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by

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STATUE STATION

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FAMILY LAW-I

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 - i. Evolution and Concept of the Institution of Marriage
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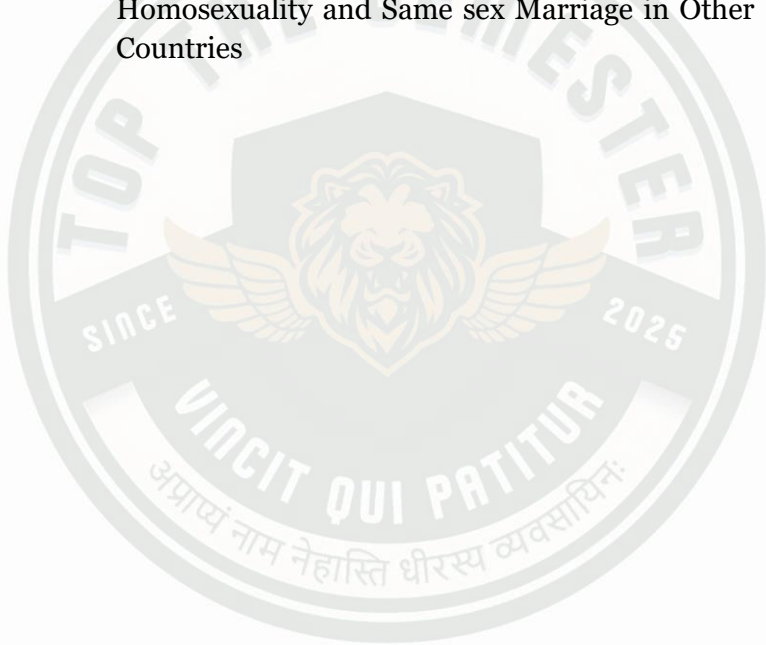
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UNIT 1

HINDU MARRIAGE AND DISSOLUTION

INSTITUTION OF MARRIAGE UNDER HINDU LAW

EVOLUTION AND CONCEPT OF THE INSTITUTION OF MARRIAGE

Evolution of the Institution of Marriage

Marriage in Hindu law has evolved significantly over the years. Ancient scriptures called Dharmashastras, like Manusmriti, Yajnavalkya Smriti, and others, have deeply influenced the evolution of marriage in Hindu law. In Vedic times, marriage was considered a sacrament, a binding and solemn duty for social and religious reasons, and not a contract.

As we progress through the medieval period, we find some changes in the attitudes towards marriage, but the fundamental sacramental aspect of marriage remained largely unchanged. However, in modern times, while the sacramental aspect remains, the contract element is also acknowledged, highlighting the dual nature of Hindu marriage.

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Concept of Institution of Marriage

Under the Hindu law, marriage is not just a physical or emotional union, but a spiritual union of two souls. It is considered a 'samskara' or sacrament, one of the most important of the sixteen Hindu 'samskaras' or sacraments.

As per Section 5 of the Hindu Marriage Act, 1955, certain conditions must be fulfilled for a marriage to be considered valid, including age requirements (bride should be 18 years, and the groom should be 21), mental capacity, degrees of prohibited relationship, and more. A marriage in violation of these conditions is either void or voidable, as per the stipulations in the Act.

Sacramental Aspect of Hindu Marriage

In a sacramental marriage, the rites and rituals play a significant role, and the marriage is considered complete only when these are performed. Some of the rites include 'Kanyadan' (the gift of a maiden), 'Panigrahana' (taking the hand of the bride as a gesture of union), and 'Saptapadi' (seven steps taken together by the couple). The completion of the 'Saptapadi' is crucial, and the marriage is deemed complete when this ritual is performed.

The case of Smt. Sarla Mudgal, President, Kalyani vs. Union of India (1995) highlighted the sacramental aspect of Hindu marriage. The Supreme Court emphasized that a Hindu marriage is a sacrament and not a contract, and

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conversion to another religion for the purpose of bigamy without dissolving the first marriage is illegal.

Contractual Aspect of Hindu Marriage

The contractual aspect of Hindu marriage is governed by the Hindu Marriage Act, 1955. This Act includes conditions that must be satisfied for a valid marriage, making marriage a contract to some extent. It is contractual in the sense that it involves an agreement between two parties agreeing to enter into a marital alliance, observing the legal conditions like free consent, competent parties, and lawful consideration.

The Supreme Court in the case of Bhaurao Shankar Lokhande & Anr vs. State Of Maharashtra & Anr (1965) reiterated that a Hindu marriage is a form of a contract for the purpose of legal proceedings and that both parties to the marriage have obligations and rights that arise from the agreement to marry.

Modern Concept of Marriage

In recent years, the concept of Hindu marriage has adapted to changing social norms and principles of human rights and gender equality. Emphasis has been given to the importance of the wife's consent in a marriage. The Supreme Court's decision in Independent Thought vs. Union Of India (2017) increased the age of consent for sexual relations to eighteen years for a wife, bringing it in line with the rest of the nation's laws, and thus, promoting gender equality.

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FORMS OF MARRIAGE

Traditionally, Hindu law recognized eight forms of marriage, as prescribed by the ancient text Manusmriti, divided into two broad categories - approved (Brahma, Daiva, Arsha, Prajapatya) and unapproved (Gandharva, Asura, Rakshasa, Paishacha). Over time, with the codification of Hindu law, the multiplicity of forms has diminished, and today, only the 'Brahma' form is truly recognized, which involves the voluntary union of a man and a woman with the performance of traditional rites and ceremonies.

Validity of Marriage

Under the Hindu Marriage Act, 1955, a marriage is considered valid if it fulfills certain conditions laid down in Section 5 of the Act. These conditions include:

1. Monogamy: Neither party should have a living spouse at the time of the marriage (Section 5(i)).
2. Mental Capacity: Both parties should be capable of giving valid consent and should not suffer from a mental disorder of such kind as to be unfit for marriage and procreation of children (Section 5(ii)).
3. Age: At the time of marriage, the bridegroom should be of 21 years, and the bride should be of 18 years (Section 5(iii)).

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4. **Prohibited Degrees of Relationship:** Parties should not fall within degrees of prohibited relationship unless custom or usage allows such a marriage (Section 5(iv)).
5. **Sapinda Relationships:** Parties should not be 'sapindas' of each other, unless permitted by custom or usage (Section 5(v)).

A marriage that fails to fulfill any of these conditions, except condition 3 relating to age, is considered void ab initio, meaning null from the beginning, under Section 11 of the Act.

Voidable Marriage

Section 12 of the Hindu Marriage Act, 1955, details situations where a marriage is considered voidable and can be annulled by a court decree if a petition is filed by either party. These conditions include:

1. **Impotency:** If either party is impotent at the time of marriage and continues to be so until the filing of the petition.
2. **Non-consummation due to mental illness:** If the marriage is not consummated due to the respondent's unsoundness of mind.
3. **Consent obtained by force or fraud:** If the consent of the petitioner was obtained by force or fraud, and the petitioner was unaware of the facts at the time of marriage.

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4. **Pregnancy by a person other than the petitioner:**
If the respondent was pregnant by someone other than the petitioner at the time of the marriage.

If the aggrieved party wishes to dissolve a voidable marriage, they must appeal to the court within a specified period after the marriage. Otherwise, the marriage continues to be valid.

Landmark Judgements

1. **R. v. R. (1991):** This was a British case but it had far-reaching implications for marital rape laws across the world, including India. In this case, the House of Lords held that a husband could be held criminally liable for raping his wife, thereby nullifying the marital rape exemption. This ruling highlighted that forced sexual intercourse, without the consent of the wife, amounts to rape, thereby providing some degree of protection under the legal framework.
2. **Bharata Matha & Ors vs. R. Vijaya Renganathan & Ors (2010):** The Supreme Court held that a second marriage would be void if the first marriage was not legally dissolved. The court stated that under Section 5(i) of the Hindu Marriage Act, monogamy is a necessary condition for a valid marriage.
3. **Lata Singh vs. State of UP (2006):** This landmark judgment upheld the validity of inter-

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caste and inter-religious marriages, emphasizing that every person, including a Harijan girl, has a right to marry anyone she wishes. The court condemned acts of violence against such couples and ordered the administration and police authorities to provide protection when needed.

4. **Neetu vs. Bhagat Ram (2009):** This Supreme Court judgement underlined the importance of free consent in marriage. In this case, the marriage was held voidable because the husband had concealed his previous marriage from his wife. The Court noted that such concealment amounted to fraud.
5. **Independent Thought vs. Union Of India (2017):** This judgment was a significant move towards achieving gender justice in marriage. The Supreme Court increased the age of consent for sexual relations to eighteen years for a wife, ruling that sexual intercourse with a wife below 18 years of age is rape. This decision led to an amendment of exception 2 of Section 375 of the Indian Penal Code (IPC), which permitted marital rape of a girl child between the ages of 15 and 18.
6. **Pratibha Rani vs. Suraj Kumar (1985):** This Supreme Court case underlined the right of a Hindu wife to stay separately from her husband without dissolving the marriage, due to cruelty. The court held that the wife could claim maintenance under Section 125 of the Code of

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Criminal Procedure, 1973, despite her decision to live separately.

These judgments have played a significant role in shaping the Hindu law of marriage, underlining the principles of justice, fairness, and equality. They emphasize the importance of consent, respect for individual choice, and the need for the law to evolve in response to societal changes.



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1.2 MATRIMONIAL REMEDIES

I. RESTITUTION OF CONJUGAL RIGHTS

II. JUDICIAL SEPARATION

III. DISSOLUTION OF MARRIAGE: THEORIES, FORMS OF DIVORCE, GROUNDS

IV. DIVORCE BY MUTUAL CONSENT

V. IRRETRIEVABLE BREAKDOWN AS A GROUND FOR DISSOLUTION

MATRIMONIAL REMEDIES: RESTITUTION OF CONJUGAL RIGHTS; JUDICIAL SEPARATION

Marriage, under Hindu law, is a sacred bond with both social and legal implications. As a result, when disputes arise in marital life, the law provides certain remedies to spouses. These remedies, including restitution of conjugal rights and judicial separation, aim to protect the rights of both parties and uphold the sanctity of the marital relationship.

Restitution of Conjugal Rights

Restitution of Conjugal Rights (RCR) is a matrimonial remedy available under Section 9 of the Hindu Marriage Act, 1955. This provision allows a spouse to petition the court for restoring the conjugal rights, i.e., the right to

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stay together, if the other spouse has withdrawn from their society without reasonable cause.

The RCR petition, if granted by the court, mandates the respondent spouse to return to the matrimonial home and resume marital cohabitation. If the respondent fails to comply within the stipulated time period after the decree, it may serve as a ground for divorce.

The constitutional validity of Section 9 was challenged in the case of Harvinder Kaur v. Harmender Singh Choudhary (1984) on the grounds of it being violative of the right to privacy. However, the court held that it was not an invasion of privacy but a legal mechanism to preserve the sanctity of marriage.

Judicial Separation

Judicial separation is another remedy provided under the Hindu Marriage Act, 1955. This can be viewed as an intermediate step before divorce, where the couple lives apart for a certain period while remaining legally married. This provides both parties the opportunity to reflect on their relationship and decide whether they want to continue with the marriage or dissolve it.

Section 10 of the Hindu Marriage Act provides the grounds on which judicial separation may be ordered, which are the same as the grounds for divorce (adultery, cruelty, desertion, conversion, unsoundness of mind, virulent and incurable form of leprosy, venereal disease

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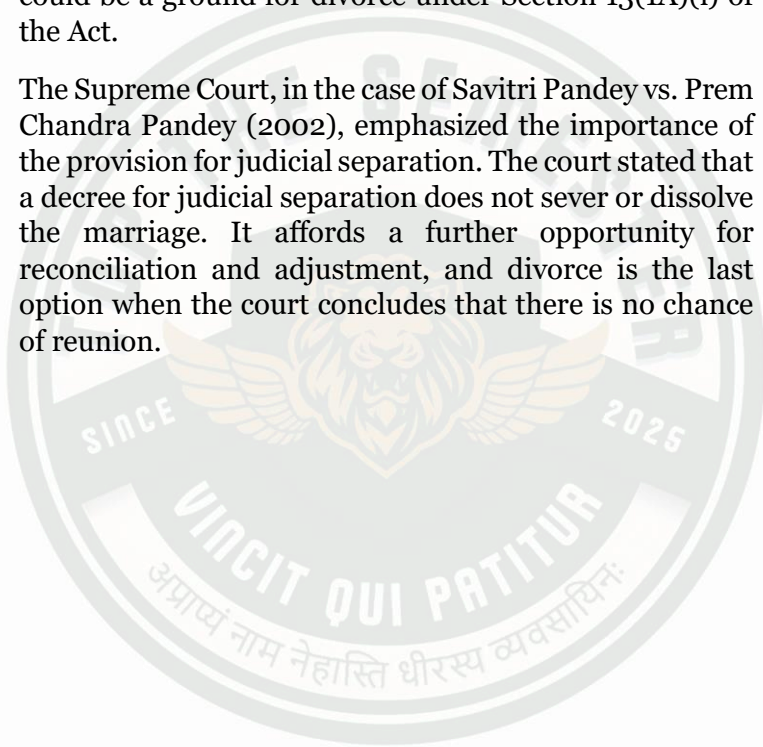
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in a communicable form, renouncement of the world, and not heard as being alive for seven years).

If there's no cohabitation between the parties for one year after the decree for judicial separation has been passed, it could be a ground for divorce under Section 13(1A)(i) of the Act.

The Supreme Court, in the case of Savitri Pandey vs. Prem Chandra Pandey (2002), emphasized the importance of the provision for judicial separation. The court stated that a decree for judicial separation does not sever or dissolve the marriage. It affords a further opportunity for reconciliation and adjustment, and divorce is the last option when the court concludes that there is no chance of reunion.



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DISSOLUTION OF MARRIAGE: THEORIES, FORMS OF DIVORCE & GROUNDS

Theories of Divorce

There are three prominent theories of divorce:

1. **Fault Theory:** This theory holds that marriage can be dissolved when one party is at fault. The innocent party is entitled to seek relief due to the matrimonial offense committed by the other party. This theory is embodied in the Hindu Marriage Act, 1955, under which there are several fault grounds such as adultery, cruelty, desertion, conversion, unsoundness of mind, etc.
2. **Mutual Consent Theory:** According to this theory, if both parties agree to end their marriage due to irreconcilable differences, they can seek a divorce by mutual consent. In India, this is codified in Section 13B of the Hindu Marriage Act, 1955.
3. **Irretrievable Breakdown Theory:** This theory proposes that a marriage can be dissolved if it has broken down irreparably, even if neither party is at fault. This theory has been discussed and applied in several Indian judgments, though it is not explicitly included in the Hindu Marriage Act. The Law Commission of India has recommended its inclusion.

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Forms of Divorce

Under the Hindu Marriage Act, there are two forms of divorce:

1. **Contested Divorce:** One party petitions for divorce based on one or more grounds specified in Section 13(1) of the Act. This requires a trial where evidence is presented to prove the allegations.
2. **Mutual Consent Divorce:** Both parties agree that their marriage should be dissolved due to irreconcilable differences. This is codified under Section 13B of the Act and requires a six-month cooling-off period to allow for reconciliation.

Grounds for Divorce

Section 13 of the Hindu Marriage Act, 1955, lays out specific circumstances under which a spouse can seek divorce:

1. **Adultery:** The respondent has had voluntary sexual intercourse with a person other than the petitioner.
2. **Cruelty:** The respondent has treated the petitioner with physical or mental cruelty.
3. **Desertion:** The respondent has deserted the petitioner for a continuous period of at least two years.

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4. **Conversion:** The respondent has converted to a religion other than Hinduism.
5. **Unsoundness of Mind:** The respondent has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder.
6. **Leprosy/Venereal Disease:** The respondent suffers from a virulent and incurable form of leprosy or a venereal disease in a communicable form.
7. **Renunciation:** The respondent has renounced the world by entering a religious order.
8. **Not Heard Being Alive:** The respondent has not been heard of as being alive for a period of seven years or more.
9. **No Resumption of Co-Habitation:** There has been no resumption of cohabitation for a year or more after the decree of judicial separation or restitution of conjugal rights.

In the case of Naveen Kohli vs. Neelu Kohli (2006), the Supreme Court held that the living together of husband and wife under the same roof is not a pre-condition for a successful divorce petition. The judgment was an important step towards recognizing the irretrievable breakdown of marriage as a ground for divorce.

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LANDMARK JUDGEMENT

1. **Naveen Kohli vs. Neelu Kohli (2006):** The Supreme Court, in this case, highlighted the concept of 'Irretrievable Breakdown of Marriage' as a ground for divorce. The Court observed that the living together of husband and wife under the same roof is not a precondition for the success of a divorce petition. This judgement was an important step towards recognizing 'Irretrievable Breakdown of Marriage' as a ground for divorce.
2. **V. Bhagat vs. D. Bhagat (1994):** This Supreme Court case is important in understanding the concept of mental cruelty as a ground for divorce. It was held that mental cruelty can be assessed from the instances given in the petition and the court's observations during the trial.
3. **Ms. Jordan Diengdeh vs. S.S Chopra (1985):** The Supreme Court, in this case, advocated for the introduction of 'Irretrievable Breakdown of Marriage' as a ground for divorce. It also recommended amendments to the law to include a provision for the wife to oppose a petition for divorce on this ground if it resulted in grave financial hardship for her.
4. **Praveen Mehta vs. Inderjit Mehta (2002):** This Supreme Court judgement clarified the interpretation of 'cruelty' under the Hindu Marriage Act. The court held that cruelty can be

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physical or mental, and it's not necessary to prove that the cruelty is of such a character as to cause danger to life, limb or health.

5. **Samar Ghosh vs. Jaya Ghosh (2007):** In this case, the Supreme Court gave a broad definition of 'cruelty' for the purpose of divorce under the Hindu Marriage Act. It noted that to constitute cruelty, the conduct complained of should be "grave and weighty" so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse.
6. **Sushma vs. Sudhir Kumar (2009):** In this case, the Punjab & Haryana High Court ruled those false accusations of impotency amount to cruelty and are a ground for divorce. This underlines the expansion of the notion of cruelty as a ground for divorce.

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DIVORCE BY MUTUAL CONSENT

Divorce by mutual consent is a simplified and relatively hassle-free process of ending a marriage. This form of divorce is based on the principle that when both parties in a marriage agree to part ways amicably, they should be allowed to do so without needing to establish any fault.

Under Section 13B of the Hindu Marriage Act, 1955, a petition for dissolution of marriage by mutual consent can be presented by both parties together on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

Process of Divorce by Mutual Consent

1. **Filing of Petition:** Both parties intending to dissolve the marriage are required to agree upon terms of agreement. It is in this context that these agreements covering alimony, child custody or any other contentious issues are finalized. After this, a joint petition for divorce is filed.
2. **Court's Observation Period:** After filing of the petition, parties need to wait for a period of six months, also known as the 'cooling-off' period. During this time, they are given the opportunity to reconsider their decision.
3. **Second Motion:** If at the end of the six-month period, both parties still wish to proceed with the

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divorce, they must make a joint statement to the court. This is known as the second motion.

4. **Final Decree of Divorce:** If the court is satisfied after hearing the parties that the marriage should be dissolved, a decree of divorce is granted.

Landmark Judgments

1. **Sureshta Devi vs. Om Prakash (1991):** This case clarified the purpose of the 'cooling-off' period, stating that it was not mandatory but rather a period to give time for introspection and reconsideration.
2. **Anil Kumar Jain vs. Maya Jain (2009):** In this case, the Supreme Court held that the six-month waiting period could be waived under certain circumstances, and the divorce could be granted earlier.
3. **Amardeep Singh vs. Harveen Kaur (2017):** This significant judgement from the Supreme Court held that the 'cooling-off' period is not mandatory and can be waived under certain circumstances if all efforts for mediation/conciliation to reunite the parties have failed. The period mentioned in Section 13B(2) is not mandatory but directory, and it will be open to the court to exercise its discretion in the facts and circumstances of each case where there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation.

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IRRETRIEVABLE BREAKDOWN AS A GROUND OF DISSOLUTION

"Irretrievable breakdown" of marriage is a relatively modern concept in divorce law, wherein it is asserted that a marriage should be dissolved when there is no chance of reconciliation between the spouses. This concept deviates from the traditional 'fault' theory of divorce where one spouse had to be at fault for the marriage to be dissolved.

Although the Hindu Marriage Act, 1955, does not explicitly recognize "irretrievable breakdown" as a ground for divorce, the Supreme Court of India, through its interpretative role, has in several instances granted divorce on this ground, noting that to insist on the continuance of a dead marriage would amount to a meaningless and inhuman formalism.

Landmark Judgments

1. **Naveen Kohli vs. Neelu Kohli (2006):** The Supreme Court recognized 'irretrievable breakdown' as a ground for divorce in this case. The court noted that where marriage is beyond repair on account of bitterness created by the acts of the spouse, courts should be able to dissolve the marriage.
2. **Rishikesh Sharma vs. Saroj Sharma (2006):** The Supreme Court reiterated its stance on the irretrievable breakdown of marriage as a ground for divorce in this case. It held that where the marriage of

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the parties cannot be saved or salvaged and it is beyond repair despite the efforts of the court or counselling, divorce can be granted.

3. **Sanghamitra Ghosh vs. Kajal Kumar Ghosh (2007):** The Supreme Court upheld its earlier stance and held that the marriage had irretrievably broken down with no chance of the parties coming together.

Proposed Legal Reforms

Over the years, various committees and commissions have suggested the introduction of 'irretrievable breakdown of marriage' as a ground for divorce in the Hindu Marriage Act:

1. The Law Commission of India in its 71st Report titled "The Hindu Marriage Act, 1955 - Irretrievable Breakdown of Marriage as a Ground of Divorce" recommended the inclusion of 'irretrievable breakdown of marriage' as a ground for divorce.
2. The Marriage Laws (Amendment) Bill, 2010, which sought to amend the Hindu Marriage Act, 1955, and the Special Marriage Act, 1954, to make 'irretrievable breakdown of marriage' a new ground for divorce was passed by the Rajya Sabha, but it lapsed with the dissolution of the Lok Sabha in 2014.

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UNIT 2

MUSLIM MARRIAGE AND DISSOLUTION OF MARRIAGE

2.1 NIKAH (MUSLIM MARRIAGE)

I. DEFINITION, OBJECT AND NATURE

II. ESSENTIALS FOR VALIDITY

III. KINDS, RESTITUTION OF CONJUGAL RIGHTS, MUTA MARRIAGE, DISTINCTION BETWEEN NIKAH AND MUTA

Definition of Nikah

In Islamic law, marriage is referred to as 'Nikah', which literally means "contract". Nikah is considered a civil contract between a man and a woman for the object of legalizing sexual relations and the procreation of children.

Object of Nikah

The primary objective of Nikah is to legalize the relationship between a man and a woman and to make the procreation of children legitimate. It is meant to create a familial bond characterized by mutual rights and obligations. It also has a spiritual and moral purpose, aimed at promoting love, mutual respect, peace, and tranquility between the spouses. Moreover, it provides

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for companionship and satisfies the natural urge for sexual gratification in a legitimate and responsible manner.

Nature of Nikah

1. **Contractual Nature:** Nikah, in essence, is a contract. Thus, it has all the essential elements of a contract such as proposal (Ijab) from one party and acceptance (Qubul) from the other. The parties must be competent to contract, and there must be free consent.
2. **Formalities:** There are few formalities prescribed under Muslim law for the Nikah to be valid, such as the presence of two adult witnesses and the payment of dower (Mahr) to the bride.
3. **Public Affair:** Unlike some other religious marriages, Nikah is not a sacrament but a public affair. It is usually performed in the presence of family members and the community.
4. **Equality of Spouses:** The spouses are seen as equals, and each has rights and responsibilities. The wife has the right to Mahr, maintenance, and kind treatment, while the husband has the right to respect and obedience in all lawful matters.
5. **Polygamy:** Under Muslim law, a man can have up to four wives at the same time, provided he can

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treat them all equally. However, polygamy is not encouraged or considered ideal.

6. **Divorce:** Divorce is permissible under certain conditions. It is considered as the most abhorrent of lawful things in the eyes of Allah, indicating that it should only be the last resort.

Essentials for Validity of a Nikah

For a Nikah to be valid under Muslim law, it must fulfill the following conditions:

1. **Competent Parties:** Both parties must be competent to contract, i.e., they should be of sound mind, should have attained the age of puberty, and should not be barred by any law from contracting a marriage.
2. **Free Consent:** Both parties should consent to the marriage freely. Any consent obtained by coercion or undue influence renders the marriage void.
3. **Absence of Legal Disabilities:** Certain disabilities under Muslim law, such as consanguinity (close blood relations), affinity (relation by marriage), and fosterage (relation by milk), bar the marriage between certain individuals.

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4. **Proposal and Acceptance (Ijab and Qubul):** There should be a proposal made by or on behalf of one of the parties to the marriage, and it must be accepted by or on behalf of the other party.

5. **Presence of Witnesses (Walis):** The presence of two adult male witnesses or one male and two female witnesses is necessary during the contract of Nikah.

6. **Mahr (Dower):** A provision for dower is essential for a Muslim marriage. The dower amount is a sum of money or other property promised by the husband to be paid or delivered to the wife.

Kinds of Nikah

Nikah is mainly classified into two categories, depending on the validity of the marriage:

1. **Valid (Sahih):** A valid marriage satisfies all the conditions mentioned above. It creates mutual rights of inheritance between husband and wife, and the children born from such a marriage are legitimate.

2. **Void (Batil):** A void marriage is one that fails to comply with the essential conditions of a valid marriage, such as when there are legal disabilities

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(consanguinity, affinity, fosterage). Such a marriage has no legal effect.

3. **Irregular (Fasid):** An irregular marriage is one which violates certain non-essential conditions, such as the absence of witnesses. Such marriages can be regularized upon removal of the irregularity.

Restitution of Conjugal Rights under Muslim Law

Restitution of Conjugal Rights is a remedy provided to spouses in case one of them, without reasonable excuse, withdraws from the society of the other. Under Muslim law, both husband and wife are entitled to this remedy.

If the spouse refuses to comply with the decree of restitution, the court cannot enforce it directly, as it involves creating a situation of 'forced cohabitation'. However, if the spouse still doesn't return after the passage of a certain period, the court may attach the property of the refusing spouse.

In the landmark case of **T. Sareetha vs. T. Venkatasubbaiah (1983)**, the Andhra Pradesh High Court held the provision for Restitution of Conjugal Rights under the Hindu Marriage Act, 1955 as unconstitutional. This judgement had implications on similar provisions under the Muslim law as well. However, this judgement was later overruled by the Supreme Court of India in **Saroj Rani vs. Sudarshan**

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Kumar Chadha (1984) where it held that such provisions do not violate the right to privacy and were hence constitutional.

NIKAL (MUSLIM MARRIAGE) : MUTA MARRIAGE; DISTINCTION BETWEEN MUTA & NIKAH

Muta Marriage

Muta marriage is a temporary marriage contract under Shia law. The word 'Muta' means 'enjoyment' or 'pleasure'. This form of marriage is entered into for a specified period of time in exchange for a specified sum as consideration. The duration of the marriage and the dower must be specified during the contract.

The objective of Muta marriage is to legalize sexual relations between a man and a woman for a fixed period of time. It is often seen as a form of marriage that caters to human needs in circumstances where a permanent marriage (Nikah) may not be feasible.

It's important to note that while Muta is recognized under Shia law, it is not accepted by Sunni law, which treats a temporary marriage contract as void.

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Essentials of Muta Marriage

The essential elements of a Muta marriage are:

1. **Duration:** The period of cohabitation should be clearly specified at the time of the contract. The contract becomes void if the duration is not specified.
2. **Dower:** The amount of dower should also be specified in the contract.
3. **Consent:** Both parties must agree to the marriage.
4. **Competent Parties:** The parties must be legally competent to contract.

Distinction between Muta and Nikah

1. **Duration:** The most significant distinction between Muta and Nikah is that Muta is a temporary marriage contract with a specified duration, while Nikah is a permanent contract with no stipulated end date.
2. **Inheritance Rights:** In a Nikah marriage, the spouses and children have mutual rights of inheritance. However, in a Muta marriage, there are no such mutual inheritance rights unless the marriage is consummated.
3. **Dissolution:** A Nikah marriage requires a formal process of divorce for dissolution. In contrast, a Muta

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marriage automatically ends when the specified period expires, without any need for divorce.

4. **Legal Recognition:** Muta is recognized and legally valid only under Shia law, while Nikah is recognized universally by all sects of Muslims.
5. **Social Recognition:** Nikah is socially recognized and accepted by the Muslim community worldwide, while Muta, due to its temporary nature, lacks such broad social acceptance.
6. **Number of Spouses:** A Muslim man under Nikah can have up to four wives if he can treat them equally. However, in Muta, there is no such limitation.

Landmark Judgments with respect to Muta and Nikah

1. **Abdul Kadir v. Salima and Anr (1886):** This was one of the earliest cases that dealt with Muta marriage under Indian law. The Allahabad High Court held that a Muta marriage is for a fixed term, and no rights of inheritance arise from such a marriage. However, the child born from such a marriage is legitimate and has rights to inherit the property of the parents.
2. **Rashid Ahmed v. Anisa Khatun (1932):** This case before the Privy Council provided a significant distinction between a Muta marriage and a regular Nikah. It held that unlike a regular Nikah, Muta is a temporary marriage contracted for a specific term,

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and at the end of the term, it gets automatically dissolved without any need for divorce.

3. **Anwari Begum v. Mohd. Tamizuddin Khan (1933):** In this case, the Calcutta High Court highlighted the importance of intention in Muta marriages. It held that the marriage would not be treated as Muta if the intention was not to contract a Muta marriage, but a regular Nikah.
4. **C M Habibullah vs C K Kunhahamed (1995):** The Kerala High Court in this case noted that although Muta marriage is recognized under Shia law, it is not accepted by the Sunni sect. Hence, its validity will depend on the specific sect to which the parties belong.
5. **Sadiq Ali And Anr. vs. The State Of Bombay And Anr (1952):** The case debated the legality and morality of Muta marriages. The court held that Muta marriages are neither immoral nor opposed to public policy, and they are recognized by Shia law.
6. **Seema vs. Ashwani Kumar (2006):** This Supreme Court case indirectly touches upon Nikah marriages, as it made the registration of all marriages, including Muslim marriages, mandatory, citing the necessity for evidence in case of disputes.

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2.2 DISSOLUTION OF MARRIAGE

I. TALAQ: INTRODUCTION, CONDITIONS, MODES, TALAQ-I-AHSAN, TALAQ-I-HASAN, TALAQ-I-BIDDAT, ILA, ZIHAR, TALAQ-ULTAFWEEZ, KHULLA, MUBARRAT, LIAN, FASKH

II. DISSOLUTION OF THE MUSLIM MARRIAGE ACT, 1939

DISSOLUTION OF MARRIAGE: TALAQ: INTRODUCTION, CONDITIONS & MODES

Conditions for Talaq

1. **Competency:** The husband must be of sound mind and must have attained the age of puberty.
2. **Free Consent:** The pronouncement of Talaq must be made out of free will and not under duress, coercion, or undue influence. If the husband is compelled to give Talaq, such Talaq is not valid.
3. **Communication:** The intention of the husband to divorce the wife should be clearly communicated.

