Chapter - III

HINDU MARRIAGE SYSTEM
AND
HISTORICAL PERCEPTIVE
OF
DIVORCE
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Evolution of The Institution of Marriages

‘Marriage’ and ‘family’ are ancient institutions in human society. It seems to be now well established that the institution of marriage did not exist among the primitive men. At that time man lived more or less like any other animal. He was so much engaged in the satisfaction of his primary needs, hunger and shelter, that there was no time or occasion to think of refinement. Sex life was absolutely free. Sex promiscuity was the rule. (Diwan and Diwan, 1995).

As man advanced, twin discoveries were made: of the domestification of and use of the fire. The domeistication of the milch cattle went a long way to distinguish him from other animals. It no longer remained necessary for him to wander from place to place in search of food. In the initial stages of use of fire man used it to ward off his enemies, wild animals and other groups of men who attacked him. (The use of fire for cooking purposes was made later). With the emergence of herds of cattle, the ideas of possession and ownership also emerged. Man started leading some civilized life.

So long as the sex relationship remained unregulated, it was maternity alone which could be known. Paternity could not be determined. It seems to be possible that at some stage of human development with the emergence of notions of possession and ownership, the human male was seized with the idea of knowing his children. This was not possible if sex promiscuity continued to be the rule. If sex relationship could be made an exclusive union of man and woman, then only it was possible to determine the paternity of children.
Thus, it seems, in man’s quest to know the paternity of children lies the seeds of the institution of marriage. It is obvious that marriage as an exclusive union of a man and a woman could not have emerged at one stroke. The process was naturally slow and prolonged. (Diwan and Diwan, 1995).

Civilization dawns on man with the acquisition of knowledge of cattle breeding, agriculture and industry. When man acquired the knowledge of using natural products to the best of his advantage, when he acquired the knowledge of metal smelting, and when he acquired the knowledge of art and industry, the civilization bloomed. Naturally, in the realm of family relationship some sort of sex regulation came to be established. Probably, it began with group marriages. At various places, and at various stages of human development, marriage come into existence in different forms. At the beginning probably promiscuous sexual intercourse prevailed within a tribe, i.e., women in the tribe belonged equally to every man and vice versa, but sexual intercourse outside the tribe was prohibited. The future development seems to be in the narrowing out of this circle. The process begins by exclusion from the sex relationship within the tribe of the closer relations such as mother and on then brother and sister. This process of exclusion must have continued, so remoter relations were excluded, till finally a stage was reached when there remained only a couple, a man and a woman united in marriage. Initially, this was probably a union loosely uniting the couple, the dissolution of the union being as simple a matter as entering it. The recorded history of early Roman civilization testifies that marriage and divorce were easy matters. Just as parties could come and live together as husband and wife by mutual consent and without any formalities, they could as easily and without any formalities separate from each other by mutual consent.
When humanity comes into the patriarchal stage, that is, when man succeeds in establishing descent through the male, we find that marriage as an exclusive union comes to be firmly established, though the exclusiveness of the union for male sex was not as strict as for the female sex. The chief attributes of the patriarchal family are the organization of a number of persons, bound and free, into a family under the paternal power of the head of the family (pater familias, as he was known under Roman law). At this stage, monogamy in the west any polygamy in the East came to be established. In the west monogamy was strict rule for women, though not so strict for men. The reason being that if descent is to be traced through male, the fidelity of the wife has to be absolutely secured, as on her fidelity depends the determination of the paternity of his children. The result was that in the patriarchal society woman was placed at men's absolute power: power of corporeal chastisement, and power to kill. If he killed an infidel wife he merely exercised his power and, therefore, could not be guilty of murder. (Diwan and Diwan, 1995)

Thus, in the era of man's ascendancy to power, the institution of marriage came into existence as an exclusive union. Man, on the one hand, tried to impose fidelity on the woman by the power which he had acquired over her; on the other, he tried to idealize the institution of marriage with a view to dominating the will and mind of the woman. In its most idealized form, marriage among the Hindus and the Christians came to be considered as a sacrament. (Diwan and Diwan, 1995)

Definitions of Marriage

According to Lord Penzance marriage is to be defined "the voluntary union for life of one man and one woman to the exclusion of all others."
According to the Canon law, "marriage is a conjugal union of a man and woman which arises only from the free consent of each spouse."

Different sciences have different frames of reference in studying any institution. Marriage is also conceived differently by social scientists in different fields. While the popular concept of marriage is that it is a union between a man and a woman, anthropologists like Lowie, Murdock and emphasize on social sanction in the union and how it is accomplished by different rituals and ceremonies. Sociologists like Blood, Lantz and Snyder, Bowman, Baber, Burgess, etc., view it as a system of roles and as involving primary relationships. Indologists look upon Hindu marriage as a sankar or a dharma. Before studying the traditional and modern systems of Hindu marriage, we will try to understand the concept and the sociological significance of marriage.

**Concept of Marriage**

Every individual has to play a number of roles in his life, or one may say, life consists of a combination of roles played in various institutional settings. Of the various roles one plays, two roles have a very great significance: one is the economic role and the other is the marital or the family role. The former is unquestionably prominent in life because one devotes quite a good part of his career in performing it. Assuming that one starts earning one's livelihood at the age of twenty to twenty four years and continues to do so up to the age of fifty-eight to sixty-two years, that is, the economic career is spread over to about four decades and that every day one devotes eight to ten hours to his job/work, one can well assume the period which one's economic role consumes. The marital role also involver about forty to fifty years of one's life. But, of these two roles, the marital role is more important than
the economic role be cause when the latter involves secondary relations, the former involves personal or primary relations.

Primary relations are essentially unlimited, particularistic, emotionally involved, altruistic and spontaneous. Conversely, secondary relations are typically limited, standardized, unemotional, utilitarian and contractual. Again, primary relationship in marriage is different from the primary relationship in other primary groups like friends’ group, close neighbourhood, peer group village, etc., in the sense that primary relationship in the former is based on sexual relationship also, and this sexual relationship brings further intimacy and permanence in the relationship by fulfilling two important functions of gratification and biological need other of social control. It gratifies biological (sex satisfaction), psychological (affection and sympathy) and economic (food, clothing and shelter) needs of the individuals and also acts as a primary source of morality and ethics. When one finds one’s partner performing certain tasks for him/her, he/she considers it his/her moral obligation to care for her/him. One is, thus generally no longer free to be immoral and irresponsible.

A sociologist, while studying marriage, analyzes not only the primary relationships involved in it but also how marriage involves performing new and varied roles and whether the persons involved are capable of performing those new roles or not, and how the inadequacy portent in marriage is and how the role enactment of one partner corresponds to the role expectations of the other (Blood, 1960).

According to Koos (1953), marriage is a dividing line between the family of orientation and family of procreation in terms of the nature of roles one performs in the two families. The roles in the family of orientation vary in infancy, childhood and adolescence and carry no
responsibilities and obligations, but the roles one performs in the family of pro-creation after the marriage as a husband, a father, a wage-earner, a grandfather, a retired person, etc., have different expectations and obligations.

Thus, marriage is a miniature social system which must be kept in equilibrium if it is not to fall apart. Equilibrium requires adjustment which in turn requires give and take or some sacrifice on the part of both husband and wife. It is a dyad system. To maintain equilibrium requires certain tasks to be performed by someone; for example, of cooking cleaning, washing, wage-earning, child-care and so on. Who performs which role may vary from society to society (society has certain expectations from both husband and wife). What is significant is that somebody should perform these roles for the stability of marriage.

