Evolution of the Institution of Marriage:

Procreation is essential for survival of all forms of life including man because no living being is immoral. Like animals human beings also require mutual cooperation of two individuals with different sex structures for procreation acts. Urge in living being in this regard is called sex urge. To canalize the sex-urge, the concept of marriage developed in the society of human beings. In the broad sense marriage means a legally and socially sanctioned union of man and women that accords status to them as husband and wife and legitimacy to their offspring's. It involves certain rights and duties between the parties entering into wedlock.

It seems to be will established that the institution of marriage did not exist among the primitive men. At that time man time man lined more or less like any other animal. He was so much engaged in the satisfaction of his primary needs, buunger and shelter, that there was no time or occasion to think of refinement. Sex life was absolutely free. Sex promiscuity was the rule.

As man advances, twin discoveries are made of the mulch cattle and of the fire. These two discoveries went a long way to distinguish his from animals. It no longer remained necessary to him to wander from place to place in search of food. Later on with the emergence of herds of cattle, the idea 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 that at some stage of human development with the emergence of concept of possession and ownership, the human male was seized with the idea of knowing his children. It was not possible if sex promiscuity continued to be rule. To determine paternity of children sex relationship must be made exclusive union of man and woman. So the men's guest to know the paternity of children laid the seeds of the institution of marriage. But this was not happened in a single stroke. The process was naturally slow and prolonged.

When man required the knowledge of art and industry, some sort of sex regulation came to be established. Probably it began with group marriages. So the
Institution of marriage came into existence in different forms. At the beginning probably promiscuity sexual intercourse prevailed in tribe, sexual intercourse outside the tribe was privileged. 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 closer relations such as mother and son and then brother and sister. This process of exclusion must have continued, so that even 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, thin was probably a union loosely uniting the couple, the dissolution of union being as simple a matter as entering it. The recorded history of early Roman civilization testifies that marriage and divorce were easy matters.

When humanity comes into patriarchal stage, that is, when man succeeds in establishing decent through male, we find that marriage as and exclusive union comes to be firmly established, though the exclusiveness of the union for male was not as strict as for female. At this stage monogamy in west and polygamy in east came to be established. In the west, monogamy was strict rule for women, though not strict for women. The reason being that if descent is to be traced through male, the fidelity depends the determination of the paternity of his children. In the patriarchal society women was placed at men's absolute power. Thus in this era the marriage came into existence as an exclusive union. Man 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 Christians came to be considered as a sacrament.

**Concept of Marriage**

In the ancient times the institution of marriage was not in vogue. In procuring partner for connubial union man demonstrated the same behavioral activity which is adopted by the animal class. This psychology of the ancient society brought in uncertainty about paternity of children. Sooner or later man's quest for paternity of children went on and this sowed seed of marriage as an institution. Indian mythology maintains that Svetakentu, son of the sage Uddalak, was the first man to introduce the institution of marriage.¹ The biological notion of marriage with powerful instinct of reproduction may be pertinent in western countries, but is not applicable in India. According to the Indian concept, marriage is not merely response to the first instinct of man; it is basically a means to achieve some social goals, viz., social harmony,

¹ *Mahabharat, Adiparva, I, 122, 147.*
well-being of the weaker members of the society and the promotion of healthy
development of human species. Like other parts of the world, polygamy and
polyandry were originally common in India as well.²

**Hindu Law:**

Hindu marriage is a *samskara* or a sacrament. It is a necessary *samskara* for
every Hindu and only one for a woman. Since it is a sacrament and not a contract, it
creates an indissoluble union between the parties.³ Hindus have, from the very
beginning of their civilization, regarded marriage as a "sacrament", as a tie which
once tied cannot be untied. The Hindus notion of sacramental marriage differs from
Christian in as much as the Hindu regards their marriage not merely a sacrosanct and
inviolable union, lent also an eternal union. It is one of the ten "Sanskars" (ceremonies of reformation) which one has to undergo at the time of entering
"Grihastha Ashrams" (life of house holder) [other three Ashrams are first
"Brahmacharya" (life of celibacy and studentship), third "Vanaprastha" (life of recluse) and fourth "Sanyas" (life of emancipation)]. Hindu marriage was regarded as
a union which subsists not merely during this life lent for all lives to come. Derrett
puts it succinctly, "the intention of the sacrament is to make the husband and wife
one, physically and psychically, for secular and spiritual purposes for this life and for
after lives"⁴.

The husband is declared to be one with the wife. Neither by sale nor by
repudiation is a wife released from her husband. Once only a maiden is given in
marriage.⁵ The injunction is: "May mutual fidelity continue till death".⁶

Marriage is an essential *Sanskar* for all Hindus. Every Hindu is enjoined to
marry, to enter the *Grihasta-ashram*.

Manu declared, "To be mothers were women created and to be father men, the
Vedas ordain the dharma must be practiced by man together with his wife. He only is
a perfect man who consists of his wife, himself and his offspring."⁷ Husband and wife

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² *Supra* note 1, VV, at 30.
³ J.D. Mayne, *Hindu Law and Usag* 120, 136 (1953); D.F. Mulla, *Hindu Law* 551 (1986); N.R.
are enjoined to live in perpetual love, bliss and happiness.

A passage in Rig Veda run, "Be thou [wife] mother of heroic children, devoted to Gods, be thou queen in thy father-in-laws household May all Gods unite the hearts of us two into one."\(^8\)

The wife is not just Patni (wife) but dharmapati (partner) in the performances of duties, spiritual; religious and other. Among the Hindus, there are many yagnas (religious and spiritual sacrifices, rites and ceremonies) which a man without a wife cannot perform. That is why she is called dharmapati.\(^9\) She is ardhangani, half of her husband.\(^10\) The Vedas have ordained that dharma must be practiced by man together with his wife. According to Vedas marriage is a union of "bones with bones, flesh with flesh and skin with skin, the husband and wife become as if they were one person."\(^11\) The wife was also a source of Dharma, Artha, Kama and Moksha.\(^12\) In Ramayana the wife is said to be the very soul of her husband.\(^13\)

Thus, Hindus conceived of marriage as a sacramental union, as a holy union. This implies several things. First the marriage between man and woman is of religions or holy character and not a contractual union.\(^14\) For a Hindus marriage is obligatory, for begetting son, for discharging his debt to his ancestors, and for performing religious and spiritual duties. Wife is not merely a grihapati but also dharmapati and sahadharmini.

As a rule, marriage was considered to be an indissoluble union. It was only some exceptional cases that the sages allowed a woman to abandon her husband and take another. Narada and Parasara\(^15\) mention five cases in which a woman may abandon her husband and take another : a) when the husband is missing, b) when he is dead, c) when he has become an ascetic, d) when he is impotent and, e) when he is an out caste.\(^16\)

Side by side with this idealized picture of the wife, the Hindu sages hold in clear terms that husband is," the lord and master of his wife, he must be adored and

\(^8\) Rig Veda, IX, 85.
\(^9\) Supra note 5, at 45.
\(^10\) Taittiriya Samhita -III, 57; Satpatha Brahmana, v.16, 10.
\(^11\) Shyama Charan Sarkar Vidya Bhushan, Vyavastha Chandrika: A Digest of Hindu Law, as Current in All the Provinces of India Except Bengal Proper, 480 (1878).
\(^12\) Supra note 1, at 46.
\(^13\) Ramayana, 11, 37, 23-24.
\(^14\) Supra note 11, at 432.
\(^15\) Narada Samhita- XII, 81; Parasara Samhita- X, 26-35.
\(^16\) Supra note 5, at 147.
obeyed even if devoid of all virtues.”\textsuperscript{17} He must be obeyed as long as he lives and the wife should remain faithful to his memory even after his death.\textsuperscript{18} He should be worshipped like God even though he is a man of bad character with no qualities.

With the marriage emerging as an exclusive union, the wife’s position was that of mother of her husband’s legitimate children, of ‘patrani’ or the chief house keeper and of the superintendent of the females slaves, who were more often then not the concubines of husband. With this also emerged institutions of polygamy, concubinage and prostitution. The marriage becomes monogamous for the woman alone. It became a sacrament for her alone.

As it has been mentioned above that latter on Hindu marriage became sacrament only for Hindu female. A Hindu marriage was a sacrament in the sense that a wife could never ask for divorce, or for another husband even if her husband was a lunatic, impotent, a leper, a deserter, chronic patient of venereal diseases, or even an eunuch or a dead man. As regards the husband, he could always mock at this sacrament with impunity and arrogance by taking another wife into another and similar sacramental fold; and he could do so as many times as he liked. It is a different matter that polygamy was not practiced by Hindus on a large scale and that it remained a privilege of the few.

The supreme marital objective behind the institution of marriage under Hindu law was to procreate a son. Who could redeem the father from hell, who could succeed to his properly and who could avoid extinction of the line. The Hindu sages laid down qualifications and qualities of bride and bridegroom in detail. But consenting mind was not insisted upon.

A marriage was not rendered will and void or even voidable in the absence of consent on the part of either party to marriage or even on the port of both the parties to marriage. Marriage being a sacrament and indissoluble union, no emphasis was placed upon the contractual aspect of marriage. In reality Hindus did not consider their marriage as a contract. When some reforms were introduced in India, marriage did not became a contract, rather courts took the view that marriage of lunatics and idiots was valid.

Now under the Hindu Marriage Act. 1955, divorce is recognized, yet one cannot say that marriage has become a contract or has still remained a sacrament.

\textsuperscript{17} Julius Jolly, \textit{Institutes of Vishnu}, 13-14 (1998).
\textsuperscript{18} \textit{Supra} note 5, at 15; \textit{Supra} note 11, at 886.
Sections 5, 11 and 12 of the Act are the relevant provisions. Section 5 deals with conditions of marriage. Clause (ii) deals with mental capacity. Clause (iii) lays down that at the time of marriage "the bridegroom has completed the age of 21 years and bride the age of 18 years." The age of marriage and soundness of mind relates to the main elements of marriage. If marriage is looked upon as a contract consent of both the parties is a condition precedent to marriage contract mind is void. Should the same test be not applicable to marriage if marriage is regarded as a contract? But the fact is that marriage of a lunatic is a valid marriage under Act. The violation of clauses (ii) and (iii) of Sec. 5 of Act does not render the marriage void. Under section 12 the violation of the former requirements renders the marriage merely voidable, while violation of the latter requirement does not render the marriage void or voidable; it will be a valid marriage. Under law of contract, a contract for want of capacity is void ab-initio. But the Hindu Marriage Act does not consider the question of consent much importance. Thus a person incapable of giving consent can marry and marriage will be valid marriage. Thus a marriage without consent is valid marriage. Sections 5, 11 and 12 does not speak of consent, though Section 12(1)(c) does by down that in case consent of either party to marriage or consent of guardian as the case may be obtained by fraud or force, the marriage is voidable.

Then, could we say that Hindu marriage continues to be a sacrament? The sacramental marriage among Hindus has three characteristics: It is a permanent and indissoluble union, it is an eternal union and thirdly it is a holy union. So the first element is destroyed by the concept of Divorce as the Act recognises it. The Second element was destroyed in 1856 when the widow remarriage was given statutory recognition. The third element is still retained to some extent. In most of the Hindu marriages a sacred or religious ceremony is still necessary. But this aspect of sacramental ceremony is of least importance.

So, it may be concluded that the Hindu marriage has not remained a Sacramental marriage and has also not become a contract, though it has semblance of both. It has a semblance of contract as consent is of some importance and concept of Divorce is there, it has semblance of a sacrament as in most marriages a sacramental ceremony is still necessary.

19 The Indian Contract Act, 1872, Sec.11.
20 Venkatcharyalu v. Rangacharyalu (1840) 14 Mad. 816.
Muslim Law:

Marriage i.e. *Nikah* in pre-Islamic Arabia, mint different forms of sex relationship between a man and woman established on certain teams. In pre-Islamic days, woman were treated as chatter and were not gives any right of inheritance and were absolutely dependent. It was Prophet Mohammed who brought about a complete change in the position of women. He placed women an a footing almost perfect equality with men in the exercise of all legal powers and functions.\(^{21}\) Under Muslim Law marriage is considered as a civil contract.

Considered juristically, "*Nikkah*, in Islam is a contract" and this statement is sometimes so stressed, however, that the real nature of marriage is obscured and it is overlooked that it has other important aspects as well. So first all one must determine the definition of marriage (*Nikah*).

The Arabic word *Nikah* literally means the union of the sexes and in law this term means marriage. In Baillie’s Digest, marriage has been defined to be "a contract for the purpose of legalizing sexual intercourse and procreation of children." In Hedaya, it is defined as , "Nikah in its primitive sense, means carnal conjunction". Some have said that it signifies conjunction generally. In the language of law it implies a particular contract used for the purpose of legalising generation.