Modes of Talaq

1. **Talaq-e-Sunnat:** This form of Talaq is in accordance with the dictates of Prophet Muhammad and is considered the proper form of Talaq. It is further divided into two types:

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- a. **Talaq-e-Ahsan (Most Proper Divorce):** This is the most approved form of Talaq. In this, the husband pronounces Talaq once in a period of Tuhr (period of purity between two menstruations) and abstains from sexual intercourse for the period of Iddat (waiting period). If the husband refrains from intercourse during this period, the Talaq becomes irrevocable.
- b. **Talaq-e-Hasan (Proper Divorce):** In this form, the husband must pronounce Talaq three times during three consecutive periods of Tuhr. If he refrains from intercourse during these periods, Talaq becomes irrevocable.
2. **Talaq-e-Biddat (Innovative Divorce):** This is also known as triple Talaq or instant Talaq. The husband pronounces Talaq three times in a row, and the marriage ends immediately. This form of Talaq is considered irregular and is not approved by the Prophet.
3. **Talaq-e-Tafweez (Delegated Divorce):** In this form, the husband delegates his power of pronouncing Talaq to his wife or any other person. The wife can then pronounce Talaq whenever she deems fit.

Landmark Judgment: The Triple Talaq Case

In the landmark judgment of **Shayara Bano vs Union Of India And Ors (2017)**, the Supreme Court of India

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declared the practice of instant triple Talaq (Talaq-e-Biddat) as unconstitutional by a 3:2 majority. The court held that it is arbitrary and not an essential part of Islam and, therefore, violates the fundamental right to equality enshrined under Article 14 of the Indian Constitution.

Following this judgment, the Indian Parliament passed the Muslim Women (Protection of Rights on Marriage) Act, 2019, making instant triple Talaq a criminal offense.



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DISSOLUTION OF MARRIAGE: TALAQ: TALAQ-I-AHSAN; TALAQ-I-HASAN; TALAQ-I- BIDDAT

1. Talaq-i-Ahsan (The most proper form of divorce)

Talaq-i-Ahsan is the most approved form of dissolution of marriage in Muslim law. It has the following features:

1. **Single Pronouncement:** The husband pronounces "Talaq" once during a period of Tuhr (the period of purity, i.e., when the wife is not menstruating).
2. **Abstention from Intercourse:** The husband must abstain from sexual intercourse during the period of Iddat (waiting period). The Iddat for Talaq is three menstrual cycles or three months if the woman does not menstruate, or if the woman is pregnant, until the delivery of the child.
3. **Revocability:** The Talaq is revocable during the Iddat period. If the husband resumes cohabitation or intimates an intention of resuming conjugal relations within this period, the pronouncement of Talaq is treated as having been revoked.

2. Talaq-i-Hasan (The proper form of divorce)

Talaq-i-Hasan, another approved form of Talaq, has the following features:

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1. **Three Pronouncements:** In this form, the husband must pronounce Talaq in three successive Tuhrs.
2. **Abstinence from Intercourse:** The husband must abstain from intercourse during all three Tuhrs.
3. **Revocability:** The first and the second pronouncements are revocable. If the husband resumes cohabitation or intimates an intention of resuming conjugal relationship before the third pronouncement, the Talaq can be revoked. However, once the third pronouncement is made, the Talaq becomes irrevocable.

3. Talaq-i-Biddat (The disapproved form of divorce)

Talaq-i-Biddat, also known as triple Talaq or instant Talaq, is a disapproved method of divorce. It has the following features:

1. **Instantaneous Effect:** The husband pronounces "Talaq" three times in one sitting or in a single Tuhr either in one sentence or in three sentences.
2. **Irrevocability:** This form of Talaq is considered irrevocable from the moment it is pronounced, irrespective of the Iddat period.

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The practice of Talaq-i-Biddat has been a subject of controversy and reform. In the landmark judgment in the case of **Shayara Bano vs Union Of India And Ors (2017)**, the Supreme Court of India declared the practice of Talaq-i-Biddat unconstitutional. Following this, the Indian Parliament passed the Muslim Women (Protection of Rights on Marriage) Act, 2019, which criminalized Talaq-i-Biddat.

DISSOLUTION OF MARRIAGE: TALAQ: ILA, ZIHAR, TALAQ-UL-TAFAWEEZ

1. Ila (Vow of Continence)

Ila is a form of divorce where a husband, who is of sound mind, takes a vow of continence, swearing to abstain from sexual relations with his wife.

The requirements for Ila include:

- a)** The husband must swear by Allah that he will abstain from conjugal relations with his wife.
- b)** The husband must abstain from intercourse for a period of four months.
- c)** If the husband breaks his vow within four months, the Ila is cancelled. If he does not break his vow, the marriage is dissolved irrevocably.

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2. Zihar (Injurious Assimilation)

Zihar involves a husband comparing his wife to a close family member within prohibited degrees, such as his mother or sister. Zihar is considered a reprehensible form of Talaq in Islamic law due to its implicit injurious nature.

In traditional Islamic law, the wife could, after the husband pronounced Zihar, abstain from living with the husband until he performed a penance (fasting for two consecutive months or feeding sixty poor people). However, in India, the Muslim Women (Protection of Rights on Divorce) Act, 1986, makes Zihar punishable and entitles the wife to seek a decree of divorce if the husband does not retract the comparison and perform the penance.

3. Talaq-ul-Tafweez (Delegated Divorce)

Talaq-ul-Tafweez, also known as delegated divorce, is a contractual form of divorce where the husband delegates his power of pronouncing Talaq to his wife or any other person. He may delegate the power absolutely, or conditionally, or for a particular period.

In a Talaq-ul-Tafweez:

- a) The delegation of power may be made at the time of marriage contract, or during the subsistence of the marriage.

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- b) Once the power is delegated, the wife may pronounce Talaq upon herself when she decides.
- c) The Talaq pronounced by the wife under the delegated power is as effective as if it were pronounced by the husband himself.



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DISSOLUTION OF MARRIAGE: TALAQ: KHULA, MUBARAK, LIAN, AND FASKH

Khula (Divorce at the instance of the wife)

Khula is a form of divorce in Islamic law that is initiated by the wife. The term Khula literally means "to pull a thing away from another." Here, it signifies the pulling away of the wife from the husband's dominion by the dissolution of the marriage tie.

Features of Khula:

- a) **Request by the Wife:** The wife must desire to be separated from her husband and must offer compensation, usually returning her mehr (dower) or a part of it, to the husband.
- b) **Acceptance by the Husband:** The husband must accept the offer. The acceptance may be either at the same meeting or later.

2. Mubarak (Irrevocable Divorce)

Mubarak is a form of irrevocable divorce where the husband declares his intention to divorce his wife by saying, "I have divorced thee irrevocably". The divorce becomes effective immediately, and the husband has no right to revoke it.

3. Lian (False Accusation of Adultery)

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In Muslim law, if a husband levels a false charge of adultery against his wife and the charge is untrue, the wife has the right to ask for a divorce. This form of divorce is known as Lian.

Procedure for Lian:

- a) The husband must level a charge of adultery against his wife, which the wife must deny.
- b) Both parties must take an oath in front of the judge.
- c) If the wife successfully defends herself and the husband fails to prove the charge, the marriage is dissolved.

4. Faskh (Judicial Divorce)

Faskh means "to annul". It is a form of divorce initiated by a judicial decree where the judge (Qazi) dissolves the marriage due to some fault or defect in the marriage or due to some condition that makes the continuation of the marriage injurious to the parties.

Grounds for Faskh can include:

- a) Non-payment of mehr by the husband
- b) Cruelty by the husband
- c) Failure of the husband to provide maintenance
- d) Long absence of the husband without any news

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- e) Impotence of the husband
- f) Insanity or serious illness of the husband

DISSOLUTION OF THE MUSLIM MARRIAGE ACT, 1939

The Dissolution of Muslim Marriage Act, 1939, was enacted to consolidate and clarify the provisions of Muslim law relating to the suit for dissolution of marriage by a woman married under Muslim law and to remove doubts as to the effect of the renunciation of Islam by a married Muslim woman on her marriage tie.

According to the Act, a woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage on the following grounds:

- 1. Husband's Whereabouts Unknown:** If the whereabouts of the husband have not been known for a period of four years.
- 2. Failure to Provide for Maintenance:** If the husband has failed to provide for her maintenance for two years.
- 3. Imprisonment of the Husband:** If the husband has been sentenced to imprisonment for seven years or upwards.

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4. Failure to Fulfil Marital Obligations: If the husband was impotent at the time of the marriage and continues to be so.

5. Insanity or Leprosy: If the husband has been insane for two years or is suffering from leprosy or a virulent venereal disease.

6. Cruelty: If the husband treats her with cruelty, that is, habitually assaults her or makes her life miserable by cruelty even if such conduct does not amount to physical ill-treatment, or if any other person with the knowledge of the husband habitually treats her with cruelty.

7. Other Grounds: Other grounds include if the husband has more wives than one and does not treat her equitably in accordance with the injunctions of the Quran, or if the husband was a minor at the time of marriage, or if the husband is not a Muslim.

The Dissolution of Muslim Marriage Act, 1939, brought significant reform in Muslim personal law, empowering women to seek legal remedy for dissolution of marriage under specific circumstances. It was a step towards providing Muslim women with rights similar to those provided to men under traditional Islamic law.

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UNIT 3

ADOPTION, MAINTENANCE AND GUARDIANSHIP

3.1 ADOPTION

I. NATURE

II. LAW ON ADOPTION

III. CONDITIONS AND EFFECT

IV. CEREMONIES

V. CAPABILITY

VI. EFFECT

VII. INTER COUNTRY ADOPTION



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ADOPTION: NATURE, LAW ON ADOPTION, CONDITIONS, AND EFFECTS

1. Nature of Adoption

Adoption is a legal act of permanently placing a child with parents other than the birth parents. It results in the severance of the parental responsibilities and rights of the biological parents and the placing of those responsibilities and rights onto the adoptive parents.

2. Law on Adoption

The primary statute dealing with adoption in India is the Hindu Adoption and Maintenance Act of 1956 (HAMA). This Act brought significant changes in the law and made adoption a more structured and codified process. Under this Act, both males and females, regardless of their marital status, can adopt a child. However, if a person is married, then the consent of the spouse is required.

While HAMA covers Hindus, Buddhists, Jains, and Sikhs, it doesn't apply to Muslims, Christians, Jews, or Parsis. Individuals belonging to these religions have no adoption laws and have to approach the court under the Guardians and Wards Act, 1890.

In 2000, India passed the Juvenile Justice (Care and Protection) Act, which allows for the adoption of a child by non-Hindus as it describes the adoption process for orphaned, abandoned, or surrendered children.

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3. Conditions for Adoption

The conditions for valid adoption under HAMA include:

- a) The person adopting has the legal right to take in adoption.
- b) The person giving in adoption has the capacity to do so.
- c) The person adopted is capable of being taken in adoption.
- d) The adoption is made in compliance with the other conditions mentioned in Chapter II of the Act.

4. Effects of Adoption

The effects of a valid adoption under HAMA are:

- a) The adopted child becomes an integral part of the adoptive family and severs all ties with the biological family.
- b) The child takes up the family name and has all rights of a biological child, including the right to inherit.
- c) The adopted child loses all rights of inheritance from his/her biological family.

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ADOPTION: CEREMONIES, CAPABILITIES, EFFECT

1. Adoption Ceremonies

The Hindu Adoption and Maintenance Act, 1956 (HAMA), unlike previous laws, does not mandate any specific religious ceremony for the adoption process. Section 11 of the Act prescribes the procedural requisites that have to be complied with for a valid adoption. These include:

- If the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son, son's son or son's son's son (whether by legitimate blood relationship or by adoption) living at the time of adoption.
- If the adoption is of a daughter, the adoptive father or mother by whom the adoption is made must not have a Hindu daughter or son's daughter (whether by legitimate blood relationship or by adoption) living at the time of adoption.
- The same child may not be adopted simultaneously by two or more parents.
- The child to be adopted must be actually given and taken in adoption with an intent to transfer the child from the family of birth.

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2. Capabilities for Adoption

Section 7 and 8 of the Act describes the capacity of a male and female Hindu respectively to take in adoption. It states:

- Any male Hindu who is of sound mind and has attained the age of majority has the capacity to adopt a son or a daughter, provided that if he has a wife living, he shall not adopt except with the consent of his wife unless the wife has renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.
- Any female Hindu who is of sound mind, is not a minor, and is not married, or if married, whose marriage has been dissolved or whose husband is dead or has renounced the world or has been declared by a court of competent jurisdiction to be of unsound mind, has the capacity to adopt a son or daughter.

3. Effect of Adoption

Section 12 of HAMA deals with the effects of adoption. It states that an adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption, and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family.

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Landmark Judgements

1. **Lakshmi Kant Pandey vs Union of India:**
This case was a turning point in the history of adoption in India. In 1984, the Supreme Court gave guidelines to be followed in adoption cases. This case led to the development of the Central Adoption Resource Authority (CARA) guidelines, which have been adopted by the Juvenile Justice (Care and Protection) Act, 2015.
2. **Adoption of Payal @ Sharinee Vinay Pathak and his wife Sona Mohapatra vs unknown:** In this case, the court held that in adoption, the best interest of the child should be considered primarily. The court also stated that HAMA doesn't stop parents from adopting a child of the opposite sex.
3. **Devendra and Anr. Vs State of Uttar Pradesh and Anr:** In this case, it was held that if a person is adopted by a Hindu family, then the adopted person will be considered Hindu and would be governed under the Hindu Succession Act, 1956.

ADOPTION: INTER-COUNTRY ADOPTION

Inter-country adoption refers to the process by which an individual or couple becomes the legal and permanent parents of a child who is a national of a different country.

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Inter-country adoption is one of the three components of the broader child welfare scheme known as the "Child Protection System," which also includes in-country adoption and foster care.

Inter-country adoption in India is governed by the Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption, 1993, which India ratified in 2003. The Central Adoption Resource Authority (CARA) is the central authority for overseeing and regulating all adoptions across the country, including inter-country adoptions.

Procedure of Inter-country Adoption

1. **Application:** The prospective adoptive parents (PAPs) residing in a foreign country, irrespective of their Indian or foreign origin, need to approach an authorized foreign adoption agency, or the Central Authority (CA), as the case may be, with their application for adoption of a relative's child.
2. **Home Study Report:** The authorized foreign adoption agency or the Central Authority prepares a Home Study Report of the PAPs and upon finding them eligible, sponsors their application to CARA along with the required documents.
3. **Registration:** On receiving the application from the authorized foreign adoption agency or the Central Authority, as the case may be, along with

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the required documents, CARA may register the application in Child Adoption Resource Information and Guidance System (CARINGS) and the case is then forwarded to the District Child Protection Unit (DCPU) where the child resides.

4. **No Objection Certificate:** After obtaining a report from the DCPU and scrutinizing the documents received, CARA may issue a No Objection Certificate (NOC) in favor of the proposed adoption, and forward it to the authorized foreign adoption agency or the Central Authority.
5. **Petition to the Court:** The Specialised Adoption Agency (SAA) or the DCPU files an adoption petition in the court for obtaining the adoption order.
6. **Adoption Order:** On receipt of a certified copy of the court order, the SAA gives the child in adoption to the PAPs. The authorized foreign adoption agency or Central Authority has to ensure the submission of progress reports about the child in the adoptive family and will also make alternative arrangement in the case of disruption, as stipulated in the Adoption Regulations.

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Important Landmark Judgments

Lakshmi Kant Pandey vs Union of India, 1984:

This case is a landmark judgment concerning inter-country adoption. The Supreme Court laid down comprehensive guidelines ensuring a fair and transparent adoption process that safeguarded the interests of the child. It stressed upon scrutinizing the adoptive parents thoroughly, taking all necessary precautions in verifying the credentials of the foreign agency involved, and obtaining proper guarantees about the welfare of the child in the adopted family.



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3.2 MAINTENANCE UNDER HINDU ADOPTION AND MAINTENANCE ACT, 1956

I. DEFINITION

II. MAINTENANCE OF WIFE

III. MAINTENANCE OF WIDOWED DAUGHTER IN LAW

IV. MAINTENANCE OF CHILDREN AND AGED PARENTS, DEPENDANTS

V. DETERMINING AMOUNT OF MAINTENANCE

**MAINTENANCE UNDER HAMA, 1956:
DEFINITION, MAINTENANCE OF WIFE,
MAINTENANCE OF WIDOWED DAUGHTER-IN-
LAW**

Maintenance under Hindu Law refers to the obligation of a person to provide for those who are unable to maintain themselves. The Hindu Adoptions and Maintenance Act, 1956 (HAMA), specifically defines and explains the provisions for maintenance under Hindu Law.

2. Maintenance of Wife

Section 18 of HAMA covers the provision for the maintenance of the wife. As per this section:

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- A Hindu wife, whether she is a legally wedded wife or not, shall be entitled to be maintained by her husband during her lifetime.
- A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance if he is guilty of desertion, cruelty, leprosy, or any other justifiable cause.
- If a Hindu wife is living separately by mutual consent, she is not entitled to maintenance.

The actual amount of maintenance may vary depending upon the status and lifestyle of the parties, the independent income and earning capacity of the wife, and the husband's income.

3. Maintenance of Widowed Daughter-in-law

Section 19 of HAMA provides for the maintenance of the widowed daughter-in-law. It states:

- A Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained after the death of her husband by her father-in-law.
- If she is unable to maintain herself out of her own earnings or other property, and the estate of her husband or her father or mother is not sufficient to provide maintenance.
- If the father-in-law has other legal obligations to maintain, and he is incapable of providing

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maintenance to the widowed daughter-in-law, the obligation ceases.

Landmark Judgements

- **Badri Pershad vs Smt. Kanso Devi (1970):** The Supreme Court held that maintenance should be enough to allow the wife to live in the same lifestyle as she enjoyed in her husband's house.
- **Captain Ramesh Chander Kaushal vs Mrs. Veena Kaushal and Ors (1978):** The Supreme Court held that the wife should be able to maintain a decent standard of living, taking into consideration the social standing, background, etc.
- **Bhagwan Dutt vs Kamla Devi (1975):** The court held that the amount of maintenance must be reasonable and realistic and avoid a pittance. It should not lead the wife to live in penury. The living needs of the wife should be measured in terms of the husband's living standard.

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MAINTENANCE UNDER HAMA, 1956: MAINTENANCE OF CHILDREN, AGED PARENTS & DEPENDENTS; DETERMINING AMOUNT OF THE MAINTENANCE

1. Maintenance of Children

Section 20 of the Hindu Adoption and Maintenance Act (HAMA), 1956, stipulates the maintenance rights of children. According to the law:

- A Hindu is bound, during his or her lifetime, to maintain his or her legitimate or illegitimate children.
- The obligation to maintain a daughter extends until she is married.

The maintenance includes provisions for food, clothing, shelter, education, and medical attendance and treatment.

2. Maintenance of Aged Parents

Section 20(2) of HAMA includes a provision for the maintenance of aged parents. It states that a Hindu is bound, during his or her lifetime, to maintain his or her aged or infirm parents if they are unable to maintain themselves out of their own earnings or property. In this context, "parent" does not include a childless stepmother.

3. Maintenance of Dependents

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Section 21 of HAMA defines dependents as the following relatives of a deceased Hindu: his or her father, mother, widow, children and grandchildren, so long as they are unmarried, and any other relatives who are in legitimate male lineal descent and are unmarried or are widows. The maintenance rights of these dependents are covered under Section 22 of the Act.

4. Determining the Amount of Maintenance

Section 23 of HAMA lays down the factors to be considered while determining the amount of maintenance. These include:

- The position and status of the parties.
- The reasonable wants of the claimant. If the claimant is living separately, whether the claimant is justified in doing so.
- The claimant's own earnings or property.
- The number of people entitled to maintenance.

While deciding the quantum of maintenance, the court considers the status of the family, the price index, and the needs of the dependents among other things.

Landmark Judgments

- **Dr. Kulbhushan v. Raj Kumari and Anr. (1970):** This case pertained to the maintenance

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of an illegitimate child. The Delhi High Court held that a father is obliged to maintain his illegitimate child.

- **Commissioner of Income-tax, Madhya Pradesh, Bhopal v. Gomedalli Lakshminarayan (1968):** The Supreme Court clarified that the term "maintenance" includes a provision for food, residence, clothing, education, and medical attendance and treatment.
- **S. Sethurathinam Pillai v. Barbara alias Dolly Sethurathinam (1971):** The Supreme Court held that the liability of a Hindu to maintain his aged or infirm parents, if they are unable to maintain themselves, is confined only to those who possess sufficient means.

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3.3 DEFINITION AND CONCEPT OF MAINTENANCE (NAFAQA)

Maintenance, in the context of family law, refers to the obligation to provide financial support to family members who are unable to maintain themselves. In the Indian legal system, this concept is deeply rooted in both personal laws pertaining to different religions and statutory provisions under various acts.

1. Personal Laws Perspective:

- **Hindu Law:** Under the Hindu Marriage Act, 1955, and the Hindu Adoptions and Maintenance Act, 1956, maintenance obligations are primarily towards the wife, children, and elderly parents.
- **Muslim Law (Nafaqa):** In Islamic law, 'Nafaqa' embodies the idea of maintenance, which includes necessities like food, clothing, and shelter. It's primarily the husband's duty to provide for his wife and children.
- **Christian and Parsi Law:** Similar provisions exist under the Indian Divorce Act, 1869 (for Christians) and the Parsi Marriage and Divorce Act, 1936.

2. Statutory Provisions:

- **Section 125 of the Criminal Procedure Code (CrPC), 1973:** This is a secular provision applicable to all, irrespective of religion,

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providing a speedy remedy for maintenance. It covers wives, children, and parents.

Landmark Judgments of the Supreme Court of India

1. **Shah Bano Case (1985):** A landmark decision where the Supreme Court ruled that Muslim women have the right to get maintenance from their husbands under Section 125 of CrPC after divorce.
2. **Vineeta Sharma v. Rakesh Sharma (2020):** This judgment emphasized the rights of daughters to their father's property, which indirectly impacts their maintenance rights.
3. **Rohtash Singh v. Ramendri (2000):** The Supreme Court held that a wife is entitled to maintenance unless she is living in adultery or refuses to live with her husband without sufficient reason.

Relevant Sections and Illustrations

- **Section 125 CrPC:** A secular provision for maintenance.
- **Section 24 of the Hindu Marriage Act, 1955:** Provides for maintenance pendente lite (during the pendency of the case).

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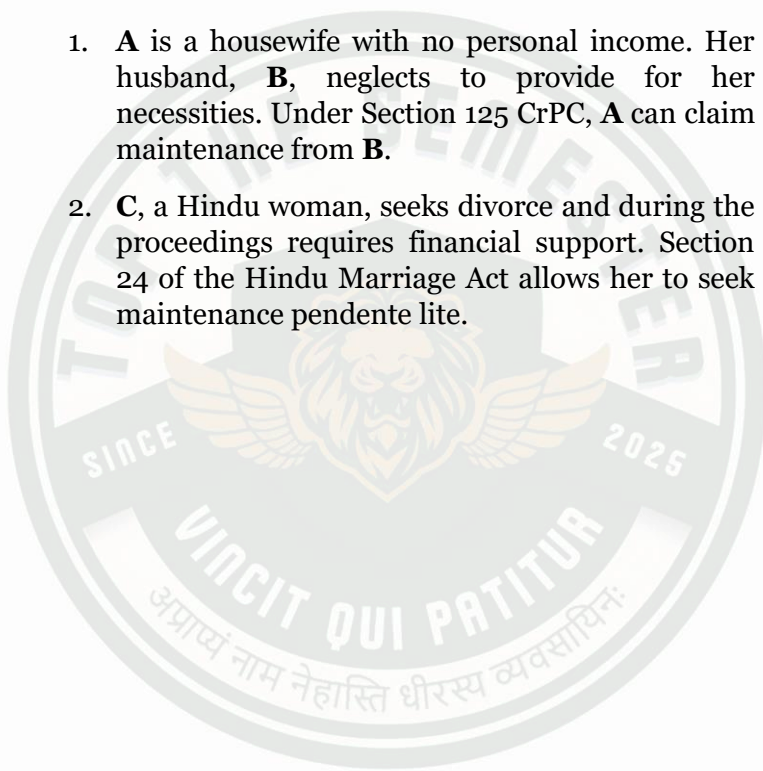
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- **Section 18 of the Hindu Adoptions and Maintenance Act, 1956:** Elaborates on a wife's right to maintenance under Hindu Law.

Illustrations:

1. **A** is a housewife with no personal income. Her husband, **B**, neglects to provide for her necessities. Under Section 125 CrPC, **A** can claim maintenance from **B**.
2. **C**, a Hindu woman, seeks divorce and during the proceedings requires financial support. Section 24 of the Hindu Marriage Act allows her to seek maintenance pendente lite.



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MAINTENANCE OF WIFE: LEGAL FRAMEWORK

1. Personal Laws:

- **Hindu Law:** Under the Hindu Marriage Act, 1955, and the Hindu Adoptions and Maintenance Act, 1956, a wife is entitled to maintenance if she is unable to maintain herself.
- **Muslim Law (Nafaqa):** Nafaqa in Islamic law specifically refers to the husband's obligation to provide for his wife's basic needs. The amount of maintenance is based on the husband's financial capacity and the wife's personal needs.
- **Christian and Parsi Law:** Provisions under the Indian Divorce Act, 1869, and the Parsi Marriage and Divorce Act, 1936, also address the maintenance rights of the wife.

2. Secular Provisions:

- **Section 125 of the Criminal Procedure Code, 1973:** This section allows a wife, irrespective of her religion, to seek maintenance from her husband if he has sufficient means and neglects or refuses to maintain her.

Landmark Judgments

1. **Shah Bano Case (1985):** This case brought the issue of maintenance for Muslim women to the

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forefront, affirming their right to seek maintenance under Section 125 of CrPC.

2. **Danial Latifi & Anr v. Union of India (2001):** This case interpreted the Muslim Women (Protection of Rights on Divorce) Act, 1986, asserting that a Muslim woman is entitled to a fair and reasonable provision and maintenance from her husband within the iddat period and even beyond if she remains unmarried and is unable to maintain herself.
3. **Rajnish v. Neha & Anr (2020):** The Supreme Court laid down guidelines to standardize and streamline the process for granting maintenance, making it more women-friendly and efficient.

Relevant Sections and Illustrations

- **Section 125 CrPC:** Illustration - **A** is a Muslim woman whose husband, **B**, refuses to provide maintenance. **A** can seek maintenance under this section.
- **Section 18 of the Hindu Adoptions and Maintenance Act, 1956:** This section specifically addresses a Hindu wife's right to maintenance.

Illustrations:

1. **C**, a Hindu woman, is estranged from her husband, **D**, who is financially well-off. **C** can seek

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maintenance under Section 18 of the Hindu Adoptions and Maintenance Act.

2. **E**, a Christian wife, files for separation from her husband, **F**. She can claim maintenance under the provisions of the Indian Divorce Act, 1869.



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MAINTENANCE OF CHILDREN AND PARENTS: LEGAL FRAMEWORK

1. Personal Laws:

- **Hindu Law:** The Hindu Adoptions and Maintenance Act, 1956, mandates that it is the duty of a Hindu to maintain his or her legitimate or illegitimate children and aged parents.
- **Muslim Law (Nafaqa):** In Islamic law, the concept of Nafaqa extends to children, where parents (especially the father) are responsible for the maintenance of their children. Maintenance of parents is also a recognized duty.
- **Christian and Parsi Law:** Similar obligations exist under respective personal laws, like the Indian Divorce Act, 1869, for Christians, and the Parsi Marriage and Divorce Act, 1936.

2. Secular Provisions:

- **Section 125 of the Criminal Procedure Code, 1973:** This provision is not limited to spouses; it also includes children and parents, irrespective of religion. It mandates that a person with sufficient means must maintain his minor children and his parents if they are unable to maintain themselves.

Landmark Judgments

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1. **Noor Saba Khatoon v. Mohd. Quasim (1997):** The Supreme Court held that even Muslim children can claim maintenance under Section 125 of the CrPC until they attain majority.
2. **Kirtikant D. Vadodaria v. State of Gujarat (1996):** This case highlighted the responsibility of a father to maintain his children and stated that this duty does not cease even after the children are no longer minors if they suffer from physical or mental abnormalities.
3. **Bhagwan Dutt v. Kamla Devi (1975):** The Supreme Court ruled that aged parents can seek maintenance from their adult children under Section 125 of CrPC if they are unable to maintain themselves.

Relevant Sections and Illustrations

- **Section 125 CrPC:** This section is crucial for children and parents seeking maintenance.
- **Section 20 of the Hindu Adoptions and Maintenance Act, 1956:** Pertains to the maintenance of children and aged parents under Hindu Law.

Illustrations:

1. **A, a minor child of divorced parents, can seek maintenance from his father under Section 125 CrPC.**

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2. **B**, an elderly Hindu parent, can claim maintenance from his financially capable son under Section 20 of the Hindu Adoptions and Maintenance Act.



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MAINTENANCE UNDER THE CODE OF CRIMINAL PROCEDURE, 1973

1. Key Provisions:

- **Section 125 CrPC:** This is the pivotal section concerning maintenance. It mandates that any person having sufficient means must provide maintenance to his wife, minor children (legitimate or illegitimate), and parents if they are unable to maintain themselves.

2. Scope and Applicability:

- The provision is secular and applies to all citizens of India regardless of their religion.
- It is a measure for preventing vagrancy and destitution in society.

3. Eligibility for Maintenance:

- **Wife:** Including those divorced by their husbands, unless she has remarried or is living in adultery.
- **Children:** Legitimate or illegitimate children who are minors and unable to maintain themselves. In the case of a married daughter, the husband's capacity to maintain her is also considered.
- **Parents:** Including both father and mother, even if they did not maintain the child in the past.

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4. Amount of Maintenance:

- Determined based on the needs of the claimant and the paying capacity of the respondent.
- Aimed at ensuring that dependents live a life similar to what they were accustomed to before the neglect.

Landmark Judgments

1. **Mangat Mal v. Punni Devi (1995):** Clarified that maintenance under Section 125 CrPC is not dependent on the personal law applicable to the parties.
2. **Shah Bano Case (1985):** Reinforced the right of Muslim women to claim maintenance under Section 125 CrPC.
3. **Rajnesh v. Neha & Anr (2020):** Laid down guidelines for determining the quantum of maintenance and streamlined the procedure for maintenance cases.

Relevant Illustrations

1. **A**, a woman divorced by her husband, can claim maintenance under Section 125 CrPC for herself and her minor children.
2. **B**, an elderly parent with no means of income, can seek maintenance from his financially stable son.

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3.4 GUARDIANSHIP UNDER HINDU MINORITY AND GUARDIANSHIP ACT, 1956

I. NATURAL GUARDIAN AND HIS POWERS

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GUARDIANSHIP UNDER THE HINDU MINORITY AND GUARDIANSHIP ACT, 1956

Objective and Applicability:

- The Act primarily aims to enhance the welfare of Hindu minors.
- It applies to Hindus, including Buddhists, Jains, and Sikhs, and governs the laws relating to minority and guardianship within these communities.

Key Provisions:

- **Section 4(b):** Defines a minor as a person who has not completed the age of 18 years.
- **Section 6:** Deals with the natural guardianship of Hindu minors, stating that the father is the natural guardian, and after him, the mother. In

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the case of an illegitimate child or a child whose parents are divorced, the mother is the natural guardian.

