INTRODUCTION
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I

The requirements of our age make it necessary to examine and weigh once more many matters about which it is no longer enough to accept the old assessment. The system of family rights and responsibilities is one of these matters. In the years subsequent to the seventeenth century, there was a movement in the area of social affairs, which took place in the wake of scientific and philosophical developments, and which went under the name of “Human Rights”. In this age, it has been commonly supposed that the basic questions in this area are the ‘liberation’ of women and the ‘equality’ of their rights with men. All other problems are off-shoots of these two matters. By the time the human civilisation comes to arrive at this state of consciousness about its woman folk, the latter has to pass through varieties of ordeal and humiliation in the hand of her male counterpart. A cursory look at the different religious and social laws reveals a long period of degradation of woman. Of the four great religions, Buddhism, Judaism, Christianity and Islam, and of some extinct and living systems—the Roman, the Persian, the Greek and English, it is only Islam that initiated acceding right, dignity and equality for women, although its progressive march was thwarted in course of time.

The position of women reflects the cultural attainment of a society. A major index of modernisation of any society is the position of its women vis-a-vis men. The more balanced the opportunity structure for men and women, the higher the status enjoyed by women in the society. However, the status of women suffered a setback both on the
religious and philosophic as also on the socio-legal plane.

Originally a female under the Roman law had very little of personal and proprietary independence, but gradually she extricated herself out of it. According to Sir Henry Maine, there were three modes in which marriage might be contracted under Roman usage: 'conferreatio' involving a religious solemnity and, 'coemptio and usus', involving observance of certain secular formalities. On marriage, the husband acquired a number of rights over the person and property of his wife which was on the whole in excess of such as are conferred on him in any system of modern jurisprudence. However, at the most splendid period of Roman greatness, these three forms of marriage fell into disuse and were founded on the modification of the lower form of civil marriage.

In Persia, women had the most 'crooked fate-line'. Ameer Ali Says:

"Never was the condition of women so bad,
ever was she held under greater subjection —
a slave to the caprice of man than under
Magozoroastrians".¹

The Mago-Zoroastrian depicted the lowest moral standard and was full of evil and vice. Mazuak, the later Sasanide ruler in the sixth A.D. "bade all men to be partners in riches and in women..." Earlier under the Zoroastrians, marriage with sisters was recognised.

Among the Jews, the condition of females was one of extreme dependence, servitude and degradation. The Hebrew maiden, even at her father's place, stood in the position of a servant. Her father and after him his son, could give, sell or dispose her of at his will and pleasure and had no right of inheritance except in rare circumstances.²

Hindu law and customs were extremely unfavourable to woman. She was treated as inferior to man. The great law-giver Manu says that "Day and night must women be held by their protectors in a status of subjection ". It is true that after some time life-

interest in the property was given to them under the name of stridhan, but because the custom of suttee came into practice that right was of no practical value. A widow burnt herself alive with the dead body of her husband and that horrible custom was the most gloomy picture of the position that women held in the social economy of the Hindu life. Woman was sometimes made the wife of several brothers at the same time. She was sometimes put on the gambling stake and lost. Even up to the other day there was no limit to polygamous marriage in Hindu society. A Hindu widow could not adopt a son unless her deceased husband had left her permission to do so. She could not get any alienable right in property. She could be married without her consent when only a child of four or five years of age. Marriage was viewed as a gift of the bride by her father or other guardian to the bride-groom. As a daughter she was only entitled to expenses of her marriage from her father's estate. She had no right to succession along with her brother. No girl was allowed to be adopted by Hindus. Remarriage was not allowed. Once married, she could not get divorce. Her status in the society was negligible. A father was never expected to eat at her husband's house, and so on.

From an ethical point of view there is hardly any religion which stands on such a high idealistic plane as Buddhism does. Yet it has not much to say in favour of woman. 3

The whole fabric of Christianity rests upon the criminality of woman. If Eve had not shown the frailty of going astray, if she had not tempted innocent, childlike Adam, sin would not have become inherent in human nature, and no saviour would have been required, no spilling of human blood would have been needed to "cleanse". Jesus said that he had come to fulfil the law, so he accepted "Thy desire shall be to thy husband and he shall rule over thee" as the maxim of a married life for women. 4 Under English law, wife had no independent identity. The notion of the unity of the personalities of husband and wife prevailed. She had no separate legal existence. She was incapable of holding

