Paper-7 Module-23

Women and Law Relating to Matrimonial Reliefs

(A) Personal Details

Role	Name	Affiliation
Principal Investigator	Prof. Sumita Parmar	Allahabad University, Allahabad
Paper Coordinator	Prof. Kiran Gupta & Dr.Vageshwari Deswal	Faculty of Law Delhi University Faculty of Law, DU.
Content Writer/Author (CW)	Prof. Kiran Gupta	Faculty of Law Delhi University
Content Reviewer (CR)	Dr.Vageshwari Deswal	Faculty of Law, DU.
Language Editor (LE)	Prof. Sumita Parmar	Allahabad University

(B) Description of Module

Subject Name	Women's Studies
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Pre-requisites	None
Objectives	1. To study various matrimonial remedies available to a women under the personal laws. 2. To highlight modern changes in the ancient practices pertaining to divorce among various religious group in India.
Keywords	Annulment of marriage, Restitution of Conjugal Rights, Judicial separation, Dissolution of marriage, Extrajudicial divorce, Khula, mubarat, Reasonable cause, Cruelty, Desertion, Adultery, Conversion, Mutual Consent, Irretrievable breakdown of marriage.

Women and Law Relating to Matrimonial Reliefs

Introduction

Marriage is seen as an institution of two people coming together under the promise of spending a life time with each other. Every religion firmly believes that a marriage is a permanent union of man and woman. However, with a view to provide relief to a spouse in distress, the law in almost all the countries of the world has provided certain matrimonial remedies. The statutory law revolves around four basic arenas of matrimonial relief – Annulment of marriage, Restitution of Conjugal Rights, Judicial Separation, and Divorce. The first three were well established principles of matrimonial law even prior to the introduction of a right to divorce. These became stipulated rights under personal laws.

The term annulment refers to the process of declaring a marriage which suffers from a legal defect as null and void. The legal defects are of two categories resulting in void or voidable marriages. A void marriage does not confer any status, rights or obligation upon the spouses. While a marriage can be declared as null and void through a judicial decree, even without such declaration, marriage is deemed to be void and the parties cannot claim any rights against each other. A voidable marriage remains valid until it is declared as null and void through a judicial degree.

Restitution of conjugal rights refers to the right of one spouse to the companionship of the other. Initially only husbands could avail this remedy. This remedy was introduced into the Indian Family Law through judicial decisions. Later it was incorporated into various statutes and both the husband and wife were awarded the right to enforce conjugality upon the other.

A decree of judicial separation awards the spouse claiming relief the right to live separately from the other spouse while keeping the marital bond intact. This was more relevant for women as they could leave their husband's home and live separately and also claim maintenance from their husbands. The decree does not result in dissolution of the marriage and gives no right to the parties to remarry.

The decree of divorce dissolves the matrimonial tie and the spouses cease to be husband and wife. They are now free to marry again. After divorce, the parties do not have the right to succeed to each other’s property.

Ancillary reliefs such as alimony, maintenance, custody of children, and division of property can be

claimed along with any of the four matrimonial remedies mentioned above.

Nullity of Marriage

Marriage confers the status of husband and wife upon a man and woman thereby providing legitimacy to the sexual relationship and legitimacy to the children. As a consequence of this relationship certain mutual rights and obligations accrue. The creation of these rights presupposes the capacity of the parties to enter into a valid marriage. The concept of nullity is linked to the capacity of an individual to enter into a valid marriage. If the person lacks the capacity to enter into a valid marriage, the marriage is void or voidable. The capacities and condition for a valid marriage under the personal laws has already been discussed in the previous module.

Restitution of Conjugal Rights

Both husband and wife have a right and duty to society. This is the unique feature of a conjugal relationship. In other relationships, however close, say parents and children, brothers and brothers, sisters and sisters, or brothers and sisters no such right to society exists. On the other hand husband and wife have a duty not to withdraw from the society of each other without a reasonable cause. If one of them withdraws from the society of the other, the aggrieved spouse has a legal right to claim a decree of restitution of conjugal rights against the other spouse. However, the spouse who has forsaken his or her spouse cannot ask for the relief of restitution of conjugal rights. This is the only positive matrimonial relief aiming at affirming and preserving marriage.

