

The Triple Talaq Verdict: Victory in one battle in a much longer war*

C.P. Chandrasekhar and Jayati Ghosh

The verdict of the Supreme Court in the Triple Talaq case has quite rightly been welcomed and celebrated across India by all those who are concerned with even the most minimal rights of women. It is also a tribute to the prolonged and fearless struggle of groups like the Bharatiya Muslim Mahila Andolan in the face of much pressure from within and outside the Muslim community.

But it is worth asking why – unlike many other societies in which higher rates of marital dissolution are often seen as expressions of greater choice and emancipation of women – in India, the possibility of divorce is still such a stark and unwelcome outcome for most women, even when their marriages have been unhappy, exploitative and oppressive. This is essentially because of the still low status of women in most of Indian society. This is reflected in their low paid work participation, which prevents them from accessing independent incomes; as well as in extremely regressive and unequal practices with respect to inheritance and asset ownership, which means that women, regardless of religion, are typically denied access to assets. This means that the end of marriage can –and typically does – leave women in dire material straits, having to look after children and themselves without any apparent means of support.

The ability of a man to end a marriage through the demeaning and irresponsible route of triple talaq added further insult to this injury of a gender-unequal post-divorce reality, specifically for Muslim women. So it is an important victory that this practice will no longer be legally recognised.

However, there is an important concern: most dissolved marriages in India occur through separation, rather than formal divorce. Chart 1 indicates the relative significance of both for women across different religious categories, according to the Census of India 2011. It should cause some concern, because it is evident that separation (typically in the form of abandonment by husbands) is much more widespread for women across all religions, than divorce. Furthermore, while divorce was more prevalent among Muslim women than Hindu women (but less than among Christian, Buddhist and Other women) separation was actually higher among Hindu women.

Further, Chart 2 shows that Muslim women across all age groups do not have the highest rates of marital dissolution (taking separation and divorce together) and indeed their rates are only slightly higher than those of Hindu women, and significantly lower than for some other groups of women. So while triple talaq was definitely a completely unacceptable practice, it was only one of the ways in which married women could be abandoned, and women across all communities continue to face these problems of abandonment without adequate recourse to either justice or survival incomes.

Chart 1: Separation is more prevalent than divorce.

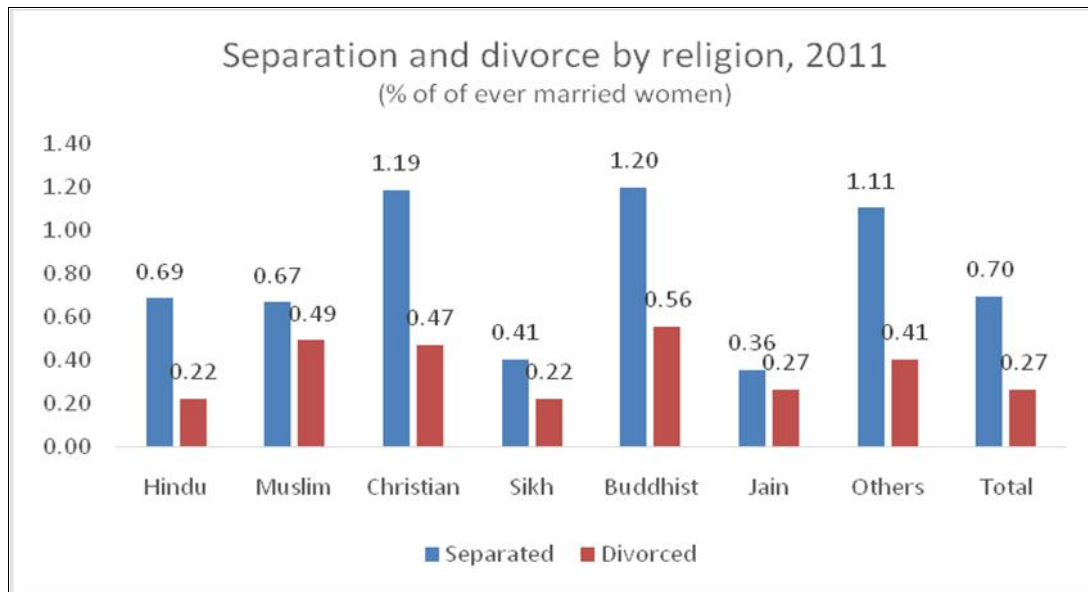
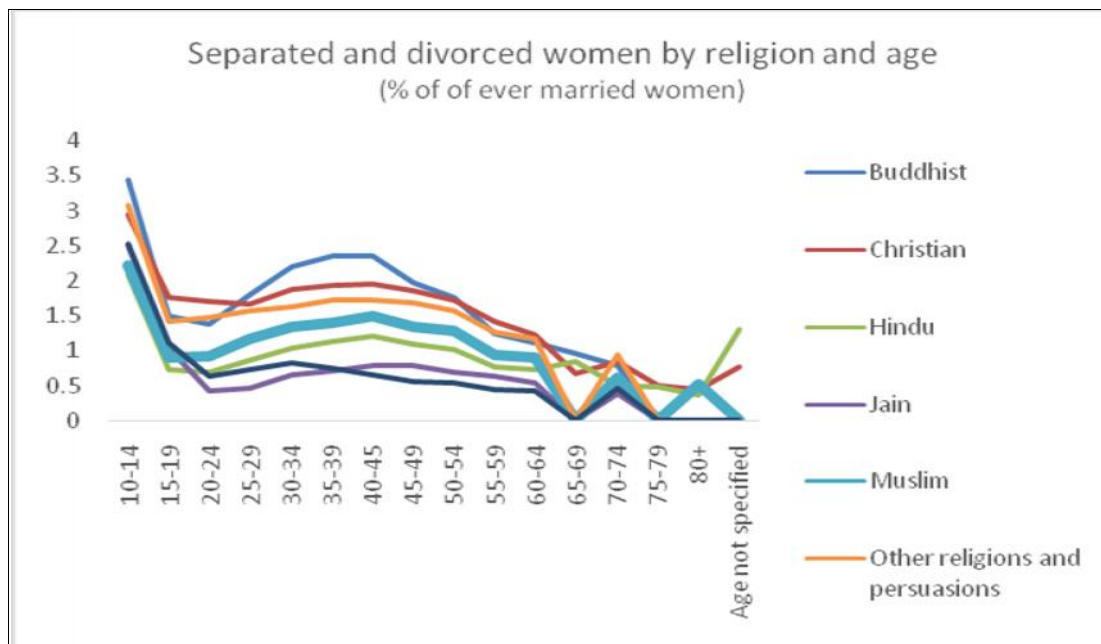


