RECAPITULATION

In the first chapter of this academic venture dealing with Hindu divorce according to the leading Hindu source Books-Vedaas Shastra-Manu Shastra-Yajnvalkya etc and various at Acts, (Hindu Court Bill) and various schols we have observed that the Hindu divorce or dissolution of marriage has not remained a can divorce or a Dharmashastric or shastric divorce but has be come to be a judicial contract and has also become a civil contract, though it has semblance of the both. It has a semblance of a contract or a civil contract as consent is of some most importance necessary. In this chapter, I have also mentioned the various forms of the Hindu Marriage and divorce. In this chapter, I have also discussed the nature of Hindu marriage and divorce and i s form and capacity of the parties entering into divorce literally means the theory of the "sapurate" in law this term means "divorce". In Dr. H.S. Gour's Hindu law of marriage and divorce has been defined to be "Separation" or 'dissolution' of a marriage means divorce, but not every such separation or dissolution can properly be so designated. So while the term "divorce" has sometimes been broadly defined or applied to include both decrees of nullity and decrees of dissolution of marriage." In Modern Hindu Law by prof.Paras Diwan, it is defined as:

"Once it came to be established that marriage is a civil contract, it is a logical next step to recognize that it is also a dissoluble union. In the second part of this
chapter I have discussed the divorce according to the Qur'an/Hadith/Leading School of Juris Prudence. The latest acts -pre-post Independent India.

In Islam divorce, when not absolutely necessary, is strongly disapproved of and discouraged. The Prophet (peace be on him) has said, "of all the permitted things divorce is the most abominable with Allah." (Sunan, Abu Dau'ud). Even when a man is not satisfied with his wife, the Qur'an enjoins forbearance. It says, "And retain them (the wives) kindly. Then if you hate them, it may be that you dislike a thing while Allah has put abundant good in it." (Qur'an, IV.19).

Muslim Jurists have held different views regarding divorce in Islam. According to some, divorce is prohibited but is permissible in case of necessity. It is stated in al-Radd al-Muktar, dealing with Hanafi Law, that no doubt it (divorce) is forbidden, but it becomes mubah (permitted) for certain outside reasons. Also in this chapter I have discussed to give instances of our own times. We may quote some important changes introduced in the Muslim law of divorce by the dissolution of Muslim marriages act of 1939. The Bill was introduced in the central Legislative Assembly by the late Muhammad Ahmad Kazmi, a member of the Working Committee of the Jam-iyyat al-Ulama-i Hid, because it was considered necessary to bring about certain important modification in the then
prevalent provision of Muslim Law.

In the second chapter I have discussed the grounds of divorce under Hindu law. Before 1937 divorce was impossible without proof of adultery; this was prejudicial to public morality, as a person who wished to bring an end to his marriage had either to commit adultery or perjury; the law was an incitement to immorality. The development of the English law of divorce has been dealt with in brief outline in chapter 1st, as the Hindu marriage act, 1955, The Hindu marriage and divorce ordinance, 1960(Kenya) and the Hindu marriage and divorce ordinance, 1961(Uganda) have borrowed the provisions for divorce largely from the English Matrimonial Courses Acts, 1937-1950 (as amended and consolidated by the (English) matrimonial courses act, 1965). The above legislation brought revolutionary changes in the Hindu matrimonial law by introducing divorce and making marriage a civil contract, which can be terminated on prescribed grounds. As we see in chapter (1st), a Hindu castric marriage was purely of a sacramental nature and did not admit divorce, so there is Indian case law to which courts can look for Precedents in applying the modern Hindu law of divorce, which is still in process of development. The question is how far the Hindu courts can resort to English Precedents? The following observations of Gajesedragadkar, J. (as he then was) can be of some help in this respect. "When we are dealing with the problems of constrving a constitutional provision which is
not too clear or lucid you feel inclined to inquire how other Judicial minds have responded to the challenge presented by similar provisions in other sister constitutions.

Since the Hindu marriage act 1955 is based largely on the English matrimonial causes act, 1950 there is a great tendency to rely upon English decisions. However, there are differences between the two acts and great care has to be taken while acting upon the English law and practice of divorce; for instance, English decisions ordering medical examination of an alleged lunatic can have no application in a case arising under the Hindu marriage act, 1955, because, under the matrimonial causes rules in England, specific provision has been made for examination by medical inspectors. There is no such provision in India. There are other important considerations. There are differences in the social conditions between Hindu and English society and in the language of the English and Hindu acts. Hindu law is quite different from English law in the following respects. Suffering from a virulent form of leprosy for a period of a least one year, and suffering from a venereal disease in a communicable form for a period of not less than three years are grounds for judicial separation, but there is no such provision in English law, though the communication of venereal disease may amount to cruelty. Coasing to be a Hindu by conversion to another religion and renunciation
of the world by entering a religious order are grounds for divorce peculiar to Hindu law, which I have defined and discussed in this chapter.

In the second part of the second chapter of this work I have also discussed the grounds of divorce under Islam or Muslim law. The guiding principle in the matter of the husband's duty towards his wife is provided by the verse of the Qur'an where in it is laid down, "To keep them (the wives) with kindness or separate (from them) with humanity," in Surah al-Nisa, IV:34. It is stated at another place, in Surah al-Bagarah,11:231, "And They (the wives) have rights similar to those against them in a just manner." The Prophet (peace be on him) said in his sermon at the last pilgrimage, "O, my people, you have certain rights over your wives and so have your wives over you": At another time he stressed this matter when he told a person "thy body has a right over the and the soul has a right over thee and thy wife has a right over thee."

As stated, one of the important objects of marriage is a happy companionship of the parties and with this end in view the husband has to perform certain marital obligations. But the failure to perform marital obligations by a husband does not necessarily constitute a cause for the dissolution of marriage. In some cases it may amount to a moral offence only, but in the case of the breach of some important obligations the wife gets a right
to the dissolution of her marriage.

In India, Pakistan and Bangladesh, a wife can also get her marriage dissolved under the provisions of Act viii of 1939, if the husband fails to perform his marital obligations.

In chapter III I have discussed the modes of divorce/dissolution of marriage under Hindu Religion or Hindu Law and in the second part of this chapter I have discussed and defined the modes of divorce/dissolution of marriage under Islam or Muslim law.

In fourth Chapter I have discussed the effected divorce under Hinduism and Hindu Law and also I have discussed the effected divorce under Islam or Muslim Law.

In Chapter fifth I have mentioned the present Hindu and Muslim Laws on divorce and the concerned Acts. (causes of the Independent India)

In Chapter sixth I have discussed points of similarities and dissimilarities (in the both religious) in the fields of