

Evolution of the Institution of Marriage and Family

The Anglo-Saxon society saw the institution of marriage as a tool to establish strategic ties between two empires. In one of the books, Stephanie Coontz says, "You establish peaceful relationships, trading relationships, mutual obligations with others by marrying them." Marriage was no longer based on the consent of the woman and depended solely on the will of the male. So, marriage was basically based on the king's will and his desire to acquire the property.

Before 1858, taking a divorce was difficult and rare. The couple used to live in misery than take a divorce. The gates for divorce opened by certain laws introduced in India and other countries as well.

Law prior to Hindu Marriage

As early as the time of Rig Veda marriage has assumed the sacred character of a sacrament and sanction of religion had highlighted the character and importance of the Institution of marriage. Marriage could enable a person to discharge properly his religious and secular obligations.

In Hindu law marriage is treated as a Sanskara or a sacrament. It is the last of the ten sacraments enjoined by the Hindu religion for regeneration of men and obligated in case of every Hindu who does not desire to adopt the life of Sanyasi.

A great drawback of the existing law was that a Hindu could take another wife although he had a wife living, this and some other rules relating to the conditions of valid marriage called for substantial change in the law of marriage. The stage had been reached when codification at least of the law of marriage and succession had become virtually indispensable.

Hindu law strictly so called did not allow divorce except in certain communities in the lower social strata where it was permitted by custom and there was deep-rooted sentiment against any provision for divorce in the new legislation which was being forged. It may be some interest to note that some of the smritikaras although they did not deal with divorce in the sense it is now understood did declare that a woman could take a second husband in certain events. The celebrated text of Narada is if husband is missing or dead or retired from

the world or impotent or degraded in these five calamities a woman may take another husband

Marriage whether considered as a sacrament or a contract give rise to status of husband and wife on parties to the marriage and a status of legitimacy on the children of the marriage. For valid marriage in most system of law two conditions are necessary they are follows:

- a. Parties must have capacity to marry
- b. They must undergo necessary ceremonies and rites of marriage.

Most systems even today insist on performance of some ceremonies of marriage religious or secular elaborate or simple. In ancient Hindu law eight forms of marriage prevailed of which only three were valid before 1955. They were Brahma, Gandharva and Asura.

Hindu refined the Institution of marriage and idealized it. The Hindu Marriage Act has simplified the law of marriage. The Hindu Marriage Act 1955 does not specifically provided for any form of marriage the Act calls marriage solemnized under the act as a Hindu Marriage which may be performed in accordance with the Shastra rites and ceremonies and in accordance with the customs that prevail in the community to which bride or bridegroom belongs.

Harvinder Kaur v. Harmander Singh ChoudharyIn this case, the court rejected the plea that personal law was discriminatory towards Gender inequality in India. It also observed that introduction of Constitutional law into the home (referring to personal laws) was most inappropriate.

Forms of Hindu Marriage

The Hindu scriptures admit the following eight forms of marriage:

1. ***Brahma marriage:*** In this form of marriage the girl, decorated with clothes and ornaments, is given in marriage to a learned and gentle bridegroom. This is the prevalent form of marriage in Hindu society today.
2. ***Prajapatya marriage:*** In this form of marriage the daughter is offered to the bridegroom by blessing them with the enjoyment of marital bliss and the fulfillment of dharma.

3. ***Aarsh marriage:*** In this form of marriage a rishi used to accept a girl in marriage after giving a cow or bull and some clothes to the parents of the girl. These articles were not the price of the bride but indicated the resolve of the rishi to lead a house-hold life. According to P.K.Acharya, the word aarsh has been derived from the word rishi.
4. ***Daiva Marriage:*** In this form of marriage the girl, decorated with ornaments and clothes, was offered to the person who conducted the function of a Purohit in the yajna.
5. ***Asura marriage:*** In this form of marriage the bride-groom gets the bride in exchange for some money or articles given to the family members of the bride. Such a form of marriage was conducted in the case of marriage of Pandu with Madri.
6. ***Gandharva marriage:*** This form of marriage is the result of mutual affection and love of the bride and the bride-groom. An example of this type of marriage is the marriage of the King Dushyanata with Shakuntala. In this form of marriage, the ceremonies can be performed after a sexual relationship between the bride and the bride-groom. In Taittiriya Samhita it has been pointed out that this type of marriage has been so named because of its prevalence among the Gandharvas.
7. ***Rakshas marriage:*** This type of marriage was prevalent in the age when women were considered to be the prize of the war. In this type of marriage, the bride-groom takes away the bride from her house forcibly after killing and injuring her relatives.
8. ***Paisach marriage:*** This type of marriage has been called to be most degenerate. In this type, a man enters into a sexual relationship with a sleeping, drunk or unconscious woman. Such acts were regularised after the performance of a marriage ceremony which took place after the physical relationship between the man and woman.

