



## STATUS OF CHRISTIAN WOMEN AND LAW

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Christianity, as a religion, was founded in Judaea (modern Israel) about 2000 years ago by Jesus of Nazareth. After nearly three centuries of per was founded in Judaea (modern Israel) about section, it became the official religion of the Roman Empire and spread rapidly throughout the world with the Roman Catholic Church building large and complex legal system of its own.

Christianity is basically divided into three major branches:

1. Roman Catholic
2. Protestant
3. Eastern Orthodox

Each of these are further subdivided into sects that prescribe different ways of worship, marriage, community living, etc. For the purpose of this study, we would very generally and briefly take a look at what was prevalent during the Middle Ages before Christian thought and practice ushered in regulations and changes in rites, rituals and concepts.

### Sources of Christian Law

#### Traditional source

##### Bible

The most important and basic source of Christian Law is the Holy Bible.

The Sacrament of Matrimony in Ephesians lays down the following:

Being subject one to another, in the fear of Christ. Let Women be subject their husbands, as to the Lord: Because the husband is the head of the wife, as Christ is the head of the Church. He is the savior of His body. Therefore, as the

Church is subject to Christ, so also let the wives be to their husbands in all things.

Husbands, love your wives, as Christ also loved the Church, and delivered Himself up for it: That He might sanctify it, cleansing it by the laver of water in the word of life: That He might present it to Himself a glorious Church not having spot or wrinkle, or any such thing; but that it should be holy, and without blemish. So, also ought Men to love their wives as their own bodies; He that loveth his wife, loveth himself. For no man ever hated his own flesh; but nourished and cherished it, as also Christ doth the Church: Because we are members of His body, of His flesh, and of His bones, for this cause shall a man leave his father and mother, and shall cleave to his wife, and they shall be two in one flesh. This is a great sacrament; but I speak in Christ and in the Church.

Nevertheless, let every one of you in particular love his wife as himself: and let the wife fear her husband.

#### Modern source

##### Legislations

Much of Christian Law with respect to matrimonial relations has been codified in India. The personal laws which govern the Christians are:

1. **Christian Marriage Act, 1872 (CMA):**-This Act contains the provisions of Christian personal law on marriage. The Act lays down rules with respect to solemnization of marriage, its registration, issuance of marriage certificate, etc.



The Act is divided into 8 chapters with 88 sections and applies to the whole of India (except Travancore, Cochin, Manipur and Jammu and Kashmir)<sup>1</sup> and to all Christians married in India, irrespective of the nationality and domicile of the parties to a marriage.

## 2. Indian Divorce Act, 1869 (IDA).-

The provisions regarding divorce and matrimonial relief applicable to Christians are principally contained in the IDA. The word "Indian" in the IDA suggests that it applies to all the Indians, whereas the Act applies only to Christians in India. IDA provides for matrimonial reliefs such as nullity of marriage, judicial separation and restitution of conjugal rights. Orders for payment of alimony and for custody of children can also be passed by court while passing decrees of divorce, judicial separation, etc. under the Act.

There is a provision in the IDA that whatever matter is not provided for in this Act, the courts in India while giving relief shall follow the rules declared by English courts. If this is so, a question arises as to what amount of English Law are we to follow. What about the substantive law and the procedural law? Besides, we have to remember that English Law regarding marriage and divorce is speedily changing and most Indian Christians are unaware of this change. For instance, a lot of Christian Churches have now conceded to same sex marriage in many Western countries around the world and some have even condoned abortion.

Other legislation that applies to Christians is Converts' Marriage

Dissolution Act, 1866. IDA is supplemented in a minor respect by the Converts' Marriage Dissolution Act, 1866 in matters related to divorce. Further matters relating to Christians are covered under secular laws discussed later.

## ***Who is a Christian for the purposes of Christian Law?***

Indian Christians mean original inhabitants of Bharat who by conversion adopted Christian religion along with their progeny. As defined in Section 3 CMA:

*Interpretation clause.* -the expression 'Christian' means persons professing the Christian religion; and the expression 'Indian Christians' includes the Christian descendants of natives of India converted to Christianity, as well as such converts.

