CHAPTER – II

DIVORCE: CONCEPTUAL ANALYSIS

I. Introduction

The family\(^1\) is a very important primary group in society. It consists of people who consider themselves related to by blood, marriage, or adoption. The origin of family cannot be treated to a single human trait or instinct. A complex of human needs and desires, finding different environments, everywhere gives birth to some form of family system. The family is vested with four important functions, i.e., reproduction, maintenance, placement and socialization of the young. But there are a number of secondary activities which have economic, political and religious implications. The family generally follows marriage between a man and woman. The sanctity of marriage was held to be so great that it was regarded to have some divine origin and was predestined. Marriage is an institution that admits men and women to family life. It makes a couple unite and create a blissful environment to raise their family. According to Anderson and Parker marriages are the sanctioning by a society, of a durable bond between one male or more males and one female or more females establish to permit sexual intercourse for the implied purpose of parenthood. According to Vedas a marriage is the ‘union of Flesh with flesh, Bone with bone and a Soul with soul.’ It is a union of seven births; therefore, it is sacred, indissoluble. Husband is a God for a woman and wife is called Ardhangini who shares with him the fruits of all his acts, good or bad. Both husband and wife are compliment and supplement to each other and therefore, each is indispensable for the other.

Manu laid down:

Wife is a divine institution given by Gods.

One should not think that one has obtained her by choice.\(^2\)

Her unity (with her husband) is established by the vedas.\(^3\)

A woman is half of her husband and completes him.\(^4\)

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\(^1\) To borrow the words of an eminent jurist, family is the basic unit of social responsibility and that of political organization. It is basic norm of society, unit of production, consumption and exchange. See an Article by Dr. R.K. Mishra, published in 1963 Jaipur Law Journal p. 165-87.

\(^2\) Manu Smiriti, ix, 95.

\(^3\) ibid. ix, 96.
A woman must be honored by her father, brother, husband, and brother-in-law, who desires their own welfare. Where women are honored, the Gods are pleased, but where they are not honored, no sacred rights yield any reward.\(^5\)

Under the Muslim law the term marriage is given definite meaning. Marriage (nikah) among Muslims is a ‘solemn pact’ (mithaq-e-ghalid) between a man and a woman soliciting each other’s life companionship\(^6\). Marriage is an institution ordained for the protection of the society and in order that human beings may guard themselves from foulness and unchastity.\(^7\) In Abdul Kadir v. Salima,\(^8\) Mahmood J. said that marriage among muhammadans is not a sacrament but purely civil contract and though solemnized generally with recitation of certain verses from the Quran, yet the Mohammadan law does not positively prescribe any service peculiar to the occasion. On the basis of above observation it can be said that the main object of marriage is the promotion of day to day family life and the legalization of children.

In Parsi law although marriage is not regarded as a sacrament, but rather as a contract, the sanctity of married life is held in much importance any violation of it still frowned upon by many. Some would attribute the low rate of divorce to the predominance of arranged marriages and belief that such a marriage is an eternal bond.

The concept of divorce is a 20\(^{th}\) century innovation amongst Zoroastrians in Persia, and today they have a uniform legal code, the Ayin-nama-ye-Zoroastrian which adopted by the community around 1935.

The Marriage under Jewish law is not a civil contract but as a relation between man and woman involving very religious duties.

So above discussion reflects that the marriage was a religious act and indissoluble union in ancient time. Severance of marriage is permitted only on substantial grounds.

Divorce: it’s meaning

The term ‘divorce’ is derived from the latin word ‘divortium’ which means to turn aside or separate. Divorce is the legal cessation of a matrimonial bond. Divorce (or the dissolution of marriage) is the final termination of a marital union, cancelling the legal

\(^4\) ibid. ix, 26.
\(^5\) ibid. III, 58.
\(^7\) See Ameer Ali, Mohammadan Law, 7\(^{th}\) ed., p. 97.
\(^8\) (1886) 8 All 149, 154-55.
duties and responsibilities of marriage and dissolving the bonds of matrimony between the parties (unlike annulment, which declares the marriage null and void)

Divorce laws vary considerably around the world, but in most countries it requires the sanction of a court or other authority in a legal process. The legal process of divorce may also involve issues of alimony (spousal support), child custody, child support, distribution of property, and division of debt. In most countries monogamy is required by law, so divorce allows each former partner to marry another; where polygyny is legal but polyandry is not, divorce allows the woman to marry a new husband.

Another interpretation of divorce is given by an American author as follows:

“Divorce is an effect, not a cause. It is a symptom, not the disease. Divorce does not break up marriage. It is adultery, cruelty, drunkenness, incompatibility, the decay or transfer of affection etc. that destroy marriages. It is only when marriages have been completely wrecked, and the parties have discontinued their marital relations, that parties resort to divorce, that the remaining bond created by law, may be dissolved by law also. Divorce is the annulment of the legal bond on proof of de facto dissolution of marriage”.

Like every major life change, divorce can be a stressful experience. It affects finances, living arrangements, household jobs, schedules and more. If the family includes children, they may be deeply affected.

In India the various religious communities are governed by their own personal laws. The Hindu law applicable to Hindus, Muslim law applicable to Muslims. The institution of marriage and divorce are also an outcome of religion. Marriage is a term for social relationship of husband and wife.

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9 See also, Ishwar Singh v. Hukam Kumar, AIR 1965 All 464, “As observed by the Allahabad High Court severing all connections with one’s wife and permitting her to remarry any person of her choice is no divorce; divorce has to be obtained through a competent court. A decree of divorce is subject to the mandatory provisions contained in Section 15 of Hindu Marriage Act, 1955. See also Furzund Hussain v. Janu Bibi, (1878) 4 Cal 588; Asha Bibi v. Kadar, (1909) 33 Mad. 22; Wajid Ali Khan v. Jafar Hussain, AIR 1932 Outh 34 at 38, “Talaq is an act of repudiation of marriage by the husband in exercise of his power which has been conferred on him. The term divorce includes all separation originating from the husband and repudiation for talaq in the limited sense, namely, of separation effected by use of appropriate word.

The concept of marriage and divorce directly deals with the lives of human beings i.e. husband and wife. The whole civilization of the world depends on the good relationship between the two spouses. Today the attitude towards marriage is changing. Therefore, the marriage and divorce are receiving increasing importance.

Marriage no doubt is union of a man and a woman for life. Still when the marriage has completely broken down, the formal continuance of the union would be only a source of misery for the parties. “To live under the perpetual authority of a man whom you hate is itself a state of slavery; but to be compelled to submit to his embrace, is a misfortune too great for slavery itself”\(^{11}\). Accordingly divorce in some form or other is prescribed in most systems of law. “Divorce is considered as a necessity, an unhappy by-product of an ineffective marriage.” There is no reason to assume that wherever it exists, people have taken undue advantage of it, where otherwise they would be content to be bound by the first marriage.\(^{12}\) The social aspect of divorce and the great care with which it should be granted is illustrated by the judgment of the Privy Council in an appeal from Canada\(^{13}\). Lord Blansburgh delivering the judgment of their Lordships observed: “So long as divorce, in contrast with marriage, is not permitted to be a matter of agreement between parties,\(^{14}\) but the public at large are directly interested in them, affecting as they do, not only the status of the two individuals immediately concerned but not remotely when taken in the mass, the entire social structure and the preservation of a wholesome family life throughout the community.”

\(^{11}\) Bentham’s Theory of Legislation, p.222. The individual theory, the ‘I attitude in the place of the previous ‘We’ attitude that prevailed early is’ largely responsible for the increase in divorce in the West- see Social Disorganization by Elliott and Merrill, p.633. There are some who hold that divorce is sordid and ugly. H.G. Wells maintains that divorce is inhuman because it involves parading in public essential private areas of human existence. Yet in case of divorces which involve children, the State has a valid concern. For these divorce is not to be allowed, but there should be a readjusted marriage. See Social Disorganization by Elliott and Merrill, p.751.

\(^{12}\) See Rattigan on Divorce, p.9 –“For good or bad, desirable or undesirable, divorce is a social fact of our generation.”

\(^{13}\) Mepherson v. Mepherson, 43 L.W. 469 (P.C.); 193 A.C. 177.

\(^{14}\) Divorce, by mutual consent is allowed under section 28, Special Marriage Act, 1954. In Sankaralinga v. Subba, 17 Mad. 497, Madras High Court said that a custom of allowing divorce by consent is not immoral. Roman Law permitted divorce by consent. Encylo. Brit. - Divorce; Muhammadan Law permits divorce- See Wilson Anglo-Muhammadan Law, Ch. III. In the Continent- divorce by consent is allowed in Belgium, Estonia, Latavia, Luxemberg, Netherlands, Portugal, Rumania and Spain, See Cohn: Foreign Marriage Laws. In Rumania (at page 190) mutual firm consent between the parties that conjugal society is intolerable for them, provided the formalities required by law are complied with. In Spain (page 200) mental alienation of one of the spouses when it prevents their spiritual life in common to the extent of being gravely prejudiced to the family is a ground.
A single codified law does not define the personal law. There are various personal laws; in India we have the Hindu, Muslim, Christian, Jewish and Parsi laws. There are various matrimonial Statutes laying down the provisions for each of these laws. Following is the discussion of these Statutes in detail:

2. Hindu Law on Marriage

According to ancient Hindu law marriage is the last of the ten sacraments\(^\text{15}\) and is a tie, a sacred tie, a tie which can never be broken. It is a relation established by birth to birth. According to Smritikars even death cannot break this relation of husband and wife which is not only sacred and religious but is a holy union also. Once created this sacred tie cannot be untied.\(^\text{16}\) It is not a mere contract wherein a consenting mind is indispensable. The institution of marriage is a sacrament and not a mere socio-legal contract.\(^\text{17}\)

The object of marriage was to enable a man and a woman perform religious duties and to beget progeny. Moreover the writers said that a man was incomplete without a woman; thus marriage fortifies the concept of oneness which is expressed by an adage, that “A woman is half of her husband (Ardhangini)\(^\text{18}\) and completes him”.

Every Hindu, male or female, had to marry. Where a person could not remain a perpetual celibate, or student or where he did not desire to be an ascetic (Sanyasin), he was enjoined by the Shastras to marry. Marriage, therefore, was as good as compulsory; and more so in case of a female. A girl might choose a husband for herself and marry. But with the changed conditions of life, as time passed, marriage became optional for both, male and female.

Monogamy was recommended for both, a male and a female. It was compulsory for a female, but in the course of time relaxations were carved out for males and a male could have more than one wife at his pleasure unless legislation prohibited it.

The Hindu law of marriage, as the British rulers of India found, interpreted and applied, was, in a nutshell, as follows:\(^\text{19}\)

\(^{15}\) Sundaribai v. Shivanarayan, ILR (1908) 32 Bom 81.
\(^{16}\) Shivanandy v. Bhagawanthymma, AIR 1962 Mad 400.
\(^{17}\) Gopal Kishan v. Mithilesh Kumari, AIR 1979 All 316.
\(^{18}\) Misreading of the scriptural teachings gave rise to the practice of “Sati”.
(i) Marriage was a holy Sanskar; it could be solemnized in one of the eight forms recognized by law;

(ii) The solemnization would be according to the Shastric or customary rites;

(iii) One could marry at any age, there being no lowest age of marriage, and a man could marry any number of women;

(iv) Inter-religious and inter-caste marriages were prohibited, but the latter could be sanctioned by custom;

(v) Marrying within one’s own gotra or pravara was not allowed, except among the Shudras;

(vi) Husband and wife would live together, the latter would submit to the wishes of the former, and the former would maintain the latter;

(vii) Marriage was indissoluble; divorce was not permitted unless recognized by custom;

(viii) Death did not dissolve a marriage and therefore a widow could not remarry unless permitted by custom so to do.

The Courts in India recognized, interpreted and applied all these principles in their minutest details.  

