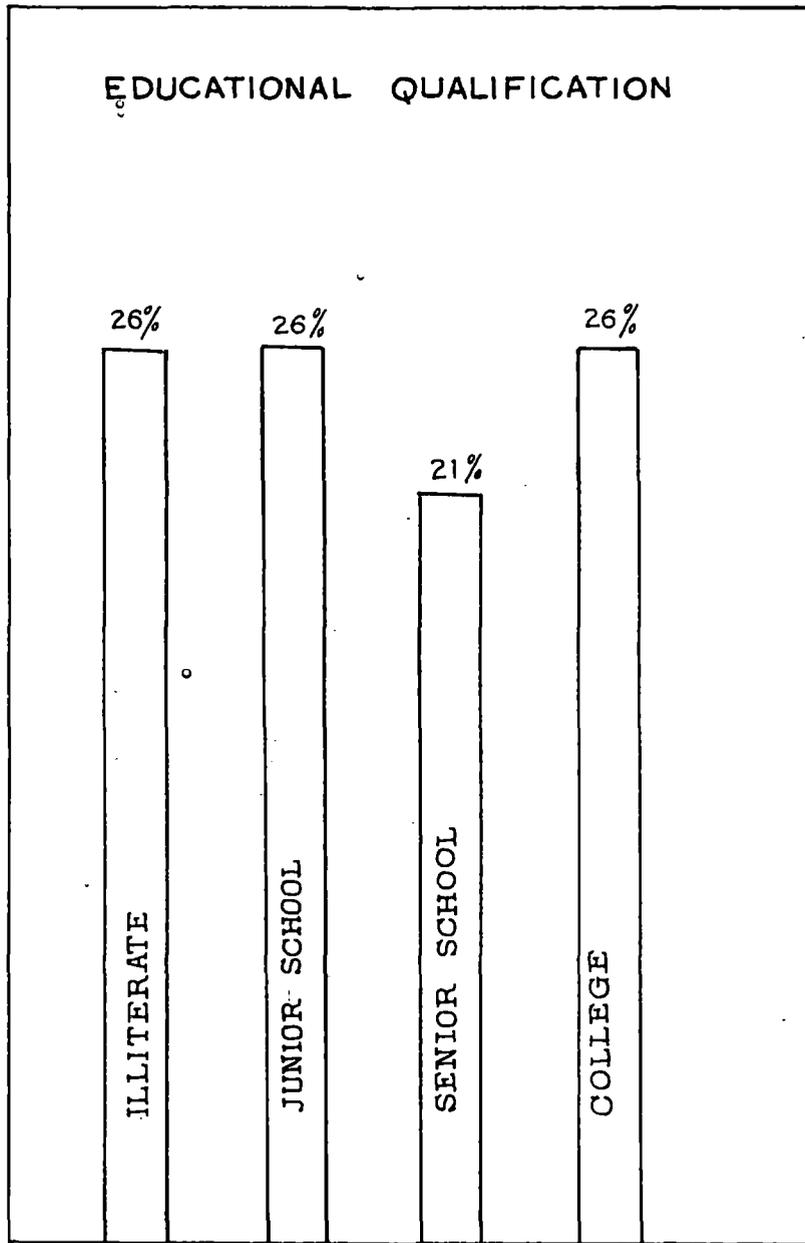
The educational qualification of the parties are varied as is seen from the following chart.

Table - 3Educational background of the parties

Total Number of cases		Illiterate		Junior School (Class 0-VIII)		Senior School (Class 9,10, 11,12)		College (Upto University)	
Men	Women	Men	Women	Men	Women	Men	Women	Men	Women
10	36	0	12	2	10	5	5	3	9
10	36	0	12 (33%)	2 (20%)	10 (27%)	5 (50%)	5 (14%)	3 (30%)	9 (25%)

The educational background varied from illiterate, but is able to sign the name. School Education, from Nursery class to class 8 formed the category of junior school. Classes 9, 10, 11, 12 formed a separate category of senior school. Graduation incomplete, graduation pass and graduation honours and University education (complete or incomplete) formed the college category. It was seen that between illiteracy to class ^{VIII}, that is junior school, there were twenty four persons (52%) followed by 10 persons (22%) in senior school, and 12 persons (26%) were in the college category.

It is worthwhile to note the fact that about 52% cases were from among the people who had read upto junior school. In about 26% cases were the parties ^{who} had read upto the college or University level. Least number of 22% was reported from the senior school categories. Those with least education appear to be more divorce prone. Those with college or university education next follow suit. In the former category it is the lack of exposure, struggles of impoverished life and refinement lead to the incidents



GRAPH - VII - 2 .

of divorce. In the latter group, education and exposure brings about awareness of right, duty, wrong-right, liberty, personality and a certain amount of rigidity of thought and personality. Inability to adjust due to these reasons could be the cause of such high rate of divorce.

The data regarding the division of the percentage of male and female in education is very revealing. In the category of illiterate, there are no men, all the twelve persons are women, that is 33% women were illiterate, 20% men and 27% women were educated between nursery to class eight that is junior school. 10% men and 4.34% women passed their class ten examinations. 50% men and 14% women studied upto senior school. 30% men and 25% women went upto college level.

The literacy rate of women are relatively lower when compared to men. It is not that highly educated persons do not divorce. It simply signifies that through education persons achieve a greater exposure and refinement of behaviour and incidents of divorce then may become less. However this low rate of literacy enjoyed by woman also leads to their predicament when they are unceremoniously discarded and find themselves without shelter, support and sympathy.

Though more women were educated upto junior school, greater number of men enjoyed senior school and college level education. Therefore the education level among women are considerably lower than that of men.

2. Occupational Background

To survive after divorce most of the women are employed in one way or another and all the men are employed. The nature of employment varies from being a maid servant and sweepers to drivers, head load workers, masons, clerks, officers, lawyers, businessmen, teachers, Panchayat Pradhans. The type of employment is not shown in the chart, The chart only indicates the member of persons employed.

Table - 4

Occupational background of the parties

Total Cases	Persons Employed		Persons Unemployed	
46	37 (80%)		9 (20%)	
Total Cases	Men employed	Employed women	Unemployed men	Unemployed women
46	10 (100%)	27 (75%)	0	9 (25%)
Men = 10 Women=36				

of the fortysix person, thirty seven (80%) people are employed, of which ten (100%) are men and twenty seven (75%) are women. Nine persons (25%) are unemployed and all of them are women.

Of the ten employed men majority were in business, some were employed as (UDC and LDC) clerks, etc. of the twenty seven women few were clerks, many were school teachers and many were employed as maid servants also. However, each according to their own ability try to support themselves.

Table - 4AType of employment undertaken by women

No. of women	Menial	Teacher	Clerk	Beedi worker	Business
27	11	10	4	1	1
(75%)	(41%)	(37%)	(15%)	(4%)	(4%)

It is seen that about 41% women took up employment as maid servants. At least 2 (18%) out of these 11 women who worked as maid servants were employed as general duty maids at the North Bengal Medical College. Both the women took up employment after divorce. Of the remaining 9, 4 women (36%) worked as residential house maids and had taken up employment after divorce. The remaining 5 (45%) women had started to work after marriage but before divorce and variously employed like mason's helper.

About 37% women were employed as teachers. About 3 (30%) of them worked as teacher even before divorce and marriage. About 70% of them took up employment after divorce. More remarkably, almost all were junior school and primary school teachers.

All the 15% women who worked as clerks were employed before marriage. One lone woman (4%) each worked as beedi worker and another conducted garment business. Both had taken up their respective jobs after divorce.

Thus the total number of women who took up employment in one form or another after divorce formed about 56% of the cases.

Women who took up employment after marriage and before divorce were 19% and those who were employed even before marriage were of 26%. About 25% of the total number of women remained unemployed and thereby totally dependant on others.

Table - 4B

Type of Employment undertaken by men

No. of Men	Business	Class IV staff	Clerk	Driver
10	5	1	3	1
	(50%)	(10%)	(30%)	(10%)

All the men (100%) were employed before marriage. Majority (50%) were in business. One man (10%) was employed in Air force as Class IV menial staff. Three persons (30%) served as clerks each in Railway, Municipality and Bank. A single man (10%) worked as driver of truck owned by private persons.

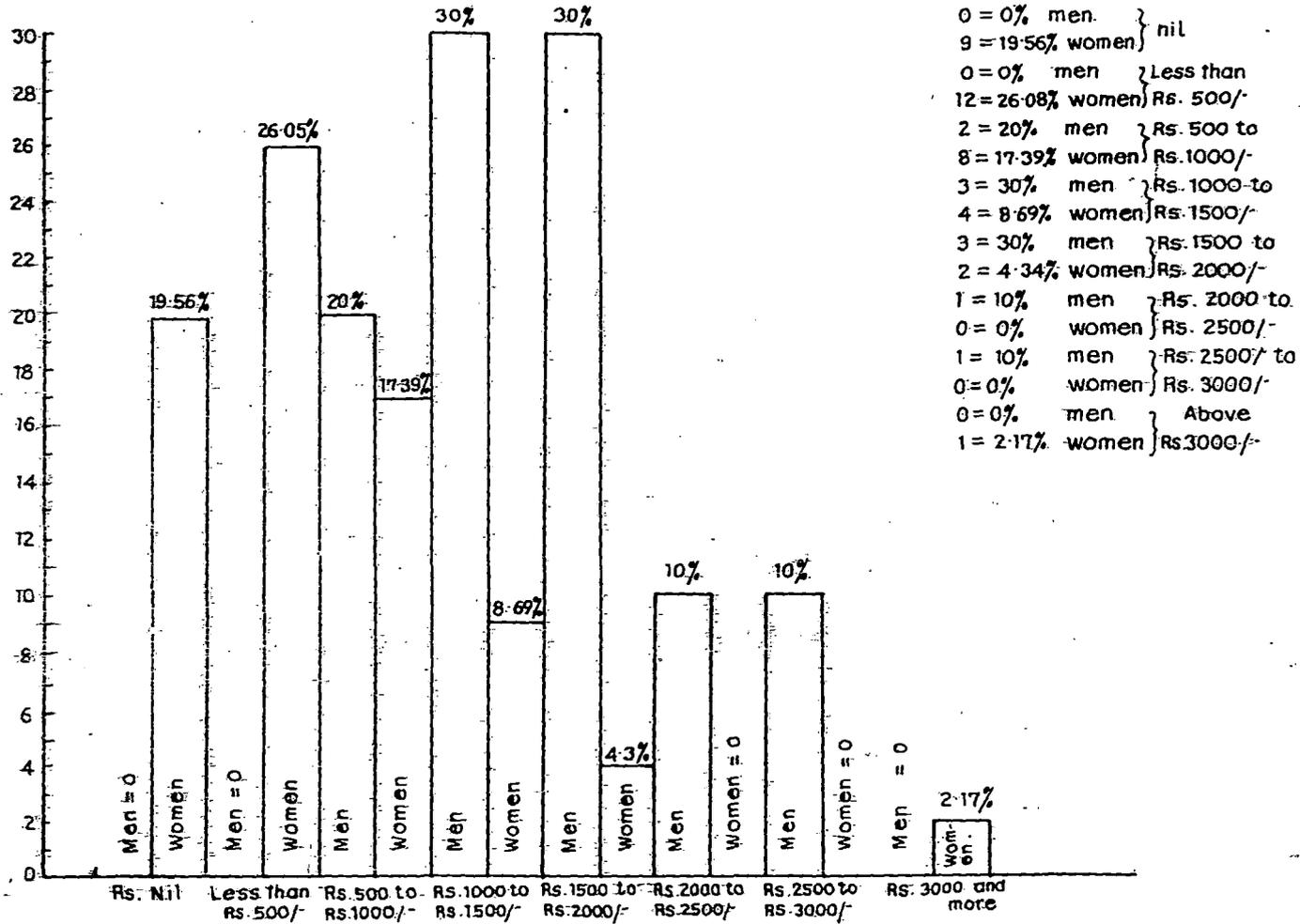
3. The Financial Position

The economic position of a person is closely intertwined with questions of education, employment and remuneration. Financial background is also a vital consideration in any divorce proceedings. The following data shows that:

Table 5 : Financial background of the parties

Total	Nil		Less than Rs. 500/-		Rs. 500-1000/-		Rs. 1000-1500/-		Rs. 1500-2000		Rs. 2000-2500		2500-3000		Above Rs. 3000	
	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women
46	0	9	0	12	2	8	3	4	3	2	1	0	1	0	0	1
(10+36)		(25%)		(33%)	(20%)	(22%)	(30%)	(11%)	(30%)	(6%)	(10%)		(10%)			(3%)

FINANCIAL BACKGROUND



GRAPH - VII-3.

