Chapter – I

INTRODUCTION
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The word divorce is related to ‘marriage’ and ‘family’ which are the most important institutions of the human society. Human society is made of groups. Of all the groups human beings have formed, none can be thought more important than the family. It is a group as ancient as man himself. It is a multi-functional group which satisfies basic physical, mental and spiritual needs of human beings. In marital relationship alone, two human beings enter into a complete physical, mental and spiritual union with each other. The highest of human ideals, values and qualities namely, love, devotion, cooperation and sacrifice are found in the family. It is a universal institution as well. Marriage and family are ancient institutions and around them have grown up deep and powerful sentiments and traditions. Family is the institution which forms the basis of every other institution on the face of the earth. (Pothen 1986).

Family as a reproduction or a biological unit, is composed of a man and a woman having a socially approved sexual relationship and whatever offspring they might have. Importance of family as a fundamental social unit and the role of family in determining the character and structure of society are accepted by all. Family is intrinsic to human life and society. It is an institution founded on the laws of nature. It is also an association supporting and supported by every civilization, sanctioned by law, esteemed by knowledge, blessed by religion and wisdom, extolled in its highest achievements by all forms of economy. In spite of evolutionary and revolutionary disruption, the institution of family has witnessed all the assaults made upon it and has survived as a witness to its own indispensability in determining the character and structure of society and man. (Pothen 1986)
William. J. Goode said that “Family is both fragile and tough – fragile because it is constantly breaking down and tough because manifestly it has not disappeared”. Human beings go through procedure of marriage to establish family. Marriage which is stepping stone to making family is considered to be most important legal contract in every human society as it refers to the continuity of the race.

All over Hindu and Christian worlds marriage began as sacrament. Marriage, as a sacrament, necessarily implied a permanent and indissoluble union. Hindus took the notion of indissolubility of marriage to the extreme by laying down that even death did not put the marriage asunder. It was a union not merely in this life but also in all lives to come – an eternal union. The Hindus conceived of their marriage as a holy and sacramental tie and not a contractual union. (Diwan and Diwan, 1995)

Hindu marriage is considered as a permanent life-long and sacred union. When one examines the scriptures, one comes across many passages to support the view that marriage is union made by God himself and hence none should break it. In the Holy Bible, it is written: Man must not separate, then, what God has joined together. In Hindu texts, a still more intense view is expressed. For a Hindu, marriage is a sacrament and hence unbreakable. It is a union not only for this birth, but for all the births to come; in other words, immortal, interminable, eternal. (Pothen 1986)

Hindu marriage ordained as a necessary sacrament (Samskar) for getting Son, for discharging his debt to his ancestors, and for performing religious and spiritual duties. The Shastrakars ordained that once is a maiden given in marriage, and the injunction was: “A true wife
must preserve here chastity as much after as before her husband’s death.” (Diwan and Diwan, 1995)

Marriage which is stepping stone to the making of a family is considered to be the most important legal contract in every human society as it refers to the continuity of the race. It implies a most delicate and difficult adjustment of emotional and physical relationship with domestic and economic co-operation. It also involves the co-habitation of male and female, of progeny, of kins and infact, the whole community (Malinowski, 1973). The sacred institution of family thus formed has indeed undergone considerable change in the recent times. Increasingly, family is not being based upon compulsion or formal agreement but upon binding affections and loyalties growing out of intimate associations and companionship. When such emotional, physical, and economic needs of the individual are not met satisfactorily, marriage turns out to be intolerable. Although marriages everywhere are contracted for life, every society provides a way of terminating such marriages before the death of the spouses. One such way is divorce and the fragility of family mentioned by Goode (1956) is manifest in the tremendous increase in the number of divorces today.

Divorce is considered a taboo in our society and a divorced woman is looked upon with displeasure and disapproval. In this context it would be relevant to have a look at the prevalence of divorce in India through the ages and understand the sanctions that society allowed it. (Usha Devi, 1998)

Definition of Divorce

The word ‘divorce’ in English is derived from the Latin word *divortium* which again is derived from *dis* which means ‘apart’ and *vertere* which means ‘to turn’. Divorce is the dissolution of the tie of
marriage. So, divorce is the turning away of partners from each other. It truly is a complete turn from the way of life the couple had so far. Divorce is related to marriage and family which are by far the most important and vital institutions of human society. Divorce is a decree of dissolution of marriage granted by the judicial court. (Pothen 1986)

Divorce in the proper and strict sense of the term means complete rupture of the marital bond, the persons divorced returning to their original state of being free to marry. Divorce is the word used to mean the legal ending of a marriage. In the legal language, it might appear as a simple phenomenon, but in practical life its implications are massive. Divorce 'represents the end of the hopes that two people had for each other; it is the certificate that their relationship failed.” (Gerald and Whitehead, 1970).