The institution of marriage is the foundation of peace and order of society and is considered as sacred even by those who view it as a civil contract. Under traditional Hindu Law, it is more religious than a secular institution. In Shastric Hindu Law, marriage has been regarded as one of the sanskaras (sacraments) necessary for men of twice-born (Dwijas) classes and the only sacrament for Women and Sudras. Manu says: “To be mothers, were women created and to be fathers, men. The Vedas ordain the dharma must be practiced by man together with his wife”. Strange has rightly observed, “by no people, is greater importance attached to marriage than by the Hindus.”

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22 Manu, IX, 6. See also, Dr. Basant k. Sharma, Hindu Law, third edition, 2011, p.35.
The Shastarkars ordain that one must have a son to save him from the hell called ‘put’ and marriage as a primary means to that end, becomes a religious necessity. Vedas declare that a Hindu born is a debtor in three obligations (rinas). One, to the holy saints (rishirina) for the practice of religious duties; two, to the (devrina) for the performance of sacrifices; three, to his forefathers (pitirina) for offspring. According to Manu, “after he has read the Vedas in the form prescribed by law has legally begotten a son and has performed sacrifices to the best of his power, he has paid his three debts”24. He who consists of his wife, himself and his offspring, is a perfect man.

For a Hindu, marriage is obligatory not merely for begetting a son in order to discharge his debt to the ancestors but also for the performance of other religious and spiritual duties. ‘Wife’ under Hindu Law is not merely a ‘grihpatni’, but also a ‘dharampatni’ and ‘sahadharmini’.

Under Shastric Law, marriage was conceived as a sacramental and holy union. According to Brihadaranyaka Upnishad, marriage was considered as a sacrament, a holy union, a union of flesh with flesh, bone with bone and soul with soul to continue even in the next world. According to Ramayana, wife was considered as half of the male, dharampatni, a friend and adviser to be associated by the husband in all religious rites and ceremonies. Rig-Veda has declared:

be thou mother of heroic children, devoted to the Gods, be though Queen in the father-in-law’s household. May all Gods unite the hearts of us two into one.25

According to Satpatha Brahmin, “the wife is verily the half of the husband”.26 Lord Shiva is shown as ardhnarishwar, i.e. half man and half woman. The Taittiriya Samhita is to the same effect: half is she of the husband, that is, wife.27

Marriage is one of the essential samaskaras (sacraments) for every Hindu. Every Hindu must marry. To be mothers were women created and to be father man, the Veda

24 Manu, VI, 36.
25 Rig., IX, 85.
26 Sat. Brah., V, 16.10.
27 Tat. Sam. III, 1.2.57.
ordains that dharma must be practiced by man together with his wife.\textsuperscript{28}Mahabharta said that those who have wives can fulfill their due obligations in this world; those who have wives truly have a family life, those who have wives can be happy, those who have wives can lead a full life. Thus, Hindu conceived of marriage as a sacramental union, as a holy union.

The sacramental aspect under Hindu Law had three characteristics; one, that it is a sacrosanct union. It means that marriage is not to gratify one’s physical needs but is primary for the performance of religious and spiritual duties. So, a marriage was to be solemnized with the performance of sacred rites and ceremonies. Two, a sacramental union implies that a marriage once entered cannot be dissolved on any ground whatsoever. Three, a sacramental marriage also meant that it is an eternal union. It was a union of soul, body and mind. It is not only a union for this life but in all lives to come (jam janmantera sambandh). Manu holds that the husband and wife are united to each other not merely in this life but even after death in the other world\textsuperscript{29}. This means that even death of one spouse did not dissolve the marriage tie.

The third aspect was abrogated when widow remarriage was allowed by Widow Remarriage Act, 1856. The second aspect is abolished by the Hindu Marriage Act, 1955 by allowing divorce to the husband or wife to some extent. The third aspect still remains as Hindu Marriage has to be solemnized under a religious ceremony unless the ceremony is replaced by a custom of the community.\textsuperscript{30} Moreover, unless the consent is vitiated by fraud or force\textsuperscript{31}, lack of consent does not affect the validity of marriage. It is on this premise that a child marriage is perfectly valid though some penal consequences may follow\textsuperscript{32}. Now, after 1976 by amendment in the Hindu Marriage act, the wife has been given ‘option of puberty’\textsuperscript{33} to repudiate the marriage if she was given in marriage before she attained the age of 15 years.

\textsuperscript{28} Manu, IX, 96. See also, Dr. Basant k. Sharma, Hindu Law, third edition, 2011, p.36. See also Dr. UPD Kesari, “Modern Hindu Law” 11\textsuperscript{th} ed. 2011 p.36-181; B.M. Gandhi, “Hindu Law” 2\textsuperscript{nd} ed. 2003 eastern book co. p.207-209.
\textsuperscript{29} Manu, V, 160-61.
\textsuperscript{31} See section 12 (c) of the Hindu Marriage Act, 1955.
\textsuperscript{32} Section 18 of the Hindu Marriage Act, 1955 and also see the Child Marriage Restraint Act, 1929.
\textsuperscript{33} See details under section 13.
The Hindu Marriage Act, 1955 has brought radical changes in the concept of marriage. Now it has largely destroyed the sacramental aspect of marriage. By the amendment in 1976, the element of consent has been introduced in section 5(ii) of the Act and also section 13(2)(iii) has given the wife a right to repudiate the marriage if she was married before she attained the age of 15 years. It is pertinent that in a similar situation the husband is not given a similar right in case he was married below this age. Still we can say that an express consent of parties in a Hindu Marriage is not required and lack of such consent would not affect the validity of marriage unless, of course, the consent is vitiated by fraud or force, in which case it would be a ground of voidable marriage under section 12 of the Act. Moreover, the violation of condition of age provided in section 5(iii) did not affect the validity of marriage and the marriage was held to be perfectly valid.\(^\text{34}\) But inspite of the Amendment in 1976, the Allahabad High Court has held that the marriage under Hindu Law is still a sacrament and endeavour should be made to restore the relation\(^\text{35}\). Derrett, in his book on Hindu Law has maintained that “the shastric concept of marriage as a Sanskara (sacrament) a union of two persons for all purposes, spiritual and secular, indissoluble even by death has been trimmed but not destroyed by Legislation.”\(^\text{36}\)

Section 5 and 7 of the Hindu Marriage Act make it clear that a Hindu marriage has both religious as well as secular aspects. Therefore, it is to be treated both as a sacrament and as a contract. It is a sacrament because there is emphasis on the performance of the customary rite and ceremonies including Saptapadi wherever it is treated as an essential ceremony for the completion of the marriage. It is a contract because this section deals with the capacity of the spouses to enter into an alliance for a marriage. Even under the original Hindu Law, marriage was a sacrament as well as a contract. Section 7 gives statutory recognition to the marriage under the Hindu Law as a sacrament.\(^\text{37}\)

**Hindu Law on Divorce**

Under the general uncodified Hindu law divorce was not recognized; it was rather unknown to the old textual Hindu law of marriage. The reason is very simple that a

\(^{34}\) But now see the Prohibition of Child Marriage Act, 2006 (w.e.f. 1-11-2007) which renders a child marriage voidable.

\(^{35}\) Gopal Krishan v. Mithilesh Kumari, AIR 1979 All 316.


\(^{37}\) Margaret Palai v. Savitri Palai, AIR 2010 Ori.45 at 49.
marriage was an indissoluble tie between the husband and wife. Divorce was thus not recognized unless it was allowed by custom. Section 13 therefore introduces a vital and dynamic change in the marriage law of Hindus.

The primary objective of the Hindu Marriage Act is to preserve and protect a Hindu Marriage, rather than allow it to disintegrate. Severance of marriage is therefore to be permitted only on substantial grounds. Now, since the amendment, the right to divorce has become more or less a statutory right subject to any right recognized by custom. Divorce, according to section 14, will not ordinarily be granted within one year of the marriage. Even where a ground for divorce is made the court will have to satisfy itself (i) that the petitioner is not seeking to take advantage of his own wrong or disability. (ii) where the petition is founded on adultery, the petitioner has not in any manner connived at or condoned the act or acts complained of, (iii) that the petition is not the result of any collusion between the spouses or its presentation is not marked by any unnecessary or improper delay, and (iv) that there is no other legal ground against granting the relief prayed for. One cannot add to any grounds mentioned in Section 13 on the strength of one’s own notions about the interest of the parties or society. As observed by the Allahabad High Court severing all connections with one’s wife and permitting her to remarry any person of her choice is no divorce; divorce has to be obtained through a competent court. A decree of divorce is subject to the mandatory provisions contained in Section 15.

Section 13 provides the circumstances wherein the right to divorce accrues while Section 14 limits this right by laying down a “one-year limit” of time. In cases of exceptional hardship to the petitioner or exceptional depravity on the part of the respondent a petition for divorce may be allowed to be made even though there is a time limit. It all depends upon the discretion of the court. Section 15 explains when divorced persons may marry again.

38 See Section 29(2).
39 See Section 23(1) (a) to (c).
40 Dwarka Bai v. Nainan Mathews, AIR 1953 Mad 792.
41 Ishwar Singh v. Hukam Kumar, AIR 1965 All 464.
Analysis of the Section 13

When carefully analysed the section shows that there are in all fifteen grounds for divorce. When classified these grounds fall into the following three divisions:

(i) Nine grounds based on “fault-liability theory” of divorce. These grounds are laid down in sub-section (1) and only the party aggrieved may avail of them.

(ii) Two grounds based on “breakdown theory” of divorce which are contained in sub-section (1-A). They may be availed of by any party to the marriage who is aggrieved or who is guilty.

(iii) Four grounds which are special and which can be availed of by a wife only. These are shown in sub-section (2).

Grounds shown above in (i) and (ii) are available in every case of marriage, whenever solemnized.

The following are the grounds for divorce in India mentioned under the Hindu Marriage Act.

Adultery - The act of indulging in any kind of sexual relationship including intercourse outside marriage is termed as adultery. Adultery is counted as a criminal offence and substantial proofs are required to establish it. Proof of adultery by direct evidence is rare and is not necessary. Moreover the nature of this act is such that expecting direct evidence is not only unreasonable but also not possible. An amendment to the law in 1976 states that one single act of adultery is enough for the petitioner to get a divorce.

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43 Hindu Marriage Act, 1955.
44 Hederson v. Hederson, AIR 1970 Mad 104. It is a consensual sexual intercourse between a married person and a person of the opposite sex not being the other spouse, during the subsistence of the former’s marriage.
45 Sec. 497, Indian Penal Code, 1860: “In such a case the wife shall not be punishable an abettor.” The reason given were that the males could enjoy many wives at a time and to make laws for punishing the inconstancy of the wife, is not a course to be adopted till education and time have changed the conditions till then “we are not inclined to throw into a scale, already too much depressed, the additional weight of the penal law.” Obviously the wife also will be guilty of a matrimonial offence for purposes of the Hindu Marriage act, 1955.
46 Adultery in Hindu Law is explained in the texts collected by Ganga Nath Jha, “Hindu Law in its Sources, Vol. I, pp. 473, 476; see also Notes under sec. 10, clause (f) of Hindu Marriage Act, 1955.
**Cruelty** - In Shobha Rani⁴⁹ Case, the Supreme Court said that the word, “cruelty” has not been defined in the Hindu Marriage Act. The word as used in section 13(1) (ia) of the Act is with reference to human conduct or behavior in relation to or in respect of matrimonial duties or obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional.

A spouse can file divorce case when he/she is subjected to any kind of mental and physical injury that causes to life, limb and health. The intangible acts of cruelty though mental tortures are not judged upon one single act but series of incidents and it can be decided with reference to facts and circumstances of each individual case. The court can examine evidence in appeal also.⁵⁰ Certain instances like the food being denied, continuous ill treatment and abuses to acquire dowry, perverse sexual act and such are included under cruelty.