Changes brought by Hindu Marriage Act, 1955

The passing of the Hindu Marriage Act, in 1955, has substantially modified the institution of marriage as recognised by the ancient Hindu law. This Act has brought about certain radical changes, the most important of which are as follows:

- (1) The Act has declared that marriages amongst Hindus, Jains, Sikhs and Buddhists, are valid Hindu marriages in the eyes of the law. (See Section 2.)
- (2) The Act has abolished the divergence between the Mitakshara and the Dayabhaga Schools in connection with the prohibited degrees of relationship for the purposes of a Hindu marriage. (See Section 3.)
- (3) The Act also introduces monogamy for the first time amongst the Hindus, and provides for punishment for bigamy under the Indian Penal Code. (See Sections 5 and

17.)

- (4) The Act abolishes the distinction between the marriage of a maiden and that of a widow.
- (5) The Act also prescribes the minimum age for marriage, being 21 in the case of a boy, and 18 in the case of a girl. (See Section 5.) Ancient Hindu law did not prescribe any such age for marriage.
- (6) The Act does not specifically recognise any particular form of the eight ancient forms of Hindu marriage. Rather, it merely lays down conditions of a valid Hindu marriage. (See Section 5.)
- (7) The Act does not prescribe any particular ceremony for a valid Hindu marriage. It only provides that such a marriage can be solemnized in accordance with the customary rites and ceremonies of any one of the parties to the marriage. (See Sections 5 and 7.)
- (8) The Act provides, for the first time, for the registration of Hindu marriages. (See Section 8.)
- (9) The Act also contains provisions for restitution of conjugal rights of the parties to a marriage. (See Section 9.)
- (10) The Act also lays down grounds on which a judicial separation can be decreed by the Court. (See Section 10.)
- (11) The Act lays down the grounds on which a divorce can be obtained by any of the parties to Hindu marriage. Further, the concept of divorce by mutual consent has also been introduced in the Act. (See sections 13, 13B and 14.)
- (12) The Act also makes a provision for re-marriage, inasmuch as it provides that after a valid divorce, either party may marry again. (See Section 15.)
- (13) The Act also provides for maintenance pendente lite and for expenses of legal proceedings. (See Section 24.)
- (14) The Act also provides for permanent alimony and maintenance. (See Section 25.)
- (15) The Act also makes provisions for the custody of children during the pendency of legal proceedings, as also after the passing of a decree. (See Section 26.)

ESSENTIALS OF VALID HINDU MARRIAGE

Section 5 of the Hindu Marriage Act, 1955 lists out the essential conditions for a valid Hindu Marriage.

Monogamous Relationship

Under section 5(i) of the Hindu Marriage Act, the first essential condition of a valid Hindu marriage is that neither party should have a living spouse at the time of marriage. Section 5(i) may read with Section 11,17 of the Hindu Marriage Act, 1955 which makes a Hindu guilty of the offence of bigamy under Section 491 of Indian Penal Code.

Sarla Mudgal vs. Union of India

Issues raised

- Whether a Hindu husband, married under Hindu law, by embracing Islam, can solemnise a second marriage?
- Whether such a marriage without having the first marriage dissolved under law, would be a valid marriage *qua* the first wife who continues to be Hindu?
- Whether the apostate husband would be guilty of the offence under Section 494 of the IPC?

Arguments advanced from both the sides

Petitioners

All the petitioners collectively argued that the respondents converted themselves to Islam to circumvent the provisions of bigamy given under Section 494 IPC and facilitate their second marriage with other women.