Though not baptized, any person professing Christian religion is a Christian for the purposes of the CMA.<sup>2</sup>

"Indian Christian" is also defined in Section 2(d) ISA.<sup>3</sup>

It provides as under (d) Indian Christian' means a native of India who is, or in good faith claims to be, of unmixed Asiatic descent and who professes any form of the Christian religion.

## ***Christian sacraments***

Marriage is one of the seven sacraments according to Christian doctrine, just like Hindu samskara. Baptism, confirmation and eucharist are the three sacraments of Christian initiation. Penance or reconciliation and anointing of the sick are the two sacraments of healing. Holy orders and marriage being the last pair of the sacraments at the service of communion according to the Catholic Church.

<sup>1</sup>These territories have their own laws in this regard.

<sup>2</sup>K.T.B.David v. Nilamoni Devi, AIR 1953 Ori 10: 1953 Cri LJ 260.

<sup>3</sup>Mathew Varghese v. Rosamma Varghese, (2003) 4 CTC 193, 200.



According to the Catholic Church, only those who have been baptized may receive the sacrament of marriage and are free to marry. A catholic who is not married in the presence of a priest is “not married”.

Christian generally regards marriage as instituted and ordained by God for the lifelong relationship between one man as husband and one Woman as wife, and is to be "held in honor among all...." Christian Marriage Act, 1872 (CMA) follows from the traditional Christians understanding of marriage, as a voluntarily union of a man and a woman to the exclusion of all others for life, and does not, therefore, provide for same sex, marriage in India.

Christian theology views marriage from a moral and religious perspective marriage is generally seen from a Christian perspective that transcends all social interests. Divorce or dissolution of marriage is generally seen from a Christian perspective as less than the ideal.

#### **5.8. Civil Marriage by Registration:**

The marriage under the Special Marriage Act is a civil marriage by registration.

The certificate of the Marriage Officer that this has been done is conclusive evidence of the factum of marriage under the Act. Even marriages not solemnized under this Act may be registered under the Act. The parties applying for registration should have been residing within the jurisdictional area of the Marriage Officer for not less than 30 days immediately prior to their application. They should have completed the age of 21 years at the time of registration. The effect of registration under this Act is that the marriage would be deemed to have been solemnised under this Act.

#### **Remedies**

#### **(A) Grounds for Judicial Separation :**

Under Sec. 27-A every ground for divorce is a good ground for alternative relief of judicial separation with one exception. Not being heard of for 7 years or more is not an alternative ground for judicial separation in a petition for divorce. But under Sec. 23 where the petition itself is only for judicial separation, any ground which would suffice for divorce (including the ground of not being heard of for 7 years as alive) would also suffice for the petition of judicial separation. Further, failure to comply with a decree for restitution of conjugal rights is a good ground for judicial separation. To serve as a ground for divorce the decree should remain uncomplied with for 1 year or more. There is no such waiting time when the remedy sought is only judicial separation.

#### **(B) Grounds of Divorce (Sec. 27) :-**

Either husband or wife can file a petition for divorce on the ground that the respondent:

- (1) had voluntary sexual intercourse with a third person.
- (2) is undergoing sentence of imprisonment for 7 years or more for an offence under the I.P.C.
- (3) had deserted the petitioner for 2 years prior to the petition;
- (4) has treated the petitioner with cruelty;
- (5) has been incurably of unsound mind or suffering from mental disorder to such an extent that petitioner cannot be reasonably expected to live with respondent;
- (6) has been suffering from venereal disease in a communicable form;



(7) <sup>4</sup>has been suffering from [leprosy], the disease not having been contracted from the petitioner;

(8) has not been heard of as being alive for 7 years or more;

(9) has not resumed cohabitation for 1 year or more after the passing of a decree for judicial separation against respondent;

(10) has failed to comply with a decree for restitution of conjugal rights for 1 year or more.

