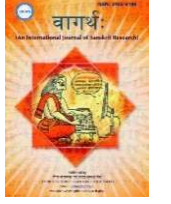




## वागर्थः

(An International Journal of Sanskrit Research)

Journal Homepage: <http://cphfs.in/research.php>



## Adhivedana –The Ancient Indian Practice of Divorce

**Prof. Radhavallabh Tripathi**

Former Vice Chancellor,  
Rashtriya Sanskrit Sansthan, New Delhi.  
Former Professor of Sanskrit,  
Dr. Harisingh Gour University, Sagar.  
radhavallabh2002@gmail.com

**Keywords- divorce, adultery, adhivedana, puritans, Protestants.**

It is a common belief that marriage according to Hindu scriptures is irrevocable being a sacrament and a divinely ordained relationship. The very concept of a wife as the half of her husband spelled out in most unequivocal terms [1] in Vedic literature overrules any idea of any kind of separation in marriage.

अर्धं जाया मनुष्यस्य। अर्धो ह एष आत्मनो यज्जायेति।

*Satapathabrāhmaṇa*, V.2.1.10

यावन्न विन्दते जायां तावदर्धो भवेत् पुमान्।

नार्धं प्रजायते सर्वं प्रजायेतेत्यपि श्रुतिः॥

*Vyāsasmṛti* -14, *Aṣṭādaśasmṛti*, p. 424

The *mantras* recited during the ritual for solemnizing a marriage make the bridegroom to promise a union with his would – be wife till old-age (गृभ्णामि ते सौभगत्वाय हस्तं मया पत्या जरदष्टिर्यथासः। *Rgveda*, X.85.25). He would also declare that the bond of marriage would remain intact till the last moment of his life (प्रेतो मुञ्चामि नामुतः सुबद्धामुतस्करम्। *Rgveda*, X.85.25). The blessings given by the elders, which form a part of the ritual, repeatedly say that the couple should remain ever united.

इहैव स्तं मा वियोष्टं विश्वमायुर्व्यश्रुतम्। *Atharvaveda*, XIV.1.22

अग्निः सुभगां जातवेदा पत्ये पत्नीं जरदष्टिर्यथासः। *ibid*, XIV.1.49

The authors of *Dharmasūtras* like *Āpastambha* treat the bond of marriage absolutely irrevocable, the violation of which would cause both of the defaulters to fall in hell (तद्व्यतिक्रमे पुनरुभयोर्नरकः। *Āpastambhadharmasūtra*, II.10.27.6); *Āpastambha* also prescribes an exceptionally harsh punishment for a man deserting his wife – “wearing donkey’s skin, he should

beg for feeding himself from seven houses making an announcement – ‘please give alms for a man who has wronged his wife!’. He should live this way for six months.” (दारव्यतिक्रमी खराजिनं बहिल्लोमं परिधाय दारव्यतिक्रमिणे भिक्षामिति सप्तागाराणि चरेत्। सा वृत्तिः षण्मासान्। *Āpastambhadharmasūtra*, I.10.28.19). The lady making the similar kind of violation is required to observe the *kr̥cchravata* for twelve nights.

स्त्रियास्तु भर्तुर्व्यतिक्रमे कृच्छ्रद्वादशरात्राभ्यासस्तावन्तं कालम्।

*Āpastambhadharmasūtra*, I.10.28.20

व्यतिक्रमे तु कृच्छ्रः, शूद्रे चान्द्रायणं चरेत्।

*Bodhāyanadharmasūtra*, II.2.3.49-50

There are different views in the *smṛtis* on the questions whether a woman proven to have had illicit relations with a man should be deserted by her husband or not. To some of the authors of *dharmasūtras*, neither the adultery committed by a wife, nor any act unbecoming of the matrimonial relationship can be considered the reason for the breach of the relationship.

न त्याज्या दुष्कृता नारी नास्यास्त्यागो विधीयते।

मासि मासि रजो ह्यासां दुष्कृतान्यपकर्षति॥

*Vaśiṣṭhasdharmasūtra*, XXVIII.3-4

Adultery is of two types mild and aggressive, and the authors of *dharmasāstra* texts do not favor divorce even for a woman who is an aggressive adulteress-- *ugra vyabhicārīṇī*. Punishments to a wife betraying her husband are provided for, but in no case she is to be deserted or divorced. A woman is never impure; she is purified after every menstruation (*Atrisamhitā*, 190-96, *Aṣṭādaśasmṛti*, pp. 30-31).