**Desertion**⁵¹ - As a ground for matrimonial relief desertion is well known to the world. After the amendment of the section in 1976, desertion is a ground for judicial separation as well for divorce. The Supreme Court in *Bipin Chandra v. Prabhawati*⁵² observed that in every case of desertion there must coexist: i, the factum of separation, and ii, animus deserendi, i.e. intention to forsake the aggrieved party. These two factors may not commence at the same time, one may follow the other. It should also be remembered that these two elements must subsist during the whole of the statutory duration (i.e. two years).⁵³ If one of the spouses voluntarily abandons his/her partner for at least a period of two years, the abandoned spouse can file a divorce case on the ground of desertion.

**Conversion**⁵⁴ - on the ground that the other party has ceased to be a Hindu by conversion to another religion a marriage can be dissolved by a decree of divorce. From this simple-looking proposition it follows that one should adopt some other major religion which cannot be regarded as Hindu religion. If a Hindu person who is a Jain adopts Buddhism,

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⁵¹ Section 13 (1) (i-b) of Hindu Marriage Act, 1955.

⁵² AIR 1957 SC 176.


⁵⁴ Section 13 (1) (ii) of Hindu Marriage Act, 1955.
he is still a Hindu. He cannot be said to have changed his religion.\textsuperscript{55} One must remember that the ground of conversion is not available to the converting spouse, it is the other spouse who remains a Hindu that can avail of this ground if he or she so desires.

**Mental Disorder**\textsuperscript{56} – Mental disorder can become a ground for filing a divorce if the spouse of the petitioner suffers from incurable mental disorder and insanity and therefore cannot be expected from the couple to stay together.\textsuperscript{57} It is a very wide term covering and embracing within its fold different phases of unsoundness of mind and mental disorder.\textsuperscript{58}

**Leprosy**\textsuperscript{59} – in case of a ‘virulent and incurable’ form of leprosy, a petition can be filed by the other spouse based on this ground.

**Venereal Disease**\textsuperscript{60} – if one of the spouses is suffering from a serious disease that is easily communicable, a divorce can be filed by the other spouse. The sexually transmitted diseases like AIDS are accounted to be venereal diseases.

**Renunciation**\textsuperscript{61} – A spouse is entitled to file for a divorce if the other renounces all worldly affairs by embracing a religious order.

**Not Heard Alive**\textsuperscript{62} – if a person is not seen or heard alive by those who are expected to be ‘naturally heard’ of the person for a continuous period of seven years, the person is presumed to be dead. The other spouse should need to file a divorce if he/she is interested in remarriage.

**No Resumption of Co-habitation**\textsuperscript{63} – it becomes a ground for divorce if the couple fails to resume their co-habitation after the court has passed a decree of separation.

The following are the grounds for divorce in India on which a petition can be filed only by the wife.

- If the husband has indulged in rape, bestiality and sodomy.\textsuperscript{64}

\textsuperscript{55} The word “Hindu” is to be interpreted in the light of section 2 of the Act.
\textsuperscript{56} Section 13 (1) (iii) of Hindu Marriage Act, 1955.
\textsuperscript{58} For analysis of the expression see table in Hindu Law, Dr. T. Mahmood, p. 109.
\textsuperscript{59} Section 13 (1) (iv) of Hindu Marriage Act, 1955.
\textsuperscript{60} Section 13 (1) (v) of Hindu Marriage Act, 1955.
\textsuperscript{61} Section 13 (1) (vi) of Hindu Marriage Act, 1955.
\textsuperscript{62} Section 13 (1) (vii) of Hindu Marriage Act, 1955.
\textsuperscript{63} Section 13 (1-A) (ii) of Hindu Marriage Act, 1955.
• If the marriage is solemnized before the Hindu Marriage Act and the husband has again married another woman in spite of the first wife being alive, the first wife can seek for a divorce.\textsuperscript{65}

• A girl is entitled to file for a divorce if she was married before the age of fifteen and renounces the marriage before she attains eighteen years of age.\textsuperscript{66}

• If there is no co-habitation for one year and the husband neglects the judgment of maintenance awarded to the wife by the court, the wife can contest for a divorce.\textsuperscript{67}

**Divorce by mutual consent: Section 13-B**

As ordinarily understood, divorce is nothing more nor less than another name for dissolution of marriage whether the same results from the act of parties or is a consequence of the proceedings at law, and it would be wrong to regard the two terms as not being synonymous with each other, unless the legislature makes a direction to the contrary.

Section 13-B introduces a revolutionary concept of “divorce by mutual consent.”

The section is retrospective.

**Requirements of the section**- the section requires the following:

(i) That both the parties together should present a petition to the court;\textsuperscript{68}

(ii) That they should wait for at least six months from the date they present a petition;\textsuperscript{69}

(iii) That the parties may withdraw their petition during this time;

(iv) That before the expiry of eighteen months they together should make a motion to the court for passing a decree;

(v) That after due inquiries the court shall pass a decree.

\textsuperscript{64} Section 13 (2) (ii). See also Gandhi: Indian Penal Code chap. 16 pp. 428-430, 1996 Edn.
\textsuperscript{65} Section 13 (2) (i) of Hindu Marriage Act, 1955.
\textsuperscript{66} Section 13 (2) (iv) of Hindu Marriage Act, 1955.
\textsuperscript{67} Section 13 (2) (iii) of Hindu Marriage Act, 1955.
\textsuperscript{68} Section 13-B (1) of Hindu Marriage Act, 1955.
\textsuperscript{69} Section 13-B (2) of Hindu Marriage Act, 1955.
Today we are living in an industrial age. The outlook on every aspect of life has changed. The industrial era has brought in new experiences which have considerably reshaped the ideology and demands of people of different communities. In *Ram Parkash v. Savitri Devi*,\(^\text{70}\) Bhandari, C.J., Punjab High Court said:

“With the passage of time and the advancing march of civilization people began to recognise that it was somewhat inequitable that the husband should be at liberty to pick all the plums from the tree of marriage and the wife should be left only with stones. The legislature accordingly proceeded to enact a number of measures, with the express objects of emancipating married women from the liabilities which the Hindu law attached to them, enlarging their rights and protecting the wife from the importunities of the husband. These measures introduce a fundamental change of public policy and lay down a new foundation of equality of husband and wife”.

Thus, the recent reforms in the concept of marriage in Hindu law confirmed due respect for and adherence to the Indian Constitution and Fundamental Rights incorporated there under, wherefrom commences a movement of justice in social, economic and political fields.

**3. Muslim Law on Marriage**

A Muslim marriage is a religious duty as well as a contract. It is a contract because one party makes an offer of marriage; the other party is at liberty either to accept or not to accept that offer. The consideration is the dower which the husband is required to pay to his wife. These are the three conditions which are necessary for the validity of any contract. The object of a marriage is enjoyment and the procreation of children.\(^\text{71}\)

Under the Muslim law the term marriage is given a definite meaning. Marriage is an institution ordained for the protection of society and in order that human beings may guard themselves from foulness and unchastity.\(^\text{72}\) In *Abul Kadir v. Salima*\(^\text{73}\) Mahmood J. said that marriage among Muhammadans is not a sacrament but purely a civil contract and

\(^{70}\) AIR 1958 Punj. 87.
\(^{72}\) See Ameer Ali: Mohammadan Law, p.97, (7th edn.).
\(^{73}\) (1886) 8 All 149, 154-55.
though solemnized generally with recitation of certain verses from the Quran, yet the Muhammadan law does not positively prescribe any service peculiar to the occasion. On the basis of above observation it can be said that the main object of marriage is the promotion of day to day family life and the legalization of children.

**Essentials**

The following are the essentials of a valid marriage:

(i) There must be an offer and acceptance;

(ii) The parties must be of sound mind;

(iii) They must have attained the age of majority.

**The doctrine of equality in marriage (Kafaa):**

It is true that Islam advocates equality. But it is very difficult to treat all persons equally. It has, therefore, been said that the prophet is reported to have recommended marriage with fit spouses. ‘Marry your equals’ \(^{74}\). The Hanafi School, therefore, insists that there shall be equality between the two parties. Hanafi law says that a Muslim male while marrying should keep into mind the following things:

(i) Family

(ii) Islam

(iii) Profession

(iv) Freedom

(v) Good character and

(vi) Means.

The doctrine of equality is merely directory. In *Jamait Ali Shah v. Mir Mohammad* \(^{75}\), it was said that a disregard of the rules of equality does not render the marriage void ab initio, and that the court was not justified in dissolving the marriage. It

\(^{74}\) Mohammad Ali, Manual, 272 (No. 10).

\(^{75}\) (1916) PR 371 (no. 119).
may however be noted that the Indian Courts possess the power to repudiate such marriages.

The Muslim marriage (nikah) is a contract made between two persons of opposite sexes with the object of intercourse, procreation and the legalizing of children. It is a civil contract and no priest or Qazi is necessary for its performance.

Every Muhammadan who has attained puberty and who is of sound mind may enter into a contract of marriage. Lunatics and minors who have not attained puberty may be validly contracted in marriage by their respective guardians, in the absence of evidence, puberty is presumed on completion of the age of fifteen years. There should be a proposal made by or on behalf of one of the parties to the marriage (Ijab, i.e., proposal). There has to be an acceptance of the proposal by or on behalf of the other, in the presence of two males or one male and two female witnesses. The proposal and acceptance must be expressed at one meeting. The witnesses must be sane and adult Mohammedan (a marriage contracted without witnesses would be merely irregular), Ijab followed by qubul results in a marriage contract.

Under the Muslim law a man is permitted to have four wives at the same time. If he marries a fifth wife when he has already four, the fifth marriage would be merely irregular. However, a marriage with a woman, who has her husband alive and who has not been divorced by him, is void. It is not lawful for a Muslim wife to have more than one husband at the same time. The following verse of Quran which is sacred law of the Muslims is a pointer towards monogamy.

“And if ye fear that ye will not deal fairly by the orphans, marry the women who seem good to you, two or three or four and if ye fear that ye cannot do justice (to so marry) then one (only) or (the captives) that your right hand possess. Thus, it is more likely that ye will not do injustice”.

It is clear that the Quran only permits, does not enjoin polygamy and that too only in those cases where the man finds it impossible safeguard the interests of widows and orphans. If the man does not feel confident of treating all the wives equally without discriminating against any of them, he should have only one. Is it possible for a man to give equal love and affection to all the four wives? It is quite impossible. Therefore, the
arbitrary power of the Muslim husband to have more than one wife has been controlled almost in all the Muslim countries. Some countries have totally abolished polygamy; others have partially abolished this institution. Obviously polygamy which is not expressly permitted by the Quran in normal times has no practical relevance among the Muslims of India. Statistical researches have proved the incidence of polygamy amongst the Hindus more than among the Muslims. Thus, Muslim law about polygamy appears to have been followed more in breach than in observance and it will hardly hurt the Muslims if monogamy legislatively be made the rule for them.

**Muslim Law on Divorce or Talaq**

“Either retain them with humanity, or dismiss them with kindness”\(^76\)

Among the disorganization by death, factual separation and jural separation, the most important disorganization is that of divorce. The concept of divorce is very old immemorial institution. Among all the nations of antiquity, divorce was recognized. Originally, the power of divorce was given only to the husband. The wife was under no circumstance entitled to claim a divorce. Later on, wives were also given the qualified right to dissolve the marriage.\(^77\)

Divorce is an unavoidable evil. According to Letaurneau,\(^78\) divorce as an institution is the final milestone in the process of freeing the women from slavery of man in marital relationship. Letaurneau says the union of man and woman beings with very rare exceptions, by the complete slavery of the woman and her status equal to that of Chattel over which the man has all proprietary rights (including killing, selling, gifting, or driving her away).

The position of women under pre-Islamic customary law was the worst. Prophet Mohammad was the first person to improve the status of women. He restrained the power of divorce possessed by the husbands. He also gives power to the women to dissolve their marriages on reasonable grounds. Towards the end of his life he went so far as practically to forbid its exercise by the men without the intervention of arbiters or a judge.