There were about 25% women who earned nothing as they were unemployed. 12 women, that is about 26% of the people interviewed earned less than Rs. 500/- per month. Table 3 shows that 12 women that is about 26% person of the people interviewed were found to belong to the illiterate class. They also form about 33% of the total women community. Furthermore, 11 women, that is 24% of the total people interviewed and 31% of the total women interviewed worked as maid servants and menials (See table 4A). To rephrase, numerically speaking, 33% women earned less than Rs. 500/-, 33% women were illiterate, 31% were employed as menials which is about 41% of total women employed. Therefore the total number of women with no income or income less than Rs. 500/- was found to be about 58%.

About 22% of the total people interviewed earned between Rs. 500/- and Rs. 1000/- Of these 2 (20%) were men and 22% were women. Table 3 shows that 20% men had studied upto junior school and 27% women had studied upto that level, and Table 4A show that 41% of the total employed women were menial workers, but according to Table 4B only 20% men were employed in a low category like Class IV staff and driver.

About 15% of the total persons interviewed earned between Rs. 1000/- and Rs. 1500/- . Of these 11% were women and 30% were men. It is seen under table 3 that 50% men and 14% women have studied upto senior school. Table 4A shows that about 15% of total women employed and 11% of total number of women interviewed were employed

as clerks. 30% men were also employed as clerks as per table 4B.

In 17% cases the persons earned more Rs. 1500/- upto Rs. 3000/- Of these, 50% are men while only 80% are women. Table 3 indicates that 30% men and 25% women have read upto university level. Table 4B show that about 50% men are engaged in business and table 4A shows that about 28% women were engaged as teachers. Therefore a relationship between income, occupation and education can be established in this manner.

1a. Number of illiterate women = 12 (33%)

Number of women employed in menial jobs = 11 (31%)

Number of women earning less than Rs. 500/- = 12 (33%)

b. Number of illiterate men = Nil

Number of men in menial jobs = 2 (20%)

Number of men earning less than Rs. 500/- = None.

2a. Number of women who studied upto junior school = 10 (27%)

Number of women in low jobs = 2 (6%)

Number of women earning between Rs. 500/- and Rs. 1000 = 8 (22%)

b. Number of men who studied upto junior school = 2 (20%)

Number of men in menial jobs = 2 (20%)

Number of men who earn between Rs. 500/- and Rs. 1000/- 2 (20%)

3a. Number of women who studied upto senior school = 5 (14%)

Women employed as clerks = 4 (11%)

Women earning between Rs. 1000 and Rs. 1500/- = 4 (11%)

- b. Men who studied upto senior school = 5 (50%)
 Men employed as clerk etc = 3 (30%)
 Men earning between Rs. 1000/- and Rs. 1500/- 3 (30%)
- 4a. Women with college or university education = 9 (25%)
 Women working as teachers = 10 (28%)
 Women earning more than Rs. 1500/- = 3 (30%)
- b. Men with college or university education = 3 (30%)
 Men in business = 5 (50%)
 Men earning more than Rs. 1500/- = 5 (50%)

In conclusion it can be safely stated that education has a bearing upon the income and employment of the parties that were interviewed for the purpose of this work.

The economic and financial position of women therefore is weaker than the men. The foregoing data definitely shows that economically, financially women are handicapped and are at a disadvantageous position.

4. The Caste Factor

The question of caste being of interest an analysis of the Caste has been made at the state and district level also. The scene at the sub divisional level shows that

Table - 6Divorce in various castes

Total case	Brahmin	Kayastha	Vaidya	Scheduled Caste	Neplai	Others
46	7	20	3	14	1	1

This pattern is in confirmity with the State and district level pattern. At this level, maximum number of divorce has taken place among the Kayasthas followed by Scheduled Castes. Brahmins and Vaidyas follow respectively. Nepali and others were one each.

C. Social Background

All the subjects were met in their natural social background. Twelve (33%) women belonged to what is generally known as the lower middle class background. Sixteen (44%) women belonged to what is known as the comfortable middle class background eight (22%) women belonged to a very affluent background and can crudely be termed rich.

As for men, two (20%) belonged to the lower middle class background, five (50%) to the comfortable middle class and three (30%) men were really affluent persons.

The field covered in the empirical study ranged from the lowest strata of the society to the highest echelon of our social strata.

All these also form the basic background based upon which the various analysis regarding the persons interviewed are made. The previous data also reveal the fact that divorce is not the monopoly of the sophisticated higher section of the society but, that, it has penetrated every strata and the fact that it is rising steadily only goes to show how much conscious people have become regarding their individual rights and identity.

II. Marriage.

Marriage is an institution whereby men and women are joined in a special kind of social and legal relationship for the purpose of having a family. Much activities take place behind the scene before the final legal knot of marriage is tied on stage. The behind the scene activities are of two types (a) courtship or negotiation leading to marriage and (b) preparations for the marriage itself. For the purpose of this Chapter a look at the former is taken hereunder.

Table - 7
Divorce in different marriage forms

Total Cases	Courtship Marriage	Negotiated Marriage
46	12 (26%)	34 (74%)

Despite the relatively broader social outlook, most of the marriages (74%) were negotiated in nature, few marriages (26%) were courtship marriages. Courtship marriages are still not freely accepted or resorted to. That being so, the persons who marry after negotiations miss out on the personal communication and understanding. The negotiation, settlement and commitment thereof are between the elders who are either parents or guardians or well wishers of the parties who are to be married. Therefore the question of consent on the part of the bride or the bridegroom is hardly material. There is only a consent to get married. The question "to whom" is decided by the parents or the elders and family members. The question "do the intended persons like each other? or can they at least be friendly with each other?" are questions which are altogether ignored. All is well if the parties adjust with each other in life but where they cannot, especially in cases where the parties take an instant dislike of each other or have any physical short coming, then the questions of fraud, coercion, nullity, divorce etc are raised. During the crisis period the members of the marital or natal family are hardly of any help even though they were instrumental in bringing about the marriage. In many cases these same very people are known to have inflamed grievances.

Therefore, cases like Babui Panmato Vs Ram Agya Singh² will often arise. In this case the girl heard her father telling

2. AIR 1968 Pat 1970

her mother that he had fixed her (the girls) marriage with a person who was very affluent and of twentyfive years to thirty five years of age. Since this suited her, the girl did not raise any protest. During the marriage ceremony she wore a heavy veil and could not even see her husband. The father did not send the girl to her in-laws house after marriage. The husband instituted a criminal case under section 498 of the Indian Penal Code. The case was compromised and the girl was sent to her in-laws place. on reaching there to her dismay she discovered that her husband was over sixty years of age and a man of ordinary means. When she protested, she was beaten. She managed to escape from her husbands house and the husband again resorted to legal action Under Section 498 of Indian Penal Code. This time, the wife was forcefully taken to her in-laws house and confined there against her wishes. The resultant legal intricacy is another question altogether, but the facts of the case is relevant to drive homethe point that is being made.

In yet another case, Ruby Roy Vs Sudarshan Roy³, the husband had complained that he did not know that the bride was devoid of a female organ, had he been aware of it he would not have married her. It was, however, found by the court that the father of the husband was very much aware of the short coming in the wife. In the former case the court accepted the plea of fraud and in the

3. AIR 1988 Cal 210

latter case the court refused to do so.

Where the parties themselves settle to get married through courtship, these questions are less likely to arise. In case of courtship marriages too, fraud can be perpetrated and accepted but the complexity of the situation on involving parents, guardians or elders can be avoided.

Table - 8

Nature of marriage

Total number of cases	Social marriage	Temple Marriage	Registered marriage
46	39 (85%)	2 (4%)	5 (11%)

The data shows that most of the marriages (85%) were social marriages without registration. About 4% marriages were temple marriages and 11% marriages were registered marriage. As a result, where the marriage was social but unregistered, in the event of bigamy etc the wife was faced with the question of proving a valid marriage which she seldom can and temple marriage is no marriage at all. In other words there was a chance that 89% marriages may run into trouble without an easy remedy. For Leela Maschatak^{4a} it was

4a. Party interviewed for the purpose of this work. See Appendix V.

not so. Hers was a courtship marriage but she did not know that her fiancé was a gambler and a drunkard. His extremely cruel behaviour drove her out of the matrimonial home. Mamata Routh^{4b} too married for love but within a few years of marriage, her husband brought a new bride home. Not being able to tolerate the situation she divorced him on the ground of adultery.

Regarding solemnisation of marriage, statistics show that, social marriage without subsequent registration are very prevalent.

The above show that the Hindu community does not have enough social awareness. The least that can be done immediately is to make registration of Hindu marriages compulsory under the law.

It will also be interesting to know that how long the marriages subsisted. As seen at the state and district level, the

