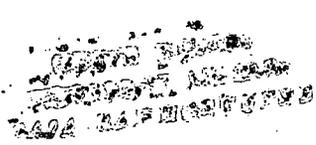


**SOCIO-LEGAL CONSEQUENCES OF DIVORCE
UNDER
HINDU MARRIAGE ACT, 1955.**

**THESIS SUBMITTED TO
THE UNIVERSITY OF NORTH BENGAL
FOR THE
DEGREE OF DOCTOR OF PHILOSOPHY**

**BY
GANGOTRI CHAKRABORTY**



**DEPARTMENT OF SOCIOLOGY AND SOCIAL ANTHROPOLOGY
FACULTY OF ARTS, COMMERCE AND LAW
UNIVERSITY OF NORTH BENGAL**

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A C K N O W L E D G E M E N T

Human beings and human relationships are a subject of both law and sociology. During the last two decades of twentieth century what has really caught and held the attention of the lawyers, jurists and sociologists alike, is the increasing incidents of termination of familial relationship, especially marriage, rather than its formation. As this alarming trend is also a matter of academic concern, the study of the socio-legal consequence of divorce under Hindu law was undertaken. While the work is not absolutely exhaustive, a wide range of field and large number^{of} cases have been covered within its scope. The idea behind the work has never been to offer a readymade solution, but based upon the findings from the analysis, some suggestions and submissions have been made.

I am deeply indebted to Dr. N.C. Chaudhury, for guiding me through the intricate avenues of this work, but for his guidance, this work would not have been possible. I convey my deep respect and sincere gratitude to him.

I do hereby record my gratitude to the authorities of the Central and Departmental libraries of the North Bengal University, Patna University, Cochin University, Benaras Hindu University, Calcutta University, Sanskrit College, Calcutta. I wish to thank the authorities of Calcutta High Court, Darjeeling District Court and Siliguri Courts. Not only have they catered to my needs but have extended help in every possible manner.

(II)

People who have granted me an interview deserve a special mention here. Those were the people who were very brave and special, for life has not been gentle with them. Those who granted an interview and allowed an entry into their private world, have helped to throw lights on new aspects hitherto undefined. Those who refused to speak confirmed through their refusal what was revealed by others. I am thankful to each and everyone of them.

My warm gratitude are due to those who accompanied me in the field while I collected data for this work.

My thanks are due to all those myriads of people who, throughout this work, have stood by me and made me smile.

North Bengal University
Rajarammohunpur
July 1992

Gangotri Chakraborty
(Gangotri Chakraborty)

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CHAPTER - I

INTRODUCTION

With the wider understanding of the sociology of law, there has been a great interest generated in the nature of dispute settlement. Lawyers, anthropologists and sociologists have made significant contribution in this field. As a result, a multidisciplinary approach has grown which is called the socio-legal studies or studies on Law and Society. This has cultivated a new learning towards law which seeks explanation, rather than justification, about the decision-making. It emphasises the process rather than the rules of the decision making. It tries to appreciate the distinctiveness of law against the background of a larger social pattern.

As a result of this approach, the divergence of legal norms and social practice has become very apparent. It has also shown that deliberate legal changes do not ordinarily produce the desired result. In actuality the effects they produce are quite unexpected ones. The effect of legal control and regulation is largely dependent not only upon the impelenting authorities but also on the consumers and users of law and their differential capabilities of using it. Law as a system of symbol is very much different from law as a system of control¹. It is here that the difference between law as it is and law as it ought to be becomes clear.

1. Marc Gallanter, Law And Society In Modern India, pp. 296-303, oxford University Press (1989)

The law is unique and majestic. It is the power of the State to control the existing political and social organisation that permits the civilisation to exist. But one can get around any law. The law can be twisted out of shape to serve a wicked civilisation. The rich can escape the law and occasionally the poor get lucky. Some lawyers treat law contemptuously. Judges, if they so desire, may sell the law, the courts may betray it, but the truth remains that there is no better instrument which works to ensure social contract between fellow human beings, and between the governed and the governors. Therefore law remains the sole instrument for social control and social change.

This work aims at investigating this relationship of law in the arena of divorce laws. It must be mentioned here that the Sastras² were only a part of the Indian laws in many matters. Indians were regulated by less formal norms known as the customary laws. Customary laws alone, however, were not sufficient and a gap was there between the sastric laws and customary laws. The need to fill the gap led to development of statutory codification.

The extension and consolidation of the modern features of a legal system is most apparent in the basic institution of the Hindu society, namely, the family. If the Constitutional principles were sincerely implemented, then India would have been in the possession of an Uniform Civil Code³. Had that been so, there would not have

2. Scriptures. Hindu Scriptures relating to law is known as Sastras or Dharmasastras.

3. The Constitution of India, Part IV, Directive Principles of State Policy, Article 44.

been any personal laws in India. However, the truth is that instead of enacting an Uniform Civil Code, different personal laws were enacted in India. To that extent the Indian laws could not regulate the Indian social scene effectively. As a result, a series of enactments took place for the Hindu Community. The enactments of the Hindu laws have brought about a lot of changes and reforms in the Sastric Hindu laws. The Sastras became the recipients of a new status known as the source of Hindu laws. The sastric notion of indissolubility of marriage stands totally abandoned. By recognising divorce, individualism was also recognised. As a result new concept of nuclear family emerged. Hithertofore the Hindus looked to the Sastras for the regulation of family relationships, but now, with the enactments under the Hindu law, they began to look towards the Parliament.

The laudable result of this development is that for the first time all the Hindus irrespective of their sects, caste, groups, class or sect began to be governed by a single set of laws, and as such they became capable of bringing changes in their social arrangements. Thus a degree of uniformity has been achieved within the Hindu Community, but unfortunately not within the Indian society.

The question now arises as to what role does the modern Hindu law play in the modern Indian legal system and to what extent it promotes changes in the social system. The precepts of the Dharmasastra is completely obliterated. While it is considered as

a source of various rules in the Hindu personal laws⁴, it is no longer a living source of Hindu law; customary components of Hindu law also form a source of Hindu laws but are no longer the living source of the present laws⁵. Now statutory law has supplanted both custom and Dharmasastra.

Unfortunately, demise of traditional laws do not mean the demise of the traditional society. Traditional notions of legality and methods of change still persists at the sub-legal level. The modern legal system tries to provide new possibilities for operating within the traditional society. A circular process is created. Official laws are used to evade traditional restrictions and yet the same laws are used to create and enforce those same very restrictions. In this manner newer social concepts like the concept of nuclear family have also emerged. The nuclear family concept is new because traditionally Hindus lived in Joint families or Hindu Undivided families. The concept of divorce is also new to the traditional Conservative Hindu beliefs as they never believed in Divorce prior to the statutory enactment. Traditional interest and groupings now

-
4. The Hindu law has its foundation in the ancient scriptures like the Srutis, Smritis, Digests and Commentaries etc. certain rules like the provision for maintenance of wife, children and parents, finds their origin in the Hindu scriptures. However, the modern developments, amendments and changes are not rooted in the scriptures but are based on the needs of the society.
 5. India is a vast country comprising of diverse communities with unique customs of their own. They also form a source of the Hindu law. The modern enactments under the Hindu law gives them the overriding importance. Like the Sastras they no longer form the source of the modern Hindu laws.

finds expression in litigations, pressure group activity and through voluntary organisations⁶.

Most lawyers are atomistic in nature. The lawyer addresses the problem in isolation with the situation of the client. There is very little planning or preventive work. The relation between the client and the lawyer tend to be episodic and thus the range of service is narrow. In this manner, to a lawyer, divorce is not a part of a system concept, but as an isolated incident. There is little specialisation or professional collaboration. They are only interested in mobilising the clientele. As a result, the events of the actual life has to be dressed to fit the notion of law and justice. There is a chasm between what goes before the court and what takes place in the real life. The consequence is the gap between the law and the society.

The social scientists of the 20th century have developed the ideas and notions of divorce which were announced long before and proposed in various forms by thinkers who lacked training, tools or the persistence to work out and arrange their ideas systematically and scientifically. Most of these ideas existed in the form of hunches, dreams, discoveries and strong sense of decency and propriety. The social scientists and engineers have turned these critical ideas into dominant theories.

6. Organisations like the Vishva Hindu Parishad, Bajrangdal etc.

The study is undertaken in two stages, namely, (1) The analysis of divorce cases taken from the (a) Supreme Court (b) High Courts (c) District Courts and (2) analysis of Maintenance cases at the Supreme Court, High Court and Sub-divisional Courts. Some of the questions that arise in the first stage are:

1. The economic and educational background of the people taking advantage of the provisions of divorce under the Hindu Marriage Act, 1955.
2. Whether the divorce law is being abused.
3. If the right to divorce in any way has affected the status of the Hindu women in society.
4. If divorce law is equally administered between men and women.
5. Whether the incidents of divorce is on the rise since 1955.

Law is a tool for social engineering. This is true of the diffused customary law where the process of social engineering is spontaneous. It is also true of the Statute law which is relatively rigid in nature and the process of social engineering is more deliberate. Because of the deliberate nature of the latter, it sets off a chain of social reactions⁷. It is an interesting fact that the institution of marriage, sans divorce is a dominant social instrument

7. At the time of enacting the Hindu Code Bill, the Hindu orthodox society was in a traumatic shock because Bill introduced monogamy and divorce which was considered as alien to the Hindu scriptures.

of oppression fem. The institution of marriage with the right to divorce has led to the continuously rising divorce cases in the courts. The number is bewildering and the variety is untold. Analysis of this social behaviour is an object of this study.

The fundamental question is whether divorce law is being abused and also whether it is administered equally to men and women. It is a well known fact that women in India do not have a socio-economic independence, our divorce law is a long drawn process in which the parties are expected to prove the "fault" of the other. In doing so they have to fit the events of the real life to provision of law and justice. Then there are grounds like cruelty, which is so wide in its ambit that any human behaviour can effectively termed a cruelty. In this prevailing scenario and in the absence of irretrievable breakdown of marriage, divorce law in India is more of an oppression than a relief. It is also true that divorce is necessary to regulate the institution of marriage.

There is a recognition of this fact among the judicial echelon. Their awareness has led to granting of the relief in favour of women, while more men come to court because of their economic independence and social clout.

Some of the questions that arise in the second stage are:

1. How has the provision for maintenance or alimony helped the Hindu women.
2. Whether the foregoing provisions afford some sort of economic independence to the Hindu woman.
3. Problem of the children of the estranged marriage.

4. Problem of the divorced women who receive maintenance forming a socially oppressed class.
5. Influence of divorce on the family structure in India.
6. Whether remarriage after divorce is a popular event.
7. Whether any alternative to marriage is emerging.

Law can be regulative, restrictive or restitutive. The Hindu Marriage Act, 1955 is basically a restitutive law. Before granting divorce, it tries to restore the family⁸ and after granting divorce it tries to restore the normal social relationship of the divorced individual⁹.

But the question for evaluation is whether the Act has been successful in its restitutive attempt. When there is a crack in the family relationship the parties come to court. Just as the law cannot prevent the factual breakdown of marriage, the law cannot factually join a broken marriage. Similarly law can only make provisions for restoring the status quo of the persons but cannot actually restore the same. Law cannot, and is not expected to go to the length of such actuality. Therefore there is a gap between what the law aims to achieve and what is actually achieved by it.

-
8. Provisions of restitution of conjugal rights under Section 9, the provision for reconciliation attempt under Section 23(2), (3); the six months time gap before taking up a petition under Section 13B for mutual consent are all indicative of this fact.
 9. The Act makes provision for alimony (Section 25) custody and maintenance of children (Section 26). Disposal of property (Section 27) remarriage of the parties (Section 15). All with a view to restore the social normalcy of the divorced individual.

In order to transform the objective of the social achievement of the law, society must accept it and implement it in that spirit. The western society has fully reconciled to divorce as a social reality. Today, it is not a major social tragedy for a couple to be divorced. Divorce there causes very little impression on the mind of the child, for right from the cradle, so to say the child learns that divorce is a part of life, a social reality. Not so in India. In India divorce is a major event, a family aberration. The weaker party to the divorce suffers a social stigma and the child of the divorced parents are some how not considered normal in India. What has been easy in the west has not been so easy in the Indian society. The reason is the eclectic canons of the church did not have or rather could not hold the western society in such a vicious hold as did the Dharmasastra in the Indian society. Besides the west has been more successful in rising above their religious and scriptural shackles than India. So long as the gap remains between the intended achievement of the law and the actual acceptance and implementation by the society the chasm between law and society will continue to widen.

Law is made for society, society was not made for law. Therefore, it is imperative to tune law in such a manner that is able to recognise and feel the social pulse before bringing about a social change and then too it must act keeping in view the system concept of the change.

It is a lamentable fact of most of the families in India that chiefly because the husband has the financial clout or rather because he is the lord, he controls the wife inside wedlock and

also outside the wedlock. Take for example the requirement that if, after the divorce the wife does not remain faithful to her husband or if she is guilty of adultery then she forfeits her maintenance and often the custody of her child. In this manner the husband continues to exercise direct control over her even when the marriage is dissolved and also when she is his wife. Like the imperial lord that control the masses, the husband controls the wife in most of the families. Therefore maintenance provisions, provisions of alimony afford no economic independence to the woman .

The children, though it is implied under the Hindu marriage act form the innocent third party to the divorce, in reality they get a property like treatment under it. Parents fight over the children's custody with little regard for their strain and trauma. The children are not represented by a lawyer like their parents are. Their property is not put in a trust for them till they attain the age of majority. The provision for maintenance, education and custody of children to that extent are divorced from the social reality.

The Hindu Marriage Act, 1955 does make provision for remarriage of the divorced parties. In reality very few persons marry a divorcee. An unmarried maiden gains precedence over a divorcee, more so, if that divorcee is a woman with children. Even today, even if the society does not stigmatise her, she is very conscious and depressed about her divorce status. In many other cases there is a social stigma.

The family itself is both at the receiving and at the contributing end. On one hand due to friction between the family members in the case of a joint or unitary family or due to the singular

stress and strain of the nuclear family divorce take place on the other hand the family itself is in jeopardy. One special feature of the Indian family system is that people tend to confine themselves in their extended kinship circle. So if the family in question is one that is deeply rooted in the social mores then divorce is a major disaster for all concerned.

Methodology:

When a complicated but an indepth study is conducted involving two disciplines, in this case law and sociology, methodology is the only link joining the two. Methodology is an approach, a method to look into the operation of law in the context of the social realities, also a way to control the social vicissitudes and to assess law as a variable in a social process.

The methodology adopted for this work rests on the following approaches:

1. Collection and study of about three hundred and more cases in the Supreme Court and the High Courts of India during the period 1914-1954 and 1955-1990. All the cases are collected from the All India Reporter alone. This is so because All India Reporter has a continuous publication from 1914 onwards.

The period from 1914 to 1954 is taken for evaluating the unplanned social change and the period from 1955 to 1990 is taken in order to study the planned social change.

2. Collection and study of about two hundred and more divorce cases filed at the Darjeeling District Court during the year 1984 to 1990.

In order to obtain a continuity of study, few available cases of Calcutta High Court reported in the AIR was studied. This forms a link between the trend at the national level and district level. All the three trends at the National, State and District level were analysed at length.

3. An indepth study of about forty six cases of matrimonial causes has been undertaken. For this purpose, these persons were interviewed, various aspects of their life covered.
4. Maintenance cases were collected from the All India Reporter during the period 1914 to 1954 and 1955 to 1990. As with the divorce cases, the planned and unplanned social changes, the trends etc were examined.
5. The maintenance cases at the Sub-divisional level were also evaluated in relation with the national scene.

Besides these empirical study, an analysis of the provision for divorce and maintenance in relation to the social context has been made.

According to Allen¹⁰, under the sociological school of law, more stress is on factual investigation of law's actual working and results. It is by practical ascertainment and collation of the facts of law-in-action that weaknesses of orthodox rubrics are disclosed and way is opened for revision.

In the field of marriage and divorce social justice involves administrative know how and collaborative agencies of the other sister departments like the social worker, social psychiatrists etc.

10. C.K. Allen, Law In the Making, p. 47, Clarendon Press, Seventh Edition (1978).

Since social setting lends meaning to legal reasoning, the raw reality of life of ordinary common man must form the backdrop of any analysis of law geared for a healing regeneration of the society. Human laws and human justice are means to an end, the uninhibited manifestations of total human potential, its development and achievement.

Marriage is an institution which helps to create and achieve such potential. So long as the marriage leads to the creation of a family and development of the potentials of the individuals involved therein, marriage or family as such does not draw attention. The cause of concern is for those marriages only in which the tragedy overflows from the homes into the lap of society. Justice that is social justice is the chief arbiter in these cases. But it often fails, for, the strict letter of laws, the abracadabra of technicalities and the lawyers vested interest does not allow it to progress. Law does not cast a glance beyond to see the raw realities of the life and the people who form the main backdrop of the society. It is a paradox that law, which is meant to serve a social purpose, and regulate the society at large should be so embroiled in legal technicalities so as to lose sight of its very purpose and goal. Divorce is a paradigm. The law of Divorce which was meant to liberate men and women from marital conflicts, tragedies, and deceptions, have made the technique and procedure of it so complicated that its consequence on the society is more complicated and tragic.

Further, divorce law, in its letter and spirit is meant for both men and women equally. But a common trait of the Indian society, especially of the Hindu society is that there is a predominance of men everywhere. This can be found in the concept of Karta, the head of the family, the guardianship concept, the matrimonial home concept. It is seen in the inter-spousal relationship also. In short patriarchy is recognised and provided for, there is no formal recognition of mutuality. Thus the concept of patriarchy, partiliny patrilocality, patrimony and patriguardianship etc have put women to a disadvantageous position. They cannot take the advantage of divorce law as their male counterpart can.

In addition to this, the marriage of the Indian woman never really gets dissolved. Consider for example the fact that a woman who has gained custody of her child gets the power of physical care, control and supervision of the person of the child. The power of guardianship, maintenance, education and property with relation to the child remains with her husband. If the custodian mother changes her religion, has a relationship with a man, wishes to sell or acquire property for her child, so much so that if she wishes to change the school of her child, then the father may claim the child back from her. In addition, in exchange for her good conduct she is maintained by her husband. So even after divorce she is really not divorced. There is a notional extension of marriage as the co-habitation. Though the letter of the law sets her free, the spirit of the law and the society in addition, does not set her free.

The struggle for social justice is partly ideological, limited necessarily to the ideals of the Constitution. The battle of breaking with the past is essentially that of the people for it is they who undertake the adventure of radical modernisation of law. The path of necessity lies through the Courts. It is the judge and judge alone who decides the path the law must take. Thus judicial justice is a determinant factor in social justice.

Social change is usually heralded by the judiciary. Through judicial activism newer trends in social justice emerge. But the burden of the judges is great. According to Jerome Frank "the judges' unconscious plays an enormous role in the exercise of the judicial process, particularly where it closely touches the contemporary economic and social problems"¹¹. Justice Iyer, in tune with this observes that:

"When law speaks equally but acts unequally there is evidence of injustice. If the law speaks stern when the weak are its punitive victims, but chooses to be gentle or silent when the strong molest the society the mask of equal justice is lost"¹².

These are not theoretical facts, judges continuing to serve the august office have also felt the same way. Little over an year ago, I had the honour of intervieweing His Lordship late Sabyasachi Mukherjee, the then Chief Justice of India, while he was returning

11. Jerome Frank, Courts On Trial : Myth And Realities of American Justice, Page 148, Holt Rinehart And Winston, Inc. (1950).

12. V.R. Krishna Iyer, Social Justice, Sunset or Dawn, page 67, Eastern Book Company, 2nd Edition (1987).

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from his tour of Sikkim and North Bengal and was passing through Siliguri. I took the opportunity of talking with him about my work and at my request, he graciously agreed to be interviewed by me. The unabridged and unedited text is produced hereunder as thus has turned out to be his last interview at Siliguri, for soon after he boarded the Darjeeling Mail.

After having the copy typed I sent him a copy for his kind perusal but by then he had left India on his last journey. I fondly imagine that I would have received a few lines in acknowledgement on his return, but my fond imagination remains just that. With a deep sense of loss, I have the honour to present the entire text of the interview below, for it is too precious to be relegated to the appendix.

Interview

on

SOCIO-LEGAL CONSEQUENCES OF DIVORCE

UNDER THE HINDU MARRIAGE ACT : 1955

I. Identification:

His Lordship Sabyasachi Mukherjee, C.J.

Chief Justice of India.

II. In the presence of : District Judge, Darjeeling,

Santi Sekhar Mukherjee.

III. Venue : Circuit House, Siliguri on 24.5.1990 at 4 p.m.

IV. Subject: Socio-legal aspects of divorce under Hindu Law.

1. Has the divorce provision under the Hindu Marriage Act successfully served the social purpose for which it was enacted?

It is very difficult to say whether the divorce provisions have served the social purpose successfully. The reform that is to be brought out by a social legislation depends upon the developments in the society. In 1955 when the Hindu Marriage Act was enacted there were many maladjustments in the society and Section 13 was aimed towards solving them. Certainly it is a temporary solution and it affords a freedom to the parties to lead their own lives. But too much freedom will lead to social imbalance and instability. In a limited way it solves the marital problem.

2. Has this provision become the monopoly of the urbanised rich?

No. This is not true. To begin with it was the monopoly of the urbanised rich. In such cases it was easy to give relief. But to-day a new phenomena has emerged. Divorce suits come from all section of the society and also from those who are not at all rich. This leads to the difficulty in granting relief. I even have a case of a peon from Lucknow whose wife is in Delhi. Question of transfer etc come up.

3. To what factors could the rise in the rate of divorce be attributed?

Lack of ability to adjust. To that extent, from one point of view, early marriages helped the parties to adjust with each other

while they were young. To-day, where the parties to the marriage are matured, difficulty in adjustment arises. Break up of joint family system is another factor. In a joint family people are taught tolerance, sacrifice and adjustment. To-day in small families these qualities are lacking. So parties from such background find it difficult to adjust with each other and end up in divorce though not every one of them.

4. Is the Section 13 of the Hindu Marriage Act responsible for the destruction of the Indian family values?

No. It cannot be put so drastically. However, it also reflects a situation where the parties are unable to live together, but S. 13 alone is not responsible for the deterioration of the family values when marriages are psychologically and physically shattered. S. 13 is one of the remedies. So it cannot be fully responsible for destroying family values.

5. Should one preserve a marriage at any cost?

No. Only happy and good marriages are to be preserved. Broken relationships need not be preserved.

6. Should the divorce law be made more liberal?

No. I would not say that. Divorce law should be able to meet the social demand. Under such laws, bad irreconcilable marriages should end easily, but if divorce itself is made very liberal that will not help. Divorce law should be rational, scientific and reflect the need of the society.

7. Has the status of the married woman become more secure because of her right to divorce?

No. Not necessarily. Right to jobs, right to income, right to stand on her feet alone will help her to become more secure. Right to divorce by itself is of no use to her security. Only education and economic independence alone will render her secure.

8. In spite of so many provisions in favour of them why is the Indian woman still down-trodden?

Lack of education, a feeling, an urge from within to stand on her own feet, to achieve something and compete with the men of similar age and circumstances is lacking in them. It is not to say that they lack the inner urge but that we have not been able to motivate them in proper spirit and on a large scale.

9. Should the divorce law be made more reconciliation based?

Yes. Divorce law must be more reconciliation based, but not to the extent where divorce is not possible at all. Reconciliation should not prevent divorce but it should first seek to preserve the social institution of the marriage. Marriage is a very vital institution of the society and it should be dealt with, with care.

10. The worst victim of marital breakup are the women and children. Should the law make provisions of psychiatric help in order to aid them to tide over the crisis?

Yes, psychiatric help to the victims of divorce is very essential. In divorce, the man, the wife and the child are all involved. It is necessary to instil moral courage in them. But this

should first be done by the society and then by trained professionals and by the sympathetic elders of the family. Such a help should be directed to help them adjust and rehabilitate themselves. But one must remember too much pity or counselling could be harmful in that it can set off a series of emotional reactions.

11. How can the economic aspect of the marital breakup be brought in consonance with social realities?

This is a question which requires a detailed treatment. It requires an indepth study and consideration of the problem in relation to the existing law and social conditions.

12. Will the theory of community property, deduction of maintenance allowance at source and divorce insurance solve the matter to an extent?

A judge should not comment on such matters. This is the work of the legislators. A judge can only interpret them in his judgement.

13. What measures would you suggest for containing the aftermath of divorce?

Broadly speaking, anything or any measure that will help to rehabilitate the victims of the divorce in the society. The rehabilitation should be on social, economic and moral plane. Mere off hand ventures will not help. A concrete formula is required to solve the problem. It can be done with the help of sociologists, legislators and social reformers.

14. If right to life under Article 21 means the right to live and to live with dignity, does the right to divorce also come within the fold of Article 21?

I would not like to answer this question.

15. Any other comments, opinions or suggestions?

A law such as this which deals with a social problem should be studied by sociologists, economists, psychiatrists, doctors and jurists. The problem should be viewed and met with the aid of a continuous process of study. I would not categorically say that this is an interdisciplinary matter, but I would like to point out that this is a complex situation having its ramifications in all directions and they should be met effectively by experts.

There is a need to deviate slightly from this common theme and to address ourselves to the laws, customs and social norms of the tribes. I am coming from Sikkim. The society there is chiefly matriarchal and polyandrous. We have little knowledge of such law. Very little work has been done in these areas and more and more scholars like you should address themselves in this area.

To sum up the important points made by His Lordship were as follows:

1. It is difficult to say whether the divorce provisions under Hindu law serve their desired social purpose. What was appropriate about three decades and six years ago may not be sufficient to-day.
2. The rising trend of divorce may be attributed to the social change and the changing requirements thereof.

3. Disintegration of joint family system and the stress and strain of the nucleus family could be a contributing factor of divorce.
4. More emphasis should be on preserving the inter spusal relationship and the family.
5. Divorce law should be rational, scientific and reflect the social requirements.
6. Economic dependence, lack of education are the basic reasons for the failure of women to take advantage of the social changes.
7. Our laws are inadequate on aftermath of divorce.
8. Rehabilitation of the victims of family tragedies like divorce should be done on social, economic and moral plane.

The Judges, at least in the field of matrimony have done well. They have tried to rise to the occasion in response to a plea for help. Even a cursory glance is sufficient to prove the same. It was an unique gesture by the court when it held in Satyapal Sethi Vs Susheela Sethi¹³ it was held that the Hindu wife has her own independent notions of right and wrong. If she, inspite of the existence of good grounds for the dissolution of her marriage, does not want to dissolve it, the Court cannot do so. She may suffer immensely as a result of her decision, yet if she does not desire the relief, the Court cannot give her the same.

13. AIR 1984 A 11 81

In Shanti Devi Vs Raghav Prakash¹⁴, the wife who was admittedly illiterate, falsely accused the husband of having illicit relationship with another person, filed criminal complaints against him and ultimately burnt his Ph.D thesis. The husband was a lecturer. The Court dissolved the marriage on the ground of cruelty by the wife, yet granted her permanent alimony on the ground of her being an illiterate woman with no means of earning a livelihood and that,

"it will have to be accepted as hard social reality that the position, status and life of a divorced Hindu wife in Hindu society so far, is very miserable and pitiable. She is economically and socially poor and had great disadvantage in as much as the society looks down against her. Even though law recognises it, most communities where divorce is not customary and have been introduced by law, a divorced wife is a cursed human being, abhorred by the society"¹⁵.

The hither-to-fore rule that the second wife of a bigamous marriage did not have a right to claim maintenance was done away with in Rajeshri Vs Shantibai¹⁶ it was ruled that by invoking the power of ex debito justitiae the court could grant maintenance to such wives despite the decree of nullity. On similar principles it was held in Swarnlata Vs Sukhvinder Kumar¹⁷ that maintenance could be

14. AIR 1986 Raj 13.

15. AIR 1986 Raj 13.

16. AIR 1982 Bom 231.

17. (1986) I HLR 363.

granted even though the substantive relief was denied.

In T. Sareetha Vs Venkata Subbaiah¹⁸ the Andhra Pradesh High Court held that the provision of restitution of conjugal life enshrined under the Hindu Marriage Act, was derogatory and discriminatory as it forced one spouse to cohabit with the other against the other's will, more so against the woman because it was her privacy that was violated. This decision, though not upheld by the Supreme Court had merit in it.

In Aboobacker Vs Mamu Koya¹⁹ a strong case was made out for recognition of irretrievable breakdown of marriage.

In Alka Bhaasker Bakre Vs Bhaskar Satchidanand Bakre²⁰ the courts have held that there is an element of mutuality involved in the concept of matrimonial home and hence the wife has an equal say in the matter of determining the locus of matrimonial home.

In Parminderlal Vs Sumanlata²¹ the court held that the order relating to custody would not become void merely because the substantive relief was denied to the parties.

Matrimonial problems can easily be adjusted given tactful judicial handling

18. AIR 1983 AP 356

19. 1971 KLT 663.

20. AIR 1991 Bom 165.

21. (1984) I HLR 154

"The vice of social inequity assumes a particularly reprehensible form in relation to backward classes and communities which are treated as untouchables. So, the problem of social justice is urgent and important in India as is the problem of economic justice I am using the term social justice in comprehensive sense so as to include both economic justice and social justice. The concept of social justice thus takes within its sweep the objective of removing all inequalities and affording equal opportunities to all citizen in social affairs as well as in economic activity²².

Women are also a part of the oppressed backward masses of people. Their lack of education and economic backwardness have dehumanised them to an extent. Torture of women in the form of dowry deaths, domestic violence, desertion, cruelty etc are not only reprehensible but also leads to social degradation. Social justice must be ever growing, adjusting, moulding itself according to the time and the changing concepts in the society, with the new hopes and aspirations of the people, constitution is a primary social document, but such a document is of no use at all if it is not used, interpreted or moulded in a manner to herald a new social order. Thus, judicial and social justice in India will only remain a myth.

Many legal rights and duties flow from the family status. If one were to examine what leads to those rights and duties it becomes clear as to what the family is and what the family should be .

22. Supra note 19, page 51.

It is the universal basis of the social structure which comes into force through marriage. Marriage is implicitly a legal concept having sociological emanations. It is not a mere attachment nor annexations of two heterosexual beings or just a pairing. It is a relation of sharing joys and a partnership in stability and unity. That associative natural phenomenon satisfies biological and natural urges and adds to the aggregation of species²³. Marriage thus is a conscious union of two human beings which takes a form which is recognised at the basic institution of society itself and which is the smallest unit of it, called the family.

All civilised and organised thoughts lay down forms and principles that uphold marriages, dissolutions, successions, inheritances, legitimacy and offer voluminous evidence of the institutionalised character of marriage. The rules of behaviour and of sanction help form the unit of human partnership. Whether it is a holy sacrament or a contract pairing of men in personal relation is a highly social as well as ethical question. Law simply sanctions the form and process recognising its orderly need. The rise of family is traced to this phenomenon, though early forms of family did not necessarily originate out of marriage. A family is also a natural association of the father, mother and child²⁴.

23. B. A. Masodkar, Society, State And the Law, p. 50.
N.M. Tripathy (1979)

24. Ibid.

Family forges partnership and habitation, security, sex, food, roof, all are the goods of it. It is an organic cell of the society. Process of inclusion, assimilation as well as exclusion and expulsion is the basic formative process integrating it into a unit. Here, the first germ of authority, submission, co-operation, co-ordination, common enjoyment and relations are all born and nursed²⁵. Family creates the concept of property, ownership, rights and title.

Family is the simplest institution of the earliest origin which heralds the social growth. But, family, however simple it may be, because it is an instrument of social growth, it is also exposed to powerful economic, ecological and sociological pressures, and influences. Social growth is interactional as well as dimensional phenomenon.

Legal regulation of spousal relation deals mainly with two areas : (1) support obligations and (2) socio-legal and economic autonomy of women. Law is simply not an efficient and workable means to order spousal relations or to remedy ordinary family relationship and difficulties. Most of the legal standards concerning spousal relations are not tested until significant disharmony occurs and breakup is threatened. The law has announced various standars that reflect social values and serves as moral precepts to guide family behaviour.

25. Ibid.

Marital breakdown can be divided into three main categories, (1) divorce which refers to legal termination of marriage, (2) separation, which refers to physical separation of spouses, they no longer share the same dwelling (3) the so called empty shell marriages, where the spouses live together, remain legally married, but their marriage exists in name only.

Despite minor fluctuations, there has been a steady rise in the divorce rate through out the country. It might be expected that modern couples groomed in modern traditions (as against traditional upbringing) may be more than ready to regularise the unsatisfactory marital situations. Disturbingly, there are recorded and unrecorded breakdowns. The recorded ones are taken and analysed whereas the unrecorded number is a matter of guess work. Empty shell marriages cannot be operationalised and put into measurable forms. However it can safely be presumed that eventually such marriages will end in divorce or separation.

From the functional perspective however, especially during the analysis of the recorded cases of divorce, the following factors were considered,

1. Factors which affect the values attached to the marriage by the individuals - e.g. children of broken home, or very posh and losely knit society and family.
2. Factors affecting the degree of conflict between the spouses, example, social and cultural background of spouses, economic criteria like whether both the spouses economic criteria like whether both the spouses are earning or are rich etc.

3. Factors which affect the opportunity of individuals to escape from marriage; example : the supportive nature of the natal family, economic independence, consciousness regarding rights, duties, education etc.
4. Factors which cause divorce; example: grounds like adultery, cruelty, desertion etc.

To this extent it cannot be denied that these factors themselves reflect a change in the social attitude towards marriage and divorce. People expect and demand more from marriage and are therefore more likely to end a relationship which may have been acceptable in the past. Viewed from this angle, the high divorce rate may be indicative of higher and not lower standards of marriage.

On the other hand the adaptation of the family to the requirement of the modern and current economic system has put the family under greater stress and strain. What is functional in one part of the society may not be functional in another. The relationship between the family and the economic system which leads to a relative isolation of the nuclear family from the extended kinship may result in disfunctional consequences upon the family. The structural differentiation of society which involves the establishment of the institution specialising in particular functions may increase as a result of industrialisation and urbanisation. This also has a disfunctional effect upon the family. The high marital breakdown could be the price the family has to pay for the greater good of the family system²⁶.

26. M. Harlambos with R.M. Heald, Sociology-Themes and Perspectives pp. 360-68, Oxford University Press (1985).

If behaviour is directed by norms and values, a change in the norms and values associated with divorce would be expected. If the stigma attached to divorce were considerably reduced, itself would divorce easier²⁷.

Changing attitude towards divorce have been institutionalised by various changes in law which have made divorce easier to obtain. In the Hindu Marriage Act, prior to 1976 under the ground of adultery it was required that the petitioner prove that the opposite party was living in adultery. After the 1976 amendment, it is sufficient if the other spouse has had voluntary sexual inter-course with any other person.

With the introduction of the concept of mental cruelty, which is a very abstract term the door of cruelty has been thrown wide open to the seekers of divorce.

The introduction of Section 13B which deals with divorce by mutual consent and section 13(1A) which prescribes a waiting period of mere one year in case of non restitution and sustained judicial separation after which the parties may seek divorce. All these factors have helped in easy obtainance of divorce. These reforms on one hand reflect the change in social attitude towards divorce and also become the reason for the dramatic rise in incidents of divorce on the other hand. This has been further helped by the mushroom growth of centres for free legal aid and advice. Such

27. Ibid.

institutions have helped to control the cost of litigation to a great extent.

The increasing divorce rate can be seen as a product of conflict between changing economic system and its social and ideological superstructure, notably the family. In advanced industrialised societies there is an increasing demand for cheap female labour. Wives are encouraged to take up paid employment not only because of the demand of their service but also because of the media publicity (both audio-visual) which increases the material aspirations of the family and its demand for the goods. This can be satisfied if both the spouses are wage earners. However conflicts result from the contradistinction between female wage labour and the normative expectations which surround the married life; working wives are still expected to be primarily responsible for house work and raising children. In addition they are expected to play a subservient role to their male counterpart who is the head of the household. This alienates the wife as she shares the economic burden of the husband. Such conflict and alienation may lead to marital breakdown²⁸.

Where the wife is unemployed and does not share the economic burden of the husband she is expected to bring dowry from her parents as a sort of compensation. Even then her economic dependence upon her husband becomes a source of irritation for him. Even there

28. Ibid.

conflicts arise and they are perhaps more serious than in case where both the spouses are working. A look at the recorded cases of divorce that are analysed shows that very few women are employed compared to men.

Apart from this there is a relationship between the rate of divorce and age of the parties at the time of divorce. The more youthful and rigid in their ways the more set they are in their life style.

The chances of marital breakdown increase if the spouses belong to different social backgrounds, for example if they belong to different class, or ethnic group, or where one belongs to a rich family the other to the poor. If the spouses have different marital role expectations from each other which has a background to their different subcultures, conflicts may arise. The increasing social and geographical mobility has also aided the situation wherein individuals with widely differing social background tend to come together for marriage, therefore a potential for marital breakdown.

The list of reasons can be endless, but priority goes to the status of women to a changing society. The more discriminated and dependent the women feel, so long as they remain uneducated vocationally or otherwise, the situation in relation to divorce will worsen.

While divorce must survive as an escape route for the victims of unbearable marriages, attention must be given to improving the status of women, recognition of irretrievable breakdown of marriage and finding a just fair and equitable solution to post divorce problems.

CHAPTER - II

EVOLUTION OF THE CONCEPT OF DIVORCE UNDER THE ANCIENT HINDU LAW

Woman is said to be an enigma, and the question of her equal status with man a myth. Most religions have declared a woman equal to man. Yet every effort to render an equal status to her has only emphasised her subservience and vulnerability.

The Dharmasastra has ordained the woman with a divine role. She is to be cherished and worshipped everywhere and always. But this ideology does not find support in all the Hindu scriptures. In vedic times, the glorification of women was limited to literature alone. On one hand Manu stipulates that women should be honoured and adored by father, brother, husband and brothers-in-law. His ultimate verdict is that where women are honoured there the gods dwell, where women are dishonoured and live in sorrow, the household perishes for a curse dwells in that house and no religious rituals yield any reward¹. But on the other hand Manu is so much biased and prejudiced against women that he denies her any property and marital rights². Even certain verses of the vedas proclaim that the mind of a woman is uncontrollable and there can be no friendship with women for they have wicked hearts³. Later works of Sruti have

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1. G. Buhler, The Laws of Manu, Chapter III, Verse 54-59, Page 85, Motilal Banarasi Das, (1964). For Original text of the Sanskrit Verse see, Kulluk Bhatta, Manusmrti Chapter III, Verses 54-59, Page 91, Motilal Banarasi Das (1983).
 2. Ibid, Verses II, 213-214, IV, 205-206, V, 146-148, VIII, 416, IX, 2-3, 14-20, 45-46, 104, XI, 36-37.
 3. Rig Veda Samhita, X. 95.15 VIII 33.17 Vaidika Samsadhana Mandala (Vedic Research Institute (1951). Rg. Veda with commentaries by Vishveshwara Vedic Research Institute (1965).

also described women as weak and wretched⁴ and no sympathy or kindness must be shown to a woman. In the medieval society the position of women sunk to an all time low level.

Surprisingly enough, the western philosophers too were not to be left behind in their condemnation of women. Aristotle says, woman is to the man as the slave to the master, the manual to the mental worker, the barbarian to the Greek. Woman is an unfinished man, left standing on a lower step in the scale of development. The male is by nature superior and the female inferior. The one rules and the other is ruled, and this principle extend of necessity to all mankind. Women, according to Aristotle are weak of will and therefore incapable of independence of character or position. Finally Aristotle declares that the best condition for a woman is a quiet home life in which while ruled by the man in her external relations, she may be supreme in domestic relations. He says the dissimilarity between men and women should be increased⁵.

The same thought is reflected in the works of Friedrich Nietzsche when he declares that equality between men and women are impossible, because war between them is eternal. There can be no peace without victory and peace will not come till either the man

4. Pandurang Vaman Kane, History of Dharmasastra, Vol II Part I Page 576-580. Bhandarkar Research Institute (1941)

5. Aristotle, The Politics, ch-1 , p-13, R.G. Mulgan, Aristotles Political Theory, Pages 20, 44-47, 61, 79. Clarendon Press (1977)

or the woman is acknowledged as the master. It is dangerous to try equality with women for she will never be content with mere equality⁶.

The question corollary to the above findings is that, inspite of the high status conferred to her in the scriptures at what point did her decline begin and why. The answer it appears, lies in the fact that the primitive man had to wage war with his fellowmen whose savage instincts rendered their own existence precarious and that of the women and children almost impossible as they were physically much weaker than them. This naturally resulted in the formation of groups and alliances. Women, children, and slaves, in the same order of priority, formed the vulnerable group. The stronger group of men began to bestow their protection on these groups, because women by giving birth to a child assures the continuation of a community, a social group. Hence she is valued and needs to be protected for her procreative power. This, perhaps also, concealed the proprietary rights in its embryonic form. In return of the protection given, man began to demand unquestionable services. This heralded the curtailment of liberties to this vulnerable group which resulted in absolute suppression in later years. Infusion of religious ideas into the social fabric rendered the situation a

6. Generally read will Durant, The Story of Philosophy, Pages 430-433. Washington Square Press, New York (1961); Schopenhauer, Herbert Spencer all have given an inferior status to women.

solemn rationality. The suppression, perhaps also flows from the fear that given a chance the woman may really live up to the exalted position allotted to her by religion and ideology and may even be able to do justice to that role.

The institution of marriage may have evolved out of the need, based on quid pro quo, the role of the man in this institution being that of a protector especially in view of the woman's procreative powers and of the woman in rendering unquestionable service. As the institution of marriage became unquestionably the most vital social institution the question of her subservience became eternal. Since marriage is the most important of all social institutions, the law must decide as to what is meant by marriage.

The interest of the community is in a married partnership, which treats each party on an equal basis. Law has come far from the original approach which treated the wife as a mere chattel under the control of her husband. Originally marriage was seen in terms of contract, dissolution in terms of property and marital offence. But the recognition of the individuality of married women has been a slow process. What is equally important as physical freedom is economic independence. Law must recognise that the unity of married life lies in the oneness of the husband and wife, however this should not be used to justify the preservation of the unity of family life at any cost and to reduce the wife to a subordinate position.

For the Hindus marriage tie is irrevocable but for the Hindu man he can enter into several such irrevocable ties. The Hindu woman can enter into only one such relationship. The irony is that Hinduism is essentially in favour of monogamy yet this is more effective in unilateral violation. The violation is universal because the men marry several times often by simply taking another wife. As a result polygamy flourished, and the fact that Hinduism discouraged divorce made very little difference to men.

Once the institution of marriage is recognised legally, divorce must be recognised per se. yet the Smrti, srutis and the scriptures prima facie denied the right of divorce. However, Narada and Parasara recognise the contingent situations where a woman should be permitted to remarry.

Narada says that a woman can seek another husband if

1. the husband is unheard of (for a long time).
2. the husband is dead.
3. the husband adopts another religious order.
4. the husband is fallen (patita).
5. the husband becomes impotent⁷.

She can marry again after waiting for three months⁸. There is a

7. Narada Smriti Ch. XII Verse 16, 24, 97, 98 as referred to in Bhagbat N. Deshpandey, "Divorce And Hindu Smritis", AIR 1934 Jour 204 See also Krishna Nath Chatterjee, Hindu Marriage Past and Present, Tara Publications, Varanasi (1972) p. 263.

8. Ibid Verse 24.

title confusion here as Narada uses the words kanya and it may mean a maiden, a woman or a betrothed girl. Logically, however, it must be understood to mean a woman because at the time of Narada, a maiden or a betrothed girl could not have been expected to know whether her would be husband is an impotent or not.

Parasara Smriti is in agreement with Narada Smriti. According to Parasara a woman may marry again for all the reasons cited by Narada⁹.

The word "Patita" used by Parasara¹⁰ is of wide significance for this word is capable of several interpretations. Within it is included a man who is excommunicated, a man who is suffering from sinful diseases like leprosy, venereal diseases and a man who is guilty of crimes like rape, adultery, murder, incest etc. conversion from one religion to another was not significant or relevant at the time of Narada or Parasara but conversion is a significant factor in the present context. It can be well understood what a conversion would have amounted to in the days of the aforementioned srutis. Any action, omission or behaviour not in keeping with the normal norms of behaviour was a good cause for excommunication. A excommunicated man is a patita. Thus in view of this wide backdrop

9. Parasara IV. 28. Madhavacharya, Parasara Smriti, Parasara Madhava, Volumes II & III, Prayaschitta Kanda And Vyavhara Kanda Edited with note by Chandrakanta Tarkalankar, The Asiatic Society, (1973).

10. Ibid.

of various causes and interpretations, it becomes clear that a woman could avail of any of the above causes for divorce if she claimed that her husband had become a patita.

More than Narada, Parasara makes himself very clear on the issue by clearly using the word 'Pati' which means a husband. Contextually too Parasara's intention is very clear. He refers to a situation where the husband is unheard of for a long time, or has left the grihasthasrama^{10a} for Sanyasa^{10b} and refers to the impotency of the husband. All these situations can arise only after marriage. Thus laying a quiet emphasis on the question of divorce.

Kautilya too is very clear on the matter of divorce, but exempts the first four types of marriage from the right of divorce. The first four superior form of marriage are those that Kautilya refers to as dharmya, namely Brahma, Prajapatya, Arsa, Daiva. For the remaining four types that is Gandharva, Asura, Rakshasa and Paisacha he concedes divorce¹¹. According to him, a disaffected

10a. Grihasthasrama means domestic life

10b. Sanyasa is the assumption of the ascetics life after renouncing the domestic life.

11. V.K. Gupta, Kautilyan Jurisprudence, Book III, Ch. III Verse 15-19. B.D. Gupta Publication (1987), also R.P. Kangle, The Kautilya Arthasastra, 3.3. 15-19 Part I, University of Bombay (1969).

wife is not to be granted divorce from the husband who is unwilling nor the husband from the wife. By mutual disaffection alone a divorce shall be granted. Or if the husband seeks divorce because of the wife's offence, he shall give her whatever he may have taken. Or if the wife seeks divorce because of the husband's offence, he shall not give her whatever may have been received. There is no divorce in pious marriage. Thus ends disaffection¹².

Therefore, in the thus existing scenario a new element of mutual disaffection is introduced. To this Kautilya adds¹³ a husband who has become degraded or gone to a foreign land or has committed the offence against the king or is dangerous to her life or has become an outcast or even impotent, may be abandoned¹⁴.

Very clear concepts emerge from the above discussion of Kautilya in that he recognises desertion, cruelty, apostasy, impotency and mutual consent.

When, the husband leaves the wife and goes to a foreign land, if the husband is unheard of for a long time or if the husband has withdrawn himself from the society of his wife, it amounts to desertion. Cruelty however, is a wider term, though Kautilya's use

12. Literal translation by R. P. Kangle, The Kautilya Arthashastra, 3.3.15-19, Part II, University of Bombay (1969).

13. Ibid, Book III, Ch. II Verse 48.

14. Ibid, Literal translation of Kangle.

of this term is only restricted to physical violence, but still it may include not only personal violence but the fact that the husband is a drunkard, rake or is a degraded man, apostasy is more relevant today than the medieval society. Impotency of the husband is a vital factor in all times and mutual consent or divortium bona gracia is unique in that in Hindu law Kautilya uses it for the first time. Add to these concepts the eloquent concept of patita and we get a wide spectrum of causes and reasons when the wife may divorce her husband.

This reflects a picture of the society where the woman has a right of sex and happy marriage and was assured against neglecting husbands. Interestingly, all the smritikars have given when the right to divorce laying down very special and exceptional grounds. Most of these grounds are not made available to the husbands, which can only mean that the husbands were to follow monogamy except in the case of adultery or mutual disaffection when he could cast his wife away. However only the reverse situation was true. There was a rising rate of polygamy on one hand and incidents of divorce being almost nil.

The reason for this reverse situation inspite of the noble intention of the sages appears to be two. The men did not really need any special reason to marry again except for a flight of fancy. Their physical and economic supremacy gave them an edge over the women. On the other hand physical vulnerability, economic dependence, and social prejudices made women stick to their unhappy marriages.

They dare not even dream of divorce let alone ask for one. The reason for this rigid attitude of women also lay embedded in the precepts of the Primus Patriae of Hindu Law, Manu. He was also the reason why divorce was not accepted by the higher caste and the intelligentsia of the patriarchal society as they could not afford any freedom to women.

Manu, whose precepts are largely anti women says about marriage that¹⁵, neither by sale nor by repudiation is a wife released from her husband, such we know the law to be which the lord of Creatures (Prajapati) made of old¹⁶. Once is the partition (of the inheritance) made, (Once is) a maiden given in marriage, (and) once does (a man) say 'I will give' each of those three (acts is done) once only¹⁷. Let mutual fidelity continue until death, this may be considered as the summary of the highest law for husband and wife¹⁸. Let man and woman united in marriage constantly exert themselves, that (they may not be) disunited (and) may not violate their mutual fidelity¹⁹. In spite of this bigamy or polygamy was not

15. Kulluka Bhatta, Manu Smriti, Ch. IX Verses 46, 47, 101, 102 Edited by J.L. Sastri, Motilal Banarasidas (1983).

16. F. Max Muller, The Sacred Books of the East, Ch. IX Verse 46. Translated by B. Buhler, Volume XXV, Motilal Banarasidas (1964).

17. Ibid, Ch. IX Verse 47.

18. Ibid., Ch. IX Verse 101.

19. Ibid, Ch. IX Verse 102.

unknown, but the woman once discarded by her husband could never hope to be legally married to another man because for her the marriage never dissolves.

Still even in Manu's work there are certain discrepancies, Manu says if the husband went abroad for some sacred duty, (she) must wait for him eight years, if (he went) to (acquire) learning of fame six years, if (he went) for pleasure three years²⁰. He is silent on what should the woman do after the expiry of the waiting period, even though he admits that there is a possibility of her becoming corrupt²¹. Buhler opines that she must remain chaste and support herself by blameless occupation, which by Manu's own admission does not appear to be possible. The only logical consequence could be that Manu may have implied by his eloquent silence that she should seek another husband.

Again Manu says that if a woman abandoned by her husband, or a widow, of her own accord contracts a second marriage and bears (a son), he is called the son of a remarried woman (Paunarbhava)²². Manu could not have formulated the concept of a Paunarbhava son if such incidents did not exist in the society then. Thus behind the iron-strong commandments regarding marriage there is a tacit acceptance of divorce.

20. Ibid, Ch. IX Verse 76.

21. Ibid, Ch. IX Verse 74.

22. Ibid, Ch. IX Verse 175.

The earliest example of this tacit acceptance is found in the Atharva Veda. In Atharva Veda it is stated that whenever a woman having married one husband marries another and if they two offer a goat with five dishes of rice, they would not be separated from each other. The second husband secures the same world with his remarried wife when he offers a goat accompanied by five rice dishes and with the light of fees²³.

The Superiority of Manu over all the teachers of law is not in dispute. However, one would have expected Manu to take his cue from the above mentioned vedic verse and develop upon the issue. Instead, it is seen that, smritikars and law teachers posterior to Manu have been more liberal on the point. But for some reason or another Manu Smriti had a greater binding effect on the society than the Veda or its implied nuances. The custom of divorce continued to prevail among the sudras and other low castes, but marriage became a Samskara, a sacrament and a religious institution for the upper castes. For them it became a spiritual union or a holy unity without any possibility of its dissolution.

The reason for this, perhaps is the fact that some parts of Manu appear to be of later origin. This is further emphasised and proved by Julius Jolly. To quote Jolly:

"The author of our M (Manu) at all events already knew various older law books as he speaks of Dharmasastras in general as well as mentions several teachers of law by name. The Vaikhanasa school for example which he refers

23. Atharva Veda (Saunaka) Navam Kandam Su. V. M. 27-28 with The Padapatha and Sayanacharyas Commentary, Edited by Vishvabandhu, Part II (Kanda VI-X). Vishveshvarananda Vedic Research Institute, Hoshiarpur (1961).

to when dealing with the duties of the Vanaprastha has left us a Dharmasutra, which though a very late work in its present form, yet in that particular section about Vanaprasthas shows a remarkable point of agreement with Manu"²⁴.

Julius Jolly also establishes a link between Manu and Manava School which he traces through Vishnu and Kathaka School and arrives at the conclusion that,

"It should not, therefore, be doubted that the author had made use of works of various schools when he intended to write a didactic poem on Dharma binding on all castes and to set it off with the name of Manu, who had so long been glorified as the first parent of mankind and was considered to be descended from Brahman, the universal soul, or was identified with it and was said to be the founder of the social order in this world, and was renowned as the inventor of sacrificial usages and as the religious law giver"²⁵.

The contention of Jolly is further substantiated by a reading of the text of Manu Smriti²⁶.

As a result of this Manu developed a comprehensive and well planned text which was naturally appreciated by and suited the intelligentia and the upper castes. And since it suited their interest it was implemented with tremendous vigour and zeal. Thus the woman found herself more bound by these commandments. The prevailing social custom and background^k also helped in this.

24. Julius Jolly, Hindu Law And Custom, Page 37 Authorised translation by Batekrishna Ghosh. Bharatiya Publishing House (1975).

25. Ibid, Page 38.

26. G. Buhler, The Laws of Manu, Pages XVII, XXIII, XXI, Motilal Banarasi Das (1964).

The unique institution of custom had a major contribution to make towards the developments of marital relationships. Custom is a perfectly democratic means of evolving social norms²⁷, and as the new norms evolved the older and untenable ones are destroyed. As a result, on one hand no specific matrimonial remedies took shape and on the other hand, due to their dependence both economic and protectorial, women were reduced to absolute suppression and submission. The consequence was casuistry, distortions of commonsense values and human transactions and behaviours²⁸.

Considering all the foregoing discussion, the statement that divorce is an idea which is foreign to Hindu law is incorrect. The sastras really did not overcome the customary element of the Hindu society. The rewaZ-e-am of the agricultural class known as Jats in the district of Jullundher in the present state of Punjab is known to have followed the custom of divorce by simply repudiating the marriage after which the spouses could remarry. It is also a well known fact that among the scheduled castes and certain tribes divorce is easily obtained. This fact is also recognised by the Parliament because while enacting the Hindu Marriage Act in the year 1955, the Parliament instead of abolishing customary divorce gave it a special recognition under S. 29 of that Act. Customary divorce thus were and remain available to millions of Hindus in India.

27. Virendra Kumar "The working of formal Adversary Procedure In The Resolution Of Matrital Conflict Problems", Banaras Law Journal (1983) p. 6083.

28. Virendra Kumar, "Isn't Law Rising From Dogmatic Slumber", Punjab University Law Reform. p. 5 (reprint).

The Parliament has relied upon the ubiquity of that right among the lower caste to introduce judicial divorce among the upper caste.

However the introduction of divorce has not interfered with the Samskara of marriage, still less abolish it. Divorce has not turned Hindu Marriages into contracts. Marriage performed correctly according to sastra is still a samskar, Judicial divorce does not affect that aspect of marriage, it merely terminates the secular right of one spouse against the other, and frees each other to enter into another union²⁹.

The society has taken a very long time to realise this. The first attempt at making written statutory provision for divorce as late as in the 20th century, that is in the year 1931 in the form of the Divorce Act, 1931. Under this both the husband and the wife were given the right to divorce for impotency, adultery, bigamy, desertion, conversion, cruelty, intoxication and in addition to these, if the wife was pregnant at the time of marriage or if either of the spouses disappeared for seven years or more. This enactment was soon followed by the Madras Act, 1933. After this the boldest attempt towards the granting of divorce was made in the form of the Hindu Marriage Act, 1955. Which was applauded spontaneously and received a tremendous response.

While talking of the Hindu Marriage Act, 1955, one must realise that this enactment, by introducing divorce merely universalised what was hithertofore applicable only to the lower castes.

29. Harisingh Gour, The Hindu Code, Pages 8-12 , Vol 1, Law Publishers (1974).

Divorce was and is even now enjoyed by the lower castes, not withstanding the norms of Dharmasastra or any other legal precepts. However this universalisation has not made any significant change in the status of the woman as this study reveals.

Keeping the oppressed condition of women as a common denominator, the situation is still the same to day. Majority of women do not claim divorce because of their dependence, especially economic dependence on their husbands. Today divorce has taken the form of punishment, where a person has a defacto power to inflict evil on another, for instance, because of the latter's economic and moral dependence on him, where the sovereign neither authorises nor forbids the exercise of that power.

To understand the inner mechanics of divorce one must understand what marriage involves socially as well as legally.

Socially speaking, when the marriage takes place, the woman, as her newly gained status of a wife get a specific domestic, economic and sexual status. These changes are quite significantly different from what she enjoyed during her maiden days. In her maiden days, domestically, she remains as one of the many members of her fathers family. On marriage she assumes the role of a manageress, either immediately or gradually. Economically she remains dependant. Only the nature of dependence changes. Sexually her status undergoes an overwhelming change. For in her fathers house, she is only a member of the family, she does not have any specific significance as the procreator or propagator of her fathers lineage, but she, on marriage gets an added significance as pro-

genetrix. She is the procreator or propagator of her husband's lineage. To this extent she acquires a special right which was unknown to her before marriage. This perhaps is the most significant social change a woman undergoes on marriage, her status changes in many ways but the role of the progenetrix is the most important one.

In short, therefore, marriage is the institution whereby men and women are joined in a special kind of social and legal dependence for the purpose of founding a family.

Marriage, therefore is jural relationship involving the transfer of certain jural consequences in shape of rights, duties obligations and disabilities between the parties to the marriage. This transference or creation of the jural rights is true of all marriages.

On marriage, according to the Hindu law, the gotra of the woman changes to that of the husband. This legal fiction is followed only to signify the change of the rights, duties and obligations qua her husband and his family. That is the reason why the change of gotra is signified irrespective of the form of the marriage. On the death of the husband also the wife does not revert to the gotra of her father and according to the ancient Hindu law her sexual right continued to be vested in the family of her husband³⁰.

30. Panjab rao vs. Atmaram AIR 1926 Nag 124.

The principal right acquired by the woman is that of the pro-genetrix of her husband's family. As a consequence she gets an absolute right to her husband's society. This is an express condition in the nuptial vows. That is why one party can sue the other for the restitution of conjugal rights and marital fidelity is held in such high esteem even in the Modern Hindu Law. Under the Hindu law the question of sexual morality was carried to the extent that the widow of the deceased brother was taken by the other brothers³¹. Instances of such a nature are found in the Rg Veda as well³². Accordingly in Hindu law the marriage of the woman or the bride is not only with her husband but also to his kula i.e. family.

This was perhaps aimed at preventing the passage of the family property to another family and so the brother of the husband or any body who could represent him or by a pupil or by an old servant could prevent the widow from ascending her husband's funeral pyre³³. However this practice was put an end to by Apastamba and Manu. If the sole reason for owning the woman sexually was to prevent passage of property to another family then they succeeded admirably.

31. K.M. Kapadia, Marriage & Family in India, Chapter 4 pp. 52-63 etc., Oxford University Press, Calcutta, 3rd Edition.

32. Rg. Veda X. 188 Vaidika Samsodhana Mandala (Vedic Research Institute (1951); Rg Veda with commentaries by Vishveshwara Vedic Research Institute (1965).

33. Krishna Nath Chatterjee, Hindu Marriage Past and Present, Page 258, Tara Publications, Varanasi (1972).

But on the other hand if the *raison d'etre* behind this system was carriage of one's own name and thereby his family name then beyond doubt the problem remained unsolved, Kane thinks that the great hankering for a son, evinced by all Vedic times was the most important cause of this age old system, because the son was a religious necessity³⁴. So in default of a natural son from her husband, the woman in her role of a pro-genetrix could beget a son through the system of *niyoga* and in such cases, according to Manu the property remains within the family and confined to the husband as he remains the owner of both the wife and the son³⁵.

The jural relationship of the Marriage was very well discussed by Justice A.M. Bhattacharjee in Kamal Kumar Basu Vs Kalyani Basu³⁶. where the appellant husband sought divorce on the ground of desertion by the wife who had been forced to leave her matrimonial house because of a broken down relationship between herself and her sister-in-law who had brought up her husband and also due to the uncompromising attitude that was adopted by her husband. It was admitted that the wife never misbehaved with her elder sister-in-law. While upholding the wife's claim for a separate matrimonial

34. Pandurang Vaman Kane, History of Dharmasastra, Page 606, Vol II Part I, Bhandarkar Research Institute (1941).

35. Kullaka Bhatta, Manu Smriti, Ch. IX Verse 54 and 181, Edited by J.L. Sastri, Motilal Banarasi Das (1983) see also F. Max Muller, The Sacred Books of the East, Translated by G. Buhler, Vol XXV, Motilal Banarasi Das (1964).

36. 92 CWN 323 (Feb 1988).

home, Justice Bhattacharjee asserted in no uncertain term that in the context of the set up of our modern society, with Articles 14 and 15 of the Indian Constitution³⁷ staring in the face, the wife cannot be exposed to unreasonable unpleasantness in her matrimonial home. The wife is entitled to the society, comfort and consortium of the husband and those rights come within her rights to personal liberty under Article 21 of the Constitution³⁸. So the wife can insist on a separate matrimonial home away from the unpleasant in-laws and the husband cannot have either a casting vote or a veto in this regard.

That being so, the woman today is no longer married to the Kula or family of her husband but to the husband alone, her right in pro-geneticem is confined with the husband and both acquire certain rights and liabilities against each other which by logical extension of the above discussion includes the right to a separate matrimonial home and as well as a right to divorce.

37. These Articles of the Indian Constitution mandate equality before law and countermands any discrimination on the ground of sex, caste etc.

38. Article 21 not only guarantees the right to life but also defines right to life as a right to live with dignity. The scope of this Article was expanded to the widest possible amplitude in cases like Maneka Gandhi Vs Union of India AIR 1978 SC 597; Francis Corrali Mullin AIR 1981 SC 746 and other subsequent cases.

CHAPTER III

DIVORCE UNDER THE HINDU MARRIAGE ACT, 1955 —

a critical assessment

The concept of divorce, though not alien to the Hindus, is not an easily acceptable one. This has been discussed at length in the previous chapter. However the non acceptance of the concept of divorce neither meant its non existence, nor did it mean that the situations akin to divorce did not arise. This perhaps was the reason why the system gained recognition eventually. Hinduism expressly recognised monogamy, but that remained confined to the text books only. Wives could be cast away for no reason at all. But gradually, as the women became aware of their rights, the concept of marriage no longer remained a matter of domination of the husband over the wife and the society had to concede the right of divorce to women. Therefore, when there is a marriage, divorce must be conceded per se.

This chapter is a critical analysis of the laws regarding divorce under the Hindu Marriage Act, 1955. The relevance of this critique is vital to the understanding of the subtle legal nuances of divorce laws but it will also be a help in the understanding of the socio-psychological and economic aspects of the divorce cases and the analysis thereof presented in the subsequent chapters and also will serve as a background.

It cannot be denied that the society is generally interested in maintaining the marriage bond and preserving the matrimonial state with a view to protecting social stability, the family, home and proper growth and happiness of children of the marriage. Legislation for the purpose of dissolving the marriage constitutes a departure from that primary principle and the legislature is extremely circumspect in setting forth the grounds on which the marriage may be dissolved. The history of all matrimonial legislations will show that the onset of conservative attitudes influenced the grounds on which separation or divorce could be granted. Over the decades, a more liberal attitude has been adopted, fostered by a recognition of the need for the individual happiness of the parties involved. But although the grounds for divorce have been liberalised, they nevertheless continue to form an exception to the general principle favouring continuation of marital tie¹. This is inevitably so. The history of matrimony itself in the recent past has been a movement from the ritualistic and sacramental to equalisation and contractual, even as the history of relationship between the sexes has been a movement from male dominance to equality between the sexes, even though economic and social equality between the sexes appear to be a distant goal. Economic instability and insecurity appear to be the root cause for not succeeding in our aim of equality between the

1. Per R.S. Pathak J (as he then was) in Reynold Rajamoni Vs Union of India and another, AIR 1982 SC 1261.

the sexes. Society still looks askance at a divorced woman. She is yet a suspect and her chances of survival is further diminished by her divorce. Every divorce solves a problem and creates several others².

Marriage is an alliance between man and woman and is recognised in law. The first essential of marriage therefore is the formation of an alliance, and the second essential is that such an alliance must be recognised in law. The legal recognition is dependent on the law and custom to which the parties were subject, the prescribed rules and ceremonies of that law. In its solicitude for upholding marriages, the law permits every community to follow its own notions of a valid marriage. It even presumes that it has been performed with requisite sanction of custom. Even the Hindu Marriage Act can be overridden if a custom can be proved. According to Dr. Hari Singh Gaur, remarriage of wives come within the purview of Customs³. He believes that even Manu allows the wives to remarry under conditions of de facto divorce when the husband is not heard of for a long time⁴. There is however no clear mandate to this effect in the text of Manu, such remarriages are the only logical conclusion that can be drawn from the Verse⁵. Narada, Gautama,

2. Per O. Chinnappa Reddy J. in Reynold Rajamoni Vs Union of India and Another, AIR 1982 SC 1261 at page 1265, para 14.

3. Dr. Hari Singh Gaur, The Hindu Code, Pages 223-224, Volume I, Law publishers (1974).

4. Ibid at page 234.

5. Manu Smriti. Chapter IX, Verse 76. For a detailed translated text see G. Buhler, The Laws of Manu, Motilal Banarasidas (1964). For original text see Kullaka Bhatta, Manu Smriti Motilal Banarasidas (1983).

Vasistha all have given a clear mandate to the wife to marry again after the prescribed waiting period if the husband is unheard of for a long time⁶. Among the lower castes and other custom ridden societies remarriages of wives are very common. This was so in the medieval society also, but among the upper caste during those days, the men often remarried but divorce as such was unacceptable.

Tolerance, adaptability, adjustment are all synonymous with Hinduism because the Hindu philosophy is so fluid in nature that it very easily moulds itself with the changing times. However, surprisingly enough, we adhere to the teaching of Manu with a zeal bordering on fanaticism. Though I am at a loss to understand this, it is very clear to me that ever since the days of Manu, the society had to bow to the inevitable and accept the dissolubility of marriage. Once divorce was recognised and conceded, it has taken the form of a right today⁷.

Perhaps the earliest legislative sanction for divorce in India came in the form of Native converts Marriage Dissolution Act, 1866, under which the conversion of a Hindu male or female into Christianity was treated as a ground for dissolution of marriage. The first legislation in respect of dissolution of marriage among the Hindus was very probably enacted in the year 1920 in the State

6. Narada, Chapter XII Verse 97; Gautama, Chapter XXII Verses 15, 17; Vasistha, Chapter XVII Verse 78. Also see Bhagbat N Deshpandey "Divorce And Hindu Smriti" AIR 1934 Jour 20. Also K.N. Chatterjee, Hindu Marriage Past and Present, Tara Publications, Varanasi (1972).

7. This aspect has been discussed at length in the first Chapter of this work.

of Kolhapur. This was the first tentative step towards widening the door of divorce for the women. In the State of Baroda, a Divorce Act, 1931 was passed for the Hindus which gave the right to divorce to both the husband and the wife equally. Close at its wake came the Madras Act, 1933, legislated similarly on the line of the enactment of the State of Baroda. However even though a new right was bestowed on women, the judicial recognition of the right took a long time in coming.

It should be noted here that Divorce as a customary law was present in the Hindu society since the ancient times. The scriptural canons only reflected the ideal for emulation by the elite and members of the upper caste. Modern laws however universalised this social phenomenon for all members of the Hindu Society.

The Hindu Marriage Act, 1955, was the first serious and comprehensive legislative step in the matter of marriage and divorce. The Hindu Marriage Act, under Sections 13 and Section 13B enumerates several grounds for divorce under which the Hindu man and woman may seek divorce.

The Hindu law allows divorce for cruelty, desertion, adultery, unsoundness of mind et al. But such dissolutions are by no means easy or automatic. There is not the slightest doubt that whatever sympathy a judge may have for the difficulties of a particular spouse

8. The text of the statutory provisions and the grounds for divorce shall be discussed at relevant places in this chapter.

or couple, he will not facilitate their separation or a divorce otherwise than in complete accordance with the policy of the Hindu Marriage Act, which does not by any means provide for termination of duties reciprocally of a married pair to suit their personal claims and prejudices⁹. It is of interest to the nation that marriages should be stable, and matrimonial relief is available under that fundamental understanding¹⁰. This has gained further importance in view of a number of cases that have been started by the spouses who have never come to grips with the realities and have trumped up preposterous charges against each other. Since subsistence of the marriage is the concern of the country and not the individual spouses alone, the courts have been placed under a positive duty to attempt reconciliation. There is no reason to dissolve the marriage if the courts can reconcile a marriage merely by getting the parties to adjust with each other. However caution must be exercised to see that such reconciliation attempts do not take the form of a hasty ritual. If reconciliation attempts are a must, they should always strive to preserve its spirit¹¹.

9. Apurba Mohan Ghosh Vs Manashi Ghosh I (1990) DMC 145.

10. Aruna Vs Sudhansu AIR 1962 Ori 65 (SB).

11. J. Duncan M. Derret, Introduction to Modern Hindu Law, pp. 140-178, Oxford University Press (1963).

Where dissolution of marital bonds are concerned, the Hindu Marriage Act is very cautious. It does not allow spouses to dissolve the marriage in collusion with each other. The petition warrants that no collusion has in fact taken place¹². Collusion here means a secret and illegal agreement for a fraudulent and illegal purpose. It is a secret understanding between the spouses to plead and testify and proceed fraudulently against each other in order to mislead and to that extent defraud the court. The court is entitled to refuse to decree a relief as petitioned unless it is satisfied that the petition was not a collusive one¹³.

One may argue here that once the spouses decide that they cannot continue with their marriage and want to get it dissolved, what objection can any one, let alone the court, have to it? In answer, it has been stated that the Hindu Marriage is a sacrament which is popularly believed to have been made in heaven and of a deep religious value. Anything so potently sacred and significant, is obviously not worth destroying on human whim.

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12. The Hindu Marriage Act, 1955, S.23(1) which reads as "Every petition presented under this Act shall state as distinctly as the nature of the case permits the facts on which the claim to relief is founded and except in a petition Under S.11 shall also state that there is no collusion between the petitioner and the other party to the marriage".
13. Ibid S.23(1)(c) which reads as "In any proceeding under this Act, whether defended or not, if the court is satisfied that the petition not being a petition presented under S.11 is not presented or prosecuted in collusion with the respondent"

But, if however, we allow the modern trend to surface, we cannot deny the freedom of choice and maturity of judgement to the spouses. It is they who must comply with the judgment of the court. Here the court can only bring the proverbial horse to the water, but I doubt if the court can make it drink the water. So it is really very doubtful if the parties will be able to comply with the courts judgment in the bruised and aberrated state of mind after a prolonged legal battle.

The concern for preserving the marriage and preserving the same must come from within and no amount of judicial, social or legal lectures will generate that feeling.

The Hindu Marriage Act, perhaps is most unique for its caution in granting the decree of dissolution. The Act, even while contemplating divorce by mutual consent does not allow the marriage to be dissolved if there does not exist any of the established and specific grounds of divorce as enumerated under the S.13 of the said Act. Thus, even for a petition under S.13 B of the Hindu Marriage Act for mutual consent the court makes doubly sure that there is no collusion and also a definite and specific ground for divorce does in fact exist.

This is also the reason why irretrievable breakdown of marriage has not been recognised under the Hindu Marriage Act¹⁴.

14. Harendranath Burman Vs Suprova Burman & Anr. 93CWN: 102;
Saroj Rani Vs Sudarsan AIR 1984 SC 1562 at 1566
Mita Gupta Vs Prabir Kumar Gupta 93CWN50.

However, unfortunately what the court denies through the front door it allows through the back door, where irretrievable breakdown fails to gain recognition, the concept of cruelty is made so wide that anything at all can be brought under its purview¹⁵.

The Act, does not tolerate delay and recognises condonation on the part of the spouses. The limitation period for filing a suit for the dissolution of marriage begins to run after the expiry of the prescribed period under the Act itself and may continued upto seven years as per S. 30 of the Limitation Act. One must satisfy the court of the reason for such delay or else the court is free to presume connivance and collusion¹⁶. Law expects one to be alive to ones rights. It is another matter that in India few have that kind of knowledge of law. Fortunately the court being aware of this fact allows itself to be fully satisfied as to the reasons of delay if the reasons are like, One was working for a reconciliation or protecting the children or being a poor village rustic took a long time to know his or her rights. This "Satisfaction of the courts" clause is like a gamble to the petitioner. If he succeeds in

15. This will be discussed in detail under the head of "Cruelty".

16. The Hindu Marriage Act, 1955 S. 23(1)(d) which reads:
 (1) "If any proceeding under this Act, whether defended or not, if the court is satisfied that (d) There has not been any unnecessary or improper delay in instituting the proceeding," read with the relevant Section of the Limitation Act, 1963.

satisfying the court a delay longer than seven years may be condoned and if he fails to so satisfy the court it may prove fatal to his case.

Since the matrimonial causes are based on what is loosely known as matrimonial offences, the grounds on which the relief is to be granted, both take the form of an offence. As a result of this the parties approach the court as adversaries one being the guilty and the other being the aggrieved one. If the aggrieved party, it is found, has forgiven the fault of the guilty party either expressly or impliedly, then he becomes disentitled to present the petition for the dissolution of marriage¹⁷. At the same time the court does not recognise condonation of insanity or void marriages which means, where the petitioner is morally disentitled to relief, relief cannot be and will not be granted. The court will not step outside the boundaries of equitable justice and good conscience. The test of condonation are two. One, whether the aggrieved spouse was aware of the offence committed against him, and two, whether after and in spite of such awareness the guilty spouse was reinstated in his or her former position and status. Mere uttering of "I

17. Ibid S. 23(1)(b) reads as (1) "if any proceeding under this Act, whether defended or not, if the court is satisfied that -
 (b) whether the ground of the petition is the ground specified in Cl(1) of Sub-Section (1) of Section 13, the petitioner has not, in any manner been accessory to or connived at or condoned the act or acts complained of or where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty

forgive thee" will not suffice and does not amount to condonation¹⁸.

Finally, no relief will be granted if there is any "other legal ground" based on which relief should not be granted¹⁹. If a person is himself guilty of certain matrimonial misconduct, then he cannot take advantage of his own wrong²⁰. The petitioner to matrimonial relief should come to the court with clean hands that is free from matrimonial misconduct. Thus a man who has driven his wife away from her marital home, and has absolutely neglected her, thereafter cannot seek a divorce in the court of law on the ground of desertion. Similarly if a wife in desertion is living in adultery,

18. N.G. Dastane Vs S. Dastane, AIR 1975 S.C. 1534.

19. Ibid, S. 23(1)(e) reads as - (1) "In any proceeding under this Act, whether defended or not, if the court is satisfied that (e) there is no other legal ground why relief should not be granted".

20. Ibid, S. 23(1)(a) reads as - (1) "In any proceeding under this Act, whether defended or not, if the court is satisfied that (a) any of the grounds for granting relief exist and the petitioner, except in cases where the relief sought by him on the ground specified in Sub-Clause (a), sub clause (b) or sub clause (c) of Clause (ii) of Section 5 is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief"

she cannot hope that the court will exercise its discretion in her favour even if a matrimonial offence on her husband's part can be proved.

Within the protective shield of these five procedural requirements, namely collusion, delay, condonation, clean hands and alternative grounds, the Hindu Marriage Act will dissolve a marital tie only if the petition is presented after one year of the marriage²¹, whatever be the ground for seeking the relief, unless the petitioner obtains a special permission from the High Court after making out a case of exceptional hardship²².

Therefore, this piece of legislation is extremely circumspect where it must terminate the antiquated norms of the marriage and liberate the parties from bondage. The spirit is to preserve the institution of marriage but to allow the inevitable if it must. This extreme caution has a strong psychological effect on the parties as they are put in a social limbo, a kind of torpor during the years of litigation which they spend in a statusless state. These elaborate precautionary measures, as required under the Act also has the inevitable delaying effect. This delay only helps to intensify their bitterness.

21. Ibid, S.14(I), no petition for divorce to be presented within one year of marriage.

22. Ibid, Proviso to S. 14(I).

TERMINATION OF MARRIAGE : DIVORCE

Under the Hindu Marriage Act, the husband and the wife have been granted roughly about eleven grounds for terminating their marriage, which after a combination and permutation assumes an enormous dimension. Yet the Act is not exhaustive in nature, which is quite understandable in view of the diversified and complex human behaviour and the allied circumstantial causes.

The refusal to accept the ground of irretrievable breakdown has opened a flood gate through which a multiplicity of behaviours and situations came to be recognised as cruelty. The result is that where the marriage has in effect irretrievably broken down cannot be dissolved as such but instead the spouses have to bring the case before the court under the grounds enumerated under Section 13 of the Hindu Marriage Act. This means that the spouses cannot have their marriage dissolved freely, and dignifiedly and quietly. They must stand before the world, soil each others image by airing before an audience each intimate detail of their marriages, till the court declares one of them guilty. With the acceptance of the breakdown theory of marriage at least the concept of adversary guilt establishing tendency will come to an end. Matrimonial causes are the result of mutual short comings and non adjustments. The answer to every such cause is only dissolution of marriage and that can be done without laboriously finding out who is guilty.

The main obstacle in this direction appears to be that where breakdown is accepted, the requirement of reconciliation under Section 23 of the Hindu Marriage Act 1955 cannot be complied with.

Once breakdown is conceded there is no scope for reconciliation. When two mature parties to a marriage want to dissolve their marriage they do it after weighing all the pros and cons of the consequences. In such cases even if the court attempts reconciliation it will seldom succeed. It is therefore, healthier and less traumatic to concede breakdown. In so doing the totality of the marriage has to be focussed on and not raise accusing finger at either of the spouses²³.

Since marriage do continue to breakdown irretrievably inspite of the non recognition of the breakdown the courts have allowed through the back door what they disallowed through front door. Take for example a case, where the wife, soon after marriage, finding that she cannot live with her husband goes home to her father. Later she files a maintenance suit against the husband. The husband, while contesting the maintenance suit files a suit for restitution of conjugal rights against his wife. In reply the wife files a divorce suit against the husband²⁴. Is it not irretrievable breakdown of

23. Virendra Kumar, "The working of Formal Adversary Procedures In The Resolution of Marital Conflict Problems in India" 18 and 19 Ban L.J. (1982-83) p. 60. See generally pages 70-81.

24. Maya Rani Mondal Vs Bharat Mondal M.R. Case No. 123/89 filed in SDJM court at siliguri, Bharat Mondal Vs Maya Rani Mondal M.S. No. 39/89 filed at the court of District Judge at Darjeeling, claim of divorce by the wife is in the written Statement of the wife in 39/89.

the marriage? What purpose a prolonged litigation would serve for the court has to dissolve the marriage here. If it does not dissolve the marriage, the parties will continue in a state of de facto divorce. But instead the concept of cruelty is made wider and wider²⁵ not keeping in time with the change in the society and social behaviour and custom.

Matrimonial Causes : ADULTERY²⁸

Hindu law, which is also known as Vyavhara Mayukha discusses adultery under its fifteenth title. It is an act which is condemned by every society and religion in all times and by every prophet with equal emphasis. Manu condemns adultery in its every form and degree²⁷.

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25. Sushil Kumar Verma Vs Usha AIR 1987 Del 86; Savitri Balchandani AIR 1987 Del 52, Vinay Kumar Vs Nirmala Chauhan AIR 1987 Del 78, Sudha Vs Mahesh Chand AIR 1987 Del 174, Tapan Kr Kundu Vs Bibha Kundu AIR 1988 Cal 223.
26. The Hindu Marriage Act, S. 13(1)(i) states that "(I) Any Marriage solemnised whether before and after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party - (i) has after the solemnisation of the marriage, had voluntary sexual intercourse with any person other than his or her spouse".
27. Dassi Vs Dhani Ram Teku, AIR 1969 P&H 25 at p. 6 para 8. Apart from being a case of adultery it also propounded the need to prove the offence of adultery beyond any reasonable doubt. In this connection also see Patrick Donald Tracy Vs Eileen Tracy, AIR 1957 ASm 66. These cases are cited only as examples of cases of adultery to show that the condemnation by Manu had very little effect on the common man.