Marriage also involves 'instrumental' and 'integrative' leadership roles. The 'instrumental' leader is concerned with getting things done and pushing the group to its goals. The 'integrative' leader is concerned with holding the group together despite the strains and the stress created. Thus, though the two roles are contradictory, yet they are complementary. It is all these roles that are studied by the sociologists in the institution of marriage. (Ram Ahuja, 1995)

Motivations in Marriage

All roles have certain motivations. What is the motivation in marriage? It is maintained that in the early periods, and individual married because of the practical problems related to getting a living. These practical problems were that people wanted children for economic reasons. They wanted them as an insurance against wants when they (parents) could no longer work for themselves. They also wanted more women to work on fields. This does not mean that there
was no love or companionship on early marriage. Only practical reasons were more important. (Ram Ahuja, 1995)

According to Bowman (1960), the basic objects of marriage are: sex gratification, desire for home and children, companionship, social position and prestige, and economic security and protection. Popenoe (1951) has talked of five elements of marriage: mating urge, division of labour, desire for home and children, comradeship (sexually as well as non-sexually covered), and economic security. Bowman has rejected ‘fulfillment of personality’ as the object of marriage. He says that it is not the purpose but the result of marriage.

According to Majumdar (1944) although regularized and socially sanctioned sex gratification is a basic reason for marriage (and the formation of family), yet it is not the only nor the final cause. He gives the example of Sema Nagas among whom a child marries his father’s widows (other than his mother) to get possession of the property because according to their tribal custom, not the children but man’s widows inherit his property. Thus, Mujumdar believes that the objects of marriage are: sex gratification, need for a dependable social mechanism for the care and rearing of children, transmission of culture, economic needs, and inheritance of property.

As ‘traditional’ society is changing into a ‘modern’ one, the practical reason’s for marriage have been relegated to a minor position. The main motivations of marriage now are believed to be escape from the feelings of loneliness and for the purpose of living through other. In simple words, we may say, the main object of marriage today appears to be ‘companionship’ or ‘comradeship’. This does not exclude the object of sex-gratification from its scope. What is being suggested is that sex-gratification and all other objects today are secondary to the one mentioned above that is, companionship.
In the traditional Hindu society, the main objects of marriage were believed to be: dharma (righteousness or the performance of duty), praja (progeny), and rati (pleasure). Of theses, dharma was given the greatest importance, followed by procreation and sex-gratification. Daftri (1948) has also said that sexual enjoyment was not regarded as the sole objective of (Hindu) marriage. The primary object was dhrma or the fulfillment of one’s duties. There was, thus, little idea of ‘individual interest’ in Hindu marriage. Marriage was considered to be a ‘social duty’ towards the family and the community.

Types of Marriages

In the Hindu society in the early period, eight modes of acquiring a wife were referred to, of which four were considered proper and desirable (dharmya) which had the approval of the father/family, and four were regarded as undesirable (adharmya) which did not have the approval of the father. The proper marriages recognized by the Smritis were Brahma, Daiva, Arsha, and Prajapatya, while the four undesirable marriages were Asura, Gandharva, Raksasa, and Paishacha.

In Brahma, the marriage is settled by the parents. A Brahmin is called to preside over the marriage rites, and the daughter is given by her father to the groom along with some dowry of ornaments and clothes, etc. in Daiva, the Brahmin who officiates over the ceremony is not paid any dakshina (gift) but the given daughter is properly bejeweled and decorated. In Arsha, the bride’s father gets something from the groom say a pair of cattle or two in exchange for his daughter. This is just for the sake of the ceremony. In Prajapatya, though consent of parents is essential but no ceremony is preformed. In Asura, bride-price is given by the groom to the bride’s father. This is sort of an economic contract. There is no limit of the amount given. In Gandharva, neither is
the consent of parents necessary nor are the rites or dowry essential. Only the will of the marrying parties is given importance. This marriage is believed to spring from desire and has sex satisfaction as its chief purpose. In Raksasa, marriage is by capture or abduction without obtaining the consent of the girl or her parents. This was practiced in times when group conflicts and tribal wars were very common. The victorious groups used to carry away the girls of the conquered groups and keep them as 'keeps' (some other word, say, Concubine). In Paishacha, a woman who is seduced when asleep or unconscious or when incapable of protecting herself is given the social status of a wife.

Of these eight forms of marriages, Brahma is considered to be the best marriage where a girl is given to a boy of merit in the same caste or in a caste of equal status. Both bride and groom in this marriage are supposed to be grown-up persons competent to give consent.

Besides the above forms of marriage, the type of marriage that was usually practiced by the Hindus was monogamous, though we find some examples of polygynous marriage too in early and medieval times. The only example of polyandrous marriage is found in the Mahabharata – the marriage of Drupadi with five Pandavas.

**Forms of Marriage**

The principle forms of marriages are Monogamy, Polygyny and Polyandry but the forms of marriage is defined as various factors, their exists several forms of marriages.

**Polygyny**

Polygyny is marriage of one male with more than one female, or what may be called the ‘plurality of wives’. Polygynous marriage may be
unrestricted or conditional. In early Hindu society, it was the second type of polygynous marriage that was practiced. According to Apastamba Dharmsutra, a man could marry again after ten years of his first marriage if his wife was barren, or he could marry after thirteen or fourteen years if he had only daughters from his wife and wanted a son. Manu has said that a man can supersede his first wife after eight years of his first marriage, if his wife is barren; after ten years if children produced by his wife do not remain alive; after eleven years if his wife produces only daughters; and immediately after the first marriage if his wife is quarrel some, rebellious, or harsh. In the Mahabharta, it is said that man who marries twice without any rational cause commits sin for which there is no penance. Nanda (1976) has said that a man who marries twice should not be accepted as a witness. Daftari (1948) has said that no doubt one could marry more wives than one at the same time, monogamy generally prevailed.

Today, polygyny has been legally prohibited. Bombay enacted a law in 1946, Madras in 1949 and Saurashtra in 1950, prescribing punishment for bigamy. All these legislations were repealed in 1955 when the Central Government enacted the Hindu Marriage Act. Besides the legal restrictions, people do not practice polygyny because: weekening of the philosophy that one should have a son to attain salvation (moksh) or to provide him support in the old age; maintaining higher living standards is not possible with more than one wife in the house; plurality of wives increases tensions in the family; and woman having become economically and socially independent refuses to accept man's dominance over her. Since practice of polygyny lowers the status of women, a girl refuses to marry a man who already possesses a wife.
Polyandry

Polyandry is marriage of one woman with many men, that is, it is a practice involving plurality of husbands. The only example of Drupadi's marriage with five Pandavas in the Mahabharta period was justified by Yudhistira on the basis by citing some examples of some of his ancestors who had practiced polyandry; and he described it as "mother's command" and obeying mother's command was son's dharma. Vyasa, however, described Drupadi's marriage as 'against usage' and as such against dharma; yet he wanted it to be accepted as preordained. In the Mahabharta itself, referring to polyandry, it is said: "To have many wives is no dharma on the part of men but to violate the duty owed to the first husband would be a great adharma in the case of a woman.

In recent times, the Nairs amongst the Hindus in South India practiced polyandry. But Westernmarck, referring to these Nair marriages, has said that the polyandrous unions of the Nairs can hardly be called marriages, considering that they were of loosest and most fugitive character, that the male partners never lived with the woman and that the duties of fatherhood entirely were ignored. In 1986, the Malabar Marriage Act was passed which stabilized marriage among the Nairs. The marriage is now dissolved among the Nairs by application to the district judge.

