CHAPTER -III

GROUNDS OF DIVORCE

3.1 Introduction and Theory of divorce:

Different personal laws govern the marital relations of the persons in India have also provided the matrimonial remedies through Restitution of conjugal Rights, Judicial separation and Divorce. Divorce as a rule in all the matrimonial laws, is based on many grounds upon which the spouses can seek the remedy to terminate the marriage bind. A critical analysis of 'divorce grounds' to explore the uniform standards and contrast in them will be beneficial in formulating the unification equations on the issues of making one law throughout the territory of India to all citizens of India at large.

To have the systematic discussion for better exposure of the different 'divorce grounds' contained under various matrimonial laws. Since the marriage is considered as a social institution and it is not a transaction between the individuals and that is why it has social interest in preservation and protection of the institution of marriage and thus the legal protection binds. A marriage can be put an end, if one spouse is found guilty. Thus guilt theory or fault theory of divorce becomes the emergence of the offence.

3.1.1 Fault theory or guilt theory of divorce:

After the solemnization of the marriage between the parties, if one of the parties commits some matrimonial offence, the petitioner should
prove that the respondent was guilty of one more grounds of divorce found in
the statutory provisions governing the divorce laws of the parties' i.e. petitioner
and respondent. When in 1955 the Hindu Marriage Act was passed, it was the
guilt theory in its most traditional and conservative form is found. These
grounds are adultery; desertion and cruelty were made the grounds of judicial
separation. Almost all legal system of the world in which, the institutions of
divorce has got adultery as a specific ground of divorce. The Matrimonial
Causes Act, 1937, Section 2 allows other divorce grounds. Provided for the
same provisions for dissolution of marriage on the ground of adultery, different
castes professing different religions admit specifically adultery as sufficient
ground for petition. The Matrimonial Causes Act added cruelty, three years
desertion and in incurable insanity. After the Second World War gradual
development occurred to reform if divorce by following the basic principle of
divorce. In 1973 the Matrimonial Causes Act, 1973, was passed by following
the basic grounds of divorce. The Hindu Marriage Act 1955 was passed
where living continuously in adultery, was a ground of Divorce.

Adultery not being a specific ground of divorce can only be pleaded
if it has any authority for divorce in customary law of the Muslims and no
doubt certain schools of Mohammadan law such as Hanifi. Muslim wife
under old Muslim laws had no right of divorce. In 1939 Muslim wife was given
right to seek judicial divorce by suit on certain grounds like (a) whereabouts of
husband is not known for a period of four years (b) husband failure or neglect
to provide maintenance to wife (c) husband being final sentenced to
imprisonment for seven years or more (d) husband's failure without reasonable cause to perform marital obligation for a period of three years or more (e) husband's impotency at the time of marriage and continues till the filing of the suit. (f) Husband insanity for at least two years or leprosy or virulent venereal disease (g) exercise of right of repudiation by wife (h) husband's cruelty is a good ground for divorce under Muslim law. The Convert's Marriage Dissolution Act, 1866 was enacted to provide facility of divorce to those native converts to Christianity where spouses refused to cohabit with them on account of their conversion. But first divorce statute was passed in 1869. The Divorce Act, 1869 was based on the Matrimonial Causes Act, 1857. It was applying only to Christian Marriages. But this Act was amended completely by Indian Divorce (Amendment) Act 2001 and it has renamed as the Divorce Act.

The Parsi Marriage and Divorce Act, 1936 was amended by the Act 1988, has eleven fault grounds. It also recognized divorce by consent and also irretrievable break down of marriage. The Parsi marriage and Divorce Act., 1936-88, has recognized some of the grounds of voidable marriage for divorce by the amending Act of 1988. The Parsi Marriage may be dissolved either by willful refused to consummate the marriage by the respondent within one year of solemnization of marriage or unsound mind at the time of marriage or continues to be still filing of the suit within three years of marriage and the plaintiff (petitioner) should not have any knowledge of insanity, pre-marriage pregnancy of the respondent at the time of marriage. The
respondent, if involves adultery, fornication, bigamy, rape or an unnatural
offence, being caused grievous hurt, compelled her for prostitution are all
good fault grounds. The Special Marriage Act, 1954 as amended by the
Marriage laws (Amendment) Act 1976 recognized eight fault grounds for
divorce, on which either party can seek divorce. The eight grounds are
adultery two years desertion, undergoing a final sentence of imprisonment for
seven years or more, cruelty, venereal disease (communicable form), leprosy,
incurable insanity or continuous intermittent mental disorder, presumption of
death (respondent not been heard of alive for a period of seven years or
more) and two additional grounds are, the husband has since the
solemnization of marriage been guilty of rape, sodomy or bestiality and
cohabitation has not been resumed for the year or more after passing of an
order under section 125 Cr. P.c or a decree of maintenance under section 18
of Hindu Adoption and maintenance Act, 1956.

Cruelty, desertion are ground of divorce available to all
communities in India except to Christian wife and the section 10 of Indian
Divorce Act, is discriminatory in the ground of religion.

The vital thing in fault theory (guilt theory) is that the opposite
party must be innocent. The conduct which does not render the opposite party
as innocent is laid down U/s 23 of the Hindu Marriage Act which is called
(bars to matrimonial relief) if such bar exists, then the petitioner cannot be
granted relief even he is established his ground. Suppose a petition is filed in
the ground of suffering from venereal disease and it is also proved. But if the
disease has come from the petitioner is proved, then the petition will fail. In case of ground of adultery if it is established that the petitioner is connived at or was accessory to or was condemned the adultery of the respondent. So, the collusiveness of parties or delay, for which there is no proper and reasonable explanation. No petition for divorce is maintainable in the court of law, if a period of three years has not been elapsed since the solemnization, unless a case of exceptional hardship to the petitioner or exceptional depravity on the part of respondent is made out.

3.1.2 Breakdown Theory of Divorce:

Separation is an important ground in all personal laws. Separation may be two kinds (a) separation by mutual consent (agreement) or the voluntary separation (b) separation by judicial pronouncement. In both kinds of separation the basic common factor is the non-cohabitation between the parties. The object of such separation is made in the hope that the parties will reconcile again in near future and it gives some opportunities to have some sorts of adjustment. The husbands and wives who have lived apart of the statutory number of years cannot live together in happiness. If this is so, it is good for the parties as well as in the best interest of the state and society; divorce should be good in such cases. The parties are at liberty that without the interference of law and within the statutory period, they can return back to their old matrimonial home and drop their ideas of divorce. The parties if resume cohabitation, in statutory period then finally it leads to divorce. Thus the statutory period is the barrier to have/ have not for divorce. Law is
interested in its objective that the marriage lies should remain intact rather than breakdown.

In India, judicial separation under a decree of court is recognized. Separation by agreement is only recognized in old Hindu law and is still continued.

The Hindu Marriage Act, 1955, through by amendment by the Marriage Laws Amendment Act, 1976 modifies the clause of the section 13(1) by renumbering the clause (1) and (ii) of section 13 (1A) and under this amendment two years has been reduced to one year. After the amendment of 1964, it has been said that irretrievable break down of marriage in its two versions i.e non-compliance with a decree of restitution for one year and non-resumption of cohabitation after a decree of judicial separation is a part of Hindu Matrimonial Law. But irretrievable break down of marriage per se, is not a ground of divorce.  

In Muslim law the relief of judicial separation does not carry much weight. Under this law the husband has embittered powers of divorce against his wife and the Quoran enjoins the husband. The wife cannot separate herself from him except under the arrangement called "Khula" which is made upon terms to which both are absenting parties and operate in law as divorce of the wife by the husband. The Muslim law, in theory, assures to wife considerable right against her husband. Tyabji in his book entitled, ‘Muslim Law’ says that the regularly married wife who has attained an age at which
she can render conjugal rights to her husband, is entitled to live separately while the marriage subsists. But this right of Muslim wife does not carry much force because the Muslim husband possesses the arbitrary power of divorce. Muslim law does not give any relief to the wife. The Muslim law has recognized the following grounds where the wife will refuse to live with the husband and will be entitled for judicial separation.

1) If the husband is impotent, the Quazi pronounces the order of separation;

2) A Muslim husband can enforce his marital rights; if in case of cruelty to a degree rendering it unsafe for the wife to return to husband and in this situation the wife refuse to come back;

3) The Muslim wife can claim separation if the marriage between the husband and wife was irregular;

4) Where the husband has been made an outcaste by his community, the wife can live separately;

5) During the time of marriage, the Muslim wife enters into certain contracts with her husband. On violation of such contracts, the wife can live separately.

The wife seeks divorce under the Dissolution of Muslim Marriage Act, 1939. These separations by contracts or judiciary are permissible in all the system of matrimonial law in India. Thus judicial separation has gained a good ground of various personal laws. It is a sincere Endeavour of legal
system to prevent the matrimonial ties from breaking down the marriage to relieve the parties from agony and frustration in life.