3. For details, Supra note 2 at pp. 10-12
4. id. at pp. 19 to 45.
separate property. So neither the husband could make any grant in her favour, nor could she bring any action for redress against any body without his consent. The disabilities were subsequently modified by the Court of Equity and the Married Women's Property Act. 5

Like Jewish and pagan Arabs, the women in Pre-Islamic Arabian Peninsula were treated as chattels. They enjoyed no legal rights. In youth, they were the property of their fathers and after marriage the husband became their lord and master. A woman was not a free agent in contracting marriage. It was the right of her father, brother, cousin or any other male guardian to give her in marriage, whether she was old or young, widow or virgin to whomsoever he chose. Her consent in marriage was not required.

Polygamy was prevalent, and there was no restriction as to the number of wives one could have. Along with the formal marriage, group marriage, flag marriage, prostitution, marriage by barter and temporary marriage (‘*muta’*) were in vogue. In regular marriage, dower formed a part of the marriage contract. In some cases the guardians of the girls used to take the dower for themselves. Imputation of unchastity used to deprive a woman of her dower. Husband's power as regards divorce was unrestricted. He could divorce his wife as many times as she liked and could contract fresh alliance of marriage with her every time. Even on pronouncement of divorce, it depended on his discretion whether the marriage was dissolved or not. 6

The position of widows was also miserable. It often happened on the death of a man leaving widows that his son or heir would immediately cast a shroud of cloth on each of the widows (except natural mother) purporting to annex them to himself. In case the widow escaped, her dower was denied. This caused difficulty for her sustenance, as she had no right to inheritance. In short, woman was treated unfavourably all over the world before the advent of Prophet Muhammad. Almost all the social laws were against her.

5. Supra note, 1, p.137.
Ameer Ali beautifully depicts the reforms introduced by the Prophet who brought about complete change in the position of women. The improvement was so vast and striking that their position became unique as regards their legal status and far superior to any other legal system of the world. The Qur'an as a first step categorically warned against burying the female children alive and promised great reward for their proper upbringing. The Prophet reformed the marriage system. He strictly abrogated the last three forms of marriage. Prostitution was abolished. Temporary marriage (muta) was forbidden after the tenth year of Hijra. Polygamy was restrained by a Qur'anic injunction limiting the number of wives upto four at a time with a note of caution, "If you (husband) cannot deal equitably or justly with all, you shall marry only one", a condition which is practically impossible to comply with. Ill-treatment of wife is strictly prohibited. And where she is habitually ill-treated, she has the right of obtaining a divorce. Wilson opines, "According to the special needs of his time and country, Prophet was a very earnest champion of woman's rights."

As long as a woman is minor, she remains under the control and care of her parents. But on attainment of puberty, the law vests in her all the rights and privileges, as an independent human being. She is entitled to share of inheritance of her parents along with her brother. Though the distinction is founded on a just comprehension of relative circumstances and position of the two, on her marriage her individuality is not lost, and she remains a distinct member of the society. Her existence or personality is not merged into that of her husband. The contract of marriage gives no power over her person beyond what the law defines and none whatever upon her goods and property. Her property remains hers in her absolute individual right. The Doctrine of coverture is not recognised in Islam. She can sue and be sued. After she has passed from her father's house into her husband's home, she continues to exercise all the rights and privileges.

8. Qur'an : IV :3
which the law allows. She can alienate or transfer her property in any way she pleases without any extraneous control of her husband. Her earnings acquired by her personal exertions cannot be touched by her husband. She enjoys this unique position and legal status by authority of the Book of God.

It was the Prophet of Islam who raised the woman from disgrace and shame to the place of honour and dignity in the society. He told the father that the birth of a daughter did not bring him any shame. Bringing her up and educating her was rather a means of his salvation.  

1. "The man who brought up two daughters, so that they attained maturity, will appear at my side on the Day of Judgement as are my two adjacent fingers".  

2. "A man of whom only daughters are born, and he brings them up properly, the same daughters will become a covering for him against Hell".  

3. "The best blessings among the blessings of the world to a man is a virtuous wife".

4. "Two things in the world please me the most; the woman and the perfume; and in salat the solace of my eyes".


