INTRODUCTION AND METHOD OF STUDY

At the very outset, the present researcher state that, the present developed human civilization, becomes possible by the holy and nobles institution 'Marriage'. In the view of the researcher, the institution 'marriage' as an institution is the bedrock of a society. It is the very foundation of civil society. As such the institution of marriage has been playing a vital role in different communities and above all in human civilization.

Having said this under classical Hindu conception "marriage" is arranged by God from birth after birth. The very conception of sacrament in marriage is found mostly in ancient Hindu and Christian world. The cardinal purpose and object of marriage among Hindus is to beget sons which later on perform religious and spiritual duties for the ancestors. At the same time, the wife also must protect her chastity. The Shastrakers say, a virtuous wife must preserve her chastity as much after as before her husband's death¹, as such, under traditional Hindu law the wife is considered as the source of Dharma. Artha and Kama as well as - Moksha. Thus the wife is ardhangini² and also sahadharmini for performing religious function yagnas³.

Since the inception of the Muslim marriage, it is a civil contract and their marriage in introduced to legalize the sexual intercourse and to determine the paternity of the children. At the time of solemnization of the marriage certain holy verses from the Koran are recited. Marriage among Muslims is not a sacrament but purely a civil contract. In Muslim religion Nikah (Marriage) is an institution having multifarious purposes and objects such as keeping the species continue on, restraining the men from as trying the right
path and to encourage the chastity. Added to above the solemnization of marriage is a civil ceremony of the offer is made by one party and acceptance is by another party in the same meeting in presence of two witnesses (Not in case of Shias) and it is sufficient to enter into contract, if any religious ceremony in performed, it does not affect the legality of marriage.

The Christian Marriage is also a sacrament one. The Christian Marriage Act, 1872 lays down the procedure of solemnization of marriages. In the solemnization of marriage a minister of religion notices of the declaration by one party to the marriage are essential ingredients for the marriage. Registration is essential for parties are free to choose their respective spouse.

Under the Parsi marriage ceremony is performed it is called “Ashirbad” being solemnized by a Parsi priest in presence of two Parsi witnesses. In this community registration is very essential and marriage is to be certified by the officiating priest in the prescribed form. The certificate has to be signed by the priest, the partied to the marriage and by two witnesses before the Registrar of Marriage.

In this world whatever forms of marriages are existed, all have its own sanctity and holiness in the institutional of marriage and also these different form of marriages are recognized in their respective societies.

It is the greatness of India with having it is multi communities, sects professing multi religions with their respective marriage and divorce laws and the Hindus, the majority community have the respective marriage and divorce law and then after the biggest minority community and small minority.
communities are Muslim, Christian, Parsi's, and Jews having also their respective laws.

As referred earlier, to some people the term 'Divorce' a frequent word stains to the institution holy marriage, but it is synthesis of marriage as it fortifies the marriage. Divorce legally dissolves the marriage in one way it can be considered to be emancipation from in desirable and objectionable tension of marriage. Till the completion of divorce problem are many and complicated to face. In view of the researcher the concept of divorce in all personal laws may be understood broadly such as 1. separation 2. Desertion 3. Amulment.

The term 'divorce' is of Latin origin 'divortium' which means "to turn aside to be form "divertendo" because a husband is diverted from his wife. Anyhow, divorce is a necessity, is now accepted on all lands. It is not an antithesis of marriage. It is rather there to strengthen the institution of marriage. The present trend therefore is to consider divorce more favourably calling it the mark of emancipation, specially, of the fair sex, a type of escape value for the real ease of undesirable tension of marriage.

In Muslim matrimonial law has also its extrajudicial divorce such as 'Talak' 'Mubarat'. By 'Talak' the husband to state unequivocally three times expressing his intension to repudiate the marriage.

In Christian marriage and divorce the cannon law is a conjugal union of man and woman with their free consent of the spouses. Entering into a marriage is a sacrament and in this view, the death can separate them. As such, Christian marriage is a voluntary union of one man and one woman intending to continue the whole life.
Extra-judicial Divorces in India: In ancient Hindu Law, divorce was known and indissoluble only, it was allowed by custom, in the case where Madras High Court has opined that custom if permits a divorce by mutual agreement is not valid. In the case of it was held that, if custom among parties permits divorce by mutual consent is valid. Muslims are bound by Muslim personal Law. Extra-judicial divorces are the most fragment way of dissolving the marriage through "Khula", 'Talak' through extra-judicial divorces under Muslim personal law recognized by Indian courts. As a whole extra judicial divorces recognized in Hindu as well as Muslim marriage laws.