Dr. Jang is of opinion "Marriage though essentially a contract is also a devotional act; its objects are rights of enjoyments and procreation of children and regulation of social life in interest of society.\(^{22}\)

Abdur Rahim is of view "The Mohammedan Jurists regard institution of marriage a partaking both of the nature of "ibaadat" or devotional acts and 'muamalat' or dealings among men."\(^{23}\)

The Prophet of Islam said:

"Marriage is my 'Sunna' and those who do not follow this way of life are not my followers."

Before coming to law proper, we shall consider the three aspects of marriage in Islamic law, namely- (i) Legal (ii) Social (iii) Religious.\(^{24}\)

(i) Legal aspect: Juristically, it is a contract not a sacrament. It has three characteristics:

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\(^{22}\) Dr. M.U.S. Jang, *Dessertion on the development of Muslim Law in British India*, 2 (1932).


(a) consent is mandatory for marriage.
(b) as a contract, there is provision for its breach, the various kinds of
dissolution by the act of parties or by operation of law.
(c) the terms of a marriage contract are with in legal limits capable of being
altered to suit individual cases.

(ii) Social aspect: In social aspect, three important factors are there:
(a) Islamic law gives to the women a high status after marriage.
(b) restrictions are placed upon the unlimited polygamy and limited
polygamy is there.
(c) Prophet encouraged the status of marriage. "There is no mockery in
Islam, expresses his attitude towards celibacy briefly but adequately."

(iii) Religious aspect: This aspect is often neglected or misunderstood. Marriage is
regarded in Islam as basis of society. It is a contract, but it is also a sacred
covenant. The tradition of the Prophet follows the same lines, "marriage when
treated as a contract is a permanent relationship based on mutual consent on
the part of a man and a woman between whom there is no bar to a lawful
union."

Regarding objects of Marriage the Prophet said:

"Men marry women for their piety, or their property, or their beauty but you
should marry for piety."

A glossary on 'Tarmizi' sets out four objects of Marriage
1) The restraint of sexual passion.

Hedaya\(^\text{25}\) says, "The intercourse of a man with a woman who is not his wife is
unlawful and prohibited absolutely".

The Fatawai Alamgiri\(^\text{26}\) add "where there is neither the reality nor the
semblance of this relation between the parties, their intercourse is termed as 'zina' i.e.
fornication.

2) The ordering of domestic life.

Kifaya\(^\text{27}\) lays down "It is one of the original necessities of man (al-hawarj-ul-
aslia) instituted for the good ordering life."

3) The increase of the family.

\(^{25}\) Supra note 21, at 586.
\(^{26}\) Fatawai Alamgiri vol.II, 202.
\(^{27}\) Alhaji Ajijola, Introduction to Islamic Law, 577 (2007).
Kifaya\textsuperscript{28} laid "It is lawful on the part of an old man (shiekh-ul-kabir) or who has no hope of offspring and even in the last or death illness.  

4) The procreation and upbringing of virtuous children.  

Tyabji\textsuperscript{29} say's "Marriage brings about a relation based on and arising from a permanent contract for intercourse and procreation of children, between a man and woman."

"The offspring of a connection where the man has no right nor semblance of right in the woman, by marriage or bondage is termed walad-uz-zina, or child of zina, and is necessarily illegitimate.\textsuperscript{30}

There are difference opinions with regard to the nature of Muslim marriage some jurists are of opinion that Muslim marriage is purely a civil contract while other say that it is a religious sacrament in nature.

The view that marriage is not purely a civil contract but a religious sacrament too is considered to be an orthodox view, but it is also supported by the judiciary. In \textit{Shoharat v. Jafri Begum},\textsuperscript{31} the Privy Council said that Nikah under Muslim Law is a religious ceremony.

In \textit{Anis Begum v. Mohammad Istafa},\textsuperscript{32} C.J. Sir Shah Sulaiman has balanced the view of the Muslim marriage by holding it both civil contract and religious sacrament. Justice Sulaiman observed," It may not out of place to mention the Maulvi Samiullah (D.J. Raibarielly) collected some authorities showing that marriage is not regarded as a mere civil contract but a religious sacrament." Though the learned C.J. does not himself say that marriage is a sacrament, but from the context in which he said, it is clear that he supported the view of Maulvi Samiullah.

In \textit{Sirajmohmedkhan v. Hafizunnisa},\textsuperscript{33} the Supreme Court has described it as a 'sacrosanct contract'.

Taking the religious aspect into account Muslim marriage is an 'ibaadat' (devotional act). Let us consider the Quranic injunctions regarding marriage. Marriage is a contract, but it is also a sacred covenant. Marriage as an institution leads to uplift of man and is a means for the continuance of human race.\textsuperscript{34} Spouses are strictly

\begin{footnotesize}
\begin{enumerate}
\item[	extsuperscript{28}] Ibid. at 551.
\item[	extsuperscript{29}] Tyabji, \textit{Muslim Law}, 44-45 (1918).
\item[	extsuperscript{30}]\textit{Supra} note 26, at 209.
\item[	extsuperscript{31}] Qureshi, \textit{Marriage and Matrimonial Remedies}, 43 (1978).
\item[	extsuperscript{32}] (1993) 55 APP 743.
\item[	extsuperscript{33}] AIR 1981 SC 1972.
\item[	extsuperscript{34}] A.A.A. Fyzee, \textit{Outlines of Mohammedan Law}, 86 (1974).
\end{enumerate}
\end{footnotesize}
enjoined to honor and love each other.

"It is instituted by divine command among members of the human species."35

"He who marries completes half of his religion it now rests with him to complete the other half by leading a virtuous life in constant fear of God."

"There is no act of worship except marriage and faith, which has continued form the days of Adam and which will continue in paradise as well."

Prophet stated that - "I keep fast and break it. I pray and I sleep and I am married, so whoever inclines to any other way than my Sunnah, he is not of me."

It means Muslim marriage is something more than a civil contract. In the words of Baillie, marriage is," for the solace of life ..................it is therefore lawful in extreme old age after hope offspring has ceased, and even in the last or death illness."36

Muslim marriage is not merely a civil contract because :-

i) Unlike civil contract, it cannot be made contingent on future event.

ii) Unlike civil contract, it cannot be for a limited time (Mutu marriage is an exception)

iii) Unlike civil contract, the analogy, of lien cannot be supplied to a marriage contract. Secondly, the contract of sale of goods may be cancelled by unpaid seller. He may result the goods by resending such contract ; where as in a contract of marriage, the wife is not entitled to divorce her husband or to remain with a third person if a part of his dower remain unpaid. The dower (mahr) in Muslim marriage should not be confused with consideration in the context of civil contract justice Mahmood said in Abdul Qadir v. Salima Dower, under Muslim Law, is a sum of money or other property promised by the husband to be paid or delivered to the wife in consideration of the marriage. In no other can dower under Mohammadan law be regarded as consideration for the comitial intercourse."

Let us suppose that woman is seller and woman's personality is the thing to be sold. This is against the basic principles of natural justice for, no one is entitled to sell his or her personality.

Some jurists consider Muslim marriage as a civil contract. This observation seems to be based on the fact that marriage, has similar characteristics as a contract,

36 Neil B. E. Baillie, A Digest of Moohummudan Law, 31 (2010).
under Muslim law:-

1. As marriage requires proposal (Ijab) from our party and acceptance (Qabool) from the other so is the contract.

2. There can be no marriage without free consent and such consent should not be obtained by means of coercion, fraud or undue influence." It is unlawful to oppress or coerce a women into marriage or to obtain her consent by force or coercion, or to compel her to marriage."

3. Just as in case of contract, entered into by a Guardian, on attaining majority, so can a marriage contract in Muslim law, be set aside by a minor on attaining the age of puberty.

4. The parties to a Muslim marriage may enter into any ante nuptial or post nuptial agreement which is enforceable by law provided it is reasonable and not opposed to the policy of Islam. Same in the case with a contract.

5. The terms of a marriage contract may also be altered within legal limits to suit individual cases.

6. There is a provision for breach of Marriage contract by divorce although it is discouraged both by holy Quran and Hadith.

One may conclude the nature of Muslim marriage by the observation of M. Jung. "Marriage is an institution of 'Ibadat' clothed in the legal form of contract regaling sexual intercourse; lent its continence is dependant upon the maintenance of conjugal affection." So it is devoid of none but the blending of two.

The Shia Law recognizes two kinds of marriages, namely: permanent and temporary or Muta. Temporary or Muta marriages are void according to Sunni Law. According to Mulla, there are only limited incidents of a Muta marriage.

Christian Law:

Most frequently asked, and disputed, questions concerning Christian marriage were addressed by the International Theological Commission at its meeting in 1977. Its answers were published in the form of "Propositions on the Doctrine of Christian Marriage." Those propositions represent a significant step in doctrinal development;

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they certainly carry the discussion forward.

Christian marriage has been described as a "secular reality" which has become a "saving mystery." Indeed, in the "new creation" in which we live, marriage has acquired a new purpose. Besides being for "mutual help" and "procreation of children," it is there to "save and sanctify." Christians perceived this new elevation of the old institution right from the beginning, although they did not systematically explain it until the twelfth century, when the Scholastics classified marriage as one of the seven sacraments.40

Vatican II chose to call the sacrament of marriage "covenant," foedus.41 If there is a covenant, there are covenaners. Who are they? The man and the woman exchanging promises. They mutually agree to a communion of life until death do them part: a bilateral agreement.42

In the proof of Apostolicity of the doctrine that marriage is a sacrament of the New Law, it will suffice to show that the Church has in fact always taught concerning marriage what belongs to the essence of a sacrament. The name sacrament cannot be cited as satisfactory evidence, since it did not acquire until a late period the exclusively technical meaning it has today; both in pre-Christian times and in the first centuries of the Christian Era it had a much broader and more indefinite signification. In this sense is to be understood the statement of Leo XIII: "To the teaching of the Apostles, indeed, are to be referred the doctrines which our holy fathers, the councils, and the tradition of the Universal Church have always taught, namely that Christ Our Lord raised marriage to the dignity of a sacrament."43

The classical Scriptural text is the declaration of the Apostle Paul, who emphatically declares that the relation between husband and wife should be as the relation between Christ and His Church, "Let women be subject to their husbands, as to the Lord: because the husband is the head of the wife, as Christ is the head of the Church. He is the savior of his body. Therefore as the Church is subject to Christ, so also let the wives are to their husbands in all things. Husbands, love your wives, as Christ also loved the Church, and delivered Himself up for it: that He might sanctify it, cleansing it by the laver of water in the word of life; that He might present it to

41 Gaudium et spes 48 and 50.
43 "Encyclical " Arcanum , 10 February, 1880.
Himself a glorious church not having spot or wrinkle or any such thing; but that it should be holy, and without blemish. So also ought men to love their wives as their own bodies. He that loveth his wife, loveth himself. For no man ever hated his own flesh; but nourisheth it and cherisheth it, as also Christ doth the Church: because we are members of His body, of His flesh, and of His bones." After this exhortation the Apostle alludes to the Divine institution of marriage in the prophetical words proclaimed by God through Adam: "For this cause shall a man leave his father and mother and shall cleave to his wife, and they shall be two in one flesh." He then concludes with the significant words in which he characterizes Christian marriage: "This is a great sacrament; but I speak in Christ and in the Church." 44

In pre-Christian Roman Law marriage and divorce were private act. Romans had the same freedom of dissolving their marriage as they had entering them. No formalities were needed for either. But with the advent of Christianity, marriage came to be regarded as a sacrament, with its doctrine of indissolubility of marriage. The fact is that the canon law of marriage was based partly on Roman law and partly on Jewish law. The canon law held that by marriage man and wife were made on flesh by the act of God- marriage being a holy tie, a sacrament. However it was not Christ who proclaimed this doctrine, but it was St. Paul who proclaimed that marriage is a sacramental and indissoluble union. He linked the relationship of husband and wife of that of Christ and his church. A marriage is a mystic union of soul and body never to be put to an end. A contractual union though valid in law yet not spiritual complete without the blessing of the church. There was no escape from the holy tie of marriage only death could put it as under. The parties to the marriage were treated as "ministers of the sacrament."

The Church had always insisted on a public religions ceremony for marriage. It was necessary to seek the permission to marry from Church - the bishop, the priest or the deacon. In 1802 celebration of a marriage in the absence of the Bishop, priest and elders of the people was forbidden. Clandestine marriages not performed in church were regarded as fornication, but continued to be tolerated by the church. Finally a decree of the canal of Trent laid down that for a valid marriage it was necessary that consent of both the parties should be declared before three nut-nesses and priest.