Chart 2: Rates of marital dissolution are not the highest among Muslim women



These problems are compounded by the poor handling of alimony or maintenance payments. Even though marriage and its termination in India are covered under various different legal systems and personal laws, in all of them, the dice are loaded against women. No matter what the legal framework, the only legal right that an Indian woman has on separation or divorce is a right to maintenance from her spouse. But maintenance awards are typically much delayed because of the prolonged legal process, provide very small and inadequate amounts and do not ensure regular payment.

For obvious reasons, the problems are most severe for women whose marriages have not been formally ended. Even for those with formal divorce, the courts (whether

family courts or formal courts) tend to be difficult and intimidating places for women seeking justice, especially for women with relatively little education and coming from poor families. The repeated trips to courts and postponement of cases, dealing with lawyers' charges and with patriarchal attitudes displayed by lawyers and judges, all contribute to their sense of powerlessness wasted effort, and have even dissuaded women from pursuing cases beyond a point. Women who have taken up employment after dissolution of the marriage, even if the employment is very low-paying, have been found to get less sympathy from courts in terms of alimony and maintenance.

This is the context in which the triple talaq judgement should be viewed. Getting some alimony or maintenance is difficult for women across religious categories. But for Muslim women, the matter became even more difficult with the passage of the Muslim Women (Protection of Rights on Divorce) Act 1986 (or MWA), which was widely seen as an essentially patriarchal response to the outcry among the male Muslim community to the Supreme Court judgement in the Shah Bano case (which forced her former husband to pay continued maintenance to her). The MWA drastically limited the husband's liability to his former wife. It basically stated that, once a woman's iddat expenses (covering three months' subsistence) had been paid and she had received her mehr (dowry) and any other money or property that had been gifted to her at the time of marriage, the husband had no further financial responsibility towards her.

This law came in for much criticism from women activists and others, as a discriminatory law that singled out Muslim women to deprive them of maintenance rights that would be available to all other divorced women in the country. It was taken for granted that this would have seriously detrimental consequences for Muslim women, encouraging higher rates of divorce that would allow men to get away without providing maintenance.

But the subsequent reality may be more complex. The MWA requires the husband to provide "reasonable and fair provision" during the three-month iddat period, a clause that was further reinforced by a Supreme Court judgement of 2001 that "during the iddat period, a Muslim man is liable to make a payment to his ex-wife that will secure her ability to sustain herself in the future. As a result, courts began to require men to give their ex-wives substantial lump-sum amounts or to transfer some material assets such as land, a house, or gold and jewellery. In at least some cases, the implementation of the law had a (probably unintended) positive effect on divorced Muslim women, by forcing the ex-husbands to give substantial once-off payments and releasing the divorced women from the uncertainty and unreliability of periodic low payments of maintenance. (Indeed, they might even be better off than non-Muslim women in this respect.) But of course, in most other cases, lack of material support for women remains a huge concern.

In any case, the point is that the problems faced by women in India whose marriages end are numerous, and result from economic, legal, social and cultural practices that are widespread across all religious groups. This Supreme Court verdict should cause all of us to take note of this and strive for more gender just and sensitive solutions for all such women.

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