

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 |

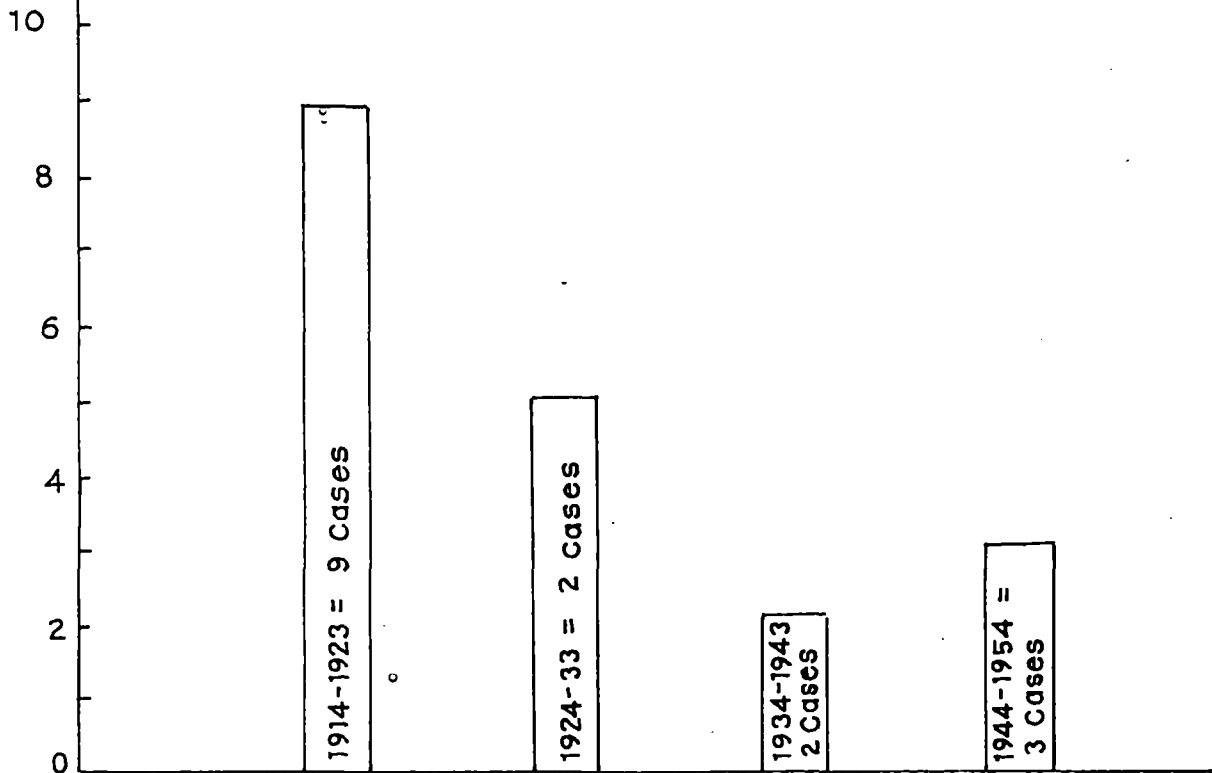
5a. See Appendix II Part I.

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 Gandhi 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. Arulanandan 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 compel 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