Significance and Methodology of proposed research study

I. Significance:

It has been found on legal literatures that there are few studies on divorce throughout India. Further the matter of divorce deals with the behaviour of man and, as such, it is necessary to make a socio legal research study.

II. Scope and objective of study:

1. The prime factor of the scope and objective of the research is to which specific area it covers.

2. Divorce is nothing but the thought of indiscipline unrealization of respective marital duties bound to spouses. Divorce will never occur if there will be happy marital adjustment. The type of marriage is also very important in matters of divorce, such as arranged marriage and civil marriage.
Besides this, the early age of marriage between spouses is very essential so as to quench the thirst of the spouses and also engagements in any type of services or jobs far from the matrimonial home are important for the cause of divorce.

3. There are different grounds leads to legal divorce and mostly the source of socio-economic status creates the different causes of divorces of the couples.

4. The time taken for obtaining the decree of divorce from the judicial courts is a cumbersome and time consuming procedure. The time for adjournment taken by litigant parties and advocates also causes delay.

5. Even after the legal divorce many consequences arise. After the divorce different types of feeling and reaction occurs among relatives and among community. This social degradation is a great problem of divorce.

III. Hypothesis raised in Research Study:

It is an admitted fact that, hypothesis provides direction to research. Thus, it is forward looking. It permits a researcher to identify the procedures and methods to be used solving his research problems and rule out methods which are incapable of providing the data necessary to test the Hypothesis. Further, a hypothesis should not carry within it a value statement.

Having said this, in the mind of the researcher four key questions originate

Firstly, is the divorce is antithesis of marriage?
Secondly, whether there are semblances of divorce in different personal law?

Thirdly, what are main causative grounds of divorce in different personal law?

Fourthly and lastly, what will be the passive effect to divorce occurs if proposed uniform relating civil code is implement?

IV. Source of data collection:

This present research provides mostly doctrinal as well as little non-doctrinal. It is very important in the part of the present researcher to follow both the methods. The present researcher has made all kinds of attempts to make this research more scientific, unbiased and more logical. The researcher collected the data's from libraries, case laws, field study, District courts, books, relevant Acts from different seminars and also.

V. Methodology:

The method of study is a good research is very important. The study also must be scientific, logical and truth finding. For making the present research experimental and scientific, arriving at conclusions the researcher took the help of following methods:

VI. The Universe of research study:

Collecting the sample of cases is rather very complex problem. The present researcher had first wishes to cover the Sambalpur District of Orissa.
Because sufficient numbers of appropriate divorce cases are available in the Sambalpur District. It has also dense population as well as the literacy rates are found high. Besides this, it has mixed population like Hindu, Muslims and Christians are found in aforesaid District and the cases of divorce on different grounds of different personal laws have been instituting.

The researcher though to trace out fifty cases but unfortunately only 12 cases are found because of following reasons or difficulties, such as, not traceability of the either or the spouses, changing of addresses, transfer to job purposes, either of the spouse remarried, due to death.

VII. Tools and Technique of the Data Collection:

For a good legal research, there are many techniques or tools for collecting data's and these are very important part of research to prepare the blue print for erecting the super structure of proposed research.

The following tools are used for this research by the researcher.

1. Judicial Case record:

Any spouse when institute a case against the respondent then a case file is prepared. During the course of trial, the case record subjudiced in the court and when the case is disposed off and after the appeal period over, the case file send to record room. The case record contains the petition filed by the petitioner, written statement (the reply of the respondent on the petition), issues frame and the evidence of witnesses along with cross examination of witnesses, arguments either written or oral before the judge and finally
judgment and decree. Studying entire case file gives transparent information of the grounds of the divorce. Different divorce cases are found like dissolution of marriage, judicial separation, restitution of conjugal rights etc. For studying the case records the researcher obtained permission from the District judge, Sambalpur (Orissa).