On the basis of the above analysis, it may be logically concluded that in early India, polygyny was a rare practice, polyandry was not sanctioned, and monogamy was the only acceptable form of marriage practiced. Manu has also said in Manu Smriti: "Let mutual fidelity continue until death. This may be considered as the summary of the highest law for husband and wife (Kapadia, 1972). Today, monogamy is highly valued and marriage continues to be considered a sacred and
a social obligation. Though it is no longer an extravagant religious affair, yet principal religious ceremonies are still performed both at the bride's and the groom's homes.

**Hindu Marriage: A Sacrament**

Marriage being mainly performed for dharma and not for pleasure, it was considered a sacrament among Hindus. Several reasons may be given for considering the Hindu marriage sacred: (i) *dharma* (fulfilment of religious duties) was the highest aim of marriage; (ii) performance of the religious ceremony included certain rites like havan, kanyadan, panigrahana, saptapadi, etc., which being based on the sacred formula, were considered sacred; (iii) the rites were performed before agni (the most sacred God) by reciting mantras (passages) from Vedas (the most sacred scriptures) by a Brahmin (the most sacred person on earth); (iv) the union was considered indissoluble and irrevocable and husband and wife were bound to each other not only until death but even after the death; (v) though a man performed several sacraments during the course of his life, a woman performed only one sacrament of marriage in her life, hence its greatest importance for her; (vi) emphasis was on chastity considered to be a 'social duty' towards the family and the community and there was little idea of individual interest and aspiration.

Since Hindu marriage has undergone changes in the last few decades, does it continue to be sacred or is it to be treated as a contract? The two significant changes in Hindu marriage are that young people today marry not for performing duties but for companionship; and the marital relations are no longer unbreakable, as divorce is socially and legally permissible. Scholars are of the opinion that permitting divorce only as a last resort (when marital obligations are not fulfilled) and not to remarry. Similarly, though widow remarriage is
sanctioned but such marriages are not practiced on a wide scale. Mutual fidelity and devotion to partner are still considered to be an essence of marriage. So long marriage is not performed for sex gratification alone but for ‘living together’ and ‘begetting children’, marriage will continue to be a sacrament for Hindus. Freedom in marriage (mate selection, etc.) does not destroy but rather confirms the stability of marriage and purifies its practice. Kapadia (1972) has also said: “Marriage continues to be a sacrament; only it is raised to an ethical plane.”

Ceremonies of Marriage

Performance of certain shastric ceremonies is still necessary for a valid Hindu marriage. The ceremonies have been laid down in minute details in the Grihya Sutras. These may be briefly summarized. On the forenoon of the day, when marriage is scheduled to be performed, the father of the bride or in his absence, the next nearest male relative, performs the vridhi sradha, i.e., offerings are made to the departed ancestor with a view to obtaining their blessings for the marriage. On the same forenoon the ceremony of giving bath to the bride takes place. In the evening the bridegroom comes in a procession (barat) to the bride’s place, where he and his party are received with great hospitality. Anciently, a cow was set apart for the wedding feast. Later on this was abandoned, though the practice of tying a cow and then letting it loose is still observed in some parts of the country.

After the arrival of the bridegroom at the bride’s house, the first ceremony that is performed is known a sampradana consisting of water (padya) for washing the feet, water mixed with flowers, durva grass, rice and sandal paste for washing the head, a cushion for sitting, and a mixture of honey, curd and ghee. These gifts are made amidst the chanting of certain mantras. This is followed by one of the main
ceremonies of marriage, the kanyadan. The father of the bride, or in his absence, the next guardian for marriage, pours to a libation of water-s symbolizing the gift of the bride. Sometimes the hands of the bride and bridegroom are tied together with the kush grass. In this manner the bride is formally given in gift to the bridegroom who recites the kama sukta and offers gold as dakshina. Then the bride’s father invokes the bridegroom and tells him never to fail the bride in his pursuit of dharma, artha, kama and moksha, to which the bridegroom replies thrice that he shall never fail her.

Then comes the next important ceremony; the vivaha-homa, i.e., lighting of holy fire, symbolizing it as divine witness and sanctifier of the vivaha samskara. On the west of the fire is place a mill-stone and on the north-east is placed a water-pot. The bridegroom offers oblations to the holy-fire in which bride participates by grasping the hand of the bridegroom. These oblations include mahavayahritu-homa, i.e., oblations are offered in honour of earth, sky and heaven. The bridegroom also recites certain sacred mantras. This is followed by the third important ceremony, the panigrahana, the bridegroom takes the hand of the bride. According to the Grihya Sutra this is to be done by the bridegroom standing up and facing west, while the bride sits in from of him facing east. Holding the hand of the bride, the bridegroom recites certain Vedic hymns. Then is performed the laja-loma by the bride in which she offers oblations to Aryama, Varuna, Pushan and Agni, so that the Gods may be pleased to free her form their bonds. The next in order is the ceremony of Agni-parinayana (popularly known as pheras, which according to the Grihya Sutras are three, though in practice they are usually five or seven). This is the rite of going around the holy fire, where the bridegroom leads the bride three times, round the nuptial fire and water-pot, the couple, keeping to the right side of the nuptial fire and water-pot. At the end of each round the bride mounts the mill-stone
with the helping hand of the bridegroom. The bridegroom recites certain hymns. At the end of the final round the bridegroom loosens two locks of her hair chanting the hymn, “I release thee from Varuna’s bondage”.

Then comes the fourth and the most important and indispensable ceremony: the saptpadi. Near and vivaha-mandap the bridegroom leads the bride for seven steps in the north-eastern direction while reciting certain hymns. This is followed by an address by the bridegroom to the bride. Water is then poured on the hands of the couple and certain the bride and says to her. “Give thy heart to my religious duties, may thy mind follow mine. Be thou consentient to my speech. May Brihaspati unite thee unto me.” On the completion of the seventh step the marriage becomes final and irrevocable.

It is evident, in most Hindu Marriages in our times all the above ceremonies are not performed. There are very few marriages where bride and bridegroom recite the hymns. The function of reciting hymns is performed by the priest or the pundit who officiates at the ceremony and the bride and bridegroom go on nodding. The performance of all the ceremonies is also not necessary for the validity of the marriage.

**Historical Perspective of Divorce**

It is universally acknowledged fact that the institution of marriage is not a perfect system. There are some failures in all sub-systems economic, political, social etc. Similarly the marriages system too is by no means infallible. A certain proportion of marriages is bound to fail as no fool-proof, mathematical system can be worked out in human-relationship. Hence, all societies have to devise methods to deal with unsuccessful marriages.
Divorce or dissolution of marriage is one of the ways. Society attempts to rectify broken marriages. It enables a person to have one more chance and fit in somewhere in the system. But it remains to be examined whether divorce enjoys moral and social sanction of society and if was prevalent in the past. (J.N. Choudhary, 1988)

Divorce in Vedic Dharamasastras, and Smritis Periods

Marriage in the Hindu society during the Vedic Age, i.e. 1400 B.C. - 1000 B.C., was considered a religious sacrament and was indissoluble by human action (Bhargawa, 1971). Vishnu Purana points out that when a marriage ceremony was conducted, the bride-groom led the bride around the holy fire with the vow that he would take her hand for good fortune so that she may attain old age with him as her husband. Women in the Aryan society of the Vedic Age. Enjoyed a fairly high position in society. They were not secluded and were given freedom to choose their husbands. They held an honourable position in the family too. Iyengar (1942) states that girls married for love and if unmarried, remained in the parents home where they were well cared for.