**Special grounds for wife :**

(i) Husband being guilty of rape, sodomy or bestiality.

(ii) though order for separate maintenance was passed against husband, he has not resumed cohabitation for 1 year or upwards.

**(C) Divorce by mutual consent:**

Divorce is possible under the Special Marriage Act, 1954 by mutual consent. If the husband and wife are living separately for one year or more and are not able to live together, then they may mutually agree that the marriage should be dissolved. A petition for divorce may be presented by both the parties stating these facts. Then they should wait for six months. Thereafter before the expiry of 18 months from the petition, they should jointly move the Court for a decree. The Court may, thereupon, pass a decree declaring the marriage to be dissolved with effect from the date of the decree. No petition for divorce can be presented unless at the date of the presentation of the petition one year has passed since the date of entering the certificate of marriage in the Marriage Certificate Book. (Sec. 29). In a case of exceptional hardship this rule may be relaxed by the Court.

**Advantages to Hindus Marrying under this Act:**

Two Hindus may validly marry under the Special Marriage Act of 1954. Under the original Special Marriage Act of 1872, the party to a Special Marriage had to make a declaration that he was not a Hindu. That requirement is no longer there.

**The advantages of a marriage under this Act are the following:**

**Application of Indian Succession Act, 1925:**

(i) When one of the parties to the Special Marriage dies, though he or she is a Hindu, Succession to his/her property would be governed not by Hindu Law but by the rules applicable to Christians under the Indian Succession Act of 1925. These latter rules are more scientific and agreeable to modern notions of nearness of relationship than the ancient rules of Hindu law.

(ii) The husband becomes severed from his joint family. So if he dies, his share in joint family property would not be taken by his surviving brothers. The widow can claim the property. This was a distinct advantage to the wife marrying under the Special Marriage Act. The Hindu Marriage Act of 1955, however, has improved the position of the widow for she can now claim inheritance to the coparcenary property of her husband. The rules of succession under this Act are also consonant to modern notions. So, by Sec. 21-A of the Special Marriage Act it is now provided that where both parties to the marriage are Hindus (which includes Buddhists, Sikhs and Jains), there would be no automatic severance of jointness and the rules under the Indian Succession Act

<sup>4</sup>Note: The words “has been suffering from leprosy” are now omitted by The Personal

Laws (Amendment) Act, 2019), dt. 21-02-2019.



would not apply.

**Remedies** :--Divorce by mutual consent :- Under Sec. 28 of the Special Marriage Act, 1954, if a couple whose marriage has been solemnized under this Act have lived separately for a period of 1 year or more and are unable to live together, they may jointly petition to the court to dissolve their marriage. The court would wait for 6 months, to see whether the parties change their minds and withdraw their petition. Thereafter before the expiry of 18 months, the parties may jointly move the Court and the court may declare the marriage to be dissolved. This remedy of divorce by mutual consent was not available under the Hindu Marriage Act of 1955. It is an advantage from one point of view as it points to an easy way out of an unhappy marriage. The remedy of divorce by mutual consent has become available under the Hindu Marriage Act, 1955 only since 1976.

#### **Remarriage of Divorced Persons**

**Effect of Divorce Decree** :-In *Biswanath Mitra vs. Anjali Mitra*<sup>5</sup>, the marriage of A with B was dissolved in 1958 under the Special Marriage Act, 1954. That Act prescribes a period of one year before the parties can remarry. However, A remarried C before the expiry of the period and she had children of this marriage. In a proceeding by her for judicial separation from C, on the ground of cruelty, it was held that her marriage was void as it was performed before the expiry of one year from the date of dissolution of her previous marriage. The children no doubt were pronounced legitimate by granting a decree of nullity. According to this decision, the first marriage of A would come to an end only when the waiting period for remarriage expires. This is no doubt anomalous for

the marriage is deemed to continue to be valid even after the Court has ended it by a solemn decree!

The anomaly has now been removed. The Special Marriage Act has been amended. The one year waiting period has been dropped. Sec. 30 provides that divorced persons may remarry as soon as the Divorce Decree becomes final.