2. Field Study:

The present researcher comprehends the field study method can only bring the best and effective conclusion. The researcher drew inference from it by analyzing the same subsequently it has come out to the notice that the background of the divorce, the way of life leading after the divorce couples, the remarriage after the divorce and the life leading with new couple and the feeling the reaction of divorce couples have come to the lime light.

3. Interview:

Interviewing the divorce couples makes the research more authentic. The researcher started the field study by visiting to their residence of involved spouses. At the time of interview, the researcher faced some trouble to interview the divorced couples, as because, maximum couple does not want to disclose their private affairs before third party and in such a position, it is the duty of the researcher to bring the couple into confidence and he did so.

The researcher though studies the case records of the divorce couples but without disclosing the fact asked the interviewers about details particulars of the cause of the divorce and both the divorce spouses used to say that they are not at fault and implicate the opposite spouse as guilty one.
while interviewing the divorce couples, they used to express their feeling and reaction and consequences meeting by them after the divorce. Some divorcees also admit their fault and taking the decision of divorce or filing divorce case is their hasty and wrong decisions and committed irreparable blunder in their life span.

4. Observation:

As earlier described, the researcher visited the residence of the divorcee's spouses for collecting data. Besides this, the researcher met the children of the divorcee parents, relatives, and close friends of the divorcee spouses to know the way of life leading by the children after divorce and whether they are in comfort by missing one of the parents.

5. Discussion with those lawyers dealing with only divorce cases-

The researcher being an advocate by the profession at Sambalpur District having more than 37 years practice dealing with civil cases along with matrimonial cases has personal practical experience, however, the researcher also discussed with other colleagues and all have used to say that maximum divorce cases are getting filed in mutual consent. It is an admitted fact that court always used to take sincere effort for reconciliation the spouses, if fails, the marriage of the spouse get dissolved. During the study the researcher gets valuable advices from the senior lawyers on pre and post scenario of divorce cases.
6. Attending the matrimonial cases in the Judicial Court:

Out of all few divorce cases of sensitive issues used to hold in the camera court. The researcher after due permission of the court got the chance of attending the camera court to observe the proceeding.

VIII. Scheme of Chapterisations proposed in the thesis:

The researcher plans to study the research problem by sub-dividing into eight chapters which are as follows:

In the first chapter "The social back grounds of spouses in divorce, marital relation and adjustment wishes to highlight the genesis of marriage law and divorce law of different personal laws of different communities applicable in India.

In the second chapter :"Divorces in Hindu law and Non-Hindu law", the researcher has reflected the differences of fundamental principle in respect of divorce laws of Hindu law and Non Hindu communities and at the same time trace out similarities and dissimilarities.

The third chapter: "Grounds of divorce". Here the researcher has focused the different grounds, which leads the spouses to get the divorce. The researcher plans to point out the vital psychological differences of opinion between the spouses which lead to final decision of dissolution of marriage.

In the fourth chapter: "field report of divorces" the researcher desires to include some case studies along with necessary data decided in the court in tabular forms.
The fifth chapter: "Legal process and procedure", the researcher makes an effort that what different legal court processes and procedure are to be adopted while filing the divorce cases and subsequent steps taken till judgment and decree.

In sixth chapter: "Alimony and maintenance as ancillary relief" where the researcher has made an attempt to specify the importance of alimony, interim-maintenances during that pendance of litigation and alimony sanction by the court.

The seventh chapter: "Consequences and effect after divorce, care custody, education of children and remarriage". In this chapter, the researcher has depicted what fate meets by the spouses after the divorce important. The researcher wants to trace out that the remarriage is essential, important and good for the divorcee spouses and their marital adjustment.

In the eighth and last chapter; that is "conclusion and suggestions". Here the researcher arrive conclusion as per his collected data and plans to give some suggestions.

Notes and References

1. Manu smriti Vs 151, Yajnavalkya Smriti, 1, 76 Vishnu Smritis xxv, 13-14.
2. Sathpath Brahamana 1, 6.10.
3. Supra note I ix, 64-68.
5. Prem Bai Vs Channolas (1963) A.M.P 57.