In India the three enactments such as, the Parsi marriage and Divorce Act 1936\textsuperscript{14}, the Special Marriage Act 1954\textsuperscript{15} and the Hindu Marriage Act 1955\textsuperscript{16}, agree on a principle that divorce will be granted where a decree for restitution of conjugal rights had be granted against the respondent and the same had not been honoured by him or her within a certain specified period. The Special Marriage Act, 1954 being succeeded by an amendment by the Special Marriage Act, 1970 which provides for a breaking down ground of divorce to either party to a marriage when the other party had not complied with a decree for restitution of conjugal rights for a period of one year or more after passing of the decree. The object and scope of this amendment is to enlarge the right of divorce where reconciliation is not possible. The Parsi Marriage and Divorce Act, 1936 also provides for one year or more time to comply with a decree for restitution of conjugal rights. Non-compliance of the decree, the petitioner is entitled to get a decree of divorce. The divorce provision of the Hindu Marriage Act, 1955 was amended in 1964 by the Hindu Marriage (Amendment) Act, 1964 which came into force on December 20\textsuperscript{th}, 1964 to introduce the break down theory. The object of the amendment is to provide for the right to apply for divorce on the ground proposed under section 13(1A) to either husband or wife where the marriage has proved to be failure. Again it was amended by marriage laws (Amendment) Act, 1976 to make the divorce provisions of Hindu law at par with the provisions of the Special
Marriage Act, 1954, Section 13 (1 A) of Hindu Marriage Act. The provision of Section 23 (1)(A) of the Hindu Marriage Act, 1955 cannot be invoked to refuse the relief under section 13 (1 A) of the Act where cohabitation has not been resumed between the parties to the marriage for a statutory period after passing of the decree for restitution of conjugal rights provided. The Indian Divorce Act, 1869 as amended under section 32 is replica for restitution of conjugal right as under section 9 of the Hindu Marriage Act, 1955. But under the order Indian Divorce Act, the Court would refuse to order restitution of conjugal rights. The breakdown of marriage is defined as such due to failure of matrimonial relationship or such circumstances have been created that there is no probability of reconciliation of living together as husband and wife.

In modern laws, the irretrievable breakdown of marriage theory of divorce based on the following ways:

A. The fact of the breakdown of the marriage is left for the determination of the Court. A decree of divorce is granted in the petition of either spouse, if the Court is convinced that the marriage has broken down irretrievably.

B. The Divorce Law Reforms Act, 1973 lays down that if the parties lived separately for a period of five years, either party may sue for divorce. Minimum period of five years is considered to be sufficient time of irretrievable breakdown of marriage. The Court tries best effect for reconciliation of the parties.

C. Gradual Courses, the time limit of five years becomes shortened to two years or more for non-resumption of co-habitation or non-compliance of
the decree of restitution of conjugal rights under the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954. Further the 1964 amendment reduced the period to one year this provision is also found in Parsi Marriage and Divorce Act 1988.

The women being economically weaker than her husband but there is no rectification to maintain a broken marriage on economic ground, as because the wife can obtain maintenance from her husband under section 25 Hindu Marriage Act, i.e permanent alimony.

The different matrimonial laws provided for divorce on grounds of Judicial separation or non-compliance of decree of restitution of conjugal rights after a period specified in the statute. Muslim and Christian matrimonial laws do not provide for such ground to seek divorce although the judicial decisions have allowed divorces. The researcher submits that there should be one single ground of divorce viz, irretrievable break down of marriage. This will help in having one uniform law of divorce for all citizens of the country.

3.1.3 Mutual consent theory of divorce:

In the ideas of researcher, divorce by mutual consent is highly controversial and a much debated issue. This theory has been borrowed from Roman law and it has been spread to other foreign countries. At present in numerable number of literate, illiterate spouses seek their divorce by mutual consent. In India, the dissolution of marriage by mutual consent is very
frequent Hindu Law allows on the ground of mutual consent, section 13(B) presupposes only those cases where cohabitation, which is the essential ingredient of a valid and subsisting marriage, has come to an end because of total breakdown of the matrimonial relationship. A petition under section 13(B) could not be dismissed as withdrawn at the instance of one party. The husband filed a petition for divorce against his wife on the ground of cruelty and desertion, sought to convert it into a petition for divorce by mutual consent. The reconciliation by Court also got failed and the wife also desired divorce. The Court treated the petition as petition for divorce by mutual consent and passed a decree for dissolution of marriage ignoring the formality of joint petition. The maximum time limit is six months to eighteen months mentioned in section 13(B) (2) and the case cannot be withdrawn and the Court may grant a decree of divorce. The Court can pass decree before expiry of six months if reconciliation fails and the separation of the parties become very long which is virtually the wedlock becomes deadlock. The concept of mutual consent is that, parties get freedom from the marriage ties by avoiding unnecessary delay. As marriage stands on contract by mutual consent, similarly the divorce in mutual consent breaks the contract hastily.

Statutory provisions and customary rites under Hindu law allows divorce in the ground of mutual consent. Customary divorce by mutual consent of the parties functioned satisfactorily among several Hindu Communities. In the customary divorces cases generally mutual consent becomes the ground of divorce. Cruelty and failure to provide maintenance by
the husband becomes the ground of divorce\textsuperscript{20} by mutual consent. Village Panchayat also dissolves the marriage on mutual consent where a customary rite prevails. The Hindu Marriage Act, 1955 lay down the following ingredients to both the spouses in a joint petition for divorce by mutual consent.

i. That they have been living separately for a period of one year;

ii. That they have not been able to live together;

iii. That they have mutually agreed to separate.

The parties are at liberty to withdraw the case by joint petition. The very important thing of mutual consent in that is it must be free a consent section 23 of the Hindu Marriage Act also applies to the petition for divorce by mutual consent of either party has not been obtained by force, fraud and undue influence. The Hindu Marriage Act, 1955 is mandatory and not directory and the court has no power to relax the said compulsory time wait of six months.

In India, dissolution of marriage by mutual consent is very common among Mohammadans and it has been hailed as a remarkable feature of the Islamic law. It was koranic legislation which conferred on wives such a right. The Fatwa Alamgiri lays down that when married parties disagree and are apprehensive that they observe the bounds prescribed by the divine laws, the women can release herself from the tie by giving up some property in return of which the husband is to give her a 'Khula' and when such mutual Act is performed 'talak-ul-bain' takes place. The word 'Khul' literally means to 'to put off'. In law it means laying down by a husband of his right and authority over
his wife for an exchange. Therefore, two elements are necessary in Khula form of divorce.

i) Common consent of the husband and the wife;

ii) Some‘iwad’ (return-consideration) passing from the wife.

The other form ‘mubbarat’ in this form it an Act of freeing one another mutually and the proposal for divorce comes out from either spouse. In 'mubbarat' the wife has to give up her dower or pent of it. It appears that both forms of divorce by mutual consent confer a benefit on the husband and he can make his wife agree to give up her claim to dower or give him some other property in consideration of his agreeing to release her. Otherwise he may not agree to divorce.

Some High courts forbids withdrawing the case unilaterally once consent is given by both the parties.21, where as the Supreme Court viewed that consent given for mutual divorce can be withdrawn unilaterally at any time22.

Minimum awaiting of six months for the disposal off the petition on mutual consent is mandatory and it has been decided by Orissa High Court.23 In the theory of mutual consent 'living separately' is the important feature and the Gujarat High Court has already decided that living in one roof by the spouses without having any consummation then it is considered living separately24.
The Special Marriage Act, 1954 provides for analogous provision of divorce by mutual consent. The Indian Divorce Act, 1869 does not provide for divorce by mutual consent. Section 32 B of the Parsi Marriage and Divorce Act, 1936 as amended in 1988 empowers the parties to a marriage to file a suit for divorce by mutual consent. Our legislature had already given much ahead on aping the west by introducing breakdown theory of divorce in different matrimonial laws. Irretrievable break down of marriage and divorce by mutual consent should be retained by us uniformly under divorce laws in India. This will help us in having one uniform law of divorce through out the territory of India.

3.2 Ground of divorce in Hindu Law:

Section 5 of Hindu Marriage Act, 1955, the other party to a Hindu Marriage is entitled to get divorce, nullity or judicial separation as the case may be.

The grounds of judicial separation and divorce are the same. Section 13 of Hindu marriage Act 1955, has been amended twice – first in 1964 and then in 1976 drastically. The purpose and object of the 1976 amendments in sub-section (I) of sec. 13 was to transfer form of Section10 to Section 13 what were, originally hitherto grounds for judicial separation exclusively and thus, now to provide a unified list of grounds for divorce and judicial separation. Section 13 provides three type of grounds for divorce as follows:-
(i) Nine grounds based on the fault theory of divorce which only the aggrieved spouse may avail as per sub-section (1).

(ii) There are two grounds based on the 'breakdown theory' of divorce - which either the 'aggrieved' or the guilty spouse may avail as per subsection (1-1).

(iii) There are four special grounds – which only a Hindu wife can avail as per sub-section (2)

(i) **Adultery**:

That the other party living in adultery on the other hand, one of the six grounds for judicial separation, there was after the solemnization of the marriage had sexual intercourse with any person other than his or her spouse\(^27\).

Thus, while a single Act of extra-marital sex in the part of the guilty party entitled the aggrieved party to seek judicial separation, the latter could seek divorce only if the former was living in adultery.

Adulter, being a serious charge which casts a blot in the character and effects his or her reputation thus the pleadings in adultery must be specific. If the pleadings do not reveal detail particulars of the charge of adultery, then the respondent would not be able to meet the charge\(^28\).

(ii) **Cruelty**: Before 1976 amendments 'cruelty' was ground only for Judicial separation.
Cruelty means -

The other party has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it will harmful or injurious for the petitioner to live with the other party. Cruelty can be judged on the basis of totality of circumstances and all evidence on record. Cruelty in the universal sense was not within the purview of the Act, it was only cruelty which produced a particular kind of consequence that fail within it. Any pre-marriage conduct of either spouse cannot be regarded as cruelty to the other spouse under the provision of section 13 (I) (I-a) of the Hindu Marriage Act.

