CHAPTER – I

INTRODUCTORY REFLECTIONS

Marriage is the foundation on which the institution of family is built up. Family is the unit of society on which the super structure of entire society and stability of social institution would stand. A happy matrimonial life is undoubtedly the foundation for successful family system. On the contrary, the sick and disgruntled marital relation has their repercussion not merely upon the related spouses but also their children. Its impact on society may give rise to social problems.

In our contemporary society, divorce is an important aspect of personal laws of every community. No longer is marriage an indissoluble union among any community in any country. Only question is how copiously it is available & how much it is availed of. Stability of marriage is the sine qua non of every society, yet we should not confuse stability with indissolubility. A marriage which has broken down irretrievably is not a stable marriage, and stability of marriage requires that it should be dissolved with maximum fairness and minimum bitterness, distress and humiliation.

In most countries, divorce requires the sanction of a judge or other authority in a legal process to complete a divorce. A divorce does not declare a marriage null and void, as in an annulment, but divorce cancels the marital status of the parties, allowing them to marry another.

According to Oxford Dictionary Divorce is the legal dissolution of a marriage. Divorce is a severance and separation. It is a break up of marriage. Divorce means the legal termination of a marriage relationship. A divorce -- referred to in some states as dissolution of marriage -- is a decree by a court that a valid marriage no longer exists. A divorce leaves both parties free to remarry. It usually provides for division of property and makes arrangements for child custody and support.

In England, before 1857, the law relating to marriage became a part of canon law over which the ecclesiastical courts (Church courts) claimed exclusive jurisdiction. In this way jurisdiction over matrimonial causes was exercised by these courts. Then divorce was unknown. In the rapidly advancing English society of eighteenth and nineteenth centuries
the need for divorce was so pressing that its recognition became imperative. All the
ingenuity of the Church failed to avert its reception in English law. In 1857 the first
Matrimonial Causes Act was passed which not only repudiated the doctrine of
indissolubility of marriage, but also transferred the entire jurisdiction in matrimonial
causes from ecclesiastical courts to civil court. Subsequently, many reforms were made.
The same have now been consolidated in the Matrimonial Causes Act, 1973, and which
has been supplemented by the Domicile and Matrimonial Proceedings Act, 1973.

In contrast to the Western world where divorce was relatively uncommon until
modern times, divorce was a common occurrence in at least two pre-modern societies:
Japan and the Muslim world. The ancient Athenians liberally allowed divorce, but the
person requesting divorce had to submit the request to a magistrate, and the magistrate
could determine whether the reasons given were sufficient.

Divorce was rare in early Roman culture but as their empire grew in power and
authority, Roman civil law embraced the maxim, “matrimonia debent esse libera”
(marriages ought to be free), and either husband or wife could renounce the marriage at
will. Though civil authority rarely intervened in divorces, social and familial taboos
guaranteed that divorce occurred only after serious circumspection.

Under Indian law, the matrimonial causes are comparatively of recent growth.
Muslim law has all along recognized divorce, but it never had anything akin to
matrimonial causes. Divorce has been recognized in some Hindu communities by custom,
otherwise Hindu marriage has been a sacramental (i.e. essentially indissoluble, apart from
other aspects) union. Thus, among Hindus the question of existence of matrimonial causes
could not have arisen, and, broadly speaking, India did not have anything like matrimonial
causes before the advent of British rule.

In 1869, the Indian Divorce Act was passed which for the first time introduced
matrimonial actions of divorce, nullity of marriage, judicial separation and restitution of
conjugal rights, and ancillary reliefs of alimony, and custody, etc. of children. But the Act
applied to very limited persons; Christians alone. Four years earlier, the Parsi Marriage
and Divorce Act, 1865 was also passed which recognized matrimonial causes Act, 1857.
This and its successor statute, the Parsi Marriage and Divorce Act, 1936 make provision
for divorce, nullity of marriage, judicial separation and restitution of conjugal rights.
However, till 1869, Christian and Parsis were in very small and insignificant (so far as concerned with the present subject) number.