Historical Perspective of Divorce

Divorce or dissolution of marriage is one of the ways, the 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 it was prevalent in the past. (Chowdary, 1988).

Divorce in Vedic Dharmasastra and Smrithis 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 (Bhargava, 1971). Women in the Aryan society of the Vedic Age enjoyed a fairly high position in society.

Narad and Parasura have allowed a wife to dissolve the marriage if the husband is found to be impotent. According to Narad, the woman is the field and the man is the seed-giver; so, the field must be given to
one who has seed (Prabhu 1963). So, if a woman finds her husband devoid of virility, she should wait for six months and then choose another husband.

Narad and Kautilya allow a woman to seek a second husband if the first one is missing, dead, becomes an ascetic, is impotent, or has fallen from the caste.

Narad adds that even if the woman is not eager to take another husband, she should be persuaded by her relatives to do so. Kautilya permitted the woman to abandon her husband if he is a bad character, or is long abroad, or has become a traitor to the King or is likely to endanger her life or has fallen from his caste, or has lost virility.

Kautilya also speaks of divorce and according to him divorce may be obtained only in the case of mutual enmity and hatred between the husband and wife. Neither the husband nor the wife could dissolve the marriage against the wishes of the other.

In early India 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 drinkard 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 early India, Kautilya had sanctioned divorce only in for adharmic (non-religious) marriages, namely, Asura, Gandharva, Paishyacha, and Rakshyasa on grounds like bad character, unknown whereabouts, falling from caste, losing virility, endangering spouse's life and becoming traitor to kins. But even in these marriages, mutual consent was necessary for dissolving the marital ties. According to Kautilya, a woman hating her husband could not dissolve her marriage with him against her will. Further, in case of divorce, a man was to return to his wife whatever she was given at the time of marriage and woman was also enable to forfeit her claim in her husband's property. But since almost all marriages were of Brahma type, that is, dharmic, one can say that divorce was not practised in ancient India.

**Divorce in the Medieval Indian Society**

The 9th century A.D. heralded a new era in the history of India, especially with the decline of the Aryan and Aryo-Buddhistic period. Monogamy was the prevalent social custom though polygamy was also practiced to a lesser extent. Widows were not allowed to remarry and female infanticide was practiced, as having a daughter was considered a bad omen. Divorce was still a taboo in the higher castes though it was practiced among the lower castes. Both religious and social customs continued to govern marriage practices and divorce. Some peculiar forms of marriage dissolution were found prevalent among the Rajputs of Rajasthan and the Nairs of Kerala. *(Usha Devi, 1998)*.

Among the Rajputs, a wife found guilty of adultery was dismissed from her caste. In some cases the couple was allowed to separate. The
wife was sent back to her parents and the husband was allowed to take another wife (Billington, 1895).

The Nairs of Kerala, who followed the matrilineal system, had a different way of dissolving their marriage. The concept of marriage was different. They had a system called ‘sambandham’ (man-woman relationship). This relationship continued as long as both parties wanted it. The alliance was initiated by the presentation of ‘pudava’ (cloth) by the man to the woman in the presence of family members. Any one of them could dissolve the marriage by informing the other that they wished to discontinue the relationship. Being matrilineal and matrilocal, the children born out of this alliance belonged to their mother’s ‘tharawad’ (joint family) and inherited from the mother (Kapadia, 1966).

Divorce in the Pre and Post Independence Periods

A change that took place in the attitude towards marriage and divorce in the 19th and 20th centuries was due to the pressure of various movements and organizations 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, 1998).

The first legislation in respect of the dissolution of marriage in India was enacted for Christians in 1869 called Indian Divorce Act, for Parsis in 1936 called Parsi Marriage Divorce Act, and for Hindus in Kolhapur State in 1942, Bombay on grounds of change of religion, desertion for more than seven years, cruelty, drunkenness, bigamy, and adultery. The Bombay Hindu Divorce Act sanctioned judicial separation of divorce on grounds of impotency, lunacy for more than seven years,
leprosy for not less than seven years, desertion for a continuous period of four years, and bigamy. Within five years of passing the Bombay Act, there were about 5,500 applications for divorce in Bombay courts, of which about 60 per cent were submitted by women on grounds of bigamy alone. On an all India level, the Special Marriage Act was passed in 1954 and the Hindu Marriage Act in 1955, which legally permitted divorce to Hindus, including Sikhs, Jains and Buddhists but excluding scheduled tribes. However, it may be stated that unlike the western society, in Hindu society divorce is still discouraged and is permitted only in cases where it is absolutely a necessity under circumstances of exceptional hardship or where it is impossible for either party to live with the spouse. The factors which restrain couples from divorcing when the marriage has failed generally are: love for children, property consideration, parents’ fear, social disapproval, chances of economic career being jeopardized, high cost of divorce, moral or religious considerations, fear or publicity to private affairs, and the fear of losing economic support.