On the other hand, *Vyabhicāra* (adultery) by a woman is a condemnable offence for other *smṛtikāras*, a woman indulging in *vyabhicāra* is to be renounced with minimum allowance for her maintenance.

हताधिकारां मलिनां पिण्डमात्रोपजीविनीम्।

परिभूतामधःशय्यां वासयेद् व्यभिचारिणीम्॥ *Yāñyavalkyasmṛti*, I.70

Forsaking a married woman, who has not done anything wrong, is regarded highly sinful.

अदृष्टापचितां भार्यां यौवने परित्यजेत्।

सप्त जन्म भवेत् तस्य स्त्रीत्वं वैधव्यं च पुनः पुनः॥

*Parāśarasamṛti-15, Aṣṭādaśasmṛti*, p. 243

Professor P. Ramchandrudu has been a well-known Sanskrit scholar steeped in tradition and open to modern notions. He has authored a new *dharmaśāstra* text in Sanskrit - *Kaundīnyasmṛti*. Despite his progressive outlook on several areas, he condemns the modern practice of divorce in this *smṛti* - “The bond of marriage between man and woman is unbreakable. Marriage is a source of mutual happiness of man and woman both here and hereafter. The woman and man are the two wheels of the cart of the worldly life. There is no difference in their strength or in place of honour of both of them; this is *sanātana dharma*. No woman can live without man and no man can live without woman. The talk of antagonism heard now and then, should be treated as *pranayakopa*, feigned anger in love. The break of marriage again and again on flimsy grounds would be cause of ruin of the family and unrest in society. Children born out of marriage lasting only for two or three or five or six years would become highly undisciplined without any control. Those who cut the bond of marital relation on account of lust, bad temper or haughtiness or fickle-mindedness will have to undergo series of troubles in the old age.” (Tr. by Ramchandrudu himself).

स्त्रीपुंसयोरविच्छेद्यः बन्धो वैवाहिको मतः।

अन्योन्यस्यातिमहते सुखायात्र परत्र च।।

संसारशकटस्योक्ते द्वे चक्रे स्त्री पुमानिति।

शक्तिर्मानस्तयोस्तुल्यावेष धर्मः सनातनः।।

न नरेण विना नारी न नार्या च विना नरः।

तदा तदा द्वेषभाषा ग्राह्या प्रणयकोपवत्।।

पुनः पुनर्विवाहस्य च्छेदः क्षुद्रेण हेतुना।

विनाशाय कुटुम्बस्य समाजस्याप्यशान्तये।।

द्वित्रयपञ्चवर्षात्मकालदाम्पत्ययोर्हि या।

सन्ततिः स्याद् दुर्विनीता समाजेऽशान्तिकारणम्।।

कामेन दुरहङ्कृत्या विवाहं चापलेन वा।

छिन्दतां वार्धकेऽनन्ता भवेत् क्लेशपरम्परा।।

*Kaundīnyasmṛti*, 183-88

There are instances of men forsaking their wives as described in the Epics and the *Purāṇas*, though they may not be taken as the cases of divorce exactly in the legal sense of the term as understood today. In *Rāmāyaṇa*, the King of Kaikeya made a declaration of divorcing his queen, whom he had legally married. King Daśaratha, outraged at Kaikeyi's demand of two boons, makes a declaration to forsake her. While in the first

case, the declaration of the divorce was actually carried out by the King of Kaikeya, in the second case, it just remained confined to a wishful thinking of the king who met his demise soon after. In the *Rāmāyaṇa*, Rāma who has just defeated Rāvaṇa, speaks in utterly harsh tones to Sitā and refuses to admit her as his wife and even asks her to go to any man anywhere in the world. He does bring her to *Ayodhyā* after the fire-test, but finally banishes her to save the reputation of the great family of the *Raghus*. In the *Mahābhārata*, Duṣṇanta secretly marries Śakuntalā, and when she comes to demand her right as a wife, he deliberately refuses to recognize her with a roguish arrogance and pretensions. Ahalyā in *Rāmāyaṇa* is an example of a forsaken woman. There are stories of women, like Damayantī or Yaśodharā, who were forsaken by their husbands without any kind of intimation or explanation. In the *nāyikābheda* (categories of heroines), the *vipralabdā* almost approximates a divorcee.