The Dissolution of Muslim Marriage Act, 1939 was passed to enable the Muslim wife to obtain divorce on certain grounds, as before 1939 there was hardly any ground on which the Muslim wife could ask for divorce. This enactment enables the Muslim wife alone to file a suit for divorce. This is only aspect of the Muslim matrimonial causes where a suit for divorce can be filed in a court of law. Of course, under general law a suit for restitution of conjugal rights can be filed by any Muslim husband or Muslim wife.

Polygamy can be practised by Indian Muslim men only. It has also been noticed that other men who wish to practice polygamy or who are unable to obtain divorce from first wife, convert to Islam for the sake for having multiple wives. Under Muslim law and marital jurisprudence, divorce is accepted and referred to as talaq. However, divorce is considered the most hated of all lawful things in the sight of Allah.

The special Marriage Act, 1954 makes provision for all the four matrimonial causes. It also provides for ancillary reliefs. The Hindu Marriage Act, 1955 introduced all the four matrimonial causes for Hindus. Some efforts at regional level to introduce matrimonial causes were made. Earliest was made in 1930 when the Baroda state introduced divorce for Hindus. The Bombay state did it in 1947 by the Hindu Divorce Act. Earlier in 1946 it has passed the Prevention of Hindu Bigamous Marriage Act. The province of Madras did it in 1949 by enacting similar statutes. Saurashtra state did it in 1952. In the erstwhile states of Travancore and Cochin statutes reforming the law of marriage and divorce were passed some of which recognized divorce by mutual consent, such as under the Travancore Nayar Act. The Hindu Code Bill, 1948, which was drafted by a Hindu Law Committee under the Chairmanship of Sir Benegal Nar Singh Rau, for the first time stipulated to introduce matrimonial causes for all Hindus. But the measure could not make much head way, mainly on account of opposition from a conservative section of Hindus; ultimately the Indian Parliament passed the Hindu Marriage Act, 1955 which recognized all the four matrimonial causes for all Hindus.

Thus, in 1955 India reaches a stage when it recognizes all the four matrimonial causes for its entire people except the Muslims. Among Muslims the position is that a wife can file a suit for divorce under the dissolution of Muslim Marriage Act, 1939 and a
Muslim (male or female) can ask for restitution of conjugal rights by filing a suit in a civil court. Just as in India we do not have a uniform law of marriage, so also we do not have a uniform law of matrimonial causes; every community has its own personal law. The question of conflict of inter-communal law hardly arises in India, though conflict of laws situation in personal laws do arise at an international level.

In India, Divorce and remarriage are legal; however Indian society views a divorced woman harsher than a divorced man. Problems of a divorced woman involve finance, parental support, dowry, child support, security, social stigma and remarriage. Often divorced men seek unmarried women from poorer background for remarriage. With law favoring custody of children with the mother, it becomes increasingly difficult for a divorced woman to remarry. Similar is the case with widowers failing to support another widow, thus making remarriage for a woman more difficult. Families of widowers sympathize and console the widower with remarriage to an unmarried woman. Such practice questions the law for allowing divorced man or widower to remarry an unmarried woman.

A lot of studies have tried to understand why the divorce rate in India has been low for so many years and why it is slated to increase recently. The present research work concentrates on the latter question... divorces rates in the context of modern society. Here are some pointers as to why divorces rates are increasing:

Greater societal acceptance of divorcees in urban areas and also a gradual acceptance of divorced daughters by families (not in rural areas) because families have started to believe that perhaps their daughter can have a life after marriage and without a husband.

Now a days, India is going through many changes from boosts in the economy by Information Technology companies making huge profits from off-shore contracts to the rise in more open dating and advent of Indian women marrying late and pursuing professions instead.

