Q-1 What are the essentials of valid Hindu marriage? On what Grounds a marriage becomes void and voidable?

(Alongwith the provisions of the Hindu Marriage Act, 1955)

Nature of Hindu Marriage

Marriage is one of the oldest institutions of Hindus. It occupies a very important place in their social life. It is regarded as one of most important ten Sanskaras (sacraments) for them. In marriage the father entrusts his daughter into the hands of a noble and physically sound groom who thereby becomes her husband. This mode of marriage is well-settled since vedic Period and has assumed religious significance. According to Raghunandan, a Hindu marriage mplies the acceptance of the bride as wife by the groom through a ceremonial process which is technically known as kanyadan.It 1s the only Sanskara (sacrament) which has not been prohibited for any one irrespective of caste and sex and has been provided as compulsory for all males and females. Through the institution of marriage men and women are united into a wedlock, the purpose of which is generally to give birth to a male child. Every twice born Hindu is under a religious obligation to discharge three debts namely, Pitri Rin, Dev Rin and Rishi Rin i.e., debt to father, debt to gods and debt to seers and sages and in the discharge of Pitri Rin, he must of necessity have his own son, Dharmaj Putra, begotten upon his legally wedded wife, who 1s supposed to perform funeral rites and to give sacred oblations to the ancestors on their death for their salvation. Hindu law has thus assigned a very important status to the male child, who plays a key role for the salvation of his parents and his deliverance from sufferings of the hell. A Hindu son is thus a saviour from Hell (*Punnam Narkaat Trayatey iti Putrah*) meaning thereby that only his son salvates men from the tortures of Hell. The sacrament of marriage, therefore, becomes necessary to beget a son.

Marriage is essential also because all the religious ceremonies and rites are to be performed by a Hindu in the companionship of his wife otherwise they will not bear any fruits. It is noteworthy that marriage under Hindu law is not regarded primarily as means of satisfying the corporal lust nor does it have the connotation of contractual obligations. On the contrary it is simply a religious sacrament and an obligatory duty. According to Bombay and Madras High Courts the importance of the institution of marriage becomes

distinct by the fact that religion regards it as one of the ten sacraments essential for purifying the body from its hereditary taints.

Defination of Marriage.- According to Raghunandan, a well known Bhasyakar, "The acceptance of bride as his wife by the bridegroom in a gift by her parents is defined as marriage." In the process of gift the father of the bride chooses the bridegroom as a suitable person to whom the girl is given. The pious duty of giving away the girl in marriage by way of gift has been thrust upon the father or her guardian in his absence, as according to rigveda, the girl is the property of the god of fire who has entrusted the father with the responsibility of the god of fire who has entrusted the father with the responsibility of bringing her up and to give her in gift to a virtuous person by invoking the fire god to witness the act of giving. The father or guardian of the girl enjoys almost absolute right to settle the marriage and the assent of the girl does not carry any material significance.

Marriage under the Hindu Marriage Act, 1955

The concept of Hindu marriage, like any other institution did not remain unaffected in modern times owing to social changes which were the bye-products of early 20th century industrial revolution. Hindu Marriage which was considered to be a religious duty and a sacrament has undergone a change and it has lost its religious sanctity under the Hindu Marriage Act, 1955, which came into force on 18th May, 1955. The enactment is exhaustive. It is a landmark in the history of social legislation.

The law contained in the Act is applicable to Hindus of every sect irrespective of howsoever progressive and unorthodox views they propound. Itis thus applicable to Lingayats, Brahmas and Arya Samajists as well. It is applicable to all Hindus and the term Hindu in the present context has been interpreted in wider connotation so as to include Jains, Sikhs and Buddhas as well as to the converts from other religions. Thus the present Act has enabled the followers of different religions to inter-marry.

The Act has an overriding effect. Section 4(a) and (b) provides that any texts rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act. But matters expressly saved from

the application of the Act continues to be governed by the previous law, statutory or otherwise.