11. Muslim.

12. Muslim.


5. “Nothing among the choicest blessings of this world is better than a virtuous wife”. 15

The Prophet of Islam taught the son that the one who most deserves his respect, veneration and kind treatment after Allah and His Prophet, was his mother:

1. “A man asked, ‘O Prophet of Allah, who deserves to be treated well by me most of all?’ Prophet said, ‘your mother’. He asked, ‘who then?’ Prophet said, ‘your mother’. He asked, ‘who then?’ Prophet said, ‘then your father’” 16

2. “Allah has forbidden you to disobey your mothers and deprive them of their right.” 17

Again, it was the Prophet who pointed out that woman is by nature emotional and sensitive and inclined to extremes. She has been created by Allah with that nature and this is her merit, not her demerit. This trait of her character can be usefully employed in the service of humanity. But if man tried to straighten and harden her like himself he would break her instead:

“The woman is like a rib. If you try to straighten her, you would break her. But if you employ usefully you will benefit

15. Ibn-i-majah.
17. Ibid.
from her inspite of her crookedness". 18

Likewise, the Prophet of Islam was the first and indeed the last man who not only changed the mentality of the man about woman but also of the woman themselves, and created the type of mentality based not on emotions but on real knowledge and reason. Then he did not rest content with informing the people spiritually, but also made arrangements to safeguard by law the right of woman against the encroachment of man.

Ideal of sex-equality in Islam can be well gauged from the following verses of the Holy Qur'an:

(1). "O, People! be careful of (your duty to) your Lord, who created you from a single being and created its mate of the same (kind) and spread from these two many men and women "19

(2) "They are an apparel for you and you are an apparel for them". 20

(3). "Man shall have the benefit of what they achieve and acquire and woman shall have the benefit of that which they similarly achieve and acquire.
And whoever does good deeds, whether male or female, and he or she is a believer, these shall enter the garden and they shall not be dealt with a jot unjustly ". 20A

19. Qur'an, IV:1; also VII : 189
20A. Qur'an, IV:124.
(4). "And as for the believing men and believing women, they are guardians of each other; they enjoin good and forbid evil and keep up prayer and pay the poor tax and obey Allah and His apostle; (as for) these, Allah will show mercy to them, surely Allah is Mighty, wise." 21

(5). "And one of His signs is that He created mates for you from yourselves, so that you may find quiet of mind in them and He put between you love and compassion." 22

(6). Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they support them from their means. 23

(7). "And they (women) have rights similar to those against them in a just manner and the men are a degree above them". 24

These verses reflect the Qur'anic attitude towards sexes. Each sex is charged with an independent mission for preservation and advancement of the human race. Within the limit of their special mission both men and women have different functions and consequently different rights and responsibilities. In order to effectuate their specific role in society, Islam does not admit of "colourless equality" which stands out to be denial of real equality. From a perusal of the verses cited above it is also clear that the

21. Qur'an IX: 71
23. Qur'an, IV: 34.
Qur'an first sets forth a general doctrine of the sex equality and then qualifies and defines it with the assertion that this is not a bald and undifferentiated equality but one involving special rights and duties both for men and women, within the confines of capabilities specially attributed to each of the sexes.  

To reach her present stage the Western woman had to swim through troubled waters and there were national revolutions and reforms to change her fate-lines. Plato did concede them the equal status in his "Republic". But it is almost a lone example. He was among the philosophers who came first to accord women an equal place with men in sharp contrast to Aristotle and Rousseau who held completely different attitude to women. As ardent champion of equality, Rousseau was uncharitable, when it came to women. Aristotle based his theories of slavery and subservience of women on alleged natural difference. Among English think-tanks John Stuart Mill was the real advocate of women's right and their cause. His ideas stand out in contrast to his predecessors and contemporaries. One among such was Jeremy Bentham, the eminent utilitarian who would not accord women the equality. In the domain of socialist thought the institution of private property was denounced as it was, according to them, the root cause of relegating women to a secondary position.

The perennial subjugation of women accounts for the growth of feminist movement in the West which had its sway in 1940's and 1970's. As a result the policies and politics of Britain and the United States were adequately affected. Both in Britain and in America the controversy centres round the question as to whether women were "persons" or "citizens". This question has intrigued the judiciary in the West for long and the decisions given till recently were greatly male chauvinistic or protectionist. Women for quite some time were not included in the term "person". Only in 1929 in Britain the controversy ended in women's favour. And from America, as late as 1971, cases of such.