With such noticeable changes, the fabric of Indian society is being affected by this shift. Indian women are educating themselves, choosing professional careers and becoming independent. The impact of cable and satellite television, the internet and
Western influences have all contributed to women raising their expectations of marital life. Financial security and dependency on the man, as once practiced in the past, is now no longer the case. Professional women are making their own choices and financial stability is giving them the confidence which was not present in the past. However, this evolution is now damaging the sacred institution of marriage and consequently separation and divorce rates in India are rising.

Where marriage was central to the social status of the Indian women, today it is not the case as younger women are breaking the mould and are becoming more intolerant of their partners. Many unhappy women are now taking the stance to leave relationships compared to those of the past that took everything that was literally thrown at them, for the sake of honour, family and society. Abusive relationships are one key reason for many splits, where the women feel enough is enough. Violent and abusive partners are no longer being tolerated. Families of the women are also becoming more understanding. In general, Indian women today, are becoming physically, financially and sexually more demanding than past generation.

Conversely, many unhappy Indian men are divorcing women due to the stress, tension and pressure of 21st century Indian marriages and thus, increasing their urge for personal freedom. They are finding it harder to adjust to the changes in women. Extra-marital affairs and break-downs in communication, all play a role too.

For previous generations, divorce was a much harder thing to do or accept. The financial or emotional support today was simply not there. And women more so than men would not have the courage to leave and would accept whatever the man did in the marriage. Be it drink, have affairs or gamble.

However, the option for divorce is still class led because the rise is being seen amongst the educated, wealthier middle class. The lower classes still do not see it as an option due to stigma, costs and the delay in the justice system which can take years for cases to be settled, especially if they involve children.

The conventional model of a rising divorce rate during the process of modernization is a staple element of the sociological theory of the family. This generalization is challenged, however, by traditional high-divorce societies, primarily in Islamic
Southeast Asia, which have experienced a decline in divorce with modernization. Initially in the common law jurisdictions the notion was that the objective of divorce law is the punishment of the guilty party, and therefore it was necessary that one of the parties must be guilty of some matrimonial offence and the other should be totally innocent. If in any sense the other party was responsible for, or associated with, the guilt of the guilty party he or she could not get relief.

The guilt or offence theory of divorce is essentially a nineteenth century concept where the society abhorred divorce as an evil, as devil's mischief, and therefore that society could agree for divorce only on that basis that one of the parties has committed some sin, some very heinous offence against marriage. Thus, adultery was a ground, since it undermined the very foundation of marriage the exclusiveness of sex relationship; cruelty was a ground as it is destructive of mutual confidence, and desertion as it is the negation of very marriage, of consortium. As a corollary to the guilt of one party, the other party was required to be totally innocent. Since we adopted the guilt theory in both the statutes, the innocence aspect of the other party was also emphasized. Under both the statutes no petition will succeed on the ground of adultery if the petitioner has been accessory to or connived at or condoned the adultery of the respondent. Similarly if cruelty was condoned, petition must fail. Collusion between the parties or improper delay in filing the proceedings is also fatal to the petition. Under the Hindu Marriage Act, if it can be shown that the petitioner himself or herself is trying to reap advantage of his own wrong or disability, then divorce cannot be obtained.\(^1\)

This nineteenth century concept of divorce was out-moded even at the time when it was adopted. By 1955 the concept was eroded of its basic structure in some countries by a frontal attack, by enlarging the grounds of divorce so much that incompatibility of temperament was made a ground of divorce; in some, by outmaneuvering it, in as much as snoring and nagging were considered to amount to cruelty. Not only this, collusive divorces in many western countries become very common. But all this was not enough to solve the social problem.

\(^1\) Section 23 of the Hindu Marriage Act, 1955.
Breakdown of marriage as the sole basis of divorce is now recognized in several countries of the world. The Soviet Union recognized it in 1944. In most of the communist countries it is recognized as basis of divorce. In some states of The United States it is recognized. In England so far considered the citadel of conservatism it was recognized in 1969. It is more and more now accepted, that for divorce, why should it be necessary for one party to prove that the other party has in a culpable manner violated the marital bond. To use the language of the law of the German Democratic Republic, "If a marriage ... has lost its significance for the married partners, for the children and thereby for the society, if it has become merely an empty shell, it must be dissolved, independently, whether one of the married partners, or which of the two, bears the blame for its disintegration”.