In the *Mahābhārata* Pāṇdu tells Kunti that women in former ages were uncontrollable, they did as they liked and left one man for the other.” This promiscuity belonged a bygone age. Even then there are instances of ladies leaving their husbands at their will. The women of Therīgātghā, leave their house and the husband to join the *saṅgha*. But these acts of renunciation also cannot be taken as the cases of divorce in the legal sense of the term as understood today.

A house-holder would not be allowed to become an ascetic without the permission of his wife, which overruled any license to a man for forsaking a duly married wife. But this also implies that he may divorce his wife if she permits him to do so. There are instances of wives permitting their husbands for *sannyāsa*, and the husbands willfully availing this opportunity. At least two of the disciples of Śaṅkarācārya – Umveka and Padmapāda - did so.

The question then remains – did the *dharmaśāstras* permit divorce? The pundits in our times take considerable pride in emphasizing over the unbreakable nature of matrimonial relationship in Hindu society. On the other hand, the scholars with a modern outlook are not comfortable with this and some of them find this enforced permanency in marriage as inhuman and unjustified. One of them has pathetically complained that Sanskrit language does not even contain a word for divorce.

सच बात यह है कि संस्कृत भाषा में तलाक के अर्थ का कोई शब्द नहीं है। यदि संस्कृत भाषा में तलाक के लिये शब्द होता, तो बुद्ध को घर छोड़ कर भागना न पड़ता। .....

संस्कृत भाषा में तलाक और डाइवोर्स के अर्थ का शब्द नदारद है।

(*Kāmasūtra kī Santānen: Dharmavir*, p. 15)

Both of these – the puritans and the protestants – either disregard or are unaware of, the whole gamut of terms which *smṛtis* use to spell out the idea of separation and divorce between married people. These terms include *mokṣa* (being free from each other), *adhidevana* (partial divorce), *tyāga* and *parityāga* (renouncement), *nirvāsana* (banishment) *niṣkrāmaṇa* (expulsion), *nirdāmana* (eviction or deportation) etc. which approximate the idea of divorce between married people with considerable difference. The way Manu prohibits *mokṣa* in

matrimony gives sufficient ground for the belief that in actual practice the couple did separate and got divorced.

The term *mokṣa* is used by Kauṭīla in the sense of complete divorce between a husband and a wife, with specific legal provisions. While Kauṭīlya allows a woman to form sexual relations with other man, preferably the younger brother of her own husband, in case the husband is away from home for a long time. He also gives the liberty to a woman for divorcing the husband if he has committed something disgraceful, has gone on a prolonged journey, has revolted against the state, or if he is a criminal or is impotent.

नीचत्वं परदेशं वा प्रस्थितो राजकिल्बिषी।

प्राणाभिहन्ता पतितस्त्याज्यः क्लीबोऽपि वा पतिः॥

*Arthaśāstra*, Part II, p. 18

He also allows divorce on mutual consent to the couple if their marriages were not solemnized by vedic rites. A man is allowed to seek divorce from the woman doing a disservice to him (*Arthaśāstra*, Part II, p. 21). But then Kauṭīlya also adds that *mokṣa* is not to be given in case of marriages sanctified by vedic rites (*dharmya-vivāhas*).

अमोक्षो धर्म्यविवाहानाम्। *Arthaśāstra*, Part II, p. 18

Devala in his *smṛti* seems to have used the word *mokṣa* in the sense of divorce in context of property to be inherited by a woman. Nīlakaṇṭha has interpreted it as *tyāga* which means *dāna* (charity). But looking to the context, I think that Devala has used the term *mokṣa* to mean divorce here.

वृत्तिराभरणं शुल्कं लाभश्च स्त्रीधनं भवेत्।

भोक्त्री च स्वयमेवेदं पतिर्नार्हत्यानापदि।

वृथा (तथा?) मोक्षे च भोगे च स्त्रियै दद्यात् सवृद्धिकम्।

पुत्रार्तिहरणे वाऽपि स्त्रीधनं भोक्तुमर्हति॥

.....मोक्षस्त्यागो दानमिति यावत्।

(*Vyavahāramayūkha* of Nīlakaṇṭha, p. 100. Suggested reading in bracket is mine.)