nature have kept coming in. 27

The position of the modern woman so enviable is a creature of industrial revolution, forced economic conditions, and shortage of man-power during wars which compelled her to stand up and fight against the challenge of time. 28 After pointing out that although the liberty of women was talked about during the French Revolution, without there being any practical change in their position, Will Durant remarks, "Until 1900 or so a woman had hardly any rights which a man was legally bound to respect". 29 Writing about the causes for a change in the status of women in the twentieth century he said,

"The emancipation of women was an incident of the Industrial Revolution. They (women) were cheaper labour than men. The employer preferred them as employees to the more costly and rebellious males. A century ago, in England, men found it hard to get work, but placards invited them to send their wives and children to the factory gate". 30 Mary R. Beard, an American writer has summed up three divergent viewpoints, namely, democratic, communist and fascist, on the subject of women's place in society. According to her, democratic, communist and fascist viewpoints about the rights of women and their place in the society were in part moulded by certain historical conditions and in part by political or military expediency designed to secure a larger following by enlisting support of women. The history of women's emancipation in France, England, America, Germany, Spain, Italy and Russia all lend support to the above view. 31

In this connection Murtada Mutahhari, observes that the steps that Islam took with respect to the rights of women are, without doubt, basically different in two ways from what is going on in the West. First, in the area of the psychologies of man and woman, Islam has accomplished a miracle, and secondly, that despite the fact that Islam ac-

30. Ibid.
quainted woman with her human rights, gave her individuality, freedom and independence, it never induced her to revolt and mutiny against, or be cynical towards the male sex. The Islamic women's movement was a 'white' movement -- a pure movement based on the fundamental nature of woman, and not allied to some particular man-made ideology. Daughter's respect for their fathers, and wives' respect for their husbands were not done away with. The foundations of family life were not wrecked. It did not make women despise having husbands, being mothers and bringing up children. The Islamic teachings on this subject, therefore, spring from the ultimate facts of human nature in its local content. Military necessity, political expediency or merely blind revolt against the past did not in any way affect Islam's solution of the sex problem.

II

In India, as already observed, the status of women suffered a socio-cultural setback resulting gradually in loss of their freedom and decline in their education. This caused erosion in their personality and lowering their status. Evils like child marriage, polygamy, female infanticide, suttee and exclusion of women from succession to property cropped up.

Social inhibition and discriminatory practices continued during the British Raj. However nineteenth century saw social reform movement and considerable awakening against social evils. With the intensification of freedom movement, the social scenario

started changing. The national celebrities who were also the champion of women's equality motivated the women folk to get into the mainstream of national life. The period of British subjugation turned out to be an era of social reform. Multitudes of woman organisations sprang up to enhance women's cause through education and employment opportunity.

The framers of the Indian Constitution ushered in a new era for the Indian women who were accorded an equal status with men and a place of honour and dignity in the society. The Constitution envisaged the ideal of equality in its preamble which was elaborated in several provisions of its parts dealing with fundamental rights, directive principles of state policy and fundamental duties. The fundamental law also prohibits discrimination on the ground of sex. It enables the states to make special provisions beneficial to women. The Constitution also casts on every citizen the fundamental duty to renounce practices derogatory to the dignity of women.

In keeping with the letter and spirit of the Constitution, the legislations, that followed, comprised, *inter alia*, some codified personal laws of Hindu community. The sanctity and inviolability of the institution of marriage had degenerated into the instruments of women's enslavement and humiliation. Their status was sought to be restored in mid-fifties by introducing, through enactments, monogamy, eligibility of daughter, widow and mother to inherit property along with son, requirement of the consent of wife for adoption of a child by a married man, eligibility of a woman in child adoption, eligibility of a wife living separately to claim maintenance, and entitlement of a woman to appoint a guardian at will. On the procedural side, the establishment of family courts has

34. See Articles 14, 15(1) (2), 16(2), 15(3) and 51A(e).
facilitated speedy disposal of cases. And the appointment of women as judges has brightened the prospect of gender justice.

Thus in the area of family laws the Hindu law was given a sweeping face-lift in mid-fifties. The Parsi law has been amended recently in 1988 and has been brought almost at par with the Special Marriage Act, 1954.

The law of divorce of the Christians is still based on the English statute of 1857. We find a very outmoded law of divorce for the Christians. A few years ago an attempt was made to re-enact and consolidate the Christian family laws, but the move was strongly opposed by the orthodox bishops and was, therefore, dropped. Thus Christian divorce laws still remain extremely uncharitable to the Christian wives. Time and again pleas were made for its reform which had gone unheeded so far.