#### **Matrimonial Reliefs under the Special Marriage Act, 1954 Compared with those under the Hindu Marriage Act, 1955 :**

##### **(a) Before 1976 amendments :**

There is provision for divorce both under the Special Marriage Act, 1954 and the Hindu Marriage Act, 1955. But there is a vital difference of policy in the approach to this social problem. Under the Special Marriage Act, 1954, the policy is to facilitate divorce. This Act is voluntarily availed of by progressive people who wish to transcend barriers of religion and caste for their marriage. If such people find that the marriage has foundered, they should have adequate scope for dissolution of the marriage. So, divorce is made comparatively easier.

The Act of 1955 governs all Hindu Marriages compulsorily unless the parties solemnise their marriage under the Special Marriage Act of 1954. So, the provisions for divorce are stricter under the Act of 1955. Thus, while nothing short of living in adultery was sufficient for divorce under the Act of 1955, mere commission of adultery is sufficient under the Act of 1954. Further, the Act of 1955 contains a special provision for "Divorce by consent" under Sec. 23 of that Act. There was no comparable provision under the Act of 1955, till the Amendment of 1976.

Under the Hindu Marriage Act of 1955 there are two grounds for divorce,

<sup>5</sup>A.I.R. 1975 Cal. 45





which do not afford ground for any matrimonial relief under the Act of 1954. There are: (1) Change of religion (2) Renunciation of the world by joining a religious order, Since the parties marrying under the Act of 1954 are likely to be of progressive outlook, these are not recognised as grounds for relief under the Act. The Act of 1955 provides that the wife may seek divorce if her marriage was prior to the Act of 1955 and her husband had taken another wife before that Act came into force. No such problem can arise under the Act of 1954.

Barring these special considerations, the provisions for divorce under the Act of 1955 have been virtually borrowed from the Act of 1954 and are identical.

#### **(b) 1976 Amendments:**

The Marriage Laws (Amendment) Act of 1976 has introduced profound changes both in the Special Marriage Act, 1954 and the Hindu Marriage Act, 1955. The object of the Amendments is to assimilate the provisions under the two Acts and to streamline the law as to divorce.

Hindu can avail themselves of the relief of divorce under the Hindu Marriage Act, 1955, or under the Special Marriage Act, 1954. The provisions of the Act of 1954 are applicable only if the parties solemnise or register their marriage under that Act. In other cases Hindus are governed by the Act of 1955.

Prior to the Amendment of 1976 the provisions for divorce under these two Acts displayed considerable dissimilarities. The Amending legislation of 1976 removed the divergencies and assimilated these provisions. Thus divorce by mutual consent previously available

only under the Special Marriage Act has been applied also to the Hindu Marriage Act. The period of time over which a disability should have extended has either been omitted altogether (e.g., virulent [leprosy]<sup>6</sup> and communicable venereal disease: period of 3 years omitted) or has been uniformly reduced to the same period under both Acts (e.g: non-compliance with decree for restitution of conjugal rights; non-resumption of cohabitation after passing of decree for judicial separation); 2 years period reduced to 1 year; Desertion: Period reduced from 3 years to 2years (under Special Marriage Act). To both Acts new grounds are added which are specially available to the wife; e.g. non-cohabitation for 1 year after decree for separate maintenance under Hindu Adoption and Maintenance Act or order for maintenance under the Code of Criminal Procedure: Repudiation of child marriage on attaining 15 and before attaining 18.

In all these ways the provisions of the two Acts have been brought into line so far as the matrimonial relief to divorce is concerned.

#### **Christian Law Inheritance**

##### **Succession among Christian Women:**

The entire Christian law of succession is codified and governed by the Indian Succession Act. The Act regulates the intestate as well as testamentary succession among the Christian and also others.