44 Ephesians 5:22 sqq.
The Christian marriage being a sacrament was indissoluble. Separation from bed and board was recognized. Parties, could live away from each other till life but there was no right to remarry during the life of the other. Where a marriage had not been consummated, it might be dissolved on the proof of non- consummation of marriage, on both the parties taking a religious vow or papal dispensation.

The medieval church regarded marriage as a sacrament, as a sacred and divine contract and a holy union. Christianity regarded the institution of marriage as enacted by God and not man made. In reality, marriage is a contact in its formation entered into by the free volition of the parties to the marriage, but regarded as a sacrament its consequence. It was proclaimed by Christ-God, being the author of nature, promulgated the law of marriage.\textsuperscript{45} God was the author of the law of sacramentality and indissolubility of marriage, it was he who constantly supervised and ordained the stativity of marital tie, its utility and firmness.\textsuperscript{46} According to St. Augustine all human institutions were essentially sinful but some were redeemed by the grace of God. Marriage was such institution and if man and woman, parties to marriage, chose wrongly, they should take their cross on their back gladly as a duty owned to God.\textsuperscript{47}

In sum, the Christian concept of marriage has been that marriage being obligatory for every human being (except the Churchman) is a sacrament having ordained by God, and an indissoluble solemn union entered into by the parties with their full and free volition for life so as to prevent fornication (a mortal sin) and with a view to providing safeguards against depopulation. Since it was ordained by God, no one can put it as under.

It was the reformation which effected changes in the concept of marriage and which made the Christian world divided into Catholics and Protestants. The protestants started considering the marriage as a dissoluble union and subject to the jurisdiction of the civil courts, while Catholics contained to adhere to the notion of indissolubility of marriage, and the church continued to have firm jurisdiction over it.

Once the Protestant world came to consider marriage as a dissoluble union and under the jurisdiction of civil courts, great strides were made when the Industrial Revolution firmly took the view that marriage was a civil contract, which was dissoluble under certain circumstances. No other people regarded there marriage as a sacrament.

\textsuperscript{47} \textit{Ibid.}
The Industrial Revolution's ideas of liberty, equality and pursuit of happiness gave a further impetus to liberate marriage from the fetters of the church. Once the marriage was accepted as a contract it was next logical step to consider it as dissoluble union. Marriage came to be recognized as a human institution based on free volition of men and women who were undoubtedly responsible though not infallible individuals. They can err; they can blunder. They should be given the right and liberty to get out of the burden that had become intolerable, and which was sapping the vital energy and moral fiber of the spouses to a marriage that had failed. As in other human affairs so in marriage, people should have the opportunity to rectify their errors.

On the other hand, the Catholics continued to uphold and follow the ecclesiastical doctrinaire view of sacramentality and indissolubility of marriage, while the Protestants became liberated and propounded the notion of contractility and dissolubility of marriage. They regarded marriage as essentially man made in contradistinction of the catholic view which continued to hold that marriages were made in heaven.

Yet, the Protestants, though regarded their marriage as contract, regarded it as a special contract. It was not equated with a commercial contract. They asserted that marriage being a social institution, there was social interest in its preservation and protection. Marriage though dissoluble can be dissolved only in those cases where a party to the marriage by his act or omission fundamant by undermined it. The marriage thus because dissoluble in case of an inevitable failure of marriage on account of recurring mischievous or atrocious conduct of one party to the marriage against the other party. There were later on came to be known as grounds of divorce.

British colonization of India, has had a tremendous impact on the legal system in India. In many respects, English law in letter and spirit came to be applied in India. As regards Christians, the earliest Act that was made applicable to Christian marriages in British India was the statute 14 and 15 Victoria, Chapter 40. This was followed by statute 58 Geo III Chapter 84. These were supplemented by the Indian Act VIII of 1852 and then by Act XXV of 1864 and then again by Act V of 1865. Even when the law relating to Christian marriage was still in a fluid state, British Indian Administration thought it necessary to bring in a law for divorce among Christians. They thought that the English law on the subject, the Matrimonial Causes Act of 1857 with necessary modifications, could be applied in India. Thus, the Indian Divorce Act 1869 came to be enacted in India except the Princely States, former
Portuguese and French Settlements and certain tribal areas. Subject to such exceptions, generally speaking, the Indian Divorce Act, 1869 is the law of divorce for Christians in India.

The Indian Divorce Act was enacted in 1869 to "amend" the then existing law on divorce and matrimonial causes of Christians, and to confer jurisdiction upon the High Courts and District Courts in matrimonial matters.

Among the Indian Christians, marriage is regarded as a civil contract though it is usually solemnized by Minister of religion licensed under the Christian Marriage Act, 1872. It can also be solemnized by the registrar of Marriages.

The difference between Hindu concept of marriage and Christian concept is that former regard it as an immutable union, a union for all lives to come, (thus death did not dissolve it) while the latter considered it to stand dissolved on the death of either party. Both agree that it is a sacrament. So divorce was not permitted.

Parsi Law:

Since 1835 efforts were made by the members of the Parsi community to have suitable marriage law in keeping with their social requirements and that effort culminated in the passing of the Parsi Marriage and Divorce Act, 1936. Initially the Parsi Marriage and Divorce Act, 1865 was based on Matrimonial Causes Act, 1857 of England. The various defects of Parsi Marriage and Divorce Act, 1865 were rectified and the law on the subject was made in conformity with the changed conditions and views of Parsi community by the Parsi Marriage and Divorce Act, 1936. This Act has been amended in 1988 by the Parsi Marriage and Divorce (Amendment) Act, 1988.

A 'Parsi' is defined in section 2(7), as Parsi Zoroastrian. A Zoroastrian is a person who professes the Zoroastrian religion. A Zoroastrian need not necessarily be a Parsi. The word 'Parsi' has only a racial significance and has nothing to do with his religious professions. The word takes it derivation from 'Pers' or 'Fars', a province in Persia, from which the original Persian emigrants came to India. At one time it was held that an Iranian who temporarily resides in India, who is registered as a foreigner and whose domicile continues to be Persian does not become a Parsi merely because

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49 see the Preamble to the Indian Divorce Act 1869. Though the Act is titled as "The Indian Divorce Act" it applies only to Christians.
he is a Zoroastrian. As he is not Parsi, the Parsi Marriage and Divorce Act does not apply to him.\textsuperscript{52} Now, it has been held that the word 'Parsi' in the Act means Zoroastrian, both of India and Iran, and court constituted under the Parsi Marriage and Divorce Act, 1936 has jurisdiction over them.\textsuperscript{53}

A Parsi husband or wife can not remarry in the life time of his wife or husband until his or her marriage is dissolved by a competent court although he or she may have become a convert to any other faith. It shows the strict monogamy in Parsi marriages.\textsuperscript{54}

\textbf{Jewish Law:}

The making and validity of a contract of marriage between Jews in India depends wholly on the religious usages of the Jewish faith and is unaffected by legislation. The law of marriage of Jews is not codified in India. Even today they are governed by their religious laws. The book on "Marriage and Divorce" written by David Melzinar is followed in the courts.\textsuperscript{55} The entire law of marriage and divorce among Jews in India has been discussed by Mr. Justice Crumps in \textit{Benjamin v. Benjamin}.\textsuperscript{56} The Jews regard marriage not as a civil contract but as a relation between two person involving very sacred duties.\textsuperscript{57}

Marriage in Judaism may not be viewed as an "outward sign of inward and divine grace", yet it is respected as a sacred institution. The Hebrew religion sees no conflict between man's duty to his family and man's duty to God and thereby the highest values of purity, sanctity and stability are vested in the Jewish family which has been preservative of their religi-moral and socio-cultural treasures, thereby it become incumbent and significant that laws of the family should occupy an exalted status in the Jewish Legal Corpus.\textsuperscript{58}

Since there is no legislation governing Jewish marriage and divorce we have to glance and flash through the religious scriptures which is the hidden treasure of serenity of Jewish family structure of making, sharing and breaking of marriage. Jewish religious ordinances, beginning with the Old Testament which includes the

\textsuperscript{52} Sarwar Merwan Yezdiar v. Merwan Rashid Yezdiar, AIR 1951 Bom. 14.
\textsuperscript{55} \textit{Ibid}, at 34
\textsuperscript{56} AIR 1926 Bom. 169.
\textsuperscript{57} David Sasson Ezekiel v. Najia Noori Ruben, 33 BLR 725.
\textsuperscript{58} S. Krishnamurthy Aiyar, \textit{Marriage, Maintenance,Separation and Divorce}, 503 (2010).
Mosaic Code as enunciated in the Pentateuch (the Five books of Moses). The Old Testament was also called the Written Law. There was a volume of rabbinic traditions, time hardened customs and practices which were gathered together along with the old Testament into an encyclopedic work known as Talmud. All this post-Biblical literature became known as Oral Law.59

So Jewish Law like Hindu Shastrik Law (not codified) is enshrined in the religious books that govern marriage and divorce. It is pertinent to mention here that the Jews wherever they reside, willingly submit to the civil regulations regarding marriage and divorce with the Talmudic admonitions:-

"DINA d' malkhuta dina", meaning thereby that the law of the land is binding.60

Marriage according to the Bible and Jewish traditions, the entire nation sprang and developed from a single family and furthermore the development proceeded not from all the members of the family but from those whose character displayed trials of nobility and Righteousness. The first injunction in the Bible to man and woman is:-
"Be fruitful and multiply."61 According to the Old Testament Adam was sent from the garden of Eden and Eve was sent later on as a companion to Adam with a motive, "It is not good that a man should be alone; I will make him a helpmeet for him."62

"Therefore shall a man leave his father and his mother cleave unto his wife and they shall be as one flesh."63 There lies the concept of Marriage.64

The rabbis of the Talmud considered marriage a holy contract, and the dissolution of marriage an unholy act. They quote the prophet Malachi, “. . .the Lord has been witness between you and your wife of your youth against whom you have dealt treacherously, though she is your companion, the wife of your covenant”65. Jewish Oral Law added that, “Even God shares tears when anyone divorces his wife.”66

Any person may, however, marry under Special Marriage Act, 1954, in lieu of religious formalities as prescribed by their personal law because this Act is applicable

60 Supra note 58, at 504.
61 Genesis 1-27.
62 Genesis 2-18.
63 Genesis 2-24.
64 Israel T. Naamani, Marriage and Divorce in Jewish Law, 34 (1963).
65 Genesis 2-14.
66 Sanhedrin (22a)
to all citizens of the country irrespective of their religious affiliations. It is secular optional law applicable to all Hindus, Muslims, Christians, Parsis and Jews.

A critical analysis of marriage provisions in different legal systems reveals factual and legal uniformity more than the contrast in them. The sacramental nature of marriages has been shattered with the induction of contractual elements in them.

**Concept of Divorce**

Among almost in all the ancient nations, divorce was regarded as a natural concept or marital right. Romans, Hebrews, Israelis etc. all had divorce in one form or the other form. Once it was established that marriage was a civil contract, it was the logical next step to recognize that it was also a dissolute union. Even though the provision of divorce was recognized in all religions, Islam is perhaps the first religion in the world which has expressly recognized the termination of the marriage by way of divorce. In England divorce was introduced only about one hundred and fifty years back. 67

The word 'divorce' has been derived from the Latin word 'divortium', which means "to turn aside, to separate from, Divertion". Divorce is said to be like the husband is diverted from his wife. (dictur a divertendo, quio viz. divertitur ab uxore). 68

As ordinarily understood, it is nothing more or less than another name for dissolution of marriage i.e. parties ceases to be husband and wife after divorce. 69 Divorce is on of the legalized forms to enable marital and in turn familial, disorganization. 70 According to Letourneau, "divorce as an institution is the final milestone in the process of freeing the woman from slavery of man in marital relationship". 71 Dr. Peterson 72 considers divorce as a preparation or an experience for better and happier second marriage. Yet it has been maintained that divorce should be stopped as it has destroyed many families. Goode 73 regards divorce as a social invention, one type of escape valve for the inevitable tensions of marriage itself.

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67 The Matrimonial Causes Act, 1857.
68 Supra note 54, at 34.
70 Encyclopaedia of Social Sciences (1968), vol. 10, 417.
Professor Kay\textsuperscript{74} says that divorce is the consequence of failure or fault of both the spouses.