Mental Cruelty:

Mental cruelty is an important and the wider aspect of cruelty in modern matrimonial law. In this type of cruelty the mental state of the respondent as well as temperament, and other circumstances are to be considered. Any such Act causes hurt mentally, depression, deprivation leads to mental cruelty and it helps to breakdown the marriage. Mental cruelty is rather very dangerous than physical cruelty as because it is injurious to body, mind and soul.

(iii) Desertion:

Before the 1976 Amendment ‘desertion’ was the ground for judicial separation under section 10 and it was not the ground of judicial separation as well as in divorce. Hindu marriage Act provides the duration of desertion of
two years from the presentation of the petition. Under Hindu Marriage Act, the
desertion must be without reasonable and without the consent or against the
wish of the deserted spouse. The section 13(1) (1b) of the Hindu Marriage Act
grants no relief:

(i) The facts of desertion exist but there has been a reasonable cause for it.
(ii) When there is consent of desertion either of the deserted spouse.
(iii) Where the parties have mutually agreed to apart. There is no desertion on
the part of the wife.

Supreme Court and different High Courts have stated the principles of
desertion.

(i) Desertion is willful termination if cohabitation without the express
consent of the deserted spouse 32.
(ii) Deserted spouse if shows a reasonable cause, then it is no desertion.
(iii) Conduct of both spouses is to be taken into consideration in deciding
on desertion.
(iv) Conversion

Section 13 (1) (i) of the Hindu Marriage Act, 1955, Conversion by a
Hindu spouse to Muslim, Christian, Jewish or Parsi faith such conversion will
not, automatically dissolve the convert's marriage; it will be a ground of
divorce to the other spouse. Family law based on religion, conversion finds a
unique place in the law of matrimonial remedies. In India conversion has been
recognized as a ground for divorce by all those statuate which have got
religious fervour, namely Parsi Marriage and Divorce Act 1936, The
Dissolution of Muslim Marriage Act, 1939, Indian Divorce Act, 1869 and the Hindu Marriage Act, 1995. But the special marriage Act, 1954 being secular Act remains completely silent in this regard. Personally the convert spouse may, however, claim benefit of the law applicable to the followers of his new religion. The legal position sometimes creates ambiguities.

**Insanity:**

Insanity a 'mental disorder' or psychopathic disorder in clause (1) and (4) of Section 4 of Mental Health Act, 1959 and it provides as a ground of divorce. The petitioner gets a decree of divorce stating that it has been incurably of unsound mind or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent. The expression mental disorder means mental illness arrested or in complete development of mind, psychopathic disorder, any other disorder or disability of mind. Before 1976, amendment of the Hindu Marriage Act the position of insanity as a ground of decree of divorce or judicial separation. 33

(i) Insanity — Lasting for not less than two years ending with the filing of the petition — was a ground of judicial separation

(ii) Incurable insanity — Lasting for at least three years immediately preceding the filing of the petition was a ground for divorce.

In 1976 virulent and incurable Leprosy becomes the ground of divorce. Venereal disease becomes the ground of divorce as well as judicial
separation under section (1) (v) of the Hindu Marriage Act 1976, it must be 
communicable in nature, irrespective of the period for which the respondent 
has effected from it 34.

Missing Spouse:

Since 1872 Statutory law in India has recognized in common law 
rule that either spouse who has not been heard of for seven years or more by 
his/her close relation etc should be presumed to be dead, the burden of proof 
lies on him who claims the person to be alive. The same rule has been 
prescribed under section 13 of the Hindu Marriage Act 35. This Act has clearly 
stated that the other spouse has not been heard of as being alive during the 
past at least seven years. Missing of spouse and decree of presumption of 
death can be declared under section 8 of the Indian Evidence Act, 1872.

(Vii) Non-compliance of the restitution Decree:

The decree of restitution of conjugal rights has been passed and two 
years has already been passed but the decree of restitution of conjugal rights 
has not been complied. The guilty spouse always desires to ignore the decree 
of restitution of conjugal rights. Non-compliance of decree of restitution of 
conjugal rights leads to divorce.

(viii) Sexual offences:

Any Sexual offence being committed by the husband then the wife is 
entitled to seek divorce.
Rape: A wife can seek divorce on the ground that she has been raped by her husband within the meaning of the exception to section 375 I.P.C. When the wife is under 15 years of age during the judicial separation if forced coitus is done by the husband with his wife, then it is considered to commit rape and it amounts to contempt of court.

Sodomy:

Sodomy is the connection between two human beings of the same sex - the male - named from the prevalence of the 'sin Sodom'. Sodomy and 'Crime against nature have often been used synonymous terms and it is the infamous crime against the nature' either with man or beast. In this unnatural offence anal intercourse being done by a man the object of which can be (a) his wife (b) another man (c) or another woman and the age of the victim is irrelevant in this offence. It is also equally irrelevant whether the victim is consented party. The Court may apply statutory bars against the relief as laid down in section 23 of the Hindu Marriage Act. Section 377 of Indian Penal code is taken into consideration in a case where divorce is sought for on the ground of sodomy.

Bestiality:

This is an unnatural relation of man or woman in any manner with an animal. Bestiality is a crime of men having carnal intercourse with beasts, Section 13 (2) (II) Hindu marriage Act includes.
(i) Any brutish sexual Act being done in the part of the husband whenever in its object.

(ii) Sexual Act on the part of the husband with any animal.

Rape, sodomy or bestiality committed by a man before his marriage with the petitioner's wife – cannot be used by the latter as a ground for divorce.

(ix) Separate Residence and Maintenance:

This one is introduced for the first time by the marriage laws (Amendment) Act 1976. A Hindu wife can obtain a decree or order of separate residence and maintenance as follows:

(i) Section 18, Hindu Adoption and Maintenance Act 1956.

(ii) Section 125 Criminal procedure code 1973.

The Act of 1955 (amended in 1976) enables the wife who obtains the said decree or order to seek divorce if her husband does not resume cohabitation within one year from the date of the decree or order if not cohabitation is resumed within one year, the wife can seek a divorce. The marriage law treats an order or decree for separate residence and maintenance at per with use for judicial separation.

Tahir Mahamood, "inform us that" the effect that making it obligatory for wife to respond thereto would defeat the statutory provisions that allow her to live separate along with maintenance. 36
3.3 Grounds of divorce in Muslim Law:

The divorce in Pre-Islamic period was frequent. A husband could divorce his wife for any cause. The Quoran suggests the procedure for reunification of the married couples. The Quoran does not say any matrimonial offences but prophet puts some limitation for matrimonial offences but prophet puts some limitation for matrimonial relief. The law giver of Islam does not want the master to be brought to the court at all unless it is unavoidable one. Otherwise, the husband or wife or both of them jointly, to Act silently and privately and in exceptional cases judicial interference becomes necessary. Islamic law recognizes extra judicial service, judicial service which have various forms.

Divorce law in India:

The 'Muslim law' by Prof. Tahir Mahamood recognizes several forms of extra judicial divorce (a) by the husband (b) by the wife and (c) by the husband and wife jointly. Judicial divorce recognized by the Muslim law in India. The Dissolution of Muslim Marriage Act, 1939 regulates to it. The statutory and non-statutory laws of divorce are applicable to the Muslims.

A marriage under the special Marriage Act, 1954 is full exempted from the application of the Muslim law of divorce.

Divorce by death of spouse:

The death of Islam stands dissolved absolutely for the either spouse, when husband dies, then widow has to wait for a certain period.
Before, she exercise her right to remarry in view of the biological compulsion into determine the paternity of the child. The waiting period is 'iddat period' in Muslim law. The wife if dies, then the husband is free to remarry immediately. The 'iddat period' of the wife is five months and ten days and if the wife is pregnant, then till the delivery of the child or till the abortion of the child, thereafter she can remarry.

Extra Judicial divorce:

Without the intervention of the court, the divorce if occurs, then it is non-statutory from divorce and therefore, it is called extra judicial divorce having different forms.

Talaq-i-biddat -

Extra judicial service may be either revocable (rajai) or irrevocable (baen). Revocability depends on by the intension of the person effecting a divorce.

Revocability of divorce is closely related with the iddat and after the expiry of that period, the woman can remarry. The 'iddat period' for a pregnant woman is full duration of pregnancy for a non-pregnant woman, the menstrual period in Hanafi law and three menstrual periods (Tuhr) in Ithana Ashari Law. For non-pregnant and non-menstruating woman, three lunar months in Hanfi Law and 78 days in Ithima Ashari law.
Bilateral Divorce (Mutual Consent):

Bilateral Divorce in Muslim law is a great controversial problem of at present. Only the punishment and sin could control and regulate the different legal system. There are different personal laws in India; the law of Islam was the first to provide for a divorce by mutual agreement of the spouses. Several other laws are applicable in India.

Khula (Release):

In Muslim law, dissolution of marriage by mutual consent of the spouses takes the form of either 'Mubara' or 'Khula'. The basic principles under 'Mubarat' are a bilateral desire to get rid of marital bond. In 'Khula' the desire to separate is of the wife which the husband agrees to fulfill at the terms. Mutually agreed upon by the wife and the husband may determine by law. In the 'Khula' form of divorce, the husband in return gives some property or claim called 'Maher'.

The Shariat Act, 1937 mentions both 'mubara' and 'khula' separately and has a statutory recognition, in India. However, Mubarat or 'Khula' are two reverse processes. Mubarat or Khula may be effected orally, writing or registration is not necessary. In India the agreement is in the written form called 'Khulanama'.