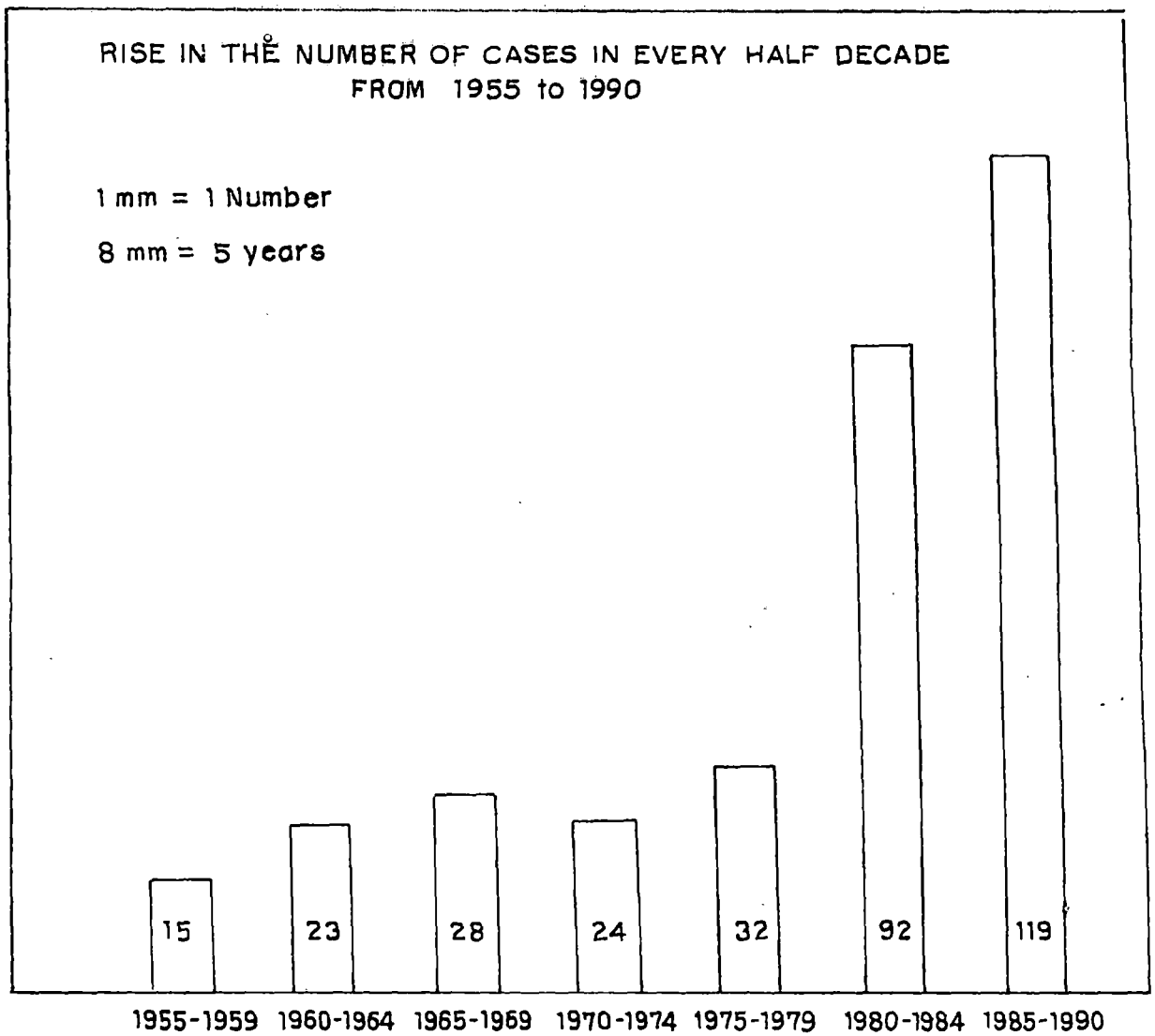
| Sl. No. | Decades And Half decades | Number of cases |
|---------|--------------------------|-----------------|
| 1 | 1955-1959 | 15 |
| 2 | 1960-1964 | 23 |
| I | 1955-1964 | 38 |
| 3 | 1965-1969 | 28 |
| 4 | 1970-174 | 24 |
| II | 1965-1974 | 52 |
| 5 | 1975-1979 | 32 |
| 6 | 1980-1984 | 92 |
| III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