When in 1857, the first Matrimonial Causes Act was passed and jurisdiction over matrimonial matters was transferred from ecclesiastical courts to civil courts,\textsuperscript{75} the ground of wife's adultery was the ground available to husband. Husband could seek divorce only on the ground of wife's adultery, but wife could not seek divorce on the simple adultery of her husband. She was required to show incestuous adultery, or bigamy with adultery, or rape, sodomy, bestiality, or adultery coupled with such cruelty or adultery coupled with desertion without reasonable excuse for a period of two years. It was later on that desertion and cruelty were made grounds for divorce.\textsuperscript{76}

In India among Hindus it was allowed only by the Hindu Marriage Act, 1955. Before this Act divorce was not recognized by the Hindu Law. When marriage came to be accepted as a contract, it was not regarded like an ordinary contract. It is because marriage has always been considered as a social institution. Being a special contract, the marriage could not be put to an end like an ordinary contract.

\textbf{Hindu Divorce}

According to the Hindu Dharamasastras marriage is a sacrament and indissolubility of marriage which exists even beyond death is insisted. Kautilya did not opposed this concept but he provided for some cases were divorce could be permitted. According to him, marriage performed in an unapproved form can be dissolved by mutual consent, but the marriage which was performed in an approved form is indissoluble. However, in some exceptional circumstances and in number of cases divorce was acceptable as caste custom.\textsuperscript{77} William Strange, also says that divorce by custom did prevail and it was permitted in some places.\textsuperscript{78} Dr. K.P. Jayswal is of view:

"Tyaga is a technical term denoting separation from conjugal intercourse, as opposed to moksha the technical divorce. In other words, she remained a legal wife

\textsuperscript{74} Herma Hill Kay, \textit{The Outside Substitute for the Family, Forum Lectures}, Voice of America, Series No. 1, 7.
\textsuperscript{75} In England earlier divorce could be obtained by an Act of Parliament; then also the only ground was adultery.
\textsuperscript{76} The Matrimonial Causes Act, 1937.
\textsuperscript{78} William Strange, \textit{Treatise on Hindu Law}, 52 (1978).
according to Manu Dharmasastra, though given up by the husband".79

Derrett,80 observes that under the ancient Hindu law the concept of nullity was there, but this remedy was prevalent only in some cases. According to smritis, "a man could discard a wife and marry another under certain limitations, but the wife still remained the legal wife and her marriage tie as a result of her samskara could not be snapped".81 Under ancient Hindu law, even an adulterous wife was not allowed to be divorced. She could be punished if she had committed adultery with men of inferior castes. It has, however, been maintained that if she became pregnant as a result of adulterous intercourse she could be renounced.82

The marriage among Hindus is also treated as contractual, exceptionally.83 Dr. Paras Diwan84 says that wife could never ask for divorce or for another husband, let her husband be lunatic, an impotent, a leper, a deserter, a chronic patient of venereal diseases or even an eunuch. Of course, the husband too could not ask for divorce. But, then he could always mock at sacramental union with impunity and arrogance by taking another wife into another and similar sacramental bond; and he could do so as many times as he liked; the only limitation was that of his capacity, physical or otherwise.

Wife could ask for "another husband in five calamities, viz., when the husband was lost (unheard of), was dead, had become a sannyasi, was impotent or was patita".85 This text was quoted by Pandit Ishwar Chander Vidyasagar in the agitation for remarriage of widows which culminated in the Widow Remarriage Act, 1856. In the Vedic age, though monogamy was kept as the ideal, the Vedic literature is full of references to polygamy. Polygamy was not unknown.86

It can be well understood that the sacramental character of Hindu marriage has evaporated as a result of induction of the remedy of divorce by statutory law of Hindu Marriage. The Hindu Marriage Act, 1955 transformed a Hindu marriage from an ancient and vedic 'sanskara' or sacrament to a modern and dissoluble contract. It also introduced for the first time the principle of monogamy. Little attempt has been made

79 Dr. K.P. Jayswal, Manu and Yajnavalkya, 230 (1930).
80 Derrett, Nullity of Marriage among Hindus, 1964 AIR (Journal Section) 957.
81 Naresh Chandersen Gupta, Evolution of Ancient Indian Law, 136
82 Supra note 54, at 38.
83 Supra note 11, at 432.
85 Supra note 15.
86 P.V. Kane, History of Dharamasastra, 550 (1941).
however, to rectify numerous lacunae in the act which provide an ample scope for a Hindu man to escape both from the criminal consequences of a bigamous marriage and from the economic responsibility towards the second wife.\textsuperscript{87} The process of wiping off sacramental character of marriage started in 1856 when widow remarriage was statutorily recognized in supersession of the concept of 'eternal union'. During Warren Hasting's tenure, disputes regarding inheritance, the laws regarding marriage, caste and religious usages or institutions were to be settled for Hindus according to the laws of the 'shaster'. Why these subjects and not others? To quote Duncan Derrett: "Hastings and his colleagues were ... predisposed to see the division of topics of law in terms of the contemporary English division..." They assumed that just as the European marriage laws were based on Biblical tenets, so must the personal laws of various communities draw their legitimacy from some fundamental religious tenets. All matters of marriage and divorce, and all questions of testaments and distribution of goods, ... all matters of religious worship and discipline, excommunication and so forth were within the exclusive jurisdiction of the Bishops' courts, and the law was ecclesiastical law ... When the Anglo-Indian judges sent ... for 'opinions' ('vyavastha') on Hindu law from the pandits, and acted upon these certificates without bothering to see whether they agreed with others given by the same persons in the like circumstances, they were imitating the practice of the King's bench or the Common Pleas. This was of a piece with the error perpetuated by Sir William Jones, that brahmins were 'priests'. Very few brahmins were priests and there were priests who were not brahmins: and similarly pandits were not bishop's officials, or anything of the kind.\textsuperscript{88}

Independence of India soon brought in a demand for uniform law on divorce and steadily it received momentum. Reason behind this demand lay in the sufferings of Hindu women. After heated debates in the Parliament, the government was able to introduce the institution of divorce among the Hindu community by enacting the Hindu Marriage Act, 1955. Prior to the enactment of the Hindu Marriage Act in 1955, the courts, according to Derrett,\textsuperscript{89} "generally regarded themselves as hamstrung in matters of marriage and divorce...... Times have changed.......and we find the judges protesting that these are not the days of Manu and other Rishis and that the latter


\textsuperscript{88} J Duncan Derrett, Religion, Law and the State in India, 225 (1968).

had to say does not obtain as law to-day.” The same scholar also remarks in his other study:

"Divorce was introduced into Hindu Law for the protection of helpless women when they were ill-treated. It was Parliament's intention to give husbands matrimonial variety at their option so long as they could retain a pleader." 

In the modern law-Hindu marriage Act, 1955, came into existence eight years after the independence of the country, the provisions of divorce in the existing Marriage law has brought about a radical change in the legal concept of Hindu Marriage Section 13 of the circumstances which extend the right of divorce. Section 14 renders the provisions of divorce a bit difficult as it provides that no petition for divorce can be presented within one year of the marriage unless it causes exceptional hardship to the petitioner or it become a case of exceptional depravity on the part of the respondent.

Before the commencement of the Hindu Marriage Act 1955, there were Acts in some of the States providing for divorce in certain circumstances, viz., the Bombay Hindu Divorce Act (22 of 1947), the Madras Hindu (Bigamy, Prevention and Divorce) Act (6 of 1949), and the Saurashtra Hindu Divorce Act (30 of 1952). These Acts were repealed by Section 30 of the Hindu Marriage Act 1955. Section 13 of the Hindu Marriage Act 1955 has undergone many changes through amendments. Section 13 (1-A) was introduced in the present Act by the Hindu Marriage (Amendment) Act (44 of 1964). The amendments of 1976 in the Hindu Marriage Act 1955 have made these three grounds as grounds of divorce as well as of judicial separation and also added Section 13-B, providing for divorce by mutual consent. The other grounds of divorce are virulent leprosy, incurable and continuous insanity, venereal diseases, conversion to another religion, renunciation of world by entering a holy order or sect and when whereabouts are unknown for a period of seven years or more. By the Marriage Laws (Amendment) Act (68 of 1976), the words — is living in adultery stated in Section 13 (1) (i) were substituted by the words — has after solemnization of the marriage had voluntary sexual intercourse with any person other than his or her spouse.

Today we are living in an Industrial age. The outlook on every aspect of life has changed. The Industrial era has brought in new experiences which have

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91 U.P.D. Kesari; Modern Hindu Law, 114 (2009).
considerably reshaped the ideology and demands of people of different communities. In *Ram Prakash v. Savitri Devi*, Bhandari C.J., Punjab High Court said, "With the passage of time and the advancing march of the civilization people began to recognize that it was somewhat inequitable that husband should be at liberty to pick all the plums from the tree of marriage and the wife should be left only with the stones. The legislature accordingly proceeded to enact a number of measures, with the express objects of emancipating married women from the liabilities which the Hindu law attached to them, enlarging their rights and protecting the wife from the importunities of the husband. These measures introduce a fundamental change of public policy and lay down a new foundation of equality of husband and wife."

**Muslim Divorce**

Marriage is a contract (*akad*) determined by Islamic law that permits physical relationship between a man and a woman. It is an honourable way to regulate domestic life and to ensure the continuation of a responsible generation. When a contract (*akad*) is official, both husband and wife have rights and responsibilities towards one another. They have the right to live and to make plans for their life and future together. Unfortunately, not all marriages last forever. As the final solution and the last resort, the dissolution of marriage or divorce is allowed.  

Divorce among ancient Arabs was easy and of frequent occurrence. In fact this tendency had even persisted to some extent, in Islamic law in spite of the fact that Prophet showed dislike to it. It was regarded by the Prophet to be "the most hateful before Almighty God of all permitted things." Qadi Numan records an instance where Ali refused to divorce one of his four wives in order to marry another; and he told the people of Kufa not to give their daughters to Imam Hasan (his own son) for he was in the habit of marrying and divorcing a large number of women, a course of action which Ali disapproved.

The word 'Divorce' is known throughout the world and its concept is found in every language and religion. According to Islamic concept matrimonial alliance is a...
sort of social contract and it can be dissolved when it ceases to serve its purpose. This does not mean that marriage has no sanctity and solemnity in Islam. Islam with its realistic and practical outlook on all human affairs recognizes 'Divorce', but only as a necessary evil, inevitable in certain circumstances. Who can deny the fact that there do arise certain situations in which it is not humanly possible for the couple to lead a happy and useful life by continuing as husband and wife? Instead of dragging on with a bitter and miserable existence in forced partnership, would it not be more conducive to the welfare of the parties to part with the grace and good will? Ameer Ali in his book 'Mohammedan law' is of view that the reforms of Prophet Mohammed marked a new departure in the history of Eastern legislation. Prophet Mohammad restrained the power of divorce and gave to the women the right of obtaining separation on reasonable grounds. The Prophet is reported to have said, "If a woman be prejudiced by a marriage, let it be broken off."99

Great divergence exists among the various schools regarding the exercise of the power of divorce by husband of his own motion without the intervention of the Judge. A large and influential body of jurist regard talaq emanating from the husband as really prohibited except for the necessity such as the adultery of the wife. Another section consisting chiefly of the 'Matazalas', consider talaq as not permissible without the sanction of the 'Hakim-ush-sharaa', viz. the judge administering the Muslim law. They consider any such cause as may justify separation and remove talaq from the category of being forbidden, should be tested by an unbiased judge and in support of their doctrine, they refer to the words of the Prophet already cited and his directions that in case of dispute between the married parties, arbitrators should be appointed for the settlement of their differences.100

The pre-Islamic institution of divorce required no formula to make its action valid, and as there was no check on effect that the tie was dissolved was considered sufficient. In Muslim marriage the husband can dissolve the marriage tie at his will as he has much greater rights than that of the wife but the woman cannot divorce herself from her husband without his consent. She can of course purchase her divorce from her husband.101

The happiness of a marriage depends on the presence of harmony. Without

99 Supra note 97.
100 Radd-ul-Muhtar, voll. II, 682.
harmony, a marriage is meaningless. Instead, it will become an arena of animosity and disagreements between the husband and wife. Once this happen, the marriage is exposed to catastrophe. In order to create a harmonious marriage, the most important key is responsibility, whereby it is not only limited to providing a place to stay and fulfilling physical needs such as food, transport and others. The main and more specific responsibility is to provide love, taking care not to hurt the heart and feelings of the spouse. Therefore, Islam provides a complete law on marriage, beginning from the time a person plans to get married until the time a couple chooses to get a divorce after failing to mend their relationship.102

The term talaq has been used in following two senses:103

i) in a restricted sense, it is confined to separation effected by the use of certain appropriate words by the Husband.

ii) in a wider sense, it covers all separations for causes originating from the Husband.