Nature of Marriage under the Act of 1955

The present Act has effected certain changes in the law of marriage, which have a long bearing upon its nature. It no longer remains a pure sacrament and a binding religious duty. In the sacred texts, marriage created an inseparable tie between the husband and wife, which could not be broken in any circumstances whatsoever. This fact along with the others ascribed sacramental character to marriage. But the Hindu Marriage Act of 1955 by providing several matrimonial remedies including mainly divorce and nullity of marriage has seriously eroded its sacramental character. S.T. Desai, the revising author of Mulla's "Principles of Hindu Law" concludes that a Hindu marriage under the Act, it is submitted, is not entirely or necessarily a sacrament but a union of one man with one woman to the exclusion of ali others satisfied by solemnisation of the customary rites and ceremonies of either party essential for a marriage; and directly it creates a relation and status not imposed or defined by contract but by law. However, the Andhra Pradesh High Court maintains that the sacramental character of marriage is still preserved under the Act It was observed by the court, "there can be no doubt that a Hindu marriage is a religious ceremony. According to all the texts it is a Sanskara or sacrament throughout one's life for purification of soul.

Conditions for a valid Hindu marriage under the Act.

The Hindu Marriage Act, 1955 originally provided six conditions for a valid marriage but the Child Marriage Restraint Act which was passed in 1978 omitted the sixth condition relating to guardianship in marriage and now there are only five conditions as pre-requisites for a valid Hindu marriage. These conditions are essential for the validity of marriage. In case of non-fulfilment of these conditions the marriage would not be deemed to be valid. The conditions given in the section are binding and definite, in absence of which the validity of marriage becomes doubtful. Section 5 of the Act, which deals with these conditions dispenses with the requirement of the identity of the caste. Section 5 lays down that a marriage may be solemnised between any two Hindus if the following conditions are fulfilled, namely-

(1) Monogamy-neither party has a living spouse at the time of marriage;

(2) Soundness of mind-neither party at the time of marriage-

(a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

(b) though capable of giving a valid consent has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or

(c)has been subject to recurrent attacks of insanity or epilepsy.

Beyond prohibited degrees- the parties are not within the degree of prohibited relationship unless customs or usage governing each of them permits of a marriage between the two;

Beyond Sapinda relationship- the parties are not Sapinda of each other, unless the custom or usage governing each of them permits of a marriage between the two.

(1) As regards the first condition.-Section 5(1) provides the rule of monogamy and prohibits polygamy and polyandry. It now specifies unequivocally that "Hindu can have only one marriage subsisting at a time". Prior to the Act of 1955 a Hindu male could marry more than one. Smt. Yamuna Bai Anant Rao Adhav v. Anant Rao Shioa Ram Adhava, has laid down that in the event of breach of first condition specified in Section 5(1) the marriage is rendered null and void under Section 11(1) of the Act and since it is void *ab initio*, the wife cannot claim maintenance under Section 125 of the Code of Criminal Procedure.

In *Bhogadi Kannababu and others* v. *Vaggina Pydamma and others*, the Supreme Court observed that Clause (6) of Section 5 is one such condition which clearly provides that no marriage can be performed, if there is a living spouse. I, however, marriage has been so solemnized by the husband, such marriage is void *ab initio* and she cannot inherit the property.

In Sarla Mudgal v. *Union of India* the husband converted himself into a Muslim by adopting Islam, then married another wife. Here it becomes the question was whether by conversion the first marriage is annulled or it void and whether the husband commits an offence of bigamy. The court said that the first marriage subsists and the husband commits an offence of big bigamy. Against this disposed of an appeal was filed by the husband and this appeal was disposed of along with the case of Lily Thomas by the Supreme Court. In Lily Thomas v. union of India, the same questions arose before the Court for consideration. The Sun observed that the institution of marriage under every personal law is a sacred institution. Under the Hindu Law, marriage is a sacrament. Both these have to be preserved, therefore, religion is not a commodity to be exploited to matter of faith. When a non-Muslim married according to religious rites stipulating monogamy, renounces his religion, converts to Islam and solemanizes a second marriage, according to Islamic rites, without divorcing his first the second marriage is void. Here a person feigns to have adopted a not religion, just for some worldly gain or benefit, and this is religious bigotry, The conversion does not automatically dissolve the first marriage. Since a bigamous marriage is an offence under Section 17 of the Hindu Marriage Act, any marriage solemnized by the husband during the subsistence of the first Hindu any marriage is void under Section 11 and an offence under Section 17 read with Section 494 of the Indian Penal Code. The Court affirmed the decision in *Sarla Mudgal* case and dismissed the husband's appeal.