Adultery is hard to forgive, Marriage creates a reciprocal bond to cherish each other. It gives a spouse an exclusive right against the other both emotionally and materially, especially in relation to sex and procreation. When one spouse breaks up this reciprocal bond, the right of the other is affected. It is true that the person or body of the wife is not to be owned like a chattel or commodity. It is also true that the willingness and wishes of both the spouses are important factors²⁸, but beyond this in the realm of emotions and spirituality a bond, a kind of ownership is created at a totally abstract level. This bond is not unilateral but reciprocal. Therefore it applies to both the spouses equally and to equal extent. When either of the spouses commit adultery, they in fact violate this right, the agreement and understanding of the other spouse. Since this whole thing is at an abstract level, beyond the realm of the written contracts, it is much more serious and the loss is much more hurting.

The root cause behind setting up the social institution of marriage is the prevention of sexual promiscuity. For that reason the physical relationship that results from the marriage is fiercely guarded and protected. Even a single lapse on the part of the spouse cannot be accepted and reconciled with. It is neither upto the court nor upto the society to forgive the lapse whether a single one or a

28. T. Saretha Vs T. Venkata Subbaiah, AIR 1983 A.P. 356.

series of them, only the aggrieved spouse can forgive the lapse under the concept of condonation. Just as the marital bond is strictly confined to them alone so is the power of forgiveness strictly confined to them.

Yet the incidents of adultery is very common, unrepentent and erring spouses are not rare . The Dharmasastra prescribes variously for such situations.

In the medieval period, the sages have exhibited an uniquely humane side of their nature amidst the relentlessly rigid social standard. They have not approved that the wives should be cast away for the offence of adultery, except when she conceives from such adulterous indulgence or when she is guilty of terminating the pregnancy arising from such adulterous indulgence²⁹, otherwise she can be purified through penance and punishments. Such penance or punishment take the form of providing a bare subsistence of food, clothes etc. and being kept in a guarded room. Other means of social castigation may also be used like shaving off her head etc. The degree of punishment depended upon the caste of the man with whom adultery was committed³⁰. Thus, the above, ineffect, reduces adultery to a minor sin, an "upapataka" which can be atoned for through penance at as long as no pregnancy or termination of pregnancy results

29. Pandurang Vaman Kane, History of Dharmasastra, Vol II Part I p. 571. Bhandarker Oriental Research Institute, Poona (1941), Also see, Gautama, Ch. 22 Verse 35; Yajuavalkya Ch. I Verse 70, 72.

30. Ibid at p. 572.

from the adulterous intercourse. Conversely, if a man of lower caste committed adultery with a woman of a higher caste, he would face death. If a brahmin committed adultery he paid the fine³¹.

This is the reflection of a society which disallowed divorce. A society where the marital bond was made so strong that even adultery could be forgiven after the guilty spouse undertook the prescribed penance.

Manu, like every other teacher forbids adultery. Criminal conversation with another woman is forbidden. According to Manu, adultery leads to the destruction of the social fabric. He requires that adulterous be terrorised and banished. In order to eliminate all possibilities of adultery Manu does not permit a man to address another man's wife in seclusion let alone touch her or be intimate with her. A non brahmin man faces death for committing the sin of adultery, but if a man commits adultery with a woman of the same caste, he just had to pay the prescribed fine. For a Brahman the punishment is the payment of fine. The devine punishment for an adulterous man is said to be the swelling of limbs and for the wife the punishment of eternal hellfire befalls her for indulging in adulterous acts³².

31. Ibid at page 160.

32. Manu Smriti, Ch. IV Verse 133-134; Ch. VIII v. 352-353, 356-359, 366, 385, Ch. IXv. 30; Ch XI v. 52, 60, 177-179; CH XII v. 60 for the original text see Kullaka Bhatta, Manu Smriti, Motilal Banarasidas (1983) and for a detailed translated text see G. Buhler, The Laws of Manu, Motilal Banarasidas (1964).

Therefore, more than the relationship between the spouses, Manu is more concerned with the destruction of the social fabric. So while the present society is concerned with the break up of the bond between the individual spouses which results in moral promiscuity and thus destroying the social values, Manu does not advocate abandonment or divorce but only penance as a deterrent to the social destruction.

Kautilya prescribes that if the husband condones the act, then no harm has been done. If not, the woman's nose and ears should be cut off and the lover shall meet death. Various punishments are prescribed depending upon severity of the offence committed according to the caste to which the parties belong³³.

Two things emerge from the study of the medieval society, (1) Adultery was only a upapataka, that is a minor sin as contrasted with Mahapataka a major sin and could be atoned for through penance. (2) The question of caste played a very significant role. Both medieval and modern societies sought to preserve the marriage and the social values, but proceeded to adopt different means. The medieval teachers were concerned with the purity of the social fabric and disapproval of adultery for it would result in mixed castes, and today adultery is disapproved of in order to protect the society from sexual promiscuity.

33. R.P. Kangle, The Kautilya Arthashastra, Part II 4.12.35; 4.13.30-41. University of Bombay (1972) For the original text please see Part I by the same author. Also, V.K. Gupta, Kautilyan Jurisprudence, B.D. Gupta, 146, Gali Aryasamaj, Delhi (1987).

In view of this extremely sensitive situation, the question arises that how can adultery be proved? This issue is very important as the consequences are serious for the matrimony is totally ruined and a greater social stigma is involved. Thus to treat the ground of adultery lightly is neither in the interest of the spouses nor in the interest of the society.

Prior to 1976, the law required, with a view to safeguard the incidents involving false charge of adultery, that it is not sufficient if a single act of adultery is alleged, the spouse should be living in adultery. In 1976, the futility of the concept of living in adultery was realised and since then, a "single act" theory has taken the place of "living in adultery" theory. Even a single act of adultery amount to a breach of trust enshrined in spousal promise "to cherish each other till death do us part".

Since the charge of adultery is a serious charge, ordinarily it would have to be proved beyond any reasonable doubt. But, if one must prove adultery beyond any reasonable doubt, adultery would be impossible to prove³⁴. Therefore it is not necessary to prove the fact of adultery by direct evidence, and such evidence, if produced, would be likely to be rejected as a fabricated one. Adultery should be proved through a set of circumstantial evidences which inevitably will lead one to conclude adultery. Adultery, from its very nature,

34. Dassi Vs Dhani Ram Teku AIR 1969 P&H 25; Patrick Donald Tracy Vs Eileen Tracy AIR 1957 Asm 66.

is a secret and a promiscuous act. Seclusion is necessary and a lot of cunning is involved on the part of the erring spouses to indulge in the act of adultery, and when they do, they leave their individual hallmark behind. For this reason alone there cannot be any thumb rule to prove adultery and it has to be proved circumstantially to the extent that it leads a man of reasonable mind to reach that conclusion. This is a very delicate and dangerous task for an error will not only destroy a marriage but affect several lives including the spouses, the children and the lover³⁵.

This theory of probability must be exercised judiciously because, the act of adultery the status of the parties and public interest requires that marriage should not be set aside lightly, but human nature devious as it is, involves and invents many tangential situations.

Since adultery is no longer to be proved beyond any reasonable doubt and only circumstances pointing to the commission of the act need alone be proved, a very disturbing development has surfaced. Spouses allege unchastity and adultery very easily. Since the courts sometimes even accept uncorroborated evidence³⁶ the spouses allege

35. Pushpa Devi Vs Radheshyam AIR 1982 Raj 260 at p. 262 para 12; Bhagwan Singh Sher Singh Arora Vs Aman Kaur AIR 1962 Punj 144 at 145 Para 6, 8; Somasekhar Nair Vs Thankamma AIR 1988 Ker 308; P appellant Vs P and others AIR 1982 Bom 498; Dr. Saroj Kumar Sen Vs Dr. Kalyan Kanta Roy AIR 1980 Cal 374, Vinod Anand Lakra Vs Belula Lakra, AIR 1982 Pat 213.

36. Varadarajulu Naidu Vs Baby Ammal AIR 1965 Mad 29 at Page 29-30 para 5.

unchastity with impunity. The law laid down by the courts declare that such allegations of adultery amounts to cruelty³⁷. When it comes to cooking up a set of damning circumstances against an unsuspecting spouse, alleging and proving adultery becomes easier than proving many of the grounds laid down in the Hindu Marriage Act. It is of course of little concern to the falsely alleging spouse that at the end of the prolonged legal battle if he or she is successful the other innocent spouse is left behind with a lot of social stigma. If he or she is unsuccessful, then too he or she goes free while the stink lingers on with the woman³⁸. The other easier way to obtain divorce against the wife is to falsely accuse her of unchastity and adultery, when she leaves the matrimonial home in retaliation to bring a case of desertion against her. Now how will she prove that she was falsely accused of unchastity and adultery³⁹. There are also cases where the spouses falsely allege adultery and bigamy against each other⁴⁰, the inevitable result in such a case is that marriage must be dissolved for the latent indication is that the marriage has

37. Aruna Jalan Vs Ramesh Chand Jalan AIR 1988 ALL 239.

38. Lakshman Uttamchand Kirplani Vs Meena alias Mota AIR 1964 SC 40 at Para 18 on p. 42.

39. Ibid, See also Chiruthakutty Vs Subramanian AIR 1987 Ker 5.

40. Parvathy Vs Shivram AIR 1989 H & P 29. Santamy Vs Jagadish 73CWN502 Subbarama Vs Saraswati (1966) 2 M.L.J.

completely rotted, the allegation being only the symptom of such decay. In other words, the indication is that the marriage is totally and irretrievably broken down. False allegations of adultery amounts to extreme cruelty especially if such a charge is made before the superiors at the place of work. Such charge must have an evidentiary value of unimpeachable nature otherwise it will have far reaching results. For example, if a wife alleged before her husbands superiors at work that her husband is an adulteror and is able to prove the allegations to an extent then the husband is likely to lose his job, face the break up of his marriage, be perpetually blemished with the result that apart from the social censure, he may not be able to pick up the shattered pieces of his life and settle down in matrimony again. But if the wife fails to substantiate her allegations even then the husband has to face embarrassment at his place of work and live with the stigma⁴¹.

To prove that the wife who is living apart from the husband is also living in adultery is a successful way to get rid of the wife's claim of maintenance⁴². The cardinal principle in such cases should be that the solitary evidence of a spouse should never be relied upon because he might be extremely interested in the case.

41. Aruna Jalan Vs Ramesh Chand Jalan, AIR 1988 AII 239 at p. 242 para 8. Also see, Rajbala Vs Gajender Singh & others I (1990) DMC 282 at Para 6 (P & H.C) Parveen Singh Vs Kanchan Devi I(1990) DMC 24.

42. Shankarlal Jaiswal Vs Umabai alias Dhaneswari II (1989) DMC 131 (M.P.H.C.)

Here adultery is to be proved. Where the question of adultery arises the social background of the parties cannot be ignored. The vital question is how the parties are accustomed to live in the given set of social background. Ordinarily the natural intermingling of the opposite sexes cannot be looked down upon especially in the modern jet set world. Yet the common middle class families still maintain a degree of conservatism. The unusual meeting of the two persons in seclusion for any length of time amongst that class can justifiably lead to the inference of adultery.

The most difficult question involved in cases of adultery is how and where to strike a balance between sexual promiscuity and the modern intermingling. One cannot overlook the fact that such large scale intermingling can result in innocent intimacy of heterogenous sexes on one hand or lead to adulterous relationship on the other. It is the latter that is sought to be protected and the former is to be ignored. But if such innocent heterosexual intermingling aggrieves the other spouse, even that is to be avoided. Faith is the essence of marriage, trust and belief are its pillars. They must always be preserved. A slight tremor in the foundation of the marriage is sufficient to destroy it.

Matrimonial Causes : Cruelty⁴³

The question of cruelty is judged on the basis of evidence on record and on the totality of the circumstances of the case. The

43. The Hindu Marriage Act, 1955 S. 13 "(I) Any marriage solemnised whether before and after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party - (ia) has after the solemnisation of the marriage, treated the petitioner with cruelty".

cultural background of the spouses, their temperament, their behaviour with each other in daily life their colloquialism with each other and their norms and conceptions have to be kept in view in determining as to whether an act or omission amounts to cruelty.

Cruelty need not be a physical violence inflicted by one spouse upon the other. Cruelty may also be in his demeanour and treatment. A solitary incident of cruelty or a solitary lapse of term however would not be sufficient to bring the case within the ambit of cruelty, the act must be repeated persistently. Even the incidents wear and tear during the initial days of marriage which occur while the spouses are trying to adjust with each other is not sufficient to allege cruelty⁴⁴. The nature, degree and extent of cruelty which would make it actionable depends up the capacity of the petitioner for endurance.

The test, therefore would not be whether the respondent is cruel but whether the conduct appears as cruel to the other spouse. In other words, what is relevant is the impact or the effect of the alleged conduct upon the petitioner. The emphasis no longer is on the nature of the act but on the effect produced by that act, in other words cruelty depends upon the level and degree of endurance that is exhibited by the spouse.

44. This point was emphasised by M.M. Punchi J in Santosh Kumari Vs Parveen Kumar AIR 1987 P&H 33.

Manu appears to be oblivious of any spousal behaviour which may be termed cruel. Where reciprocal behaviour of the spouses are concerned, Manu is guided by a few thumb rules. The first being that the woman is a dependent creature and she must worship and obey her husband in order to get a seat in heaven. The second one is that the woman is a heartless wretched being, she must be fiercely guarded at all times, must be kept busy always and if necessary she may even be punished by beatings⁴⁵. Though Manu dwells on the fact of women being honoured failing which the household comes under a curse of perishing, the sad truth is that he, in fact, advocates cruel behaviour towards women. If the husbands were to follow the code of Manu today, then very few marriages will survive.

Kautilya on the other hand is more stable. According to him a cruel behaviour, whether on the part of the husband or the wife is to be punished with fine. Kautilya Arthashastra has behaviours like refusal to cohabit, refusal to open the door to the husband, going out at night, abusing in filthy language etc well within the purview of the concept of cruelty. In case of extreme misconduct the woman may even forfeit her woman's estate. Such extreme misconduct takes place on the part of the husband or the wife if one

45. Manu Smriti, Ch. V Verse 148-151, 153-156, 167-168 Ch. IX V. 2-16, 26-30, 96, 101-102 Ch. VIII V. 299-300. For original text see Kullaka Bhatta, Manu Smriti, Motilal Banarasidas (1983) and for translation Shri G. Buhler, Laws of Manu Motilal Banarasidas (1972).

spouse puts the other into a genuine apprehension of his or her limb or life, that is to a cruel behaviour or misconduct by which one spouse feels endangered by the other⁴⁶.

The tone and nature of these behaviours as described in the sastras, the remedy, modus and procedures that are prescribed for them has made the common man take an adversarial attitude towards marital problems. This breeds a lot of antagonism between the spouses. They feel drawn to establish and prove the guilt of the other. Society which is aware and sensitive to these issues tend to exaggerate them and took down upon the so called guilty spouse. By attaching a social stigma to such erring spouses the society attempts to take preventive measures. The adversarial attitude also leads man to idolise marriage to such an extent that one loses touch with the reality. Matrimonial norms are required to function at a dual plane, the social plane and the individual plane. So wide an interpretation of the term cruelty results in mechanisation and dehumanisation of the term cruelty. In such an event every human behaviour will amount to cruelty. So instead of identifying the problem with a certainty and objectivity at the individual plane, there ensues a legal battle which instead of rendering any

46. Kautilya Arthashastra, 3.3-7-11; 3.3.14; 3.3.16, 3.3.23-24 3.3.32 See R.P. Kangle, The Kautilya Arthashastra, Part II for the translation and Part I for the original script Published by the University Press, Bombay (1972). Also peruse, V.K. Gupta, Kautilyan Jurisprudence B.D. Gupta 146 Gali Arya Samaj Delhi (1987).

individual or social justice, forecloses the future development of any social norms. Non recognition of irretrievable break down of marriage is a case in point.

Starting with false accusation of unchastity, to indifference, nagging, quarrels everything is cruelty. Thus abortion is also a ground for divorce, refusal to make tea, not opening the door, shouting before friends, beating and abusing the children, all are cruelty and a ground for divorce.

The Act⁴⁷, does not define cruelty and the word is naturally used in relation to human conduct or behaviour. It is a conduct in relation to and in respect of matrimonial duties and obligations. It is a course of conduct which adversely affect the other. Cruelty can be physical and mental, intentional and unintentional. If it is physical the court has no difficulty in deciding the case, since it becomes a matter of fact and degree. Mental cruelty presents a lot of difficulty. First the enquiry is on the nature of the cruel behaviour and second its impact on the mind of the other spouse. Based on these an inference has to be drawn.

There is a rapid change in the life around us and in the matrimonial duties and responsibilities in particular. They vary from house to house and person to person. Therefore, when one spouse complains of cruelty by another spouse it is futile to search for the standard in life, for a set of events stigmatised as cruelty

47. The Hindu Marriage Act, 1955.

in one case may not be so in the other, for it depends upon the type of life the parties lead and the values to which they attach importance. The categories of cruelty are not closed. Each case brings a different set of circumstances and human beings are as a rule dissimilar. Among human beings there is no end to the kind of behaviour that may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, their capacity and incapacity to tolerate the conduct complained of such is the wonderful realm of cruelty⁴⁸.

Matrimonial Cause : Desertion⁴⁹

Desertion involves a very complicated fact situation. The Hindu Marriage Act does not define desertion just as it does not define cruelty. However an effort is made here to make the concept of desertion clear.

According to Halsbury's Laws of England "..... Desertion means the intentional and permanent forsaking or abandonment of one spouse by the other without that others consent or without reasonable cause. It is a total repudiation of the obligations of

48. Sobharani Vs Madhukar Reedy, AIR 1988 SC 121.

49. The Hindu Marriage Act, 1955, Section 13 "(1) Any marriage solemnised, whether before and after the commencement of this Act, may, on a petition presented by either the husband or the wife be dissolved by a decree of divorce on the ground that the other party (ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition, or"

the marriage"⁵⁰. In view of the large variety of circumstances and modes of life involved, the courts have discouraged attempts at defining desertion, there being no general principle applicable to all cases.

In the medieval period the expressly monogamous nature of the Hindu Sastra was followed more in contravention than in compliance. While the wives worshipped, the husbands searched greener pastures to commit bigamy. Such being the case, the question of desertion was hardly a significant one. Yet Manu⁵¹ prescribed that neither by sale nor by desertion is the wife released from the husband. When the woman is left behind by the husband for any reason she is asked to wait for a certain period. Manu is silent on the course of action a woman is to follow if her husband does not return after the prescribed period^{51a}. Thus, when the husband did in fact desert the wife it was considered to be no desertion at all.

According to Kautilya the woman could seek to dissolve her marriage if her husband leaves her behind and goes away to a foreign land subject to the condition that dharmya marriages and

50. Halsbury's Laws of England (3rd Edition) Volume XII paragraphs 453 and 454 at Pages 241-243.

51. Manu Smriti, Chapter IX Verses 46, 76. For the Original text, see Kullaka Bhatta, Manu Smriti. Motilal Banarasidas (1983). For a detailed translation of the verses see G. Buhler Laws of Manu. Motilal Banarasi Das (1972).

51a. Ibid. This was also discussed at length in the first Chapter of this work and also at the beginning of this Chapter.

upper caste marriages could not be dissolved⁵².

All these reflect a medieval society where wives could be discarded at will. The men could supercede them and marry again but the wives would have to spend the life clinging to the memory.

Today desertion is a ground for divorce, if such desertion is for a continuous period of two years. Which means intermittent comings and goings are not cause enough to seek divorce on the ground of desertion. Such behaviour could of course be termed as cruelty. Even desertion itself is a type of cruelty even though desertion simplicitor is itself a ground for divorce.

Abandonment or desertion must therefore be (a) wilful and deliberate, (b) without express or implied consent of the deserted party, (c) against the wishes of the party deserted, and (d) without reasonable cause⁵³. Thus, desertion is not a withdrawal from a place, but from a state of things for what law seeks to enforce is the recognition and discharge of the obligations of a married state of things which usually is termed as the home. For this there are two essential conditions to be fulfilled by the deserting spouse, namely, (1) The factum or the actus of separation called the factum deserendi or actus deserendi, and (2) the intention to bring

52. Kautilya Arthasastra, 3.3.15-19, 8.2.48. For the original text see R.P. Kangle, Kautilya Arthasastra Part I and for the translated text see the Part II of the same book by the same author published by University Press, Bombay (1972). See also V.K. Gupta, Kautilyan Jurisprudence, B.D. Gupta, Gali Arya Samaj, New Delhi (1987).

53. Perumal Naicker Vs Seetha Laxmi Ammal, AIR 1956 Mad 415.

cohabitation or the spousal relationship permanently to an end, more commonly known as the animus deserendi. Two conditions are to be fulfilled by the deserted spouse too. They are (1) absence of consent and (2) absence of any conduct giving rise to any reasonable cause to the spouse leaving the house. If the spouse sincerely expresses an willingness to return, i.e. exhibits animus revertendi then he or she cannot be held guilty⁵⁴.

Just as with any other marital causes, desertion is also an inference to be drawn from the fact and circumstances of each case. The cause of action begins when the fact of separation and the intention to end the marriage coexists. But it is not necessary that they should commence at the same time. Separation can be without necessary intention or they may coincide at a given point of time. Where there is a fact of separation, it must be found out on whose part was the intention to end the marriage was involved. The guilt of desertion befalls on that spouse who had the intention to end the marriage. Where there is a fact of separation and the separated spouse later develops an interest to end the marriage, desertion commences from that point of time.

That act of desertion involves both, the actual abandonment and also expulsive conduct. When a spouse, by his or her behaviour and demeanour, by his or her acts and omissions forces the other spouse to leave him or her, it is known as expulsive conduct. Since

54. Bipin Chandra Jaisinghbhai Jha Vs Prabhavati,
AIR 1957 SC 180.

desertion is a withdrawal from a state of things it can take place even when the spouses are sharing a bed and board. Completely neglecting and ignoring a spouse, denying him or her every marital rights are all an extreme form of cruelty and desertion. For example where the spouses are sharing the same board and bed, if they do not have any physical and emotional relationship for years inspite of such sharing, it not only is an extreme form of cruelty but also desertion. Such desertions are very painful and wrecking⁵⁵. But in our society due to the adverse economic and social conditions such desertions are common.

In the course of my empirical study I have come across cases where the wives have been brought back to their parents house by the devoted husbands who wanted to give them some rest or recuperate their health, there weing no quarrels and tensions. Then when they went back, they refused to accept them back. These women do not want divorce so they have not sought one. In some cases the husbands have filed a divorce suit but did not follow them up. These women are even now ready to join their husbands if reconciliation, though they do not know what they should reconcile, can be

55. Lachman Uttamchand Kirplani Vs Meena alias Mota AIR 1964 SC 40. Tapan Kumar Chatterjee Vs Kamala Chatterjee AIR 1989 Cal 74. Jyotish Chandra Vs Meera Guha, AIR 1970 Cal 266. Gollins Vs Gollins (1963) 2 AII ER 966. Sheldon Vs Sheldon 1966 Prob. 62.

affected, they in the meanwhile continue to live in a state of de facto divorce⁵⁶.

To confine one self to the strict technical limits, the animus - actus, - consent - conduct paradigm often results in unnecessary inquiries which obscure reality. As a result there may either be a prolongation or denial of justice. Instead of such elaborate deductions the only single rule by which one should be guided is the existence of a reasonable ground. The entire situation is to be viewed as a composite whole. The conduct and reactions of the parties are to be assessed keeping in view of their personal and habitual experiences, the exceptions and knowledge of life, society and law. To consider marital relations in bits and pieces brings about a virtual disaster on the contesting parties. Because marital conflicts are basically human conflict, they are to be handled in proper societal setting.

In the modern society, where offering and accepting a dowry has de facto become one of the essentials of a valid marriage, there is a rampant abuse of marriage in its sacramental form and also an increase of greed. Where dowry claims cannot be prevented by implementing the Dowry Prohibition Act, 1961, act of desertion

56. Subrata Mukherjee Vs Aparna Mukherjee M.S. 20/84, Filed in the Ld. District Court at Darjeeling. See also the case of Lila Singh, Meera Ghosh and several others discussed in a Later Chapter and given in the appendix.

has become an easy means of escaping a violent death. In such cases factum deserendi is hardly significant, and divorce is a relief⁵⁷. The courts have held that harrassment for dowry, misbehaviour, neglect and abuse in order to obtain dowry are all cruelty and if the wife leaves her marital home due to such ill treatment it does not amount to desertion, for then she has a reasonable ground for such separation. She may even claim maintenance from her husband.

Desertion, which with an unbroken monotony consists of one parting from the society of the other, in effect gives rise to a gravely complex situation, which requires utmost care if miscarriage of justice is to be prevented.

Matrimonial cause : Unsoundness of Mind⁵⁸.

Of all the matrimonial causes, the cause that involves the maximum tragedy is that of unsoundness of mind. In causes like desertion, cruelty, adultery, an element of *mens rea*, intention or animus is involved. These are actions resorted to by one party against the other consciously and intentionally. But, when a person suffers from unsoundness of mind, he or she can hardly help it. Such a person who has lost the orientation of mind he or she can

57. Tapashi Ghosh Vs Anjan Ghosh MS No. 45/89, Filed at the Ld. District Court Darjeeling, See appendix She ran away from her husbands house after they attempted to burn her and later divorced him on the ground of extreme cruelty.

58. The Hindu Marriage Act, 1955, Section 13 "(1) Any marriage solemnised whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party - (iii) has been incurably of unsound mind or has been suffering continually or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

hardly plan a marriage, let alone a family and its future. Therefore, when a marriage takes place where one of the parties to the marriage is of unsound mind, the people arranging for such marriages are worthy of nothing but social condemnation. Needless to mention that such marriages seldom last, subjecting the already incapacitated mind to further trauma.

The question of the validity of marriage, with a person of unsound mind did not arise at all during the time of Manu. According to him marriage was indissoluble. Women, he propagated, must worship their husbands even if they be devoid of any virtue, even if they sought their pleasure elsewhere and were sans any good qualities. The question of unsound mind is not raised at all. However, to be fair to Manu, he exhorts the fathers not to give their daughters in marriage to a groom who is not of excellent virtues and qualities⁵⁹. However I have not come across any verse where Manu allows a marriage in contravention of this rule to be dissolved, nor is there anything in the code where a father who contravenes this requirement is to be punished. But a wife is not to be punished for being averse to her husband's madness.

59. Manu Smriti Chapter IX Verses 79, 89, 95. For Original Text see Kullaka Bhatta, Manu Smriti, Motilal Banarasidas (1983). for the translated text see G. Buhler. The Laws of Manu, Motilal Banarasidas (1964).

Kautilya, who has exhibited an extreme sensitivity to human problems is silent on the issue. However by inference and deduction insanity can be brought within the purview of the ground where Kautilya permits a wife to seek divorce when she feels that her husband is becoming dangerous to her life, and that he is a viscious person. There is a some difficulty here. Visciousness is a conscious act and so excludes insanity. Where she feels endangered by her husband, it includes only violently insane person. She, therefore is left without a remedy if her husband is of incurably unsound mind even though such insanity is of milder form. Therefore, accordingly only those impairment of mind which are incurable in nature and violent in form will make a wife entitled to seek a remedy on the ground that she is endangered by her husband⁶⁰.

A mere hint or a whispered allegation of unsoundness of mind is sufficient to put a marriage in jeopardy. To concede the fact of insanity will render a marriage dissoluble at the instance of the parties. To conceal the fact of insanity at the time of marriage will render a marriage voidable at the instance of the parties on the same ground and also on the ground that a fraud has been practiced on the party⁶¹, and when the fact of past affliction is revealed,

60. Kautilya Arthashastra, Book III Chapter II Verse 48. For original text see R.P. Kangle, Kautilya Arthashastra, University Press, Bombay (1972) for the translated text see Part II of the same book. Also refer, V.K. Gupta, The Kautilyan Jurisprudence, B.D. Gupta 146 Gali Arya Samaj, Delhi (1987).

61. The Hindu Marriage Act, 1955, Clause (b) and (c) of Sub-Section (1) of Section 12.

it becomes the bane of the married life with one spouse reading the symptoms of an unsound mind in every acts and omission of the other spouse. N.G. Dastane Vs Sucheta Dastane⁶² is a case in point.

In this case, the bride's father, with a view to avoid any future dispute, informed the parents of the groom regarding a past mental disturbance of the wife which was subsequently cured. It is true that the cause of the affliction was at first stated to be a bad attack of sunstroke and later changed to malignant malaria. However the cause of the affliction is immaterial here, what is materially important is that the groom N.G. Dastane could not reconcile himself to this revelation, nor could he overcome the temptation to marry the bride, namely Sucheta, who belonged to a very affluent family. The result was a prolonged and traumatic legal battle where the behaviour of the wife, arising from her inability to adjust with the Dastane family due to their different socio-economic background was attributed to her earlier mental affliction. Normally what would have been a cruel act became an act arising from an unsound mind. The husband kept hurling the charge of insanity to her face, then changed the allegation to cruelty and yet kept referring to her insanity. Though divorce was denied to the couple on the ground of condonation, it is obvious from the afore-narrated facts that the marriage had irretrievably broken down.

62. AIR 1975 S.C. 1534.

However, there are some exploitative marriages when the insane party is given in marriage for some material gain and benefits. During my survey in this field I came across a case where the wife was suffering from an incurable type of schizophrenia which was punctuated by lucid intervals. During one such lucid intervals her parents arranged her marriage with the groom. Fortunately or unfortunately she remained steady for about three years during which period she bore two daughters. Her second child birth proved ruinous. She suffered a relapse and her problem if anything became more severe and violent than before. The parents alleged extreme cruel behaviour of the husband as the cause of insanity. Persistent and prolonged inquiry revealed her medical history. Subsequently the marriage was dissolved mutually but only after he settled a handsome alimony on her⁶³.

This is a tragic situation to say the least, and more so, because there are two innocent children involved in the tragedy. One cannot blame the husband for dissolving the marriage and the wife is beyond reproach.

A third variety of situation arises where unsoundness of the mind is imputed falsely so that the marriage may be dissolved. Such false allegations amount to cruelty. The spouses under such circumstances get a chance to lead evidence and contest each others

63. Sunil Debnath Vs Sandhya Debnath, MS 19/1989, In the Court of the Id. District Judge, Darjeeling.

allegations. Such situations though regretful has a chance of being proved or disproved⁶⁴. A husband, suffering from tuberculosis of a curable nature may bring a suit for the dissolution of marriage against a wife who is incurably of unsound mind. However the situation cannot be reversed where a wife suffering from incurable mental disorder brings a suit of dissolution against a husband who is suffering from tuberculosis of curable nature⁶⁵.

The matrimonial cause of insanity also includes various other forms of mental disorder, namely idiocy, lunacy, epilepsy and other psychopathic disorder. The requirements are two fold - (1) the impairment should be of incurable nature and (2) the impairment of the mind should be of such a type that the petitioner could not be reasonably expected to live with the spouse. The degree of affliction is an important point for without it very few marriages would survive. For all of us are eccentric to an extent and eccentricity is not insanity. Eccentricity is to be enjoyed, insanity is to be treated and sympathised with.

In 1950, at a very late stage, the Federal court ruled that insanity could be a reason to nullify the marriage till then marriage with a lunatic was a valid marriage and incapable of dissolution, nullification of annulment⁶⁶. In the year 1955, unsoundness of mind

64. Ram Narain Gupta Vs Rameshwari Gupta, AIR 1988 SC 2260;
Manisha Vs Premod I (1990) DMC 540.

65. Veeranna Vs Sumitra Bai I(1990) DMC 49.

66. Ratneswari Nandan Vs Bhagwati Saran, AIR 1950 FC 142.

was given the legislative and judicial acceptance as a ground for dissolution of the marriage. It was brought to the present form in the year 1976 and is now wide enough to include all forms of mental disorder. As things stand today, insanity as a ground for seeking annulment of marriage requires that the impairment of mind should have been present at the time of the marriage. Insanity as a ground of dissolution of marriage requires that the disorder should be in there at the time of presenting the petition.

The latter situation appears to be very heartless. Yet unless the petitioner wants to remain in wedlock with such a person, unless the spouses have an urge from within to remain together, no one, let alone the law can ask a healthy spouse to continue with such a marriage especially if the insanity of either of the parties adversely affect the children. So, a clean break, even if painful, is desirable.

Accordingly, to me, marriage with a lunatic is not accepted by the Dharmasastra. The ceremony of Kanyadan involves giving away of the daughter in dana or gift and accepting her as such. He, who has lost his mind, becomes incompetent to accept such gifts. Such marriages would therefore be ipso facto invalid. However when such marriages were performed, validity was granted on the rule of factum valet. If, however, the parties feel that they are incapable of continuing with the alliance, they should be free to do so. The whole realm of insanity revolves around the degree and severity of the affliction.

Every mental disorder calls for a medico-legal distinction, which is not the intention of this work. The action reprehensible

to human values are those where one is deceived into such marriages. Casting away a mentally unstable spouse or divorcing a spouse because he has been afflicted by mental disorder at a later stage of the marriage is equally painful.

The standard of proof in cases of mental disorder is very high. The entire complex situation is to be evaluated on unimpeachable medical evidence coupled with the conduct of the spouse. His or her behaviour towards the other, his or her habits as noticed, his or her loss of personality and other noticeable features to understand. Whether a person is suffering from a mental disorder of any kind.

Matrimonial causes : Other Grounds For Divorce

Apart from the four foregoing grounds divorce may be sought on several other grounds. Unlike these four grounds, these are less commonly used and are unique by themselves. Such grounds are discussed under this head.

A. Conversion⁶⁷;

One would have thought that with the constitutional proclamation of the secular nature of Indian Polity, people have become indifferent to any religious dogma. However the multi ethnic society

67. The Hindu Marriage Act, 1955, Section 13, "(1) Any marriage solemnised whether before or after the commencement of this Act may, on a petition presented by either the husband or the wife be dissolved by a decree of divorce on the ground that the other party (ii) has ceased to be a Hindu by conversion to another religion.

of India, to date, remains exotic, emotional and deeply religious. Conversion to another religion, therefore is a good cause enough to seek divorce. The Indian Courts being the secular instrument of secular India cannot prefer one religion over the other.

The Dharmasastra and the Sastri teachers do not speak of conversion. Those who did allow the women to seek divorce allowed them to seek it on the ground of the other spouse having embraced another religious order. This was because as early as the days of Dharmasastra, India was a unireligious nation. Apart from the Hindu religion, no other religion was known to India at that time. By analogy however it can be presumed that conversion would have been a good ground to seek divorce⁶⁸.

When one spouse ceases to be a Hindu, the religious sentiment of the other may be hurt. In recognition, however, of this fact. The Native Converts Marriage Dissolution Act, was passed in the year 1866. Under this law when either of the spouses converted to Christianity the marriage could be validly dissolved by the one who did not get converted,^{and not} when a person adopts any of the religion which is considered to be a form and development of Hinduism and its

68. Narada Chapter XII Verse 98, Parasara IV. 30. Kautilya is silent on the issue which indicates that during those days conversion was not contemplated. Adopting Sanyasa, or becoming a recluse would give rise to a matrimonial cause of divorce.

other sister religions⁶⁹ Conversion to Islam will automatically dissolve the marriage unless the other spouse too adopts Islam as his/her religion. In the year 1950 the word "native" was dropped from the caption of the Act of 1868 and it became The Convert's Dissolution Of Marriage Act 1866. Under this a spouse whose partner embraced Christianity could get his or her marriage dissolved.

Such dissolution however is not automatic, and if the spouses feel that despite conversion they can continue to lead a conjugal life they may do so, there is nothing in law and society to prevent them. However if dissolution is sought then the unconverted spouse may seek dissolution under the Hindu Marriage Act⁷⁰ and if the converted spouse seeks dissolution then he or she must use the Convert's Dissolution of Marriage Act⁷¹.

A social problem is created by the conversion of one spouse into another religion especially Islam. Sometimes such conversion is affected with the sole purpose of contacting another marriage. In such cases interest of the party in the conversion is a vital

69. The Hindu Marriage Act, 1955; Clause (a)(b) of sub section (1) of section 2. Under this the form and development of Hindu religion are Virashaiva, lingayat, Bramho, Prarthana or Arya Samaj, Budhists, Jaina and Sikhs are its sister religion.

70. See ante foot note 67.

71. The Convert's Dissolution of Marriage Act, 1866, Section 4 and 5 and also sections 15, 16 and 17.

factor. The intention of the party and the circumstance under which the conversion is affected is inquired about.

In a case by his first wife, Puja Khanna, Javed Khan was accused of bigamy under Section 494 of the Indian Penal Code. According to her case he had embraced Islam solely for the purpose of marrying a second time. Jai Sharma, as Javed Khan was known before his conversion married his first wife Puja Khanna according to Hindu rites. The marriage ran into troubled waters within a year and Jai Sharma embraced Islam in order to marry another girl known as Rajani Ahuja who herself embraced Islam and came to be known as Shayeeda. Puja Khanna brought a case for bigamy and conversion and obtained relief⁷².

The courts have repeatedly held that where the conversion is merely on the ground of obtaining some material benefit or gain of that religion and custom related to it, such conversions are invalid. Such conversions are against public policy and morality and cannot be recognised by the courts, even the doctrine of factum valet will not come to their aid because any action which is in deliberate violation of a legal rule cannot ever be valid⁷³.

72. Reported in The Telegraph, July 30th 1989.

73. Ibid. See also Juliana Yonzone Vs Pratap Kumar, 14/85 and 22/88. Filed in the Id Court of the District Judge at Darjeeling. Also Budhousa Rowther Vs Fatima Bi AIR 1914 Mad 192.

The facts of each and every case of conversion is to be viewed and weighed separately. Facts of no two cases can have precedence over each other. The background the circumstance and intentions of the parties are some of the factors to be considered while dealing with the cases of conversion. The Delhi High Courts decision is in direct contradistinction to the view widely held thus far that a man who converted himself to Islam can marry a second time during the subsistence of the first marriage, only he cannot divorce his first wife by Talaque. Where a woman embraces Islam, she may not marry during the subsistence of the first marriage as Islam does not allow polyandry⁷⁴.

Thus, conversion will be accepted socially and legally only and if only it is for reasons of deep and abiding faith. Conversion of convenience is a kind of insult to that religion which is governed by some special features not found in another religion, conversion must essentially be based on faith and spiritual satisfaction alone. If it is for the subversion of law, then it is no conversion at all.

The phenomenon of conversion has a history of only two centuries and conversion has gradually gained momentum and is fully in keeping with the secular spirit of the Indian Constitution but it must at any cost exhibit a broadness of mind and faithfulness of the spirit.

74. Budhansa Rowther Vs Fatima Bibi, AIR 1914 Mad 192.

B. Leprosy⁷⁵ :

Leprosy is a ground for divorce, and leprosy is curable. Only a virulent and incurable form of leprosy alone will give rise to a valid cause of action. However the human mind has a deep seated revulsion and fear for this disease. The people suffering from leprosy suffer psychologically too, for they believe it to be contagious, painful and a result of some dreadful sin. None of this is of course true. Like so many unreasonable social fetter this is also one.

Apart from a sweeping statement that a wife should not be punished if she is averse on the husbands madness and crime, Menu is silent on the issue⁷⁶. Dharmasastra is not however silent on the issue. Parasara says a woman may seek to dissolve her marriage if her husband has fallen. The word 'fallen' is of a very wide connotation; within it is included a man who has leprosy or venereal disease, which were in those days believed to be incurable and result of some sins⁷⁷ and resulted in excommunication. Similarly Kautilya observes that if a man has become degraded or an outcaste or is fallen his wife may seek divorce on that ground. By a similar analogy again a man suffering from leprosy is to be brought under this provision. Kautilya takes a step further and adds that when a husband endangers the life of his wife she may seek to dissolve the

75. The Hindu Marriage Act, 1955, Section 13, sub section "(1) Any marriage solemnised whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party - (iv) has been suffering from a virulent and incurable form of leprosy.

76. Manu Smriti, Chapter IX.79. See for original text Kullaka Bhatta, Manu Smriti, Motilal Banarasi Das, (1983). and for translation G. Buhler, The Laws of Manu, Motilal Banarasidas, (1964).

77. Parasara Smriti, Chapter IV Verse 30.

marriage. That means if a man by having a contagious and virulent form of leprosy endangered the life of the wife she would be free to seek divorce⁷⁸.

Thus, though leprosy is an illness and no one has any control over illness, it bore a stigma since days beyond a memory. Such an attitude no doubt perpetrates a social problem and ineffect condemned a man to an animal existence.

Sociologists insist that we should not allow our minds to be swayed by feelings of emotional loathing and revulsion with which leprosy patients have been treated, throughout human society in all countries throughout the world and that we should take a very balanced and humane outlook and accept leprosy as simply another disorder that requires medical attention⁷⁹.

This social approach can seldom be followed in the married life. The spouse cannot be forced to lead a healthy marital life nor can they be compelled to overcome their prejudices. Keeping this in view and in order to strike a balanceⁱⁿ law and society, divorce is allowed where the disease is of virulent and contagious nature. This provision also aims to safeguard the health of the spouses and children.

78. Kautilya Arthashastra, Book III Chapter II Verse 48, For the Original Text see R.P. Kangle, Kautilya Arthashastra, University Press, Bombay (1972) Part I. For translation see Part II by the same author. Also V.K. Gupta, Kautilyan Jurisprudence, Published by B.K. Gupta.

79. Swarajya Lakshmi Vs G.G. Padma Rao, AIR 1974 SC 165

To secure relief under this provision of law it must be by unimpeachable medical evidence that (1) the disease is a contagious one and (2) it is incurable in nature. The latter is a predominant requisite. Even where the disease is a communicable one but curable in nature will not entitle the spouses to seek the relief of divorce only on medical authentication of this fact can a marriage be dissolved.

Divorce must be declined where the disease has already been communicated by one spouse to another and both are suffering from the same. A divorce, merely to satisfy the vengeance of the wronged spouse would set an unhealthy trend. Thus here the courts must seek to preserve the marriage.

Where the wife is living away from the husband on account of his leprosy but claims maintenance from him, the courts have held that the leprous husband cannot force her to cohabit with him nor can he use his disease as a defence to resist maintenance⁸⁰.

Just as the insane, the leprous also have no control over their disease. Though both are curable in most cases these socially unfair yet unavoidable.

C. Veneral diseases⁸¹

Veneral diseases are the result of sexual promiscuity and

80. H. Sheenappayya Vs Rajamma alias Padmavati. AIR 1922 Mad 399.

81. The Hindu Marriage Act, 1955, Section 13 Sub section "(1) Any marriage solemnised, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party- (v) has been suffering from veneral disease in a communicable form....."

has a psychological impact on the person whose spouse is suffering from it. These are abhorrent diseases which are the result of a reckless life style. If such a disease is communicable in nature, then it is a good ground for seeking divorce. The fact that a person is suffering from venereal disease or has in the past suffered from such a disease is sufficient to run the marriage into troubled waters.

If a spouse being aware of his or her disease has intercourse with the other or forces it upon the other, it will amount to inflicting an extreme form of cruelty upon the other. There is no obligation on the part of the court to dissolve the marriage if both the spouses are suffering from the disease.

The existence of the disease is to be considered from three points of view. They are, (1) whether it is a breach of contract of marriage, (2) whether existence of the disease at the time of the marriage is cause enough to get it annuled and (3) whether any of the spouses contracting the disease after the marriage has a good ground for divorce.

Regarding the first query, contracting the marriage inspite of the disease results in a crime against society where consortium vitæ, the gratification of natural passion is rendered lawful by marriage for the procreation of children to build a healthy society. Violation of such a rule of society (or agreement or contract) invariably result in a breach of contract. Specially if the disease is of a communicable nature, there remains the possibility

of the other spouse and the future child contracting the same. The law will constrain no man to assume a position so full of perils to have placed within his reach a lawful means of gratifying a powerful passion at the risk of another's health or life and the possibility of bringing into this world children in whose constitution the sin of the father lurks and who may carry the disease by reason of its birth to this particular parents.

As regards question number two, when, the disease prevents and obscures very purpose of marriage that is physical and emotional companionship, gratification of natural passion and procreation of children, such a marriage is worthy of annulment, and may be fitted within the framework of that provision⁸².

As for the third question, contracting venereal disease indicates that the spouse was having a sexual relationship with several other persons which ipso facto brings the action within the purview of adultery and cruelty. Such cruelty assumes an extreme form if one spouse begets the disease from the other, and as such it comes to be recognised as a ground for divorce⁸³. But a mere

82. The Hindu Marriage Act, 1955; Clause (c) of Sub-Section (1) of Section 12.

83. Birendra Kumar Biswas Vs Hemlata Biswas AIR 1921 Cal 459.

allegation that the other spouse is suffering from venereal disease is not sufficient, the alleged disease must be proved medically and beyond any doubt⁸⁴. Falsely alleging venereal disease of the other spouse is again a cruelty and renders the marriage dissoluble⁸⁵.

Existence of the disease in a person is a clear indication of the persons bad character and loose morals, or else it shows that the disease is inherited. In either case it has a tremendous effect upon the mind irrespective of whether the disease is curable or not. It is unwise to seek to preserve such marriages and when the parties approach the court, it should have no hesitation in granting the relief sought.

The social stigma that is attached with the illness is so intense and deep that the afflicted spouse is so affected psychologically that often suicide is attempted. Sometimes the fact of the unfaithfulness of one spouse drives the other to self destruction. Therefore, the disease which has its roots in the carnal pleasures of the body has the capacity to cause the sure death of the spirit.

84. Madhusudan Vs Chandrika, AIR 1975 MP 174.

85. Probohd Kumar Pal Vs Kabita Pal. M.S. No. 16/88, Filed at the court of the Learned District Judge at Darjeeling. In this case the wife alleged venereal disease falsely.

D. Sanyas⁸⁶

Renunciation of the world at large and embracing another religious order is known as sanyas. The sanyasi by renouncing the world renounces his grihasthasrama and all other material desire.

The preachers of Dharmasastra allow the marriage to end if the husband has either become a sanyasi or a recluse, Narada says that another husband is ordained for the wife if the husband adopts another religious order⁸⁷. According to Parasara, a woman may dissolve her marriage if her husband has become a recluse or a sanyasi⁸⁸. Kautilya, does not say that the wife may divorce when the husband renounces the world but refusal to have conjugal relationship, according to him, is a good reason for divorce⁸⁹.

Since adopting sanyasa, in effect, terminates the marital tie, whether the person has actually adopted sanyas is a vital question. Otherwise a person, in order to escape the obligations of marriage, may simply pretend to have adopted sanyas. Therefore, it must be proved beyond any reasonable doubt that all the religious requirements for the adoption of sanyas were complied with. Adoption

86. The Hindu Marriage Act, 1955. Section 13. "(1) Any marriage solemnised whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife be dissolved by a decree of divorce on the ground that the other party - (vi) has renounced the world by entering any religious order".

87. Narada Smriti XII. 98.

88. Parasara Smriti IV. 30.

89. Kautilya Arthasastra, 3.2.48 R. P. Kangle, Kautilya Arthasastra, Part I and II, University Press, Bombay (1973).

of sanyas amounts to a civil death having effect on both marriage and succession.

Religion and piety is good so long as it does not affect the life of the others. So, he who adopts sanyas before assuming any such marital obligations or does so only after the completion of all his responsibilities is beyond reproach. Adopting sanyas while well burdened by family and matrimonial relationship is a callous escapism from life itself.

It is easier to prove desertion than sanyas because in the latter case the whereabouts of the spouse remains unknown and the wives find it very difficult to sue them, even though when one adopts sanyas, factum deserendi and animus deserendi coincide. Only in desertion, the cause of action commences if it continues for a continuous period of two years, in sanyas the cause of action commences at once subject to the requirement under Section 14 of the Hindu Marriage Act⁹⁰.

E. Presumption of Death⁹¹

When a person is unheard of for more than a period of seven years by people who would have heard from him had he been alive,

90. Every petition under this section is to be presented after one year of completion of marriage unless a special permission of the High Court is obtained on specified grounds.

91. The Hindu Marriage Act, 1955, Section 13 "(1) Any marriage solemnised, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party - (vii) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had the party been alive.

it is presumed that he is dead. In such an event the marriage became dissolvable.

Presumption of death is conceded by the Dharmasastras. Narada allows it a prime importance where the wife is ordained another husband⁹². Parasara also allows a woman to marry if her husband is not heard of for a long time⁹³. Kautilya broadens the situation when he concedes divorce to a wife whose husband has gone to a foreign land and is unheard of for a long time⁹⁴. Manu⁹⁵ on the other hand prescribes an eight years waiting period for the woman whose husband has gone off to another country. Though this eight years waiting period is the maximum limit. Manu does not specify what the woman should do after the said time limit expires.

The process of proving the case is pure logic. If the petitioners contention regarding the silence of the husband is true,

92. Narada Smriti, Chapter XII Verse 98.

93. Parasara Smriti, Chapter IV Verse 30.

94. Kautilya Arthasastra, 3.2.48. For the original and the translated text see R.P. Kangle, Kautilya Arthasastra, Part I & II University Press, Bombay (1972).

95. Manu Smriti, Chapter IX Verse 76, Kullaka Bhatta, Manu Smriti Motilal Banarasidas (1983) and G. Buhler, Laws of Manu, Motilal Banarasidas (1964).

then the case goes unchallenged, if not, the spouse reappears or makes his whereabouts known than divorce move will be thwarted. The court can only ascertain the truth by advertisement and notifications.

Matrimonial Causes : Sustained Judicial Separation and non restitution⁹⁶.

As the law stands now, either spouse may get their marriage dissolved if (1) the parties did not resume cohabitation for one year even after the passing of the decree of judicial separation, (2) they have failed to comply with the restitution of conjugal rights for a period of one year passed in favour of one spouse against the other.

96. The Hindu Marriage Act, 1955, Section 13 "(1-A) Either party to a marriage, whether solemnised before or after the commencement of this act, may also present a petition for the dissolution of the marriage by a decree on the ground - (i) that there has been no resumption of cohabitation between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceedings to which they were parties; or (ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree of restitution of conjugal rights in a proceedings to which they were the parties."

This is a roundabout method of recognising the theory of irretrievable breakdown of marriage, for there is a distinct shift of emphasis involved here. It shows that whoever was the so called guilty party in the previous litigation, he or she has taken no steps to correct it or atone for it. In other words the so called guilty party in the marriage, simply does not care whether the marriage can be saved or not.

Under the circumstances, the legislative policy enshrined in this provision is clear. It makes divorce liberal for the parties whose marriages have suffered irreparable damage. This involves least bitterness and hostility and maximum human understanding⁹⁷. Thus this section affords relief to the parties who cannot even agree to disagree. Such is the extent of their mutual intolerance and hatred.

Where one of the spouses lead an adulterous life and the other spouse obtains a decree of judicial separation, but the "guilty" spouse does not make amends nor corrects his or herself, there will only be a sustained judicial separation. Take the situation where one spouse had deserted the other spouse without any reasonable grounds with a view to live in adultery and a decree of restitution of conjugal rights is passed against him or her. In this situation with or without efforts restitution cannot be affected.

97. Bimala Devi Vs Singh Raj, AIR 1977 P & H 167

Now, what should the court do in these circumstances? Will granting a divorce decree not encourage these aberrative practices? And help one to take advantage of the situation? The answer prima facie would appear to be in the positive, but in reality it would not amount to encouragement. The foregoing hypothetical questions only reflect a hapless state of married life. Refusal to grant a decree would not make them live together and lead a happy conjugal life again. I have met people who are living in separation due to the similar situations enshrined above. A few women have told me that they are going to contest the divorce when it comes up before the court. I asked them the reason for this, would they then lead a happy life with their husband. They denied such possibilities. They said that they knew they would have to continue in a state of de facto divorce but they would contest the case (of course win it also) in order to punish the husbands and avenge themselves.

Such marriages therefore, even if made to subsist, would be unhealthy empty shell marriages. Socially, these marriages are better dead than alive. Therefore, even if one spouse is hurt and emotionally aberrated, the court takes a right step when it dissolves such marriage, especially in view of the fact that even if divorce is declined to the parties on contest, they continue to live in a state of de facto divorce, often continuing the adulterous relationship which formed the cause of action of the suit. Divorce will at least enable the other spouse to turn a new leaf.

But so long as matrimonial laws are not broad enough to warrant the dissolution of marriage on the sole ground of irretrievable break down of marriages, each case will have to be assessed upon whether one spouse is taking advantage of his or her own wrong and the court will very often be put in a dilemma in such cases.

One must remember that after a decree of judicial separation neither of the spouses have an obligation to cohabit with the other spouse. In judicial separation, both parties are relieved from all types of marital obligation, only the fact of the marriage exists. Therefore, failure of the spouses to make amends and resume and reactivate the conjugal life does not amount to the spouses taking advantage of their own wrong⁹⁸. Yet in every case of sustained judicial separation and non restitution, this question of whether the spouses are taking advantage of their wrong arise and very valuable judicial time is wasted in debating the issue.

It cannot also be ruled out that with the usual cunning of the litigative party, a spouse may obtain a decree for restitution against the other and does not enforce the same with the sole purpose of obtaining a divorce with least ado at a later date after the lapse of the statutory period. But such conduct or abuse of law can be prevented through legislative measures alone but as matters stand now, disinclination to execute the decree in ones favour with an ulterior motive of obtaining a decree of divorce is not prohibited

98. Smutra Manna Vs Gobinda Chandra Manna 92CWN 254; Jethabhai Vs Manabai, AIR 1975 Bom 88; Dharmendra Kumar Vs Usha Kumari, AIR 1977 SC 2218.

legally and divorce cannot be declined on that ground⁹⁹. Where a decree of restitution is passed in favour of one spouse against the other, there is no decretal obligation on the part of the spouses to resume cohabitation although there is a marital and a moral obligation to do so. Thus, a spouse even after obtaining a decree of restitution, (if a spouse) does not offer his or her society to the other, still, he or she may obtain a decree under this provision¹⁰⁰.

Therefore, behind this innocuous provision of law, there is the cardinal principle that let no law compel the union of man and woman who have decided to separate. If they desire to be two why should the law insist that they be one. Where the marriage, de facto, has become defunct, where is the obligation to keep it de jure alive? If this is so, and the provision ultimately aims at this, then why not adopt a more direct and forthright approach and accept irretrievable breakdown simpliciter as a ground for divorce?

This roundabout acceptance of the inevitable leads to the prolongation of the agony of the spouses. There is a loss of much valued litigative time which is used up debating issues like taking advantage of own wrong etc, specially keeping in view of the huge back log of cases in every court in India.

99. Radha Kumari Vs K.M.K. Nair, AIR 1988 Ker 235.

100. Mita Gupta Vs Prabir Kumar Gupta 93 CWN 50, Gajna Devi Vs Purushattam Giri, AIR 1977 Del 173, Dharmendra Vs Usha AIR 1977 SC 2218, Anil Vs Sudhaben, AIR 1978 Guj 74, Saroj Rani Vs Sudharshan, AIR 1984 SC 1562.

Matrimonial Cause: Special Ground of Divorce for the wife¹⁰¹

Under the Hindu Marriage Act, the wife has been conceded certain special grounds on which she may dissolve her marriage in a court of law (1) Bigamy¹⁰²; with the lapse of almost three and a half decade, the bigamous marriages which took place before the cut off year of 1955, have become antiquated. The provision, further loses significance since bigamy has been covered from different aspects under the law. At the very outset, for a valid Hindu marriage, neither party should have a spouse living at the time of the marriage¹⁰³ and of such marriages, therefore, if performed in contravention of this rule, would ipso facto be null and void¹⁰⁴. In spite of this, if a

101. The Hindu Marriage Act, 1955, Sub Section (2) of Section 13 provides four special grounds under which the wife alone "may also present a petition for the dissolution of her marriage".

102. Ibid Clause (1) of sub-section (2) of Section 13 states that, "in the case of any marriage solemnised before the commencement of this Act, that the husband had married again before such commencement or that any other wife of the husband married before such commencement was alive at the time of the solemnisation of the marriage of the petitioner:"

103. Ibid. Clause (1) of Section 5. While discussing the conditions of a Hindu marriage lays down that "A marriage may be solemnised between any two Hindus, if the following conditions are fulfilled namely - (1) neither party has a spouse living at the time of the marriage"

104. Ibid. Section 11 reads as "Any marriage solemnised after the commencement of this Act shall be null and void and may, on other party be so declared by a decree of nullity if it contravenes any of the conditions specified in clauses (i), (iv) and (v) of Section 5".

person married a second time while he or she has a spouse living, then they can be prosecuted under the criminal laws as well¹⁰⁵.

The wife of the earlier valid marriage cannot have the subsequent bigamous marriage declared as void under the Hindu law, neither can she have the subsequent marriage dissolved under any provision of divorce¹⁰⁶. But she has one weapon to fight the case. She can sue her husband on the ground of adultery for having had sexual intercourse with a person other than his wife i.e. herself. Marrying again after the act has come into force, that is after the cut off year of 1955, is certainly adultery, and if he is living with the other woman as if she were his wife, then she is living in adultery. Unlike criminal law, where the validity of both the marriages are to be proved to the hilt and beyond any reasonable doubt, the charge of adultery will be sustained even if the subsequent marriage was defective and invalid¹⁰⁷. In that case criminal

105. The Indian Penal Code, 1860, Section 494 reads "whoever having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine" and section 495 reads "whoever commits an offence in the last preceding section having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine."

106. Umashankar Vs Radha Devi, AIR 1967 Pat 229

107. Chanda Vs Nandu AIR 1965 MP 268, Geetabai Vs Fattoo AIR 1966 MP 130, J. Duncan M Derret, "A Round up of Bigamous Marriages" Bom Law Reporter Vol. LXIX Pg 90 as cited in Essays in classical and Modern Hindu Law by the same author.

law will also come to the aid of the aggrieved spouse¹⁰⁸, but the difficulty is that under the criminal law, adultery is to be proved beyond any reasonable doubt, but the matrimonial law has no such stringent requirement.

To prove a marriage valid or an adultery beyond a reasonable doubt is a very difficult thing in the criminal law, with the result that very rarely does the bigamist or the adulterer face any consequences of their deed. The least the courts can do is condemn it as a very reprehensible social conduct.

The Dharmasastra is totally silent on the question of bigamy even though Hindu sastras are monogamous in nature. Therefore bigamy though reprehensible has become a social fact.

(ii) Sexual And Unnatural Offences¹⁰⁹: The wife may seek divorce on the ground of the husband's perverted and unnatural sexual behaviour. These offences are also punishable under the criminal law but only on a conclusive evidence alone¹¹⁰. But under the

108. The Indian Penal Code, 1861, Section 497, "whoever has sexual intercourse with a person who is or whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape is guilty of the offence of adultery and shall be punished with imprisonment of either description of a term which may extend to five years or with fine or with both. In such cases the wife shall not be punishable as an abettor.

109. The Hindu Marriage Act, 1955, Clause (ii) of Sub-Section (2) of Section 13 reads that, "A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground - (ii) that the husband has, since the solemnisation of marriage, guilty of rape, sodomy or bestiality, or"

110. Under the Indian Penal Code, 1861, Section 377, a carnal intercourse against the order of nature with any man, woman or animal is made punishable as unnatural offences and the offence of rape is defined under Section 375.

matrimonial laws, if a set of circumstances point towards the commission of that offence it would be taken as a sufficient proof.

(iii) Upholding the wife's claim of maintenance¹¹¹; Where the courts have upheld the wife's claim of maintenance in a maintenance suit, the wife, in the subsequent divorce case becomes entitled to the relief of divorce thereby again upholding the theory of irretrievable breakdown of marriage and avoidance of multiplicity of litigations. This is also similar to Section 13(1-A).

(iv) Repudiation of Marriage by the bride¹¹²; Where the marriage has taken place between the parties when the girl was below the age of fifteen and very young, she can repudiate her marriage on reaching the age of fifteen but before attaining the age of eighteen. Her marriage may be dissolved on such repudiation. This provision

111. The Hindu Marriage Act, 1955, Section 13(2)(iii) reads as "(2) wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground..., (iii) that in a suit under Section 18 of the Hindu Adoptions and Maintenance Act, 1956, or in a proceeding under Section 125 of the Code of Criminal Procedure, 1973, or under the corresponding section 488 of the Code of Criminal Procedure 1898, decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards or"

112. Ibid. Clause (iv) reads ... " that her marriage, (whether consummated or not) was solemnised before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of 18 years".

is fraught with danger because young men can be exploited under this section. Take the case of a girl of fifteen who repudiates her marriage because her parents want her to do so. Here, in these types of marriages parental whim is more at play than the wisdom of the child-woman of the marriage, for these children hardly can take an individual and independent decision at such a young age.

Matrimonial Cause: Divorce by Mutual Consent¹¹³; The decree by mutual consent is the least painful process of divorce and is one of its smoothest forms. However, in this healthy procedure the legislature still requires that (1) a reconciliation proceeding should be affected and (2) mere agreement to divorce is not enough; any of the grounds established under S. 13 of the Hindu Marriage Act, should be there.

This provision has a two way operation. It allows a six months' time limit to the petitioners to withdraw the petition if they change their decision to dissolve the marriage. Should they decide to go ahead with their decision to dissolve the marriage, they may do so

113. The Hindu Marriage Act, 1955, Section 13-B "(1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to a district court by both the parties to a marriage together whether such marriage was solemnised before or after the commencement of the Marriage Laws Amendment Act, 1976, on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and they have mutually agreed that the marriage should be dissolved.

after the expiry of initial six months and within eighteen months from the date of filing the petition. Therefore, not only is the requirement of court reconciliation complied with but the spouses are granted a six month "thinking period", thereby another reconciliation attempt is made.

Among the propounders of Dharmasastra, Kautilya alone advocated mutual disaffection as a ground for the dissolution of marriage¹¹⁴.

Since mutual consent or mutual disaffection is good enough to end the marriage by analogy one would tend to feel, that if the concerned spouses enter into an agreement or a compromise to end the marriage, then, it should be enough for the court to dissolve the marriage. However, that is not the case. The court insists on the following:

1. Whether such agreement or compromise is a lawful one.
2. Whether such agreement or compromise satisfy the requirement of Section 23 of the Hindu Marriage Act, 1955.
3. Whether any of the grounds specified for divorce in the Act exists.
4. Satisfaction of the court on the foregoing requirements¹¹⁵.

114. Kautilya Arthasastra 3.3,15-19. For original text see R. P. Kangle, Kautilya Arthasastra, Part I, University Press, Bombay (1972). For translated text see Part II of the same book by the same author. For further reference see V.K. Gupta, The Kautilyan Jurisprudence, B.D. Gupta, Gali Arya Samaj, Delhi (1987).

115. Apurba Mohan Ghosh Vs. Manashi Ghosh I (1990) DMC 145.

These stringent requirements deprive the section and thereby the spouses to the marriage, the real facility and inherent dignity of the mutual consent.

At the Indian scene, the judiciary and the legislature have taken upon themselves the duty and the responsibility of trying to reconcile each marriage and protect one spouse from the other. They fail to understand that the requirement of S. 23 of the Hindu Marriage Act, must have been essential in the 1950s and the 1960s when the social transformation was just initiated. Today, however strict adherence to this section does not appear to be keeping tune with the time and people. The only thing the court can insist upon is that, where the spouse has been coercively and in collusion made to apply for the divorce under mutual consent, he or she should bring the fact to the notice of the court within six months of the petition.

There is no doubt that the legislation has bestowed upon the court a duty to fight a last ditch battle to save the marriage but the truth is that even if the court wins the battle apparently and officially, very few of such marriages have been patched up. As will be seen from the subsequent chapters, I have come across many cases in the course of my empirical study that even where the court has declined to grant the divorce relief, the parties did not press the case and the suit has been dropped for non prosecution or default or the case has been withdrawn and the parties are still not living together and continuing with the marriage.

During reconciliation, the parties sometimes agree to try again. Sometimes out of emotional reaction, which is of very temporary nature, sometimes people agree to reconcile out of fear and belief that not to agree with the courts reasoning will be a kind of contempt for which they will be punished. Even where divorce is declined because a spouse is taking advantage of his or her own wrong, or where an element of fraud and coercion is involved, they come away from the court empty handed only to lead a life of de facto divorce. To my mind this is a worse social problem and it is better to dissolve the marriage where the parties are pleading that they cannot continue to live together.

To that extent, I am in full agreement with P.A. Choudary J¹¹⁶ when he says that it is a well settled proposition of law, that a statutory-provision though mandatory in form, can yet be treated as directory in substance. In my opinion, the requirement of caution under S. 23 of the Hindu Marriage Act is only directory in substance though mandatory in nature. Justice Chowdhury opines that, the design of the law expresses its liberalising tendency by providing relief to the parties on the basis of their mutual consent from their broken marriages. This relief is granted by bringing about a profound alteration in the concept of Hindu Marriage. By that alteration law has definitely set its face against forcible perpetration of the

116. P.A. Choudary J. in Om Prakash Vs K. Nalini AIR 1986 A.P. 167 at para page 169.

status of matrimony between unwilling partners. A procedural provision must be interpreted as a handmaid to justice in order to further and advance the interest of justice and not as a technical rule. When the court is satisfied that in the interest of justice, primarily to the spouses, then to the society, the marriage must be broken, the court must put the marriage tie asunder. And what can be a greater "satisfaction" than the fact that both the spouses feel that they cannot continue with the marriage.

Therefore, when the parties to the marriage seek divorce on the strength of an agreement or compromise they have entered into, the court should not hesitate to dissolve the marriage on the strength of that document. This sentiment and reasoning has been upheld by the Law Commission¹¹⁷. When it said that the essence of marriage is a sharing of common life, a sharing of all happiness that life has to offer, and all the miseries that has to be faced in life, an experience of joy that comes from enjoying common things of the matter and of the spirit, from showering love and affection to ones offsprings. Living together is the symbol of such sharing in all its aspects. Living apart is a symbol indicating a negation of such sharing. It is indicative of disruption of the essence of marriage - a "breakdown", and if it continues for a fairly longer period, it would indicate the destruction of the essence of marriage-"irretrievable breakdown". That being so, when the parties to the marriage

117. Law Commission, 71st Report "Irretrievable Breakdown of Marriage As a Ground for Divorce" Para 62, Government of India Publication.

after living apart for a year or more approaches the court on mutual consent, that they would like to get their marriage dissolved, the court should have no hesitation to do so unless either of the parties approach it before the expiry of six months on the ground of collusion and fraud.

In view of the foregoing reasons stated above, I cannot help but agree with Madan Mohan Panchhi J. when he says that, the fruitful years in human life being short, the possibilities of the litigating parties rearranging their lives after the divorce by mutual consent also seem to have been the persuasive factors for granting instant relief, and when satisfied that there is no collusion, the matrimonial court can dissolve the marriage by a decree of divorce between two Hindus. It can do so on the basis of a compromise entered into between the parties without strictly following the time lapses prescribed under the provision of mutual consent under section 13-B of the Hindu Marriage Act of 1955, but only after satisfying itself of the absence of collusion etc as required under S. 23 of Hindu Marriage Act, 1955 to be brought to the notice of the court within six months of filing the petition¹¹⁸.

The concept of mutual consent is novel to Hindu law. Hitherto-fore, the concept to divorce envisaged in the law was based upon the fault theory. To dissolve a wedlock, the courts would have to set

118. M.M.Panchhi J. in Smt Krishna Khetarpal Vs Satish Lal
AIR 1987 P&H 191 at paras 16, 17 at pages 196, 197.

out to discover who was the guilty spouse and due to whose guilt did the marriage reach such impasse. But under mutual consent the parties, without blaming each other can agree to dissolve the wedlock and go their independent ways to begin life afresh, and under such circumstances the requirements under S. 23 of the Hindu Marriage Act should have no relevance at all. The spirit of the law is being overlooked by the courts when divorce law has been restructured and liberalised by shifting the concept from fault theory to breakdown theory, this section should not be allowed to cast its shadow on this healthy trend.

CONCLUSION

The right of divorce is a phenomenon which found a concrete shape in the statutory law about three and a half decade back. That is not to say that the customary form of divorce was not prevalent among the lower castes in the ancient and medieval society. It also does not mean that the precepts of subsequent law givers like Yajnavalkya, Parashara, Narada and Kautilya were entirely baseless. The reflection is on the development that took place in the society from which the modern trend of thought has emerged. The concept of divorce lay dormant in the ancient and medieval time, its statutory-isation merely resulted in the universalisation of the concept of divorce which hithertofore was latent within the idea of marriage itself and prevalent among the lower castes.

Divorce was shunned by Manu. To him a marital tie was for keeps. Nothing could terminate the marital relationship between the

husband and the wife. Subsequent law givers like Yajnavalkya, Parashara, Narada and Kautilya conceded the right of divorce under certain specific circumstances. In a nutshell those circumstances are as follows:

- a) cruelty, (b) desertion, (c) adultery, (d) excommunication,
- (e) have not been heard of for a long time, (f) impotency,
- (g) apostacy, (h) sexual offences, (i) other crimes.

The same causes among few more form the ground of divorce under the Hindu Marriage Act, 1955.

In the medieval society, these causes were treated to be a criminal offence first and the marriage ended as a further reaction to the said offence. In other words, the reason behind terminating the marriage was that either of the spouses were guilty of committing a criminal offence. This way such termination of marriage was also a part of the punishment. Under the Hindu Marriage Act, 1955 all the matrimonial causes are not considered as criminal offences. Acts of adultery, intoxication, sexual offences, fall within the category of crimes and also within the purview of Indian Penal Code. But if a divorce is sought on any of the grounds that is both a criminal offence and a matrimonial cause the only outcome of such a litigation would be either denial or decree of dissolution of the marriage depending upon the merit of the case. If one wishes to secure a punishment for those acts as criminal offence, then one would have to proceed in a criminal court. This diversification of the cause of action on the same offence was absent in the medieval time.

In the medieval time the social structure and the social status of women were such that the very thought of divorce would be considered a mortal sin. Things are different today. Even though society looks askance at a divorced woman, her social status is relatively much different from the earlier times and she can at least think of seeking a matrimonial remedy in court.

If Hindu Jurisprudence is studied for the purpose of restructuring the past only, then Hinduism will be left possessed with antiquity alone. My purpose of studying the Hindu jurisprudence regarding marriage with the Modern Hindu law relating to marriage is to evaluate the extent to which the modern law is rooted in the medieval law. It can be done from three different angles, one, establish the point of linkage of the ancient law with the modern law, second, evaluation of the continuity and moulding of the modern law with the Sastric law and thirdly to establish the extent to which the Sastric law has influenced the modern law.

A descriptive assessment of both the sastric and the modern law shows that certain behavioural aspects of marriage, that were found to be socially offensive during the sastric period are still held to be offensive in the modern times, example, adultery, sexual offences etc. Yajnavalkya, Parasara, Narada and Kautilya have agreed that impotency, apostacy, insanity, desertion, conversion, being unheard of for a long time can each be a good reason for terminating marriage. The Statute lays down the same very grounds as causes of divorce. These are also the points where the sastric law and the modern law remains linked together.

But sastric principles cannot be said to be the descriptions of the ancient society alone. These descriptive prescriptions were obeyed as social norms for the same reasons as today's laws are obeyed by the people. Therefore those principles can be evaluated from within the context of the modern values.

Manu prohibited divorce, adultery is declared to be an offence. He recognised that when a person is unheard of for a long time he puts the woman in a social peril and he does condemn sexual offences. However when Yajnavalkya and others held that these could be reason enough to terminate a marriage, it only showed that society had changed and people were forced to rethink on marriage so as to grant the right of divorce. This not only signifies a social change but also a change in human thought and relationship. An element of continuous social development is involved here. When the Hindu Marriage Act was enacted, the same very reasons found their way into the enactment as grounds of divorce. Thus what was found to be offensive and irregular by Manu at one time was thought to be reason enough to dissolve marriage subsequently and went a step further when they were statutorised and legitimised as grounds of divorce. Thus a continuity between the sastric and the modern law can be established.

A dharmasastri and a modern law framer both perceive themselves as teachers of morality and justice. Both clearly prescribe what ought to be done rather than taking into account what is being done. Reforms of 1955-56 may mean a deviation from the sastric traditions but the norms of the sastras continued to influence the modern law of marriage. For example the fault theory of marital

dissolution can be traced back to the sastra. Every dharmasastrī attributed a sense of guilt to the matrimonial causes rather than treating it as an accidental situation for which both the spouses are equally responsible and relating to the immediate causation of the situation back to multifarious socio-economic and psychological reasons. This is a direct influence of the sastra. The structure of the family, the relationship between the husband and the wife are to a large extent influenced by traditional views. This is more so because the Indian society itself is in the tight grip of the sastras and social and moral standards are still being set up under their influence.

The ups and downs, the discontent and the discord of the marriage was the same as in the ancient and modern society. Both the society has people with feelings and emotions. Divorce is merely a consequence of such discontentions. Divorce law per se cannot keep the ties of conjugal life together. These laws cannot be made the keeper of morality and conscience, they simply put a legal stamp over the inevitable breakdown of marriage.

Neither the dharmasastra, nor the Modern Hindu law has delved deeply into the cause of the marital breakdown. Without delving deeply into this the question of the real cause of divorce cannot be solved. A glance beyond the court rooms and the parliamentary debates and into realm of reality reveals that socio-economic and psychological factors are involved here.

The subsequent chapter seeks to look into these factors of marriage.

There is a crying need for social engineering in this area and an attempt is made to achieve the same in this work.

CHAPTER - IV

DIVORCE CASES BETWEEN 1914 - 1990

A RECONNOITER

Social change usually takes two forms : changes that occur spontaneously, without deliberate planning or rational human intervention, and changes that are planned and engineered by human beings to achieve specific, agreed objectives and goals. In democratic societies planned social change is generally brought about by the action of governments.

In India, major social changes were sought to be introduced by introducing the Hindu Marriage Act, campaigning for family planning, legal literacy campaigns and programmes introducing environmental awareness. Our aim is to evaluate the introduction, recognition and acceptance of divorce laws enacted under the Hindu Marriage Act.

Statutory introduction and recognition of divorce was the first step taken to herald vast social changes in the field of matrimonial law. As already discussed earlier, the concept of divorce, though known to the ancient Hindu law, was prevalent among the lower castes. In the modern times, roughly about four and a half decade back, the Hindu Marriage Act, 1955, merely universalised what was prevalent among the lower castes in the ancient times. This introduction of the concept of divorce, and its universalisation can be recognised as social change planned by the government. It must be recognised however that, both

before and after the statutory introduction of the concept of divorce, the unplanned social changes have been taking place. Some of those changes are spontaneous yet unprominent and others are both spontaneous and prominent.

The Hindu Marriage Act, 1955, provides for divorce under Section 13, 13B of the Hindu Marriage Act, 1955¹. Thus the concept of divorce is introduced universalised and regulated by the Statute and thereby the government It therefore becomes a indubitable fact that marriage, which is also the foundation of a family is the subject of a planned social change. Within this planning, there are various social forces at work, which also help in bringing about certain unplanned social changes. To investigate and discover this unplanned social change, that the study has been undertaken here.

In this chapter, an attempt has been made to examine the pattern, if any, that has emerged over the years. The total span of time is 1914 to 1990, that is a period of about seventy seven years. This time span has been divided into two phases, namely, Phase I, Period from 1914 to 1954 and Phase II 1955-1990. For the purpose of uniformity and continuity, only cases from All India Reporter² has been collected. Therefore, though there are

1. See Appendix I.

2. Hereinafter called the AIR

many more cases which may have been reported in various journals, for the sake of consistency only those reported in the AIR alone has been made use of. There are cases which do not see the face of the court, a great number of them do not go on appeal. Very few Supreme Court. There are cases which are pending before the Court. It has not been possible to include them here. Therefore, the cases which are reported in the AIR alone are used.

Phase I : Period from 1914 to 1954

This period of four decade is the twilight period of matrimonial legislation. To understand the spontaneous unplanned social changes in the post-1955 period it is essential that the pre-1955 period should also be studied. The spontaneous unplanned social change³ brought about during the pre-1955 period prompted the planned social change during the post-1955 period⁴. Therefore, even while remaining strongly embedded in the orthodox precepts of Manu, some subtle changes were visible. Since this period constitutes the gradual awakening to the change that was needed, it is termed the twilight period.

Thus, while there was no legislation to aid them, the predicament of the parties brought them before the courts. Such

3. Hereinafter referred to as SUSC

4. Hereinafter abbreviated as PSC.

instances were indeed very few as will be seen from the following chart^{5a}. This period is also indicative of the SUSC.

Table - 1
Number of Divorce Cases between 1914 - 1954

Sl.	Year	No. of cases	Sl.	Year	No. of cases
1.	1914	1	25.	1938	0
2.	1915	1	26.	1939	0
3.	1916	0	27.	1940	0
4.	1917	1	28.	1941	1
5.	1918	1	29.	1942	0
6.	1919	0	30.	1943	0
7.	1920	0	31.	1944	0
8.	1921	3	32.	1945	1
9.	1922	1	33.	1946	0
10.	1923	1	34.	1947	0
11.	1924	1	35.	1948	0
12.	1925	0	36.	1949	1
13.	1926	0	37.	1950	1
14.	1927	0	38.	1951	0
15.	1928	1	39.	1952	0
16.	1929	0	40.	1953	0
17.	1930	1	41.	1954	0
18.	1931	0			
19.	1932	0			
20.	1933	2			
21.	1934	0			
22.	1935	0			
23.	1936	1			
24.	1937	0			
TOTAL			41 years		19 cases

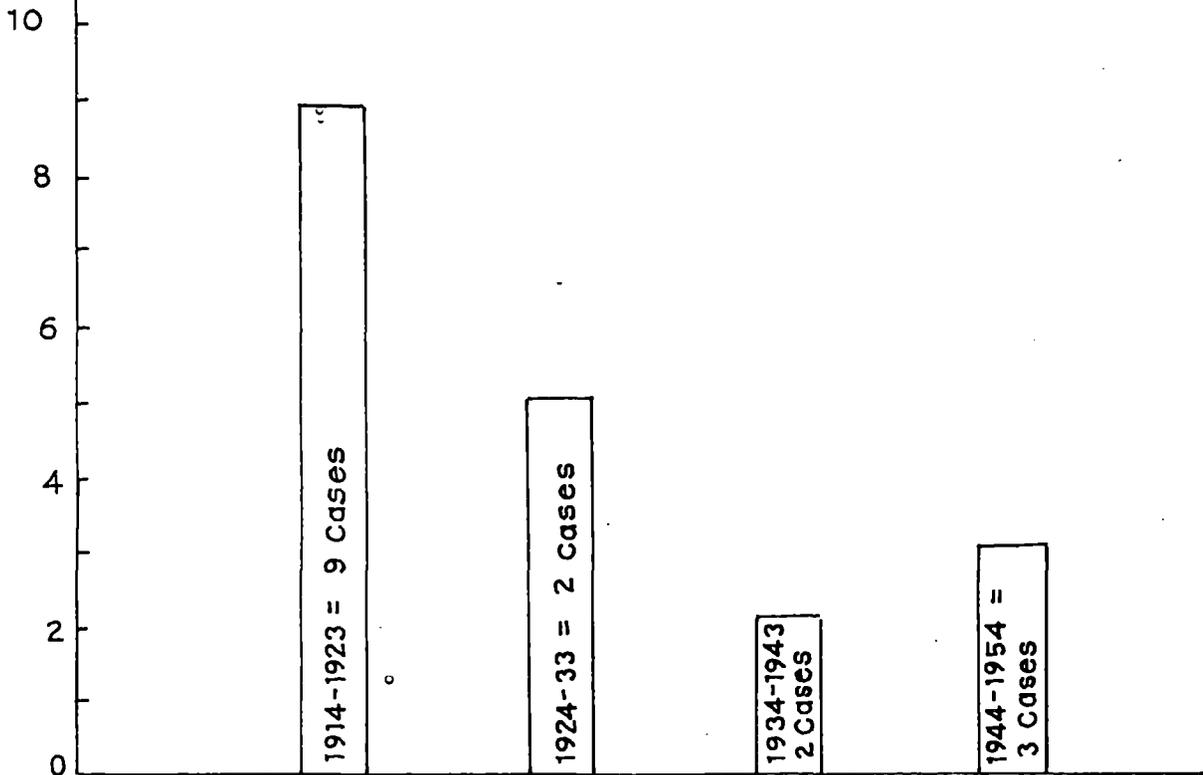
5a. See Appendix II Part I.

NUMBER OF DIVORCE CASES BETWEEN 1914 AND 1954

1 cm = 1 Number

2 cm = 1 Year

Total cases = 19 Numbers



GRAPH - IV.1

One of the unique features of this era is that while divorce cases under Hindu Law were so rare and so far apart the courts had a larger number of cases for maintenance etc. The cases from Lower Burma and Rangoon have also been included because under the present period. The Hindu Marriage Act, applies to the Buddhists as well who have been included within the purview of Hindu⁵.