Talaq means dissolution of marriage or the annulment of its legality by certain words.104 The term includes all separations originating from the husband and repudiations for talaq in the limited sense. Talaq is an act of repudiation of marriage by the husband in exercise of his power which has been conferred on him.105 The Arabic word for the divorce is 'talaq' which carries the literal significance of freeing or the undoing of a knot (Raghib). In the terminology of the jurists, the talaq is called khul (meaning literally the putting off or taking off of a thing), when it is claimed by the wife.106

In Mooshee Buzloor Rahim v. Laleefutoon Nisa,107 it was said that under Muslim law talaq is the merely arbitrary act of a Muslim husband who may repudiate his wife at his own pleasure with or without cause. He can pronounce the talaq at any time. It is not necessary for him to obtain the prior approval of his wife for the dissolution of his marriage.

The Muslims considered their marriage as a contract without any semblance of

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103 Verma, Mohammedan Law, 186 (1962).
104 Supra note 21, at 72.
107 8 MIA 397.
sacrament. They recognize divorce in three main versions - a) unilateral divorce by husband, b) divorce by mutual consent, c) judicial divorce which is available only to the wife. In former two no intervention of the Court is required.

Under Muslim law a marriage is dissolved either by the death of the husband or wife, or by divorce. After the death of the wife, the husband may remarry immediately. But the widow cannot remarry before a certain specified period called iddat expires. The iddat of death is four months and ten days in case of the death of husband and if she is pregnant, until the delivery of the child.

The classification of dissolution of marriage under Muslim law can be well understood from an organizational chart - A as given here :-
Classification of Dissolution of Marriage under Muslim Law.

By Death of either party to marriage.

By Divorce

By Husband
  - Zihar
  - Ila
  - Talaq

By Wife
  - Talaq-e-tawfeez

By Mutual Consent
  - Khula
  - Mubarat

By Judicial Decree
  - Lian
  - Fask

Under Dissolution of Muslim Marriage Act, 1939

Talaq-ul-Sunnat

Talaq-ul-Biddat

Ahasan

Hasan
Divorce at the instance of Husband

The absolute power of a Muslim husband of divorcing his wife unilaterally, without any cause, without assigning any reason, literally at his whim, even in the jest or in a state of intoxication, and without recourse to the court, and even in the absence of the wife, is recognized in India. All that is necessary is that husband pronounce talaq; how he does it, when he does it, or in what manner he does it, is not very material.\(^\text{108}\) In *Hannefa v. Pathummal*,\(^\text{109}\) the judicial conscience of Khalid, J. was disturbed at this, and he dubbed it as a "monstrosity".

When clear and unequivocal words, such as "I have divorced thee" are uttered, the divorce is express. As shown in the organizational chart, a talaq may be effected by the husband in any of the two modes:-

1. Talaq-ul-Sunnat; and
2. Talaq-ul-Biddat.

1. **Talaq-ul-Sunnat**: It is a form of Talaq, which is effected in accordance with the traditions of Prophet. It has been further sub-divided into:

   (i) **Ahsana**: This is regarded as the most approved form of talaq. The word ahsan means 'best' or 'very proper'. To be ahsan form, the proceedings of divorce must satisfy certain conditions. These conditions are as follows:\(^\text{110}\)

   (a) the husband must pronounce the formula of divorce in a single sentence;
   (b) the pronouncement of divorce must be in a state of purity (turh); it is a period when a women is free from her menstrual course;
   (c) he must abstain from intercourse for the period of iddat.

   When the marriage has not been consummated, a talaq in the ahsan form may be pronounced even if the wife is in her menstruation. Where the spouses are away from each other for a long period or where the wife is beyond the age of menstruation, the condition of turh is not applicable.\(^\text{111}\) The advantage of this form of divorce is that it can be revoked at any time, before the completion of the period of iddat. The Raad-ud-Muhar puts it thus,\(^\text{112}\) "it is proper and right to observe this form, for human nature is apt to misled, and to lead astray the mind far to perceive faults which may not exist

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\(^{109}\) 1972 KLT 512.
\(^{111}\) Chand Bi v. Bandesha, AIR 1960 Bom. 121.
\(^{112}\) *The Raad-ud-Muhar*, vol II, 683-84.
and to commit mistakes for which one is certain to feel ashamed afterwards." After the expiration of the iddat the divorce becomes irrevocable.

(ii)  

Hasan: This is regarded as the most good form of talaq. The word hasan, in Arabic means 'good' or 'proper'. A talaq pronounced in hasan form, the proceedings must satisfy some conditions. These conditions are as follows:

(a) there must be three successive pronouncements of the formula of divorce;

(b) in case of menstruating wife, the first pronouncement should be made during a period of turh, the second during next turh and the third during the succeeding turh;

(c) in case of non-menstruating wife, the pronouncement should be made during the successive intervals of 30 days;

(d) no sexual intercourse should take place during these three periods of turh.

The above divorce is based on the Quranic injunctions,

"Divorce may be pronounced twice, then keep them in good fellowship or let (them) go kindness"

"So if he (husband) divorces her (the third time) she shall not be lawful to him afterwards until she marries another person"

Such divorce becomes irrevocable on the third pronouncement.

2. Talaq-ul-Biddat: This form of talaq is regarded as the most disapproved mode of talaq. It is sinful form of divorce. This irregular mode of divorce was introduced by Omeyyads in order to escape the strictness of law. Ameer Ali depicts the historical background, "the Omeyyad monarchs finding that the checks imposed by the Prophet on the facility of repudiation interfered with the indulgence of their caprice, endeavoured to find an escape from the strictness of law and found.....a loophole to effect their purpose". Talaq-ul-Biddat, has two forms:

(i) the triple declaration of talaq made during the period of purity, either in one sentence, such as " I divorce thee triply or thrice" or in three sentences, such as

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113 Supra note 110, at 162.
114 The Holy Quran, II, 229, 230.
115 Supra note 110, at 163.
116 Supra note 35, at 474.
"I divorce thee, I divorce thee, I divorce thee" the moment pronouncement is made, marriage stands dissolve irrevocably.

(ii) The other form of Talaq-ul-Biddat constitutes a single irrevocable pronouncement of divorce made in a period of purity or even otherwise. This also results in the irrevocable dissolution of marriage.\(^\text{118}\)

Talaq-ul-Biddat, is recognized form of divorce among Hanafis. Sunni Law recognizes this form of talaq, though they think it to be sinful. Shias and Malikis donot recognize this form of divorce.

This form of triple talaq has been an issue of long discussion and is not regarded as a valid divorce. The problem of holding three pronouncements of 'Talaq' together as final irrevocable divorce is not so simple. It leads to many socio-economic problems. Among the rules and regulations of Muslim Personal Law, which have become the targets of adverse criticism in the present time the topic of 'Triple Divorce' stands uppermost. It is very important and at the same times a delicate matter. The law on "Triple Divorce" has developed through several historical stages and if recent controversies in India are any guide, the development has not yet come to an end. In order that one can understand the subject in its fullness and form, an intelligent estimate of the debate on the subject of "Triple Divorce". There has been a good deal of debate about the law of divorce. Judges and authors have expressed their uneasiness in the matter, such as Ammer Ali, Fyzee, Baillie, Fitzgerland, Mulla, Tyabji, Abdul Raheem and many others. While considering the controversy among Muslim Jurists and Doctor of theology, over the subject of triple divorce it may be said that the scholar of both the views have over-emphasized there own arguments and underrated those of others.\(^\text{119}\)

The interpreters of 'Ali-talaq marriatan' (the only verse of the Quran laying down the procedure of divorce) may be divided into four groups\(^\text{120}\) :-

1. The Shi’ite Ulama hold that the three divorce have to be given separately; any contravention of this rule makes them null and void, except to the extent of the occurrence of one divorce.

2. The second group is that of Imam Safi’i and his followers. They are of opinion that the word" Marratan" in the Quranic verse simply means twice and there is

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\(^{118}\) Saleema v. Sheikh, 1973 MP 207.

\(^{119}\) In Foreword, written by Z.M. Shahid Siddiqi, to the Furqan Ahmad, Divorce in Mohammedan Law, vii (1983).

\(^{120}\) Ibid, at 96.
no implication of the intervening period between the one and the other. According to them it is, no doubt, better to pronounce three divorces, each in a period of woman's turh. But if he does otherwise, the divorces would occur with a legal force, and at the same time he would not be considered to have committed a sin. At the worst he would be regarded to have abandoned the best course.

3. The third group includes Ibn-e-Taimiya and his supporters. They believe that it is absolutely necessary that the three divorce should be given separately, each in a separate period of turh and if someone utters them together on a single occasion, he would be taken to have given only on revocable divorce (Talaq Rajai’i).

4. The fourth group consists of Hanafi Jurists and interpreters. They argue that the word 'Marratan' of Quranic verse mean 'one occasion after the other occasion with an intervening period', and that the traditions of the Prophet, too, have declared as sinful the act of giving three divorces together at a single sitting. In spite of all this, the divorce given in such a manner would be legally effective and binding. This group agrees with the Shafiiites upon the effectiveness of three divorces together but they differ in regarding it as sinful. The followers of Imam Shafii take the word 'Marratan' to mean twice while the Hanafi take it to mean 'two occasions, one after the other'.

As to the social aspect of triple divorce it must be borne in mind that the present day society of Indian Muslims has for the most part become foreign to Islamic values and Islamic teachings. Somehow or other it has come to be believed that divorce does not occurs on the first pronouncement of the word and if husband does not retract it within the specified period, it becomes final and irrevocable.\(^\text{121}\)

Now it seems desirable to describe the amendments made by various Muslim countries relating to the Triple Divorce. The laws of various Muslim countries relating to the Triple Divorce are stated below :-

(A) EGYPT :-

Sheikh is considered as a religious functionary in Egypt. The divorce cannot become legal unless a sheikh establishes it. Further some special rights have been given to women under Egyptian law. The right sue for divorce and obtain proper

\(^{121}\) Ibid, at 98.
alimony is most important among them. The two laws on personal status (1920-29) as re-amended in 1985 together and Waqfs of 1943-60 constitutes the present Egyptian code of personal law. Article 3, 4, and 5 refers Triple Divorce as:  

"A divorce accompanied by a number, expressly or impliedly, shall count only a single divorce and such a divorce shall be revocable."

"Symbolic expression of talaq i.e. words which may or may not bear the implication of divorce shall not affect a divorce unless husband actually intended it."

"Every talaq shall be revocable, except a third talaq, that, given before consummation, that for a consideration, and that expressly described as irrevocable."

(B) SUDAN :-

In Sudan Law, according to Manshur 41 of 1935, Article 1-5, made the unintended divorces ineffective and also derecognize the triple divorce. Article 3 provides that a formula of divorce. As per this rule, all divorces shall be revocable by the husband, except a third divorce, divorce before consummation of marriage and a divorce for consideration.

(C) JORDAN :-

The new code which was notified on 1st June 1977 provides for derecognizing of talaq not actually intended and of triple talaq. The provisions of the Code pertaining to triple Talaq are :-

1 A divorce coupled with a number, expressly or impliedly and also a divorce repeated in the same sitting will not take effect as a single divorce. (Article 90).

2 Every divorce shall be revocable except the final third one before consummation and one with consideration. (Article 94).

(D) IRAQ :-

In no other country except Iraq women have equal rights with men. This right has been recently given by the amendment in the Civil Code. According to Iraqi Law no more that one divorce shall take place at a time. Iraqi Law of Personal Statutes 1959, Article 35 also derecognizes the talaq not actually intended to dissolve the Marriage. Further according to Article 34 and 39 it requires the special Sharia formula for pronouncement of a talaq and for its simultaneous confirmation by the Court or

122 The Egyptian law no. 25, of 1929 as amended in 1985
123 Law on Talaq, Marital Disputes and Gifts Act, 1935.
pronouncement of a talaq and for its simultaneous confirmation by the Court or subsequent registration. Article 37, clause (2) provides that "where a divorce is coupled with a number, express or implied, not more then one divorce shall take place. Article 38 provides if a woman is divorced thrice on three separate occasions by her husband, it will result into baainunah kubraa (great parting)."

(E) SYRIA :-

Notable provisions in the Syrian Code of Personal Statutes 1953 (Law 59 of 1953 as amended by Law 34 of 1975) Article 89 and 93 also include ineffectiveness of unintended talaqs, and abolition of triple talaq. Article 92 provides that if a divorce is coupled with a number, expressly or impliedly, not more then one divorce shall take place. According to Article 94 it is further assured that every divorce shall be revocable except a third one before consummation, a divorce with a consideration and a divorce stated in this Code to be irrevocable.