(2) Second condition-Lunacy.-Section 5(2) of the Act, 1955 was amended by the Marriage Law Amendment Act 1976 and the restructured clause lays down as one of the conditions for a Hindu marriage is that neither party must be suffering from unsoundness of mind, mental disorder, insanity or epilepsy at the time of marriage.

The Hindu Marriage Laws Amendment Act, 1976 added a new provision in Section 5(2) in supersession of the previous used expression “idiocy and lunacy” so as to include now every kind of mental disorder as a ground of nullity of marriage under Section 12 of the Act. But in this respect it is noteworthy that Section 5 (2) of the Act is a contradiction in terms inasmuch as none who is affected by unsoundness of mind can give a valid consent to the marriage under any circumstances.

(3) Third condition- Age of the parties.- Section 5(3) prescribed the age of the bridegroom as eighteen years and that of bride as fifteen years but by the Child Marriage

Restraint (Amendment) Act, 1978 the words 'the eighteen' and fifteen' stand substituted by twenty one and eighteen respectively. Now for a valid marriage the bridegroom must have attained the age of 21 years and the bride of 18 years at the time of marriage. But the breach of this pre-requisite did not affect the validity of marriage, but on the other hand, rendered it as an offence, inviting penal consequences to the erring parties.

(4) fourth condition.:

(a) Prohibition as to prohibited degrees of relationship: Section 5(4)-

Under sub-section (iv) of Section 5, marriages between persons falling within the prohibited degrees of relationship have been prohibited. Section 3(g) defines degrees of prohibited degrees of relationship have been prohibited. Section 3(g) defines degrees of prohibited relationship as follows:-

Two persons would be regarded to be within prohibited degrees-

(a) if one is a lineal ascendant of the other; or

(b) if one was the wife or the husband of a lineal ascendant or descendant of the other; or

(c)if one was the wife of the brother or of the father's or mother's brother or of the grandfather's or grandmother's brother of the other.

(d) if two are brother and sister, uncle and niece, aunt and nephew, or children of brother and sister or of two brothers or of two sister.

Nullity of Marriage

Void Marriages. Section 11 lays down that "any marriage solemnized at the commencement of this Act shall be null and void and may, on a petition, presented by either party thereto (against the other party) be declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (), (iv) and (V) of Section 5. Thus a marriage would be void *ab initio* if-

(1) any party to marriage has a spouse living at the time of marriage [Section 5(1)1

(2) the parties to marriage are within the degree of prohibited relationship unless the custom and usage governing each of them permits such a marriage Section 5(iv)

(3) The parties to marriage are 'sapinda' of each other, unless the custom or usage governing each of them permits such a marriage [Section 5(v)]. Such marriages in contravention to the provisions of Section 5(i), iv) and

(v) would be void *ab initio and ipso facto*. This section would apply only when the marriage was solemnised after the enforcement of the Hindu Marriage Act, 1955 Thus where a person marries another wife or husband during the subsistence of first marriage the subsequent marriage would become void under the section. It is open to the parties to treat it a nullity without even asking for a declaration from the court. Thus where a person married his sister's daughter after the commencement of this Act, it was held that the position of the wife was not better than concubine, and the marriage was void.