The remedy of restitution of conjugal rights is available to members of all communities in India (Section 9 of Hindu Marriage Act, Section 32 and 33 of Divorce Act, 1869, Section 36 of Parsi Marriage and Divorce Act, 1936, Section 22 of Special Marriage Act, 1954). Before the enactment of these statutes, this remedy was granted to Hindus as well as Muslims by the judiciary under the general civil laws of the land (*Moonshiee Buzloor Ruheem* v. *Shumsoonnissa Begum* (1867)11MIA551; *DadajiBhikaji* v. *Rukma Bai* (1886) 10 Bom 301). Though initially only husbands availed of this remedy, later it was also used by deserted wives to restore their marriages. Section 9 of the Hindu Marriage Act led down four conditions for decreeing the grant of this relief:

1. The respondent has withdrawn from the society of the petitioner.

2. The withdrawal by the respondent is without a reasonable excuse.

3. The court is satisfied that the statements made in the petition are true.

4. There is no legal ground for refusing to grant application.

Withdrawal from society may take place even when the parties are living under the same roof. It is withdrawal from a state of affairs i.e. conjugality and not from a place. When the husband himself is instrumental in driving the wife out of her matrimonial home, it cannot be said that the wife has withdrawn from the society of her husband. The defence available to the remedy of restitution is the presence of reasonable excuse for withdrawal. If the cause or excuse for withdrawal is reasonable, the court will not award a decree of restitution to the petitioner. Though technically both husband and wife are able to use this remedy, studies reveal that far more husbands than wives file for this remedy. When a wife files for maintenance, as a retaliatory measure, husbands file a petition for restitution. Very often this remedy is used as a legal ploy to defeat the wife's claim rather than as a genuine intention of reconciliation. Section 13(1-A) of the Hindu Marriage Act made non-restoration of conjugal relations for one year or more after the decree of restitution a ground for divorce available to both the parties. Husbands are now using this restitution decree as a stepping stone to get a decree of divorce. This resulted in challenging the constitutional validity of Section 9. The Supreme Court in *Saroj Rani* v. *Sudarshan Kumar* AIR 1984 SC562, upheld the constitutional validity of this provision on the ground that it is a benevolent provision which would facilitate reconciliation and save the marriage. When the husband himself obstructed the execution of the decree of restitution of conjugal rights the wife was granted a decree for divorce. In *Prabhat Kumar Chakraborty* v. *Papiya Chakraborty* 2004 MLR576 Cal, it was held that when the husband himself prevented the wife to comply with a decree of restitution , the wife was entitled to a decree of divorce under section 13(1-A).

Does the wife's refusal to give up her job at the instance of the husband, constitutes withdrawal from the society of the husband without a reasonable cause? The views of the Punjab and Haryana, Andhra Pradesh and Madhya Pradesh High Courts is that a wife cannot choose any job contrary to the wishes of her husband. If she is already in a job, she must abandon it whenever the husband asks her to do so and must go to live with him at the place of his liking. However, the Punjab and Haryana High Court in *Kailashwati* v. *Ayodhya Prakash* (1977) PLR 216, makes it clear that this right of the husband is subject to two qualifications, firstly the husband must actually establish a matrimonial home wherein he can maintain his wife in dignified comfort in accordance with the means and standards of living of the parties. Secondly, it must be crystal clear that the husband whilst claiming the society of his wife in the matrimonial home should be acting in good faith and not merely to spite his wife. The views of

some other High Court is different on this point and they have taken a view that a wife gainfully employed at a place away from the husband's home, who has no intention of breaking off from him and was willing to visit him ocassionally, could not be compelled to give her job by means of a decree of restitution of conjugal rights (*Shanti Nigam* v. *Ramesh Nigam* (1977) ALJ 67; *Mirchomal* v. *Devi Bai* AIR 1977 Raj 113). In *Swaraj Garg* v. *K.M Garg* AIR 1978 Del 296 it was held by the Delhi High Court that a husband could force the wife to leave a government job while claiming a decree of restitution. The court was of opinion that the working wives who are better situated than their husbands have the right to choose the place of the matrimonial home.