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. If, however, divorce is persisted 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 were inserted by act 49 of 2001 amendment of Hindu Marriage Act 1955. Section 8 provided that the payment of the expenses of the proceeding and such monthly sum during the proceeding and Section 9 provided that 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

Hindu Marriage Act 1955 has Six Chapters and 28 Sections which is as follows:

Chapter 1 deals with Section 1 Short Title and Extent, Section 2. Application of Act, Section 3. Definitions Section, 4. Over-riding effect of Act.

Chapter II of Hindu Marriage Act deals Condition of Hindu Marriage in this Section 5 deals Condition for a Hindu Marriage, Section 6 Guardianship in marriage, Section 7 deals with Ceremonies of a Hindu Marriage, Section 8 Registration of Hindu Marriage.

Chapter III of Hindu Marriage Act deals with Restitution of Conjugal rights and Judicial Separation. The Section 9 is Restitution of conjugal rights, Section 10 is Judicial Separation.
Chapter IV of Hindu Marriage Act deals Nullity of Marriage and Divorce in this chapter. Section 11 deals with Void Marriages, Section 12 deals with Voidable Marriages, Section 13A deals with Divorce, Section 13B deals with Divorce by mutual consent, Section 14 deals with No petition for divorce to be presented within one year of marriage, Section 15 deals with Divorced persons when may marry again, Section 16 deals with Legitimacy of Children of void and voidable marriages, Section 17 deals with Punishment of bigamy, Section 18 deals with Punishment for contravention of certain other conditions for a Hindu Marriage.

Chapter V of Hindu Marriage Act deals with Jurisdiction and Procedure. Section 19 deals with Court to which petition shall be presented, Section 20 deals with Contents and verification of petitions, Section 21 deals with Application of Act 5 of 1908, Section 21A deals with Power to transfer petitions in certain cases, Section 21B deals with Special provision relating to trail and disposal of petitions under the Act, Section 21C deals with Documentary evidence, Section 22 deals with Proceedings to be in Camera and may not be printed or published, Section 23 deals with Decree in proceedings, Section 23A deals with Relief for respondent in divorce and other proceedings, Section 24 deals with Maintenance pendente lite and expenses of proceedings, Section 25 deals with Permanent alimony and maintenance, Section 26 deals with Custody of children, Section 27 deals with Disposal of property, Section 28 deals with Appeals from decrees and orders, Section 28A deals with Enforcement of decrees and orders.

Impact of Divorce in General

Legislations permitting divorce and separation will have far-reaching consequence in any society. This is particularly so in a country
like India where no divorce was permitted by law, more so, among the Hindus who have a traditional life. (Pothen 1986)

According to J. Derrett, M. Duncan, (1971) "the impact of legal dissolution of marriage on the institution of family and the total society is a matter of difference of opinion. Divorce cases reflect a sick society, not a healthy one. Horton and Leslie, (1960) felt that divorce and desertion are widely recognized as problems. They are not problems in all societies, as they do not exist in all societies. According to Burgess and Locke (1950), who have been pioneers in the study of family Sociology, "the most practical index of family disintegration for research purposes is divorce. "Mowrer (1942) has also mentioned that "family disintegration first impinges itself upon the attention of marriage relations expressed in divorce and desertion. Fonseca (1966) who made a research on the subject under the guidance of the eminent sociologist, Professor G.S. Ghurye, came to the conclusion that "it can be safely asserted that separation, desertion of the family are generally not favoured in Indian society". This is possible due to the adverse effects of divorce.

At the same time, some other social scientist has pointed out that "family dissolution is imperfect index of family disorganization. According to David L. Sills, "divorce is an imperfect index of marital disorganization, because, there may be disorganization with out divorce.

For instance, divorce was very difficult to obtain in England prior to liberalization of the laws in 1857, and again in 1937. When the divorce door is closed, marital disorganization may be un-conspicuously endured. On the other hand, a couple with high expectations of marital bliss but relatively little marital disorganization is often not extreme is
shown by the frequency of reconciliation, dropping of divorce suits and remarriage to the former spouse. Marshall Clinard (1965) has stated that: “although many persons regard divorce as the only index of family disintegration, it is but one of the many signs, since it represents the legal dissolution of the marriage, it certainly is the final one”.

According to Carter and Flateria, (1968) pointed out that perhaps the viewpoint of Marshal Clinard is acceptable to the present investigator. At the same time, we should not underestimate the seriousness of the subject, in view of the fact that divorce in any society has far-reaching consequences, with regard to persons, social institutions and communities. The alarming rates of divorce in Western countries indicate the same. More than 390,000 divorces in the United States in 1960, virtually affected the lives of 780,000 adults and their 460,000 children in many instances permanently. Anthony Pietropinto and Jacqueline, Simenauer, (1981) said that again million Americans, they are justified in regarding the situation as something of a national health emergency. As a result of a nation wide survey of Marriage in the United States, it is pointed out that “although one in three American marriages now ends in divorce, most married people basically are opposed to the concept”.