This section does not entitle the first wife to the marriage, performed before the commencement of the Act of 1955 to apply for the declaration that her husband's second marriage was null and void, but a declaration to that effect could be sought by the second wife on the ground that his first marriage was subsisting.

voidable marriage.-Under Section 12, any marriage solemnised either before or after the commencement of this Act, shall be voidable at the option of the aggrieved party and may be annulled by a decree of nullity. Under the Marriage Laws (Amendment) Act of 1976, some changes have been affected in respect of impotency as a ground of nullity of marriage. Moreover, the Child Marriage (Restraint) Act of 1978 has deleted the sixth condition relating to guardianship in marriage contained in Section 5 vi) and Section 6 of the Hindu Marriage Act, 1955. The grounds under Section 12 are as under

(a) that the marriage has not been consummated owing to the impotencey of the respondent, or

(b) that the marriage is in contravention to the condition specified in clause (ii) of Section 5, i.c, if either party suffers from unsoundness of mind at the time of marriage; or

(c)that the consent of the petitioner or where the consent of the guardian in marriage of the petitioner was required under Section 5, as it stood immediately before the commencement of the Child Marriage Restraint (Amendment" Act, 1978, the consent of such guardian was obtained by force or by fraud as to the nature of ceremony or as to any material fact or circumstances concerning the respondent; or

(d) that the respondent was, at the time of marriage pregnant by some person other than the petitioner.

(a) Impotency. -The primary aim of marriage is to procure a child and for that physical capacity, i.e, potentiality is an essential requisite. Hence under. Hindu law the marriage of an impotent person whether male or female, is wholly ineffective.") Impotency connotes incapacity to cohabit, whether it be physical or mental, but it must be permanent and incurable Refusal to cohabit for any psychological reasons pertaining to the husband or wife would also be considered impotency. According to a decision of Delhi High Court impotency is incapacity to accomplish sexual intercourse in complete sense. Where it is proved by medical examination that the wife was capable of accomplishing sexual intercourse, but which has been performed once or twice, she could not be considered impotent.

Q-2 What are the Grounds of divorce According to the Hindu marriage Act, 1955? Can a marriage be dissolved by mutual consent of the parties?

Old Hindu Law- divorce was unknown to the law of the dharmashastra as marriage was regarded as an indissoluble union of the husband and wife. Manu declared a wife cannot be separated from her husband either by sale or by abandonment, because marital tie could not be severed under any circumstances whatsoever. It, therefore follows that the Hindu law does not recognise a divorce. Although the law did not contemplate divorce yet it has been held that it was recognised in some communities of Hindus as an established custom. In some parts of the country it was permitted by legislation. For example, in Bombay, Madras and Saurashtra, it was specifically contained in the Bombay Hindu Divorce Act, 1947, Madras Hindu Bigamy Prevention and Divorce Act, 1949, and the Saurashtra Hindu Divorce Act, 1952. All these Acts now stand repealed by the Hindu Marriage Act, 1955. In other parts of the country in absence of custom divorce had no recognition under any Circumstances.

Modern law-Hindu Marriage Act, 1955.- The provisions for divorce in the existing Marriage law have brought about a radical change in the legal concept of Hindu Marriage. Section 13 of the Act describes the circumstances which extend the right of divorce. Section 14 renders the provisions of divorce a bit difficult as it provides that no petition for divorce can be presented within one year of the marriage unless it causes exceptional hardship to the petitioner or it becomes a case of exceptional depravity on the part of the respondent. Section 15 lays down the limitations on the right of divorced persons to marry again.

Grounds of Divorce [Section 13(1)]-The significant situation arising since the Marriage Laws (Amendment) Act, 1976 by the creation of identical Since grounds one of divorce and judicial separation has led to a stage where non to a marriage now prefers a petition for judicial separation and the aggrieved party straightway applies for divorce. Consequently, in Cases of matrimonial offences like adultery, cruelty, desertion etc. even when not serious enough attract a decree of divorce, parties go for divorce instead of judicial Separation which fact is evident from the number of petitions for divorce since after 1976.

It has been observed in the case of *Ishwar Singh* v. Snit. *Hukumma Kaur* that severence of relations with wife on the ground of her poor health and permission to her for remarriage with some other person would not amount to divorce under Section 13, because divorce which is dissolution of a lawful marriage, performed with help of religious ceremonies, Could be obtained only through presentation of a petition before a competent Court. The marriage subsists till a decree of divorce is granted by the court and until then neither party can remarry. The provisions of divorce govern the marriages performed before the commencement of the Hindu Marriage Act, 1955 as well. The parties to marriage after decree of divorce is passed, have to wait for one year more under Section 15 for contracting another marriage.