The two Smriti writers, Narada and Parasara, laid down that a woman who finds her husband devoid of virility may after waiting for six months, choose another man as her husband (Prabhu, 1961). In addition to impotency they mentioned four more grounds by which the wife was allowed to remarry. Thus she was allowed to take a second husband if the first one was missing or dead or had taken to asceticism or was degraded in caste. It was also stated by Narada that in such cases the women should be persuaded by her family to find another husband even if she herself did not think of doing so (Devad, 1980). The Dharmasasthra literature (200 – 1200 A.D.) permitted the husband to
remarry during the lifetime of the first wife but refused divorce to a wife even when she was completely abandoned by her husband.

The Code of Manu states that a wife given to a drunkard or who is rebellious, diseased, mischievous or wasteful may be superseded by another. Yet, elsewhere it is stated that “neither by sale nor by repudiation is a wife released from her husband” (Henriques, 1964). Yet again it is stated by Manu that a wife is not to be blamed if she abandons a husband who is impotent, insane, suffering from an incurable or contagious diseases (Altekar, 1962). Such abandonments were understood to be divorces as, such wives were permitted to remarry if their previous marriage was not consummated, thus giving legitimacy to the children on the new union.

In his writings, Kautilya stated that a woman should wait for ten months for a husband who has gone on a long journey. If he does not return within the specified period and she is not willing to join him, she could regard him as dead and unite herself with another man of the same family. However Kautilya insisted that judicial permission must be given before the second marriage took place. All the jurists were usually unanimous in permitting the marriage, though they differed in the period of waiting which never exceeded eight years. Kautilya further stated that divorce could be allowed to those husbands and wives who hated each other on the grounds of mutual enmity. If a man wanted divorce, he had to return to his wife all the presents received at the time of marriage. If it is the wife who desired the divorce, she has to forfeit her property rights to her husband (Altekar, 1962).

The fact that Hindu society was divided on the basis of caste reflected in the matter of divorce also. Divorce was found to be unknown among the high caste Hindus but was present among the
lower caste (Mukherjee, 1972). It was also observed that Sudra husbands divorced their wives quite freely. But Brahmin, Kshatriya and Vaishya husbands did so only after the wife was proved to be barren or an adulteress. According to Abbe Dubois (1992) “A Hindu can only put away his legitimate wife for one cause, and that is adultery”. In South India all castes admitted divorce for reasons other than adultery, in some cases even by mutual consent (Henriques, 1964).

Divorce in Buddhist Period:

The Buddhist literature indicates that divorce was unusual in the higher sections of society (Altekar, 1962). In the KANHADIPAYANA (JATAKA, No. 444), woman points out to her husband that though she did not love him, she refrained from marrying again because it was not the custom in the family for a wedded wife to take a new husband. It is, thus, clear that woman in higher castes of society were very unwilling to take advantage of the custom of divorce prevailing among the lower castes.

By about the 5th century B.C., a wave of asceticism passed over Hindu society. Though there was a good deal of opposition to it, the ideal of renunciation and Puritanism, which it assiduously advocated, became eventually well established in society at the beginning of the Christian era. As one of its natural consequences, society began to hold that a girl could be given in marriage only once. To divorce one husband and to marry another, because the marital life was not happy, began to appear as a grossly sensual procedure (J.N. Chowdary 1988). Endogamy in the Buddhist period gradually made the caste system highly complex and in highest castes purity of descent was much prized. A grown up unmarried girl had a right to become a nun according to Buddhist canon. Society, therefore, held that even if the
husband was a moral wreck, or he grievously illtreated his wife, the later could not claim any relief by way of divorce.

Divorce in Medieval Period

The 9th Century A.D. was a turning point in Indian history. There came a drastic change in social life. With the end of the Aryan and Aryo-Budhistic India a new era began. In the medieval period there was a marked dominance of religion on marriage and divorce. As it has already been observed that from early times, marriage practices were governed by social custom. They were beyond the preview of religion except in certain instances. Some peculiar forms of dissolution of marriage are found prevalent in some castes like the Rajputs Nambudries in the medieval period.

The Rajputs summarily dismissed a woman guilty of adultery from being even a member of the caste, though in cases of incompatibility of temper, they allowed a couple to separate. The wife went back to her parents, and the husband took another spouse (Billington, 1895).

Most curious of all, however, was the divorce among the Nambudries of the Malabar Coast. When a woman was suspected by her own kinsmen or by neighbouring Brahmins of having been guilty of loose conduct, she was ex-communicated and placed under restraint. The maid servant (Dasi or VESHALI), who was indispensable to every Nambudri family, was then interrogated, and if she proved her mistress guilty, the latter was forthwith isolated and a watch set upon her. When the family could find a suitable house for the purpose, the SADHANAM (the thing, or article or subject, as the suspected person was called) was removed to it; otherwise she was kept in the family house, the other members finding temporary accommodation elsewhere. The accused, if it was justified by the chief, was punished accordingly.
During the medieval period, normally monogamy was prevalent in society, but among the rich, polygamy was a common occurrence. The widows could not marry again. There was a constant threat of Muslims either molesting or capturing Hindu woman which resulted in child marriages (Sharma, 1981). The birth of a daughter was regarded as a bad omen resulting in the practice of female infanticide. Divorce was not allowed in the higher castes, however, the women of lower castes were free to divorce and remarry. Even widow marriages were permitted among them. Devadasi system also prevailed among the Hindus, Beautiful unmarried girls were offered to gods in temples where they passed their lives as maid servants of gods. The position of woman suffered a further set back when the Rajputs, like the Muslim emperors, started the practice of having harems. (J.N. Choudhary, 1988)

**Divorce in the Pre and Post Independence Periods**

There came a change in the attitude towards marriage and in the 19th and 20th centuries due to the pressure of various movements and organisations led by reformers like Raja Ram Mohan Roy, Iswara Chandra Vidyasagar, Anne Besant, Dayanand Saraswati and others. Laws were also adopted during the British rule which provided freedom and privileges to woman; one such example was the Civil, Marriage Act, 1872, which enforced monogamy. (Usha Devi. R. 1988)

The first legislation with regard to dissolution of marriage was enacted by Kolhapur State in the 1920’s. The State of Baroda followed suit in 1942. The Bombay Government also passed an Act in 1947, permitting divorce. Madras and Saurastra followed the example of Bombay in 1949 and 1952 respectively.

According to the 1942 Act of Baroda State, dissolution may be granted if either party has disappeared for seven years, has become a
recluse, has been converted to another religion, is guilty of cruelty that might cause danger to life, guilty of desertion without reasonable cause, impotency and adultery. On the dissolution of marriage, the party is allowed to contract a second marriage, if desired, after the expiry of six months from passing the decree. The outstanding achievement of the Act is that the woman is allowed to separate from her husband whose marriage obligations are not properly fulfilled.

Under the Bombay Act of 1946, impotency, lunacy, leprosy, desertion for a continuous period of four years, absence for seven years and bigamy are some of the grounds on which divorce is allowed.