Muslim law on divorce is indeed, very pragmatic and meaningfully liberal towards both parties to a marriage.
Uniliteral divorce:

The second category of non-statutory form of divorce under Muslim law is called 'Talaq'. A Muslim husband under Muslim law can divorce his wife by his unilateral action and without intervention of court. The power is the power to pronounce is Talaq\textsuperscript{37}. The law of Islam pleads the unilateral and extra judicial power of pronouncing a Talaq by the husband, the law of Islam though the ample power is given in the hands of the husband but ordinarily not exercise at all. Finding no recourse in unavoidable circumstances, the husband will do so with a sense of justice and rationally (Maquliyat) which are the basic demands of Islam from every God fearing Muslim. In the law of Islam the husband can exercise the power of Talaq, in an arbitrary, irrational or unreasonable manner. There are certain restrictions while pronouncing the talaq.

(i) The husband should not pronounce Talaq while the wife is undergoing her menstrual period.

(ii) He should not pronounce Talaq in the state of anger, jest, intoxication (Hanafi Law) if he does so he pays the price of findings.

(iii) Whoever divorces his wife for third time will not be able to get back the same woman as his wife again unless he pays the penalty of finding her somebody else's bed before remarrying her. The courts of India followed the law of Talaq. A sound Muslim husband but wife is below the age of puberty, then the husband is free to divorce\textsuperscript{38}. The husband is not required to pronounce Talaq on presence of wife and need not
give any notice but it is very important that the name of the wife must be named. The Guardian of minor cannot pronounce a Talaq on behalf of his ward. If the guardian does so, the talaq will be void.

**Unilateral Divorce by Wife:**

Talaq-i-Tafwiz under the law of Islam, the wife has got the right to make an end of marriage exercising her unilateral action which is called Talaq-i-tafwiz. The vital difference is that the husband derives his power through law where as the wife derives her power through the husband and it is recognized by law. It may be done in the form of the agreement between the husband and the wife: In independent agreement may be entered by the spouses at any time after the marriage. On the other hand, the husband by his own unilateral action, delegates the power of Talaq to the wife. Thus the delegate must not be absolute. The wife should be authorized to pronounce talaq only whom the husband violates the agreement and its conditions must be reasonable and must not be opposed to the policy of Islamic law. Under this rules the delegated power of the wife is determined by the husband himself. The delegated from the divorce is an important weapon of the wife to get freedom without any obstructor of the court Faskh (Judicial/statutory divorce); statutory law in India provides judicial divorce, extra judicial divorce is recognized under the Shriat Act 1937 but there are no legislative enactments any such form of divorce. The (central) dissolution of Muslim Marriage Act, 1939 after the independence, it was made applicable to the whole of India except the part B states. In 1959 it was amended and made
applicable to whole India except the states of Jammu and Kashmir. Jammu and Kashmir has its own local laws of dissolution of marriage Act. In 1943 in Mysore a local dissolution Muslim Marriage Act was enacted on the basis of the Central Act of 1939. After merging with Indian Union, the above enactments got applicable in Mysore. The central Act and the two local Acts applied to all Muslim without distinguishing the schools of Hanfi, Shafei, Ithna, Ashari, Ismaili. The wife has also the right to use the provision of the Act.

Grounds of Faskh:

(i) Husband’s unknown whereabouts:

The whereabouts of the husband is not known for a period of four years or more. The wife when seeks for divorce, the court shall give notice to her suit, to all heirs of the husband and other relatives and all will be heard of and thereafter the court passes order for divorce. After passing the decree, the Court waits for six months and after its expiry, the marriage stands dissolved and within six months, the husband returns and on the application of wife the decree gets cancelled.

(ii) Failure to maintain by the husband:

The husband neglects his wife to maintain for a period of two years or more, she can apply for Faskh under Section 2 (II) of dissolution of Muslim Marriage Act. There is also restriction that if co-wife willfully refused to live, then the Court would grant Faskh. The legal principle is well settled that the
disobedience of wife is disentitled for maintenance under the provision of the Section 2(II) in the Act of 1939\textsuperscript{10}.

(iii) **Husband’s Imprisonment:**

If the husband has been sectioned to final imprisonment for seven years or more, the wife is entitled to obtain Faskh under Section 2 (II) of dissolution of M.M. Act, 1939.

(iv) **Non-performance of marital obligation by husband:**

The husband if failed to perform his marital obligation, the wife is entitled to get ‘Faskh’ Under Section 2(II) of the Dissolution of M.M. Act. The husband deserted his wife for three years without giving any maintenance, a suit may institute jointly Under Clause (II) and (IV) of Section 2 of the Dissolution of Muslim Marriage Act, 1939.

(v) **Husband’s Impotency:**

The wife can sure for ‘Faskh’ against her husband on the ground of husband’s impotency by proving that the husband was impotent during the time of marriage and up till then at the time of filing the suit. The husband if denies the allegation of impotency then he may apply for time to prove that he has no impotency. The Court gives one year time and there after grants Faskh.
(vi) **Husband's mental disorder and bodily disease:**

The husband has been suffering from insanity for two years or more, the wife can sure of Faskh under the section 2 (VI) of Dissolution of Muslim Marriage Act, 1939. The wife can apply for Faskh if her husband is suffering from leprosy or virulent venereal disease.

(vii) **Wife's option of puberty:**

This is the statutory ground for faskh. Under this provision, the wife can seek for 'faskh' if she was given marriage by her father or guardian before attaining the age of fifteen years stating that she has repudiated the marriage without having any consummation before completing eighteen years. The option of puberty if exercised by a girl is sought to be confirmed by a decree of faskh under the Section 2(VII) of the Dissolution of Muslim Marriage Act but a Kashmiri girl seeks faskh for the cause of puberty and then she will be guided under Section 2(VII) of Jammu and Kashmir Dissolution of Muslim Marriage Act.

(viii) **Husband's cruelty:**

The wife can seek 'faskh' on the ground of cruelty caused by the husband under Section 2(VIII) of the Act, 1939. Cruelty is defined by this Act under Section 2 (VIII) of the Muslim Marriage Act, 1939.

(a) The husband habitually assaults the wife making the life miserable by physical ill-treatment.

(b) The husband if leads an immoral life with an ill reputed woman.
(c) The husband if forbids the wife to observe the religious profession or practice.

(d) There is quoranic injunction if the husband treats inequitably with co­wives. The principles of different schools differ under Muslim law. A marriage without the presence of the witness is irregular (fasid) in Hanafi Law but void (batil) in Ithana Asari law.

3.4 Grounds of divorce in Christian Law:

The divorce of Christian is governed under the Indian Divorce Act, 1869 which relates to Indian Christian Marriage Act, 1872. Under the Indian divorce Act, 1869, the general law relates to divorce and other matrimonial relief's among the Christian. Section 10 only entitles the wife and not the husband, to dissolution of marriage if the husband has exchanged his profession of Christianity for the profession of some other religion and gone through a form of marriage with another man.

Under the Convert’s Marriage Dissolution Act, 1866, the ground for dissolution of marriage is not conversion or change of religion, but the non-convert spouse’s denial conjugal rights to converts spouse.

Adultery as a ground of Dissolution of Marriage:

There are several provisions of Indian Divorce Act of 1869 which are not outdated. Under Section 10 of this Act, the husband is entitled to a dissolution on the ground of adultery simpliciter on the part of the wife, the wife is not entitled under she further proves the husband’s adultery incestuous
or is coupled with 'cruelty' or 'bigamy' or 'desertion'. The husband when alleges adultery against the wife, it is essential for him to imply the adulterer a co-respondent. This is a mandatory statutory requirement Under Section 11 of this Act. According to the court the adultery is a serious matrimonial charge and when the respondent dispute the charge, the impleading of the adulterer prevents collusive divorce.

**Directive to be followed in Exparte Cases:**

The directives given by the Court must be observed by the Court under Section 17 where exparte divorce granted to the wife. The Court after scrutinizing the evidence used to pass decree when the pleadings and evidence showed that there was adultery by giving proper direction.

**Divorce granted, though there is no statutory ground:**

Exparte divorce decree was granted to the husband though there is no existence of statutory provision in Indian Divorce Act. On the ground of adultery proved, the divorce is given but in the ensuring case due to non-cohabitation of the wife with husband in spite of decree of restitution of conjugal rights as the wife has withdrawn from the society without reasonable cause. Thus there is no co-relation between adultery and non-cohabitation with husband, in spite of the decree of restitution of conjugal rights. So this type of circumstances does not create any provision of the statutory ground. But the court granted the divorce to the husband. Indian Divorce Act has no such provision of mutual consent. There is peculiarity in Christian Law.
Christian husband can divorce his wife on the ground of adultery but the Christian wife cannot divorce his wife on the same ground without having other grounds like bigamy, cruelty, desertion etc. The other grounds are conversion to another religion along with marrying to another woman and the husband being guilty of rape, sodomy, bestiality under Section 10 of the Indian Divorce Act.

There are certain grounds which annulled the marriage of Christians.

**Bigamous Marriage:**

Indian Divorce Act, Indian Christian Marriage Act and all other legislation relating to Christian Marriage declares the bigamous Marriage null and void. In the Court of India, the Christian is also punishable for bigamy Under Section 494 and 495 of I.P.C.

**Lunacy or idiocy:**

Lunacy is a ground for annulment of marriage Under Section 19(3) of the Act. The either spouse gets effected in lunacy or idiocy was unable to give valid consent for the marriage and that marriage becomes voidabinitio.