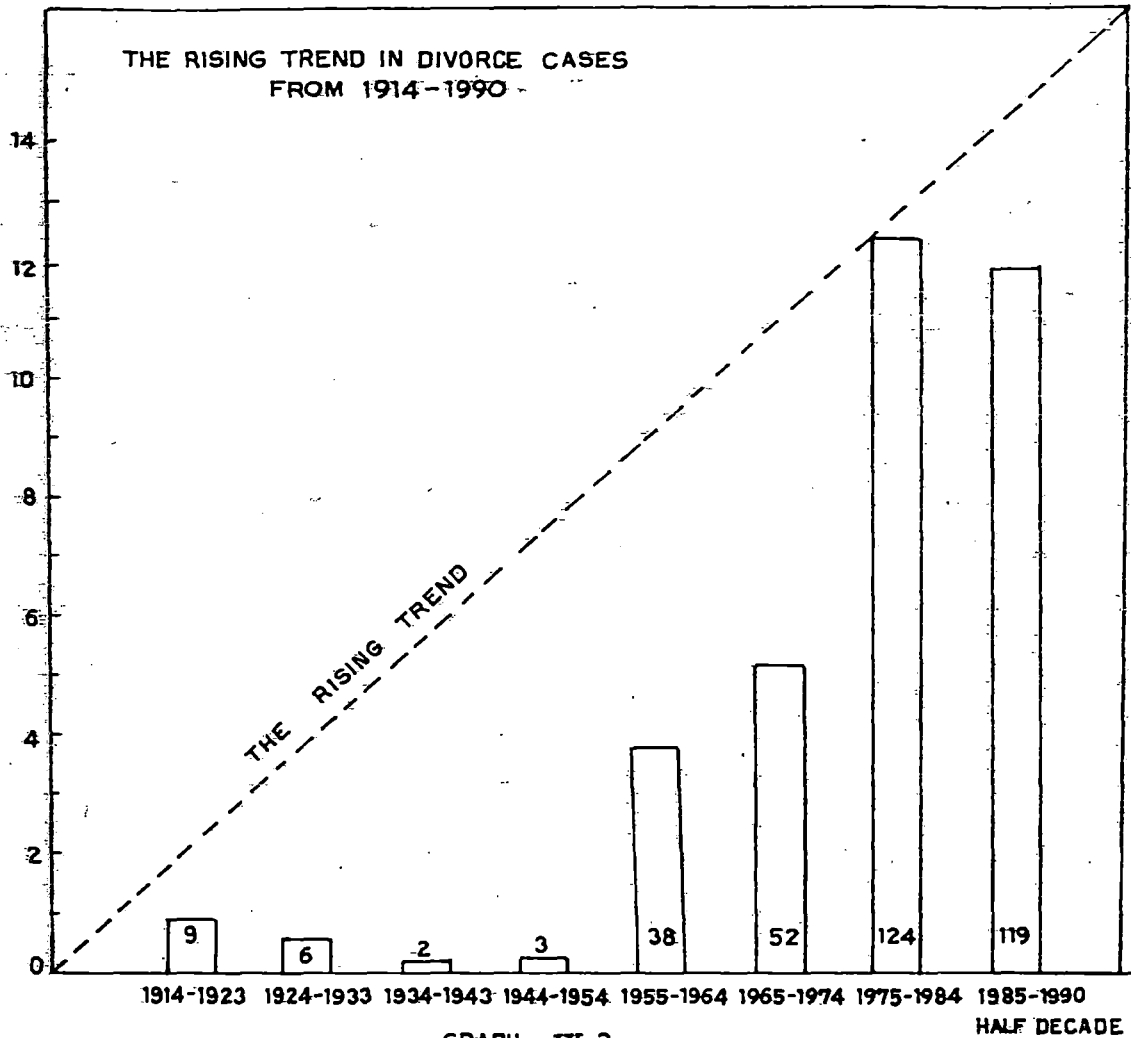


GRAPH - IV.2.

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.

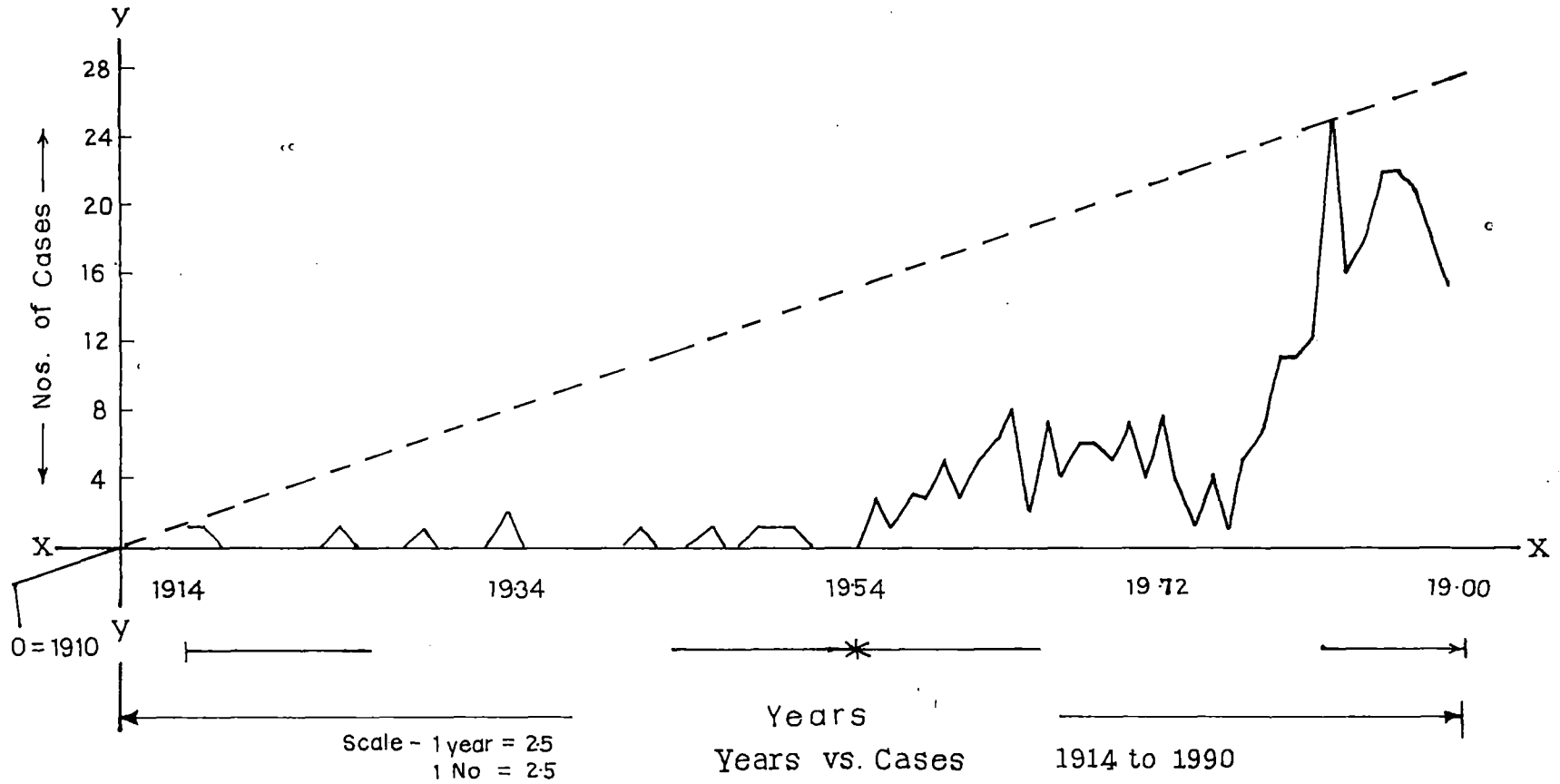
One of the general laws of legal evolution which Mayne believed to have discovered is setforth in his classical treatise Ancient Law : "The movement of progressive society has been uniform in one respect. Through all its course it has been distinguished by the gradual dissolution of family dependency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