In Hindu law the breakdown principle in the third form of divorce was introduced in 1964, and in 1970 in the Special Marriage Act. This was done by amending the last two clauses of divorce of the two statutes. The new Section 13(A) of the Hindu Marriage Act laid down that if parties have not resumed cohabitation for a period of two years or more after a decree of judicial separation, or if a decree of restitution of conjugal rights has not been complied with for a period of two years or more, then either party may sue for divorce. The provision in Section 27(2) of the Special Marriage Act is identical except that the period therein is only one year. When the Hindu law provision came for interpretation before our courts, our courts tested it on the touchstone of guilt theory and looked in the question very closely whether the petitioner is thereby not taking advantage of his own wrong, and if they found culpability in him, they refused the relief. In most of the cases the question came in this form: a wife obtained a decree of restitution of conjugal rights but the husband did not comply with it. After a period of two years the husband sued for divorce. The courts said that since he himself has not complied with the decree, he is in the wrong, and if divorce is allowed to him, it will amount to giving him an advantage of his own wrong.

Looked at in this manner the argument is not merely plausible but appears convincing. But the point is, if non-compliance is a criterion of breakdown of marriage, then divorce should be granted, without bothering which of the two parties bears the blame for the disintegration of marriage. It is very unfortunate that neither the Law Commission, the report of which constitutes the basis of the Marriage Laws (Amendment)
Act, 1976, nor the framer of the Marriage Laws (Amendment) Bill, 1976, looked at this aspect of the matter. In this regard only suggestion that has been made is that the period of two years separation under the Hindu Marriage Act, should be reduced to one year. One wished very much that Parliament should have enacted a simple provision that if parties have ceased to cohabit for a period of two years (irrespective of fact whether there is a decree of judicial separation or restitution), then either party may sue for divorce. A provision like this would help us in achieving the goal of a uniform civil code,\(^2\) as such a provision would be, and it is submitted, acceptable to all communities. It will not work hardship on the women, as, even after divorce, under both the statutes, a wife, who has no means of livelihood, can claim maintenance from her divorced husband.

Adultery, cruelty and desertion have now been made grounds of divorce under the Hindu Marriage Act—thing which Parliament should have done right in 1955. Under the Special Marriage Act, these were already grounds of divorce, though the minimum period of desertion was three years. Now it is reduced to two years. Under the Special Marriage Act, if one of the parties to the marriage is undergoing a sentence of imprisonment for seven years or more, the other party could sue for divorce after the respondent had undergone imprisonment for three years. Now this bar is removed. A party can ask for divorce the moment the term of imprisonment begins. Originally, under both the statutes insanity, leprosy and Venereal Disease were grounds of divorce provided the disease was, at least three year old. Under both the statutes this three year period is omitted. A definition of insanity has been also inserted.

Both the statutes originally stipulated that ordinarily no divorce petition can be moved unless a period of three years has elapsed from the date of solemnization of marriage. In English law such a provision existed and it was called fair trial clause: every marriage should be given a fair trial. The Act has now reduced the period to one year\(^3\) it is submitted that the fair trial rule has some relevance to divorce by mutual consent, but it has no relevance when marriage is sought to be put to an end on account of guilt of one party or on account of breakdown of marriage.