Types of Guardians:

- **Natural Guardians:** Parents of the child.
- **Testamentary Guardians:** Appointed by the will of the natural guardian.
- **A Guardian appointed by the court:** In circumstances where the natural guardians are unable or unfit to act.

Welfare of the Minor:

- The paramount consideration in appointing or declaring any person as the guardian of a Hindu minor is the welfare of the minor.

Powers and Responsibilities of Guardians:

- Guardians are responsible for the minor's person and property.
- They must act in the best interest of the minor, ensuring their education, health, and overall welfare.

Landmark Judgments

1. **Githa Hariharan v. Reserve Bank of India (1999):** The Supreme Court held that the mother can also be a natural guardian of the child during

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the father's lifetime if the father is not in a position to act as a guardian.

2. **Shruti Garg v. Ashwini Garg (2014):** Emphasized that the welfare of the minor is of paramount importance in custody matters.

Relevant Illustrations

1. **A**, a Hindu father, can be the natural guardian of his minor children, but if he is incapacitated, the mother, **B**, takes the role.
2. In case both parents are unable to act as guardians, a court-appointed guardian or a testamentary guardian named in the will of the natural guardian can take responsibility for the minor's welfare.

NATURAL GUARDIAN AND HIS POWERS

Definition of Natural Guardian:

- **Section 6 of the Hindu Minority and Guardianship Act, 1956**, defines natural guardians. For a boy or an unmarried girl, the natural guardians are, in order, the father and the mother. For an illegitimate boy or an illegitimate unmarried girl, the mother, and after her, the father, is the natural guardian.

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Powers of Natural Guardians:

- The natural guardian has the power to make decisions regarding the minor's education, health, and overall welfare.
- They can manage the minor's property but are expected to act in the minor's best interest and are not allowed to derive personal benefit from the minor's property.

Limitations on Powers of Natural Guardians:

- Certain limitations are placed on the powers of the natural guardian, particularly in dealing with the minor's property.
- **Section 8 of the Act** specifies that the natural guardian cannot mortgage, sell, or transfer by gift or otherwise, any part of the immovable property of the minor or lease it for a term exceeding five years (or one year in case the lease is from year to year), without the previous permission of the court.

Welfare of the Minor as Paramount Consideration:

- The Act emphasizes that the welfare of the minor is of paramount importance. Any decision taken by the natural guardian should prioritize the minor's overall well-being.

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Landmark Judgments

1. **Githa Hariharan v. Reserve Bank of India (1999)**: The Supreme Court held that the mother can act as the natural guardian of the minor during the father's lifetime under certain circumstances, thereby emphasizing the welfare of the minor.
2. **Jijabai Vithalrao Gajre v. Pathankhan (1970)**: Highlighted that the natural guardian should act in the capacity of a trustee with respect to the minor's property.

Relevant Illustrations

1. **A**, the father of a minor son, **B**, is the natural guardian and has the authority to make decisions regarding **B**'s education and health.
2. **C**, a widowed mother of a minor daughter, **D**, is her natural guardian and has the power to manage **D**'s property, but cannot sell it without the court's permission.

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TESTAMENTARY GUARDIANS AND POWERS

Definition of Testamentary Guardian:

- A testamentary guardian is appointed by the will of a child's natural guardian. This type of guardianship comes into effect upon the death of the natural guardian.

Appointment of Testamentary Guardians:

- **Section 9 of the Hindu Minority and Guardianship Act, 1956**, deals with testamentary guardians. It states that a Hindu father, and after him, the mother, may, by will, appoint a testamentary guardian for their minor children.

Powers of Testamentary Guardians:

- The powers of a testamentary guardian are generally similar to those of a natural guardian. They include managing the minor's property and making decisions concerning the minor's education and welfare.
- However, their powers are also defined and limited by the terms of the will.

Limitations on Powers of Testamentary Guardians:

- Just like natural guardians, testamentary guardians cannot sell or mortgage the minor's

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property without the court's permission, as outlined in Section 8 of the Act.

- The court has the power to revoke the rights of a testamentary guardian if it finds that the guardian is acting against the interests of the minor.

Welfare of the Minor as Paramount Consideration:

- The overriding principle in the appointment and actions of testamentary guardians, like with natural guardians, is the welfare of the minor.

Landmark Judgments

1. **Krishna Kutty Nair v. N. Balakrishnan Nair (2004)**: The court emphasized the importance of the welfare of the minor in appointing testamentary guardians.
2. **Saraswatibai Shripad Ved v. Shripad Vasanji Ved (1941)**: Highlighted that the powers of a testamentary guardian should be exercised in accordance with the will and the welfare of the minor.

Relevant Illustrations

1. **A**, upon his demise, names **B** as the testamentary guardian of his minor daughter, **C**. **B** has the

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responsibility to manage C's property and ensure her welfare, as per A's will.

2. D, a testamentary guardian appointed for E, a minor, must seek the court's permission to sell E's immovable property, adhering to the limitations set by the Act.



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CERTIFIED GUARDIANS AND POWERS

Definition and Appointment:

- **Certified guardians** are those appointed by a court or legal authority to take care of a Hindu minor and/or their property when natural or testamentary guardians are unavailable, unwilling, or unfit to act.
- The process of appointment is typically initiated through an application to the court by a concerned relative or by the court's own motion.

Legal Framework:

- The appointment and powers of certified guardians are governed by the Hindu Minority and Guardianship Act, 1956, in conjunction with the Guardians and Wards Act, 1890.
- The court considers various factors, including the welfare of the minor, the suitability of the guardian, and the minor's own preferences (if old enough to express them).

Powers and Responsibilities:

- Certified guardians have the authority to make decisions regarding the minor's welfare, education, and management of property.

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- They are required to act in the best interest of the minor and are accountable for their actions and decisions to the court.

Limitations on Powers:

- Like natural and testamentary guardians, certified guardians cannot deal with the minor's property (like selling or mortgaging it) without the court's prior permission.
- The court supervises their actions and may intervene or revoke guardianship if it is in the best interest of the minor.

Welfare of the Minor as Paramount Consideration:

- The primary consideration in all actions and decisions by a certified guardian is the welfare of the minor, which remains the central theme of the Act.

Landmark Judgments

1. **Laxmikant Pandey v. Union of India (1984):** The Supreme Court emphasized the need for ensuring the welfare of the minor in cases involving the appointment of guardians.
2. **Rameshwari Devi v. State of Bihar (2000):** This case highlighted the court's role in supervising the actions of certified guardians to protect the interests of the minor.

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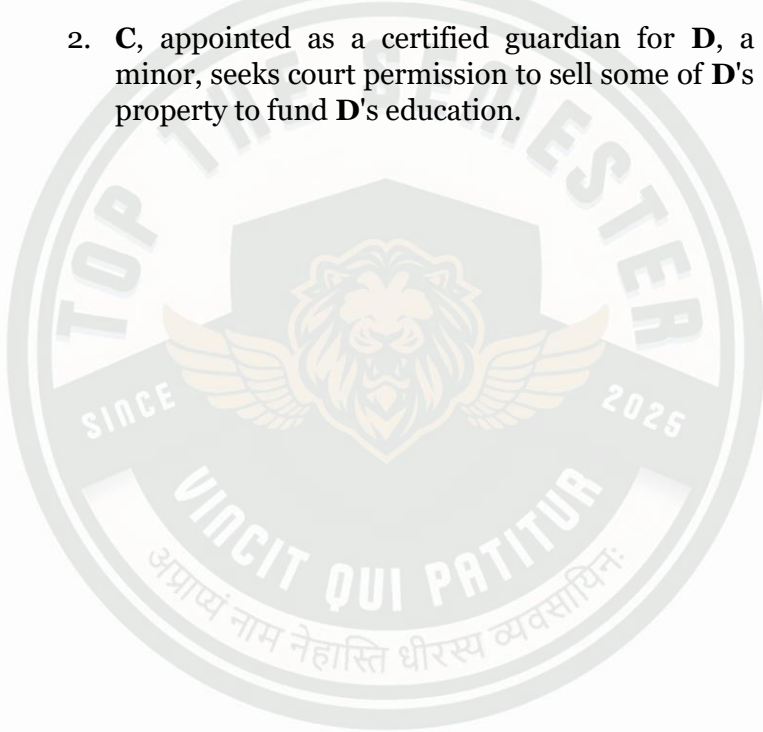
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Relevant Illustrations

1. **A**, a minor with no living parents, has **B** appointed by the court as her certified guardian. **B** must manage **A**'s property and ensure her welfare, reporting back to the court as required.
2. **C**, appointed as a certified guardian for **D**, a minor, seeks court permission to sell some of **D**'s property to fund **D**'s education.



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GUARDIAN BY AFFINITY

Definition and Context:

- **Guardianship by affinity** in Hindu law occurs when a person assumes the role of a guardian for a minor through a marital relationship. This typically happens in cases where a step-parent becomes responsible for a stepchild.
- This concept is rooted in the familial structures and relationships within Hindu society, where extended family relationships are common.

Legal Framework:

- The Hindu Minority and Guardianship Act, 1956, does not explicitly mention guardianship by affinity. However, such situations are often addressed under the broader principles of guardianship outlined in the Act, especially the focus on the welfare of the minor.

Powers and Responsibilities:

- A guardian by affinity may take on roles similar to a natural or certified guardian, such as caring for the minor's personal needs and, in some cases, managing their property.
- Their primary duty is to act in the best interest of the minor, ensuring their welfare, education, and overall wellbeing.

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Limitations and Challenges:

- Since guardianship by affinity is not explicitly detailed in the Act, legal challenges can arise, particularly regarding the extent of authority and responsibility.
- These guardians may face limitations in decision-making authority, especially in matters involving the minor's property.

Judicial Interpretations:

- Courts in India have occasionally had to interpret and apply the principles of guardianship to cases involving guardians by affinity, focusing on the welfare of the minor as the paramount consideration.

Relevant Illustrations

1. **A**, who marries **B**, a widow with a minor child, **C**, may assume the role of a guardian by affinity for **C**, caring for their education and day-to-day needs.
2. **D**, a widower who remarries, might find his new spouse, **E**, becoming a guardian by affinity to his minor daughter, **F**.

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DE FACTO GUARDIAN

Definition and Characteristics:

- A **de facto guardian** is someone who, without any legal authority, assumes the responsibility of caring for a Hindu minor and/or managing their property.
- They are not appointed by a court, nor are they a natural or testamentary guardian.

Recognition in Law:

- The Hindu Minority and Guardianship Act, 1956, explicitly does not recognize the concept of a de facto guardian. According to Section 11 of the Act, no person shall be entitled to dispose of, or deal with, the property of a Hindu minor merely on the ground of his or her being the de facto guardian.

Limitations on Powers:

- The most significant limitation of a de facto guardian is their inability to deal with the minor's property. They cannot enter into contracts or transactions on behalf of the minor.
- This limitation is primarily to protect the minor's interests and property from mismanagement or exploitation.

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Role in the Minor's Life:

- Despite the legal limitations, de facto guardians often play a vital role in the day-to-day care and upbringing of the minor, especially in situations where the natural or legal guardians are absent or incapable.

Judicial Views:

- Indian courts have consistently held that the actions of a de facto guardian in dealing with a minor's property are not legally binding. However, the courts may recognize the role of a de facto guardian in specific contexts, especially concerning the minor's welfare and upbringing.

Landmark Judgments

1. **Sri Ramulu v. Pundarikakshayya (1952):** This case highlighted that a de facto guardian has no power to alienate the property of a minor.
2. **Rajalakshmi v. Ramachandran (2009):** The court observed that a de facto guardian's actions in the care and protection of a minor could be recognized, but not in matters of property.

Relevant Illustrations

1. **A**, who is taking care of her deceased sister's minor child **B** without any formal legal authority, is acting as a de facto guardian. While **A** can make

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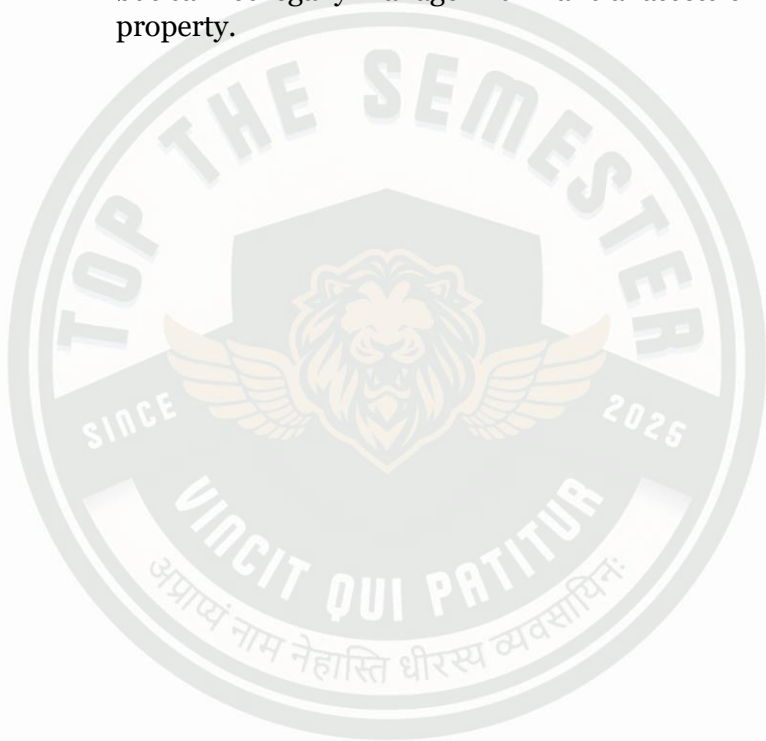
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day-to-day decisions for **B**, she cannot sell **B**'s inherited property.

2. **C**, a neighbor who steps in to care for an orphaned minor, **D**, may be considered a de facto guardian but cannot legally manage **D**'s financial assets or property.



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3.5 GUARDIANSHIP UNDER MUSLIM LAW

I. GUARDIANSHIP OF PERSON (WALAYAT-E-NAFS)

II. GUARDIANSHIP DURING MARRIAGE (WALAYAT-E- NIKAH)

III. GUARDIANSHIP OF PROPERTY (WALAYAT-E- MAL)

IV. TESTAMENTARY GUARDIAN AND POWERS

V. CERTIFIED GUARDIANS AND POWERS

VI. DE FACTO GUARDIAN

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GUARDIANSHIP UNDER MUSLIM LAW

Types of Guardians:

- **Wilayat:** The natural guardianship by the father or paternal grandfather. This form of guardianship is primarily concerned with the minor's person and less with their property.
- **Hizanat:** Custody, usually pertaining to the minor's mother or other female relatives, focuses on the physical and emotional well-being of the child.
- **Wasiyat:** Testamentary guardianship, where a guardian is appointed through a will.
- **Qayyimat:** A judicial guardian appointed by a court, particularly for the management of the minor's property.

Guardianship of Person (Hizanat):

- In hizanat, mothers are generally preferred for custody of young children, especially for daughters and sons until the age of seven. The exact age can vary depending on the child's needs and circumstances.
- After this age, or in the mother's absence or incapacity, the father or other relatives may assume custody.

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3. Guardianship of Property (Wilayat and Qayyimat):

- The father, and in his absence, the paternal grandfather, have the primary right to manage the minor's property.
- If they are unable or unfit, the court can appoint a Qayyim (judicial guardian) to handle the property affairs.

4. Testamentary Guardianship (Wasiyat):

- A Muslim father has the right to appoint a testamentary guardian for his children through a will.

5. Legal Framework and Judicial Interpretation:

- Muslim Law on guardianship is derived from Islamic jurisprudence (Sharia) and is subject to interpretation by the courts in India.
- The welfare of the minor is the paramount consideration in all guardianship decisions.

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Landmark Judgments

1. **Imambandi v. Mutsaddi (1918):** The Privy Council held that under Hanafi law, the father is entitled to the custody of his sons over the age of seven and daughters who have reached puberty.
2. **Mohd. Ahmed Khan v. Shah Bano Begum (1985):** Although primarily a maintenance case, it has implications on the understanding of Muslim personal law in India.

GUARDIANSHIP OF PERSON (WALAYAT-E-NAFS) UNDER MUSLIM LAW

Definition and Scope:

- **Walayat-e-Nafs** refers to the guardianship over the person of a minor. It includes making decisions about the child's upbringing, education, health, and overall welfare.
- This guardianship is typically entrusted to a specific set of relatives, with a clear preference in traditional Islamic jurisprudence.

Preference in Custody (Hizanat):

- The mother is generally given preference for the custody of young children. The age up to which the mother is preferred varies: for boys, it is usually up to 7 years, and for girls, it may continue until puberty.

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- After the mother, the custody usually passes to other female relatives on the mother's side, followed by the father and his relatives.

Father's Role in Guardianship:

- While the mother is preferred for physical custody, the father remains the legal guardian (wali) and is responsible for the child's maintenance and education.
- The father's consent is often required for significant decisions affecting the child's future, such as marriage.

Conditions Affecting Custody:

- The primary condition for custody (hizanat) is the welfare of the child. If the custodial parent becomes unfit or circumstances change, custody can be reassigned.
- Factors such as the parent's religion, moral standing, financial stability, and the child's preferences may be considered.

Legal Framework and Judicial Interpretation:

- Islamic jurisprudence (Sharia) forms the basis of these rules, but their application can vary. Indian courts interpret these principles with a focus on the child's welfare.

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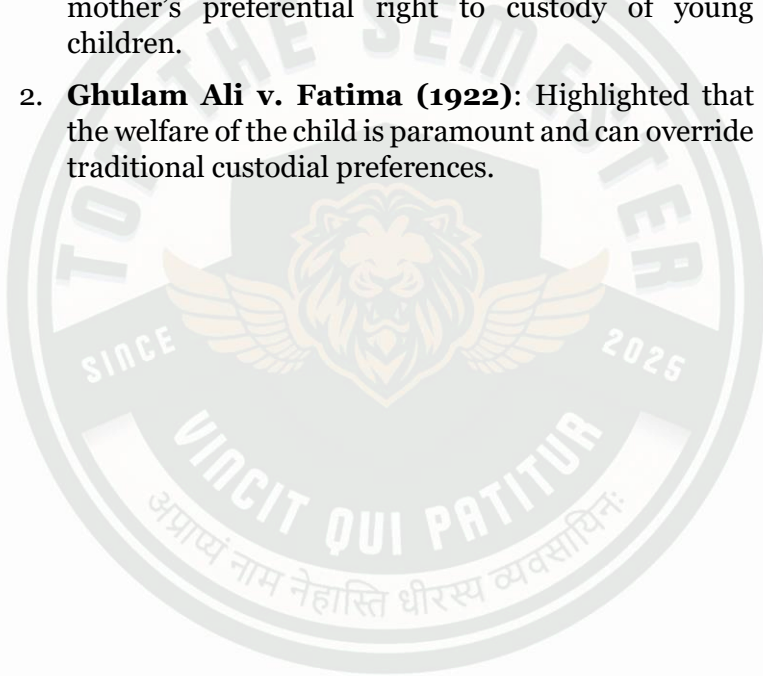
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- The Guardians and Wards Act, 1890, also plays a role in legal proceedings related to child custody in India, supplementing Muslim law.

Landmark Judgments

1. **Imambandi v. Mutsaddi (1918)**: Emphasized the father's role as a legal guardian while recognizing the mother's preferential right to custody of young children.
2. **Ghulam Ali v. Fatima (1922)**: Highlighted that the welfare of the child is paramount and can override traditional custodial preferences.



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GUARDIANSHIP DURING MARRIAGE (WALAYAT-E-NIKAH) UNDER MUSLIM LAW

Definition and Context:

- **Walayat-e-Nikah** refers to the guardianship associated with the arrangement and solemnization of a marriage. This form of guardianship is particularly relevant when one or both of the individuals getting married are minors.
- The guardian, known as the 'Wali', plays a crucial role in the marriage contract, and their consent is often essential, especially in the case of a minor bride.

Role of the Wali (Guardian):

- The Wali is typically the father or paternal grandfather. They have the authority to arrange and consent to the marriage of the minor.
- In the absence of the father or paternal grandfather, this responsibility may pass to other male relatives or, in some interpretations, to a religious or judicial authority.

Legal Requirements and Validity of Marriage:

- Under most schools of Islamic law, the Wali's consent is crucial for the validity of a marriage, especially for a female minor. However, the Hanafi school of thought considers a mature

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minor's marriage valid even without a guardian's consent.

- The guardian's primary responsibility is to ensure the suitability of the match and the fairness of the marriage terms, including the Mahr (dower).

Considerations in Guardianship during Marriage:

- The welfare and best interests of the minor are paramount in decisions related to their marriage.
- The guardian must consider factors like compatibility, the prospective spouse's character, social standing, and financial stability.

Judicial Oversight:

- In cases of dispute or if the guardian's decision is deemed not in the minor's best interest, the matter may be taken to a court. The court can override the guardian's decision or appoint another Wali.

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GUARDIANSHIP OF PROPERTY (WALAYAT-E-MAL) UNDER MUSLIM LAW

Definition and Scope:

- **Walayat-e-Mal** refers to the guardianship over a minor's property. It involves managing the minor's assets, property, and financial interests until they reach adulthood or maturity.
- The guardian responsible for Walayat-e-Mal has the duty to protect, invest, and wisely manage the minor's property.

Appointment of the Guardian:

- The father and, in his absence, the paternal grandfather are typically the natural guardians of a minor's property.
- If neither is available, a guardian (Qayyim) can be appointed by the court to manage the property.

Responsibilities and Limitations:

- The guardian must act in the best interest of the minor and is expected to handle the property with the care of a prudent man.
- Any major transactions involving the minor's property, such as selling or mortgaging assets, generally require judicial approval to ensure the minor's interests are protected.

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- Mismanagement or misappropriation of the minor's property by the guardian is a serious offense.

Accountability of the Guardian:

- Guardians are accountable for their actions in managing the minor's property. They may be required to provide regular accounts and can be held liable for any loss due to negligence or misconduct.

Transition to Majority:

- When the minor reaches the age of majority (usually 18 under Indian law, though it may vary in different contexts), they are entitled to take control of their property.
- The guardian is then responsible for handing over all assets and accounts to the now-adult minor.

Legal Framework and Judicial Interpretation

- While Islamic principles guide the guardianship of property, these practices are also subject to the legal framework in India, including the Guardians and Wards Act, 1890, and relevant case law.

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TESTAMENTARY GUARDIAN AND POWERS UNDER MUSLIM LAW

Definition and Appointment:

- A **testamentary guardian** is appointed by the will of a child's parent, typically the father. This appointment is effective upon the death of the parent.
- Under most Islamic schools of thought, the father has the right to appoint a testamentary guardian for his minor children.

Scope of Guardianship:

- The testamentary guardian is responsible for both the personal welfare of the minor (Walayat-e-Nafs) and the management of the minor's property (Walayat-e-Mal).
- Their role is akin to that of a natural guardian, with duties encompassing the overall care, education, and upbringing of the child, as well as managing the child's financial affairs.

Powers of the Testamentary Guardian:

- The powers of a testamentary guardian are generally delineated in the will. They include making decisions about the minor's education, health, and general welfare, and managing the minor's property.

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- However, their authority is subject to the limitations imposed by Islamic law and, in India, also by the relevant legal provisions.

Limitations and Oversight:

- Like other forms of guardianship in Muslim law, the actions of a testamentary guardian are governed by the principle of the child's welfare.
- Major decisions, especially regarding property, may require judicial approval to ensure they align with the best interests of the minor.

Legal Framework and Judicial Interpretation:

- While Islamic jurisprudence provides the basis for testamentary guardianship, its application in India is also influenced by national laws, including the Guardians and Wards Act, 1890.
- Indian courts interpret these principles with an emphasis on the welfare of the minor.

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CERTIFIED GUARDIANS AND POWERS UNDER MUSLIM LAW

Definition and Appointment:

- **Certified guardians** are those appointed by a judicial authority, typically when no suitable natural or testamentary guardian is available.
- The appointment is generally made in response to an application by a concerned party or initiated by the court itself.

Legal Framework:

- While Islamic jurisprudence provides guidelines for guardianship, the appointment of certified guardians in India is also governed by the Guardians and Wards Act, 1890.
- This Act allows courts to appoint a guardian for a minor's person and property in the best interest of the minor.

Responsibilities and Powers:

- Certified guardians have the authority to make decisions regarding the minor's welfare, education, and property management.
- They are expected to act in the best interests of the minor, adhering to the principles of Muslim Law while also complying with Indian legal standards.

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Limitations on Powers:

- The guardian's actions, especially concerning property management, are often subject to court oversight.
- They must seek court approval for significant transactions involving the minor's property, ensuring that such actions benefit the minor.

Accountability and Oversight:

- Certified guardians are accountable to the court for their management of the minor's affairs.
- Regular reporting and auditing of the minor's assets may be required to ensure proper management and protection of the minor's interests.

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DE FACTO GUARDIAN UNDER MUSLIM LAW

Definition and Characteristics:

- A **de facto guardian** is someone who, without formal legal appointment, takes on the responsibility of caring for a Muslim minor or managing their property.
- This role is often assumed out of necessity or due to the absence of a natural, testamentary, or court-appointed guardian.

Recognition in Muslim Law:

- Traditionally, Muslim Law does not recognize the concept of a de facto guardian in the same way as formal guardianship categories (like natural or testamentary guardianship).
- A de facto guardian's actions, especially regarding the property and financial transactions of the minor, are not given legal validity.

Limitations on Powers:

- The most significant limitation for a de facto guardian under Muslim Law is their inability to undertake legal transactions involving the minor's property.
- Their actions in regard to the welfare and upbringing of the minor may be recognized in

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practice, but they lack formal authority, particularly in legal and financial matters.

Role in the Minor's Life:

- While de facto guardians may play a vital role in providing day-to-day care and support, their decisions and actions might not have legal standing, especially in disputes or legal proceedings.

Judicial Views and Legal Implications:

- In cases where the actions of a de facto guardian are brought before a court, the primary consideration is usually the welfare and best interests of the minor.
- Indian courts, while considering Muslim Law, may also apply the principles of the Guardians and Wards Act, 1890, to address issues arising from de facto guardianship.

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UNIT 4

CIVIL MARRIAGE AND EMERGING TRENDS IN FAMILY LAW

4.1 IMPORTANT PROVISIONS OF SPECIAL MARRIAGE ACT, 1954

4.2 EMERGING TRENDS:

I. SURROGACY: MEANING AND TYPES,
CAUSES, ARGUMENTS AGAINST SURROGACY,
SURROGACY BILL,

SURROGACY THROUGHOUT WORLD

II. LIVE-IN RELATIONSHIP: MEANING,
REASONS ASSOCIATED, LIVE IN
RELATIONSHIP IN INDIA

III. DOMESTIC VIOLENCE: DEFINITION,
CAUSAL FACTORS, DOMESTIC VIOLENCE ACT,
2005

IV. SAME SEX MARRIAGE: HISTORICAL
BACKGROUND, HOMOSEXUALITY: FOR AND
AGAINST, SAME SEX MARRIAGE IN INDIA,
HOMOSEXUALITY AND SECTION 377, IPC,
1860, HOMOSEXUALITY AND SAME SEX
MARRIAGE IN OTHER COUNTRIES

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KEY PROVISIONS OF THE SPECIAL MARRIAGE ACT, 1954

Application of the Act (Section 4):

- The Act applies to all Indian citizens, including those residing abroad, irrespective of their religion.
- Parties intending to marry under this Act should not be bound by any other marriage laws specific to their religion.

Conditions for Marriage (Section 4):

Section 4 of the Act specifies certain conditions that must be fulfilled for a marriage to be valid under this Act:

- **Age:** The male must have completed 21 years of age, and the female must have completed 18 years of age.
- **Mental Capacity:** Both parties should be capable of giving valid consent and must not suffer from any mental disorder or insanity that renders them unfit for marriage and procreation of children.
- **Marital Status:** Neither party should have a living spouse at the time of marriage.
- **Fit for Procreation:** Neither party should be incapable of giving a child due to insanity or recurrent attacks of epilepsy.

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- **Prohibited Relationship:** Parties should not fall within the degrees of prohibited relationship, unless their custom or tradition permits such a marriage.

Procedure for Solemnization of Marriage

- **Notice of Intended Marriage:** A written notice of the intended marriage must be given to the Marriage Registrar of the district in which at least one of the parties has resided for a period of not less than 30 days immediately preceding the date on which such notice is given.
- **Publication of Notice:** The Marriage Officer must publish the notice and invite objections, if any, within 30 days of the issue of notice.
- **Declaration by Parties and Witnesses:** Before the marriage is solemnized, the parties and three witnesses must sign a declaration in the prescribed form in front of the Marriage Officer.
- **Place of Marriage:** The marriage may be solemnized at the office of the Marriage Officer or at such other place within a reasonable distance.

Notice of Intended Marriage (Section 5):

- Couples must give notice in writing to the Marriage Officer of the district where at least one of them has resided for a minimum of 30 days prior to the notice.

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- The notice is then published, inviting objections, if any.

Solemnization of Marriage (Sections 11 and 12):

- The marriage is solemnized at the specified Marriage Office.
- The marriage is officiated in the presence of three witnesses.
- The marriage is entered into the Marriage Certificate Book, which is signed by the parties, the witnesses, and the Marriage Officer.

Marriage Certificate (Section 13):

- Upon the solemnization of the marriage, the Marriage Officer enters the marriage certificate in the Marriage Certificate Book.
- The parties and the witnesses sign the certificate.
- The certificate is deemed to be conclusive evidence of the Special Marriage.

Registration of Marriages Celebrated in Other Forms (Section 15)

- Couples already married under other forms can register their marriage under this Act.
- This provision allows couples who have had religious ceremonies to have their marriage recognized under civil law.

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Restitution of Conjugal Rights and Judicial Separation

- **Restitution of Conjugal Rights (Section 22):** If either spouse withdraws from the society of the other without reasonable excuse, the aggrieved party may apply for restitution of conjugal rights.
- **Judicial Separation (Section 23):** Either spouse can apply for judicial separation on the grounds mentioned in Section 27 (grounds for divorce).

Judicial Separation and Divorce (Sections 27 and 28):

- The Act allows for judicial separation and divorce under specific grounds, including adultery, cruelty, desertion, unsound mind, and conversion to another religion.
- The Act also includes a provision for divorce by mutual consent.

Legitimacy of Children (Section 26):

- Children born out of marriages solemnized under the Act are deemed legitimate, and the same succession rights apply as in other marriages under personal law.

Succession (Section 21):

- The succession to the property of persons married under the Act, and of their offspring, is governed by the Indian Succession Act, 1925.

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4.2 EMERGING TRENDS:

SURROGACY: MEANING AND TYPES

Meaning of Surrogacy:

- **Surrogacy** is an arrangement, often supported by a legal agreement, where a woman (the surrogate mother) agrees to bear a child for another person or couple, who will become the child's parent(s) after birth.

Types of Surrogacy:

- **Traditional Surrogacy:** The surrogate mother is artificially inseminated with the sperm of the intended father or a donor. In this case, the surrogate mother is the child's biological mother.
- **Gestational Surrogacy:** An embryo created through in vitro fertilization (IVF) is implanted in the surrogate mother's uterus. The surrogate carries the pregnancy but has no genetic link to the child.

Causes of Surrogacy

- **Infertility:** Couples unable to conceive naturally or through conventional fertility treatments may opt for surrogacy.