(F) MOROCCO :-

Moroccan Code of personal statutes, 1958, Article 51 says about triple talaq that, 'A Talaq pronounced with a number whether in words or by signs or in writing shall effect only on divorce'.

(G) PAKISTAN :-

In Pakistan according to The Muslim Family Laws Ordinance 1961, Section 7, which is called the Magna Carta of Family Law Reforms in Pakistan' A divorce by Triple pronouncements is no longer considered 'mughallazah' or final and it is open to spouses to continue the marriage if reconciliation is brought between them within the prescribed period.

(H) SAUDI ARABIA :-

It is however an admitted fact that in some Muslim countries traditional interpretation of law of triple talaq is still applicable. Saudi Arabia is an example of it. It has done nothing in order to change this practice. Few years back the issue of triple talaq at a time (talaq al thalaathah) was considered by the Permanent Commission of Academic Research and Adjudication. Its attention was drawn to the fact that in some Muslim countries 'triple talaq' has, by legislation been either abolished or made

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125 Iraqi Law of Personal Statutes 1959, section 34, 35, 37 and 39.
126 Syrian Code of Personal Statutes 1953 (Law 59 of 1953 as amended by Law 34 of 1975), Article 89, 92, 93 and 94.
127 Moroccan Code of personal statutes, 1958, Article 51
128 The Muslim Family Laws Ordinance 1961, Section 7
impracticable. After considering the entire legal and jurisprudential literature on the subject Commission has decided that :-

1. 'Triple talaq' was prevented in Prophet's time.
2. Hazarat Umar conferred formal legal recognition on Triple divorce and his decision was later followed by entire community; and so
3. It is established law that triple talaq effects three divorces.\(^{129}\)

**Position in India :-**

Many Muslim countries have waived the rigidity of the effectiveness of the triple talaq as irrevocable talaq and made the law that three divorces altogether amount to only one revocable divorce. However, no such reforms had taken place in our country and all attempts to reform had been met buy allegations of interference in political and religious rights of Muslim Community. The Protagonists who are of opinion that triple divorce should be treated as single divorce in India also put forth the legislations of these Muslim countries as an argument. A word may be added here regarding the trend of the judiciary in India, in respect of this matter. It appeared that in all cases where both the parties belong to Sunni sect of Muslims the judiciary had so far been accepting the view of the effectiveness of three divorce together. But in a case *Khadisa v. Mohammad*,\(^{130}\) the Court held that the remarriage (with the same husband of the woman thrice divorced as irregular but not void. So previously the judicial trend was in favour of recognizing the 'triple talaq' as an irrevocable divorce. Instances are as in *Sara Bai v. Rabia Bai*,\(^{131}\) Bombay High Court recognized 'triple talaq' as irrevocable divorce. Again in the Privy Council case *Mst. Annesa Khatoon v. Rasheed Ahmad*,\(^{132}\) the decision appear to be harsh. In this case Privy Council held agreeing with the conclusion of the subordinate judges of the lower Court, that the pronouncement on the 'Triple Divorce' taken by the respondent constituted an immediately effective divorce. The learned judges of Privy Council pointed out the validity and effectiveness of an irrevocable divorce in the biddat form would not be affected by the husband's intention.

In *Ahmad Giri v. Mst. Begha*,\(^{133}\) Jammu and Kashmir High Court held that

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131 I.L.R (1905) 30 Bom. 537.
132 AIR (1932) PC 25.
'Triple divorce' becomes effective and irrevocable the moment it is given. Again is *Saliha B. v. Sheikh Gulla*, Madhya Pardesh High Court held triple repetition is not a necessary condition for irrevocability effect.

In this way we find till 1979 or till the decision of *Khadisa v. Mohammad*, 'Triple Divorce' was recognized as an irrevocable divorce if pronounced in single breath. The learned Judge Narayana Pillai observed that, "a remarriage without conducting an intermediate marriage is only an irregularity and therefore does not render the marriage as void."

So now the courts are taking liberal view on the subject of talaq-ul-bidat deviating from there earlier views regarding the effect of triple divorce and there by the courts are inclining towards the view taken by the progressive scholars and the triple pronouncement in a single breath amounts to one divorce and therefore revocable.

In 1993 three Muftees of 'Jameeat Ahl-i-Hadith according to their 'maslak'(law) gave a verdict (fatwa) holding that if a Muslim husband pronounces talaq, talaq, talaq to his wife at a single sitting it will not be considered as a divorce under shariah and will not be in any manner effect the rights and obligations of both husband and wife. The legal consequences of such talaq, treated as one, was only that the spouses have to abstain from sexual intercourse, but if the husband resumed cohabitation the talaq would be treated as revoked and the couple would be entitled to stay together. The Jameeat Ahl-i-Hadith is an all India, non political organization, drawing inspiration from Quran and Hadith. Some of its members are on Muslim Personal Law Board and All India Milli Counsel. According to fatwa a month has to pass before the husband can pronounce a talaq for a second time, and after another month before it can be pronounced a third time. After the first and the second pronouncement of talaq a man can still reverse his decision.

After this fatwa the vary next year that is in 1994 Allahabad High Court pronounced a similar decision. On 15 April, 1994 Justice H.N.Tilhari of the Lucknow Bench held that the practice of uttering the word talaq at one, go to effect an irrevocable divorce was both unconstitutional and illegal.

'Talaq, Talaq Talaq is no final talaq' these words showed the view about triple
talaq,\textsuperscript{137} published on 21 May 1993 under Article 'Fatwaa' in Jarida Tarjuman, Delhi vol. 13, no.21. It is a weekly brought out by Jameeat Ahl-i-Hadith. So in this way judicial as well as social trend in India is shifting. The proof of it can be well understood while going through an article "Islam and Reforms" by Fafia Zakaria,\textsuperscript{138} in which she reiterated that the country old traditions which are prevailing in Muslim society should need to be reformed keeping in view, the changing need of society, remaining within the praxis faith.

There can be no doubt that giving three divorces together is a wicked and condemnable act. A number of traditions agree upon its evil. Besides it is punishable act in Islam and the guilty may be fined and punished physically.\textsuperscript{139} But, the legal permissibility of Divorce with restrictive safeguards and reservations still stand firms.

In particular one aspect of Triple Divorce is the helplessness of woman and its consequent evil effects on society, so it is suggested that three divorces together be declared as void, or at least be continued as one.

Two forms of constructive divorce have existed in Muslim law, Ila and Zihar. According to Abdur Rahim, "In some cases the conduct of the husband will have the effect of a repudiation, though he did not use the word talaq or any other expression with the intention of dissolving the marriage."\textsuperscript{140}

1. Ila:- When the husband had attained the age of majority and is of sound mind swears by God that he will have nothing to do with his wife, and will not have sexual intercourse with his wife and in pursuance of such oaths abstains from her society for four months to observe iddat. The legal effect of such a conduct would be single irrevocable divorce. This form of divorce is known as Ila.\textsuperscript{141}

Ila is when a husband takes oath on the name of Allah, or by mentioning the characteristics of Allah to not have intercourse with his wife for the duration of four months or more or without mentioning the length of time. The commandment from Allah: "For those who swear not to have sexual relations with their wives is a waiting time of four months, but if they return [to normal relations] - then indeed, Allah is Forgiving and Merciful. And if they decide on divorce - then indeed, Allah is Hearing

\textsuperscript{137} Ibid.
\textsuperscript{138} Frontline, 5, 2 June 2006.
\textsuperscript{139} Al-Sharani Abdul Wahab, Kitab Mizan Al-Kubra, vol.2, 194 (1862).
\textsuperscript{141} Supra note 101, at 164.
The Shafis and the Shias hold that this does not result in talaq, but merely gives the wife the right of judicial divorce. According to the Ithana Asharis, this form of divorce can be used only after the consummation of marriage. If the husband resumes intercourse with his wife, or has retracted from it before the expiry of the period of four months, the Ila does not take place and stands cancelled. If the husband assents of Ila after four months, then the cancellation will be valid only if the wife assents to it.

In *Bibi Rehana v. Iqtidar-u-din*, after the marriage ceremony was over, the parents of the boy pushed him into a room where his wife was waiting for him. It appears from the facts of the case that the husband was not interested in marriage. Immediately after entering the room he took a vow in the presence of his wife that he would never have sexual intercourse with her. Soon after giving the statement he came out of the room and repeated the vow in the presence of his mother and his mother’s sister. His father then came out of another room and he once more repeated the vow. The court refused to accept the version of the husband. The court said that the husband has failed to establish that there had been a divorce in the Ila form. As for a valid divorce in the Ila form in pursuance of vow the husband must abstain from sexual intercourse with his wife for four months or more.

2. *Zihar*: - If the husband who is of sound mind and have attained majority compares his wife to his mother or any female within a prohibited degree, the wife acquires a right to refuse cohabitation with her husband till he performs penance. If the husband refuses to perform the penance, the wife gets the right of judicial divorce. This form of divorce is Zihar.

Zihar is when a husband likens the back of his wife with the back of his mother (or any person that is unlawful for him to marry). This matter is explained in the Quran meaning: “*Those who pronounce the zihar among you [to separate] from their wives - they are not [consequently] their mothers. Their mothers are none but those who gave birth to them. And indeed, they are saying an objectionable statement and a falsehood. But indeed, Allah is Pardoning and Forgiving.*”

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142 *Quran, II, 226-227.*
143 *Supra* note 29, at 175.
144 (1943) All. 295.
145 *Supra* note 101, at 165.
146 *Quran, al-Mujadilah, 2.*
Tyabji\textsuperscript{147} remarks that Zihar has hardly any significance so far as the courts in India are concerned; the words do not come naturally to Indian Muslims.

\textit{Divorce at the instance of Wife}

\textit{Talaq-i-tafweez:-} The doctrine of tafweez or the delegated divorce is an important topic of Muslim Law of Divorce. The Muslim husband is free to delegate his power of pronouncing talaq to his wife or any person. Such delegation of power is known as tafweez. He may delegate this power, absolutely or conditionally, temporarily or permanently\textsuperscript{148}

An agreement made either before or after the marriage providing that the wife would be at liberty to divorce herself from her husband under certain specified conditions such as in case the husband marries a second wife or fails to maintain her for a specified period, is valid, provided first, that the potion is not absolute and unconditional and secondly, that the conditions are reasonable and not opposed to the public policy\textsuperscript{149}

Such delegation must be made distinctly in favour of the person to whom the power is delegated, and the purpose of delegation must be clearly stated. This has been thus illustrated by Ameer Ali: if a husband says, "Choose thyself" or "Choose a repudiation", and if wife answers, "I choose", or "I have chosen myself" or "I have chosen a talaq" it would be sufficient. But if he were merely to say, "Choose", and wife replies, "I have chosen", this is not sufficient, and there is no talaq\textsuperscript{150}

In \textit{Mohammad Khan v. Shahmai},\textsuperscript{151} under a pre-nuptial agreement, a husband who was a Khana Damad, undertook to pay certain amount of marriage expenses incurred by the father-in law in the event of his leaving the house. The husband left the house without paying the amount. The wife exercised the right and divorced herself. It was held that it was a valid exercise of the power of talaq delegated to her.

The wife exercising her power under the agreement must establish that the conditions entitling her to exercise the power have been fulfilled\textsuperscript{152} In such cases, the mere happening of the contingency is not sufficient, the wife must clearly establish first that the events entitling her to exercise her option have occurred, and secondly,\textsuperscript{147} Supra note 29, at 184.\textsuperscript{148} Supra note 36, at , 238.\textsuperscript{149} Supra note 101, at 166.\textsuperscript{150} Supra note 35, at 496.\textsuperscript{151} AIR 1972 J&K 8.\textsuperscript{152} Bufftan Bibi v. Abdul Salim, AIR 1950 Cal. 304.
that she actually exercised her option.  

The happening of the event or the contingency does not result in a automatic divorce. Even on the happening of the contingency or event stipulated in the agreement, whether or not the power is to be exercised, depends upon the wife; she may choose to exercise it or she may not.

Like the husband's pronouncement of talaq, the wife's pronouncement under authority delegated to her by the husband (talaq-i-tafwid) dissolves the marriage without the intervention of a Court.

The power so delegated to the wife, either under a pre-marriage or post marriage agreement, is not revocable by the husband. The wife may exercise this power after the husband has filed a suit for restitution of conjugal rights, and if she does so it will result in divorce.

**Divorce by Mutual Consent**

The Khul and the Mubarat are considered by many as the species of divorce by mutual consent.