(1) Adultery.- Prior to the Amendment Act of 1976, Section 10(1) accorded recognition to adultery as a ground of judicial separation but that state of adultery was different from the one on which a decree of divorce could be obtained. Even a solitary instance of adultery could be a basis of judicial separation but for divorce the other spouse must be guilty of a course of adulterous conduct. In a petition for divorce it was required to establish that at the time of presentation of petition the respondent was living in adultery.

Prior to the Amendment Act of 1976, 'living in adultery' was required to be proved for divorce, according to a judgment of Bomabay High Court, a clever respondent could defeat the very basis of this ground of divorce by indulging into acts of adultery for some time and then discontinuing it for a certain period. Indeed the intention of the legislation lay in the fact that the adultery led by the respondent could not afford a ground of divorce.

(2) Cruelty.-In *Shobha Rani* v. *Madhukar Reddi*, the Supreme Court observed that the word "cruelty" has not been defined in the Act, the word is used in Section 13(1)(ia) of the act with reference to human conduct or behaviour in relation to or in respect of matrimonial duties or obligations. It is a course of conduct of one which is adversely affecting the other. After passing Marriage Laws (Amendment) Act, 1976 cruelty has been a ground of divorce. Prior to this Amendment cruelty was a ground for judicial separation except in the State of Uttar Pradesh. Earlier cruelty had to be such which would affect the physical or mental health of other spouse. Section 13(1) (i-a) of the Act now requires that the other party has, after the solemnisation of marriage treated the petitioner with cruelty. It is no more required that cruelty must affect the physical or mental health of the party."

Thus it is now sufficient to establish cruelty as a ground of divorce and it has been left to the courts to determine on the facts of each case, whether the conduct amounts to cruelty.

Though the word 'cruelty' has not been defined in the Hindu Marriage Act, 'cruelty' contemplated under clause (ia) of Section 13 (1) neither attracts the old English doctrine of danger, nor the statutory limits embodied in the old Section 10 (1) (b) of the Hindu Marriage Act. After the Amendment of 1976, 'cruelty' contemplated by Section 13 (1) (ia) is a conduct of such type that the petitioner cannot reasonably be expected to live with the respondent or that it has become impossible for the spouse to live together."

Cruelty complained of must satisfy the conscience of the court to believe that relations between the parties had deteriorated to such an extent due to the conduct of one of the spouses that it has become impossible to live together without agony, torture or distress or that the atmosphere in the house is so surcharged that it is not conducive for the mental or physical health of any of the parties."

(3) Desertion.- Before Marriage Laws(Amendment) Act, 1976, desertion was only a ground for judicial separation under Section 10(1)(a) has been reproduced in Section 13 of the Act providing for divorce. The desertion for a continuous period of not less than two years immediately preceding the presentation of the petition is now a good ground both for judicial separation and divorce.

In its essence desertion means the intentional permanent forsaking and abandonment of one spouse by the other without that order's consent and without reasonable cause. it is a total repudiation of the obligation of marriage. The meaning and purport of desertion is to be understood in the same sense in which it find mention under the heading judicial separation. where the petition against wife is presented on the ground of cruelty and desertion and the wife of offers to live with the husband the petition would fail in the event of failure to prove cruelty.

(5)Unsoundness of mind.-An incurable unsoundness of mind in either party to the marriage constitutes a ground for divorce. Unsoundness may be continuous or intermittant and to such an extent that the petitioner cannot reasonably be expected to live with the

respondent. Under the Amendment Act of 1976, incurable unsoundness of mind or continuous or intermittant mental disorder of such a nature as to disable the petitioner to live reasonably makes the petitioner eligible to get a decree of divorce.