Table - 9

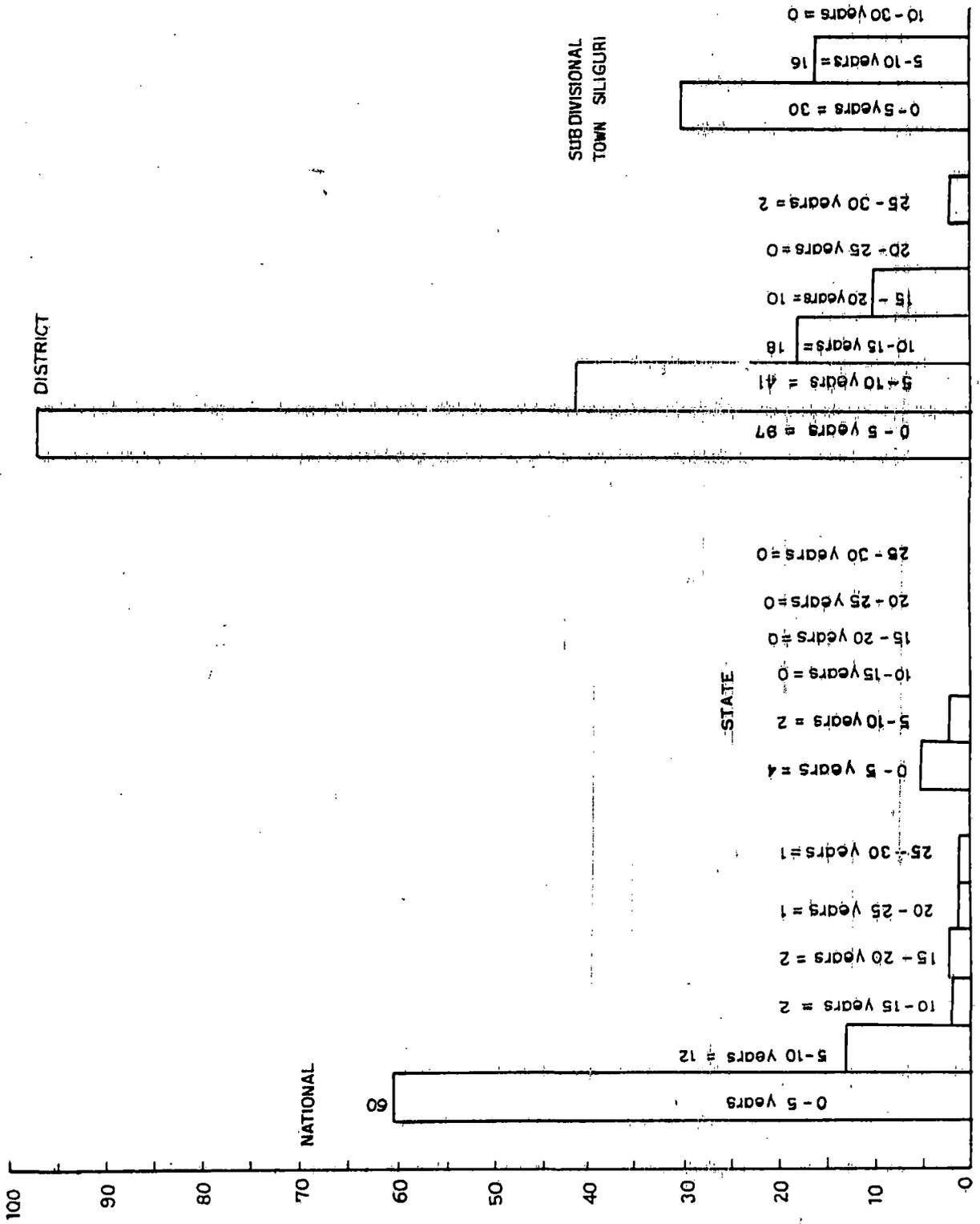
Subsistence of marriage

Total Cases	Few months	1-2 yrs	2-3 yrs	3-4 yrs	4-5 yrs	5-6 yrs	6-7 yrs	7-8 yrs	8-9 yrs	9-10 yrs
46	8	5	6	6	5	3	1	2	6	4
0-5 years = 30 (65%)						5-10 years = 16 (35%)				

maximum number of cases took place between first five years and mostly within few months of marriage.

^{4b}. Ibid.

CHART DEPICTING THE SUBSISTENCE OF MARRIAGE AT THE NATIONAL ,
STATE , DISTRICT AND THE SUBDIVISIONAL LEVEL .



GRAPH - VII - 4.

Table - 9A

Percentage of the type of marriage between
men and women

<u>Total Cases</u>		<u>Courtship marriage</u>		<u>Negotiated marriage</u>	
Men	Women	Men	Women	Men	Women
10	36	3	9	7	27
		30%	25%	70%	75%

Table - 9B

Table correlating type of marriage with
duration and type of marriage

<u>Subsistence of marriage</u>	<u>Courtship marriage</u>		<u>Negotiated marriage</u>	
	Men	Women	Men	Women
0-5 years 24% : 41%	2 20%	9 25%	2 20%	17 47%
5-10 years 2% : 33%	1 10%	0	5 50%	10 28%

Total no. of case 46; Number of men = 10; Number of Women = 36

It must be noted here that 30% men and 25% women had courtship marriages. The total number of courtship marriage being only 26%. About 74% of the people interviewed had negotiated marriages. Of these 70% were men and 75% were women. Further, it was noted that of the 30% men who had courtship marriages, 20% of them obtained divorce within the first five years of marriage and 10% had their marriages dissolved after five years and before the completion of 10 years of marriage. About 25% women had courtship marriage and all 25% of them faced divorce within the first five years of marriage.

There were about 70% men and 75% women whose marriages were negotiated ones. Of the 70% men, only 20% of their marriages lasted for five or less than five years, 50% of them were married for more than five years. Of the 75% women with negotiated marriages, a majority (47%) of their marriage dissolved within five years of marriage and about 28% had continued in a married state for more than five years.

It must not be forgotten that about 85% cases are of social unregistered marriages (See Table 8), and about 74% of marriages are negotiated social but unregistered marriages (See Table 7). From this it may be inferred that of 26% marriages which are courtship marriages (See Table 7) about 10% end in social marriage without registration, about 11% are registered, about 4% are in temple (See table 8) where it is neither social nor registered, and the remaining 1% are unreported.

Column 1 of table 9B clearly shows that maximum number of marriages (41%) which end within the first five years of marriage

are negotiated, social and unregistered. Of 74% of negotiated marriages, 41% ended within first five years of marriage and 33% end within ten years (5 years - 10 years) of marriage. There were about 26% of courtship marriage cases, of it about 24% ended within first five years and 2% between five years to ten years, again, about 10% of them are social but unregistered.

The result of this is that many have been tricked into bigamous second marriages or there has been no valid marriage conducted. When the cases came before the court, the validity of the marriage is challenged invariably. Women find it hard to prove that they had a valid marriage. So, law fails to accord the status of wife to them and the women not only lose the social status but cannot claim maintenance etc. under the criminal laws.

III. Marital Conflict

As stated earlier, a marriage can break down for various reasons. The Hindu Marriage Act recognises great many grounds for divorce⁵. Due to the diverse human behaviour many of the real grounds of marital conflicts are not covered by the Act. So both the actual ground and the statutorily recognised ground must be elasticised and adjusted so that they suit each other. The various types of conflicts experienced by the subjects interviewed are as follows:

5. See Chapter III for a detailed treatment of the ground of divorce.

Table - 10
Grounds for divorce

Total cases	Adultery	Cruelty	Desertion	Insanity	Leprosy and other diseases	Irretrievable breakdown	Mutual consent
46	19	27	10	4	2	1	3
	(41%)	(59%)	(22%)	(9%)	(4%)	(2%)	(7%)

The maximum number of cases are for cruelty, followed by adultery and then desertion. Desertion is followed by mutual consent, leprosy and other diseases and irretrievable breakdown respectively.

This situation is almost identical with the national, state and district levels except for minor differences.

Similar to the national position, desertion at the sub divisional level occupies a third position after cruelty and adultery. Cruelty ranks at the top at the national, state, district and sub divisional level. Desertion occupies a second position after cruelty at the state and district level, and at these levels adultery is relegated to the third place. Insanity is the next important ground for divorce. Mutual consent is in the next important place.

Each of the grounds are studied more minutely in order to study the real dimension of the cases.

It may be recalled here that in analysis regarding education it was seen that about 60% women were between illiterate to junior school. About 55% women earned between nothing to less than Rs. 500/- . About 77% women hailed from low middle class to comfortable middle class background. Most of the marriages (85%) were social unregistered marriage and about 59% cases were on cruelty which, as already discussed is a vague and convenient ground for divorce.

It will not be an exaggeration to say that a majority of women are educationally, financially handicapped. Their marriage were negotiated, social, unregistered marriages which were dissolved on vague and convenient charges of cruelty.

A. Adultery

1. Adultery As Bigamy And Extra marital Affair

Adultery is the second frequent ground of divorce. There are about 41% cases of adultery (See Table 10). It has been studied in various context. In the first instance adultery is divided into bigamy and extramarital affairs. There were 9 (47%) cases of bigamy and 10 (53% cases of extra marital affairs. It is true that, if

Table - 10A

Bigamy and extra marital affair

Bigamy	Extra marital Affair
9 (47%)	10 (53%)

by an effective legislation or means bigamy was to be reduced or stopped altogether, then incidents of extra-marital affairs would be on the rise. Though that would not be a welcome situation at all, yet, perhaps, that would have reduced the sufferings of the discarded second wives to a large extent. As it is, the second wives are neither entitled to maintenance nor the status of a wife. The first wife of a bigamous marriage can have her marriage dissolved on the ground of adultery. On the contrary, the second wife of the bigamous second marriage is socially differentiated and discriminated against because of the factum of her marriage, that her marriage is in fact void is neither accepted nor recognised by the society. So in effect a terrible wrong is perpetrated against the woman in bigamous marriages. In extra-marital affair at least this aspect of injustice is absent. That is not to say that people must have the right or liberty to indulge in such affairs and nor is it being encouraged or welcomed. It is only that extra marital affairs are the lesser of the two evils. The remedy could lie in a suit for adultery and divorce and the tragedy of the second wife will be averted.

2. Adultery in different income groups

There are about 19 cases of adultery. It was seen that nine (47%) cases were from among the group of no income to Rs. 500/- 8 (21%) cases were registered from the income group of Rs. 500/- to Rs. 1000/-. 3 (16%) from the income group of Rs. 1000/- to Rs. 1500Rs-. The income group of Rs. 1500/- to Rs. 2000/- registered 2 (11%) cases. No adultery cases were recorded in the income bracket of Rs. 2000/- to Rs. 3000/-. At the level of Rs. 3000/- there was a single case (5%) of adultery.

Table - 10BAdultery in different income groups

Total Cases	Less than 500	Rs. 500- Rs. 1000	Rs. 1000- Rs. 1500	Rs. 1500 Rs. 2000	Rs. 2000- Rs. 2500	Rs. 2500- Rs. 3000	Above Rs. 3000/-
19	9 (47%)	4 (21%)	3 (16%)	2 (11%)	0 (0%)	0 (0%)	1 (5%)

Economic question has a close bearing on the question of divorce on the ground of adultery. Among the low and low middle classes men and women after a hard and gruelling days' work tend to avoid their spouses and seek relaxation elsewhere with other women and men. This appears to be a very natural phenomenon. If they spend time with their respective spouses then questions, problems and topics of family commitments, child rearing etc cannot be avoided, which instead of relaxing them, weigh them down, so adultery is an escape route of the skulldruggery of a monotonous life, where there is a relatively easy flow of money and lesser hard work involved, the couple settles down into a relaxed and comfortable life and rarer incidents of adultery occurs. Where there is too much money, much time goes in earning and preserving it which again can lead to strains resulting in adultery and divorce.

3. Adultery and literacy rate

The relationship between adultery and literacy rate makes a very interesting study.

Table - 10C
Adultery and literacy

Total Cases	Illiterate	Junior School	Senior School	College/ University
19	6 (32%)	5 (26%)	3 (16%)	5 (26%)

Maximum number (32%) of divorce cases are from among the illiterate class followed by junior school and college/university groups showing 26% cases. Lastly 16% cases are recorded in senior school category.

The question of education, it has been found during the analysis of tables 4, 4A and 4B, is directly connected with the question of income. The same analysis also shows that occupation and education also are directly connected. Table 10C shows that maximum number of divorce cases (32% and 26%) are from this educationally, occupationally and financially backward classes.

Adultery amongst the group enjoying high educational, occupational and financial status is also high^{at} 26%.

The reason is quite apart in the former and latter classes. Among the former class pressing poverty, domestic problems, lack

of diversions with books, news papers etc force the people of this class to form adultrous relationships. In the latter cases, availability of every amenities of life, tension of earning and keeping money, yet the sheer boredom of affluency force the people to seek and to keep themselves pre-occupied with extra marital or adulterous relationships. For the former and the latter group, their charm of life depend on their repertoire of amatory skills. On the contrary, the comfortable middle class group are more prudent, prim, and status conscious and hence record the least (16%) number of cases.