According to Kapadia (1959) as elsewhere, certain redeeming aspects of divorce in India would be that it would help to liberate the women and in reorganizing the family. Instead of dragging a miserable family life, it is better to secure a divorce. Certain studies in India have shown that the Hindu women are in favour of legislation in respect of divorce. Mrs. Hate found that out of 805 cases in her survey, 498 were in favour of the law of divorce, and 160 were against it. Mrs. Desai (1972) found 383 women in her study (47 percent) in favour of divorce and 398 (49 per cent) against it. Those who favoured divorce did so as
they had to bear one or the other of affections such as maladjustment in marriage, bigamy, a drunken, whimsical, cruel or immoral husband, supersession by the husband, excessive sexual indulgence on the part of the husband when the woman is physically incapable of conceiving. The study of Rama Mehta (1975) has shown that modern education has inculcated in the Indian woman a sense of her own identity. There is evidence in her of a personal desire to live fully and express herself fully, preferably within marriage, but not exclusively in it.

Several social legislations in India, especially of very recent times, have furthered the women’s movement in India and added to her stature both economically and socially. Important of them are as follows:

2) The Hindu Married Woman’s Right to Separate Residence and Maintenance Act, 1946, now repealed by the Hindu Adoptions and Maintenance Act, 1956;
3) The Hindu Succession Act, 1956;
4) Dowry Prohibition Act, 1961; and
5) The Hindu Marriage Act, 1955 (with its Amendments up to 2001).

Women today no longer occupy a subordinate position in the family as they did at one time. This is especially true in the urban areas. The policies and programmes of the Central and State Government in India, the activities of several private organizations, and a number of publications prove this. A very recent publication by Yaqin and Anwar (1982) has brought to light that there are really numerous social legal studies regarding the rights of Indian women.

**Review of Previous Studies on Divorce**

A marriage has to pass through various difficult phases: disparities between the couple themselves rose a major problem,
adjustment of personality between the couple and within the immediate environment, the inherent disharmony in such relationships has to be resolved. The other major problem arises from the termination of unsuccessful relationships in which the couple resort to law courts.


The expectations of the young educated men and women from marriage are gaining new dimensions such as the resolution of their psychological and emotional problems apart from the physical and biological needs.

The changes have also taken place in the pattern of mate selection. The marriages which were arranged by the parents with or without formal consent of the prospective mates are now being arranged generally by the choice of the boy and the girl (G.B. Desai (1957), Ross (1961), Shah (1962) and Kapur (1973)). Again we find a change in the values of educated boys and girls with regard to the age of marriage. The practice of pre-puberty marriage is no longer found among the educated Girls. Ross's study (1961) revealed that none of the unmarried women wanted to be married before the age of nineteen. The university students in Mathew's study regarded any age between twenty-two and twenty four as the most suitable for a woman to marry.

Further, the patterns of husband-wife relationships have also adapted new dimensions. In the social structure of the tradition-oriented family, the typical pattern of husband wife relationship was that of male-
dominance and female-dependence. Accordingly, the husband used to be regarded as the master and the wife was regarded to be subordinate to him (Srinivas, Dube (1955) and Kapadia (1956)). But now as it is revealed from various studies undertaken by Kuppuswamy (1961), Damle (1964), Mahajan (1965), Rama Mehta (1975), and Fonseca (1980), women’s education and employment Desai (1945), Kapadia (1958), Ross (1961), Dube (1963), Roa (1973), Kapur (1973), Rama Mehta (1975), and Fonseca (1980) has clearly reflect the change of attitude and behaviour with regard to the traditional role relationships between spouses which have been made quite obsolete by the Marriage Act 1954 and 1955. These Acts have provided ample privileges to both husband and wife in the case of family conflicts. All these changes have affected the objectives of the institution of marriage considerably.

Kuppuswamy’s (1957) study of 895 cases had shown that three-quarters of his respondents were against dissolution of marriage on the ground of wife’s barrenness. However, more than three-quarters of the respondents believed that the marriage tie should be dissolved if either of the partners was incurably insane. A similar response was reported in the case of husband or wife suffering from a virulent and incurable type of leprosy. A large number of respondents in Kuppuswamy’s study had favoured divorce if the parties to the marriage failed to perform their marital obligations. When 73.2 percent of the male respondents favoured divorce in the case of impotency, 47.4 percent of the female respondents did not like dissolution merely on this ground since other values in marital relationship were more important according to them. Another interesting fact in Kuppuswamy’s study was that, whereas all castes except the Harijan, favoured divorce if the Woman misbehaved, the percentage of castes favouring mis-behaviour as the ground of divorce varied from 79.4 percent of 85.4 percent it was only the
Brahmins (63.7%) who were prepared to condemn the man if he misbehaved, other castes being far behind (varied from 36.6 to 44.4%), 43.9 per cent Harijans condemned wife’s adultery but only 10.6 per cent were prepared to condemn adultery on the part of the husband.