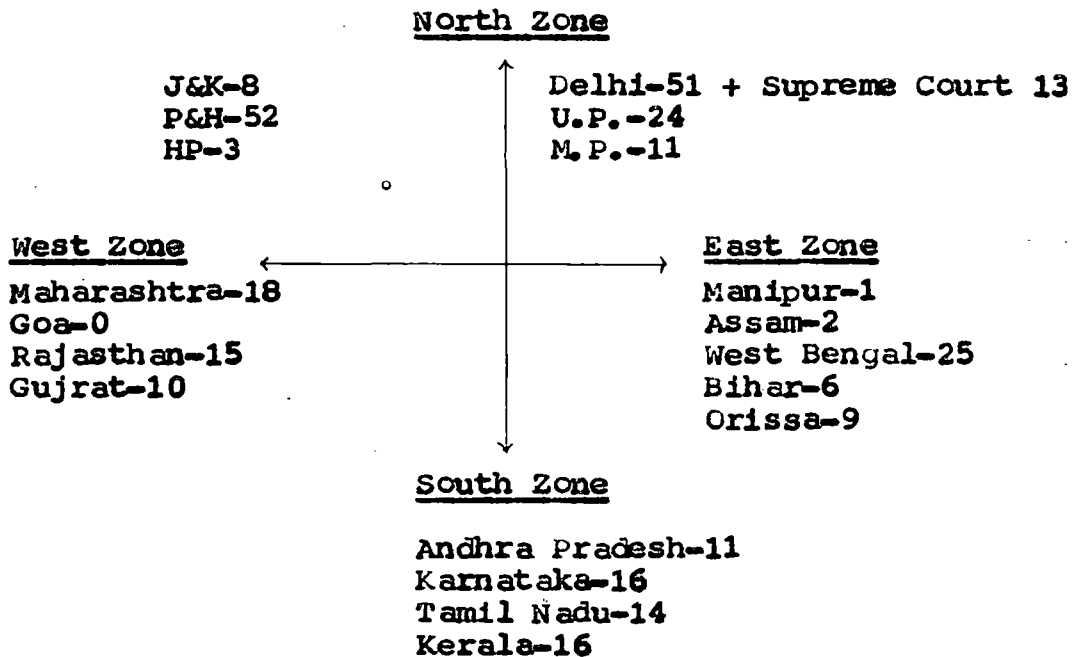
It will be seen here that among the High Courts, the Punjab and Haryana High Court recorded the maximum number of cases, that of 52 followed by Delhi 51. The four metropolitan cities of Bombay, Calcutta, Delhi and Madras recorded 18, 25, 51 and 14 cases respectively.

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.

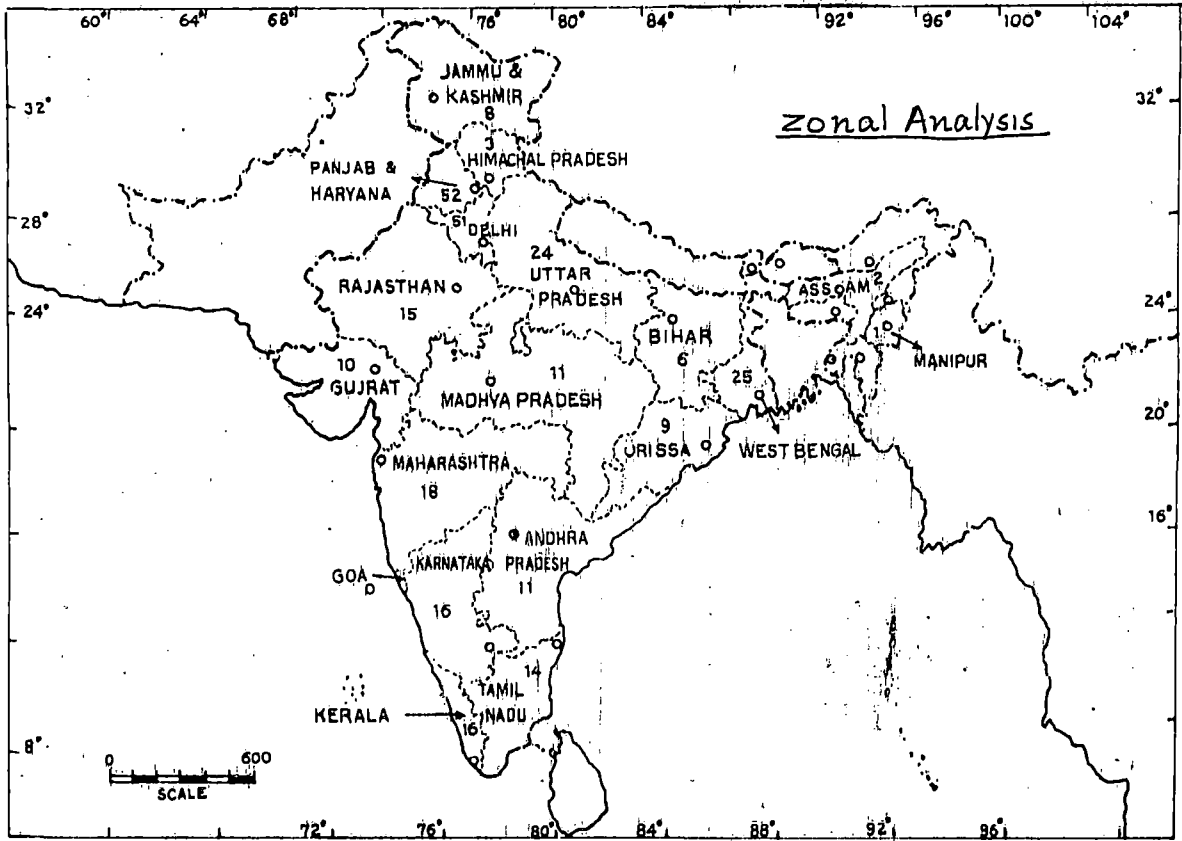
has only 3 divorce cases to its credit while Uttar Pradesh has 24 cases.