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\(^{76}\) Quran, Chapter II, V, p.229.


pronounced talaq to be most detestable before the Almighty God of all permitted things.\textsuperscript{79} Prophet introduced reforms only because divorce prevented conjugal happiness and interfered with the proper bringing of children.\textsuperscript{80}

There is no clear cut distinction between divorce and talaq. Both the terms have been used in an ambiguous manner.

Mr. Verma\textsuperscript{81} says that the term “talaq” is used in the two senses by lawyers:

1. A restricted sense in which it is confined to separation effected by use of certain appropriate words by the husband; and

2. A wide sense, in which it covers all separations for causes originating in the husband.

According to Verma, talaq means repudiation of the wife by the husband in exercise of the absolute powers which the law has conferred on him.\textsuperscript{82} According to Hedaya, it means dismissal; it means dissolution of marriage on the annulment of its legality by certain words\textsuperscript{83}.

According to Baille\textsuperscript{84}, the term ‘divorce’ includes all separation originating from the husband and repudiation for talaq in the limited sense, namely, of separation effected by use of appropriate words. In Islam, the term talaq means absolute power which the husband possesses of divorcing his wife at all time\textsuperscript{85}.

In \textit{Furzund Hussain v. Janu Bibee}\textsuperscript{86} it was said that talaq means the taking off the marriage tie by appropriate words.

Oxford Dictionary\textsuperscript{87} defines the term divorce as legal dissolution of marriage. Under the Muslim law it means all separations made by the husband. It also includes

\begin{footnotesize}
\begin{enumerate}
\item Ameer Ali, “Mohammadan Law”, p.472.
\item Mr. Verma, “Muslim Marriage and Dissolution” p.158.
\item Ibid, p.186.
\item Hedaya, p.72.
\item Baille. 1. 204.
\item For details pl. see Encyclopedia of Islam. P.636-640; Wilson: Anglo Indian Muslim Law.
\item (1878) 4 Cal. 588.
\item p.352.
\end{enumerate}
\end{footnotesize}
repudiation, khula and Mubaraat. In *Asha Bibi v. Kadar*\(^{88}\) it was said that the word divorce means dissolution of the marriage tie by a declaration of the husband. In *Wajid Ali Khan v. Jafar Hussain*\(^{89}\) it was said that divorce means freedom from the bondage of marriage and not from any other bondage. On the basis of the above it can be said that talaq means the repudiation of marriage by the husband during the continuance of marriage.

The process of talaq, i.e., divorce by the man, is very simple. A husband who is convinced that his marriage has irretrievably broken down can quietly pronounce a divorce; but it shall not become effective during the period of iddat\(^{90}\), during which period he can freely retreat. At the expiry of this period, if he has not revoked the divorce, the marriage is dissolved- but the couple can revive the marriage by a fresh solemnization, provided that the wife agrees. And that is all. There are no complications, no complexities and no inequities in this process. However, since the husband cannot be allowed to play hide and seek with his wife by repeating pronouncing a divorce and then either revoking it within the permissible period of iddat or offering to remarry the same woman after its expiry, the law provides that a husband can do so only twice in the whole of his life; whenever during his married life he pronounces a divorce for a third time, the marriage is instantly dissolved perpetually, leaving no room either for the revocation of divorce or for a novation of marriage by a fresh solemnization.\(^{91}\)

The rule of “no marriage with a triply-divorce wife” is meant to be a deterrent for the ambivalent husband; he should know that a third divorce is the last word that he can speak regarding the marital bond. It is a pro-wife legal provision meant to help her out of the clutches of a man who cannot make up his mind about her- and not in any sense a penalty for herself. After the third divorce the wife may, and is rather encouraged to, marry another man. At this stage, then the law thinks of a possible pitiable situation which this woman may find herself in viz., incidental failure of her second marriage too leading

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\(^{88}\) (1909) 33 Mad. 22.
\(^{89}\) AIR 1932 Outh 34, p.38.
\(^{90}\) Iddat means in the case of a pregnant wife the period till she is free from confinement, and in respect of all other wives approximately three months during which at least two menses-free periods for the wife would have intervened- the idea being to afford the man a fair chance, or several chances, to go closer to the wife and in all probability reconsider his decision.
to divorce, or its dissolution by the death of the second marriage. If per chance- I repeat, per chance- this happens, it may not be so very easy, or even advisable, for the poor woman to seek marriage with a third man. So, the embargo on her remarriage with the first husband if lifted and he is allowed to marry her if she agrees. This again is a pro-wife law meant to meet the extremely pitiable exigency of the dissolution also of a woman’s second marriage.\(^{92}\)

In *Moonshi Buzloor Ruheim v. Shusoonnissa Begum*\(^{93}\), about the pre-nuptial agreement it was said that except Islam no other religion of the world gives to the women the right to enter into pre-nuptial agreements. If the Muslim husband failed to observe the pre-nuptial agreement, the wife was at liberty to ask for the dissolution of marriage. Later on, it was said that a Muslim woman could ask for the dissolution of marriage on the following grounds:

1. Option of Puberty (Khyarul-Bulugh);
2. Impotence of the husband;
3. Husband's allegation of faithfulness against the wife; and
4. Option of inequality.

Ameer Ali\(^{94}\), Wilson\(^{95}\) and Fitzgerald\(^{96}\) show that Mohammedan marriage being a civil contract, physical cruelty, desertion, persistent failure to maintain, contraction of a loathsome disease, insanity, gross misrepresentation, and lack of consensus on a vital matter would be the sufficient grounds for dissolution of marriage at the instance of the wife.

Muslim law is divided in two schools, i.e., the Sunni and Shia. The Sunni School is divided in four sub-schools i.e., Hanafi, Maliki, Shaifii and Hanbali. The Shia school is divided into various sub-schools. The important are Ithna Ashari and the Ismailia Schools. Out of all these schools and sub-schools only the Maliki sub-school is favourable to the

\(^{92}\) Ibid, p.115-118. See also, Tahir Mahmood, “Personal Laws in Crisis” (1\(^{st}\) ed. 1986) Metropolitan book co. p.75-76.

\(^{93}\) (1867) 11 M I A 511, 612.


\(^{95}\) Wilson, Ánglo Mohammadan Law”, 1971 Edn., p.94.

Muslim women. Under the following circumstances a Maliki Muslim woman can ask for divorce:

1. When the husband leaves the wife without means of subsistence;
2. When he deprives the wife of raiment;
3. When he forces her to beg for living;
4. When he refuses to provide a habitation for her;
5. When he leaves the conjugal domicile without making any provision for her;
6. When he abandons her and refuses to visit her;
7. When he treats her with cruelty;
8. When he beats her without cause; and
9. When he tries to introduce a concubine into the conjugal domicile.

Shaifii sub-schools also permits a wife to dissolve the marriage if her husband is suffering from madness, elephantiasis or leprosy or if her husband does not treat her impartially. Under Hanafi law, insanity, cruelty and desertion are grounds on which the wife can ask for dissolution of the marriage. Under the Hanbali sub-school a wife can ask for dissolution of marriage if her husband has failed to fulfill the agreement which was entered at the time of marriage. Ithna Ashari sub-school permits wife to seek divorce on the grounds of insanity, enuchism and impotence. Under the Ismaili sub-school elephantiasis, insanity, leprosy and qaru (a small tumour like hernia), are mentioned as good grounds for rescission of the marriage.

There is cleavage between law and practice. At present the Muslim husband is absolutely free to divorce his wife just by pronouncing the word talaq which is contrary to Quranic injunctions. In the Quran nowhere it has been mentioned that a Muslim male may

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dissolve his marriage by pronouncing talaq three times. Ameer Ali\textsuperscript{99} says:

"Prophet Mohammad restrained the power of divorce possessed by the husbands. He gave to the women the right of obtaining a separation on reasonable grounds. Muslim husbands do not possess the arbitrary power to dissolve the marriage as and when he deems it fit. A large and influential body of jurists regards talaq emanating from the husband as really prohibited except for necessity such as the adultery of the wife. The Prophet Mohammad himself declared talaq to be the most detestable of all permitted things before the Almighty God. The reason is that it is a hindrance to conjugal happiness and it is very difficult for a divorced woman to give proper education to her children".

A divorce becomes necessary only when the husband cannot do his duties, i.e., when he is impotent or a eunuch. Talaq under the Muslim law is a kind of divorce\textsuperscript{100}. It consists of two types, i.e., talaq-ul-sunnat and talaq-ul-bidat in Hanafi Law. The talak-ul-sunnat is regarded as one of the most approved form of talak. It can again be divided into two kinds, i.e., talak-ul-ahsan and talak-ul-hasan.

**Talak-ul-ahsan**

In the form of divorce i.e. talak-ul-ahsan\textsuperscript{101}, the husband should fulfill the following conditions:

1. He must pronounce the formula of divorce once, in a single sentence;

2. He must do so when the woman is in a state of purity (tuhr) and there is no bar to

\textsuperscript{99} Ameer Ali, “Mahommedan Law” Vol. I, 4\textsuperscript{th} edn., 1912; Vol. II, 5\textsuperscript{th} edn. 1929.

\textsuperscript{100} According to Tahir Mahmood, “The Muslim Law of India” 3\textsuperscript{rd} edn. 2002 p. 104-105, “Talaq-e-sunnat, talaq-e-ahsan, talaq-e-hasan and talaq-e-bidat are not ‘modes’ or ‘forms’ of talaq, as some authors describe them. A talaq is a talaq- these expressions only refer to the conduct of the man in pronouncing a talaq i.e., whether he has or has not strictly followed the prescribed rules for it which aim at discussing and keeping him away from actually breaking the marriage.

The Muslim law prescribes a simple procedure for talaq, keeping all chances of reconciliation and reconsideration open. A talaq strictly following this procedure is talaq-e-sunnat- a proper talaq.

Within the limits of talaq-e-sunnat there are degrees of virtue in respect of the man’s conduct. The more virtuous conduct in this respect will be ahsan (better), the less virtuous hasan (fine).

A talaq in violation of the prescribed procedure is a talaq-e-bidat or bidat talaq- an improper talaq.

\textsuperscript{101} See Chandbi v. Bandesha (61) A.B. 121,"When the marriage has not been consummated, a talak in the ahsan form may be pronounced even if the wife is in her menstruation. Where the wife has passed the age of periods of menstruation the requirement of a declaration during a tuhr is inapplicable, furthermore, this requirement only applies to an oral divorce and not a divorce in writing”. See also, Ahmed Kasim v. Khatoon Bibi (1932) 59 Cal. 833, 141 I.C. 869 (33) A.C. 27.
3. He must abstain from the exercise of conjugal rights after pronouncing the formula.

**Talak-ul-hasan**

As far as talak-ul-hasan is concerned, the husband is required to pronounce the formula three times during three successive tuhrs\(^{102}\), namely three periods of purity of the wife. When the last formula is pronounced, the divorce becomes irrevocable.\(^{103}\) These forms are also approved by Shias.

**Talak-ul-biddat**

The talak-ul-biddat consists of:

1. three pronouncements made during a single tuhr either in one sentence, e.g., 'I divorce thee thrice', or in separate sentence, e.g., 'I divorce thee, I divorce thee, I divorce thee;
   or

2. a single pronouncement made during a tuhr clearly indicating an intention irrevocable to dissolve the marriage, e.g., 'I divorce thee irrevocably'\(^{104}\).

Under the talak-ul-biddat (Talak-ul-bain), once a definite and complete separation has taken place the parties so separated cannot remarry without the formality of the woman marrying another man and being divorced from him. It has always been a point of dispute amongst the jurist of Muslim law about talak-ul-biddat as an unapproved form of talak. It is reported that the son of Umar divorced his wife during her courses. The Prophet

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\(^{102}\) The first pronouncement should be made during a tuhr, the second during the next tuhr, and the third succeeding tuhr.