\(^{2}\) Article 44 of the Indian Constitution.
\(^{3}\) Section 14 of the Hindu Marriage Act, 1955.
Another welcome provision is the introduction of divorce by mutual consent⁴ under the Hindu Marriage Act. Under the Special Marriage Act such a provision already exists. The protagonists of the consent theory have maintained that mutual fidelity in marriage can prevail only when parties have the same freedom of divorce as they have of marriage. Just as an individual may err in entering into any other transaction, he may as well err in marriage. If two parties realize that this is so, then they should be permitted to put the marriage to an end by mutual consent. But the drawbacks of consent theory are that either it makes divorce too easy or too difficult. To prevent hasty divorces by mutual consent the law in various countries provides several safeguards. But nothing can be done, if one of the parties withholds his consent, innocently or wickedly or maliciously. Under the Special Marriage Act it was laid down that a couple may present a petition for divorce by mutual consent on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed to divorce. On doing so, they were required to wait for one year. If, after the expiry of the period of one year, if they move a motion that they wanted their marriage to be dissolved, then the court might pass a decree of divorce. Now this latter period of one year has been reduced to six months. A provision of divorce by mutual consent in this modified form has been introduced into the Hindu Marriage Act. It is submitted that the latter period of six months desirable as it gives parties an opportunity for rethinking and reconsidering. But the initial period of separation of one year is not justified. In our Indian situation sometimes, it may not be possible to live separately even though parties are living together very miserably.

The consent theory accepts that parties to a marriage could together decide to end the relationship. This is the concept of "divorce by mutual consent." In the Hindu Marriage Act, the Indian Divorce Act, the Parsi Marriage and Divorce Act and the Special Marriage Act, parties are required to apply to the court for an order of divorce on this basis. These laws provide that the parties live apart for a specified period of time, and also require that such application be made in two stages, before the divorce is confirmed. Importantly related but critical issues such as maintenance, distribution of common properties and custody of children are expected to be decided by the parties. Islamic law

⁴ Section 13 B of the Hindu Marriage Act, 1955.
too provides for divorce by mutual consent, but there is no additional requirement to apply to a Court for an order of divorce.

The fourth theory of divorce is the 'breakdown' of marriage. The courts have, on occasions, when confronted with proceedings for divorce, found that the parties have been living apart and locked in litigation against each other for years. In these circumstances, the courts have, on consideration that the marriage has effectively broken down, ordered a divorce, though such a ground is not available under the matrimonial laws (except Islamic law).

The theory of breakdown of marriage is qualified by the requirement that the breakdown be irretrievable, i.e., a satisfaction that nothing can be done to save it. This theory moves from the "fault" basis for terminating the relationship to a basis where irrespective of fault of either or both the parties, the marriage can be terminated if it is shown that nothing survives in the relationship.

Under the fault theory, where one of the parties has committed a matrimonial wrong, which would be a justifiable ground for divorce, the choice of applying for a divorce is that of the innocent party. Likewise, the party committing a wrong cannot apply for divorce in view of his conduct in the matrimonial relationship, and some laws specifically provide that where a spouse has been guilty of a matrimonial wrong, he or she cannot apply for a divorce (e.g. the Indian Divorce Act, the Hindu Marriage Act).

This is not to say that the party committing the wrong should be able to take advantage of it by divorcing the spouse (e.g., where a spouse is guilty of adultery or bigamy). However, there is no purpose in forcing a relationship to continue, when there is no bond or trust between the parties. It would, in fact, be more constructive if the dependencies in the relationship are addressed, e.g., financial support to the dependent spouse, custody and upbringing of children, etc. It is a fact that many women condone or overlook wrongs by their spouses simply because they cannot afford to do otherwise.

**Aim and Objective of the Study**

It is said that identifying a problem is what gives us power and energy to solve them as every problem has in it the seeds of its own solution. This statement signifies the need of defining the objective of research. The objectives of this research work are to
touch all the important facets of divorce in a comprehensive way and to achieve new insights into it. Main objective of the study is to find out various shortcomings available in the object of the rational, critical and comparative analysis of the following concepts and find out their answer:

(a) To trace out the historical background of theories of divorce from the ancient time to the present era.

(b) To know the literal meaning of the word “divorce” as laid down under various personnel laws.