Among these, nineteen cases, it is seen that,

Table - 2

Number of Divorce cases reported in different High Courts⁶.

Sl. No.	Year	Bombay	Calcutta	Lahore	L. Burma Rangoon	Madras	Nagpur	P. C.
1	1914	-	-	-	-	1	-	-
2	1915	1	-	-	-	-	-	-
3	1917	-	-	-	1	-	-	-
4	1918	-	-	-	1	-	-	-
5	1921	-	-	1	2	-	-	-
6	1922	-	-	-	1	-	-	-
7	1923	-	-	-	-	1	-	-
8	1924	-	-	-	1	-	-	-
9	1928	-	-	-	-	-	1	-
10	1930	-	-	-	1	-	-	-
11	1933	1	-	1	-	-	-	-
12	1936	-	-	-	-	-	-	1
13	1941	1	-	-	-	-	-	-
14	1945	-	-	-	-	1	-	-
15	1949	-	1	-	-	-	-	-
16	1950	-	-	-	-	1	-	-
TOTAL :		3	1	2	7	4	1	1

5. Section 2, Hindu Marriage Act, 1955.

6. In this chart only those years where cases were filed are recorded. The years which show no cases are not mentioned in the chart.

The largest number of cases were filed in Lower Burma/Rangoon, followed by Madras and Bombay. Even during that period the cases in Lower Burma/Rangoon was filed under the Buddhist law. Thus, while analysing the pre-1954 period, the cases from Lower Burma/Rangoon are significant only to the extent that they were greater in number especially when compared with provinces from which cases were filed strictly under Hindu Law are being considered. Lower Burma/Rangoon is followed by Madras with four cases and then Bombay with three cases.

It might be worth recalling here that both Bombay and Madras were presidency townships and were more under western influence than the other provinces. Question may arise about the third Presidency Town Calcutta where the number of case is a nominal, one only. It is true that Calcutta had a greater exposure to western culture, but for Calcutta the period between 1914-1954 was the period of catastrophic turmoil when, perhaps even family disputes had to take a back seat even though social reformers like Rammohan Roy and Vidyasagar were very active during that time. The other reason being, Bengalis were more conservative and were tied in Manu's Orthodoxy firmly and the contemporary nationalist movement made them spurn western influence consciously.

The cause of action was also varied. In the following analysis in chart No. 3, the cases reported from Burma/Rangoon are not included as they did not have a direct bearing on Hindu shastric law. Though there was only one case reported in the year 1915, the case showed two grounds as will be seen in the said chart.

Table - 3Cause of action in Divorce cases 1914-1950

Sl. No.	Year	Adultery	Bigamy	Conversion	Custom	Desertion
1.	1914			1		
2.	1915				1	1
3.	1921					1
4.	1923	1				
5.	1928				1	
6.	1933	2				
7.	1936				1	
8.	1941				1	
9.	1945				1	
10.	1949			1		
11.	1950		1			
TOTAL:		3	1	2	5	2

Total number of cases = 12

In the absence of a statutory law for divorce, customary divorce was most common. In Kshamadhar Prasad Vs Saraswati⁷, the husband belonged to the Gujar community amongst whom divorce is allowed on customary basis. In this case Halifax G observed that:

"In the body of customs known as the Hindu law as expounded in the ancient texts there was no divorce and there no provision for what should happen in the case of divorce. But the Hindu law with which we are concerned is the body of custom existing to day"⁸.

7. AIR 1928 Nag 196.

8. Ibid at page 197.

and needless to stress, such custom does exist amongst certain community.

In Basant Singh Vs Bhagwan Singh⁹, the parties belonged to the Jat community of the Sialkot district. According to the customary law of Sialkot district, among the Hindu divorce must be given in writing. As the parties failed to divorce in writing, the court refused to decree the same. In Jeena Magan Pakhali Vs Bai Jethi¹⁰, the parties belonged to the Pakhali community of Ahmedabad. According to the custom of that community, the marriage had to be dissolved by the caste headman on a written appeal by the parties and if the parties were minors, then through their guardians.

This also appears to be the custom among the Gaundan Community of Madras¹¹.

But the courts were initially very reluctant to accept and uphold customary divorce¹². However in 1936 the Privy Council upheld the claim of customary divorce by a Vaishya woman who had been abandoned and deserted by her former husband¹³.

9. AIR 1933 Lah 755.

10. AIR 1941 Bom, 298.

11. Thangammal Vs Gengayammal AIR 1945 Mad 308.

12. Keshav Hargovan Vs Bal Gandi AIR 1915 Bom, 107; Bai Ganga Vs Emperor AIR 1916 Bom, 97.

13. Gopi Krishna Kasaudhan Vs Mt. Jaggo & another, AIR 1936 P.C. 198.

The decision of the courts during this period were largely dependent on precedents, judicial discretion and wisdom and strong common sense. The reason for this was mainly the absence of a distinct precept of dharmaśāstra in this area and the absence of any specific legislation. The judges who continued to be influenced by the English law found it hard to adjust with the concept of something as abstract and diverse¹⁴ as the Hindu customs. Therefore, it is difficult to find any uniform criteria or standard which the judges may have applied to the cases of customary divorce. However those amongst whom customary divorce was allowed felt themselves to be the chosen few to have the privilege and the power over the others.

The only criteria so to say was to discover whether the alleged custom was a valid one and if it truly existed. According to J. Mookerjee¹⁵, for a custom to be valid, it must be immemorial, must be reasonable, must have continued without interruption since its immemorial origin, it must be certain in respect of its nature and locality and the persons whom it affects, a custom should not be unreasonable, bad and opposed to public policy. Given all these prerequisites a custom is established.

14. The custom of the Gujars differed from the Pakhalis which again differed from the Jats and Vaishyas neither following any uniform modus.

15. Mahamaya Debi Vs Haridas Halder, AIR 1915 Cal 161
Per Justice Mookerjee at pp. 165-166.

Whether that custom is opposed to public policy and whether its prescribed requirements were fulfilled by the parties involves considerable judicial wisdom and discretion.

But, it is different where the ground of adultery is concerned. Adultery is an act which is not very easily accepted by the society. Conjugal fidelity plays a very important role even where the society allows a lot of sexual liberty. Under such prevailing circumstances, apart from the suits under customary law, divorce cases on the ground of adultery should rank highest. But mere allegation of a adultery was not sufficient for granting of divorce. The courts refused to accept the evidence of the husband or the wife alone and insisted on a corroborating witness or strong and compelling circumstantial evidence¹⁶.

Prior to 1955, the criteria was whether the parties were living in adultery. In other words a single act of adultery was pardonable. Society, it appears, was more liberal. Though even a single act of adultery violates the right of cohabitation that one spouse had against the other, under the customary laws a single lapse was pardonable. There is a reflection on two facts.

1) The customary law took a more lenient view on adultery than the modern statutory law.

2) The social attitude was more broader and the requirement of living in adultery reflected, (a) that the emphasis was on

16. Arulnandan Vs Arul Prakrasam & another.
AIR 1923 Mad 375 at p. 376.

preserving the marriage and family and (b) an accidental lapse was to be ignored.

Conversion was the third highest ground for divorce. While adultery involves the question of sexual morality, conversion involved the question of religious morality. It must be noted here that prior to 1950 there was no written emphasis on secularism even though India was more secular then than it is today. However conversion was a ground for divorce prior to 1955 and continues to be so even after 1955.

Prior to 1955 the cases of conversion were not very frequent and took place under very special and compelling circumstances. It may be very safely stated here that in most cases the conversion was taken by both the spouses, or if a Hindu husband converted himself, the Hindu faith would compell the wife to follow albeit reluctantly. The dispute would arise if the wife converted herself unilaterally without the consent of the husband. Those cases therefore, came before the courts if the wives converted against the wishes of their husbands¹⁷ since the husband is not tied to the woman spiritually but the woman is tied spiritually to the husband. Such bold steps by the women were rare indeed, the reason for the few cases are explained. According to justice Ormrod, the motive of the conversion is

17. Budausa Rowther Vs Fatima Bi. AIR 1914 Mad 192.

immaterial and the courts cannot gauge the sincerity of religious beliefs¹⁸. However this argument does not hold much water today as conversion takes place with socially unacceptable motives.

Desertion and bigamy both have been a cause for divorce, but the ground of bigamy gained importance after the Prevention of Bibamy and Dissolution of Marriage enactments were passed. Cruelty apparently was not considered a ground at all for dissolution of marriage, perhaps because, those actions that are considered as cruelty today formed a part of the daily life. Mental disorder was also not taken as a ground for divorce as it was unthinkable for a Hindu wife to forsake her husband even if he was a lunatic, but a question whether marriage with a lunatic is valid or not was raised in Ratneswari Nandan Singh Vs Bhagwati Saran Singh¹⁹ Justice Mahajan observed²⁰ that marriage with a lunatic was reprehensible both from the moral and social point of view. He, whose loss of reason is complete, is deemed incompetent to accept the gift of a bride. The objection to a marriage on the ground of mental incapacity must depend on a question of degree of insanity. Therefore, the dissolution of such marriages were very rare.

18. Ayesha Bibi Vs Subodh Ch. Chakraborty AIR 1949 Cal 436

19. AIR 1950 F.C. 142.

20. Ibid at pp. 177.

The inclination to grant or refuse divorce follows a pattern as in the following chart.

Table - 4

Number of Divorce Cases decreed or declined between 1914-1954

Sl. No.	Year	Decreed	Declined	Sl. No.	Year	Decreed	Declined
1.	1914		1	7.	1936	1	
2.	1915		1	8.	1941	1	
3.	1921		1	9.	1945	1	
4.	1923	1		10.	1949	1	
5.	1928		1	11.	1950	1	
6.	1933	1	1				
Total:						7	5

Total no. of cases = 12.

It is to be noted here that the number of grant and refusal are almost neck to neck in the aggregate. But the salient feature is that in the first two decades, that is about the years 1914-1933 there have been more refusal to grant divorce. In the latter two decade cases of refusal are nil and in all the cases divorce was granted. This indicates a definite shift in the attitude of the judiciary and the unquestionable progress of SUSC. It could also mean that during this period a distinct social change was ushered in through judicial activism, and the judiciary too began to be influenced through public opinion.

On the question of how out going the women became in these matters, the chart is very significant.

Table - 5

Number of male and female Petitioners (1914 - 1954)

Sl. No.	Year	Male appellant	Female Appellants	Others
1.	1914	1		
2.	1915	1		
3.	1921	1		
4.	1923	1		
5.	1928	1		
6.	1933	1	1	
7.	1936	1		
8.	1941	1		
9.	1945		1	
10.	1949		1	
11.	1950			1
Total:		8	3	1

Total No. of cases = 12

Most of the cases were brought by male appellants. Female appellants were very rare. This means that the men, for whom desertion and bigamy were no problem at all, had become more interested in a clean break before setting off in search of newer pastures, while the females did come forward but only

on very rare occasions and that also 1933 onwards when circumstances or the suffering forced them into filing the case.

Table - 6

Number of cases decided in favour of men & women.

Sl. No.	Year	Male	Female	None
1.	1914	1		
2.	1915		1	
3.	1921	1		
4.	1923	1		
5.	1928	1		
6.	1933		1	1
7.	1936		1	
8.	1941		1	
9.	1945		1	
10.	1949		1	
11.	1950		1	
Total		4	7	1

Total number of cases = 12

It can be seen from the above total number 6 that, most of the cases were decided in favour of women. More significant is the fact that from 1914 to 1928 most of the cases went in favour of men and during the period 1933 to 1950 almost all the cases went in favour of women. Two significant factors must be read together here.

1. During the period 1914-1928, of the 5 cases reported, in four of them divorce was declined and in a single case divorce was allowed. In all the 5 cases, the appellants were male. In four of the cases the decision went in favour of men and in a single case in favour of the female. Therefore during the period from 1914 to 1928, (a) in most of the cases divorce was declined, (b) all the appellants were male and (c) most of the cases went in favour of men.
2. During the period 1933 to 1955 (there being no divorce cases between 1928-1933) the male and female appellants were equally divided (3 each), in most of the cases divorce was decreed (except a single case) and almost all the cases were decided in favour of women.

From the above data a few conclusions can be drawn,

(I) During the period between 1914-1928:

- i) The judiciary was more orthodox in its approach and attitude towards family problems,
- ii) The emphasis was on marital and familial relationship rather than the individuals, and

(II) During the period between 1933 to 1950

- i) More women were willing to come before the court as appellant means there was a change in the social attitude.

ii) most of the cases went in favour of women and divorce was granted. This shows a clear shift in the social attitude and the status of the women.

A gradual social evolution is evinced from the above which also laid the foundation for the codified Hindu law on marriage which was the admixture of the ancient and the modern and ushered in a virtual revolution in the Hindu matrimonial life. This also became the starting point of P.S.C. as a result of which statutorisation took place.

Phase II : Period from 1955 to 1990.

The year 1955 is very significant in the history of Hindu matrimonial laws for it ushered in a revolutionary change in the field of Hindu marriage in the form of the Hindu Marriage Act, 1955. It also significant for the fact that SUSC gave way to PSC.

The Object of the Hindu Marriage Act, 1955

The object of the Hindu Marriage Act, 1955²¹ is to amend and codify the law relating to marriage among Hindus. This enactment, however, is neither a consolidating or exhaustive statute. An Indian lawyer will not be able to advise on matters of Hindu marriage and divorce solely with reference to the provisions of this Act, without regard and knowledge of the state of law previously in existence.

21. Hereinafter referred to as the Act.

This is important in view of the fact that under many provisions of this enactments, a retrospective effect is given. In such cases it is necessary to know the prior law which governed Hindu marriages before passing of the Act.

This legislation was passed amidst tough opposition, resistance and criticism from the Hindu orthodox section. This section was particularly critical of the monogamous nature of the Act and also the provisions for divorce enshrined in the Act. Both these provisions, it was argued by them, went against the sastric precepts of the Hindus and therefore could not be allowed. However, inspite of the zealous resistance, with the help of other members of the community who were in favour of the legislation the Act was passed.

The application of the Act.

The Act applies only to the Hindus²². The word Hindu according to the Statute has a very wide connotations and is an

22. Section 2 of the Hindu Marriage Act reads as follows:

(1) This Act applies-

- a) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,
- b) to any person who is a Buddhist, Jaina or Sikh by religion, and
- c) to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

acceptance and recognition of the broad nature of the Hindu philosophy. All the sub-sects of Hindu religion including Veerashaiva, Lingayats, followers of Bramhosamaj, Prarthana Samaj or Arya Samaj have been included in the fold of the definition of Hindu. Any religion which has a common stock with the Hindu philosophy Buddhism, Jainism, Sikhism have also been included in the word Hindu. Further, any person who is not a Parsi, Muslim, Christian or a Jew, but lives within the territory of India and is not governed by any other law shall be governed by Hindu law. The latter is a blanket provision whereunder, all the tribes and communities who do not have a legislation of their own are governed by the Act.

Explanation - The following persons are Hindus, Buddhists, Jainas or Sikhs by religion, as the case may be-

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

- 2) Notwithstanding anything contained in sub-section (1) nothing contained in this Act shall apply to the members of any Scheduled Tribes within the meaning of clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.
- 3) The expression "Hindu" in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.

The term Hindu under the Act, therefore means and includes

1. All the subjects of the strictly Hindu religion.
2. All those religion which are an offshoot or extension of Hindu religion and have a common stock with Hindu religion.
3. Any person, who is not governed by any other law is governed by Hindu law.

The Act, therefore, attributes encyclopædic character to the word Hindu.

The Extent of the Act

The territorial extent of the Act is the whole of India except the territory of Jammu and Kashmir²³. Persons who belong to the territory where the Act applies but reside outside that territory are, governed by the Act. If a person is to be governed by the Act, he must be an Indian but belonging outside the territory of Jammu and Kashmir, and should be governed by the definition of Hindu as laid down in the Act²⁴.

23. Section 1 of the Hindu Marriage Act, reads as follows:-

1. Short title and extent - (1) This Act may be called the Hindu Marriage Act, 1955.
2. It extends to the whole of India except the State of Jammu and Kashmir, and applies also to Hindus domiciled in the territories to which this Act extends who are outside the said territories.

24. Supra note 22.

The question of domicile arises only where one of the parties to the marriage is a foreigner²⁵. The Act applies to all Hindus irrespective of their domicile and/or residence. The sole condition being they must be Hindus whose marriage has been performed in accordance to the Hindu rites and ceremonies of marriage²⁶.

The provision for divorce²⁷ also applies to the above categories of people alone. However, for the purpose of analysis even cases of Jammu and Kashmir High Court have been included as the J & K Hindu Marriage Act is pari materia the Act under study.

I. A Review of Total Number of Cases from 1955-1990.

It will be seen from the following chart that about three hundred and thirty three cases have been filed in thirty six years²⁸.

25. Prem Singh Vs Dulari Bai AIR 1973 Cal 428

26. Nitaben Vs Dhirendra Chandrakant Shukla AIR 1985
NOC 76 (Guj.)

27. See Appendix I.

28. See Appendix II Part II.

Table - 7Number of Cases filed between 1955 and 1990

Sl. No.	Year	Number	Sl. No.	Year	Number	Sl. No.	Year	Number
1.	1955	3	13.	1967	6	25.	1979	11
2.	1956	1	14.	1968	6	26.	1980	12
3.	1957	3	15.	1969	5	27.	1981	13
4.	1958	3	16.	1970	7	28.	1982	24
5.	1959	5	17.	1971	4	29.	1983	18
6.	1960	3	18.	1972	7	30.	1984	25
7.	1961	4	19.	1973	5	31.	1985	22
8.	1962	6	20.	1974	1	32.	1986	24
9.	1963	8	21.	1975	7	33.	1987	21
10.	1964	2	22.	1976	1	34.	1988	20
11.	1965	7	23.	1977	5	35.	1989	16
12.	1966	4	24.	1978	8	36.	1990	16
TOTAL - 36								333

The chart shows that there is an increase in the number of cases in every decade.

Table - 8

Number of cases filed during the decades and half decades

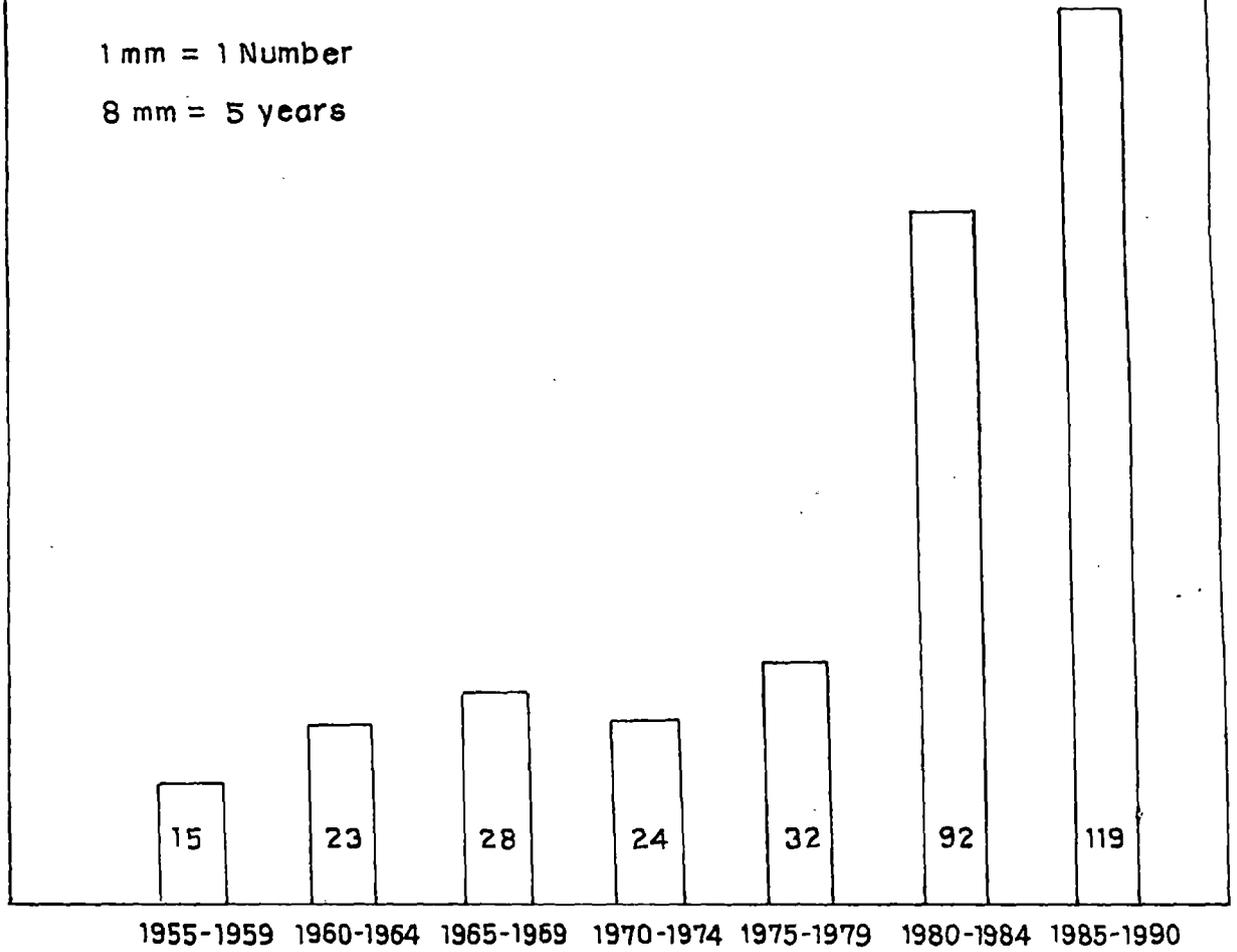
Sl. No.	Decades And Half decades	Number of cases
1	1955-1959	15
2	1960-1964	23
I	1955-1964	38
3	1965-1969	28
4	1970-174	24
II	1965-1974	52
5	1975-1979	32
6	1980-1984	92
III	1975-1984	124
7	1985-1990	119

The half-decade study undertaken for the last three half decades, indicates a huge rise in the number of divorce cases. The half decade between 1975-1979 indicates 32 cases, between 1980-1984 almost triple, 92 cases and between 1985-1990, 119 cases were registered. In other words there is 288% rise from 1975-1979 period to 1980-1984 period, 129% rise 1980-1984 period 1985-1990 period. There is a gradual rise in the number of divorce cases from 1955-1990 (see graph).

RISE IN THE NUMBER OF CASES IN EVERY HALF DECADE
FROM 1955 to 1990

1 mm = 1 Number

8 mm = 5 years

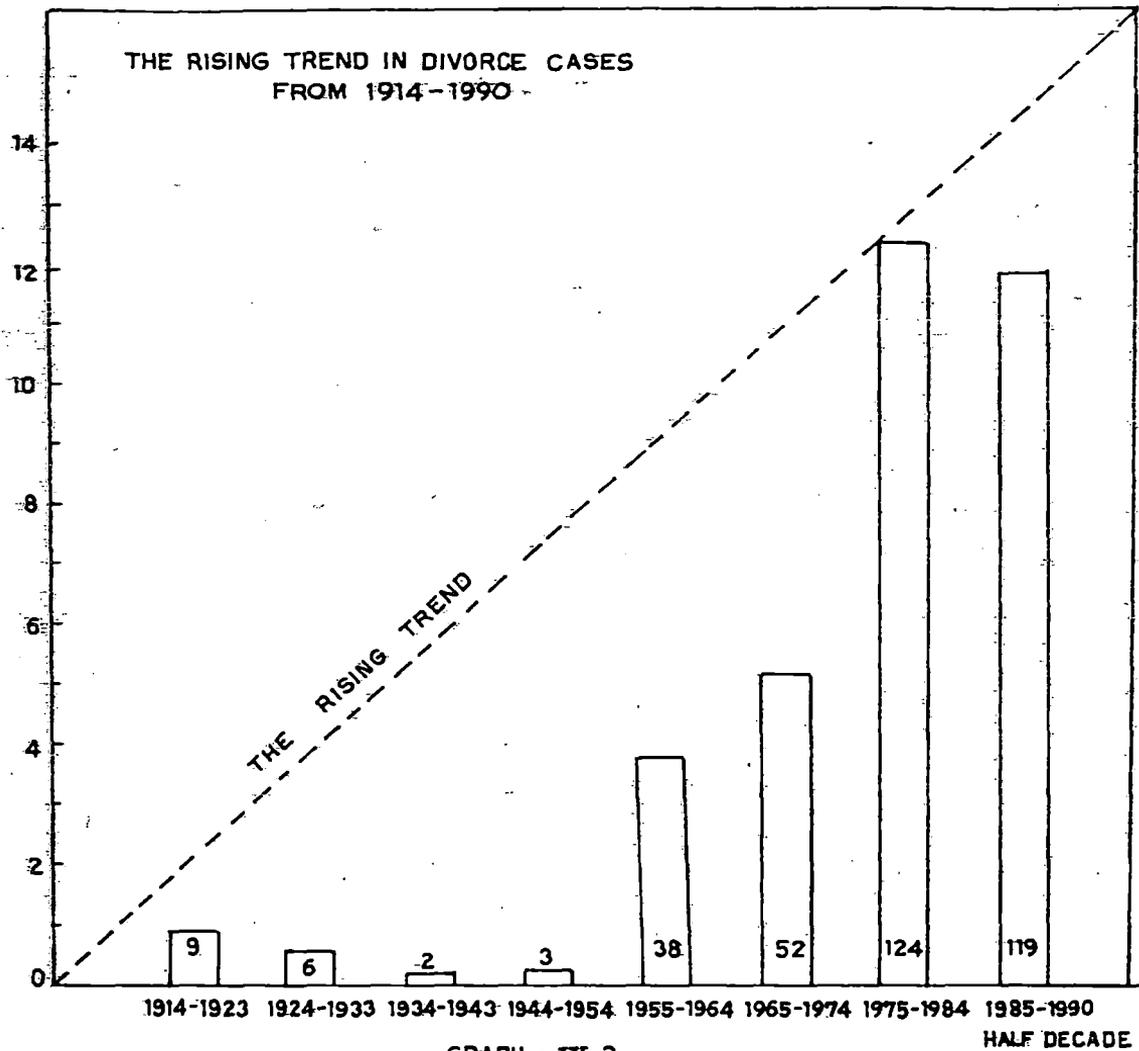


GRAPH - IV.2.

A close study of all the years show that even though there is no significant rise in the number from one year to the next year there is a over all general rising trend. If the table recording the trend from 1914 to 1954 is closely followed, it shows that in between two recordings of divorce cases there is a gap of few years. From 1955 onwards, as seen in the table recording the trend from 1954 to 1990, though between one year and the next there was no significant rise (even a decline is sometimes recorded between each year) but the study of every decade and haf decades a rising trend. In this graph and also in the commulative graph recording the trend from 1914 to 1990, if a straight line trend is drawn it will be seen that there is a steady rise in the member of cases of divorce. However there is sharp rise in the one and a half decade 1975-1990.

A number of factors can be attributed to this. Most significant of all is the fact that a gradual social change is seen unfolding. There is a rise in the number of cases of divorce from 1914-1928 period to 1928 to 1933 to 1954 period. Thereafter, since 1954, in every decade there is a rising trend. This reflects a shift of emphasis from preservation of family to the status of the individual.

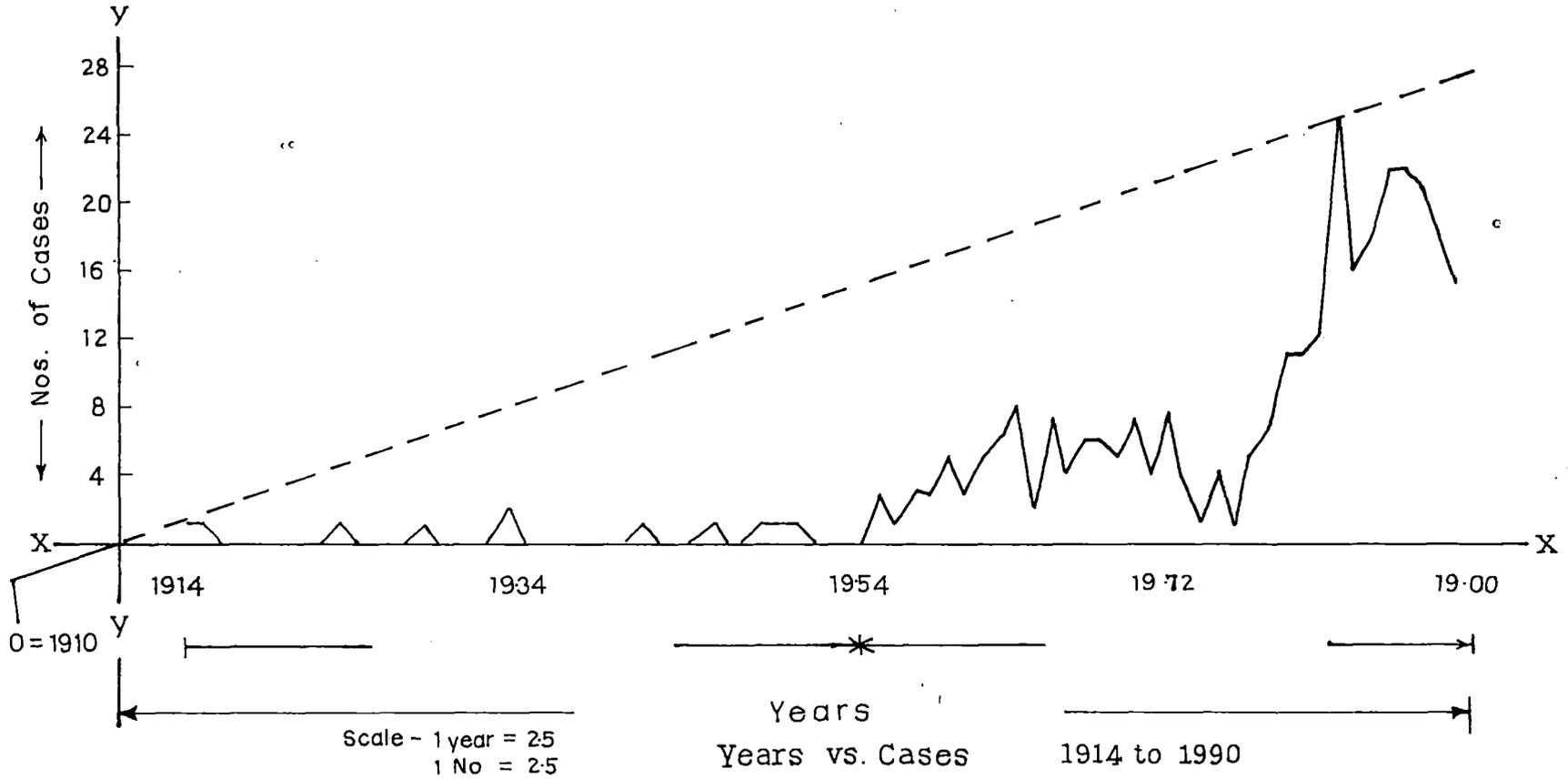
One of the general laws of legal evolution which Mayne believed to have discovered is setforth in his classical treatise Ancient Law : "The movement of progressive society has been uniform in one respect. Through all its course it has been distinguished by the gradual dissolution of family dependency and the



GRAPH - IV-3

HALF DECADE

THE RISING TREND OF DIVORCE CASES FROM 1914 to 1990



GRAPH - IV-A.

growth of individual obligation in its place. The individual is steadily substituted for the family as the unit, of which the Civil Laws take account". Mayne further observes that "whatever its pace, the change has not been subject to reactions and recoil and apparent retardations will be found to have been occasioned through the absorption of archaic ideas or customs, from some entirely foreign source. Mayne emphasises the fact that,

"What is the tie between man and man which replaces by the degrees those forms of reciprocity in rights and duties which have their origin in the family. It is contract starting as from terminus of history, from a condition of society in which all the relations of persons are summed up in the relation of family, we seemed to have steadily moved towards a phase of social order in which all these relations arise from the free agreement of individuals"²⁹.

Thus Mayne arrived at his oft quoted conclusion that the movement of the progressive societies has hitherto been a movement from status to contract³⁰.

Another reason for this growth is that, the parties to the marriage realise that a clean break is better than an empty marriage. With the universalisation of the divorce law by the Act, and perhaps influenced by a wave of westernisation, the society does not consider divorce a taboo, even though, as will be seen later, in most cases the divorced women face socio-economic problems.

29. Edgar Bodenheimer, Jurisprudence : The Philosophy And Method of the Law (1974) p. 74.

30. Ibid at p. 75

Table - 9

Number of divorce cases in each High Courts

Period : 1955 to 1990						
Sl. No.	SC and High Courts	Total Cases	Sl. No.	High Courts	Total Cases	The order of max nos.
1.	Supreme Court	13	11.	Jammu & Kashmir	8	P&H = 52
2.	Allahabad	24	12.	Karnataka	16	Del = 51
3.	Assam	2	13.	Kerala	16	Cal = 25
4.	Andhra Pradesh	11	14.	Madhya Pradesh	11	All = 24
5.	Bombay	18	15.	Madras	14	AP = 21 Bom = 18
6.	Calcutta	25	16.	Manipur	1	Ker, Kant = 16
7.	Delhi	51	17.	Orissa	9	Mad = 16 Raj = 15
8.	Goa	0	18.	Punjab & Haryana	52	MP = 11
9.	Gujrat	10	19.	Patna	6	Guj = 10
10.	Himachal Pradesh	3	20.	Rajasthan	15	Other = less than 10

A glance at the State High Courts where the highest number of cases have been recorded show that from the early 1970s there is a distinct rise in the rate of divorce cases in almost all the High Courts. That is about fifteen years after the passing of the Act. In other words, Indian society took about fifteen years to accept and adjust to this new right of divorce conceded under the Act. A sharp rise is noted between the decades 1970 - 1980 and 1980-1990.

ZONAL ANALYSIS

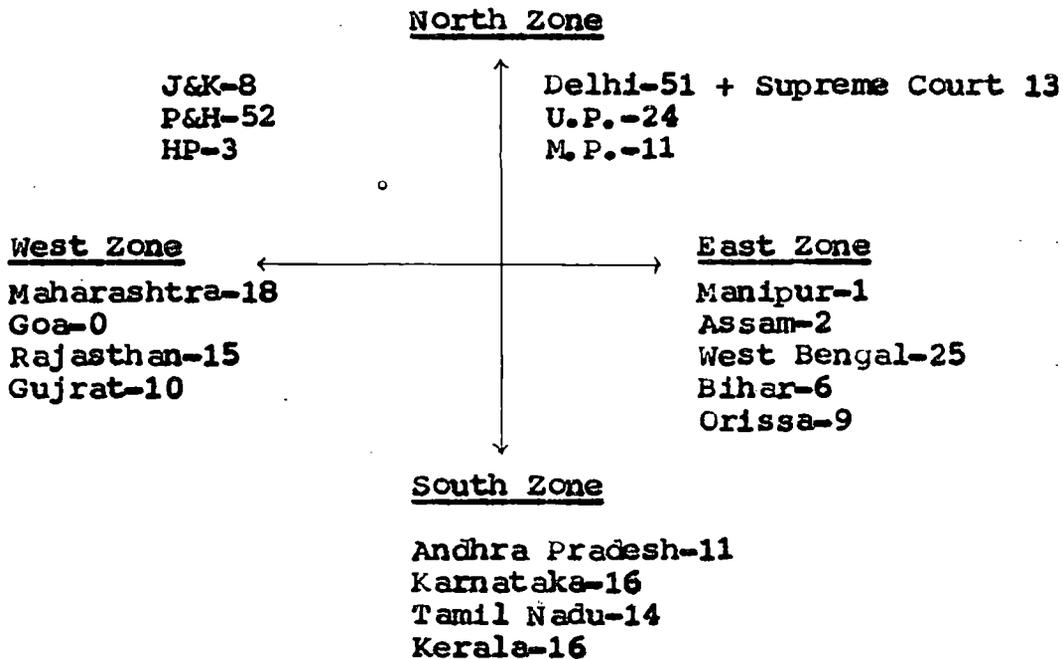
It will be seen here that among the High Courts, the Punjab and Haryana High Court recorded the maximum number of cases, that of 52 followed by Delhi 51. The four metropolitan cities of Bombay, Calcutta, Delhi and Madras recorded 18, 25, 51 and 14 cases respectively.

Table - 9A ZONAL ANALYSIS

Sl. No.	High Courts	Total Cases	Remarks
1.	Bombay	18	The four metropolitan cities from North, South, East & West of India.
2.	Calcutta	25	
3.	Delhi	51	
	Madras	14	

In other words Delhi recorded the maximum number of cases.

Closer scrutiny shows that maximum number of cases are recorded from the northern zone which comprises of the High Courts of Jammu and Kashmir, Punjab & Haryana, Himachal Pradesh,



Delhi, Uttar Pradesh, Madhya Pradesh, North Zone is followed by South Zone, which comprises of the High Courts of Andhra Pradesh, Karnataka, Kerala and Tamil Nadu, South Zone recorded 57 cases. Eastern zone, which comprises of the High Courts of Manipur, Assam, Bihar, Orissa, West Bengal, and Western Zone comprising of the High Courts of Maharashtra, Goa Rajasthan and Gujrat, each recorded 43 cases in the last 3.6 decades.

It is to be noticed here that, the High Courts of Delhi and Punjab and Haryana which are also two adjoining states, have recorded the maximum number of cases at 52 and 51 respectively. Delhi, being the capital of the country is more under the Western influence. Being the capital of India even during the Mughal

period, a certain amount of Islamic influence cannot be ruled out. Unlike the Hindus, Islam has always conceded divorce to men and women governed by Islamic laws. Greater urbanisation and being the seat of the popular movement for women emancipation Delhi is at the forefront with 51 cases.

Punjab & Haryana being adjacent to Delhi, Delhi may have a greater influence upon the Punjabi society. In Punjab, among the Jats the customary form of divorce was, and is prevalent.

Among the Ghuman Jats of Punjab, a divorce is a written private act of parties³¹ and it is insisted upon that the grounds must be stated. In most cases the act is unilateral and the parties become free to marry. The Chimah Jats of Sialkot also recognise this form of divorce³².

The already prevalent customary form of divorce coupled with the provisions for divorce conceded in the Act and also the influence of Delhi are the factors which have placed the Punjab and Haryana High Court at the top with 52 divorce cases.

Uttar Pradesh is adjoining both Himachal Pradesh and Delhi, Delhi can therefore exercise its influence both over Himachal Pradesh as well as Uttar Pradesh. Yet Himachal Pradesh

31. Sunder Vs Nihala, 84 PR 1889 as quoted in Paras Diwan Law of Marriage and Divorce, Wadhwa & Co. 1988, p. 474.

32. Jassan Vs Nihala, 78 PR 1884, op. cit. Paras Diwan; Basant Singh Vs Bhagwan Singh AIR 1933 Lah 75.

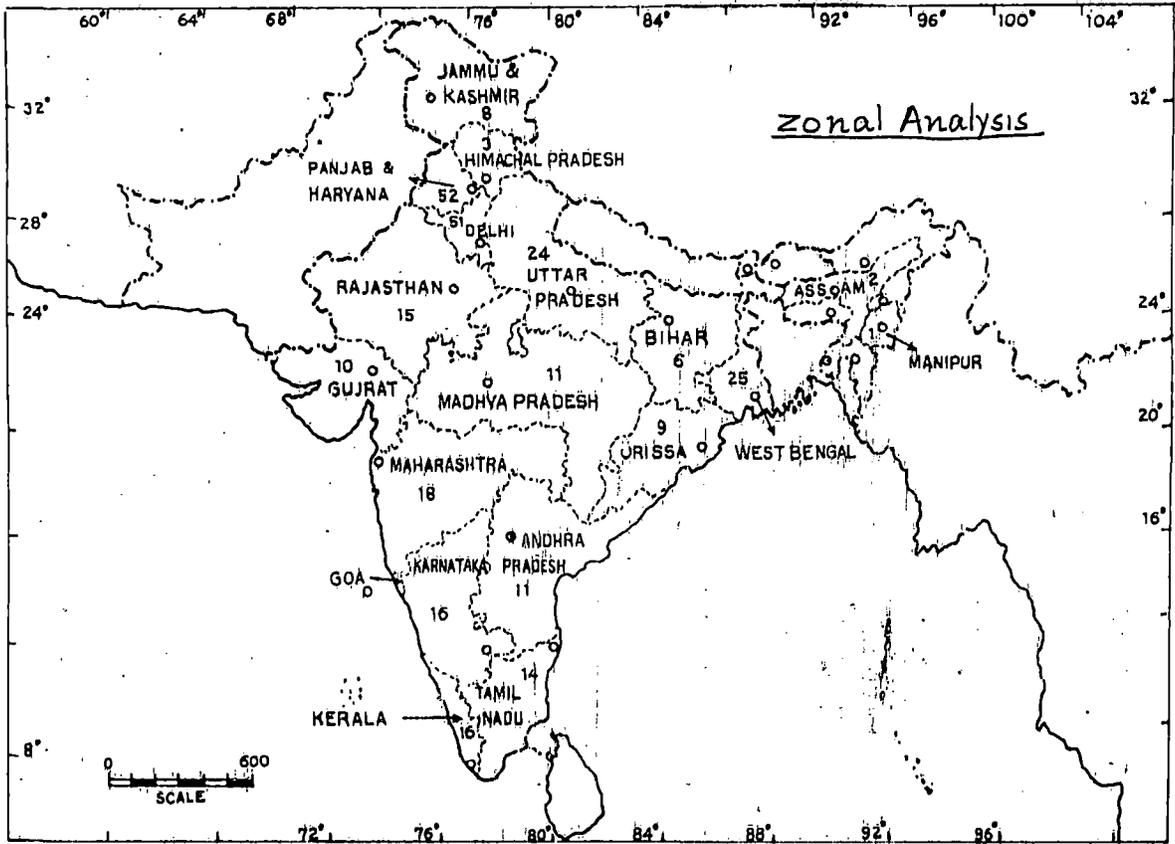
has only 3 divorce cases to its credit while Uttar Pradesh has 24 cases.

Himachal Pradesh is a tiny state tucked away in the Himalayan hills, far from the madding crowd of Delhi. It is an extremely private and shy state. Thus, it is understandable as to why so few a cases have been recorded. Even if there are more cases they must have been settled at the village levels by the customary laws.

Uttar Pradesh, which even though is adjoining to Delhi is also sandwiched between Delhi and Eastern State of Bihar. Uttar Pradesh records only 24 cases. Jammu and Kashmir has a greater Muslim population than Hindu population, and both Muslims and Hindus there share a common culture, the Kashmiri culture. Madhya Pradesh, which is considered central India also is adjoined by Uttar Pradesh, Rajasthan, Gujrat, Maharashtra. Karnataka, Orissa and Bihar has recorded only 11 cases. Rajasthan shows 15 cases, Gujrat 10 cases, Maharashtra 18 cases, Karnataka 16 cases, Andhra Pradesh 11 cases, Bihar 6 cases, Orissa 9 cases. In other words Madhya Pradesh and its adjoining states show a similar low recording of cases. This reflects a society quite different from the northern zone.

The southern state of Kerala, Tamil Nadu, Karnataka and Andhra Pradesh have 16, 14, 16, 11 cases respectively reflecting an uniform social condition again.

In the Western Zone again the topmost place is occupied by Maharashtra but on the whole a stable picture emerge with



MAP - IV.1

Maharashtra 18 cases, Rajasthan 15 cases and Gujrat 10 cases.

In the Eastern zone, there is a low recording of cases in hilly areas of Manipur, Assam each with 1 and 2 cases respectively. Bihar, which is a highly caste ridden conservative state has recorded only 6 cases. West Bengal has a record of 25 cases.

Therefore, it is seen from the map that each zone has a different set of social norm, and except for the metropolitan cities and some northern states like Punjab and Haryana, Himachal Pradesh, Uttar Pradesh etc., the adjoining states have recordings closer to each other. This is specially true of Kerala, Karnataka, Tamil Nadu and Andhra Pradesh in the South, Maharashtra Rajasthan Gujrat in the West and Assam, Manipur in the east.

North zone is also more divorce prone than any other zones. South zone follows next. Both East Zone and West zone have shown equal degree of vulnerability.

The population of India in 1990 was 84,39,30,861 persons³³, The Hindu population being 70,247,400 at 82.64%³⁴ approx.

33. The population figure in 1990. See Manorama Year Book 1991, Malayala Manorama, p. 428; Bartaman 26.3.1991; Uttar Banga Sambad 25.8.91.

34. 82.64% is the 1981 census figure. Since 1991 census figures are not yet available the calculation is done at the 1981 figure on 1990 population. In 1991 census it may vary but may not go below this minimum level for the statistics, op. cit. Manorama Year Book.

The percentage of married women in the fertile age group (between 15 years of age to 49 years of age) is 82.35%³⁵ that is 57,848,733 persons approx. Therefore the number of Hindu married males will also be 57,848,733, persons, or 57,848,733 couples. Of these, some are widowed and other are subsisting in marriage. Therefore for argument sake we may presume that only 1/3rd of them have divorced or are in the process of being divorced then the figure is 19,282,911 persons. Since in this, only All India reporter is followed for the sake of continuity, thousands of cases that are being reported in Divorce & Matrimonial cases, Hindu Law Reporter and others do not figure here. The present 332 cases figure for '0017% of the said target group that is about 333 couples for the purpose of this chapter alone. But collection of cases from all the available journals like Divorce & Matrimonial Cases, Hindu Law Reporter, Kerala Law Times, Calcutta weekly Notes and others for a period of five years that is 1986 to 1990 showed 270 cases whereas those recorded from All India Reporter alone showed 114 cases. That is,

35. 82.35% is 1981 census figure but calculations are made on 1990 population.

Table - 10

Differential reporting

Cases from AIR only (1985-1990)			Cases from available journals (1985-90)		
No.	Year	No. of Cases	No.	Year	No. of Cases
1	1985	22	1	1985	29
2	1986	24	2	1986	30
3	1987	21	3	1987	36
4	1988	20	4	1988	40
5	1989	16	5	1989	47
6	1990	15	6	1990	88
TOTAL		118	TOTAL		270

Difference: $270-118=152$, Percentage of Variation = 228.81%

If one were to take this into account, then in effect the number of cases rises to 777 cases, which is '0040% only at the High Court level alone, and 33.33% of the population of married couples who are in one way or another in some matrimonial trouble. The situation calls for concern and confirms the graphic prediction of the rising rate of divorce.

Further analysis is based on the cases collected from All India Reporter alone because there the trend is continuous from the year 1914 onwards and reveals a comprehensive picture of the situation.

II. Review of the Grounds Used Frequently

Regarding the question of most frequently used ground in a divorce suit, analysis shows that cruelty is the most frequently used ground for divorce.

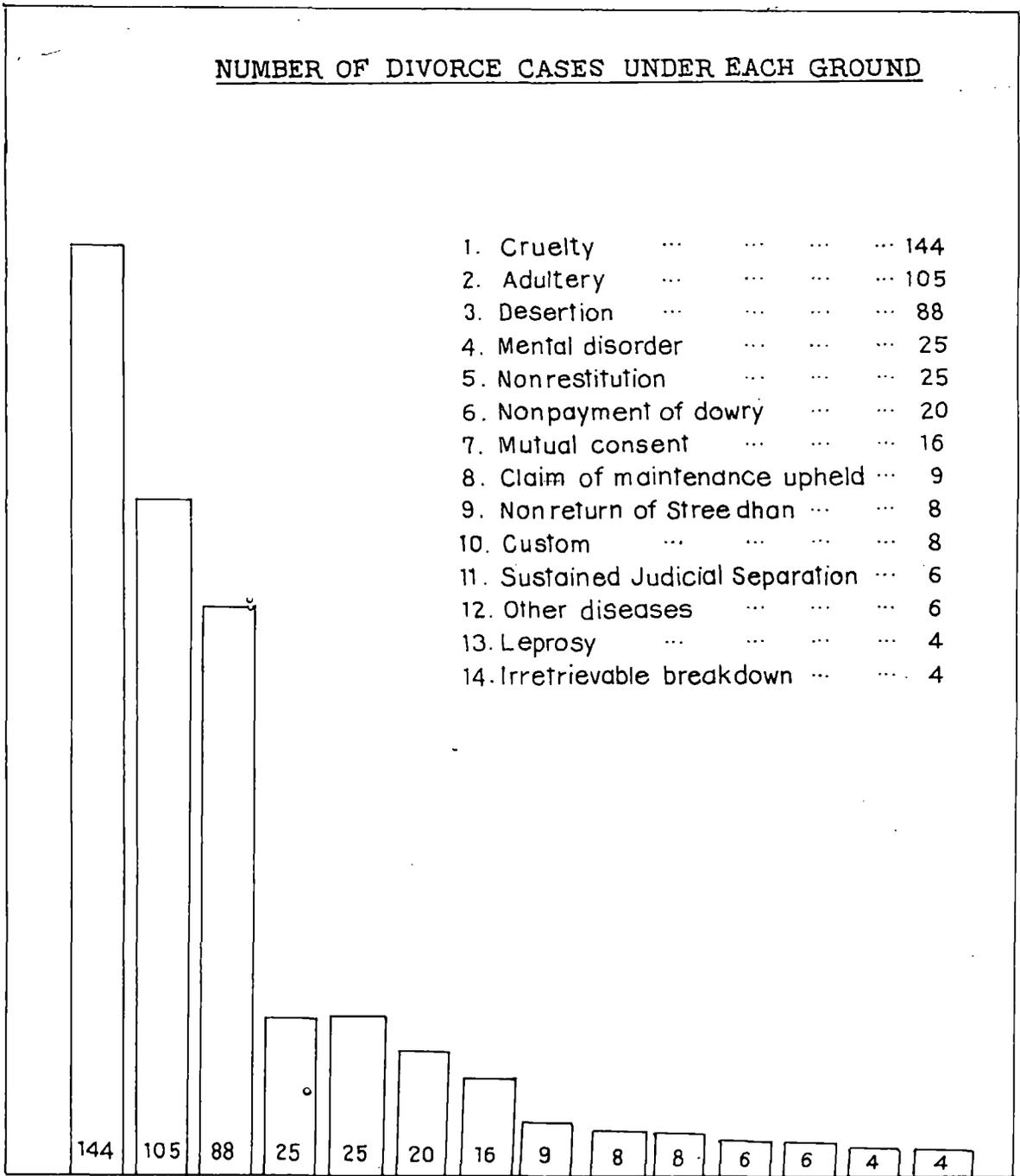
Table - 11

Number of cases under each ground between the year 1955-1990.

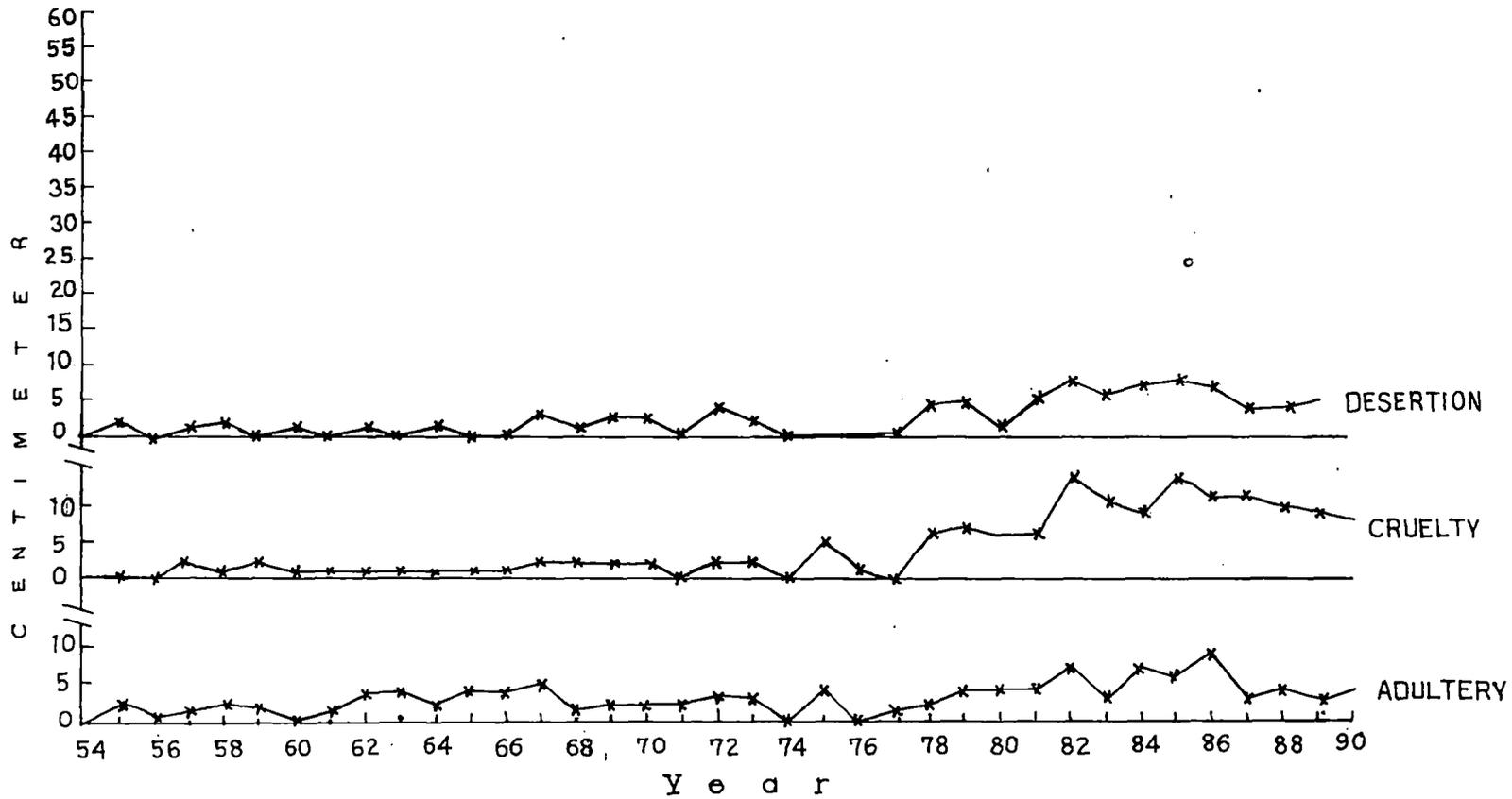
Sl. No.	Grounds	No.	Sl. No.	Grounds	No.
1.	Cruelty	144	10.	Irretrievable Breakdown	4
2.	Adultery	105	11.	Dowry	20
3.	Desertion	88	12.	Maintenance claim upheld	9
4.	Conversion	1	13.	Custom	8
5.	Mental disorder	25	14.	Non return of streedhan	8
6.	Leprosy	4	15.	Mutual Consent	16
7.	Non restitution	25	16.	Other diseases	6
8.	Sustained Judicial separation	6	17.	Other grounds	49
9.	Unnatural offences	2			

About 144 cases of cruelty followed by adultery with 105 cases and desertion with about 88 cases. Other grounds being mental disorder, non restitution and sustained judicial separation, mutual consent and dowry cases (see graph).

NUMBER OF DIVORCE CASES UNDER EACH GROUND



RISE IN THE GROUNDS OF CRUELTY ADULTERY AND DESERTION.



GROUP - IV.6.

(i.) Allegations by the parties to the suit

In an attempt to discover as to who was guilty of what fault, the allegations made by the parties were noted. For example, wife's allegation against the husband would apparently be regarded as the fault of the husband and vice versa. These when compared with in whose favour most of the cases were decreed and in how many cases divorce was decreed or declined a clear picture emerges.

a. Cruelty

It was found from the data that compared to women, more men alleged the ground of cruelty. There has been a steady increase

Table - 12

Allegations of Cruelty							
No.	Year	Male	Female	No.	Year	Male	Female
1.	1955	-	-	19.	1973	1	-
2.	1956	-	-	20.	1974	-	-
3.	1957	-	1	21.	1975	3	2
4.	1958	-	-	22.	1976	-	1
5.	1959	2	-	23.	1977	1	-
6.	1960	1	-	24.	1978	4	1
7.	1961	1	-	25.	1979	3	8
8.	1962	1	-	26.	1980	4	2
9.	1963	1	-	27.	1981	2	5
10.	1964	1	1	28.	1982	6	10
11.	1965	1	-	29.	1983	6	6
12.	1966	-	-	30.	1984	7	5
13.	1967	1	1	31.	1985	10	8
14.	1968	1	-	32.	1986	10	6
15.	1969	2	-	33.	1987	6	6
16.	1970	2	-	34.	1988	6	5
17.	1971	-	-	35.	1989	4	6
18.	1972	2	-	36.	1990	7	5
TOTAL :						96	75

in the rate of such allegations in the post 1976 period that is to say from the year 1977 onwards.

b. Desertion

The situation is reverse in the case of desertion. More women alleged desertion against men .

Table - 13

Allegation of Desertion by men and women

Nb.	Year	Male	Female	No.	Year	Male	Female
1.	1955	1	1	19.	1973	2	-
2.	1956	-	-	20.	1974	-	-
3.	1957	1	1	21.	1975	-	-
4.	1958	-	2	22.	1976	-	2
5.	1959	-	-	23.	1977	-	-
6.	1960	-	1	24.	1978	-	-
7.	1961	-	-	25.	1979	-	6
8.	1962	-	1	26.	1980	1	1
9.	1963	-	-	27.	1981	-	4
10.	1964	1	-	28.	1982	2	9
11.	1965	-	-	29.	1983	3	4
12.	1966	-	-	30.	1984	2	7
13.	1967	-	1	31.	1985	2	6
14.	1968	-	1	32.	1986	2	6
15.	1969	2	1	33.	1987	-	4
16.	1970	-	2	34.	1988	2	3
17.	1971	-	-	35.	1989	-	6
18.	1972	1	2	36.	1990	2	4
Total						24	75

It must be noticed that the allegation of desertion by men against women has been constantly on the rise 1982 onwards with sharp decline in 1987 where as women's allegation against men is on the rise from 1979 onwards without any significant decline.

c. Adultery.

More women allege adultery against men, than men do against women.

Table - 14
Allegation of Adultery by men and women

No.	Year	Male	Female	No.	Year	Male	Female
1.	1955	-	1	19.	1973	1	2
2.	1956	-	-	20.	1974	-	-
3.	1957	1	1	21.	1975	2	1
4.	1958	1	1	22.	1976	-	-
5.	1959	1	1	23.	1977	1	1
6.	1960	-	-	24.	1978	1	2
7.	1961	1	-	25.	1979	1	2
8.	1962	1	2	26.	1980	2	3
9.	1963	3	3	27.	1981	3	1
10.	1964	-	2	28.	1982	2	8
11.	1965	1	4	29.	1983	-	3
12.	1966	2	1	30.	1984	2	4
13.	1967	1	2	31.	1985	2	5
14.	1968	1	-	32.	1986	5	5
15.	1969	1	1	33.	1987	2	4
16.	1970	2	-	34.	1988	2	3
17.	1971	-	2	35.	1989	1	2
18.	1972	1	3	36.	1990	0	4
Total						44	74

The allegation of adultery is one of the oldest allegation in the history of matrimony. Man's allegation of adultery against woman though starts from 1957 picks up really from 1975. But in the case of woman's allegation of adultery against man has been from the very inception of the Act and its number is steadily on the rise since 1978.

(ii) Trend

1. The appellants

The data shows that even today there are more male appellants than female even though the difference is marginal.

Table - 15
Number of male and female appellants

No.	Year	Male	Female	No.	Year	Male	Female
1.	1955	1	2	19.	1973	3	5
2.	1956	1	-	20.	1974	-	1
3.	1957	3	-	21.	1975	2	5
4.	1958	-	3	22.	1976	1	-
5.	1959	4	1	23.	1977	2	3
6.	1960	3	-	24.	1978	3	5
7.	1961	1	2	25.	1979	7	4
8.	1962	4	2	26.	1980	6	5
9.	1963	4	4	27.	1981	4	7
10.	1964	1	1	28.	1982	9	15
11.	1965	3	4	29.	1983	15	18
12.	1966	2	2	30.	1984	7	10
13.	1967	3	3	31.	1985	9	13
14.	1968	4	2	32.	1986	13	9
15.	1969	3	2	33.	1987	10	12
16.	1970	6	1	34.	1988	10	7
17.	1971	3	1	35.	1989	11	5
18.	1972	2	5	36.	1990	9	6

TOTAL

169

165

However 1977 onwards there is a rise in the number of female appellants where as the men have been among the forefront as appellants from the very beginning of the social revolution. It is to be noted that there is a steep rise among men allegeders from 1974 onwards. The steep rise in total number of cases also commenced from 1976 onwards.

2. The Decision making

Regarding the trend in the decision-making it was seen that :

Table - 16

Trends in decision-making

Sl. No.	Year	<u>Granted</u>		<u>Declined</u>		<u>Others</u>	
		Number	Percent	Number	Percent	Number	Percent
1.	1955	1	33	2	67	-	-
2.	1956			1	100		
3.	1957			3	100		
4.	1958			3	100		
5.	1959	1	20	3	60	1	20
6.	1960	2	67	1	33		
7.	1961	2	50	2	50		
8.	1962	2	33	3	50	1	17
9.	1963	6	75	2	25		
10.	1964	2	100				
11.	1965	6	86	1	14		
12.	1966	3	75	1	25		
13.	1967	3	50	3	50		
14.	1968	1	10	5	90		
15.	1969	3	60	2	40		
16.	1970	4	57	3	43		
17.	1971	1	25	3	75		

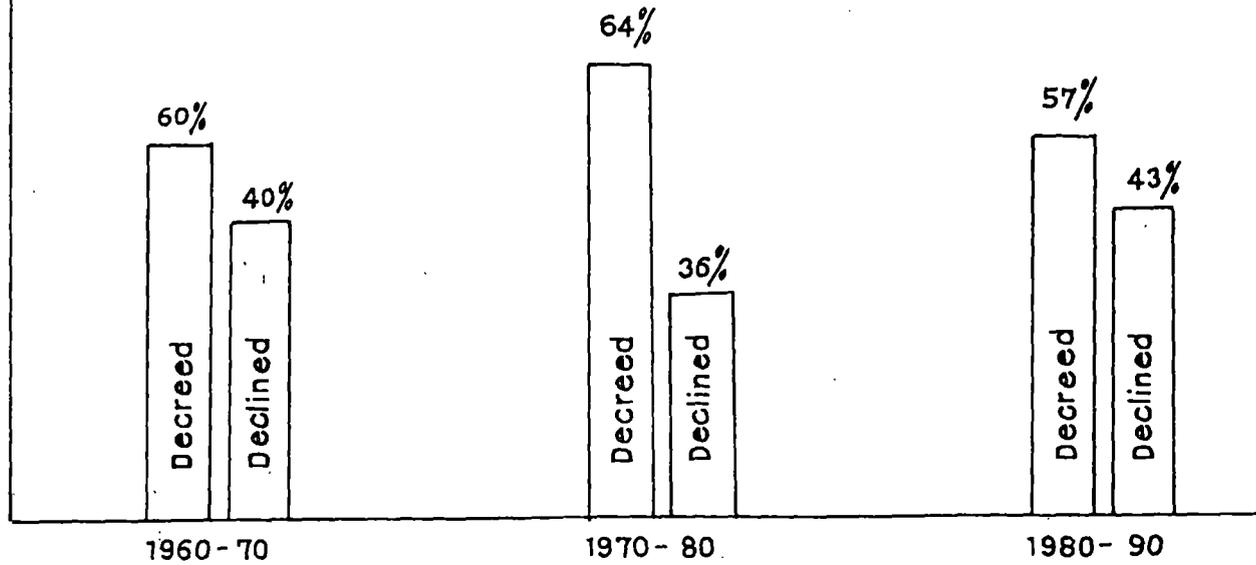
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Table - 16 (Contd..)

Sl. No.	Year	Granted		Declined		Others	
		Number	Percent	Number	Percent	Number	Percent
18.	1972	5	71	2	29		
19.	1973	3	60	2	40		
20.	1974	1	100				
21.	1975	4	57	3	43		
22.	1976	1	100				
23.	1977	2	40	3	60		
24.	1978	6	75	2	25		
25.	1979	6	55	5	46		
26.	1980	7	58	3	25	2	17
27.	1981	6	46	6	46	1	8
28.	1982	8	33	11	46	5	21
29.	1983	4	22	9	50	5	28
30.	1984	10	40	5	20	10	40
31.	1985	10	45	8	36	4	19
32.	1986	15	63	5	21	4	16
33.	1987	10	48	4	19	7	23
34.	1988	10	50	8	40	2	10
35.	1989	7	44	2	12	7	44
36.	1990	5	33	10	67		

Numerically speaking in more cases divorce was granted, than declined In 157 cases (47%) divorce was granted. In 126 cases, (38%) divorce has been declined. In the remaining 15% per cent cases other decisions like sent back for reconsideration, review, revision, reference, and other alternative reliefs have been granted. It must be noted that from 1955 to 1958 the tendency was to decline

TRENDS IN DECREE AND DECLINE OF DIVORCE
IN THE PAST THREE DECADES
(1960 - 1990)



GRAPH - IV-7.

divorce. Such a continuous tendency is not found in the granting column of the table.

Numerically speaking, out of the total 332 cases, in 157 cases (47%) divorce was granted whereas in 126 cases (38%) divorce was declined. In the remaining 49 cases (15%) cases other forms of decisions like transferring of cases from one forum to another or one place to another or referring back of cases took place. The noteworthy points are that there is a clear inclination towards granting divorce. Moreover from 1955 to 1958 the tendency was to decline divorce, but since then granting of divorce became more frequent. Between the years 1958 to 1968 and 1974-1976 the tendency was more towards granting than declining. There is a gradual drop in the tendency to grant divorce from 1978 onwards. However, the rate of decline too has not risen sufficiently. The noteworthy factor is that since 1980 onwards a significant portion to the cases have been embroiled in the technicalities of law and other ancillary relief. Technical question and other alternative relief was first being granted in 1959 and 1962. The trend setting commenced and 1980 onwards.

3. Inclination of the decision

Another important question is who does the decision favour?

Table -17

Inclinations in decision making

Sl. No.	Year	Total	Male	Female	Both	None	Other
1.	1955	3	2	1	-	-	-
2.	1956	1	1	-	-	-	-
3.	1957	3	-	3	-	-	-
4.	1958	3	2	1	-	-	-
5.	1959	5	1	3	-	-	1
6.	1960	3	1	1	-	-	1
7.	1961	4	1	2	-	-	1
8.	1962	6	3	2	-	-	1
9.	1963	8	2	5	1	-	-
10.	1964	2	2	-	-	-	-
11.	1965	7	2	5	-	-	-
12.	1966	4	-	3	-	-	1
13.	1967	6	2	3	1	-	-
14.	1968	6	-	6	-	-	-
15.	1969	5	2	3	-	-	-
16.	1970	7	1	4	-	2	-
17.	1971	4	1	3	-	-	-
18.	1972	7	4	3	-	-	-
19.	1973	5	1	4	-	-	-
20.	1974	1	1	-	-	-	-
21.	1975	7	4	3	-	-	-
22.	1976	1	-	1	-	-	-
23.	1977	5	2	3	-	-	-
24.	1978	8	2	4	2	-	-
25.	1979	11	5	5	1	-	-
26.	1980	12	3	6	1	1	1
27.	1981	13	4	5	1	1	2
28.	1982	24	7	17	-	-	-
29.	1983	18	5	9	1	1	2
30.	1984	25	10	12	1	1	1
31.	1985	22	5	17	-	-	-

Contd..

Table - 17 (Contd..)

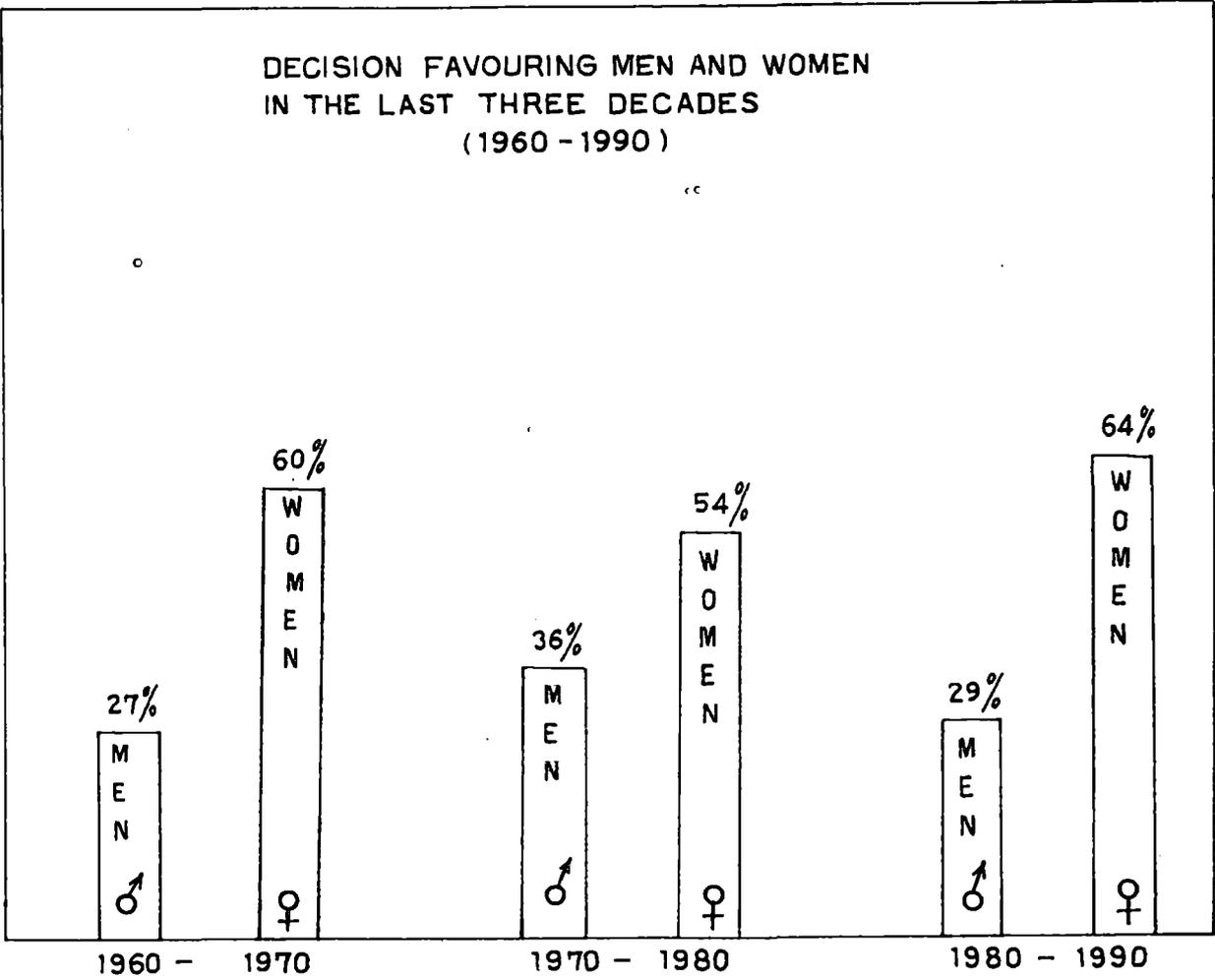
Sl. No.	Year	Total	Male	Female	Both	None	Other
32.	1986	24	11	7	3	1	2
33.	1987	21	7	12	1	1	-
34.	1988	20	4	11	2	2	1
35.	1989	16	4	7	1	-	4
36.	1990	16	4	11	-	-	1
TOTAL		333	106 (31%)	182 (55%)	16 (5%)	10 (3%)	20 (6%)

Numerically, it will be seen that the court tends to grant more cases (55%) in favour of women and the percentage of granting divorce is also higher (47%) than those of declined (38%). Decision going in favour of men is 31% while the decision favouring both men and women is almost nominal at 5%. About 9% of the decisions are purely technical decisions.

The rise in the allegation of cruelty commenced from the year 1977-1978, barely a year after the 1976 amendment was made to the Act⁵⁸ when cruelty was made a ground for divorce. Prior to 1976, cruelty was only a ground for judicial separation and not divorce. Prior to 1976 amendment, under Section 10(1)(b) the provision for cruelty read as follows:

58. Marriage Laws (Amendment) Act, 1976, Section 39.

DECISION FAVOURING MEN AND WOMEN
IN THE LAST THREE DECADES
(1960 - 1990)



GRAPH - IV · 8.

"has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party".

The effect of this provision was more restrictive as (1) it dealt with only physical cruelty and (2) even then provided for judicial separation alone.

As a result of the amendment, under Section 13(1)(1a) the provision for cruelty read as:

"has after the solemnisation of the marriage, treated the petitioner with cruelty".

The effect of this new wording has widened the ground of cruelty, and unlike the former does not qualify it.

Men being more ready to accept changes, and also being more aware than women, made use of this opportunity faster than the women could. It must be noticed here that in 1977 at least one case for divorce alleging cruelty was filed by man while no such case was filed by woman. In 1978 when four men had alleged cruelty only one woman did the same. In 1979 however four women and one man filed cases of cruelty and the ratio continues to rise.

It is not necessary that since an allegation is made, the same has been proved. It is to be remembered here that most of the cases go in favour of women. Therefore even if an allegation of cruelty is made by a man, if a woman defends the case and denies the charge and the case is decided in her favour, it merely shows that his allegations were either incorrect or not proved.

The situation in the case of desertion is reverse. More women allege desertion by men than vice versa. However even here a post 1976 rise in desertion cases is noticed. In 1976 after the amendment⁵⁹, desertion became a ground for divorce. Prior to 1976 desertion was only a ground for judicial separation and both under the pre 1976 Section 10(1)(a) and post 1976 Section 13(1)(ib) the provision for desertion reads as follows:

"has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of a petition".

Desertion, however, was attempted to be explained in 1976 amendment as

"the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variation and cognate expressions shall be construed accordingly".

more than explains desertion, it adds to the concept of desertion, as a matrimonial wrong, the idea that it must be without reasonable cause and without the consent or against the wish of the party who claims relief; and further, that the wilful neglect of a party to a marriage by the other party, is also desertion. In other words real or constructive withdrawal of one party from the society of the other spouse without reasonable cause is called desertion.

Here too widening of the ambit must be noticed. But the allegation of desertion by women was and is always higher than that

59. Ibid.

by men. A very sharp rise in the allegation is noticed from 1979 onwards, but the allegation of desertion by women is relatively high, even prior to 1976, compared to men, more women alleged desertion than men.

Since in most of the cases divorce is granted and are decided in favour of women, and keeping in view the fact that desertion is relatively difficult to prove, it appears that such allegation by women is seldom made lightly and are often proved. This leaves one to conclude that men desert women more than women do. The reason is easy and various namely, (a) woman being a mother and having species finds it difficult to walk out of her home and hearth (b) women are socio-economically dependant on men but men are not dependent on women. So when a man walks out on her, he has nothing to lose and his socio-economic status remains intact; (c) man as a nature does not like to be tied down and be burdened by wife and children but not so for women for whom home is her fulfilment.

From the year 1982 onwards more men have alleged desertion by their spouses. This is significant. During the last two decades the literacy rate of women has more than doubled itself⁶⁰. While this does not mean that the women have become socio-economically

60. The Female literacy rate in 1971 census was 18.69%, in 1981 24.88% and 1991 34.42%. The 1971 and 1981 figures are from Manorama Year Book 1991 op. cit. and 1991 figure is from Bartaman, 26.3.1991.

independent, it does mean that more and more women are becoming socially aware, their awareness of self identity and self respect have given them enough self confidence to walk out of a situation if they do not like living in it. Besides, inspite of severe unemployment problems in India, women may have also improved socio-economically than they had done before.

Like-desertion, more women allege adultery against men than men do against women. Though this increase is there from 1955 itself, a very significant rise is noticed from 1977 onwards both in the case of men and women and that is a year after the 1976 amendment⁶¹. By the 1976 amendment the ground has been altered from living in adultery⁶² to having had, after the solemnisation of marriage, 'voluntary sexual intercourse with any person other than his or her spouse'⁶³.

In other words, prior to 1976, sexual intercourse under the influence of temporary passion which is purely an accident was not considered adultery at all, but after the amendment no such rider is entertained. A voluntary sexual intercourse is adultery. The degree of "voluntarily" ness cannot be measured in a barometer and so everything short of rape is voluntary. Thus, ineffect, the scope of this marital cause of action has been widened. Therefore, it really is not so surprising that the increase

61. Supra note 58.

62. Section 10(1)(f) prior to 1976 amendment of the Act.

63. Section 13(1)(1) of the Act after 1976 amendment.

in the number of allegations of adultery and the cases thereof have increased from 1977 onwards.

For the same reasons as under other grounds it can be safely presumed that most of such allegations are true, and hence more men resort to adultery. Here adultery includes both bigamy and extra-marital affairs. Men, do resort to the diversion of extra marital affairs, this is a historical fact. They can afford to do so for the consequence of such affairs is for the woman alone and do not devolve upon them, women have to be relatively cautious, because extra marital affair do not stigmatise men but it has that effect on women. Besides while the man is the guardian of his legitimate children it is the woman, that is the mother who is the guardian of the illegitimate child. Therefore the truthfulness of the allegation of adultery made by a woman cannot be shirked off lightly.

More interestingly, 1976 also marks the relative rise in men alleging adultery against women which records a significant rise from the year 1983 with the rise in the literacy rate⁶⁴. women have also been taking advantage of the ensuing emancipation. This has resulted in free heterogenous intermingling. Such social mingling is not without a certain degree of permissibility which may lead to adulterous situations or relationships. Women have also learnt to take advantage of the Medical Termination of

64. Supra note 60.

Pregnancy Act etc. which, with her new found social status, takes the woman on the equal footing with men and almost of equal social status.

A most interesting revelation is the fact that, whether consciously or unconsciously the judiciary has been doing a great balancing act. More cases are filed by men and more cases are decided in favour of women, and more divorce is granted than declined.

In the decade 1960-1970, 58 cases are recorded, of this in about 59% cases, divorce was granted and of the 59% cases, 60% were decided in favour of women. In the decade 1970-1980, 68 cases are recorded, of this in 64% cases divorce has been decreed of which 54% are in favour of women. During the decade 1980-1990, 210 cases are recorded. Of this in 57% cases divorce has been decreed and 64% decision has been in favour of women. See graph No. 6.

It cannot escape notice that since 1976 onwards there is a steady and determined rise in the number of divorce cases. The 1976 amendment shifted emphasis from preservation of family to the individual. The shifts from status to contract is clear.

A gradual improvement in the individual status of woman is to be noted.

Cruelty is the most used and easily provable ground of divorce.

With the emphasis on the individuals of a marriage the fault theory of divorce has become deeply embedded in the system. Irretrievable breakdown does not yet figure in the whole gamut of the divorce law. However with the steady rise of the rate of divorce, a serious thought is to be given at the consequences of divorce, or else happy homes will become a matter of dreams and dreams alone. All the cases from all the states, High Courts, District Courts from all over India, or from all the journals are not here. Only those reported in All India Reporter is taken, for the purpose of the foregoing analysis.

Relation between duration of marriage and divorce

Only in 187 cases the duration of marriage between the litigating couple was mention. This analysis is restricted to those cases alone. Strange are the ways of human society. The range of the subsistence of the marriage varies from one hour to 43 years. The maximum number of cases were recorded from marriages which subsisted only a few months, followed by marriage which subsisted for 2-3 years, followed by 3-4 years. In other words maximum number of cases were recorded in the first five years of marriage, and the number of divorce keeps decreasing as the marriage grows older.

Table -18

Number of years of marriage and divorce

Sl. No.	Years 0-5	Years 5-10	Years 10-15	Years 15-20	Years 20-25	years 25-30	Years 35-40	Years 40-45
Total Cases	131	26	13	7	5	3	1	1
187	70%	14%	7%	4%	3%	2%	.53%	.53%

Divorce and presence of children

On the question whether all the couples in question have children it was found, Out of the 333 cases available, in 99 cases specific mention of children were made. In other words about 30% cases specifically mentioned children but in the remaining 70% cases no children were mentioned.

Divorce and employment

Regarding question of employment only in 52 cases, employment was specifically mentioned. However, in view of the highest number of appellants being men and also because the man have to play the role of a provider it must be presumed that the husbands were all employed and were bread earners. Of this 52 cases in only 20 cases it was specifically mentioned that the wives were also employed. In other words, if we presume that all the men were one way or other employed or earning something as able bodied persons, then only .024% women were employed.

DROP IN THE DIVORCE CASES IN
EVERY FIVE YEARS SUBSISTENCE
OF MARRIAGE .