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- **Medical Issues:** Certain medical conditions may make pregnancy or childbirth risky for the intended mother.
- **Same-Sex Couples and Single Parents:** Surrogacy provides an option for same-sex couples and single individuals wishing to have children.
- **Age-Related Factors:** Older women, facing higher pregnancy risks, may choose surrogacy.

Arguments Against Surrogacy

Ethical Concerns:

- Surrogacy raises questions about the commodification of women's bodies and the ethical implications of essentially 'renting a womb'.

Exploitation Risks:

- There are concerns about potential exploitation, especially in cases where surrogate mothers are from economically disadvantaged backgrounds.

Legal and Custody Issues:

- Surrogacy can lead to complex legal battles over custody, especially if the surrogate decides to keep the child or if the intended parents refuse to accept the child.

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Psychological Impact:

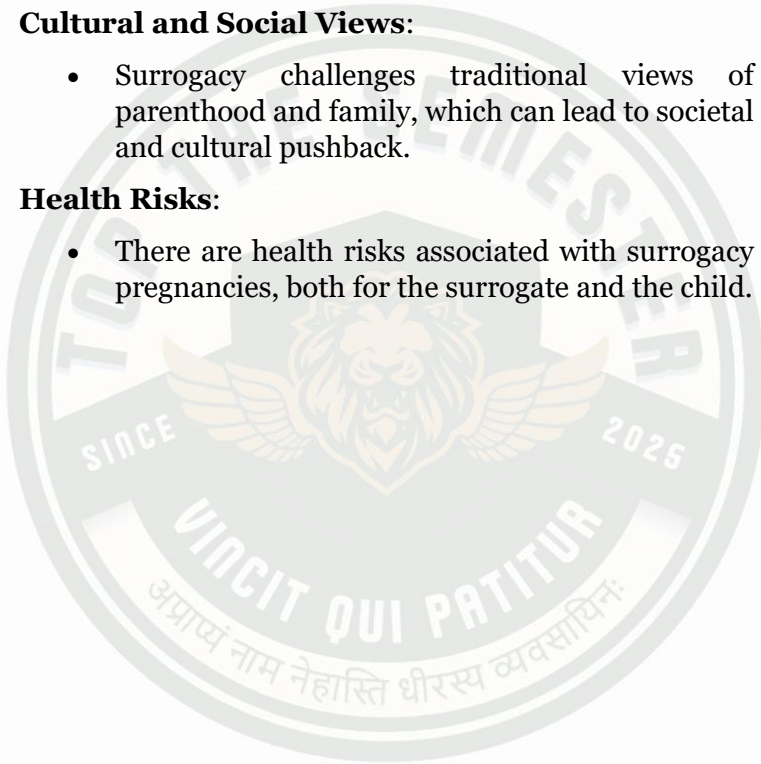
- The psychological effects on surrogate mothers and concerns regarding the well-being of the child born out of surrogacy are significant issues.

Cultural and Social Views:

- Surrogacy challenges traditional views of parenthood and family, which can lead to societal and cultural pushback.

Health Risks:

- There are health risks associated with surrogacy pregnancies, both for the surrogate and the child.



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DETAILED OVERVIEW OF THE SURROGACY BILL, 2019

Objective and Scope (Section 2):

- The Bill's aim is clearly outlined: to regulate surrogacy in India, prevent commercial surrogacy, and protect the rights of children born through surrogacy and surrogate mothers.
- It applies to all of India, except Jammu and Kashmir.

Prohibition of Commercial Surrogacy (Section 4):

- Commercial surrogacy, including the sale and purchase of human embryos and gametes, is strictly prohibited.
- Violations of this provision carry severe legal consequences.

Permitting Altruistic Surrogacy (Section 4):

- The Bill permits only altruistic surrogacy, where no monetary compensation other than necessary medical expenses is provided to the surrogate mother.

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Eligibility Criteria for Intended Parents (Sections 4 & 5):

- Intended parents must be Indian citizens, married for at least five years, with at least one partner being infertile.
- The age criteria set are between 23-50 years for women and 26-55 years for men.
- The couple must not have any surviving biological, adopted, or surrogate children (exceptions are made for children with certain specified conditions).

Eligibility for Surrogate Mothers (Section 4):

- A surrogate mother must be a close relative, married with a biological child, aged 25-35 years, and not have been a surrogate before.
- Her eligibility is further determined by medical and psychological fitness.

Establishment of National and State Surrogacy Boards (Sections 17 & 25):

- These boards will regulate surrogacy clinics and oversee surrogacy procedures, ensuring compliance with the law.

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Insurance for Surrogate Mothers (Section 4):

- The surrogate mother must be insured for a period covering pregnancy and an additional 16 months postpartum.

Registration of Surrogacy Clinics (Sections 35-36):

- All surrogacy clinics must be registered. Unregistered clinics face penalties.

Parental Rights and Obligations (Section 7):

- A child born through surrogacy is deemed the biological child of the intending parents.
- The Bill ensures that the child has all rights and privileges available to a natural child.

Offences and Penalties (Sections 37-39):

- The Bill specifies penalties for violations, including conducting or aiding commercial surrogacy, exploitation of surrogate mothers, abandonment, exploitation, or disownment of surrogate children.

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SURROGACY IN DIFFERENT PARTS OF THE WORLD

United States:

- Surrogacy laws in the U.S. vary by state. Some states have clear regulations allowing both commercial and altruistic surrogacy, while others have restrictions or completely ban the practice.
- California, for instance, is known for its surrogacy-friendly laws, attracting people from around the world.

India:

- Historically a hub for commercial surrogacy, India has moved to ban commercial surrogacy with the Surrogacy (Regulation) Bill, 2019, allowing only altruistic surrogacy for Indian citizens.
- The move aimed to prevent exploitation of surrogate mothers and the commercialization of the practice.

Russia and Ukraine:

- Both countries allow commercial surrogacy and are destinations for international surrogacy arrangements.

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- They have relatively liberal laws compared to many other countries, making them popular for those seeking surrogacy services.

Canada:

- Canada permits only altruistic surrogacy and has strict regulations to ensure that surrogates are not paid beyond medical and other reasonable expenses.
- Surrogacy contracts are enforceable, but commercial surrogacy can attract legal penalties.

United Kingdom:

- Only altruistic surrogacy is allowed in the UK. Surrogates can only be compensated for reasonable expenses.
- Unlike some countries, surrogacy contracts are not legally binding in the UK.

Australia:

- The laws vary by state, but generally, commercial surrogacy is illegal across Australia. Altruistic surrogacy is allowed, and surrogacy agreements are enforceable in some states.
- Intended parents often need to go through a court process to obtain parental rights.

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Thailand, Cambodia, and Nepal:

- These countries have become hubs for surrogacy tourism but have since imposed bans or restrictions on the practice, particularly for foreigners, due to ethical concerns and instances of exploitation.

European Countries:

- Many European countries, like France, Germany, Italy, and Spain, have stringent laws against surrogacy, often prohibiting both altruistic and commercial forms.
- Some countries, however, like Greece and Portugal, have provisions for altruistic surrogacy under strict conditions.

Global Trends and Ethical Considerations

- Surrogacy laws reflect a balance between ethical considerations, such as the exploitation of women and the rights of the child, and the desire to provide reproductive options to individuals and couples who cannot conceive.
- Cross-border surrogacy raises complex legal issues, especially concerning citizenship and parental rights.
- The diversity in surrogacy laws globally often leads to "surrogacy tourism," where individuals or couples travel to countries with more permissive legal frameworks.

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MEANING OF LIVE-IN RELATIONSHIP

Definition:

- A **live-in relationship** is an arrangement in which an unmarried couple lives together in a long-term relationship that resembles a marriage. In such relationships, the couple shares a household and often a sexual relationship without being legally married.

Characteristics:

- Live-in relationships involve cohabitation without the formal legal binding of marriage.
- Couples in such relationships typically share responsibilities, expenses, and other aspects of their daily lives.

Reasons Associated with Live-in Relationships

1. Testing Compatibility:

- Many couples choose to live together before marriage to test the compatibility of their relationship in a long-term living situation.
- This approach is often seen as a way to ensure that the relationship is sustainable before committing to marriage.

2. Financial Practicality:

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- Cohabitation can be a financially practical decision, as it allows couples to share expenses and resources.
- For some, this arrangement can be a way to manage housing and living costs more effectively.

3. Flexibility and Autonomy:

- Live-in relationships offer more flexibility than marriage. Couples can maintain their individuality and independence while being in a committed relationship.
- This setup allows for less formalized roles and responsibilities compared to traditional marriage.

4. Societal and Cultural Shifts:

- Changing societal attitudes toward marriage and cohabitation reflect a shift towards more liberal views on relationships.
- Increased acceptance of different relationship models, including live-in relationships, is indicative of evolving social norms.

5. Avoiding Legal Complications:

- Some individuals prefer live-in relationships to avoid the legal complexities and obligations associated with marriage, especially in the event of a relationship breakdown.

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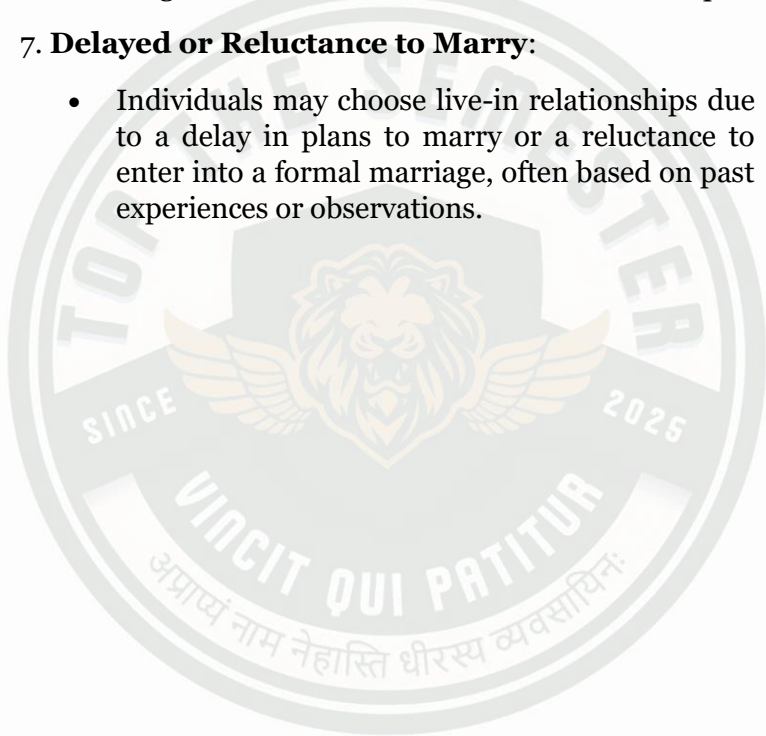
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6. Personal Beliefs and Values:

- For some, the decision to cohabit without marrying is based on personal beliefs or values. They may not see the necessity of a legal or religious sanction to validate their relationship.

7. Delayed or Reluctance to Marry:

- Individuals may choose live-in relationships due to a delay in plans to marry or a reluctance to enter into a formal marriage, often based on past experiences or observations.



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LIVE-IN RELATIONSHIPS IN INDIA

Cultural and Social Context:

- Traditionally, Indian society has emphasized marriage as the standard for a committed relationship. However, rapid urbanization, increased exposure to global cultures, and greater independence among the youth have contributed to a growing acceptance of live-in relationships.

Legal Status:

- Indian law does not explicitly recognize live-in relationships, but the judiciary, through various judgments, has provided certain rights and protections to couples in such arrangements.
- The Supreme Court of India has observed that a live-in relationship, if it meets certain criteria, can be considered equivalent to marriage under the law.

Notable Judgments and Legal Protections:

- In several landmark judgments, such as the 'Indra Sarma vs. V.K.V. Sarma' case, the Supreme Court has ruled that women in live-in relationships are entitled to protection under the Domestic Violence Act, 2005.
- The Court has also recognized the rights of children born out of live-in relationships.

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Societal Attitudes:

- While urban areas show greater acceptance, live-in relationships often face social stigma and resistance in more traditional and rural parts of the country.
- Younger generations are more likely to accept and engage in live-in relationships compared to older generations.

Challenges and Criticisms:

- Couples in live-in relationships can face challenges ranging from familial opposition to legal issues, particularly concerning inheritance, maintenance, and custody matters.
- There is also a societal concern about the impact of live-in relationships on traditional family values.

Rising Popularity Among Youth:

- Many young Indians view live-in relationships as a way to test compatibility with their partners before committing to marriage.
- The increasing independence and financial stability of the youth, particularly women, have also contributed to the feasibility of such arrangements.

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DEFINITION OF DOMESTIC VIOLENCE

Broad Definition:

- **Domestic violence** is a pattern of behavior in any relationship that is used to gain or maintain power and control over an intimate partner. It can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person.
- This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone.

Types of Domestic Violence:

- **Physical Abuse:** Hitting, slapping, shoving, grabbing, pinching, biting, hair-pulling, etc.
- **Sexual Abuse:** Coercing or attempting to coerce any sexual contact without consent.
- **Emotional Abuse:** Undermining an individual's sense of self-worth and/or self-esteem.
- **Economic Abuse:** Making or attempting to make an individual financially dependent.
- **Psychological Abuse:** Causing fear through intimidation; threatening physical harm to oneself, partner, children, or partner's family or friends.

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Causal Factors of Domestic Violence

1. Societal Factors:

- **Cultural Norms:** Societal norms that perpetuate the acceptance of violence as a means to resolve conflicts.
- **Social Inequality:** Systems of male dominance and power imbalances in relationships.
- **Economic Factors:** Poverty, lack of employment opportunities, and economic stress can contribute to domestic violence.

2. Personal Factors:

- **Psychological Issues:** Perpetrators may have personality disorders or psychological issues that predispose them to violent behavior.
- **History of Violence:** Individuals who have witnessed or experienced violence in their own families are more likely to become perpetrators or victims of domestic violence.

3. Relational Factors:

- **Family Structure:** Certain family structures, like those with stepchildren, may have a higher incidence of domestic violence.
- **Marital Conflict and Instability:** High levels of conflict and instability in a relationship can lead to domestic violence.

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4. Substance Abuse:

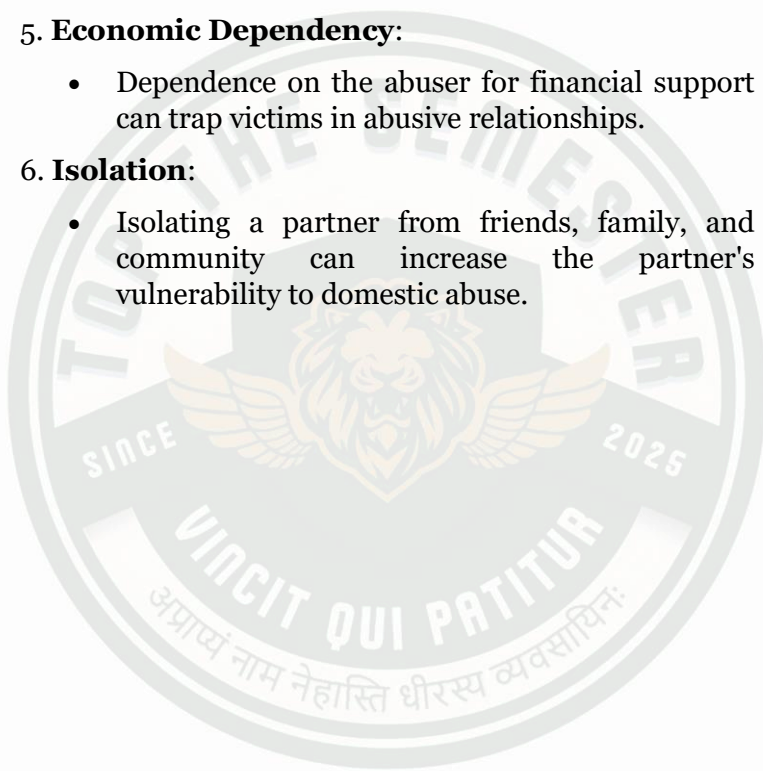
- The abuse of alcohol and drugs can exacerbate tensions and reduce self-control, leading to an increased risk of violence.

5. Economic Dependency:

- Dependence on the abuser for financial support can trap victims in abusive relationships.

6. Isolation:

- Isolating a partner from friends, family, and community can increase the partner's vulnerability to domestic abuse.



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OVERVIEW AND KEY SECTIONS OF THE DOMESTIC VIOLENCE ACT, 2005

Objective and Scope (Sections 1 & 2):

- **Objective:** To provide effective protection to women who are victims of domestic violence, irrespective of their age or marital status.
- **Scope:** Covers all women living in a domestic relationship with the abuser, including wives, mothers, sisters, and live-in partners.

Definition of Domestic Violence (Section 3):

- The Act provides a broad definition of domestic violence, encompassing physical, sexual, emotional, verbal, and economic abuse, as well as threats and intimidation.

Rights of Women (Section 17-22):

- **Right to Reside in a Shared Household (Section 17):** A woman cannot be evicted or excluded from a shared household, regardless of whether she has any title or rights to the property.
- **Protection Orders (Section 18):** The Act empowers the court to pass protection orders prohibiting the abuser from committing acts of domestic violence.
- **Residence Orders (Section 19):** The court can pass orders to secure the woman's residence in the

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shared household and restrain the abuser from entering the area.

- **Monetary Relief (Section 20):** Provides for compensation and maintenance for the woman and her children.
- **Custody Orders (Section 21):** The court can grant temporary custody of children to the woman.
- **Compensation Orders (Section 22):** The victim can be awarded compensation for injuries, including mental torture and emotional distress.

Appointment of Protection Officers (Section 8-10):

- Protection officers are appointed to assist the court and the police in ensuring the enforcement of protection orders.

Role of Service Providers (Section 10):

- NGOs and other organizations registered with the state government can act as service providers to help the woman.

Procedures and Powers of the Magistrate (Section 12-14):

- The Act outlines the procedure for obtaining orders and the powers of the magistrate to ensure speedy and effective disposal of cases.

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Reporting of Domestic Violence (Section 4):

- Encourages the reporting of incidents of domestic violence by healthcare providers.

Penalties for Breach of Protection Order (Section 31 & 32):

- Breaching a protection order is a cognizable and non-bailable offence, punishable with imprisonment.

Jurisdiction and Appeal (Sections 27 & 29):

- The Act specifies the jurisdiction of the courts and provides for the right to appeal against any order made under it.

IMPORTANT JUDGMENTS

S.R. Batra vs. Taruna Batra (2007):

- This landmark case clarified the definition of "shared household". The Supreme Court held that a woman can only claim a right to residence in a household that belongs to or is rented by her husband, and not to the husband's parental home.

Indra Sarma vs. V.K.V. Sarma (2013):

- The Supreme Court recognized live-in relationships under the Act and provided guidelines for determining whether a live-in

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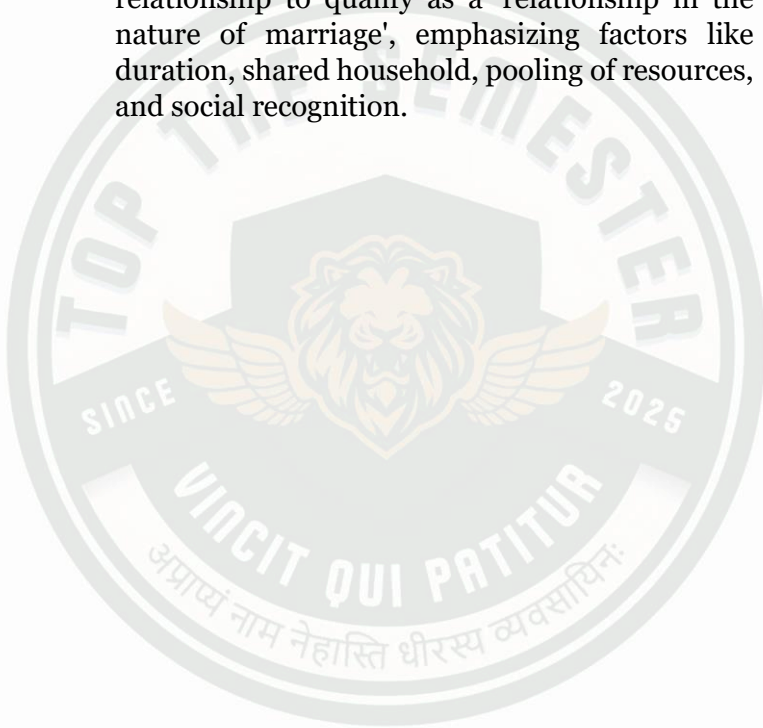
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relationship could be treated as a 'relationship in the nature of marriage' under the Act.

D. Velusamy vs. D. Patchaiammal (2010):

- This case further defined the criteria for a live-in relationship to qualify as a 'relationship in the nature of marriage', emphasizing factors like duration, shared household, pooling of resources, and social recognition.



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SAME SEX MARRIAGE

Ancient and Medieval Periods

Early History:

- Historical evidence suggests the presence of same-sex relationships in ancient civilizations like Greece, Rome, and certain parts of China. However, these relationships were not necessarily seen through the modern lens of 'marriage'.

Classical Antiquity:

- In ancient Greece, relationships between adult men and adolescent boys, known as pederasty, were common and socially accepted, though not equivalent to marriage.
- Ancient Rome had instances of men marrying other men, but these were not legally recognized marriages and often faced ridicule and scorn.

Medieval Times:

- During medieval times, especially in Europe, same-sex relationships were largely condemned due to religious doctrines. There were, however, instances of intense same-sex relationships, some of which were romantic, though they didn't have the legal or social recognition of marriage.

Modern Era: Emergence of the Concept

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Enlightenment and Beyond:

- The Enlightenment brought about a shift in thinking, challenging traditional views on relationships. However, this period also saw the pathologization of homosexuality.
- By the 19th and early 20th centuries, same-sex relationships were largely criminalized and stigmatized in Western societies.

20th Century Movements:

- The latter half of the 20th century witnessed the emergence of the LGBTQ+ rights movement, which began to challenge laws against homosexual relationships.
- The Stonewall Riots of 1969 in New York were a pivotal moment, leading to the formation of LGBTQ+ rights groups and increased activism.

Legal Recognition in the Late 20th and 21st Centuries

Early Legal Battles:

- The push for legal recognition of same-sex marriages began in earnest in the latter part of the 20th century.
- One of the first notable cases was in Minnesota in 1970 (Baker v. Nelson), where a same-sex couple applied for a marriage license and was denied. The case eventually reached the U.S. Supreme Court,

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which dismissed it for lack of a substantial federal question.

21st Century Breakthroughs:

- The Netherlands became the first country to legalize same-sex marriage in 2001.
- This was followed by other countries like Belgium (2003), Canada (2005), and Spain (2005). The legalization wave continued in various countries, each with its unique legal battles and societal debates.

U.S. Landmark Decision:

- The United States Supreme Court, in the landmark case *Obergefell v. Hodges* (2015), legalized same-sex marriage nationwide, ruling that state bans on same-sex marriage were unconstitutional.

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ARGUMENTS FOR HOMOSEXUALITY

Natural Variation:

- **Biological Perspective:** Research suggests that homosexuality is a natural variation of human sexuality, with evidence of its occurrence across various species.
- **Genetic Factors:** Some studies indicate that genetic factors may play a role in determining sexual orientation.

Human Rights and Equality:

- **Equality and Non-Discrimination:** Advocates argue that, like heterosexuality, homosexuality is an inherent aspect of identity, and thus individuals should not face discrimination based on sexual orientation.
- **Right to Love and Marry:** The right to love and marry whomever one chooses is seen as a fundamental human right.

Cultural and Historical Precedence:

- Throughout history and across cultures, homosexual relationships have been a part of human societies.
- Many ancient societies recognized and accepted various forms of homosexual relationships.

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Personal Autonomy:

- The principle of personal autonomy and freedom supports the view that individuals should be free to pursue relationships with consenting adults, regardless of gender.

Mental Health and Well-being:

- Acceptance and recognition of homosexuality are vital for the mental health and well-being of LGBTQ+ individuals.
- Societal acceptance helps reduce the rates of mental health issues among the LGBTQ+ community.

Arguments Against Homosexuality

Religious and Moral Beliefs:

- Many religions view homosexuality as morally wrong, based on religious texts and doctrines.
- Traditional moral frameworks in various cultures often emphasize procreation and the union of man and woman as central to marriage and family structure.

Societal and Cultural Norms:

- Concerns about maintaining traditional family structures and societal norms often fuel opposition to homosexuality.

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- Some argue that widespread acceptance of homosexuality could lead to the erosion of traditional family values.

Biological and Procreation Arguments:

- The argument that the primary purpose of sex and marriage is procreation is often cited against homosexuality.
- Opponents sometimes argue that homosexual couples cannot naturally conceive children together, which they claim undermines the natural order.

Health Concerns:

- Some opponents cite health risks associated with homosexual activities, particularly among men, such as higher rates of certain sexually transmitted infections.

Impact on Children:

- There are claims (though often contested) that children raised by same-sex couples may face social challenges or confusion about their own sexual identity.

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LEGAL STATUS OF SAME-SEX MARRIAGE IN INDIA

Lack of Legal Recognition:

- Indian marriage laws, such as the Hindu Marriage Act, 1955, and the Special Marriage Act, 1954, currently do not recognize same-sex marriages. These laws define marriage as a union between a man and a woman.

Section 377 of the Indian Penal Code:

- Although Section 377, which criminalized homosexual acts, was read down by the Supreme Court in 2018 (Navtej Singh Johar v. Union of India), this landmark ruling did not extend to the recognition of same-sex marriages.

Notable Judgments and Legal Developments

Navtej Singh Johar v. Union of India (2018):

- The Supreme Court decriminalized consensual homosexual acts by reading down Section 377. However, the judgment did not address the issue of same-sex marriage.
- The court acknowledged the rights of LGBTQ+ individuals to express their sexual orientation and live with dignity.

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Cultural and Societal Context

1. Social Stigma and Acceptance:

- Despite growing acceptance in urban and progressive circles, same-sex relationships often face societal stigma in many parts of India.
- Cultural and religious norms play a significant role in shaping attitudes towards homosexuality and same-sex marriage.

2. Activism and Advocacy:

- LGBTQ+ activists and organizations in India have been advocating for the recognition of same-sex marriages and equal rights for LGBTQ+ individuals.
- These movements have been crucial in initiating conversations and raising awareness about LGBTQ+ rights in India.

Current Scenario and Future Outlook

- The issue of same-sex marriage in India is currently in a state of legal and social flux.
- While there is growing advocacy and legal challenges pushing for recognition, the path towards legalizing same-sex marriage involves navigating complex social, religious, and legal landscapes.

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HOMOSEXUALITY AND SECTION 377, IPC, 1860

Homosexuality, historically seen as a taboo subject in many societies, has been a significant area of legal and social discourse in recent years. In India, this discourse centers around Section 377 of the Indian Penal Code (IPC), a colonial-era law. This section, introduced in 1860 under British rule, criminalized "carnal intercourse against the order of nature." Although not explicitly mentioning homosexuality, it has been used to criminalize homosexual acts.

Historical Background of Section 377

- **Origin and Colonial Influence:** Tracing the roots of Section 377 to the British colonial era, examining the Victorian morals and beliefs that shaped such laws.
- **Post-Independence Era:** Discussing the retention of Section 377 in the Indian Penal Code post-independence and its implications in independent India.
- **Societal Attitudes:** Exploring the social and cultural perceptions of homosexuality in India, influenced by religious, cultural, and traditional norms.

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Legal Challenges and Key Judgments

- **Naz Foundation Case (2009):** Detailing the Delhi High Court's landmark judgment that decriminalized homosexual acts among consenting adults. Discussing the reasoning behind the verdict, focusing on privacy, dignity, and equality.
- **Supreme Court Reversal (2013):** Analyzing the Supreme Court's decision in Suresh Kumar Koushal vs. Naz Foundation, which overturned the Delhi High Court's ruling. Examining the court's rationale and the widespread criticism it faced.
- **Navtej Singh Johar Case (2018):** Discussing the historic Supreme Court judgment that decriminalized homosexuality. Explaining the court's reasoning, focusing on constitutional morality, individual freedom, and the right to equality and dignity.
- **Legal Implications:** Evaluating the impact of this judgment on Indian society and law, including subsequent legal and social changes.

Comparative Analysis with Other Jurisdictions

- **Global Perspective:** Comparing India's legal approach to homosexuality with other countries, both where it's criminalized and where it's been decriminalized or never criminalized.

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- **Influence of International Human Rights:** Discussing how international human rights law and judgments have impacted the discourse on homosexuality in India.

Section 377 and Its Impact on Family Law

- **Marriage, Adoption, and Inheritance Rights:** Exploring the ongoing challenges and legal ambiguities for same-sex couples in India in areas such as marriage, adoption, and inheritance, despite the decriminalization of homosexuality.
- **Societal Implications:** Discussing the broader societal implications of the legal status of homosexuality on family structures and societal perceptions.

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HISTORICAL CONTEXT OF HOMOSEXUALITY AND SAME-SEX MARRIAGE

Early Legal Perspectives on Homosexuality

The legal treatment of homosexuality has varied greatly across cultures and historical periods. Traditionally, many societies did not have laws specifically concerning homosexuality. However, with the rise of organized religions and codification of laws, attitudes began to change.

In the Western world, especially under the influence of Christianity, homosexuality was often condemned and penalized. For instance, in medieval Europe, it was frequently criminalized. This perspective was exported to various parts of the world through colonialism, leading to the introduction of anti-homosexuality laws in places like India, much of Africa, and parts of Asia.

Evolution of Same-Sex Marriage Rights

The concept of same-sex marriage is relatively modern, emerging prominently in the latter half of the 20th century. Initially, the fight for LGBTQ+ rights focused more on decriminalization of homosexuality and combating discrimination. The Netherlands was the first country to legalize same-sex marriage in 2001, marking a significant milestone in the global LGBTQ+ rights movement.

Following the Netherlands, many countries, particularly in Western Europe and the Americas, began to reconsider

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their stance on same-sex marriage. This shift was often a result of a combination of legislative changes, court rulings, and public referendums.

Key Milestones in Legal Recognition

- **The Netherlands (2001):** Legalization of same-sex marriage.
- **Canada (2005):** Became the first country outside Europe and the fourth country in the world to legalize same-sex marriage nationwide.
- **South Africa (2006):** The first and, so far, only African nation to legalize same-sex marriage.
- **United States (2015):** The Supreme Court ruling in Obergefell v. Hodges legalized same-sex marriage nationwide.

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COUNTRY-SPECIFIC CASE STUDIES: UNITED STATES

Legal Evolution of Homosexuality and Same-Sex Marriage Rights in the United States

The journey toward legal recognition of homosexuality and same-sex marriage in the United States has been marked by significant legal battles, cultural shifts, and policy changes.

1. Early Legal Stance on Homosexuality:

- Historically, homosexuality was criminalized in various states.
- The American Psychiatric Association listed homosexuality as a mental disorder until 1973.
- Early activism, like the Stonewall riots in 1969, marked the beginning of the modern gay rights movement.

2. Decriminalization of Homosexuality:

- The landmark Supreme Court case *Lawrence v. Texas* (2003) was pivotal. It struck down sodomy laws in Texas, effectively decriminalizing homosexual acts across the United States.