4. Adultery - Sex ratio and Age factors

In a study relating to adultery in relation to sex ratio and age group it was seen that, interesting enough, adultery

Table - 10D

Age and Sex ratio in adultery

Total Cases	Men	Women	Years 15-20	Years 20-25	Years 25-30	Years 30-35	Years 35-40	Years 45-50	Years 50-55
19	12	7	0	1	5	9	2	1	1
	63%	37%	0%	5%	26%	47%	11%	50%	5%

by men are higher (63%) than those by women (37%) and majority of persons (47%) belonged to the age group of thirty to thirty five years and (26%) twenty five to thirty years. As the age increased the rate declined.

Adultery is a very physical question. As the age increases the body also ages and the attraction and urge of the person is lost. It is purely a frolic for the young. Yet, the strictly marriageable age records less adultery because the thrill of being newly married does not wear off. But between 25 years to thirty years, when the domestic responsibilities are heavy and the charm of marriage begins to wear thin the attraction beyond the bond of matrimony is very strong and incidents of adultery are high.

Women are a homing species as a rule. Rearing the young ones and management of the household affairs are her natural instincts and pre-occupation in these matters serves as a check on her adulterous inclinations which is less intense in the case of men. That is the reason lesser (37%) women are guilty of adultery than men (63%).

An average Indian is still under the strong influence of our ancient traditions and beliefs. When the question of adultery arises it has to be judged against the backdrop of that person's social sphere. In short, adultery is high among people who are (1) in the age group of twenty five to thirty five years (2) who have an income below Rs. 2000/- per month and (3) their educational qualification varies somewhere from being illiterate to junior schools. So in this social background it is not surprising that incidents of adultery should be high here. Firstly, because among this group leaving one spouse and starting life with another, customary form of divorce etc were very common, even before the

advent of the Act. Due to this reason, adultery is relatively high in this group.

Adultery takes place even among those whose (1) age is between twenty five years to thirty five years (2) who are educated somewhere between senior school to University education and (3) earn more than Rs. 2000/- to Rs. 3000/- the reason for this in this given social background is different. People from this strata of society enjoy a greater exposure and a lot of heterogeneous intermingling takes place. This cannot be looked down upon especially in the modern jet set world. Yet the common middle class family still maintains a certain degree of conservatism. The unusual meeting of two persons, belonging to opposite sexes in seclusion for any length of time amongst that class can justifiably lead to the inference of adultery.

The most difficult question involved in the cases of adultery is how and when to strike a balance between sexual promiscuity and modern intermingling. One cannot overlook the fact that on one hand such heterogeneous mingling may lead to innocent intimacy or to an adulterous relationship on the other. The former is to be ignored and the latter is to be avoided. But it appears that the rule of probability has the last say if circumstantially it can be proved that the parties have been indulging in an adulterous relationship, then there is sufficient ground to dissolve the marriage.

B. Cruelty

If one considers grounds like dowry and irretrievable breakdown of marriage to be included under the ground of cruelty, then, cruelty is the major ground on which divorce takes place. The statute does not define cruelty, since there is no definition of the word, the judiciary has interpreted the word in a manner so as to include physical and mental cruelty. The effect of this is that the ambit of the word has been made so wide as to include any form of behaviour which may be found repugnant to the other partner, strictly depending upon the endurance of the other. Therefore, it is not necessary to find whether one spouse intended to be cruel but it must be found out whether the other spouse felt such act to be cruel.

1. Cruelty : Its Various forms

Cruelty is alleged with almost all the other grounds. The lawyers always insist that this ground be included as a safeguard for if other grounds fail there is still a chance of proving cruelty as all the other grounds of divorce include an element of cruelty. In the survey that has been conducted, 27 (59%) cases are filed under cruelty. In order to go deeper into the matter cruelty has been classified under several types. Each person may have suffered one or more type of this. Such analysis presents a clear social picture. In every case there is an element of mental cruelty and the percentage of allegation is about 41%.

Table - 11Different types of cruelty

Physical Cruelty (beating)	Mental cruelty	Dowry	Drink- ing	Drug	Suspi- cious	Impo- tency	Gamb- ling	Threats of sui- cide	Other
12	1	4	9	2	3	1	1	1	2
44%	41%	15%	33%	7%	11%	4%	4%	4%	7%

Total number of cases = 27 (59%)

The test of cruelty must be the victims capacity to endure⁶. The test is, has the matter come to such a pass and such a pitch of persistence and intensity that it is no longer possible to have a matrimonial relationship⁷. All forms of cruelty involve an element of mental cruelty and is subjective matter. Physical cruelty or incidents of domestic violence account for 44% of the cases. Dowry, which also includes domestic violence and mental cruelty alone account for 15% of the cruelty cases. Dowry, domestic violence, drinking, drug abuse etc can be objectively assessed and then mental cruelty can be inferred. The most common forms of cruelty are domestic violence (44%), mental cruelty (41%), drunkenness (33%), dowry problems (15%) etc.

6. Sudha Vs Mahesh Chand Jhamb AIR 1987 Del 174.

7. Ibid.

2. Cruelty In Different Income Groups

In order to investigate the relationship of cruelty with income group or rather the financial position of the parties it was seen that the incidents of cruelty is highest in the income

Table - 11A

Cruelty and income group

Total Cases	Rs. 0-Rs. 500	Rs. 500- Rs. 1000	Rs. 1000- Rs. 1500	Rs. 1500- Rs. 2000	Rs. 2000- Rs. 2500
27	8	10	7	1	1
	30%	37%	26%	4%	4%

bracket of Rs. 500/- to Rs. 1000/- at 37% which is followed by a still lower income group of Rs. 9 to Rs. 500/- at 30% cases. The income group of Rs. 1000/- to Rs. 1500/- carries 26% cases. The last two highest income group of Rs. 1500/- to Rs. 2000/- and Rs. 2000/- to Rs. 2500/- have 4% cases each. Thus, the income group below Rs. 1500/- register about 93% of cruelty cases.

Poverty also plays havoc with the family often leading to its disintegration. Lack of money, the constant pressure of survival lets off raw nerves which lead to tensions, quarrels often physical abuse. With the rise in prices, the toll of modernisation is that both the spouses be employed. The daily tension of reaching for work in time, the ordeals of daily commuting, work:

load and work place irritations and lack of time for each other's company are few of the reasons for cruelty in the upper and lower income groups.

3. Cruelty And Literacy Rate

Closely linked with the question of money is the question of education. As has already been established earlier, low education earns less money.

Table - 11B

Cruelty and literacy

Number of cases	Illiterate	Junior School	Senior School	College/ University
27	3	9	8	7
	11%	33%	30%	26%

The illiterate and junior school group together account for 44% of cruelty cases. The senior school and the University group together account for 56% of the cases. The income group below Rs. 1500/- account for about 93% of the cases, and about 74% cases are recorded upto the senior school group. The persons in this group are caught in the grip of a vicious economic cycle. Many of these persons, if not all, cannot study upto very high grade or college/university grade for reasons of poverty. Again due to low education level, they cannot get into any better pay jobs. It is very difficult for this particular strata of society to break this rut. For people for whom life itself is a burden,

it is of little wonder that they become cruel to each other.

4. Cruelty : Sex Ratio And Age Factors

Who allege cruelty and what are their age is another question that often intrigue the mind, some data relating to this shows that:

Table - 11C

Age and Sex ratio factors in cruelty

Total Cases	Men	Women	20-25 years	25-30 years	30-35 years	35-40 years	40-45 years	45-50 years
27	10	17	9	2	9	4	2	1
	37%	63%	33%	7%	33%	15%	7%	4%

At the sub divisional level most of the women (63%) alleged cruelty by men whereas lesser men (37%) allege cruelty to women. However the women who have alleged cruelty have not approached the court and many live in the state of a de facto divorce (as will be shown in the subsequent analysis) so at the other levels more men allege cruelty than women.

The group that allege cruelty mostly belong (1) to the 20-25 years, and (2) 30-35 years which together account for about 66% cases; the reasons are poles apart. The former group is young, impulsive and immature and are sometimes unintentionally cruel, but the latter is more mature, aware of their rights, their

discrimination and are cruel sometimes intentionally and out of frustrations. As the parties age, the uneven edges and creases are ironed out and adjusted often out of maturity and experience. So in the later years unless out of absolute necessity, fewer cruelty cases are filed.

This situation, will not improve unless there is an effective law banning dowry torture and domestic violence. Though section 498-A of Indian Penal Code has helped a great deal still there is a long way to go.

D. Desertion

"A matrimonial offence seems to me to mean an offence against the vows of marriage. The vows of marriage are well known. Desertion is certainly an offence"

Bucknil L.J.⁸

Of the 46 total cases available, desertion forms about 22% of the cases. Desertion actually is the wilful withdrawal of one person from the society of another. Such withdrawal is not a withdrawal from a place but withdrawal from a state of things.

8. Richardson Vs Richardson (1949) 2 ALL ER 330

1. Desertion - Its different Types

An analysis of the grounds of desertion is very revealing too. Among the subjects interviewed there is only one case (10%)

Table - 12

Different types of desertion

Total cases	Wife driven away	Wife deceived desertion	Wife abandoned	Wife decision to leave
10	1	2	5	2
	10%	20%	50%	20%

where the wife was driven away from her house. In majority cases numbering five in this instance (50%) the husband simply left home. The wife was left to fend for herself and for her domestic liabilities. In two cases that of Alpona Mukherjee and Reeta Shaha⁹ the husband accompanied the wives to their parents home on the ostensible ground that they had to "recoup" their health and then never taken back nor accepted them back when they attempted to gack. Leela Maschatak and Shephali Das decided that they could not endure any more torture and misbheaviour and decided to leave. Just walking out on the family, home and hearth seems to be the easiest solution to the marital conflict for these people.

9. See Appendix 5

2. Desertion In Different Income Groups

Whether the income of the parties have anything to do with the incidents of desertion is a very vital question.

Table - 12A

Desertion in different income group

Total Cases	Rs. 0- Rs. 500	Rs. 500- Rs. 1000	Rs. 1000- Rs. 1500	Rs. 1500- Rs. 2000	Rs. 2000- Rs. 2500	Rs. 2500- Rs. 3000	Above
10	4	2	3	0	0	0	1
	40%	20%	30%	0%	0%	0%	10%

Economic strain upon the parties are one of the important reasons why desertions take place from among the lower income group. Data shows that 40% of the cases are from the income bracket of no income to Rs. 500/- per month. The income group of Rs. 1000/- to Rs. 1500/- provides 30% the case and 20% case is from the Rs. 500/- to Rs. 1000/- income bracket. In other words 90% of the desertion cases belong to the income group of low income upto Rs. 1500/- .

While it is true that high education is not a guarantee for high income, low education is often a guarantee for low income. Among the low income group money almost always is a bone of contention. Quarrels, misunderstandings, neglects become a part of the daily life. Desertion appears to be a easy way out of the

situation. This not only leads to untold hardships etc, in many cases this leads to the parties living in a state of de facto divorce. Such persons are forced to exist in a sort of a limbo, they cannot plan their future in terms of marriage and children and if they do they will be guilty of adultery or bigamy. Their life remains in a state of suspended animation.

3. Desertion And Education

Since it has been hithertofore shown that low education and low income group are directly related to each other it has become imperative to find out the relationship between education and desertion.

Table - 12B

Desertion in different educational group

Total Cases	Illiterate	Junior School	Senior School	College/ University
10	2 20%	2 20%	5 50%	1 10%

Persons with no education to those educated upto senior school account for 90% of the desertion cases as also the income group of upto Rs. 1500/- .

While it is wrong to suggest that divorce takes place from among the lower strata of society, it must also be agreed that they are more susceptible.