(6) Leprosy.-Where the respondent is a victim of serious leprosy in its incurable and virulent form, a decree of divorce will be passed in favour of petitioner. Virulent means that the disease is considered to be extremely poisonous when it is of malignant type. Every form of leprosy is not virulent but that which is malignant or vernomous is virulent.

Leprosy is a loathsome disease of the body and is chronic and infectious due to bacillus lepra. Lepromotous leprosy is virulent and incurable and entitled the other spouse to a decree for divorce.

(7) Venereal disease.- Where the respondent has been suffering from venereal disease in a communicable form, a decree of divorce will be granted in favour of petitioner. The period of duration has been dispensed with by Marriage Laws (Amendment) Act, 1976. Syphilis, gonorrhoea or soft chancre are mentioned as venereal diseases under the English Venereal Diseases Act, 1917. The present section requires that the disease must be in a communicable form. The venereal diseases are only such diseases which are communicated by sexual intercourse.

(8) Renunciation of the world.-This clause lays down that a husband or wife can seek dissolution of marriage, by a decree of divorce on the ground that the respondent has renounced the world by entering any religious order. "A person cannot be said to have adopted a religious order by merely declaring himself to belong to such order. He must have performed the requisite ceremonies and formalities of the particular religious order.

Presumptive Death.-This clause provides that where there are reasonable grounds for supposing the other party to marriage to be dead, the Petitioner may seek divorce on this ground. This supposition could be drawn Where the other party has not been heard of as being alive for a period of seven years or more by persons who would naturally have heard of him or her had that party been alive.

The principle, on which this presumption is drawn that if he or she were alive, he or she would probably have communicated with some of his friends and relations. When the

near relations of a person establish by evidence on oath that, he has not been heard of for seven years that person is presumed to be dead and the petitioner be granted a decree of dissolution of marriage by divorce.

Non resumption of cohabitation after the decree of judicial separation.-According to this clause either party to marriage whether solemnised before or after the commencement of this Act, may present a petition for the dissolution of the marriage by a decree of divorce if there has been no resumption of cohabitation as between the parties for a period of one year or upwards after the passing of the decree for judicial separation in a proceeding to which they were parties.

It is obligatory on the court to pass a decree for divorce when cohabitation has not been restored within one year of the passing of the decree for judicial separation.

Failure to comply with the decree of restitution of conjugal rights.-either party to marriage would be entitled to a decree of divorce also when a decree for restitution of conjugal rights has been passed and it has not been complied with within one year of passing of such decree of restitution. Thus in a case covered under Section 13(1A)(ii) either of party can apply for dissolution of marriage by a decree of divorce if it is able to show that there has been no restitution of conjugal rights as between the parties to a marriage for one year or upwards after the passing of the decree of restitution.

In A.V Janardhana Rao v. M. Aruna kumari, the husband moved the petition under Section 13(1-A)(ii) of Hindu Marriage Act for dissolution of his marriage with his wife on the ground that there was no resumption of cohabitation between the parties, after the marriage for a period of one year and upwards. After passing of a decree for restitution of conjugal rights, the both parties were not willing to reach to a compromise for leading marital life jointly.

Section 13B of The Hindu **Marriage** Act,1955 provides the provision for Divorce by **Mutual Consent**. It explains that if the **parties** that are living separately continuously for a period of one year and **parties** are not able to live together and have agreed to separate mutually then they **can** seek divorce by **mutual consent**.

Q-3 Distinguish between the following

(a) void and voidable marriage

Distinction between void and voidable marriages

The principal difference between void and voidable marriages lies in the marriages the marriage is without any legal effect and void Since its inception and it could not receive the recognition of marriage at all. On fact that in void the other hand in voidable marriages marriage remains valid for all purposes till the petition for its nullity is granted by the courts.

in a void marriage, it is open to the parties even without recourse to the court to treat it as a nullity. Neither party is under any obligation to seek a declaration of nullity under this section. When a marriage is void, the court regards it as never having taken place and that there is no conferment of status of matrimony as a result thereof. A voidable marriage, on the other hand, is regarded by the court as a valid and subsisting marriage until a decree of nullity is obtained during the life time of the parties. In the case of a void marriage, the decree declares the status and in the case of a voidable marriage the decree change the status.