\(^{103}\) Fatawai Alamgiri, Vol. 1, p. 492. See also, Tahir Mahmood, “The Muslim Law of India” 3rd edn. 2002 p. 105- talaq-e-hasan means “three talaqs pronounced one after the other in three consecutive tuhrs” is indeed a grave distortion, rather making a mockery of the law. Three consecutive tuhrs are the minimum period allowed for this purpose- certainly not a fixed period for it to be followed in every case:

“A man pronounces a revocable talaq. He reconciles and resumes cohabitation. A few years later under some provocation he pronounces a revocable talaq once again. On recovering from provocation he again resumes cohabitation. Now two talaqs are over. Thereafter whenever he pronounces a talaq it will be counted as the third talaq which will dissolve the marriage forthwith.(Maulana Ashraf Ali Thanavi, Behishti Zewar, Vol. IV, p.31, translated from urdu by TahirMahmood)

desired Umar to command his son to take her back again. In fact this kind of talak was introduced to oblige the Omayyad Caliphs who wanted greater facility and easier rules of repudiation. The Shias and Malikis have not recognised this form of talaq. It is only recognised by Hanafis and Shafis.

The Muslim law is not, therefore, impartial in dealing with the two sexes, i.e., male and female. At one place it gives unfettered right of divorce to Muslim males and on the other hand, it does not give the same unfettered right of divorce to women. On account of this discrimination many Muslim countries have tried to improve the status of women through legislation. The Tunison code allows a wife to insist for divorce, whatever the reason may be, provided she is prepared to pay such financial compensations the court may decree. In India, neither Muslim husbands nor Indian courts recognized the Quranic injunctions about divorce. To rescue the Muslim wives the Bhopal State passed an Act in the year 1931, through which they were allowed to free themselves from the marriage. Later on, the difficulties faced by the Muslim wives were realized and the Dissolution of Muslim Marriage Act was passed. This was made applicable to all wives irrespective of their sects under Muslim law. The Act provides various grounds which may enable a wife to seek divorce from her husband. It is quite evident from the aforesaid discussion that the methods of dissolution of Muslim marriage are not adequate, justified or reasonable. The law lags far behind the changes in norms of the society and social values.

4. Christian Law on Marriage

The Indian Christians, in all matters of marriage are governed by the Indian Christian Marriage Act. Under the Act marriage may solemnized between persons, one or both of whom is or are Christians in accordance with the provisions of the Act, otherwise the marriage will be void. The Act provides for the solemnization of marriage by ordained priest as well as by the registrar of marriages. In the former case, the marriage may be solemnized under Section 5 of the Christian Marriage Act, 1872. If a person,

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105 The Dissolution of Muslim Marriage Act, 1939.
106 The Christian Marriage Act, 1872.
107 Section 4 of The Christian Marriage Act, 1872.
108 (1) by any person who has received episcopal ordination, provided that the marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of which he is a minister.
who is not duly authorized to solemnize the marriage solemnizes or professes to
solemnize a marriage he shall be punishable for a term of imprisonment which may extend
to ten years as well as fine or (in lieu of a sentence of imprisonment for seven years or
upward) with transportation for a term of not less than seven years and not exceeding ten
years. Any person professing and believing in Christian religion is a Christian for the
purpose of the Christian Marriage Act, 1872\textsuperscript{109}. A bill to amend this law, entitled the
Christian Marriage and Matrimonial Causes Bill, was pending before the Parliament in
1962. When the House of People was dissolved that Bill lapsed. The Christian marriage
law appears outdated in comparison to other matrimonial laws in India. There is no clear
provision regarding proveableness of marriage among Indian Christians barring sections 5
and 80 of the Indian Christian Marriage Act, 1872. Admission by either of the spouses of
the fact of marriage, evidence of eye-witnesses who were present during the marriage
ceremony, subsequent conduct of the couple in living as husband and wife for some time
and the opinions on the conduct of the spouses expressed by persons who had special
means of knowledge, being all recognised mode of proof of a marriage may be admitted in
evidence in order to prove a marriage among Indian Christians. In a suit for declaration
that the marriage with defendant was invalid the onus lies on the plaintiff to prove that the
marriage was not solemnized by any of the authorized persons prescribed in section 5 of
the Indian Christian Marriage Act\textsuperscript{110}.

Marriages among Indian Christians are looked at from two stand points, viz., the
law of the land and the canon law. Marriage performed in compliance with the law of the
land governing the parties will make the marriage valid and the offspring legitimate.
Under the Canon law, a marriage performed by a Schismatic\textsuperscript{111} priest where the parties to
the marriage are Roman Catholics will not be recognised as valid by the Catholic Church
and the offspring will be described as illegitimate. Such a marriage would be perfectly
valid under sections 4 and 5 of the Act and the progeny perfectly legitimate. The most

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\item[(2)] by any Clergyman of the Church of Scotland, provided that such marriage be solemnized according to the
rules, rites, ceremonies and customs of the Church of Scotland;
\item[(3)] by any minister of Religion licensed under this Act to solemnize marriages;
\item[(4)] by, or in the presence of, a Marriage Registrar appointed under this Act;
\item[(5)] by any person licensed under this Act to grant certificates of marriage between Indian Christians.
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\textsuperscript{109} Section 3 of the Christian Marriage Act, 1872.
\textsuperscript{110} XV of 1872.
\textsuperscript{111} (especially in the Christian Church) a person who promotes schism; an adherent of a schismatic group.
important provision of the Christian Marriage Act is that a marriage must be registered.\textsuperscript{112} The Act is only concerned with the form in which the marriage is to be solemnized and it does not deal with objections to the validity of the marriage. Section 88\textsuperscript{113} of the Act says that nothing in this Act shall be deemed to validate any marriage which the personal law applicable to either of the parties forbids. It was held in \textit{Jude v. Jude}\textsuperscript{114} that a marriage between a Roman Catholic woman and a Jew under the provisions of the Act is null and void as the personal law of Roman Catholic forbids such a marriage. Section 6 provides that every marriage between Indian Christians who apply for a certificate shall, without the preliminary notice as required under Part III, be certified under this part, if the following conditions be fulfilled:

(i) The age of the man shall not be under 21 years; and the age of woman intending to be married shall not be under 18 years;

(ii) Neither party to the marriage shall have a wife or husband still living; and

(iii) In the presence of one person licensed under section 9 and at least two credible witnesses other than such licensed person, each of the parties shall say to the other:

“I call upon these persons here present two witnesses that I, A.B., in the presence of Almighty God, and in the name of our Lord Jesus Christ, do take thee, C.D., to be my lawful wedded wife or husband” or words to the like effect.

About other Christians and their marriages the Act is silent about the age of the parties and some other matters. Hence for Christian marriages in India as per section 7 of the Indian Divorce Act, 1869, the age of consent will depend on the state of law in England at the time of marriage. The Child Marriage Restraint Act as amended by the Child Marriage Restraint (Amendment) Act, 1978 is applicable to the Christian system the prohibitions to marry, are against certain relations. According to Bible, a Christian is not allowed to marry the relations such as:

\textsuperscript{112} Section 27 of the Christian Marriage Act, 1872.
\textsuperscript{113} The Christian Marriage Act, 1872.
\textsuperscript{114} AIR 1949 Cal. 563.
“Mother, father’s wife (step mother), sister, daughter, half sister, granddaughter, aunt (father’s sister and mother’s sister), aunt by marriage, daughter in law, brother’s wife, wife’s sister (during wife’s life time), intermarriage with the heathen and intermarriage with unbelievers”.

In England, a marriage is prohibited wherever the parties are the whole blood or half blood relations. In Christians the prohibitions exist on the ground of prohibited degrees. In *Lopez v. Lopez*115, it was said by the full Bench of Calcutta High Court that they are to be taken according to the customary law of the Church to which the parties belong.

**Christian Law on Divorce**

The marriage and divorce among Christians is governed by The Indian Divorce Act, 1869 it came to be enacted in India by the Governor General in Council and applied to the Christians throughout India except the princely States, former Portuguese and French Settlements and certain tribal areas116. Subject to such exceptions, generally speaking, the Indian Divorce Act, 1869 is the law of divorce in India.117 Parties to a Christian marriage may approach the court of law to dissolve the marriage tie under the provision of the Indian Divorce Act, 1869. The Christian marriage may be dissolved on the compliance of the requirements set out in section 10 of the Indian Divorce Act, 1869. The Act provides that unless parties to the marriage are domiciled in India at the time when the petition is presented, the courts have no jurisdiction to dissolve the marriage. In determining the 'domicile' of the parties in a proceeding for dissolution of marriage it is the domicile of the husband alone which is to be considered in as much as a wife takes the domicile of her husband upon her marriage. 'Domicile' means a permanent home or place where one resides with the intention of remaining there for an indefinite period. Domicile is not the same thing as residence. Residence implies a purely physical fact, the fact of just being and living in a particular place. But domicile is not only residence; it is residence

115 63 Cal. 735.
116 As far as the Travancore-Cochin areas of the State of Kerala are concerned, the Act came to be extended with effect from 1-4-1951 by virtue of the provisions of the Part B States (Laws) Act, 1951. It may note that there was no law for divorce in these areas prior to 1-4-1951 and the extension of the Act was made without the informed knowledge of the community.
117 See the Preamble to the Indian Divorce Act. Though the Act is titled as the ‘The Indian Divorce Act’ it applies only to Christians.
coupled with intention to live indefinitely in the place. 'Domicile is the place where a person intends eventually to return and remain. It is distinguished from residence in that residence comprehends no more than a fixed abode where one actually lives for the time being'.

If court has passed the decree for dissolution of marriage having no jurisdiction, the marriage would subsist and either of the parties going through a subsequent form of marriage would be guilty of bigamy and any issue from such subsequent union would not be legitimate. Section 7 as a residuary section of the Act permits court to interpret the provisions of Act with the help of the principles and rules of English courts. But the section 7 cannot be read as interfering with or extending the grounds of dissolution of marriage as incorporated in section 10 of the Act. Hence dissolution of marriage cannot be sought for on grounds not mentioned under section 10 of the Act. 118

5. Parsi Law on Marriage

Since 1835 efforts were made by the members of the Parsi community to have suitable marriage law in keeping with their social requirements and that effort culminated in the passing of the Parsi Marriage and Divorce Act, 1936 119. The Parsi Law Association of 1855 in its mission succeeded in getting Parsi Marriage and Divorce Act, 1865 120. This Act was based on Matrimonial Causes Act, 1857, of England. The various defects of Parsi Marriage and Divorce Act, 1865 were rectified and the law on the subject was made in conformity with the changed conditions and views of the Parsi Marriage and Divorce Act 1936. This Act has been amended in 1988 by the Parsi Marriage and Divorce (Amendment) Act, 1988.

‘A Parsi’ is defined in section 2(7) 121, as Parsi Zoroastrian. A Zoroastrian is a person who professes the Zoroastrian religion. A Zoroastrian need not necessarily be a Parsi. The word ‘Parsi’ has only a racial significance and has nothing to do with his religious professions. The word takes its derivation from ‘Pers’ or ‘Fars’, a province in

118 The Divorce Act, 1869.
119 Act 3 of 1936. The Parsi Marriage and Divorce Bill having been passed by the Legislature received its assent on 23rd April, 1936. It came on the Statute Book as THE PARSI MARRIAGE AND DIVORCE ACT, 1936 (3 of 1936).
120 Act No. XV of 1865.
121 The Parsi Marriage and Divorce Act, 1936
Persia, from which the original Persian emigrants came to India. The Parsi community consists of Parsis who are descended from the original Persian emigrants and who are born of Zoroastrian parents and who profess the Zoroastrian religion, the Irames from Persia professing the Zoroastrian religion who came to India either temporarily or permanently, and the children of Parsi fathers by alien mothers who have been duly and properly admitted into the religion. At one time it was held that an Iranian who temporarily resides in India, who is registered as a foreigner and whose domicile continues to be Persian does not become a Parsi merely because he is a Zoroastrian. As he is nota Parsi, the Parsi Marriage and Divorce Act do not apply to him. Now, it has been held that the word ‘Parsi’ in the Act means Zoroastrians, both of India and Iran, and the Court constituted under the Parsi Marriage and Divorce Act, 1936 has jurisdiction over them. The Parsi Marriage and Divorce Act, 1936 as amended in 1988 now provides that in the case of any Parsi for the marriage to be valid, should have completed the age of 21 if male, and 18 if female. However, sub-section (2) of section 3 lays down that any child of such invalid marriage who would have been legitimate if the marriage had been valid, shall be considered to be legitimate.