GROUP - IV.9.

Table - 19

Relation between couples with or without children
and divorce

Sl. No.	Year	With Children	Not Men- tioned	Sl. No.	Year	With Children	Not Mentioned
1.	1955	1	2	19.	1973	0	5
2.	1956	-	1	20.	1974	1	-
3.	1957	1	2	21.	1975	4	3
4.	1958	-	3	22.	1976	-	1
5.	1959	-	5	23.	1977	-	5
6.	1960	1	2	24.	1978	3	5
7.	1961	-	4	25.	1979	5	6
8.	1962	1	5	26.	1980	7	5
9.	1963	-	8	27.	1981	5	8
10.	1964	1	1	28.	1982	8	16
11.	1965	2	5	29.	1983	6	12
12.	1966	-	4	30.	1984	8	17
13.	1967	-	6	31.	1985	10	12
14.	1968	1	5	32.	1986	7	17
15.	1969	-	5	33.	1987	5	16
16.	1970	4	3	34.	1988	4	16
17.	1971	1	3	35.	1989	7	9
18.	1972	1	6	36.	1990	5	10
TOTAL						99	233

Total number of case = 332.

Table - 20
Cases where women were employed

Total Cases	Employment mentioned	Employed women	Total men	Women employed
332	52=15%	20=38%	332	.024%

Conclusion

Family is the core unit of any society. Every law and every aspect of the society revolves around this family core group. Thus any disruption in the family life has a far reaching effect on the society especially in terms of the effect it has on women and children. In a divorce case the husband, wife and the children are all affected. However since, the custodian parent of minor children are often their mothers, and also because the women are not socio-economically independent, as is corroborated by the low rate of employment and literacy of women, the plight of the women are too great.

However, the scene at the national level must be read against the data available at the state (in this case the state of West Bengal) and then with the data at the district and sub-divisional level. The emergent pattern must be seen with this total concept.

Summary of the findings

Phase I : The period covered under this phase is from 1914-1954. The intention of studying this period minutely was to see how an spontaneous unplanned social change (SUSC) unfolded itself and laid the foundation for a planned social change (PSC) in the form of the Hindu Marriage Act, 1955.

There were about 19 cases, seven of which were reported from Burma/Rangoon alone. 4 cases were reported from Madras, 3 cases from Bombay and two cases from Lahore. The remaining courts reported only single cases each. The cases from Burma/Rangoon were excluded from further analysis as they had no direct bearing upon Hindu law. Therefore only 12 cases were analysed in detail.

It was noted that during this period maximum number of divorces were customary divorces being five in number, which was followed by three adultery cases. Two cases each were seen under the ground of desertion and conversion. Only a single case under bigamy was seen.

During the first two decades during 1914-1928 five divorce cases were reported. In four of them divorce was declined and in a single case divorce was allowed. In all the five cases the appellants were men. Four cases went in favour of men and a single case went in favour of a lone woman. During the period 1933-1955 the number of male and female appellants were equally divided into three each. Except a single case, all were decided in favour of women.

Therefore in the gradual yet steady social change becomes apparent during this phase. It is really significant as the society was very orthodox during this period and strictly adhered to the shastric norms. Yet, people were beginning to think of divorce.

Phase II: This phase covers a shorter period but larger number of cases. The most significant development here is the clear and steady rise in the number of divorce cases over the years (especially since 1976 onwards). Zonal analysis shows a general uniformity of social culture in each zone. Adjacent states have indicated more or less similar trends.

Grounds of divorce: The ground used most frequently in seeking divorce is also a social index. It is also an indicator of slovenly drafting. Maximum number of cases were filed under the ground of cruelty. The use of this ground became more frequent in the post 1976 period. Adultery, the second popular ground of divorce, is a well used from the inception of the enactment though the post 1976 period is significant even under this ground. Desertion secures the third position in the list. Again, a post 1976 rise is noted here. Mental disorder and not restitution follows next. Torture for non-payment of dowry (which may also be included under cruelty) is also a frequently used reason of divorce.

Allegations: More men are found to allege cruelty against women. Women use the ground of adultery and desertion more frequently than men.

Trend in decision making: There is only a marginal difference between male and female appellants. Female appellants are marginally lesser than male appellants. In about 47% cases divorce was allowed whereas in 38% cases divorce was declined. In about 15% cases, technical decisions regarding transfer, review, revision interpretation etc were taken. Over the last three decades the trend has been towards granting of divorce. Most of the cases (55%) are decided in favour of women. Relatively lesser number of cases (31%) go in favour of men. Some of the cases (5%) favour both men and women as in cases of divorce by mutual consent and some cases (9%) are technical decisions.

There is a clear indication that with the passage of time, women have slightly improved their social status. There is also a clear shift from preservation of family to the status of the individual.

Duration of marriage, children and Employment:

It has been found that most of the divorce take place within first five years of marriage. Presence of children were not specifically mentioned in all cases. Only about 30% of the cases mentioned presence of children. Since in about 70% of the cases (only in 56% cases duration of marriage is mentioned) the marriage is dissolved within first five years of marriage, it is possible that in most of the cases children were not there. Since economic condition plays a vital role in marriage and divorce, it was presumed that all the men were employed but data showed

that only about .02% women were employed.

These findings cannot be called conclusive as the data is not exhaustive, but they do certainly indicate the path that is being currently followed by our society.

CHAPTER - V

EXAMINATION OF DIVORCE CASES UNDER CALCUTTA HIGH COURT IN THE STATE OF WEST BENGAL

(Period 1955 - 1990)

Social changes do not begin at the apex. It begins at the base. The study however is made from apex to base. After the picture that emerged at the national level, it is only natural that the situation at the state level be examined.

The national scene testifies to the fact of woman's repudiation of the duty of absolute submission to their husband, and their quest for individual identification and status. Every progressive step thus taken by the woman means a duty repudiated, and a scripture torn up. Though reform is a 'must' for progress, the legal process is haunted by too many ghosts which need to be laid. How hard the task is, may be realised from a simple metaphor; 'Attempting to reform the law is like attempting to make a sheet of corrugated iron flat with hammer'.

I. A REVIEW OF THE TOTAL NUMBER OF CASES IN WEST BENGAL.

From the year 1955 to 1990, West Bengal, that is, Calcutta High Court, has registered 26 cases¹. The national analysis is made from cases taken from All India Reporter alone. The source from

1. See Appendix II Part II.

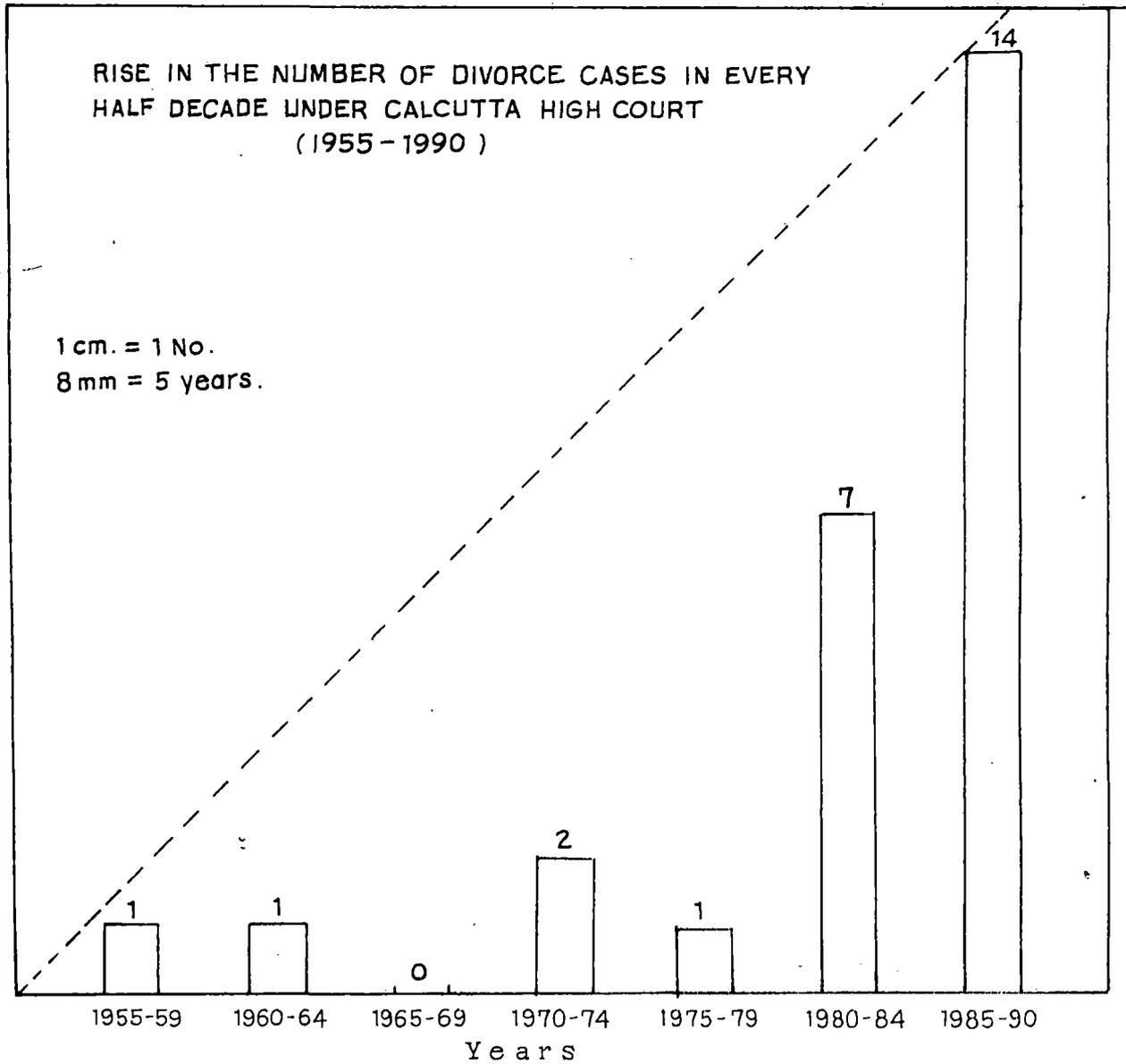
the state level analysis too is the same. Even at this stage there are cases which have not reached the High Court, those that are pending and those that have not been reported. The cases that are available from the West Bengal State level are 26 cases that is about 2 cases (2.16) per year. The period is from 1955 onwards because the study of the pre 1955 period has been studied under Phase of Chapter IV. It must also be noted here that Calcutta High Court accounts for only about 8% cases that have been dealt with at the national level under Phase II of Chapter IV.

Table - 1

Number of divorce cases at the Calcutta High Court
from 1955-1990

Sl. No.	Year	Number	Sl. No.	Year	No.	Sl. No.	Year	No.
1.	1955	-	13.	1967	-	25.	1979	1
2.	1956	-	14.	1968	-	26.	1980	2
3.	1957	-	15.	1969	-	27.	1981	1
4.	1958	-	16.	1970	2	28.	1982	3
5.	1959	1	17.	1971	-	29.	1983	1
6.	1960	1	18.	1972	-	30.	1984	-
7.	1961	-	19.	1973	-	31.	1985	1
8.	1962	-	20.	1974	-	32.	1986	2
9.	1963	-	21.	1975	-	33.	1987	-
10.	1964	-	22.	1976	-	34.	1988	3
11.	1965	-	23.	1977	-	35.	1989	6
12.	1966	-	24.	1978	-	36.	1990	2

TOTAL NUMBER OF CASES = 26



GRAPH-V.1

The actual data shows that between 1955 to 1960 only 2 case and 1960-1970 also only 2 case was recorded. Between 1970-1980, 3 cases and 1980 to 1990, 19 cases are recorded. There is a sharp

Table - 2

Rising trend of the divorce cases

Sl. No.	Decade	Number	Percentage	Total rise	Remarks
1.	1960-1970	3	-	-	80% cases were filed between 1980-1990
2.	1970-1980	5	166%	700%	
3.	1980-1990	21	420%		

rise in the number of divorce cases from 1979 onwards. On the national scene the rise is noted from 1977 onwards. So as on the national level from mid seventies onwards there is a rising trend in the rate of divorce. The state of West Bengal too confirms the rate of divorce. The state of West Bengal too confrims the same. If a straight line is drawn on the graph, just as at the national level, even at the State level too a steady rising trend will become visible.

II. REVIEW OF THE GROUNDS USED FREQUENTLY

5

Under the Hindu Marriage Act, 1955, eleven grounds of divorce is prescribed under Section 13(1). They are (1) Adultery,

5. Hereinafter called the Act.

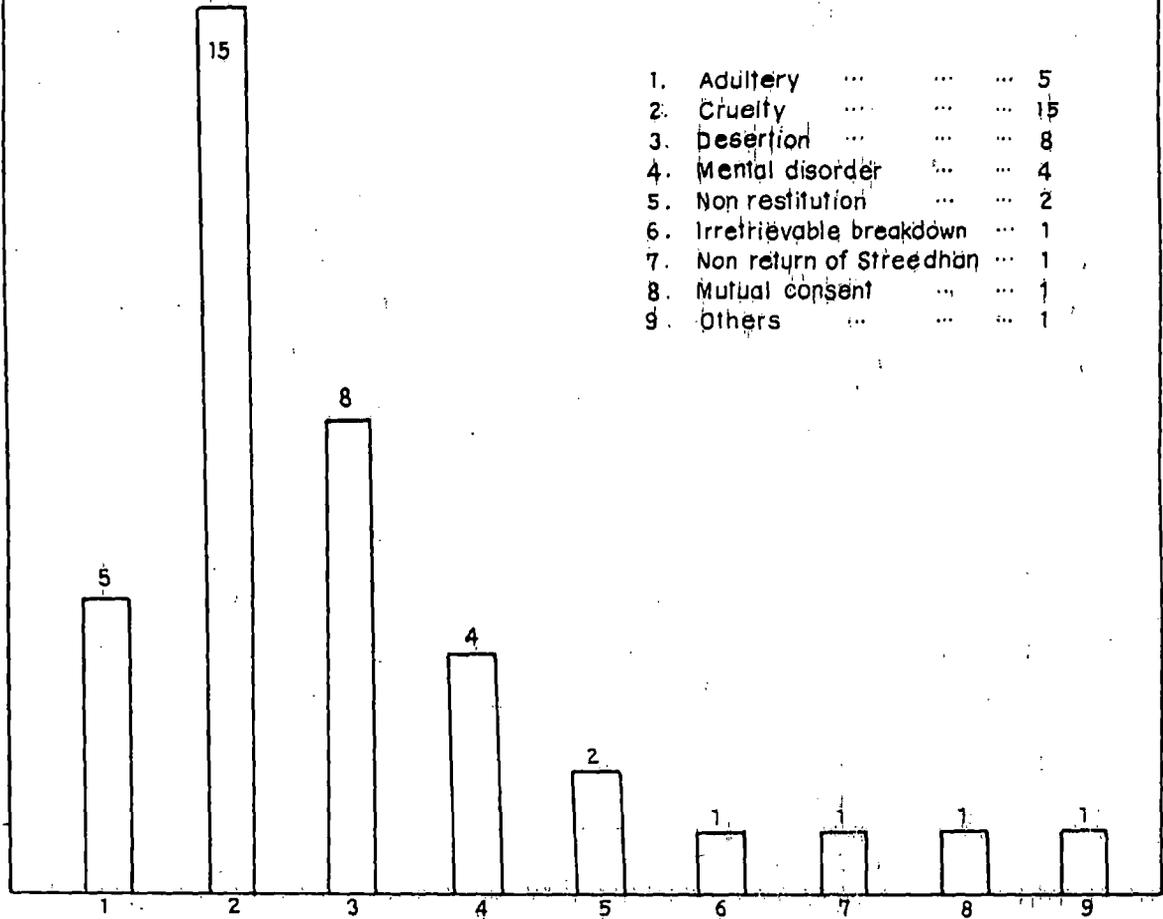
(2) Cruelty, (3) Desertion, (4) Conversion (5) unsoundness of mind (6) Virulent and incurable form of leprosy, (7) communicable form of venereal disease (8) renouncement of the world, (9) not being heard of for a period of 7 years (10) Sustained judicial separation and (11) non restitution. Sub section 2 of S. 13 provides for special grounds of divorce for women alone. The data on the most commonly used grounds indicate:

Table - 3

Number of cases filed under each ground

Sl. No.	Grounds	Number
1.	Adultery	5
2.	Cruelty	15
3.	Desertion	8
4.	Mental disorder	4
5.	Non restitution	2
6.	Irretrievable breakdown	1
7.	Non return of Streedhan	1
8.	Mutual consent	1
9.	Other diseases	1
10.	Other grounds	1

MOST FREQUENTLY USED GROUND OF DIVORCE



GRAPH - V-2.

(1) CRUELTY : THE MOST COMMONLY USED GROUNDS

Even at the state level, it is seen that the most commonly used ground for divorce is cruelty, followed by desertion and adultery. At the national level cruelty is followed by adultery and desertion. Thus, in the use of the grounds, at the national level allegation of adultery is higher than that at the state of West Bengal. West Bengal however records a high rate of desertion. It was seen that about 43% of the cases on national level were under cruelty whereas about 58% cases in West Bengal are filed under cruelty.

The graph No. 2 showing the most commonly used ground of divorce in the state of West Bengal is almost a replica of its counterpart at the national level limited to the grounds of adultery, cruelty, and desertion alone. In other words, these three are most commonly used both under the national level and at the level of the state of West Bengal.

In one case, more than one ground of divorce may be there. So, the total number of grounds cannot form the total number of cases.

(11) DESERTION : MORE FREQUENT IN WEST BENGAL

Significantly, though the allegation of cruelty continues to be high, the rate of desertion is higher in West Bengal at 31% when compared with the national scene at 26%, even if the difference is marginal.

This perhaps has a historical consistency. Even as recently, as a century back Bengal witnessed the survival of one of the most reprehensible form of social systems known as Kulinism. The essential feature of this system being polygamy and desertion. In this system, in Bengal, a class of men would marry several women ostensibly to save them from eternal maidenhood. They would project it as a favour conferred upon the woman and her family. Soon they would move on to bestow the favour on other women. Often in such marriages the bride and the Kulin groom would never meet after the first day. Though this system is officially abolished today, the tendency to desert is still present in the social fabric of the Bengali society.

Another reason for the high rate of desertion could be that of the sixteen districts of West Bengal⁶, nine have a common borderline with Bangladesh⁷. It is learnt first hand that in these districts illegal immigration and infiltration is very high⁸. A

-
6. The sixteen districts of West Bengal are, (1) Bankura, (2) Bardhaman, (3) Birbhum, (4) Cooch Behar, (5) Darjeeling, (6) Hooghly, (7) Howrah, (8) Jalpaiguri, (9) Malda, (10) Murshidabad, (11) Nadia, (12) Purulia (13) Twenty four pargana North, (14) Twenty four Pargana South, (15) West Dinajpur, (16) Midnapur.
 7. The nine districts adjoining Bangladesh are : (1) Cooch Behar, (2) Darjeeling, (3) Jalpaiguri, (4) Malda, (5) Murshidabad, (6) Nadia, (7) Twentyfour Pargana North, (8) Twentyfour Pargana South (9) West Dinajpur.
 8. Incidents of illegal immigration and infiltration are also reported in the news papers of these areas. Some of the recent ones are : Bartaman 15 May 1991 p. 3; Uttar Banga Samvad 12th May, 1991, p. 3; Uttar Banga Samvad 18th March 1991 p. 1; Bartaman 18th Feb 1991 p. 2; Drishi Parivartan 23rd April, 1991, p. 1. Bartaman 3rd August 1991, Bartaman 2nd August 1991.

study undertaken at the sub divisional town of Siliguri⁹ revealed a high rate of extra judicial de facto divorce in this town. First hand knowledge indicates that since access across the border between the two countries is relatively easy, it is easier to leave the spouse here and go over to the other country. Therefore, as this problem is acute in the state adjoining Bangladesh, the rate of desertion is high in West Bengal. The socio-economic, socio-political questions that are thrown up from this experience is not a subject matter of study here, however they do have a significant effect on the questions of matrimonial stability.

(iii) Adultery : a quiet presence

The percentage of adultery in West Bengal (19%) compared to the national level (32%) is low, but quietly present. This does not mean that the men of West Bengal are more ascetic or faithful than in other states. It is only natural that society allows a certain degree^{of} heterogenous intermingling without a frown or without being unduly conscious of the fact. This is likely to be true of all the metropolitan cities.

(iv) Allegations by the parties to the suits.

In every suit of divorce, each party to the suit makes a definite allegation against the other. Depending on the frequency of allegation by a single group, a definite social picture emerges.

9. See Chapter VII of this work.

Table - 4

Allegation by the parties to the suit under the ground
of adultery, cruelty and desertion

Sl. No.	Year	Adultery		Cruelty		Desertion	
		Men	Women	Men	Women	Men	Women
1.	1955						
2.	1956						
3.	1957						
4.	1958						
5.	1959						
6.	1960						
7.	1961						
8.	1962						
9.	1963						
10.	1964						
11.	1965						
12.	1966						
13.	1967						
14.	1968						
15.	1969						
16.	1970						1
17.	1971			1	2		
18.	1972						
19.	1973						
20.	1974						
21.	1975						
22.	1976						
23.	1977						
24.	1978						
25.	1979		1	1		1	
26.	1980	1	1	1		1	
27.	1981				1		
28.	1982			1	2		1

Contd..

Table - 4 (Contd..)

Sl. No.	Year	Adultery		Cruelty		Desertion	
		Men	Women	Men	Women	Men	Women
29.	1983				1		
30.	1984						
31.	1985				1		
32.	1986		1	2	1		
33.	1987					1	1
34.	1988						
35.	1989			2	1	1	3
36.	1990			2			
Total		1	3	10	9	4	6

For example, if the women allege more cruelty than men, and if on analysis it is found that in most of the cases the decision is in favour of women and divorce is also granted in majority of the cases, it goes to show that most of such allegations were not totally baseless.

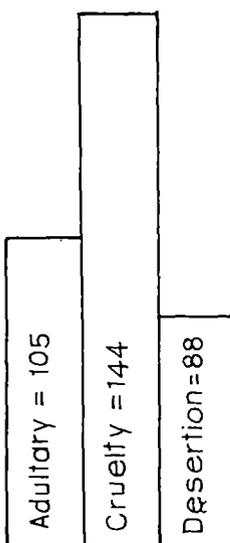
a. Allegation of cruelty

The men have alleged cruelty to women, more than the women did to the men. In one case of cruelty, if both men and women allege cruelty to each other, then a point each goes to them. Therefore the number of case of cruelty do not match with the total number of the cases on cruelty.

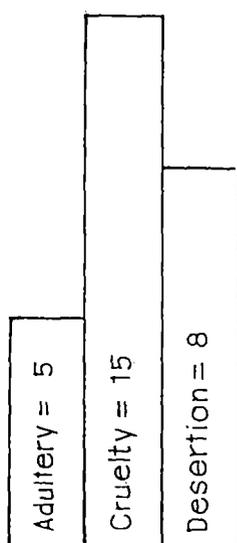
However, again a confirmation of the national pattern is seen here. At the National level 96 men alleged cruelty to women.

NUMBER OF CASES UNDER THE GROUNDS OF
ADULTERY , CRUELTY AND DESERTION AT THE
NATIONAL AND STATE LEVEL

NATIONAL SCENE
TOTAL CASES =
= 332 .



STATE SCENE
TOTAL CASES
= 25 .



GRAPH - V.3 .

where as 75 women repeated the allegation to men. At the West Bengal level, the score is almost equal. Ten men alleged cruelty to women and nine women did the same to men. The difference being 10%. The rise commences from 1979 onwards. At the national level the rise in the allegation by men started in the year 1977 and that of women in the year 1978. At the level of West Bengal the rise began from 1979 onwards for men and 1981 onwards for women. The closeness between the national and state level data are significant. The change ushered in by the 1976 amendment¹⁰ affected West Bengal and perhaps all other states at the sametime and the trend both at the national level and the state level were complimentary to each other.

b. Adultery

More women allege adultery to men than men do to women, both at the state and national level.

There is no consistent rise and fall in table 4. In the table recording allegations by men a single case is recorded prior to and after the 1976 amendment¹¹. In the table showing allegation by women all the three cases are recorded in the post 1976 amendment period. The trend however remains the same at the national and the state level.

10. Marriage Laws (Amendment) Act, 1976, Section 39.

11. Ibid.

c. Allegations of Desertion

Like Adultery, more allegation of desertion are made by women than by men and is in conformity with the national trend.

The table shows that, all the allegations of desertion by men are post 1978 and apart from a single case allegation by women are also post 1982. That is, the cases began to set a trend only after the 1976 amendment.

d. Number of Male and Female Appellants

In order to be able to get a glimpse at the real situation it must be assessed that how many women or men appeal the decision of the lower courts.

Table - 5

Number of male and female appellants

Sl. No.	Year	Men	Women	Sl. No.	Year	Men	Women
1.	1955	-	-	19.	1973	-	-
2.	1956	-	-	20.	1974	-	-
3.	1957	-	-	21.	1975	-	-
4.	1958	-	-	22.	1976	-	-
5.	1959	1	-	23.	1977	-	-
6.	1960	1	-	24.	1978	-	-
7.	1961	-	-	25.	1979	-	1
8.	1962	-	-	26.	1980	2	-
9.	1963	-	-	27.	1981	1	-
10.	1964	-	-	28.	1982	1	2
11.	1965	-	-	29.	1983	-	1
12.	1966	-	-	30.	1984	-	-

Contd..

Table - 5 (Contd..)

Sl. No.	Year	Men	Women	Sl. No.	Year	Men	Women
13.	1967	-	-	31.	1985	-	1
14.	1968	-	-	32.	1986	1	1
15.	1969	-	-	33.	1987	-	-
16.	1970	2	-	34.	1988	2	1
17.	1971	-	-	35.	1989	5	1
18.	1972	-	-	36.	1990	1	1
TOTAL						17	9
						(65%)	(35%)

There are more men appellants than women appellants in West Bengal. According to the data, men have been appellants even before 1976 amendment¹². At the national level also men appellants out number women appellant albeit marginally. At the state level too the trend is repeated. At the national level, the last three decades show a rise in the number of cases and also the number of men appellants. At the state level however the first two decades show no significant rise but the last decade shows a significant rise.

Among the women all the cases began a post 1976 amendment rise. There are no cases in the first decade, and a single case in the second decade and a sharp rise of 9 cases in the third decade.

12. Ibid.

It must be noticed that at the national level in third decade there is a relative rise in women appellants than men appellants. But the trend of gradual rise in women appellants can be seen both at the state and national level. However it cannot be denied that the national trend is reflected at the state level.

e. Divorce - Decreed, declined

Where there is a rise in the number of cases and women appellants, it becomes imperative that the rate of granting (decreeing) and declining divorce be properly assessed. So that the trend of the mind of the judiciary may be assessed.

In West Bengal there is a contrast with national scene. In West Bengal more divorces are declined than granted according to the case available in All India Reporter. At the national level, more cases are decreed than declined. To find out whether the declines are detrimental to the women, it must be decided in whose favour the decisions are made.

f. For whom The Decision Goes.

To find out in whose favour the judicial balance is tilted, it has to be revealed through data.

Like the trend all over India, West Bengal too shows that judges mostly rule in favour of women. The decade-wise analysis both at the state and national level shows that this trend is on the rise.

Table - 6
Divorce, decreed and declined

Sl. No.	Year	Decreed	Declined	Others	Sl. No.	Year	Decreed	Declined	Others	Sl. No.	Year	Decreed	Declined	Others
1.	1955	-	-	-	13.	1967	-	-	-	25.	1979	-	1	-
2.	1956	-	-	-	14.	1968	-	-	-	26.	1980	1	1	-
3.	1957	-	-	-	15.	1969	-	-	-	27.	1981	-	1	-
4.	1958	-	-	-	16.	1970	1	1	-	28.	1982	-	3	-
5.	1959	-	1	-	17.	1971	-	-	-	29.	1983	-	1	-
6.	1960	1	-	-	18.	1972	-	-	-	30.	1984	-	-	-
7.	1961	-	-	-	19.	1973	-	-	-	31.	1985	1	-	-
8.	1962	-	-	-	20.	1974	-	-	-	32.	1986	1	-	-
9.	1963	-	-	-	21.	1975	-	-	-	33.	1987	-	-	-
10.	1964	-	-	-	22.	1976	-	-	-	34.	1988	-	2	-
11.	1965	-	-	-	23.	1977	-	-	-	35.	1989	3	-	5
12.	1966	-	-	-	24.	1978	-	-	-	36.	1990	-	2	-

Total = Decreed = 8 (31%)

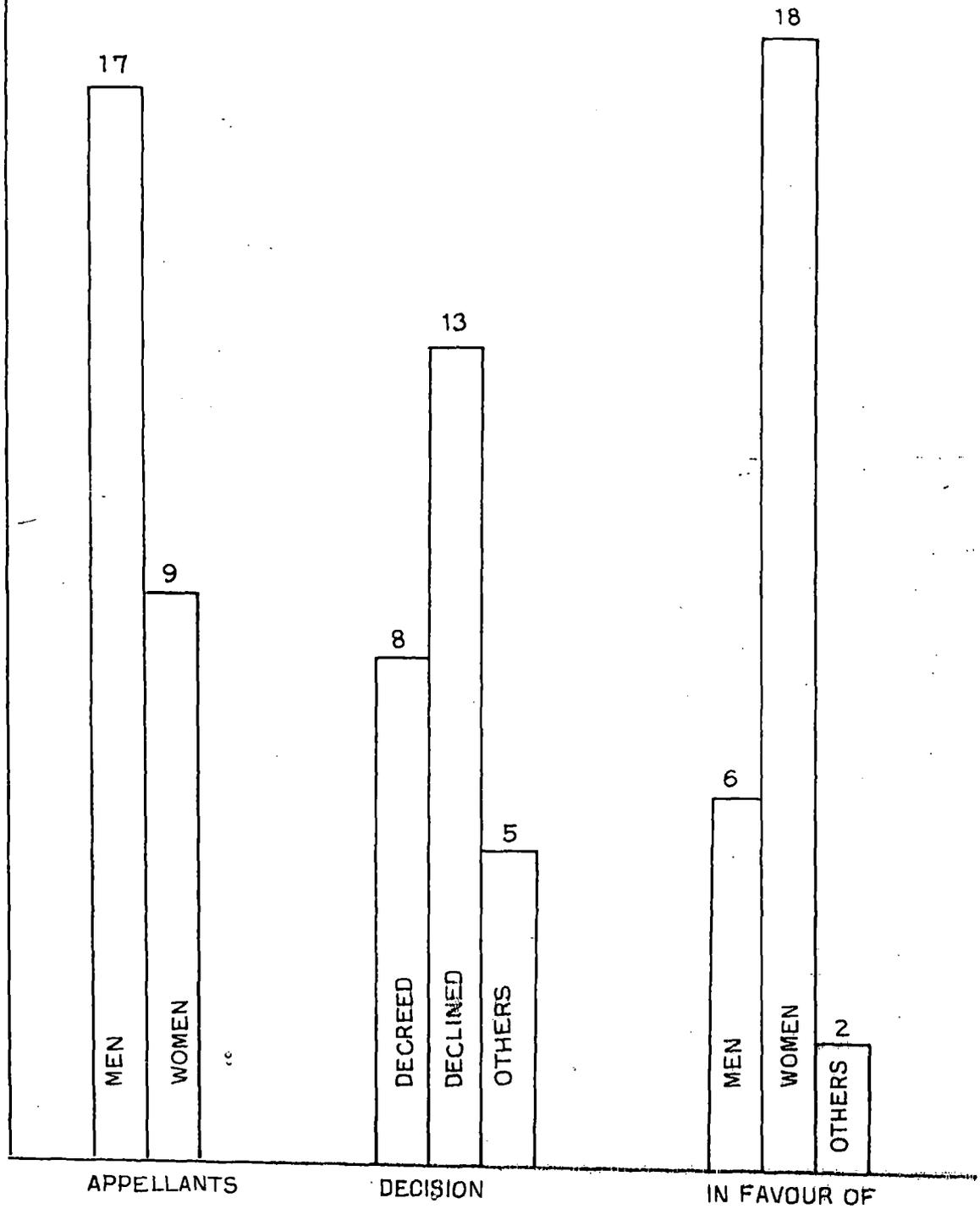
Declined = 13 (50%)

Others = 5 (19%)

Table - 7The decision in favour of men & women

Sl. No.	Year	In favour of Man	In favour of Women	Sl. No.	Year	In favour of man	In favour of women
1.	1955	-	-	1.	1973	-	-
2.	1956	-	-	2.	1974	-	-
3.	1957	-	-	3.	1975	-	-
4.	1958	-	-	4.	1976	-	-
5.	1959	-	1	5.	1977	-	-
6.	1960	1	-	6.	1978	-	-
7.	1961	-	-	7.	1979	-	1
8.	1962	-	-	8.	1980	1	1
9.	1963	-	-	9.	1981	-	-
10.	1964	-	-	10.	1982	-	3
11.	1965	-	-	11.	1983	-	1
12.	1966	-	-	12.	1984	-	-
13.	1967	-	-	13.	1985	1	-
14.	1968	-	-	14.	1986	1	1
15.	1969	-	-	15.	1987	-	-
16.	1970	2	1	16.	1988	-	2
17.	1971	-	-	17.	1989	1	5
18.	1972	-	-	18.	1990	-	2
						6 (23%)	18 (69%)

TRENDS IN THE DECISION MAKING IN WEST BENGAL (1955-1990)



GRAPH V-4.

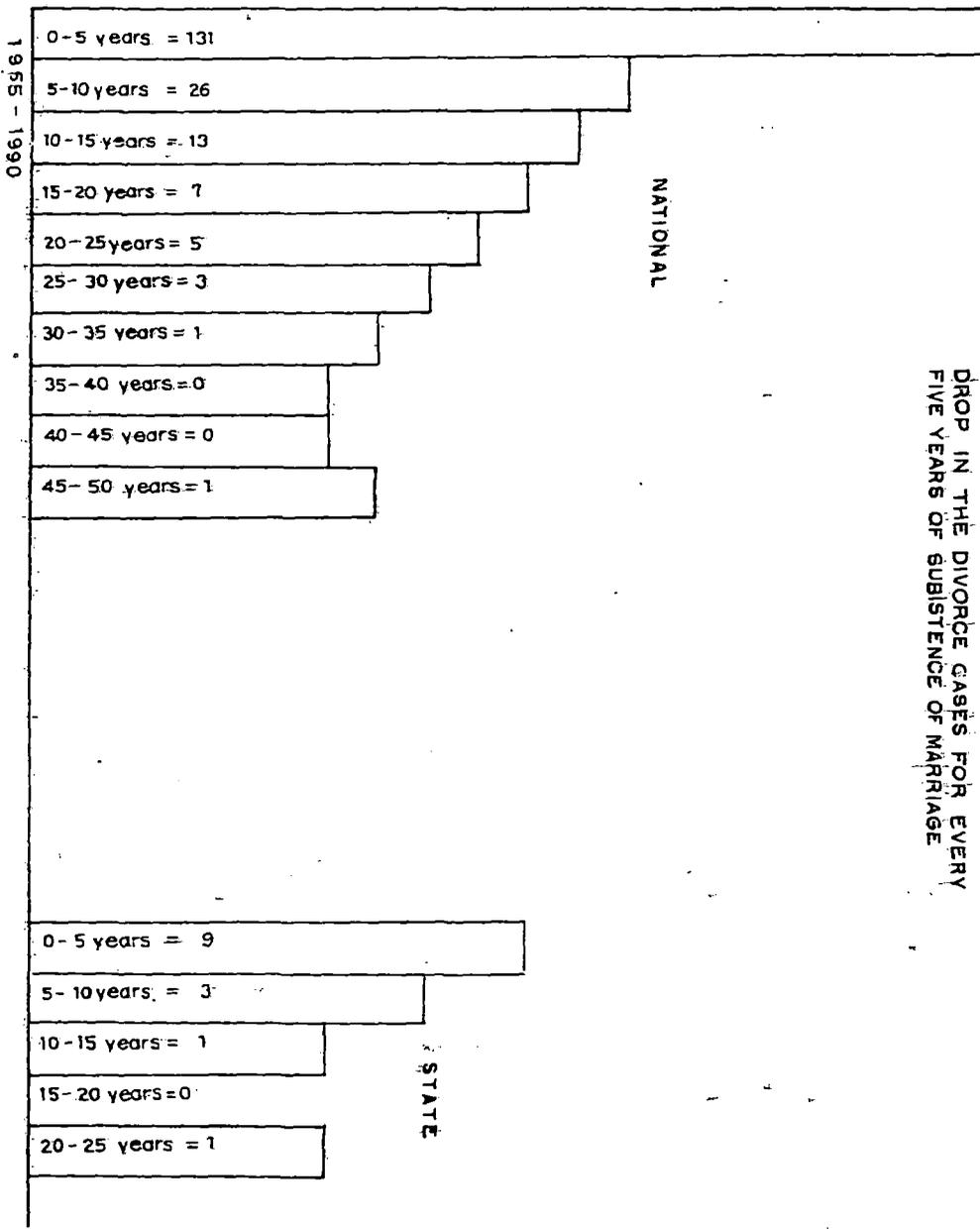
Therefore, if in most of the cases divorce is declined in West Bengal, most of the decisions have also gone in favour of women. In other words, whatever be the allegation of the woman or that of her husband, if the woman does not want her marriage dissolved no judge is likely to do so against her will.

Despite the current trend of dissolving marriages quickly and not with much qualms, the underlying intention of the Act is to preserve the institution of marriage. Therefore, if the women in West Bengal are basically against dissolution of marriage, then no court will dissolve it against her will.

SUBSISTENCE OF MARRIAGE

A question arises regarding the period of subsistence of marriage after which the divorce like situations have arisen. At the national level it was found that during the first five years of marriage the divorce rate was very high and which gradually declined as the marriage became older.

The same trend is repeated at the state level also. There is a drop in the incidents of divorce as the marriage becomes older. At the state level there are nine cases during the first five years and the numbers keep falling every half decade. The comparison of this trend with the state is rather favourable. The same declining tendency is noted at the state level. This shows that during the first five years of marriage, when maximum adjustment problems and frictions take place and marriages are prone to breaking.



DROP IN THE DIVORCE CASES FOR EVERY FIVE YEARS OF SUBSISTENCE OF MARRIAGE

GRAPH - V.5

Table - 8Duration of marriage

Pd.	0-5	5-10	10-15	15-20	20-25
No.	9	3	1	0	1
14	64%	21%	7%		7%

Employment Factor

Regarding the question of employment, there is not a single case of the women being employed. Seven cases specifically mention that the men were employed. However, for the same reasons as mentioned at the previous chapter, it is presumed that all the men are employed. That being so, there is no special requirement of comparing data at the national level.

Presence of children

The question of children are a vital issue. It was seen that only in 8 cases children were mentioned and in the remaining

Table - 9Number of couples with children

Sl. No.	Cases	Children mentioned	Children not mentioned
1	26	8	18

seventeen cases the question of children were not mentioned. This is the same pattern at the national level. If this is to be accepted, then it is also to be welcomed. Since the children are the worst victims of the marital tragedies of their parents, divorce in marriages without children means less of the tortured and agonised tiny souls. It also means the woman who is so completely dependent on the doles of her husband or natal family for her survival is less burdened emotionally or economically with a child.

Another social aspect is taken into consideration at the state level which has not been considered at the national level. That is the question of the castes. None of the cases in the All India Reporter mentions the caste of the parties. At the state level however, by making use of the book of Lokeshwar Basu¹³, the castes of the parties have been determined and the analysis made. There are some common titles which have been mentioned separately. This exercise was not available at the National level because no caste can be determined by name at that level. In the state of West Bengal the title reveals the caste and Lokeshwar Basu¹⁴ has screened the titles according to caste. On analysis it was seen that the maximum number of divorce took place among

13. Lokeshwar Basu, History of Our Titles (Amader Padabir Itihash) pp. 79-82. Ananda Publisher (1986).

14. Ibid.

among the Kayasthas and then followed by the Brahmins and Baidya.

Table - 10

Number of Cases Under each Caste.

	Brahmin	Kayastha	Baidya	Others
Number of cases 26	7 (27%)	13 (50%)	2 (8%)	4 (15%)

The findings in brief

The analysis of the cases under the Calcutta High Court from 1955 to 1990 was undertaken in order to understand the decision-making mechanism in greater detail. Except for slight deviations, the trend at the state level was more or less complimentary to those at the national level.

The rising trend: The total number of cases recorded under Calcutta High Court during this period was 26 in number. A rise in the number of divorce cases were noted after the year 1979. This accounted for about 8% of the total number of cases at the national scene. The post 1976 rise is also in conformity with the national scene. It also specially indicates the liberalising effect of the 1976 amendments on divorce laws.

Ground for divorce: A slight deviation is noticed here. Though cruelty took the front seat both at the state and national level, adultery which had the second position at the national level was

relegated to the third place at the state level. Desertion takes the third position at the national level, but occupies a second position at the state level.

Allegations of the parties to divorce: It was seen that at the national and as well as at the state level, men were very fond of the ground of cruelty and made use of it more frequently than women. Desertion and adultery are the grounds which are most favoured by women and they outnumber men in their use of the ground.

Trends in the decision making: Men were marginally greater in number as appellants than women at the national level. The same trend is noticed at the state level too. There were about 65% male appellants and 35% female appellants at the state level. At the National level in about 47% cases divorce was allowed whereas at the state level in about 31% cases only divorce was decreed. In the state level in about 50% cases divorce was declined whereas at the national level in only about 38% cases divorce was declined. So while the national trend was towards granting divorce, the state trend is towards declining it. This is also a deviation observed while studying the national and state trend. Both at the national level (55%) and at the State level (69%) most of the decision go in favour of women. No deviations can be noticed at this juncture.

Subsistence of marriage, children and Employment: The emergent picture was uniform. At the national level, as also at the state level, it has been seen that most of the dissolution of marriages

occur within the first five years of marriage. 70% of the cases at the national level and 64% of the cases at the state level were dissolved during this period. While .02% women were found employed at the national level no women are found employed at the state level. As at the national level (30%), so also at the state level only 31% cases reported the presence of children. This reveals a remarkably similar situation.

Caste analysis: This analysis was not done at the national level. The reports rarely mention the caste of the person. What is done, is with the help of Lokeshwar Basu's caste analysis the caste of the people at the state level has been sought to be determined. It was found that about 27% of the litigants were Brahmins, about 50% belonged to the Kayastha caste, about 8% were from among the Vaidya caste and about 15% were from other sects and community.

The data at the state level is essentially similar to that at the national level except for the two deviations mentioned above. A definite trend appears to be taking shape gradually.

CHAPTER VI

DIVORCE CASES AT THE DARJEELING DISTRICT

COURT BETWEEN 1984-1990

AN ANALYSIS

The findings and the quest has been brought to the district level. For the purpose of this analysis, the data had to be collected from the District Court of Darjeeling for which the permission of the Calcutta High Court was obtained¹. There is an unique feature in this District Court. Darjeeling is situated at height of approximately 7000 ft, 79 km from the sub divisional town of Siliguri. This majestically indolent Himalayan town is wonderfully non-litigating in nature, Since the Act requires that, "every petition under this Act shall be presented to the district Court"² all the cases within the district of Darjeeling has to be filed under the Darjeeling District Court. However, since the litigants find it difficult to commute this mountaneous route frequently and since during the winter and monsoon Darjeeling is mostly inaccessible, the cases from the plains are transferred

1. See Appendix - III

2. Section 19, Hindu Marriage Act, 1955.

to the Siliguri additional district courts. So the collection of the cases have been done from the district court at Darjeeling and Additional District court at Siliguri.

I. The total number of cases in a Nutshell

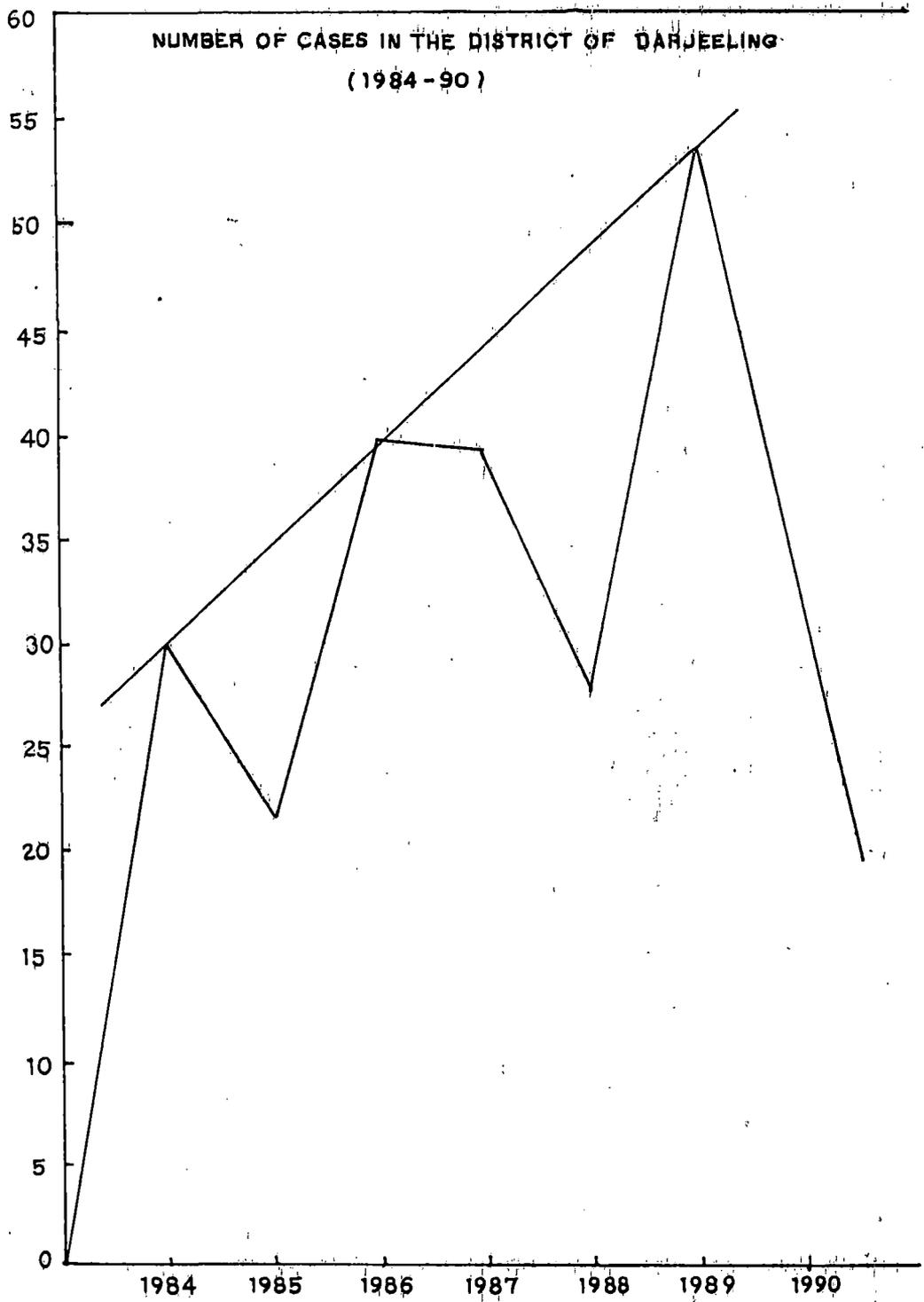
The data was collected from the year 1984 upto 1990 May. The total number^{of} cases were 268³. All of these cases were not found. Some could not be traced and others had been sent to the High Courts on account of appeal by the parties. Records prior to 1984 were not available at the court.

Table - 1

Total number of cases at the district level

Sl. No.	Year	Total Cases	Not traced	Other section	Usable cases	
1.	1984	34	15	4	15	
2.	1985	28	10	5	13	
3.	1986	44	10	5	29	
4.	1987	44	8	6	30	Average 26 cases per year
5.	1988	29	7	4	18	
6.	1989	63	5	9	49	
7.	1990	26	2	7	17	
6.5 Years		268	57	40	171	

3. See Appendix IV*



GRAPH - VI.1

If seen in totality, the district of Darjeeling in the last 6.5 years has recorded a total number of 171 divorce cases. Whereas at the state of West Bengal High Court (Calcutta High Court) level under which there are sixteen districts, the total number of cases in the last six and a half years is only fourteen. There are nineteen High Courts at the national level under each of which there are innumerable districts, but there are only 131 cases at the national level in the last 6.5 years. Under the Supreme Court, there are 19 High Courts, yet in the last 6.5 years, there are only eight divorce cases. Therefore, the indication is that, largest number of divorce cases are filed at the district level of which very few reach the High Courts on appeal. In most of the cases the verdict of the district court is accepted as final and only in negligible number of cases appeal to the High Court is preferred. Even lesser number of cases go before the Supreme Court in appeal. That is the reason why only eight cases were there in the Supreme Court between 1984-1990.

Table - 2

Cases between 1984-1990 in each forum

Period	Calcutta H.C.	National level	Supreme Court	District of Darjeeling
1984-1990	14 Cases	131 cases	8	171

Factors like litigating expenses, lengthy judicial process are a few economic reason for this. Emotionally there is an urgent desire on the part of the parties to distance themselves from an acrimonious situation, to escape the humiliation of being ripped apart in public. Socially, both men and women detest the social limbo in which they have to survive during the pendency of the case. During this time, the woman is neither a daughter nor a wife in the social eye and society knows no other identity of woman hood. So, during this period the existence could be very painful. On the other hand, the men too exist in a different yet difficult state. Men generally have three images in the social eye, a "covetable" bachelor, a "respectably" married man and a "playboy". The last category though painful, is precarious in the sense that being neither a bachelor, nor a married person, the playboy image is magnified which can be rather uncomfortable for men. In short both men and women, during the pendancy of the suit, and also where the divorce is declined, live in a state of suspended animation.

So, in a quest for speedy remedy and to avoid prolonged emotional and social battle and to save the children from the resultant trauma, usually, the decision of the District Court is accepted as the final verdict.

This is not to say that upto the district level the going is smooth. It is never so. Divorce litigations can be one of the most traumatic experience for any human being especially when the

whole enchilada of the divorce procedure is based upon the fault of the parties. This requires a bitterly fought battle, in fact such battle is compulsory in a divorce proceedings, the going becomes very tough.

II. REVIEW OF THE GROUNDS USED FREQUENTLY

Even though there are several grounds under the Act⁴ under which marriage may be dissolved, the most well known and frequently used grounds are those of cruelty, adultery and desertion. The grounds used at the district level from 1984-1990 are as follows:

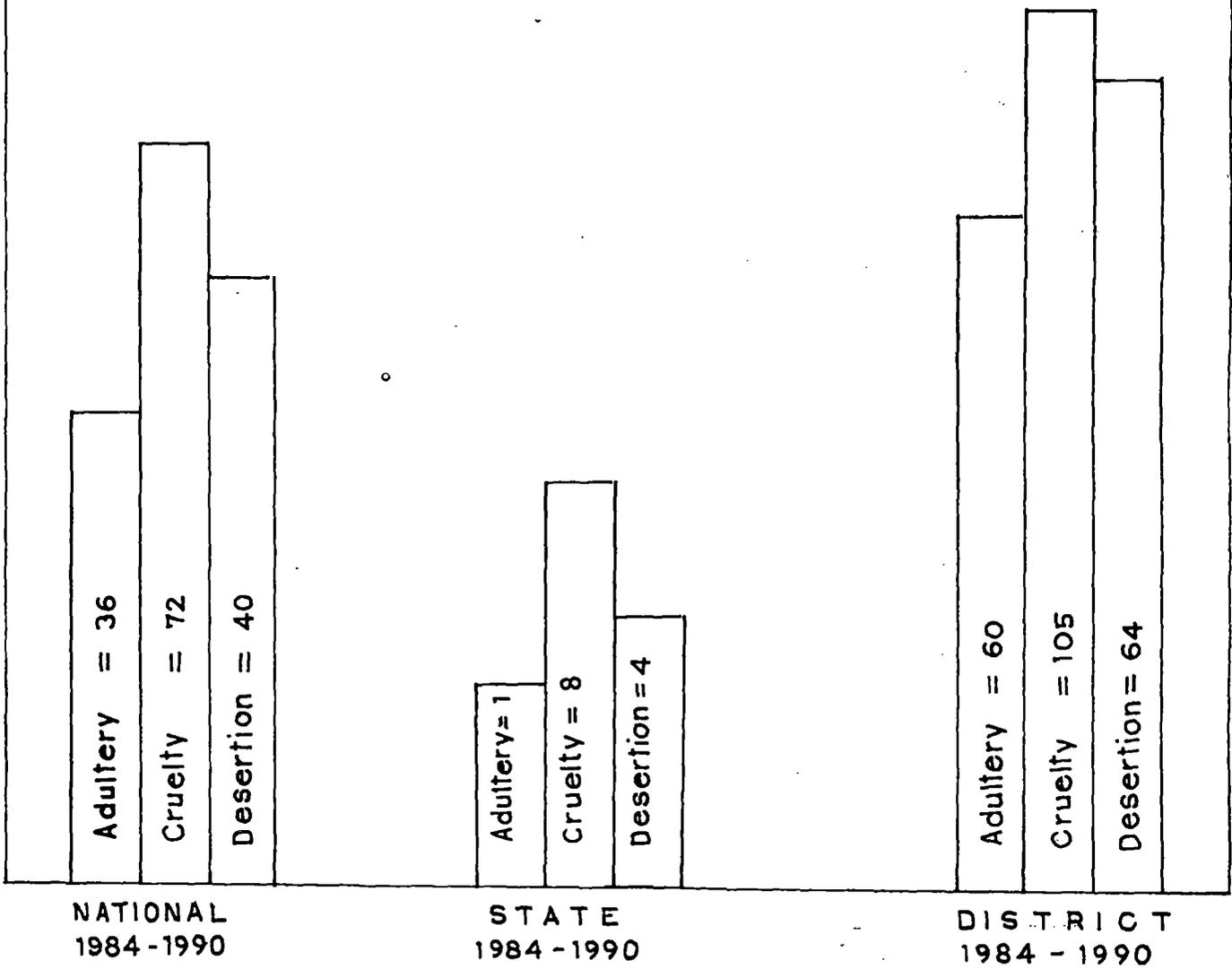
Table - 3

Review of the grounds used frequently

Sl. Nb.	Year	Adultery	Cruelty	Desertion	Mental disorder	Conversion	Non S.9	Mutual consent.	
1.	1984	6	5	4	0	0	0	3	Adultery = 60
2.	1985	6	6	5	0	2	0	3	Cruelty = 105
3.	1986	14	21	13	0	0	0	3	Desertion = 64
4.	1987	10	21	10	3	0	0	6	Mutual Consent = 34
5.	1988	7	12	5	0	1	0	2	Mental disorder = 5
6.	1989	14	32	20	2	0	0	11	Conversion = 3
7.	1990	3	8	7	0	0	1	6	Non-restitution = 1

4. See Chapter III

Ground used for divorce at the National State and District levels during 1984 - 1990



GRAPH - VI.2 .

For the purpose of the above finding the untraceable cases and those filed for relief other than divorce, have been excluded. It is seen from the above that the most frequently used ground in a divorce suit is cruelty, numbering 105. The same trend is observed at the national and state level. This is followed by 64 cases of adultery which reflects the situation at the state of West Bengal level and also at the level of district of Darjeeling but at the national level desertion occupies a third position. Adultery follows desertion with 60 cases at the district level which is only a confirmation of the trend at the state level. Adultery has a second place, between cruelty and desertion at the national level. However cruelty remains at the top in all the three stages.

A. Cruelty: looms large in Divorce Suits

Cruelty is a question of fact, and is an offence against the vows of the marriage⁵. Both mental⁶ cruelty and physical cruelty form matrimonial offence. Where the conduct of the respondent spouse is so bad that the other should not be called on to endure it, cruelty is established; it is immaterial whether the respondent's conduct was aimed at the other spouse or due to unwarranted indifference attributable perhaps to selfishness or laziness⁷. The degree of the cruel behaviour is not in question.

5. Richardson Vs Richardson (1949)2All ER 330.

6. Preeti Parihar Vs Kailash Singh AIR 1975 Raj 7.

7. Trambak Narayan Vs Kumudini AIR 1967 Bcm 80.

The question of cruelty focus upon the degree of endurance by the other party. Every matrimonial misconduct like adultery, cruelty, desertion, drunkenness, drug addiction, studied indifference, neglect, beating, all involves an element of mental cruelty in it. Because of this reason and the subjective nature of its proving cruelty is the most commonly used ground for divorce.

The concept of cruelty varies depending upon (1) Socio-legal and economic status of the spouses (2) the degree of endurance of the aggrieved spouse (3) it includes and accepts subtle elements of irretrievable breakdown of marriage. Therefore, its proving is entirely subjective and relatively easy, for the aggrieved party only has to show that the opposite parties conduct was beyond his or her endurance.

Table - 4

Allegation of cruelty by males and females

Sl. No.	Year	Total Cases	Male allegers	Female allegers	Total cruelty cases	Total cases of cruelty at the three level
1.	1984	15	5	5	5	National level = 72 (55%)
2.	1985	13	2	4	6	
3.	1986	29	11	15	21	State level = 8 (57%)
4.	1987	30	8	15	21	District level = 105 (61%)
5.	1988	18	7	7	12	
6.	1989	49	24	19	32	
7.	1990	17	7	4	8	
		171	64 (37%)	69 (40%)	105 (61%)	

Almost 61% per cent of the cases are filed under the ground of cruelty. It is noticed that more women (40%) allege cruelty against men than men (37%) do against women. This is a point of digression from the national and state scene even though the difference is marginal.

It is seen that at the national level during 1984-1990 there were 72 cases but during the same period at the level of state of West Bengal there were only 8 cases but at the district of Darjeeling there were 105 cases of cruelty. At the national level the rate of allegation of cruelty is seen to be declining gradually from the year 1987 onwards. 1987 however is a rising point at the state level and at the district level 1985 is the rising point. At all the three levels it is seen that the highest number of cases are filed under the ground of cruelty.

The Allegers of Cruelty

In a divorce suit involving a charge of cruelty, the allegation is made by either party to the suit. It must be seen that maximum number of allegations is made by men against women at the national level and at the state level, but the situation reverses itself at the district level.

It is really an ironical situation that at a time when there is so much public furor regarding cruelty against women, crime against women, female infanticide, at the national and state level it is the men who have approached the court on the ground of cruelty in order to obtain divorce. The difference between male and female allegers at the district level is only about 3%.

Majority of petitioners are men, and majority of the appellants are also men. So when the decision have gone against them they could, because of their socio-economic independence, afford to persue the case to the higher courts. That is the reason why at the national and the state level the allegation of cruelty is higher by men than women. Women, have a very low percentage of socio-economic and educational independence. In such cases, very few can afford to persue the case upto higher courts.

B. Adultery : used in lesser numbers

The following table shows that adultery is a less frequently used ground in divorce cases at the state and district level but it occupies second position at the state level.

Table - 5

Number of adultery cases between 1984-1990 at the three levels.

Sl. No.	Year	National level	State level	District level
1.	1984	7	0	6
2.	1985	6	0	6
3.	1986	9	1	14
4.	1987	3	0	10
5.	1988	4	0	7
6.	1989	3	0	14
7.	1990	4	0	3
		36 (27%)	1 (7%)	60 (35%)

During the period 1984-1990 adultery ranks lower to desertion, even though during the period 1955 to 1990 adultery occupied the second place between cruelty and desertion at the national level. Proving of adultery is more difficult than desertion and cruelty, so takers of this ground are relatively few as it is difficult to prove.

The allegers of adultery

Table - 6

The Allegers of Adultery at the three levels

Sl. No.	Year	National		State		District	
		Male	Female	Male	Female	Male	Female
1.	1984	2	4	0	0	4	6
2.	1985	2	5	0	0	3	3
3.	1986	5	5	0	1	9	6
4.	1987	2	4	0	0	3	7
5.	1988	2	3	0	0	5	3
6.	1989	1	2	0	0	9	5
7.	1990	0	4	0	0	3	0
		14 (11%)	27 (21%)	0	1 (7%)	36 (21%)	30 (18%)

At the district court it was seen that men have used the ground of adultery (21%) to seek divorce than women (18%) have. The difference however is very small and marginal. Except at the district level, women in greater numbers are seen to be alleging adultery against men than vice versa. This is significant because the proving of adultery is relatively harder than cruelty. The

relatively higher use of such a ground by women at the state and national level is significant, especially at the national and state level where questions of appeal and the cost thereof is involved. It must be understood here that where majority of the petitioners are male, and the women are handicapped due to their socio-economic dependence on others, and they often cannot afford to make baseless allegation. Besides, more noteworthy is the fact that the decisions mainly go in favour of women. That being so it must be understood that their allegations stand proved.

F. Desertion: occupies a second place

Table - 7

Incidents of desertion at the three levels

Sl. No.	Year	National	State	District
1.	1984	7	0	4
2.	1985	8	0	5
3.	1986	7	0	13
4.	1987	4	0	10
5.	1988	4	2	5
6.	1989	5	2	20
7.	1990	5	0	7
		40 (31%)	4 (29%)	64 (37%)

Between the year 1984-1990, the district level shows 64 (37%) cases and the state level 4 (29%) cases. At the national level there are 40 (31%) cases. At the national level, the ground

of desertion occupies a third position whereas at the state and district level it has a second position.

The allegeders of desertion

Who alleges more desertion, the wife or the husband is of considerable socio-legal and socio-economic importance. Both

Table - 8

Allegation of desertion by men and women

Slr No.	Year	National		State		District	
		Male	Female	Male	Female	Male	Female
1.	1984	2	7	0	0	4	6
2.	1985	2	6	0	0	3	3
3.	1986	2	6	0	0	9	6
4.	1987	0	4	0	0	3	7
5.	1988	2	3	1	1	5	3
6.	1989	0	6	1	3	9	5
7.	1990	2	4	0	0	3	0
		10 (8%)	36 (27%)	2 (14%)	4 (29%)	36 (21%)	30 (18%)

at the national and state level more women have alleged desertion but at the district level more men have alleged desertion against women.

The havoc that man-made-law plays with man's life has endless dimensions. Closely linked with desertion is the question of restitution of conjugal rights. The grounds which provide a good cause of action under desertion also provide a good cause of action for restitution of conjugal rights, once a restitution decree has passed, if the other party does not make an effort to

get the decree executed and enforced, then desertion continues. Subsequently, within one year of passing such decree, the marriage can be dissolved on the ground that the restitution order was not honoured⁸.

D. The Petitioner

It is seen that, during the year 1984-1990, greater number of petitioners before the court were the men, a pattern which has been repeated at the state and national levels also.

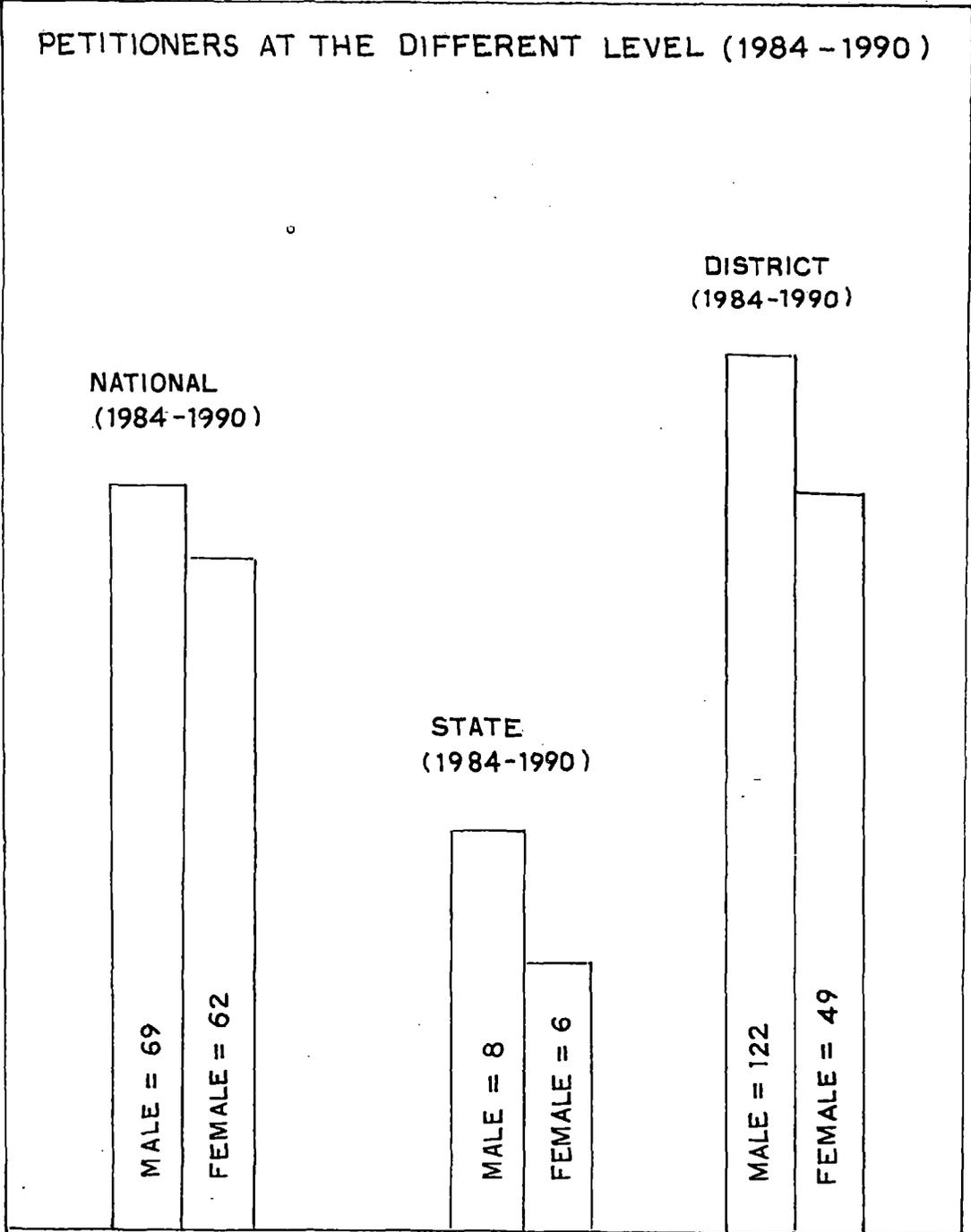
Table - 9

The male and female petitioner

Sl. No.	Year	National		State		District	
		Male	Female	Male	Female	Male	Female
1.	1984	7	10	-	-	10	5
2.	1985	9	13	-	1	9	4
3.	1986	13	9	1	1	18	11
4.	1987	10	12	-	-	20	10
5.	1988	10	7	1	1	12	6
6.	1989	11	5	4	1	39	10
7.	1990	9	6	2	2	14	3
		69 (53%)	62 (47%)	8 (57%)	6 (43%)	122 (71%)	49 (29%)

This is indicative of the fact that women still have a tendency to cling on to the marriage which really has become an empty shell. The reason for their doing so is basically socio-economic. Being economically dependent on others, the woman realises that she and her children, if any, will become a burden

8. Section 13(IA)(ii), Hindu Marriage Act, 1955, See Appendix I.



GRAPH - VI - 3 .

on her natal family and she cannot set up an independent home. Socially, there is a stigma attached to divorced women, besides, her emotions and ignorance are her enemies. The natal family too pressurises her to have patience, assuring her that everything will become alright in time⁹. Men are more economically independent. They can make and break a home. So, to them, seeking divorce is not a matter of great ordeal.

E. The Trends in the decision making

1. Decree Vs Decline.

In the earlier analysis at the state and district level it was seen that at the national level more divorces were decreed than declined and at the state level more divorces were declined than

Table -10
Trends in decision making

S/Yr.	Granted	Decline	Dropped for default	Dropped for non-prosecution	Withdrawn	Pending
1/84	6	0	3	5	1	0
2/85	5	1	3	3	1	0
3/86	16	1	3	6	2	1
4/87	12	1	9	6	1	1
5/88	12	0	6	0	0	0
6/89	15	0	11	3	3	17
7/90	1	0	1	0	0	15
	67	3	36	23	8	34

9. Jean D' Cunha, "Hindu Law Has Its Lapses", in Women's Liberation and Politics of Religions Personal Laws In India p. 25 Edited by Dr. A.R. Desai, Bombay (1990); Madhu Kishwar, "Dowry Deaths:

decreed. At the district level it is seen that in most of the cases divorce was decreed, and no cases were pending during the years 1984 and 1986. In very few cases divorce was denied. A new dimension comes to view at the district level. There are very many cases where either the proceedings were dropped for default or were dropped for non prosecution of the case. Some of the cases were withdrawn. Majority of the petitioners are men and the decision shows that there are many cases, in fact in majority of cases divorce was granted. Almost all the cases were pending in 1990, and more than one fourth cases were pending in 1989. Where the proceedings discontinued for some reason, the parties lived in a state of de facto divorce - a suspended animation.

At the various levels it is seen that:

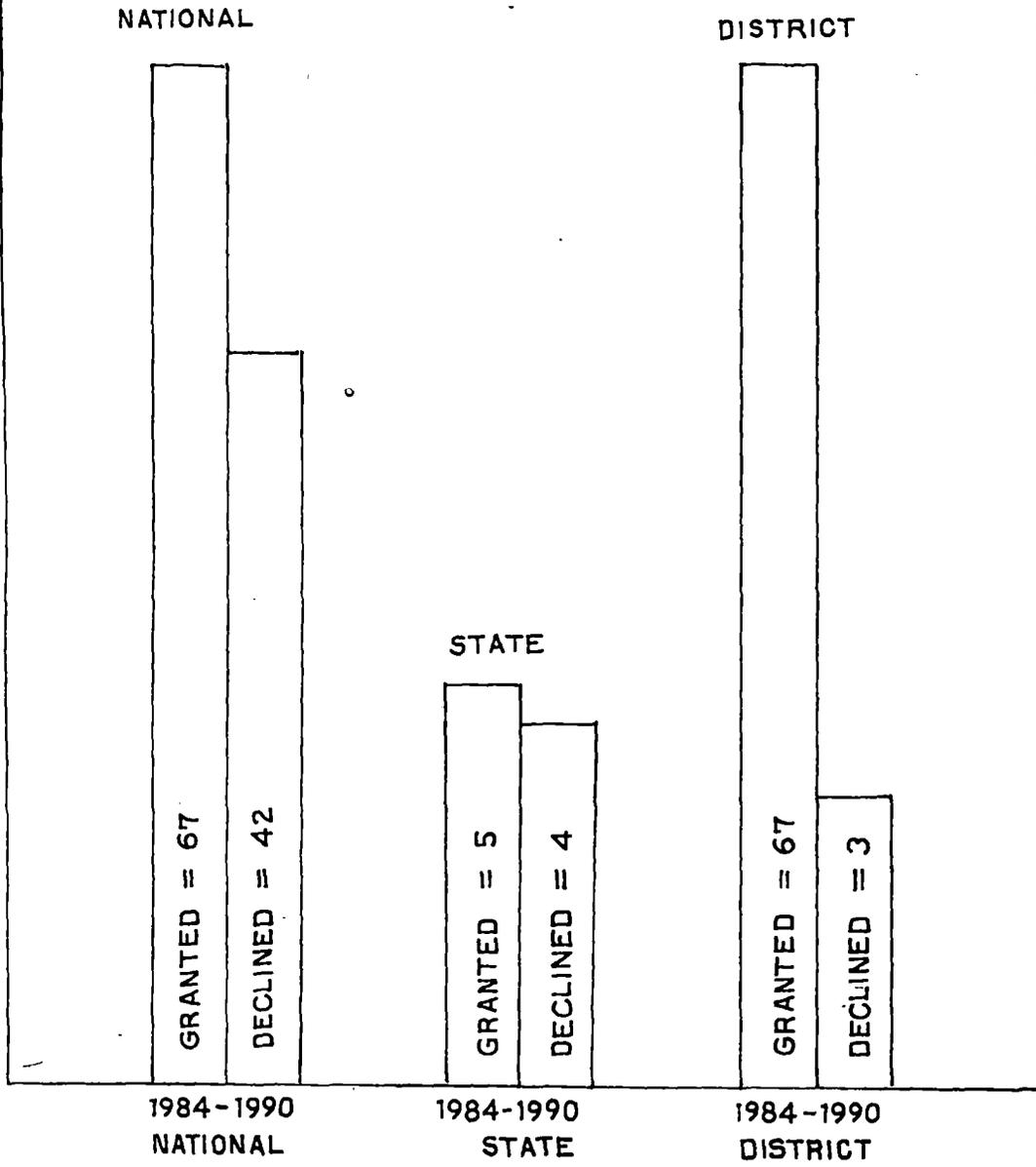
Table - 11

Table showing the rate of grant and decline of divorce

Sl. No.	Year	National		State		District	
		Grant	Decline	Grant	Decline	Grant	Decline
1.	1984	10	5	-	-	6	0
2.	1985	10	8	1	-	5	1
3.	1986	15	5	1	-	16	1
4.	1987	10	4	-	-	12	1
5.	1988	10	8	-	2	12	0
6.	1989	7	2	3	-	15	0
7.	1990	5	10	-	2	1	0
		67	42	5	4	67	3
		(51%)	(32%)	(36%)	(29%)	(39%)	(2%)
		Others = 18%		Others = 35%			

The Real Murderers" Express Magazine, Indian Express (Sunday Edition) April 9, 1989, Sanobar Keshwaar "Scream Silently or the Neighbours will Hear". The crying Need for a law Against Domestic Violence" Lawyer, April 1991 page 4.

Rate of granting and declining divorce at the three levels during 1984 - 1990



GRAPH- VI-4

At the national, state and the district level there is a tilt towards granting divorce.

2. Whom does the decision favour

Every decree or decline of divorce is to be in favour of one spouse and against the other spouse. Fundamentally, this is what the divorce law of the present times requires. The divorce laws of the present times is based upon the fault theory of divorce. In other words it must be proved by the one spouse that he has been on the right and it is the other spouse who is guilty of having committed an offence against matrimony and therefore must be punished. By granting divorce, so the common belief goes, that punishment is successfully meted out. So, inevitably, every decree or decline of divorce is, in reality it is believed, in favour of one spouse against the other. Such favouring one spouse against the other be speaks of the wrong understanding of the divorce proceedings of the common man.

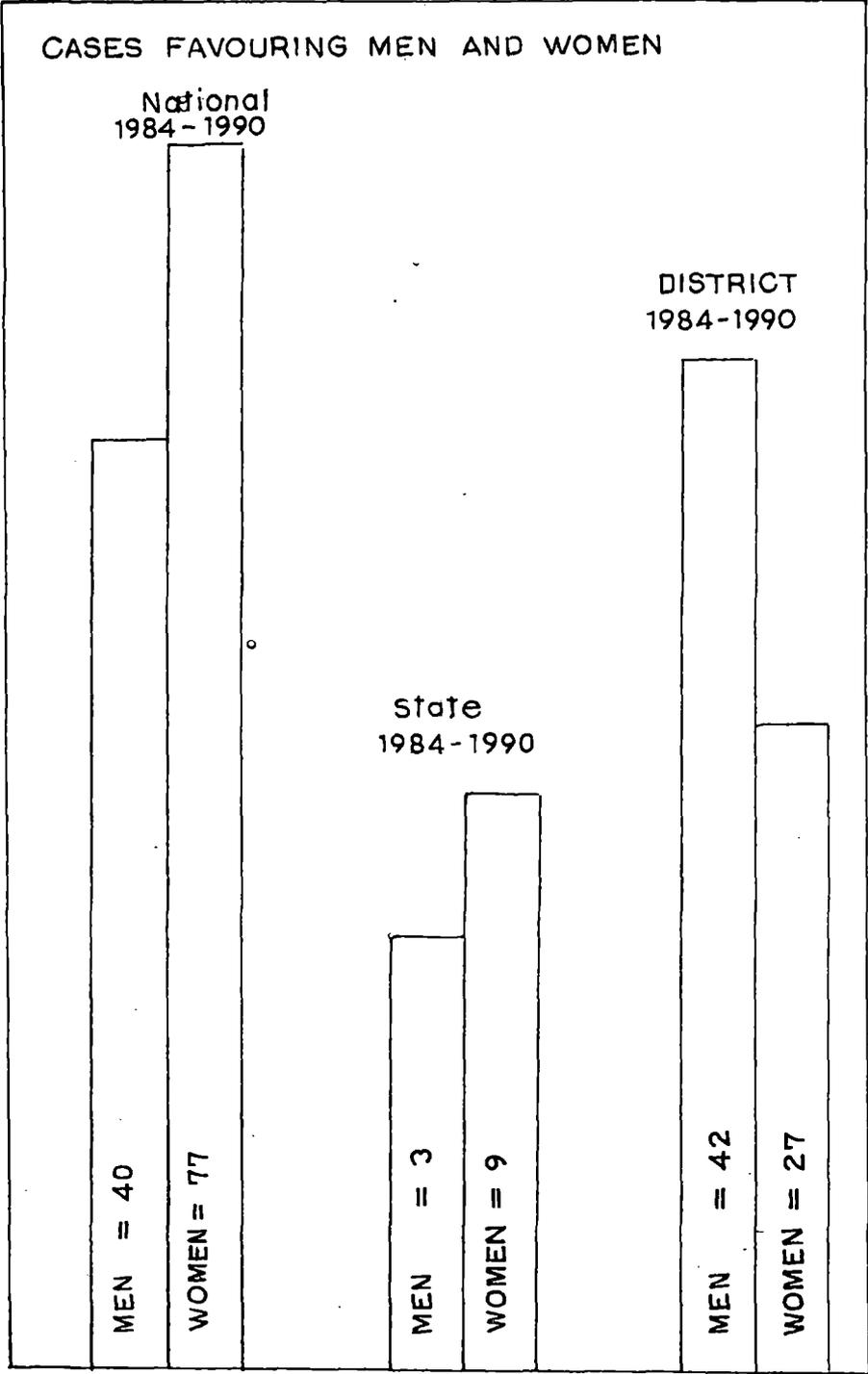
However, an analysis of whom did the decisions favour presents a very interesting study.

Table - 12

Decision favouring men and women

Sl. No.	Year	National =131		State =14		District=70	
		Men	Women	Men	Women	Men	Women
1.	1984	5	12	-	-	2	4
2.	1985	5	17	1	-	3	3
3.	1986	11	7	1	1	9	8
4.	1987	7	12	-	-	9	4
5.	1988	4	11	-	2	8	4
6.	1989	4	7	1	5	12	3
7.	1990	4	11	-	2	-	1
		40 (31%)	77 (59%)	3 (21%)	10 (71%)	43 (61%)	27 (39%)
		None = 10%		None = 7%			

At the district level it is seen that majority of the petitioners are men and most of the cases too go in favour of men. The majority of the appellants at the state and national level are also men, but it seems the judiciary, rather the bench, is engaged in a balancing act of its own. Here at the national and the state level most of the decisions have gone in favour of women. This unique feature is not an express or official policy of the judiciary rather it is a subconscious act of balancing that the judiciary is engaged into.



GRAPH - VI.5 .

F. The sound of silence; Uncontested Ex-parte divorces

^{le}
Since, sometimes can be more deafening than the loudest of noises. A new aspect of divorce litigation reveals itself in the form of a stony silence maintained by one spouse in the face of violent accusations of the other.

Table - 13

Number of Ex-parte divorce

Sl. No.	Year	Silence of women	Silence of men
1.	1984	5	4
2.	1985	6	4
3.	1986	10	10
4.	1987	9	12
5.	1988	8	5
6.	1989	19	7
7.	1990	7	1
Total number of cases 107 i.e. 63%		64 (60%)	43 (40%)

In fact, there were sixty four women (60%) and 43 (40%) men who have not pleaded any counter allegations out of a total number of 107 (63%) cases. A number of reasons for this comes to mind. For example, it may be that (1) Indian women who face relatively little exposure in life do not realise that under the present laws they have a right to defend themselves, (2) Those who know that they have right to defend themselves may not know : (a) how to go about it (b) there are help to be obtained from legal

aid and services (c) that, if she so desires she can obtain maintenance pendente lite (3) The marriage may have reached such a painful state that she is beyond caring about her marriage especially what happens to it and who alleges what against her. Almost the same is true of men. Other than a few very exceptional cases of financial hardships, men generally can defend their cases, but when they abstain from doing so it either means (1) they do not know that they have to defend themselves or (2) they particularly do not care for the marriage and so they do not want to defend themselves.

However, in the divorce litigations at the district level, the sound of silence is the loudest, Almost 63 per cent cases are there inclusive of men and women, wherein rather than the voice of the parties, their silence speak for them.