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 aprox. 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.

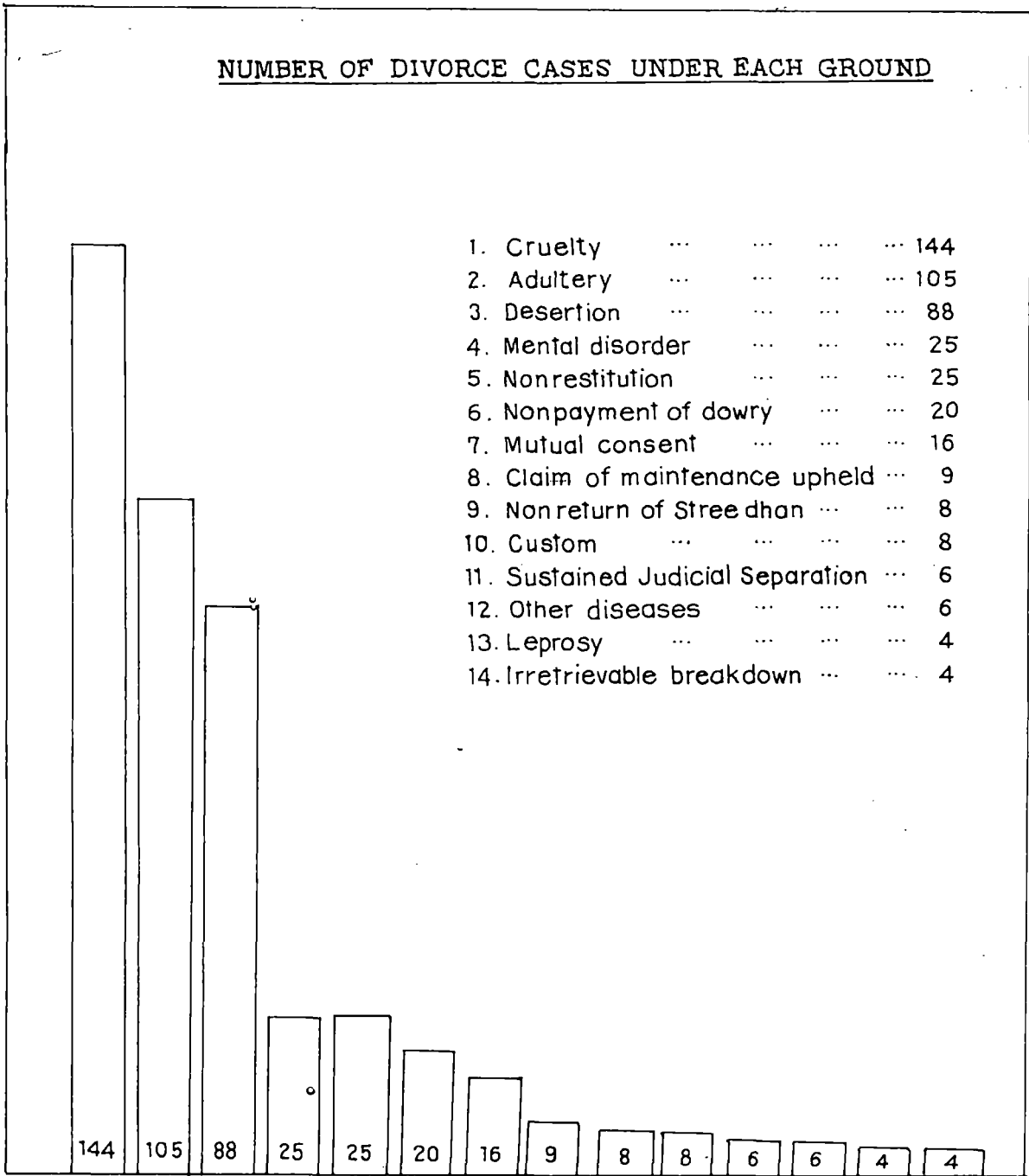
Table - 11

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

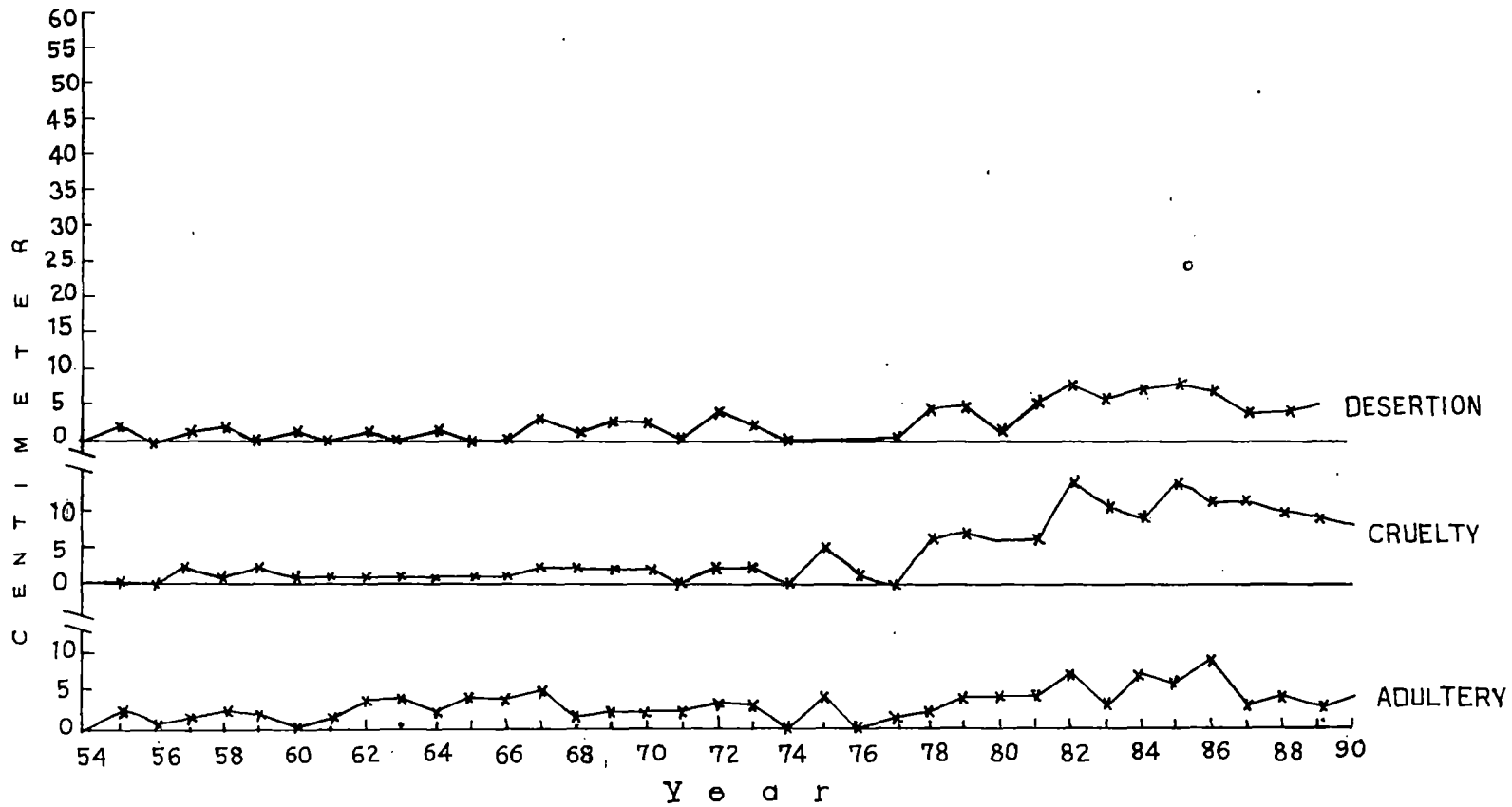
| Sl. No. | Grounds | No. | Sl. No. | Grounds | No. |
|---------|-------------------------------|-----|---------|--------------------------|-----|
| 1. | Cruelty | 144 | 10. | Irretrievable Breakdown | 4 |
| 2. | Adultery | 105 | 11. | Dowry | 20 |
| 3. | Desertion | 88 | 12. | Maintenance claim upheld | 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

| <u>Allegations of Cruelty</u> | | | | | | | |
|-------------------------------|------|------|--------|-----|------|-----------|-----------|
| 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 | | |