In the meantime, a Committee, known as the Rau Committee, was appointed by the Government of India in order to examine the Hindu Women’s Right to Property Act, 1937, and to advise upon the law to remove any injustice. Rau Committee issued a questionnaire and received many responses. In their report, it was concluded that “the Hindu Law is a complicated organic structure, the various parts of which are inter-connected, so that an alteration of one part may involve the alteration of others” (Mahajan, 1957). They recommended to attempt a Code of Hindu Law. In 1944, the Government of India entrusted the Hindu Law Committee with the work of formulating a code of Hindu Law as complete as possible. This Committee prepared a draft of Hindu Code and circulated it for public opinion. It also visited important cities of the country and heard views of individuals and representative bodies. The necessary changes were made in the Code. In April 1947, the Bill was introduced in the Central Legislative Assembly. The bill could not be discussed or passed due to other burning issues like Partition and Independence. There were lot of agitations and opposition against Hindu Code Bill. Yet, Pandit Jawaharlal Nehru and other Congress leaders were determined to pass the bill. The bill, however, could not be
passed en bloc, but was passed in the form of different acts, the Hindu Marriage and Divorce Act of 1955 being one of the most significant among the same (Pothen, 1986).

In India, the Hindu Marriage Act, 1955, amended in 1976, 1978, 1981 and 2001, provides for judicial separation, divorce, nullity of marriage and annulment of marriage. It is only when two years have elapsed since the date of marriage that a petition for divorce may be made. But to start with, one gets only judicial separation for two years during which one may try to reconcile with his/her partner. The judicial separation, thus, may be described as separation from bed and board. During this period, husband continues to pay the maintenance allowance to his wife. The grounds for the dissolution of marriage are: adultery, conversion to other religion, unsound mind for not less than three years, desertion for more than seven years, incurable leprosy and venereal disease, renunciation, and bigamy. The 1976 amendment permits divorce under section 13B of Hindu Marriage Act 1955 by mutual consent. Section 13: C, Section 13: D, and Section 13: E were introduced in 1981 amendments. After getting divorce, one is free to remarry provided one year has passed since obtaining the date of decree of divorce. Besides, husband may be required to pay alimony to his wife for her maintenance, having regard to his own as well as to his wife’s income and property.

Section 8 and Section 9 inserted by act 49 of 2001 amendment of Hindu Marriage Act 1955. Section 8 provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be. Section 9 provided that the application with respect to the maintenance and education of the minor children, pending the
proceeding for obtaining such decree, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the respondent.

Salient Features of Hindu Marriage Act 1955

The Hindu Marriage Act 1955 has consists of 6 Chapters and 30 Sections and reads as below:

Chapter – I – Preliminary
1. Short title and extent –
   (1) This Act may be called the Hindu Marriage Act, 1955.
   (2) It extends to the whole of India except the State of Jammu and Kashmir, and applies also to Hindus domiciled in the territories to which this Act extends who are outside the said territories. (The Act has been extended to Dadra and Nagar Haveli with effect from 1.7.1965 by Regulation 6 of 1963, Sec. 2 and Sch. I and to Pondicherry w.e.f. 1.10.1963 with modifications by Regulation 7 of 1963, Sec. 3 and Sch. I.)

   (1) This Act applies –
   a) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj.
   b) to any person who is Buddhist, Jaina or Sikh by religion; and
   c) to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu Law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.
Explanation: The following persons are Hindu Buddhists, Jainas or Sikhs by religion, as the case may be:

a. any child, legitimate or illegitimate, both of whose parents are Hindu, Buddhists, Jainas or Sikhs by religion;
b. any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged; and
c. any person who is a convert or re-convert to the Hindu, Buddhist, Jaina or Sikh religion.

(2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning clause (25) of Article 366 of the Constitution unless the Central Government by notification in the Official Gazette, otherwise directs.

(3) The expression “Hindu” in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.

3. Definitions: In this Act, unless the context otherwise requires, -

a) the expressions “customs” and “usage” signify any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family:

Provided that the rule is certain and not unreasonable or opposed to public polity; and

Provided further that in the case of a rule applicable only to a family it has not been discontinued by the family:

b) “district court” means, in any area for which there is a city civil court, that court, and in any other area the principal civil court of
original jurisdiction, and includes any other civil court which may be specified by the State Government, by notification in the Official Gazette, as having jurisdiction in respect of the matter dealt with in this Act;

c) “full blood” and “half blood” – two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife and by half blood when they are descended from a common ancestor but by different wives;

d) “uterine blood” – two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands:

Explanation.- In clause (c) and (d), “ancestor” includes the father and “ancestress” the mother;

c) “prescribed” means prescribed by rules made under this Act;

i. “sapinda relationship” with reference to any person extends as far as the third generation (inclusive) in the line of ascent through the mother, and the fifth (inclusive) in the line of ascent through the father, the line being traced upwards in each case from the person concerned who is to be counted as the first generation.

ii. two persons are said to be “sapindas” of each other if one is a lineal ascendant of the other within the limits of sapindas relationship or if they have a common lineal ascendant who is within the limits of sapindas relationship with reference to each of them;

d) “degrees of prohibited relationship” – two persons are said to be within the “degrees of prohibited relationship” –

i. if one is a lineal ascendant of the other; or

ii. if one was the wife or husband of a lineal ascendant or descendant of the other, or
iii. if one was the wife of the brother or of the father’s or mother’s brother or of the grand—father’s or grand—mother’s brother of the other; or
iv. if the two are brother and sister, uncle and niece, aunt and nephew, or children of brother and sister or of two brothers or of two sisters;

Explanation. – For the purposes of clause (f) and (g), relationship includes –
i. relationship by half or uterine blood as well as by full blood;
ii. illegitimate blood relationship as well as legitimate;
iii. relationship by adoption as well as by blood;
and all terms of relationship in those clauses shall be construed accordingly.

4. Over—riding effect of Act- Save as otherwise expressly provided in this Act,
a). any text rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;
b). any other law in force immediately before the commencement of this Act shall cease to have effect in so far as it is inconsistent with any of the provisions contained in this Act

Chapter II - Hindu Marriages
5. Conditions for a Hindu Marriage: A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled namely:
i) neither party has a spouse living at the time of the marriage;
ii) at the time of the marriage, neither party –( Subs. By Act 68 of 1976, Sec. 2, for clause (ii).)
a) is incapable of giving a valid consent, to it in consequence of un
soundness of mind; or
b) though capable of giving a valid consent, has been suffering from
mental disorder of such a kind or to such an extent as to be unfit
for marriage and the procreation of children; or
c) has been subject to recurrent attacks of insanity (Omitted by Act
39 of 1999 (w.e.f. 29.12.1999))

iii) the bridegroom has completed the age of [twenty − one years] and
the bride, the age of [eighteen years] at the time of the marriage;
(Subs. By Act 2 of 1978, Sec. 6 and Sch. For “eighteen years” (w.e.f.
1.10.1978), Subs. By Act 2 of 1978, Sec. 6 and Sch. For “Fifteen
years” (w.e.f. 1.10.1978))
iv) the parties are not within the degrees of prohibited relationship
unless the custom or usage governing each of them permits of a
marriage between the two;
v) the parties are not sapindas of each other, unless the custom or
usage governing each of them permits of a marriage between the
two;
[***] (Clause [vi] omitted by Act 2 of 1978, Sec, 6 and Sch;,
(w.e.f. 1.10.1978))

6. Guardianship in marriage: [Rep. by the Child Marriage Restraint
(Amendment) Act. 1978 (2 of 1978), Section 6 and Schedule
(w.e.f. 1-10-1978)].