*Adhivedana* involves various steps getting separated from the wife considering the nature of the offense committed by her, i.e. stopping conversation, termination of conjugal relationships, prohibition from rituals, arranging a different dwelling or sending her to her kin. Manu has extensively dealt with the renouncement of a wife who is rude, hateful or exhibits bad character. He has used the terms *tyāga*, *parityāga* and *adhivedana* synonymously in this context.

The word *mokṣa* in Sanskrit comes from the root *mokṣa*, basically meaning to release, to be released. The state of being released is *mokṣa*. *Mukti*, its synonym is formed by the root *muc* meaning to renounce, which Manu has used with prefix *vi*. The way Manu prohibits *vimukti* or *mokṣa* in matrimony gives sufficient ground for the belief that in actual practice the couple did separate and got divorced. “*Vimocana* of a wife from the husband is possible neither by sale nor by desertion” – he says – “we know this as *dharma* which the Prajāpati prescribed.”

न निष्क्रयविसर्गाभ्यां भर्तुर्भार्या विमुच्यते।

एवं धर्मं विजानीमः प्राक्प्रजापतिनिर्मितम्॥ *Manusmṛti*, IX.46

But then there are passages in Manu opening the possibilities of a wife remarrying and a husband obtaining a legal separation from his wife for a limited period. The two stanzas in IX.76 states that a woman should wait for her husband for eight years in case he has proceeded on a long journey for an act of *dharma*, for six years if he has proceeded for studies or fame and for three years if he has gone for pleasure.

प्रोषितो धर्मकार्यार्थं प्रतीक्ष्योऽष्टौ नरः समाः ।

विद्यार्थं षड्यशोऽर्थं वा कामार्थं त्रींस्तु वत्सरान्॥ *Manusmṛti*, IX.76

This has led the commentators to make a number of suggestions as to what she should do after the expiry of the term of waiting – taking another husband being one of them. Kulūkabhṭta’s suggestion seems to be most practicable – that the lady should go to live with her husband. But Kulūka does not consider the situation as to what the woman should do if she does not know his whereabouts, is unable to locate him, and is turned out even if she finds him.

But then, Manu makes a clear provision for stopping *samvāsa* (living together) with a woman who hates her husband after waiting just for one year. After a year the husband should take away her inheritance and stop relationships with her—he says.

संवत्सरं प्रतीक्षेत द्विषन्तीं योषितं पतिः ।

ऊर्ध्वं संवत्सरात्त्वेनां दायं हृत्वा न संवसेत् ।। *Manusmṛti*, IX.77

Kulūkabhṭta suggests that she should be provided with bare minimum subsistence –(*grāsamātrācchchādanaṃ tu deyam eva*).

The instruction does not imply banishment from the house. In the next stanza there is a provision for forsaking a wife for three months allowing her to take her ornaments and other things.

अतिक्रामेत्प्रमत्तं या मत्तं रोगार्त एव वा ।

सा त्रीन्मासान्परित्याज्या विभूषणपरिच्छेदा ॥ *Manusmṛti*, IX.78

Brian Smith’s translation - ‘He may deprive her of jewellery and personal property’ does not fit in the context as in the very next stanza Manu prohibits complete desertion even of a hateful woman and he also prohibits depriving her of her property.

उन्मत्तं पतितं क्लीबं अबीजं पापरोगिणम् ।

न त्यागोऽस्ति द्विषन्त्याश्च न च दायपवर्तनम् ॥ *Manusmṛti*, IX.79

*Adhivinnā* is translated as supersession, deprivation conjugal rights, forsaking a wife and taking another. , i.e. a lady, subjected to this partial divorce is to live separately with provision of maintenance. It involves gradations for deserting and depriving the woman of the status of a housewife, but it cannot normally include expulsion. Manu also prescribes absolute *adhivedana*, which amount to complete desertion of a woman, if she is a drunkard, is of a loose character, goes against the man, suffers from (an incurable) disease, has violent and murderous designs.

मद्यपासाधुवृत्ता च प्रतिकूला च या भवेत्।  
व्याधिता वाधिवेत्तव्या हिंस्रार्थत्री च सर्वदा।। *Manusmṛti*, IX.80

Yājñavalkya says that a woman who has betrayed her husband should be shorn of all the rights (of a wife), is made live unclean and on minimum subsistence, in humiliating conditions and has to sleep on a separate and lower bed. Yājñavalkya also prescribes *Adhivedana* for the woman who is a drunkard, afflicted with some disease, is a rogue, is barren, wastes money, speaks unpleasant words, gives birth to female children only and is envious to the man.