3. Path to Same-Sex Marriage Legalization:

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- Initial steps involved states recognizing civil unions and domestic partnerships, providing some legal rights to same-sex couples.
- Massachusetts became the first state to legalize same-sex marriage in 2004.
- A series of state-level legalizations and bans ensued, creating a patchwork of laws across the country.

4. **Obergefell v. Hodges (2015):**

- This historic Supreme Court decision was a turning point.
- The Court ruled that the fundamental right to marry is guaranteed to same-sex couples by both the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.
- This decision effectively legalized same-sex marriage nationwide.

5. **Current Legal Status and Implications:**

- Same-sex marriage is now legal across the United States.
- There are ongoing debates and legal battles concerning religious freedom and LGBTQ+ rights.

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- The legalization has had significant social and cultural implications, leading to increased visibility and acceptance of LGBTQ+ individuals.



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COUNTRY-SPECIFIC CASE STUDIES: CANADA

Journey Towards Legalizing Same-Sex Marriage in Canada

Canada's progress in legalizing same-sex marriage reflects a combination of legal, legislative, and social developments that highlight the country's commitment to LGBTQ+ rights.

1. Early Developments:

- Prior to the 2000s, same-sex relationships in Canada faced legal challenges and societal discrimination.
- Activism and advocacy for LGBTQ+ rights grew significantly during the late 20th century.

2. Legal Milestones Leading to Legalization:

- In 2003, the Ontario Court of Appeal declared the Canadian definition of marriage as unconstitutional for excluding same-sex couples, leading to the first legal same-sex marriages in Ontario.
- Other provinces and territories followed suit, recognizing the right to same-sex marriage through court decisions or legislative actions.

3. Civil Marriage Act (2005):

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- The pivotal moment came with the enactment of the Civil Marriage Act in 2005.
- This federal law made same-sex marriage legal across Canada, making it the first country outside Europe and the fourth country in the world to officially legalize same-sex marriage.
- The Act defines marriage for civil purposes as the lawful union of two persons to the exclusion of all others.

4. Key Legal Provisions and Cases:

- The Civil Marriage Act was not only about legalizing same-sex marriage but also about providing equal protection and benefits under the law, regardless of sexual orientation.
- The Act was a result of both legal advocacy and political will, showcasing a collaborative approach between the judiciary and legislature.

5. Social and Legal Impact:

- Legalizing same-sex marriage had a profound impact on Canadian society.
- It signified a broader acceptance and inclusion of the LGBTQ+ community.

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- It also set a precedent for other countries, demonstrating that inclusive marriage laws can coexist with religious and cultural diversity.



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COUNTRY-SPECIFIC CASE STUDIES: AUSTRALIA

Chronology of Legal Changes in Australia Regarding Same-Sex Marriage

Australia's path to recognizing same-sex marriage reflects a journey marked by societal shifts, political debates, and legal challenges, culminating in a significant legislative change.

1. Early Legal Stance and Societal Attitudes:

- Historically, Australia, influenced by its British colonial legacy, had laws that criminalized homosexual acts.
- The late 20th century saw gradual decriminalization of homosexuality across Australian states and territories, accompanied by increased advocacy for LGBTQ+ rights.

2. Civil Unions and Domestic Partnerships:

- Before the legalization of same-sex marriage, some Australian jurisdictions recognized civil unions or domestic partnerships, offering limited rights to same-sex couples.
- These were important steps but did not provide the full legal equivalence of marriage.

3. The Marriage Amendment (Definition and Religious Freedoms) Act 2017:

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- The significant turning point came in 2017 with the passage of this Act.
- The Act followed a nationwide postal survey, where 61.6% of participants supported legalizing same-sex marriage.
- It amended the definition of marriage in Australia's Marriage Act 1961 to include same-sex couples, thereby legalizing same-sex marriage across the country.

4. Key Features of the Legislation:

- The amendment changed the definition of marriage from "the union of a man and a woman" to "the union of two people."
- It also included provisions to recognize same-sex marriages performed in foreign jurisdictions.

5. Implications and Societal Impact:

- The legalization of same-sex marriage in Australia was celebrated as a major victory for LGBTQ+ rights.
- It reflected and further influenced a shift in societal attitudes towards greater acceptance and equality for LGBTQ+ individuals.

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COUNTRY-SPECIFIC CASE STUDIES: SOUTH AFRICA

South Africa's Unique Position in Legalizing Same-Sex Marriage

South Africa's path to legalizing same-sex marriage is notable for its distinct context and the role of its progressive constitution. This journey places South Africa as a leader in LGBTQ+ rights, particularly in Africa.

1. Background and Early Legal Context:

- Under apartheid, South Africa had laws criminalizing homosexual acts.
- The post-apartheid era, marked by the adoption of a new constitution in 1996, set the stage for significant changes. This constitution was the first in the world to outlaw discrimination based on sexual orientation.

2. Constitutional Protections and Legal Developments:

- The constitutional protection of LGBTQ+ rights led to a series of legal reforms and court rulings that progressively enhanced these rights.
- In 1998, the Constitutional Court of South Africa ruled in the National Coalition for Gay

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and Lesbian Equality v. Minister of Justice that the laws criminalizing homosexual conduct were unconstitutional.

3. **Minister of Home Affairs v. Fourie (2005):**

- A landmark case in the journey towards marriage equality.
- The Constitutional Court ruled that the existing marriage laws violated the constitution by denying same-sex couples the right to marry.
- The court gave the South African parliament one year to rectify the inconsistency.

4. **Civil Union Act (2006):**

- In response to the court's directive, Parliament passed the Civil Union Act in 2006.
- This Act allowed same-sex couples to form civil unions that provided the same legal rights as marriages for opposite-sex couples.
- South Africa became the first country in Africa and the fifth in the world to legalize same-sex marriage.

5. **Impact and Current Status:**

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- The legalization of same-sex marriage in South Africa was a monumental step in affirming LGBTQ+ rights in a region where such rights are often severely restricted.
- It showcased the power of constitutional protections in advancing human rights.
- Despite legal advancements, societal acceptance of LGBTQ+ individuals in South Africa is still evolving, with challenges remaining in terms of social stigma and discrimination.



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INTERNATIONAL HUMAN RIGHTS PERSPECTIVE ON SAME-SEX MARRIAGE

The recognition of same-sex marriage and LGBTQ+ rights is not only a national issue but also a matter of international human rights. This perspective involves understanding global human rights laws and how different countries, including India, align with these standards.

UN Declarations and Global Human Rights Laws

1. Universal Declaration of Human Rights (UDHR):

- Adopted in 1948, the UDHR sets out fundamental human rights to be universally protected. While it does not specifically mention LGBTQ+ rights, its principles of equality and non-discrimination have been interpreted to support these rights.
- Article 16 of the UDHR, which deals with the right to marry and to found a family, is often cited in discussions about same-sex marriage rights.

2. Yogyakarta Principles:

- Introduced in 2007, these principles are a set of international human rights standards specifically addressing sexual orientation and gender identity.

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- They affirm that all human beings are born free and equal in dignity and rights, and they outline the application of international human rights law in relation to sexual orientation and gender identity.

3. Role of International Human Rights Bodies:

- Various UN bodies, including the Human Rights Council and the Office of the High Commissioner for Human Rights, have increasingly recognized and advocated for the rights of LGBTQ+ individuals.
- Reports and resolutions have called for an end to discrimination and violence against LGBTQ+ people and for the recognition of their rights, including in the context of marriage.

Global Influence and Emerging Trends

- The international human rights perspective influences national policies and legal reforms, as seen in various countries that have legalized same-sex marriage.
- The trend towards recognizing LGBTQ+ rights, including marriage equality, is becoming more prominent, with international human rights law playing a significant role in this shift.

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- India, like many other countries, faces the challenge of integrating these international norms with its domestic legal and social landscape.

IMPACT ON SOCIETY AND CULTURE OF LEGALIZING SAME-SEX MARRIAGE

The legalization of same-sex marriage has profound implications not only legally but also on society and culture. This impact can be observed globally, including in the countries we've discussed (the United States, Canada, Australia, South Africa), and its comparison with the Indian context.

Societal Attitudes in Countries with Legalized Same-Sex Marriage

1. Increased Acceptance and Visibility:

- Legalizing same-sex marriage often leads to greater acceptance and visibility of LGBTQ+ individuals in society.
- In countries like the United States and Canada, this has translated into more inclusive policies in various sectors, including employment, healthcare, and education.

2. Cultural Shifts:

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- The recognition of same-sex marriage has influenced cultural expressions, media representation, and public discourse, contributing to a more open and inclusive culture.
- It has also encouraged a broader conversation about gender and sexual diversity.

3. Role of Legal Changes in Societal Acceptance:

- Legal changes, while crucial, are often a reflection of broader societal shifts. They can also further accelerate these shifts by legitimizing and normalizing LGBTQ+ identities and relationships.
- In countries like Australia and South Africa, legal recognition has played a key role in challenging stereotypes and reducing stigma.

Comparison with the Indian Scenario

- **Gradual Societal Shifts:** India is experiencing gradual shifts in societal attitudes towards LGBTQ+ individuals. The decriminalization of homosexuality in 2018 marked a significant step, but societal acceptance is still evolving.
- **Cultural and Regional Variations:** India's diverse cultural and religious landscape means that acceptance of LGBTQ+ individuals varies widely across different regions and communities.

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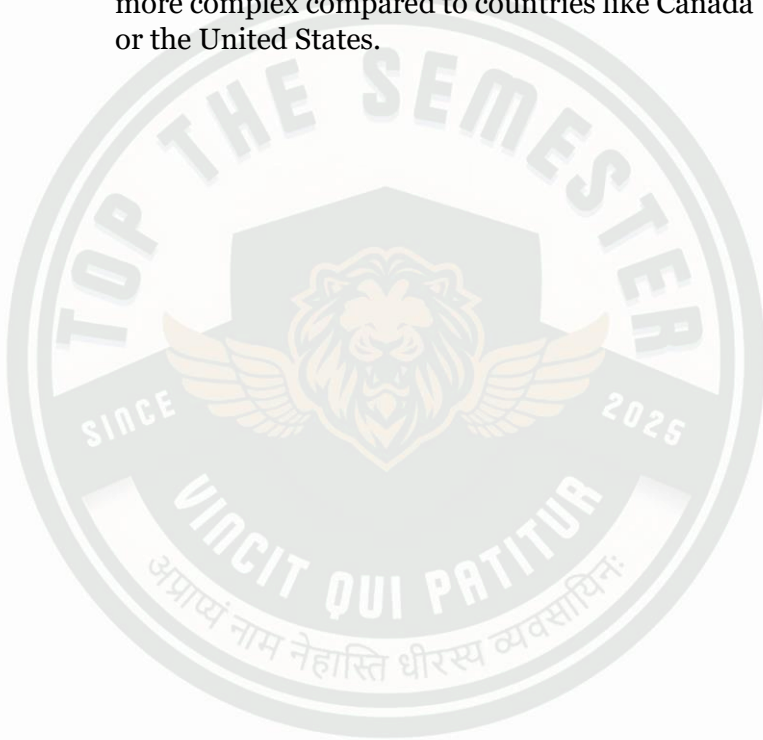
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- **Influence of Legal Changes on Social Norms:** The Indian legal system's approach to LGBTQ+ rights, characterized by judicial activism, has the potential to influence societal attitudes, though this process is often slower and more complex compared to countries like Canada or the United States.



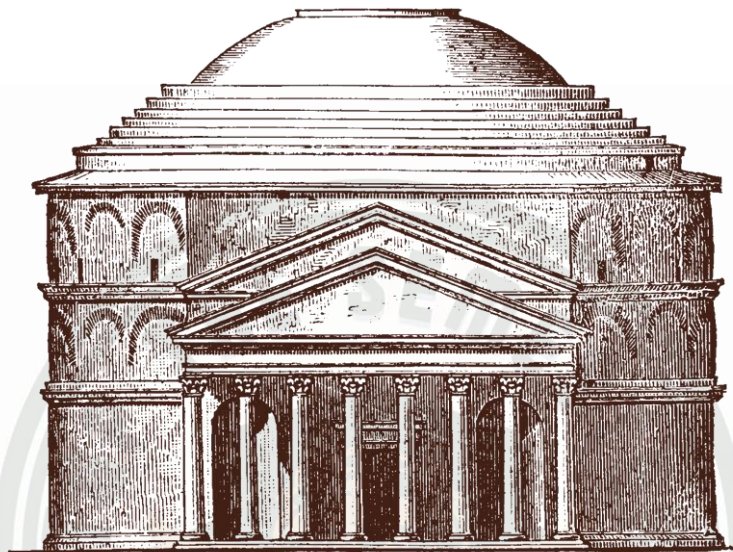
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REQUIRED CASE READINGS

CASE BRIEFS AND ANALYSIS

1. **T. Sivakumar v. Inspector of Police, Tiruvallur Town Police Station, AIR 2012 Mad 62**
2. **Gullipillisowria Rai v. Bhandaru Pavani, AIR 2009 SC 1085**
3. **Ghulam Kubra Bibi v. Md. Shafi Mohammad Din, AIR 1940 Peshawar 2**
4. **Goutam Kundu v. State of West Bengal, AIR 1993 SC 2295**
5. **Smt. Pinki Jain v. Sh. Sanjay Jain, AIR 2005 Delhi 273**
6. **Parveen Mehta v. Inderjit Mehta AIR 2002 SC 2582**
7. **Smt. Asha Gupta Alias Anju Gupta v. Rajiv Kumar, AIR 2005 P H 134**
8. **Narayan Ganesh Dastane v. Sucheta Narayan Dastane, 1975 AIR 1534**
9. **Bipin Chander Jaisinghbhai Shah v. Prabhawati, AIR 1957 SC 176**
10. **Rupa Ashok Hurra v. Ashok Hurra&Anr, AIR 2002 SC 177**
11. **Mohammed Ahmed v. Shah Bano and Anr., 1985 SCR (3) 84**

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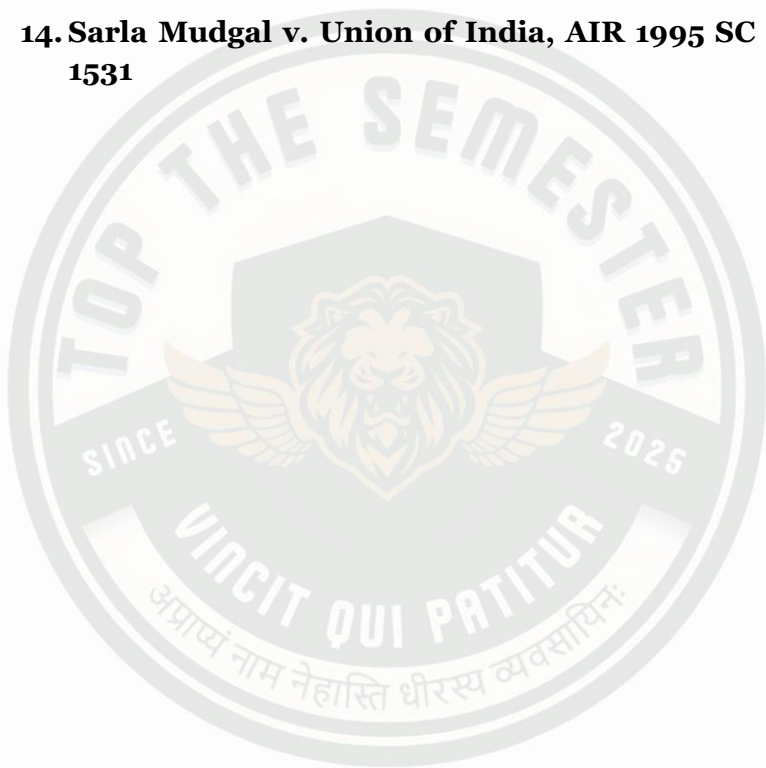
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12. ShayaraBano v. Union of India and others,
1985 (2) SCC 556
13. Danial Latifi and another v. Union of India,
(2001) 7 SCC 740
14. Sarla Mudgal v. Union of India, AIR 1995 SC
1531



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1.

**T. SIVAKUMAR V. INSPECTOR OF POLICE,
TIRUVALLUR TOWN POLICE STATION**

AIR 2012 MAD 62

Facts in Brief

The case revolves around Selvi. Sujatha, a 17-year-old girl, who is the daughter of the petitioner, T. Sivakumar. She was studying in a Higher Secondary School at Tiruvallur and was staying at the house of the petitioner's sister. On 08.06.2011, she went to a local temple but did not return. The petitioner learned that the 2nd respondent, Thiru.Anbu, along with others, had allegedly kidnapped her. A complaint was lodged before the 1st respondent, the Inspector of Police, Tiruvallur Town Police Station, on 20.06.2011, leading to the registration of a case under Section 366(A) of IPC. The petitioner filed a habeas corpus petition, alleging that the minor was kept illegally by the kidnappers.

The 3rd respondent, Thiru.Samandan, is the father of the 2nd respondent. When the habeas corpus petition came up for hearing, the minor detenue appeared before the Division Bench and filed an affidavit stating that she had fallen in love with the 2nd respondent for quite some time. She claimed that her parents were arranging her marriage with her maternal uncle against her wish. Therefore, she left her parental home on her own accord on 08.06.2011, and on 12.07.2011, she married the 2nd

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respondent. She stated that she was not illegally detained by anybody.

Issues

The primary issue in this case was the legality and validity of the marriage between the minor detinue and the 2nd respondent. The court had to determine whether the minor detinue was in a position to make an intelligent preference to go with the 2nd respondent and whether, after the said marriage, the 2nd respondent became the legal guardian. The court also had to consider the welfare of the minor detinue.

Arguments

The learned counsel for the respondents 2 and 3 argued that since the detinue was in a position to make an intelligent preference to go with the 2nd respondent and since after the said marriage, the 2nd respondent is the legal guardian, the detinue should be set at liberty to go along with the 2nd respondent.

On the other hand, the learned counsel for the petitioner opposed this on several grounds, projecting the welfare of the minor detinue. They argued that the minor was not

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in a position to make an intelligent decision about her life and that her welfare would be compromised if she were allowed to stay with the 2nd respondent.

Held

The court held that the welfare of the minor child is the paramount consideration in such cases, irrespective of the legal rights of the parties involved. The court referred to several judgments, including Elizabeth Dinshaw v. Arvand M. Dinshaw, (1987) 1 SCC 42, and Ruchi Majoo v. Sanjeev Majoo, (2011) 6 SCC 479, which clearly laid down that when the question of custody of a minor child comes up for consideration before a court of law, the court is concerned with the paramount interest and welfare of the minor rather than considering the legal right of the parties fighting before the court for custody.

The court also noted that the minor detainee was too young and immature to make an independent decision about her life. The court directed that the minor detainee be kept in a Government Children's Home for her welfare. The court did not accept the argument that the 2nd respondent became the legal guardian of the minor detainee after their marriage.

The court also referred to the decision of the Madras High Court in the case of Muthuswami Moopanar (AIR 1935 Madras 195), where the court observed that if a minor has for many years from a tender age lived with grandparents

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or near relatives and has been well cared for, and during that time the minor's father has shown a lack of interest in the minor, these are circumstances of very great importance, having bearing upon the question of the interest and welfare of the minor and on the bona fides of the petition by the father for their custody.

Legal principles with relevant sections:

The court in the case of T.Sivakumar vs The Inspector Of Police on 3 October, 2011, discussed several legal principles and relevant sections of various acts. The primary legal principles and sections discussed are as follows:

- Section 3 of the Prohibition of Child Marriage Act: This section states that a child marriage is voidable at the option of the contracting party who was a child at the time of the marriage. The court held that the marriage contracted by a person with a female of less than 18 years is voidable and the same shall be subsisting until it is annulled by a competent court under this section.
- Section 6(c) of the Hindu Minority and Guardianship Act, 1956: This section states that the natural guardian of a Hindu minor, in the case of a girl, is the husband if she is married. However, the court held that this section stands impliedly repealed by the

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Prohibition of Child Marriage Act. Therefore, an adult male who marries a female child in violation of section 3 of the Prohibition of Child Marriage Act shall not become the natural guardian of the female child.

- Section 9 of the Prohibition of Child Marriage Act: This section provides for punishment for male adult marrying a child, and the court emphasized that the offence is cognizable and non-bailable.

Obiter dictum:

The obiter dictum in this case is the court's commentary on the societal and legal implications of child marriages. The court noted that child marriage is a human rights violation with serious consequences for national development, education, and health opportunities. The court also emphasized the need for more stringent laws and better enforcement to combat child marriages.

Important para from judgement :

“In our considered opinion, the marriage shall remain voidable [vide Section 3] and the said marriage shall be subsisting until it is avoided by filing a petition for a decree of nullity by the child within the time prescribed... If within two years from the date of attaining eighteen years in the case of a female... a petition is not filed... the

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marriage shall become a full-fledged valid marriage... Until such an event... the marriage shall continue to remain as a voidable marriage.”

Subsequent Impact :

The judgement in this case has had a significant impact on the interpretation and application of laws related to child marriage in India. The court's decision to interpret the Prohibition of Child Marriage Act as implicitly repealing section 6(c) of the Hindu Minority and Guardianship Act has clarified the legal status of adult males who marry female children. This interpretation has helped to strengthen the legal protections for female children against child marriage.

Furthermore, the court's directions for handling the custody of minor girls whose marriages have been procured in violation of the Prohibition of Child Marriage Act have provided valuable guidance for future cases. These directions help to ensure that the welfare and safety of the minor girl are prioritized in such cases.

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2.

GULLIPILLI SOWRIA RAJ V. BANDARU
PAVANI

AIR 2009 SC 1085

Facts in Brief

The case revolves around the marriage between the appellant, Gullipilli Sowria Raj, a Roman Catholic Christian, and the respondent, Bandaru Pavani, a Hindu. The marriage took place on 24.10.1996 in a temple only by the exchange of 'Thali' and in the absence of any representative from either side. The marriage was subsequently registered on 2.11.1996 under Section 8 of the Hindu Marriage Act, 1955.

Soon after the marriage, on 13.3.1997, the respondent-wife filed a petition before the Family Court at Vishakapatnam, under Section 12(1)(c) of the Hindu Marriage Act, 1955, for a decree of nullity of the marriage. The main ground for declaring the marriage to be a nullity was the misrepresentation by the appellant regarding his social status and that he was a Hindu by religion, although it transpired after the marriage that the appellant and his family members all professed the Christian faith.

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Issues

The primary issue in this case was the validity of the marriage between a Hindu and a Christian under the Hindu Marriage Act, 1955. The court had to determine whether the marriage was valid under the provisions of the Hindu Marriage Act, 1955, and whether the appellant's misrepresentation of his religious faith could be a ground for declaring the marriage null and void. The main issue before the court was to determine when and where the contract of sale occurred in a self-service store. Specifically, the issue was whether the display of an item constituted an offer (as argued by the Pharmaceutical Society) or an invitation to treat (as argued by Boots).

Arguments

The appellant's counsel argued that the Hindu Marriage Act, 1955, does not preclude a Hindu from marrying a person of some other faith. They contended that the conditions indicated in Section 5 of the Act were optional, and the marriage could not be said to be a void marriage. They further argued that the marriage could be said to be a voidable marriage and the High Court had erred in allowing the respondent's application under Section 12(1)(c) of the Act on the misconception of the provisions thereof.

On the other hand, the respondent's counsel argued that the Act was promulgated to amend and codify law

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relating to marriage amongst Hindus. They contended that the Act and its provisions would apply to Hindus only, and a person professing the Christian faith is specifically excluded from its ambit. They further argued that each religious community in India had their own form of marriages which excluded members of other religious communities.

Held

The court held that the marriage between a Hindu and a Christian under the Hindu Marriage Act, 1955, is void ab initio and that the marriage was, therefore, a nullity. The court disagreed with the appellant's argument that the Hindu Marriage Act, 1955, does not preclude a Hindu from marrying a person of some other faith. The court referred to the Preamble to the Hindu Marriage Act, 1955, which makes it clear that the Act was promulgated to amend and codify law relating to marriage amongst Hindus. The court also referred to Section 2 of the Act which indicates that the Act applies to Hindus only and a person professing the Christian faith is specifically excluded from its ambit.

The court also held that the conditions indicated in Section 5 of the Act were not optional, and non-fulfilment thereof would not permit a marriage under the Act between two Hindus. The court concluded that the marriage solemnized in accordance with Hindu customs was a nullity and its registration under Section 8 of the

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Act could not and/or did not validate the same. The court dismissed the appeal and upheld the High Court's judgement.

Legal principles with relevant sections:

The case of Gullipilli Sowria Raj vs Bandaru Pavani @ Gullipili Pavani primarily revolves around the interpretation of the Hindu Marriage Act, 1955. The legal principles and relevant sections discussed in the case are as follows:

- **Section 5 of the Hindu Marriage Act, 1955:** This section prescribes the conditions for a Hindu marriage. The opening words of Section 5 are: "A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely :...". The interpretation of the word 'may' in this context was a point of contention in the case. The appellant argued that the use of the word 'may' indicates that the conditions were not mandatory and that as a result, the said conditions would not be binding on the marriage performed between the appellant and the respondent. However, the court disagreed with this interpretation, stating that the conditions in Section 5 are mandatory for a marriage to be recognized under the Hindu Marriage Act, 1955.
- **Section 11 of the Hindu Marriage Act, 1955:** This section deals with void marriages and states:

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"Any marriage solemnized after 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 so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v), Section 5." The court held that the marriage between the appellant and the respondent was void as it contravened the conditions specified in Section 5.

- **Section 12(1)(c) of the Hindu Marriage Act, 1955:** This section was invoked by the respondent to seek a decree of nullity of the marriage on the grounds of misrepresentation by the appellant regarding his social status and religion.

Obiter dictum :

An obiter dictum is a remark or observation made by a judge that, although included in the body of the court's opinion, does not form a necessary part of the court's decision. In the context of this case, the obiter dictum could be the court's observation on the interpretation of the word 'may' in Section 5 of the Hindu Marriage Act, 1955. The court opined that the use of the word 'may' in the opening words of Section 5 is not directory, but mandatory, and non-fulfilment thereof would not permit a marriage under the Act between two Hindus.

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Important para from judgement :

"In order to appreciate the same, we may first refer to the Preamble to the Hindu Marriage Act, 1955 , which reads as follows: 'An Act to amend and codify the law relating to marriage among Hindus'. As submitted by Mr. Rao, the Preamble itself indicates that the Act was enacted to codify the law relating to marriage amongst Hindus. Section 2 of the Act which deals with application of the Act, and has been reproduced hereinabove, reinforces the said proposition. Section 5 of the Act thereafter also makes it clear that a marriage may be solemnized between any two Hindus if the conditions contained in the said Section were fulfilled. The usage of the expression 'may' in the opening line of the Section, in our view, does not make the provision of Section 5 optional. On the other hand, it in positive terms, indicates that a marriage can be solemnized between two Hindus if the conditions indicated were fulfilled. In other words, in the event the conditions remain unfulfilled, a marriage between two Hindus could not be solemnized. The expression 'may' used in the opening words of Section 5 is not directory, as has been sought to be argued, but mandatory and non-fulfilment thereof would not permit a marriage under the Act between two Hindus. Section 7 of the 1955 Act is to be read along with Section 5 in that a Hindu marriage, as understood under Section 5, could be solemnized according to the ceremonies indicated therein."

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Subsequent Impact :

The judgement in the case of Gullipilli Sowria Raj vs Bandaru Pavani @ Gullipili Pavani has had a significant impact on the interpretation of the Hindu Marriage Act, 1955. It has clarified that the conditions specified in Section 5 of the Act are mandatory for a marriage to be recognized under the Act, and that a marriage between a Hindu and a non-Hindu cannot be solemnized under the Act. This has implications for interfaith marriages in India, as it underscores the need for such marriages to be conducted under the Special Marriage Act, 1954, which provides a framework for interfaith marriages.



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3.

**GHULAM KUBRA BIBI V. MD. SHAFI
MOHAMMAD DIN**

AIR 1940 PESHAWAR 2

Facts in Brief:

The litigation arose from a suit instituted by Mohammad Shafi seeking restitution of conjugal rights against Mt. Ghulam Kubra Bibi, whom he claimed to be his lawfully wedded wife. He also sought an injunction restraining her parents from interfering with the alleged marital relationship.

The defendant denied the existence of any valid marriage, disputing both the fact of the nikah and the validity of her consent. The dispute therefore centred not on dissolution, but on whether a lawful marriage had ever been contracted under Mahomedan law.

At trial, the Mullah who purportedly officiated the marriage testified that he read the nikah at the request of the girl's grandfather but acknowledged that no one had gone inside to obtain her consent prior to the ceremony. Other witnesses claimed to have been present but provided vague and incomplete testimony regarding the procedure and the identity of witnesses.

The Trial Court held that the marriage was proved and decreed restitution of conjugal rights. On first appeal, the District Court affirmed the decree but declined to grant the injunction against the parents.

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In second appeal before the Peshawar High Court, the principal issue was whether a valid Muslim marriage had been proved. The Court examined the evidentiary record, including customary practices relating to consent in pardah marriages, and concluded that the essential requirements of a valid *nikah* had not been established. The decree for restitution was accordingly set aside.

Issues:

The case presented the following principal issues under Mahomedan law:

1. **Proof of a Valid Marriage**

Whether the alleged *nikah* satisfied the essential requirements of Muslim marriage—namely, proposal and acceptance at the same meeting, the presence of two competent witnesses, and lawful consent of the parties.

2. **Sufficiency of Evidence**

Whether vague and general assertions regarding the presence of witnesses, without particulars of the ceremony or procedure, were sufficient to establish a valid marriage in law.

3. **Consent of the Bride**

Whether the consent of the bride had been duly obtained, particularly in light of testimony indicating that no inquiry was made of her prior to the ceremony.

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4. Effect of Age

Given that the bride was alleged to be of age (above the age of presumed puberty), whether her personal consent was legally indispensable to the validity of the marriage.

5. Maintainability of Restitution

Whether a decree for restitution of conjugal rights could be sustained in the absence of proof of a valid and subsisting marriage.

Arguments:

Plaintiff's Case.

Mohammad Shafi contended that a valid *nikah* had been duly solemnised. He relied on testimony that the Mullah had read the marriage ceremony and that witnesses were present. It was argued that customary practice permitted the marriage to be arranged through a guardian, and that the existence of the ceremony and witnesses sufficed to establish a lawful union. On this basis, he claimed entitlement to restitution of conjugal rights.

Defendant's Case.

Mt. Ghulam Kubra categorically denied the marriage. She argued that the essential requirements of a valid Muslim marriage—particularly her consent—had not been proved. The evidence adduced, she submitted, was vague, unsupported by particulars, and legally insufficient. Emphasis was placed on the principle that marriage must

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be clearly established, and that mere assertions regarding witnesses or ceremony cannot substitute for proof of compliance with mandatory requirements.

Age and Consent.

It was admitted that the defendant was approximately seventeen years old at the relevant time. The defendant maintained that, being of age under Mahomedan law, her consent was indispensable. The plaintiff, however, argued that a guardian could validly arrange the marriage.

Credibility of Evidence and Custom.

The defence further challenged the credibility of the plaintiff's witnesses, noting their inability to describe the procedure in detail. While the plaintiff invoked local custom, the defendant contended that custom cannot dispense with the essential legal elements of a valid *nikah*.