Respondents

The respondents in all the petitions assert a common contention that once they convert to Islam, they can have four wives despite having a first wife who continues to be a Hindu. Thus, they are not subject to the applicability of the Hindu Marriage Act, 1955 and IPC.

The Court held that if a Hindu converts to Muslim and then have a second marriage, he can not do so, irrespective of the fact that polygamy is allowed in Islamic Law.

FreeConsent

Section 5(ii) of the Act provides that at the time of marriage neither party shall be incapable of giving free valid consent on the basis of unsoundness of mind, mental disorder and insanity (unfit for marriage and procreation of children). Free consent is a necessary element of a Hindu Marriage. A Hindu Marriage takes in contravention of this condition is not per se void but voidable under Section 12 (1) (b) of the Act.

Age

Under section 5(iii) of the Act, at the time of marriage the male shall be minimum 21 years of age and female 18 years of age. Any violation of the required age of this clause is not void. It is voidable at the instance of minor when he attains majority, but it is the breach of condition and is punishable with simple imprisonment which may extend to fifteen days, or with fine, or with both by Section 18(a) of the Act.

Prohibited-Relationship

Under section 5(iv) of the Act, neither parties shall fall under degrees of prohibited relationship except when such union is allowed by custom or usage. A marriage solemnized within the prohibited degrees of relationship would be void under Section 11 of the Act and is punishable for simple imprisonment which may extend upto one month, or with fine or with both by Section 18(b) of the Act. If a custom is prevailing it must be a valid custom under Section 3(a) of the Hindu Marriage Act. The marriage constituted within the degrees of prohibited relationship will only become legal and valid if there exists a valid custom.

Sapinda Relationship

Under section 3 (f)(ii) of the Act, two persons are said to be “sapindas” of each other if one is lineal ascendant of the other within the limits of sapinda relationship, or if they have a common lineal ascendant who is within the limits of sapinda relationship with reference to each of them. Sapinda marriages are prohibited and are liable for punishment as per section 18(b), unless when such union are allowed by custom or usage. Thus according to this section marriages between persons of blood relationship are void.

Some other essential provisions for a Hindu Marriage

Solemnization of Marriage (Section 7)

Section 7 of the Hindu marriage act 1955 states the solemnization of the Hindu marriage, a Hindu marriage may be performed by all the ceremonies and rituals of both the party or either anyone. It is concerned with the Saptapadi which means that taking seven rounds around the fire with their partner; after its completion marriage becomes complete and binding.

- Each party to the marriage declaring in any language shall be understood by each of the parties.
- Each party to the marriage shall put the ring upon any finger of the other.
- Tying of the Thali.

The marriage renders to be valid if it is performed between Hindu couples according to the customary ceremony and rituals of each party or any one of them. Any child born after performing the marriage according to this section will be legitimate. The beginning of the child before the dissolution of the marriage is not the cause to dissolve the marriage. It is one of the most important duties of the father to bring up the girl child, find a suitable boy for her and do Kanyadan for the girl. Girl leaves their gotra and enters into the gotra of the boy. It is

an unbreakable bond that is tied for the generation to generation. It is a sacrament, not a contract.

Ceremonies to be performed in a Hindu Marriage

Marriage in the Hindu religion is a sacred tie performed by certain ceremonies and rites which are necessary for a valid marriage. There are three important stages wherein certain ceremonies are to be performed.

- **Sagai** -Hindu engagement is an important pre-wedding ritual in Indian culture, it is a type of culture in which the bride and groom come face to face and are engaged with a religious bond by each other's families. The Hindu tradition of "Vagdanam" dates back to Vedic period where the groom's father gives their words to the bride's father that they will accept their daughter and will be responsible for their future well being. There are various terms which are used instead of engagement in different places like Mangi, Sagai, Ashirbad, Nishchayam etc.
- **Kanyadan**– The word kanyadan consists of two words- Kanya which is maiden or girl and daan which means donation. It is the donation of a girl. It is an age-old tradition where the bride's father presents his daughter to the groom, giving him responsibility for her future wellbeing. It is an emotional and sentimental laden ritual which recognizes the sacrifice a father makes in order to ensure her daughter's happiness. It is followed till now from the Vedic times. It is an integral part of traditional Hindu marriage.
- **Saptapadi**– Saptapadi is a very important and integral component of a typical Hindu marriage. It is an activity which is undertaken by the bride and groom in front of the fire god, where couples go around the sacred fire seven times while reciting certain vows. This movement is also known as phera. Fire or Agni is considered highly sacred in the Hindu religion, vows taken in front of the Agni are unbreakable. The god of fire, Agni deva is considered to be a witness to be solemnization of the marriage as well as a representative of the supremebeing to provide his blessing to the newlywed couple. Section 7 of the Hindu marriage act 1955 states the solemnization of the Hindu marriage, a Hindu marriage may be performed by all the ceremonies and rituals of both the party or either anyone. It is concerned with the Saptapadi which means that taking seven rounds around the fire with their partner; after its completion, marriage becomes complete.