The ojections are being raised in certain groups that section 9 of the Hindu Marriage Act, 1955 serves no useful purpose in today's society as it has more been misused than used. It must be noted that Section 9 is only a codification of the pre existing law. Rule 32 of Order 21 of the Code of Civil Procedure 1908 deals with the decree for specific performance of restitution of conjugal rights, willful disobedience of which might be enforced by attachment of property. The section serves the social purpose as an aid to the prevention of a breakup of a marriage. The courts can prevent the misuse of this remedy by carefully examining the genuineness of the petition filed by the husband. There are sufficient safeguards in Section 9 itself to prevent it from being a tyranny. The court can only decree this relief if there is no just reason for not passing the decree of restitution of conjugal rights to offer inducement for the husband or wife to live together in order to give them an oppurtunity to settle the matter amicably (*Saroj Rani* v. *Sudarshan Kumar* AIR 1984 SC1562).

Judicial Separation

The decree of judicial separation entitles a spouse to sever conjugal relations with the other without breaking the matrimonial tie. For women who are subjected to cruelty, the right to judicial separation became an important remedy to obtain the right of separate residence, maintenance and custody of the children. This remedy is viewed as an intermediate measure for spouses who are facing matrimonial conflict but are not yet ready for divorce. All personal law statutes contain this remedy (Hindu Marriage Act Section 10, Special Marriage Act Section 23, Divorce Act Section 22, Parsi Marriage and Divorce Act Section 32 and 34). Section 13(1-A) of the Hindu Marriage Act provides non-restoration of conjugal relations for one year or more after a decree of judicial separation as a ground for divorce available to both the parties, merely on the ground that they have not been able to resume co-habitation.

In the HMA, 1955 the grounds for claiming decree for judicial separation were specified in Section 10, which were different from the grounds prescribed for divorce under Section 13 of the Act. By the

Matrimonial Laws (Amendment) Act, 1976 the grounds specified in Section 10 were merged with the grounds of divorce under Section 13. Now the parties are free to claim either judicial separation or divorce on the same ground. Section 13A of the Act which deals with alternate relief in divorce proceedings permits the court to grant a decree of judicial separation where a petition is filed for decree of divorce if the court thinks it fit.

Divorce

In India in all uncodifed personal laws, except Muslim law, the marital bond is treated as eternal and unbreakable. Hindu law, Christian law, even Parsi law does not provide for dissolution of marriage. It is only under the Muslim law that a marriage is treated as a dissoluble union. With the passage of time, it was realised that sometime it is very difficult to adhere to matrimony. This resulted in the enactment of various statutory personal laws, permitting dissolution of marriage by a decree of a competent court.

Theories of divorce

Under modern times, the concept of divorce can be categorized under mainly three theories.

1. **Fault theory**: When the right to divorce or the right to dissolve the marital bond was first introduced into the statutory matrimonial laws, it was based on the guilt/fault/disability theory. Only if one spouse was guilty of a matrimonial misconduct did the other spouse have the right to dissolve the marriage. It was assumed that the pupose of the right to dissolve the marriage and set free the innocent spouse was to punish the party that had committed the matrimonial offence by depriving him or her of conjugal access to other. The basic ingredients of a fault ground divorce are:

   i) There must exist a guilty party or a party who is responsible for having committed one of the specified matrimonial offences.
   ii) There must also exist an innocent party who has suffered due to the misconduct of the guilty party.
   iii) The innocent party should have no role in the cause of the misconduct i.e. there must be no collusion.