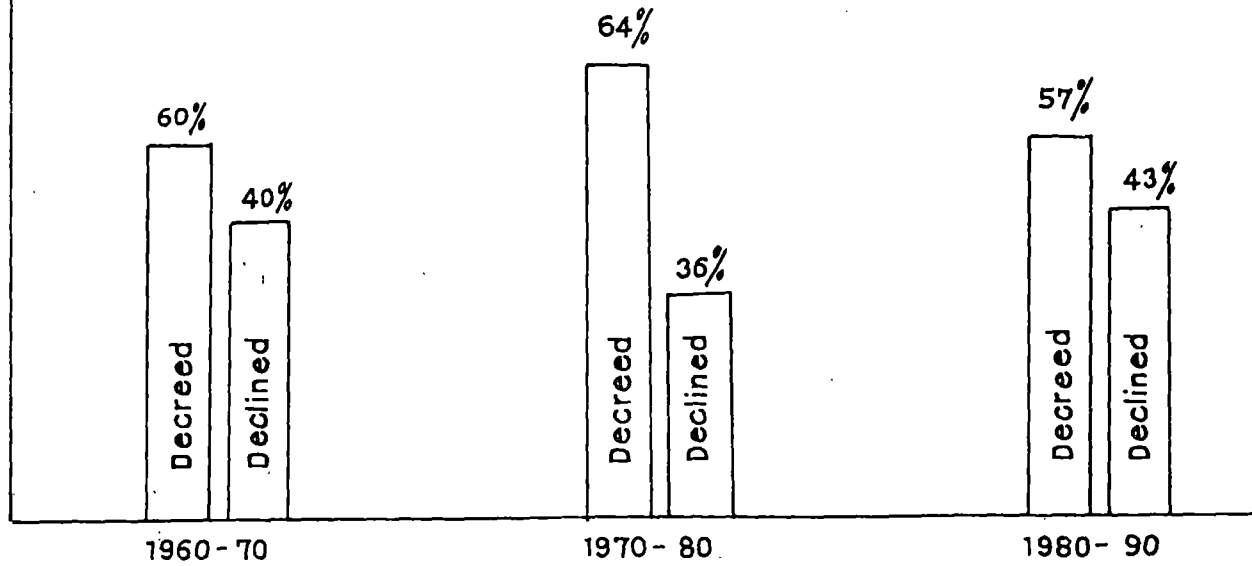
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Table - 16 (Contd..)

| 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..)

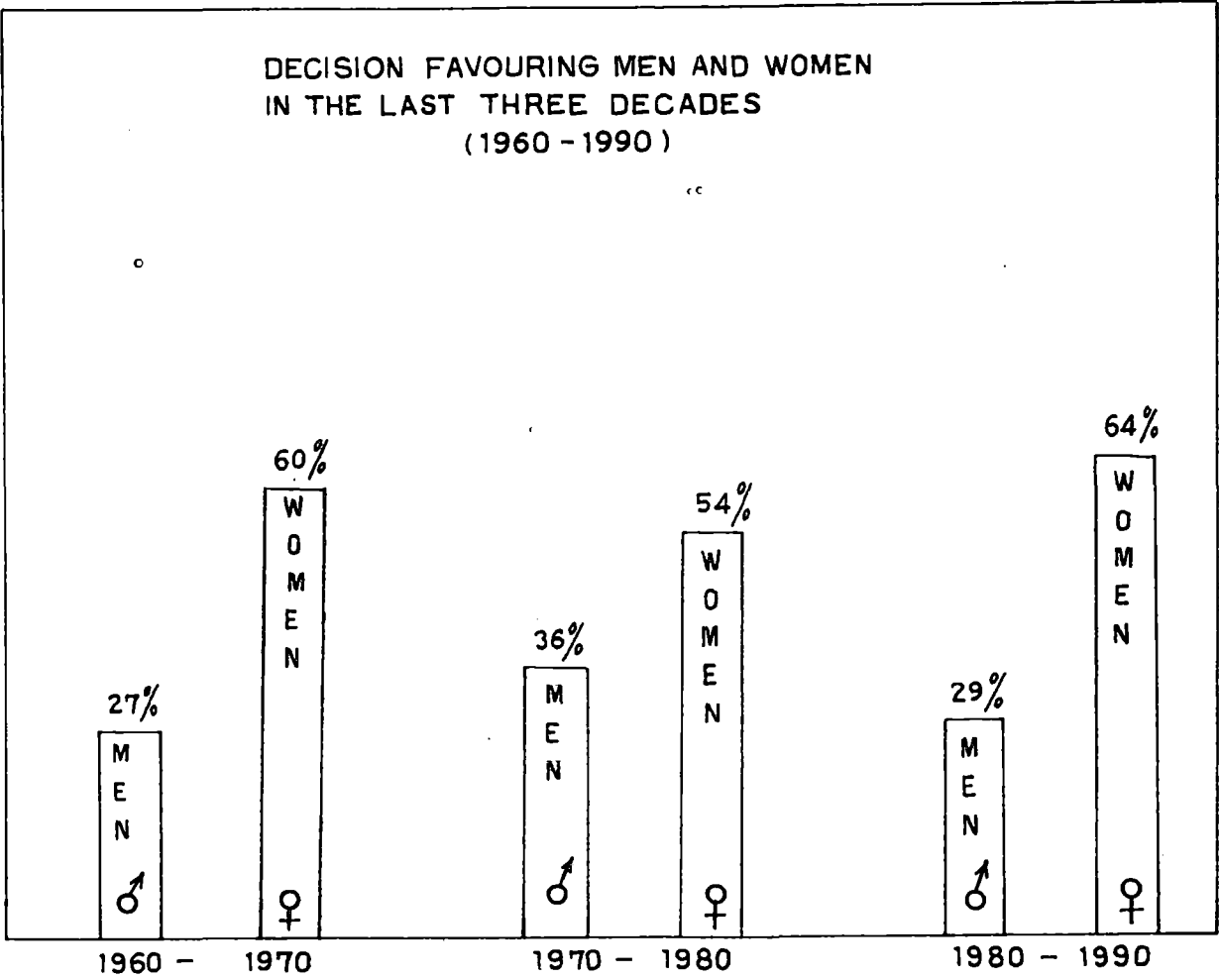
| Sl. No. | Year | Total | Male | Female | Both | None | Other |
|--------------|------|------------|---------------------|---------------------|-------------------|-------------------|-------------------|
| 32. | 1986 | 24 | 11 | 7 | 3 | 1 | 2 |
| 33. | 1987 | 21 | 7 | 12 | 1 | 1 | - |
| 34. | 1988 | 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% |