Intestate Succession: Part V of the Act, and Sections 29-56 deal with the intestate succession. This part is not applicable to the property of any Hindu, Muhammadan, Buddhist, Sikh or Jaina. In other words this part is applicable to the property of

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<sup>6</sup>Note: The word "leprosy" is now omitted by The Personal Laws (Amendment) Act, 2019 (Act 6 of 2019), dt.21-02-2019.



the Christians and Parsis only. Part V of the Act deals with the Rules in cases in Intestate other than parsis. According to section 32, the property of an intestate devolve upon the wife or husband on upon those who are the kindred of the deceased.

According to section 33, where the intestate has left a widow and also any lineal descendants, one third of his property shall belong to his widow and the remaining two thirds shall go to his lineal descendants. But if there are only distant kindred left along with the widow but no lineal descendants, one half of his property shall belong to his widow. If he has left behind any lineal descendants of distant kindred but only the widow, she takes the entire property. Therefore the share of the wife is not fixed and is variable depending on certain circumstances,

Thus the widow is made to share the property along with the other relatives of the husband in certain cases. On the whole the position of the Christian Women is not so unhappy as was the case of the Hindu Women prior to the Act of 1956. The lineal descendants and the kindred also of the intestate as per the Rules of distribution contained Sections 36 to 49 of the Indian Succession Act. 1925.

#### **5.14. Law Applicable to Christians in Indian Succession Act (Chapter III). Succession to a Male Intestate:**

The scheme of succession to the property of a male intestate is explained below

**(i) Widow** :-If the deceased has left a widow but no lineal descendants or collaterals she takes the entire estate. If he has left no lineal descendants but there are ascendants or collaterals, she takes one half. If there are lineal descendants, she takes one third of the property. A widow may be excluded from inheritance by a valid contract made before her marriage.

**(ii) Lineal descendants:** --In the presence of the widow, the lineal descendants (i.e. children and descendants of children) take 2/3rd of the estate. Otherwise, they take the whole of the estate. If they are of equal degree they share equally. The division is per capita. In reckoning degrees, children are of the first degree, and every generation descending constitutes a degree. So, the grand children are two degrees removed from the deceased. If the lineal descendants are of different degrees of kindred, the division is per stripes. That is, there are as many sharers as there are branches of descendants who are nearest in degree and the share of a branch is allotted to the representatives of that branch. So, if there are two children and three grandchildren by a predeceased child, there will be 3 shares, each child taking one share and three grandchildren taking the share of their deceased parent.

**(iii) Father** :-When there are no lineal descendants, after deducting the share of the widow (1/2 share) the remaining 1/2 share goes to the father.

**(iv) Mother** :-If the father is dead, the mother takes the whole of the property (after deducting widow's half share) when there are no brothers and sisters or their children.

**(v) Brothers, sisters and their children** :- the mother also is dead, brothers, sisters, and their children take the property. Each living brother and sister takes a share and the children of pre-deceased brothers and sisters take the shares which would have been allotted to their parents if they had been alive. Even if the mother is alive, she cannot exclude brothers, sisters and their children wholly. She is allotted one share and the distribution is effected among the brothers, sisters and their children as already mentioned.



(vi) **Nearest of kin** :-In the absence of lineal descendants, parents, brothers and sisters, the relatives who are in the nearest degree of kindred share equally after deducting the widow's share (if there is a widow).

**Succession to Female Intestate:**

The husband of the deceased has the same rights which the widow has in respect of the husband's property if he dies intestate. The widower thus takes the widow's place in the scheme of succession. With this difference, the scheme of succession is the same.

**Special Provisions in the case of Christians other than Indian Christians:**

In the case of Christians other than Indian Christians, when there are no lineal descendants, the widow (or widower) is entitled to the first, 5,000 rupees out of the estate of the deceased. If the estate is worth more than Rs. 5000 the excess devolves according to the rules mentioned above.