2. **Mutual consent theory**: Marriages very often fail not because of the fault or guilt of one of the spouses but because the spouses are not compatible in their temperaments. Despite their best efforts they are unable to live together as husband and wife. To remedy the problem faced by

such couples, the notion of the consent divorce came to be included in the matrimonial laws. The purpose was to enable couples to adopt honest means to achieve legitimate ends.

3. **Irretrievable Breakdown theory**: This theory is based on the fact that irrespective of the fault of either or both parties, a marriage can be terminated if it is shown that nothing survives in the relationship. Borrowing the phrase used by some judges, a marriage which is reduced to dead wood can be dissolved. The basic premise of this theory is that if a mariage has broken down without any possibility of repair (or irretrievably), it should be dissolved without ascertaining the fault of either party.

Hindu law of divorce

Under the Shastric Hindu law the marital bond was eternal and unbreakable. Divorce was not provided for, however painful cohabitation might be. In some non-dwija communities, the custom of divorce obtained and the courts enforced these customs of divorce providing for dissolution of mariage without the intervention of courts (*Shivalingiah* v. *Chowdamma* AIR 1956 Mys 17).

The Hindu Marriage Act, 1955 has introduced a revolutionary change by permitting divorce to all the Hindus on certain reasonable grounds (Section 13 of HMA, 1955). This permission was given for the first time in the history of Hindu law. The Act saved also the customs and special legislation granting the dissolution of marriage before its commencement (Section 29(2)). The original provisions of the HMA, 1955 regarding divorce have been liberalized by the Mariage Laws (Amendment) Act, 1976.

The relief of divorce may be obtained in respect of any Hindu marriage whether solemnized before or after the commencement of the Act, 1955. A divorce petition has to be made to a court either by the husband or by the wife. A third person including parents or children cannot make the petition. The Act permits judicial divorce under section 13 of HMA, 1955. Section 13 has various parts namely 13(1) having clauses (i) to (vii); 13(2) having clauses (i) to (iv); 13(1-A) having clauses (i) to (ii); 13 A and 13 B.

The grounds for divorce as provided under section 13 are divided into two types:

(i) The common or general grounds which are based on guilt/fault/disability etc. on which both parties to a marriage, husband or the wife, can obtain divorce. They are eleven and are given in the subsections (1) and (1-A).

(ii) The grounds which are available to a wife exclusively in addition to the general grounds.

They are four and are mentioned in sub-section (2).

There is however, no exclusive grounds for divorce for the husband. Section 13 of the Hindu Marriage Act 1955 (Act, 1955) states the grounds and reasons for divorce which are as follows:

1. Adultery – The act of indulging in voluntary sexual intercourse outside marriage is termed as adultery. An amendment to the law in 1976 states that one single act of adultery is enough for the petitioner to get a divorce.

2. Cruelty – A spouse can file a divorce case when he/she is subjected to any kind of mental or physical cruelty. It is physical when the body is injured and mental when feelings and sentiments are wounded. The intangible acts of cruelty through mental torture are not judged on the basis of one single act but a series of incidents. For this, intention or motive is not an essential element of cruelty (*Sayal* v. *Sayal* AIR 1961 Punj. 125; *Bhagwat* v. *Bhagwat* AIR 1977 Bom 80). In modern matrimonial law, mental cruelty is a very important aspect of legal cruelty (*Dastane* v. *Dastane* AIR 1975 SC 1534; *V. Bhagat* v. *D. Bhagat* (1994) 1 SCC 337; *Samar Ghosh* v. *Jaya Ghosh* 2007 (3) SCC 253).

3. Desertion – If one of the spouses voluntarily abandons his/her partner for at least a continuous period of two years, immediately presiding the presentation of the petition, the abandoned spouse can file a divorce case on the ground of desertion. The desertion may be actual, constructive or willful neglect. Desertion requires permanent forsaking of the spouse with intention to bring cohabitation permanently to an end. It must be without reasonable cause and without the consent or against the wish of other party. A spouse who forces the other spouse to leave the house will be guilty of desertion (*ShyamChanad* v. *Janki* AIR 1966 H.P. 70).