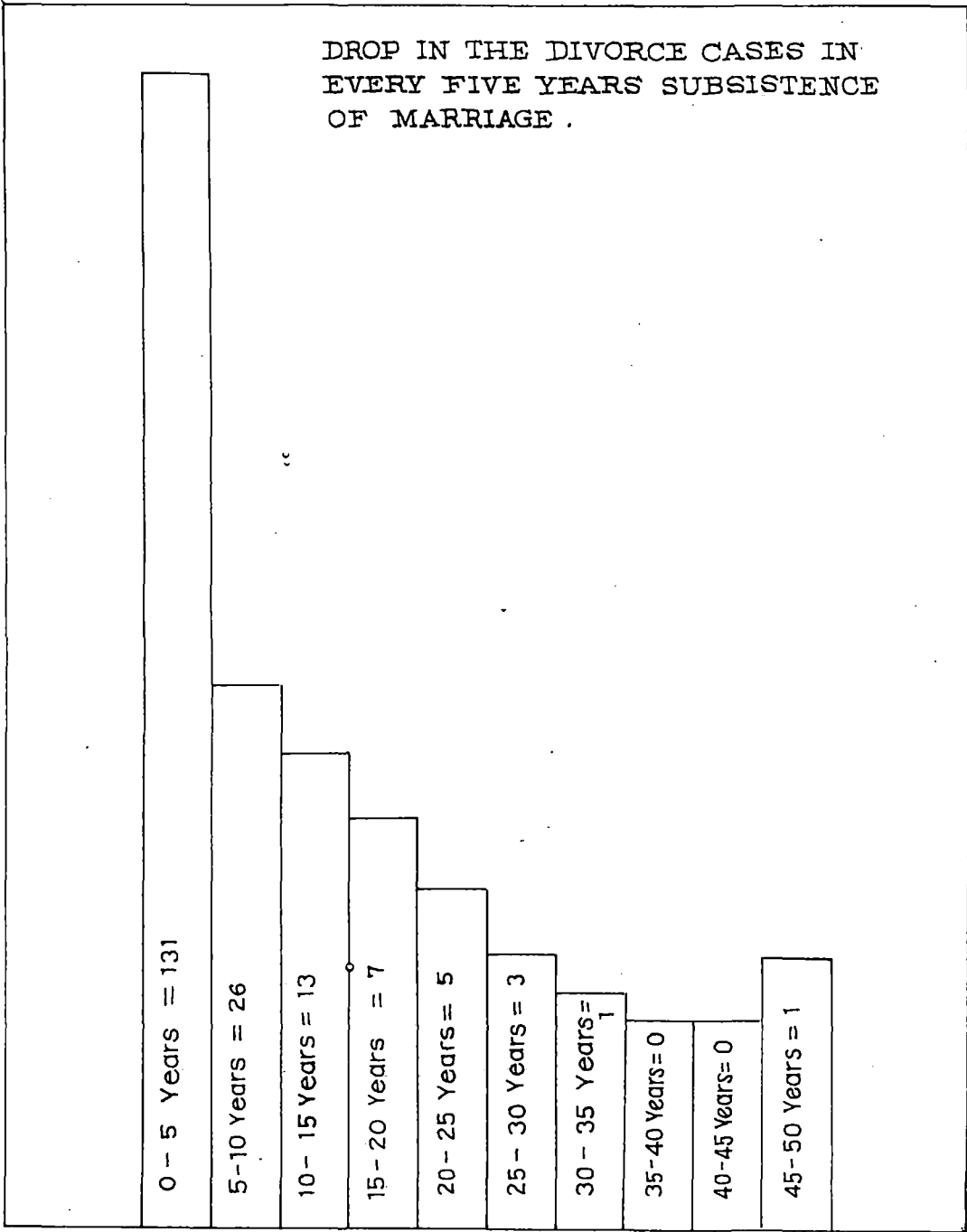
Divorce and presence of children

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.