Held:

(A) Essential Requirements Not Proved

The Peshawar High Court held that the essential elements of a valid Muslim marriage had not been established. Under Mahomedan law, a valid *nikah* requires (i) offer and acceptance at the same meeting, (ii) the presence of two competent witnesses, and (iii) where the bride has attained puberty, her consent. The evidence failed to demonstrate compliance with these

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requirements. There was no clear proof of consent, and the procedure of the ceremony was not satisfactorily established.

(B) Insufficiency of Vague Testimony

The Court emphasised that mere assertions that witnesses were present or that a ceremony occurred are insufficient. Proof must establish that the legally required procedure was followed in substance and form. Vague or general testimony cannot sustain a finding of marriage.

(C) Necessity of Bride's Consent

As the defendant was approximately seventeen years of age and thus major under Mahomedan law, her consent was indispensable. The absence of evidence proving such consent rendered the alleged marriage invalid.

(D) Dismissal of Suit for Restitution

In the absence of proof of a valid and subsisting marriage, the plaintiff had no enforceable right to restitution of conjugal rights. The decree of the lower courts was set aside, the defendant's appeal was allowed, and the plaintiff's claim, including the prayer for injunction, was dismissed.

(E) Legal Significance

The decision clarified that marriage under Muslim law must be strictly proved by evidence demonstrating fulfilment of essential requirements, and cannot be presumed from vague or incomplete testimony.

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Legal principles with relevant sections:

(A) Essentials of a Valid Muslim Marriage

The Court reaffirmed that a Muslim marriage (*nikah*) is a civil contract requiring:

1. **Proposal (ijab) and acceptance (qubool)** at the same meeting;
2. **Presence of two competent witnesses** (in Sunni law) who hear the offer and acceptance;
3. **Lawful consent of the parties**, where they are major.

Failure to establish these essentials renders the marriage invalid.

(B) Consent of the Bride

The Court emphasised that where the bride has attained puberty—presumed at fifteen under Mahomedan law—her consent is indispensable. As the defendant was seventeen, proof of her personal consent was mandatory. Absence of such proof was fatal to the claim.

(C) Role of the Guardian

While a lawful guardian may contract a minor's marriage, such authority does not extend to marrying a major woman without her consent. Even in cases of guardianship, the formal requirements of offer, acceptance, and witnesses must be satisfied.

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(D) Standard of Proof

A central holding of the judgment is that marriage must be strictly proved. Mere assertions that witnesses were present or that a ceremony occurred are insufficient. The evidence must demonstrate compliance with all essential elements of a valid *nikah*. Given the legal consequences of marital status—including rights of legitimacy, inheritance, maintenance, and property—presumption cannot substitute for proof.

(E) Restitution of Conjugal Rights

The Court reaffirmed that restitution presupposes a valid and subsisting marriage. In the absence of proof of marriage, no decree for restitution can be sustained.

Obiter dictum:

(A) Marriage Procedure in Pardah Context

The Court described the customary practice in *pardah*-observing households, where a male relative enters the inner quarters to obtain the bride's consent before the ceremony. Although not essential to the ratio, this discussion provided sociological context and demonstrated judicial recognition of local custom while insisting on compliance with legal requirements.

(B) Evidentiary Caution in Matrimonial Status

The Court underscored the unreliability of vague testimony regarding marriage ceremonies. Given that

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marriage determines personal status and carries significant legal consequences, strict and cogent proof is required.

(C) Clarification on Age and Majority

The judgment noted confusion between general statutory notions of majority and the rule under Mahomedan law that presumes puberty at fifteen for purposes of marriage. This clarification, though incidental, served to delineate the applicable legal standard.

(D) Centrality of Consent

While not articulated in constitutional terms, the reasoning reflects a clear emphasis on the indispensability of consent in marriage, thereby reinforcing protection against forced unions within the framework of personal law.

Important paras from the judgement

“According to Mahomedan law it is absolutely necessary that the man or someone on his behalf and the woman or someone on her behalf should agree to the marriage at one meeting and the agreement should be witnessed by two adult witnesses... the vague allegation that there were two witnesses of the nikah has no value and it should be proved that the whole procedure has been gone through.”

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Subsequent Impact of the judgement:

(A) Standard of Proof in Muslim Marriage Disputes

The decision reinforced the requirement of strict proof where the validity of a Muslim marriage is contested. Subsequent courts insisted upon clear evidence of compliance with essential formalities, particularly in cases concerning maintenance, inheritance, bigamy, and restitution of conjugal rights.

(B) Centrality of Consent

The emphasis on the consent of an adult Muslim woman informed later jurisprudence, strengthening judicial scrutiny in cases where consent was doubtful or disputed.

(C) Restitution of Conjugal Rights

The judgment influenced courts to examine the validity of marriage as a threshold issue before granting restitution, thereby limiting the remedy to cases where a lawful and subsisting marriage was established.

(D) Clarification of Legal Standards

By distinguishing the rule of puberty under Mahomedan law from general statutory notions of majority, the decision contributed to doctrinal clarity and greater consistency in the application of personal law principles.

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4.

GOUTAM KUNDU V. STATE OF WEST BENGAL,

AIR 1993 SC 2295

Facts in Brief

The case involves Goutam Kundu (the appellant) and his wife (the second respondent). The couple got married on January 16, 1990, according to Hindu rites and customs. The wife moved to her parents' home to prepare for her Higher Secondary Examination, during which time she conceived. The appellant and his family members wanted her to undergo an abortion, which she refused. A female child was born on January 3, 1991.

The wife filed a petition under section 125 of the Criminal Procedure Code (Cr.P.C.) for herself and the child, and the court granted maintenance to both. The appellant disputed the paternity of the child and filed a criminal miscellaneous application for a blood group test of the wife and the child. He claimed that if it could be established that he was not the father of the child, he would not be liable to pay maintenance. The application was dismissed, and the appellant's revision application was also rejected by the High Court.

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Issues

The main issue in this case was whether the courts in India can order a blood group test to determine the paternity of a child. The appellant sought to disprove his paternity of the child through a blood group test, arguing that if he could establish that he was not the father, he would not be liable to pay maintenance. The court had to determine whether it had the authority to order such a test and whether the appellant's request was valid.

Arguments

The appellant's counsel argued that the only way for the father to disprove the paternity is by a blood group test. They contended that denying that request would be unreasonable, especially considering the advancements in medical jurisprudence. They pointed to English law, where blood tests are commonly used when paternity is in question.

On the other hand, the respondents argued that Section 112 read with Section 4 of the Evidence Act debars evidence except in cases of non-access for disproving the presumption of legitimacy and paternity. They contended that the presumption of a child's legitimacy can only be displaced by a strong preponderance of evidence and not by a mere balance of probabilities.

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Held

The Supreme Court held that courts in India cannot order a blood group test as a matter of course. Unlike English law, there is no special statute in India that empowers the courts to direct such a test. The court stated that applications for a blood group test cannot be entertained if their purpose is to have a roving inquiry.

The court also held that Section 112 of the Evidence Act creates a presumption that a child born during the lawful wedlock is legitimate, and that access occurred between the parties. This presumption can only be displaced by a strong preponderance of evidence and not by a mere balance of probabilities. The court stated that there must be a strong prima facie case, and the husband must establish non-access in order to dispel the presumption arising under Section 112 of the Evidence Act.

The court further held that no person can be compelled to give a sample of blood for analysis, and no adverse inference can be drawn against a person on account of such refusal. The court dismissed the appeal and upheld the High Court's judgement.

Legal Principles with Relevant Sections

The legal principles in this case revolve around the legitimacy of a child born during the continuance of a valid marriage. The primary legal section referred to is Section 112 of the Indian Evidence Act. This section is

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based on the maxim "pater est quem nuptioe demonstrant," which means "he is the father whom the marriage indicates." The law presumes that a child born of a married woman is legitimate, and the burden of proving otherwise falls on the person who is interested in making out the illegitimacy. This presumption can only be displaced by a strong preponderance of evidence, and not by a mere balance of probabilities. The section requires the party disputing the paternity to prove non-access in order to dispel the presumption. "Access" and "non-access" mean the existence or non-existence of opportunities for sexual intercourse; it does not mean actual cohabitation.

Obiter Dictum

The obiter dictum in this case is the court's observation that courts in India cannot order blood tests as a matter of course. The court must carefully examine the consequences of ordering a blood test, as it could potentially brand a child as a bastard and the mother as an unchaste woman. The court also noted that no one can be compelled to give a sample of blood for analysis

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Important Para from Judgement

“From the above discussion it emerges:-

- (1) that courts in India cannot order blood test as matter of course;
- (2) wherever applications are made for such prayers in order to have roving inquiry, the prayer for blood test cannot be entertained;
- (3) There must be a strong prima facie case in that the husband must establish non-access in order to dispel the presumption arising under Section 112 of the Evidence Act;
- (4) The court must carefully examine as to what would be the consequence of ordering the blood test; whether it will have the effect of branding a child as a bastard and the mother as an unchaste woman;
- (5) No one can be compelled to give sample of blood for analysis.”

Subsequent Impact of the Judgement

The subsequent impact of the judgement is not explicitly mentioned in the document. However, the judgement sets a precedent for future cases involving disputes over the paternity of a child born during the continuance of a valid marriage. It emphasizes the importance of the presumption of legitimacy under Section 112 of the

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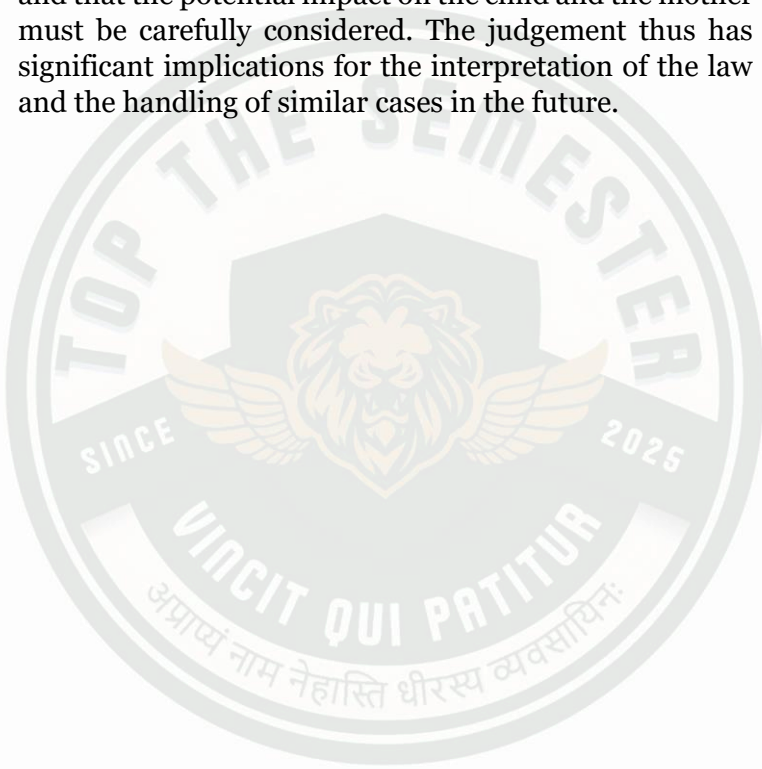
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Indian Evidence Act and the high burden of proof required to displace this presumption. It also underscores the limitations on the use of blood tests in such disputes, noting that they cannot be ordered as a matter of course and that the potential impact on the child and the mother must be carefully considered. The judgement thus has significant implications for the interpretation of the law and the handling of similar cases in the future.



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5.

SMT. PINKI JAIN V. SH. SANJAY JAIN

AIR 2005 DELHI 273

Facts in Brief

The case of Smt. Pinki Jain v. Sh. Sanjay Jain was heard in the Delhi High Court on 31st January 2005. The appeal was against the order dated 24th December 1999 passed by the Additional District Judge, which allowed the respondent-husband's petition under Section 13(1) (i.e.) of the Hindu Marriage Act, 1955. The respondent-husband sought dissolution of marriage by a decree of divorce on the grounds of cruelty.

The respondent-husband alleged various instances of cruelty by the appellant-wife, which were detailed in the impugned judgment. The appellant-wife denied these allegations and claimed that the petition was filed because she did not satisfy the respondent's greed for more dowry. The respondent-husband, his father, and uncle were arrested based on a complaint lodged by the appellant-wife at Meerut, under various sections of the Indian Penal Code and the Dowry Prohibition Act. They remained in jail for about ten days.

A mutual settlement was reached between the parties, under which the appellant agreed to receive a sum of Rs. 5,25,000/- towards full and final settlement for divorce by mutual consent. However, after receiving part of the settlement, the appellant resiled from the agreement and

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did not agree for divorce by mutual consent. The respondent-husband and other co-accused persons were acquitted by the CJM vide order dated 6.6.95.

Issues

The primary issue in this case was whether the actions of the appellant-wife constituted cruelty under the Hindu Marriage Act, 1955, and whether these actions justified the dissolution of the marriage by a decree of divorce. The court also had to consider whether the appellant-wife's failure to fulfill the terms of the mutual settlement agreement constituted an act of cruelty.

Arguments

The appellant-wife argued that the burden of proof lay on the husband who filed the divorce petition to prove the alleged instances of cruelty. She contended that the failure to examine her relations could not be taken as a factor against her, nor could the respondent's case be strengthened just because she did not examine her relations. She also argued that many other instances of cruelty allegedly took place in the presence of some relations of the husband, but he too did not examine any of them.

The respondent-husband argued that the appellant-wife's actions, including lodging a false complaint leading to his

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arrest and imprisonment, and her failure to abide by the terms of the mutual settlement agreement, constituted acts of cruelty. He also cited various other instances of cruelty by the appellant-wife.

Held

The court held that the appellant-wife's actions clearly amounted to an act of cruelty. The court noted that the appellant-wife had lodged a false complaint, which led to the arrest and imprisonment of the respondent-husband and his relatives. The court also noted that the appellant-wife had agreed to a mutual settlement agreement for divorce but later resiled from the agreement after receiving part of the settlement.

The court found that these actions by the appellant-wife constituted a clear instance of cruelty. The court also noted that the appellant-wife did not examine her relations in whose presence some of the alleged incidents of cruelty took place. The court, therefore, upheld the decision of the Additional District Judge, which allowed the respondent-husband's petition for divorce on the grounds of cruelty.

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Legal Principles with Relevant Sections

The legal principles applied in this case are primarily based on Section 13(1)(i-a) of the Hindu Marriage Act, 1955. This section provides for the dissolution of marriage by a decree of divorce on the ground of cruelty. The court found that the appellant wife had lodged a false complaint at Meerut, leading to the arrest of the respondent husband, his father, and uncle. They remained in jail for about ten days. This act was considered by the court as an instance of cruelty.

The court also referred to the case of GVN Kameswara Rao v. G. Jabilli, where the Supreme Court defined mental cruelty in Section 13(1)(i-a) as "that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other." The court held that the appellant's actions amounted to such mental cruelty.

Obiter Dictum

The obiter dictum in this case is the court's observation regarding the nature of cruelty and its impact on marital relationships. The court noted that what constitutes cruelty can vary from case to case, depending on the social status, educational level of the parties, the society they move in, and other relevant facts and circumstances. The court also observed that false accusations and

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allegations can amount to cruelty, especially when they lead to the arrest and imprisonment of the accused party.

Important Para from Judgement

“The act of the appellant in filing a false complaint case and getting her husband and other in-laws arrested clearly amounts to cruelty.”

This is the **ratio decidendi** of the case.

Why it is crucial:

- The wife lodged a complaint under Sections 498A etc.
- Husband and relatives were arrested and jailed for about 10 days.
- The wife later admitted before the CJM that the complaint was not based on true facts.
- She accepted settlement money and later resiled.

The Court treated this as **clear mental cruelty**, sufficient by itself to justify divorce.

Subsequent Impact of the Judgement

The judgement in this case has significant implications for how courts interpret and apply the concept of cruelty in divorce cases. It underscores the principle that false accusations and allegations, especially when they lead to

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the arrest and imprisonment of the accused party, can amount to cruelty under Section 13(1)(i-a) of the Hindu Marriage Act, 1955.

6.

PARVEEN MEHTA V. INDERJIT MEHTA

AIR 2002 SC 2582

Facts in Brief

The case of Parveen Mehta v. Inderjit Mehta was heard in the Supreme Court of India on 11th July 2002. The appellant, Parveen Mehta, is the wife of the respondent, Inderjit Mehta. They were married according to Hindu rites and customs on 6th December 1985. After marriage, the spouses stayed together at Panipat where the respondent was posted as a Judicial Officer. They lived together till 28th April 1986 when they parted company, never to stay together again.

The respondent claimed that right from the first day of the marriage, he sensed something abnormal with his wife; he was unable to consummate the marriage as there was no cooperation from the side of the wife for sexual intercourse. Despite several attempts, cohabitation was not possible due to a lack of cooperation on the part of the wife. The respondent also noticed that the appellant was looking very frail and weak, and upon questioning, he

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learned that she had been undergoing strict diet control and had been making efforts to reduce her weight.

Issues

The primary issue in this case was the interpretation and application of the term 'cruelty' as a matrimonial offence. The court had to determine whether the appellant's actions, or lack thereof, constituted cruelty under the Hindu Marriage Act, 1955, and whether these actions justified the dissolution of the marriage by a decree of divorce.

Arguments

The appellant argued that the respondent's allegations were false and that her actions did not constitute cruelty. She contended that her health condition and inability to consummate the marriage should not be grounds for divorce.

The respondent argued that the appellant's lack of cooperation for sexual intercourse, her refusal to seek proper medical treatment to improve her health, and her false plea in the case that she had conceived but unfortunately there was a miscarriage, all constituted acts of cruelty. He also pointed out that the appellant had approached the police complaining against him and his parents, causing him mental depression.

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Held

The court held that the cumulative effect of the appellant's actions amounted to mental cruelty caused due to her stubborn attitude and inexplicably unreasonable conduct. The court noted that the appellant's refusal to seek proper medical treatment, her false plea of miscarriage, and her complaint against the respondent and his parents were bound to cause a sense of mental depression in the respondent.

The court found that these actions by the appellant constituted a clear instance of cruelty. The court also noted that the parties had parted ways in 1986 and despite several attempts by relatives and well-wishers, no conciliation between them was possible. The respondent had also remarried in the year 2000. On these grounds, the court inferred that the marriage between the parties had broken down irretrievably without any fault on the part of the respondent.

Legal principles with relevant sections

The legal principles in the case of Parveen Mehta vs Inderjit Mehta revolve around the interpretation of 'cruelty' as a ground for divorce under the Hindu Marriage Act, 1955. The case primarily dealt with Section 13(1)(ia) of the Act, which provides for divorce on the grounds of cruelty.

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The court emphasized that cruelty includes both physical and mental cruelty. The legal conception of cruelty and the degree of cruelty necessary to amount to a matrimonial offence has not been defined under the Act. The court referred to the accepted legal meaning of cruelty as 'conduct of such character as to have caused danger to life, limb or health (bodily or mental), or as to give rise to a reasonable apprehension of such danger' (Russel v. Russel [(1897) AC 395 and Mulla Hindu Law, 17th Edition, Volume II

The court also referred to its previous judgments in Dastane vs. Dastane, AIR 1975 SC 1534, Savitri Pandey vs. Prem Chandra Pandey, (2002) 2 SCC 73, and G.V.N.Kameswara Rao vs. G.Jabilli, (2002) 2 SCC 296, to elucidate the concept of mental cruelty. It was noted that mental cruelty is the conduct of the other spouse which causes mental suffering or fear to the matrimonial life of the other. The court also emphasized that the application of the rule must depend on the circumstances of each case.

Obiter dictum

The obiter dictum in this case is the court's observation on the interpretation of 'cruelty' under the Hindu Marriage Act. The court noted that the term 'cruelty' is not defined in the Act and its interpretation depends on the circumstances of each case. The court also observed that mental cruelty can be considered a ground for

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divorce, and it is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner.

Important para from judgement

“Cruelty for the purpose of Section 13(1)(ia) is to be taken as a behavior by one spouse towards the other which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship... Mental cruelty is a state of mind... It is necessarily a matter of inference to be drawn from the facts and circumstances of the case.”

Subsequent Impact of the judgement

The subsequent impact of the judgment is not explicitly mentioned in the document. However, the judgment has likely influenced the interpretation of 'cruelty' in divorce cases under the Hindu Marriage Act. It has set a precedent for considering both physical and mental cruelty as grounds for divorce, and for the principle that the application of the rule must depend on the circumstances of each case. It has also emphasized that it is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner.

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7.

SMT. ASHA GUPTA ALIAS ANJU GUPTA V.

RAJIV KUMAR

AIR 2005 P H 134

Facts in Brief

The case of Smt. Asha Gupta Alias Anju Gupta v. Rajiv Kumar was heard in the Punjab-Haryana High Court. The appellant, Smt. Asha Gupta, is the wife of the respondent, Rajiv Kumar Gupta. They were married on 26th October 1985 and lived together as husband and wife until 26th September 1987.

The respondent alleged that on the first night after marriage, the appellant had told him that her marriage with him was solemnised against her wishes and that she was forced to marry him by her parents and elder brother. The respondent also claimed that the appellant avoided sexual relations with him on the first night and for some days thereafter. The first time they had sexual intercourse was during their honeymoon to Shimla, Kullu, and Manali.

The respondent also alleged that the appellant did not attend to domestic work, threatened him when asked to help his old mother with domestic work, and expressed her desire to live separately from the joint family. He further claimed that the appellant had concealed her age

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and the fact that she was dying her grey hair. The respondent also alleged that the appellant had caused his mother to suffer from blood pressure due to her cruel acts and mental torture.

Issues

The primary issue in this case was whether the appellant's actions constituted cruelty under the Hindu Marriage Act, 1955, and whether these actions justified the dissolution of the marriage by a decree of divorce.

Arguments

The appellant argued that the respondent's allegations were false and that her actions did not constitute cruelty. She contended that the respondent's dissatisfaction with her domestic work, her desire to live separately from the joint family, and her concealment of her age and grey hair should not be grounds for divorce.

The respondent argued that the appellant's lack of cooperation for sexual intercourse, her refusal to help with domestic work, her desire to live separately from the joint family, her concealment of her age and grey hair, and her causing his mother to suffer from blood pressure all constituted acts of cruelty. He also pointed out that the appellant had lodged a complaint with the police for the offences under Sections 406/498A I.P.C.

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Held

The court held that the respondent had failed to prove that the appellant had treated him with cruelty, mental or physical. The court noted that the respondent's allegations were either minor disputes or unproven allegations. The court also noted that the respondent himself was guilty of not giving the exact age, and that not disclosing the correct age would not be sufficient to prove the allegation of cruelty.

The court found that the respondent had failed to produce any witness from the bank in support of his allegations that the appellant had gone to his office and had levelled serious allegations against him, including his having illicit relations with a woman. The court also found that the respondent had failed to prove that the appellant had told their child that the father was dead.

Legal Principles with Relevant Sections

The case of Smt. Asha Gupta Alias Anju Gupta v. Rajiv Kumar Gupta, AIR 2005 P H 134, revolves around the interpretation and application of certain provisions of the Indian Penal Code (IPC) and the Hindu Marriage Act. The legal principles and relevant sections that were invoked in this case include:

- Section 406 of the IPC: This section pertains to criminal breach of trust. The husband alleged that

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the wife had committed an act of cruelty by lodging a criminal complaint under this section.

- Section 498A of the IPC: This section deals with the husband or relative of the husband of a woman subjecting her to cruelty. The wife had lodged a complaint under this section, which the court did not find to be an act of cruelty towards the husband.
- Hindu Marriage Act: The court made it clear that the ground of 'irretrievable breakdown of marriage' is not a ground provided under the Hindu Marriage Act for the dissolution of a marriage. The court held that the trial court had committed an illegality in granting a decree of divorce on this ground.

Obiter Dictum

The obiter dictum in this case is the court's observation that the lodging of a complaint under Sections 406/498A IPC by the wife does not constitute an act of cruelty towards the husband. The court also observed that the ground of 'irretrievable breakdown of marriage' is not a valid ground for divorce under the Hindu Marriage Act.

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Important Para from Judgement

“In my opinion, the learned Additional District Judge had committed an illegality in granting decree of divorce to the husband on the ground that the marriage had irretrievably broken. This is not one of the grounds provided under the Hindu Marriage Act, on which a marriage between the parties can be dissolved by way of decree of divorce. In my opinion, the learned Additional District Judge could not have granted the decree of divorce on the ground that the marriage had irretrievably broken... Furthermore... nothing has been brought on the record to show that the appellant wife had caused cruelty to the respondent husband, in any manner whatsoever.”

Subsequent Impact of the Judgement

The judgement in this case has significant implications for the interpretation of 'cruelty' under the Hindu Marriage Act. It clarifies that the lodging of a criminal complaint by a wife against her husband does not necessarily constitute cruelty. This interpretation can potentially protect women who are victims of domestic violence or other forms of marital misconduct from being unjustly accused of cruelty when they seek legal recourse.

Furthermore, the judgement reiterates that 'irretrievable breakdown of marriage' is not a ground for divorce under the Hindu Marriage Act. This reinforces the sanctity of marriage under Hindu law and sets a precedent that

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divorce cannot be granted merely on the basis of a prolonged period of separation.

8.

**NARAYAN GANESH DASTANE V. SUCHETA
NARAYAN DASTANE**

1975 AIR 1534

Facts in Brief

The case of Narayan Ganesh Dastane v. Sucheta Narayan Dastane was heard by the Supreme Court of India on March 19, 1975. The petitioner, Narayan Ganesh Dastane, and the respondent, Sucheta Narayan Dastane, were both highly educated individuals who were married in 1956. The couple had two children, born in 1957 and 1959.

The appellant husband filed a petition for the annulment of the marriage on the grounds of fraud, for divorce on the grounds of unsoundness of mind, and for judicial separation on the grounds of cruelty. The Trial Court rejected the contentions of fraud and unsoundness of mind but found the wife guilty of cruelty.

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Issues

The primary issues in this case revolved around the interpretation of the Hindu Marriage Act, specifically Section 10(1)(b) and 23(1)(a)(b), which deal with cruelty and the burden of proof in matrimonial matters. The court had to determine whether the wife's actions constituted cruelty and whether the husband had condoned this cruelty.

The case also raised questions about the meaning of proof under the Evidence Act, Section 3, and the powers of the High Court in a second appeal under the Code of Civil Procedure, Section 100 and 103.

Arguments

The appellant argued that his wife's behavior amounted to cruelty, which is a ground for judicial separation under the Hindu Marriage Act. He provided evidence of instances where the respondent had accused him of being a person with a beggarly luck and had made derogatory comments about the food he provided.

The respondent, on the other hand, argued that the appellant had provoked her to act in the way she did and that he could not take advantage of his own wrong. She also contended that she had no intention of preventing the children from seeing the appellant.

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Held

The court held that the respondent's actions did indeed constitute cruelty. Her frequent apologies were seen not as genuine contrition but as temporary measures to tide over a crisis. The court also considered whether the appellant had at any time condoned the respondent's cruelty.

The judgment in this case set a precedent for the interpretation of cruelty under the Hindu Marriage Act. It highlighted the importance of considering the specific circumstances of each case when determining whether a spouse's actions amount to cruelty.

Legal Principles with Relevant Sections

The case of Narayan Ganesh Dastane vs Sucheta Narayan Dastane is a landmark case in Indian law, particularly in the area of matrimonial law. The case revolves around the interpretation of the Hindu Marriage Act, 1955, specifically Section 10(1)(b) and Section 23.

Section 10(1)(b) of the Hindu Marriage Act, 1955, states that either party to a marriage, whether solemnized before or after the commencement of this Act, may present a petition to the district court praying for a decree for judicial separation on the ground that the other party has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner

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that it will be harmful or injurious for the petitioner to live with the other party.

The court in this case clarified that the inquiry under this section has to be whether the conduct charged as cruelty is of such a character as to cause in the mind of the petitioner a reasonable apprehension that it will be harmful or injurious for him to live with the respondent. It is not necessary, as under English law, that the cruelty must be of such a character as to cause "danger" to life, limb, or health or as to give rise to a reasonable apprehension of such a danger. The court also emphasized that the standard of proof in matrimonial cases is a preponderance of probabilities, not beyond a reasonable doubt.

Section 23 of the Hindu Marriage Act, 1955, governs the jurisdiction of the court to pass a decree in any proceeding under the Act. The court can pass a decree if it is "satisfied" on matters mentioned in clauses (a) to (e) of the section. The court clarified that the word "satisfied" must mean "satisfied on a preponderance of probabilities" and not "satisfied beyond a reasonable doubt". Section 23 does not alter the standard of proof in civil cases.

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Obiter Dictum

An obiter dictum in this case is the court's observation about the standard of proof in matrimonial cases. The court noted that the standard of proof in matrimonial cases is a preponderance of probabilities, not beyond a reasonable doubt. This observation, while not directly related to the decision in the case, provides important guidance for future cases.

Important Para from Judgement

"The normal rule which governs civil proceedings is that a fact can be said to be established if it is proved by a preponderance of probabilities. This is for the reason that under the Evidence Act, section 3, a fact is said to be proved when the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists."

Subsequent Impact of the Judgement

The judgement in the case of Narayan Ganesh Dastane vs Sucheta Narayan Dastane had a significant impact on subsequent cases involving matrimonial disputes. It clarified the standard of proof in matrimonial cases and the interpretation of "cruelty" under the Hindu Marriage Act, 1955. This has helped courts in later cases to determine whether a spouse's conduct amounts to cruelty and whether it is harmful or injurious for the petitioner to live with the respondent.

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9.

BIPIN CHANDERJAISINGHBHAI SHAH V.

PRABHAWATI

AIR 1957 SC 176

Facts in Brief

The case revolves around a married couple, Bipin Chander Jaisinghbhai Shah (the appellant) and Prabhawati (the respondent). They were married in 1942 and had a child. In 1947, Bipin left for England on business. Upon his return to India, he discovered that his wife had been having an amorous correspondence with another man. When confronted, Prabhawati was unable to provide an answer and left for her father's place on May 24, 1947, under the pretext of attending her cousin's wedding. On July 15, 1947, Bipin sent a notice to Prabhawati through his solicitor, stating that he did not wish to keep her under his care and protection any longer and desired her to send their minor son to him. On July 4, 1951, Bipin instituted a suit for divorce under section 3(1)(d) of the Bombay Hindu Divorce Act, 1947, on the grounds that Prabhawati had been in desertion.

Issues

The primary issue in this case was whether Prabhawati had deserted Bipin, as per the provisions of the Bombay Hindu Divorce Act, 1947. The court had to determine the

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ingredients of desertion, including the intention (animus deserendi) and the statutory period of separation. The burden of proof was also a significant issue in this case

Arguments

The appellant argued that his wife had deserted him, as evidenced by her departure to her father's place and her failure to return despite his solicitor's notice. He contended that her actions constituted desertion under the Bombay Hindu Divorce Act, 1947, and thus he sought a divorce.

On the other hand, the respondent and her relatives provided oral evidence to counter the allegations of desertion. They argued that the respondent had not deserted the appellant and that they were interested in reconciliation. The respondent's relatives corroborated her evidence, and their testimony was not explicitly disbelieved by the trial court

Held

The Supreme Court dismissed the appeal. The court agreed with the Appellate Bench of the High Court's conclusion, although not for the same reasons. The court did not find it necessary to delve into the question of animus revertendi (the intention to return), which was a significant point of argument for both sides. The court

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ruled that each party must bear its own costs throughout the proceedings

The court held that desertion is not a single act complete in itself and revocable by a single act of repentance. This ruling implies that the court did not consider the respondent's departure and her failure to return as constituting desertion under the Bombay Hindu Divorce Act, 1947. The court also seemed to give weight to the oral evidence provided by the respondent and her relatives, which was not explicitly disbelieved by the trial court.