4. Conversion – In case either of the two converts himself/herself into another religion, the other spouse may file a divorce case based on this ground. The petition can be filed only by the non-convert spouse and not by the convert spouse.

5. Incurable Unsound Mind or Mental Disorder – Mental disorder can become a ground for filing a divorce if the spouse of the petitioner suffers from incurable mental disorder and therefore cannot be expected to stay together (*RamNarayan* v. *Rameshwari* AIR 1989 SC 149).

6. Virulent and incurable Leprosy.

7. Venereal Disease – If one of the spouses is suffering from a venereal disease that is easily communicable, a divorce can be filed by the other spouse. The sexually transmitted diseases like AIDS are accounted to be venereal diseases (*Mr. X* v. *Hospital Z* AIR 1999 SC 495).

8. Renunciation – A spouse is entitled to file for a divorce if the other renounces all worldly affairs by embracing a religious order.

9. Not Heard Alive – If a person is not seen or heard to be alive by those who are expected to be 'naturally heard' of the person for a continuous period of seven years, the person is presumed to be dead. The other spouse needs to file a divorce if he/she is interested in remarriage. The basis of this ground is section 108 of the Indian Evidence Act, 1872 according to which a person not heard alive by his relations and near ones for a period of seven years is deemed to be legally dead.

10. No Resumption of cohabitation between the parties to the marriage for a period of one year or upward after the court has passed a decree of judicial separation (section 13(1-A)(i) of the Act, 1955).

11. No restitution of conjugal rights between the parties for a period of one year or upward after the court has passed a decree of restitution of conjugal rights (section 13 (1-A) (ii) of the Act, 1955).

The grounds which are available only to a wife are (section 13(2) of the Act, 1955).

1. If the husband has more than one wife married to him before the commencement of the HMA, 1955.
2. If the husband has indulged in rape, bestiality and sodomy.
3. If there is no resumption of cohabitation for one year between the parties after the passing of the decree of the maintenance in favor of the wife by the court.
4. A girl is entitled to file for a divorce if she was married before the age of fifteen and renounces the marriage before she attains eighteen years of age.

Divorce by mutual consent is addressed under S.13 B of the Act, 1955 which was added in 1976. The

petition for obtaining a divorce by mutual consent has to be presented jointly by the husband and the wife, adopting a standard format and stating therein :

1. The parties have been living separately for a period of at least one year.
2. They have not been able to live together, and
3. They have mutually agreed that marriage should be dissolved.

After 6 months from the joint petition both the parties have to make a joint motion in the court. The court will then examine the original petition and grant a decree of divorce after hearing the parties and after making such inquiries as it thinks fit, that the averments in the petition are true. In *Leela Mahadev Joshi* v. *Mahadev Sitaram Joshi* AIR 1991 Bom 105, it has been held that if the necessary ingredients are proved, then the court does not have the jurisdiction to deny the decree of divorce. In *Mitten* v. *Union of India*I (2009) DMC 93 Bom, the court held that one year of living separately is necessary for a petition under section 13B of HMA, 1955. In *Sureshta Devi* v. *Omprakash* AIR 1992 SC 1904, court emphasized that the mutual consent to dissolve the marriage must remain till the decree of the court and any party prior to the decree of the court is free to withdraw the consent. In *Anil Kumar Jain* v. *Maya Jain* (2009) 10 SCC 415, the court opined that only the Supreme Court has the power to waive six months statutory period by invoking its extraordinary power under Article 142 of the Constitution. Such power cannot be exrecised by High Courts or trial courts.