7. Ceremonies for a Hindu Marriage:
(1) A Hindu Marriage may be solemnized in accordance with the
customary rites and ceremonies of either party thereto.
(2) Where such rites and ceremonies include the saptapadi (that is, the
taking of seven steps by the bridegroom and the bride jointly before
the sacred fire), the marriage becomes complete and binding when
the seventh step is taken.
8. Registration of Hindu Marriage:

(1) For the purpose of facilitating the proof of Hindu Marriages, the State Government may make rules providing that the parties to any such marriage may have the particulars relating to their marriage entered in such manner and subject to such conditions as may be prescribed in a Hindu Marriage Register kept for the purpose.

(2) Notwithstanding anything contained in sub-section (1), the State Government may, if it is of opinion that it necessary or expedient so to do, provide that the entering of the particulars referred to in sub-section (1) shall be compulsory in the State or in any part thereof, whether in all cases or in such cases as may be specified and where any such direction has been issued, any person contravening any rule made in this behalf shall be punishable with fine which may extend to Twenty-five rupees.

(3) All rules made under this section shall be laid before the State Legislature, as soon as may be, after they are made.

(4) The Hindu Marriage Register shall at all reasonable times be open for inspection, and shall be admissible as evidence of the statements therein contained and certified extracts there from shall, on application, be given by the Registrar on payment to him of the prescribed fee.

(5) Notwithstanding anything contained in this section, the validity of any Hindu Marriage shall in no way be affected by the omission to make the entry.

Chapter III – Restitution of Conjugal Rights and Judicial Separation

9. Restitution of conjugal rights:

[***] The brackets and figure “(1)” omitted by Act 68 of 1976, Sec. 3

When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal right
and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

[Explanation: Where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society.] (Ins. By Act 68 of 1976, Sec. 3)

[***](Sub-section (2) omitted by Act 68 of 1976, Sec. 3.)

10. Judicial Separation:

(1) Either party to a marriage, whether solemnized before or after the commencement of this Act, may present a petition praying for a decree for judicial separation on any of the grounds specified in sub-section (1) of Section 13, and in the case of a wife also on any of the grounds specified in sub-section (2) thereof, as grounds on which a petition for divorce might have been presented. (Subs. By Act 68 of 1976, Sec. 4, for sub-section.)

(2) Where a decree for judicial separation has been passed, it shall no longer be obligatory for the petitioner to cohabit with the respondent, but the court may, on the application by petition of either party and on being satisfied of the truth of the statements made in such petition, rescind the decree if it considers it just and reasonable to do so.

Chapter IV – Nullity of Marriage and Divorce

11. Void Marriage: Any marriage solemnized after the commencement of this Act shall be null and void and any, on a petition presented by either party thereto [against the other party], be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of Section 5.( Ins. by Act 68 of 1976, Sec. 5.)
12. Voidable marriages:

(1) Any marriage solemnized, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:

a) that the marriage has not been consummated owing to the impotence of the respondent; (or) (Subs. By Act 68 of 1976, Sec. 6, for clause(a).)

b) that the marriage is in contravention of the condition specified in clause (ii) of section 5; or

c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner [was required under section 5 as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, 1978 (2 of 1978)], the consent of such guardian was obtained by force (Subs. By Act 68 of 1976, Sec. 6, for "or fraud"). (Subs. By Act 2 of 1978 Sec. 6 and Sch., for "is required under Sec. 5" (w.e.f. 1.10.1978))

[or by fraud as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent]; or

d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.

(2) Notwithstanding anything contained in sub-section (1), no petition for annulling a marriage –

a) on the ground specified in clause © of sub-section (1) shall be entertained if –

i) the petition is presented more than one year after the force had ceased to operate or, as the case may be, the fraud had been discovered; or

ii) the petitioner has, with his or her full consent, lived with the other party to the marriage as husband or wife after the force
had ceased to operate or, as the case may be, the fraud had
been discovered;
b) on the ground specified in clause (d) of sub-section (1) shall be
entertained unless the court is satisfied --
i) That the petitioner was at the time of the marriage ignorant of
the facts alleged;
ii) that proceedings have been instituted in the case of marriage
solemnized before the commencement and in the case of
marriages solemnized after such commencement with in one
year from the date of the marriage; and
iii) that marital intercourse with the consent of the petitioner has
not taken place since the discovery by the petitioner of the
existence of [the said ground] (Subs. By Act 68 of 1976, Sec.
6, for “the ground for a decree”.)

13. Divorce: -

(1) Any marriage solemnized, whether before or after the
commencement of this Act, may, on a petition presented by either
the husband or the wife, be dissolved by a decree of divorce on the
ground that the other party –

i. has, after the solemnization of the marriage, had voluntary sexual
intercourse with any person other than his or her spouse; or
(Subs. By Act 68 of 1976, Sec. 7 for clause (i))

a) has, after the solemnization of the marriage, treated the
petitioner with cruelty; or
b) has deserted the petitioner for a continuous period of not less
than two years immediately preceding the presentation of the
petition; or]

ii. has ceased to be a Hindu by conversion to another religion; or

iii. 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. (Subs. By Act 68 of 1976, Sec. 7 for clause (iii))

**Explanation – In this clause –**

a) the expression ‘mental disorder’ means mental illness, arrested or in-completed development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

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

iv) form of leprosy, has been suffering from a virulent and incurable or ( certain words omitted by Act 68 of 1976)

v) has [***] been suffering from venereal disease in a communicable form; (Certain words omitted by Act 68 of 1976, Sec.7) or

vi) has renounced the world by entering any religious order; or

vii) has not 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 party been alive; [***](The word “or” omitted by Act 44 of 1964, Sec. 2.)

[Explanation. - In this sub-section, the expression “desertion” means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expression shall be construed accordingly.] (Ins. by Act 68 of 1976, Sec. 7.)

[***] (Claues (viii) and ix) omitted by Act 44 of 1964, Sec. 2.)
[1A Either party to a marriage, whether solemnized before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground (Ins. by Act 44 of 1964, Sec. 2)–

i. that there has been no resumption of cohabitation as between the parties to the marriage for a period of [one year] or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties;(Subs. By Act 68 of 1976, Sec. 7, for “two years”.) or

ii. that there has been no restitution of conjugal rights as between the parties to the marriage for a period of [one year] or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.](Subs. By Act 68 of 1976, for “two years”)

(2) A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground, -

i) in the case of any marriage solemnized before the commencement of this Act, that the husband had married again before such commencement or that any other wife of the husband married before such commencement was alive the time of the time of the solemnization of the marriage of the petitioner:

Provided that in either case the other wife is alive at the time of the presentation of the petition; or

ii) that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or [bestiality; or](Subs. By Act 68 of 1976, sec. 7, for “bestiality”).

iii) that in a suit under Section 18 of the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), or in a proceeding under Section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) (or under the corresponding Section 488 of the Code of Criminal
Procedure, 1898 (5 of 1898), a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards; (Ins. by Act 65 of 1976, Sec.7)

iv) that her marriage (whether consummated or not) was solemnized before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.

Explanation – This clause applies whether the marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976).

13A. Alternate relief in divorce proceedings. – In any proceeding under this Act, on a petition for dissolutions of marriage by a decree of divorce, except in so far as the petition is founded on the grounds mentioned in clauses (ii), (vi) and of sub-section (1) of section 13, the Court may, if it considers it just so to do having regard to the circumstances of the, pass instead a decree for judicial separation.(Ins. by Act 68 of 1976, Sec. 8.)