The other important fact which emerged from Kuppuswamy’s study was that, rural or urban upbringing of men and women as not found significant in affecting the outlook on marital relations.

Kapadia (1958) studied about 513 university graduates and the study revealed that about half the number of the respondents considered divorce desirable: as against this about one-forth considered it undesirable and 17 percent considered it harmful. Nearly 58 percent of the respondents thought it a good case for divorce when the two partners themselves felt that they could not continue to live together. This may be due to various factors; a) because they did not love each other, or b) because they had failed to adjust themselves to each other’s shortcomings, c) because the incompatibility between them was such that compromise was impossible. The husband may be an alcoholic, quarrelsome or cruel. He might even have criminal propensities. In such cases there is an intolerable burden making domestic felicity unattainable. The other conditions revealed by the respondents were childlessness, age difference etc. which could also become ground for divorce.

Y.B. Damle (1964-65) study about 363 divorce cases in Poona District had shown that Marathas (53.18%) and intermediate Hindus other than artisans (14.88 percent) accounted for about 70 percent of the 363 Hindu divorces (the remaining 10 were Muslim), while the high castes (9.64 percent) and the depressed castes (10.19 percent) accounted for about one-fifth. These figures, however, shed no light on
the relative popularity of divorce among castes because, first, they were not related to the percentage of these castes in the total population of the area surveyed; second, some of these castes allowed divorce by custom. The majority of persons who were divorcees (about 51 percent) were agriculturists and about 18 percent belonged to the salaried group. The level of literacy of divorcees was very low. More than 60 percent were illiterate, 13.5 percent were educated upto 4th standard and 9.6 percent had studied from 5th to 7th standards.

The period of marital span before divorce was 10 or more years in 43.5 percent cases, 7 to 9 years in 26.6 percent cases, and 4 to 6 years in 19.9 percent cases. About 25 percent of the divorces were obtained on the ground of childlessness. The other reasons given were illicit relations, domestic disharmony, diseases or the disability of the partner, immorality of the Wife, and adultery of husband; and so forth. The study also revealed that divorce behaviour varied from one caste to another. Illicit relations were the major ground of divorce among artisans and the depressed castes, while domestic disharmony was most dominant among the intermediate and the high castes. The study also revealed that educated people did not assign as much importance to childlessness as to the fulfilment of the marriage.

Fonseca (1966) studied 1261 divorced couples – 367 from agency records and 894 from court records. She found that an alternative to an unhappy marriage was not the termination of the marriage, but its continuance in whatever truncated from it appeared to exist. It was verified from the court records that parties did not really want to terminate the marital union. Similarly, in desertion cases, Fonseca found reconciliation as the common practice. About 42.6 percent of the cases were actually reconciled. The median age
difference between the couples computed from the court records was 6 years. In almost all cases, the husband was older than the wife.

The factors of marital discord as seen from institutional cases in Fonseca’s study were as follows: ill-treatment by husband and family members was as high as 28.6 percent and 26.2 percent respectively, as compared to other contributing factors. Infidelity stood at 12.3 percent and economic insecurity was 10.4 percent. The other important factors highlighted were personal defects 5.4 percent, vices 4.4 percent, incompatibility 3.8 percent sexual-incompatibility/abnormalities 2.2 percent and about 7 percent were recorded as other factors responsible for marital discord. Similarly, the grounds on which the petitions were filed in court cases, desertion, cruelty and miscellaneous were highlighted as the most common grounds for divorce, adultery in both spouses was the next highest ground for marital discord. While impotency as the ground for divorce was figured among 4 percent and 10.5 percent of the husbands and wives respectively.

Some other features of Fonseca’s findings are:

(i) Separation, desertion and divorce as they represent various degrees of dissolution of the marriage are genuinely not favoured in Indian Society.

(ii) Today, however, the transitory phase of adjustment, or rather readjustment to changing ideas, ideologies some considerable number of cases, in other, it has brought to light families which were already ‘weak’ where marital partners displayed little marital affection and there was no sharing of desires or pleasure or mutuality of affection. This has made investigation into maladjustment imperative.

(iii) According to Fonseca, counseling will be very useful for marital happiness. Life has become extremely complex, and demands new
adjustments. In the realm of marriage, therefore, counseling has much to achieve to bring about these adjustments as near to perfection as is humanly possible.

(iv) The analysis of the various factors that create disruption between the spouses – whether temporary at times in the form of desertion or permanent as determined after much consideration as in the case of termination of the marriage through divorce undertaken by the author is very useful. For instance, see the grounds (impotency, adultery, desertion, etc.)