It is said that 80% of the Indian population are below

poverty line. If that be true, they form the larger group. Well educated people from the upper echelon of the society also are highly susceptible to dissolution of marriage but for quite different reasons as has already been discussed earlier under this chapter.

The social strata of this sub division is the sub-urban social strata. It is the low middle class who are striving to become rich quickly form the majority of the subjects who have been studied. They are caught up in the vicious cycle of low education, low income, low occupation. It is this vicious circle which needs to be broken. Illiteracy or school education can only lead to unemployment and low income, Low income and the rising family burden leads to the desertion. Deserting spouses often feel that life is beginning anew for them.

4. Desertion : Age and Sex Factors

Like the assessment of any other matrimonial cause the ground of desertion too has to be tested for sex ratio and age factors.

Table - 12C

Age and Sex ratio in desertion

Total Cases	Men	Women	20-25 years	25-30 years	30-35 years	35-40 years	40-45 years	45-50 years
10	5	5	1	3	3	2	0	1
	50%	50%	10%	30%	30%	20%	0%	10%

50% men and 50% women have alleged desertion. Where the wife is abandoned she has alleged desertion. But in cases where the women are forced to or tricked into desertion it is the men who allege desertion.

The age groups 25-30 years and 30-35 years record about 60% cases. In other words 25-35 years form the bulk (60%) of the cases. During this age people are young, confident and bold enough to take a step like desertion. As age increases, strength ebbs away and people hesitate to take a step like desertion.

In short, desertion means total repudiation of marital obligation, an end of the two-in-onenesship and marital togetherness which is the kernel of marriage.

Until an action is brought about, desertion remains an inchoate offence that is to say, it can be terminated by the party in desertion by either resuming colabitation or expressing a specific intention to resume cohabitation. Desertion is a question of fact and often is difficult to establish which of the spouses are the deserter.

D. The Proposer, The Petitioner, And The Procedure.

All the cases were not filed before the court even though the parties have been living a separate existence. The data has shown that at the district level, those who did approach the court, did not, and often do not, have the case finally disposed off. Most of the cases are either dropped for default or dismissed for

non prosecution or withdrawn. It was seen that of the 46 cases

Table - 13

Cases in which legal recourse was taken

Total Cases	Recourse taken to law Court	Law Courts not approached	Reluctant to state
46	29	16	1
	63%	35%	2%

63% had taken recourse to the law courts, about 35% people did not approach the court and 2% refused to disclose any information regarding their suits. The situation further clarifies itself on the following:

Table -14

De facto - De jure divorce

Total Cases	Persons living in the state of De facto divorce	Persons living in the state of a De jure divorce
46	26	20
	57%	43%

of the cases that were taken before the court (63%), 7% cases remained undecided, by way of dropped for default, dismissed for non prosecution or withdrawn, but couples from cases which

remained so undecided, continued to live separately as if they have been divorced. Such a state of separation is termed de facto divorce here. Persons belonging to the category of de facto divorce are 57%. Those persons, whose marital tie has been legally dissolved through the courts is called De Jure divorce here and they constitute 43% cases.

The persons who had initially approached the court for relief were asked who proposed the idea of divorce. In 52% cases

Table - 15

The proposal of the divorce was made by.

Total Cases	The Husband	The wife	The In-laws
29	15	12	2
	52%	41%	7%

it was found that the husband had first proposed the idea of divorce. In 41% cases the first idea of divorce occurred to the wife and was proposed by her. In 7% cases the idea of divorce was mooted by the in-laws. In these 7% cases, the germ of the idea of divorce was planted by a third party, namely the relatives-in-law. But, the question however is who were the actual petitioners? On this question the data shows that in keeping with the trends found at the national, state, and district level¹⁰. The interesting

10. See the previous chapters on this issue.

Table - 16The Petitioner in the cases were

Total No. of Cases	The husband	The wife	By mutual consent
29	19	8	2
	66%	28%	7%

fact is that of the 41% women, who did propose divorce in the first place, all did not petition for the case. About 14% women were proposers of divorce but not petitioners and their husbands petitioned on their behalf that is why, even though there were 52% men who initially proposed divorce 66% were actual petitioners, which means those women (about 14%) who in the heat of momentary passion or on sudden provocation proposed the divorce at the first instance, refused to petition for divorce later; but in those 14% cases the men did what the women refused to do, and they petitioned for divorce. So in the list of the petitioners the percentage of men have risen by 14% and has stood at a total of 66%.

Men, who as a rule in India, are generally more educated and better employed than women, who have a better socio-economic status do not hesitate to dissolve the marital tie. The women, on the other hand who are at a disadvantageous position at all counts do initially propose divorce (35%) under grave and sudden provocation and on the heat of passion, but at the time of filing the

petition they back off because (1) the concept of marriage for an average Indian woman is still embedded in the ancient socio-cultural and religious mores and (2) even if her concept of marriage is on the proper perspective, she is socio-economically backward and heavily dependant on the others for her day to day survival. A man has very little to lose from a broken marriage than the woman. A similar trend is reflected at the national state and district level.

It has already been observed that majority of women earn less than Rs. 1500/-, many almost nothing. One question that naturally arises is where do these estranged persons live? The answer that the data provides is that 36% women have found shelter with their parents or the natal family and 31% women had their personal residence and 14% stayed at their place of work and 8% in rental accommodations. About 70% men lived in their own residence, 20% men put up with their parents, 10% in rental accommodations and that too because they were on transferable jobs.

Very few women as compared to men could afford their own establishments. It cannot but be pointed out here that about 53% women lived away from their natal family¹¹. Whether they received financial or moral support from them is another question altogether. What is being pointed out is that on dissolution of

11. The women who live in personal houses (31%), live in rentals (8%) and in the place of work (14%) together constitute 53%.

Table - 17Where do these estranged persons live?

Total	Personal		Parents		Rentals		2nd in-laws		Place of work	
	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women
46	7	11	2	13	1	3	0	4	0	5
	70%	31%	20%	36%	10%	8%	0%	11%	0%	14%

Total number of men = 10;

Total number of women = 36

marriage, as many as 53% women found it difficult to put up with their natal family. 11% women lived with their second in-laws after remarriage.

At his stage most of the victims of matrimonial disputes are people with children. 56% women and 60% men had children. Of

Table - 18

Persons with children

<u>Total cases 46</u>		<u>Persons with children</u>		<u>Persons without children</u>	
<u>Men</u>	<u>Women</u>	<u>Men</u>	<u>Women</u>	<u>Men</u>	<u>Women</u>
10	36	6	20	4	16
		60%	56%	4%	44%

the total 46 cases interviewed 26 of them (57%) were persons with children 44% women and 40% men were without children. Of the total 46 cases interviewed 20 persons (43%) were without children.

Table - 19

Maintenance received by and given to wife and children

<u>Total cases 46</u>		<u>Maintenance received by</u>		<u>Maintenance given to</u>	
<u>Men</u>	<u>Women</u>	<u>Wife</u>	<u>Children</u>	<u>Wife</u>	<u>Children</u>
10	36	7 (19%)	4 (20%)	4 (40%)	0

Of the 36 women interviewed 7 women (19%) women were receiving maintenance from their husbands and of the 20 (56%) women with children, 4 of their children (20%) were receiving maintenance from their fathers. Only 4 men (40%) from the total men interviewed were paying maintenance to their wives and none of them were paying any maintenance to their children.

Table - 20.
Custody of children

<u>Persons with children</u>		<u>Custody with mother</u>	<u>Custody with father</u>
Men	Women		
6	20	23	3
Total 26 persons		88%	12%

Of the total 26 persons with children, 20 (56%) women were with children and all had their children with them. Of the 6 (60%) men with children, only three (30%) had their children with them and the other three (30%) had to give the children to their wives. In other words of the 26 persons with children, in 23 cases, in 88% cases the mothers or rather the women were the custodian parent and 3 (12%) men or fathers were custodian parents.

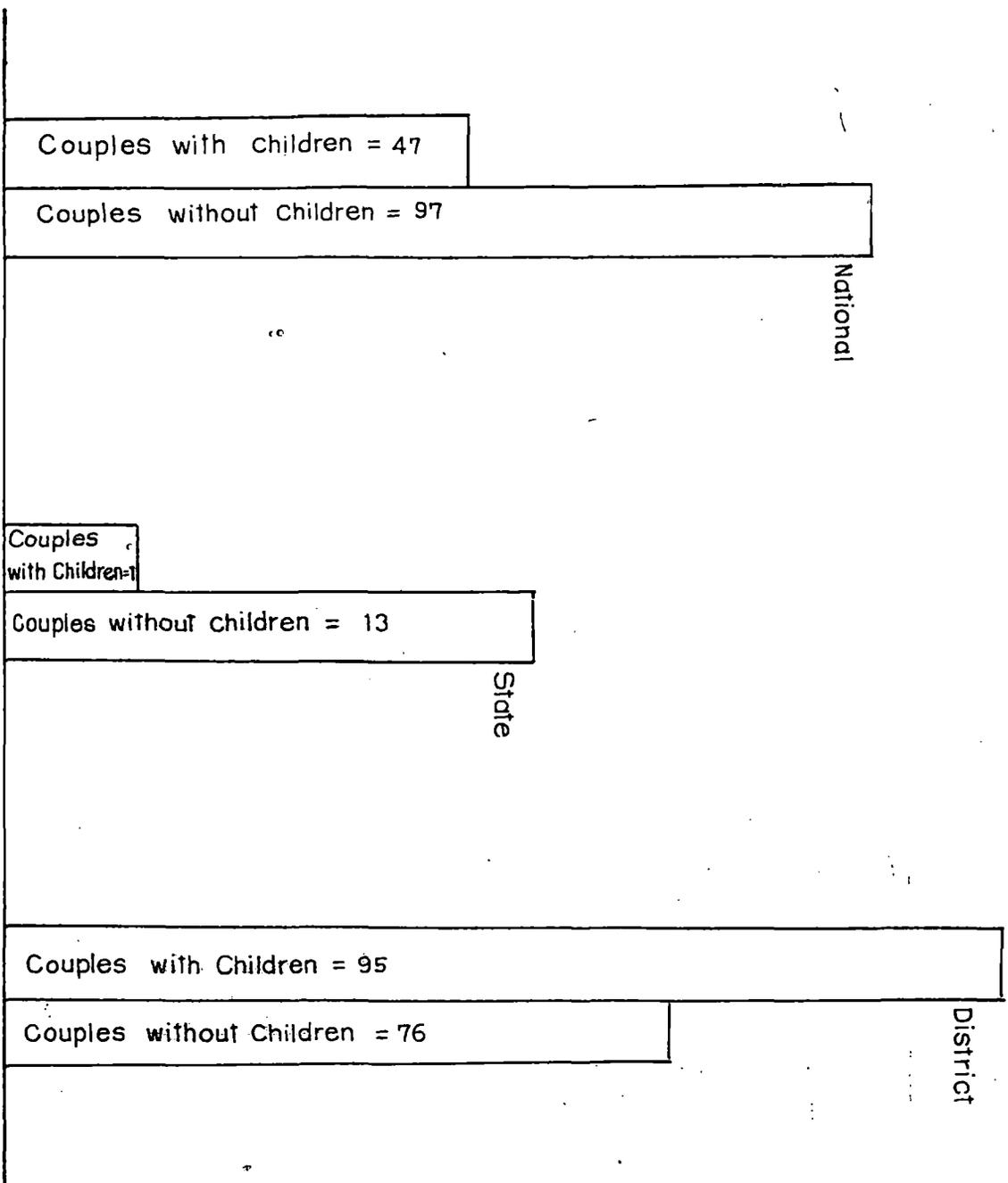
The rate of maintenance however is very meagre and insufficient.