**Consent obtained by fraud and force:**

The marriage of the wife being held by obtaining the consent with fraud and force and the wife presents the petition in the Court
3.5 Grounds of Divorce in Parsi Law:

The Parsi Marriage and Divorce Act were passed in 1865. Since then circumstances have greatly altered and to some extent there has also been a change in the sentiments and views of the Parsi community. Hence a necessity of change in the law has been felt for years. The Parsi Central Association appointed a Sub-Committee in the year 1923 which suggested amendments. The Sub-Committee submitted a report which the Association circulated for opinion to most of the other Parsi's Association as well as prominent members of the country both in Bombay and outside, the trustee of Bombay and the Parsi Panchayat, who got advantage of seeing the suggestions of others. The Central Association adopted the suggestions of the Panchayat Trustees and reprinted the whole and again circulated i.e. Fresh Suggestion come in the press on the platform, by Association and individuals. These were fully analyzed and considered by the Trustees and Associations and the Parsi Marriage and Divorce Act, 1936 come to picture after getting the majority of the community and the some has been approved by eminent parsi's like Sir Dinshaw E. Wacha and the late Rt. Hen Sir Dinshaw F. Mulla and this present Act 1936 was framed.

Parsi is derived form the word 'pers' or 'fars' a province in 'persia' where original Persians migrated to India called 'parsi's'.

The followers of Zorastrianism are parsi's and in their immigration to different parts of the world, they had not brought any law with then from persia. They followed and adopted Hindu law and customs and in course of
time it becomes the personal law of the Parsi's in India. Living in India the Parsi’s formed Panchayats of their communities in different places and formed their own rules and regulation. The Parsi Panchayat of Bombay became the Supreme Authority and its rulings were followed and honoured by other Panchayats.

In the 19th century the Parsi community faced difficulties to apply English law in personal affairs and thus the codification of Parsi law was essential and initiated in respect of marriage, divorce, inheritance and suggestion by the members of the Parsi community. The Parsi law Association succeeded in framing the Parsi Marriage and Divorce Act was enacted in 1865. It has many defects and on rectification the Parsi Marriage and Divorce Act of 1936 was passed. Some more changes are required and as such the Parsi Marriage and Divorce (Amendment) Act, 1988 was passed. This Act gets applicable to all Parsi’s everywhere in India and even in the state of Jammu and Kashmir on conversion of religion; the Parsi’s cannot remarry Under Section 32 of the Parsi Marriage and Divorce Act, 1936 Provides certain grounds for divorce:

(i) Willful refusal the consummate the marriage within one year of solemnization of marriage.

(ii) On the ground of committing adultery, bigamy, fomication, rape or unnatural offence.

(iii) Causing infection with venereal disease.

(iv) Causing grievous hurt.
(v) Desertion of three years.
(vi) Final sentence of imprisonment for seven years.
(vii) An order passed by the Court for judicial separation and three years being elapsed or separate maintenance was passed.
(viii) One year passed away to comply the decree of the restitution of conjugal rights.
(ix) Ceasing to be Parsi by means of conversion to other religion.

The husband is empowered some more grounds for divorce such as pre-marriage, pregnancy and she also seeks divorce if she is forced into prostitution. The Court would pass reasonable order after the allegations being well proved. The wife is entitled to receive the interim and permanent alimony by the husband to the wife so long the wife would remain chaste and unmarried.

Unknown/whereabouts:

Absence of either of spouse, husband or wife for a period of seven years or more has been recognized as a ground of dissolution of marriage in India since 1872. Section 31 of the Parsi Marriage and Divorce Act, 1936, the marriage of such husband or wife shall with the compliance of the requirements contained under the provision of said section be dissolved. In this section petition may be presented for the dissolution of marriage on the ground that the other party to the marriage has been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it had that other party been alive. The section 108 of evidence
Act, 1872 speaks about the presumption to be dead. The burden of providing that such person is not dead but alive lies on him or her who affirms it.

**Divorce by Mutual consent:**

In 1936, the Parsi Marriage and Divorce Act did not recognize divorce by mutual consent for Parsi Zoroastrians. In 1988 that section 32 B was inserted for the purpose of providing divorce by mutual consent between spouses. This provision incorporates the break down theory of divorce. The requirements for mutual consent are:

(i) Both spouses must together present a suit for divorce.

(ii) Both the spouses should have been living separately for a period of one year or more.

(iii) The conjugal life of the spouses is not in a position to adjust so as to live together.

(iv) For the mutual consent, the court must be satisfied

The provision U/s 32(l), of the Parsi marriage and Divorce Act categorized Parsi into two classes (i) Parsi’s spouses continuing to be Zoroastrian

(ii) Parsi Spouse ceasing to be Zoroastrian. In second class category it is conversion of religion which causes divorce. The Parsi law provides monogamy. The second marriage is solemnized on the basis of presumption of death without getting a decree of divorce, no person other them missing spouse can question the veniality of the second marriage 44.
Section 30 of the Parsi marriage and divorce Act, the null and void can be passed if consummation of marriage is impossible due to natural cause. The impotency of the husband can cause no consummation take place in natural cause. The Act of non-consummation amounts to impotency. In Parsi law, a marriage within prohibited relationship and the marriage of minor without the guardian's consent are invalid. According to Parsi law, both male and female have equal rights.

Each community is governed by own personal law either it may be codified or non-codified. The provision of their code may be applicable by the civil procedure code and the execution proceeding be started in civil procedure code.

3.6 Grounds of Divorce in Jew's Law:

The law of marriage and divorce of Jews are not codified in India and they are governed by their own religious laws a book written by David Melzinar namely "Marriage and Divorce" and it is followed in the court. Jews does not regard the marriage as civil contract but relation between the two parties become sacred duties. The Special marriage Act, 1954 involves the marriage of the Jews and this Act is applicable to all citizen of the country irrespective of their religious affiliation to all Hindus, Muslims, Christians, Parsi's and Jews.

Since, Jews have no codification in divorce laws but they are guided by the customary law. The marriage of the spouses get registered their
marriage and the special marriage Act, 1954, then their divorce case be settled under the provision of the Special Marriage Act being a secular law.

The conceptual analysis of marriage and divorce reveals factual legal unanimity than contrast in various matrimonial laws governing the relation and marital status of men and women in different communities. The religious oriented matrimonial laws have been molded in practice by customs prevalent in various communities. The concept of divorce is infused in statutorily in the body of all matrimonial laws. It shows more uniformity than contradiction in them.

The grounds of divorce are also followed under the provisions Special Marriage Act, 1954 under section 27.

(a) Having sexual intercourse voluntarily with other person other than his or her spouse after the marriage.

(b) Deserting the petitioner for a continuous period of two years at the time of presenting the petition in the court.

(c) Undergoing a sentence of final imprisonment for seven years for an offence.

(d) Making ill-treatment and cruelty after the solemnization of the marriage.

(e) Has been suffering from incurable unsound mind, mental disorder continuously as a result, it is not possible to leave with the respondent.

(f) Has been suffering from venereal disease in a communicable form

(g) Has been suffering from leprosy.
(h) Has not been heard of as being alive for a period of seven years or more.

Similarly the wife present petition before the District judge stating the following grounds.

i) Since the solemnization of the marriage if the husband has been guilty of rape, sodomy or bestiality.

ii) The parties living apart and cohabitation between the parties has not been resumed for one year or upwards of the order of restitution conjugal rights, the divorce can be claimed.

Some communities having no codification of marriage, divorce laws, so to-say no personal laws, then they follow the customary rites, instead of their personal law.

3.7 GROUNDS OF DIVORCE IN SPECIAL MARRIAGE ACT, 1954:

This is an Act to provide a special form of marriage in certain cases and it is meant for the registration of such and certain other marriages and for divorce. The Bill revises and seeks to replace the special Marriage Act, 1872 so as to provide a special form of marriage which can be taken advantage of by any person in India and by all Indian nationals in foreign countries irrespective of faith which either party to the marriage may observe any ceremonies for the solemnization of their marriage but certain formalities are prescribed before the marriage can be registered by the marriage officer. For the benefit of Indian citizen abroad, the Bill provides for the appointment of
diplomatic and consular officer as marriage officer for solemnizing and registering marriage between the citizens of India in foreign country.

Provision is all sought to be made for permitting person who are already married under the forms of marriage to register the marriage under this Act and thereby avail themselves of these provision. The bill is drafted generally on these lines of the existing Special Marriage Act, 1872 and the notes on clauses attached here to explain some of the changes made in the bill in greater detail.

The constitution of India was enforced in January, 1950 and the prevailing condition required to be changed. The state was given ample power to introduce law reforms and regulate secular practices associated with religion. The constitution of India grants secularism, equality before law, equal protection of laws and uniform civil code among others were the newly adopted ideals which revolutionalised the thinking of the Political leaders and legislators.

It was the circumstance that in 1952 a new marriage bill was introduced in parliament but got an acted in 1954 in the forms of new Special Marriage Act which replaced the old Special Marriage Act of 1872. In 1963 the Special Marriage Act 1954 was amended in order to protect the customs and usages conflicting with its rules relating the prohibited degree in marriage. Six years later, the Foreign Marriage Act, 1969 took away the extra territorial application of Special Marriage Act since then its provisions have been
applicable only the marriage solemnized in India. The law relating to the
petitions for divorce grounded in earlier judicial degree i.e. judicial separation
and restitution of conjugal rights was amended in 1970. After another six
years, the Marriage Law (Amendment) Act, 1976 drastically amended several
important provisions of the Special Marriage Act, 1954. These amendments
were based mostly on the proposals made by the law commission of India
which was asked by the Government to review the Special Marriage Act,
1954. Many of the amendments are highly significant.