Although Fonseca's study was mainly motivated for marital counselling, it is a pioneering study and the data given are really illuminating.

Rama Mehta (1975) studied 50 divorced women; 25 from upper middle class and 25 from lower middle class in Delhi, Udaipur and Bombay. The reasons of divorce reported by 25 lower middle class women were as follows: seven stated that they were not considered worthy companions, five stated the disparity between the husband and wife with regard to their social outlook, four stated that they suffered physical brutality and mental torture, four stated the difference in the family status of respondents, and of the remaining five, three stated constant demand to get more money from their parents while two had to leave their husbands because the men were mentally deranged.

Similarly, of the 25 respondents from upper middle class, eleven started that their marriage had broken because of kind of life they had led after marriage, three stated that their Marriages turned out to be incompatible because of differences in their up bringing, four stated that their Marriages had broken because of their continuation in job, while of the remaining seven four stated frankly that they had fallen in love with
someone else, the other three were less open about their emotional attachments but it was evident that they had men friends. The extreme suffering on the part of the women before the break, as was evident in the former group (i.e. the lower middle class) was not present in the latter group of respondents.

The study revealed that fourteen of the lower middle class respondents after the break of their marriage, lived with their parents. Five respondents stayed with their in-laws and the remaining six women had taken refuge with family friends. In all cases the respondents were dependent for shelter for a period of time before any one of them could establish a place of her own.

Similarly, majority of the twenty-five women of upper middle class, after leaving their husbands went back initially either to their parental house or to their in-laws. This was not because the women felt they had to recapture lost respectability but because they could not find suitable accommodation or work.

Some of her main findings are:

(i) The Women who were joint family based and who were brought up to respect and fear their related group were less capable of breaking with conventional standards of behaviour.

(ii) The husband-wife relationship has become pivotal to the success of a marriage.

(iii) The western educated women inculcated in her sense of her own identify.

(iv) Secular Society was more tolerant and more open for women who were divorced.

(v) Indian Society is going through dramatic and rapid changes, affecting radically the traditional role of women.
(vi) The younger generation is increasingly ignorant of the ritualistic basis of their religion.
(vii) Though there was confidence in the arranged marriage pattern, this pattern would have to undergo a change.
(viii) In spite of liberal ideas taking a firm hold in India, in the upper and lower middle class, it was clear that the position of the divorced or separated women had only marginally improved.

However, the study of Rama Mehta suffers from some shortcomings from the scientific sociological point of view such as:
(i) The study took very small sample of 50, out of which only 13 were of real divorce which may not provide sufficient depth into the problem.
(ii) The study did not care to interview even a single husband of the divorced woman,
(iii) The study was not based on interview of the respondents personally, thus, her techniques of data collection were not satisfactory and lastly,
(iv) The study did not go through the court records even in the case of 13 divorcees which could have provided her deeper insight of the cases to arrive at more reliable findings.

Pothen (1986) studied 200 divorced men and 200 divorced women. She found that husbands and wives had great expectation about their future partners before marriage, which were not always fulfilled in marriage. Strains in their marital life started when these expectations did not meet reality. Majority of her male respondents preferred to live in joint families while the females did not. The life of the respondents during the pending of the court cases were miserable and most felt relieved after the decision of the court. Women were found to have shown greater progress in education in the post – divorce period
as compared to men. The rate of remarriages among her male respondents were more than that of the female respondents.

Krishna Kumari (1987) conducted a comparative study regarding the problems of working and non-working single women by interviewing 333 unmarried, widowed, separated and divorced women. The majority of her separated or divorced respondents were below 40 years of age and their marriage ended at a relatively young age. Majority of the non-working respondents were given good treatment by their family members than working respondents since the former captured the sympathy with their helpless state than an economically self-sufficient woman. Her study also revealed that friends of the respondents were a greater source of support and help than either family members or relatives. All their plans of the future centered around their children. None of the childless women favoured adoption as they considered it an additional responsibility and feared the children will be ungrateful to them once their true parentage was found.

Kumari (1988) studied 260 graduate and post-graduate women to find their views and values regarding divorce, maintenance and remarriage. Majority of them felt that women exercising their right to divorce indicated a healthy development and improvement in their status. It was favoured as a better solution to save oneself from a life of torture or lack of adjustment and faith between the spouses or ill-treatment from the in-laws.