**Stirpital Division:**

When the property is divided among heirs, the question arises whether the division is to be made per capita or per stripes. Where the heirs are lineal descendants and are of the same degree of relationship e.g., all children; or all grandchildren, the division is per capita and each gets one share. Thus, if the intestate left 2 sons and 2 daughters, they take per capita and each child takes 1/4th. When the lineal descendants are of different degrees of relationship, the division is per stripes, i.e., according to the branches. So, if A dies leaving two sons B and C and two grandsons by a predeceased son D and three great-grand-daughters through another pre-deceased son's predeceased son the property is divided

into four shares for the four sons (including two predeceased sons). The two surviving sons B and C take 1/4th each. The 1/4th share allottable to D will be taken by his two sons and the 1/4th share allottable to the last pre-deceased son will be taken by his grand-daughters. That is, the grandsons and great-granddaughters of A take what is allottable to their respective branches. They will stand in the shoes of their respective parents for this purpose. Among Christians the lineal descendants take per stripes when they claim through their parents or remoter ancestors of the same degree of relationship as the nearest kindred to the deceased.

There is another case where stripital division is allowed among Christians. When there are no lineal descendants, and when the father is dead, and the property is divided either among brothers and sisters or among them and the mother of the deceased, the children of pre-deceased brothers and of pre-deceased sisters will be allowed the right of representation and they take *per stripes*. i.e. what is allottable to their parent had he or she survived the intestate. These two are instances of division among Christian heirs.

Though Christian law does not statutorily provided for adoption it has been held by Kerala High Court in **Philips Alfred Malvin v. Y.J.Gonsalvis**,<sup>7</sup> that Christian Law recognizes adoption and the adoptive child will have the same rights as that of natural born son.

**Ceremonies Incidental to a Christian Marriage:**

**The Indian Christian Marriage Act (XV of 1872):-**

<sup>7</sup>AIR 1999 Ker. 187.





If one of the parties to a Marriage is a Christian or both parties are Christians, the marriage should be solemnized under the Act of 1872. Otherwise, it would not be a valid Christian marriage. Such a marriage should be solemnized by a Minister of the Church or by a Marriage Registrar appointed under the Act. In the case of Indian Christian, the marriage may also be solemnized by any person licensed under that Act to grant certificates of marriage between Indian Christians.

Form of Marriage solemnized by a Minister of the Church One of the persons intending marriage shall give a notice to the concerned Minister of the Church, (i.e. Churchman) intimating the names of the parties to the marriage and the church or private dwelling where it is to be performed. The notice will be affixed to a conspicuous part of the Church by the Minister who officiates in that Church. If the marriage is to be performed at a private dwelling, the notice will be affixed in the office of the Marriage Registrar. When one of the person's intending marriages is a minor, the notice must necessarily be affixed in the office of the Marriage Registrar. The father or if he is dead, the guardian, of the person of the minor, and where there is no such guardian, the mother has to give consent to minor's marriage. The Minister of the Church gives a Certificate of Notice received. The marriage should be solemnized within 2 months thereafter. Otherwise, a fresh notice will have to be issued. The marriage when solemnized is registered in the Registrar of Marriage maintained by the Minister of the Church. Quarterly returns are made to the Archdeacon who sends a copy to the

Registrar General of Births, Deaths and Marriages.

### **Solemnization by Marriage**

**Registrar:** -One of the parties to the marriage gives notice in the prescribed form to the Marriage Registrar. The notice is affixed to a conspicuous place in the office of the Registrar. It is also entered in the Marriage Notice Book maintained by the Registrar. On being so required, the registrar issues a certificate of receipt of notice of the intended marriage. Before doing so, one of the parties to the marriage has to make an oath.

### **Law of Divorce :**

**Law Applicable** :- (1) The converts Marriage Dissolution Act (21 of 1866)

(2) Indian Divorce Act (4 of 1869).

In *Molly Joseph v. George Sebastian*,<sup>8</sup> it was held that the Ecclesiastical Courts cannot decide on matters that are within the realm of the Courts as per the statute.