(c) To examine the recent trend of judiciary regarding theories of divorce.

(d) To examine various statutes/ legislations regarding theories of divorce.

(e) To throw light upon various new trends in respect of theories of divorce.

(f) To compare and analyze the specific difference among various personal laws.

(g) To study in detail, the grounds for and procedure with respect to attaining divorce under various personal laws in India.

(h) To explain and analyze the same, with the help of comparative method.

(i) To explore the major causes of divorce among married couples in the Indian context.

(j) To investigate the effects of demographic variation such as, gender, age and qualification in determining the perception of causes leading towards divorce.

(k) To suggest remedial measures for prevention and check of the evil of divorce in the society.

Review of Literature

No research work can possibly be taken up without consulting literature available on the topic under study. Before starting up the work on the problem the present study aims to review the existing literature on the subject. The review of the existing literature would provide clarity of concept, understanding of different aspects, and would help in identifying problem zones and formulating research methodology.

Shiva Gopal’s, “The Hindu Code (Old and New) (1964)”, discusses traditional and modern Hindu marriage and divorce. He explains all the Laws relating to marriage and divorce among Hindus. Besides the uncodified part of Hindu law containing different concept like Hindu joint family gift, stridhan, will, partition, debt etc. are also discussed.
Bernard J, in his book, “The Future of Marriage (1982)”, has attempted to find out the possibility of a workable solution to all the problems relating to divorce and has examined the various factors and consequences of divorce.

Tahir Mahmood in “Personal Laws in Crisis, (1986),” focuses on the personal laws under the constitutional framework. He also discusses the area of conflict, tensions and ailments under various personal laws and suggests various remedies and solutions.

Preet Sharma, in his book, “Hindu women’s Right to Maintenance (1990)”, has discussed marriage among Hindus as one of the essential pious sacraments, a union of flesh with flesh, and bone with bone and this sacred tie subsists even after the death of the husband. He also explains the marital rights and duties are absolutely fixed by law and include the husband’s rights to protect his wife, to give her a home, to provide her with comforts and necessities of life.

Paras Diwan, Peeyushi Diwan’s, “Modern Hindu Law Codified and Uncodified (1990)” discusses elaborately Hindu philosophy, social structure and concept of law. It also discussed the concept of marriage and various theories of divorce and asserts that there is a social interest in preservation and protection of the institution of marriage. This is the main reason why the institution of marriage is hedged in with all-round protection. It is, therefore, inevitable to consider marriage as a special contract; the marriage cannot be put to an end like an ordinary contract.

Shiv Sahai Singh’s, “Unification of Divorce laws in India (1993)”, focuses on the relevance of various fragmented matrimonial laws which owe their existence to religions and have provided different set of norms and procedures for the dissolution of marriage. The work mainly concentrates on exploring the conceptual and practical uniformity in different laws. This is because the followers of these religious laws have since long enjoyed the same ecological surrounding which have gone a long way in moulding their lives. Though one may not agree wholly with the proposition of geographical determinism of legal theory expounded in this work, the book is an important contribution in giving the conceptual analysis conceptual analysis of marriage and divorce which will ultimately pave the way to disclose the unanimity and contrast on a number of issues in different laws. This work answers some of the relevant questions relating to unification of civil laws in different chapters.
**Dr. Hari Singh Gaur**, in “*The Hindu Code (1994)*”, has touched all the aspect of Hindu marriage as well as divorce. He clarifies his ideas with the help of various cases and discusses relevant Amendment under Hindu Law. He also discusses the traditional Hindu Law and gives valuable suggestions and recommendations.

**Paras Diwan/ Peeyushi Diwan’s, “Law of Marriage and Divorce (1997)”** discusses Law of Marriage and Divorce under various personal laws and focuses upon various grounds and theories of divorce. The author has also highlighted the relevant case laws and various Amendments to the concerned Personal Laws and has presented a comparative analysis of various Personal Laws prevailing in India.