The Special Marriage Act specifies the grounds on which the court
can dissolve the marriage whether originally solemnized under its own
provisions contracted under any of the various personal laws but later
registered under the provisions of the Special Marriage Act any of the various
personal laws but later registered under the provisions of the special Marriage
Act. Even without such registration, a religious marriage can be dissolved
under the Special Marriage Act. The law of divorce contained in the Act, thus
furnish the alternative to each of the personal law of divorce. An extra judicial
divorce is impossibility under the Special Marriage Act, 1954 in which only
court can dissolve a marriage. The Parties to a marriage themselves, or one
of them can never do so. The Special Marriage Act however, suffers from
certain flows which have not been removed by the changes as recommended
by the law commission of India and introduced into the said Act by the
marriage laws (Amendment) Act, 1976. To bring the modernity and
secularism and in order to enforce the constitutional guarantee regarding the
equal protection of law, it is necessary to give a new look to the Act as a whole and to modify some of the objectionable provisions.

The Special Marriage Act is an amalgamation with other marriage laws. The parties were married under the Hindu Marriage Act and later got the marriage registered under Chapter-III of the Special Marriage Act. The parties did not pull well and the wife filed a petition for divorce under section 13 of Hindu Marriage Act and also under Section 27 of the Special Marriage Act. The grounds alleged by her were cruelty, adultery etc. This case does not disclose the cause of action within the meaning of order 7 rule ii of the Civil Procedure Code originally before three years of marriage a petition for divorce would not be presented in the court except in exceptional case of hardship in the petitioner or exceptional deprivity to part of the respondent. The marriage laws (Amendment) Act of 1976 reduced the period of one year. Till 1976, the incurable 'mental insanity', Leprosy and Venereal disease in a communicable form became the ground for divorce under the Special Marriage Act, provided that their duration had been for three years continuously. The Marriage Law (Amendment) Act 1976 and this Act brought notable changes as follows:

1) There is no line limit of any of the three diseases constituting the grounds for divorce.

2) The insanity has been enlarged so as to include mental disorder covering mental illness, arrested or incomplete development of mind, psychopathic disorder and schizophrenia.
Desertion:

Desertion without reasonable cause lasting for two years is a ground for divorce under the Act. After the 1976 amendment the grounds for "judicial separation" and divorce have merged under Civil Marriage Law. Any of the spouse found disappeared or whereabouts are unknown or he or she is missing for a long period of seven years, then the other spouse gets a ground for divorce. Even in case of any spouse undergoes a final sentence of imprisonment of seven years or more, the other spouse can seek a divorce under the law.

Cruelty:

Cruelty is the important ground for divorce under the special Marriage Act. Cruelty has so broad sense that there is no exact definition of cruelty. Cruelty is a conduct which causes danger to life, limb or health (both bodily and mentally) or gives rise to a reasonable apprehension of such danger. Threats of force used towards a woman in that condition are sufficient to constitute legal cruelty. Some sorts of forced sexual intercourse especially when one of the spouses is suffering from a venereal disease would amount to cruelty. Habitual vile expressions are used towards his wife amounts to cruelty. The husband making false accusation of moral turpitude to his wife amounts to cruelty being caused to wife. A course of conduct more calculated to be disruptive of married life than persistent and deliberate sucking. Maladjustment or disharmony of temperament of the parties may cause cruelty. Making threat, to commit suicide to other spouse; aments to cruelty
Constant ill-treatment by the husband as well as by in-laws amounts to cruelty. In course of time, the marriage laws have been liberated from time to time and in consequences there are innumerable cases get breakdown by one of the spouses and it other spouse doesn’t agree to a divorce and it leads to a hardship to other spouse. Once the marriage has been broken down irretrievability and the parties can no longer live together as husband and wife. In such a situation if the marriage is not dissolved, then it is cruelty to the parties.

Since the date of marriage, the husband on the first night comes with heavily drunken and the habit becomes regular and ill-treatment was held and the situation becomes cruelty which causes a ground of divorce to the wife under section 27(1) (d) of the Act.

Under influence and Misrepresentation to the marriage:

The consent of either spouse to the marriage has been obtained by coercion or fraud as defined in the Indian Contract Act, 1872.54 The parties were known to each other and taking the girl and made signed on the marriage paper saying that it was for some radio programme. This misrepresentation becomes the ground for divorce.

Reconciliatory attempt – Mandatory

In every divorce case, the reconciliation is an important and great attempt before divorce and it is not so easy to grant divorce. On the failure of reconciliation, the divorce occurred. All most all personal laws require the
court to try reconciliation between the parties before granting divorce. Section 34(2) of the Act provides the court as bound down duty to make attempt for reconciliation, even if parties have filed joint petition for divorce under section 28 of the Act. 55

The decree of divorce if passed without any reconciliation efforts, than the decree of divorce be set aside and remanded to trial court by the Appellate court for fresh disposal. It was held because the mandatory section 34 (2) was not complied and it was not maintainable.

Nullity of Marriage:

The scope and object of the special Marriage Act, 1954 is only law which provides for civil marriage between two Indians without having any discrimination of religion, caste, creed, colours of the parties. The marriage solemnized under the Special Marriage Act, 1954 can be declared null and void by the District Judge by presenting a petition by either of the spouse against adverse spouse. 56 The conditions of nullity of marriage specified in clauses (a) (b) (c) and (d) of section 4 of the Act are not fulfilled or the respondent was impotent at the time of marriage and at the time of filing the petition on the ground. The marriage solemnized under this Act and in violation of any of the conditions laid down for a lawful marriage are (i) monogamy (ii) Sanity or soundness of mind (iii) minimum prescribed age (iv) absence of degree of prohibited relationship is treated null and void.
The registration of the marriage if it is held then it can be cancelled in contravention of any legal condition. i.e marriages was/is (i) bigamous (ii) Either party was/is idiot or lunatic at to time of registration of marriage. (iii) No valid ceremony of marriage was performed between the parties (iv) one of the parties or both were under the age of 21 years at the time of registration (v) parties are within the degree of prohibited relationship.

The Special Marriage Act 1954 provides 'voidable marriage' on the ground as follows;

(i) Willful non-consummation of marriage.

(ii) Pregnancy by another man at the time of marriage.

(iii) No free consent due to coercion or fraud under the Indian Contract Act.

All such marriage got annulled by the court. The lack of free consent of the petitioner in respect of marriage under section 25 (iii) of the Act, the court shall refuse to grant the decree if the proceeding have not been instituted within one year after the coercion had ceased or the fraud had been discovered. The court only declares the marriage as null and void but not void completely. So to say the requirements if not complied which are inevitable, then such marriage is void and of no legal consequences. The parties selected a form of marriage without performing a particulars form of ceremony but the parties have to undergo the statutory procedure under section 12(2) of the Act, otherwise the marriage between the parties is uncompleted.
Jurisdiction of the Marriage certificate and for this purpose at least one of the parties must reside within the jurisdiction of the Marriage officer for a period of 30 days immediately preceded the date of notice of the intended marriage, otherwise, the certificate has no value. Both the parties are if not staying in the jurisdiction of the marriage officer and the marriage certificate is issued, then the marriage of the parties declared void. The marriage of the girl was solemnized and she was minor and in these circumstances the marriage is void and in this situation, the question of reconciliation though mandatory is not necessary.

**Judicial Separation:**

Section 23 of the Special Marriage Act, 1954 provides judicial separation of the parties. Either of the party can present a petition in the District Court under this section by following the grounds mentioned in section 27 (1) (A) of the Act. The party if do not comply the decree of restitution of conjugal rights, then the grounds of divorce leads. Hearing the grounds of the petition, the court grants the decree of judicial separation which subsist the marriage but there is complete restriction that there would not be cohabitation between the parties after passing the decree of judicial separation. In the year 1970 there was an amendment that non-resumption of cohabitation for a period of two years or more and thereafter it become the ground for divorced to either of the spouse. Thus, it is one way to accept the theory of break-down of marriage. But in the year 1976 it was amended and reduced to one year only.
Under the Act if the respondent found disappeared for seven years or more, the petitioner can move to the court by presenting a petition for a decree of divorce. Granting the decree of judicial separation by the court means it gives a chance to the spouses for rectification of the marital life. The separated spouse under judicial separation has the right to inherit the property of the other spouse under the law of succession in accordance with the provisions of the Indian Succession Act, 1925. Any two persons of any religious community get married under Special Marriage Act. They would retain in their personal law and they would not be deprived of inheriting the property under the law of succession in accordance with the provisions of the Indian Succession Act, 1925.

The personal laws of different religions are the law if their own respective community but this Special Marriage Act gives shelter to all the personal laws.

3.8: Divorce by mutual consent:

Divorce by mutual consent under Muslim law uniliteral withdrawal of consent by single party in this matter different High Courts have given different views. Earlier sense High Courts have optioned that once consent is given by one of the parties to the petition cannot withdraw the consent. But Bombay, Punjab, Haryana and Keral High Courts have expressed their views that a spouse is free to give consent and at liberty to withdraw his or her consent uniliterally at any time. The spouses got heavy pressure by
parents, relatives and near and dear ones to withdraw as the social background are set up accordingly. Thus, it is well considered that the marriage of the parties have broken down irretrievably. The Supreme Court has decided that any one party can withdraw his/her consent unilaterally.\textsuperscript{60} The final limitation of 18 months passes away and thereafter the court either dismisses the case or allow divorce if conditions are fulfilled.\textsuperscript{61}

The Supreme Court said that a petition for divorce by mutual consent under the Divorce Act could not be granted as there is no provision for divorce by mutual consent but by the amendment, the provision presently available as a section 10A\textsuperscript{62}. Statuate recognizes divorce by mutual consent and it is a compromise petition\textsuperscript{63}.