It appears like a protest of the divorce litigants against the present fault theory and the fault finding procedure of divorce. Majority of the spouses, simply avoid being there in order to avoid being broken in spirit for the rest of their lives. This must be avoided. Divorce law in India should be such that if the spouses so desire, they may be able to part as good friends but bad life partners.

G. Subsistence of Marriage.

Justice Krishna Iyer has said that:

"Daily, trivial differences get dissolved in the course of time and may be treated as teething trouble of early matrimonial adjustments. While the stream of life lived in married maturity may wash away smaller pebbles, what is to happen if in transient compatibility of mind

breaks up the flow of the stream? In such a situation, we have a breakdown of marriage itself and the only course left open is for law to recognise what is in fact and accord a divorce¹⁰.

In Santosh Kumari Vs Parveen Kumar¹¹ the Punjab and Haryana High Court has held that cruelty cannot be claimed in four to five days of living together.

Few hours or few days or perhaps an year of living together, irrespective of judicial opinion has provided maximum cause of action for divorce. The early married period, statistics show, is almost like walking on egg shells. It calls for a maximum degree of tolerance and adjustments. Trivialities of life which can be called a reasonable wear and tear of matrimonial life cannot constitute a cause of action for divorce. Precisely for these reasons a period of one year is specified after which a divorce petition can be brought before the court¹².

10. Aboobacker Vs Mamu Koya 1971 K.L.T. 663.

11. AIR 1987 P&H 33.

12. Hindu Marriage Act, 1955 Section 14 States that:

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

1) Notwithstanding anything contained in this Act, it shall not be competent for any court to entertain any petition for dissolution of a marriage by a decree of divorce, unless at the date of the presentation of the petition one year has elapsed since the date of the marriage:

Provided that the Court may, upon application made to it in accordance with such rules as may be made by the High Court in that behalf, allow a petition to be presented before one year has elapsed since the date of the marriage on the ground that the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent, but if it appears to the Court at the hearing of the petition that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the court may, if it...."

Table 14 Subsistence of marriage at national and state level

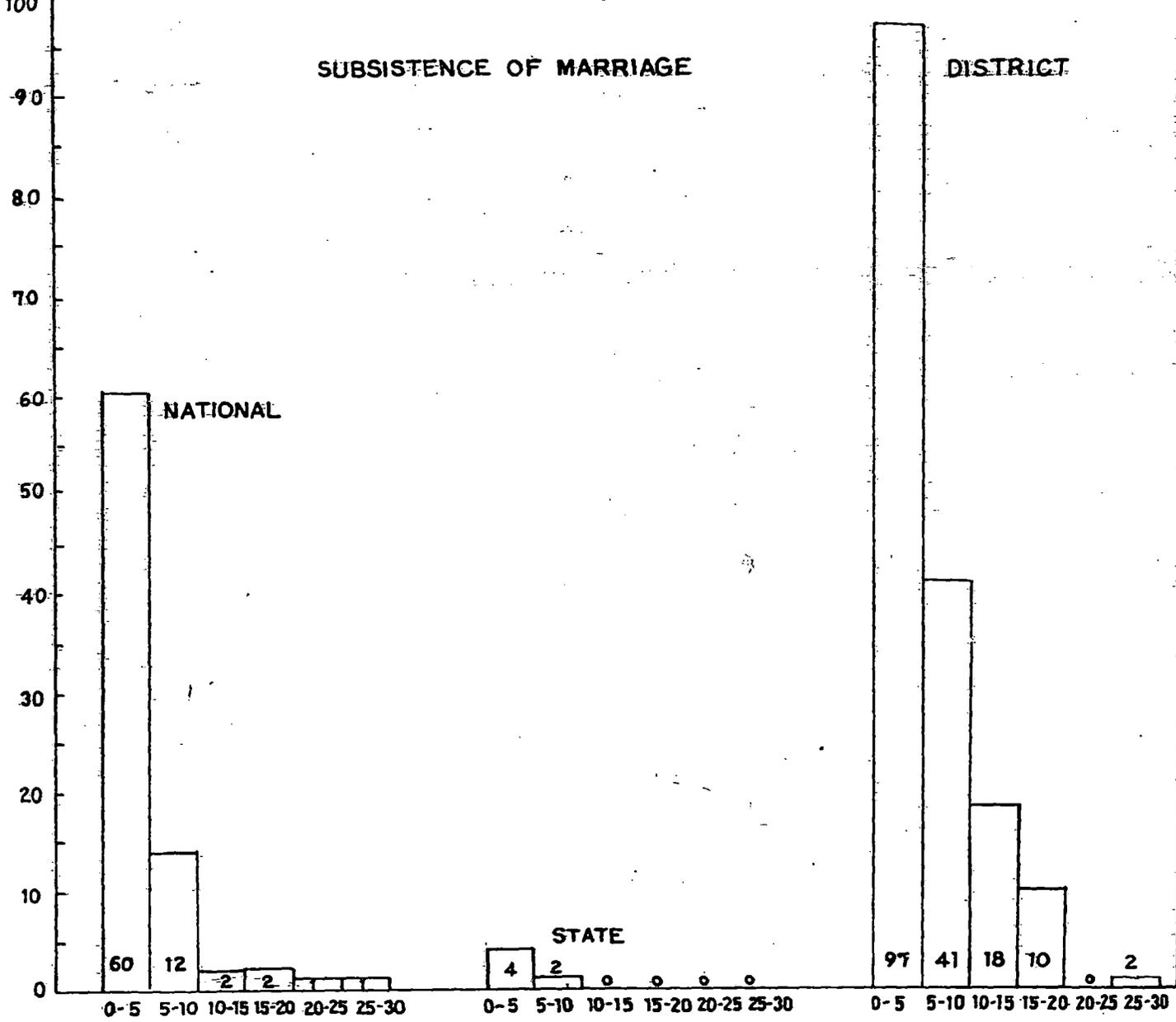
Sl.	Year	0-5 Year		5-10 years		10-15 years		15-20 years		20-25 years		25-30 years	
		N	S	N	S	N	S	N	S	N	S	N	S
01	1984	10	-	3	0	1	0	2	0	-	-	0	-
02	1985	11	1	1	0	0	0	0	0	-	-	0	-
03	1986	12	1	1	1	0	0	0	0	-	-	0	-
04	1987	10	-	2	0	0	0	0	0	-	-	1	-
05	1988	7	1	3	0	3	0	0	0	-	-	0	-
06	1989	6	1	0	1	0	0	0	0	1	-	0	-
07	1990	4	-	2	0	1	0	0	0	0	-	0	-
7 years		60	4	12	2	5	0	2	0	1	0	1	0
		(74%)	(67%)	(15%)	(33%)	(6%)		(3%)		(1%)		(1%)	

N = National level

S = State level

Table -15
Subsistence of marriage at the district level

Sl.	Year	0-5 years	5-10 years	10-15 years	15-20 years	20-25 years	25-30 years
1.	1984	9	2	3	1	-	-
2.	1985	4	6	1	1	-	-
3.	1986	16	6	3	2	-	1
4.	1987	18	6	4	2	-	-
5.	1988	7	6	3	1	-	1
6.	1989	32	11	4	1	-	-
7.	1990	11	4	0	2	-	-
		97 (58%)	41 (24%)	18 (11%)	10 (6%)	0	2 (1%)



GRAPH - VI-6.

It was seen at the district level that maximum number of divorce took place within few months of marriage. The period of 1-2 years and 3-4 years also in-decade the peak of marriage break-age. Interestingly enough every five years of marriage indicates a relatively high number of divorce for example 5th year of marriage shows 12 cases, tenth year shows 10 cases, fifteenth year 6 cases, twentieth year 8 cases so on.

The readings at the national and state level also records a gradual decrease in the marital dispute with the progress of married years.

At the district level the data shows that, again during the first five years the rate of divorce was very high and this is true of all the levels that is the national, state and district. As the year progresses the spouse seem to settle down to the matrimonial life. Therefore even if law lays down that trivial friction and general wear and tear of life should not constitute a cause of action for divorce, their cumulative effect does lead the spouses to the door step of the court.

H. The Innocent Third Party In Divorce Proceedings

Marriage does not mean only husband and wife. Marriage also means home hearth and children. When marriage takes a turbulent turn the innocent children are caught up in it. The trauma that the children undergo during the marital conflict and also the post divorce trauma leave far reaching impressions on them. Children therefore constitute a very important factor in marriage. During the period 1984-1990 it was seen that at the appellate

Table 16 Parties with children at the three level

Sl.	year	National			State of W.B.			Darjeeling District		
		Total cases	With Children	Without Children	Total Cases	With children	Without children	Total cases	With children	Without children
1.	1984	20	8	12	-	-	-	15	7	8
2.	1985	22	11	11	1	-	1	13	9	4
3.	1986	21	7	14	2	-	2	29	17	12
4.	1987	21	5	16	-	-	-	30	18	12
5.	1988	20	4	16	3	-	3	18	12	6
6.	1989	16	7	9	6	1	5	49	23	26
7.	1990	11	5	6	2	-	2	17	9	8
7 years		131	47 (36%)	84 (64%)	14	1 (7%)	13 (93%)	171	95 (56%)	76 (44%)

stage most of the couples are without children. Of 131 cases at the national level, 47 couples (36%) are with children and 84 (64%) couples are without children. At the state level too there were 14 cases between this period. Only one couple (7%) with children were there and the rest of couples (93%) were without children. At the district level of 171 cases 95 couples (56%) were with children and 76 (44%) couples were without children.

The complexity of the situation involves important socio-economic questions. At all the levels it is the men who constitute majority of the appellants and petitioners but most of the cases are decided in favour of women. But after the first round of litigations at the district level. Most of the couples with children do not go in appeal. Probably the question of the child welfare, maintenance, alimony and litigation expenses begin to pinch him. Women with children rarely go in appeal, unless they are forced to do so. That is because women, especially the custodian woman is heavily constrained financially. She is dependent upon the others and does not have the liberty to spend as she pleases.

^{Table 17}
It_^ only indicates that Brahmins are still embedded in the ancient culture in their beliefs and in the social mores. As for the other castes, they were not really under the vicious grip of religion, and the Hindu Marriage Act, really did not do anything special for them. They were more governed by custom than the Dharmasastra.

Table 17 Caste factors in divorce

Sl.	Year	Total		State of West Bengal				District of Darjeeling				NB
		S	D	Bram.	Kay.	Vai	Others	Bram.	Kay.	Vai.	Others	
1.	1984	-	16	-	-	-	-	3	4	1	1	7
2.	1985	1	13	-	1	-	-	1	3	2	0	7
3.	1986	2	29	1	1	-	-	2	9	5	1	12
4.	1987	-	30	-	-	-	-	1	6	4	1	18
5.	1988	3	18	1	2	-	-	3	3	-	1	11
6.	1989	6	48	2	3	1	-	10	14	2	1	21
7.	1990	2	17	1	1	-	-	3	6	0	0	8
		14	171	5 (36%)	8 (57%)	1 (7%)	-	23 (13%)	45 (26%)	14 (8%)	5 (3%)	84 (49%)

The Findings in a nutshell

The data at the district court records show that between the period of 1984 to 1990 (May) a sum total of 268 cases had been filed. Of these only 171 cases could be used for the purpose of this work. Since the analysis called for finding of the position both at the state and national level during this period of 1984-1990 it was seen that during this period 1984 to 1990 at the national level there were about 131 cases and at the state level there were about 14 cases during this period. In keeping with the trend at the other two forms, a rising trend in divorce cases were also seen during this period.

Ground of divorce: In keeping with the trends in the national and state levels, cruelty occupies the highest rank. Like the state level desertion has the second position here at the district level too. Similarly, unlike national level but like state level adultery occupies the third position. In other words the Darjeeling district of West Bengal confirms the trend available at the Calcutta High Court level.

The allegation made by the litigants: One of the unique things is that more women alleged cruelty than men. This of course is not true at the state and national levels. In these two levels it is the men who have used this ground more frequently. Unlike the other two levels, women have used the ground of adultery less frequently than men. Again a diversion from the national and state trends is noted here and also in that more men have used the ground of desertion.

Trends in the decision making: Like in the National and State levels, there are more male petitioners than female petitioners. The difference is quite large at the district level though marginal at the state and national levels. In all the three levels the rate of granting divorce is higher than rate of declining divorce. Whereas at the national and state levels the decisions have favoured women, at the district level the decisions favour men. Again a degression from the state and national level is visible here.

The sound of silence: an unique feature: Cases where one of the parties to the divorce litigation choose to abstain from defending him/herself may not be unique or special to the district of Darjeeling but they are certainly a speciality of the lower court of jurisdiction, namely the district court.

In the Darjeeling district it was found that in about 63% cases, either of the parties to the suit refrained from any form of rejoinder in his or her defence. Of these 63% cases, there were about 60% women and 40% men.

The reason for the silence of the women could be that (1) Indian women who face relatively little exposure in life may not be aware that they have a right to defend themselves (2) those who are aware of their right of legal defence, may not know how to go about it nor do they know anything about legal aid or legal service (3) they may be unaware of maintenance pendente lite, and (4) the marriage may have reached such a painful stage that she simply does not care as to what happens to her marriage,

she is beyond caring.

The men generally enjoy greater exposure than women and so when they abstain from defending themselves, it either means they are so hurt in wedlock that they are beyond any feeling for it or it means that they do not know that they have a right to defend themselves. One last crude possibility is that, they simply save the litigation fees by avoiding responding to the charges brought against him by his erstwhile counterpart.

Subsistence of marriage, children, caste factors: There are no digression in the trend regarding subsistence of marriage. At all the three levels, most of the marriages that are dissolved are within first five years of marriage.

In about 56% cases at the district level presence of children were specifically mentioned. During this period of 1984 to 1990, 36% cases were with children at the national level and 7% were with children at the state level.

Regarding caste also the findings at the district level, highest number of divorce can be seen amongst the Kayasthas, followed by the brahmins, probably because the brahmins have not been able to pull themselves above the shastric precepts and viscious religious grip.

In conclusion it can be said that despite small deviations, a definite trend or pattern in divorce litigation and decision making can be seen. The patterns at all the three stages largely compliment each other.

CHAPTER VII

THE DIVORCEE AS A PERSON, NOT A CASE

(An Analysis of the Empirical Study conducted in the Siliguri Sub divisional Town of West Bengal)

Divorce can be the most painful, traumatic and shattering experience for a person. People tend to equate post divorce pain with the pain of widowhood. Many divorcees feel that widowhood is easier to bear because one knows that the person is deceased and not living a life of intimacy with another person. In death, one does not have to hear all those awful allegations from the persons who were once loved very dearly. But the post event loneliness can be equally nerve shattering, more so in cases of divorce. To this is added the need for adjusting one self with the new problems, the new status of being a divorcee gives rise to.

The difference between the law as it ought to be and the law as it is more acutely felt in the matrimonial laws and litigations. The law as it is reflects the true life beyond the four walls of the court rooms. If the bar and the bench pause a while and cast a look beyond the window, they would discover a mass of humanity staring at them with a question in their eyes. It is that question which leads one to differentiate between law as it is and law as it ought to be. About seventy one cases for interview were collected. Interview of forty six men and women with conflicts have been used¹.

1. The names of the persons and a sample of the questionnaire is given for reference.

The questionnaire for the interview are divided into six parts, A. Identification B. Migration C. Socio-economic background, D. History of divorce (Marital conflict), E. Attitude to divorce and remarriage, F. Post divorce status and comments.

The Identification of the persons are not used in the body of the thesis. Except the name and address other details are taken for analysis. This chapter is divided into four parts. I. Background history, II. Marriage, III. Marital Conflict, IV. Attitude to divorce and remarriage V. Post divorce status and comments.

I. THE BACKGROUND HISTORY

In order to interview the divorcees the first task was to find them. Some of the addresses were taken from the case reports obtained from the court. The advocates were informed, friends and acquaintances were asked for information. Once a general publicity to the desire to interview the subjects were made, some of them came forward on their own to narrate their story. In this manner seventy one names and addresses were obtained of which twentytwo were men and forty-nine (69%) persons were women.

Table -1

Total number of cases interviewed

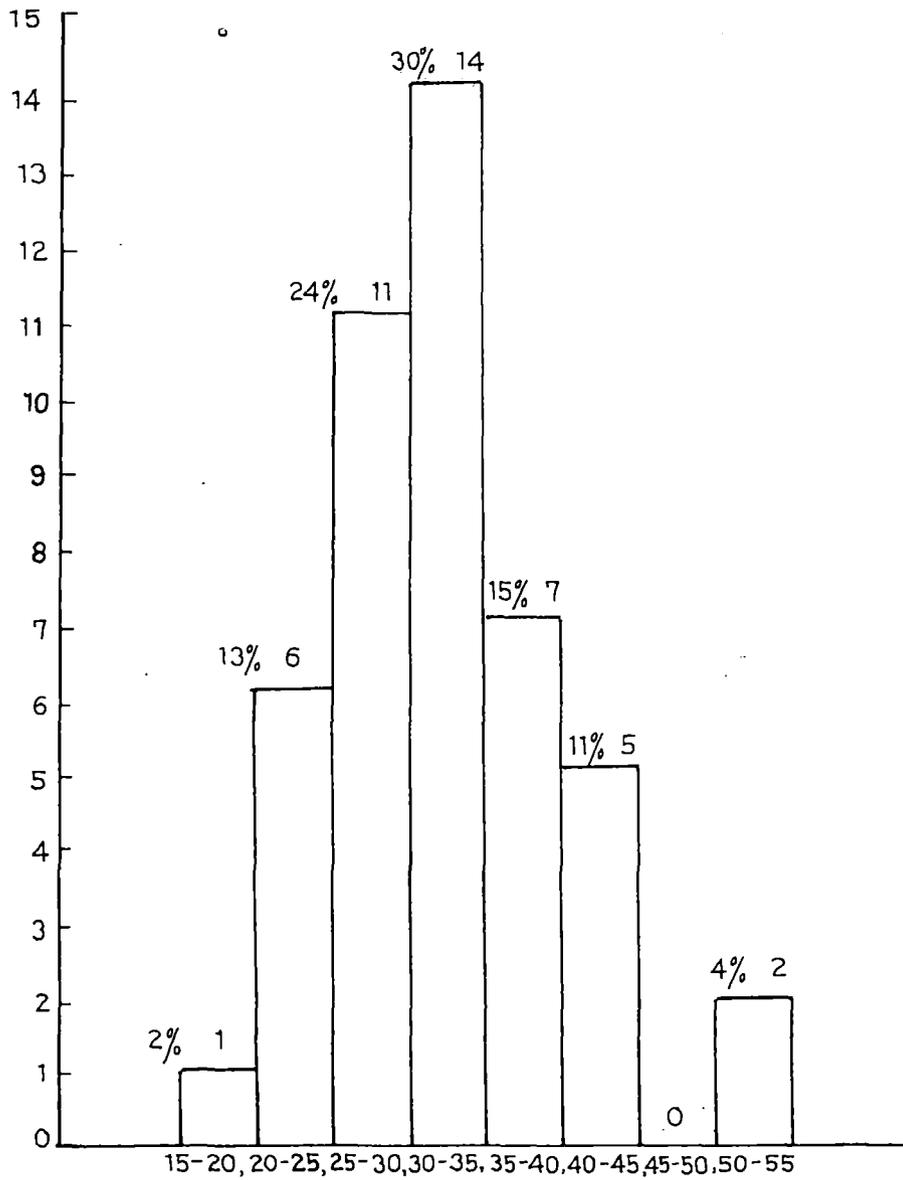
Total cases	Male	Female	Not available	Migrated	Declined	Interview	
						Male	Female
71	22 (31%)	49 (69%)	12 (17%)	10 (14%)	3 (4%)	10 +	36 (65%)

However all of the seventyone persons could not be contacted. Some were not available for interview. That is, about 12 (17%) persons were either out of station or made it a point not to be available. In short these twelve persons just did not want to talk about themselves. Ten persons (14%) had left town and migrated elsewhere. Out of these ten people, at least two of them had remarried and moved on, at least five had obtained employment outside the town and the other three just went away. This information was obtained from their friends, relatives and neighbours. Three persons (4%) declined to talk. One of them, a lady, said she was remarried and her husband did not know of her past and she did not want to say or do anything which will make him aware of it. Another gentleman whose divorce had just been granted said that his wounds were too green yet for him to speak. Another lady said her private life was hers alone. When she was suffering the society did not help her and now she would not do anything that will help the society. Forty six persons (65%) agreed to be interviewed of which ten (22%) were men and thirty six (78%) were women. In other words the ratio of men and women interviewed were 1 : 4 persons approximately.

A. Age

The age of the parties play an important role in any marriage and marital conflicts. With this end in view, an analysis regarding the age of the person was conducted.

- AGE -



GRAPH - VII - 1 .

Table - 2Age of the parties

Total	15-20	20-25	25-30	30-35	35-40	40-45	45-50	50-55
46	1	6	11	14	7	5	0	2
	(2%)	(13%)	(24%)	(30%)	(15%)	(11%)		(4%)

Most of the people (30%) belonged to the age group between 30 to 35 years, followed by 25 to 30 years (24%). It appears from the data that the age between 25-35 years is of the majority of persons (54%) when their marriage was ended. This is also the age when women and men become matured and well set in life. Sense of self respect, right and wrong, the determination to protest against anything that they consider as against their interest is at the peak at this age. Besides today women particularly middle class women tend to marry in their mid twenties and mid thirties.

B. Economic background

To understand the economic background of the parties, consideration is lent on the question of (1) educational qualification, (2) employment and (3) salary.

1. Educational Qualification

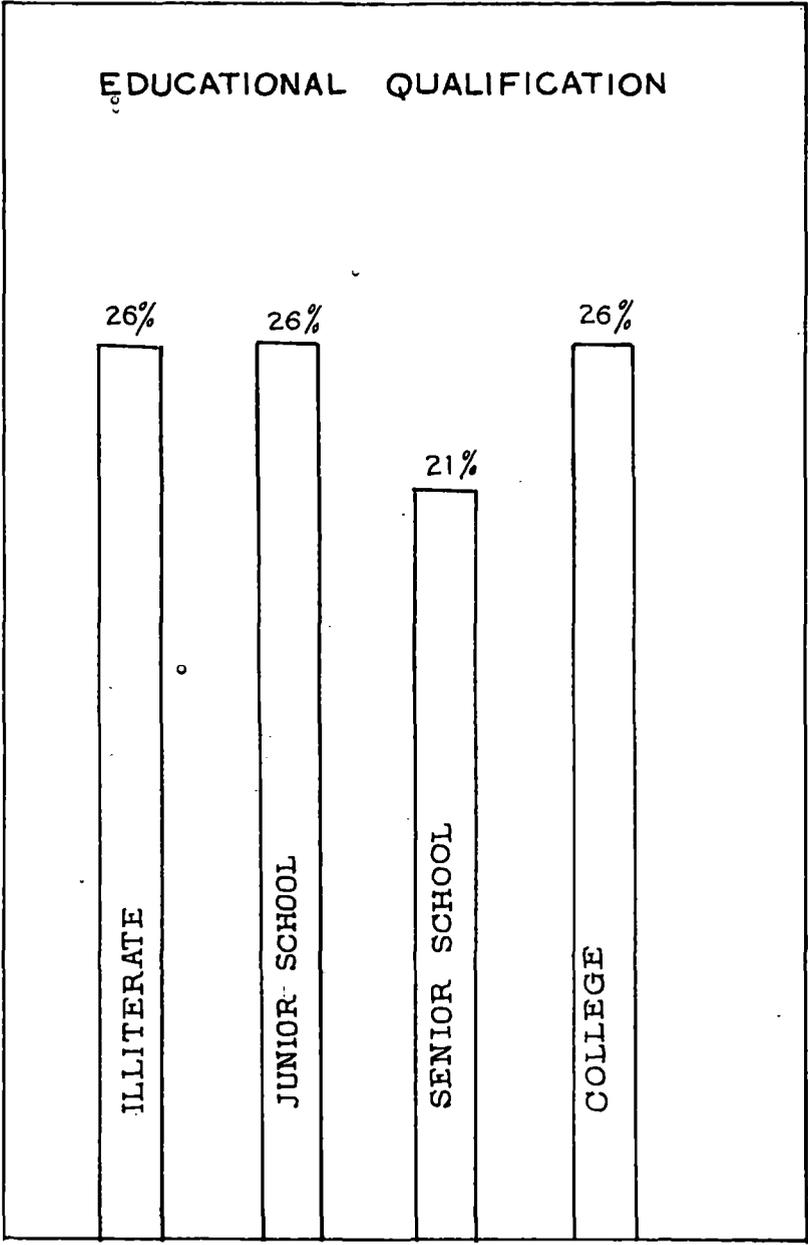
The educational qualification of the parties are varied as is seen from the following chart.

Table - 3Educational background of the parties

Total Number of cases		Illiterate		Junior School (Class 0-VIII)		Senior School (Class 9,10, 11,12)		College (Upto University)	
Men	Women	Men	Women	Men	Women	Men	Women	Men	Women
10	36	0	12	2	10	5	5	3	9
10	36	0	12 (33%)	2 (20%)	10 (27%)	5 (50%)	5 (14%)	3 (30%)	9 (25%)

The educational background varied from illiterate, but is able to sign the name. School Education, from Nursery class to class 8 formed the category of junior school. Classes 9, 10, 11, 12 formed a separate category of senior school. Graduation incomplete, graduation pass and graduation honours and University education (complete or incomplete) formed the college category. It was seen that between illiteracy to class ^{VIII}, that is junior school, there were twenty four persons (52%) followed by 10 persons (22%) in senior school, and 12 persons (26%) were in the college category.

It is worthwhile to note the fact that about 52% cases were from among the people who had read upto junior school. In about 26% cases were the parties ^{who} had read upto the college or University level. Least number of 22% was reported from the senior school categories. Those with least education appear to be more divorce prone. Those with college or university education next follow suit. In the former category it is the lack of exposure, struggles of impoverished life and refinement lead to the incidents



GRAPH - VII - 2 .

of divorce. In the latter group, education and exposure brings about awareness of right, duty, wrong-right, liberty, personality and a certain amount of rigidity of thought and personality. Inability to adjust due to these reasons could be the cause of such high rate of divorce.

The data regarding the division of the percentage of male and female in education is very revealing. In the category of illiterate, there are no men, all the twelve persons are women, that is 33% women were illiterate, 20% men and 27% women were educated between nursery to class eight that is junior school. 10% men and 4.34% women passed their class ten examinations. 50% men and 14% women studied upto senior school. 30% men and 25% women went upto college level.

The literacy rate of women are relatively lower when compared to men. It is not that highly educated persons do not divorce. It simply signifies that through education persons achieve a greater exposure and refinement of behaviour and incidents of divorce then may become less. However this low rate of literacy enjoyed by woman also leads to their predicament when they are unceremoniously discarded and find themselves without shelter, support and sympathy.

Though more women were educated upto junior school, greater number of men enjoyed senior school and college level education. Therefore the education level among women are considerably lower than that of men.

2. Occupational Background

To survive after divorce most of the women are employed in one way or another and all the men are employed. The nature of employment varies from being a maid servant and sweepers to drivers, head load workers, masons, clerks, officers, lawyers, businessmen, teachers, Panchayat Pradhans. The type of employment is not shown in the chart, The chart only indicates the member of persons employed.

Table - 4

Occupational background of the parties

Total Cases	Persons Employed		Persons Unemployed	
46	37 (80%)		9 (20%)	
Total Cases	Men employed	Employed women	Unemployed men	Unemployed women
46	10 (100%)	27 (75%)	0	9 (25%)
Men = 10 Women=36				

of the fortysix person, thirty seven (80%) people are employed, of which ten (100%) are men and twenty seven (75%) are women. Nine persons (25%) are unemployed and all of them are women.

Of the ten employed men majority were in business, some were employed as (UDC and LDC) clerks, etc. of the twenty seven women few were clerks, many were school teachers and many were employed as maid servants also. However, each according to their own ability try to support themselves.

Table - 4AType of employment undertaken by women

No. of women	Menial	Teacher	Clerk	Beedi worker	Business
27	11	10	4	1	1
(75%)	(41%)	(37%)	(15%)	(4%)	(4%)

It is seen that about 41% women took up employment as maid servants. At least 2 (18%) out of these 11 women who worked as maid servants were employed as general duty maids at the North Bengal Medical College. Both the women took up employment after divorce. Of the remaining 9, 4 women (36%) worked as residential house maids and had taken up employment after divorce. The remaining 5 (45%) women had started to work after marriage but before divorce and variously employed like mason's helper.

About 37% women were employed as teachers. About 3 (30%) of them worked as teacher even before divorce and marriage. About 70% of them took up employment after divorce. More remarkably, almost all were junior school and primary school teachers.

All the 15% women who worked as clerks were employed before marriage. One lone woman (4%) each worked as beedi worker and another conducted garment business. Both had taken up their respective jobs after divorce.

Thus the total number of women who took up employment in one form or another after divorce formed about 56% of the cases.

Women who took up employment after marriage and before divorce were 19% and those who were employed even before marriage were of 26%. About 25% of the total number of women remained unemployed and thereby totally dependant on others.

Table - 4B

Type of Employment undertaken by men

No. of Men	Business	Class IV staff	Clerk	Driver
10	5	1	3	1
	(50%)	(10%)	(30%)	(10%)

All the men (100%) were employed before marriage. Majority (50%) were in business. One man (10%) was employed in Air force as Class IV menial staff. Three persons (30%) served as clerks each in Railway, Municipality and Bank. A single man (10%) worked as driver of truck owned by private persons.

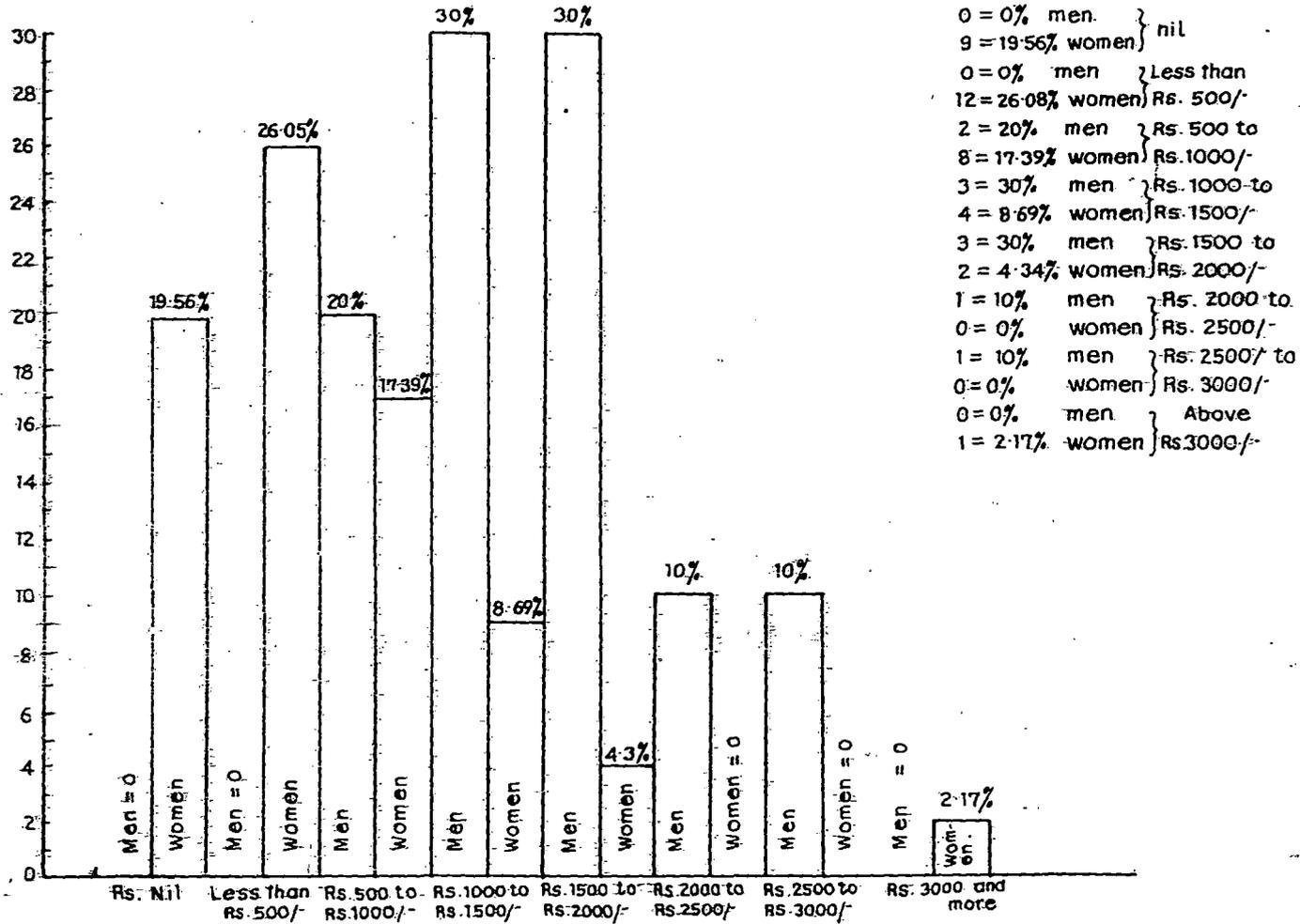
3. The Financial Position

The economic position of a person is closely intertwined with questions of education, employment and remuneration. Financial background is also a vital consideration in any divorce proceedings. The following data shows that:

Table 5 : Financial background of the parties

Total	Nil		Less than Rs. 500/-		Rs. 500-1000/-		Rs. 1000-1500/-		Rs. 1500-2000		Rs. 2000-2500		2500-3000		Above Rs. 3000	
	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women
46	0	9	0	12	2	8	3	4	3	2	1	0	1	0	0	1
(10+36)		(25%)		(33%)	(20%)	(22%)	(30%)	(11%)	(30%)	(6%)	(10%)		(10%)			(3%)

FINANCIAL BACKGROUND



GRAPH - VII-3.

There were about 25% women who earned nothing as they were unemployed. 12 women, that is about 26% of the people interviewed earned less than Rs. 500/- per month. Table 3 shows that 12 women that is about 26% person of the people interviewed were found to belong to the illiterate class. They also form about 33% of the total women community. Furthermore, 11 women, that is 24% of the total people interviewed and 31% of the total women interviewed worked as maid servants and menials (See table 4A). To rephrase, numerically speaking, 33% women earned less than Rs. 500/-, 33% women were illiterate, 31% were employed as menials which is about 41% of total women employed. Therefore the total number of women with no income or income less than Rs. 500/- was found to be about 58%.

About 22% of the total people interviewed earned between Rs. 500/- and Rs. 1000/- Of these 2 (20%) were men and 22% were women. Table 3 shows that 20% men had studied upto junior school and 27% women had studied upto that level, and Table 4A show that 41% of the total employed women were menial workers, but according to Table 4B only 20% men were employed in a low category like Class IV staff and driver.

About 15% of the total persons interviewed earned between Rs. 1000/- and Rs. 1500/- . Of these 11% were women and 30% were men. It is seen under table 3 that 50% men and 14% women have studied upto senior school. Table 4A shows that about 15% of total women employed and 11% of total number of women interviewed were employed

as clerks. 30% men were also employed as clerks as per table 4B.

In 17% cases the persons earned more Rs. 1500/- upto Rs. 3000/- Of these, 50% are men while only 80% are women. Table 3 indicates that 30% men and 25% women have read upto university level. Table 4B show that about 50% men are engaged in business and table 4A shows that about 28% women were engaged as teachers. Therefore a relationship between income, occupation and education can be established in this manner.

1a. Number of illiterate women = 12 (33%)

Number of women employed in menial jobs = 11 (31%)

Number of women earning less than Rs. 500/- = 12 (33%)

b. Number of illiterate men = Nil

Number of men in menial jobs = 2 (20%)

Number of men earning less than Rs. 500/- = None.

2a. Number of women who studied upto junior school = 10 (27%)

Number of women in low jobs = 2 (6%)

Number of women earning between Rs. 500/- and Rs. 1000 = 8 (22%)

b. Number of men who studied upto junior school = 2 (20%)

Number of men in menial jobs = 2 (20%)

Number of men who earn between Rs. 500/- and Rs. 1000/- 2 (20%)

3a. Number of women who studied upto senior school = 5 (14%)

Women employed as clerks = 4 (11%)

Women earning between Rs. 1000 and Rs. 1500/- = 4 (11%)

- b. Men who studied upto senior school = 5 (50%)
 Men employed as clerk etc = 3 (30%)
 Men earning between Rs. 1000/- and Rs. 1500/- 3 (30%)
- 4a. Women with college or university education = 9 (25%)
 Women working as teachers = 10 (28%)
 Women earning more than Rs. 1500/- = 3 (30%)
- b. Men with college or university education = 3 (30%)
 Men in business = 5 (50%)
 Men earning more than Rs. 1500/- = 5 (50%)

In conclusion it can be safely stated that education has a bearing upon the income and employment of the parties that were interviewed for the purpose of this work.

The economic and financial position of women therefore is weaker than the men. The foregoing data definitely shows that economically, financially women are handicapped and are at a disadvantageous position.

4. The Caste Factor

The question of caste being of interest an analysis of the Caste has been made at the state and district level also. The scene at the sub divisional level shows that

Table - 6Divorce in various castes

Total case	Brahmin	Kayastha	Vaidya	Scheduled Caste	Neplai	Others
46	7	20	3	14	1	1

This pattern is in confirmity with the State and district level pattern. At this level, maximum number of divorce has taken place among the Kayasthas followed by Scheduled Castes. Brahmins and Vaidyas follow respectively. Nepali and others were one each.

C. Social Background

All the subjects were met in their natural social background. Twelve (33%) women belonged to what is generally known as the lower middle class background. Sixteen (44%) women belonged to what is known as the comfortable middle class background eight (22%) women belonged to a very affluent background and can crudely be termed rich.

As for men, two (20%) belonged to the lower middle class background, five (50%) to the comfortable middle class and three (30%) men were really affluent persons.

The field covered in the empirical study ranged from the lowest strata of the society to the highest echelon of our social strata.

All these also form the basic background based upon which the various analysis regarding the persons interviewed are made. The previous data also reveal the fact that divorce is not the monopoly of the sophisticated higher section of the society but, that, it has penetrated every strata and the fact that it is rising steadily only goes to show how much conscious people have become regarding their individual rights and identity.

II. Marriage.

Marriage is an institution whereby men and women are joined in a special kind of social and legal relationship for the purpose of having a family. Much activities take place behind the scene before the final legal knot of marriage is tied on stage. The behind the scene activities are of two types (a) courtship or negotiation leading to marriage and (b) preparations for the marriage itself. For the purpose of this Chapter a look at the former is taken hereunder.

Table - 7
Divorce in different marriage forms

Total Cases	Courtship Marriage	Negotiated Marriage
46	12 (26%)	34 (74%)

Despite the relatively broader social outlook, most of the marriages (74%) were negotiated in nature, few marriages (26%) were courtship marriages. Courtship marriages are still not freely accepted or resorted to. That being so, the persons who marry after negotiations miss out on the personal communication and understanding. The negotiation, settlement and commitment thereof are between the elders who are either parents or guardians or well wishers of the parties who are to be married. Therefore the question of consent on the part of the bride or the bridegroom is hardly material. There is only a consent to get married. The question "to whom" is decided by the parents or the elders and family members. The question "do the intended persons like each other? or can they at least be friendly with each other?" are questions which are altogether ignored. All is well if the parties adjust with each other in life but where they cannot, especially in cases where the parties take an instant dislike of each other or have any physical short coming, then the questions of fraud, coercion, nullity, divorce etc are raised. During the crisis period the members of the marital or natal family are hardly of any help even though they were instrumental in bringing about the marriage. In many cases these same very people are known to have inflamed grievances.

Therefore, cases like Babui Panmato Vs Ram Agya Singh² will often arise. In this case the girl heard her father telling

2. AIR 1968 Pat 1970

her mother that he had fixed her (the girls) marriage with a person who was very affluent and of twentyfive years to thirty five years of age. Since this suited her, the girl did not raise any protest. During the marriage ceremony she wore a heavy veil and could not even see her husband. The father did not send the girl to her in-laws house after marriage. The husband instituted a criminal case under section 498 of the Indian Penal Code. The case was compromised and the girl was sent to her in-laws place. on reaching there to her dismay she discovered that her husband was over sixty years of age and a man of ordinary means. When she protested, she was beaten. She managed to escape from her husbands house and the husband again resorted to legal action Under Section 498 of Indian Penal Code. This time, the wife was forcefully taken to her in-laws house and confined there against her wishes. The resultant legal intricacy is another question altogether, but the facts of the case is relevant to drive homethe point that is being made.

In yet another case, Ruby Roy Vs Sudarshan Roy³, the husband had complained that he did not know that the bride was devoid of a female organ, had he been aware of it he would not have married her. It was, however, found by the court that the father of the husband was very much aware of the short coming in the wife. In the former case the court accepted the plea of fraud and in the

3. AIR 1988 Cal 210

latter case the court refused to do so.

Where the parties themselves settle to get married through courtship, these questions are less likely to arise. In case of courtship marriages too, fraud can be perpetrated and accepted but the complexity of the situation on involving parents, guardians or elders can be avoided.

Table - 8

Nature of marriage

Total number of cases	Social marriage	Temple Marriage	Registered marriage
46	39 (85%)	2 (4%)	5 (11%)

The data shows that most of the marriages (85%) were social marriages without registration. About 4% marriages were temple marriages and 11% marriages were registered marriage. As a result, where the marriage was social but unregistered, in the event of bigamy etc the wife was faced with the question of proving a valid marriage which she seldom can and temple marriage is no marriage at all. In other words there was a chance that 89% marriages may run into trouble without an easy remedy. For Leela Maschatak^{4a} it was

4a. Party interviewed for the purpose of this work. See Appendix V.

not so. Hers was a courtship marriage but she did not know that her fiancé was a gambler and a drunkard. His extremely cruel behaviour drove her out of the matrimonial home. Mamata Routh^{4b} too married for love but within a few years of marriage, her husband brought a new bride home. Not being able to tolerate the situation she divorced him on the ground of adultery.

Regarding solemnisation of marriage, statistics show that, social marriage without subsequent registration are very prevalent.

The above show that the Hindu community does not have enough social awareness. The least that can be done immediately is to make registration of Hindu marriages compulsory under the law.

It will also be interesting to know that how long the marriages subsisted. As seen at the state and district level, the

Table - 9

Subsistence of marriage

Total Cases	Few months	1-2 yrs	2-3 yrs	3-4 yrs	4-5 yrs	5-6 yrs	6-7 yrs	7-8 yrs	8-9 yrs	9-10 yrs
46	8	5	6	6	5	3	1	2	6	4
0-5 years = 30 (65%)						5-10 years = 16 (35%)				

maximum number of cases took place between first five years and mostly within few months of marriage.

^{4b}. Ibid.

CHART DEPICTING THE SUBSISTENCE OF MARRIAGE AT THE NATIONAL ,
STATE , DISTRICT AND THE SUBDIVISIONAL LEVEL .

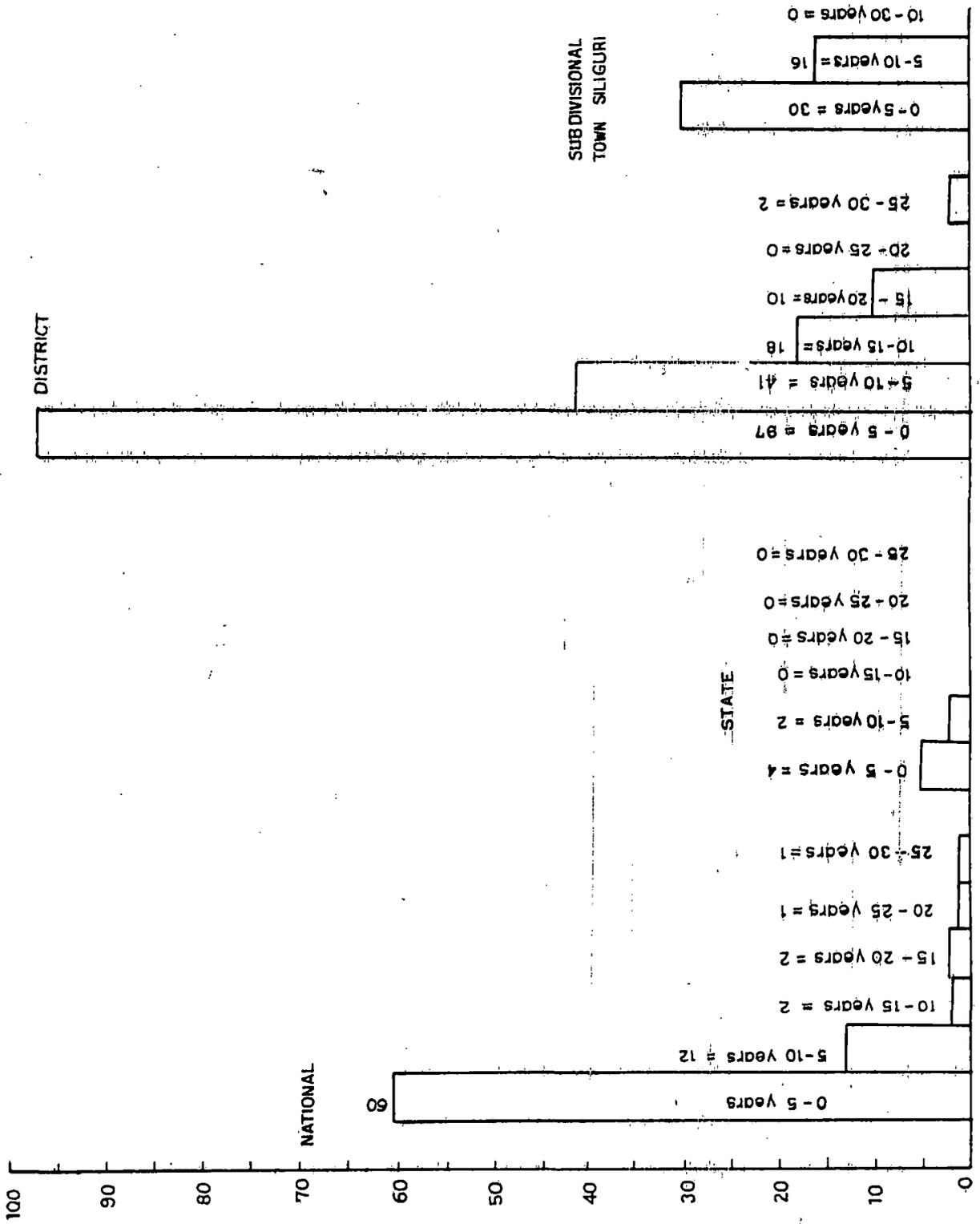


Table - 9A

Percentage of the type of marriage between
men and women

<u>Total Cases</u>		<u>Courtship marriage</u>		<u>Negotiated marriage</u>	
Men	Women	Men	Women	Men	Women
10	36	3	9	7	27
		30%	25%	70%	75%

Table - 9B

Table correlating type of marriage with
duration and type of marriage

<u>Subsistence of marriage</u>	<u>Courtship marriage</u>		<u>Negotiated marriage</u>	
	Men	Women	Men	Women
0-5 years 24% : 41%	2 20%	9 25%	2 20%	17 47%
5-10 years 2% : 33%	1 10%	0	5 50%	10 28%

Total no. of case 46; Number of men = 10; Number of Women = 36

It must be noted here that 30% men and 25% women had courtship marriages. The total number of courtship marriage being only 26%. About 74% of the people interviewed had negotiated marriages. Of these 70% were men and 75% were women. Further, it was noted that of the 30% men who had courtship marriages, 20% of them obtained divorce within the first five years of marriage and 10% had their marriages dissolved after five years and before the completion of 10 years of marriage. About 25% women had courtship marriage and all 25% of them faced divorce within the first five years of marriage.

There were about 70% men and 75% women whose marriages were negotiated ones. Of the 70% men, only 20% of their marriages lasted for five or less than five years, 50% of them were married for more than five years. Of the 75% women with negotiated marriages, a majority (47%) of their marriage dissolved within five years of marriage and about 28% had continued in a married state for more than five years.

It must not be forgotten that about 85% cases are of social unregistered marriages (See Table 8), and about 74% of marriages are negotiated social but unregistered marriages (See Table 7). From this it may be inferred that of 26% marriages which are courtship marriages (See Table 7) about 10% end in social marriage without registration, about 11% are registered, about 4% are in temple (See table 8) where it is neither social nor registered, and the remaining 1% are unreported.

Column 1 of table 9B clearly shows that maximum number of marriages (41%) which end within the first five years of marriage

are negotiated, social and unregistered. Of 74% of negotiated marriages, 41% ended within first five years of marriage and 33% end within ten years (5 years - 10 years) of marriage. There were about 26% of courtship marriage cases, of it about 24% ended within first five years and 2% between five years to ten years, again, about 10% of them are social but unregistered.

The result of this is that many have been tricked into bigamous second marriages or there has been no valid marriage conducted. When the cases came before the court, the validity of the marriage is challenged invariably. Women find it hard to prove that they had a valid marriage. So, law fails to accord the status of wife to them and the women not only lose the social status but cannot claim maintenance etc. under the criminal laws.

III. Marital Conflict

As stated earlier, a marriage can break down for various reasons. The Hindu Marriage Act recognises great many grounds for divorce⁵. Due to the diverse human behaviour many of the real grounds of marital conflicts are not covered by the Act. So both the actual ground and the statutorily recognised ground must be elasticised and adjusted so that they suit each other. The various types of conflicts experienced by the subjects interviewed are as follows:

5. See Chapter III for a detailed treatment of the ground of divorce.

Table - 10
Grounds for divorce

Total cases	Adultery	Cruelty	Desertion	Insanity	Leprosy and other diseases	Irretrievable breakdown	Mutual consent
46	19	27	10	4	2	1	3
	(41%)	(59%)	(22%)	(9%)	(4%)	(2%)	(7%)

The maximum number of cases are for cruelty, followed by adultery and then desertion. Desertion is followed by mutual consent, leprosy and other diseases and irretrievable breakdown respectively.

This situation is almost identical with the national, state and district levels except for minor differences.

Similar to the national position, desertion at the sub divisional level occupies a third position after cruelty and adultery. Cruelty ranks at the top at the national, state, district and sub divisional level. Desertion occupies a second position after cruelty at the state and district level, and at these levels adultery is relegated to the third place. Insanity is the next important ground for divorce. Mutual consent is in the next important place.

Each of the grounds are studied more minutely in order to study the real dimension of the cases.

It may be recalled here that in analysis regarding education it was seen that about 60% women were between illiterate to junior school. About 55% women earned between nothing to less than Rs. 500/- . About 77% women hailed from low middle class to comfortable middle class background. Most of the marriages (85%) were social unregistered marriage and about 59% cases were on cruelty which, as already discussed is a vague and convenient ground for divorce.

It will not be an exaggeration to say that a majority of women are educationally, financially handicapped. Their marriage were negotiated, social, unregistered marriages which were dissolved on vague and convenient charges of cruelty.

A. Adultery

1. Adultery As Bigamy And Extra marital Affair

Adultery is the second frequent ground of divorce. There are about 41% cases of adultery (See Table 10). It has been studied in various context. In the first instance adultery is divided into bigamy and extramarital affairs. There were 9 (47%) cases of bigamy and 10 (53% cases of extra marital affairs. It is true that, if

Table - 10A

Bigamy and extra marital affair

Bigamy	Extra marital Affair
9 (47%)	10 (53%)

by an effective legislation or means bigamy was to be reduced or stopped altogether, then incidents of extra-marital affairs would be on the rise. Though that would not be a welcome situation at all, yet, perhaps, that would have reduced the sufferings of the discarded second wives to a large extent. As it is, the second wives are neither entitled to maintenance nor the status of a wife. The first wife of a bigamous marriage can have her marriage dissolved on the ground of adultery. On the contrary, the second wife of the bigamous second marriage is socially differentiated and discriminated against because of the factum of her marriage, that her marriage is in fact void is neither accepted nor recognised by the society. So in effect a terrible wrong is perpetrated against the woman in bigamous marriages. In extra-marital affair at least this aspect of injustice is absent. That is not to say that people must have the right or liberty to indulge in such affairs and nor is it being encouraged or welcomed. It is only that extra marital affairs are the lesser of the two evils. The remedy could lie in a suit for adultery and divorce and the tragedy of the second wife will be averted.

2. Adultery in different income groups

There are about 19 cases of adultery. It was seen that nine (47%) cases were from among the group of no income to Rs. 500/- 8 (21%) cases were registered from the income group of Rs. 500/- to Rs. 1000/-. 3 (16%) from the income group of Rs. 1000/- to Rs. 1500Rs-. The income group of Rs. 1500/- to Rs. 2000/- registered 2 (11%) cases. No adultery cases were recorded in the income bracket of Rs. 2000/- to Rs. 3000/-. At the level of Rs. 3000/- there was a single case (5%) of adultery.

Table - 10BAdultery in different income groups

Total Cases	Less than 500	Rs. 500- Rs. 1000	Rs. 1000- Rs. 1500	Rs. 1500 Rs. 2000	Rs. 2000- Rs. 2500	Rs. 2500- Rs. 3000	Above Rs. 3000/-
19	9 (47%)	4 (21%)	3 (16%)	2 (11%)	0 (0%)	0 (0%)	1 (5%)

Economic question has a close bearing on the question of divorce on the ground of adultery. Among the low and low middle classes men and women after a hard and gruelling days' work tend to avoid their spouses and seek relaxation elsewhere with other women and men. This appears to be a very natural phenomenon. If they spend time with their respective spouses then questions, problems and topics of family commitments, child rearing etc cannot be avoided, which instead of relaxing them, weigh them down, so adultery is an escape route of the skulldruidery of a monotonous life, where there is a relatively easy flow of money and lesser hard work involved, the couple settles down into a relaxed and comfortable life and rarer incidents of adultery occurs. Where there is too much money, much time goes in earning and preserving it which again can lead to strains resulting in adultery and divorce.

3. Adultery and literacy rate

The relationship between adultery and literacy rate makes a very interesting study.

Table - 10C
Adultery and literacy

Total Cases	Illiterate	Junior School	Senior School	College/University
19	6 (32%)	5 (26%)	3 (16%)	5 (26%)

Maximum number (32%) of divorce cases are from among the illiterate class followed by junior school and college/university groups showing 26% cases. Lastly 16% cases are recorded in senior school category.

The question of education, it has been found during the analysis of tables 4, 4A and 4B, is directly connected with the question of income. The same analysis also shows that occupation and education also are directly connected. Table 10C shows that maximum number of divorce cases (32% and 26%) are from this educationally, occupationally and financially backward classes.

Adultery amongst the group enjoying high educational, occupational and financial status is also high^{at} 26%.

The reason is quite apart in the former and latter classes. Among the former class pressing poverty, domestic problems, lack

of diversions with books, news papers etc force the people of this class to form adultrous relationships. In the latter cases, availability of every amenities of life, tension of earning and keeping money, yet the sheer boredom of affluency force the people to seek and to keep themselves pre-occupied with extra marital or adulterous relationships. For the former and the latter group, their charm of life depend on their repertoire of amatory skills. On the contrary, the comfortable middle class group are more prudent, prim, and status conscious and hence record the least (16%) number of cases.

4. Adultery - Sex ratio and Age factors

In a study relating to adultery in relation to sex ratio and age group it was seen that, interesting enough, adultery

Table - 10D

Age and Sex ratio in adultery

Total Cases	Men	Women	Years 15-20	Years 20-25	Years 25-30	Years 30-35	Years 35-40	Years 45-50	Years 50-55
19	12	7	0	1	5	9	2	1	1
	63%	37%	0%	5%	26%	47%	11%	50%	5%

by men are higher (63%) than those by women (37%) and majority of persons (47%) belonged to the age group of thirty to thirty five years and (26%) twenty five to thirty years. As the age increased the rate declined.

Adultery is a very physical question. As the age increases the body also ages and the attraction and urge of the person is lost. It is purely a frolic for the young. Yet, the strictly marriageable age records less adultery because the thrill of being newly married does not wear off. But between 25 years to thirty years, when the domestic responsibilities are heavy and the charm of marriage begins to wear thin the attraction beyond the bond of matrimony is very strong and incidents of adultery are high.

Women are a homing species as a rule. Rearing the young ones and management of the household affairs are her natural instincts and pre-occupation in these matters serves as a check on her adulterous inclinations which is less intense in the case of men. That is the reason lesser (37%) women are guilty of adultery than men (63%).

An average Indian is still under the strong influence of our ancient traditions and beliefs. When the question of adultery arises it has to be judged against the backdrop of that person's social sphere. In short, adultery is high among people who are (1) in the age group of twenty five to thirty five years (2) who have an income below Rs. 2000/- per month and (3) their educational qualification varies somewhere from being illiterate to junior schools. So in this social background it is not surprising that incidents of adultery should be high here. Firstly, because among this group leaving one spouse and starting life with another, customary form of divorce etc were very common, even before the

advent of the Act. Due to this reason, adultery is relatively high in this group.

Adultery takes place even among those whose (1) age is between twenty five years to thirty five years (2) who are educated somewhere between senior school to University education and (3) earn more than Rs. 2000/- to Rs. 3000/- the reason for this in this given social background is different. People from this strata of society enjoy a greater exposure and a lot of heterogeneous intermingling takes place. This cannot be looked down upon especially in the modern jet set world. Yet the common middle class family still maintains a certain degree of conservatism. The unusual meeting of two persons, belonging to opposite sexes in seclusion for any length of time amongst that class can justifiably lead to the inference of adultery.

The most difficult question involved in the cases of adultery is how and when to strike a balance between sexual promiscuity and modern intermingling. One cannot overlook the fact that on one hand such heterogeneous mingling may lead to innocent intimacy or to an adulterous relationship on the other. The former is to be ignored and the latter is to be avoided. But it appears that the rule of probability has the last say if circumstantially it can be proved that the parties have been indulging in an adulterous relationship, then there is sufficient ground to dissolve the marriage.

B. Cruelty

If one considers grounds like dowry and irretrievable breakdown of marriage to be included under the ground of cruelty, then, cruelty is the major ground on which divorce takes place. The statute does not define cruelty, since there is no definition of the word, the judiciary has interpreted the word in a manner so as to include physical and mental cruelty. The effect of this is that the ambit of the word has been made so wide as to include any form of behaviour which may be found repugnant to the other partner, strictly depending upon the endurance of the other. Therefore, it is not necessary to find whether one spouse intended to be cruel but it must be found out whether the other spouse felt such act to be cruel.

1. Cruelty : Its Various forms

Cruelty is alleged with almost all the other grounds. The lawyers always insist that this ground be included as a safeguard for if other grounds fail there is still a chance of proving cruelty as all the other grounds of divorce include an element of cruelty. In the survey that has been conducted, 27 (59%) cases are filed under cruelty. In order to go deeper into the matter cruelty has been classified under several types. Each person may have suffered one or more type of this. Such analysis presents a clear social picture. In every case there is an element of mental cruelty and the percentage of allegation is about 41%.

Table - 11Different types of cruelty

Physical Cruelty (beating)	Mental cruelty	Dowry	Drink- ing	Drug	Suspi- cious	Impo- tency	Gamb- ling	Threats of sui- cide	Other
12	1	4	9	2	3	1	1	1	2
44%	41%	15%	33%	7%	11%	4%	4%	4%	7%

Total number of cases = 27 (59%)

The test of cruelty must be the victims capacity to endure⁶. The test is, has the matter come to such a pass and such a pitch of persistence and intensity that it is no longer possible to have a matrimonial relationship⁷. All forms of cruelty involve an element of mental cruelty and is subjective matter. Physical cruelty or incidents of domestic violence account for 44% of the cases. Dowry, which also includes domestic violence and mental cruelty alone account for 15% of the cruelty cases. Dowry, domestic violence, drinking, drug abuse etc can be objectively assessed and then mental cruelty can be inferred. The most common forms of cruelty are domestic violence (44%), mental cruelty (41%), drunkenness (33%), dowry problems (15%) etc.

6. Sudha Vs Mahesh Chand Jhamb AIR 1987 Del 174.

7. Ibid.

2. Cruelty In Different Income Groups

In order to investigate the relationship of cruelty with income group or rather the financial position of the parties it was seen that the incidents of cruelty is highest in the income

Table - 11A

Cruelty and income group

Total Cases	Rs. 0-Rs. 500	Rs. 500- Rs. 1000	Rs. 1000- Rs. 1500	Rs. 1500- Rs. 2000	Rs. 2000- Rs. 2500
27	8	10	7	1	1
	30%	37%	26%	4%	4%

bracket of Rs. 500/- to Rs. 1000/- at 37% which is followed by a still lower income group of Rs. 9 to Rs. 500/- at 30% cases. The income group of Rs. 1000/- to Rs. 1500/- carries 26% cases. The last two highest income group of Rs. 1500/- to Rs. 2000/- and Rs. 2000/- to Rs. 2500/- have 4% cases each. Thus, the income group below Rs. 1500/- register about 93% of cruelty cases.

Poverty also plays havoc with the family often leading to its disintegration. Lack of money, the constant pressure of survival lets off raw nerves which lead to tensions, quarrels often physical abuse. With the rise in prices, the toll of modernisation is that both the spouses be employed. The daily tension of reaching for work in time, the ordeals of daily commuting, work:

load and work place irritations and lack of time for each other's company are few of the reasons for cruelty in the upper and lower income groups.

3. Cruelty And Literacy Rate

Closely linked with the question of money is the question of education. As has already been established earlier, low education earns less money.

Table - 11B

Cruelty and literacy

Number of cases	Illiterate	Junior School	Senior School	College/ University
27	3	9	8	7
	11%	33%	30%	26%

The illiterate and junior school group together account for 44% of cruelty cases. The senior school and the University group together account for 56% of the cases. The income group below Rs. 1500/- account for about 93% of the cases, and about 74% cases are recorded upto the senior school group. The persons in this group are caught in the grip of a vicious economic cycle. Many of these persons, if not all, cannot study upto very high grade or college/university grade for reasons of poverty. Again due to low education level, they cannot get into any better pay jobs. It is very difficult for this particular strata of society to break this rut. For people for whom life itself is a burden,

it is of little wonder that they become cruel to each other.

4. Cruelty : Sex Ratio And Age Factors

Who allege cruelty and what are their age is another question that often intrigue the mind, some data relating to this shows that:

Table - 11C

Age and Sex ratio factors in cruelty

Total Cases	Men	Women	20-25 years	25-30 years	30-35 years	35-40 years	40-45 years	45-50 years
27	10	17	9	2	9	4	2	1
	37%	63%	33%	7%	33%	15%	7%	4%

At the sub divisional level most of the women (63%) alleged cruelty by men whereas lesser men (37%) allege cruelty to women. However the women who have alleged cruelty have not approached the court and many live in the state of a de facto divorce (as will be shown in the subsequent analysis) so at the other levels more men allege cruelty than women.

The group that allege cruelty mostly belong (1) to the 20-25 years, and (2) 30-35 years which together account for about 66% cases; the reasons are poles apart. The former group is young, impulsive and immature and are sometimes unintentionally cruel, but the latter is more mature, aware of their rights, their

discrimination and are cruel sometimes intentionally and out of frustrations. As the parties age, the uneven edges and creases are ironed out and adjusted often out of maturity and experience. So in the later years unless out of absolute necessity, fewer cruelty cases are filed.

This situation, will not improve unless there is an effective law banning dowry torture and domestic violence. Though section 498-A of Indian Penal Code has helped a great deal still there is a long way to go.

D. Desertion

"A matrimonial offence seems to me to mean an offence against the vows of marriage. The vows of marriage are well known. Desertion is certainly an offence"

Bucknil L.J.⁸

Of the 46 total cases available, desertion forms about 22% of the cases. Desertion actually is the wilful withdrawal of one person from the society of another. Such withdrawal is not a withdrawal from a place but withdrawal from a state of things.

8. Richardson Vs Richardson (1949) 2 ALL ER 330

1. Desertion - Its different Types

An analysis of the grounds of desertion is very revealing too. Among the subjects interviewed there is only one case (10%)

Table - 12

Different types of desertion

Total cases	Wife driven away	Wife deceived desertion	Wife abandoned	Wife decision to leave
10	1	2	5	2
	10%	20%	50%	20%

where the wife was driven away from her house. In majority cases numbering five in this instance (50%) the husband simply left home. The wife was left to fend for herself and for her domestic liabilities. In two cases that of Alpona Mukherjee and Reeta Shaha⁹ the husband accompanied the wives to their parents home on the ostensible ground that they had to "recoup" their health and then never taken back nor accepted them back when they attempted to gack. Leela Maschatak and Shephali Das decided that they could not endure any more torture and misbheaviour and decided to leave. Just walking out on the family, home and hearth seems to be the easiest solution to the marital conflict for these people.

9. See Appendix 5

2. Desertion In Different Income Groups

Whether the income of the parties have anything to do with the incidents of desertion is a very vital question.

Table - 12A

Desertion in different income group

Total Cases	Rs. 0- Rs. 500	Rs. 500- Rs. 1000	Rs. 1000- Rs. 1500	Rs. 1500- Rs. 2000	Rs. 2000- Rs. 2500	Rs. 2500- Rs. 3000	Above
10	4	2	3	0	0	0	1
	40%	20%	30%	0%	0%	0%	10%

Economic strain upon the parties are one of the important reasons why desertions take place from among the lower income group. Data shows that 40% of the cases are from the income bracket of no income to Rs. 500/- per month. The income group of Rs. 1000/- to Rs. 1500/- provides 30% the case and 20% case is from the Rs. 500/- to Rs. 1000/- income bracket. In other words 90% of the desertion cases belong to the income group of low income upto Rs. 1500/- .

While it is true that high education is not a guarantee for high income, low education is often a guarantee for low income. Among the low income group money almost always is a bone of contention. Quarrels, misunderstandings, neglects become a part of the daily life. Desertion appears to be a easy way out of the

situation. This not only leads to untold hardships etc, in many cases this leads to the parties living in a state of de facto divorce. Such persons are forced to exist in a sort of a limbo, they cannot plan their future in terms of marriage and children and if they do they will be guilty of adultery or bigamy. Their life remains in a state of suspended animation.

3. Desertion And Education

Since it has been hithertofore shown that low education and low income group are directly related to each other it has become imperative to find out the relationship between education and desertion.

Table - 12B

Desertion in different educational group

Total Cases	Illiterate	Junior School	Senior School	College/ University
10	2 20%	2 20%	5 50%	1 10%

Persons with no education to those educated upto senior school account for 90% of the desertion cases as also the income group of upto Rs. 1500/- .

While it is wrong to suggest that divorce takes place from among the lower strata of society, it must also be agreed that they are more susceptible.

It is said that 80% of the Indian population are below

poverty line. If that be true, they form the larger group. Well educated people from the upper echelon of the society also are highly susceptible to dissolution of marriage but for quite different reasons as has already been discussed earlier under this chapter.

The social strata of this sub division is the sub-urban social strata. It is the low middle class who are striving to become rich quickly form the majority of the subjects who have been studied. They are caught up in the vicious cycle of low education, low income, low occupation. It is this vicious circle which needs to be broken. Illiteracy or school education can only lead to unemployment and low income, Low income and the rising family burden leads to the desertion. Deserting spouses often feel that life is beginning anew for them.

4. Desertion : Age and Sex Factors

Like the assessment of any other matrimonial cause the ground of desertion too has to be tested for sex ratio and age factors.

Table - 12C

Age and Sex ratio in desertion

Total Cases	Men	Women	20-25 years	25-30 years	30-35 years	35-40 years	40-45 years	45-50 years
10	5	5	1	3	3	2	0	1
	50%	50%	10%	30%	30%	20%	0%	10%

50% men and 50% women have alleged desertion. Where the wife is abandoned she has alleged desertion. But in cases where the women are forced to or tricked into desertion it is the men who allege desertion.

The age groups 25-30 years and 30-35 years record about 60% cases. In other words 25-35 years form the bulk (60%) of the cases. During this age people are young, confident and bold enough to take a step like desertion. As age increases, strength ebbs away and people hesitate to take a step like desertion.

In short, desertion means total repudiation of marital obligation, an end of the two-in-onenesship and marital togetherness which is the kernel of marriage.

Until an action is brought about, desertion remains an inchoate offence that is to say, it can be terminated by the party in desertion by either resuming colabitation or expressing a specific intention to resume cohabitation. Desertion is a question of fact and often is difficult to establish which of the spouses are the deserter.

D. The Proposer, The Petitioner, And The Procedure.

All the cases were not filed before the court even though the parties have been living a separate existence. The data has shown that at the district level, those who did approach the court, did not, and often do not, have the case finally disposed off. Most of the cases are either dropped for default or dismissed for

non prosecution or withdrawn. It was seen that of the 46 cases

Table - 13

Cases in which legal recourse was taken

Total Cases	Recourse taken to law Court	Law Courts not approached	Reluctant to state
46	29	16	1
	63%	35%	2%

63% had taken recourse to the law courts, about 35% people did not approach the court and 2% refused to disclose any information regarding their suits. The situation further clarifies itself on the following:

Table -14

De facto - De jure divorce

Total Cases	Persons living in the state of De facto divorce	Persons living in the state of a De jure divorce
46	26	20
	57%	43%

of the cases that were taken before the court (63%), 7% cases remained undecided, by way of dropped for default, dismissed for non prosecution or withdrawn, but couples from cases which

remained so undecided, continued to live separately as if they have been divorced. Such a state of separation is termed de facto divorce here. Persons belonging to the category of de facto divorce are 57%. Those persons, whose marital tie has been legally dissolved through the courts is called De Jure divorce here and they constitute 43% cases.

The persons who had initially approached the court for relief were asked who proposed the idea of divorce. In 52% cases

Table - 15

The proposal of the divorce was made by:

Total Cases	The Husband	The wife	The In-laws
29	15	12	2
	52%	41%	7%

it was found that the husband had first proposed the idea of divorce. In 41% cases the first idea of divorce occurred to the wife and was proposed by her. In 7% cases the idea of divorce was mooted by the in-laws. In these 7% cases, the germ of the idea of divorce was planted by a third party, namely the relatives-in-law. But, the question however is who were the actual petitioners? On this question the data shows that in keeping with the trends found at the national, state, and district level¹⁰. The interesting

10. See the previous chapters on this issue.

Table - 16The Petitioner in the cases were

Total No. of Cases	The husband	The wife	By mutual consent
29	19	8	2
	66%	28%	7%

fact is that of the 41% women, who did propose divorce in the first place, all did not petition for the case. About 14% women were proposers of divorce but not petitioners and their husbands petitioned on their behalf that is why, even though there were 52% men who initially proposed divorce 66% were actual petitioners, which means those women (about 14%) who in the heat of momentary passion or on sudden provocation proposed the divorce at the first instance, refused to petition for divorce later; but in those 14% cases the men did what the women refused to do, and they petitioned for divorce. So in the list of the petitioners the percentage of men have risen by 14% and has stood at a total of 66%.

Men, who as a rule in India, are generally more educated and better employed than women, who have a better socio-economic status do not hesitate to dissolve the marital tie. The women, on the other hand who are at a disadvantageous position at all counts do initially propose divorce (35%) under grave and sudden provocation and on the heat of passion, but at the time of filing the

petition they back off because (1) the concept of marriage for an average Indian woman is still embedded in the ancient socio-cultural and religious mores and (2) even if her concept of marriage is on the proper perspective, she is socio-economically backward and heavily dependant on the others for her day to day survival. A man has very little to lose from a broken marriage than the woman. A similar trend is reflected at the national state and district level.

It has already been observed that majority of women earn less than Rs. 1500/-, many almost nothing. One question that naturally arises is where do these estranged persons live? The answer that the data provides is that 36% women have found shelter with their parents or the natal family and 31% women had their personal residence and 14% stayed at their place of work and 8% in rental accommodations. About 70% men lived in their own residence, 20% men put up with their parents, 10% in rental accommodations and that too because they were on transferable jobs.

Very few women as compared to men could afford their own establishments. It cannot but be pointed out here that about 53% women lived away from their natal family¹¹. Whether they received financial or moral support from them is another question altogether. What is being pointed out is that on dissolution of

11. The women who live in personal houses (31%), live in rentals (8%) and in the place of work (14%) together constitute 53%.

Table - 17Where do these estranged persons live?

Total	Personal		Parents		Rentals		2nd in-laws		Place of work	
	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women
46	7	11	2	13	1	3	0	4	0	5
	70%	31%	20%	36%	10%	8%	0%	11%	0%	14%

Total number of men = 10; Total number of women = 36

marriage, as many as 53% women found it difficult to put up with their natal family. 11% women lived with their second in-laws after remarriage.

At his stage most of the victims of matrimonial disputes are people with children. 56% women and 60% men had children. Of

Table - 18

Persons with children

<u>Total cases 46</u>		<u>Persons with children</u>		<u>Persons without children</u>	
<u>Men</u>	<u>Women</u>	<u>Men</u>	<u>Women</u>	<u>Men</u>	<u>Women</u>
10	36	6	20	4	16
		60%	56%	4%	44%

the total 46 cases interviewed 26 of them (57%) were persons with children 44% women and 40% men were without children. Of the total 46 cases interviewed 20 persons (43%) were without children.

Table - 19

Maintenance received by and given to wife and children

<u>Total cases 46</u>		<u>Maintenance received by</u>		<u>Maintenance given to</u>	
<u>Men</u>	<u>Women</u>	<u>Wife</u>	<u>Children</u>	<u>Wife</u>	<u>Children</u>
10	36	7 (19%)	4 (20%)	4 (40%)	0

Of the 36 women interviewed 7 women (19%) women were receiving maintenance from their husbands and of the 20 (56%) women with children, 4 of their children (20%) were receiving maintenance from their fathers. Only 4 men (40%) from the total men interviewed were paying maintenance to their wives and none of them were paying any maintenance to their children.

Table - 20.
Custody of children

<u>Persons with children</u>		<u>Custody with mother</u>	<u>Custody with father</u>
Men	Women		
6	20	23	3
Total 26 persons		88%	12%

Of the total 26 persons with children, 20 (56%) women were with children and all had their children with them. Of the 6 (60%) men with children, only three (30%) had their children with them and the other three (30%) had to give the children to their wives. In other words of the 26 persons with children, in 23 cases, in 88% cases the mothers or rather the women were the custodian parent and 3 (12%) men or fathers were custodian parents.

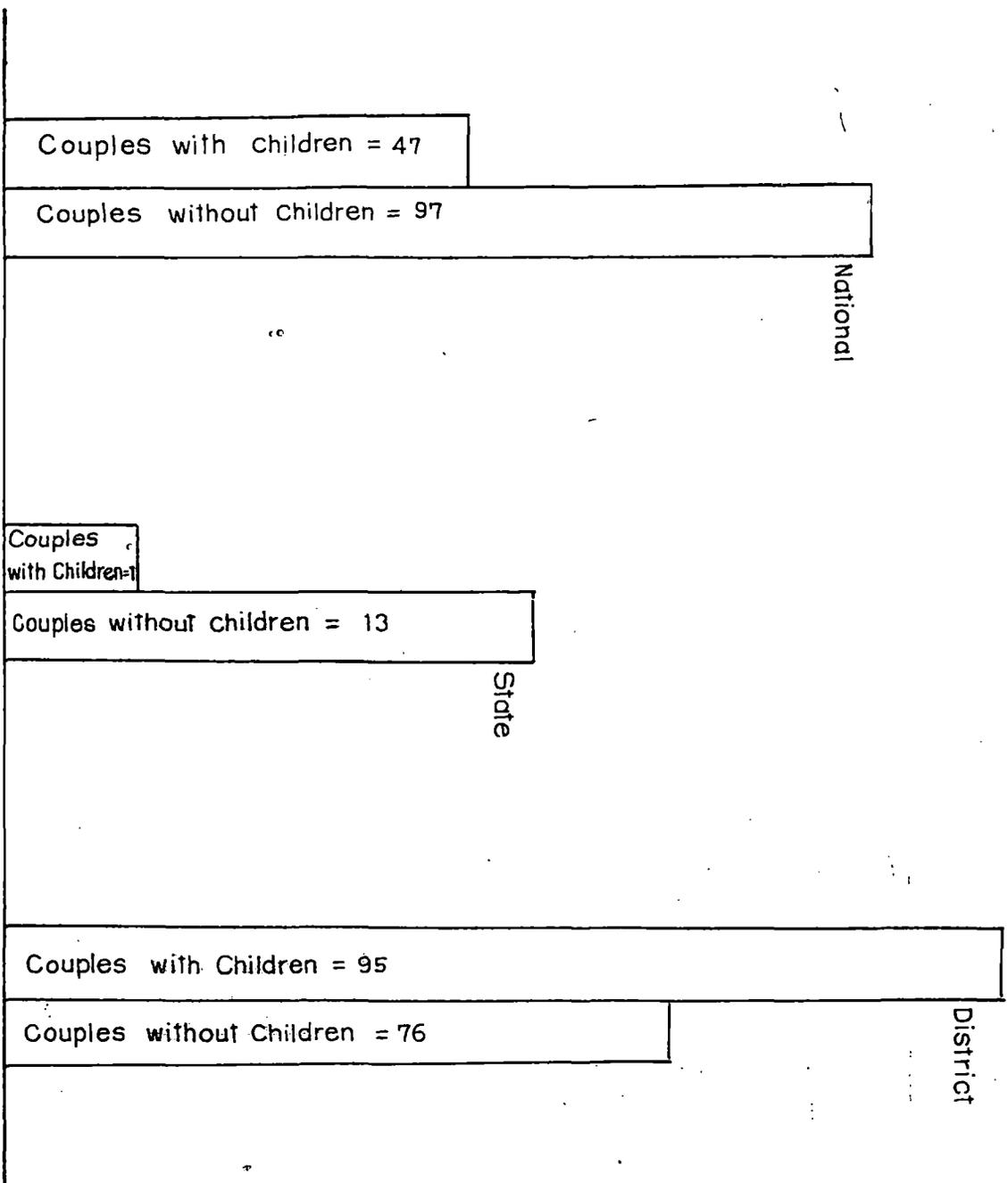
The rate of maintenance however is very meagre and insufficient.

Table - 21Maintenance received and given

Maintenance Received by wives & children			Maintenance given to wives & children		
Wife	Children		Wife	Children	
Lumpsum	Mohtly	Monthly	Lumpsum	Monthly	Monthly
Rs. 27000	Rs. 300/-	Rs. 300/-	15000/-	Rs. 300/-	
15000/-	Rs. 125	-	27000	Rs. 300/-	
	Rs. 400/-	Rs. 400/- + Rs. 400/-			
	Rs. 150/-	Rs. 150/-			
	Rs. 200/-	Rs. 300/-			

Where alimony is paid in the lumpsum, the amount is very meagre. For example, on receipt of the alimony of Rs. 15000/- a person may put it in the fix deposit account at the present rate of 13% interest thereof. Such a person will be receiving a sum of Rs. 1950/- per year. That persons monthly income then becomes Rs. 187.50 per month. However if alimony is granted in a monthly instalment, then the amount is more often than not, less than Rs. 400/- and often stops altogether. In both the cases the maintenance money is not even worthy of its name. Besides where the money is to be paid in instalments the avenues for litigations are always kept alive which does not allow a clean break between the parties. For instance where the maintenance payable in instalment stops altogether, the wife has to litigate further to obtain the same which results in her harrassment and hardship. In those cases

THE INNOCENT THIRD PARTY IN A DIVORCE SUIT



GRAPH - VII. A

where the instalments have not stopped, the woman cannot enter into a relationship with another man, for immediately the payment will stop on account of her being of bad character. In such cases the husband enjoys an extended hold upon the wife even after divorce, and the wife is really not free from the clutches of her former husband.

In Saba Vs Syed Mohammed Fazil¹² it was held that maintenance means an amount, which should be sufficient to keep the body and soul together. It is expected to provide for a standard of life wherein the person is expected to keep her body and soul together. Which takes within itself not only the expense for food and clothing but also the expenses for meeting other necessities of life. In Shantilata Pradhan Vs Mrutunjaya Pradhan¹³ it was held that the fixation of maintenance is to be considered along with the prevailing cost of living, price of the essential commodities and the income of the husband. The latter being a cliché. The salary of the husband is the most elusive thing in a maintenance suit.

