

Author's Preface

In 1995, when I started studying non-state jurisdictions and customary practices of divorce and remarriage among Hindus in Central India, people's recurrent reaction, especially in the urban middle-class context, was that I was studying tribes. Then, when I entered in details concerning the actual practices, my interlocutor felt confirmed on the impression that I was indeed studying tribes. 'Divorce does not belong to Hindu tradition,' I was told. Yet at the same time many seemed to recall somebody who was not tribal but had in fact divorced or remarried customarily. This triggered an engaging conversation on the local variants of custom. Finally, depending on the ideological positioning of my interlocutor, a strong judgement against custom and traditional jurisdiction, or otherwise a paternalistic and nostalgic comment, concluded our exchange.

During the following years the above conflicting positions were progressively diluted within the widespread enthusiasm for the economic and socio-political developments that are making India attractive on the global market. However, the interest and sometime fascination for local traditions did not completely disappear. This seems nowadays reformulated in a singular interaction between state and non-state law, which in certain situations might even allow greater scope for negotiation. Divorce is no longer seen exclusively as a post-Independence right that one can only claim in a law court. Customary divorce, especially in the form of sec. 29.2 of Hindu Marriage Act 1955 starts to appeal the middle classes in India and in the countries of the South Asian settlements.

Now, at the time of the publication of *Hindu Divorce*, I feel myself changed as a researcher. Initially, my repulsion toward the pressure for an *a priori* positioning vis-à-vis Hindu customs of divorce hindered in some way their apprehension: during the early stage of my research I spent considerable time in following the specific arguments that challenged the existence or the validity of Hindu customary divorce on different grounds. Later, when I was trying to understand these customs for their pragmatic outcomes beyond the variety of their interpretations, I was seen alternatively as the heretic interpreter of Hindu tradition or the supporter of barbarian traditions. But I was lucky to be trusted by some of the women and men who were, and are, involved in the daily praxis of divorce customs in a variety of social strata. I realize now that this would not have happened if I had given way to the pressure of taking sides. What seems now clear to me is that the theoretical rationale of Hindu divorce only has a very residual link with its empirical recurrence.

As Flood (1983, p. 149) vividly describes in his ethnography on the barrister's clerks, it is a critical moment for the researcher when the outcome of her effort

has reached the stage of being presented to an audience in which the ‘observed’ are part. During the production of this book I feared the danger of unwillingly misrepresenting the people that trusted me. I sometimes felt overwhelmed by the risk of inadequately portraying the compassionate attitude of lawyers and the veritable needs of their clients in India, and more recently even out of India. I constantly struggled to achieve, in various ways, what appeared to me as a faithful – even if contextual – picture of the Hindu divorcees, by negotiating my analysis with their instances for self-representation. I am responsible for the risk that the present work might nevertheless misinterpret the subjects of my study. It goes without saying that I feel tempted to use the exemption clause mentioned by Flood (1983, p. 149) and postpone dissemination, but as Flood (1983) writes, when the subjects know what the researcher is looking for, this is in itself the fragile sign of achievement, on the basis of which researcher and observed are not two isolated entities anymore. From this point of view, this book materializes for me this kind of fragility: a substantial agreement might never be fully achieved, yet there is exchange. Such a tension was the principal nourishment of *Hindu Divorce*.

Hindu Divorce retraces the use of the arguments that support or deny divorce in the Hindu context. Hence, it narrates those cases of divorce that factually belong to the Hindu tradition by involving Hindus of a variety of backgrounds and rooting within a legal awareness that generates and constitutes a wider context than official law and mainstream academic discourses. This book describes with details not only the procedures of customary divorce but also their pragmatic links within the Indian legal system and their transnational implications in view of tangible outcomes. Hence, I fear also the damage that the manipulation of the information divulged by the present book might cause to the people who genuinely follow Hindu customs of divorce and to the potential of these customs for substantial justice. Arguing for controlled access would be against the very essence of these practices as fluid and dynamic instruments able contextually to answer the need for justice at a local and even transnational level. I strongly plead with the reader for a cautious use in the respect of the subjects and of the contexts of this research.