Legal Principles with Relevant Sections

The case of Bipin Chander Jaisinghbhai Shah v. Prabhawati was primarily based on the principles of desertion in the context of divorce proceedings. The legal principles revolved around the interpretation of the term 'desertion' and the requirements to establish it as a ground for divorce. The relevant section was Section 3(1)(d) of the Bombay Hindu Divorce Act, 1947, which deals with desertion as a ground for divorce.

The court held that desertion is not a single act complete in itself and revocable by a single act of repentance. It involves the intention to bring cohabitation permanently to an end without the consent of the other party or without reasonable cause. This intention, known as 'animus deserendi', is a necessary element of desertion. The court also emphasized that the statutory period of

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separation must be continuous for at least two years immediately preceding the presentation of the petition.

Obiter Dictum

The court made several obiter dicta in this case. One of the notable ones was the court's statement that it was not necessary to go into the question of 'animus revertendi' (the intention to return), which was a point of considerable argument in the case. The court agreed with the conclusion of the Appellate Bench of the High Court, although not exactly for the same reasons.

Important Para from Judgement

For the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there, namely, (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (*animus deserendi*). Similarly two elements are essential so far as the deserted spouse is concerned: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. The petitioner for divorce bears the burden of proving those elements in the two spouses respectively.

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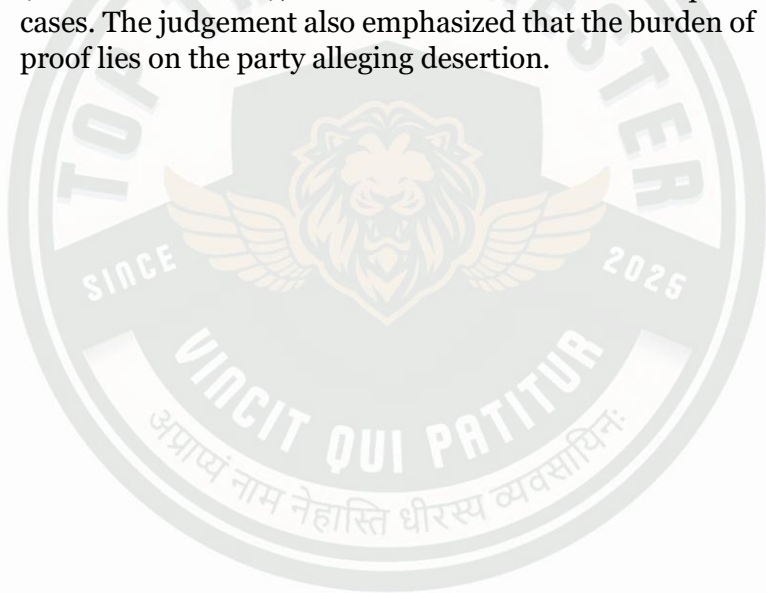
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Subsequent Impact of the Judgement

The judgement in Bipin Chander Jaisinghbhai Shah v. Prabhawati had a significant impact on the interpretation of 'desertion' as a ground for divorce in Indian family law. It clarified the concept of desertion and laid down the requirements to establish it. The court's interpretation of desertion as a continuous state of affairs, requiring both the factum of separation and the intention to desert (animus deserendi), has been followed in subsequent cases. The judgement also emphasized that the burden of proof lies on the party alleging desertion.



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10.

RUPA ASHOK HURRA V. ASHOK HURRA&ANR

AIR 2002 SC 177

Facts in Brief

The case of Rupa Ashok Hurra v. Ashok Hurra & Anr is a landmark case in the Indian legal system that dealt with the question of whether an aggrieved person is entitled to any relief against a final judgment/order of the Supreme Court, after the dismissal of a review petition, either under Article 32 of the Constitution or otherwise. The case arose from a dispute between Rupa Ashok Hurra and Ashok Hurra, and the judgement was delivered on 10th April 2002.

Issues

The primary issue in this case was whether a judgement of the Supreme Court could be regarded as a nullity and whether a writ petition under Article 32 of the Constitution could be maintained to question the validity of a judgement of the Supreme Court after the petition for review of the said judgement has been dismissed. This issue was of considerable constitutional significance and was referred to a Constitution Bench of the Supreme Court for consideration.

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Arguments

The arguments in this case revolved around the interpretation of Article 32 of the Constitution and the powers of the Supreme Court in reviewing its own judgements. The petitioner argued that a judgement of the Supreme Court could be regarded as a nullity if it was in violation of the principles of natural justice or if there was an apprehension of bias. On the other hand, the respondent argued that the Supreme Court, being the court of last resort, had the final say in matters of justice and its judgements could not be questioned under Article 32 of the Constitution.

Held

The Supreme Court held that an aggrieved person is not entitled to any relief against a final judgement/order of the Supreme Court after the dismissal of a review petition, either under Article 32 of the Constitution or otherwise. The Court emphasized that it is the final arbiter of justice and its judgements, once delivered, are final and binding. The Court also held that the principles of natural justice or apprehension of bias could not be used as grounds to question the validity of a judgement of the Supreme Court.

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Legal Principles with Relevant Sections

The case of Rupa Ashok Hurra v. Ashok Hurra & Anr primarily revolved around the interpretation of Article 32 of the Constitution of India and the powers of the Supreme Court in reviewing its own judgements. The legal principle that emerged from this case is that an aggrieved person is not entitled to any relief against a final judgement/order of the Supreme Court, after the dismissal of a review petition, either under Article 32 of the Constitution or otherwise. The court held that it is the final arbiter of justice and its judgements, once delivered, are final and binding. The court also held that the principles of natural justice or apprehension of bias could not be used as grounds to question the validity of a judgement of the Supreme Court.

Obiter Dictum

The court made several obiter dicta in this case. One of the notable ones was the court's statement that it was not necessary to go into the question of 'animus revertendi' (the intention to return), which was a point of considerable argument in the case. The court agreed with the conclusion of the Appellate Bench of the High Court, although not exactly for the same reasons.

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Important Para from Judgement

“We are of the view that though Judges of the highest court do their best, subject to the limitation of human fallibility, yet situations may arise where a decision rendered by this Court may result in miscarriage of justice. In order to prevent abuse of its process and to cure gross miscarriage of justice, it may reconsider its judgments in exercise of its inherent powers. For this purpose, we think that it would be proper to entertain a curative petition in rarest of rare cases.”

Subsequent Impact of the Judgement

The judgement in Rupa Ashok Hurra v. Ashok Hurra & Anr had a significant impact on the interpretation of 'desertion' as a ground for divorce in Indian family law. It clarified the concept of desertion and laid down the requirements to establish it. The court's interpretation of desertion as a continuous state of affairs, requiring both the factum of separation and the intention to desert (animus deserendi), has been followed in subsequent cases. The judgement also emphasized that the burden of proof lies on the party alleging desertion.

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11.

MOHAMMED AHMED V. SHAH BANO AND
ANR

1985 SCR (3) 84

Facts in Brief

The case revolves around the appellant, Mohammed Ahmed Khan, an advocate by profession, and his wife, Shah Bano Begum. The couple was married in 1932 and had five children. In 1975, Khan expelled Shah Bano from their matrimonial home. In April 1978, Shah Bano filed a petition under section 125 of the Code of Criminal Procedure in the court of the learned Judicial Magistrate (First Class), Indore, asking for maintenance at the rate of Rs 500 per month. On November 6, 1978, Khan divorced Shah Bano by an irrevocable talaq. His defense to Shah Bano's petition for maintenance was that she had ceased to be his wife by reason of the divorce granted by him, and he was therefore under no obligation to provide maintenance for her. He claimed that he had already paid maintenance to her at the rate of Rs. 200 per month for about two years and that he had deposited a sum of Rs. 3000 in the court by way of dower during the period of iddat.

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Issues

The primary issue in this case was whether the Muslim Personal Law imposes any obligation upon the husband to provide for the maintenance of his divorced wife. The case also raised questions about the application of section 125 of the Code of Criminal Procedure to Muslims, and whether a divorced Muslim wife is entitled to apply for maintenance under this section.

Arguments

Khan argued that Shah Bano had ceased to be his wife due to the divorce he had granted, and he was therefore under no obligation to provide maintenance for her. He claimed that he had already fulfilled his obligations by paying maintenance at the rate of Rs. 200 per month for about two years and depositing a sum of Rs. 3000 in the court as dower during the period of iddat.

On the other hand, Shah Bano contended that she was entitled to maintenance from Khan under section 125 of the Code of Criminal Procedure, despite the divorce. She argued that the Muslim Personal Law did not absolve a husband of his duty to provide maintenance for his divorced wife.

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Held

The Supreme Court held that the Muslim Personal Law does not absolve a husband of his duty to provide maintenance for his divorced wife. The court ruled that the divorced Muslim wife is entitled to apply for maintenance under section 125 of the Code of Criminal Procedure. The court dismissed Khan's appeal and confirmed the judgment of the High Court, which had enhanced the amount of maintenance to Rs. 179.20 per month. The court also stated that it would be open to Shah Bano to make an application under section 127 (1) of the Code for increasing the allowance of maintenance granted to her on proof of a change in the circumstances as envisaged by that section.

The court also made observations on the broader societal implications of the case, noting that the issue was of common interest not only to Muslim women but to all those aspiring to create an equal society of men and women. The court observed that Article 44 of the Indian Constitution, which calls for a uniform civil code, had remained a dead letter and that the state had the legislative competence to secure a uniform civil code for the citizens of the country. The court noted that such a code would help the cause of national integration by removing disparate loyalties to laws with conflicting ideologies.

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Legal Principles with Relevant Sections

The Shah Bano case is a landmark judgment that interpreted the legal principles and relevant sections of the Code of Criminal Procedure, 1973 (Act II of 1974), and the Muslim Personal Law.

The case primarily revolved around Section 125 of the Code of Criminal Procedure, which deals with the right of maintenance. The section states that if any person with sufficient means neglects or refuses to maintain his wife, who is unable to maintain herself, a Magistrate of the first class may order such person to make a monthly allowance for the maintenance of his wife. The section further includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried, within its definition of "wife".

The case also touched upon Section 127 (3) (b) of the Code of Criminal Procedure, 1973, read with Section 2 of the Shariat Act XXVI of 1937. The court examined whether Section 127 (3) (b) debars payment of maintenance to a divorced Muslim wife.

Obiter Dictum

The obiter dictum in the Shah Bano case is the court's observation on the need for a uniform civil code in India. The court stated that Article 44 of the Indian Constitution, which calls for a uniform civil code, has remained a dead letter. The court opined that a common civil code would help the cause of national integration by

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removing disparate loyalties to laws with conflicting ideologies. The court also stated that the state is charged with the duty of securing a uniform civil code for the citizens of the country and has the legislative competence to do so.

Important Para from Judgement

“These provisions are too clear and precise to admit of any doubt or refinement. The religion professed by a spouse or by the spouses has no place in the scheme of these provisions... Whether the spouses are Hindus or Muslims, Christians or Parsis, pagans or heathens, is wholly irrelevant in the application of these provisions... Section 125 is truly secular in character.”

Subsequent Impact of the Judgement

The Shah Bano case had a significant impact on the legal landscape of India, particularly in relation to the rights of Muslim women. The judgment sparked a debate about the extent of personal laws and their interaction with general laws enacted for the welfare of women. The case led to the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986, which was seen as a legislative response to the judgment. The Act sought to limit the right of Muslim women to claim maintenance under Section 125 of the Code of Criminal Procedure, which was upheld in the Shah Bano case. However, the Act was later interpreted by the Supreme Court in a manner that ensured that Muslim women were not denied the right to claim maintenance.

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12.

SHAYARABANO V. UNION OF INDIA AND OTHERS, 1985 (2) SCC 556

Facts in Brief:

The case of Shayara Bano v. Union of India and others is a landmark case in the history of Indian jurisprudence. It was heard and decided by the Supreme Court of India on 22nd August 2017. The case was brought before the court by Shayara Bano, who challenged the practice of "Triple Talaq" (Talaq-e-Biddat), a form of Islamic divorce practiced by some in the Muslim community in India.

Shayara Bano, the petitioner, was married to Rizwan Ahmad for 15 years. During this time, she was allegedly subjected to domestic violence and other forms of abuse. On 10th October 2015, Rizwan Ahmad sent Shayara Bano a letter with the word "Talaq" written thrice, indicating his intention to divorce her. This form of divorce, known as "Triple Talaq", is considered instant and irrevocable under certain interpretations of Islamic law.

Shayara Bano challenged the constitutionality of this practice, arguing that it violated her fundamental rights under the Indian Constitution. She contended that "Triple Talaq" was discriminatory and deprived her of her rights to equality and life with dignity, as guaranteed under Articles 14 and 21 of the Constitution.

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Issues:

The primary issue before the court was whether the practice of "Triple Talaq" was constitutional. Specifically, the court was asked to consider whether this practice violated the fundamental rights of Muslim women, particularly their right to equality under Article 14 and their right to life with dignity under Article 21 of the Constitution.

Another issue was whether "Triple Talaq" could be considered an essential part of the Islamic religion. If it was, it would be protected under Article 25 of the Constitution, which guarantees the right to freedom of religion.

Arguments:

The petitioner, Shayara Bano, argued that "Triple Talaq" was a discriminatory practice that violated her fundamental rights. She contended that it was not an essential part of Islam and therefore should not be protected under the right to freedom of religion.

On the other hand, the respondents, including the Union of India and the All India Muslim Personal Law Board (AIMPLB), argued that "Triple Talaq" was a matter of personal law and was thus protected under the right to freedom of religion. They contended that the court should not interfere in matters of personal law, as they were outside the purview of the judiciary.

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Held:

The Supreme Court, in a majority decision, held that the practice of "Triple Talaq" was unconstitutional. The court found that "Triple Talaq" was not an essential part of Islam and therefore was not protected under the right to freedom of religion. The court also found that the practice violated the fundamental rights of Muslim women, particularly their right to equality under Article 14 and their right to life with dignity under Article 21 of the Constitution.

The court's decision was a landmark ruling that affirmed the rights of Muslim women and marked a significant step towards gender equality in India. It underscored the principle that personal law cannot be used as a shield to deny individuals their fundamental rights.

Legal principles with relevant sections:

The legal principles that were invoked in this case primarily revolved around the interpretation of the Indian Constitution. The court had to consider the interplay between the right to equality (Article 14), the right to life with dignity (Article 21), and the right to freedom of religion (Article 25).

Article 14 of the Indian Constitution guarantees equality before the law and equal protection of the laws within the territory of India. It prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. In this case, the court had to consider whether the practice of "Triple Talaq" was discriminatory and thus violated the right to

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equality.

Article 21 of the Indian Constitution guarantees the right to life and personal liberty. It states that no person shall be deprived of his life or personal liberty except according to the procedure established by law. In this case, the court had to consider whether the practice of "Triple Talaq" deprived Muslim women of their right to life with dignity.

Article 25 of the Indian Constitution guarantees the freedom of conscience and the right to freely profess, practice, and propagate religion. However, this right is subject to public order, morality, and health, and to the other provisions of Part III of the Constitution. In this case, the court had to consider whether "Triple Talaq" was an essential part of Islam and thus protected under the right to freedom of religion.

Obiter dictum:

In the judgement, the court made several obiter dicta, or statements that were not necessary for the decision but may serve as guidance for future cases. One such obiter dictum was the court's observation on the need for a uniform civil code. The court noted that while India has a uniform and complete Criminal Code, it does not have a uniform code of laws covering every aspect of human relationships. This observation, while not directly related to the issue of "Triple Talaq", could have implications for future discussions on the need for a uniform civil code in India.

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Important paras from the judgement

“This form of Talaq is manifestly arbitrary in the sense that the marital tie can be broken capriciously and whimsically by a Muslim man without any attempt at reconciliation so as to save it. This form of Talaq must, therefore, be held to be violative of the fundamental right contained under Article 14 of the Constitution of India. In our opinion, therefore, the 1937 Act, insofar as it seeks to recognize and enforce Triple Talaq, is within the meaning of the expression ‘laws in force’ in Article 13(1) and must be struck down as being void to the extent that it recognizes and enforces Triple Talaq.”

Subsequent Impact of the judgement:

The judgement in Shayara Bano v. Union of India had a significant impact on the Muslim community in India and on the broader discussion of women's rights. By declaring "Triple Talaq" to be unconstitutional, the court affirmed the rights of Muslim women and marked a significant step towards gender equality.

The judgement also sparked a broader discussion about the need for a uniform civil code in India. The court's observation on this issue in its obiter dictum has been cited in subsequent debates about whether India should have a uniform set of laws governing personal matters such as marriage and divorce, regardless of religion.

Finally, the judgement has had an impact on the legislative process. Following the judgement, the Indian

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Parliament passed the Muslim Women (Protection of Rights on Marriage) Act, 2019, which makes the practice of instant "Triple Talaq" a punishable offence.

13.

DANIAL LATIFI AND ANOTHER V. UNION OF INDIA

(2001) 7 SCC 740

Facts in Brief:

The case of Danial Latifi and another v. Union of India is a significant case in the realm of Indian family law, particularly concerning the rights of Muslim women post-divorce. The case was heard and decided by the Supreme Court of India on 28th September 2001.

The case was brought before the court in the context of the constitutional validity of the Muslim Women (Protection of Rights on Divorce) Act, 1986, hereinafter referred to as the Act. The Act was enacted in response to the landmark judgement in the Shah Bano case (Mohd. Ahmed Khan vs. Shah Bano Begum & Ors. (1985) 2 SCC 556), where the Supreme Court had ruled that a Muslim woman was entitled to maintenance from her ex-husband under Section 125 of the Code of Criminal Procedure, which applies to all citizens regardless of religion.

The Act was seen by many as an attempt to overturn the Shah Bano judgement. It stated that a Muslim man was required to provide maintenance to his divorced wife only

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until the period of iddat (approximately three months), after which the onus would shift to her relatives or the Wakf Board.

Danial Latifi, the husband in this case, argued that the Act should be interpreted in such a way that the husband's liability to pay maintenance extends beyond the iddat period.

Issues:

The primary issue before the court was the constitutional validity of the Act. The court was asked to consider whether the Act was in violation of the fundamental rights guaranteed under the Constitution, particularly the right to equality (Article 14) and the right to life with dignity (Article 21).

Another issue was the interpretation of the Act. The court had to determine whether the Act, which ostensibly limits the husband's liability to provide maintenance to the iddat period, could be interpreted in a way that extends this liability beyond the iddat period.

Arguments:

The petitioner, Danial Latifi, argued that the Act should be interpreted in such a way that the husband's liability to provide maintenance extends beyond the iddat period. He contended that such an interpretation would be in line with the principles of equality and justice.

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On the other hand, the respondent, Union of India, defended the constitutionality of the Act. The Union argued that the Act was a reasonable and fair provision that was made in accordance with the principles of Islamic law.

Held:

The Supreme Court, in its judgement, upheld the constitutional validity of the Act. However, it interpreted the Act in such a way that the husband's liability to provide maintenance extends beyond the iddat period.

The court held that a Muslim husband is liable to make a reasonable and fair provision for the future of the divorced wife, which includes her maintenance as well. Such a provision extending beyond the iddat period must be made by the husband within the iddat period.

The court also held that a divorced Muslim woman who has not remarried and who is not able to maintain herself after the iddat period can proceed against her relatives who are liable to maintain her in proportion to the properties which they inherit on her death according to Muslim law. If any of the relatives are unable to pay maintenance, the Magistrate may direct the State Wakf Board to pay such maintenance.

The court's decision was a significant ruling that affirmed the rights of Muslim women post-divorce. It underscored the principle that personal law cannot be used as a shield to deny individuals their fundamental rights.

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Legal principles with relevant sections:

The legal principles that were applied in the case of Danial Latifi and another v. Union of India primarily revolve around the interpretation of the Muslim Women (Protection of Rights on Divorce) Act, 1986. The Supreme Court held that a Muslim husband is liable to make a reasonable and fair provision for the future of the divorced wife, which includes her maintenance as well. This provision, extending beyond the iddat period, must be made by the husband within the iddat period as per Section 3(1)(a) of the Act. The liability of a Muslim husband to his divorced wife to pay maintenance is not confined to the iddat period

Obiter dictum:

The obiter dictum in this case can be seen in the court's interpretation of the Act. The court held that if there is an appropriate reading of an enactment that can uphold the validity of the Act, such interpretation is accepted by courts

Important paras from the judgement

“The wordings of Section 3 of the Act appear to indicate that the husband has two separate and distinct obligations: (1) to make a reasonable and fair provision for his divorced wife; and (2) to provide maintenance for her. The emphasis of this section is not on the nature or

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duration of any such provision or maintenance, but on the time by which an arrangement for payment of provision and maintenance should be concluded, namely, within the iddat period.”

Subsequent Impact of the judgement:

The judgement in the case of Danial Latifi and another v. Union of India had a significant impact on the interpretation and application of the Muslim Women (Protection of Rights on Divorce) Act, 1986. The Supreme Court's interpretation of the Act clarified the obligations of a Muslim husband towards his divorced wife, extending beyond the iddat period. This interpretation has been accepted by courts and has guided subsequent decisions involving similar issues. The judgement also affirmed the constitutional validity of the Act, stating that its provisions do not offend Articles 14, 15, and 21 of the Constitution of India. This has reinforced the Act's standing and its application in cases involving the rights of divorced Muslim women.

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20.

SARLA MUDGAL V. UNION OF INDIA

AIR 1995 SC 1531

Facts in Brief:

The case of Sarla Mudgal v. Union of India is a landmark case in the realm of Indian family law, particularly concerning the issue of bigamy and the conversion to Islam for the purpose of circumventing the provisions of the Hindu Marriage Act, 1955.

The case was brought before the Supreme Court of India by Sarla Mudgal, the President of Kalyani, a registered society working for the welfare of needy families and women in distress, and Meena Mathur, whose husband Jitender Mathur had converted to Islam and married another woman, Sunita Narula, without dissolving his first marriage.

Jitender Mathur and Sunita Narula had converted to Islam and subsequently got married. A son was born to them. However, under the influence of his first wife, Jitender gave an undertaking that he had reverted back to Hinduism and agreed to maintain his first wife and their three children. Sunita, who continued to be a Muslim, was not being maintained by Jitender and had no means to maintain herself and her son.

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Issues:

The primary issue before the court was whether a Hindu husband, married under Hindu law, by embracing Islam, can solemnise a second marriage. The court was asked to consider whether such a marriage, without having the first marriage dissolved under law, would be a valid marriage in relation to the first wife who continues to be a Hindu. Another issue was whether the apostate husband would be guilty of the offence under Section 494 of the Indian Penal Code (IPC).

Arguments:

The petitioner, Sarla Mudgal, argued that the conversion of Jitender Mathur to Islam was only for the purpose of marrying Sunita and circumventing the provisions of Section 494, IPC. She contended that having embraced Islam, Jitender cannot have four wives irrespective of the fact that his first wife continues to be a Hindu.

On the other hand, the respondent, Union of India, defended the constitutionality of the freedom of religion and the right to profess, practice and propagate religion.

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Held:

The Supreme Court, in its judgement, held that a Hindu husband, married under Hindu law, by embracing Islam, cannot solemnise a second marriage. The court held that such a marriage, without having the first marriage dissolved under law, would not be a valid marriage in relation to the first wife who continues to be a Hindu. The court also held that the apostate husband would be guilty of the offence under Section 494 of the IPC.

The court further emphasised the need for a uniform civil code in India, stating that "Article 44 is based on the concept that there is no necessary connection between religion and personal law in a civilised society. Article 25 guarantees religious freedom whereas Article 44 seeks to divest religion from social relations and personal law." The court criticised the government for failing to implement a uniform civil code, which it described as an "unequivocal mandate under Article 44 of the Constitution of India".

Legal principles with relevant sections:

The Sarla Mudgal case primarily revolved around the interpretation and application of various legal principles and sections of the Indian Penal Code (IPC) and personal laws. The key legal principles and relevant sections involved are:

- **Article 44 of the Indian Constitution:** This article, which is a part of the Directive Principles of State Policy, mandates the state to secure a Uniform

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Civil Code for its citizens. The court, in this case, emphasized the need for a Uniform Civil Code in India to promote national consolidation.

- **Section 494 of the Indian Penal Code:** This section of the IPC deals with the offence of bigamy. It states that a person is guilty of the offence of bigamy if they marry again during the lifetime of their spouse. The court held that a Hindu husband, by embracing Islam, cannot solemnize a second marriage and such a marriage without having the first marriage dissolved under law, would not be a valid marriage.
- **Personal Laws:** The case also involved the interpretation of personal laws of different religions. The court held that a marriage solemnized under a particular personal law cannot be dissolved according to another personal law, simply because one of the parties had changed his or her religion.

Obiter dictum:

In the Sarla Mudgal case, the Supreme Court made several observations that, while not directly related to the decision, are significant. These obiter dicta include:

- The court observed that the practice of polygamy is not integral to Islam and many Islamic countries have either totally prohibited or severely restricted it.
- The court emphasized the need for a Uniform Civil Code in India, stating that it is an "unequivocal

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mandate under Article 44 of the Constitution of India" and a "decisive step towards national consolidation."

- The court also suggested that the government should consider appointing a committee to enact a Conversion of Religion Act to check the abuse of religion by any person.

Important paras from the judgement

A Hindu marriage solemnised under the Act can only be dissolved on any of the grounds specified under the Act. Till the time a Hindu marriage is dissolved under the Act none of the spouses can contract second marriage. Conversion to Islam and marrying again would not, by itself, dissolve the Hindu marriage under the Act. The second marriage by a convert would therefore be in violation of the Act and as such void in terms of Section 494, IPC. Any act which is in violation of mandatory provisions of law is per-se void. The real reason for the voidness of the second marriage is the subsisting of the first marriage which is not dissolved even by the conversion of the husband. It would be giving a go-bye to the substance of the matter and acting against the spirit of the Statute if the second marriage of the convert is held to be legal.

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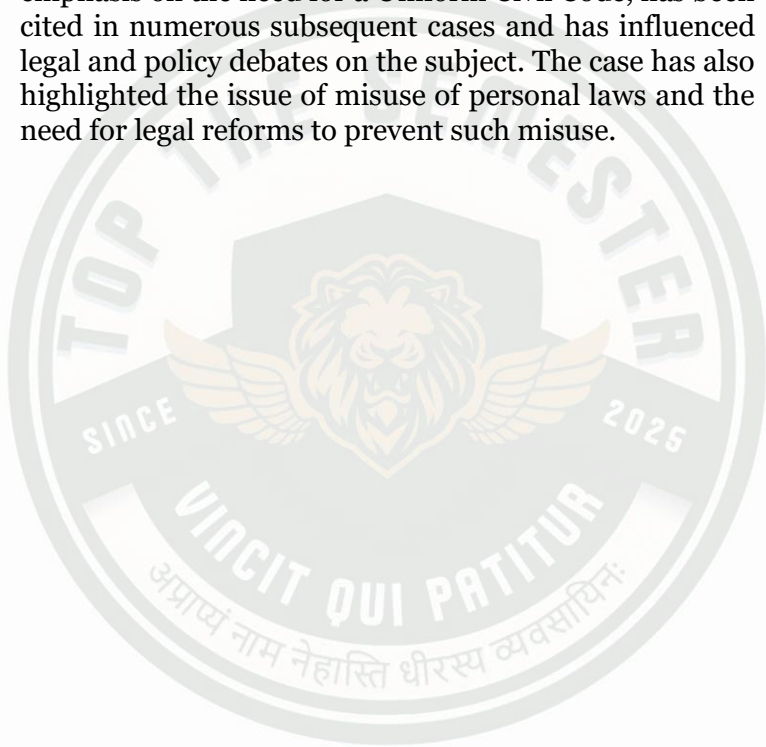
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Subsequent Impact of the judgement:

The Sarla Mudgal case has had a significant impact on the discourse around personal laws and the need for a Uniform Civil Code in India. The judgement, with its emphasis on the need for a Uniform Civil Code, has been cited in numerous subsequent cases and has influenced legal and policy debates on the subject. The case has also highlighted the issue of misuse of personal laws and the need for legal reforms to prevent such misuse.



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LAW SOLUTIONS

PREVIOUS YEAR QUESTION PAPERS (PYQs) SOLUTIONS

PAPER 1

PART A

**QUESTION 1: WRITE SHORT NOTES ON THE
FOLLOWING:**

**QUESTION 1: WRITE SHORT NOTE ON
IRRETRIEVABLE BREAKDOWN THEORY OF
MARRIAGE**

The **Irretrievable Breakdown Theory** of marriage, in essence, holds that marriage is a union based on the emotional bonds between the spouses, and when this bond breaks down irretrievably, the marriage should be dissolved. The foundational idea of this theory is that the marriage should continue only as long as it serves the purposes of both parties, and it should be discontinued when it is clear that the parties can no longer live together in harmony.

**Development and Adoption in Various
Jurisdictions**

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The roots of this theory can be traced back to the New Zealand Divorce and Matrimonial Causes Amendment Act, 1920. However, the theory was first officially recognised in the UK with the introduction of the Divorce Reform Act, 1969. It was later adopted in Australia and the USA.

In India, the **Law Commission Report No. 71** in 1978 recommended the inclusion of Irretrievable Breakdown as a ground for divorce, acknowledging that the object of marriage is to lead a happy life. Subsequent reports, including the 217th Report, continued to advocate for this theory.

Landmark Judgments

The Indian judiciary, noticing the changing societal norms and realising the necessity of the theory, started acknowledging it in certain judgments. The most prominent one being the case of **Naveen Kohli vs Neelu Kohli, 2006** where the Supreme Court observed that the marriage was beyond repair and allowed dissolution of marriage based on the Irretrievable Breakdown theory. However, the Court also emphasised that only the Union Legislature can incorporate such a ground in the law, urging the Parliament to consider the amendment.

The Marriage Laws (Amendment) Bill, 2010

The Parliament of India proposed an amendment to the Hindu Marriage Act, 1955, and the Special Marriage Act,

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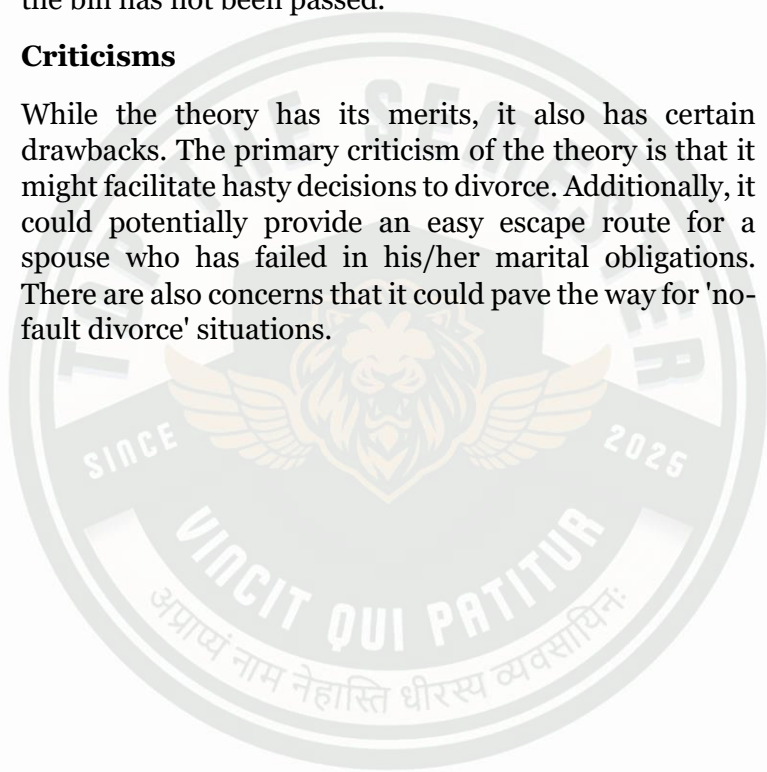
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1954, in the form of the Marriage Laws (Amendment) Bill, 2010. The bill aimed at introducing Irretrievable Breakdown of Marriage as a new ground for divorce. However, as of my knowledge cutoff in September 2021, the bill has not been passed.