हृताधिकारां मलिनां पिण्डमात्रोपजीविनीम्।  
परिभूतामधःशय्यां वासयेद् व्यभिचारिणीम्।।  
सुरापी व्याधिता धूर्ता वन्ध्याथ्यन्प्रियंवदा।  
स्त्रीप्यसूत्राधिवेत्तव्या पुरुषद्वेषिणी तथा।। *Yājñavalkyasmṛti*, I.70,72

Manu has used the terms *tyāga*, *parityāga* and *adhivedana* synonymously in this context. But a woman subjected to *tyāga*, *parityāga* and *adhivedana* is not to be banished from the husbands house.

There prescribed limits to allow the wife under *adhivedana* the time for reforming herself. They range between eight to eleven years, whereas there is provision of instant divorce for a woman who speaks harsh words.

वन्ध्याष्टमेऽधिवेद्याब्दे दशमे तु मृतप्रजा।  
एकादशे स्त्रीजननी सद्यस्त्वप्रियवादिनी।। *Manusmṛti*, IX.81

Manu makes all sorts of concessions for a man desirous forsaking his wife. He is somewhat kind to the lady of good conduct and prescribes that a woman who is either ill or is kind-hearted and imbued with good character should only be given *adhivedana* after getting her consent and even after being given *adhivedana* she should never be humiliated.

या रोगिणी स्यात्तु हिता संपन्ना चैव शीलतः।  
सानुज्ञाप्याधिवेत्तव्या नावमान्या च कर्हिचित्।। *Manusmṛti*, IX.82

Expelling a wife who has been given *adhivedana* is prohibited in Manu. If such a woman leaves the house in fury she should be stopped (Brian translated 'locked up') or be dispatched to her parental house (Brian has translated as 'deserted in presence of the family' But Kulūkabhāṭṭa's explanation to me is more acceptable authentic – *pitṛādīkulasannidhau vā tyājyā* i.e. she should be sent to her parental house.). Kulūkabhāṭṭa says that she should be stopped by binding with ropes etc. till she calms down (*rajivādīnā baddhā sthāpanīyā ākopanīvr̥tteh*).

अधिविन्ना तु या नारी निर्गच्छेद्गृहिता गृहात्।  
सा सद्यः सनिरोद्धव्या त्याज्या वा कुलसंनिधौ।। *Manusmṛti*, IX.83

Yājñavalkya is also of the opinion that there is no need to go to the extent of *adhivedana* for an adulteress. But if she is pregnant (by another man) they she should be deserted. Vijñāneśvara adds here that *tyāga* has to be done in case of heinous crimes like pregnancy and murder of the husband (*garbhabhartr̥yadhādau tathā mahati pātake*). But then an

*adhivinnā* – the woman this deserted should be provided maintenance, failing which the husband would incur great sin.

Commentators of Yajnavalkya prescribe *tgāga* has several gradations – stopping conversation, stopping conjugal relations, prohibiting the wife from participation in rituals, lodging her in another house. For all these categories of divorce, the law-givers insist on providing maintenance for the ladies partially divorced, renounced or separated with difference in the grades of whether it is *mokṣa*, *adhivedana*, or *nirvāsana*. Yājñavalkya also says that the man has to continue supporting even a woman who has committed the most serious offences, otherwise he would incur great sin and on the other hand if he renounces a wife who is obedient, skilled, has produced brave sons, and is soft-spoken, then he should be made to provide one third of his earnings a maintenance for the lady. If he is penniless, then he is to take responsibility to support her. Vijñāneśvara says that this is equally applicable to a man who marries another lady when he already has a good wife. Even if he is penniless, he has to take responsibility to support her.