The requisites for the validity of Parsi Marriage are discussed under section 3 of the Parsi Marriage and Divorce Act, 1936. According to this the contracting parties should not be related to each other in any of the degrees of consanguinity or affinity set forth in Schedule 1 of the Act.

A Parsi husband or wife cannot remarry in the life-time of his wife or husband until his or her marriage is dissolved by a competent court although he or she may have become a convert to any other faith. It shows the strict monogamy in Parsi marriages. Every marriage contracted contrary to the provisions of section 4(1) shall be void. If a Parsi, in violation of that section, marries again in the life-time of his or her wife or

\[\text{Section 3: Requisites to validity of Parsi Marriages. - (1) No marriage shall be valid if-}
\]
\[\begin{align*}
\text{(a) the contracting parties are related to each other in any of the degrees of consanguinity or affinity set forth in Schedule I; or}
\end{align*}\]
\[\begin{align*}
\text{(b) such marriage is not solemnized according to the Parsi form of ceremony called 'Ashirvad' by a priest in the presence of two Parsi witnesses other than such priest; or}
\end{align*}\]
\[\begin{align*}
\text{(c) in the case of any Parsi (whether such Parsi has changed his or her religion or domicile or not) who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age.}
\end{align*}\]
\[\begin{align*}
\text{(2) Notwithstanding that a marriage is invalid under any of the provisions of sub-section (1), any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate.}
\end{align*}\]
husband before the dissolution of earlier marriage by a competent court, he or she shall be
punished under sections 494 and 495 of the Indian Penal Code. Marriage certificate is
required under section 6 but the certificate is not in itself the requisite of a valid marriage
amongst the Parsis. Section 17 states that the marriages of Parsi is not considered invalid
merely because the provisions of section 6(entry in a register) are not complied with.
Where there is no certificate (marriage certificate) and no entry in the marriage register
(sections 6-12) any other relevant evidence is admissible as proof of the marriage having
taken place. The register of marriage, however, is evidence of the truth of the statements
contained therein and non-compliance with requirement of section 6 results in penalties.
Section 12 prescribed penalties for the priest neglecting to carry out the requirements of
section 5. Section 14 prescribes penalty for making a false certification. Section 15 lays
down penalty for Registrar failing to make necessary entry in the register pursuant to
section 6. Section 16 prescribes penalties for secretting, destroying or attesting the register.

**Parsi Law on Divorce**

A Parsi husband or wife may file a suit to dissolve the marriage tie under the Parsi
Marriage and Divorce Act, 1936, the marriage of such husband or wife shall, with the
compliance of the requirements contained under the provisions of said section, be
dissolved. Parties of the Parsi marriage may sue for divorce on any one or more of the
grounds provided under the Act. When a court passes a decree for divorce, the court

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123 Section 8 of the Parsi Marriage and Divorce Act, 1936.
124 Section 31of the Parsi Marriage and Divorce Act, 1936: suits for dissolution- if a husband or wife shall
have been continually absent from his or her wife or husband for the space of seven years, and shall not have
been heard of as being alive within that time by those persons who would have naturally heard of him or her,
had he or she been alive, the marriage of such husband or wife may, at the instance of either party thereto, be
dissolved.
125 Section 32: Grounds for divorce- Any married person may sue for divorce on any one or more of the
following grounds, namely:-
   (a) that the marriage has not been consummated within one year after its solemnization owing to the
wilful refusal of the defendant to consummate it;
   (b) that the defendant at the time of the marriage was of unsound mind and has been habitually so up to
the date of the suit: Provided that divorce shall not be granted on this ground, unless the plaintiff (1)
was ignorant of the fact at the time of the marriage, and (2) has filed the suit within three years
from the date of the marriage

(bb) [ that the defendant has been incurably of unsound mind for a period of two years or upwards
immediately preceding the filing of the suit or has been suffering continuously or intermittently from
mental disorder of such kind and to such an extent that the plaintiff cannot reasonably be expected to
live with the defendant. Explanation.- In this clause,-
(a) the expression “mental disorder” means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

(b) the expression “psychopathic disorder” means a persistent disorder or disability of mind (whether or not including subnormality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the defendant, and whether or not it requires or is susceptible to medical treatment;

(c) that the defendant was at the time of marriage pregnant by some person other than the plaintiff: Provided that divorce shall not be granted on this ground, unless (1) the plaintiff was at the time of the marriage ignorant of the fact alleged, (2) the suit has been filed within two years of the date of marriage, and (3) marital intercourse has not taken place after the plaintiff came to know of the fact;

(d) that the defendant has since the marriage committed adultery or fornication or bigamy or rape or an unnatural offence: Provided that divorce shall not be granted on this ground if the suit has been filed more than two years after the plaintiff came to know of the fact;

(dd) that the defendant has since the solemnization of the marriage treated the plaintiff with cruelty or has behaved in such a way as to render it in the judgment of the Court improper to compel the plaintiff to live with the defendant: Provided that in every suit for divorce on this ground it shall be in the discretion of the Court whether it should grant a decree for divorce or for judicial separation only:

(e) that the defendant has since the marriage voluntarily cause grievous hurt to the plaintiff or has infected the plaintiff with venereal disease or, where the defendant is the husband, has compelled the wife to submit herself to prostitution: Provided that divorce shall not be granted on this ground if the suit has been filed more than two years (i) after the infliction of the grievous hurt, or (ii) after the plaintiff came to know of the infection, or (iii) after the last act of compulsory prostitution;

(f) that the defendant is undergoing a sentence of imprisonment for seven years or more for an offence as defined in the Indian Penal Code (45 of 1860): Provided that divorce shall not be granted on this ground, unless the defendant has prior to the filing of the suit undergone at least one year's imprisonment out of the said period; (g) that the defendant has deserted the plaintiff for at least two years.

(h) that an order has been passed against the defendant by a Magistrate awarding separate maintenance to the plaintiff, and the parties have not had marital intercourse for one year or more since such decree or order;

(j) that the defendant has ceased to be a Parsi [by conversion to another religion]: Provided that divorce shall not be granted on this ground if the suit has been filed more than two years after the plaintiff came to know of the fact.

32A. Non- resumption of cohabitation or restitution of conjugal rights within one year in pursuance of a decree to be ground for divorce.

(1) Either party to marriage, whether solemnized before or after the commencement of the Parsi Marriage and Divorce (Amendment) Act, 1988, may sue for divorce also on the ground,-

(i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or

(ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.

(2) No decree for divorce shall be granted under sub- section (1) if the plaintiff has failed or neglected to comply with an order for maintenance passed against him under section 40 of this Act or section 488 of the
shall send a copy of the decree for registration to the Registrar of marriages within its jurisdiction appointed under section 7 of the Act. The Registrar shall enter the same in a register to be kept by him for the purpose, and the provisions of Part II (section 3-17) applicable to the Registrars and registers of marriages shall be applicable, so far as may be, to the registrars and registers of divorces.

6. Jews Law on Marriage

The law of marriage and divorce of Jews are not codified in India. Even today they are governed by their religious laws. The book on “Marriage and Divorce” written by David Melzinar is followed in the courts. The entire law of marriage and divorce among Jews in India has been discussed by Mr. Justice Crumps in *Benjamin v. Benjamin*126. The Jews regard marriage not as a civil contract but as a relation between two persons involving very sacred duties. The Jews may, however, marry under the Special Marriage Act, 1954, in lieu of religious formalities as prescribed by their personal law because this Act is applicable to all citizens of the country irrespective of their religious affiliations. It is secular optional law applicable to all Hindus, Muslims, Christians, Parsis and Jews.

**Jews Law on Divorce**

Jews have no codified divorce laws. They are fully guided by the customary laws. If the spouses of Jews marriage opt to register their marriage under the Special Marriage Act, 1954, their divorce cases shall be settled within the provisions provided under the Act. The Special Marriage Act is a secular optional law for all the citizens irrespective of

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126 *ILR 50 Bom. 359.*
their religious affiliations. Two persons can either directly marry under it, or being already married under the rites of their personal law, get their marriage registered under it. Therefore, this secular optional law which provides adequate matrimonial remedies including divorce is applicable to all the citizens of the country, i.e., Hindus, Muslims, Christians, Parsis, Jews, etc.

This conceptual analysis of marriage and divorce reveals factual and legal unanimity than contrast in various matrimonial laws governing the relations and marital status of men and women in different communities. These religion-oriented matrimonial laws have been moulded in practice by trustworthy customs prevalent in various communities. The sacramental character of marriages has been shattered by the incorporation of contractual element in them as part of the secularization of the religious laws. The concept of divorce is infused statutorily in the body of all the matrimonial laws. It shows more uniformity than contradiction in them. This lead to believe that in areas like divorce, an attempt should be made to structure a common personal law based on the similarities under which the differences can be accommodate and reconciled to create a single, personal law for the whole country.

7. The Phases of Divorce

Divorce is much more complex than it appears on the surface. Ending a marriage relationship is not a one-time event that occurs in a courthouse; it is a process. Usually, a series of events and behaviours on the part of one or both spouses erodes the positive feelings toward one or the other or both. Over a period of time, one or both of the marital partners becomes convinced that the relationship is intolerable, or at least is not working.

The divorcing couple, as well as the entire family, experiences a variety of abrupt changes which impact nearly every aspect of their lives. Divorce is the most often an extremely painful series of events. According to one expert, divorce occurs in six phases:

The emotional divorce centers around the problem of the deteriorating marriage. This phase usually takes place over a period of time, which varies from couple to couple.

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128 Frustration Theory: The wedlock may be frustrated for a party to marriage even though the other party is not guilty of any marital offence. This may happen when he or she is suffering for mental unsoundness or has changed his religion or renounce the world or has disappeared for a very long period. If a person prefers
The positive feelings of love and affection are displaced by increasing feelings of anger, frustration, hurt, resentment, dislike, or hatred, and the perception that the positive feelings are gone forever. The attributes that attracted the couple to each other become less important in the presence of these negative feelings.

The **legal divorce**\(^{129}\) is based on grounds for the divorce. Even if “no-fault” divorce laws exist, one or both divorcing spouses usually states reasons why the other is at fault. The law usually recognises incompatibility as adequate reason for divorce. This phase of the divorce process involves the legal documentation that the couple is no longer married to each other.

The **economic divorce** deals with money and property. For many divorcing couples, this is the most volatile phase of divorce. Emotions often run high when it comes to dividing material goods accumulated during the marriage. If the couple cannot negotiate a fair property and asset settlement, the court will mandate what it considers a fair distribution to each of the divorcing persons.

The **co-parental divorce** deals with custody, single parent homes, and visitation. This is also a very emotional part of the divorcing process. Traditionally, mothers were automatically given custody of their children unless they were proven to be unfit. Today, most custody decisions are made on a case-by-case basis, and the child or children are placed with the parent deemed capable of providing the overall best environment for them. It is common for the non-custodial parent to pay monetary child support payments to the custodial parent. Sometimes the court awards joint custody in which both parents have more or less equal responsibility in the raising of their children. In such cases, the children may spend equal amounts of time living with each of the two parents.

The **community divorce** involves the changes of friends and community that every divorcing persons experiences. Married couples tend to socialize with other married couples. After divorce these two individuals no longer fit comfortably in the couples’

\(^{129}\) Fault Theory: According to this theory, if a party commits a matrimonial offence the aggrieved party may seek divorce form the delinquent spouse. It is only the matrimonial offence which is a ground of divorce. No criminal offence, howsoever heinous, is a ground for divorce. Traditionally, adultery, desertion and cruelty are considered as matrimonial offences.
environment. For economic reasons, one or both of the divorcing persons may have to move to a less expensive part of town or to a smaller house or apartment.