**P. Rathnaswamy** in his book, “*Marriage, Divorce and Morality (1999)*”, has summarized the existing terminological interpretations of the morality and after detailed discussions and critical analysis he develops a new definition, understanding and meaning of morality. He also examined the concept of marriage and divorce in the world till date. The book adds a new dimension to the study as besides discussing various traditional theories it refers consistently to psychology, sociology, nuclear physics and science.

**Y. P. Minocha & Ashok Sudan’s “Ready Referencer on Hindu Law (2002)”** covers case law on matrimonial disputes beginning with over-riding effect of the Act, conditions for Hindu marriage, ceremonies, registration, restitution of conjugal rights, judicial separation, void and voidable marriage and legitimacy of children, divorce under various clauses of section 13, divorce by mutual consent, alternate relief in divorce proceedings, transfer petitions, maintenance pendent lite and permanent alimony, custody of children, disposal of property and appeals from decrees and orders.

**Mulla’s “Principle of Mahomedan law (2003)”** has a unique reputation. The main attraction is the ease with which Islamic law as applied in India and Pakistan has been discussed. His new introduction goes, a little deeper into the history and evolution of Islamic law and rounds off with a bird’s eye view of the reforms now being made and problems attending them. Recent cases on the position of divorced wife and widows and the legislative changes are put in separately.

**Janak Raj Janak** in his book “*Divorce Law and Procedure (2004)*” has studied the law and procedure on Divorce under all different Acts, and has discussed important cases along with model petitions and statutory extracts from relevant statutes. It covers all the
important topics on Divorce under different legislation. Latest amendments made by the Marriage Laws (Amendment) Act, 2003 (50 of 2003) effective from 23rd December, 2003 have been incorporated in the book.

Asaf A. A. Fyzee, in “Cases in the Muhammadan Law of India, Pakistan and Bangladesh (2005)”, has picked up forty-three judicial decisions, which he considered important, and has arranged these under nineteen chapters, offering his own introductory remarks about each case prefixed to the texts of or extracts from their judgments. Most of these decisions are quite old, handed down in nineteenth or the early twentieth century.

Dr. Sebastian Champappilly’s “Christian Law of Divorce (2007)”, elaborates the evolution of Christian law of divorce in India. The book also discusses the origin and development of English Law on divorce and fully elaborates the various grounds of divorce with different legal authorities under Christian law. It also touches all amendments which have been made under the Christian law of divorce.

H.K. Saharay’s “Law of Marriage and Divorce, (2007)” discusses in detail the concept of marriage and divorce like ancient marriage institution, forms of marriage, kinship, persons competent to marriage, inter-caste marriage and remarriage, ceremonies of marriage, dissolution of marriage, remedy for infringement of marital rights etc.

Ramesh Chander Nagpal, in “Modern Hindu Law (2008)”, has explained the modern concept of Hindu Marriage and Divorce. He has interpreted these concepts under the vision of various case laws and Amendments in Hindu Law and has also summarized various theories of Divorce under Hindu Law.

Dr. Basant K. Sharma, in his book “Hindu Law, (2011)” has taken under study the laws relating to Marriage in Hindus, conditions for valid marriage and grounds for divorce, procedure for maintenance, laws relating to adoption and succession. Although a plethora of case law is reported from the courts especially on divorce, only the cases which lay down a point of law, have been discussed and added in the book.

Prof. U.P.D. Kesari’s “Modern Hindu Law, (2011)” is a detailed discussion of old as well as Modern Laws with its up-to-date amendments and case laws. It also discusses the effect of these amendments and provisions relating to them have been incorporated at appropriate places. Similarly, chapters on Adoption, Minority, Guardianship and Joint Hindu Family property have been discussed with all the tenets. Besides, the uncodified
part of Hindu law containing chapters on joint family partition, debts, stridhan, gift, will, impartible estate, religions and charitable endowments have been discussed in the changed perspectives as the law has been put into innovative process through judicial decision and change in social thinking.