"As regards our Muslim sisters", observes V.R. Krishna Iyer, "almost all over the Islamic world, including Pakistan, the winds of change have wafted away many discriminatory features. Tunisia, like Soviet Islamic Republics has monogamy. Pakistan itself has curbed male polygamy.....Minimal legislative alteration apart, the lot of our Muslim sisters in India leaves much to be desired. The parties in power or the intellectuals in that minority community have not been catalysts of change in this area. Nor has the judiciary, ... cared for imperative humanism. ...The legislatures too have failed woman-kind. The masculine complex in our laws need review and rectification. The inequitious inequalities in law must go. ...politics must not invade the field but leave other forces to operate. Humanism must be the basis. ... The Prophet of Islam was so humane that his law leads itself to gender justice if insightfully interpreted. ..."

During the course of some of its judgements the judiciary has brought to limelight certain progressive features of the Muslim personal law. "Since infallibility is not an attribute of the judiciary, the view has been ventured by Muslim jurists that the Indo-

Anglican judicial exposition of the Islamic law of divorce has not exactly been just to the Holy Prophet or the Holy Book. ... The view that the Muslim husband enjoys an arbitrary unilateral power to inflict instant divorce does not accord with Islamic injunctions. ... Indeed a deeper study of the subject discloses a surprisingly rational, realistic and modern law of divorce. ...”

In the same breath one Allahabad High Court ruling emphasised the “better not” advice of the Qur’an which qualified the permission to polygamy given by it.

A few years later, Justice V. Khalid of the Kerala High Court has in one of his judgments explained certain evils of the traditional Muslim personal law as applicable in our country. Realizing that it was his duty “to alert public opinion towards a painful aspect” of the traditional law, the Justice observed:

”Should Muslim wives suffer this tyranny for all times? Should their personal law remain so cruel towards these unfortunate wives? Can it not be amended suitably to alleviate their suffering? My judicial conscience is disturbed at this monstrosity. ...”

In the post - Shah Bano period, the general criticisms against the Muslim personal laws assumed a political overtone with far reaching consequences. Muslim personal laws began to be condemned outright by lawmen and lay-men alike as according no status to Muslim women and no remedies to wives in the matrimonial realm. It came to be denounced as too archaic to be continued any more in the modern civilised society. It began to be viewed that among the existing family laws the Muslims’ is the most oppressive for wives and be rather replaced by another suitable code, (say, like the

Swiss Family Law Code as happened to Turky under Kemal Ataturk in the early part of this century) on the ground that it lagged far behind the personal laws of its sister communities and that it looks totally unbecoming beside them. It may be observed that when Justice Khalid came down heavily, he was referring to the Muslim divorce law alone. However, within a few years, his statement came to be indiscriminately attributed to every department of Muslim law. The rising tides of the above popular notion regarding the Muslim personal laws have prompted the researcher to proceed with the present work on “The Matrimonial Remedies Available to a Wife under the Existing Family Laws in India — A Comparative Analysis”, on the hypothesis that all existing Indian family laws as they stand today except the Muslim family laws as applied in India are rich enough to tackle the problems of their wives in the matter of matrimony and that the Shariat laws have not been followed nor practised in their true spirit in the dispensation of matrimonial remedies to the Muslim wives under Muslim law in India.

With the movement of Human Rights gathering momentum and women’s right acknowledged more and more, matrimonial remedies in wives’ context have started taking wide connotations, purport and import in nineties of this century.44 The concept is

44. Article 16 of the Universal Declaration of Human Rights, 1948, says:

“Men and women ... have the right to marry and found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution”.

According to Article 23(4) of the International Covenant on Civil and Political Rights, 1966, “State parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. Article 16(D)(C) of the Convention on the Elimination of All Forms of Discrimination Against Women in all matters relating to marriage and family relations in particular shall ensure on a basis of reality of men and women ...the same rights and responsibilities during marriage and at its dissolution ...”

In 1965 the Commission on the Status of Women and the Economic and Social Council of the United Nations adopted resolutions recommending “that Governments of member states take
no longer static. It has taken dynamic look. It includes both material and spiritual aspects.