13B. Divorce by mutual consent.

(1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the District Court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement or the Marriages Laws (Amendment) Act, 1976 (68 of 1976), on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.
(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in subsection (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.

14. No petition for divorce to be presented within one year of marriage

(1) Notwithstanding anything contained in this Act, it shall not be competent for any court to entertain any petition for dissolution of a marriage by a decree of divorce, [unless at the date of the presentation of the petition one year has elapsed] since the date of the marriage. (Subs. By Act 68 of 1976, Sec. 9, for certain words.)

Provide that the court may, upon application made to it in accordance with such rules as may be made by the High Court in that behalf, allow a petition to be presented [before one year has elapsed] since the date of the marriage on the ground that the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent, but if it appears to the court at the hearing of the petition that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the court may, if it pronounces a decree, do so subject to the condition that the decree shall not have effect until after the [expiry of one year] from the date of the marriage or may dismiss the petition without prejudice to any petition which may be brought after the [expiration of the said one year] upon the same or substantially the same facts as those alleged in support of the petition so dismissed. (Subs. By Act 68 of 1976, Sec. 9, for "before three years have elapsed").
(2) In disposing of any application under this section for leave to present a petition for divorce before the [expiration of one year] from the date of the marriage, the court shall have regard to the interests of any children of the marriage and, the question whether there is a reasonable probability of a reconciliation between the parties before the expiration of the [said one year]. (Subs. By Act 68 of 1976, Sec. 9, for “expiration of three years”.)

15. Divorced persons when may marry again – When a marriage has been dissolved by a decree of divorce and either there is no right of appeal against the decree or, if there is such a right of appeal, the time for appealing has expired without an appeal having been presented, or an appeal has been presented but has been dismissed, it shall be lawful for either party to the marriage to marry again.

[***] (Proviso omitted by Act 68 of 1976, Sec. 10)

[16. Legitimacy of children of void and voidable marriages –

(1) Notwithstanding that marriage is null and void under section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.

(2) Where a decree of nullity is granted in respect of a voidable marriage under Section 12, any child begotten or conceived before the decree is made, who would have been the legitimate child of the
parties to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.

(3) Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under section 12, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents.]

17. Punishment of bigamy – Any marriage between two Hindus solemnized after the commencement of this Act is void if at the date of such marriage either party had a husband or wife living; and the provisions of Sections 494 and 495 of the Indian Penal Code, 1860 (45 of 1860), shall apply accordingly.

18. Punishment of contravention of certain other conditions for a Hindu marriage – Every person who procures a marriage of himself or herself to be solemnized under this Act in contravention of the conditions specified in clauses (iii), (iv), [and (v)] of Section 5 shall be punishable – (Subs. By Act 2 of 1978, Sec. 6 and Sch. For “(v) and (vi)" (w.e.f. 1.10.1978))

a) in the case of a contravention of the condition specified in clause (iii) of Section 5, with simple imprisonment which may extend to fifteen days, or with fine which may extend to one thousand rupees, or with both;

b) in the case of a contravention of the condition specified in clause (iv) or clause (v) of Section 5, with simple imprisonment which may
extend to one month, or with the fine which may extend to one thousand rupees, or with both;

[***] (The word “and” omitted by Act 2 of 1978, Sec. 6 and Sch. (w.e.f.10.1978))

Chapter V – Jurisdiction and Procedure

19. Court to which petition shall be presented. – Every petition under this Act shall be presented to the district court within the local limits of whose ordinary original civil jurisdiction – (Subs. By Act 68 of 1976, Sec. 12 for Sec. 19.)

i. the marriage was solemnized, or

ii. the respondent, at the time of the presentation of the petition, resides, or

iii. the parties to the marriage last resided together, or

iv. the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is, at that time, residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of him if he were alive.]

20. Contents and verification of petitions –

(1) Every petition presented under this Act shall state as distinctly as the nature of the case permits the facts on which the claim to relief is founder [and, except in a petition under Section 11. shall also state] that there is no collusion between the petitioner and the other party to the marriage. (Subs. By Act 68 of 1976, Sec. 13, for “and shall also state”)

(2) The statements contained in every petition under this Act shall be verified by the petitioner or some other competent person in the manner required by law for the verification of plaints, and may, at the hearing, be referred to as evidence.
21. Application of Act 5 of 1908. – Subject to the other provisions contained in this Act and to such rules as the High Court may make in this behalf, all proceedings under this Act shall be regulated, as far as may be, by the Code of Civil Procedure, 1908.

21A. Power to transfer petitions in certain cases.

(1) Where – (Ins. by Act 68 of 1976, Sec. 14.)

a) a petition under this Act has been presented to a district court having jurisdiction by a party to a marriage praying for a decree for judicial separation under section 10 or for a decree for divorce under Section 13; and

b) another petition under this Act has been presented thereafter by the other party to the marriage praying for a decree for judicial separation under Section 10 or for a decree of divorce under Section 13 on any ground, whether in the same district court or in a different district court, in the same State or in a different State.

The petitions shall be dealt with as specified in sub-section (2).

(2) in a case where sub-section (1) applies, -

a) if the petitions are presented to the same district court, both the petitions shall be tried and heard together by that district court;

b) if the petitions are presented to different district courts, the petition presented later shall be transferred to the district court in which the earlier petition was presented and both the petitions shall be heard and disposed of together by the district court in which the earlier petition was presented.

3) In a case where clause (b) of sub-section (2) applies, the court or the Government, as the case may be, competent under the code of Civil Procedure, the later petition has been presented to the district court in which the earlier petition is pending, shall exercise its
powers to transfer such later petition as if it had been empowered to
to do under the said Code.

21B. Special provision relating to trial and disposal of petitions
under the Act.

(1) The trial of a petition under this Act shall, so far as is practicable
consistently with the interests of justice in respect of the trial, be
continued from day to day until its conclusion unless the court finds
the adjournment of the trial beyond the following day to be
necessary for reasons to be recorded.

(2) Every petition under this Act shall be heard as expeditiously as
possible, and endeavour shall be made to conclude the trial within
six months from the date of service of notice of the petition on the
respondent.

(3) Every appeal under this Act shall be heard as expeditiously as
possible, and endeavour shall be made to conclude the hearing
within three months from the date of service of notice of appeal on
the respondent.

21C. Documentary Evidence - Notwithstanding anything in any
enactment to the contrary, no document shall be inadmissible in
evidence in any proceeding at the trial of a petition under this Act on the
ground that it is not duly stamped or registered.]

22. Proceedings to be in camera and may not be printed or
published.

(1) Every Proceeding under this Act shall be conducted in camera and
it shall not be lawful for any person to print or publish any matter in
relation to any such proceeding except a judgment of the High Court
or of the Supreme Court printed or published with the previous
permission of the court. (Subs. By Act 68 of 1976, Sec. 15, for Sec. 22)

(2) If any person prints or publishes any matter in contravention of the provisions contained in sub-section (1), he shall be punishable with fine which may extend to one thousand rupees.]