1. **Khul:** Khul or redemption literally means "to lay down". In law it means laying down by a husband of his right and authority over his wife. In *Balaquis Ikram v. Najmal Iqram*, it was said that under the Muslim law the wife is entitled to Khula as of right if she satisfies the conscience of the court that it will otherwise mean forcing her into a hateful union.

   It is also known as 'divorce by redemption’ which means the dissolution of marriage obtained by a wife by paying her husband a valuable item whereby the rate of the item is based on an agreement between the husband and wife or based on the decision of the *qadhi* (judge). This is considered compensation to the husband concerned. This matter is based on the understanding derived from *hadith* Rasullullah meaning: From Ibnu Abbas r.a. that the wife of Thabit bin Qais came to see Rasullullah and said, “O’ Rasullullah, I wish to seek divorce from my husband and I have no grousse against him, on his character and his religion but I hate him being an infidel whereas I am a Muslim”. Rasullullah then proclaimed, “Are you willing to

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156 Saiuddin v. Latifinessa, (1919) 46 Cal 141.
157 (1959) 2 WP 321.
return his farm that was given to you as a dowry?" She answered: "Yes I am willing". Rasullullah then told Thabit bin Qais to accept back his farm and to divorce his wife. Thabit accepted the order and divorced his wife.159

The meaning of the commandment from Allah: "It is not lawful for you (men), to take back any of your gifts (from your wives), except when both parties fear that they would be unable to keep the limits ordained by God. But if you fear that they will not keep [within] the limits of Allah, then there is no blame upon either of them concerning that by which she ransoms herself. These are the limits of Allah, so do not transgress them. And whoever transgresses the limits of Allah - it is those who are the wrongdoers."160

In Moonshee-Buzlu-Raheem v. Lateefutoonisa,161 the Khula has been defined as, "a divorce with the consent and the instance of the wife, in which she gives or agrees to give a consideration to the husband for her release from the marriage tie. It signifies an arrangement entered into for the purpose of dissolving a connubial connection in lieu of compensation paid by wife to her husband out of her property." Khula in fact is thus a right of divorce purchased by the wife from her husband.

In the words of Fyzee,162 "In the case of khul, the wife begs to be released and the husband agrees for a certain consideration, which is usually a part or the whole of the mahr."

Generally, whatever that can become mahar (dowry) can be made khula’ payment. That is any item of value or of benefit and decided definitely about the item or benefit that would be used as the khula’ payment. The compulsory allowance (nafkah) that is owed by the husband to the wife or the allowance for small children under the care of the mother or payment for milk and childcare which duration has been determined can also be made khula’ payment from the wife. As such, the allowance that should be paid by the husband no longer needs to be paid and is borne by the wife herself. Amongst the effects of khula’ are: that the ex-husband cannot reconcile with his ex-wife, the ex-husband cannot add talaq onto his ex-wife, the ex-husband cannot add talaq onto his ex-wife during ‘iddah and the ex-husband cannot remarry his ex-wife except with new akad and dowry. Iddah for the wife who

160 Quran II, 229.
161 8 MIA 395, 399.
162 Supra note 34, at 156.
obtained khulu’ is one menstruation period and dissolution through khula’ can be
done at any time regardless of whether the wife is having menstruation or not. The
initiative for divorce by way of khula’ belongs to the wife and with excuses that can
be accepted by Islamic Law. Nevertheless, a husband is forbidden to take advantage
of this provision to cause hardship to his wife to get khula’ from him because in such
cases, members of the Jurisprudence are of the opinion that the khula’ is invalid and
the payment to redeem talaq is returned to the wife.\footnote{Abd. Muhsin Ahmad, "Women and the Dissolution of Marriage in Islam", Sinar Rohani Magazine December 2001.}

2. Mubarat: Mubarat signifies a mutual discharge from the marriage claims. In
mubarat the aversion is mutual and both the sides desire separation. Thus it involves
an element of mutual consent.\footnote{Jani v. Mohammad Khan, AIR 1970 J&K 154.}

   In the words of Fyzee, "in mubaraa apparently both are happy at the prospect
of being rid of each other."\footnote{Supra note 162.} Among the Sunnis when the parties to marriage enter
into a mubaraa all mutual rights and obligations came to an end.\footnote{Supra note 21, at 139.} In Mubarat, according to Ameer Ali,\footnote{Supra note 35, at 517.} if the husband were to say to his wife, "I have discharged
you from the obligation of marriage for such sum, and you are separated from me",
divorce would result.

   Among both the Sunnis and Shias, the mubarat is an irrevocable divorce as in
the talaq-ul-bain. In the words of Al-Karkhi, quoted by Ameer Ali, "When the
husband receives a compensation from the wife the divorce is bain and even when it
is without compensation and consequently rajai (reversible at the option of the
husband), if during the wife's iddat he were to accept from her a compensation, the
separation would be equally bain."\footnote{Supra note 35, at 517.}

\textit{Divorce by Judicial Decree}

   Apart from the divorce which may emanate, either from the husband, or the
wife, without the intervention of the court, or any other authority, the Muslim law
givers also provided for the dissolution of marriage by a decree of the court. It is
called turkaf, literally means separation.\footnote{Supra note 140, at 339.} According to Abdur Rahim, "if a decree of
separation be for a cause imputable to the husband, it has, generally speaking the
effect of a talaq. If the decree for separation be for a cause imputable to the wife, then it will have the effect of annulment of marriage."

Lian: Where a husband charges his wife of adultery and the charges are false, the wife is entitled to sue for and obtain divorce. The Qur'an regulates the lian manner of divorce. The Qur'an states: “Those who accuse their wives and do not have any witnesses except themselves, should swear four times in the name of God, the testimony of each such person being that he is speaking the truth, and (swear) a fifth time that if he tell a lie the curse of God be on him. The woman’s punishment can be averted if she swears four times by God as testimony that her husband is a liar, her fifth oath being that the curse of God be on her if her husband should be speaking the truth.”

Upon being accused of adultery, a wife can file suit to compel her husband to retract the accusation or swear the oath that the Qur'an requires. During this time, when the suit is filed, the couple cannot engage in marital relations. If the husband retracts his accusation, the wife is not entitled to a divorce and the couple can resume normal relations. If the husband does not retract his statement, the wife can file for divorce and must swear her own oath of innocence; a hearing is then held on the charge of adultery. For a valid retraction, the husband must admit that the charges of adultery made by him against his wife were false and he must make retraction before the end of the trial.

Mere charge levied by the husband will not automatically dissolve the marriage. The wife must file a regular suit for dissolution of her marriage as a mere application to the court is not proper procedure. The charge of adultery of the wife made by the husband could not be the ground of divorce by the wife. In Zafar Husan v. Ummat-ur-Rahman, the Allahabad High Court recognized the doctrine of Lian. In this case the wife of the plaintiff alleged that her husband had stated before several persons that she had illicit intercourse with her brother and imputed fornication to her. It was argued that the law of lian had no place in Anglo-
Muhammadan law and must be considered obsolete. This argument was rejected.\textsuperscript{177} It was held that Qazi of the Muslim law was replaced by the court. It was held that a Muslim wife is entitled to bring a suit for divorce against her husband and obtain a decree on the ground that the latter falsely charged her with adultery.

Lian applies only when the husband accuses the wife of adultery, and not the other way around. The divorce due to lian is irrevocable.

\textit{Faskh}: Under Muslim Law a lady can approach to the Qazi for the dissolution of her marriage. Faskh means cancellation, abolishment, recession, revocation, abrogation, annulment. Before the passing of Dissolution of Muslim Marriage Act, 1939, there was no piece of legislation under which a Muslim lady could ask for the dissolution of her marriage. Muslim ladies could only apply for the dissolution of their marriages under the doctrine of Faskh. According to Tyabji,\textsuperscript{178} the following were the main grounds for dissolving the marriage at the instance of the wife:

(i) that the marriage is irregular;
(ii) that a person having an option to avoid a marriage has exercised his option;
(iii) that marriage was performed within prohibited degrees or fosterage;
(iv) that the marriage have been contracted by non-Muslim the parties have adopted Islam.

While the Qur'an does not promote divorce, it states, "If you fear a breach between the couple appoint one arbiter from the people of the man and one from the people of the woman. If they wish to have a settlement then God will reconcile them...."\textsuperscript{179} This provision is interpreted to mean that the Qur'an permits Muslims to divorce pursuant to legal standards.

Faskh is the annulment and dissolution of a marriage that binds a husband and wife because of the existence of several issues that hinders the continuation of the marriage for example marriage between muhrics (family members or relatives who are forbidden to marry each other), someone else’s wife, wali (guardian) or witness is fasiq (a sinner) (the akad (marriage contract) is invalid from the beginning), one of the two becomes murtad (an apostate)(the akad is annulled), the akad is valid but is fasakhed by the qadhi on the demand of the wife either because the husband has a disease (in this case the marriage cannot be dissolved until it comes to trial or is

\textsuperscript{177} Noorjahan Bibi v. Mohammad Kazim Ali, AIR 1977 Cal. 90.
\textsuperscript{178} Supra note 29, at 194.
\textsuperscript{179} Quran, 4:35.
decided upon by the qadhi or a judge from the Islamic Court), not kufu’, the husband cannot afford to pay mahar (the compulsory provision from husband to wife) and nafkah (allowance to those under his responsibility) or other circumstances for example the difficulties faced by the wife because the husband has disappeared, the husband is imprisoned, the husband hurts the wife in an extreme manner (physical and mental abuse) or the likes.\(^{180}\)

**Dissolution of Muslim Marriages Act, 1939:**

Qazi Mohammad Ahmad Kazmi had introduced a bill in the Legislature regarding the issue on 17th April 1936. It however became law on 17th March 1939 and thus stood the Dissolution of Muslim Marriages Act 1939. The Dissolution of Muslim Marriages Act, 1939 provides grounds for marriage dissolution unrecognized prior to its enactment.\(^{181}\) Only a wife can file for divorce under the Dissolution of Muslim Marriages Act, 1939; a husband cannot invoke the Dissolution of Muslim Marriages Act, 1939 to divorce his wife. Section 2 of the Act runs there under: \(^{182}\) “A woman married under Muslim law shall be entitled to obtain a decree for divorce for the dissolution of her marriage on any one or more of the following grounds ..........” This is probably because husbands have broad talaq rights and do not need the rights that the Dissolution of Muslim Marriages Act, 1939 gives. The most important implications of the Dissolution of Muslim Marriages Act, 1939 are that it:

- raises the stature of Muslim women in the family law context, and
- does not differentiate between the Islamic schools.

The grounds available to a Muslim wife under Dissolution of Muslim Marriages Act, 1939 have been discussed in the next chapter.

**Christian Divorce**

From early Saxon times, side by side with the civil law, there existed ecclesiastical law, even when the court had jurisdiction in both civil and ecclesiastical matters. There was an intimate union of Church and the State, a union in which the royal authority constantly upheld the authority and national position of the Church. The superior clergy took a major role in legislative activities and in the administration


\(^{181}\) Because the Dissolution of Muslim Marriages Act, 1939 adopts non-traditional grounds for divorce for Muslims, it is considered a departure from Shari’a.

\(^{182}\) The Dissolution of Muslim Marriages Act, 1939, section 2
of justice as well as in general government. With the defeat of King Harold at the battle of Hastings in 1066 A.D, by William the Conqueror with the support of the then Pope, the practice of dealing with the ecclesiastical and temporal affairs in the same court was abolished and the Bishop and the Archdeacon had his own crown. The marriage law of England became the canon law. The substantive law that was administered in the Church courts, (Courts Christian) was, first and foremost, the Holy Scriptures in the so called "Vulgate" version, the one made by St. Jerome in the fourth century. And a mass of specific regulations announced by various Councils, both general and local, as well as decrees of Popes, had all the aspects of legislation and were treated as laws. All complications and collections were, from the sixteenth century, known as the Corpus Juris Canonici, (the Body of Canon Law) formed the basis of the law administered by the Church courts. However difficulties began to develop between Church and the State. In 1164 A.D, King Henry II wanted to abolish many of the privileges of the clergy and forbade appeals to Rome. But later, the King had to give up his efforts. In 1532 A.D, King Henry VIII forbade marriage case appeals to the Pope in the Statute of Appeals. This was followed by the Act of Submission of the Clergy. Finally, when the King could not get an annulment of his marriage by the Pope, he proclaimed himself 'Supreme head in Earth of the Church of England', in the year 1534. By another Act, it was provided that dispensations for marriage could be given to the Crown, but at the same time, there was to be no departure from the true faith of the Catholic Christian Church. The Church courts became royal courts after Henry VIII, but retained their independence of the Common Law Courts. The older Canon Law was not repudiated, but a new cannon law was built up on it. Thus the Statutes subordinated the Church to the State, and the Church Courts to the law of the land. But it would be wrong to suppose that the Church was to lose her liberty. The position that emerged out of the conflicts was that the state law was to have predominance over the Church law only when there was a
conflict between the two. Otherwise, the Church law was to have its sway. But an Act of 1836 had paganised marriages by providing for marriages before a Civil Registrar. With certain exceptions, the matrimonial law of the Church survived until 1857. The Matrimonial Causes Act of 1857 established a new temporal (civil) court to exercise jurisdiction in all matrimonial causes. Thus, marriage, which had once been a sacrament, became merely a civil contract in England and the logical sequel was that it could no longer be held to be indissoluble. This led to the introduction of divorce a vinculo by a temporal court. And the Church lost the last remnant of her jurisdiction in matrimonial causes in England. The Established Church not only lost her jurisdiction in marriage cases, but also in her ministry and in her attempts to revise her canon law. She had to look to Parliament for assent for needed changes even in canon law.