**Under Muslim law:**

Under Muslim law, according to Hadith a woman seeks divorce from her husband with a cause but never conferred any power to pronounce 'Talaq" on woman in Islamic law. The statement not to live together means that marriage had broken down irretrievably.\textsuperscript{64} On the initiation of wife divorce, the consent of the husband bestows, it is called 'AhuP 'Khula' and the wife has to give some consideration. But when husband and wife both give consent for divorce is called 'Mubaraa' or Mubarrat. Both spouses must be of sound mind and major at the time of giving consent. The Hanifi Law allows to the guardian to enter into agreement, on behalf of minor and their after consideration amount will be paid by him. Among shias the Guardian has no power to enter into agreement. The wife has the power to demand to give
'Khul' in exchange of her dower or Maher and the husband if agrees and it is sufficient that the marriage stands dissolved. An unconditional 'Khul' results in irrevocable divorce while conditional 'Khul' takes place into fulfillment of the condition like consideration in terms of movable or immovable. The essential ingredients are mainly special agreement and the Kazi merely declare the Act that the parties have dissolved their marriage mutually.

3.9 Irretrievable breakdown of marriage:

Irretrievable break down of marriage is very common basis of divorce is recognized only under Hindu Marriage Act, the Parsi Marriage Act and divorce Act, the Special Marriage Act and under Muslim law.

Section 13 (IA) Hindu Marriage Act, section 32-A Parsi Marriage and divorce Act and section 26 (2) Special Marriage Act and according to all these section of the Act says that either party can present petition for dissolution of marriage by a decree of divorce on the following grounds.

(i) The parties have no resumption of cohabitation to the marriage for a period of one year or upwards after passing of a decree for a judicial separation in a proceeding in which they are parties.

(ii) There has been no restitution of conjugal rights as between parties to the marriage for a period of one year or upwards after passing of a decree for restitution of conjugal rights in a proceeding in which they are parties.
Section 10(I) (VIII) of the Indian divorce (Amendment) Act 2001 has provided in a case that the respondent failed to comply the decree of restitution of conjugal rights for a period of two years or more after passing the decree against the respondent. In both cases the parties have the right to divorce. Non-resumption of cohabitation and non-compliance of the decree of restitution of conjugal rights are nothing but the basis of divorce on the ground of irretrievable break down of marriage. So to say the marriage has been complete failure. In such a situation there is no use of continuing to subsist the marriage life.

The clause (II) of section 13(IA) of the Hindu Marriage Act and the clause (a) of section 23(I) in which a decree of divorce will not be passed until the court gets satisfied that a party should not take the advantage of its own wrong. It is a strange matter that neither the court looks to the intention of the parliament nor the parliament looks to the applicability of the section 23 to the section 13(IA) and thus certain reforms are made but due to non-participation of the nature, it remains unchanged. The Supreme Court has land deem that section 23 is applicable in section 13 (IA). The trial courts take the same view of clause (I) of the selected 13(IA) whenever a petitioner presents the petition for judicial separation under section 10 of the Hindu Marriage Act, 1955 on the fault grounds and after the expiry of period of one year or more, the petition for divorce under section 13(IA) (I) is filed: Nain, J. of Bombay High Court comprehends that sub-section incorporates irretrievable breakdown principle. He said "......... enactment of section
13(IA) in 1964 is a legislative recognition of the principle that in the interest of society if there has been a breakdown of the marriage, there is no purpose in keeping the parties lied down to each other. At this, parliament enacted to the new and more liberal thinking on the subject of divorce. The amended section says where the reconciliation got failed and also by resumption of marriage life for two year and now it is one year or upwards after the decree for judicial separation or restitution of conjugal rights. The amendment takes the interest of the community which has broken down and the petition helps in allowing remarrying. The Supreme Court held that under section 13 (IA) the court is not bound to grant divorce on mere proof of non-cohabitation for the prescribed period and that further section 10(2) does not bestow right to get divorce in the spouse. Granting maintenance is an important part before granting divorce.

A petition U/s 13(1) (I) may also succeed when it has been made in favour of the petitioner after the completion of a year from the date of a year from the date of decree of Judicial separation was not pre-mature.

Under Muslim Law:

The wife hated her husband that he could not live with him that there was total incompatibility of temperaments, the marriage had failed and divorce should be granted as because of irretrievable break down of marriage. In the earliest time, Muslim wives have been entitled to divorce when it was clearly found that either the marriage has ceased to be reality and suspensive of marriage tie had in fact taken place or continuance of marriage...
involved injury to wife. The parties are failed to live within the limit of Allah. When Muslim law allowed divorce to the wife on the grounds of husband’s non-payment of maintenance, it was not because divorce was by way of punishment of the husband, or was a means of enforcing wife’s right of maintenance, but as an instance, where cession or suspension of the marriage had occurred. The Koranic text in their regard as “if limits of the God will not be observed, it is better to dissolve the marriage”. The traditions: (a) when one of the wives of prophet, Ashma, asked for divorce in the ground that he could not continue to live in matrimony, he granted her divorce (b) one Jamila appeared before the prophet and said that thing to she had no complaint to make against her husband Sabit as to his morals or religion. She could not bring herself to the whole hearted by loyal to him as a Muslim wife ought to be, as she hated him and finding no way to live together happily, the divorce is only alternative (c) the couples if do not pull on together well, then it will be better to refer to Muslim arbitrators and their decision shall be binding upon them both. The prophet says, “If women be prejudicial by marriage, let it be broken off”.

Muslim law of modern India has two main broke down grounds of divorce. (a) non-payment of maintenance by the husband even if the failure has resulted on account of conduct of the wife (b) where there is total irreconciliability between the spouses or where marriage has broken down irretrievably. In this matter Gauhati High Court enlightened a new matter in section 2 of dissolution of Muslim Marriage Act by granting divorce to the
parties by mutual consent as the parties have arrived at compromise in spite of a provision for the same being not in existence in the Act. 

3.10 Divorces without intervention of the courts introductory:

Divorce is the most vital and uninhibited aspect of Muslim matrimonial law. A remarkable feature of Muslim law is that divorce has no judicial or non-judicial authority is required to effect dissolution of marriage.

Non-Judicial divorce is without the intervention of the courts, the Muslim law is classified as follows:

Unilateral divorce by husband is called Talak and Talak has many kinds. 
(i) Express Talak
(ii) Implied or contingent talak
(iii) Delegated divorce, talak-i- tafweez
(iv) Divorce by mutual consent it has two kinds-
   (a) Khul
   (b) Mubaraa

Unilateral Divorce-Talak:

The husband under Muslim law has the unilateral power of pronouncing divorce on his wife without any reason, even in a jest, or in a state of intoxication. When no one is present but in Shia Law at least two witnesses must be present. In modern India, in absence of the witnesses and in her absence only mere utterance of talak is sufficient and this form of divorce is
recognized by all schools of Sunnis and Shia. In the Muslim world a Wife could be given up in a joke, it was the only feasible regulation marital relation and as such Muslim law gives apex position and ample power to the husband. There are four ways of talak the Sunnis recognizes the four forms of Talak and the Shias recognizes only express form of the Talak delegated forms of the Talak.

Express Divorce:

The husband when express in clear and unambiguity words such as, "I have divorced you" and the divorce is express form.

The express divorce is classified into two categories.

(a) Talak-i- Sunna- It is approved divorce

(b) Talak-ul-badai or Talak-in-Biddat or Talak-ul-Bidda. It is unapproved divorce

(a) Talak-i-sunna- The pronouncement for divorce is revocable and it is classed into two forms (i) hasan (ii) hasan.

Talak-ul-Bidaai, has also two kinds -

(i) Triple divorce or three pronouncements at one time.

(ii) One irrevocable pronouncement.

Hasan Talak:

It is a single pronouncement divorce made in a period between two menstruation courses is called 'Luha' or at any time if wife is free from menstruation. The requirement that pronunciation of talak should be made
during the period of Luhr applies to oral divorce but does not apply to Talak in writing. The divorce can be revoked at any time before the completion of the period ‘Idda’. Before the completion of the period in ‘idda the husband resumes cohabitation with his wife or declares to her ‘I have retained you’ and thus divorce is revoked and makes it popular and approved form of divorce.

Hasan Talak:

In this form of talak, the husband pronounces "Talak" three times during the successive "Luhrs' subject to the condition that the wife is not menstruating, the pronouncement of "Talak may be made after the interval of a month or thirty days. When the third pronouncement is made, Talak becomes final and irrevocable. It is most essential each of three pronouncements should be made when no intercourse has taken place during the period of Luhr. A wife is having her period of Luhr, the husband without having any sexual intercourse says to her, 'I have divorce you'. This is the first pronouncement thereafter the husband resumes cohabitation with her or revokes 'Talak' by the pronouncing the words 'I have retained you'. Then in the next period of "Tuhr" when no intercourse has taken place, he again pronounces, "I have divorced you". This is second pronouncement. In the same manner the pronouncement is uttered 'I have divorced you'. The moment the marriage stands dissolved irrevocably, irrespective of idda.

The husband if wants, reconcile a rigid condition gets imposed that the divorced wife has to marry another man with whom he is actually
consummated and then marriage was to be dissolved. On the completion of the period of 'idda' the woman was to remarry her first husband.

Undergoing all the rigid conditions is nothing but a great punishment to the husband to make chastity to the wife by the husband and at the same time it is a greater punishment and humiliation to the wife.