Section 14 of the HMA, 1955 prohibits filing of divorce petition within one year of marriage. It compels the newly weds to give a fair trail to their marriage. Further a person divorced under the Act, 1955 may marry at any time after the divorce decree (before 1976, there was a one year restriction), provided there is no right of appeal against the decree or if a right exists, the time for appealing has expired or the appeal has been dismissed (section 15 of the Act, 1955). Another distinctive feature of the Act, 1955 is that it ensures that precautions be taken by court before passing a decree. The court is directed to satisfy itself that the one who comes to equity must come with clean hands and there exists no bar to granting the relief claimed (section 23(1) of the Act, 1955). The Act, 1955 also entrusts courts to attempt reconciliation (section 23(2) of the Act, 1955). The duty to effect reconciliation is madatory.

Irretrievable breakdown of marrige is yet not a ground of divorce provided under the HMA, 1955, despite the recommendation of the Law Commission in its 71st and 217th Report to introduce irretrievable breakdown of marriage as a ground for divorce. In a number of judicial decisions the Supreme Court has also suggested to make this as a ground for divorce.

Muslim Law of Divorce

Islam insists upon the subsistence of a marriage and prescribes that a breach of marriage contract should be avoided. The Prophet Mohammed declared that, among the things which have been permitted by law, divorce is the most detestable. Divorce being an evil, it must be avoided as far as possible. But in some situations, this evil becomes a necessity, because when it is impossible for the parties to the marriage to carry on their union with mutual affection and love then it is better to allow them to get separated rather than compel them to live together in an atmosphere of hatred and disaffection. The basis of divorce in Islamic law is the inability of the spouses to live together rather than any specific cause (or guilt of a party) on account of which the parties cannot live together. A divorce may be either by the act of the husband or by the act of the wife or by their mutual consent. A decree of divorce from the court is not required under Muslim law. The basis for this extra judicial divorce is the irretrievable breakdown of marriage or the mutual consent of the parties.

A Muslim husband can dissolve the marriage by making a unilateral declaration of pronouncement of divorce of the wife according to the various forms recognised by the law. This is called *talaq*.

Talaq by a husband has to be clear and expressed in unequivocal words, such as “I have divorced thee” . *Talaq*, falls into two categories:

1. *Talaq-us-sunnat*, which has two forms:
    I. *ahasan* (Most approved)
    II. *hasan* (Less approved).
2. *Talaq-e-biddat* (This form of *talaq* is not recognized by Shias).

The *ahasan talaq* consists of a single pronouncement of divorce made in the period of *tuhr* (purity, between two menstruations), or at any time, if the wife is free from menstruation, followed by abstinence from sexual intercourse during the period of *iddat*. The requirement that the pronouncement be made during a period of *tuhr* applies only to oral divorce and does not apply to *talaq* in writing. Similarly, this requirement is not applicable when the wife has passed the age of menstruation or the parties have been away from each other for a long time, or when the marriage has not been consummated. The advantage of this form is that divorce can be revoked at any time before the completion of the period of iddat, thus hasty, thoughtless divorce can be prevented. The revocation may be effected expressly or impliedly. Thus, if before the completion of *iddat*, the husband resumes

cohabitation with his wife or says I have retained thee the divorce is revoked. Resumption of sexual intercourse before the completion of period of *iddat* also results in the revocation of divorce. If the talaq has not been revoked during the *iddat* period by the husband, it will result in one single *talaq*. Parties are still free to solemnize *nikah* or marriage with each other.

In *hasan talaq* the husband is required to pronounce the formula of *talaq* three time during three different *tuhrs*. If the wife has crossed the age of menstruation, the pronouncement of it may be made after the interval of at least a month between the successive pronouncements. When the third pronouncement is made, the *talaq*, becomes final and irrevocable. The significance of *hasan talaq* is that each pronoucement results in single divorce which is revocable during the *iddat* period. Only after the third pronoucement the divorce becomes irrevocable.