The author also found that the respondents indicated the need for compensation or maintenance as the wife usually becomes economically insecure, thus making her socially helpless too. Moreover, it would help her considerably if she has to support a child also. The respondents looked upon with approval to the idea of the remarriage of
the divorcees. They felt that it would give them a better status in society, help to safeguard the future of the children if any, and save themselves from physical and mental harassment. *It is also noted by the author that quite a few of the respondents still believed that divorce is harmful and it would only cause family and social disorganization.*

**J.N. Chowdary (1988)** studied 125 divorced couples and stated that divorce is on the increase and this increase has been stimulated by the growing acceptance that divorce is a reasonable and at times desirable alternative to an unhappy marriage. He identifies that factors that affect the decision to divorce as the number and age of children, income, age and level of education of the divorcees. Further, process of role adjustment after divorce is affected by several factors such as the social strata of the divorced people. His study also revealed that it is the social and biological factors that led to the break up of marriages. The relationship between husband and wife become strained due to the irritative nature of the partner, illicit relations, chronic diseases and poverty. However the period of the spouses staying together before divorce is greater in those cases where relations are strained by biological factors. The study also showed that if illicit relations are viewed as simple resultant of role conflict or maladjustment in family, then it is the environmental factors that is most responsible for the cause for divorce than personality factors. After divorce, persons with a strong, well integrated life organization survive the changes in their status and role with comparative ease than those who have less integrated personalities. *It was also found that children of divorced people have more difficulty in adapting in school and friends.*

**Dhagamwar (1989)** studied 65 unhappily married Hindu women who had filed for divorce, judicial separation or a decree of nullity of marriage. This study revealed that in about fifty percent of the cases,
the main cause of dispute was the wife beating of a drunken husband. Two other factors mentioned are the sexual demands of the father-in-law on the daughter-in-law and the sadistic teasing of the daughter-in-law by her mother-in-law and sister-in-law. The author found that although these women came from widely varying educational, social and economic backgrounds they were characterized by helplessness, lack of confidence and total dependency on others when it came to making important decisions concerning their personal lives. They were ignorant of the laws pertaining to marriage and divorce and were unaware of the existence of institutions for distressed women where they could receive shelter and legal counselling. She states that it is the family upbringing and school education that makes the women meek and obedient to whoever who marries her. She calls for a school education that would counter the traditional upbringing received at home, increase awareness about women's rights and legal provisions and enable them to take advantage of the job reservations for women.


This is an exploratory study of 15 couples selected by method of purposive sampling from the case records of the Bombay Civil Court. The couples were granted divorce during 1971-72. the unit of the study was the divorced couple. The main findings of the study are:

(i) Majority (53 percent) of the respondents prior to marriage came from upper middle class, where the average monthly income ranged from Rs. 1000 to Rs. 2000 per family.

(ii) Majority of the husbands (73 percent) married at the average age of 25, and the majority of wives (86 percent) at the age of 20.
(iii) The areas of conflict as indicated by majority of the couples (74 percent) were personality differences and incompatibility, whereas minority (33 percent) stressed infidelity and unfaithfulness as prominent factors. The study revealed that since the law required certain grounds for divorce, in most cases, the real factors were not stated.

(iv) 30 percent of the respondents had remarried, while 20 percent were getting married within a couple of months.

(v) Majority of the couples (80 per cent) were of the firm opinion that marriage counsellors should make attempts at reaching out to the larger community by conducting premarital and post-marital guidance and counselling courses. They also felt that schools and colleges must introduce such talks and short-term courses as part of the curriculum.

Though it was a brief study, the findings of Maye were really significant.

There may be some other studies also, especially by students and teachers of institutions of higher learning in India, but then, the present researcher could not get hold of them. However, it must also be put on record that inquiries from the Departments of Sociology and schools of social Work of various universities in India did not reveal any more studies. These included major universities in Delhi, Bombay, Chandigarh, Mysore. It should also be mentioned here that unless and until research studies are published, the fruits of such studies cannot be enjoyed by the academicians, administrators, social workers and the general public.

The above studies point out the changes in the values and perceptions of the spouses in relation to the institution of marriage.
owing to a variety of social, cultural, political and economic factors. The untiring efforts of the social reformers and educationists in the second quarter of the twentieth century and the various legal enactments in the third quarter of the century have contributed a great deal in bringing about these changes. Besides, the increasing enthusiasm for higher education. Particularly professional education, and the employment of women have played a vital role in affecting the values and image of males and females and changing the attitude towards marriage and divorce. These changes have not only contributed considerably to the breaking of traditional structure of Hindu marriage but also to the increase in the rate of divorce in our society.

**Statement of the problem**

Divorce is the final and legal termination of marriage. It is seen as a mechanism for dealing with the pressures and problems caused by marriage. Divorce is often resorted to when it is found that continuing an unhappy and unsatisfactory marriage is imposing heavy costs not only upon the embattled spouses but also on their children, if any. Moreover, in divorce both the spouses are violating the only significant principle that both should remain together in amity to create a home in which the children can grow to adulthood. Studies relating to marital disruptions like divorce, separation and desertion are indeed rare in India.