अधिविन्ना तु भर्तव्या महदेनोजन्यथा भवेत्। *Yājñavalkyasmṛti*, I.74  
त्वग्दुष्टां व्यसनासक्तां महितामधिवेदयेत्।  
अधिविन्नामपि विभुः स्त्रीणां तु समतामियात्।। *Vyāsasmṛti*, II. 51

आज्ञासम्पादिनीं दक्षां वीरसुं प्रियवादिनीम्।  
त्यजन् दाप्यस्तृतीयंशमद्रव्यो भरणं स्त्रियाः।। *Yājñavalkyasmṛti*, I.76

The injunctions with regard to *punarbhū* (a lady married again) by the authors of *smṛti* texts indicate a silence acceptance of divorce. The *punarbhū* is given a legal status with provisions for inheriting the property of the previous or the second husband. *Atharvaveda* describes the practice of a married lady renouncing one husband and choosing another (*Atharvaveda*, IX.5.27-28). *Vātsyāyana* in his *Kāmasūtra* (IV.2.35) recommends that a lady may leave her husband and go to live with another man if she does not feel amenability. (*ātmanāścittānukūlyāt iti Vātsyāyānaḥ - Kāmasūtra*, IV.2.35). *Vātsyāyana* also makes provisions to help this lady to enable her to lead an honourable and comfortable life. *Parāśara* prescribes re-marriage of a lady in five situations - the husband is lost, is dead, has become an ascetic, is impotent, and is condemned.

नष्टे मृते प्रव्रजिते क्लीबे च पतिते पतौ।  
पञ्चस्वापत्सु नारीणां पतिरन्यो विधीयते।।

*Parāśarasṁṛti* -31, *Aṣṭādaśasmṛti*, p. 345

The concept that a woman is the field to be owned by the one who has the seed, allows room for getting her divorced from the man who has no seed. Jay Shankar Prasad in his well-known Hindi play *Dhruvasvāminī*, a modern classic, had invoked a passage from *Nārada* airing this view and also the recommendation of *Parāśara* for remarrying a woman in case of five calamities to justify the re-marriage of *Dhruvasvāminī* with *Candragupta*, who was the younger brother of her husband *Rāmagupta*. Prasad also projected her as a lady with revolutionary spirit.

The authors of the texts on *vyavahāra* (Law) belonging to the medieval period are aware of the ancient practice of women

divorcing a man and re-marrying. Devaṇabhaṭṭa cites the views of Vaśiṣṭha prescribing re-marriage (punaḥ-saṁsāra) of a girl married with vedic rites, in case she has not been made to loose her virginity.

पाणिग्रहकृते कन्या केवलं मन्त्रसंस्कृता  
सा चेदक्षतयोनिः स्यात् पुनः संस्कारमर्हति॥  
उद्वाहितापि या कन्या न चेत् सम्प्राप्तमैथुना  
पुनः संस्कारमर्हति यथा कन्या तथैव सा॥

*Smṛticandrikā*, pp. 221-23

Most revolutionary verdict in this context is given by *Yamaśmṛti* as cited by *Smṛticandrikā*, which says – If the husband is not suitable in family and character, then even if a girl is married by *mantras*, that does make a ground for not getting her released from this unsuitable marriage. She should be taken out of the house of her in-laws by applying force and be married to a deserving man. This is the view of Śātātapa. Devaṇabhaṭṭa also cites Kātyāyana who holds almost the similar view, and he also cites the view of Parāśara, prescribing re-marriage in five calamities, albeit ascribing it to Manu.

वरश्च कुलशीलाभ्यां न युज्येत कथञ्चन  
न मन्त्रः कारणं तत्र न च कन्यानृतं भवेत्।  
समाकृष्य तु तां कन्यां बलादक्षतयोनिकाम्  
पुनर्गुणवते दद्यादिति शातातपोब्रवीत्॥  
कात्यायनोपि --

स तु स्यादन्यजातीयः पतितः क्लीब एव वा

...ऊढापि देया सान्यस्मै सप्रावारणभूषणा॥ *Manusmṛti*, p.224

But to Devaṇabhaṭṭa these are just *prima facie* views. He over-rules them by simply saying these they were in practice in the days of yore, but in Kaliyuga they are prohibited. There are alternate *smṛtis* for this age, which absolutely prohibit re-marriage. He however, does support desertion of the wife of unbecoming conduct.