The basis of matrimonial remedy is the theory that one spouse has some rights and duties towards other spouse. It becomes more pronounced when marriage as an institution assumes character of a contract. The object of the court in deciding matrimonial cases is that the innocent spouse should be given protection. The reliefs of matrimonial remedy are not meant to punish the offenders. Although the concept of matrimonial relief is dynamic with its scope expanding in keeping with the spirit of time, such relief is generally of two types, the direct or primary reliefs and indirect or ancillary reliefs. Restitution of conjugal rights, judicial separation, nullity, annulment of marriage, divorce, separate residence and maintenance may fall within the domain of first category while interim maintenance (i.e. maintenance pendente lite), permanent alimony, right of custody of the children, right of the destitute spouse to be provided with financial succour and wife's right to matrimonial property on the dissolution of marriage may be termed as ancillary or indirect relief. These apart, from the procedural side, Family Court, too, comes up as a means of providing relief. This is the confines of our present study.

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all possible measures to ensure equality of rights between men and women in the event of dissolution of marriage, annulment of marriage or judicial separation; and that in order to ensure this equality inter alia, “a divorce or judicial separation shall be granted only by competent judicial authority and shall be recorded” and both spouses shall have the same rights and shall have the same legal grounds and legal defences in proceedings for divorce, annulment of marriage and judicial separation.”

[cp. XIX (a), (h), (i) and XX(c) of UIDHR, Serial No. 84, First Indian Edition, January 1990, LF Trust, Madras-600012.]
It must go on record in this connection that some of the authors have not considered the inclusion of matrimonial property and custody of children within the ambit of their studies on matrimonial remedies. However, the present researcher feels that their inclusion is necessary in view of the dynamic trends of thought of the day that the property forms a vital element in the dimension of human personality and that the children are rated at par with property in the life of wife, particularly when she is estranged. 45

If we look at the title of the topic, "Matrimonial Remedies Available to a Wife under the Existing Family Laws in India — A Comparative Analysis", we have the following information from the standard dictionaries regarding some of the key-words comprising it:

'Matrimony' : 2. "State of being husband and wife"
3. "Married life" 46
'Remedy' : "a legal means by which violation of a right is prevented or compensated for" 47

'Exist'(-ing) : 1. "to have actual or being whether material or spiritual" 48
2. "have an actual being or presence" 49

47. id. at 631.
'Family Law': "The body of Law relating to the organisation of the family and the legal relations of its members. It comprises the law of marriage, its contracting and dissolution, the relations of parents and children, guardianship and rights in property as affected by dissolution of marriage, death and rights of children" 50

Considering from the above view points, the present attempt includes, in the main, the following laws and enactments for the specific purpose of our study:

2. The Muslim Personal Law (Shariat) Application Act, 1937.
5. The Special Marriage Act, 1954.
7. The Dissolution of Muslim Marriages Act, 1939.
9. The Indian Divorce Act, 1869.

15. The Dowry Prohibition Act, 1961 (as amended in 1984)

Obviously the study extends over varieties of laws and enactments, among religious and secular, substantive and procedural, codified and uncodified,—directly and indirectly connected with the remedies extended to the wives. In fact, these apart, there are a few more laws and enactments dealing with matrimonial remedies. Only laws with wider scope of application have been considered. Those with limited scope have not been included.

The ambit of investigation is confined to an analysis of the landmark judicial pronouncements of the Privy Council, the Federal Court, the Supreme Court, and the High Courts available in the leading reports in the area of matrimonial remedies extended to women in particular. Special attention has been paid to examine if legislative or social purposes were fulfilled. Old laws are discussed only as a bare introduction and to serve as backdrops. A detailed enquiry has been made of the character, object and the effect of each remedy. A threadbare and meticulous scrutiny has been made of the various grounds allowed by the law for obtaining the remedy.

Out of the mass case-laws available, the cases picked up for the present enquiry are only those which in the assessment of the researcher are 'leading' or can be regarded as representative character. 'Leading' reports in the main have been used as a tool of the present research. Narration of the facts of the cases are deliberately avoided. The ratio decidenidis are relied upon for the purpose of investigation.

Any study on a particular subject cannot be carried in isolation. To have an overall
view a comparative study is necessary. The study will, therefore, be comparative in nature comparing the various personal laws in force. The efforts are supplemented by inputs like, case laws apart, Recommendations of the Law Commission, the Legislative Proposals for a Uniform Civil Code, the Report prepared by Centre for Women’s Developments Studies (under the National Specialised Agencies and Women’s Equality, Law Commission of India), and the working papers of National Conventions on Uniform Civil Code for All Indians. Such analytical approach on comparative footing will help conscientising those who are involved in the contemplation of more refined and cogent model of uniform civil code to be introduced at the appropriate stage of development in our national life.