23. Decree In Proceedings. –

(1) In any proceeding under this Act, whether defended or not, if the court is satisfied that –

a) any of the grounds for granting relief exists and the petitioner [except in cases where the relief is sought by him on the ground specified in sub-clause (a), sub-clause b) or sub-clause c) of clause (ii) of Section 5] is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief, (Ins. by Act 68 of 1976, Sec. 16)and

b) where the ground of the petition is the ground specified [***] or in clause (i) of sub-section (1) of Section 13, the petitioner has not in any manner been accessory to or connived at or condoned the act or acts complained of, or where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty, (the words “in Clause (f) of sub-sec. (i) of Sec. 10, or” omitted by Act 68 of 1976, Sec. 16) and

bb) when a divorce is sought on the ground of mutual consent, such consent has not been obtained by force, fraud or undue influence, and] (Ins. by Act 68 of 1976, Sec. 16)

c) [the petition (not being a petition presented under Section 11) is not presented or prosecuted in collusion with the respondent, and there has not been any unnecessary or improper delay in instituting the proceeding, (Subs. By Act 68 of 1976, Sec. 16, for “the petition”. and
d) there has not been any unnecessary or improper delay in instituting the proceeding, and
e) there is no other legal ground why relief should not be granted, then, and in such a case, but not otherwise, the court shall decree such relief accordingly.

(2) Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties: [Provided that nothing contained in this sub-section shall apply to any proceeding wherein relief is sought on any of the grounds specified in clause (ii), clause (iii), clause (iv), clause (v), clause (vi) or clause (vii) of sub-section (1) of Section 12.]

(3) For the purpose of aiding the court in bringing about such reconciliation, the court may, if the parties so desire or if the court thinks it just and proper so to do, adjourn the proceedings for a reasonable period not exceeding fifteen days and refer the matter to any person named by the parties in this behalf or to any person nominated by the Court if the parties fail to name any person, with directions to report to the court as to whether reconciliation can be and has been, effected and the court shall indisposing of the proceeding have due regard to the report (Ins. by Act 68 of 1976, Sec. 16).

(4) In every case where a marriage is dissolved by a decree of divorce, the court passing the decree shall give a copy thereof free of cost to each of the parties.]

23A. Relief for respondent in divorce and other proceedings. – In any proceeding for divorce or judicial separation or restitution of conjugal rights, the respondent may not only oppose the relief sought on the ground of petitioner's adultery, cruelty or desertion, but also
make a counter-claim for any relief under this Act on that ground; and if the petitioner's adultery, cruelty or desertion is proved, the court may give to the respondent any relief under this Act to which he or she would have been entitled if he or she had presented a petition seeking such relief on that ground.] (Ins. by Act 68 of 1976, Sec. 17)

24. Maintenance pendent elite and expenses of proceedings. - Where in any proceeding under this Act is appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceedings, it may, on the application of the wife or the husband, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable.
[Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be.] (Ins. by Act 49 of 2001, Sec. 8.)

25. Permanent alimony and maintenance.
(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent therto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall *** pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant [the conduct of the parties and other circumstances of the case], it may seem to the court to be just, and any such payment may be
secured, if necessary, by a change on the immovable property of
the respondent. (The words “while the applicant remains unmarried”
omitted by Act 68 of 1976, Sec. 18), (Susb. By Act 68 of 1976, Sec.
18, for certain words).

(2) If the court is satisfied that there is a change in the circumstances of
either party at any time after it has made an order under sub-section
(1), it may at the instance of either party, vary, modify or rescind any
such order in such manner as the court may deem just.

(3) if the court is satisfied that the party in whose favour an order has
been made under this section has re-married or, if such party is the
wife, that she has not remained chaste, or, if such parties the
husband, that he has had a sexual intercourse with any woman
outside wedlock, [it may at the instance of the other party vary,
modify or rescind any such order in such manner as the court may
deem just.] (Subs. By Act 68 of 1976, Sec. 18 for “it shall rescind
the order”.)

26. Custody of Children. – In any proceeding under this Act, the court
may, from time to time, pass such interim orders and make such
provisions in the decree as it may deem just and proper with respect to
the custody, maintenance and education of minor children, consistently
with their wishes, wherever possible, and may, after the decree, upon
application by petition for the purpose, make from time to time, all such
orders and provisions with respect to the custody, maintenance and
education of such children as might have been made by such decree or
interim orders in case the proceeding for obtaining such decree were
still pending and the court may also from time to time revoke, suspend
or vary any such orders and provisions previously made.
[Provided that the application with respect to the maintenance and
education of the minor children, pending the proceeding for obtaining
such decree, shall, as far as possible, be disposed of within sixty days
27. Disposal of property. — In any proceeding under this Act, the court may make such provisions in the decree as it deems just and proper with respect to any property presented, at or about the time of marriage, which may belong jointly to both the husband and the wife.

28. Appeals from decrees and orders.
(1) All decrees made by the court in any proceeding under this Act shall, subject to the provisions of sub-section (3), be appealable as decrees of the court made in the exercise of its original civil jurisdiction, and every such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the court given in exercise of its original civil jurisdiction. (Subs. By Act 68 of 1976, Sec. 19, for Sec. 28)

(2) Orders made by the court in any proceeding under this Act under Section 25 or Section 26 shall, subject to the provisions of sub-section (3), be appealable if they are not interim orders, and every such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the court given in exercise of its original civil jurisdiction.

(3) There shall be no appeal under this section on the subject of costs only.

(4) Every appeal under this section be preferred within a period of thirty days from the date of the decree or order.

28-A. Enforcement of Decrees and Orders. - All decrees and orders made by the court in any proceeding under this Act shall be enforced in the like manner as the decrees and orders of the court made in exercise of its original civil jurisdiction for the time being are enforced.]
Chapter VI – Savings and Repeals

29. Savings

(1) A marriage solemnized between Hindus before the commencement of this Act, which is otherwise valid, shall not be deemed to be invalid or even to have been invalid by reason only of the fact that the parties thereto belonged to the same gotra or pravara or belonged to different religions, castes or sub-divisions of the same caste.

(2) Nothing contained in this Act shall be deemed to affect any right recognised 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.

(3) Nothing contained in this Act shall affect any proceeding under any law for the time being in force for declaring any marriage to be null and void or for annulling or dissolving any marriage or for judicial separation pending at the commencement of this Act, and any such proceeding may be continued and determined as if this Act had not been passed.

(4) Nothing contained in this Act shall be deemed to affect the provisions contained in the Special Marriage Act, 1954 (43 of 1954), with respect to marriages between Hindus solemnized under that Act, whether before or after the commencement of this Act.

30. Repeals. – [Rep, by the Repealing and Amending Act, 1960 (58 of 1960), Section 2 and First Schedule].
A list of some Acts passed by the legislatures of the Centre and of the provinces or States:

   Repealed by Special Marriage Act 43 of 1954.

2. Hindu Married Woman’s Right to Separate Residence and Maintenance Act 19 of 1946.  
   Repealed by Hindu Adoptions and Maintenance Act.


   Repealed by Hindu Marriage Act,

   Repealed by Hindu Marriage Act.

   Repealed by the Hindu Widows Remarriage (Repeal) Act 24 of 1983.

   Repealed by the Hindu Marriage Act.

   Repealed by the Hindu Marriage Act.


10. The Indian Divorce Act, 1869.

    Repealed by the Madras Aliyasanthana Act, 1949.


   Repealed by Hindu Marriage Act.
   Repealed by the Hindu Marriage Act.
   Repealed by the Hindu Marriage Act.
21. Travanhcore Ezheva Act 3 of 1100 M.E.
22. Travancore Nayar Act 2 of 1100.