British colonisation of India, has had a tremendous impact on the legal system in India. In many respects, English law in letter and spirit came to be applied in India. As regards Christians, the earliest Act that was made applicable to Christian marriages in British India was the English Statute 14 and 15 Victoria, Chapter 40. This was followed by Statute 58 Geo III Chapter 84. And these were supplemented by Indian Act VIII of 1852 and then by Act XXV of 1864 and then again by Act V of 1865. Even when the law relating to the Christian marriage was still in fluid state, British Indian administration thought it necessary to bring in a law for divorce among Christians. They thought that the English law on the subject, the Matrimonial Causes Act of 1857 with necessary modifications, could be applied in India. Thus, the Indian Divorce Act, 1869 came to be enacted in India by the Governor General in Council and applied to the Christians throughout India except the Princely States, former Portuguese and French Settlements and certain tribal areas. Though the Act is titled

193 Supra note 190, at 19.
194 6 & 7 William IV Code 85, section 1.
198 As far as the Travancore-Cochin areas of the State of Kerala are concerned, the Act came to be extended with effect from 1-4-1951 by virtue of the provisions of the Part B States (Laws) Act, 1951. It may be noted that there was no law for divorce in these areas prior to 1-4-1951 and the extension of the Act was made without the informed knowledge of the community.
as "The Indian Divorce Act" it applies only to the Christians. Subject to such exceptions, generally speaking, the Indian Divorce Act, 1869 is law of divorce for Christians in India.

The Indian Divorce Act was enacted in 1869 to amend the then existing law on divorce and matrimonial causes of Christians, and to confer jurisdiction upon the High Courts and District Courts in matters matrimonial. It does not appear to be comprehensive legislation on the subject. This is evident from the Preamble to the Indian Divorce Act, 1869.

The parties to a Christian marriage may approach the court of law to dissolve the marriage tie under the provisions of the Indian Divorce Act, 1869. Since 1869, the Indian Divorce Act, 1869, did not undergo any major change and thus Christian law on divorce in India remained embedded on the principles of Victorian vintage for more than a century and a quarter. Even though there were pressing demands to update the law to be in tune with the times, both in and out of Parliament at least from 1962 onwards nothing worthwhile could be done for about half a century. While so, the Law Commission of India in its 164th Report on "The Indian Divorce Act (IV of 1869)" presented to the Government in November, 1998, has inter alia, recommended that Parliament may enact a comprehensive law governing marriage and divorce and other allied aspects of the Christians in India. The Commission, relying on the judgments and observations of certain High Courts, has also urged the Central Government to take immediate measures to amend section 10 of the Indian Divorce Act, 1869, relating to the grounds of dissolution of marriages so that the female spouses are not discriminated viz a viz male spouses in obtaining a decree of dissolution of marriage. The Commission also urged the Government to amend suitably sections 17 and 20 of the Act to do away with the procedural requirements of obtaining conformation from the High Court in respect of a decree of dissolution of marriage or decree of nullity of marriage, as such procedure is a long-drawn and strenuous one as is provided in the Indian Divorce Act, 1869, so as to remove the hardships of all concerned. In order to give effect to the recommendations of the Law

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199 The Preamble to the Indian Divorce Act, 1869.
202 The Preamble to the Indian Divorce Act, 1869, states: "Whereas it is expedient to amend the law relating to the divorce of persons professing the Christian religion, and to confer upon certain courts jurisdiction in matters matrimonial......".
Commission of India in its 164th report and the recommendations of the Commission on Review of Administrative Laws, at last, the Indian Divorce (Amendment) Act, 2001 has been enacted. Now, therefore, the intention of the Legislature in bringing out the Indian Divorce (Amendment) Act, 2001, is to be ascertained with the aid of this background of the law. However, it is made clear that the amendment has no retrospective operation.

Parsi Law

A Parsi husband or wife may file a suit to dissolve the marriage tie under section 32 of the Parsi Marriage and Divorce Act, 1936, the marriage of such husband or wife shall, with the compliance of the requirements contained under the provisions of the said section, be dissolved. Under the Act, when a court passes the decree of divorce, the court shall send a copy of the decree for registration to the Registrar of marriages within its jurisdiction appointed under section 7 of the Act. The Registrar shall enter the same in a register to be kept by him for the purpose, and the provisions of Part II (sections 3-17) applicable to the Registrars and registers of marriage shall be applicable, so far as may be, to the Registrars and registers of divorces.

Jews Divorce

While divorce is not looked at favorably in Judaism, it is by no means prohibited and, in certain cases, it is even encouraged. The rabbis of the Talmud considered marriage a holy contract, and the dissolution of marriage an unholy act. They quote the prophet Malachi, “. . .the Lord has been witness between you and your wife of your youth against whom you have dealt treacherously, though she is your companion, the wife of your covenant” (2:14). Jewish Oral Law added in Sanhedrin (22a), “Even [God] shares tears when anyone divorces his wife.”

In biblical law, a husband has the right to divorce his wife but a wife cannot initiate a divorce. About 1,000 years ago, Rebbeinu Gershom ben Yehuda (965-1028) decreed that a husband could no longer divorce his wife without her consent. This decision was accepted as binding by European Jewry.

203 Supra note 200, at 17.
204 Thomas K. Varghese v. The Family Court, 2004 (3) KLT 1036.
A Jewish religious court can compel the husband to grant a divorce when there is a just case, such as when a husband refuses to have marital relations, when he does not provide adequately for her support, when he is unfaithful, when he is a wife-beater, or when he has a loathsome disease, such as leprosy, etc.

*Get* is the Hebrew word for divorce document. Since a Jewish marriage is entered into by the issuance of a legal contract between husband and wife, it can be terminated only by the issuance of a legal writ nullifying the original contract. A *get* may not be issued unless a civil divorce is first obtained, just as a Jewish marriage ceremony may not be conducted without first fulfilling all civil requirements. Reform Jews believe that a civil divorce is sufficient for remarriage. According to Jewish law, a marriage is not dissolved until a bill of divorce, *get*, is exchanged between husband and wife. Most non Reform American rabbis, and all rabbis in Israel, will not officiate at a wedding if either party has been divorced without a *get*.

A Jewish divorce is similar to many present day legal transactions. A divorce contract is drawn up under rabbinical supervision and signed by witnesses. The husband and wife are not subject to personal questions. If they choose to, they need not be present together. A Jewish divorce usually takes an hour or two, during which time the *get* is prepared and executed. The parties are expected to provide proof of identification, and will be asked some formal questions to make it clear that the *get* is being executed on their behalf without coercion. Costs may vary in different cases, but, on the average, a *get* costs $350.

Based upon the statement in Deuteronomy (24:1), which states that when a man wants to divorce his wife, "then let him write her a bill of divorcement," the rabbis conclude that a *get* must be handwritten by a scribe for the occasion. The document is written in Aramaic as this was the vernacular during the mishnaic and talmudic periods. Proper witnesses must be present at the time of the writing of the document and at its delivery.

In some communities, there is a custom of cutting the *get* with a scissor or knife after it is written. This tradition began during Hadrian's rule over Palestine (117-138 CE), when all legal authority was denied to the Jewish community. During that time, Jewish courts continued to function secretly. When a *get* was issued, the

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document was cut so that if it were discovered by Roman authorities, the Jews could always deny that the document was legal.\textsuperscript{210}

Regardless of one's personal convictions or practices, or one's affiliation, obtaining a \textit{get} is important. This simple procedure does more than just assure the couple that they will be free to remarry should they so desire. It also prevents a tragic problem: a child born to a Jewish woman whose previous marriage did not terminate with a \textit{get} may be considered illegitimate. Any Jew, whether observant or non-observant, needs to share in the concern for Jewish unity and in providing their children with a clean slate for the future.

One of the most agonizing, and pressing, issues facing the Jewish community arises when a husband refuses to grant his divorced wife a \textit{get}, thus preventing her from marrying again in the future. Such women, called agunot (literally, "chained wife"), have little recourse in the matter since the issuance of a \textit{get} lies solely in the responsibility of the husband. The problem of agunot has a long and painful history in Judaism and it remains even more problematic today, especially outside of Israel, since the Jewish establishment has relatively little power in terms of domestic law.\textsuperscript{211}

It is important to note that a civil divorce is not sufficient to dissolve a Jewish marriage. As far as Jewish law is concerned, a couple remains married until the woman receives the \textit{get}. This has been a significant problem: many liberal Jews have a religiously valid marriage, yet do not obtain a religiously valid divorce. If the woman remarries after such a procedure, her second marriage is considered an adulterous one, and her children are considered mamzerim (bastards, illegitimate).\textsuperscript{212}

In Israel, however, steps have been taken to ensure that the problem of agunot is mitigated. In 2012, the Israeli parliament, the Knesset, ruled that a husband has 45 days maximum to provide his wife with a \textit{get} once a rabbinical court has ruled that one is needed. If the husband refuses to do so within that time frame, the court must hold a hearing to arbitrate whether to impose punitive sanctions, which can include preventing the husband from travelling abroad, confiscating his driver's license, and even incarceration.\textsuperscript{213}

A couple who has had a legally Jewish divorce are forbidden from remarrying

\textsuperscript{210} http://www.jewishvirtuallibrary.org/jsource/History/rome.html., visited on 5-10-2013.
\textsuperscript{211} http://www.jewishvirtuallibrary.org/jsource/Judiasam/agunot1.html., visited on 5-10-2013.
\textsuperscript{212} http://www.jewishvirtuallibrary.org/jsource/Judiasam/talmud&_mishna.html, visited on 5-10-2013.
\textsuperscript{213} http://www.jewishvirtuallibrary.org/jsource/Politics/knesset.html., visited on 5-10-2013.
each other. Both men and women are permitted to remarry after a divorce; however, a Kohen, a descendant of the holy priests, cannot marry a divorcee.²¹⁴

While we talk about marriages and its significance in the life, it's important that we also discuss the intricacies of the separation as it's a right provided to all men and women on different grounds to the separate if the marriage is not considered happy. Though it is still look upon as a social evil, the law permits a couple to separate ways on mutual grounds. Also Indian women have their own rights to file for a divorce if not treated well. Even though we observe that women are ill treated in our country in rural as well as urban areas of India; a very small percentage of women who initiate for separation. But more and more social activists and social agencies are creating awareness about the laws and rights available to women as well as men. While this is one side of the tale, there are also cases where the law is twisted and turned and misused by both men and women. However, we must discuss the other side of the heavenly knot. Divorce is the dissolution of a valid marriage in law, in a way other than the death of one of the spouses, so that the parties are free to remarry either immediately or after a certain period of time. The Concept of divorce was introduced in India in the latter part of the 19th century among two classes of Christians. It was introduced for Hindus in 1955 in the form of the Hindu Marriage Act 1955. Under the Hindu Marriage Act 1955, initially, adultery, cruelty, and desertion were not made grounds of divorce but of judicial separation. These grounds were based on the fault theory. At present, divorce is governed by different Acts among different communities in India. All major religions have their own laws which govern divorces within their own community, and separate regulations exist regarding divorce in interfaith marriages. Hindus, including Buddhists, Sikhs and Jains, are governed by the Hindu Marriage Act, 1955; Christians by the Indian Divorce Act, 1869; Parsis by the Parsi Marriage and Divorce Act, 1936; and Muslims by the Dissolution of Muslim Marriages Act, 1939, which provides the grounds on which women can obtain a divorce, and the uncodified civil law. Civil marriages and intercommunity marriages and divorces are governed by the Special Marriage Act, 1956.²¹⁵

²¹⁵ Animesh Kumar, Divorce and threat to institution of marriage in India: Socio-Legal study, 2004, (Unpublished Assignment, Institute of Judicial Training & Research, U.P.)