In case of a voidable marriage, till it is annulled by a decree, the parties are husband and wife and children begotten of such marriage are legitimate. A voidable marriage can be avoided only on presentation of a petition by either party thereto whereas a marriage which is null and void may be declared under ordinary law to be so even at the instance of a stranger whose interests are affected by such marriage.

In case of marriages which are void ab initio, no lapse of time is by itself a bar to the inquiry as to their validity or invalidity. Thus it can be questioned at any time because it is seeking a relief of declaration regarding status. Whereas a marriage which is voidable cannot be questioned after the death of either party.

In a void marriage, no rights or obligations are created between the parties to marriage, which arise in lawful marriages in normal course as a void marriage stands

nullified from the very beginning. In ***Sheelwati*** v. ***Ranm Nandini,*** pointing out the distinction between void and voidable marriage, ***Deokinandan Agrawal,*** J, observed that under Section 1l either party can move a petition have it declared void but in a voidable marriages under Section 12 only the aggrieved party can file a petition for nullity of marriage. In both the cases the decree which follows would be a decree of nullity although under Section 16 the consequences of both void and voidable marriages declared as such are identical.

In the aforesaid judgment the Hon'ble judge has opined that in void Marriages until the court for the contravention of the provisions of Section 5 clauses (i), (iv) and (v) declares the marriage null and void, the marriage subsists and it could not be termed as a nullity. This view is sharply in contrast to the prevailing view, as expressed in ***Bajirao v. Tolan Bai's, case. In Tolan Bai's*** case the court observed that a marriage in contravention of the provisions of Section 5(1) does not create and confer any legal status upon the parties thereto and to bring such a marriage to an end it is not necessary to move any petition and obtain a decree of nullity. In such marriages performance of religious rituals does no attach any meaning to it.

In the judgment delivered by Mr. Deokinandan, J, the difference between void and voidable marriage has been rendered nugatory. In fact void marriage is itself void since its inception, for which a decree of nullity is not necessary. But as per judgment of Allahabad High Court such a declaration would still be required. If this view is accepted then the principal difference between void and voidable marriage would vanish. Hence this view does not seem to be correct.

(B) Divorce and Judicial Separation.

Judicial Separation	**Divorce**
(1) The grounds of judicial separation Separation are less serious.	(1) The grounds for divorce are more serious.
(2) The possibility of reunion of the spouses is present.	(2) No reunion of the spouses is Possible.
(3) It is a less drastic state.	(3) It is more drastic a remedy.

Grounds	Grounds
(1) A single act of sexual intercourse outside the marital relationship is sufficient.	(1) Living in adultery is necessary for divorce.
(2) Desertion for two years.	(2) Respondent not heard of for seven years.
(3) Either party suffering from leprosy leprosy for one year.	(3) Either party suffering from leprosy for two years.
(4) Legal cruelty is a ground for judicial judicial separation.	(4) Legal cruelty is not a ground for divorce.
(5) If either party is suffering from unsoundness of mind for not less than two years.	(5) If either party is suffering from unsoundness of mind continuously.
(6) Either party suffering from V.D. for three V.D. for three years. The V.D. should not have been contracted from the petitioner.	(6) Either party suffering from V.D. for two years.

Except these there are four more grounds for divorce:-

(1) If change of religion by cither party.
(2) If either party becoming a *sanyasi* or renouncing the world.
(3) If the parties do not live together for two years after the decree of restitution of conjugal rights, then divorce can be granted.
4) If the parties do not live together for two years after the decree of judicial separation, then divorce can be granted.

Further various grounds for divorce are equally available to both the Spouses under the Hindu Marriage Act, 1955. It may be relevant to refer the provisions of Divorce Act (4 of 1869) relating to divorce over here. It has been found that provisions of Divorce Act contained in Section 10 are discriminatory towards the wives. Moreover it is also discriminatory on the grounds of religion. As such the Bombay High Court has recently quashed Section 10 as *ultra vires* of Articles 14, 15 and 21 of the Constitution.