Hanmuniya v. Virendra Kumar Singh Kushwaha

- Considering Sec 7 of the Hindu Marriage Act, 1955 the marriage performed in absence of customary rites and ceremonies of either parties to marriage is not valid. And Mere intention of the parties to live together as husband and wife is not enough. Further, there is no scope to include a woman not lawfully married within the expression of ‘wife’ in Section 125 of the Code should be interpreted to mean only a legally wedded wife.

Registration of Marriage (Section 8)

Section 8 states that:

- The state government is facilitating the provision as a proof to Hindu so that the person comes into a valid marriage with the prescribed manner.
 - All the rules made in this section shall be laid before the state legislature as soon as May.
 - Hindu marriage registrar has all the powers and reasonable time open for the inspection and collects evidence and certified them after the payment of a prescribed fee.
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- **Seema v. Ashwani Kumar, AIR 2006 S.C 1158**

The Supreme Court in this case directed the State Governments and the Central Government that marriages of all persons who are citizens of India belonging to various religious denominations should be made compulsorily registerable in their respective States where such marriages are solemnized. The Bench, comprising of Justice Arijit Pasayat and Justice S.H. Kapadia also directed that as and when the Central Government enacts a comprehensive statute, the same shall be placed before that Court for scrutiny.

Void Marriages (Section 11)

Any marriage solemnized after the commencement of the Hindu Marriage Act 1955, if it contravenes any of the provisions of this act, the marriage will be void. The marriage will have not any legal entity nor will it be enforceable.

Voidable Marriages (Section 12)

Any marriage solemnized after or before the commencement of this will be voidable on the following grounds:

- No sexual intercourse has been done after the marriage due to the impotence of the Husband.
- Marriage is in contravention of Section 5 (ii) of this Act which states that the bride shall attain the age of 18 and the groom shall attain the age of 21.
- There shall be a consent of the bride.
- If the husband has pregnant another woman other than the wife.
- The wife has filed a request for annulling the marriage.

Consummation of marriages means full and normal sexual intercourse between married person. A marriage is consummated by sexual intercourse. It consists in the penetration by the male genital organ into the female genital organ. Full and complete penetration is an essential ingredient of ordinary and complete intercourse. Partial, imperfect or transient intercourse of not Consummation. The degree of sexual satisfaction obtained by the parties is irrelevant. Consummation may be proved by medical evidence.

Impotency is the inability to have complete and normal sexual intercourse. It may arise from a physical defect in either partner or from a psychological barrier amounting to invisible repugnance on the part of one to sexual relations with that partner. Sterility is irrelevant and does not imply impotency. Absence of uterus in the body of the one's female partner does not amount to impotency but the absence of a proper vagina would mean impotency. Similarly organic malformation making a woman sexless would mean impotency. If a husband fails to satisfy his wife's abnormal appetite for sex that cannot be regarded as impotency. Thus impotency means practical impossibility of consummation of marriage. Sexual intercourse which is incomplete occasionally does not amount to impotency. It includes discharge of healthy Semen containing living sperms in the case of men and discharge of menses in the case of women.

Matrimonial Reliefs under Hindu Marriage Act

1. Restitution]of Conjugal Rights: Section 9

2. Judicial separation: Section 10

3. For void marriages: Section 11
4. Voidable marriages for nullity of legally irregular marriages: Section 12
5. Divorce: Section 13

S. 9: Restitution of Conjugal Rights

The term 'Conjugal Rights' in literal sense means '*Right to stay together*'. It is a general accepted norm that each spouse should act as a support to other in hard times, should be there to comfort and love the partner. But if any of the partner leaves the other without any reasonable or sufficient cause, then the aggrieved party can knock the doors of the court to seek justice.