### **Effect of a Hindu's conversion to Christianity**

-Suppose two Hindus A and B are husband and wife. Then one of them, say the husband A, becomes a convert to Christianity. This does not put an end to the marriage. But B may refuse to live with A on the ground that he has become a convert. After 6 months A may under the Convert's Marriage Dissolution Act, 1866, petition for restitution of conjugal rights. If B refuses to cohabit, the case will be adjourned for a year. If at the end of the year B persists in her refusal to cohabit, A can be granted a decree of dissolution of marriage.

A decree can be granted without waiting for 1 year if the marriage had not been consummated.

**Maintenance of Wife and Children:** *The Karnakata High Court has taken a reformative step while providing*

<sup>8</sup>AIR 1997 SC 109 : (1996) 6 SCC 337.



*maintenance to neglected Christian wife even though under Christian Marriage Act there is no provision for such relief. A civil suit for maintenance can be instituted under the said Act taking cognizance of said suit by court not expressly or impliedly barred.*<sup>9</sup>

**Relief under Indian Divorce Act:**-The Indian Divorce Act is applicable if the petitioner or respondent is a Christian. The reliefs available under the Act are: (1) Dissolution of marriage (2) Declaration of nullity of marriage (3) Decree for judicial separation (4) Restitution of conjugal rights.

In *Ammini vs. Union of India*,<sup>10</sup> it has been held that the portions discriminating Women under Sec. 10 of Indian Divorce Act 4 of 1869 are void and liable to be severed. It was observed that in so far as the ground of adultery is concerned the husband is in a favourable position when compared to the wife as husband has to prove only adultery simpliciter where as, the wife has to prove adultery with one or the other aggravated circumstances. This amounts to denial of equality on the ground of sex which is not permitted under the constitution.

**Decree nisi decree absolute: Appeals**  
:- The Court which has jurisdiction to grant divorce is the District court or High Court. The decree of the District Court is subject to confirmation by the High Court. From the order of the High Court confirming or refusing to confirm such decree there is no further appeal. The decree of the High Court, not being one of confirmation of a decree of the District Court, is in the first instance a decree nisi (nisi = unless) it is a provisional decree. It can be made absolute after 6 months provided no one has come forward in the meantime to show-cause why the decree

should not be made absolute. Collusion between the parties would be a good reason for making it absolute. If the plaintiff does not within a reasonable time move to have the decree made absolute, the suit, is liable to be dismissed. From the decree absolute there can be an appeal to the High Court on ill's Appellate side and even to the Supreme Court if the court certifies that the case is fit for such an appeal.

**Remarriage:** :-If the High Court has confirmed, a decree for dissolution of the marriage, the parties can marry again after the lapse of six months from the date of confirmation. If the decree for dissolution is passed by the High Court, 6 months after the date of that decree, provided no further appeal is pending, the parties whose marriage is dissolved may marry again. Where an appeal is pending the parties have to wait until the appeal is disposed of, they can marry again if the appeal is dismissed.

A Judicial separation does not put an end to the marriage. The separated wife is deemed to be a spinster (unmarried Women) for certain purposes. On her death intestate her property shall go as it would have gone in her husband had been then dead. If the husband does not pay the alimony (maintenance provision) decreed by court, he will be liable for necessities supplied for her use during her separation.

**5.20. Matrimonial Reliefs: Compared:**  
A Christian wife can secure divorce under the *Divorce Act of 1869*. The grounds recognised under this Act are: Husband leaving Christian religion and going through a form of marriage with another Woman. A Hindu wife can secure divorce merely by showing that her husband has changed his religion. Incestuous adultery

<sup>9</sup>*K.Kumar vs. Smt. Leena, AIR 2010 Karn. 75.*

<sup>10</sup>*A.I.R. 1995 Ker. 252*



of husband. This is adultery with a woman within prohibited degrees.

*Bigamy with adultery:* This is adultery with the same woman with whom bigamy is committed.

*Adultery with cruelty:* Adultery coupled with desertion for two years or upwards.

So far as a Hindu wife is concerned, she can secure divorce proof of her husband's adultery. A Mohammedan wife can obtain divorce when she can show that her husband is associating with women of evil repute or is leading an infamous life.