**Need for the Present Study**

As the studies on divorce in Hindu marriage are meagre, the present study is an attempt to explore a relatively untouched area of study. The present study is concerned with both exploratory as well as analytical goals. It is chiefly concerned with investigating causes and consequences of divorce. The socio-economic factors, the rural-urban background, the environmental factors, personality factors and the legal
factors have a bearing on divorce. Besides that, personal problems, family problems, employment, custody of children, alimony, remarriage and sentiments of family members play a vital role on divorce. The present study makes an attempt to explain how the above factors influence divorce. **Udry J.Richard (1973)** gives three factors that hold the marriages together.

1. Positive rewards within the marriage,
2. Barriers to the disruption of marriage, and
3. Alternative sources of satisfaction in the case of separation / desertion / divorce.

**Becker, Gary and Others (1977)** have also maintained that marital disruption results from careful consideration of its costs and benefits. As such, couples rationally weigh such factors when making decision to break their marriage legally. Some researches on divorce, both in India and in the west, have emphasised the importance of three factors in divorce, viz., marital duration, individual characteristics of the partners involved, and the sequencing and timing of life-cycle events.

Association between divorce and age at starting marital life, childbirth, family structure, etc., may hold true with controls for such variables as husband’s and wife’s education, occupation and income, suggesting that “factors directly associated with divorce and are fruitful areas for sociological research” (**Bumpass and Sweet 1970**).

Keeping in view the above factors and reflections, the present study is an attempt to explain factors, causes, consequences of marital disruption and divorce among the Hindu marriages.
Methodology

The present study aims at understanding socio economic and legal background of the divorce and comprehending the reasons leading to divorce and consequences of divorce. To make the present study scientific, un-biased and logical the following methodology was adopted. The methodology explains:

(i) Objectives of the study.
(ii) Universe and sample
(iii) Tools and methods of data Collection.

Objectives of the Study

The present study is concerned with both exploratory as well as analytical goals. It is chiefly concerned with investigating different dimensions of divorce. The main objectives of the present study are the following:

1. to study about the legend of Hindu Marriage system and historical perspective of divorce.
2. to find out socio-economic background of divorced spouses.
3. to understand reasons leading to divorce.
4. to assess legal basis of divorce, alimony and custody of children.
5. to study about jurisdiction, process and legal proceedings of divorce and lastly,
6. to analyse the consequences of divorce.

Universe and Sample

The present study was carried out taking the cases in the Anantapur Principle Senior Civil Judge Court Jurisdiction. This appellate jurisdiction consists of Anantapur, Uravakonda, Kalyandurgam, Rayadurgam courts of Junior Civil Judge. The divorce petitions from these entire lower court jurisdiction come to the appellate court of Principle Senior Civil Judge Court, Anantapur. The Anantapur Principle
Senior Civil Judge Court registers the cases of divorce, conjugal rights and judicial separation petitions. But in the distribution of cases the divorce petitions are allotted to Additional Senior Civil Judge Court of Anantapur.

For the present study the researcher obtained list of the 480 finally disposed cases of divorce petitions by Additional Senior Civil Judge Court and District Legal Services Authority between the years 2001 – 2003. Of these cases 144 cases in the year 2001, 156 cases in the year 2002 and 180 cases in the year 2003 were disposed. Out of these 480 disposed divorce petitions, 275 petition were set-exparte decree, 24 petitions were dismissed, and 31 petitions were decreed through mutual consent from district legal services authority. The remaining 150 cases were disposed through legal grounds. These 150 divorce cases were analysed for the present study. In all of these 150 cases, couples (150 Males & 150 Females) were studied for the present study.

Tools and Methods of Data Collection

In the present study both primary and secondary sources of data were used. In particular the following tools and methods were used:

(i) Judicial Court Records.
(ii) Schedule
(iii) Case Study.
(iv) Observation.
(v) Interviews with lawyers dealing with Divorce Cases.
(vi) Judicial Court Attendance.

The standardised schedule prepared for the study contained the questions pertaining to different aspects, viz. socio-economic background of divorcees, causes of divorce, adjustment problems after
divorce, adjustment of children, and re-marriage. Besides using techniques and methods of data collection, the facts were further checked and verified from the individual files available in the Session Court. Some of the leading advocates, who happened to be legal advisors of respondents, were also contacted.

Data Analysis

The collected data pertaining to objectives envisaged earlier were classified and tabulated for the purpose of analysis. Suitable statistical and non-statistical methods of data analysis were used to draw meaningful inferences and to arrive at generalizations.

Scheme of Presentation

The Study is presented in Nine Chapters

Chapter-I: Introduction
Chapter-II Setting
Chapter-III Hindu Marriage System and Historical Perceptive of Divorce
Chapter-IV The Divorces – Socio-Economic Background
Chapter-V Causes of Divorce
Chapter-VI Legal Basis of Divorce
Chapter-VII Jurisdiction, Process and Procedure of Divorce
Chapter-VIII Consequences of Divorce
Chapter-IX Summary, Conclusions and Suggestions.