The psychic divorce\(^{130}\) manifests the problem of regaining individual autonomy. This simply means that each of the two divorcing persons has to adjust to living alone. Each loses the part of his or her identity that was established as being a part of a married couple. Daily decisions and activities are now carried out as an individual, rather than as an individual who is part of a couple relationships. There are several cases in which parties live separate and apart from each other for several years and just because one of the parties wants the marital bond to continue, there is no way out for the other. Some of these phases may take several years to complete, and some people never finish certain phases. The children have to process through each stage right along with their parents.

8. Factors Responsible For Divorce under Various Personal Law

Marriage is the very beautiful gift which Allah has given to his human being. It gives pleasure, security, peace, and family. In life, there is happiness and worries, which men/women have to face and try to solve problems. The base of the family is made on the marriage; if the marriage is strong, the family will be happy otherwise the whole family will suffer. Now-a-days the rate of divorce is increasing day by day due to increase in social problems. When people marry someone the expectations are very high. Now when both the spouses work it is difficult for them to give each other proper time. People have been getting divorces as long as people have been getting married. There are so many factors which are responsible for divorce in the society given:

1. **Family Structure**

Joint family or nuclear families are found in most communities of the world and they have the cases of marital disruptions in different level and ratio. The reasons of divorce under the nuclear family are sexual or socially gap between the spouses due to the job distance, problem in cohabitation, freedom, out of control from their family, equal status and adjustment problem, education and awareness.

\(^{130}\) Breakdown Theory: According to this theory marriage has been broken down without any possibility of repair (or irretrievably) than it should be dissolved without looking to the fault of any party.
There are different traditions, value systems, and role-performing practices exercised in joint family structure. New couple may not be satisfied and fell uneasy to adjust and adopt in the joint family guided by traditional practices and value system. Significant numbers of cases were affected by any kind of cruelty by her husband.131

(ii) **Lack of communication**

Many a times, couples are unable to express their feeling which in turn increases the communication gap between them. They do not discuss important things with each other which later on become a reason for the arguments later on.

(iii) **Age at Time of Marriage**

Adolescent marriages are more likely to end in divorce than are marriage that take place when people are in their twenties or older. This is true for both white and African Americans after age twenty-six for men and age twenty three for women, however, age at marriage seems to make little difference.132 Under Indian law, the bride should be eighteen years and the bridegroom is twenty one years at marriage.

(iv) **Sexual matters**

Sexual matters also have a major impact on the growing rate of divorce. Sexual incompatibility and dysfunction lead to most of the divorces in the present scenario. This can also lead to infidelity caused by one of the partners.133

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(v) **High Expectations**

As Sam Walton said, "High expectations are the key to everything" unless of course we are talking about marriage. Expectations and laziness can go hand in hand when it comes to predicting whether a marriage will end in divorce.

That woman who buys the expensive wedding gown probably also has very high expectations of marriage. Men and women both make a lot of assumptions when it comes to marriage and what to expect from a marriage. These assumptions are based on many variables and problems arise when the outcome (marriage) doesn't meet the assumptions or expectations.

Marital expectations rarely align with the realities of what life is like inside marriage. Communication and expectations play a role in the outcome of marriages. Communication before marriage can keep down any unrealistic expectations one may have of marriage.\(^{134}\)

(vi) **Adultery**

In a large number of divorce cases adultery drives couples apart and is difficult to recover from. Adultery\(^{135}\) is an obvious sign that something is wrong with the marriage, or something is not right in that person’s life. Either way, the problem won’t go away by itself and will need commitment from both spouses to be open and honest with each other about moving forward.\(^{136}\)

Valentine’s Day, the official holiday of love, evokes images of happy couples wrapped in passionate embraces. While married couples know that long-term relationships

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\(^{136}\) This is a guest blog post from Bari Z. Weinberger, a Parsippany, New Jersey divorce and family law attorney.
take more effort than occasional jewelry and flowers, Valentine’s Day might be a good time to consider the attention that a man/woman gives to each other.

(vii) **Work Stress and Obligations**

Although not as common as adultery or financial troubles, work stress is a big factor that leads couples to go their own ways. Whether one or both spouses have demanding, all-encompassing jobs, this can, over time, lessen or sever the bond that originally brought them together. Persons who have either uncommon work hours, such as a night shift, or highly demanding careers, tell a story of slowly losing touch with their spouse.

(viii) **Depression**

Depression can place a dreadful strain on a marriage, especially if it hasn’t been clinically diagnosed. Often characterized by extreme mood swings and a severe detachment from life and the people around them, a person may seem like themselves one moment and then suddenly swing into full blown depression in the next. People who are depressed often don’t seek treatment, and their spouse silently puts up with the problem, growing more distant or resentful every day. Depression doesn’t need to lead to divorce.  

(ix) **Addictions**

Most of the couples part ways from their partners because of their habit of drinking alcohol and smoking. This is one of the most common factors leading to divorce. Many times one of the partners continues their bad habits in order to irritate the other partner. When one spouse becomes addicted, whether it’s to gambling, drinking, the Internet, or other, the road to recovery is often a long and painful one. The key with any addiction is to try to get your spouse to recognize that they have a problem, and to get them to seek help. Successfully treating the addiction may allow you, or your partner, to have a healthier relationship. Without attention and proper nurturing, a marriage is sure to slowly unravel and drift apart.

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(x) **Financial problems**

Financial trouble is another key cause of divorce. It can be that a couple isn’t on the same page financially, meaning one is a spender and the other a saver – and they come to resent each other because of it. Often, income instability drives one or both spouses to a state of stress and heightened arguments.\(^{138}\)

Money matters can cause friction between the couples. Different people have different spending habits and that becomes one of the major reasons behind the ongoing fights which later on turn into major reasons for divorce. Financial problems lead to almost 45% of divorces in society.

(xi) **Education Level**

Inequality in education between the spouses creates different ideas about their lives, ways of thinking and expectations. Therefore education is an important decisive factor in rating marital relationship with regard to happiness. Generally, the level of education of women is found low in comparison to men. That’s why the level of divorce is found in different level of educational background. Educational condition performs multidimensional role both in occurrence of divorce or compatibility in marital relations. But impact of education able to collect strength and ideas against injustices and raises more expectations and ambitions.

(xii) **Advanced technology**

The new age society has got numerous different avenues, which enable people to get closely acquainted. There is increased interaction in the workplace. In the day and age of mobile telephony and internet chatting, it is much easier and simpler to make friends and remain in constant touch with them. All this combined may result in lesser time for one to spend with his or her spouse and greater interaction with outsiders. This is one of the major causes for an increase in extra marital affairs and its consequent impact upon the rate of divorce. Advancement of Education and cultural changes also affects women Behaviour. Some women can create a circumstance which can lead towards divorce.

(xiii) Incompatibility differences

Incompatibility or mismatch is causes of divorce which is most commonly found. Incompatibility can be sexually, intellectually and emotionally. In these cases it is difficult to live with a person who cannot fit with. Differences vary from person to person and marriage to marriage; petty differences or boredom are not the valid reason. According to Frolick, “every divorce is unique like a snow flake”.\(^{139}\)

(xiv) Position of Woman of Today

Today, the Hindu woman has acquired both economic and political freedom. She has begun to attack the pre-existing social conceptions as unjust and inequitable. She demands that there should be consistent and logical morality, a single standard both for man as for woman. She rightly point out that all women cannot be virtuous unless all men also are equally so. There cannot be one standard for the male and another for the female.

(xv) Artificial Insemination

As a result of this so called progress in biological science, in recent years, the possibility has been reached off a woman begetting children without sexual gratification. If this practice is to come to stay, and wide spread, the veryfamily life which is the basis of human society might be destroyed. The future course of its development might lead us to a stage when “babies are shown and grown in a laboratory” and sexual intercourse could be completely divorced from any procreative purpose, indulged in solely to gratify desire as drinking wine or sugar candy\(^{140}\). If this method were to become common new and novel legal problem are bound to crop up\(^{141}\).

(xvi) New Kind of Sex Intimacies

According to authentic sources, many young people today are indulging in sexual intimacies without gravely endangering their social position. Great intellectualists’ freely proclaim that sex relations before marriage should be encouraged and that ‘there is nothing in adultery which should make it a grave offence’. They say that happiness is an

\(^{139}\) Larry Forlick, 2011.
\(^{140}\) See the Article on Artificial Insemination by G.P.R.Tallim Q. C. in 1956 Canadian Bar Review, pp.27 &166-187.
\(^{141}\) In America nearly 9, 850 women have been impregnated by artificial means.
inherent right of human beings. The recklessness and the restlessness which manifest in all sex experimentations naturally affect the fabric and functioning of the family giving rise to an increase in illegitimacy and divorce.

Phenomena of divorce is common in all societies and cultural, still it is not thought to be a good sign for that specific family because it bring several difficulties for them. Apparently there are some common causes which are attached to the happening of this act.

The modern day life style is full of pressures on all fronts of the human social life. There may be pressures at the workplace, peer pressures to have a better life style and soon and so forth. This may result in an individual leading a highly stressed out life style. As the stress accumulates, it automatically searches for avenues to let out the steam. The easiest avenue is one's spouse. Thus a small argument may turn into a big fight and it may result in applying violent methods on the part of the husband or wife. Long term physical abuse can be a major factor in the decision to file for divorce.

It is found that psychological factors are the major perceived causes of divorce. Psychological factors include communications problems which are the most significant cause towards divorce. Discussing feelings about things that are personally important is a crucial aspect of a relationship that is not always practiced by couples. Some couples may not put enough importance on pre-marital issues only to realize during marriage that those issues become the source of a major turning point. Proper communication skills are important for resolving problems arising during the course of a relationship. However, many couples fail to communicate when they are married, and as a result, they reach a point of no return. Consequently what starts out as a seemingly insignificant issue can grow to be a very serious problem.

Another psychological cause can be lack of understanding is another cause which can lead towards divorce. There are a number of different misunderstandings that can be uncovered during the lifetime of a marriage. This is often cited as one of the cause of divorce. It is common for a person’s personality to change over time; especially during the younger years. A change in likes and dislikes in any and all aspects of the relationship can be cause of the couple to drift apart.
Social factors leading towards includes good relationship with in-laws, which is very important in the Indian cultural context and maintaining good relationship with in-laws are more important for female due to join family system and at times there may be nothing wrong with the marriage itself. It may be that both the given individuals are two truly good and honest people. Yet differences may crop up due to bad relation with in-laws lack of compatibility amongst the other family members is turning out be an ever-increasing cause for divorce.

Another social concern includes financial matters, perhaps more today than ever before in history. As men mingle, the status of an individual is increasingly determined by material wealth. A lack of the ability to keep abreast with the peer group in this regard may cause unnecessary and avoidable stress on the married life of any two people. Even otherwise if there is a dearth of money to meet the basic household expenses, there is bound to be a lot of friction amongst the husband and wife on this account. Any intolerable increase in finance related troubles could be a cause that leads to divorce. Our research also provides information that attitude of men play a very important role in separations’ or divorces as relationship of husband with other Women or infidelity is one major cause of the increase in divorce. The new age society has got numerous different avenues, which enable people to get closely acquainted. There is increased interaction in the workplace. In the day and age of mobile telephony and Internet chatting, it is much easier and simpler to make friends and remain in constant touch with them. All this combined may result in lesser time for one to spend with his or her spouse and greater interaction with outsiders.

This is one of the major causes for an increase in extra marital affairs and its consequent impact upon the rate of divorce. Advancement of Education and cultural changes also affects women Behaviour some women can create a circumstance which lead towards divorce.