Table - 21Maintenance received and given

Maintenance Received by wives & children			Maintenance given to wives & children		
Wife	Children		Wife	Children	
Lumpsum	Mohtly	Monthly	Lumpsum	Monthly	Monthly
Rs. 27000	Rs. 300/-	Rs. 300/-	15000/-	Rs. 300/-	
15000/-	Rs. 125	-	27000	Rs. 300/-	
	Rs. 400/-	Rs. 400/- + Rs. 400/-			
	Rs. 150/-	Rs. 150/-			
	Rs. 200/-	Rs. 300/-			

Where alimony is paid in the lumpsum, the amount is very meagre. For example, on receipt of the alimony of Rs. 15000/- a person may put it in the fix deposit account at the present rate of 13% interest thereof. Such a person will be receiving a sum of Rs. 1950/- per year. That persons monthly income then becomes Rs. 187.50 per month. However if alimony is granted in a monthly instalment, then the amount is more often than not, less than Rs. 400/- and often stops altogether. In both the cases the maintenance money is not even worthy of its name. Besides where the money is to be paid in instalments the avenues for litigations are always kept alive which does not allow a clean break between the parties. For instance where the maintenance payable in instalment stops altogether, the wife has to litigate further to obtain the same which results in her harrassment and hardship. In those cases

THE INNOCENT THIRD PARTY IN A DIVORCE SUIT



GRAPH - VII. A

where the instalments have not stopped, the woman cannot enter into a relationship with another man, for immediately the payment will stop on account of her being of bad character. In such cases the husband enjoys an extended hold upon the wife even after divorce, and the wife is really not free from the clutches of her former husband.

In Saba Vs Syed Mohammed Fazil¹² it was held that maintenance means an amount, which should be sufficient to keep the body and soul together. It is expected to provide for a standard of life wherein the person is expected to keep her body and soul together. Which takes within itself not only the expense for food and clothing but also the expenses for meeting other necessities of life. In Shantilata Pradhan Vs Mrutunjaya Pradhan¹³ it was held that the fixation of maintenance is to be considered along with the prevailing cost of living, price of the essential commodities and the income of the husband. The latter being a cliché. The salary of the husband is the most elusive thing in a maintenance suit.

Therefore, the few women who do seek matrimonial remedies certainly have little to do with the financial aspect of the settlement. Only in four cases lumpsum monetary settlement was made. The amounts in two instances being Rs. 15000/- and in other

12. I(1991) DMC 262.

13. I(1991) DMC 256.

two instances Rs. 27000/- each. By what standard were these amounts fixed is not known. In one case the wife merely accepted what the husband offered her through his lawyer. In another case, a compromise between the parents of the spouses was reached. In the third case the brother of the wife was informed by the lawyer that Rs. 15000/- was the "going rate" of lumpsum settlement and in the last case the person could not throw any light on the mechanics of settlement. It is to be noted here that nowhere did the question of streedhan, joint property or marriage expenses figure. Neither was the question of alimony expressly debated. All that was done was a monetary settlement based on some elusive and vague concept of "going rate" was made.

It is therefore submitted that some subversion of the law takes place in the area of dispute settlement. On the one hand by laying down such elaborate grounds for divorce, matrimonial proceedings have been robbed of their simplicity and on the other hand the law is rather inadequate regarding the post divorce property settlement.

IV. Attitude To Divorce And Remarriage

1. Attitude To Divorce

The attitude of the people to divorce and remarriage has changed over the years. The study of the attitude of the persons is rather revealing. The reply to the question whether one should stick to ones marriage always was very revealing.

Table - 22Should one retain a marriage at any cost?

Total	Yes		No		Not sure	
46	13 = 28%		30 = 65%		3 = 7%	
Total	Men	Women	Men	Women	Men	Women
Men =10						
Women =36	1	12	9	21	0	3
Total 46	10%	33%	90%	58%	0%	8%

From the total cases of 46, that is ten men and thirty six women, 58% women did not believe that one had to cling on to the marriage no matter what happened to the marriage or to themselves. 90% of the men too did not believe in clinging on to the marriage out of the 46 persons interviewed, 65% did not believe that one should retain a marriage at any cost, and 28% believed that marriage should never be dissolved. A mere 8% women i.e. 7% of the sum total of persons interviewed were not sure of their mind.

Interestingly, those who believe that marriage should never be dissolved and those who are not sure of it, all live separately and live the farce of the so called marriage. No semblance of their marriage exist. Justifying their action is beyond them. They derive a satisfaction on being able to continue in marriage, of being a martyr. They realise and admit that if a marriage must subsist,

if the wheels of the marriage must turn smoothly, then both the spouses have a responsibility to keep the wheel of marriage turning to make it survive as an institution. The resultant picture reflects a sad truth that many women even today are embedded in the religious-cultural mores of the medieval society. The social changes have not affected them at all.

On the question, "If you did not have the right to divorce, do you think you could have reconciled the marriage? The response of the persons were as follows:

Table - 23

If there was no right to divorce could you have reconciled the marriage?

Total	Yes		No		Not sure	
46	8 (17%)		32 (70%)		6 (13%)	
Total	Men	Women	Men	Women	Men	Women
10+36	3	5	5	27	2	3
	38%	62%	16%	84%	33%	50%

(1) A sum total of 70% persons of which 16% are men and 84% are women felt that they had given their best to the marriage and even if there was no opportunity to divorce they could not have kept their marriage alive.

(2) 17% people of which 38% are men and 62% are women felt that the opportunity of divorce made them a little hasty in breaking their marriages.

(3) About 13% people comprising of 33% men and 50% women were the inevitably confused persons. They were not sure of what their action would have been.

It may be noted here that, more women (62%) than men (38%) felt that in the absence of the right to divorce, they could have preserved their marriage and more women (50%) than men (33%) were confused regarding what their course of action would have been. This leads one to believe that women are more committed to the marriage and they give their very best to the marriage (16% men and 84% women).

Because of this reason greater tragedy is perpetrated on women than on men when a divorce takes place. Women have the total commitment, as she has the greatest stake in the marriage due to her socio-economic dependence on her husband. A divorce plays the greatest havoc with her life and leaves her an emotional wreck.

All the persons were asked whether divorce law should be made more liberal.

Table - 24

Should Divorce Law be made more liberal?

Cases	Yes		No		Not sure		Suggestions	
	Men	Women	Men	Women	Men	Women	Men	Women
46	17 (37%)		4 (9%)		25 (54%)			
	6	11	0	4	4	19	Recognition of irretrievable break- down of marriage =30%	1) Divorce should not be there at all = 3%
	35%	65%	0%	100%	16%	76%		
Out of 10 men and 36 women	60%	31%	0%	11%	40%	53%	30%	45%

37% people felt that the divorce law should be made more liberal. About 79% felt that the concept of irretrievable breakdown of marriage must be introduced in the divorce law. Only 9% people felt there was no need to change the existing law. Women alone constituted this group. No man felt that divorce law should remain as it is. Majority of the people (54%) however confessed that they had not thought much about this and were not sure about what should be done. There were about 16% men and 76% women in this group. From among the women who felt that the divorce law need not be made liberal, 30% women felt that there should not have been any provision for divorce in the Hindu law.

These findings also confirm the following:-

- a. there is a general awareness and acceptance among the Indian women that they are not socio-economically strong enough to opt for the dissolution of marriage.
- b. Their homing instincts do not allow them to break their homes lightly.
- c. Many women are not aware of their rights in law and therefore are confused regarding their course of action.
- d. Women are more cautious in nature than men.
- e. Men are less committed to the marriage than women.
- f. Both, men and women do not relish the prospect of a prolonged divorce proceedings, especially so with the women who have to face very unpleasant and probing questions during the divorce proceedings which can be very embarrassing for a woman.

So both men and women in majority want to end the proceedings quickly and painlessly.

There was a mixed reaction when the question, "given the same set of circumstances would you go through this experience again?" is sked. It was seen that

Table - 25

Given the same set of circumstances would you repeat your actions again?

Total cases	Yes		No		Not sure	
46	19 (41%)		13 (28%)		15 (33%)	

Total cases	Men		Women		Men		Women	
10+36	6	13	2	11	2	12		
	60%	36%	20%	31%	20%	33%		

About 60% men and 36% women felt that if history were to repeat itself they would also repeat their action. They also constituted 41% of the total group. About 28% people, that is 20% men and 31% women felt that if they were to be given another chance, then they would not go through the painful process again. The category of the unsure persons were 33% and a total of 20% men and 33% women.

Notably, about 41% person were absolutely certain in their minds that they could never have patched up. They affirmed repeatedly that the circumstances leading to divorce was so serious that patching up was not possible then, it will not be possible at the present time and also will not be possible even in future. They were very positive about this. Mr. Tarun Choudhury¹⁴ asserted that if there was no opportunity of divorce, spouses would not rush to court for the silliest of the silly reasons and have their marriage dissolved. When asked if that would not result in exploitation of women? he responded that "a little exploitation" would be there but how does it matter? In marriage both the spouses exploit each other a little. He countered that even with the right to divorce are the women not being exploited?

2. Attitude To Remarriage

It is neither advisable nor desirable that men and women, who have once been divorced should lead their lives unattached for the rest of their lives, but the attitude of mind for many women and some men are to emotionally cling on to their first marriage. Probing in this region of their mind started like this .

14. An interviewee, see appendix V

Table - 26Are you willing to remarry?

Total Cases	Yes	No	Already married	Undecided
46	9 (20%)	23 (50%)	7 (15%)	7 (15%)

Total Cases	Men	Women	Men	Women	Men	Women	Men	Women
10+36	2	7	5	18	2	5	1	6
	20%	19%	50%	50%	20%	14%	10%	17%

The group with the negative answer constituted 50% of the total group, of which 50% were men and 50% were women, 15% people were already married among whom 20% were men and 14% were women. 20% expressed their willingness to marry, 20% men and 19% women made up this group. 10% men and 17% women constituted a group of 15% who were not sure about what they would do in future.

Table - 27Should all the divorces remarry?

Total Cases	Yes		No		Undecided		It is a personal matter	
46	18		10		9		9	
	39%		22%		20%		20%	
Total Cases	Men	Women	Men	Women	Men	Women	Men	Women
Men=10	5	13	2	8	1	8	2	7
Women=36	50%	36%	20%	22%	10%	22%	20%	19%

Majority (39%) of the men (50%) and women (36%) feel that all the divorcees should remarry. 22% persons have expressed a negative opinion of which 20% were men and 22% were women.

Of the 20% people who were undecided 10% were men and 22% women. 20% men and 19% women constituted a group of 20% who felt that the question of remarriage was a personal question which is to be decided by each according to their inclination and wishes.

When asked whether they feel they will be able to build a better home in future the response was:

Table -28Will this experience help you to build a better home in future?

Total Cases	Yes		No		Does not arise		Not sure	
46	22=48%		10=22%		10=22%		3=7%	
Total Cases	Men	Women	Men	Women	Men	Women	Men	Women
Men=10	8	14	1	9	1	9	0	4
Women=36	80%	30%	10%	20%	10%	20%	0%	11%

Of the 46 subjects interviewed, 22 (48%) felt that they would be able to build a better home, 22% each felt that they would not be able to build a better home and the question of building a new home does not arise, 7% were not sure as to what they would do. In short, most of the people felt that what they had built together did not receive their best, they would be able to do better in future. Almost 80% men felt this way. 30% women felt that they would be able to give more to their future home.