ऊढाया पुनरुद्वाहं ज्येष्ठांशं गोवधं तथा।

कलौ पञ्च न कुर्वीत भ्रातृजायां कमण्डुलुम्॥ *Manusmṛti*, p.225

Manu has listed eighteen *mārgas* (ways, categories) of *vyavahāras* [*Vyavahāra* has been defined by *Yājñavalkya* as a petition made before a king by a person who has been made to suffer by others in contravention to the codes of conduct prescribed in the *smṛtis* (स्मृत्याचारव्यपेतेन मार्गेणाधर्षितः परैः। आवेदयति चेद् राज्ञे व्यवहारपदं हि तत्॥ *Yājñavalkyaśmṛti*, II.5)] (law-suits) for a court of law (which is called *sabhā*, *dharmādihikaraṇa*, *dharmāsana* or *dharmasthāna* in different texts) [Bṛhaspati has used the word *sabhā* for the law-court, Kātyāyana used a more appropriate title- *dharmādihikaraṇa*. (*Vyavahāramayūkha* of Nilakaṇṭha, p. 6) Bhavabhūti has used the word *dharmāsana* in his *Uttararāmacaritam* for Rāma's court room]. These categories have been called *vivādapadas* (issues for dispute) by later authors and the list of Manu has

been mostly reproduced by them. *Strīpūṁdharmā* (laws related to man and woman) is one of these *vivādapadas* in the list.

व्यवहारान्दिदृक्षुस्तु ब्राह्मणैः सह पार्थिवः।  
मन्त्रजैर्मन्त्रिभिश्चैव विनीतः प्रविशेत्सभाम्॥  
तत्रासीनः स्थितो वापि पाणिं उद्यम्य दक्षिणम्।  
विनीतवेषाभरणः पश्येत्कार्याणि कार्यिणाम्॥  
प्रत्यहं देशदृष्टैश्च शास्त्रदृष्टैश्च हेतुभिः ।  
अष्टादशसु मार्गेषु निबद्धानि पृथक्पृथक् ।।  
तेषां आद्यं ऋणादानं निक्षेपोऽस्वामिक्रयः ।  
संभूय च समुत्थानं दत्तस्यानपकर्म च॥  
वेतनस्यैव चादानं संविदश्च व्यतिक्रमः।  
क्रयविक्रयानुशयो विवादः स्वामिपालयोः॥  
सीमाविवादधर्मश्च पारुष्ये दण्डवाचिके।  
स्तेयं च साहसं चैव स्त्रीसंग्रहणं एव च॥  
स्त्रीपुंघर्मो विभागश्च द्यूतं आह्वय एव च।  
पदान्यष्टादशैतानि व्यवहारस्थिताविह॥  
एषु स्थानेषु भूयिष्ठं विवादं चरतां नृणाम्।  
धर्मं शाश्वतं आश्रित्य कुर्यात्कार्यविनिर्णयम्॥ *Manusmṛti*, VIII.1- 8

It seems unlikely that a man or least of all a woman, would approach a *sabhā* or *dharmādihikaraṇa* for the request of *mokṣa* under the *vyavahāra* of *Strīpūṁdharmā*, i.e. to file a suit for divorce. From Nilakaṇṭha's description of *strīpūṁdharmā* in *Vyavahāramayūkha* we understand that *strīpūṁdharmā* is comprised of instructions to the king to see that the men do not renounce their wives and the wives should also not leave their husbands (*Vyavahāramayūkha* of Nilakaṇṭha, p. 159-60). But again, the authors of *Smṛtis* and specially the *Purāṇa* do leave a scope of a petition for divorce in the royal court of law. The *Agnipurāṇa* has also enumerated eighteen categories of disputes *vivādapadas* (law-suits) in a *sabhā* (court of law). With regard to the *vivādapada* named *strīpūṁdharmā*, it says - "A king's court shall entertain suits in which the legality of a marriage or the fulfillment of any condition appertaining thereto is contested or sought to be enforced either by the husband or the wife, and such a suit shall be denominated as Marriage – suit".(Tr. in the ed. of Maitreyi Deshpande, Vol. II, p. 890)

वैवाहिको विधिः स्त्रीणां पुंसां यत्र च कीर्त्यते।

स्त्रीपुंसयोगसंज्ञं तु तद् विवादपदं स्मृतम्॥ *Agnipurāṇa*, 253.24

Vijnāneśvara and Candēśvara say that the *vivādapada* called *strīpūṁdharmā* is meant to keep the husband and the wife maintains their *dharma*. Vijnāneśvara cites the tradition upholding that family matters, especially disputes between the husband and the wife were not supposed to be brought under litigation.