The *talaq-e-biddat* results in immediate irrevocable dissolution of marriage. In this talaq, three pronouncements are made in one go (triple *talaq*) either in one sentence or in three sentences signifying a clear intention to divorce a wife. In *Shamin Ara* v. *State of Uttar Pradesh* AIR 2002 SC 355, the court held that the correct law of *talaq* as ordained by the holy Quran is that *talaq* must be for a reasonable cause and be preeceded by attempts at reconcialiation between husband and wife by two arbiters- one from the wife's family and the other from the husband's; if the attempts fails, the *talaq* may be effected by a clear pronouncement of *talaq*. In *Masroor Ahmed* v. *State of NCT* 2008 (103) DRJ 137 (Del), the Delhi High Court held that a triple *talaq* even for Sunni Muslims be regarded as one revocable *talaq*, this would enable the husband to have time to think and to have ample oppurtunity to revoke the same durinng the *iddat* period. Even if the *iddat* period expires and the talaq can no longer be revoked, the estranged couple still has an opportunity to re-enter matrimony by contracting a fresh *nikah* on fresh terms of *mehr*.

Besides *talaq*, a Muslim husband can repudiate his marriage by two other modes, that are, *Ila* and *Zihar*. They are called constructive divorce. Muslim law also recognises divorce by mutual consent i.e. *Mubarat*. *Mubarat* is where both the wife and husband decide mutually to put an end to their marital tie.

Muslim law also allows divorce by the wife. *Talaaq-i-tafweez* or delegated divorce is recognized among both, the Shias and the Sunnis. The Muslim husband is free to delegate his power of pronouncing divorce to his wife or any other person. He may delegate the power absolutely or conditionally, temporarily or permanently. The power of *talaq* may be delegated to his wife also. In *Lian* if the husband levels false charges of unchastity or adultery against his wife then this amounts to character assassination and the wife has got the right to ask for divorce on these grounds (*Nurjahan*

Bibi v. *Mohd. Kazim Ali* AIR 1977 Cal 90). A Muslim wife can claim *Khula* from the husband. *Khula* is the mode of dissolution when the wife does not want to continue with the marital tie. She proposes to her husband for dissolution of marriage which is generally accompanied by her offer to give something in return. *Khula* is a divorce which proceeds from the wife which the husband cannot refuse, subject only to reasonable negotiations.

The Dissolution of Muslim Marriages Act 1939 (Act 1939), enables a Muslim woman of all sects to seek dissolution of marriage by a decree of court on any one or more of the following grounds, namely (section 2 of the Act, 1939):

1. That the whereabouts of the husband have not been known for a period of four years.
2. That the husband has neglected or has failed to provide for her maintenance for a period of two years.
3. That the husband has been sentenced to imprisonment for a period of seven years or upwards.
4. That the husband has failed to perform, without reasonable cause, his marital obligations for a period of three years.
5. That the husband was impotent at the time of the marriage and continues to be so.
6. That the husband has been insane for a period of two years or is suffering from leprosy or a virulent veneral disease.
7. That she, having been given in marriage by her father or other guardian before she attained the age of fifteen years, repudiated the marriage before attaining the age of eighteen years, provided that the marriage has not been consummated.
8. That the husband treats her with cruelty.In *Itwari* v. *Asghari* AIR 1960 All 684, the court observed that Indian law does not recognize various types of cruelty such as 'Muslim cruelty', 'Hindu cruelty' and so on, and that the test of cruelty is based on universal and humanitarian standards; that is to say, the conduct of the husband which would cause such bodily or mental pain as to endanger the wife's safety or health.

Christian law of Divorce

Marriage as per Christianity is a union of man and woman for life. As such there was no concept of

divorce in Christian law. The Divorce Act 1869 (Act 1869) for the first time granted the right for dissolution of marriage. The Act, 1869 in section 10 specified the grounds for divorce which are different for husband and wife. While for the husband adultery by the wife is a ground for divorce, simple adultery by the husband is not a ground for divorce for the wife. The Act, 1869 was drastically amended in 2001, by which, under section 10(1) ten grounds are specified which are available to both husband and wife. The grounds are almost similar to those under the Hindu Marriage Act, 1955.