Therefore, the few women who do seek matrimonial remedies certainly have little to do with the financial aspect of the settlement. Only in four cases lumpsum monetary settlement was made. The amounts in two instances being Rs. 15000/- and in other

12. I(1991) DMC 262.

13. I(1991) DMC 256.

two instances Rs. 27000/- each. By what standard were these amounts fixed is not known. In one case the wife merely accepted what the husband offered her through his lawyer. In another case, a compromise between the parents of the spouses was reached. In the third case the brother of the wife was informed by the lawyer that Rs. 15000/- was the "going rate" of lumpsum settlement and in the last case the person could not throw any light on the mechanics of settlement. It is to be noted here that nowhere did the question of streedhan, joint property or marriage expenses figure. Neither was the question of alimony expressly debated. All that was done was a monetary settlement based on some elusive and vague concept of "going rate" was made.

It is therefore submitted that some subversion of the law takes place in the area of dispute settlement. On the one hand by laying down such elaborate grounds for divorce, matrimonial proceedings have been robbed of their simplicity and on the other hand the law is rather inadequate regarding the post divorce property settlement.

IV. Attitude To Divorce And Remarriage

1. Attitude To Divorce

The attitude of the people to divorce and remarriage has changed over the years. The study of the attitude of the persons is rather revealing. The reply to the question whether one should stick to ones marriage always was very revealing.

Table - 22Should one retain a marriage at any cost?

Total	Yes		No		Not sure	
46	13 = 28%		30 = 65%		3 = 7%	
Total	Men	Women	Men	Women	Men	Women
Men =10						
Women =36	1	12	9	21	0	3
Total 46	10%	33%	90%	58%	0%	8%

From the total cases of 46, that is ten men and thirty six women, 58% women did not believe that one had to cling on to the marriage no matter what happened to the marriage or to themselves. 90% of the men too did not believe in clinging on to the marriage out of the 46 persons interviewed, 65% did not believe that one should retain a marriage at any cost, and 28% believed that marriage should never be dissolved. A mere 8% women i.e. 7% of the sum total of persons interviewed were not sure of their mind.

Interestingly, those who believe that marriage should never be dissolved and those who are not sure of it, all live separately and live the farce of the so called marriage. No semblance of their marriage exist. Justifying their action is beyond them. They derive a satisfaction on being able to continue in marriage, of being a martyr. They realise and admit that if a marriage must subsist,

if the wheels of the marriage must turn smoothly, then both the spouses have a responsibility to keep the wheel of marriage turning to make it survive as an institution. The resultant picture reflects a sad truth that many women even today are embedded in the religious-cultural mores of the medieval society. The social changes have not affected them at all.

On the question, "If you did not have the right to divorce, do you think you could have reconciled the marriage? The response of the persons were as follows:

Table - 23

If there was no right to divorce could you have reconciled the marriage?

Total	Yes		No		Not sure	
46	8 (17%)		32 (70%)		6 (13%)	
Total	Men	Women	Men	Women	Men	Women
10+36	3	5	5	27	2	3
	38%	62%	16%	84%	33%	50%

(1) A sum total of 70% persons of which 16% are men and 84% are women felt that they had given their best to the marriage and even if there was no opportunity to divorce they could not have kept their marriage alive.

(2) 17% people of which 38% are men and 62% are women felt that the opportunity of divorce made them a little hasty in breaking their marriages.

(3) About 13% people comprising of 33% men and 50% women were the inevitably confused persons. They were not sure of what their action would have been.

It may be noted here that, more women (62%) than men (38%) felt that in the absence of the right to divorce, they could have preserved their marriage and more women (50%) than men (33%) were confused regarding what their course of action would have been. This leads one to believe that women are more committed to the marriage and they give their very best to the marriage (16% men and 84% women).

Because of this reason greater tragedy is perpetrated on women than on men when a divorce takes place. Women have the total commitment, as she has the greatest stake in the marriage due to her socio-economic dependence on her husband. A divorce plays the greatest havoc with her life and leaves her an emotional wreck.

All the persons were asked whether divorce law should be made more liberal.

Table - 24Should Divorce Law be made more liberal?

Cases	Yes		No		Not sure		Suggestions	
	Men	Women	Men	Women	Men	Women	Men	Women
46	17 (37%)		4 (9%)		25 (54%)			
	6	11	0	4	4	19	Recognition of irretrievable break- down of marriage =30%	1) Divorce should not be there at all = 3%
	35%	65%	0%	100%	16%	76%		2) Irretrievable breakdown to be recognised = 45%
Out of 10 men and 36 women	60%	31%	0%	11%	40%	53%	30%	45%

37% people felt that the divorce law should be made more liberal. About 79% felt that the concept of irretrievable breakdown of marriage must be introduced in the divorce law. Only 9% people felt there was no need to change the existing law. Women alone constituted this group. No man felt that divorce law should remain as it is. Majority of the people (54%) however confessed that they had not thought much about this and were not sure about what should be done. There were about 16% men and 76% women in this group. From among the women who felt that the divorce law need not be made liberal, 30% women felt that there should not have been any provision for divorce in the Hindu law.

These findings also confirm the following:-

- a. there is a general awareness and acceptance among the Indian women that they are not socio-economically strong enough to opt for the dissolution of marriage.
- b. Their homing instincts do not allow them to break their homes lightly.
- c. Many women are not aware of their rights in law and therefore are confused regarding their course of action.
- d. Women are more cautious in nature than men.
- e. Men are less committed to the marriage than women.
- f. Both, men and women do not relish the prospect of a prolonged divorce proceedings, especially so with the women who have to face very unpleasant and probing questions during the divorce proceedings which can be very embarrassing for a woman.

So both men and women in majority want to end the proceedings quickly and painlessly.

There was a mixed reaction when the question, "given the same set of circumstances would you go through this experience again?" is sked. It was seen that

Table - 25

Given the same set of circumstances would you repeat your actions again?

Total cases	Yes		No		Not sure	
46	19 (41%)		13 (28%)		15 (33%)	

Total cases	Men		Women		Men		Women	
10+36	6	13	2	11	2	12		
	60%	36%	20%	31%	20%	33%		

About 60% men and 36% women felt that if history were to repeat itself they would also repeat their action. They also constituted 41% of the total group. About 28% people, that is 20% men and 31% women felt that if they were to be given another chance, then they would not go through the painful process again. The category of the unsure persons were 33% and a total of 20% men and 33% women.

Notably, about 41% person were absolutely certain in their minds that they could never have patched up. They affirmed repeatedly that the circumstances leading to divorce was so serious that patching up was not possible then, it will not be possible at the present time and also will not be possible even in future. They were very positive about this. Mr. Tarun Choudhury¹⁴ asserted that if there was no opportunity of divorce, spouses would not rush to court for the silliest of the silly reasons and have their marriage dissolved. When asked if that would not result in exploitation of women? he responded that "a little exploitation" would be there but how does it matter? In marriage both the spouses exploit each other a little. He countered that even with the right to divorce are the women not being exploited?

2. Attitude To Remarriage

It is neither advisable nor desirable that men and women, who have once been divorced should lead their lives unattached for the rest of their lives, but the attitude of mind for many women and some men are to emotionally cling on to their first marriage. Probing in this region of their mind started like this .

14. An interviewee, see appendix V

Table - 26Are you willing to remarry?

Total Cases	Yes	No	Already married	Undecided
46	9(20%)	23 (50%)	7(15%)	7 (15%)

Total Cases	Men	Women	Men	Women	Men	Women	Men	Women
10+36	2	7	5	18	2	5	1	6
	20%	19%	50%	50%	20%	14%	10%	17%

The group with the negative answer constituted 50% of the total group, of which 50% were men and 50% were women, 15% people were already married among whom 20% were men and 14% were women. 20% expressed their willingness to marry, 20% men and 19% women made up this group. 10% men and 17% women constituted a group of 15% who were not sure about what they would do in future.

Table - 27Should all the divorces remarry?

Total Cases	Yes		No		Undecided		It is a personal matter	
46	18		10		9		9	
	39%		22%		20%		20%	
Total Cases	Men	Women	Men	Women	Men	Women	Men	Women
Men=10	5	13	2	8	1	8	2	7
Women=36	50%	36%	20%	22%	10%	22%	20%	19%

Majority (39%) of the men (50%) and women (36%) feel that all the divorcees should remarry. 22% persons have expressed a negative opinion of which 20% were men and 22% were women.

Of the 20% people who were undecided 10% were men and 22% women. 20% men and 19% women constituted a group of 20% who felt that the question of remarriage was a personal question which is to be decided by each according to their inclination and wishes.

When asked whether they feel they will be able to build a better home in future the response was:

Table -28Will this experience help you to build a better home in future?

Total Cases	Yes		No		Does not arise		Not sure	
46	22=48%		10=22%		10=22%		3=7%	
Total Cases	Men	Women	Men	Women	Men	Women	Men	Women
Men=10	8	14	1	9	1	9	0	4
Women=36	80%	30%	10%	20%	10%	20%	0%	11%

Of the 46 subjects interviewed, 22 (48%) felt that they would be able to build a better home, 22% each felt that they would not be able to build a better home and the question of building a new home does not arise, 7% were not sure as to what they would do. In short, most of the people felt that what they had built together did not receive their best, they would be able to do better in future. Almost 80% men felt this way. 30% women felt that they would be able to give more to their future home.

It must be pointed out here that when they were asked if there was no right to divorce would they have been able to be reconciled to the marriage 30% of the men had replied in the affirmative and when asked whether they will be able to build a better home in future 80% men replied in the affirmative. These two factors read together indicate that most of the men feel, rather realise on probing that they have not been able to do justice to their marriage and what they have learnt from their first mistake will help them build a better home. Relatively very few women feel this way.

Majority of the women (50%) said they will not marry again and 39% of them felt that they will not be able to build a better home in future and the question of remarriage and building another home did not apply to them at all. If one were to probe for the reason as to why do these women feel the way they do it would be found that - (1) those who were with children did not want to put their children through another trauma of their remarriage as the children had already been through the tensions and trauma of

the pre-divorce and divorce tension, and were now adjusting themselves in the post-divorce single parent households. Approximately 56% women are persons with children and 64% are custodian parent.

(2) One bitter experience in a marriage has embittered them for life and they are planning a new future and hoping for a better life as an individual. There is a realisation that it no longer pays to be dependant on others. Welfare of the children plays an important role in the decision of the men to remain single. Besides, unlike women, men enjoy greater social liberties when they remain unmarried. Most men and women are hence seen, prefer to remain single even though 50% men and 36% women feel that all divorcees should remarry. One bitter experience has permanently turned them away from marriage and at least on this point the men and women are equal in number albeit for different reasons.

V. Post Divorce Status And Comments

This was the last part of the examination and the subjects were asked to respond to the questions relating to their relationship in the wider social perspective like their relationship with their natal families, what their individual feelings and experiences were.

a. Post Divorce Status

The question of status is very closely linked with questions relating to money matters, independence social approach which is mutually reciprocal between the subject and the society. So, they were asked

Table - 29

Have you been able to get back your pre-marriage independence?

Total Cases	Yes		No		Not sure	
46	28=61%		14=30%		4=9%	

Total Cases	Men		Women		Men		Women	
Men=10	6	22	2	12	2	2		
Women=36	60%	61%	20%	33%	20%	6%		

Of the total 46 persons, 28 persons (61%) said that they had regained their pre-marriage independence. Among them, 6 persons (60%) were men and 22 persons (61%) were women. All the women (61%) felt that their independence was not money related. They said on that score there was not much difference, especially since they were custodian parents, but personally they enjoyed greater freedom than while they were married. All the (60%) men said their independence was like pre-marriage days both socially and economically.

From the total of 46 cases, 14 persons (30%) said that they had not regained their pre-marital social and economic status. Among this group were 20% men and 33% women. It must be recalled here that 30% men are custodian parents and 40% of men have to bear the cost of alimony and maintenance. About 4 persons (9%) out of 46 were not sure what they have lost or gained. Among this group are 20% men and 6% women.

The persons were asked to ponder on the following question in retrospect

Table - 30

In retrospect, do you blame any one other than your spouse for the divorce.

Total Cases	Yes		If yes whom?		No	
	Men	Women	Men	Women	Men	Women
Men= 10	8	16	1. The adulteror= 4 persons	1. Sister-in-law= 2 persons	2	20
Women =36	80%	44%	2. Mother in law= 1 person	2. The adulteress= 4 persons	20%	56%
			3. All in the laws=1 person	3. My own sister= 1 person		
			4. A third person=1 person	4. Mother-in-law= 2 person		
			5. Will not disclose=1 person	5. My step brother & step mother=1 person		
				6. My husband's friend=1 person		
				7. Maternal uncle = 1 person		
				8. All the in law= 4 persons		
				16 women		
				44%		

80% men blamed persons other than their wives for the divorce. Their list included the adulteror (4 persons=50%) the mother-in-law (1 person = 13%), all the in-laws (1 person = 13%) a third person (1 person = 13%) and one person (13%) blamed another person but refused to disclose whom. Sixteen women felt another person other than her husband was responsible for the divorce. In the

list of women it was found that 2 women (13) blamed their sisters in law for the divorce. 4 women (25%) blamed the adulteress for the divorce. One person (6%) blamed her husband's friend, one (6%) blamed her step brother and step mother, and another (6%) blamed her maternal uncle. 2 women (13%) blamed their mother in law and 4 women (25%) blamed all of their in laws for divorce.

20% men and 56% women blamed their respective spouses alone for the divorce.

All the subjects were asked whether they viewed divorce as a death of a relationship.

Table - 31

Do you view divorce as a death of a relationship?

Total Cases	Yes		No		Not sure	
46	26=57%		18=39%		2=4%	
Total Cases	Men	Women	Men	Women	Men	Women
Men = 10	7	19	3	15	0	2
Women=36	70%	53%	30%	42%	0%	6%

More men (70%) than women (53%) regarded divorce as a death of a relationship. More women (42%) than men (30%) have a tendency to cling on to the memory of the marriage. It must be recalled that about 50% women and 50% men said that they were not willing to remarry. 6% women were not sure about their feelings.

In case of men especially those of who must pay alimony and maintenance for their wife and children, the question achieving pre-marriage economic independence is not always possible, such responsibilities also hamper their social liberties and enjoyments, women, in the quest of their survival have acquired greater and unrestricted freedom of movement and socialisations. Even though most of them are custodian parents the little pittance they are able to earn or get as alimony or maintenance add to their independence and strength.

The fact that more women than men do not believe that divorce is a death of a relationship and also that 50% women (equal with men) refused to remarry show that women are more sentimental in nature than men. Even though they live separated and divorced, emotionally they remain bound to their marriage and cling on to the religious, transcendental and traditional beliefs of marriage. The break with the past is not easy for a women, it is she who bestows marriage with a sacramental nature by maintaining her emotional bondange with the former spouse.

All the persons were asked what their relationship with their family was.

Table - 32How is your relationship with your natal family?

Total	Good		Bad		Tolerable		No family	
46	32=70%		4=9%		6=13%		4=9%	
Total	Men	Women	Men	Women	Men	Women	Men	Women
Men=10	10	22	0	4	0	6	0	4
Women=36	100%	61%	0%	11%	0%	17%	0%	11%

All the men (100%) and 22 women (61%) responded that their relationship with their natal family was very good. 11% women reported that their relationship with their natal family was bad. For 17% women there existed a sort of a tolerable distance and 11% women said they had no family at all. The total number of women who had a bad or tolerable relationship with the natal family and those who had no family at all constituted a group of 39%. It can be seen that a good portion of the women are left to fend for themselves after divorce and receive no substantial support from the natal or marital families. Men on the other hand enjoy a very good relationship with their natal family.

The persons interviewed were probed with the following question.

Table - 33

Does your being a divorcee affect the marriage of your siblings

Total	Yes	No	Do not know		Married before me			
46	1=2%	17=37%	9=20%		19= 41%			
Total	Men	Women	Men	Women	Men	Women		
M=10	0	1	4	13	0	9	6	13
W=36		3%	40%	28%	0%	25%	60%	36%

40% men and 28% women responded with a definite 'No'. Only a lone woman (3%) affirmed that her divorce had an effect upon her sisters marriage. About 60% men reported that their siblings were married before them. 25% women said they did not know if their divorce affected their siblings marriage. 36% women reported that their siblings were married before them. In other words in majority of the cases the divorce did not affect the marriage of the others in the family. The sole exception reported was also an exception. It appeared that the groom asked for heavy dowry because he was marrying a divorcee's sister and later on the poor child was burnt to death because the dowry demand could not be met fully.

The next phase of question was whether

Table - 34

Does the society stigmatise you for being a divorcee?

Total Case	Yes		No		Do not know	
46	11=24%		32=70%		3=7%	
Total Case	Men	Women	Men	Women	Men	Women
Men=10	2	9	8	24	0	3
Women=36	20%	25%	80%	67%	0%	8%

About 80% men and 67% women replied in the negative. 20% men and 25% women felt stigmatised by the society and 8% women replied that they did not know whether the society stigmatised them.

Those who said that the society did not stigmatise them went a step further and reported that the society had in fact helped them to survive and has sympathised with them. Mamata Routh and Alpona Mukherjee¹⁵ stated that while the society did not stigmatise them, they themselves tended to do so as they always felt that others were discussing about them. They admitted that they carried a burden of shame and failure on their shoulder.

Of the total number of cases interviewed 20% men and 22% women remarried. 10% men had a courtship marriage and 10% had negotiated marriage. 14% women had courtship marriage and 8% had negotiated marriage; 40% men agreed that they would marry divorced

15. Interviewees. See Appendix V.

Table - 35Details of remarriage

Total Cases	Men		Women	
	Courtship marriage	Negotiated marriage	Courtship marriage	Negotiated marriage
Men = 10	1	1	5	3
Women = 36	10%	10%	14%	8%

women. Others had not proceeded in the direction of remarriage. Among women, the second marriage was mostly courtship marriage. Though 40% men said that they would not mind marrying a divorcee

Table - 36Is your present spouse a divorcee?

Number of Cases	Men		Women	
	Yes	No	Yes	No
Men=10				
Women=36	1	1	2	6
	10%	10%	6%	17%

only 10% had married one. 6% women had married a divorcee.

The comments and suggestions

The women were more versatile in their comments and suggestions which are self revealing. 25% women asserted that there should be job reservation for victims of matrimonial tribulations. There should be a reservation for such victimised women like the army men, physically handicapped and the members of the

° Table - 37

Comments and suggestions

Total number of cases	36 women
No comments	2 (6%)
Job reservation for divorced women	9 (25%)
Shelter for divorced women	3 (8%)
Education and job facilities for the children of the divorced women	8 (22%)
Other comments	14 (39%)
a. Proceedings to be made easier	
b. Divorce to be given on a single date	
c. Irretrievable breakdown to be recognised	
d. Law to be made easier	
e. Divorce law to render greater economic security	

scheduled castes and scheduled tribe. Such victims, they felt that such women would be more hard working than the others.

It is true that divorced women find it hard to keep their body and soul together, but if this facility or the facility for job and education for their children (as requested by 22% women)

were to be granted the rate of divorce cases would rise flooding the courts. Every married couple would want to be divorced just to be able to avail of these two facilities.

8% women expressed the need for shelter facilities for divorced women. Such facilities are available in larger towns and cities than the Siliguri Sub divisional Town. The suggestion for legal changes are more eloquent. Need for greater economic security of the divorced women and recognition of irretrievable breakdown of marriage was expressed. There have been at least three suggestions that divorce proceedings should be more relaxed and easier and should be concluded in a day.

There are, however, some pathetic revelation. At least five women confessed that they did not know of anything called divorce. One such lady enquired whether this new system of divorce provides bread to the deserted women. When told about her right to seek divorce in a court of law, another lady enquired if the process involved monetary expenditure, when replied in the affirmative, she said why should one spend money when one can just stay away? But the most astounding incident occurred when a seventeen year old victim of matrimonial conflict wisely informed the interviewer that she knew that the police gave something known as "daivosh" (divorce) to women who wanted to end their marriages. In her case the gram panchayat had allowed her to stay away from her husband and heirs with her parents. A forty year old lady said that she preferred the life she led amidst bricks and mortar (she being a mason's helper), law making was not her job, it was that of the law makers.

Three women strongly affirmed their faith in the subsistence of marriage. Alpona Mukherjee, a teacher said that a relationship cannot end by the scratch of a pen. She said the matter of divorce was a material question, but is justice really done? Does one get peace of mind where is the justice for all the hurt suffered by the respective spouses, she bitterly remarked that justice is not just. She said her husband deserted her for another woman, committed adultery and then filed a case against her saying she is very cruel (allegation of physical and mental cruelty made). When she contested the case and revealed the truth even then divorce was granted ostensibly on the reasoning that in any case she would have to live alone it was better to be in de jure divorce than a de facto divorce. Who looked at her heart when she wept, what justice is it she asked. At such emotional moments the cold logic of law becomes colder, one is reduced to a helpless spectator.

The comments of men mostly moved around the benefits received by women in a divorce. Bharat Mondal submitted that the divorce proceedings must be swift. If the delay is so prolonged he felt that justice to parties would be denied. According to him the system of permanent alimony should be abolished if the wife is found guilty. Tarun Choudhary contended that the law is not applied in practice. He alleged that women are given more advantage in a matrimonial proceedings. He holds that the judges and political leaders are biased towards women. He hoped that the men will gradually rise in the society and form a forum. The television should be used as a media to project the "plight of men". Divorce

laws must be more liberal and maintenance is to be allowed only for a limited period of time. Expressing the very same sentiments Pijush Banerjee's opinion was that almost all cases are decided in favour of women. There must be quick settlement of the case or the age of remarriage will be over. Strongly reacting he said it is unfair that men should pay women to fight their cases. According to him, such payments and prolonged litigations pointed towards the law being biased. He observed that in modern times men and women married at an advanced age of above thirty, almost in late thirties. If the divorce proceedings are so prolonged, at what age will the parties remarry?

When asked why so many divorces take place today than the earlier times? Jagadish Ch. Ghosh responded saying that the root cause was the inability of the people to judge the family with whom the alliance is being made. In the modern world he says, no family has the knowledge about the other. This was not so in a village system where each family was known to the other and as a result he says lesser marriages were on the rock. Some of the men felt that maintenance must be granted only to the children and not to the wife. Sunil Debnath, a person who was deceived into marriage with an insane woman contended that when a man is trapped into a marriage which was unreasonable, he should not have to pay alimony and maintenance to the wife and the custody of the children should automatically come to him.

No matter which way one looks the fact remains that men and women are different from each other. The diversities of the functions and the role in life and the diversities of temperament lead to differences in the outlook which cannot be ignored. But these are not and cannot be the reasons for putting women under the subjection of men. A woman feels as keenly, thinks as clearly as a man, she in her sphere does work as useful as a man does in his. She has as much right to her freedom to develop her personality to the full as a man. When she marries she should not become the husband's servant but his equal partner. If his work is more important in the life of the community then her work is equally important both in the community and the family. Neither can do without the other, neither is above the other or under the other. They are equals.

SUMMARY

About seventy one name and addresses of the persons were obtained for this chapter. Forty six interviews were used.

Age: About 54% people were of the age group of 25-35 years. This is an age group when people become matured and set in their thinking and life style. Besides women, particularly middle class women tend to marry in their mid twenties and mid thirties.

Education, Occupation and Income: Majority of the women, about 60% were found to be educated upto junior school. Of these 60%, about 33% women were illiterate. About 80% men were educated between senior school to university. Of these, about 50% had read

upto senior school and about 30% upto college or university level. Remarkably, even the education group of college and university show relatively greater incident of divorce. While the former category of people are more divorce prone due to lack of exposure, ignorance and struggles of impoverished life, the latter group frequently resort for divorce due to high degree of worldly exposure enjoyed by them, their acute awareness regarding their right, duty, personality, liberty etc.

About 80% of the interviewees were found to be employed and about 20% unemployed. All the men (100%) were employed, about 75% women were employed whereas about 25% women were unemployed. The type of employment enjoyed by women were menial workers (e.g. house maids, mason's helper) teacher, clerks, beedi workers and business. The type of employment enjoyed by women were business, Class IV staff, clerk, driven etc. About 56% women took up employment after divorce, 19% women took up employment after marriage but before divorce, about 26% women were employed even before marriage. All the men (100%) were employed even before marriage.

About 66% women earned less than Rs. 1500/- . Of these, 33% earned less than Rs. 500/-, 22% earned somewhere between Rs. 500/- to Rs. 1000/- and 11% earned between Rs. 1000/- and Rs. 1500/- No man earned less than Rs. 500/- . While 50% men earned between Rs. 500/- and Rs. 1500/-, 50% men earned more than Rs. 1500/-.

It has been found that education has a direct bearing on income and employment. Women are educationally, occupationally and financially weaker than men.

Caste factor: Most of the divorce took place from among the Kayastha caste. This was followed by the scheduled caste.

Social background: About 33% women and 20% men belonged to the lower middle class, 44% women and 50% men belonged to the comfortable middle class and 22% women and 30% men belonged to the affluent section of the society.

Marriage: Its nature, type and subsistence:

About 74% marriages were negotiated marriage and 26% were courtship marriage. 85% marriages were social unregistered marriage, 11% were registered marriage and about 4% marriages are temple marriages. 65% of marriages were dissolved within first five years.

The result of the majority of the marriage being negotiated, social and unregistered, is that many marriages are invalid hence null and void due to its being bigamous in nature or non fulfilment of the essential requirements of a valid marriage. As a result many women lose the status of wife and also cannot claim maintenance etc under Section 125 of Cr. P.C.

Marital conflict: Regarding the grounds of divorce, 59% cases were under the ground of cruelty, 41% cases were on adultery and 22% cases were on desertion. The remaining grounds like insanity, mutual consent, leprosy and irretrievable breakdown of marriage, each having less than 10% cases. It must be pointed out here that most of the women were educationally, financially and occupationally backwards and majority of their marriage ended in divorce on the ground of cruelty.

a. Adultery: 41% cases were on adultery. Of them, 47% are bigamy and 53% are extra marital affair. 47% of adultery cases took place in the income group of Rs. 500/- and less. This group is followed by the income gr up of Rs. 500/- to Rs. 1000/- with 21% cases. Together they constitute 68% cases. About 58% adultery cases are from among the illiterate group and junior school group. College education group recorded 26% of the cases while 16% cases belonged to the income group of more than Rs. 1500/- . Of this 5% case belonged to the group earning above Rs. 3000/-.

The comfortable middle class group record lesser cases as they are more status conscious and believe in the traditional form of respectability.

63% cases were of adultery by men and 37% cases were of adultery by women. About 73% cases were in the age group of 25 years to 35 years.

In short adultery high among the education group of illiterate junior school and university level group. Majority of the people belong to the age group of 25 years to 35 years and earn less than Rs. 1500/-.

b. Cruelty: 59% cases were filed under cruelty. All forms of cruelty involve an element of mental cruelty. Physical cruelty or incidents of domestic violence account for 44% of the cases. Dowry violences account for 15% cases, Mental cruelty account for 41% cases drunkenness 33%, etc.

93% cruelty cases are in the income group of less than Rs. 1500/-. 30% among the illiterate group and 37% among the group having an income between Rs. 500/- and Rs. 1000/-, and 26% in the income group of Rs. 1000 to Rs. 1500/-.

56% of the cruelty cases are from the higher education group of senior school (30%) and college/university education (26%). The lower education group account for 44% cases of which 11% are from the illiterate class and 33% are from the junior school group.

37% cases of cruelty is by men and 63% cases of cruelty by women. 33% of the cases are between the age group of 20-25 years and 33% between the age group of 30-35 years. The former due to their impulsive and immature nature and latter due to their rigid ways.

d. Desertion: There are about 22% cases of desertion and it occupies third position. In 10% cases the wife was driven away from home, 20% cases the wife was left in her natal family on one pretext or another and in 50% cases the wife was abandoned by her in laws. In 20% cases the wife decided to leave.

About 90% of the cases took place in the income group less than Rs. 1500/-. 10% cases were recorded in the income group of above Rs. 3000/-.

50% cases were recorded in the group educated upto senior school. The reason for this group being more susceptible to desertion is their social ambition and desire. When they find that the family is holding them back, they just decided to walk out of their home and hearth.

Desertion is alleged by men and women equally, 50% each. 60% of the cases are from the age group of 25 years to 35 years.

The proposer, the petitioner and the procedure:

57% people continue to live in a state of de facto divorce even though 63% cases have been taken before the court. These 57% cases are either pending, or have been dropped for non prosecution or default. Some have been withdrawn. The reason could be to save the litigation expenses and also the alimony. In 52% cases the husband proposed divorce in 41% cases the wife proposed and in 7% cases the in-law proposed the idea of divorce. However, 66% of the actual petitioners were the husbands. Only in 28% cases the wife was the actual proposer. In 7% cases, the divorce was by mutual consent.

Residence: About 53% women live away from their natal families after divorce. 31% live in personal residences, 8% live in rented accommodations and 14% in their place of work. Only 36% women lived with their natal family. 11% women lived with their second in-laws. 70% men had their own accommodation, 20% put up with their parents and 10% in rented establishments.

Children and custody and maintenance: 60% men and 56% women were having children. No men received maintenance. 19% women and 20% children received maintenance. Only 40% men paid maintenance to their wife. None paid any maintenance for children.

88% women were also custodian parents. Only 12% men were custodian parents.

The rate of maintenance is very small even when paid in lumpsum or instalments. While the lumpsum payments are inadequate the payments in instalments were still worse. In the latter case there is always the possibility of prolonged litigation when the instalments are stopped on silly pretexts. The husband continue to control the wife even after divorce in the latter case.

Attitude to divorce and remarriage:

a. Divorce: 58% women and 90% men feel that there is no point in continuing in an unhappy marriage. However all the 28% people who did not believe in divorce continued to live the life of a divorcee. 70% of the people (16% men and 84% women) feel they could not have reconciled their marriages even if the right to divorce was denied to them.

While 54% people said that they were not sure whether divorce laws should be made more liberal or simpler, 37% of them felt that the divorce laws must be more liberal. 30% men and 45% women were in favour of irretrievable breakdown of marriage. 60% men and 86% women felt that if the circumstances were to be repeated they would still act in similar fashion.

b. Remarriage: 50% of the interviewees (50% men and 50% women) were not willing to remarry. 20% were willing to marry and 15% were undecided about it. 39% (50% men, 36% women) felt that all the divorcees should remarry even though 50% of them had decided against it. 48% people (80% men and 30% women) felt that this experience will help them to build a better home in future. In other words women give the best to the marriage and cannot do better

in the next but most men learn from their mistakes and feel that they can do better in future.

Post divorce status: About 61% people feel that they have regained their pre-marriage independence while the men felt free both socially and economically, the feeling of women were related to their feeling of social freedom. 56% women blamed their spouses only for their divorce while 44% blamed some third party. 80% men blamed third party for divorce while 20% blamed their spouses only.

53% women and 70% men viewed divorce as a death of a relationship while 42% women and 30% men tended to cling on to their lost marriages. The sacramental, transcendental and traditional beliefs regarding marriage is preserved in the latter category. 70% of the people shared good relationship with their natal families and 37% of them felt that their marriages did not affect the marriages of their siblings. 80% men and 67% women felt that the society did not stigmatise them for their divorce, though some of them admitted that they felt a sense of shame and failure.

Remarriage: 20% men and 22% women were remarried. 10% men and 6% women had married divorcees. Among women, second marriages were courtship marriages. Even though 40% men had stated that they did not mind marrying divorcees, only 10% had done so.

Suggestion of the interviewees: Both men and women spoke in favour of simplification of divorce proceedings. Men were in favour of speedy settlement of cases and abolition of maintenance, alimony and maintenance pendente lite. Women wanted job reservations, education and job facilities for their children.

The struggle of women to be equal to men continues, even though the progress is slow. As Lord Denning observed¹⁶

"The silent progressive march is on".

16. Lord Denning "The Due Process of Law", p. 227, Butter Worths (1990).

CHAPTER VIII

The Sequel of Marital Bondage:

Questions of Maintenance, Custody And Property.

Divorce ends the marital tie between the spouses. The matter does not end there, the sequel of social consequences begins with the passing of the decree. The question of maintenance/alimony, custody of children and property are raised. The marital tie is severed ceremoniously by a legal sanction but the contact, responsibilities, continues till the female spouse gets remarried and or the children are grown up adults capable of leading an independent life. So, the relationship, the human bondage continues when the legal and sacramental bondage is severed.

The relief that is given in relation to maintenance, custody and property^{is} known as ancillary or auxillary relief. This means a subordinate relief. It is a relief that grows out of and is auxiliary to another primary action. Such primary actions are restitution of conjugal rights, Judicial separation, Nullity of marriage and Divorce¹, but while granting any other matrimonial relief, for instance, declaration of matrimonial status², ancillary relief cannot be granted under Section 125. So on the passing of the decree of divorce the court may provide the wife with a order of maintenance or alimony³, pass orders relating to matters of custody,

1. Sections 9, 10, 11, 12 and 13 of Hindu Marriage Act, 1955.

2. Id. Section 11.

3. Id. Section 24, 25.

maintenance and education of children⁴ and decide upon the property rights of the husband and wife. The last, especially in view of the new idea of matrimonial home and the growing concept of community property⁵.

PART I - MAINTENANCE/ALIMONY

Matrimony creates a number of rights and obligations on the part of the spouses against each other, maintenance being one of them. A husband is under an obligation to maintain his wife during coverture and even upon separation and divorce. The ancient Hindu Dharmasastras also recognise this fact and so does all other personal laws too. Provision for maintenance is also provided in Parsi Marriage and Divorce Act, 1936, applicable to the Parsees, The Indian Divorce Act, 1969 applicable to the Christians, provide for maintenance⁶. The Muslim Personal Law also makes such provision for the wife for such coverture. The Special Marriage Act, 1954⁷, an optional secular marriage law applicable to persons married under it, irrespective of their religion also makes similar provisions. However under all these foregoing provisions, a wife can claim maintenance from her husband only if there is some matrimonial dispute and a petition is filed for some matrimonial remedy either by the husband or by the wife. If there is no such

4. Id. Section 26.

5. Id. Section 27

6. Sections 39 and 40.

7. Sections 36 and 37.

litigation, she has no right to claim maintenance under the personal laws. However, exceptionally for a Hindu wife a provision for separate residence on justifiable grounds while allowing her to claim maintenance from her husband without filing a petition for matrimonial dispute is made under the Hindu Adoptions And Maintenance Act, 1956⁸ in addition to the Hindu Marriage Act, 1955.⁹

Apart from these personal laws, Section 125 of the Code of the Criminal Procedure, 1983 provides for maintenance to a wife irrespective of religion¹⁰. The object of this provision are:

1. to provide a speedier remedy.
2. to avoid vagrancy and destitution of indigent persons¹¹.

It is abundantly clear that this is a special provision designed for the protection of the women who suffer due to the omissions and commissions of her husband who is well off and possesses sufficient means¹².

There is no condition precedent of pending matrimonial petition in the court to avail the remedy under Section 125. What

8. Section 18.

9. Section 24 and 25.

10. After the decision of Mohammed Ahmed Khan Vs Shahbano AIR 1985 SC 495 which laid down that a persons obligation to maintain his spouse is founded upon the individuals obligation to society to prevent vagrancy and destitution. The moral edict of law and morality cannot be clubbed with religion, the muslim fundamentalists pressured the government for the exclusion of muslim women from the ambit of Section 125. In the year 1986, as a result of violent agitation, and amidst protest from the non fundamentalists the Muslim Women (Protection of Rights on Divorce) Act was passed.

11. Bhagwan Dutt Vs Kamala Devi AIR 1975 SC 83

12. Gupteshwar Pandey Vs Ram Piari AIR 1971 Pat 181.

is required to be proved for application of Section 125 is : (1) husband has sufficient means (2) neglects or refuses to maintain his wife (3) wife who is unable to maintain herself, the wife may then claim maintenance¹³.

The right of the woman to claim maintenance is a right which has been recognised under various laws. Each of these foregoing provisions are independent of each other. The claim under one law does not foreclose her right under another law. Therefore, a wife may claim maintenance both under the personal laws and the secular law of the Criminal Procedure Code. However, a court may give regard to an order of maintenance of any other court, at the time of quantifying the amount of maintenance. Thus the right is ensured but the quantum may vary. This right to maintenance, in a way is the right to life or right to survival of a wife.

Women are not objects of charity and should never be treated so. The judiciary has begun to realise that women are no longer going to be satisfied of being treated as beneficiaries of welfare doles but wish to be actively involved in the development process of the country¹⁴. Yet unfortunately among the neglected section of the society women form a bulk¹⁵, they have a low socio-economic status in the society which forces the legislature to provide special

13. Jaya Sagade "Polygamy And Woman's Right of Maintenance: Survey of Judicial Decisions" 31 J.I.L.I. (1989) 345.

14. Lotika Sarkar, "Women and the Law", XXI ASIL (1985) p. 495.

15. Poonammal Vs Union of India AIR 1985 SC 1196.

protection to them in the form of maintenance. Women who are not job skilled suffer most, especially if the husband was good provider and the woman is a custodian parent. Maintenance payments are less than full salary and often inadequate for bare subsistence and in reality the women have been made to depend on the welfare doles of her husband.

I. ALIMONY/MAINTENANCE IN ANCIENT HINDU LAW

According to the Dharmasastras, the wife has a right of residence with the husband and she is further entitled to be maintained by her husband.

Manu says that if a man does anything for the sake of his happiness in another world, to the detriment of all those whom he is bound to maintain, that produces evil results for him both while he lives and when he is dead¹⁶. He further adds that aged parents, a virtuous wife, an infant son must be maintained even by doing a hundred misdeeds¹⁷. A female outcast shall be given clothes, food, drink etc and they shall live close to the family house¹⁸. Neither a mother, nor a father, nor a wife, nor a son shall be cast off; he who casts them off unless guilty of a crime causing loss of caste, shall be fined six hundred panas¹⁹.

16. Manu XI. 10 . G. Buhler, Sacred Books of the East Vol XXV, The Laws of Manu. Motilal Banarasidas (1964).

17. Manu XI. 10.1, Kullakabhatta Virchitaya Manusmriti Ed. Acharya Jagdishlal Shastri, Motilal Banarasidas (1983).

18. Manu XI.189 op. cit. Buhler.

19. Manu VIII. 389 op. cit. Buhler.

Yajnavalkya requires a husband to maintain his wife whom he has superseded other wise he would be guilty of a great sin²⁰. If a man abandons his wife who was obedient, diligent, the mother of a son and agreeable in speech, he was to be made to give one third of his property to the wife, but ^{if} he had no property, he had to maintain her²¹.

According to Kautilya when maintenance is not payable at stipulated intervals of time the husband shall give the necessary food and clothing according to the dependents or more in a generous measure. If payable at stipulated intervals of time, he shall calculate the same and pay in instalments. And also in case she has not received a dowry, a woman's property and compensation for supersession, the same procedure shall be followed.²²

Bharmanya²³ seems clearly to mean allowance given for the maintenance of a wife separated from the husband-anirdishtakala²⁴ the time for which is not stated seems to refer to alimony paid in one lumpsum, while°Nirdishtakal²⁵ seems to be that paid in

20. Yajnavalkya I. 74 Yajnavalkya Smriti. Translated by West & Buhler, Digest of Hindu Law 3rd Ed. 1884. Oxford University Press.

21. Yajnavalkya I. 76 op. cit West & Buhler.

22. Bharmanyam Nirdishtakalayam Grasachhadanam Vaadahikam Yetha purusha paripapam sarvashesham daddat (3) Nirdishta Kalayam tadev Sakhyay bandham cha daddat (4) Shukka stree dhanadhi Vedanikanamana dane cha (5) Kautilya Arthashastra, 3.3.3.5 R.P.Kangle, The Kautilya Arthasastra, Part I, II, 2nd Edition Bombay University (1972)

23. Ibid.

24. Ibid.

25. Ibid.

instalments at stated times. In other words, Kautilya makes provision for lumpsum alimony or maintenance as well as in instalments. The word grasachhadanam²⁶ means (food and clothing) maintenance.

Kautilya further enjoins, if a person with means does not maintain his children and wife, his brothers who have not come of age and his unmarried and widowed sisters, a fine of twelve panas shall be imposed except when these have become outcastes with the exception of the mother²⁷. If one renounces home to become an ascetic without providing for his son and wife, the lowest fine for violence shall be imposed also if one induces a woman to renounce home²⁸.

While Manu stipulates that an outcast woman²⁹ should be provided with a starvation allowance, Kautilya exempts a man from the provision of maintenance if his wife has become an out cast. Yajnavalkya declares that an adulterous woman should be deprived of her authority over servants etc, should be made to wear dirty clothes, should be given food just sufficient to enable her to live, should be treated with scorn, made to lie on the ground. If she conceives from adulterous intercourse she is to be abandoned³⁰.

26. Ibid.

27. Id at 2.1.28

28. Id. at 2.1.29

29. Supra note 21.

30. Yajnavalkya 1.70, 72, op. cit. West & Buhler.

Such abandonment consists in not allowing her to participate in religious rites, but she should not be cast off on the streets, she is to be kept apart in a guarded room and to be given food and garment³¹. Manu has contradicted himself from verse XI. 189 when he states that if a wife, proud of the greatness of her relatives or of her own excellence, violates the duty which she owes to her lord, the king shall cause her to be devoured by dogs in a place frequented by many³². And again contradicts by laying down that the husband should confine an exceedingly corrupt wife to one room and compel her to perform the penance³³.

The requirement of penance is laid down in Veda-Vyas II 49-50³⁴ and also in Parashara IV. 20³⁵.

P.V. Kane³⁶ arrives at the following propositions.

1. There is no absolute right of abandonment by the husband on the ground of adultery.
2. Adultery is a minor sin and can be atoned for by the wife through penance.
3. Till she undergoes penance she is to be provided with a bare subsistence maintenance.
4. Wives who are not guilty of adulterous and corrupt acts are to be maintained.

31. Id. III. 297

32. Manu VIII.371 op. cit. Buhler.

33. Id. XI.177.

34. Vedavyas Bharatdharma, Mahamandal Sastri Publisher 1923.

35. Madhavacharya, Parasara Smriti, Asiatic Society 1973.

36. P.V. Kane, History of Dharmashastras, p. 575, Bhandarkar Oriental Research Institute.

The concept of maintenance from the ancient times is a hypocrisy, for no maintenance has really ever helped to maintain women. Behind the mask of the glowing tribute paid to the women in the dharmasastra there was an under current of hatred, neglect, contempt. This duplicity of the dharmasastra in later years has helped to bring about social casuistry and degradation. As a result the women for century after century have been doomed to be illiterate, ignorant inhabitants of the darkness and then like a great messiah law and religion have made them the objects of charitable doles and reduced them to begging.

II. ALIMONY OR MAINTENANCE IN THE MODERN HINDU LAW

The word alimony is derived from the Latin word alimonia and the french word abre. It means sustenance. That is living maintenance, an allowance made to a woman for her support by a man pending or after her legal separation or divorce from him. Maintenance means upkeep, support³⁷.

The concept of alimony or maintenance therefore indicates the principle of sustaining the life of a woman who is in the process of being divorced or separated or has already been legally separated or divorced. When alimony is paid to the spouse when they are in the process of being separated or divorced it is known as maintenance pendente lite. When after the divorce or legal separation the husband by a court order pays an allowance to the wife

37. Websters New Collegiate Dictionary, Gand C Mirriam and Co.

it is called permanent alimony. Such payments are generally restricted to money, but under special circumstances it may be an allowance out of the spouses estate³⁸. The above terms are no longer used in matrimonial causes in England and is replaced by maintenance pending suit and permanent financial provision thereafter³⁹.

An unique feature of the modern Hindu law is that even a husband can be a claimant of alimony from the wife under special circumstances. A Hindu woman may claim maintenance both under the Hindu and the Criminal Law.

A. Maintenance/Alimony Pendente lite⁴⁰.

In Mythili Raman Vs Capt K.T. Raman⁴¹ it has been pointed out that the object of maintenance pendente lite under Section 24 is to provide funds to the needy spouse to prosecute the proceedings and to maintain him or herself. It has been observed in Hema Vs Lakshmana Bhat⁴² that by extending the relief to either of the spouses a concept of equality has been introduced. In deciding the application under S. 24 of the Act, the court has to act in accordance with sound judicial principles and cannot act in an arbitrary

38. Black, Law Dictionary.

39. Jowitt's Dictionary of English Law, Butterworths.

40. Section 24 of the Hindu Marriage Act, 1955 states that - Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable.

41. AIR 1976 Mad 260.

42. AIR 1986 Ker 130.

fashion to the prejudice of either of the parties.

1. The Claimant

In Pradeep Kumar Kapur Vs Shailaja⁴³, D. P. Wadhwa J.

laid down the following principles which were stated to be relevant in deciding a case of maintenance pendente lite under S. 24 of the Act.

1. Position and status of the parties.
2. Reasonable wants of the claimant (towards food, clothing, shelter, medical attendance, treatment education etc.)
3. Income of the claimant
4. Income of the Opposite Party.
5. Dependents of the Opposite Party.

The court is not expected to adopt a mechanical approach while interpreting the provisions of law incorporating provisions and principles of social justice like S. 24 of the Act⁴⁴. The discretion that is vested in the courts must be exercised on sound legal principles. They are :

- a. Whether the applicant is being supported by an adulteror;
- b. Whether the respondent has sufficient means. The fact that the claimant is being maintained by the natal family or friends is no ground for rejecting the claim of maintenance⁴⁵ pendente lite.

43. AIR 1989 Del 10.

44. Ibid.

45. Balti Devi Vs Chhotelal II (1986) DMC 248.

The word "sufficient means" can only be construed to mean whether the claimant has any independent income for his or her support. The word "sufficient" in collocation of the words "sufficient means" for his or her support is significant. Sufficient here is not some. It means that the income of the applicant should be such that would be sufficient for a normal person for his or her sustenance as well as to meet the necessary expenses of the proceedings⁴⁶. Maintenance means an amount which should be sufficient to meet body and soul together. This takes within itself not only the expenses of food and clothing but also expenses involved in meeting the necessities of life⁴⁷. If a party approaches the Civil court after maintenance is granted under Section 125 of the Code of Criminal Procedure and gets a decree of maintenance then the decree of the Civil Court prevails⁴⁸. The existing order granting maintenance under Section 24 of the Hindu Marriage Act does not operate as a bar to granting further maintenance pendente lite⁴⁹. It must also be noted here that Section 25 of the Hindu Marriage Act dealing with permanent alimony requires the court to have regard to the income and other property of the spouses. Section 24 refers only to the income and not the other property. So in the case of alimony

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46. Krishnapriya Mohapatra Vs Bira Krishna Mohapatra II (1986) DMC 96
47. Ku Saba Vs Syed Mhd Fazil I (1991) DMC 262.
48. Chimata Magaratnamma Vs Chimata Nathaniel I (1991) DMC 459.
49. Manab alias Manabendra Burman Vs Suvadra alias Swati Burman I (1991) DMC 465.

pendente lite. Other property of the spouses are not matters of judicial considerations⁵⁰. The word sufficient and the question of quantum involved in it must be evaluated and judged depending upon the facts of each case.

When the claimant (the applicant spouse) is possessed of sufficient means the claimant does not become entitled to the maintenance pendente lite nor the cost of the litigation. In Suresh Kumar Vs Kanaljit Kaur⁵¹ the wife applied for maintenance pendente lite against her husband, son of late Babu Jagjiban Ram. The court found that she had a substantial income through company share and declined her claim for maintenance pendente lite. The property of the wife under a litigation considered for judging if she has independent income to support her. In Premmath Sarwan Vs Premlata Sarwan⁵², the wife had received some property by way of a will and it was under litigation with her brother. The court held that such property could not be considered for judging if the wife had an independent income to support her and further held that concealment of such income in a petition for alimony pendente lite by the wife was not fatal to the suit. The relief for alimony pendente lite can be awarded even if an objection as to jurisdiction is raised provided the court has a prima facie jurisdiction⁵³.

50. Supra note 44.

51. (1985) I Current Civil Cases 574.

52. II (1986) DMC 214

53. Surendra Kumar Asthana Vs Kamlesh Asthana
AIR 1974 All 110.

There has been a controversy regarding the language of Section 24 where in it was stated that "..... order the respondent to pay the petitioner the expenses of the proceedings". The controversy for the first time arose in Rameshwar Nath Gupta Vs Kanta Devi⁵⁴. The husband had brought a suit for dissolution of marriage. The wife countered with a petition for maintenance pendente lite. The District Judge directed the husband to pay. The husband contended before the High Court stating that the District Judge had erred as he was the petitioner in the primary suit that is the suit for divorce. The Punjab High Court held that the husband's contention is without any force. The expressions "Petitioner" and "respondent" that appear in Section 24 is clearly in connection with the application under S.24 and not in connection with the primary suit for matrimonial relief. This view was accepted by the High Courts of Allahabad⁵⁵, Bombay⁵⁶ Mysore⁵⁷.

2. The stage at which the claim is to be made.

An application under S.24 is to be made as soon as possible after the service of the notice, other wise a presumption may be pleaded that the claimant was able to support himself or herself

54. AIR 1957 Punj 85.

55. Raj Kumari Vs Tarlok Singh AIR 1959 All 628.

56. Kamala Vs Shama Rupchand AIR 1958 Bom 466.

57. Nanjappa Vs Vimala Devi AIR 1957 Mys 44.

for so long that the claim is futile. It is not necessary that he/she file her written statement first and then file an application for maintenance pendente lite and cost of the litigations⁵⁸. It is now well - settled that an application under section 24 must be determined before deciding the main petition and promptly too, otherwise the very purpose of Section 24 is defeated. The jurisdiction to grant maintenance arises as soon as any proceeding are instituted under the Hindu Marriage Act⁵⁹. Failure of the applicant to file an affidavit in support of the petition for alimony is not material⁶⁰.

3. Grant of the claim - Discretion of the Court

An order fixing maintenance pendente lite under Section 24 containing neither facts nor grounds is not an order in the eye of the law. Order of maintenance pendente lite when not supported by reason and does not discuss the pros and cons of the rival version of the parties relating to quantum of income of husband the order is liable to be set aside⁶¹. A order for maintenance

58. Latika Ghosh Vs Nirmal Kumar Ghosh AIR 1968 Cal 68, Anjli Arun Kumar AIR 1981 All 178.

59. Arati Singh Vs Lt Col. Kanwar Pal Singh AIR 1977 Del 76; Rajinder Mahendroo Vs Madhurima Mahendroo 1978 HLR 85; Krishna Devi Vs Karam Chand 1978 HLR 177.

60. C.B. Toshi Vs Gangabai AIR 1980 All 130.

61. Salish Bindra Vs Surjeet Singh Bindra AIR 1977 Punj 383; Khiteswar Phukan Vs Soowala Gogoi AIR 1984 NOC 307 (Gau), Palaparambil Velayudhan Vs Palaparambil Devaki AIR 1985 NOC 69 (Ker).

pendente lite must be a speaking order which means it must contain a statement regarding what has led to the decision and set out the finding and reasoning of that. The discretion that is vested in the courts is to be exercised on sound legal principles and not on caprice or humour. An order is a reasonable order which takes into consideration the various circumstances. In the body of the section only the word "support" is used and not standard or status. It is clear that the court must keep in the view that one of the parties cannot live like a lord and the other like a maid or one cannot live like a princess and the other like a servant. There must be some balance, one cannot be living in penury while the other lives in grand style. The object of the section is to provide the weaker party financially as a matrimonial litigation is not only galling but expensive and time consuming also⁶².

4. Commencement, Duration And Quantum

The use of the word "... during the proceeding..." suggests that an order for maintenance pendente lite can be made operative from the date of institution of the original proceeding and not necessarily the date of making of application for maintenance pendente lite⁶³. Even when alimony pendente lite is claimed

62. Preeti Vs Ravindra Kumar Sharma AIR 1979 All 29.

63. Sameer Kumar Bannerjee Vs Sujata Bannerjee 70 CWN 633, Radha Kumari Vs K.M.K. Nair AIR 1983 Ker 139.

in appeal against the decision of the main proceeding it may be ordered from the date of receipt of original proceeding in trial court⁶⁴. In Shobhana Sen Vs Amar Sen⁶⁵ the husband commenced a matrimonial proceeding against the wife. The notice of the proceeding was served on the wife on the second day of February 1956. The wife applied for maintenance pendente lite on the first day of March, 1956. The appellate court allowed her to receive the maintenance from the date of the commencement of the primary matrimonial proceeding. A well known principle of law is that maintenance pendente lite must be granted from the date of commencement of the principal matrimonial proceeding.

After the termination of the primary proceeding maintenance pendente lite ceases to be operative. So, before proceeding with the application for maintenance pendente lite, if the primary proceeding is dismissed, then the application for maintenance pendente lite cannot be pressed⁶⁶. However it has been recognised that expeditious disposal of application u/s 24 is desirable so that the wife is not deprived of her right to alimony pendente lite and litigation expenses merely because husbands petition for

64. Nalini Vs Velu AIR 1984 Ker 214.

65. AIR 1959 Cal 455.

66. Chitra Lekha Vs Ranjeet Rai AIR 1977 Del 176; Dr. Tarlochan Singh Vs Mohinder Kaur AIR 1963 Punj 249.

matrimonial relief has been unconditionally withdrawn⁶⁷ or where the outcome of the primary suit has been determined by way of dismissal by consent, dismissal at hearing, abatement, the pronouncement of a decree for judicial separation or making absolute a decree nisi at divorce or nullity. But if the claimant is found guilty of adultery the order does not cease automatically. If an appeal is preferred on the issue, the appellate court may order maintenance pendente lite during the pendency of the appeal.

Disposal of petition for interim maintenance after the disposal of the primary suit for matrimonial relief is wrong. Disposal of the application for alimony pendente lite by the same judgement of the primary suit of matrimonial relief is also not correct. The court cannot mix up matters and postpone the petition for ancillary relief till the principal suit is decided on merits⁶⁸. Such petitions should of necessity be disposed off before the disposal of the primary suit⁶⁹. Granting ex parte decree without adjudicating the petition of interim alimony and litigation expenses is not proper⁷⁰.

67. Bhanwarlal Vs Kamala AIR 1983 Raj 229 Sohanlal Vs Kamlesh 1(1985) DMC 215.

68. Chaggenlal Vs Shikha Devi AIR 1975 Raj 8.

69. Bhanwarlal Vs Kamala AIR 1983 Raj 229.

70. Meena Deshpande Vs Prakash AIR 1983 Bom 409.

A slightly different view has emerged from a series of cases. In Amrik Singh Vs Narinder Kaur⁷¹ the application under Section 24 was filed on 27.2.1978. The primary suit for judicial separation was concluded on 25.9.1978, but the application Under Section 24 was allowed on 12.10.1978. The order was held to be valid. In a subsequent case, again in Punjab High Court⁷², the wife filed a restitution petition as a primary suit for matrimonial relief on 28.1.1978, she filed the petition for ancillary relief for maintenance pendente lite and litigation expenses on 31.1.1978. The restitution suit was decreed in her favour in September 1979 but the petition under Section 24 was allowed to continue. The appellate court held the order to be valid as the order could be given the retrospective effect from the date of main petition till the conclusion of the proceedings. The appellate court in this case further laid down that even after the main petition for relief like restitution of conjugal rights, judicial separation, annulment or divorce has been disposed off the court can award maintenance pendente lite and the liability to pay continues so long as the petition for maintenance pendente lite is pending.

The gist of the ratio in Sudarshan Kumars case is that a spouse, even if he/she institutes the primary suit for matrimonial relief may fight the suit on the strength of the finance

71. AIR 1979 Punj 211.

72. Sudarshan Kumar Vs Deepak AIR 1981 Punj 306.

provided by the other spouse, and that includes even the proceeding for obtaining such finance. Sohanlal Vs Kamlesh⁷³ made an improvement on this situation. It laid down that even if the main suit is finally decided, if the suit under Section 24 is pending, it can continue. It held that there is no justification for not awarding maintenance pendente lite to the wife beyond the conclusion of the main petition till the proceeding for ancillary relief is finalised.

Regarding the quantum of maintenance to be awarded it has been laid down in Mukan Kanwar Vs Ajeet Chand⁷⁴ that in the absence of special circumstances maintenance shall be allowed at 1/5th of the net income of the respondent of the petition for maintenance pendente lite after deduction of income tax and provident fund. However there is no hard and fast rule regarding the fixing of the quantum of maintenance pendente lite⁷⁵. In P. Padmavati Amma Vs K.G. Gopinath Nayar⁷⁶ it was held that, if there are no dependents of the husband, the wife being ardhangani is certainly entitled to receive half of the salary of the husband. But where dependents are there then the total salary of the husband has to be divided amongst those dependents and some amount has also to be reserved for uncertainty.

73. AIR 1984 Punj 332.

74. AIR 1958 Raj 322

75. Hema Vs Lakshman Bhat AIR 1986 Ker 288

76. 1(1991) DMC 463.

The main principle which the court should bear in mind while awarding maintenance pendente lite is that the order should not become a punishment. A low paid servant should not be allowed to part a lions share from his income either towards interim maintenance or towards costs⁷⁷. Instead of a mechanical approach the court should take a practical view of the prevailing situation and try to do justice to the parties involved. The court can also vary the quantum of maintenance from time to time according to the change in the circumstances⁷⁸. The quantum of maintenance to a wife cannot be reduced because of her residing with her natal family and she cannot be paid more than she craves for.

77. Veera Gowda Vs Susheelamma (1977) 1 Kant LJ 2288.

78. Devki Vs Purusottam AIR 1973 Raj 2.

B. Permanent Maintenance/Alimony⁷⁹

Maintenance of a wife by her husband is a personal obligation which is an matrimonial status created by a Hindu Marriage. Even where the wife was residing with her parents on account of her immaturity during the days when child marriages were common, the parents could maintain her at their own cost out of affection for the child or as a social duty but under the law they could if they so desired demand an allowance for her maintenance from the husband, and he was bound to maintain her or keep her under his roof as a matter of his right.

79. Section 25, Hindu Marriage Act, 1955,

- 1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant, the conduct of the parties and other circumstances of the case, it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.
- 2) If the court is satisfied that there is, a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just
- 3) If the court is satisfied that the party in whose favour an order has been made under this section has remarried or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any women outside wedlock, it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just.

Only the husband is liable under the law for the maintenance of his wife, and so long as she is prepared and willing to live under his roof her right is absolute. No other member of the marital family whether joint or nucleus is liable under law for the wife's maintenance.

When the wife lives separately from her husband her right of maintenance is justiciable. Its grant depends on whether in the circumstances of the case she has a reasonable and sufficient cause which justifies her living separately from her husband.

Under the modern Hindu law, on conclusion of the primary suit for matrimonial relief of any of the four kinds namely:

- a) For restitution of conjugal rights (S.9)
- b) for judicial separation (S.10)
- c) For annulment of marriage (S.12)
- d) For divorce (S.13)

the court can grant permanent alimony⁸⁰. A decree of divorce does not ipso facto debar a spouse from claiming alimony. Permanent alimony can be paid when if the petition for decree of divorce, restitution of conjugal rights or judicial separation succeeds. If the petition fails the marriage subsists and then the question of granting permanent alimony does not arise. When the divorce petition is dismissed the spouse cannot get permanent alimony. When petition for restitution of conjugal rights is dismissed the petition under Section 25 cannot be granted. The expression "passing

80. Seetaram Vs Phuli AIR 1972 Raj 313.

any decree" used in Section 25 means relief of the nature mentioned under Section 9 and 13. The same reasoning is applicable in case of dismissal of a petition for judicial separation and also after the and at the time of withdrawal of the suit for judicial separation. However if on appeal these reliefs are granted then the appellate court may pass the order for permanent alimony also. Such order is deemed to have been passed by the trial court because the forum for variation modification or rescission of the order for permanent alimony is the trial court⁸¹.

In Silla Jagannadha Prasad Vs Silla Lalitha Kumari⁸².

It has been held that the main object of section 25 is to provide some amount of sustenance to the parties who are unable to support themselves. The suit or the petition may either be dismissed or allowed. A relief may be given or refused. In either case it is a decree. There is no reason to give a restricted meaning to the word decree. In this connection the word any is also significant. It indicates either allowing or rejecting and permanent alimony may be granted. But in Vinod Chand Sharma Vs Smt Rajesh Pathak⁸³ the Allahabad High Court observed that permanent alimony can be granted only if the divorce is granted and not if it is dismissed. The word decree, the court held, is used in matrimonial cases in a special sense different from the one that is used in C.P.C. The

81. Sandhya Bhattacharjee Vs Gopinath Bhattacharjee 80 C.W.N.665.

82. AIR 1989 A.P. 8

83. AIR 1988 All 150

use of the word decree under S.25 means passing of any decree for divorce, restitution of conjugal rights or judicial separation and not passing of a decree through which the petition itself is dismissed because if the petition fails no decree is passed. In other words in such cases decree is denied to the applicant, obviously alimony cannot therefore be granted as the marriage still subsists. In the words of the court:

"The power to grant alimony contained in Section 25 of the Hindu Marriage Act has to be exercised when the court is called upon to settle the mutual rights of the parties after the marital ties have snapped by determination and variation by the passing of a decree of a type mentioned in SS 10, 11, 13, read with Sections 23, 26 and 27 of the Act. A decree can be assumed to have been passed when an application for divorce or similar other relief is granted but surely not when the application is dismissed"⁸⁴.

Death of the husband does not affect the order of the payment of permanent alimony and the same could be recovered from his estate in the hands of his heirs and successors. A decree for permanent alimony is not extinguished with the death of the husband and the estate is liable to be proceeded against in the hands of the heirs for the satisfaction of the decree⁸⁵. If divorce is obtained under any other enactment of the Hindu law, then relief

84. Ibid.

85. Nandarani Majumdar Vs Indian Airlines AIR 1983 SC 1201

under Section 25 of the Hindu Marriage Act cannot be claimed.

1. Relation to Doctrine of Sincerity

The doctrine of sincerity is enshrined under Section 23 of the Hindu Marriage Act. It lays down that he who comes for matrimonial relief must come to the court with clean hands and should not take advantage of his own wrong. However the doctrine is irrelevant where a question of granting maintenance pendente lite is concerned. In other words Section 24 is not controlled by Section 23. However the question of granting permanent alimony under Section 25 of the Act may be controlled by the doctrine of sincerity as enshrined Under Section 23 of the Act. It was held in Amar Sen Vs Shobhana Sen⁸⁶ that even an unchaste wife is entitled to a right of a starving allowance for her maintenance. A wife who is not complying with a decree of restitution of conjugal rights could claim permanent alimony in Ram Pairsi Vs Piarilal⁸⁷.

An agreement by which the wife gives up her claim to permanent alimony and the husband gives up his claim to custody of child was held to be valid by the Punjab⁸⁸ and Bombay⁸⁹ High Courts. The Kerala High Court⁹⁰ on the other hand has held such

86. AIR 1960 Cal 438.

87. AIR 1970 Punj 341.

88. Manjeet Singh Vs Savita Kiran AIR 1983 Punj 281.

89. Hirabai Vs Rirojshah AIR 1945 Bom 537.

90. Sadasivan Pillai Vs Vijayalakshmi (1986) 3 Crimes 508.

agreement to be void and opposed to public policy and against the doctrine enshrined in Section 23. Agreements that purports to oust the jurisdiction of the court are not enforceable.

In Mohinder Kumar Wahi Vs Usha Rani⁹¹, Usha Rani obtained a decree for restitution of conjugal rights on 26.8.1970. She waited for compliance of the decree until 25.2.1971 and then moved the court under Section 25 of Hindu Marriage Act. During the pendency of the suit, Mohinder Kumar attempted to comply with the decree. It was submitted that because the wife resisted with the compliance of the husband, she was taking advantage of her own wrong and her application must fail in view of the provision of the doctrine of sincerity under Section 23. The Court held that the husband's attempt to comply with the decree was malafide and the wife was granted permanent alimony.

The Mysore High Court has held⁹² that it is only upon or making a decree that the question of granting alimony arises. Therefore the grant of alimony itself being a consequence or one of the consequences of a decree, the question whether any of the circumstances mentioned in Section 23 would operate as a bar would already have been considered by the court before passing the decree. According to Justice Deoki Nandan⁹³, the question of whether one is taking advantage of one's own wrong in asking for maintenance

91. 1975 HLR 241.

92. Lalithamma Vs R Kannan AIR 1966 Mys 178.

93. Deoki Nandan, Hindu Law Marriage And Divorce, p. 726, the University Book Agency (1989).

may not arise for fresh consideration when it is the decree holder who applies for permanent alimony. But if it is the judgement debtor, then the question of his or her conduct may loom large before the court while considering whether maintenance should be granted. According to him it matters little whether the conduct of the applicant for maintenance is considered under Section 25 or Section 23 of the Act. The basis upon which the principal decree has been passed cannot altogether be ignored because sometimes an order for permanent alimony can be passed with that decree. The law cannot be different while passing the principal decree and the ancillary relief. However either party to the decree may apply for auxiliary relief, but the actual grant of the relief will depend on various other considerations.

2. The claimant

According to the law, either party to a matrimonial suit for matrimonial relief like divorce, judicial separation, restitution and annulment, may claim the ancillary relief of permanent alimony. On such application the court is entitled to take the conduct of the parties into consideration.

In N. Veeralakshmi Vs N. Hanumantha Rao⁹⁴, a very interesting differentiation was formulated by the Andhra Pradesh High Court.

94. AIR 1978 A.P. 6

It was observed that if a husband successfully obtains divorce and the wife applies for permanent alimony, the court is entitled to take into consideration whether the conduct of the wife was abominable and it may even refuse to grant a decree. But the mere fact that the wife has unjustly deserted the husband which ultimately led to the husband divorcing the wife, then the conduct of the wife cannot be said to be so abominable as to disentitle her from claiming permanent alimony.

Under S.25(1), there is a requirement that the court may have regard to "..... the conduct of the parties". It may be noticed there that, as the word 'may' has been used in relation to the action that is to be taken by the courts it is not mandatory (as it would have been if the word shall had been used) that the conduct of the parties be taken into consideration. Again, under S.25(3) it is laid down that if a party who is in the receipt of permanent alimony has a voluntary sexual intercourse with any other woman outside wedlock or leads an unchaste life, then at the instance of the other party the court may in a manner deemed just, vary, modify or rescind the order of permanent alimony. Here again such variation, modification or rescission is not mandatory and the discretion for doing so vests with the court.

Therefore, the use of the word conduct is not necessarily of such a standard as is stipulated under the doctrine of sincerity as enshrined under S.23 of the Act. It is in this context that the

Veeralakshmi's⁹⁵ case is to be understood. The courts have grant alimony to a wife who has suffered a decree of divorce due to her non compliance with decree of restitution⁹⁶. Desertion is not so abominable a conduct so as to disentitle a wife for permanent alimony. In Rajender Parkash Vs Roshni Devi⁹⁷ the courts held that a wife does not become disentitled to permanent alimony merely because the divorce has been granted on account of her own desertion. According to the Punjab High Court the conduct mentioned under section 25(1) of the Hindu Marriage Act is limited to the instances of the conduct contained under Section 25(3) i.e. remarriage, unchaste conduct in the case of the wife and having a voluntary sexual intercourse with any woman outside wedlock in the case of the husband. This view was not accepted in Umesh Chand Vs Rameshwari Devi⁹⁸ by the Rajasthan High Court which held that the expression conduct was not limited to S.25 alone and her conduct should be considered while determining the quantum of the maintenance. Even then the Rajasthan High Court awarded permanent alimony to a person who was the deserter⁹⁹, who was cruel¹⁰⁰.

95. Ibid.

96. Dharamsi Premji Vs Bai Shankar Kanji AIR 1968 Guj 150;
Rajagopalan Vs Kamalammal AIR 1982 Mad 187.

97. AIR 1981 Punj 212

98. AIR 1982 Raj 83

99. Ibid.

100. Jagadish Tulsan Vs Manjula Tulsan AIR 1975 Cal 64.

Regarding unchaste conduct of the wife, there is a clear division of opinion among the different High Courts and Judges.

According to the Calcutta High Court¹⁰¹ where there is a reliable evidence to show that even while the proceedings are going on the wife is leading an unchaste life with the co-respondent, in the absence of some special grounds the wife does not become entitled to permanent alimony. The same view was taken by the Kerala High Court¹⁰² which observed that subsequent conduct of the wife who has become unchaste can form the basis of cancellation of an order passed under S.25(1), then the finding recorded during the hearing as to the unchastity of the wife must be taken into account in the first instance, otherwise it would lead to very incongruous situation namely when a wife is proved to be unchaste during the proceedings remains entitled to maintenance and if she becomes unchaste subsequently she becomes debarred from continuing to receive maintenance. The Jammu and Kashmir High Court¹⁰³ in agreement with this view has held that a wife is not entitled to alimony if she is found to be unchaste both during or subsequent to the proceedings.

101. Sachindra Nath Vs Banamala AIR 1960 Cal 575.

102. Rajaopalan Vs Rajamma AIR 1967 Ker. 181.

103. Sardarilal Vs Vishano AIR 1970 J & K 150.

The other view is that the relief of granting alimony is not dependent either on the merits of the petition or on any decision on a particular issue when the marriage is admitted it is the duty of the affluent spouse to maintain the other¹⁰⁴. In a case where divorce was granted due to adultery by the wife, the Calcutta High Court¹⁰⁵ held that the wife was entitled to a starving maintenance which was to be withdrawn when she would have an independent source of income. This view was confirmed by the Bombay High Court¹⁰⁶. The Delhi High Court¹⁰⁷ laid down in a case where the wife had conceived and delivered of a child during the pendency while she lived separately from the husband that merely because of this reason she cannot forfeit her right of alimony. According to the court it is a well settled fact that illicit conception by itself does not amount to living in adultery, and it was open to the husband to prove that the wife was living in adultery. Besides the M.P. High Court¹⁰⁸, Bombay High Court¹⁰⁹ also agreed with this view.

The contradiction has at last been laid to rest by O. Chinnappa Reddy J in Reynold Rajamony Vs Union of India¹¹⁰

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104. Surendra Kumar Asthana Vs Kamlesh Asthana AIR 1974 All 110.
 105. Amar Sen Vs Shobhana Sen AIR 1960 Cal 438.
 106. Harmusji Kalapesi Vs Dinabai Kalapesi AIR 1955 Bom 413.
 107. Ram Krishna Vs Savitri AIR 1982 Del 458.
 108. Hargobind Soni Vs Ram Dulari AIR 1986 MP 57.
 109. Gulab Jagdusa Vs Kamal Gulab AIR 1985 Bom 88.
 110. AIR 1982 SC 1261

wherein he observed:

The law which grants decree of divorce must secure her some measure of economic independence. It should be so whatever be the ground for divorce, whether it is mutual consent, irretrievable breakdown of the marriage or even the fault of the woman herself¹¹¹. (emphasis added)

Thus as matter stand now, irrespective of the reason for divorce and the fact that the divorce may have been obtained due to the fault of the wife, a wife is entitled to receive permanent alimony.

Under Section 25 the husband also may claim permanent alimony from the wives. However, under the present socio-economic conditions of women it is they who claim alimony mostly.

3. Discretion of the Court

Regarding the grant of permanent alimony broad powers vested in the hands of the court by way of discretion. The Court has a discretion but it has to be used very cautiously and regard to the following must be given:

1. Respondents income and other property.
2. Applicants income and other property
3. Conduct of the parties.
4. Any other circumstances which to the court seems to be just.

111. Ibid.

While passing a decree for permanent alimony a speaking order is to be written which clearly lays down the reasons for arriving at the decision. Granting permanent alimony would depend on all the facts and circumstances of the case.

4. Commencement, Duration and Quantum

The power to pass an order under Section 25 of the Act, may be exercised by any court having jurisdiction under the Act at the time of passing any decree or at any time subsequent thereto¹¹². Normally, an occasion for grant of permanent alimony or maintenance arises only on the dissolution of marriage by a decree of divorce or when the parties to the marriage are relieved of their duty to cohabit together, although the marriage subsists by a decree of judicial separation.

In a patriarchal form of society there are almost no occasion for ordering alimony to the husband especially in cases where the restitution decree has been passed. Where the husband is the decree-holder he cannot surely say that his wife should not only come and live with him but also support him. If the wife does not obey the decree he cannot say that the wife should pay him maintenance for she may very well ask him the question, by way of rebuttal of his claim, as to why he applied for restitution of conjugal rights when he did not even have the means to support

112. Amreek Singh Vs Lakhwinder Kaur 1985(2) DMC 143

himself not to speak of supporting her or the family which they may bring forth as husband and wife. When the wife is the decree holder, if the husband complies with the decree then there is no question of paying maintenance and if he does not the wife can claim maintenance.

To every order of maintenance the condition that the maintenance is to be paid 'while the applicant remains unmarried is attached to every order for maintenance. In the strict letter of the law the applicant must remain chaste and unmarried. When the applicant remarries the court has no option or discretion but to rescind the order of maintenance.

The decree of permanent alimony against the husband does not stand extinguished on the death of the husband and the assets kept behind by the husband can be proceeded against in execution¹¹³. Subsequent suit that the estate of the husband stands charged can be treated as an application or execution as a measure of abundant caution¹¹⁴. According to Gurdev Kaur Vs Channo¹¹⁵ alimony being in the nature of personal obligation, liability ends with the death of the other spouse.

113. Aruna Basu Mallick Vs Dorothea Mitra AIR 1983 SC 916

114. Nandarani Majumdar Vs Indian Air Lines AIR 1988 SC 1201

115. AIR 1986 Punj 251.

While considering the question of the quantum of payment, the High Courts of Orissa¹¹⁶ Rajasthan¹¹⁷ have heavily relied on the provisions of the Indian Divorce Act and have granted one fifth of the net income as maintenance. But the Calcutta¹¹⁸, Andhra Pradesh¹¹⁹ and Bombay¹²⁰, High Courts have held that an analogy from Divorce Act cannot be drawn in the case of Hindu law it was purely the discretion of the court.

There is no fixed rule in respect of permanent alimony. It is only the independent income of the payee which is to be considered. The help received from the natal family is not to be considered, because that kind of help is given on personal basis at that persons will. The husband is under no obligation to provide the wife with money which is meant to enable the wife to equip herself with a calling or to provide expenses for other purposes¹²¹. The 1/3rd of the income rule is a mere thumb rule and is inapplicable in all the cases. The net income of each party depends upon the facts of each case and the judges are required to use their judicial wisdom.

116. Prasanna Kumar Patra Vs Sureshwari Patrani AIR 1969 Ori 12.

117. Mukan Kanwar Vs Ajeetchand AIR 1958 Raj 322.

118. Pratima Bose Vs Kamal Kumar Bose 68 CWN 316.

119. Katla Rachavulu Vs Katla Bharatamma ILR 1975 AP 799

120. Dinesh Gijubhai Mehta Vs Usha Dinesh Mehta AIR 1979 Bom 173.

121. Subramanyam Vs M.G. Saraswati AIR 1964 Mys 38.

C. Maintenance Under Hindu Adoptions And Maintenance Act, 1956
Compared with the Provisions Under Hindu Marriage Act, 1955.

A substantive right of maintenance is conferred by Section 18 of the Hindu Adoptions And Maintenance Act, 1956. Under Section 4 of this Act it is laid down that any other law in force immediately before the commencement of this Act stands repealed to the extent of its inconsistency with this Act. However Section 18 of the Hindu Adoptions and Maintenance Act (hereinafter referred to as HAMA) does not repeal the provisions under Hindu Marriage Act (hereinafter referred to as HMA). Section 25 of HMA confers a special right upon an indigent spouse to claim maintenance from the affluent spouse. However under Section 18 of HAMA confers an absolute legal right.

Section 25 of HMA provides for payment of maintenance even after the dissolution of marriage and therefore is wider in scope than HAMA. So under HAMA an unchaste Hindu wife ^{may} forfeit her right of maintenance which is necessarily the case under S.18 of HAMA.

Under HMA it is not obligatory to grant maintenance but under HAMA it is obligatory to grant maintenance. A wife, whose suit for maintenance is pending under HAMA can claim maintenance pendente lite under HMA as both the claims are separate¹²². The claim under HMA is not controlled by HAMA and without filing a suit under HAMA a claim can be filed under HMA¹²³.

122. A. Simhachalam Vs A. Papanna AIR 1973 AP 31.

123. Leela Vs Manohar AIR 1973 AP 31, Seetaram Vs Phuli AIR 1972 Raj 313; Nathulal Vs Mana Devi AIR 1971 Raj 208.

In K. Kunhikanna Vs N. V. Malu¹²⁴ it was opined that Section 25 HMA is a mere statement of law that applies to the parties to a marriage and has been applied even before the passing of HMA. No support in this matter can be derived from Section 18 HAMA. Section 18 HAMA 1956 deals with the right of a Hindu wife to separate maintenance and residence which she forfeits on becoming unchaste or on being converted to another religion. The object of HAMA and HMA are quite different. It was observed

"We can conceive of a case where an order for judicial separation was a result of a single act of infidelity on the part of the wife thereafter there was nothing against her conduct. It is possible for us to assume that section 25 of Hindu Marriage Act was not intended to benefit such a person? We do not think so. The object of Section 25 of Hindu Marriage Act is to provide for maintenance even after the dissolution was clear. In those circumstances Section 25 of the Hindu Marriage Act is wider in scope and ambit than Section 18 of Hindu Adoptions And Maintenance Act. Further it is not obligatory under Hindu Marriage Act to grant maintenance as is required under Section 23 of Hindu Adoptions and Maintenance Act. An unchaste wife will forfeit her separate residence and maintenance granted under that enactment but this does not mean that interpretation of Section 25 of Hindu Marriage Act is to be restricted for those cases where the wife is not guilty of adultery¹²⁵.

124. AIR 1978 Ker 273.

125. Ibid.

**D. MAINTENANCE under Section 125 of Code of Criminal Procedure-
A Summary Procedure.**

Under Section 125 of the code of Criminal Procedure 1973 corresponding to Section 488 of the Code of Criminal Procedure 1898, maintenance can be granted to an indigent wife who does not have sufficient means to maintain herself. It has been laid down in Savitri Vs Govind Singh¹²⁶ that this provision is intended to provide for a preventive remedy for securing payment of maintenance which can be granted quickly and in deserving cases with effect from the date of the application itself. The rate of maintenance that can be awarded is also limited even though under the law governing the parties a competent civil court was granted a larger sum in appropriate cases. No husband can claim absolution from his obligation under Section 125 towards a divorced wife except on proof of payment of a sum stipulated by customary or personal law whose quantum is more or less sufficient to do duty for maintenance allowance¹²⁷. The provision under 125 is a secular safeguard against the outrage of the jetsam women and floatsam children¹²⁸ and this is the moral edict of law and morality cannot be clubbed with religion¹²⁹. The remedy is irrespective of other remedies available under the personal laws or any other statute¹³⁰.

126. AIR 1986 SC 984.

127. Bai Tahira Vs Ali Hussain Fissali Chothia AIR 1979 SC 362

128. Fazlunbi Vs K. Khader Vali AIR 1980 SC 1730

129. Mohammed Ahmed Khan Vs Shah Bano Begum AIR 1985 SC 945

130. D. Chenchia Vs Mangamma 1969 Cr LJ 684.

In Ramesh Chandra Kaushal Vs Veena Kaushal¹³¹ the Supreme Court observed that Section 125 Cr P.C. 1978 is a measure of social justice and specially enacted to protect women and children. The brooding presence of constitution empathy for weaker sections like women and children must improve interpretation if it has to have social relevance. Section 125 of the Code has been enacted with the object of enabling discarded wives, helpless and deserted children and destitute parents to secure the much needed relief. It is a preventive measure serving a special purpose the idea being that the wife, child or parents should not be left so helpless as to be forced to commit some crime. Under this section summary action to prevent destitution and starvation can be taken. In fact it is an expression of the fundamental and natural duty of man to maintain his wife, children and parents¹³².

Proving of a valid marriage, whether past or present is an absolute necessity under this Section. Wife means a legally married wife. A wife who is of the status of a concubine or one whose marriage is null and void cannot claim maintenance¹³³.

The standard of proof of the marriage required under Section 125 is not very high and it need not be proved beyond reasonable doubts¹³⁴

131. AIR 1978 SC 1807.

132. Preeti Bewa Vs Laxmidhar 1985 Cr LJ 1124.

133. Yemunabel Anant Rao Achay Vs Anant Rai Achay AIR 1988 SC 644.

134. Muniendi Vs Jothi I (1987) DMC 88, Saudemini Devi Vs Bhagirathi Raj I (1982) LMC 333, Govinda Nandar Vs Retna Bai 1978 Cr LJ 1213.