It must be pointed out here that when they were asked if there was no right to divorce would they have been able to be reconciled to the marriage 30% of the men had replied in the affirmative and when asked whether they will be able to build a better home in future 80% men replied in the affirmative. These two factors read together indicate that most of the men feel, rather realise on probing that they have not been able to do justice to their marriage and what they have learnt from their first mistake will help them build a better home. Relatively very few women feel this way.

Majority of the women (50%) said they will not marry again and 39% of them felt that they will not be able to build a better home in future and the question of remarriage and building another home did not apply to them at all. If one were to probe for the reason as to why do these women feel the way they do it would be found that - (1) those who were with children did not want to put their children through another trauma of their remarriage as the children had already been through the tensions and trauma of

the pre-divorce and divorce tension, and were now adjusting themselves in the post-divorce single parent households. Approximately 56% women are persons with children and 64% are custodian parent.

(2) One bitter experience in a marriage has embittered them for life and they are planning a new future and hoping for a better life as an individual. There is a realisation that it no longer pays to be dependant on others. Welfare of the children plays an important role in the decision of the men to remain single. Besides, unlike women, men enjoy greater social liberties when they remain unmarried. Most men and women are hence seen, prefer to remain single even though 50% men and 36% women feel that all divorcees should remarry. One bitter experience has permanently turned them away from marriage and at least on this point the men and women are equal in number albeit for different reasons.

V. Post Divorce Status And Comments

This was the last part of the examination and the subjects were asked to respond to the questions relating to their relationship in the wider social perspective like their relationship with their natal families, what their individual feelings and experiences were.

a. Post Divorce Status

The question of status is very closely linked with questions relating to money matters, independence social approach which is mutually reciprocal between the subject and the society. So, they were asked

Table - 29

Have you been able to get back your pre-marriage independence?

Total Cases	Yes		No		Not sure	
46	28=61%		14=30%		4=9%	

Total Cases	Men		Women		Men		Women	
Men=10	6	22	2	12	2	2		
Women=36	60%	61%	20%	33%	20%	6%		

Of the total 46 persons, 28 persons (61%) said that they had regained their pre-marriage independence. Among them, 6 persons (60%) were men and 22 persons (61%) were women. All the women (61%) felt that their independence was not money related. They said on that score there was not much difference, especially since they were custodian parents, but personally they enjoyed greater freedom than while they were married. All the (60%) men said their independence was like pre-marriage days both socially and economically.

From the total of 46 cases, 14 persons (30%) said that they had not regained their pre-marital social and economic status. Among this group were 20% men and 33% women. It must be recalled here that 30% men are custodian parents and 40% of men have to bear the cost of alimony and maintenance. About 4 persons (9%) out of 46 were not sure what they have lost or gained. Among this group are 20% men and 6% women.

The persons were asked to ponder on the following question in retrospect

Table - 30

In retrospect, do you blame any one other than your spouse for the divorce.

Total Cases	Yes		If yes whom?		No	
	Men	Women	Men	Women	Men	Women
Men= 10	8	16	1. The adulteror= 4 persons	1. Sister-in-law= 2 persons	2	20
Women =36	80%	44%	2. Mother in law= 1 person	2. The adulteress= 4 persons	20%	56%
			3. All in the laws=1 person	3. My own sister= 1 person		
			4. A third person=1 person	4. Mother-in-law= 2 person		
			5. Will not disclose=1 person	5. My step brother & step mother=1 person		
				6. My husband's friend=1 person		
				7. Maternal uncle = 1 person		
				8. All the in law= 4 persons		
				16 women		
				44%		

80% men blamed persons other than their wives for the divorce. Their list included the adulteror (4 persons=50%) the mother-in-law (1 person = 13%), all the in-laws (1 person = 13%) a third person (1 person = 13%) and one person (13%) blamed another person but refused to disclose whom. Sixteen women felt another person other than her husband was responsible for the divorce. In the

list of women it was found that 2 women (13) blamed their sisters in law for the divorce. 4 women (25%) blamed the adulteress for the divorce. One person (6%) blamed her husband's friend, one (6%) blamed her step brother and step mother, and another (6%) blamed her maternal uncle. 2 women (13%) blamed their mother in law and 4 women (25%) blamed all of their in laws for divorce.

20% men and 56% women blamed their respective spouses alone for the divorce.

All the subjects were asked whether they viewed divorce as a death of a relationship.

Table - 31

Do you view divorce as a death of a relationship?

Total Cases	Yes		No		Not sure	
46	26=57%		18=39%		2=4%	
Total Cases	Men	Women	Men	Women	Men	Women
Men = 10	7	19	3	15	0	2
Women=36	70%	53%	30%	42%	0%	6%

More men (70%) than women (53%) regarded divorce as a death of a relationship. More women (42%) than men (30%) have a tendency to cling on to the memory of the marriage. It must be recalled that about 50% women and 50% men said that they were not willing to remarry. 6% women were not sure about their feelings.

In case of men especially those of who must pay alimony and maintenance for their wife and children, the question achieving pre-marriage economic independence is not always possible, such responsibilities also hamper their social liberties and enjoyments, women, in the quest of their survival have acquired greater and unrestricted freedom of movement and socialisations. Even though most of them are custodian parents the little pittance they are able to earn or get as alimony or maintenance add to their independence and strength.

The fact that more women than men do not believe that divorce is a death of a relationship and also that 50% women (equal with men) refused to remarry show that women are more sentimental in nature than men. Even though they live separated and divorced, emotionally they remain bound to their marriage and cling on to the religious, transcendental and traditional beliefs of marriage. The break with the past is not easy for a women, it is she who bestows marriage with a sacramental nature by maintaining her emotional bondange with the former spouse.

All the persons were asked what their relationship with their family was.

Table - 32How is your relationship with your natal family?

Total	Good		Bad		Tolerable		No family	
46	32=70%		4=9%		6=13%		4=9%	
Total	Men	Women	Men	Women	Men	Women	Men	Women
Men=10	10	22	0	4	0	6	0	4
Women=36	100%	61%	0%	11%	0%	17%	0%	11%

All the men (100%) and 22 women (61%) responded that their relationship with their natal family was very good. 11% women reported that their relationship with their natal family was bad. For 17% women there existed a sort of a tolerable distance and 11% women said they had no family at all. The total number of women who had a bad or tolerable relationship with the natal family and those who had no family at all constituted a group of 39%. It can be seen that a good portion of the women are left to fend for themselves after divorce and receive no substantial support from the natal or marital families. Men on the other hand enjoy a very good relationship with their natal family.

The persons interviewed were probed with the following question.

Table - 33

Does your being a divorcee affect the marriage of your siblings

Total	Yes	No	Do not know		Married before me			
46	1=2%	17=37%	9=20%		19= 41%			
Total	Men	Women	Men	Women	Men	Women		
M=10	0	1	4	13	0	9	6	13
W=36		3%	40%	28%	0%	25%	60%	36%

40% men and 28% women responded with a definite 'No'. Only a lone woman (3%) affirmed that her divorce had an effect upon her sisters marriage. About 60% men reported that their siblings were married before them. 25% women said they did not know if their divorce affected their siblings marriage. 36% women reported that their siblings were married before them. In other words in majority of the cases the divorce did not affect the marriage of the others in the family. The sole exception reported was also an exception. It appeared that the groom asked for heavy dowry because he was marrying a divorcee's sister and later on the poor child was burnt to death because the dowry demand could not be met fully.

The next phase of question was whether

Table - 34Does the society stigmatise you for being a divorcee?

Total Case	Yes		No		Do not know	
46	11=24%		32=70%		3=7%	
Total Case	Men	Women	Men	Women	Men	Women
Men=10	2	9	8	24	0	3
Women=36	20%	25%	80%	67%	0%	8%

About 80% men and 67% women replied in the negative. 20% men and 25% women felt stigmatised by the society and 8% women replied that they did not know whether the society stigmatised them.

Those who said that the society did not stigmatise them went a step further and reported that the society had in fact helped them to survive and has sympathised with them. Mamata Routh and Alpona Mukherjee¹⁵ stated that while the society did not stigmatise them, they themselves tended to do so as they always felt that others were discussing about them. They admitted that they carried a burden of shame and failure on their shoulder.

Of the total number of cases interviewed 20% men and 22% women remarried. 10% men had a courtship marriage and 10% had negotiated marriage. 14% women had courtship marriage and 8% had negotiated marriage; 40% men agreed that they would marry divorced

15. Interviewees. See Appendix V.

Table - 35Details of remarriage

Total Cases	Men		Women	
	Courtship marriage	Negotiated marriage	Courtship marriage	Negotiated marriage
Men = 10	1	1	5	3
Women = 36	10%	10%	14%	8%

women. Others had not proceeded in the direction of remarriage. Among women, the second marriage was mostly courtship marriage. Though 40% men said that they would not mind marrying a divorcee

Table - 36Is your present spouse a divorcee?

Number of Cases	Men		Women	
	Yes	No	Yes	No
Men=10				
Women=36	1	1	2	6
	10%	10%	6%	17%

only 10% had married one. 6% women had married a divorcee.

The comments and suggestions

The women were more versatile in their comments and suggestions which are self revealing. 25% women asserted that there should be job reservation for victims of matrimonial tribulations. There should be a reservation for such victimised women like the army men, physically handicapped and the members of the

° Table - 37

Comments and suggestions

Total number of cases	36 women
No comments	2 (6%)
Job reservation for divorced women	9 (25%)
Shelter for divorced women	3 (8%)
Education and job facilities for the children of the divorced women	8 (22%)
Other comments	14 (39%)
a. Proceedings to be made easier	
b. Divorce to be given on a single date	
c. Irretrievable breakdown to be recognised	
d. Law to be made easier	
e. Divorce law to render greater economic security	

scheduled castes and scheduled tribe. Such victims, they felt that such women would be more hard working than the others.

It is true that divorced women find it hard to keep their body and soul together, but if this facility or the facility for job and education for their children (as requested by 22% women)

were to be granted the rate of divorce cases would rise flooding the courts. Every married couple would want to be divorced just to be able to avail of these two facilities.

8% women expressed the need for shelter facilities for divorced women. Such facilities are available in larger towns and cities than the Siliguri Sub divisional Town. The suggestion for legal changes are more eloquent. Need for greater economic security of the divorced women and recognition of ir retrievable breakdown of marriage was expressed. There have been at least three suggestions that divorce proceedings should be more relaxed and easier and should be concluded in a day.

There are, however, some pathetic revelation. At least five women confessed that they did not know of anything called divorce. One such lady enquired whether this new system of divorce provides bread to the deserted women. When told about her right to seek divorce in a court of law, another lady enquired if the process involved monetary expenditure, when replied in the affirmative, she said why should one spend money when one can just stay away? But the most astounding incident occurred when a seventeen year old victim of matrimonial conflict wisely informed the interviewer that she knew that the police gave something known as "daivosh" (divorce) to women who wanted to end their marriages. In her case the gram panchayat had allowed her to stay away from her husband and heirs with her parents. A forty year old lady said that she preferred the life she led amidst bricks and mortar (she being a mason's helper), law making was not her job, it was that of the law makers.

Three women strongly affirmed their faith in the subsistence of marriage. Alpona Mukherjee, a teacher said that a relationship cannot end by the scratch of a pen. She said the matter of divorce was a material question, but is justice really done? Does one get peace of mind where is the justice for all the hurt suffered by the respective spouses, she bitterly remarked that justice is not just. She said her husband deserted her for another woman, committed adultery and then filed a case against her saying she is very cruel (allegation of physical and mental cruelty made). When she contested the case and revealed the truth even then divorce was granted ostensibly on the reasoning that in any case she would have to live alone it was better to be in de jure divorce than a de facto divorce. Who looked at her heart when she wept, what justice is it she asked. At such emotional moments the cold logic of law becomes colder, one is reduced to a helpless spectator.