**Chapter Scheme**

The present research work has been divided into the following eight chapters:

**Chapter – 1 ‘Introductory Reflections’** articulates the problem of the study, its aim and object. The review of the literature has been included. The research work carried out in India and abroad is also referred to make the study more useful. Divorce permeates all strata of society. Though the woman still often gets a raw deal, she is no longer prepared to grin and bear a bad marriage. She has realized it is better for her and her children to get out of a corrosive relationship and improve the quality of life with her self-respect and dignity intact. There is no doubt that divorce is a major step life-changing and with a profound impact on the position of the woman and her future as a whole.

**Chapter – 2 ‘Divorce: Conceptual Analysis’** pictures briefly the conceptual analysis of divorce, phases, necessity, factors responsible for, consequences etc. It also discusses the concept of divorce under various personal laws.

**Chapter – 3 ‘Evolution of Divorce’** deals with elaborate description of evolution and historical background of divorce in our society and abroad. In this chapter various Personal laws and Acts made in this period in different communities under different religions are discussed e.g. Matrimonial Causes Act, 1973 in England, Indian Divorce Act, 1869, Parsi Marriage and Divorce Act, 1936, The Dissolution of Muslim Marriage Act, 1939, The Special Marriage Act, 1954, Hindu Marriage Act, 1955 etc.

**Chapter – 4 ‘Different Theories of Divorce’** explains in detail the law relating to the development of different theories of divorce in India and abroad. In most of the countries, the law relating to divorce is based on various divorce theories. Earlier Adultery, cruelty and desertion were looked upon as matrimonial offences, and then it was believed that the purpose of law of divorce was to punish the guilty party, and not to dissolve any unhappy union. This mode of divorce was conceptualized into the guilt or offence theory of divorce which stipulates for two things: a guilty party, i.e., the party who has committed one of
the specified matrimonial offences, and an innocent party, who has been outraged and who has on his or her part played no role in the criminality of the other party. If the purpose of the divorce law was the punishment of the guilty party, then it was natural to agree that the other party should have no complicity in the guilt of the offending party.

According to consent theory of Divorce, if a married couple realizes that they are finding it difficult to pull on together; they have tried hard to make the marriage a success, but all their efforts have filed. It is not that they are wicked people or bad persons. They are average human beings who have, somehow or the other, not been able to pull on together. In such a case, only alternative for them is to get out of the matrimony. But they cannot do so. The fault theory requires that one of them (and only one of them) should be guilty of some matrimonial offence, then and then only the marriage can be dissolved. Then it was thought that a divorce by mutual consent was the answer to this problem. It was asserted that freedom of marriage implies freedom of divorce.

The theory of irretrievable breakdown of marriage also has been accorded recognition in most of the countries. If a marriage has broken down without any possibility of repair (or irretrievably) then it should be dissolved, without looking to the fault of any party.

Chapter – 5 ‘Divorce under various Personal Laws: A Comparative Study’ seeks to make a comparative study of the provisions of Divorce under various Personal laws i.e. Hindu Law, Muslim Law, Jews and Persian Law and Christian Law. In this chapter an attempt is also made to examine several Legislations enacted by the government to make the present day divorce procedure more progressive with respect to gender affairs and related sensitive issues.

Chapter – 6 ‘Juristic Opinion Relating to Divorce’ brings out the judicial view on customary divorce and judicial articulation of the grounds of divorce under various personal laws with a view to pace up with the current societal needs.

Chapter – 7 ‘Conflictual Problem Relating to Law of Divorce’ discusses the conflict areas of various personal laws in India, Societal Conflicts, Inter Caste Marriages, Uniform Civil Code, Recognition of Foreign Divorces, jurisdiction and choice of law and also possible remedy to these conflicts.
Chapter – 8 ‘Conclusion and Suggestions’ deals with conclusions based on the study. Some meaningful suggestions are also recommended in this chapter.