This provision can be invoked if the affluent husband or father or putative father or an off spring neglects to maintain the wife, children or parents¹³⁵, such neglect may be expressed or implied and is to be inferred from the conduct of the person charged with such negligence. Cruelty may be a ground for the wife's refusal to stay with the husband and in such an event the husband has to maintain the wife and the refusal to do so would amount to neglect or refusal¹³⁶. The circumstances in which this refusal to maintain a neglect depends upon cannot be described in a straight jacket but the applicant must prove the neglect or refusal to maintain by the opposite party. It is only on such proof of neglect or refusal to maintain can maintenance under this section be granted¹³⁷. In Shukla Mukherjee Vs Ambarendu Mukherjee¹³⁸ the wife alleged that the husband had beaten her with shoes. This went unchallenged as the husband did not examine himself. It was however recorded in the G.D. Entry of the Police. The High Court held that the wife was entitled to get maintenance.

Maintenance under Section 125 is not granted if the wife lives separately on mutual consent. But if the wife is able to show that she is living apart on just grounds then maintenance may be granted. The former is before passing the order and the latter after passing the order¹³⁹.

135. Vijaya Manohar Vs Kashirao Rajaram I (1987) DMC 382.

136. Lochan Kesaven Vs Puni Kesaven (1973) 1 Cut WR 37.

137. Rajbahadur Vs Sona II (1984) DMC 41

138. 1986 Cr. L.J. 891.

An unchaste wife who is living in adultery is not entitled to maintenance. A wife who lives away from her husband without any sufficient reason is also not entitled to maintenance. Where the marriage itself is null and void the person can not claim maintenance.

In Chandrabhan Singh Vs Kasturi¹⁴⁰ the wife admitted before the court that she survived through mazdoori. The husband argued that the wife could maintain herself through independent income. Rejecting this argument the court held that one need not be reduced to begging before claiming maintenance.

The quantum of maintenance under this section cannot exceed rupees five hundred for each one of the claimants¹⁴¹. In the matter of fixing the quantum of maintenance the needs and the requirement of the claimants for a moderate living, the earning of the person for whom the maintenance is claimed, his capacity to earn and his commitments are all relevant factors. Separate income and means of the wife may be considered¹⁴².

Failure to comply with the order of maintenance without sufficient cause may lead to the issuance of warrant for recovery of the money due and may also sentence her for imprisonment for a month for each month of default¹⁴³.

140. II (1984) DMC 355.

141. Capt Ramesh Kaushal Vs Veena Kaushal AIR 1978 SC 1807.

142. Bhaqwan Dutta Vs Kamala Devi AIR 1975 SC 83.

143. K.R. Chowda Vs State of Bombay AIR 1958 Bom 99.

E. An Analysis of Maintenance Cases Between 1914-1990.

An attempt to analyse the maintenance cases, cases were collected from the All India Reporter only. Only this journal is used as it has a continuous publication since 1914. Though maintenance may be claimed under the Hindu Adoptions And Maintenance Act and also the Code of Criminal Procedure, for the purpose of analysis only the cases under Section 24 and 25 of Hindu Marriage Act have been taken. Prior to 1955, upto 1954 maintenance cases under Hindu law alone are noted. This is because the purview of this work is the Hindu Marriage Act alone.

1. 1914 to 1954

A total number of 51 cases have been there under Hindu law whereas 229 cases were there under the Code of Criminal Procedure 1898. All the cases are at the appellate stage. It was seen that:

Table - 1

Number of maintenance Cases between 1914-1954

Total number of Appellants Cases	Decisions					In favour of		
	Male	Female	Decreed	Declined	Others	Male	Female	None
51	22	29	32	17	2	18	30	3
	43%	57%	63%	33%	4%	35%	59%	6%

It may be seen that women are the greater number of appellants in maintenance cases. The trend of the decision making is inclined towards granting of maintenance which is naturally in favour of women. It must also be noted that during this period there have been more maintenance cases than divorce cases under the Hindu law. It appears from the data that all the female appellants have succeeded in their appeal.

Of the fifty one cases only in 5 cases the persons were with children and salary of the paying spouse was mentioned in a few cases, which varied from very rich, rich, Zamindar, govt employee etc. The amount of maintenance granted was mentioned in four cases. There was one case wherein Rs. 300/- per annum was awarded, in another Rs. 80/- per month was granted. Besides in one case Rs. 20/- per month and in the other Rs. 30/- per month was allowed.

There has been a rise in the maintenance cases right from 1914 onwards. The rise may not be recorded on every year but as the graph shows, the general tendency of the graph is on the rise. The rise can be noted in every decade. Between 1914 and 1924 there have been only seven cases of maintenance. The period 1924-34 has recorded 17 cases which is a rise of about 243%. Between the year 1934 and 1944 the number of cases were only 12, that is, there is a decline of about 70.58% from the previous decade and a rise of about 171.42% from the 1914-24 decade which is also the base decade. The 1944 to 1954 decade recorded 15 cases. Here, there is a rise of about 125% from the previous decade but a rise of about 214.28% from the base decade. Therefore it can definitely

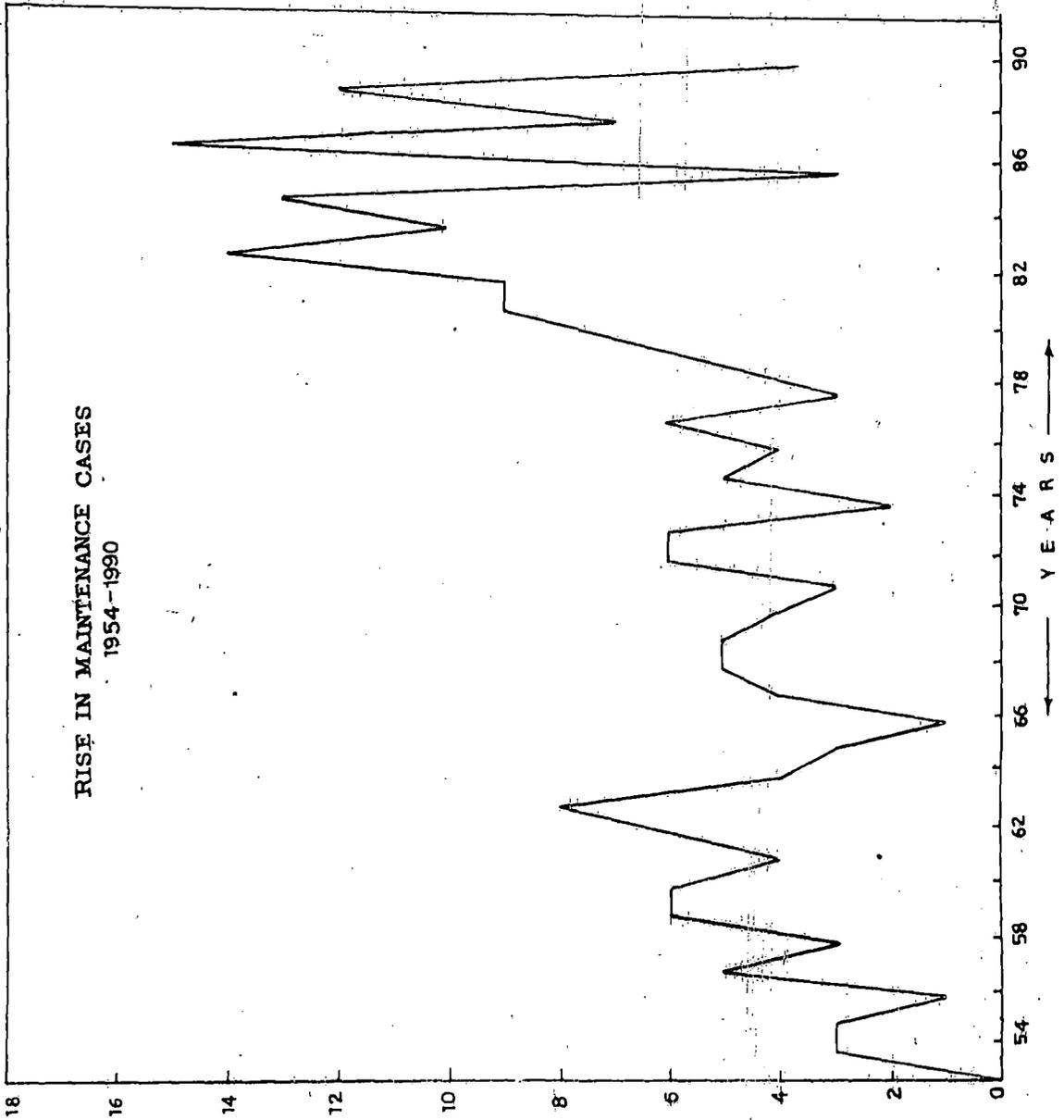
be stated that the maintenance cases are also on the rise.

2. The Period Between 1955 to 1990

The picture between the last two score years and the present three decade and six years are not very different. The rising trend that was noticed in the early fifties have not dropped. Between 1955 to 1990 a continuous rise in the number of cases can be seen. Both in the divorce cases and as well as in the maintenance cases it has been noticed that a significant rise began to be registered after 1976 and the upward climb reached its peak in the late eighties. The year 1987 has shown the maximum number of rise. It could be an end of the decade phenomenon. The data of every tenth year shows an affinity. It is really not clear why there was a sudden rise in the litigations in that year. However there is a definite rise in litigations after the amendment of 1976, which liberalised the marriage laws to a large extent.

Table 2 : Maintenance cases between 1955-1990

Sl.	Year	No.	Sl.	Year	No.									
1.	1955	3	9.	1963	8	17.	1971	3	25.	1979	5	33.	1987	16
2.	1956	1	10.	1964	4	18.	1972	6	26.	1980	7	34.	1988	7
3.	1957	5	11.	1965	3	19.	1973	6	27.	1981	9	35.	1989	12
4.	1958	3	12.	1966	1	20.	1974	2	28.	1982	9	36.	1990	4
5.	1959	6	13.	1967	4	21.	1975	5	29.	1983	14			
6.	1960	6	14.	1968	5	22.	1976	4	30.	1984	10	Total		
7.	1961	4	15.	1969	5	23.	1977	6	31.	1985	13	112 case		
8.	1962	6	16.	1970	4	24.	1978	3	32.	1986	3			



RISE IN MAINTENANCE CASES
1954-1990

GRAPH - VIII - 1

Regarding the appellants, decisions of the cases and the person whom it favoured it was seen that:

Table - 3
The trend of the maintenance cases

Total Cases	Appellants		Decision			In favour of		
	Male	Female	Decreed	Declined	Others	Male	Female	None
212	134	77	154	44	13	42	156	13
	63%	36%	73%	21%	6%	20%	74%	6%

Unlike the 1914-1954 period where there were more female appellants than male, the period between 1955-1990 shows that there were more male appellants during this period than women.

A person goes in appeal only when case fails in the lower court. In the period between 1914-1954 it is reflected that more claim of maintenance by the women failed at the lower court and because of this reason they had to approach the appellate court. Significantly in 32 cases maintenance was awarded to women whereas there were only 29 women appellants. Which means the appeal of at least three men out of the twenty two failed in appeal and the decision went in favour of women.

During the years 1955-1990, more men (63%) came in appeal to the appellate court than women (36%). Which shows the lower courts have decided in favour of women and declined the suit of men. In appeal, as against 36% women appellants, 74% decisions have gone in their favour, in other words all the 36% women have succeeded in appeal and in addition another 59% men out of the total men appellants of 63% lost their case because 74% cases are decreed in favour of women.

Of the 211 cases, in only 29 cases the existence of children was mentioned. The salary of the payer was mentioned in nine case only. The amount that was awarded to the payee was mentioned in 109 cases only. The amount granted varies.

Table -4

Amount of maintenance awarded

Total	Rs. 0- Rs. 100	Rs. 100- Rs. 200	Rs. 200- Rs. 300	Rs. 300- Rs. 400	Rs. 400- Rs. 500	Rs. 500+	Lumpsum
1955- 1990	34	21	21	4	7	12	9
	31%	19%	19%	4%	6%	11%	8%

The maximum number of cases (34=31%) is in the maintenance group of Rs. 100 or below. In the maintenance group of Rs. 100/- - Rs. 200/- and Rs. 200/- - Rs. 300/- there were 21=19% cases each. The maintenance group of Rs. 300/- - Rs. 400/- there were only 4=4% cases and in the group of Rs. 400/- - Rs. 500/- there were 7 (6%) cases. In the maintenance group of Rs. 500/- and above there were 12 (11%) cases. The incidents of awarding lumpsum amount were only in 9(8%) cases. The amount of payment of lumpsum also varies. In one case Rs. 77000/- (Rs. 35000/- maintenance allowance + Rs. 4200/- interest thereof) was awarded. This is perhaps one of the highest payments. Other lumpsum payments include Rs. 4500/-, Rs. 3000/-, Rs. 9000/- etc. It is only in the 1980 that the system of granting lumpsum amount at a time as alimony is gaining credence. It is

of course a better trend as it helps in planning the future and also avoids messy litigations when the paying spouse defaults payments.

3. The Period between 1984-1990

This is a period which gives a current picture. It is also important because the data at the sub divisional level is collected for this period only. In view of this it is important that this period be analysed specifically.

Table - 5

Trend between 1984-1990

Total Cases (1984-1990)	Appellants		Decisions			In favour of		
	Male	Female	Decreed	Declined	Others	Male	Female	None
64	43	21	48	12	4	12	48	4
	66%	32%	74%	18%	6%	18%	74%	6%

There have been 64 cases during this period. There have been 43 (66%) male appellants and 21 (32%) female appellants. This confirms the trend of 1955-1990 period where there are more male appellants than female appellants. In majority (74%) of the cases maintenance was decreed. In 18% cases maintenance was denied. 75% of the decision went in favour of women and 18% in favour of men.

Notably, there were 48 (74%) decisions in favour of women appellants and in 48 (74%) cases maintenance was decreed. In other words all the women appellants succeeded in appeal. Similarly, there were 19% in favour of men appellants, 19% cases maintenance was declined. That is all the men did not fail in their appeal. Of the 43 men appellants only 12 men succeeded.

Thus there is an unmistakable trend in favour of women, especially since this group is socio-economically most insecure. Her vulnerable position finds a judicial recognition as is reflected in the trend of the decision making.

Of these 64 cases, in 38 cases, the amount granted to the payee spouse is available.

Table - 6

Amount of maintenance granted (1984-1990)

Total	Rs. 0-	Rs. 100-	Rs. 200-	Rs. 300-	Rs. 400-	Rs. 500+	Lumpsum
	Rs. 100	Rs. 200	Rs. 300	Rs. 400	Rs. 500		
38	4	12	7	2	2	10	1
	11%	32%	18%	5%	5%	26%	3%

The largest number of cases are within the category of Rs. 100/- to Rs. 200/- maintenance followed by 10 cases (26%) in the Rs. 500 + maintenance category. In the maintenance group of Rs. 200/- to Rs. 300/- there are 7 (18%) cases. There were 2 (5%) each in the category of Rs. 300/- to Rs. 400/- and Rs. 400/- to Rs. 500/-.

Awarding of such meagre sum also reflects the incapacity of the paying spouse to pay. It is a very deplorable situation when the women have to survive on an allowance that can hardly keep their body and soul together.

One often hears vociferous contempt regarding women who have been receiving maintenance payments and have also indulged in the trade of cladenstine prostitution. The paying spouse comments that he cannot prove it and obviously the court cannot take a suo moto cognisance of the situation. But the obvious question is whether the amount of maintenance tabulated above, is in fact, sufficient for the women to live a life of a decent human being.

Though the object of all the provisions of maintenance under any law is to help the indigent spouse to survive and support oneself the obvious question that should be asked is whether the object is being fulfilled in letter and spirit of the law.

F. A Survey Of The Maintenance Cases ; In The Court Of
Sub-Divisional Judicial Magistrate At Siliguri
Sub divisional Town.

The foregoing analysis is based on the cases under Hindu law between 1914 to 1954 and cases under Hindu Marriage Act between 1955 to 1959. The analysis does not include any cases under any other law. However it was found that during the period 1914 to 1954 more cases were recorded under the Criminal Procedure Code 1898. During the decade ending 1965, there were 47 cases under Hindu Marriage Act and 82 cases under the code of Criminal Procedure.

During the decade ending 1975 there were 40 cases under Hindu law (Hindu Marriage Act) and 62 cases under the code of Criminal Procedure. Therefore it will be seen that at one time cases under Criminal Jurisdiction out numbered the cases under Matrimonial jurisdiction. However with the publication of case law reporter and law journals in each specialised branch of law the reporting of maintenance cases under criminal jurisdiction have gradually declined.

People prefer to obtain maintenance under the Hindu Marriage Act as the provisions of maintenance under the Act is wider in scope than that under the Hindu Adoptions and maintenance Act and also the provision under the Code of Criminal Procedure.

The Court of the Sub divisional Magistrate is a court of original jurisdiction for maintenance suits under the code of Criminal Procedure. In view of the importance of the cases under Criminal jurisdiction which is of summary nature this analysis is undertaken.

At this level the picture is rather shabby.

Table - 7

Maintenance Cases at Sub Divisional level

Sl.	Year	Total cases	Male	Female	Not Traced	Non Hindu	Others
1.	1984	7	0	6	-	1	-
2.	1985	18	0	12	3	2	-
3.	1986	23	0	17	2	2	2
4.	1987	39	0	32	6	1	-
5.	1988	30	0	21	8	-	2
6.	1989	30	0	27	3	-	-
7.	1990	13	0	9	1	3	-
7 Yr		160	0	124	23	9	4
				78%	14%	6%	3%

There were a total 160 cases in the record of the court. Twenty three cases could not be traced. Which also included those which have gone in appeal. Nine (6%) cases were of non Hindu parties. They could not be included here as the ambit of this work is only the Hindus. Four (3%) cases were in different stages and not for the purpose of this work. Thus, there were only 124 cases with which to proceed. All the petitioners in the suits were women. That is there were 124 women petitioners and no male petitioners.

Regarding the trends in the decision making it was seen that of 124 cases, 39 cases (31%) cases were decreed for maintenance and all were in favour of women. In a single case (1%) the decision went against the woman and maintenance was declined. About 45 cases (36%) which is more than the cases decreed, were dropped for various reasons viz. (1) default (2) non prosecution (3) compromise etc. Such dropping of proceedings is a phenomenon which is observed in the lower courts of this region. 4 cases (3%) were rejected for defective petitions and 39 (31%) cases were still pending.

The amount of maintenance granted in all the 39 cases are available.

In 20 (51%) cases Rs. 200/- to Rs. 300/- were awarded as maintenance followed by 10 (26%) cases where Rs. 100/- to Rs. 200/- was awarded as maintenance. This is in keeping with the trend found under the Hindu Marriage Act and unfortunately awarding such meagre amount hardly solves the plight of the woman.

Table - 8 : Trend in decision making at the sub-divisional level

Sl.	Year	Total	Decreed	Declined	Dropped for default	Dropped for non-prosecu- tion	Dropped on compromise	Rejected petition	Pending
1.	1984	6	2	0	1	1	1	1	0
2.	1985	12	6	0	0	1	2	2	1
3.	1986	17	5	0	7	2	2	1	0
4.	1987	32	16	0	8	3	1	0	4
5.	1988	21	8	1	4	1	0	0	7
6.	1989	27	2	0	4	0	3	0	18
7.	1990	9	0	0	0	0	0	0	9
		124	39	1	24	8	9	4	39
			31%	1%	19%	6%	7%	3%	31%

Table - 9 : Maintenance amount at the sub-divisional level

Sl.	Year	Total	Rs. 0- Rs. 100	Rs. 100- Rs. 200	Rs. 200- Rs. 300	Rs. 300- Rs. 400	Rs. 400- Rs. 500	Rs. 500 +	Lumpsum
1.	1984	2	2	0	0	0	0	0	0
2.	1985	6	1	2	3	0	0	0	0
3.	1986	5	0	2	1	2	0	0	0
4.	1987	16	0	5	9	0	2	0	0
5.	1988	8	0	1	5	0	2	0	0
6.	1989	2	0	0	2	0	0	0	0
7.	1990	0	0	0	0	0	0	0	0
		39	3	10	20	2	4	0	0
			8%	26%	51%	5%	10%		

PART II - CUSTODY AND SINGLE PARENTING OF CHILDREN.

Perhpas the real bitterness between the spouses begins after divorce as the questions of the survival of the indigent spouse through alimony or maintenance, custody of children and settlement of property etc begin to arise.

The problem of custody involves an innocent third dimension- the children, who are bewildered, hurt and agonise over the fight between their parents and through them the respective families, the parents may be having.

Law is acutely aware of the problem and laws regarding custody have been laid down. The norms laid down regarding custody may be perfect so far as the legal point of view is concerned but single parenting is beyond the purview of law, it is an individual problem and both custody and single parenting are an emotional problem for the child.

A. CUSTODY OF CHILDREN¹⁴⁶

The question of custody arises when (1) one of the parents are dead and (2) when the marital relationship is disrupted. The provision regarding custody of children under the Hindu marriage

146. Section 26. Hindu Marriage Act, 1955.

In any proceeding under this Act, the court may, from time to time pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible, and may, after the decree, upon application by petition for the purpose, make from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending, and the court may, also from time to time revoke, suspend or vary any such orders and provisions previously made.

Act is clearly restricted to the latter situation¹⁴⁷ and it vests a wide discretion with the court regarding custody, education and maintenance of minor children. Needless to emphasise that the ambit of the provision covers minor children only.

In making an order regarding the custody of a child, the welfare of the children are a paramount consideration¹⁴⁸. The fathers fitness cannot override the consideration of the welfare of the child. The court cannot pass a mechanical order. In Tarun Ranjan Majumdar Vs Siddhartha Datta¹⁴⁹ the Calcutta High Court observed that:

"..... the legal guardian cannot claim an order of return or recovery merely on the strength of his legal rights and by parading his financial or other capacity to provide a welfare custody, unless the court forms a definite opinion that even though its welfare is reasonably looked after. Such order of return would be for its better or further welfare".

147. Ibid. The opening words of the Section are "In any proceeding under this Act"

148. Vivek Vs Renukh I (1986) DMC 287, Rajendra Kumar Vs Usha II (1985) DMC 423, Anusua Devi Vs T.B. Rakshe II (1985) DMC 60; Debi Prasad Vs Sandhya Devi AIR 1985 Gau 95, Veena Kapoor Vs N.K. Kapoor AIR 1982 SC 792; Nirmala Jain Vs State (Delhi) AIR 1983 Del 120; Rosy Jacob Chakaramakkal Vs Jacob A Chakaramakkal AIR 1973 SC 2090.

149. I(1991) DMC 14.

Elaborating further it was observed that if a person has the custody of the minor without a legal right to such custody, the same should not be changed or altered without compelling reasons. Quoting Lord Mac Dermott in the House of Lord in J Vs C, (1969) I All, E, R 788 at 824 the court remarked "even though some of the authorities convey the impression that the upset caused to a child by change of custody is transient and a matter of small importance, a growing experience has shown it is not always so and that serious harm even to young children may, on occasion be caused by such a change.

A child of tender age not only needs the basic requirements of food and shelter, but for proper growth he requires love affection and tender care to satisfy his emotional needs because in those delicate years of childhood his emotional and psychological approach towards life has to be matured¹⁵⁰. Conjugal tribulations shatter the complicated growing up process of the child. Though the courts have been vested with a wide discretion and broad powers where custody of children are concerned yet proper justice in these matters is not always done. The parties come to the courts for modification, variation of the order of the court regarding the custody of children¹⁵¹.

150. Ayesha Bhatia Vs Vijay R. Bhatia, AIR 1988 Del 149

151. Ibid and also Supra note 148. See also Paras Diwan, Family Law : Law of Marriage And Divorce In India p. 286 Sterling Publishers Private Ltd (1983).

Custody in a wider sense means the right of guardianship and in narrow sense includes only the right of care and control of the person of the infant. In the former it includes the power to control education, choice of religion, maintenance, administration of the property of the minor child and consent to the marriage. If one goes a step further it also includes power to apply to the court to exercise its powers as parents patriæ. In the narrow sense it is the power of physical control and the power of control and care.

Thus the court has limited options before it:

1. To vest the right of guardianship and care and control in one parent.
2. To make split orders by giving guardianship to one parent and care and control to the other
3. Give guardianship to both the parent and care and control to one parent .
4. Give care and control to a third party and guardianship to one parent.

In the first instance the child suffers the pain of separation from the other parent but there is no disharmony in its upbringing. The second case is very dangerous because the parents may always tend to disagree with each other on everything due to their estrangement. This has a very grave effect on the child which may in frustration seek solace elsewhere like in perversion, drugs, delinquency etc. The third option is possible only when the parents are likely to cooperate with each other regarding the interest of the child and its welfare. However,

this will be disastrous for the child if his/her parents have only agreed to disagree with each other. In such cases the child will be the victim of tugging by zealously jealous parents who fight with the bellicosity of relentless combatants¹⁵². The last situation is when one of the parent have no interest in the child and the other is incapable of providing with the care and control. Here the child is likely to develop a complex of being an unwanted child and in loneliness develops habits like kleptomania, nymphomania etc.

Generally, the word custody indicates only care and control, and not guardianship. The guardianship remains with the father as he is the natural guardian of the child. The Allahabad High Court¹⁵³, has observed that there is an appreciable difference between custody and guardianship is the more comprehensive and plausible right than the right of custody. If the father is deprived of the guardianship of the children he ceases to have any right to move the court regarding his child. Under the section 6 of the Hindu Minority And Guardianship Act, 1956, it is clearly stipulated that the natural guardian of a Hindu minor, in respect of the minors person as well as in respect of the minors property (emphasis added) is the father and after him the mother. Therefore the courts can under no circumstances deprive the father of his guardianship of the child. However the courts may vest similar

152. Supra note 149.

153. Mhd Khaled Vs Zeenat Parveen AIR 1988 All 252

rights with the mother simultaneously with the father as well. In other words while the court has no power to take away the right from one parent namely the father, it has the power to add to the rights of the other parent namely the mother¹⁵⁴.

When the father continues to have the guardianship and only the custody of the person of the minor is given to the mother, the father can always move the courts in order to recover the custody of the person of the minor. But here the mandatory stipulation is that he must prove that the circumstances justify such a return. Such custody cannot be claimed by the father as a matter of legal right.

When the custody of the child is given to the mother, normally she gets the rights of care and control over the person of the minor child. However the courts have begun a new line of thought. In Mukesh Vs Deonarayan¹⁵⁵, the mother of a minor boy, whose personal custody rested with the mother and his father was alive so naturally guardianship vested with the father, entered into a contract for purchase of land, on behalf of the minor. The vendor refused to execute the sale deed on the ground that as the father of the minor was alive the mother was not the guardian of the minor and therefore she could not enter into any such transaction on behalf of the minor. The mother sued the vendor for specific

154. Mukesh Vs Deonarayan AIR 1987 M. P. 85

155. Ibid.

performance of the contract. On the facts of the case it was proved that the father did not maintain a cordial relationship with the child. The court held that under section 4(b) of the Hindu Minority of and Guardianship Act, 1956, a guardian is defined as:

A person having the care of the person of a minor or of his property or of both his person and property, and includes

- i) a natural guardian,
- ii) a guardian appointed by the will of the minors father and mother,
- iii) a guardian appointed or declared by the court,
- iv) a person empowered to act as such by or under any enactment relating to any court of wards,
- v) natural guardianship means any of the guardians mentioned in Section 6.

Therefore, the definition of guardianship is an inclusive one and there is no reason why a person who is a defacto guardian of the minor should not be included within the meaning of guardianship under Section 4(b) of the Hindu Minority And Guardianship Act. This means, the mother who has the custody and thereby the power of care and control of the minor is a de facto guardian of the minor and she can be vested with the guardianship of the minor.

As a result of this decision, when the mother gains the custody of the person of the minor she will also gain its guardianship unless otherwise provided by the court. If the court wants to keep the real welfare of the child as the paramount consideration, then as a first step towards achieving the same Section 6 of the Hindu Minority and Guardianship Act must be amended. In the

upbringing of a child both the parents should have an equal say during coverture. Any step taken in furtherance of the minors interest must be mutual. It is wrong therefore, to make the father the natural guardian of the minor on the primary basis only to be succeeded by the mother in his absence. However in custodial matters the parent who has the custody of the person of the minor must also enjoy its guardianship. In this manner split orders can be avoided and the welfare of the minor better ensured. Such a situation will help in smooth upbringing of the child. To this extent Mukesh Vs Deonarayan¹⁵⁶ is a right step in the right direction.

Under certain circumstances the court is known to have put the child in a boarding school or with a third person and directed either or both the parents to bear the cost depending on their respective economic conditions¹⁵⁷.

Decisions regarding custody are taken after consulting the child and ascertaining his wishes while keeping in view the welfare of the child as the paramount consideration. The courts hesitate to decide against the wishes of the child more so if the child is old enough to make a choice or shows a maturity beyond

156. Ibid.

157. Rosy Jacob Vs Jacob A. Chakaramakkal. AIR 1973 SC 2090.
The second child Maya (Mary) was to be kept in a boarding and her expenses were to be equally shared by the parents.

his years. However in most of the cases, at the time of making his wishes known, the child may not be able to make the right choice as he is under a tremendous emotional strain. The child, consciously or subconsciously realises that this terrible choice he is asked to make is something he should not be doing but for the fight of the elders and if he makes his choice, he loses a beloved parent. Under such a heavy burden it is likely that the child has made a wrong choice. Perhaps not from his emotional point of view but from the point of view of his welfare.

On the presentation of a petition laying down the situation the court can rectify the error by a modification, variation, rescission or restoration of the old order. However there is always the possibility in such cases that the child may have been totally turned against the parent seeking his care and control by way of amendment of an order. That being so a new struggle of adjustments is bound to commence for the child which may be an emotionally wrecking experience.

Maximum weightage is given to the question of welfare of the child in custodial matters¹⁵⁸. In Chandraprabha Vs Premnath Kapoor¹⁵⁹ the court observed that the "ultimate responsibility,

158. Section 13 of the Hindu Minority and Guardianship Act, 1956 lays down that the welfare of minor "shall be the paramount consideration" and by virtue of Section 13(2) this consideration can be made to override the provisions of that Act.

159. AIR 1969 Del 283.

it may never be forgotten is the courts to judicially consider which way the welfare of the minor lies, for such welfare is the primary and dominant consideration in determining the question of the minors custody".

Where one of the parents clandestinely removes the child from the other parent who has the actual custody, the child is further victimised. In Elizabeth Denshaw Vs Arvand M Denshaw¹⁶⁰, the child was in the custody of the mother in U.S.A. The family lived in U.S.A. The father picked up the child after school and left for India secretly. Deciding upon this case, the Supreme Court called upon the courts in all countries to be aware of the fact that substitution of self help for due process of law in the field of custody of children will harm the interest of the wards generally.

In an attempt to iron out the creases in the law relating to custody matters the concept of constructive custody was given shape. In a case of custody of a minor, when the custody of the minors person is given to one parent that person is in actual custody of the minor and the other person is in constructive custody of the child. In R Geetha Vs A.T. Rajan¹⁶¹ it was pointed out that this expression is a court envolved one formulated with a view to effectively implement the matters relating to custody of the child.

160. AIR 1987 SC 3

161. I (1991) DMC 140.

In line with this line of thought the Delhi High Court¹⁶² introduced the "Continuity of care" concept in custody decisions. In this case the mother was employed in Central Water Commission. The father's application for the custody of a child of three was granted but set aside on appeal. The father had made an allegation of adultery against the mother but could not establish it. The father also argued that since the wife was working she had to leave the child behind while he had unmarried sisters and parents and they could look after the child. The court held that the child goes to school now and spends the time after school with the mother, who by then was free from work. This routine was followed by the child ever since it was living with the mother. This continuity of care, it was held, should not be disturbed keeping in view the welfare of the child. The belief is also reflected in the case of Tarun Ranjan Majumdar Vs Sidhartha Dutta¹⁶³. The court felt that the continuity of care should not be destroyed. In this case the child lived with the maternal grand parents from birth itself and the father was in the constructive custody of the child and had applied to the court for its actual custody. The court observed;

162. Madhubala Vs Arun Khanna AIR 1987 Del 81

163. Supra note 149.

"Therefore, even though in this case the appellants have in fact the custody of the child, they having no legal right to such custody, their retaining or detaining the child against the will of its legal guardian, the father respondent would amount to removal We should order a consequential change in the existing custody only if we are satisfied that the welfare of the child, which is the primary and paramount considerations in all such matters warrant such a course".

Continuity of care theory in fact is directed towards the psychological wellbeing of the child as is seen in the *Madhubala*¹⁶⁴ and *Tarun Ranjans*¹⁶⁵. In *Mhd Khalid Vs Zeenath parveen*¹⁶⁶ the court held that if the minor remains with the appellant it will always suffer from an inferior complex of being the step child particularly after all the controversies that have been generated from its very infancy, which have engulfed its parents in a severe litigation.

The order of custody under the Hindu Marriage Act can be passed during the pendency of proceedings or on the termination of proceedings or at any time thereafter. The principal proceeding must have resulted in the grant of a decree of divorce, judicial separation etc.

164. Supra 162.

165. Supra 149.

166. Supra 154.

This provision is invoked only in cases of matrimonial dispute between the parents of the child and as a principal suit, proceedings regarding such dispute is registered before a court having the jurisdiction to consider the matter. The section does not relate to matters of guardianship of the property etc of the person. It only speaks of the custody of the person of the minor.

It is not only the custody of the minor children of the parties to the marriage, with regard to which the court may pass orders. Their maintenance and education are also matters in respect of which the court may pass such orders. As per the mandate of the section such orders may be passed wherever possible after taking the wishes of the child into consideration.

In order to protect the interest of the children a very wide power has been vested with the courts. Such powers may be used during the proceedings, after the termination of the proceedings or at any time after passing any one of the four kind of decrees under the Act, namely

1. Annulment of Marriage,
2. Restitution of Conjugal rights
3. Judicial Separation
4. Divorce.

The minor child in respect of whom the order can be passed is either the legitimate child of the parties or their legitimised child in the case where the marriage is void or in respect of an illegitimate child born after the marriage.

While making orders for custody of children the court may take into account the following factors:

1. Welfare of the child,
2. Wishes of the parents,
3. Wishes of the child,
4. Age and sex of the child,
5. Compatibility of the parents.

Although there are no express stipulations regarding the above except those regarding welfare of the child¹⁶⁷ and wishes of the child¹⁶⁸ the courts do so in order to keep in pace with modern developments in a changing society.

While trying to fathom the judicial mind one often gets to read statements like (1) the custody of the children of tender years must vest with the mother (2) when the boys are older their custody should be with the father and (3) mothers are the fit persons to be in custody of older girls. But these are not the rule for awarding custody. No such rule can really be framed. The only rule in this regard is laid down under Section 6(a) of the Hindu Minority And Guardianship Act, which stipulates that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother.

167. Section 13, Hindu Minority And Guardianship Act, 1956.

168. Section 27, Hindu Marriage Act, 1955.

The Indian Courts have consistently upheld in rule. In Saraswati Bai Vs Shreepad¹⁶⁹ the court observed:

".... If the mother is a suitable person to take charge of the child, it is quite impossible to find an adequate substitute for her for the custody of the child".

And in In re Kamal Ruda¹⁷⁰ the court opined that:

"I have no doubt in my mind that the mother's lap is God's own cradle for a child of this age, and that as between father and mother, other things being equal, a child of such a tender age should remain with the mother".

Even regarding older children the courts nurture very definite opinion. The consensus is that male children above the age of 16 years and female children above the age of 14 years should not be ordinarily compelled to live in the, custody to which they object. The qualifier of this view being that the choice made by the child should not be inconsistent with its welfare¹⁷¹ and their choice should not be a tutored choice¹⁷².

However as far as possible the court tries to ensure that the non-custodian parent has an access to the child so that the child may grow up in association with both the parents and the non custodian parent shall not lose the affection and society of the child.

169. AIR 1941 Bom 108.

170. ILR (1949) 2 Cal 347

171. Iyer Vs Iyer AIR 1948 Mad 294.

172. Venkatarama Vs Tulsai AIR 1950 Mad 294.

B. Single Parenting

According to Engles¹⁷³, the primitive society, irrespective of the geographical boundaries, can be divided in three epochs, namely (a) savage (b) barbaric (c) civilised. During the first two epochs marriage was not known to mankind. In the resultant free sexual relationship, mother alone had the duty of child rearing. But at the advent of the civilised epochs when man became conscious of concepts like ownership, possession and property the idea of marriage formulated itself because man wanted to ensure that what he nurtured and maintained belonged to him and him alone.

Marriage therefore brought about the concept of mutual dependence, rights and duties. They in turn have given rise to questions of custody, dependency etc. But the duty of bringing up the children rested solely with the woman as the man was busy providing for them, fighting for them, but the spouses came to depend on each other emotionally, draw mental strength from each other. So a divorce leads to the spouses losing this emotional bond between them which was also the perennial source of their mental strength and ability of face life.

Single parenting therefore carries a mental burden which may be more than the physical problems of having to look after the child alone. Though the law provides for the maintenance for the

173. F. Engles, The Origin of the Family, Private Property And the State, pp. 51-52, Progress Publishers, Moscow (1948).

child often it is not sufficient. Queries about marital status is often found to put separated or divorced women on the defensive and when the children fall ill they are psychologically marooned.

The divorced or separated women have to reorient themselves the most. It is they who leave the marital family, she must accept and adopt a single existence. She misses her husband for his mere presence, the feeling that "he is there". More so if the child and the father were attached.

Such mothers tend to be over protective in an effort to provide the child with security that is missing due to the absence of the father. In the process she passes on her complexes to the child. She is in deeper difficulty when the child comes up with questions like where is my father? Why doesn't he live with us? Why does he live with some one else?¹⁷⁴

Similarly a single father, even though adept at house keeping and child caring chores finds himself at a loss with the child whose custody he has gained. However since he has not had to leave the family, other family members or if he is well off trained ayahs, nurses and nannys can take care of the physical upbringing of the child but the emotional hunger, the craving for mothers tenderness cannot be supplied with the father. As a result he is either a remote father figure or a doting father spoiling the child. A busy father can rarely spare enough time for the child. So the child, whose single parent is the father,

174. S. Lalitha, "Single Parenting, Life without Father", Indian Express, Weekend July 28th 1990.

is emotionally starved generally.

In modern house holds there is a kind of division of labour. Husband and wives are generally obligated by law to support each other mutually, but in different ways, husbands are responsible for the financial support of the family and wives are responsible for domestic services, where both the spouses have to work or the husband is incapable of bread winning, this tradition is broken, but in many households especially in middle class families that this tradition is preserved¹⁷⁵. In Sheela Vs Jeevanlal¹⁷⁶ the supreme court while granting the custody of the three children to the mother observed that in our society it is usually the male member that earns bread for the family but it is the mother who devotes all her life for the children looking after their interest.

The mother being in the active care and control and father the provider constitute together an adult role model for the child.

Mothers rule with a rod in her gentle hands, she is meant for cuddling, confiding. It is her hand that rules and also rocks the cradle. Fathers are reserved for the daily wrestling bouts, holiday trips to the zoo and ice cream treats and cricket matches.

175. Virginia Tuft and Barbara Myerhoff, Changing Images of the family, p. 324-326, Yale University Press (1979)

176. AIR 1988 AP 275 See also, Stephen J Morse, "Family Law In Transition : From Traditional Families to Individual Liberty", p. 319 in Changing Images of the Family, edited by Virginia Tuft & Barbara Myerhoff. Yale University Press (1979).

Father provides the strongest retort to the child "My father is stronger than yours". Father is also the man one does not disobey easily.

So, when the family is broken, and the mother is the custodian of the child, the missing parent cannot be an adequate role model for the child or act as an added source of authority in enforcing conformity with the social rules and discipline. It has been called a matricentric family and it has serious consequences on the upbringing of the child¹⁷⁷. The same is true of the father who is a custodian parent. In addition to providing a role model for the child to follow he must also provide the tender care and control of the mother. The female relatives of the father attempt to act as surrogate mother in an attempt to reduce the emotional strain of the child. Things become more difficult if the father has the custody of the daughter and the mother has the custody of the son. Neither can be the role model to them - not the mother to the son, nor the father to the daughter. As a result the child has a difficult growing up process.

The feeling of guilt remains, though the social stigma that a woman had to face is not so extreme now. Guilt that the child is being harmed by lack of the proper family environment

177. William J. Goode, The Family Page 91-117, Prentice Hall of India Pvt. Ltd (1975).

remains. Most psychologists and feminists have agreed that the proper place for the man is the periphery, that nature did not care a hoot whether the father hung around or not after birth¹⁷⁸.

Women feel that courage is a byproduct of her desperation to get the custody of the child, save herself and rediscover herself through her child. However talismanic the father may be in terms of the purely physical or "natural" needs of the child no commemoration is required for single parenting. Reconciliation is most desirable. Single parenting is an alien concept in the civilised world where marriage is an recognised institution. It is more so in India as right from the age of Manu women have been a oppressed, depressed and dependable lot. It is not to say that in those ancient times women did not bring up children single handedly. Even then single parenting is an unnatural and uncomfortable phenomenon. When such unnatural and uncomfortable situation can not be avoided the law does its best to protect the child and the vulnerable parent.

However, it is very important to understand that there is nothing to feel guilty about single parenting and both the child and the parent must be taught to take it in their stride and made to realise that they are not the only people in the world to face the problem.

178. Supra note 174. This also appears to confirm Engles vies. See note 173.

Part III - Disposal of Property¹⁷⁹

Property is a very vital question in marriage as well as in divorce. But in the ancient Dharmasastras provisions for property to women was not made so the question of settlement of property on divorce or otherwise did not arise. Narada, Parasara, Yajnavalkya and Kautilya all have ordained a second husband to a woman under very special circumstances even then they do not mention anything regarding settlement of property in such an event.

I. Disposal of Property Under Dharmashastras:

In Manu, there is mention of stree dhana over which she has a complete and absolute title. The following property, according to Manu is stree dhana.

1. What was given before the nuptial fire
2. What was given on the bridal procession,
3. What was given in token of love,
4. What was received from her mother,
5. What was received from her father,
6. What was received from the brother .

179. Section 27, Hindu Marriage Act, 1955, states, In any proceeding under this Act, the court may make such provisions in the decree as it deems just and proper with respect to any property presented, at or about the time of marriage, which may belong jointly to both the husband and the wife.

These are the six fold property of the woman that is wife over which she has an absolute title. But since Manu does not speak of separation or divorce there is nothing mentioned regarding how the property settlement is to be made on such an event¹⁸⁰.

Maintenance and ornaments constitute woman's property according to Kautilya¹⁸¹. In all forms of marriage, making gifts to the bride and thereby giving pleasure to her is not forbidden¹⁸². Maintenance is an endowment of a maximum of two thousand panas, as ornaments there is no limit. While speaking of maintenance, Kautilya says the woman's property, and whatever she received from her husband shall be given back to her as in the cases of maintenance¹⁸³. He says by returning her streedhana and after compensating her for marrying another wife and superseding her, a man may take another wife for wives are necessary for sons¹⁸⁴. Thus Kautilya discusses a situation where a property settlement is necessary between the husband and wife when they separate and clearly states where the husband seeks divorce because of the wife's offence, he shall give to her whatever he may have taken¹⁸⁵,

180. Manu IX 194. See G. Buhler, Sacred Books of the East, Vol XXV, The Laws of Manu, Motilal Banarasidas (1964).

181. Kau. 3.2.14. See R.P. Kangle, Kautilya Arthashastra, Vol I & II, University of Bombay (1972).

182. Id. Kau 3.2.13.

183. Id. Kau 3.3.5.

184. Id. Kau 3.2.38-42

185. Id. Kau 3.3.17

but if the woman seeks divorce from the husband due to the offence of the husband she shall not receive anything¹⁸⁶.

2. Disposal of Property Under Present Hindu Law

The property built up jointly and severally by the spouses during coverture often becomes the subject matter of dispute when the marriage breaks. The court has the requisite power to make just and proper order regarding any property -

1. presented at or about the time of marriage,
2. which belongs to the spouses jointly.

The court is however not prevented by this section from passing any order with regard to any property belonging exclusively to the wife or to the husband¹⁸⁷. Such settlement can be made at any proceeding under this Act. However on the question regarding separate property of the spouses, Delhi High Court¹⁸⁸ has expressed a contrary view holding that order regarding separate property of the spouses could not be passed under Section 27 of the Act. The Jammu and Kashmir High Court¹⁸⁹ has held that

186. Id. Kau 3.3.18

187. Kamta Prasad Vs Om Wati, AIR 1972 All 153.

188. Shukla Vs Brij Bhusan AIR 1982 Del 223; Mrigalochani Vs Kulbhushan Kumar II (1985) DMC 244.

189. Sardar Surinder Singh Vs Manjeet Kaur 1982 Cr. LJ 514.

such an order can be passed only under the inherent Power of the Court Under Section 151 of the Civil Procedure Code. The Punjab High Court¹⁹⁰ has upheld the logic underlying *Kanta Prasad*¹⁹¹ and has held that what is contemplated under Section 27 is consequential or auxillary in nature. The latent principle of Section 27 can be enumerated as follows.

1. The suit must be a matrimonial suit before the court.
2. The application regarding disposal of property must be made before the decision of the primary suit.
3. The discretion before the court is limited to the extent or a just and proper order which should be made keeping in view (a) the equities between the parties (b) material surrounding circumstances (c) any other factor the court deems essential.
4. The order should limit itself to those properties which were received (i) just prior to the marriage (ii) at the time of the marriage (iii) just after the marriage.
5. Such property must belong (a) to the wife (b) to the husband (c) to both husband and the wife jointly.
6. Making of such decision is the discretion of the court.
7. The words "may belong jointly" is a wide term which does not speak of ownership or title but merely speaks of possession. The word may can also be interpreted as that which may not.
8. This provision only concerns itself only with the property presented to the spouses and not to the property earned by the spouses.

190. Surinder Kaur Vs Madan Gopal Singh AIR 1980 Punj 334.

191. *Supra* note 186.

Thus any property which may be jointly and severally earned by the spouses during coverture and built up and accrued as family assets is not covered by Section 27.

Family assets can be divided into two parts, broadly:

- 1) Those capital in nature, namely house, furniture, land and other properties;
- 2) Those revenue in nature namely (a) earning capacity of the husband (b) earning capacity of the wife (c) saving capacity of the husband and (d) saving capacity of the wife.

Section 27 is silent on this issue.

The Supreme Court¹⁹² has held that the streedhan property continues to be the property of the wife and on the husband's refusal to return the same the wife can sue him for criminal breach of trust under Section 406 of the Indian Penal Code. The husband or his relatives are mere custodians or trustees of the said property¹⁹³.

There is always a decline in the living standard of the custodian spouse mainly the non earning mother and the children after divorce while the standard of living of the non custodian spouse especially the earning father rises. Recognition of the concept of family assets or community property may be of some help¹⁹⁴.

192. Prathibha Rani Vs Suraj Kumar AIR 1985 SC 628

193. Mathai Kunjamma Vs Kochukiran II (1984) DMC 32.

194. Gillian Douglas, "Justice or Welfare In Financial Proceedings In Divorce" 1987 MLR 516 Vol 50, No. 4, at p 519.

Part IV. Disintegration of Family

The word family generally means parents and children living under the same roof. The future of a nation depends on its children whose upbringing depends on their home life which in turn depend on their family ties. The family is the microcosm of society. As bricks go to make a house so do families go to make people¹⁹⁵. These ties are vital for the wellbeing of the society. In a well knit family each member upholds the other, the strong support the weak and the good reprove the bad. They may have difference with one another but attacked from outside they join together. They are like a house that is built upon a rock and stand firm for all that is right and good¹⁹⁶.

A steady rise in divorce affects family system. Earlier it was believed that the joint family system was one of the main reason for incidents of divorce. It is a special feature of the Indian society that wife is required to live with the parents of the husband which often gives rise to quarrels and tensions, between the wife and the husbands relatives and thereby with the husband himself¹⁹⁷. This led to the emergence of unitary family

195. Lord Denning, The closing chapter p. 50 Butterworths (1983)

196. Ibid.

197. Jaffer Hussain, Marriage Breakdown And Divorce Law In contemporary Society : A comparative study of USA, UK And India, p. 217, Concept Publishing Company (1983).

consisting of the spouses, their parents and their children. However this hardly brought about any change in the rate of divorce. From the unitary family now the family structure has been changed to nucleus family which includes the spouses and their unmarried children, yet the rising trend of divorce has not changed.

Evidently then, the family structure is not the casus Belli. But the structure of the family is in great danger. There is a gap between the law enacted and the actual practices of law. The grounds on which the divorce is sought are the symptoms or indications of a breaking family.

The social scientists believe that change in the functional aspect of the family contributes to the rise of divorce. From a functional perspective they feel, the adaptations of the family to the requirements of the economic system has placed a strain on the marital relationship. It has led to relative isolation of nuclear family from the wider kinship net work. As a result, the families carry a heavier emotional burden when it finds independently than when it is a small unit within a larger kin fabric. As a consequence today's family is relatively fragile. The nuclear family suffers from an emotional overload which increases the level of conflict between its members.

In an industrial society the family specialises in fewer functions. As a result there are fewer bonds to unite the spouses, because most of the functions of the family are now carried on by the commercial organisations, which has a dysfunctional effect

on the family. The high rate of divorce is the price that is being paid and again divorce in turn affects the family¹⁹⁸.

As a consequence, young people are exploring the alternative to the family life. Single life is one such alternative. At one time the society looked askance at single people and they were considered less capable and mature. Single women are stereotyped as old maids who have not made it to the marriage market, single men are more attractively cast in the role of eligible bachelors but were often thought of as not quite respectable. There is no radical change in this view still many people conspicuously choose to remain single, especially in urban areas. In urban areas, individual opinion or social opinion about another is irrelevant and no one is really very seriously affected by it. The tensions of a busy city life, pre-occupation with survival and furtherance of career and its relentless demands are a few things which makes the survival of the single individuals easier.

The next alternative life style is what is commonly known as living together. It means a man and a woman sharing at the bed and board together without the marital bond. This is a new social relationship just emerging in India though rather common in the western countries.

Some families in the West, dissatisfied with traditional family or single life have joined communes. A commune is made up

198. M. Haralambos with R.M. Heald, Sociology-Themes and Perspectives, p. 360, 368 Oxford University Press (1985)

of several individuals not bound by blood or legal ties, who share living quarters and some responsibilities for their life together¹⁹⁹.

Where, the law cannot prevent a factual breakdown of marriage, the law also cannot prevent a man and woman from choosing any of these alternative life style. Divorce law can only prevent the transformation of factual relationship of a concubine into a legitimate marriage²⁰⁰.

The alternative life styles are logical fall outs of the present divorce situation. What protection can the law give to the unofficial wife or the *filius nullius*? If this consequence is not kept in view then we will soon be picking up the pieces of a shattered family system in the form of institutions of unwedded mothers and *filii populi*.

A primary function and characteristic of the family is that it should be a social group in which the earliest stages the child can invest its emotional resources and learn to be committed to them²⁰¹. Divorce strikes at this root and the family itself is disrupted. But divorce is also a necessary evil which combats a larger evil. For better results the system itself requires overhauling.

199. Earnest J. Green, Robert F. Massey, Sharon Davis Massy. Marriage And Family : A Basic Self Instruction Guide, pp. 164-174. Macgraw Hill Books (1977).

200. Kahn Freud, "Divorce Law Reforms" 19 MLR 477-576 (1955)

201. Michael Anderson, Sociology of the Family, pp. 57-59, Penguin Education (1975).

SUMMARY

A. MAINTENANCE:

Period 1914-1954: During the spontaneous unplanned social change (SUSC) period ranging between 1914-1954 in this study it was observed that there were about 51 maintenance cases, of which 43% were by male appellants and 57% were by female appellants. In about 63% cases maintenance was granted and in 33% cases maintenance was declined, 4% cases were under other forms of decision which are mostly technical decisions. While only 35% cases were in favour of men, 59% cases were in favour of women. In other words 57% appellants were women, in 63% cases maintenance was granted and in 59% cases the decision favoured women. All the female appellants had succeeded in their appeal.

The rate of maintenance varied between Rs. 20/- per mensem and Rs. 300/- per mensem. In about 9% cases the presence of children were mentioned.

Period 1955-1990: The rising trend of the maintenance case continue uninterrupted. There were about 212 cases during this period. Of these 63% were male appellants and 36% were female appellants. In 73% cases maintenance was decreed. In other words almost all the male appellants failed in their appeal as 74% cases were decided in favour of women.

During the former period the maintenance claim of most of the women failed in the lower forum. That is the reason why majority of the appellants were women. During the latter period

the women's claim was upheld in the lower forum itself. Therefore it became necessary for most of the men to go to the upper forum in appeal. The statistics show that those appeals were also lost to them.

Only in 51% cases the amount of maintenance paid was mentioned. Most of maintenance amount (in 31% cases) was limited to Rs. 100/- only. Maintenance amount of Rs. 100/- to Rs. 200/- and Rs. 200/- to Rs. 300/- figured 19% cases each, together constituted 38% of the cases. In about 11% cases a payment of Rs. 500/- and more was made and in 8% cases lumpsum payment was given. Apparently this began to gain popularity from 1980 onwards.

Period 1984-1990: This period is important because it was tallied with the same period at the sub-divisional level for which the cases were collected from the court of the sub-divisional judicial magistrate at Siliguri. Of the 65 cases during this period, in 66% the appellants were male and in 32% the appellants were female. In 74% cases maintenance was allowed and 74% cases the cases were decided in favour of women.

It appears that the socio-economic vulnerability of women have been granted a judicial recognition under the maintenance cases. The trend of decision making reflects that the judges have tried to make up for this social deficiency through their judgments.

Sub-divisional level (1984-1990): Of the 124 cases available for analysis out of a 160 that were filed during this period, 78% petitioners/complainants were women. A reversal of the earlier

findings at the national level between 1955 and 1990 and also 1984 to 1990. Of the 124 cases available for analysis in 31% cases maintenance was allowed, 31% cases were pending before the court. About 29% cases were dropped for default or non prosecution and as rejected petitions. About 7% cases ended on compromise. The maintenance amount in majority of 51% cases were between Rs. 200/- to Rs. 300/- followed by 26% between Rs. 100/- and Rs. 200/-.

It has been noticed that the maintenance amount sanctioned by the court are very small. It can hardly be sufficient for a person sustenance. The monthly instalment system has two disadvantages, namely,

- (a) The monthly payments often stops forcing the women into further litigation and harrassments.
- (b) The chastity of woman is given an exaggerated importance. If she develops an intimacy with any member of opposite sex, she is termed a woman of loose character and the payments stop.

B. Custody of children: When the parents engage themselves in fierce battle the children are reduced to dumb cattles. Their interest is not represented by a lawyer, their share of the property is neither documented nor apportioned and almost never put in a trust on behalf of them. Though their wishes are taken into account and their welfare is the paramount consideration in the decision making, there is nothing to aid and guide them to reach a proper decision.

Where the custody goes to the mother, she is disadvantaged in two ways (1) she only has the physical custody of the child, the guardianship continues with the father. As a result for every important decisions for the child's welfare and its future she has to turn to her estranged spouse who can by a reversal of judicial order take the child away from her and (2) If the woman who is a custodian parent later on enters into a relationship with another man, the father can take the child away from her on account of her being a person of bad character and of loose morals. Thus, even after divorce the man continues to have an extended control over the woman.

C. Disposal of property: The method and disposal of property under the Act are quite inadequate. On one hand the amount of alimony or maintenance awarded are very meagre on the other hand the property which was given during marriage has been classified into those presented to the groom and those presented to the wife. No account is taken of the property both in cash and kind and also by way of savings which was accumulated during the subsistence of marriage.

D. Disintegration of family: There is a tremendous change in the functional aspect of the family. The effort to adapt to the changing economic system places a strain on marital ties. With the advent of modern technology, the desire to achieve and possess more is heightened. As a result the nuclear family tend to isolate themselves from their kinship network. This leads to insecurity and

disintegration. The resulting emotional trauma is now leading Young people to explore alternative life styles like single living, commune living, living together etc.

As a result the entire social change is swift and wide-ranging often giving the impression of the society being in turmoil. The new awareness regarding life liberty and personality predominantly spread by the audio visual medium appears to have aided the process. While the answer regarding the destination of our social movement is not clear it forces one to question Quo Vadis? Yet one thing is apparent even now that the planned social change (PSC) brought about by the statutory provisions relating to divorce, maintenance, custody, alimony etc. and its effect upon the society have triggered off another (SUSC) spurt of spontaneous unplanned social change.

CHAPTER - IX

SUMMARY AND CONCLUSION

The focus of this present study has been to understand the trends in divorce litigation and the decision making process, the socio-legal problems which have arisen as a result of the existing laws of divorce under the Hindu Marriage Act, 1955. Clearly, the thrust of the study is both on the social and legal aspects. Altogether 1346 cases including 71 divorcees personally interviewed with a structured questionnaire have been discussed in this thesis. Cases were collected for the period of 1914 to 1990 from All India Reporter alone. These cases were analysed and discussed at different stages. The total number of cases for divorce alone during this period were about 352, those that were collected from Darjeeling District Court were about 268 cases. There were about 260 maintenance cases between 1914 and 1990, about 158 cases were collected from the S.D.J.M. Court at Siliguri. About 236 cases were used as substantive reference.

The study, however, cannot be treated as exhaustive because for a single case that has been reported there are thousands of unreported ones. Besides, as already pointed out, cases from a single journal alone has been used. Such a study obviously needs an approach which pays due attention to the variegated social, socio-legal conditions not only in Siliguri sub-divisional town but all over India.

A summary of the finding is made here on each major aspect of the study discussed in the preceding chapters. In order to duly emphasise each findings and submissions, some repetition of the points already made in previous chapters could not be avoided .

Hindus of long ago called it Dharmasastra and the modern Hindu refers to it as law. In both cases, reference is made to a whole range of rules, regulations, policies and norms which are used to regulate human behaviour in society and thereby the society itself. Marriage laws are a part of such core group of laws. It is the core because marriage is the first stone laid upon the foundation that built the society. It is here that the oft repeated statement - law is made for society and not society for law finds relevance.

Period 1914-1954: Hindus in the ancient times believed in the sacramental sanctity of marriage so firmly that they adhered to indissolubility of marriage. This led to casuistry and oppression of women. That this social rigidity has led to a spontaneous unplanned social change is quite clear during the period of 1914 to 1954. There were divorce cases based on customs and others on grounds like adultery. In the beginning from 1914 to 1933, in most of the cases divorce was denied. However, from 1934 onwards a clear shift towards granting of divorce was observed. Though the number of male appellants were found to be high, at the beginning most of the decision went in favour of men, but gradually, women began to dominate the scene.

The reason why the ground of cruelty did not gain popularity during this period was chiefly because however cruel their treatment, women did not feel sufficiently that cruelty was perpetrated against them or better perhaps some amount of cruelty was treated as normal in conjugal relationship. There was a general acceptance that it was the natural fate of their lot.

Period 1955-1990: It is a general belief that in the legal world, it is very difficult to get more than one person to agree on a single thing. There is, however, one thing on which lawyers, judges, law teachers and law researchers agree upon is the fact that there is a steady and devastating rise in the number of divorce cases over the last few decades. Every half decade, every decade, have registered a steady rise in the number of cases especially after 1976.

The most popular ground used to file divorce suits were the ground of cruelty, followed by adultery and desertion in that order. In all the three cases it was found that there was rise in the number of cases after 1976.

This is significant. After the passing of the Act in 1955, the grounds of the divorce were relatively more restricted than they are today. Having universalised what was already prevalent among certain classes of Hindus, the law makers rested without paying much attention to the nitty-gritty details of each provision. During the intervening period between 1955 to 1976 a few events occurred simultaneously, (1) Divorce was no longer an Arabian Knights tale for the Indian woman, it was beginning

to be a reality of her life. (2) The efforts at generating awareness of rights and liberty paid off as women started to develop a consciousness about them. (3) The technological, economic and sociological changes began to have an effect on almost every ones life. As a result there was an urgent need to broaden and liberalise the grounds of divorce. The much needed changes to the Act occurred through the amendment of 1976. The amendment of 1976 had the offset of liberalising the provision of divorce. The increase in the number of cases in the post 1976 period, therefore, is not very surprising.

Detailed zonal study revealed that with very few exceptions like Himachal Pradesh, Goa, Manipur etc. the adjacent states have a similar cultural fabric. However, the state of Punjab and Haryana and Delhi respectively recorded the maximum number of cases.

There was a marginal difference between male and female appellants with men leading the score. In most of the decisions divorce had been decreed and those decisions had gone in favour of women. This is a complex situation. A look into the situation shows that, prima facie, the men were against the divorce decreed by the lower court and decided to seek the help of the upper forum in order to preserve their marriages, which even the upper forum had turned down.

The reality, however, is much different. Our divorce law is based upon the fault theory. The litigating spouses are required to establish the "guilt" of the other spouse before the court. So when a court decrees divorce against the claim of the man it means that the man is "guilty" of a marital offence. It is this

stigma of "guilt" the man fights against and appeals to the upper forum and not for preserving his marriage.

There is more irony involved here. Ever since 1976 amendment, the ground of cruelty has gained unprecedented popularity, due to the fact that, now anything can be termed a cruelty and is relatively easy to prove. So it has been found that men preferred the ground of cruelty as against any other ground of divorce. The irony lies in the fact that when the whole world is concerned with cruelty and crime against women and their diminishing number, it is "cruelty", on which most of the divorce is sought by men. Woman on the contrary preferred the ground of adultery and desertion, which cannot be alleged lightly and is difficult to prove. Yet, the fact is that women have still opted for them.

Calcutta High Court (1955-1990); The Calcutta High Court in the state of West Bengal presented no specific diversion from what was observed as a nation-wide trend during the 1955 to 1990 period. A slight deviation was noticed regarding the grounds used to obtain divorce. While in the former case the ground of desertion was in the third place, it was placed in the second position in the latter case. As discussed earlier the reason for this is partly geographic and partly Bengal's cultural history. Many districts of West Bengal are adjoining the Bangladesh border and illegal immigration and marital offences are common. Bengal is well known for its social custom of Kulinism. The system which is essentially based on desertion, may be still embedded in Bengal's subconscious mind.

Darjeeling District Court 1984-1990: It is difficult to get data for more than five to six years in any district court. Usually such data are classified documents and so the work had to be started with the permission of the High Court, which was done. The picture at the district level was essentially similar with those at the state or national level with some small diversions.

The rising trend continued unhindered, rather encouraged by the swift social changes. The ground of cruelty continued with its popularity. Desertion, in a similar situation at the state level and continued to occupy the second position, while adultery took the back seat.

Women were seen to be alleging cruelty more frequently than the men did. This was a direct digression from the fingering at the state and national level. The ground of adultery and desertion were less frequently used by them. The number of male petitioners were also quite large and obviously more than female petitioners. Most of decisions favoured men, and in most of the cases divorce was decreed.

The sub-divisional scenario: When the tragedies of personal life is taken before the court, the tragedies become case numbers. This has an effect of depersonalising the event. The human factor, its feelings of pathos, pain and pleasure find no recognition there. These then retreat themselves beyond a veil which separates the man from the man made court. Even if law can get embroiled in the niceties of technicality, human emotions do not. A socio-legal study therefore has to look beyond this separating veil. This

part of the study was undertaken to look beyond the court room and into human problems. Law does not take into account the minute social and cultural factors even though it is meant for all. For this reason, in order to understand the social realities, this part of the work was undertaken.

Most of the cases were filed from the social groups which were of low education and very high education group; very low income group and very high income group. Always the lower strata was followed by the upper strata. The middle group registered a relatively less number of cases.

It appears that the social misfortune of the lower class regarding their education, occupation and income has consigned them to an eternally vicious circle where low education leads to inferior occupation and hence a small salary, which in turn again affords low education and so forth. Among this group of people, frustration of life leads to cruel behaviour relating to body and mind, adultery is a recreation and desertion is the escape. So cases of separation and divorce is high among them. Among the higher class too much of everything leads to divorce. High degree of social exposure, more than sufficient money and bookish knowledge confuses them. They have an exaggerated sense of personal rights and liberty, they lack spousal companionship as each spouse is engaged in social pursuits of their own. Since money is not a problem, the cause of tension is its preservation. This loneliness and insecurity is the cause of divorce among the upper social class. Predictably, it is the middle class who are still concerned with questions of social niceties, social morals, social status etc. So the rate of divorce is less in this class. The men Fridays and girl Fridays

of these classes do not have enough time for adultery or desertion, cruelty of course is another matter. Usually it is accepted as natural and often the concept remains vague.

Most of the marriages in these cases were negotiated, social and unregistered. Few marriages were courtship marriages, but are social and unregistered, and a few were registered. There are also cases where the marriage have taken place in a temple. The belief that 'love marriages' are unstable is not borne out by this study. Those marriages which are social and unregistered sometimes run the risk of being invalid. Such institutions pose extreme difficulties as the woman is required to prove the validity of her marriage. Where she fails to do so, she is invariably left in a lurch. She loses the status of the wife on account of her marriage being null and void. She also cannot claim maintenance under Section 125 Cr. P.C. as she is not a wife. Law may be justified in asking the woman to prove the validity of her marriage, but law does not take into account the effect of doing so, namely, providing an escape route for men and social jeopardy for the woman.

Cruelty occupied the first place even at the grassroot level. Adultery was followed by desertion. Most of the women in the sample were educationally, occupationally and financially backward and in most of the cases their marriage was terminated on the ground of cruelty.

Adultery were high among the highly educated, financially better off and occupationally well placed people. Probably it was their social set up and exposure which resulted in this situation.

The middle class was found to be more susceptible to the temptations of desertion. This may be because this group has higher social ambitions and desires, and whenever they feel that the marriage is holding them back from achieving them, they opt for the shortest and the simplest route, desertion.

A surprising fact that surfaced showed that the idea of divorce in most cases was first mooted by the husband, in quite a few cases by the wife and in some cases the in laws. However, in large majority of cases it was found that it was the husband who had petitioned for divorce. In cases where the idea was mooted by the in laws, often the divorce suit was presented on mutual consent.

It is worth noting here that compared to men very few women were employed in any of the four levels of analysis. It has also been found at the sub-divisional level that the women who were educationally backward, had very poor employment range and earned relatively less than men.

In other words, even amongst the oppressed group, the women form an oppressed class by themselves. Socio-economic independence of women continues to be the goal which is yet to be achieved. Why do Indian women suffer? The answer is simple and obvious. It is a suffering brought about by fear. A suffering

due to misplaced devotion, an urge to continue in and maintain a facade of successful marriage and above all to avoid a scandal. But this ensures that their suffering multiplies in number and doubles or triples in quantity. The truth is they have no other option.

Both economic considerations and sociological pressures play a major role in keeping her a passive prisoner of emotions. Traditionally she is conditioned to accept an inferior role, she is taught that it is upon the male members of the family that her bread and butter depends. It is they who give them a social status. From birth she is conditioned to see herself as a daughter, sister, wife or mother. She begins to see herself as a helpless victim unable to change the course of events.

In such cases, more than law what is needed is to bring about attitudinal changes. Society needs to be sensitised.

The sound of silence: Both at the district and sub-divisional stages, there were a few very startling revelations, (1) majority of the cases, after their institution before the court, were either kept pending or were withdrawn or were dropped for default and non prosecution. (2) In a good many number of cases, the defendant had kept absolutely quiet regarding the case. There was no response, defence or rejoinder.

In the former where the cases were discontinued on one pretext or another, it would lead one to presume that having discontinued the case, the parties would resume a life of conjugal bliss and harmony. Unfortunately that was not true as the sub-

divisional level interviews reveal. In almost all the cases the parties continued to live in a state of defacto divorce. While this puts the parties in a sort of limbo - a kind of suspended animation, the man saves a lot of money by non payment of alimony and litigation expenses. This way of life hardly affects the man either socially or emotionally, it is the woman who bears the cross of life. At the sub-divisional level all the women who were living in a state of defacto divorce continued with the social customs like wearing mangal sutra, sindoor, conch shell bangles which were ostensibly in protection of the spouse who was responsible for their sorry state. Their husbands however did not spend a farthing for them though they enjoy the benefit of the near divorce like situation. This is a situation which the provision for divorce or the case decisions do not contemplate but a look into the society brings it into sharp focus.

In the latter case as already discussed in the previous chapters, where the cases were decided ex-parte as the defendant chose silence as the only means of his or her survival, it would appear that the spouses really were beyond caring as to what happened to the marriage. The pain and the misery of the trauma was too deep for words. In some cases the defendants, mostly women also did not know that they had a right to defend themselves. Those who knew that they did have that right, did not know how to go about doing it. The silence of the spouses successfully proclaims to the masses that the marriage is irretrievably broken and is beyond repair. Such cases of course, do not go to the upper forum in appeal for obvious reasons.

The caste factor: When data relating to social and human factor becomes the subject matter of extensive analysis, it is curiosity which leads the researcher by the nose. It was one such curiosity to discover how divorce law has affected the different castes which led to finding of the caste from which maximum number of divorce had taken place. Since the reports of cases do not mention the castes of the parties unless they are relevant to the case at hand, it was not possible to analyse cases at the national level on the basis of castes. However, at the state level with the help of the book of Lokeshwar Basu and the title of the parties, discovery of their castes and an analysis thereof was possible. It was found that, of the state level maximum number of cases were reported from the Kayastha caste. This position was reiterated at the district level also. In the sub-divisional level it was the shudras followed by the kayasthas. Though it is not surprising to note a high degree of divorce among the shudras. They practised divorce even in the days of dharmasastras. What is noteworthy is that an upper caste like the Kayasthas have caught on to the idea of divorce, the brahmins however have taken a back seat to them. Incidents of de facto divorce was also found to be more from the lower castes. The study revealed that more people from the upper castes had filed a divorce suit, which was done by very few of the lower castes. This means the lower castes who practiced divorce long before the Act came into force, and also due to the heavy litigation expenses seldom came before the court. Those who did, had achieved some degree of legal literacy and enlightenment.

Age of the parties: Law requires that a Hindu girl should not be married before the age of 18 and a Hindu boy should not contemplate marriage before completing the age of 21. That this requirement is ignored in some community is an open secret. But, as days passed, men and women, especially middle class men and women, have started to marry in their late twenties and early thirties. Regarding divorce it was found that very few divorce took place in the age group below 20 years. Maximum number of divorce took place in a age group of 25 years to 35 years. The reason for this age group being so susceptible to divorce could be due to the reason that in this age group, on one hadⁿ, the people are young and temperamental, and on the other hand marital adjustment within the first 10-15 years of marriage is not reached in all cases easily. As a result, a very serious personality clash can easily take place within this age group leading to matrimonial breakdown.

Subsistence of marriage: Marriage, which brings about a complete change in ones life style, revolves around adjustment. Though divorce after one or two days of cohabitation does not give rise to any conclusive proof regarding the grounds of divorce, the first five years are very crucial. Most of the marriages tend to breakdown within first five years of marriage. As the marriage becomes older it tends to stabilise. This fact was true of all the four levels of analysis. The first five years of marriage is like sitting on nine pins - a mixture of pain and pleasure.

Children and custody: One of the requirement of law is that in a divorce petition the presence or absence of children must be specifically mentioned. In spite of it, in very few cases this fact is specifically mentioned. Again, the divorce cases do not mention anything regarding the custody of children. The mental state of the parties to the custody suit is not fully reflected in the case reports.

At the national and the state levels very few cases mentioned the presence of children and almost none regarding their custody. At the district level many cases with children were found though nothing was stated regarding their custody. At the sub-divisional level, however, it was found that majority of the people had children and in almost 88% cases the mothers were the custodian parents. The study also revealed that very few of the divorcees women who were interviewed, received any maintenance from their erstwhile spouses even though they had the custody of the children. These two facts read together reveal the extent of the burden these women carry. Added to this situation is the fact that through his guardianship rights the husband continues his hold over the woman even after divorce.

The post divorce trauma: The law as is revealed under the Act is very inadequate on post divorce problems which ranges to innumerable problems.

Once the final decree of divorce is passed, the life must begin anew, for it cannot wait for the traumatised person to put the pieces of his/her life together. One of the prime question is where to stay. It was seen that except for a lone person who stayed in a rented accommodation due to his transferable job all the men had their own residence. Majority of women were found not to be living with their natal family. Some lived in rental accommodations and in quarters provided in their place of work.

Though majority of the men and women at the sub-divisional level affirmed that remarriage should take place after divorce and that bad marriages should be put to an end, it was discovered that most of them continued to live an unmarried person's life.

The men said that they were happy leading a bachelor's life with all its incentives, and in any case they have had enough of marriage. The women actually shuddered at the thought of marriage. One bad experience was sufficient for them. Besides they realised that their marriage was not really over even though the law said so. Their husbands continued to control their lives through their children. If they developed an intimate relationship with another person, the child would be take away from her on the ground of her being of bad character. There was also a reluctance to put the child through further emotional strain. The pre-divorce tensions, the trauma of divorce and separation and the post-divorce adjustments leaves the child bruised and battered emotionally. Very few women have the heart of subjecting the child to the anguish of seeing his/her mother marry another man, and

begin the adjustments afresh.

They (the divorced persons) said that divorce is a death of a relationship and wept uncontrollably. They said that a bad marriage should end but wept for the hurt suffered. Fathers^h crave to be called by their children, mothers shed bitter tears for them all the while stating that there was nothing else to do. They felt that law cannot do justice for them, for law does not see their hurt, law does not know the turth of their lives law is without feelings.

Maintenance: Maintenance is the abandoned women's final and desperate attempt to remain in wedlock. The rising trend in such cases was evident during 1914-1954, between 1955 and 1990 and from 1984-1990 at sub-divisional level. While almost all the petitioners were women, a large majority of appellants were male. However, most of the cases were decided in favour of the females.

This is indeed an helping hand extended towards women by the judiciary while acknowledging their socio-economic vulnerability.

However, the amount of maintenance granted were very meagre. The judges are tied down by the stipulated law and also by the most elusive thing called the maintenance payers income. However, where a lumpsum payment was made, the woman was able to end a chapter, but where the payment was in instalments the avenues of litigation were left wide open. The payment invariably stops due to the default

of the paying spouse and the woman has to start litigation again. Even the lumpsum payments are determined without a set principle or norm but depends upon the man's capacity to pay.

Due to this reason, the woman who is often burdened with children is left to fend for herself as the empirical study in the town of Siliguri indicated. Since the maintenance amount is insufficient to keep her body and soul together she must look elsewhere for sustenance. The policy behind passing the maintenance laws was prevention of vagrancy and destitution by women. How far the law is successful is obvious and does not need any explanation. The women however take up alternate means of income which often includes prostitution. If she has any other form of occupation, which can be proved, then her maintenance money stops. But the former is difficult to prove and she continues to receive the payments.

The scenario, beyond doubt, is a dismal one. Though majority of the cases were decided in favour of women, and there is a judicial recognition of the plight of the women, the maintenance law has failed to give any solace to the woman.

So long as the maintenance law remains restricted by the consideration regarding the income of the husband or the upper limit of maintenance payable or the husbands' capacity to earn the situation will not change.

It is submitted that every able bodied person, irrespective of the fact whether he has an income or not should maintain his wife and child and there should be no prescribed upper limit to such maintenance payments. Wherein order to avert human tragedies sufficient maintenance payments cannot be made, in such cases there should be welfare organisations set up by the Government or otherwise, for the purpose of supplementing the maintenance allowance, supervising its expenditure and also for helping the woman to be vocationally self reliant.

The innocent third party - the child: The entire gamut of divorce laws tend to overlook the child and his interest in his parents staying together. The law relating to the custody of the child does look to the "wishes of the child" and considers "the welfare of the child to be of paramount importance". However, the legal jargons are of little help to the child. During the divorce, the child is anguished to witness its parents engage themselves in conjugal warfare. After the war has ended, the child is asked to make the most crucial and painful choice of its life, does he/she wants to live with mummy or papa? If the choice is to live with papa, the child surely misses the tenderness offered by the mother. Absence of her soft touch and cuddly confidences can leave everlasting scar on the psyche of the child. If, however, the custody goes to the mother, as it usually does, the problem multiplies. The mother cannot provide as lavishly or exorbitantly for the child as his/her father might have seen able to. In all

the decision regarding the child's future, the mother is faced with indecision and such indecision has a telling effect upon the life and mind of the child. The indecision of the mother regarding the child are due to the fact that the guardianship of the child always remains with the father. In addition, the child misses the role model of the father, a person whom he can imitate and believe to be the best in the world.

It must be noted here that the child's interest is not represented by a lawyer in the litigation between his/her parents. The child's interest must be protected in two ways. Our legal system must have a children counselling centre to help the child to the extent required to tide over the crisis of its life. There must be licenced, welltrained children lawyers who will protect the interest of the child during the litigation. Whoever gains the custody of the child must gain his/her guardianship as well. This will enable the custodian parent to take decisions regarding the child's future. That is not to suggest that the non custodian parent cannot have any contact with the child. The non-custodian parent should have the visiting rights etc. of the child. If the custody order is reversed, then both custody and the guardianship should then to the custodian parent.

At the time of divorce the child's share of the property is not divided nor considered. As a result many children get deprived of their legitimate share in the property. Thus, if at

the time of the post divorce property settlement, the child's share is also taken into consideration and his/her share of the property is kept in trust or kept in safe custody in any other manner, then at least the child's property can be protected.

Single parenting: Most custodian parents accept single parenting with a sense of guilt. This guilt arises from the fact that the custodian parent feels guilty of separating the child from the love and affection of the other parent and thereby causing mental anguish to the child. Both the child and the parent must be aided with proper counselling to accept the realities of life gracefully and without guilt.

Disposal of property: One of the problems of the aftermath of divorce is the apportionment of property. Law allows the court to take decision regarding those properties only, which were (a) presented at or about the time of marriage and (b) which belongs to the spouses jointly. The court is not prevented by law from passing any order regarding property belonging to the husband alone or wife alone.

Neither the courts, nor the law take into consideration the fact that property may be jointly and severally earned by the spouses during coverture and built up as family assets. The woman can be an active partner in such asset building process by being employed and contributing to the family coffers or they can be passive contributors doing the house hold work and saving for the family coffers. Law should take this fact into account. After divorce, the property built up during coverture should be

equally divided between the husband, wife and if necessary the children.

To help in these matters, insurance companies can come to the aid of the spouses by opening schemes like matrimonial insurance etc.

Matrimonial home: As stated earlier, one of the problems are regarding the stay of the partners after divorce. An Indian wife should have a definite say regarding matrimonial home which she builds with her husband away from her in laws. On divorce, she must have a right to stay on in the house if she so wishes. Though lately the courts have recognised and honoured the mutual interest of the spouses involved in the making of the matrimonial homes, the post divorce situation has not been debated or discussed in detail. Law is also silent on this issue. There is a scope for a lot of judicial activism in this area. Some contractual and property safeguards are to be built up in order to protect the woman so that her divorce does not send her on the streets. It is a recognised fact in all quarters that single women, especially divorced women, find it hard to obtain accommodation for themselves. Therefore if their right in the matrimonial home is protected it will help her to a great extent.

Family breakdown and alternative life styles: One of the boons of fast social life and high social ambition is the transition of the family from the joint family to the unitary family to the nucleus family and may be in future to the atomic family.

As the natural functions of the family is replaced by commercial bodies and organisations, the family finds itself with more and more leisure time at hand. The result is that, the nucleus family becomes more self centred. This self centredness leads to its alienation from its natural kinship fabric which makes the family also insecure and tense. Such self centred, tensed insecurity of the family leads to marital breakdowns. As a result of which, new generation has arisen, who have a deep ingrained fear and aversion for marriage and matrimonial obligations. They are now increasingly opting for alternative life styles like single life, commune life and just living together relationships.

Single life is more popularly being opted for by men and women alike. They feel that their independence of status and thought, freedom of social behaviour, are too precious to be compromised. The tension of adjustment with another person who is equally rigid and set in his thoughts and behaviour is not there. As a result of this life style is fast catching on. Besides being single is the "in thing" to-day, a kind of fashion envied by many. It affords a personality to the person concerned.

Community life is radically different from the accepted norms of the society. According to many it is akin to the life in the primitive social set up. Though there are a few known communes in the western world, they are not very popular either there or here in India. Moreover in India communes are associated with drug rackets, criminal and other shady activities. Needless to

state here that commune living is a direct revolt against the established social norms and ethics.

The life style that is catching on most rapidly is the living together system. This is also a direct rebellion against the established social norms. Usually there is a kinky personal life or aberant trait in the family history which acts as a motivating factor. There is, without a doubt, a growing fear of marriage as an institution among the children of divorcees and among the divorcees themselves. It is true also among children who have witnessed and have suffered the consequences of unhappy people tend to choose either of these life styles as an escape rout. To live in or to stay in a commune is to allow a personal fear to be sublimated into a public gesture of social defiance.