Talak-Ul-bidda-

Talak-Ul-bidda has two forms:

(i) Triple pronouncement of divorce made in a period of "Tuhr'. Either in one sentence "I divorce you", 'I divorce you'. 'I divorce you'. In the third pronouncement, the marriage stands dissolved irrevocably (ii) A single irrevocable pronouncement of divorce made in a period of "Tuhr" or even or otherwise. In this form, the husband may say to his wife.' I have divorced you' in Talak-ul-bidda form. It also results in dissolution of marriage irrevocably72. In this form the re-marriage can take place when wife again remarry with the new husband as like as in hasan talak. The Supreme court held that on pronunciation the 'Talak' rhetorically73. Under the enforcement of a feature, Indian Muslims should not take recourse to this form of divorce.

Implied and contingent Talak Sometimes, it so happens, the words used in the pronouncement by husband in Talak are not clear such as " I give up all relations with you and shall have no connection any sort with you or I have released you from being my wife". Thus the divorce is implied if the intention to divorce is clearly expressed. The divorce becomes effective on
the happening of the event. This is called contingent divorce. The husband says to his wife, 'I have divorce you but I reserve myself an opinion for three days'⁷⁴. The Talak will be valid and opinion will be void. Implied or contingent are also amounted to divorce but shies do not recognize this form of divorce.

Delegated Talak or Talak-i-tafweez this form of divorce is recognized among both Shias and Sunnis. Muslim husband has the right to temporarily, permanently irrevocably; however, the delegation power must be clear and particular. Under Muslim Law the wife has no power to divorce her husband and under certain circumstances the wife can obtain power. The husband if took a second wife and the first wife being cruelly treated, the wife will have the power to pronounce 'Talak' on herself a "Talak-i-tafweez merely gives the wife an option to pronounce 'Talak' when the power is delegated to the wife under the pre-marriage or past marriage agreement, it is not revocable.

Constructive divorce- Ila and Zihar

In Ila, husband swears that he will have nothing to do with his wife and abstains her from her society for a period of four months, marriage stand dissolves.

In Zihar form the husband expressed his dissatisfaction with his wife by comparing her with the back of her mother and any other women within the degrees prohibited relationship, the wife obtains a right to refuse cohabitation with him till he performs a penance and if the husband refuses to perform penance, she has the right of judicial divorce.
There is an exception for the pronouncement to ‘Talak’. All schools of Muslim agree that Talak can be pronounced only by a person of sound mind who has attained the puberty. A minor or a person of unsound mind has no capacity to pronounce ‘Talak’. Under Hannifi Law and pronouncement under compulsion so as to please one’s father or some other persons or in jest is valid where as the Shia Law does not recognize a divorce pronounced under compulsion or threat or undue influence or obtained by fraud. There is some controversy in Hannifi Law whether talak pronounced under intoxication is valid. The shias and the Malikis do not recognize any talak pronounced by one who is in delirious condition or in a point or in sleep or unconscious is invalid. A dumb person may pronounce divorce by signs or a literature do so in writing.

The Hannifis Talak may boreal or in writing. Neither a notice of Talak nor the presence of wife is required nor is it necessary it should be addressed to the wife but the wife must be named. The present of the wife at the time of talak is not necessary, for certain purposes communication of talak is not necessary and for certain purposes communication of talak is necessary.

3.11 Customary law:

The birth of the custom cannot be ascertained and it prevalent time is in memorial but it has its own rules and regulation’s prevailing in every personal law. Among Hindus customary divorce is still recognized.
Section 29 (2) Hindu Marriage Act, says: "Nothing contained in this Act shall be deemed to effect any right recognized by custom or conferred by any special enactment to obtain the dissolution of a Hindu Marriage, whether solemnized, before or after the commencement of this Act".

In the year 1955 the Hindu Marriage Act came into force but prior to it, the Hindus could obtain divorce only if a custom governing them allowed it. The Hindu Marriage Act preserves safely to customary divorces. For the customary divorces no provision of the Hindu Marriage Act applies. Section II, fair trial rules, Section 23, bars to matrimonial relief, Section 15, bars to remarriage, Section 24 and 25, maintenance and alimony, Section 26, custody of children do not apply to customary divorces. The low castes Hindus divorce has always been available under customs with them sacramental character of marriage but Hindus has no general common custom of divorces and it varies from caste to caste, from place to place. The parties when claims that they are governed by custom. Under Customary law divorce may be obtained through the agency of Gram Panchayat, Caste Panchayat, Caste Tribunal by private Act of parties, orally or in writing such as by 'Tyaga Patra' or 'barkatnama'. Custom permitting divorce must fulfill all the requirements of a valid custom. Unilateral wish or consent by one party and denied by other party is void as well as unreasonable and against public policy. The customary divorce is an exceptional and not alike general law of divorce. There are various modes of divorces under customs. Divorce may be by mutual consent or sometimes divorce may occur either by husband or
wife on flimsy grounds. It is difficult to classify the mode of divorce under custom.

Renunciation, abandonment or repudiation:

Different tribes, castes have their own respective customs but among the jats, a husband has the power to repudiate the marriage. No sooner did repudiation; the wife is free to remarry. A custom under which abandonment or desertion of the wife by the husband results in the dissolution of marriage which is valid in some communities, oral abandonment is not sufficient, writing is essential. Some communities confer rights to the wife for remarriage. A husband abandons or deserts the wife, the wife has the right to dissolve, the marriage Unchastely, Immorality, adultery or conversion.

Some tribes, castes, husband has the powers to divorce his wife on the grounds of unchastely, immorality, adultery and conversion. The wife if converts to other religion, the husband may divorce her.

Divorce by mutual consent in customs:

There are certain tribes and a caste recognizes divorces by mutual consent either orally or in writing. It also so happens that the consent of the husband is obtained by making payment to the husband whatever he spent in marriage. Such divorce is also valid. But consent to divorce is obtained on payment of some price in cash or in kind, divorce is not valid.
Divorce under Special Enactments:

Mostly in South India at Travemcore, Cochin (Now States of Keral) divorce among several castes or groups were recognized and regulated under certain statuates. Among the matrimonial communities like marmakhathayama and alisanthana marriage has always considered consensual union dissoluble by mutual consent. Some special enactments of old Madras Provinces and erstwhile states of Travencore and Cochin regulate marriage and divorce in these communities and therefore divorce is still found under them.

Judicial notice of custom was taken and proof of Udiki Marriage among lingayat’s was held to be proof of earlier marriage.79

Notes and References:

1. Section 2 and 3 Matrimonial Causes Act, 1937.
2. The Bombay Hindu Bigamaous Marriage Act, 1946 and Bombay Hindu Divorce Act, 1947, similar statuates were passed by Madras in 1949.
3. Section 13(i) (I), Hindu Marriage Act, 1955 now the marriage law (Amendment) Act, 1976 makes adultery as ground of divorce.
5. Edwardraj Vs Shila Kathi AIR 1994 Mad 82, Vijayan Vs Bhanusundari, AIR Mad., 166 Milay Vs Rose, AIR 1995 Gan 47 (on mere consent divorce cannot be granted).
6. 27(I) Special Marriage Act, 1954.

7. Ibid

8. Clause (a) of Sec 23 (I) the Hindu Marriage Act, 1955.

9. Clause (b) of Sec 23(i) supra note 8.

10. Clause (c) of Sec 23(i) ibid.

11. Clause (d) of Sec 23(i).

12. Section 14, the Hindu Marriage Act 1955.


14. Under Muslim law the husband, bound for the maintenance of an immature wife. Even when she stays with her parents, Maine Hindu Law P.618.

15. The Parsi Marriage and Divorce Act, 1936 sec 32 A.


17. The Hindu Marriage Act, 1955 sec 13 (IA) (III).

18. Section 13(B) of the Hindu Marriage Act, 1955.


28. See clause (f) of Section 10 (I) as it stood before the 1976 Amendment.
30. Section 10 (v) (6) as stood before the 1976 (Amendment).
33. Perumal Vs subhalaxmi A.I.R 1956 Mad 415.
34. Section 13 (I) (III), as it stood before the 1976 amendment as cited and analysed by T. Mahamood 'studies in Hindu law' at 456 (1986).
35. Section 13 (I) (V) as amended in 1976.
40. Manak Khan Vs Mt Mul Khan A.I.R 1941 Lah 167.
41. Mt Khatijan Vs Abdullah A.I.R 1943 Sind 65.
43. In fact one of the conditions of their immigration to India improved by the Hindu ruler on there was that they would adopt Hindu Customs of Marriage, Paras Diwan, Family Law Page 7 (second edn, 1997).

44. Section 39-41 of the Parsi Marriage and Divorce (Amendment) Act 1988.


47. Parsi Marriage and Divorce Act, 1936, Sec 3-4.


49. Section 29 of the Special Marriage Act, 1954.

50. 27(l) (f) and (g) of the Special Marriage Act.

51. Section 2(l) (6) explanation which defines desertion in detail.

52. Section (l) (c) of the Special Marriage Act, 1954.

53. Section (l) (d) of the Special Marriage Act, 1954.

54. Tapas Rajan Das Vs Jolly Das AIR 1990 Cal P. 353.


57. Section Special Marriage Act, 1954.

58. Sudham Kumar Roy Vs Smt. Swati AIR 1989 NOC 94 Cal.


65. Sayal Vs Sayal AIR 1968 Bom 489.


68. Sumitra Vs Ehandra AIR 1988 cal P.102.


70. Umar Bibi Vs Md. Din AIR 1945 Lah P.51.


72. Salema Vs Seikh AIR 1973 M.P. 207.


74. B. Sahoo Vs Bismilla AIR 1936 All. P.38, Mirian Vs Maimma AIR 1949 Assam P.14.


76. Prembai Vs Chhanoonalal AIR 1963 M.P. P.57.


78. Gurdit singh Vs Angrej AIR 1968 AIR 1968 S.C. P. 142 (Jats).