9. Consequences of Divorce

Divorce can cause damages not only on children but also on the society as a whole. It has become easy and common. There are various reasons pertaining to this change in society. The dignity and sanctity of marriage has gone down with the passage of time. People do not believe on the importance of marriage as they did before. Marriage is
considered a social taboo; people follow certain rituals to run the contract of agreement somehow, even if they fail to make it a very successful marriage. In current times, our society has changed its views about divorce. Now divorce is part of family life. It does have some major negative effects also. Divorce rate is increasing day by day and it is the case with emotional instability, lack of respect for the relations and family.

(i) **Family Status**

In family life, divorce permanently weakens the relationship between children and parents. It leads to destructive ways of handing conflict, diminishes social competence, leads to early loss of virginity, and it diminishes young adults’ sense of masculinity or femininity. It leads to more trouble in dating, to more cohabitation, to higher divorce rates later in life, to higher expectations of divorce, and to less desire for children.  

(ii) **Effect on Children**

Protection of children is the second important consequence. Even though courts adjudicate who will look after and how long the children will be looked after by whom the problem remain precarious. The divorce brings down standard of living which affects the growth of the children. This emotional distance between children and parents lasts well into adulthood, and may become permanent. As adults, children of divorced parent families are half as likely to be close to their parents as children of intact families are. They have less frequent contact with the parent with whom they have grown up, and have much; much less contact with the divorced parent from whom they have been separated by the divorce.

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(iii) **Economic effect**

Predominantly the women once rated those days as assets in economic upliftment. In most of the caste which were referred there is always a bride price. Even in Africa and other countries still the bride price is prevalent. But unfortunately in India, there is a total menace of dowry. In India particularly in the Northern Part almost every day becomes exceptional if there is not heading in the newspaper on dowry death. In South India there is a place called Salem which is a district head-quarter. It is reported recently a specific caste or few castes do follow killing of female infants on immediately after its birth and the reason attributed is the dowry menace. Rather today the society prefers to have sons rather than daughters. The general thought of economic prosperity may provide relief to such murders do remain remoteful to reality. Thus, the economic dependence does play an important role when we talk on divorce\(^{146}\).

(iv) **Subsequent Marriage**

Another important consequence is that of the problem of second marriage/ widow marriage / subsequent marriages. If the children are left with mother, the divorced women find very difficult to get another husband. There are basically three factors namely:

1. age of the divorced woman
2. age of group of children
3. economic dependence

Lets us assume a divorced woman get married to another person still there is a problem of adjustment with the children of her former husband to the children of her second husband or subsequent husbands. Moreover, the divorced men are almost free from any such stigma in a country like India and therefore they do not suffer from such consequences in the extreme way.\(^ {147}\)

(v) **Crime effect**

There are two sides to citizenship: fulfillment of citizenship duties and its opposite: failure and abandonment of citizenship duties. The negative aspect, the failure and abandonment aspect of citizenship, is more widely available in studies of the effects of

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divorce, and can be seen in crime, abuse and neglect and drug taking behaviors. Divorce significantly affects the rate of crime. The increase of crime rate in the society has very evident linkage with increase divorce rate. Divorce is a direct threat to the society, and it is spreading like a disease.  

(vi) **Child abuse**

Child abuse is intimately related to later delinquency and violent crime, and here too divorce is implicated. Higher levels of divorce mean higher levels of child abuse. Remarriage does not reduce this level of child abuse and may even add to it. Serious abuse is a much higher among step-children compared with children of intact families. Adults who were sexually abused as children are more likely to have been raised in step families. The rate of sexual abuse of girls by step-fathers’ ranges from six to seven times as likely, and may be as much as 40 times more, when compared with such abuse by biological fathers in intact families. Family structure predicts huge differences in rates of fatal child abuse. Professors Margo Wilson and Martin Daly of the Department of Psychology at McMasters University, Canada, report that children two years and younger are seventy to a hundred times more likely to be killed at the hands of step-parents than at the hands of biological parents.

(vi) **Personal Effect: Suicide**

Divorce affects children and parents badly. It can cause damage to their emotional, psychological, cognitive, and physical development. Separation of parents deprives them from the love of the parents. They have to love separately from one parent and sometimes from both of them. They keep on longing for the family life and for the love of both the parents. Higher divorce rates in a society lead to higher suicide rates among children. Prior to the ‘divorce revolution’ of the 1970s unemployment was the biggest correlate with suicide, but that has changed. The work of Professor Patricia McCall of the Department of Sociology of North Carolina State University now shows that the largest demographic indicator of suicide is the family structure within which the person resides, and that the

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divorced family structure is most dangerous.\textsuperscript{150} This link between the rises in adolescent suicide in the past three decades with parental divorce has been found again and again in the literature,\textsuperscript{151} and in cross-cultural studies of Japan and the United States.\textsuperscript{152}

For the child the suicide is often triggered by the child’s thoughts that his parents reject him,\textsuperscript{153} or have lost interest in him.\textsuperscript{154} Such a perception on the part of the child may sometimes be based in reality and not be just a figment of his imagination.\textsuperscript{155} The divorced parents also go through a tough time, which is sometimes prolonged for one or the other partner. The emotional trauma and depression may lead to suicide.

(vii) Emotional Effect

Divorce is often one of the most traumatic periods in a person’s life. Studies show it is the most stressful event in life, worse than the death of a loved one. Separation and Divorce is often associated with deep grief-based emotions over the loss of the desired-for relationship. Emotions may include sadness, lethargy, depression, anxiety, anger, and other emotions.

The emotional trauma can be exacerbated when the couples chooses an adversarial approach to the legal divorce, which itself adds additional stresses over and beyond the normal grieving. When in the anger-phase of grief, it can be tempting for a spouse to become adversarial, which can easily make things worse. Mental health therapy can be extremely beneficial during a divorce, in order to address the many expectable emotions. Non-adversarial methods of dispute resolution, such as mediation and

\textsuperscript{150} Patricia L. McCall and Kenneth C. Land, “Trends in White Male Adolescent, Young-Adult, and Elderly Suicide: Are There Common Underlying Structural Factors?” Social Science Research, Vol. 23 (1994), pp. 57-81
\textsuperscript{155} Patrick Fagan, Ph.D. BIO, “The Effects of Divorce on Children”. 

64

**(viii) Medical and Psychological Effect**

Recent sociological studies have pointed to a variety of long-term economic, social, physical, and mental health consequences of divorce, although the full extent of such effects remains hotly debated. All the studies to date suffer from an inherent methodological weakness which researchers have not yet found a solution to: establishing the relevant baseline for comparisons.

Any list of formal sociological articles on aftereffects of divorce would quickly become obsolete, but among the more accessible books are works by Wallerstein\footnote{Wallerstein, Judith S.: Julia M. Lewis, and Sandra Blakeslee (2000). The Unexpected Legacy of Divorce: The 25 Year Landmark Study Hyperion.} (report negative effects of divorce on children) and Mavis Hetherington\footnote{Hetherington, E Mavis, John Kelly (2002) For Better or For Worse Divorce Reconsidered W. W. Nerton & Company.} (reports that not all kids fare so badly, and that divorce can actually help children living in high-conflict homes such as those with domestic violence).

Recent longitudinal studies have reported that most divorced people are no happier after divorce. University of Chicago sociologist Linda Waite analyzed the relationships between marriage, divorce and happiness using the National Survey of Family and Households. She reported that unhappily married adults who had divorced were no happier than those who had stayed married.\footnote{Waite, Linda J.; Don Browning, William J. Doherty, Maggie Gallagher, Ye Luo, and Scott M. tanley (2003).“Divorce Make People Happy”? Findings from a Study of Unhappy Marriages’ http://www.americanvalues.org} Some studies report that cohabitation before marriage is correlated with an increased divorce rate.\footnote{Bramlett, Matthew D.; William D. Mosher (2001-05-31). “Marriage Dissolution, Divorce, and Remarriage: United State”(PDF) DC National Center for Health Statistics Advance Data’ 323.}

The actual question of interest is whether being a child of unhappy parents who divorce is better or worse than being a child of unhappy parents who do not divorce. Establishing data for that comparison would require being able to identify with reasonable
certainty the subset of non divorced parents who are nonetheless deeply unhappy with each other, something no researcher has found a way to do at a meaningful scale.

Children of divorced parents (those entirely from unhappy families) are reported to have a higher chance of behavioral problems than those of non-divorced parents (a mix of happy and unhappy families). Studies have also reported the former to be more likely to suffer abuse than in intact families, and to have a greater chance of living in poverty.\textsuperscript{161} Since by definition all children of divorced parents had lived in unhappy homes, they unsurprisingly reported numerous unhappy experiences.

It is reported that in cases of extremely high conflict, divorce can be positive. An article in the Oklahoma Bar Journal defines “high conflict” in terms of ongoing litigation, anger and distress, verbal abuse, physical aggression or threats of physical aggression, difficulty in communicating about and cooperating in child care, or other court-determined factors.\textsuperscript{162} Various Studies done on this subject have claimed that people who have been in divorced families have higher rates of alcoholism and other substance abuse compared to those who have never been divorced.\textsuperscript{163} The studies have come out with the following conclusion about the divorce families:

- Have high rates of clinical depression. Family disruption and low socioeconomic status in early childhood increase the long-term risk for major depression.\textsuperscript{164}
- Seek formal psychiatric care at higher rates. Studies vary, suggesting from 5 to 21 times the risk, and very over whether men or women are more seriously affected.\textsuperscript{165}

• In the case of men, are more likely to commit suicide at some point in their lives, according to a study by Augustine Kposowa, a University of California at Riverside sociologist.\textsuperscript{166}

• Have lower life expectancies overall.\textsuperscript{167}

• Studies have also claimed positive correlations between divorce and rates of stroke\textsuperscript{168}

• Married cancer patients are also more likely to recover than divorced ones.\textsuperscript{169}

• Acute infectious diseases, parasitic diseases, respiratory illnesses, digestive illnesses, and severe injuries.\textsuperscript{170}

• Heart problems. Some research suggests that childhood trauma; including parental divorce can lead to much greater risk of heart attack in later life.\textsuperscript{171}

Combined with job stress, divorce led to a 69\% increase of death rate among men with above average risk of heart disease.\textsuperscript{172}

• Rheumatoid arthritis and osteoarthritis. A 2002 article in the Journal of Rheumatology shows a 30\% increase in risk at any given age.\textsuperscript{173} A 2003 article in

\textsuperscript{170} Lawson, Erma Jean; Tanya L. Sharpe (July 1 2000). Black Men And Divorce: implications For Culturally Competent Practice. Minority Health Today.
the Canadian Journal of Public Health finds that parental divorce leads to increased risk of arthritis for children later in life.  

- sexually transmitted diseases For example, in Uganda “Results from a baseline survey of HIV-1 infection in the cohort of over 4,000 adults (over 12 years old) showed a twofold increase it risk of infection in divorced or separated persons when compared with those who are married.”  

As is obvious from above discussion, the social aspects act as two-edged knife in such situations. Whatever the causes of divorce, its effects present the same issues all over the world. Divorce affects the society adversely, Living in an abandoned situation feels like crushed to ground at times. Children suffer from loneliness, deprivations, and heartaches. Living life without mother in the house or father figure in the family can cause serious problems in all ages of children but particularly in adolescent. The complete social system go all in vain, physical and psychological abuse, poor performance in academic life, drop out are few of the examples of negative effects of divorce. The rate of divorce is higher among educated families, although such laws had been made which totally support women seeking divorce and the whole procedure has been made easier. Sometimes the situation becomes worse due to lack of compromise from both sides and egotistical attitude. Lack of tolerance and compromise among couples plays a vital role in increase in rate of divorce in India. Compromise is a key factor which can make life easier and save from destruction. The final thing to know upfront about divorce is that divorce is not the end of the world. Divorce is a crisis involving a very real end, but it is also a very real new beginning. Divorce is the end of a chapter of life, but not the end of life itself (even though it may feel that way). In the midst of the divorce the crisis are seeds of opportunities for remaking life into something again enjoyable new and creatively good. It is important to keep this hopeful and true message in mind as the process unfolds.