In the latter two life styles, the woman runs a much higher risk than the man in a relationship which is guaranteed neither by law nor by the society and cannot therefore be contractual. Since both the arrangements keep the option of walking away from each other open, the woman again stands more vulnerable because the lack of legitimacy in her previous relationship will stand in the way of her forging exclusive relations in future. The man is on a safer ground because in India it is the bride and not the groom who has a past.

However, inspite of these disadvantages, the living together system is fast catching on. whether it is here to stay permanently is something only time can tell. However as the study

in the suburban society of Siliguri revealed, there were at least four people who had opted for this living together arrangements. All the four of them had a history of painful divorce proceedings. Divorced couples who have one failed relationship behind them often exhibit a weariness for committing themselves to another relationship even though they need the solace of companionship. This fact was also revealed by the divorcees interviewed, where they accepted remarriage as normal but refused to remarry.

In a marital relationship, either of the partners can opt out exclusively only on bearing the substantial costs involved in a divorce suit. The alimony, maintenance etc. are often sought to be reduced by resorting to all sorts of legal subterfuge including charging the claimant with impotency, adultery and loose morals. There is a trade off between a lawyers fees and the decree of the court. Live in relationships and also commune living is devoid of such parting costs and therefore is rather attractive for some especially to the payer.

The problem however begins from the day of the birth of a child, when the birth is required to be registered, child is to be admitted to schools and other interfaces with administrative authorities. In many cases the man lends its name to the child or the mother lends her name, in some cases the couples get married. While the former poses problems like legitimacy, inheritance etc.

the latter usually solves all the problems. In a feeble attempt to repair the problems thrown up by the former case, another legal solution though very feeble is invented known as "friendship agreement" or "maitri karar". This is an agreement which attempts to bind down unmarried partners to certain contractual obligations. This agreement is as fool proof as marriage itself. Certain friendship agreements also do not rule out continuance in marriage by either party. In other words it operates as a legal cover for bigamy or polygamy.

Actually, the silent march of the society continues, even though religions dogma on ancient and medieval times continue to hold it down. The spontaneous unplanned social change brought about by the pre 1955 era leads to the planned social change of today. This planned social change has again triggered off spontaneous unplanned social changes in the form of single life, commune living and living together arrangements which may lead to a planned social change gradually. What is evinced here is a cycle wherein social change leads to the development of other changes. In the process the experimenting with new materials and components like faith, belief, love and trust continues, where emotion speaks better than law. So long as marriage remains as fragile and rapture prone as it is to-day the experimenting will continue.

An epilogue: The purpose of this work is not to decry divorce, nor in any manner suggest that divorce has become expendable in society. Divorce is unquestionably a social invention

necessary to persuade people to break the unwanted relation and to create harmony and peace by creation of new relation and mitigating the ill effects of an unstable marriage which are considered as suicidal for human beings and for the development of new-social concepts.

But divorce solves one problem but creates several other problems. To that end, one of the first steps that is to be taken is that the fault theory of marriage should be serapped. In its place irretrievable breakdown of marriage must be introduced with immediate effect. Introducing it through the backdoor, as the Act now does will not do. The approach must be direct yet simple.

Divorce should be a part of a system conce t. It should not be treated as isolated incidents to be solved in isolation as is being done by the advocates to-day. The stipulations laid down in the provision requires that each case should be fitted within that framework. As a result the true incidents and their consequences never sees the light of the day. The skill of the lawyer is at work at those times, and a totally new "play" is staged before the court. If irretrievable breakdown gains wide acceptance and layers are properly sensitised to the need of the society through a programme of continuing education then perhpas the situation will improve.

The system of divorce must also be accompanied and supplemented by counselling. This can also be a part of the social sensitisation programme. Of course, over counselling may lead to

a psychological and inferiority complex of a person, but if administered properly, in correct proportions, by trained personnel, then perhaps the victims of this tragedy will be able to cope better with life. So it is of utmost importance that divorce procedure should include counselling at different stages, namely (a) when the divorce is instituted, a marriage counsellor especially trained can take on counselling with a view to see if the marriage can be preserved. The reconciliation proceedings subscribed under the Act suffers from two disadvantages, firstly it is carried out by judges who are not specially trained in this field, secondly, overburdened with cases, and harassed by the day to day procedures, the reconciliation sometimes becomes mechanical. Therefore, it is advisable to have professional counsellors who will be committed and sympathetic to the cause of the marriage, (b) Post divorce counselling when the divorce has taken place in order to allow for adjustment with new life. This should extend to the child also in order to allow the parties as well as their off springs to cope with the post divorce trauma.

The magnitude of the tragedy is more amplified because the woman is in a socially vulnerable position.

Education is no good for women, unless they are made economically independent, aware of their rights and given the security that if they are in serious trouble there will be an organisation or a shelter or social support that they can fall back on. Without this economic emancipation of women, the human

tragedies perpetrated by divorce mechanisms will continue unabated and it will result in the failure of social justice.

Social justice is still not an accomplished rule of law in India. A time has now come when the goddess justice can no longer close her eyes behind black tape, a time has now come when she should have her eyes and ears open in the interest of the down-trodden. She must see their plight and hear their agonised scream, weigh the situation with an open mind and then alone the laws relating to divorce will become useful. The supreme court is the able navigator in this area. However, more radical approach is required in order to tackle the situation effectively. It may rightly be claimed that by western standards, Indian courts have forged far ahead and opened new vistas of administrative justice, poverty jurisprudence, remedial radicalism and interpretative break through and have formulated a forward looking judicial system.

Adjudication in respect of any matter concerning family, whether divorce, maintenance and alimony, custody, maintenance and education of children or trial of juvenile offenders and all other matters pertaining to family and broken marriage should not be viewed as failure of success of the legal action but as a therapeutic problem. It should not be viewed in terms of a battle won or lost cases but as a social problem.

The resolution of family problem should not be given equal status with ordinary litigation like cases of civil or criminal

jurisdiction. Each family conflict involves people in trouble, persons facing identity crisis and the law should aim at amicably helping them to find the required solution to the problems they face. In order to achieve this, as a first step the traditional adversarial fault finding procedure must be foresaken. In the present system the lawyers, the judges are all trained for this kind of litigation procedure and they treat family matters in the same manner.

It is true that the Hindu Marriage Act offers more equality between women and men than is done by many other enactments. Even then a large scope for improvement is left open. However, what is required to be achieved could be better done by social motivation and social sensitisation than can be done through legislative mobilisation. It is important to understand that every need or demand for a social change should come from within the heart of the society. If a social reform or a social legislation is imposed upon the society or if an extra-societal maneuvers are made, the society does not accept them. It is so very evident in the case of dowry evils, incidents of caste wars etc. No amount of legislation has helped. At the same time the pre 1955 period amply demonstrates that how through the spontaneous unplanned social change the legislation granting and approving divorce was brought about. Now another phenomenon like the "living together" is becoming popular day by day. These are demands which are coming from the heart of the society. Where legislation regarding dowry

has failed the "living together" phenomenon is helping young people to circumvent the problem.

It appears that the entire society is heading towards a social revolution. The constitution of India guarantees the inalienable right of the equality of women. It is an ideal and ideals often have feet of clay.

The contemporary crisis of the family law is the result of the variety of factors such as changes in social philosophy which lays emphasis on the individual. The profound transformation in the economic status of the family in the modern urbanised society and particularly in the position of married women who owns her property, builds up her career, votes in election, is the centre of attraction in movies and advertisements whose cause is campaigned in the audio visual media has made women determined not to tolerate ill treatment or torture any more. When they withdraw themselves from the familial association, they often discover to their utter disappointment and bitter peril, how vulnerable they really are.

The children too discover in their child-hood that they are individuals with their share of rights. From cradle itself they begin to partake in the rat race. Some suffer from lack of parental attention as a parents themselves are participating in the rat race. As a result of family planning and birth control programmes most of the children to-day are suffering from what is known as "little emperor syndrom" wherein they are so pampered for being the only child that they can no longer remain restricted

to a disciplined life of the proverbially obedient child.

As a result, in a nucleus family, separated as it is from the kinship network there is a constant clash of wills as each member are at logger-heads regarding their own rights, and social status. There is a tendency to flow along with the tide rather than swim against it and create a personality of ones own.

Under these circumstances divorce law should no longer concern itself with who did what and who is guilty. Rather a divorce by means of a duly executed affidavit posted to the divorce court should suffice. Then the spouses can sort out the custody and property matters in detail in the chamber of the judge or of the counsellor. The need of the hour is quick and simple remedy.

The recommendations in a nutshell are that,

1. while the rising trend of the divorce litigations cannot be checked divorce can be made less traumatic by (a) accepting the irretrievable breakdown of marriage and (b) by making the procedure painless, quick and simple. In this manner there will be lesser number of people who carry the scar for the rest of their lives. There will also be a lesser scope for falsehood and fabrication in the divorce litigations.

2. In cases of family conflicts, especially those involving intense emotional trauma, services of specially trained personnels, through voluntary organisations, non-governmental organisations (NGO) or government sponsored organisations, must be made available to the parties to the marital conflict. Such counselling should be

both pre-adjudication and post-adjudication. If pre-marital counselling is also introduced, then the possibility of marital tensions may be reduced to great extent. Such counselling may be able to help the people involved take a correct decision in such vital matters like marriage and divorce.

3. In order to make the economic aspect of the law more meaningful, the upper ceiling of the maintenance amount as fixed under Section 125 of the code of criminal procedure should be done away with. The amount of maintenance granted should be in parity with the changing times, rising rate of inflation and the redefined concept of bare necessity. Every able bodied man should have a compulsory duty to maintain his wife and children irrespective of the fact whether he possesses "sufficient means" or not. Where in the human interests sufficient amount of maintenance amount cannot be granted in such times welfare organisations whether voluntary, governmental or quasi governmental should supplement the amount and also try to make the claimant vocationally self reliant. The woman must be given not only a casting vote regarding the locus of her matrimonial home but must also be given an inalienable share in it. She must also have an equal share in the conjugal property that was built up during the subsistence of marriage. This should be in addition to her streedhan and other gifts given at or about the time of marriage. The whole process can be helped through the system of insurance etc.

4. In matters of custody, a time has now come when we must realise that the children should be treated as individuals. They

must be helped with the aid of counselling to withstand the trauma of constant bickering of their parents and their eventual separation. At the time of litigation their interest must be defended by specialised children lawyers. Their property must be put in a separate trust for them. Whoever is in custody must also possess guardianship rights regarding the child so that decision making connected with its life and future is smooth.

5. The men in our society continue to control the life of their spouses even after the divorce procedure is complete and disposed off. This is because the law relating to maintenance and custody allow ample scope for it. Law must be so arranged so that end of the litigation also signals the end of a chapter after which the spouses are in no way dependent on each other.

Perhaps in such an eventuality the Hindu woman's quest to rediscover her identity, her social status and legal rights will be translated into a reality.

APPENDIX - IPROVISIONS FOR DIVORCE UNDER THE HINDU
MARRIAGE ACT, 1955.

Sections 13, 13-A and 13-B - Provisions For Divorce

In Hindu Marriage Act, 1955.

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

- i) has, after the solemnization of the marriage, had voluntary sexual intercourse with an person other than his or her spouse, or
- ia) has, after the solemnization of the marriage, treated the petitioner with cruelty;
- ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or
- ii) has ceased to be a Hindu ^{by} conversion to another religion; or
- iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Explanation. - In this clause, -

- a) the expression "mental disorder" means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

- b) the expression "psychopathic disorder" means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment, or
- iv) has, been suffering from a virulent and incurable form of leprosy; or
- v) has, been suffering from venereal disease in a communicable form, or
- vi) has renounced the world by entering any religious order; or
- vii) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive.

Explanation. - In this sub-section, the expression "desertion" means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.

(1-A) Either party to a marriage, whether solemnized before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground-

- i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or
- ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.

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

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

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

- ii) that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality; or
- iii) that in a suit under Section 18 of the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), or in a proceeding under Section 125 of the Code of Criminal Procedure, 1973 (2 of 1974), or under the corresponding Section 488 of the

Code of Criminal Procedure, 1898 (5 of 1898), a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards; or

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

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

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

13-B. Divorce by mutual consent. - (1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was

solemnized before or after the commencement of the marriage Laws (Amendment) Act, 1976, on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.

APPENDIX - IIList of Cases Taken From All India Reporter
Between 1914 and 1990PART - ICASES BETWEEN 1914 - 1954

<u>Sl. No.</u>	<u>Citation</u>	<u>Name of the case</u>
1.	AIR 1914 Mad 665.	Budhansa Rowther Vs Fatima Bi.
2.	AIR 1915 Bom 107	Keshav Hargovan Vs Bal Gandi.
3.	AIR 1917 L. Bur. 30	Maung Kala Vs Nga Kin Mya.
4.	AIR 1918 L. Bur 34	Ma Mya Vs Mg Shwe Ban.
5.	AIR 1921 L. Bur 2	Ma Ngwe Hoist Vs Maung Po Hmu.
6.	AIR 1921 L. Bur 46	Maung Shwe Tha Vs Ma Waing.
7.	AIR 1921 Lah 20	Inder Singh Vs Thakar Singh.
8.	AIR 1922 L. Bur 28	Maung Shwe Sa Vs Ma Mo.
9.	AIR 1923 Mad 375.	Arulanandan Vs Arul Prakasam.
10.	AIR 1924 Rang 182	Ma Hmon Vs Maung Tin Kauk.
11.	Air 1928 Nag 196	Kshamadhar Prasad Vs Sarawati.

12. AIR 1930 Rang 56 Maung Kywe Vs Ma Thien Tin.
13. AIR 1933 Lah 75 Basant Singh Vs Bhagwan Singh.
14. AIR 1933 Bom 21 Yesubai Vs Parasram Daji.
15. AIR 1936 Pc 198 Gopi Krishna Vs Mt Jaggo.
16. AIR 1941 Bom 298 Jeena Magan Pakhali Vs Bai Jethi.
17. AIR 1945 Mad 308 Thengammal Vs Gengayammal.
18. AIR 1949 Cal 436 Ayesha Bibi Vs Subodh Ch Chakraborty.
19. AIR 1950 Mad 777 In re Ponnuswami Vs Nos 1, 2.

PART - II

CASES BETWEEN 1955 - 1990

<u>Sl. No.</u>	<u>Citation</u>	<u>Name of the Cases</u>
<u>AIR 1955</u>		
1.	Bom 300	Kamala Bai Vs Devraj Sona Bodgujar.
2.	Mad 88	Ambal Bhagyam Vs Ramayya Padayachi
3.	Mad 471	Kuppanna Gaundan Vs Palani Ammal.
<u>AIR 1956</u>		
4.	Mani 18	Puyam Tiklai Singh Bhavendo Singh Vs Moi Ramthem Mai Pak Singh.

AIR 1957

5. All 411 Ram Prasad Seth Vs State of U.P.
 6. AP 914 N. Subbaramayaⁿ Vs N. Venkata Subbamma.
 7. Mad 243 T. Rangaswamy Vs T. Aravindammal.

AIR 1958

8. Bom 116 Sitabai Ram Chandra Todankar Vs
 Ram Chandra Raghunath Todankar.
 9. Bom 264 Rajni Prabhakar Lokur Vs Prabhakar
 Raghavendra Lokur.
 10. H.P. 15 Savitri Devi Vs Naukhi Ram.

AIR 1959

11. AP 547 Thinku Verayya Vs Janani alias
 Janani Sethi Nagayya.
 12. Cal 778 Anath Nath Dey Vs Lajjavati Devi.
 13. J & K 72 Tribat Singh Vs Bimla Devi.
 14. Mad 510 Malli Ammal Vs Periya Swamy Udaya.
 15. Pat 186 Sreekant Chand Vs Ram Mohini.

AIR 1960

16. Mad 179 Nallathangal Vs Nainan Ambalam.
 17. Cal 565 Ajit Kr Bhunia Vs Kananbala Devi.
 18. Punj 422 Gurcharan Singh Vs Waman Kaur.

AIR 1961

19. AP 122 Edma Satyamma Vs Edma Gopala Reddy.
 19A. Ker 311 Chellappa Nayar Vs Madhavi Amma.

20. AP 359 Kala Kotta Varalakshmi Vs Kal Kotta
Varadri.

21. Punj 320 Wanian Singh Vs Prit Pal Kaur.

AIR 1962

22. Mys 172 Dulappa Shiva Rai Moke Vs Krishna Rai.

23. Pat 489 Antala & Antilal Gope Vs Swargo Gopini.

24. Punj 144 Bhagwan Singh Sher Singh Arora Vs
Amar Kaur.

25. Punj 432 Ishwar Ch Ahluwalia Vs Promilla Ahluwalia

26. Punj 183 Deepo Vs Kehar Singh.

27. Punj 156 Kamalesh Kumari Vs Kartar Chand
Divan Singh.

AIR 1963

28. AP 83 Mandul Naganna Vs Lachmi Bai .

29. AP 372 Peddigari Annapurnamma^{Vs} Peddigari
Appa Rao.

30. AP 323 Sirigiri Pullaiah Vs Sirigiri Rushingamma .

31. Bom 98 Devyani Kantilal Shroff Vs Kantilal
Gumanlal Shroff.

32. Guj 152 Jaswant Rai Jethalal^{Vs} Vaidhya Vimal.

33. Guj 250 Bipin Chandra Shantilal Bhatt Vs
Madhuriben Bhatt.

34. MP 160 Reva Ram Balwant Khati Vs Ram Ratan
Balwant Khati.

35. Mys 118 Venkatamma Vs Patel Venkataswamy Reddy.

AIR 19-64

36. All 486 Avinash Pr Shrivastav Vs Chandra Monini.

37. AP 308 Parimilla Rajlingam Vs Akuthotta
Lingayya.

AIR 1965

38. All 464 Ishwar Singh Vs Hukam Kaur.

39. AP 455 Edamma Vs Hasinappa

40. J&K 111 Tej Kaur Vs Hakim Singh

41. MP 268 Chanda Chhitar Lodha Vs Nandu

42. Mad 29 V. Varadaraju Naidu Vs Baby Ammal

43. Mys 110 Om Prakash Dhawan Vs Santosh Kumari

44. Ori 72 Annapurna Devi Vs Nabkishore Singh

AIR 1966

45. M.P. 130 Geetabai Vs Fattu

46. MP 258 Dhendu Sheuram Vs Malhar Bai Dhendu

47. Mys 178 Lalithamma Vs R. Kannan.

48. Punj 337 Sarala Sharma Vs Shakuntala

AIR 1967

49. SC 581 Chandra Mohini Strivastav Vs Avinash
Prasad Shrivastav.

50. J&K 89 Savita Devi Vs Pran Nath.

51. Mys 165 Revanna Vs Susheelamma.
 52. Pat 220 Uma Shankar Prasad Singh Vs.
 Radha Devi.
 53. Mad 254 Pattayee Ammal Vs Manichem Gauncer.
 54. Ori 163 Akasam Chinna Babu Vs Akasam Parvati.

AIR 1968

55. Mys 274 M. Someswar Vs Leelavati.
 56. Punj 287 Chamanlal Chunilal Vs Mohinder Kaur.
 57. Punj 489 Capt.B.R. Syal Vs Rama Syal.
 58. SC 142 Gurdit Singh Vs Augrez Kaur.
 59. Bom 332 Lakshmbai Lakshmi Chand Shah Vs.
 Lakshnichand Ravaji Shah.
 60. Del 260 Nirmu Vs Nikka Ram.

AIR 1969

61. Guj 48 Ajit Rai Shiv Prasad Mehta Vs
 Vasumati Bai.
 62. Pat 27 Shanti Levi Vs Ramesh Ch. Ronkar.
 63. P&H 397 Joginder Singh Vs Pushpa.
 64. P&H 25 Dassi Vs Dhaniram Teku.
 65. Mad 235 H.T. Veera Reddy Vs Kistamma.

AIR 1970

66. AP 300 G.G. Padma Rao Vs Swaraj Lakshmi.
67. Bom 312 Narayan Ganesh Dastane Vs Sucheta Dastane.
68. Cal 38 S.N. Chatterjee Vs Niladama Chatterjee.
69. Cal 266 Jyotish Ch. Guha Vs Meera Guha.
70. J&K 19 Janak Singh Vs Raji.
71. Mys 59 Mallappa Gurulingappa Kumari Vs Neelama Mallappa Kumari.
72. Mad 104 Dawn Handerson Vs D. Handerson.

AIR 1971

73. All 201 Hirakali Vs Ramasray Avasthy.
74. Del 208 Chander Prakash Suchdeva Vs Sudesh Kumari Suchdeva.
75. Guj 33 Madanlal Budhaiabhai Patel Vs Bai Dhai.
76. P&H 80 S. Teja Singh Vs Satya.

AIR 1972

77. AP 377 Chinta Gunti Jagannadnam Vs Chinta Gunti, Savatramma.
78. Del 50 Bani Devi Vs A.K. Bannerjee.
79. Mys 234 Thimappa Dasappa Vs Thimavva Kom. Thimappa.
80. Ori 163 Anupama Misra Vs Bhagwan Misra.
81. P&H 29 Shakuntala Tandon Vs Sardarilal Tandon.

82. P&H 270 Shanti Devi Vs Rammath.
 83. Raj 260 Pushpa Devi Vs Radhey Shyam.

AIR 1973

84. Bom 55 Madhuker Bhaskar Sheorey Vs Sarala Madhuker Sheorey.
 85. Del 46 Ambujam Vs T.S. Ramaswamy.
 86. P&H 117 Raghubir Singh Vs Satpal Kaur.
 87. Raj 94 Anandi Devi Vs Rajaram,
 88. Ker 171 Narayanan E. huthassan Vs M. Parukutty.

AIR 1974

89. SC 165 Swarajya Lakshmi Vs Dr. G.G. Padma Rao.

AIR 1975

90. SC 1534 N.G. Dastane Vs S. Dastane .
 91. All 337 Neera Vs Krishan Swarup .
 92. AP 80 Jeedi Gunta Anand Lakshmi Vs Jeedi Gunta Baskara. Narasimham.
 93. Bom 88 Jethabai Ratanshi Lodaya Vs Manabai Jethabhai Lodhaya .
 94. Mad 211 Lakshmi Ammal Vs Alagiri Swamy Chettiar.
 95. P&H 225 Jarnail Singh Vs Gurnam Kaur.
 96. Raj 28 Rameshwari Vs Kirpa Shankar .

AIR 1976

97. AP 77 M. Narasinha Reddy Vs Boosamma.

AIR 1977

98. SC 2218 Dharmendra Vs Usha.
 99. AP 43 Pinminti Venkatramana Vs State.
 100. Del 178 Gajna Devi Vs Purushottam Giri.
 101. P&H 28 Asha Rani Vs Amritlal.
 102. P&H 167 Bimla Devi Vs Bhaktavar Singh.

AIR 1978

103. All 255 Gurbachan Kaur Vs Sardar Swaran Singh.
 104. AP 6 Varalakshmi Vs N.V. Hanumantha Rao.
 105. Del 296 Swaraj Garg Vs K.M. Garg.
 106. Guj 74 Anil Jayantilal Vyas Vs Sudhaben.
 107 J&K 69 Jialal Abrol Vs Sarala Devi.
 108. MP 44 Ravi Shankar Vs Sarala Vishwakarma.
 109. Raj 140 Parihar (Preeti) Vs Parihar (Kailash Singh).
 110. P&H 317 Labh Kaur Vs Narain Singh.

AIR 1979

111. All 260 Jambu Psd. Jain Vs Malati Prabha.
 112. All 285 Leelawati Vs Ram Sevak.
 113. All 316 Gopal Krishan Sharma Vs Dr. Mithilesh Kumari Sharma.
 114. Cal 87 Bijali Choudhary Vs Sukamal Choudhary.
 115. Del 33 Prakash Ch. Gupta Vs Kamala Gupta.
 116. Guj 98 Manilal Harjvandas Vs Gangaben Ganeshbai.

117. Guj 209 Bai Mani Vs Jayantilal Dahyabai.
 118. P&H 68 Jarnail Singh Vs Shakuntala Devi.
 119. P&H 98 Gurcharan Singh Vs Sukhdev Kaur,
 120. P&H 162 Balbir Kaur Vs Dheer Dass,
 121. Raj 197 Lad Kanwar Vs Jagdish.

AIR 1980

122. Ori 171 Banchha Nidhi Vs Kamala Devi.
 123. P&H 171 Angraj Kaur Vs Baldev Singh.
 124. P&H 325 Santosh Kumari Vs Mohan Lal.
 125. P&H 220 Jusvinder Kaur Vs Kulwant Singh.
 126. Raj 48 Devi Singh Vs Sushila Devi.
 127. Del 213 Rajender Singh Juna Vs Tarabati.
 128. Ker 109 Gopal Krishnan Nair Vs R. Sarasamma.
 129. Mad 294 Sundar Ammal Vs Sundara Mahalinga Nandar.
 130. Cal 374 Dr. Saroj Kumar Sen Vs Dr. Kalyan Kanta Roy
 131. Cal 370 Suleka Bairagi Vs Prof Kamal Kanta Bairagi.
 132. All 336 S.P. Srivastava Vs Premlata Srivastava.
 133. P&H 334 Sur^endar Kaur Vs Madan Gopal Singh.

AIR 1981

134. All 78 Sulochana Vs Ram Kumar Chauhan.
 135. All 151 Inderwal Vs Radhey Raman.
 136. All 441 Pramod Saraswat Vs Ashok Kr. Saraswat.
 137. AP 74 Bathula Iylaiiah Vs Bathula Devamma.
 138. AP 269 M. Akkamma Vs M. Jagannadham.
 139. Cal 252 Arun Kumar Sinha Vs Manjula Sinha.
 140. Kant 181 Subhasini Vs B.R. Umakanth.

141. ~~Raj~~ 349 M. Venkatachalapathy Vs Saroja .
 142. Del 53 Shakuntala Kumari Vs Om Prakash Ghai.
 143. P&H 119 Krishna Rani Vs Chunilal Gulati.
 144. P&H 161 Gurmeet Kaur Vs Harbans Singh .
 145. P&H 315 Sudarshan Kumar Khurana Vs Deepak (Smt.).
 146. HP63 Kaushalya Devi Vs Masat Ram.

AIR 1982

147. P&H 60 Paras Ram Vs Kamalesh.
 148. P&H 339 Angrez Kaur Vs Baldev Singh.
 149. P&H 221 Shakuntala Devi Vs Amarnath.
 150. P&H 208 Harbhagan Kaur Vs Lt. Col. Bhagwant Singh.
 151. All 52 Sadan Singh Vs Resham.
 152. All 242 Kiranbala Asthana Vs Bhairi Psd Shrivastav.
 153. AP 369 Ravur Venkata Subbaiya Vs Muruga Kamalamma.
 154. Raj 220 Sarala Sikrodia Vs Krishan Ch. Sikrodia.
 155. Bom 498 P. Petitioner Vs P . Respondent.
 156. Cal 138 Reeta Roy Vs Satish Chandra Bhadra Roy.
 157. Cal 474 Shankar Prasad Paul Choudhary Vs Madhuri Paul Choudhary.
 158. Cal 547 Smritikana Bagh Vs Dilip Kr. Bagh.
 159. Del 107 Pushpa Rani Vs Krishan Lal.
 160. Del 223 Shukla Vs Brij Bhushan Makan.
 161. Del 240 Maya Vs Brij Nath .
 162. Del 344 Indu Gupta Vs Rajeshwar Prasad .
 163. Del 458 Ram Kishen Singh Vs Savitri Devi .

164. Del 543 Kiran Kapur Vs Surinder Kumar Kapur.
 165. Guj 254 Motilal Machavlal Chauhan Vs Padmaben.
 166. Kar 295 Swayam Prabha Vs A. S. Chandrasekhar.
 167. Del 329 D.P. Gopal Vs P^Ushpadevi.
 168. Ker 68 Chandramathi Vs Pazhetti Balan.
 169. Ker 78 P. Indira Devi Vs Kumaran.
 170. MP 120 N.C. Dass Vs Chinmayee Dass.

AIR 1983

171. All 225 Suresh Kumar Gulati Vs Suman Gulati.
 172. All 371 Bitto Vs Ram Deo.
 173 AP 111 Geeta Lakshmi Vs G.V.R.K. Sarveshwara Rao.
 174. Bom 8 P. Petitioner Vs P. Respondent.
 175. Bom 409 Meena Deshpande Vs Prakash Srinivas Deshpande.
 176. Cal 161 Sandhya Bhattacharya Vs Gopinath Bhattacharya.
 177. Del 230 Suresh Bala Vs Mj. Gurmohinder Singh Bala
 178. Del 346 Ram Narain Vs Daropodi Devi
 179. Del 351 Vilayat Raj Vs Sunila.
 180. Del 469 Sukhama Devi Vs Niranjana Singh.
 181. J&K 87 Sardar Surinder Singh Vs Majeek Kaur.
 182. Kant 63 K.S. Lalithamma Vs N. S. Hiryanaiya.
 183. Kant 235 K. Krishna Murthy Rao Vs Kamalakshi.
 184. P&H 59 Sudarshan Kumar Chadda Vs Saroj Rani.

185. P&H 253 Satya Vs Ram.
186. Raj 211 Shanti Devi Vs Govind Singh.
187. Raj 229 Bhanwarlal Vs Kamla Devi.
188. Bom 239 Madhavi Madhukar Kulkarni Vs Madhukar Ramchandra Kulkarni.
189. NOC 117 Pat Yuvrani Lokrayay Lakshni Vs Yuvraj Brajendra Kishore Singh.
190. Bom 302 Jayashree Ramesh Londhe Vs Ramesh Bhikaji Londhe.
191. Bom 413 Dr. Krishna Rao Kishanji Londhe Vs Nisha Londhe.
192. NOC 185 Del Madhan Mohan Behl Vs Veena Rani.
193. SC 1562 Saroj Rani Vs Sudarshan Kumar Chaddha.
194. NOC 186 Del Hari Kr Lekhi Vs Suman Lata.
195. All 40 Maya Chatterjee Vs Shiv Chandra Chatterjee.
196. NOC Del Veena Vs Makhanlal.
197. All 81 Satyapal Sethi Vs Susheela Sethi.
198. All 274 Bharatlal Vs Ramkali Devi.
199. AP 54 Pavuluri Murahari Rao Vs Pavuluri Vasantha Manohari.
200. NOC 145 (All) R Vs S.
201. Del 159 O.P. Mehta Vs Saroj Mehta.
202. Del 291 Rita Vs Brij Kishore Gandhi.
203. Del 368 Mukesh Kumar Gupta Vs Kamini Gupta.
204. Del 389 Dharam Dev Malik Vs Raj Rani.

228. P&H 199 Kamlesh Vs Paras Ram.
 229. P&H 232 Rajendra Kumar Vs Padam Parkash.
 230. P&H 356 Amarjeet Pal Singh Vs Kiranbala.
 231. P&H 364 Om Prakash Vs Rosani.
 232. P&H 349 Sahyogata Devi Vs Lalit Kumar Khurana.

AIR 1986

233. Raj 13 Shanti Devi Vs Raghav Parkash.
 234. Raj 49 Lallu Vs Bachi.
 235. Del 136 Meera Bai Vs Rajendra Kr. Sobti.
 236. Raj 128 Santosh Kumari Vs Virendra Kr.
 237. Del 162 Snehalata Seth Vs Kewal Krishna Seth.
 238. Del 327 O. P. Mehta Vs Saroj Mehta.
 239. Del 387 Bidhan Ch. Sinha Vs Sushmita Sinha.
 240. Del 420 Mangju Singh Vs Ajay Bir Singh.
 241. Del 460 Krishanlal Vs Nithu (Asha).
 242. MP 41 Hari Bhajan Singh Monga Vs Amarjeet Kaur.
 243. MP 57 Hargovind Soni Vs Ram Dulari.
 244. MP 138 Lakshmbai Vs Kishorimal Jain.
 245. MP 218 Savitri Bai Vs Sitaram.
 246. P&H 201 Nachhattar Singh Vs Harcharan Kaur.
 247. Pat 128 Rabindra Prasad Vs Seeta Devi.
 248. Pat 362 Raj Kishore Prasad Vs Raj Kumari Devi.
 249. P&H 161 Munjhail Singh Vs Jagir Kaur.
 250. P&H 213 In the Matter of Sharan Kumar And
 Another Petitioner.
 251. P&H 379 Tarlochan Singh Vs Jit Kaur.
 252. P&H 253 Neelam Vs Vinod Kr. Middha.

253. P&H 383 Shyاملata Vs Suresh Kumar.
 254. AP 167 Om Prakash Vs K. Nalini.
 255. Cal 150 Nemai Kumar Ghosh Vs Meeta Ghosh.
 256. Cal 284 Smriti Banerjee Vs Tapan Banerjee.

AIR 1987

257. Ker 5 Chirakutty Vs Subramanium.
 258. P&H 33 Santosh Kumari Vs Parveen Kumar.
 259. Ori 1 Pushpalata Routh Vs Damodar Routh.
 260. Ori 286 Sarat Kumar Satpati Vs Sabita Misra.
 261. Ori 167 Binayak Ch Paddhi Vs Kamala Paddy (Padhani).
 262. Ori 65 Krishnapriya Mohapatra
 Vs
 Birakishore Mohapatra.
 263. P&H 191 Krishna Khetrapal Vs Satish Pal.
 264. Bom 220 Jayashree Mohan Otavnekar
 Vs
 Mohan Govind Otavnekar.
 265. Del 52 Savitri Balchandani
 Vs
 Mulchand Balchandani.
 266. Del 79 Vinay Kumar Vs Nirmala Chauhan.
 267. Del 86 Sushil Kr. Verma Vs Usha.
 268. Del 174 Sudha Vs Mahesh Chand.
 269. Del 203 Adarsh Prakash Shrivastav
 Vs
 Sarita Shrivastav.
 270. Del 111 Anil Bharadwaj Vs Nirmallesh Bharadwaj.

271. Del 235 Umesh Kr. Agarwal Vs Sashi Kumari.
 272. Del 266 M.K. Malhotra Vs Kirti Malhotra.
 273. Del 99 Ram Chander Lamba Vs Adarsh Lamba.
 274. Mad 224 Bhagwati Ammal Vs Sethi.
 275. Mad 259 Gumali Vs Kumar Guruparam.
 276. MP 68 Ravinder Vs Pratibha,
 277. Raj 79 Sumita Bali Vs Ashoke Bali.

AIR 1998

278. SC 121 Shobha Rani Vs Madhukar Reddy,
 279. Cal 111 Mamal Kr Basu Vs Kalyani Basu.
 280. SC 839 Tejinder Kaur Vs Gurmeet Singh,
 281. SC 2260 Ram Narain Gupta Vs Rameshwari Gupta,
 282. Cal 192 Sumitra Manna Vs ^{Gobinda} Chandra Manna.
 283. Cal 223 Tapan Kumar Kundu Vs Bibha Kundu.
 284. Bom 239 Nandini Sanjeev Ahuja
 Vs
 Sanjeev Bishen Ahuja,
 285. Del 222 Narinder Kumar Vs Suresh Pandey.
 286. Guj 159 Dr. Dhiran Harilal Garasia
 Vs
 N. Mansoor (Meenaben).
 287. Kant 162 N.G. Ramaprasad Vs B.C. Vanamala.
 288. Ker 308 Somasekharan Nair Vs Thankamma.
 289. Ker 314 Aiyappan Vs Vasantha.
 290. Ker 244 Gangadharan Vs T.K. Thankam,
 291. Ker 235 Radha Kumari Vs Dr. KMK Nair,
 292. P&H 27 Harcharan Kaur Vs Nachhattar Singh.

293. Raj 180 Mangho Shivdasan Vs Mahani.
 294. Raj 86 Krishna R.P. Parekh Vs Krishna D. Parekh.
 295. All 239 Aruna Jalan Vs Ram Chand Jalan.
 296. NOC 37 (Del) Hem Chand Misra Vs Satya Misra.
 297. Del 249 Ayesha Bhatia Vs Vijay R. Bhatia.

AIR 1989

298. AP 8 Silla Jagannadha Prasad
 Vs
 Silla Laitha Kumari.
 299. Bom 75 Pramod Purushottam Padkar
 Vs
 Vasundhara Pramod Padkar.
 300. Cal 74 Tapan Kumar Chatterjee
 Vs
 Kamala Chatterjee.
 301. Cal 84 Sibnath Mukhopadhyay
 Vs
 Sumita Mukhopadhyay.
 302. Cal 248 Mita Gupta Vs Prabir Kr.Gupta.
 303. Cal 327 Brojokishore Ghosh Vs Smt.Krishna Ghosh.
 304. Del 73 Chander Kanta Vs Hans Kumar.
 305. Del 121 Ashok Kumar Bhatnagar
 Vs
 Shabnam Bhatnagar.
 306. Cal 151 Apurba Mohan Ghosh Vs Manashi Ghosh.
 307. Gau 44 Ann Sarkar Vs Anil Sarkar.
 308. HP 29 Parvathy Vs Shivram.
 309. Ker 314 S.V. Suhasini Devi Vs Padma.
 310. P&H 46 Prakash Kaur Vs Vikramji Singh.
 311. P&H 310 Kiran Mondal Vs Mohini Mondal.
 312. Raj 97 Mukesh Mathur Vs Veena Mathur.
 313. NOC 94(Cal) Sudhan Kumar Roy Vs Saraswati Roy.

AIR 1990

314. Ker 306 Puthalath Chathu Vs Nambukudi Jayashree.
315. Cal 367 Santona Bannerjee Vs Sachindra Nath Banerjee.
316. Del 146 Dhanjit Vadra Vs Beena Vadra.
317. NOC 88 (Cal) Chinmoy Chakraborty
Vs
Bharati Chakraborty.
318. Ker 151 K. Narayanan Vs K. Shreedevi.
319. HP 35 Banti Devi Vs Moti Ram.
320. MP 150 Kadambini Shahu Vs Reshamlal Shahu.
321. SC 594 Sanat Kumar Agarwal Vs Nandini Agarwal.
322. Ker 55 G. Ramakrishna Pillai
Vs
Vijaya Kumari Amma.
323. Del 1 Nitu alias Asha Vs Krishan Lal.
324. Ker 1 Rajani Vs Subramanian.

APPENDIX - III

From: Sri G.N. Bhattacharjee,
Registrar, High Court,
Appellate Side, Calcutta

No. 1463 G

To: The District Judge,
Darjeeling.

Administrative
Department

Dated, Calcutta, the 24th March, 1990

Sub: Inspection of Court records at Siliguri and
Darjeeling.

Sir,

With reference to your letter NO. 265/C dated 1.3.90 together with its enclosure on the above subject, I am directed to inform you that the Hon'ble Court has been pleased to grant permission to Miss G. Chakraborty Lecturer-in-law in the University College of Law of the North Bengal University to consult the Judicial and other official records of the Courts at Siliguri and Darjeeling for her research purpose, on such conditions as may be applicable for inspection of Lower Court records. I am also enclosing herewith a copy of the conditions for inspection of High Court records for research work, which may serve your purpose in imposing similar terms and conditions for inspection of the records.

Yours faithfully,

Sd/- G.N. Bhattacharjee,
Registrar

Enclosure: As stated

OFFICE OF THE DISTRICT JUDGE,
DARJEELING
(ENGLISH DEPARTMENT)

Memo No. 564(13) Dated 16.4.1990

Copy along with copy of the conditions for inspection of High Court records for research work.

1. Additional District & Sessions Judge, Darjeeling/Siliguri
2. Judge Special Court (E.C. Act), Darjeeling/Siliguri
3. The Chief Judicial Magistrate, Darjeeling.
4. The Assistant District Judge, Darjeeling/Siliguri
5. The Sub-divisional Judicial Magistrate, Darjeeling/Siliguri
6. The Munsif, Siliguri
7. The Judicial Magistrate, 1st/2nd Court, Siliguri
8. Miss G. Chakraborty, Lecturer-in-Law, University College of Law, North Bengal University, P.O. Raja Rammohan Pur, Siliguri

Sd/-

(N. Khan)

District Judge
Darjeeling

Conditions for Inspection of Court
Records for Research Work.

1. Only bonafide institutions of status or bonafide scholars will be entitled to the privilege.
2. The use of the materials collected by such research worker should be for the public benefit in bringing out and publishing such works of scholarship and should not be used for any other purpose.
3. A copy of the notes made from such records must be supplied by the researcher to the Registrar, Original Side or Appellate Side, as the case may be, for being placed before the Chief Justice and further one copy of the published worked of research relating thereto, should be supplied to the High Court Judge's Library for its record and reference.
4. The researcher will remain responsible for the security, safety & integrity of the records in respect of which he is making the research and he must ensure that he does not destroy, damage or mutilate or tamper or mishandle any records or part thereof while in his custody during his research.
5. The researcher shall specify the records in which he wants to carry out such research, and that he shall inspect and examine the records on the date and time specified by the Court.
6. The researcher will inspect the records only in the room provided for the purpose in the presence of one of the Assistants of the Court to be determined by the Registrar, Appellate Side or Registrar, Original Side, where the records would be available and take notes only in pencil. Use of ink should be avoided because of its risk to the record.

7. The researcher shall not Under any circumstances take any record outside the room where the inspection is held.
8. The researcher shall not utilise the notes prepared by him for any purpose other than his research work.
9. The names of the parties and the number of the case or any other particulars that may lead to the identification of the persons involved and to their or their families prejudice should not disclosed.
10. Permission granted to carry on the research under these conditions will be withdrawn immediately on the report of the breach of any of the aforesaid conditions or otherwise or without assigning any reason whatsoever.

APPENDIX - IVLIST OF CASES FROM THE DISTRICT COURT AT DARJEELING:1984 - 1990 May1984

Sl. No.	Date	M/S No	Name of the Parties
1.	01.02.84	1/84	Pushpa Kumari Agarwal Vs Madanlal Sharma .
2.	02.03.84	2/84	Abindra Prasad Chhetri Vs Beena Chhetri.
3.	03.04.84	3/84	Shiv Kumar Gupta Vs Krishna Gupta.
4.	16.04.84	4/84	Amalendu Dey Vs Seema Dey .
5.	16.04.84	5/84	Meena Roy Vs Durgapada Roy .
6.	17.04.84	6/84	Pradyut Kr. Sarkar Vs Archana Sarkar .
7.		7/84	S. 28. Special Marriage Act, 1954
8.	07.05.84	8/84	Manju Devi Vs Babu Lal .
9.	11.05.84	9/84	Ratan Ch. Pal Vs Bula Pal .
10.	07.06.84	10/84	Vishnu Prasad Sharma Vs Deepu Sharma .
11.	12.06.84	11/84	Damayanti Subba Vs Narendra Adhikary .
12.	05.07.84	12/84	Narayan Ch. Ghosh Vs Sabita Ghosh .
13.	06.07.84	13/84	Tashirin Bhotia Vs Renuka Tamang .
24.	24.07.84	14/84	Annulment, S. 12 of Hindu Marriage Act .
15.	25.07.84	15/84	Tek Prasad Thapa Vs Deepa Tamang .
16.	30.07.84	16/84	Dayei Sherpa Vs Lakhi Bhutia .
17.	31.07.84	17/84	Shakti Das Vs Ranjeet Das .
18.	23.08.84	18/84	Nayak Pheroze Subba Vs Gopa Devi Subba .
19.	11.09.84	19/84	Tarani Mukherji Vs Jhunu Mukherji .
20.	18.09.84	20/84	Subrata Kr. Mukherji Vs Aparna Mukherji .

21.	28.09.84	21/84	Ugeyen Namgyal Vs Laij Ungma.
22.		22/84	CASE COULD NOT BE TRACED.
23.		23/84	S.28, Special Marriage Act, 1954.
24.	19.11.84	24/84	Sushmita Mitra Vs Deepu Mitra.
25.	17.11.84	25/84	Kailash Singh Vs Kamala Devi Singh.
26.	22.11.84	26/84	Passang Chhoki Yolmo Vs Hubert Lama.
27.	23.11.84	27/84	Kumar Chhetri Vs Vishnu Maya Chhetri.
28.	23.11.84	28/84	Mani Kr. Pradhan Vs Shirin Doma.
29.	07.12.84	29/84	Parameshari Devi Vs Ram Chandra Sunwar.
30.	07.12.84	30/84	Bani Mukherjee Vs Binal Mukherjee.
31.		31/84	S.28, Special Marriage Act, 1954.
32.	12.12.84	32/84	Lakshmi Ghosh Vs Jagadish Ch. Ghosh.
33.	18.12.84	33/84	Nihar Ch. Burman Vs Lakshmi Rani Burman.
34.	19.12.84	34/84	Purba Dorjey Yolmo Vs Nanda Moktan.

1985

1.		1/85	Case not traced.
2.	06.02.85	2/85	Sundar Bhushan Rai Vs Sheela Rai.
3.	15.02.85	3/85	Christordy Meanze Vs Johanna Meanze.
4.		4/85	Not traced.
5.		5/85	Balkrishna Chhetri Vs M. Kumari Chhetri.
6.	28.02.85	6/85	Manta Routh Vs Manoj Routh.
7.	05.03.85	7/85	Hari Prasad Pradhan Vs Sheba Devi.
8.		8/85	S.27, Special Marriage Act, 1954.
9.		9/85	Not traced.
10.		10/85	Not traced.

11.	10.05.85	11/85	Shanti Dutta Vs Shibani Dutta SMA-A 27.
12.	22.05.85	12/85	Jhuma Majumdar Vs Samarendra Nath Sarkar.
13.		13/85	S.11, Hindu Marriage Act, 1955.
14.	19.06.85	14/85	Pratap Kumar Vs Juliana Yonson & Surendra Kaur.
15.	27.06.85	15/85	Deepu Sarkar Vs Swapan Sarkar.
16.	20.08.85	16/85	Mitali Biswas Vs Sanjeev Biswas.
17.		17/85	Narayan Ch. Modak Vs Chhabi Modak.
18.	09.10.85	18/85	Deepak Kr. Gazmia Vs Purnima Gazmia.
19.		19/85	Not traced.
20.		20/85	Mohammaden Law : Roshan Ahmed Vs Manzoor Ahmed.
21.		21/85	Not traced.
22.		22/85	Not traced.
23.		23/85	Kazilama Sherpa Vs Neema Doma.
24.		24/85	Joy Prakash Chhetri Vs Sheelu Chhetri.
25.		25/85	S.28, Special Marriage Act, 1954.
26.	13.12.85	26/85	Chetak Sherpa Vs Subhadra Devi Bonjam.
27.		27/85	Kishore Jhangiani Vs Saraswati Jhangiani. (Not traced)
28.	21.12.85	28/85	Ratan Bahadur Chhetri Vs Teeta Khati .

1986

1.	30.1.86	1/86	Moti Pradhan Vs Jeevan Das Pradhan.
2.		2/86	S.10, Hindu Marriage Act, 1955.
3.		3/86	Not traced.
4.	17.02.86	4/86	Nakul Ch. Sarkar Vs Sabita Sarkar.
5.	20/2/86	5/86	Dola Saha Vs Ashoke Kr. Saha.
6.		6/86	S.28 Special Marriage Act, 1954.
7.	1/3/86	7/86	Raj Kumar Agarwal Vs Phul Maya Tamang.
8.	5/3/86	8/86	Pramila Darnal Vs Madan Dil Coomar.
9.		9/86	Not traced.
10.		10/86	Govind Prsd Agarwal Vs Susheela Devi.
11.		11/86	Civil Procedure Code, S-151.
12.		12/86	Not traced.
13.	12.4.86	13/86	Pranab Banik Vs Shipra Banik.
14.	25/4/86	14/86	Dilip Kumar Joardar Vs Bornali Joardar.
15.	30/4/86	15/86	Jhuma Bose Vs Samir Bose.
16.	2.5.86	16/86	Gopal Singh Ghimiraj Vs Shobha Ghimiraj.
17.		17/86	Rajni Pradhan Vs Dinesh Kr. Pradhan.
18.	16/5/86	18/86	Chinmoy Goswami Vs Lolita Das.
19.		19/86	S.9. Hindu Marriage Act, 1955.
20.	29/5/86	20/86	Sanat Kr. Pradhan Vs Ganga Pradhan.
21.		21/86	S.22, Indian Divorce Act, 1869.
22.		22/86	Not traced.
23.	12/6/86	23/86	Malati Gurung Vs Indra Diwan.
24.	24/6/86	24/86	Shobha Pradhan Vs Dilip Pradhan.

25.	2.7.86	25/86	Narayan Singha Roy Vs Sabita Singha Roy.
26.		26/86	Not traced.
27.	17.7.86	27/86	Swadhin Ch. Saha Vs Saraswati Saha.
28.		28/86	Not traced.
29.	18/9/86	29/86	Swapn Bhadra Vs Beli Bhadra.
30.	18/9/86	30/86	Dr. Balaram Pal Vs Geeta Pal.
31.		31/86	Kishore Jhangiani Vs Saraswati Jhangiani.
32.	25/9/86	32/86	Arup Mukherjee Vs Keka Mukherjee.
33.	6/10/86	33/86	Jit Bahadur Dorjey Vs Phulmaya Dorjeyni.
34.	7/1/86	34/86	Gouri Choudhary Vs Arun Ranjan Choudhury.
35.	29/10/86	35/86	Anil Kr. Sarkar Vs Kalpana Sarkar.
36.	29/10/86	36/86	Jhumu Dey Vs Phani Dey.
37.		37/86	Not traced.
38.		38/86	Mahendra Kr. Misra Vs Gendua Misra.
39.	17/11/86	39/86	Sadhan Kr. Dutta Vs Maya Dutta.
40.	24/11/86	40/86	Sephali Das Vs Binod Behari Das.
41.	26/11/86	41/86	Jai Prakash Jaiswal Vs Rukmini Devi Jaiswal.
42.		42/86	Not traced.
43.	20/12/86	43/86	Anu Laha Vs Bikash Ch. Laha.
44.	23/12/86	44/86	Saraswati Das Vs Monindranath Das.

1987

1.	9/2/87	1/87	Sampad Sarkar Vs Rita Sarkar.
2.	17/2/87	2/87	Geetha-Rani Baisya Vs Madhusudhan Baisya.
3.	2/3/87	3/87	Avadh Raj Maurya Vs Sheela Maurya.

4.	10/3/87	4/87	Kishan Hang Subba Vs Subhadra Rai.
5.	20/3/87	5/87	Namita Ishwari Vs Kumar Iswari.
6.	26/3/87	6/87	Shashi Kr. Thami Vs Padma Moktan.
7.	28/3/87	7/87	Subhas Saha Vs Namita Saha.
8.	6/4/87	8/87	Utpal Majumdar Vs Ashoka Majumdar.
9.	24/4/87	9/87	Ila Joy Vs Sunil Joy, S.12 HMA.
10.	27/4/87	10/87	Mangal Singh Lama Vs Phool Kala Lama.
11.	30/4/87	11/87	Indra Kr Pradhan Vs Lila Chhetri.
12.	5.7.87	12/87	Narayan Ch. Ghosh Vs Sabita Ghosh.
13.	7.5.87	13/87	Ashim Kr Majumdar Vs Alpana Majumdar.
14.		14/87	Dilip Dutta Vs Baby Dutta.
15.	19.5.87	15/87	Manju Devi Sharma Vs Hanuman Psd. Sharma.
16.	2.6.87	16/87	Ranjit Roy Vs Maya Roy.
17.	31.7.87	17/87	Not traced.
18.	18.6.87	18/87	Shikha Rai Vs Tilak Kumar Rai.
19.	18.6.87	19/87	Kailash Rai Vs Pratibha Rai.
20.	18.6.87	20/87	Satya Narayan Sharma Vs Manju Sharma.
21.	4.7.87	21/87	Karuna Lama Vs Tej Kumar Rai.
22.	4.7.87	22/87	Gurudas Mondal Vs Anima Mondal.
23.	14.7.87	23/87	Sanjeeb Biswas Vs Mitali Biswas.
24.	20.7.87	24/87	Purnima Dey Vs Chandan Dey.
25.	20.7.87	25/87	Namita Ishwar Vs Kumar Ishwari.
26.	20.7.87	26/87	Dwipendra Nath Bhattacharjee Vs Sabita Bhattacharya.
27.	25.7.87	27/87	Ashu Paul Vs Manju Paul.
28.		28/87	Gouri Shankar Sharma Vs Uma Sharma.

29.		29/87	S.12, Hindu Marriage Act, 1955.
30.	11.8.87	30/87	Meena Kumari Kotwalni Vs Ramesh Chetri Kotwal.
31.	19.8.87	31/87	Anant Ram Vs Anandi Ram.
32.	27.8.87	32/87	Sukhahang Subba Vs Punam Rai.
33.	31.8.87	33/87	Ramu Tiwari Vs Asha K. Devi.
34.		34/87	Ram Rati Devi Jaiswal Vs Bajnath Prsd Jaiswal.
35.		35/87	S.27, Special Marriage Act, 1954.
36.	21.9.87	36/87	Ratna Gupta Vs Jayanta Gupta.
37.	28.9.87	37/87	Nirmal Choudhury Vs Rama Choudhury.
38.		38/87	S.9, Hindu Marriage Act, 1955.
39.	13.10.87	39/87	Krishna Chetri Vs Birey Chetri.
40.	7.11.87	40/87	Kaliprasanna Sarkar Vs Radha Sarkar.
41.	18.11.87	41/87	Sunil Kr. Karmakar Vs Lata Karmakar.
42.	27.11.87	42/87	Durga Devi Bhargo Vs Pusraj Bhargo.
43.	12.12.87	43/87	Parameshwar Sharma Vs Lakshmi Sarma.
44.	14.12.87	44/87	Rahjan Bechar Vs Sphephali Bechar.

1988

1.	1.2.88	1/88	Renu Dey Vs Ratan Dey.
2.		2/88	Parbati Chakraborty Vs Narayan Chakraborty.
3.		3/88	28, Special Marriage Act, 1954.
4.	29.3.88	4/88	Tapash Kumar Lahiri Vs Manabi Lahiri.

5.	29.3.88	5/88	Madhab Ch. Gope Vs Reba Gope.
6.	22.4.88	6/88	Amalendu Dey And Seema Dey.
7.	23.4.88	7/88	Phurba Yolmo Vs Dolma Yolmo.
8.	13.5.88	8/88	Govind Ram Vs Chandra Kala Devi.
9.		9/88	S.9, Hindu Marriage Act, 1955.
10.	20.5.88	10/88	Jaya Sarkar Vs Tarun Sarkar.
11.	23.6.88	11/88	Munshi Ram Rastogi Vs Shanti Devi.
12.		12/88	S.9, Hindu Marriage Act, 1955.
13.	28.6.88	13/88	Shyamal Kumar Chaki Vs Dola Chaki.
14.		14/88	Krishna Pal Vs Tarapada Pal.
15.	16.7.88	15/88	Dulal Chandra Saha Vs Reeta Saha.
16.	1.9.88	16/88	Probohd Kumar Paul Vs Kabita Paul.
17.	11.8.88	17/88	Bishnu Prasad Sharma Vs Diba Sharma.
18.	13.8.88	18/88	Pema Bhotia Vs Pasang Dawa.
19.	18.8.88	19/88	Sunil Kr. Raha Vs Basana Raha.
20.	12.9.88	20/88	Punam Bharati Vs Madan Gurung.
21.		21/88	S.27, Hindu Marriage Act, 1955.
22.	5.10.88	22/88	Tej Bahadur Chetri Vs Talsa Devi.
23.	27.10.88	23/88	Durgadutt Sharma Vs Yugkumari Sharma.
24.	31.10.88	24/88	Madhu Chhetri Vs Kulbahadur Chhetri.
25.	22.11.88	25/88	Donmal Jain Vs Ranju Jain.
26.	10.12.88	26/88	Shyambabu Prasad Vs Asha Devi Prasad.
27.	10.12.88	27/88	Sabita Bhattacharya Vs Dwipendranath Bhattacharjee.
28.	16.12.88	28/88	Juliana Yousone Vs Pratapa Kumar.
29.	23.12.88	29/88	Uttam Prasad Vs Asha Prasad.

1989

1.	27.1.89	1/89	Bhanu Das Vs Jaba Das.
2.	27.1.89	2/89	Hemant Kumar Rai Vs Bina Rai.
3.	27.1.89	3/89	Balbahadur Thapa Vs Kalpana Thapa.
4.	31.1.89	4/89	Kali Km Chetri Vs Gouri Shankar Sharma.
5.	03.3.89	5/89	Indu Prasad Sharma Vs Shobha Basnet.
6.	15.3.89	6/89	Punam Tamang Vs Migma Bhutia .
7.	18.3.89	7/89	Dr Raj Kr Agarwal Vs Santoshi Devi.
8.	27.3.89	8/89	Ashish Chatterjee Vs Pratibha Chatterjee.
9.	7.4.89	9/89	Jayashree Ghoshal Vs Tarun Kr Ghoshal.
10.	8.4.89	10/89	Mohinder Kr. Misra Vs Gendua Misra.
11.	17.4.89	11/89	Kallol Kr. Dey Vs Madhumita Dey.
12.	18.4.89	12/89	Dilip Majumdar Vs Dipali Majumdar.
13.	27.4.89	13/89	Arun Kr. Thapar Vs Anju Thapar.
14.	27.4.89	14/89	Ashoke Kr. Dhabai Vs Shanti Devi.
15.	29.4.89	15/89	Sashikala Vs Rajesh Kumar.
16.	4.5.89	16/89	Daniel Boxla Vs Patricia Boxla.
17.	6.5.89	17/89	Netai Ch. Bose Vs Manju Bose.
18.		18/89	S.18, Indian Divorce Act, 1869.
19.		19/89	Snil Debnath Vs Sandhya Debnath.
20.	24.5.89	20/89	Chandra Sekhar Das Vs Dali Das.
21.	26.5.89	21/89	Dulal Ch. Saha Vs Reeta Saha.
22.		22/89	Shibendu Bikash Roy Vs Malabika Roy.
23.	5.6.89	23/89	Mira Gurung Vs Nagendra Gurung.
24.	13.6.89	24/89	Sachidananda Bhattacharya Vs Joyati Bhattacharya.

25.	28.6.89	25/89	Raj Gupta Vs Katherine Gupta.
26.	3.7.89	26/89	Padma Thapa Vs Raj Kr. Thapa .
27.	7.7.89	27/89	Nrisingha Kr. Biswas Vs Sunita Biswas .
28.	18.7.89	28/89	Asha Prasad Vs Chandrasekhar Prasad .
29.		29/89	S.9, Hindu Marriage Act, 1955.
30.	2.8.89	30/89	Kishore Advani Vs Puja Advani .
31.	10.8.89	31/89	Renuka Pradhan Vs Bhanu Pradhan .
32.	16.8.89	32/89	Adhar Ch. Singh Vs Savita Singh .
33.	16.8.89	33/89	Sudhangshu Bhattacharya Vs Geetha Bhattacharya .
34.	17.8.89	34/89	Ganesh Chetri Vs Lakshmi Chetri .
35.	19.8.89	35/89	Sampat Sarkar Vs Reeta Sarkar .
36.	29.8.89	36/89	Mrityunjay Kr. Verma Vs Bani Verma .
37.	29.8.89	37/89	Dhurba Kr. Rani Vs Urmila Rai .
38.	31.8.89	38/89	Dawa Bhutia Vs Deichen Chetten . Bharat Mondal Vs Maya Rani Mondal,
39.		39/89	S.9, Hindu Marriage Act, 1955.
40.	11.9.89	40/89	Kallol Dey Vs Madhumita Dey.
41.		41/89	S.28, Special Marriage Act, 1954.
42.		42/89	Under Civil Procedure Code, Property.
43.		43/89	Under Civil Procedure Code, Property.
44.		44/89	S.28, Special Marriage Act, 1954.
45.	26.9.89	45/89	Tapashi alias Topu Ghosh Vs Anjan Kumar Ghosh .
46.	28.9.89	46/89	Joydeb Kr. Paul Vs Nirmala Paul .
47.	16.10.89	47/89	Sachidananda Bhattacharya Vs Jayati Bhattacharya .

48.	24.10.89	48/89	Subrata Roy Choudhury Vs Ratna Roy Choudhury.
49.	10.11.89	49/89	Maya Chetre Vs Ashoke Chetri.
50.	10.11.89	50/89	Rukmini Mukhia Vs Gangey Mukhia.
51.	15.11.89	51/89	Arati Devi Vs Om Prakash Gupta.
52.		52/89	S.12 Hindu Marriage Act, 1955.
53.	21.11.89	53/89	Anita Gupta Vs Jogendra Prasad,
54.		54/89	S.9, Hindu Marriage Act, 1955.
55.	23.11.89	55/89	Rohit Prasad Thapa Vs Proneeta Thapa.
56.	15.12.89	56/89	Shyam Kr. Chetri Vs Premu Chetri.
57.	20.12.89	57/89	Chandra Prasad Sharma Vs Durga Maya Sharma.
58.	21.12.89	58/89	Manash Chakraborty Vs Maitreyi Chakraborty.
59.	21.12.89	59/89	Arjun Dutta Vs Kalyani Dutta.
60.	22.12.89	60/89	Swati Chakraborty Vs Alike Chakraborty.
61.		61/89	S.9, Hindu Marriage Act, 1955.
62.	23.12.89	62/89	Pradeep Kr. Chakraborty Vs Shyama Rani Chakraborty.
63.	23.12.89	63/89	Manglu Roy Vs Lakshmi Roy.

1990

1.	3.2.90	1/90	Meena Mullick Vs Kamana Chitta Mallick.
2.	6.2.90	2/90	Sudip Ahluwalia Vs Hernita Ahluwalia.
3.	6.2.90	3/90	Sadhan Kr. Dutta Vs Maya Dutta.
4.	7.2.90	4/90	Radheshyam Thakur Vs Parbati Thakur.
5.		5/90	Not traced.

6.	8.2.90	6/90	Gajendra Prasad Chetri Vs Lila Chetri.
7.	16.2.90	7/90	Chitra Bhattacharya Vs Tapash Kr. Adhikary.
8.	17.2.90	8/90	Hemant Kr. Rai Vs Beena Rai.
9.		9/90	S.9, Hindu Marriage Act, 1955.
10.	28.2.90	10/90	Gautam Tamang Vs Anita Tamang.
11.	5.3.90	11/90	Shukla Ghosh Vs Gautam Gope.
12.	5.3.90	12/90	Bani Chakraborty Vs Swapan Chakraborty.
13.	5.3.90	13/90	Binod Prakash Sharma Vs Gauri Sharma.
14.	6.3.90	14/90	Swadesh Ch. Sarkar Vs Gauri Sarkar.
15.	10.3.90	15/90	Dilip Sarkar Vs Purnima Sarkar.
16.	10.3.90	16/90	Tarani Kanta Sinha Vs Lakhpali Sinha.
17.	19.3.90	17/90	Pranatosh Pradhan Vs Krishna Pradhan.
18.	19.3.90	18/90	Apurba Kr. Haldar Vs Dipti Haldar.
19.		19/90	S. 12 Hindu Marriage Act, 1955.
20.		20/90	S. 18 Indian Divorce Act.
21.	26.3.90	21/90	Dorjey Lama Vs Indu Lhamu Butia.
22.		22/90	S.10, Hindu Marriage Act.
23.	2.5.90	23/90	Raj Kumar Mittal Vs Leela Devi Mittal.
24.		24/90	Not traced.
25.		25/90	Pending for office report.
26.		26/90	Basudeb Ghosh Vs Manorama Ghosh, S. 27, S.M.A. Pending for office record.

APPENDIX - VName of the Parties interviewed

- | | |
|--------------------------|---------------------------------|
| 1. Meera Ghosh | 35. Swapna Dey |
| 2. Aparna Mukherjee | 36. Probodh Kumar Pal |
| 3. Shakti Das | 37. Manju Sharma |
| 4. Ranjit Das | 38. Shiv Kumar Gupta |
| 5. Lila Haschatak | 39. Krishna Gupta |
| 6. Deepali Mazumdar | 40. Sabita Bhattacharya |
| 7. Purnima Dey | 41. Dwipendranath Bhattacharjee |
| 8. Anu Laha | 42. Arup Mukherjee |
| 9. Kalpana Sarkar | 43. Subrata Mukherjee |
| 10. Tapasi Das | 44. Jayashree Shaha |
| 11. Mamata Sinha (Routh) | 45. Alpona Majumdar |
| 12. Shila May Ray | 46. Dilip Kumar Joardar |
| 13. Jogesh Chandra Ghosh | 47. Sabita Barui |
| 14. Sabita Chauhan | 48. Kishore Advani |
| 15. Sheela Maurya | 49. Parvati Biswas |
| 16. Avadhraj Maurya | 50. Preetibala Das |
| 17. Kabita Pal | 51. Sabitri Roy |
| 18. Dulali Sarkar | 52. Nibha Rani Mondal |
| 19. Saraswati Das | 53. Papia Choudhury |
| 20. Chandan Dey | 54. Tarun Kumar Choudhury |
| 21. Tulu Shaha | 55. Reeta Shaha |
| 22. Abhaya Sumati Burman | 56. Subrata Roy Choudhury |
| 23. Bharat Mondal | 57. Parbaty Chakraborty |
| 24. Pratibha Chakraborty | 58. Seekha Rai |
| 25. Ashis Chatterjee | 59. Dulal Chandra Saha |
| 26. Tapash Kumar Lahiri | 60. Sephali Das |
| 27. Manabi Lahiri | 61. Sheekta Roy |
| 28. Manju Pal | 62. Meeta Dasgupta |
| 29. Krishna Bardhan | 63. Purnima Mongal |
| 30. Narayan Chakraborty | 64. Lalitha Roy |
| 31. Jhunu Dey | 65. Kamini Roy |
| 32. Bela Basu Mallick | 66. Leela Roy |
| 33. Madhumita Dutta | 67. Manbahadur Chhetri |
| 34. Leela Singh | 68. Sonali Singh |
| | 69. Shikha Roy |
| | 70. Pijush Bannerjee |
| | 71. Sunil Debnath |

Questionnaire used for interviewA. Identification

- | | |
|------------|-------------|
| 1. Name | 4. Age |
| 2. W/O | 5. Caste |
| 3. D/O | 6. Religion |
| 8. Address | 7. Language |

B. Migration

Place of birth	Year of migration	Duration of stay here	<u>Frequency of visit</u>	
			To the place of origin	From the plan of origin

C. Socio-Economic Background

1. What is the level of your education?
Illit/lit/pri/Sec/College/University
2. Are you trained in any vocation?

Yes/No
3. If yes, please specify
3. Are you gainfully employed?

Yes/No

If yes,

- a. Nature of your employment?
- b. Income
4. What does your father/mother do?
Specify
5. What did your ex husband do?

7. Will this experience help you
to build a better home in future Yes/No
8. Do you think you have been able to
get back your independence Ys/No
- If yes, how
- (maidendays, Economic independence, assertion of rights)
9. Do you blame any one other than your
husband for the divorce?
10. Do you view divorce as a death
of a relationship Ys/No

Post Divorce Status

1. Have you any other siblings? Ys/No
- a) How many?
- b) Does your being a divorcee
affect their marriage?
- c) What is their attitude towards
you?
2. How did your divorce affect
your parents?
3. Does the society blame you for
being a divorcee?
4. Have you remarried Ys/No
- a. What is your present husband's
Ed. Qualification and Income
- b. Is this a love marriage
- c. What is the length of this marriage
- 5a. Does your second husband show any
curiosity regarding your previous
marriage Ys/No
- a. Does it upset you?
- b. What his attitude to your
children by previous marriage
love, affection, material
goods.

- 6a. Are your present -in-laws
curious about your previous
marriage? Yes/No
- b. Do they blame you for being a
divorcee? Yes/not sure/No
- c. Does it upset you? Yes/No
- 7a. How many children do you
have from your previous
marriage?
- b. What is their attitude
towards your present
marriage?
- c. Do they in any way blame you?
- 8a. How many children do you
have from your present marriage?
- b. What is their attitude to your
previous marriage
- c. How do your children get along?
9. Have you got your desired social status?

APPENDIX - VIP A R T - 1MAINTENANCE CASES IN HINDU LAWPERIOD - 1914 - 1954

1. N. Subbaya Vs Bhavani, AIR 1914 Mad 665.
2. Yesubai Sadasiv Vs Sadasiv Ganesh Deshpande, AIR 1915 Bom 277.
3. Debisaran Sukhu Vs Daulat Sukhain, AIR 1917 All 86.
4. H. Sheenappayya Vs Rajamma @ Padmavati, AIR 1922 Mad 399.
5. Bai Monghibai Vs Bai Ugubai, AIR 1923 Bom 130.
6. Nilawa Iraya Mathapathi Vs Revan Shidaya Shidlingaya, AIR 1928 Bom 419.
7. Anandilal Bagchand Marwari Vs Chandra Bai, AIR 1924 Bom 311.
8. Sri Raja Bomma Devara Rajlakshmi Ammagaru Vs Raja Bomma Devara Naganna Naidu Bahadur Zamindaragaru, AIR 1925 Mad 757.
9. Ramaraya Thevar Vs Papammal, AIR 1925 Mad 1230.
10. Nagubai Manglorekar Vs Bai Monghibai, AIR 1926 PC 73.
11. Annada Prasad Das Vs Ambika Prasad Das, AIR 1926 PC 96.
12. Paruchuri Rattamma Vs Surugutchi Seshachalam Sharma, AIR 1927 Mad 520.
13. Bommadevara Naganna Naidu Vs Bommadevara Rajjya Lakshmi Devi Ammagaru, AIR 1928 PC 187.
14. Sher Singh Vs Sham Kaur, AIR 1928 Lah 502.
15. Chilha Vs Chedi, AIR 1929 Oudh 121.
16. Durgi Vs Secretary of State, AIR 1929 Lah 528.
17. A. Gopala Pattar Vs Parvathy Ammal, AIR 1929 Mad 47.
18. Charandass Vassonji Thakkar Vs Nagubai Manglorekar, AIR 1929 Bom 452.
19. Manubothula Rama Rao Vs Manubothula Venkayamma AIR 1931 Mad 705.

20. Indira Bai Vs Makarand, AIR 1931 Nag 197.
21. (Haji A.S.) Abdul Mohammad Rowther Vs Seethalakshmiammal, AIR 1931 Mad 120.
22. Godavarti Shobhanadramma Vs Godavarti Varahalakshmi Narasimha Swami, AIR 1934 Mad 401.
23. Dayavati Ramchandra Vs Kesarbai Kasibai, AIR 1934 Bom 66.
24. Lachhmi Vs Mohanlal, AIR 1934 Lah 444.
25. Lajwanti Vs Bakshi Ram, AIR 1935 Lah 110.
26. Bai Appibai Vs Khinji Cooverji, AIR 1936 Bom 138.
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39. Mahta Gunvantray Maganlal Vs Bai Keshavi, AIR 1963 Guj 242.
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61. Govind Ram Vs Leela Devi, AIR 1969 Raj 253.
62. Prasanna Kumar Patra Vs Sureshwari Patrani, AIR 1969 Ori 12.
63. Sureshwari Patrani Vs Prasanna Kumar Patra, AIR 1969 Ori 13
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181. Somnath Jeena Vs Sabitri Jeena, AIR 1987 Ori 251.
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191. Githa Chatterjee Vs Prabhat Kr. Chatterjee, AIR 1988 Cal83.
192. Vinod Ch. Sharma Vs Rajesh Pathak, AIR 1988 All 150.
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195. Krishna Kumari Vs 1st Adc. Dist. Judge Hamirpur, AIR 1989 All 198.
196. Silla Jagannatha Prasad Vs Silla Laita Kumari, AIR 1989 AP 8.
197. Hemraj Sham Rao Umredkar Vs Leela, AIR 1989 Bcm 146.
198. Sadanand Sahadeo Rawool Vs Sulsehana Sahadeo Rawool, AIR 1989 Bcm 220.
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200. Pradeep Kumar Kapoor Vs Shailaja Kapoor, AIR 1989 Del 10.
201. Gopal Krishna Nair Vs Thembatty Ramani, AIR 1989 Ker 331.
202. Raghavendra Singh Choudhary Vs Seema Bai, AIR 1989 MP 259.
203. Dasharath Yadav Vs Saroj, AIR 1989 MP 242.
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206. Kishanlal Vs Kamlesh Rani, AIR 1989 NOC 144 (P&H).
207. Ranganathan Vs Shyamla, AIR 1990 Mad 1.
208. Vinod Lularai Mehta Vs Kanak Vinod Mehta, AIR 1990 Bom 120.
209. Rajinder Kaur Vs Atinder Chit Singh, AIR 1990 P&H 83
210. Kamlesh Arora Vs Jugal Kishore Arora, AIR 1990 P&H 168.

P A R T - IIIMAINTENANCE CASES IN THE LEARNED SUB DIVISION COURT
AT SILIGURIPERIOD : 1984 - 1990 (JUNE)

<u>No.</u>	<u>Citation</u>	<u>Name of the Case</u>
1.	M.R. 188/84	Putul Mondal Vs Subal Mondal.
2.	M.R. 141/84	Manju Chakraborty Vs D.K. Goswami.
3.	M.R. 55/84	Purnima Devi Vs Dilip Singh.
4.	M.R. 110/84	Anita Sarkar Vs Kamal Sarkar.
5.	M.R. 49/84	Anita Pandit Vs Ananda Pandit.
6.	M.R. 113/84	Hasna Begum Vs Sirajul Haque (Mhd).
7.	M.R. 80/84	Radha Prasad Vs Dulal Prasad.
8.	M.R. 57/85	Sneha Mahato Vs Mukhi Mahato.
9.	M.R. 95/85	Parvati Devi Vs Gulli Choudhury.
10.	M.R. 109/85	Rekha Chatterjee Vs Pradeep Chatterjee.
11.	M.R. 139/85	Prabhati Chouhan Vs Indra Deo Chouhan.
12.	M.R. 148/85	Not traced.
13.	M.R. 166/85	Kalpana Rani Vs Nabakumar Roy.
14.	M.R. 186/85	Not traced.
15.	M.R. 226/85	Not traced.
16.	M.R. 242/85	Kanan Mondal Vs Shanti Mondal.
17.	M.R. 54/85	Manjulal Khatun Vs Mhd. Safir (Mhd.).
18.	MR. 68/85	Shakuntala Devi Vs Kashiram Agarwal.
19.	M.R. 24/85	Deepa Devi Bhagat Vs Banilal Bhagat.
20.	M.R. 60/85	Sabita Singha Roy Vs Narayan Singh.
21.	M.R. 35/85	Lakshmi Rani Burman Vs Nitai Chandra Burman.

22. M.R. 50/85 Abha Rani Pal Vs Pradeep Ch. Pal .
23. M.R. 2/86 Not traced .
24. M.R. 5/86 Usha Thakuri Vs Seetaram Thakuri .
25. M.R. 11/86 Jameela Khatun Vs Kalimuddin .
26. M.R. 14/86 Shibani Dutta Vs Shanti Dutta .
27. M.R. 22/86 Jayanti Rani Ghosh Vs Anup Kumar Ghosh .
28. M.R. 26/86 Palannisa Vs Nikanu Mohammad (Mhd.) .
29. M.R. 38/86 Maya Sharma Vs Cm Prakash Sharma .
30. M.R. 59/86 Jharna Das Vs Lakhan Das .
31. M.R. 64/86 Nityakamal Barui Vs Pran Ballabh Barui .
(Father & Son)
32. M.R. 66/86 Not traced .
33. M.R. 74/86 Baby Sarkar Vs Paritosh Sarkar .
34. M.R. 83/86 Ujjala Das Vs Ranjan Kumar Das .
35. M.R. 85/86 Sheela Devi Vs Ganesh Prasad .
36. M.R. 88/86 Sabita Saren Vs Pradeep Munda .
37. M.R. 106/86 Shankari Das Vs Shubha Das .
38. M.R. 110/86 Archana Balmiki Vs Gopal Balmiki .
39. M.R. 151/86 Ruma Dutta Vs Tapan Dutta .
40. M.R. 172/86 Monika Hensda (Roy) Vs Neelkantha Roy .
41. M.R. 177/86 Manju Sharma Vs Satyananda Sharma .
42. M.R. 199/86 Sandhya Rani Das Vs Parimal Das .
43. M.R. 205/86 Jaiprakash Jaiswal Vs Rukmani Devi .
44. M.R. 206/86 Reeta Bhowmick Vs Sisir Bhowmick .
45. M.R. 220/86 Sumeeta Roy Vs Kiran Chandra Roy .
46. M.R. 1/87 Not traced .
47. M.R. 6/87 Bhagwati Mahato Vs Joginder Mahato .

48. M. R. 11/87 Muni Devi Agarwala Vs Suraj Agarwala.
49. M. R. 18/87 Sukla Roy Vs Tapan Roy.
50. M. R. 19/87 Beli Bhadra Vs Swapan Bhadra.
51. M. R. 23/87 Manju Bose Vs Nitin Chandra Bose.
52. M. R. 24/87 Manju Munda Vs Lakshmi Munda.
53. M. R. 31/87 Bheli Thapar Vs Gangey Thapar.
54. M. R. 33/87 Rama Dey Vs Pradeep Dey.
55. M. R. 34/87 Not traced.
56. M. R. 36/87 Purabi Sarkar Vs Pradyut Sarkar.
57. M. R. 38/87 Eeeti Banik Vs Radhashyam Banik.
58. M. R. 48/87 Neela Majumdar Vs Ameet Majumdar.
59. M. R. 50/87 Not traced.
60. M. R. 62/87 Durga Debnath Vs Sukumar Debnath.
61. M. R. 63/87 Basenti Das Vs Haripada Das.
62. M. R. 78/87 Geetha Levi Vs Nanda Kishore Saha.
63. M. R. 80/87 Lakshmi Sharma Vs Parameshwar Sharma.
64. M. R. 86/87 Kalpene Biswas Vs Swapan Kr Biswas.
65. M. R. 88/87 Beli Bhadra Vs Swapan Kr. Bhadra.
66. M. R. 90/87 Arati Chakraborty Vs Sudhir Chakraborty.
67. M. R. 94/87 Saraswati Hazra Vs Shibu Hazra.
68. M. R. 99/87 Not traced.
69. M. R. 103/87 Krishnamaya Tamang Vs Chakrabhadur Tamang.
70. M. R. 105/87 Salona Khatun Vs Mhd. Hasen (Mhd).
71. M. R. 120/87 Lakshmi Rani Saha Vs Ajoy Kr Saha.
72. M. R. 131/87 Archana Senyal Vs Tarun Kr Senyal.
73. M. R. 147/87 China Roy Vs Santosh Roy.

74. M.R. 151/87 Probala Singh Vs Dilip Chhetri.
75. M.R. 152/87 Meena Ghosh Vs Paritosh Ghosh.
76. M.R. 153/87 Arati Majumdar Vs Sahadeb Mazumdar.
77. M.R. 174/87 Meera Saha Vs Ram Prasad Saha.
78. M.R. 182/87 Not traced.
79. M.R. 193/87 Kabita Pal Vs Prabodh Kumar Pal.
80. M.R. 194/87 Dulali Saha Vs Dilip Saha.
81. M.R. 196/87 Jayanti Rani Ghosh Vs Anup Kumar Ghosh.
82. M.R. 201/87 Minati Das Vs Yogendra Das.
83. M.R. 205/87 Papi Choudhury Vs Tarun Kumar Choudhury.
84. M.R. 4/88 Shephali Beehar Vs Shanti Ranjan Beehar.
85. M.R. 65/88 Chhabi Bose Vs Tushar Kanti Bose.
86. M.R. 85/88 Not traced.
87. M.R. 125/88 Bharati Dey Vs Manju Gopal Dey.
88. M.R. 130/88 Archana Dutta Vs Jhantu Dutta.
89. M.R. 131/88 Not traced.
90. M.R. 132/88 Not traced.
91. M.R. 160/88 Shobha Bhattacharya Vs Ram Krishna Bhattacharya.
92. M.R. 168/88 Radhika Chhetri Vs Ram Bahadur Chhetri.
93. M.R. 164/88 Manasi Bhowmick Vs Bhabatosh Bhowmick.
94. M.R. 167/88 Kanti Devi Routh Vs Rudal Routh.
95. M.R. 175/88 Manju Goswami Vs Dilip Goswami.
96. M.R. 177/88 Aity Maya Tamang Vs Dawa Tamang.
97. M.R. 19/88 Rinku Mondal Vs Radheshyam Mandal.

98.	M. R. 188/88	Swapna Bose Vs Dilip Kumar Bose.
99.	M. R. 198/88	Not traced.
100.	M. R. 212/88	Not traced.
101.	M. R. 230/88	Anandi Devi Vs Anantram Chouhan .
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