The wife has been permitted to sue for divorce on additional grounds if the husband is guilty of rape, sodomy and bestiality (section 10(2) of the Act, 1869).

Section 10 A of the Act, 1869 made a provision for dissolution of marriage by mutual consent of the parties, which is similar to section 13 B of the Hindu Marriage Act, 1955.

Parsi law of divorce

The Parsi Marriage & Divorce Act, 1936 (Act, 1936) governs divorce proceedings for Parsis in India. As per this act, if consummation of marriage is impossible because of natural causes, such marriage can be declared null and void at the instance of either party (section 30 of the Act, 1936). A suit for divorce, however, may be filed on the grounds mentioned in section 32 of the Act, 1936.

The parties can remarry if no appeal is subsisting against the decree of divorce or time to file such appeal has elapsed or prior marriage has been terminated by death (section 48 of the Act, 1936). The Act, 1936 also provides divorce by mutual consent (section 32B of the Act, 1936). However the divorce by mutual consent under this Act, 1936 is different from the divorce claimed under Special Marriage Act, 1954 and the Hindu Marriage Act, 1955. The court under Act, 1936 starts proceedings immediately after receiving the application while in the other two Acts (1954 and 1955), there is a six months waiting period.

Jewish law of divorce

The Jews in India are not governed by statutory law but by their customary law. Jewish marriage is dissolved by death of either party to marriage or can be dissolved by divorce. In India, dissolution of the marriage can be done through the court on grounds of adultery or cruelty. The marriages are generally monogamous excepting in certain specific cases. Because they are a small minority, no effort has been made to codify or reform this law. Jewish law recognizes divorce by mutual agreement of the parties. According to Jewish law, the court should not interfere where both parties declare that their

mariage has failed and they want to dissolve their marriage. The Jewish law recognizes divorce on the petition of the husband and wife separately on certain grounds. The husband is entitled to divorce on the following grounds:

1. The wife's adultery, and even on strong suspicion of her having committed this crime.
2. The wife's public violation of moral decency.
3. The wife's change of religion or proved disregard of the Ritual Law in the management of the household, by which she caused him to transgress the religious percepts against his will.
4. The wife's obstinate refusal of connubial rights during a whole year.
5. The wife's unjustified refusal to follow him to another domicile.
6. The wife's insulting her father-in-law in the presence of her husband, or for insulting the husband himself.
7. Certain incurable diseases, rendering cohabitation impracticable or dangerous.

The wife is entitled to get divorce on the following grounds:

1. Loathsome chronic diseases which the husband contracted after marriage.
2. A disgusting trade, in which the husband engaged after marriage, the same being of such a nature as to render cohabitation with him intolerable.
3. Repeated ill treatment received from the husband, as for beating her, or turning her out of doors, or prohibiting her from visiting her parental home.
4. Husband's change of religion.
5. Husband's notorious dissoluteness of morals.
6. Husband's wasting his property and refusing to support her.
7. Husband having committed a crime, compelling him to flee from the country.
8. Husband's physical impotence, if admitted by him; and according to some authorities, also on account of his persistent refusal of matrimonial intercourse.

The Jewish law also recognises divorce enforced by court without even having any petition by either party.

Divorce under Special Marriage Act, 1954

The Special Marriage Act, 1954 (Act, 1954) lays down a civil ceremony for the marriage. The marriage under the Act, 1954 is essentially a civil contract. The Marriage Laws (Amendment) Act 1976, has amended the grounds for divorce under the Hindu Marriage Act, 1955 and the Act, 1954, and has brought them at par with each other. However, conversion of spouse is not a ground for divorce under the Act, 1954. Also two specific grounds have been provided for the wife alone (section 27 (1-A) of the Act, 1954). Section 27 B provides for divorce by mutual consent which is similar as the Section 13 B of the Hindu Marriage Act, 1955.