A comparative work on matrimonial remedies of wives of all the four Indian communities, namely, Hindus, Muslims, Christians and Parsis who virtually form the entire nation, has not been attempted so far. Raj Kumari Agrawala has a work on matrimonial remedies under Hindu law before the 1976 amendment of the Hindu Marriage Act and M.A. Qureshi on marriage and matrimonial remedies, treated generally. So the present study covers the wider-most perspective of Indian family law regime in the matter of matrimonial remedies so far as the wives are concerned.

In the area of Muslim law concerning the study special care has been taken to analyse the interaction of Islamic matrimonial law with local social forces. To ascertain the nature and status of the remedies, relevant provisions of the Holy Qur’an, authentic commentaries, relevant Hadith literature, fatwa and opinion of classical jurists and scholars, relevant Indian legislation and landmark judicial pronouncement since 1867 have been perused. At the same time, to ensure the contribution, deviation, distortion and innovation by judiciary the most faithful English translations of original sources of Islamic jurisprudence have been consulted throughout the study as a touch-stone.


52. Mohammed A. Qureshi: *Marriage and Matrimonial Remedies* [Delhi, 1978].
Since the Muslims in India are governed by their personal laws allegedly based on Shariat and other laws of the land advocated to be secular in content and concept, the effectiveness of matrimonial remedies can be determined if combined effect of both are looked into. A sincere attempt has been made to propel our study to this direction.

In the estimation of the researcher this study would be useful to reformers, legislators, judicial institution who are interested in the welfare and betterment of women folk in general and Muslim women in particular. In a word the study could inspire all those who genuinely devote themselves to enhancing the status of women. It may provide them with insight and practical guidelines for initiating reforms. Often references have been made to the legislative and judicial development of Pakistan, Bangladesh, Malaysia and Arab countries like Egypt, etc. among heart-throbs of Islamic law and culture, in order to project the modernisation drive launched therein in the area of family laws. This may serve as an eye-opener for a section of our citizenry who react to the slightest mention of reform which is indeed overdue in certain areas of family law regime.

In view of the source materials relied upon and the methodology adopted, it may be placed in the category of the doctrinal research.

Introduction apart, the total attempt in the shape of the present work has been divided into four parts, namely, institution of marriage, institution of divorce, institution of maintenance and the institution of child custody.

The modern view of man-woman relationship in conjugal life is that man seeks union with woman, not to enslave her. Man is incomplete without wife, as he alone cannot form family which is the basic institution of society. As one of the parties to marriage, her choice should be as free and independent as her husband. They should enjoy and shoulder equal amount of right and responsibility as a concomitant of marriage. It becomes legally bound when the mechanism of marriage partakes in the trait of
civil contract preparing a ground for enforcement of relief and remedies. It is for this specific purpose that the nature of marriage under all four systems has been looked into. In this connection the scope of marriage institution in all systems under study and the efficacies of various mechanisms seeking to perpetuate the marital happiness of the spouse have been discussed in Part I of this study. Attempts have also been made to probe into the (1) changing facets of marriage and the laws relating to (2) marriage-age, (3) polygamy, (4) restitution of conjugal rights and (5) judicial separation under separate chapters of this part. Judicial separation has been incorporated in this part in view of the fact that it is a desperate attempt to preserve one's marriage-tie.

A detailed treatment has been given under the caption, Institution of Divorce which constitutes Part II of our study, suitably divided into chapters : (1) the spirit of divorce under the Indian family laws in general and (2) the grounds of divorce. The former chapter, again, runs into five distinct sections of which four sections deal separately with the principles of divorce as delineated under the Hindu, Muslim, Christian and Parsi laws. A separate individual section under this chapter has been devoted to Family Court as a new approach to broken homes. The latter chapter carries the various grounds of divorce splitting itself into a few separate sections.

The Institution of Maintenance constitutes Part III of our study with three chapters being devoted to (1) maintenance pendente lite, (2) maintenance of wife under different personal laws and (3) maintenance vis-a-vis property settled upon wife, respectively.

Part IV projects the Institutions of Child custody, an incidental problem of family life in the wake of break down of marriage.

In CONCLUSION the study is rounded off with a note of overall re-evaluation of wife's remedies and scope for reform and interaction.