गुरोः शिष्ये पितुः पुत्रे दम्पत्योः स्वामिभृत्ययोः।

विरोधे तु मिथस्तेषां व्यवहारो न सिद्ध्यति।

*Mitākṣarā* on *Yajñavalkyaśmṛti*, II.32

But then he explains that this injunction cannot be absolute. Whenever there is a necessity, the disputes amongst these will also form law-suits (तदपि गुरुशिष्यादीनामात्यन्तिकप्रतिषेधपरं न

भवति। तेषामपि कथञ्चिद् व्यवहारस्य इष्टत्वात्। Ibid). He even says that if a king comes to know of some offence committed by the husband or the wife directly or indirectly, he should take suo-motto notice.

यदपि स्त्रीपुंसोः परस्परमर्थिप्रत्यथितया नृपसमक्षं व्यवहारो निषिद्धः तदपि प्रत्यक्षेण कर्णपरम्परया वा विदिते तयोः परस्परातिचारे दण्डादिना दम्पती निजमार्गे राज्ञा स्थापनीयौ। *Mitākṣarā* on *Yajñavalkyasmṛti*, II.295

The possibilities of seeking a divorce may arise mostly in families where women are allowed to make their own earning by doing a job. Manu provides for a lady's doing a job if the husband has proceeded on a long journey and has not arranged for her 'livelihood by crafts that are not disapproved.'

विधाय वृत्तिं भार्यायाः प्रवसेत्कार्यवान्नरः।  
अवृत्तिकर्षिता हि स्त्री प्रदुष्येत्स्थितिमत्यपि॥

विधाय प्रोषिते वृत्तिं जीवेन्नियमं आस्थिता।

प्रोषिते त्वविधायैव जीवेच्छिल्पैरगर्हितैः॥ *Manusmṛti*, IX.74-75

Both Kauṭilya and Vātsyayana are in favor of women doing some kind of job and getting proper wages. Kauṭilya recommends hard punishment for men indulging in any kind of extortion or bribery from such ladies. Both of these *Śāstrakāras* therefore also consider the situations of divorce in marriage.

The question whether a man is authorised to desert his wife at his will is to be determined by the concept of ownership. The question whether a man is owner of his wife and children is discussed by some of the *smṛtikāras*. Vijnāneśvara on Yaj. II.175 says – though a man cannot make a gift of his wife or children to other, still, he is the owner of his wife. Vīramitra also considers this view but differs with Vijnāneśvara. He says

*svāmitva* here does not mean ownership, it just means controllability *vaśitva*.

Manu and his followers provide easy ways to men to get rid of undesirable wives, but they do not extend same kind of liberty to women. There are some other lawgivers who seem to be more liberal to married woman. There do allow some kind of scope for situations similar to divorce, none of them giving a word of solace or encouragement for a spouse seeking divorce even in dire need. Divorces amongst the married couples are not supposed to be good for the health of the society in the world-view of the law-givers; but then the possibilities of divorce taken as the last recourse do remain looming large on their horizons.

#### REFERENCES

- [1]. *Aṣṭādaśasmṛti* – compiled by Mihirchandra, Nag Prakashak, Delhi, 1990.
- [2]. *Atharvaveda*: Nag Prakashak, Delhi, 1994.
- [3]. *Kauṇḍīnyasmṛti*– P. Sri Ramachandrudu, Hyderabad, 2004.
- [4]. *Manusmṛtiḥ* with com. *Manvarthamuktāvalī*; MLBD, 2000.
- [5]. *Ṛgveda* : (in five volumes) with Sāyaṇa's *bhāṣya*, Vaidik Samshodhan Mandal, Pune.
- [6]. *Vyavahāramayūkha*: Nīlakaṇṭha, Text with Eng translation by P.V. Kane, Rashtriya Sanskrit Sansthan, N. Delhi 2009.
- [7]. *Yājñyavalkyasmṛti*, with Mitākṣarā of Vijnāneśvara, ed. Narayan Ram Acharya, Nirnaya Sagar Press, 1949.
- [8]. The voice of verdict: Brij Kishor Swain, Choukhambha Publications, 2007.
- [9]. The Dharmaśātra: An Introductory Analysis: Brij Kishor Swain, Akshaya, Delhi, 2004.