The comments of men mostly moved around the benefits received by women in a divorce. Bharat Mondal submitted that the divorce proceedings must be swift. If the delay is so prolonged he felt that justice to parties would be denied. According to him the system of permanent alimony should be abolished if the wife is found guilty. Tarun Choudhary contended that the law is not applied in practice. He alleged that women are given more advantage in a matrimonial proceedings. He holds that the judges and political leaders are biased towards women. He hoped that the men will gradually rise in the society and form a forum. The television should be used as a media to project the "plight of men". Divorce

laws must be more liberal and maintenance is to be allowed only for a limited period of time. Expressing the very same sentiments Pijush Banerjee's opinion was that almost all cases are decided in favour of women. There must be quick settlement of the case or the age of remarriage will be over. Strongly reacting he said it is unfair that men should pay women to fight their cases. According to him, such payments and prolonged litigations pointed towards the law being biased. He observed that in modern times men and women married at an advanced age of above thirty, almost in late thirties. If the divorce proceedings are so prolonged, at what age will the parties remarry?

When asked why so many divorces take place today than the earlier times? Jagadish Ch. Ghosh responded saying that the root cause was the inability of the people to judge the family with whom the alliance is being made. In the modern world he says, no family has the knowledge about the other. This was not so in a village system where each family was known to the other and as a result he says lesser marriages were on the rock. Some of the men felt that maintenance must be granted only to the children and not to the wife. Sunil Debnath, a person who was deceived into marriage with an insane woman contended that when a man is trapped into a marriage which was unreasonable, he should not have to pay alimony and maintenance to the wife and the custody of the children should automatically come to him.

No matter which way one looks the fact remains that men and women are different from each other. The diversities of the functions and the role in life and the diversities of temperament lead to differences in the outlook which cannot be ignored. But these are not and cannot be the reasons for putting women under the subjection of men. A woman feels as keenly, thinks as clearly as a man, she in her sphere does work as useful as a man does in his. She has as much right to her freedom to develop her personality to the full as a man. When she marries she should not become the husband's servant but his equal partner. If his work is more important in the life of the community then her work is equally important both in the community and the family. Neither can do without the other, neither is above the other or under the other. They are equals.

SUMMARY

About seventy one name and addresses of the persons were obtained for this chapter. Forty six interviews were used.

Age: About 54% people were of the age group of 25-35 years. This is an age group when people become matured and set in their thinking and life style. Besides women, particularly middle class women tend to marry in their mid twenties and mid thirties.

Education, Occupation and Income: Majority of the women, about 60% were found to be educated upto junior school. Of these 60%, about 33% women were illiterate. About 80% men were educated between senior school to university. Of these, about 50% had read

upto senior school and about 30% upto college or university level. Remarkably, even the education group of college and university show relatively greater incident of divorce. While the former category of people are more divorce prone due to lack of exposure, ignorance and struggles of impoverished life, the latter group frequently resort for divorce due to high degree of worldly exposure enjoyed by them, their acute awareness regarding their right, duty, personality, liberty etc.

About 80% of the interviewees were found to be employed and about 20% unemployed. All the men (100%) were employed, about 75% women were employed whereas about 25% women were unemployed. The type of employment enjoyed by women were menial workers (e.g. house maids, mason's helper) teacher, clerks, beedi workers and business. The type of employment enjoyed by women were business, Class IV staff, clerk, driven etc. About 56% women took up employment after divorce, 19% women took up employment after marriage but before divorce, about 26% women were employed even before marriage. All the men (100%) were employed even before marriage.

About 66% women earned less than Rs. 1500/- . Of these, 33% earned less than Rs. 500/-, 22% earned somewhere between Rs. 500/- to Rs. 1000/- and 11% earned between Rs. 1000/- and Rs. 1500/- No man earned less than Rs. 500/- . While 50% men earned between Rs. 500/- and Rs. 1500/-, 50% men earned more than Rs. 1500/-.

It has been found that education has a direct bearing on income and employment. Women are educationally, occupationally and financially weaker than men.

Caste factor: Most of the divorce took place from among the Kayastha caste. This was followed by the scheduled caste.

Social background: About 33% women and 20% men belonged to the lower middle class, 44% women and 50% men belonged to the comfortable middle class and 22% women and 30% men belonged to the affluent section of the society.

Marriage: Its nature, type and subsistence:

About 74% marriages were negotiated marriage and 26% were courtship marriage. 85% marriages were social unregistered marriage, 11% were registered marriage and about 4% marriages are temple marriages. 65% of marriages were dissolved within first five years.

The result of the majority of the marriage being negotiated, social and unregistered, is that many marriages are invalid hence null and void due to its being bigamous in nature or non fulfilment of the essential requirements of a valid marriage. As a result many women lose the status of wife and also cannot claim maintenance etc under Section 125 of Cr. P.C.

Marital conflict: Regarding the grounds of divorce, 59% cases were under the ground of cruelty, 41% cases were on adultery and 22% cases were on desertion. The remaining grounds like insanity, mutual consent, leprosy and irretrievable breakdown of marriage, each having less than 10% cases. It must be pointed out here that most of the women were educationally, financially and occupationally backwards and majority of their marriage ended in divorce on the ground of cruelty.

a. Adultery: 41% cases were on adultery. Of them, 47% are bigamy and 53% are extra marital affair. 47% of adultery cases took place in the income group of Rs. 500/- and less. This group is followed by the income gr up of Rs. 500/- to Rs. 1000/- with 21% cases. Together they constitute 68% cases. About 58% adultery cases are from among the illiterate group and junior school group. College education group recorded 26% of the cases while 16% cases belonged to the income group of more than Rs. 1500/- . Of this 5% case belonged to the group earning above Rs. 3000/-.

The comfortable middle class group record lesser cases as they are more status conscious and believe in the traditional form of respectability.

63% cases were of adultery by men and 37% cases were of adultery by women. About 73% cases were in the age group of 25 years to 35 years.

In short adultery high among the education group of illiterate junior school and university level group. Majority of the people belong to the age group of 25 years to 35 years and earn less than Rs. 1500/-.

b. Cruelty: 59% cases were filed under cruelty. All forms of cruelty involve an element of mental cruelty. Physical cruelty or incidents of domestic violence account for 44% of the cases. Dowry violences account for 15% cases, Mental cruelty account for 41% cases drunkenness 33%, etc.

93% cruelty cases are in the income group of less than Rs. 1500/-. 30% among the illiterate group and 37% among the group having an income between Rs. 500/- and Rs. 1000/-, and 26% in the income group of Rs. 1000 to Rs. 1500/-.

56% of the cruelty cases are from the higher education group of senior school (30%) and college/university education (26%). The lower education group account for 44% cases of which 11% are from the illiterate class and 33% are from the junior school group.

37% cases of cruelty is by men and 63% cases of cruelty by women. 33% of the cases are between the age group of 20-25 years and 33% between the age group of 30-35 years. The former due to their impulsive and immature nature and latter due to their rigid ways.

d. Desertion: There are about 22% cases of desertion and it occupies third position. In 10% cases the wife was driven away from home, 20% cases the wife was left in her natal family on one pretext or another and in 50% cases the wife was abandoned by her in laws. In 20% cases the wife decided to leave.

About 90% of the cases took place in the income group less than Rs. 1500/-. 10% cases were recorded in the income group of above Rs. 3000/-.

50% cases were recorded in the group educated upto senior school. The reason for this group being more susceptible to desertion is their social ambition and desire. When they find that the family is holding them back, they just decided to walk out of their home and hearth.

Desertion is alleged by men and women equally, 50% each. 60% of the cases are from the age group of 25 years to 35 years.

The proposer, the petitioner and the procedure:

57% people continue to live in a state of de facto divorce even though 63% cases have been taken before the court. These 57% cases are either pending, or have been dropped for non prosecution or default. Some have been withdrawn. The reason could be to save the litigation expenses and also the alimony. In 52% cases the husband proposed divorce in 41% cases the wife proposed and in 7% cases the in-law proposed the idea of divorce. However, 66% of the actual petitioners were the husbands. Only in 28% cases the wife was the actual proposer. In 7% cases, the divorce was by mutual consent.

Residence: About 53% women live away from their natal families after divorce. 31% live in personal residences, 8% live in rented accommodations and 14% in their place of work. Only 36% women lived with their natal family. 11% women lived with their second in-laws. 70% men had their own accommodation, 20% put up with their parents and 10% in rented establishments.

Children and custody and maintenance: 60% men and 56% women were having children. No men received maintenance. 19% women and 20% children received maintenance. Only 40% men paid maintenance to their wife. None paid any maintenance for children.

88% women were also custodian parents. Only 12% men were custodian parents.

The rate of maintenance is very small even when paid in lumpsum or instalments. While the lumpsum payments are inadequate the payments in instalments were still worse. In the latter case there is always the possibility of prolonged litigation when the instalments are stopped on silly pretexts. The husband continue to control the wife even after divorce in the latter case.

Attitude to divorce and remarriage:

a. Divorce: 58% women and 90% men feel that there is no point in continuing in an unhappy marriage. However all the 28% people who did not believe in divorce continued to live the life of a divorcee. 70% of the people (16% men and 84% women) feel they could not have reconciled their marriages even if the right to divorce was denied to them.

While 54% people said that they were not sure whether divorce laws should be made more liberal or simpler, 37% of them felt that the divorce laws must be more liberal. 30% men and 45% women were in favour of irretrievable breakdown of marriage. 60% men and 86% women felt that if the circumstances were to be repeated they would still act in similar fashion.

b. Remarriage: 50% of the interviewees (50% men and 50% women) were not willing to remarry. 20% were willing to marry and 15% were undecided about it. 39% (50% men, 36% women) felt that all the divorcees should remarry even though 50% of them had decided against it. 48% people (80% men and 30% women) felt that this experience will help them to build a better home in future. In other words women give the best to the marriage and cannot do better

in the next but most men learn from their mistakes and feel that they can do better in future.

Post divorce status: About 61% people feel that they have regained their pre-marriage independence while the men felt free both socially and economically, the feeling of women were related to their feeling of social freedom. 56% women blamed their spouses only for their divorce while 44% blamed some third party. 80% men blamed third party for divorce while 20% blamed their spouses only.

53% women and 70% men viewed divorce as a death of a relationship while 42% women and 30% men tended to cling on to their lost marriages. The sacramental, transcendental and traditional beliefs regarding marriage is preserved in the latter category. 70% of the people shared good relationship with their natal families and 37% of them felt that their marriages did not affect the marriages of their siblings. 80% men and 67% women felt that the society did not stigmatise them for their divorce, though some of them admitted that they felt a sense of shame and failure.

Remarriage: 20% men and 22% women were remarried. 10% men and 6% women had married divorcees. Among women, second marriages were courtship marriages. Even though 40% men had stated that they did not mind marrying divorcees, only 10% had done so.

Suggestion of the interviewees: Both men and women spoke in favour of simplification of divorce proceedings. Men were in favour of speedy settlement of cases and abolition of maintenance, alimony and maintenance pendente lite. Women wanted job reservations, education and job facilities for their children.

The struggle of women to be equal to men continues, even though the progress is slow. As Lord Denning observed¹⁶

"The silent progressive march is on".

16. Lord Denning "The Due Process of Law", p. 227, Butter Worths (1990).