When one spouse leaves the other or withdraws the company of the other without any reasonable reason, the aggrieved spouse may go to the court for seeking remedy.

The following three essentials have to be proved:-

1. The withdrawal by the respondent from the society of the petitioner (aggrieved party).
2. The withdrawal is without any reasonable or lawful ground.
3. The court must get satisfied with the truth of the statement made in the petition.

Sushil Kumari Dang v. Prem Kumar

Here, a petition for restitution of conjugal right is filed by the husband and the husband accuses his wife for adulterous conduct. Following which he filed another petition for judicial separation which shows the extent of his sincerity and interest in keeping the wife with him. So, the Delhi High Court set aside the decree of restitution granted by the lower court.

Constitutional Validity of Section 9

In *T. Saritha Vengata Subbiah v. State*, the court had ruled that that S.9 of Hindu Marriage Act relating to restitution of conjugal rights as unconstitutional because this decree clearly snatches the privacy of wife by compelling her to live with her husband against her wish. In *Harvinder Kaur v. Harminder Singh*, the judiciary again went back to its original approach and held Section 9 of Hindu Marriage Act as completely valid.

Saroj Rani v Sudarshan Kumar

In this case the constitutionality of Section 9 of Hindu Marriage Act was challenged. Petition was filed by the wife for a restitution of conjugal rights under Section 9 of the Hindu Marriage Act,1955. Her husband consenting to the passing of a decree for the same was passed.

After a period of 1-year husband filed a petition under Section 13 of the Hindu Marriage Act,1955 against the appellant for divorce on the ground that though one year had elapsed from the date of passing the decree for restitution of conjugal rights as no actual cohabitation had taken place between the parties. The Supreme Court upheld the constitutionality of Section 9 by saying that it serves a social purpose as an aid to the prevention of break-up of the marriage.

Itwari v. Asghari, AIR 1960 All. 684

The court held that Even in the absence of satisfactory proof of the husband's cruelty, the Court will not pass a decree for restitution in favour of the husband if, on the evidence, it feels that the circumstances are such that it will be unjust and inequitable to compel her to live with him.

Judicial separation: Section 10

Parties may separate from each other under a decree of the court know as judicial separation or under an agreement entered into by parties called consensual separation. As soon as a decree for judicial separation is passed, a husband or a wife is under no compulsion to live with his / her spouse. They are separated from bed and board. Basic marital rights are suspended. Nonetheless marriage subsists. Parties remain husband and wife. If anyone remarries, he or she will be guilty of bigamy. In the event of one of the parties dying, the other party will inherit the property of the deceased spouse. Judicial separation can be allowed only if marriage is valid.

The aggrieved party to the marriage may present a petition on any of the grounds stated in the provisions for divorce under Section 13 of the Hindu Marriage Act for a decree of judicial separation.

When separation comes to an end in case of -

Separation by agreement the moment parties revoke the agreement. Judicial separation on the application by petition of either party and on being satisfied of the truth of the statements made in such petition, rescind the decree if it considers it just and reasonable to do so.

In a separation by agreement, actual separation is necessary. It must relate to present separation. All agreements for future separation are void, being against public policy. Separation agreements sometimes stipulate covenants not to seek restitution of conjugal rights. A covenant against restitution is enforceable, but courts are not bound by it.

If there is no cohabitation between the parties to the marriage for one year or more after the passing of the order for judicial separation, the parties then may apply for divorce.

Divorce:

Under Section 13 following are the grounds for divorce:

Adultery: The act of indulging in any sexual relationship, including intercourse outside marriage, is termed as adultery.

Hirachand Srinivas Managaonkar v. Sunanda, Hon'ble Supreme observed that in case where the adulterous nature of a spouse is proven the court may decree judicial separation which may further be moved towards a decree of divorce.

Cruelty: A spouse can file a divorce case when he/she is subjected to any mental and physical injury that causes danger to life, limb, and health like denying food, continuous ill-treatment, and dowry-related abuses, uncontrollable and unreasonable sexual acts.

Leading Case: *Dastane v. Dastane*

Five tests were laid down in determining whether a given conduct amounts to legal cruelty.

They are the following:

1. The alleged acts constituting cruelty should be proved according to the law of evidence;
2. There should be an apprehension in the petitioner's mind of real injury or harm from such conduct;
3. The apprehension should be reasonable having regard to the socio-economic and psycho-physical condition of the parties;

4. The petitioner should not have taken advantage of his position;
5. The petitioner should not by his or her conduct have condoned the acts of cruelty

Suman Singh v. Sanjay Singh (Supreme Court)

In the case, the husband had pleaded 9 instances which, according to him, constituted “cruelty” within the meaning of Section 13(1)(i-a) of the Hindu Marriage Act entitling him to claim dissolution of marriage against the appellant. The court held that Few isolated incidents of long past and that too found to have been condoned due to compromising behavior of the parties cannot constitute an act of cruelty within the meaning of Section 13(1)(i-a) of the Hindu Marriage Act.

Mrs. Christine Lazarus Menezes v. Mr. Lazarus Peter Menezes (Bombay High Court)

The Court noted that if the Criminal Complaint filed by the appellant wife against her husband was false and was filed only to bring back her husband and consequent to which he was arrested and was in jail for about 7 days, it would constitute a clear case of cruelty by the wife against her husband.

Desertion: If one of the spouses voluntarily abandons his/her partner for at least two years, the abandoned spouse can file a divorce case on the ground of desertion. Two essentials required –

- i. Factum of desertion (statement of desertion)
- ii. Animus descidendi (intention to desert)

Conversion: In case either of the spouses converts himself/herself into another religion, the other spouse may file a divorce case.

In *Suresh Babu v. Leela*, it was held that conversion to a non-Hindu religion does not automatically dissolved the marital bond but only provides the aggrieved spouse to move towards a court for a decree of divorce and in this relation the court admitted the decree of divorce.

Mental Disorder: A mental disorder can become a ground for filing a divorce if the spouse of the petitioner suffers from incurable mental disorder and insanity, and the petitioner cannot expect to stay together.

Pankaj Mahajan v. Dimple– In this case the appellant husband brought an evidence to show that the respondent wife was suffering from schizophrenia and asked for a divorce. The Hon'ble Supreme Court while discussing about insanity as a ground of divorce held that the husband should be granted a decree of divorce on this ground.

Leprosy: In case of a 'virulent and incurable' form of leprosy, a petition can be filed by the other spouse based on this ground. But this was the ground prior to the Personal Laws (Amendment) Bill, 2018. Leprosy has been removed as a ground for divorce as it is now a curable disease.

In ***Swarajya Lakshmi v. G.G. Padma Rao*** the Hon'ble Supreme Court while discussing about leprosy as a ground of divorce observed that in case of an incurable and virulent form of leprosy decree of divorce can be granted and based upon this reasoning granted a decree of divorce.

Venereal Disease: If one of the spouses is suffering from a severe disease that is easily communicable, a divorce can be filed by the other spouse. The sexually transmitted diseases like AIDS are accounted to be venereal diseases. Disease must be incurable.

In the case of ***Mr. X v. Hospital Z***[v], a doctor informed the fiancé about her soon to be husband's communicable venereal disease because of which she refused to marry him. In a suit filed before the Hon'ble Supreme Court it was held that this act of the doctor didn't violate Mr. X's privacy and was for a greater good. It was also held that in cases like this a divorce is permissible.

Renunciation: If a spouse renounces all worldly affairs by embracing a religious order, then other spouse may take a divorce.

Not Heard Alive: If a person is not seen or heard alive by those who are expected to be 'naturally heard' of the person for a continuous period of seven years, the person is presumed to be dead. The other spouse should need to file a divorce if he/she wants to remarry.

Differences between Judicial Separation and Divorce

1. In case of divorce, a spouse can file a suit only after 1 year of marriage (Exception is “extreme hardship”) but for a judicial separation, there is no such time limit.
2. Both Divorce and Judicial Separation are two different steps in cases of dissolution of marriage wherein the former is preceded by the later.
3. Judicial Separation is only a temporary breakage of mutual rights whereas with divorce the marriage comes to an end with no further resolve.
4. In case of Divorce, all the grounds mentioned under Section 13 could be made a ground for divorce but in case of judicial separation under Section 10 of the Hindu Marriage Act, Conversion and Absence for a period of more than 7 years with no whereabouts cannot be made ground for a decree.
5. Lastly, in Judicial Separation the spouses do have an opportunity to re-conciliate but in a divorce, they lose this privilege as their relationship comes to a legal end.

Though Judicial Separation and Divorce legally have a similar character with almost similar means, but on considering their ends, they are poles apart.

Maintenance

Types of Maintenance under Hindu Laws

Under the Hindu maintenance laws, there are 2 types of maintenance that can be claimed by the wife. When the wife files a maintenance petition through her divorce attorney, the burden to declare his income shifts to the husband, who has the right to defend the maintenance petition.

The types of maintenance under Hindu laws are as follows:

1. **Interim Maintenance:** When the wife files a maintenance petition, the court may award her interim maintenance that the husband must pay from the date on which the

application was filed by the wife till the date of dismissal through her divorce law advocate. It is also known as Maintenance Pendente Lite and is paid so that the wife can pay for the legal expenses incurred by her. Interim maintenance is awarded by the court if the wife has absolutely no source of income to maintain herself. There are no laws that lay down the amount of this type of maintenance and it is completely upon the discretion of the court to determine how much maintenance is sufficient for the wife to sustain during the proceedings. Section 24 of the Hindu Marriage Act, 1955 lays down that both the husband and wife can file an application for interim maintenance through their divorce advocate.

2. Permanent Maintenance: Permanent maintenance is paid by the husband to his wife in case of divorce, and the amount is determined through a maintenance petition filed through a divorce law lawyer in India. Section 25 of the Act states that the court can order the husband to pay maintenance to his wife in form of a lump sum or monthly amount for her lifetime. However, the wife may not be eligible for maintenance if there are any changes in her circumstances.

Under Section 18 of the Hindu Adoption and Maintenance Act, 1956, a wife has the right to live separately from her husband without affecting her right to claim maintenance. Under this law, a wife can live separately from her husband in the following cases:

- The husband has deserted the wife without any reasonable cause.
- The husband has subjected the wife to cruelty.
- The husband is suffering from leprosy of virulent form.
- The husband has extra-marital affairs.
- The husband has converted to another religion. However, the wife is not entitled to claim maintenance in the following circumstances:
 - She has ceased to be a Hindu by converting to another religion.
 - She is guilty of adultery i.e. she is unchaste and indulged in physical relations with another man.

- She has remarried after the divorce. In determining the amount of maintenance the following has to be considered;

1. The net value of the estate of the deceased after providing for payment of debts.
2. The provision, if any made under a will of the deceased.
3. Degree of relationship with the dependant.
4. Reasonable wants of dependant.
5. No. of dependants

Calculation of Maintenance under Hindu Laws

The amount of maintenance to paid depends upon different factors. The courts rely on the provision of Section 23 of the Act while asserting the total maintenance that the husband needs to pay to his wife. The provision lays down the following factors that must be considered to fix a maintenance amount: ● The position and status of the husband and wife,

- Whether the wife has an actual claim for maintenance.
- If the wife is living separately, whether the reason to do so is justified.
- The wife's total property and income.
- The husband's total property, income generated from this property, and his other income.
- The total number dependents and their expenses borne by the husband. The personal expenses of the husband.

Quantum of maintenance

Maintenance covers not merely food, clothing and shelter, but also includes other necessities. The quantum and type of necessities covered within the scope of maintenance

may vary, depending on the status, financial position and number of dependents, etc and is at the discretion of the court. Antecedent to passing an order under Section 125, the court does take cognizance of the amount of maintenance already ordered under the personal law. The reasoning is based on the premise that the wife is entitled to live as per the standard and status of her husband.

Waraj Garg v. K.M. Garg, AIR 1978 Del. 296

It is true that under the Hindu law, it is the duty of the husband to maintain his wife, but the wife is not under a corresponding duty to maintain her husband. This also is due to the fact that normally the husband is the wage earner. If, however, the wife also has her own income it will be taken into account and if her income is sufficient to maintain herself the husband will not be required to pay her any maintenance at all.