Criticisms

While the theory has its merits, it also has certain drawbacks. The primary criticism of the theory is that it might facilitate hasty decisions to divorce. Additionally, it could potentially provide an easy escape route for a spouse who has failed in his/her marital obligations. There are also concerns that it could pave the way for 'no-fault divorce' situations.



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QUESTION 2: DESERTION' AS A GROUND FOR DIVORCE UNDER THE HINDU MARRIAGE ACT

Concept and Meaning

Desertion, as per Section 13(1)(ib) of the Hindu Marriage Act, 1955, is a ground for divorce. Desertion is defined as the abandonment of one spouse by the other without any reasonable cause and without the consent of the other, or any wilful neglect by the other spouse.

There are two essential components of desertion:

1. The factum of separation, and
2. The intention to bring cohabitation permanently to an end (animus deserendi).

Both the elements need to co-exist for a valid ground of desertion. It is also important to note that desertion is not a single act but a continuous course of conduct.

Period of Desertion

Section 13(1)(ib) stipulates that desertion should have continued for a period of not less than two years immediately preceding the presentation of the petition. This continuous period of two years is mandatory, and intermittent periods of living together would not constitute valid desertion.

Justifiable Cause

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The deserting spouse must not have a reasonable or justifiable cause for leaving. If the deserting spouse can prove that there is a justifiable cause for their absence, then they cannot be accused of desertion. Therefore, it is necessary for the petitioner to show that the respondent has deserted him/her without any reasonable cause.

Burden of Proof

The burden of proving desertion in a matrimonial petition is on the person who alleges it. The petitioner must establish beyond reasonable doubt that the respondent has deserted him/her without any reasonable cause for more than two years.

Constructive Desertion

In some cases, a spouse may be forced to leave due to the behaviour or conduct of the other. This concept, termed as 'Constructive Desertion', turns the perpetrator into the deserter. It rests on the principle that if one spouse by his/her words or conduct compels the other spouse to leave, he/she will be deemed to have deserted the other. This concept was recognised in the case of **Bipinchandra Jaisinghbhai Shah vs Prabhavati, 1956.**

Landmark Judgments

The case of **Savitri Pandey vs Prem Chandra Pandey, 2002** reaffirmed that desertion is not a withdrawal from a place but from a state of things. It

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reiterated that desertion entails the deserter's intention to bring cohabitation permanently to an end.

In the case of **Adhyatma Bhattar Alwar vs Adhyatma Bhattar Sri Devi, 2002**, the Supreme Court held that even if the husband had deserted the wife as he had become a sanyasi, it constituted a valid ground of desertion for the purpose of seeking divorce.



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QUESTION 3: MUTA MARRIAGE: A HARSH REALITY

Muta Marriage, also known as a temporary or pleasure marriage, is a type of marriage permitted within the Shia Islamic sect. The term 'Muta' originates from an Arabic word meaning 'pleasure' or 'enjoyment'.

Concept and Features

In a Muta marriage, the duration of the marriage and the dower (Mehr) are specified and agreed upon at the time of the marriage. Once the stipulated period ends, the marriage automatically dissolves without the need for divorce. The primary characteristics that differentiate Muta from a regular Nikah (permanent marriage) are the fixed term and lack of inheritance rights.

Position in India

As per Indian law, Muta marriages are recognised but are not encouraged due to their temporary nature. They are considered valid under Shia law, but are invalid under Sunni law. The Indian judiciary, interpreting the provisions of the Dissolution of Muslim Marriage Act, 1939, and the Muslim Personal Law (Shariat) Application Act, 1937, has held that Muta marriages are legal.

Landmark Judgments and Legal Position

The High Court of Jammu and Kashmir in the case of **Maqbool Ahmed vs Zaitoon & Ors, 1981** held that a child born out of a Muta marriage is a legitimate child and

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is entitled to inherit the property of his/her parents. However, in the case of **Seema Bibi vs Khursheed Ahmad, 2002**, the Punjab and Haryana High Court clarified that while the marriage itself may be legal, it is primarily a contractual relationship and does not give the wife the same rights as a wife in a permanent marriage.

Harsh Reality and Criticism

Muta marriages often lead to exploitation and leave women and children in vulnerable positions. The temporary nature of these marriages and lack of legal protections for the wife and children, particularly regarding maintenance and inheritance, pose severe issues. The absence of a clear legal framework to protect the rights of women and children in such marriages contributes to the challenges. Furthermore, Muta marriages might serve as a cover for activities such as prostitution and human trafficking.

QUESTION 4: MAINTENANCE UNDER THE CODE OF CRIMINAL PROCEDURE, 1973

Maintenance, a concept crucial to family law, refers to the provision of financial support provided by one person to another. Under Indian law, several provisions provide for the right to maintenance. One such provision can be found in Section 125 of the Code of Criminal Procedure, 1973 (CrPC).

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Section 125 CrPC: An Overview

Section 125 of the CrPC is a measure of social justice specifically enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Indian Constitution. The provision provides a quick and effective remedy against those individuals who neglect to provide maintenance to their dependent wives, children, and parents.

The essential components to claim maintenance under this section are:

1. The person claiming maintenance is unable to maintain herself/himself.
2. The person from whom maintenance is claimed has sufficient means to maintain the claimant.
3. The person from whom maintenance is claimed has neglected or refused to maintain the claimant.

Maintenance to Wife, Children, and Parents

The provision stipulates that a man is legally obligated to maintain his wife, children, and parents. A

wife is entitled to maintenance if she does not have adequate means to maintain herself. The term 'wife' also includes a woman who has been divorced by her husband, provided she has not remarried.

Children, whether legitimate or illegitimate, and parents who are unable to maintain themselves, are also entitled

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to maintenance. It should be noted that the obligation to maintain parents extends to both sons and daughters, provided they have the means to do so.

Landmark Judgments and Legal Position

In the case of **Mangat Mal vs Punni Devi, 1995**, the Supreme Court held that the primary objective of Section 125 is to provide a speedy remedy to those spouses left without financial support.

In the landmark judgment of **Shah Bano vs Mohammed Ahmed Khan, 1985**, the Supreme Court held that a Muslim husband is obligated to provide maintenance to his divorced wife under Section 125 of CrPC, even if such provision was beyond the period of iddat, and it wouldn't be affected by the provisions of the Muslim Personal Law.

This judgment led to a significant discourse about the role of religious personal laws and the need for a Uniform Civil Code. In response to this judgment, the Parliament enacted the Muslim Women (Protection of Rights on Divorce) Act, 1986.

In another significant judgment, **Rajnesh vs Neha, 2020**, the Supreme Court issued comprehensive directions for dealing with maintenance cases, aiming to provide consistency and uniformity in the practice.

Recent Amendments

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The year 2001 brought a crucial amendment to Section 125, which included 'daughter' along with the 'son', making it obligatory for both to maintain their parents.



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QUESTION 5: FASHION SURROGACY

Fashion Surrogacy is a term that refers to the practice of choosing surrogacy not out of medical necessity but for reasons such as preserving physical appearance, avoiding physical discomfort or inconvenience associated with pregnancy, or maintaining one's career during the gestation period. This term is not recognised legally but is commonly used in popular parlance, especially in discussions around celebrity culture.

Critique and Ethical Considerations

Fashion surrogacy has been criticised for commodifying the process of childbirth and potentially exploiting surrogate mothers, especially in countries where regulations around surrogacy are lax or poorly enforced. It also raises several ethical questions. Critics argue that it may be driven by vanity and convenience rather than necessity, thereby trivialising the serious medical reasons that drive most people towards surrogacy.

Surrogacy involves significant physical, emotional, and psychological costs for the surrogate. Using surrogacy for convenience overlooks these factors, placing the desires of the intended parents over the welfare of the surrogate. Some argue that this represents a form of exploitation, particularly when surrogates are women from less privileged socioeconomic backgrounds.

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Legal Perspective and Indian Scenario

Surrogacy laws differ across countries. Some jurisdictions, like the United Kingdom, allow only altruistic surrogacy, where the surrogate mother receives only reasonable compensation for the expenses associated with pregnancy. Commercial surrogacy, where the surrogate mother is paid over and above the medical and ancillary costs, is permitted in some parts of the United States and other countries.

The Indian scenario has seen a transition from a lax regulatory environment to a more structured framework. India was a favoured destination for surrogacy services due to lower costs and inadequate regulation, leading to alleged cases of exploitation. However, in 2015, the Indian government banned foreign nationals from commissioning surrogacy services in India.

The Surrogacy (Regulation) Bill, 2020 in India allows only altruistic surrogacy and further restricts it to infertile Indian couples. The bill clearly states that surrogacy should only be for 'needing' and not for 'wanting'. Therefore, fashion surrogacy does not find a place in the legal framework of India.

Landmark Judgments

In the case of **Baby Manji Yamada vs Union of India, 2008**, the Supreme Court of India addressed issues relating to surrogacy, emphasising the need for a

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comprehensive legal framework to deal with the ethical and legal dilemmas associated with it.

In the case of **Jan Balaz vs Anand Municipality, 2010**, the Gujarat High Court highlighted the legal complexities around surrogacy, particularly in cross-border cases, stressing the need for clear legislation.



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PART B

RAHUL AND ANJALI GOT MARRIED AT DELHI AS PER HINDU RITES AND RITUALS IN THE YEAR 2011. DAUGHTER WAS BORN OUT OF THE WEDLOCK IN THE YEAR 2013. IN 2014, ANJALI WENT TO HER PARENT'S HOUSE AND DID NOT ALLOW RAHUL TO MEET HIS DAUGHTER AND DECIDED TO COME BACK ONLY WHEN RAHUL WILL BUY A SEPARATE HOUSE AWAY FROM HIS PARENTS. ON THE OTHER HAND, HE WANTED TO LOOK AFTER HIS AILING PARENTS. MOREOVER, HE LOVED HIS WIFE AND THEIR DAUGHTER AND HE ALWAYS WANTED THEM TO COME BACK, IN 2016, RAHUL FILED A PETITION UNDER SECTION 13(L)(IB) OF THE HINDU MARRIAGE ACT, 1955. DECIDE AND SUBSTANTIATE YOUR ANSWER WITH JUDICIAL PRONOUNCEMENTS.

Section 13(1)(ib) of the Hindu Marriage Act, 1955 provides that a party to a marriage may seek divorce on the ground of desertion, which involves the deserting party abandoning the other party without reasonable cause and without the other party's consent for a continuous period of two years. The case of Rahul and Anjali provides an opportunity to explore this concept in depth.

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Concept of Desertion in Hindu Law

In the context of marital law, desertion means the intentional abandonment of one spouse by the other without any reasonable cause or the other spouse's consent. It's important to note that desertion, both in its grammatical and legal sense, implies abandoning and forsaking entirely. It means withdrawing from the matrimonial obligations, i.e., not just physical absence but an intent to bring cohabitation permanently to an end.

Desertion is not just a physical act; it is also a mental state of the deserter. The offence of desertion commences when the factum of desertion is accompanied by the animus deserendi. In other words, the deserted spouse has to prove that the deserting spouse's intention was indeed to bring the matrimonial relationship to an end.

For desertion to be proved, two essential conditions must be present: (i) the factum of desertion and (ii) the animus deserendi. The deserted spouse has the burden to prove these two conditions. Furthermore, desertion must be for a continuous period of two years before filing the petition.

Application to Rahul and Anjali's Case

In the given case, Rahul and Anjali got married in 2011, and they have a daughter born in 2013. In 2014, Anjali went to her parent's house and did not allow Rahul to meet his daughter, demanding a separate house away from Rahul's parents as a condition to return. Rahul,

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however, desired to take care of his ailing parents and filed a divorce petition in 2016 under Section 13(1)(ib) of the Hindu Marriage Act, 1955.

The act of Anjali leaving Rahul's home to live at her parents' house may be seen as the factum of desertion. Furthermore, her demand for a separate house and her refusal to let Rahul meet his daughter could potentially be considered as the intention to bring the matrimonial relationship to an end, i.e., the animus deserendi. Since Rahul filed the divorce petition in 2016, two years after Anjali left in 2014, it would appear that the condition of a continuous period of desertion of two years has also been satisfied.

However, it is important to note that the case is not as straightforward as it seems. It needs to be considered whether Anjali's demand for a separate house could be seen as a "reasonable cause" for leaving. This determination depends on the particular circumstances of the case, such as whether living with Rahul's parents posed some genuine and significant hardship for Anjali.

Significant Judicial Pronouncements

The concept of "reasonable cause" for desertion has been discussed in various judicial pronouncements. In the landmark case of **Savitri Pandey v. Prem Chandra Pandey (AIR 2002 SC 591)**, the Supreme Court held that if a spouse makes a reasonable demand and the other spouse does not comply with it without any reasonable excuse, the spouse making the demand may have a

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reasonable cause to live separately, which would not amount to desertion.

In the case of **Geeta Jagdish Mangtani vs Jagdish Mangtani (2005)**, the Bombay High Court held that if the wife's demand for a separate residence was reasonable considering the circumstances, her decision to live separately would not be considered desertion.

In **Bipin Chander Jaisinghbhai Shah vs Prabhawati (AIR 1957 SC 176)**, the Supreme Court opined that desertion involves the willful neglect of the petitioner by the respondent. If the respondent with a reasonable cause withdraws from the society of the petitioner, she will not be guilty of desertion.

Analysis of the Case

Applying these precedents to the case of Rahul and Anjali, the court would need to consider whether Anjali's demand for a separate house was reasonable under the circumstances. If her demand was driven by genuine difficulties in living with Rahul's parents, such as significant ill-treatment or undue interference, the court may find that her leaving did not constitute desertion.

However, if the court finds that Anjali's demand was not reasonable or justified, and that she left with the intention of ending the matrimonial relationship, her conduct may be considered desertion.

Another important point to consider is the denial of Rahul's right to meet his daughter. This could be

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interpreted as another indication of Anjali's intent to abandon the matrimonial relationship. The court would have to examine whether this conduct, combined with her refusal to return, satisfies the legal criteria for desertion.

Role of Mediation and Reconciliation

Before proceeding with divorce, courts in India usually make an effort to reconcile the parties, given the social implications of divorce. The Supreme Court in **Amardeep Singh vs Harveen Kaur (2017)** held that in cases where the parties have been living separately for a long time and there is no chance of further reconciliation, mediation or counselling should not be forced upon them.

However, in the case of Rahul and Anjali, Rahul has expressed that he loves his wife and their daughter and wants them to return. This sentiment indicates the possibility of reconciliation and the court could explore mediation as a solution before deciding on the divorce plea.

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Q. (A) “IF A CONSENT DECREE FOR RESTITUTION OF CONJUGAL RIGHTS UNDER THE HINDU MARRIAGE ACT, 1955 IS PASSED, IT WILL NOT BE NULLITY.” COMMENT.

(B) WRITE A NOTE ON VOIDABLE MARRIAGES UNDER THE HINDU MARRIAGE ACT, 1955.

The Hindu Marriage Act, 1955 (HMA) under Section 9 provides for the Restitution of Conjugal Rights (RCR). The provision states that if a spouse withdraws from the society of the other without a reasonable excuse, the aggrieved party may apply for restitution of conjugal rights, essentially demanding the return of the spouse to live together once again. In such cases, a decree for restitution is passed by the court.

When both spouses mutually agree and give their consent to such a decree, it is called a consent decree. The statement in the question suggests that if a consent decree for restitution of conjugal rights is passed, it will not be nullity.

Analysis

A consent decree is essentially a compromise agreement that has been given the force of a decree by the court. It is treated on par with any other decree of the court and is fully executable. A consent decree holds its value and enforceability unless it is set aside on the grounds such as fraud, misrepresentation, or mistake, as per the provisions of the Code of Civil Procedure, 1908.

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Therefore, the statement in the question is correct. Once a consent decree for Restitution of Conjugal Rights is passed by the court, it is binding on the parties involved. It is not considered nullity or void.

Significant Judgments

The Supreme Court in **Chand Dhawan vs Jawaharlal Dhawan (1993)** held that a consent decree operates as an estoppel and binds the parties. In this case, the Court reiterated the view that a decree for RCR could be passed on the basis of compromise and it would not be void.

Q3 (b) Voidable Marriages under the Hindu Marriage Act, 1955

Introduction

The Hindu Marriage Act, 1955 distinguishes between void and voidable marriages. Void marriages are considered null and void ab initio, meaning they are treated as if they never existed. On the other hand, voidable marriages are considered valid and binding unless they are annulled by a court on the grounds specified in the Act.

Voidable Marriages Under the Hindu Marriage Act, 1955

Section 12 of the Hindu Marriage Act, 1955 provides for the grounds on which a Hindu marriage can be declared voidable. These are:

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1. **Impotency:** If the spouse is impotent at the time of marriage and continues to be so till the institution of the proceedings.
2. **Mental Disorders:** If the spouse is suffering from a mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or has been recurrently attacked by insanity.
3. **Consent Obtained by Force or Fraud:** If the consent to the marriage was obtained by force or by fraud relating to the nature of the ceremony or any material fact or circumstance concerning the respondent.
4. **Pregnancy by a Person other than the Husband:** If the wife was pregnant by someone other than the husband at the time of the marriage, and the husband was unaware of this fact.

Any of these conditions can render a marriage voidable, and the aggrieved party has the right to petition for an annulment. However, the marriage remains valid and effective unless and until the court grants an annulment.

Significant Judgments

In **Yuvraj Digvijay Singh vs Yuvrani Pratap Kumari (1970)**, the Supreme Court held that the burden of proof to establish that the marriage is voidable lies on the person alleging it.

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In **Sharda vs Dharmpal (2003)**, the Supreme Court held that the decree of nullity of marriage can be sought on the ground of mental disorder only if the following two conditions are satisfied:

1. The respondent spouse has been incurably of unsound mind, or
2. The respondent spouse has been suffering continuously or intermittently from a mental disorder of such a kind and to such an extent that the petitioner spouse cannot reasonably be expected to live with the respondent.

Application for Annulment and Limitation

An application for annulment of a voidable marriage can be filed by the aggrieved party. However, there are certain limitations to this right. According to Section 12(2) of the Act, a petition for annulment can't be entertained if:

1. The petition is presented more than one year after the force had ceased to operate or, as the case may be, the fraud had been discovered; or
2. The petitioner has, with full knowledge of the facts constituting the fraud, lived with the other party to the marriage as husband and wife after the force had ceased to operate or, as the case may be, the fraud had been discovered.

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Q. (A) WRITE NOTE ON ESSENTIAL CONDITIONS OF A VALID NIKAH

(B) WRITE NOTE ON MAHR (DOWER)

Nikah is the term used for marriage in Islamic law, or the Sharia. It is considered both a legal agreement and a sacred covenant. The Qur'an regards it as a strong bond (mithaqun ghalithun), but maintains that marriage is a civil contract, the main features of which are sound and competent parties, free consent, and a lawful purpose.

Conditions for a Valid Nikah

1. **Consent of Parties:** Consent is crucial to an Islamic marriage. Both parties must freely consent to the marriage. The consent should not be coerced or forced. The Prophet Muhammad is reported to have said, "A widow's consent must be obtained for her marriage. It must not be arranged without consulting her."
2. **Capacity to Contract:** Both parties must be capable of entering into a contract. This means that they must be of marriageable age and possess a sound mind.
3. **Mahr (Dower):** The groom must provide a dower to the bride. This is a sum of money or property that the husband promises to give the wife. It can be given at the time of the Nikah or deferred to a later date.

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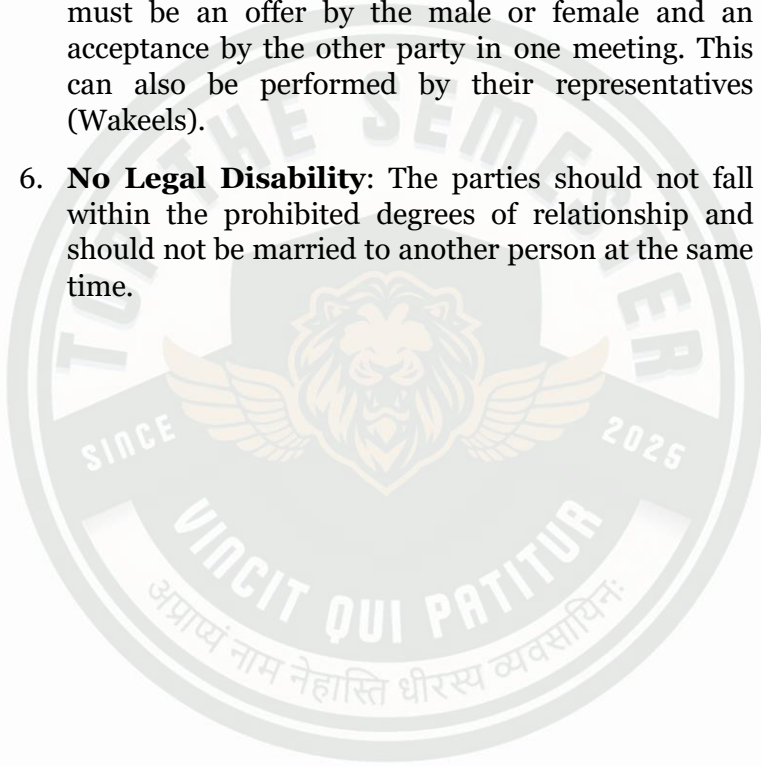
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4. **Witnesses:** Two male witnesses or one male and two female witnesses who are not blind, insane, or children, are required at the time of the Nikah.
5. **Ijab-o-Qubul (Offer and Acceptance):** There must be an offer by the male or female and an acceptance by the other party in one meeting. This can also be performed by their representatives (Wakeels).
6. **No Legal Disability:** The parties should not fall within the prohibited degrees of relationship and should not be married to another person at the same time.



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Q4 (b) Mahr (Dower)

Mahr or dower is a mandatory payment, in the form of money or possessions paid or promised to pay by the groom, or the groom's father, to the bride at the time of marriage, that legally becomes her property. It is an essential element of a Muslim marriage and is considered a wife's security and a token of the husband's willingness to accept the responsibilities of marriage.

Significance of Mahr

The payment of Mahr is mandatory and its amount is decided by the parties to the marriage. It is a mark of respect towards the bride. The Mahr does not constitute a price or consideration for the marriage contract in the sense of a civil contract, but is a mandatory requirement intended to provide financial security to the wife.

Types of Mahr

Mahr is generally of two types: *Prompt* and *Deferred*. Prompt Mahr is the amount that is due and payable to the wife at the time of marriage before the consummation of marriage. Deferred Mahr is the amount that is payable to the wife on the dissolution of marriage, either at the time of the husband's death or on divorce.

Legal Status of Mahr

Mahr is a wife's right and forms part of her financial security. According to **Section 3(1)(d) of the Muslim Women (Protection of Rights on Divorce) Act,**

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1986, Mahr is a sum of money or other property which the wife is entitled to receive from the husband in consideration of the marriage.

Significant Judgments

In **Abdul Kadir vs Salima (1886)**, the Allahabad High Court recognized Mahr as a mark of respect to the wife.

In **Noorjahan vs Ahamdali (1951)**, the Nagpur High Court held that Mahr is a sum of money or other property which the wife is entitled to receive from the husband in consideration of the marriage.

Mahr and Maintenance

It's crucial to note that Mahr is distinct from maintenance rights. The husband is obligated to provide maintenance during the subsistence of the marriage and the Iddat period post-divorce, as well as reasonable and fair provision and maintenance for future. The Supreme Court in **Danial Latifi vs Union of India (2001)** held that Mahr is the amount that is payable by law to the wife as an obligation imposed upon the husband as a mark of respect for the wife.

Payment and Enforcement of Mahr

Mahr is generally stipulated in the Nikahnama (marriage contract). If the husband refuses to pay the Mahr, the wife may refuse to live with him until he pays it. If it's not paid, it becomes a debt on him and his heirs. If the amount of Mahr is not specified in the Nikahnama, then according

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to Hanafi Law, the wife is entitled to proper Mahr, which is determined by comparing her qualities (age, beauty, status, etc.) with those of other women in her rank and status.



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Q. "TALAQ IS CONSIDERED AS A RIGHT OF A MUSLIM MALE." IS THERE ANY EXCEPTION WHERE THE POWER TO TAKE TALAQ CAN BE ACCESSED BY THE MUSLIM FEMALE? ELABORATE THE GROUNDS AVAILABLE TO MUSLIM FEMALE FOR TALAQ WITH SPECIAL EMPHASIS ON THE GROUNDS GIVEN UNDER THE DISSOLUTION OF MUSLIM MARRIAGE ACT, 1939.

In Islamic law, talaq is traditionally viewed as the exclusive right of a Muslim man to repudiate his wife unilaterally. However, there exist exceptions where this power can be accessed by the Muslim female as well, with important implications for gender equality in Muslim societies.

Women's Right to Talaq

The right to talaq is not exclusively a male right. Women too can exercise this right under certain circumstances, such as:

1. **Talaq-e-Tafweez:** This refers to a situation where the husband delegates his power of pronouncing talaq to his wife or any other person. He may delegate the power absolutely or conditionally, temporarily or permanently. This type of talaq is recognized by both Sunni and Shia schools.
2. **Khula:** This is the right of a woman in Islam to seek a divorce from her husband in exchange for a

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monetary compensation (considered as a return of the dower). It is essentially an agreement between the spouses for dissolving a dysfunctional marriage.

Dissolution of Muslim Marriage Act, 1939

The Dissolution of Muslim Marriage Act, 1939 is an important legislation that grants Muslim women the right to seek a divorce on specific grounds. Some of the key grounds available to a Muslim woman under this Act are:

1. **Absence of Husband:** If the husband has been missing for four years, a Muslim woman can seek a divorce.
2. **Failure to Maintain:** If the husband has failed to provide for her maintenance for two years.
3. **Imprisonment of Husband:** If the husband has been sentenced to imprisonment for seven years or more.
4. **Failure to Perform Marital Obligations:** If the husband has failed to perform his marital obligations for three years.
5. **Impotency:** If the husband was impotent at the time of marriage and continues to be so.
6. **Insanity or Leprosy:** If the husband is insane or suffering from leprosy or a virulent form of venereal disease.

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7. **Cruelty:** If the husband treats the wife with cruelty, that is, he habitually assaults her or makes her life miserable by cruelty of conduct.
8. **Other Grounds:** Any other grounds recognized under Muslim Personal Law, like the husband having more wives than legally permissible.

Significant Judgments

In the landmark case of **Shamim Ara vs State Of U.P. & Anr (2002)**, the Supreme Court of India held that a talaq in order to be valid must be pronounced. There has to be admissible evidence to prove talaq and mere plea taken in the written statement or its assertion in the examination would not be treated as pronouncement of talaq in the eye of law.

In the case of **Danial Latifi & Anr vs Union Of India (2001)**, the Supreme Court upheld the constitutional validity of the Muslim Women (Protection of Rights on Divorce) Act, 1986 which brought in important changes to the law related to maintenance of Muslim women.

Reformative Steps and Contemporary Discussions

Several reformative steps have been proposed and implemented across various Muslim countries and even within India to address the perceived gender imbalance in the talaq system. For instance, countries like Egypt, Tunisia, and Turkey have codified personal law and have

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implemented procedures that require court interventions in talaq cases.

In the Indian context, the passage of **The Muslim Women (Protection of Rights on Marriage) Act, 2019**, which makes instant triple talaq (talaq-e-biddat) a criminal offense, is seen as a major stride towards gender justice and equality for Muslim women. However, it is crucial to recognize that the discussion around gender equality in the realm of Muslim divorce law extends beyond the criminalization of instant triple talaq. For instance, many Muslim women's organizations have been advocating for a comprehensive reform of Muslim personal law based on a rights-based and gender-equal reinterpretation of the Quranic principles.

It is important to note here that the movement towards gender equality in Muslim divorce laws is not about imitating Western models of gender relations but about going back to the roots of Islam which, many argue, held women in high esteem and guaranteed them legal rights that were revolutionary for the time. For instance, the Quranic injunction on mahr, which mandates that a groom give his bride a marital gift, was seen as a means of providing women financial independence at a time when women's financial rights were not recognized.

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Q. "FATHER IS THE NATURAL GUARDIAN OF THE MINOR. IN THE ABSENCE OF THE FATHER, MOTHER IS THE NATURAL GUARDIAN. THE MOTHER OF THE MINOR WAS DEAD, BUT THE FATHER WAS NOT RESIDING WITH THE CHILDREN, WHO WERE BEING LOOKED AFTER BY THE AUNTY. THE FATHER HAS NOT CEASED TO BE A HINDU OR RENOUNCED THE WORLD AND HAS NOT BEEN DECLARED UNFIT." DECIDE AND SUBSTANTIATE YOUR ANSWER WITH RELEVANT CASE LAWS.

In Hindu law, the guardianship concept defines who has the responsibility and authority to care for a minor child's person and property. The Guardians and Wards Act, 1890, and the Hindu Minority and Guardianship Act, 1956 govern the guardianship provisions. These laws describe the guardianship roles for minors and how a person can become a lawful guardian.

Guardianship under Hindu Law

Traditionally, in Hindu law, the father is considered the natural guardian of a minor child, and in his absence, the mother assumes this role. This hierarchy is outlined in Section 6 of the Hindu Minority and Guardianship Act, 1956, which stipulates that the father is the natural guardian of a minor, whether legitimate or illegitimate, followed by the mother. However, the custody, upbringing, and education of a minor until the age of five ordinarily lie with the mother.

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The question presents a unique circumstance where the mother of the minor is deceased, and the father is not residing with the children, who are being taken care of by their aunt.

Case Law Precedents

In such a case, the father's natural guardianship status is unaffected by his physical absence from the children's residence, unless he is deemed unfit or unsuitable to act as a guardian. A clear understanding of this can be derived from the landmark judgement in the case of **Githa Hariharan and Another vs. Reserve Bank of India and Another (1999)**. In this case, the Supreme Court interpreted the father's role as a guardian to be not necessarily higher than the mother's. It ruled that Section 6(a) of the Hindu Minority and Guardianship Act, 1956, must be read as "after" instead of "after the lifetime", making either parent eligible to be a natural guardian during their lifetime.

This interpretation implies that although the father has not been physically present, he still holds the legal right and responsibility as a guardian unless his guardianship right is legally terminated or suspended by a competent court. The court usually only intervenes in cases where the child's welfare is at stake. In **Rosy Jacob vs. Jacob A. Chakramakkal (1973)**, the Supreme Court held that all matters concerning a minor, the child's welfare is paramount, and more important than any legal rights of the parents.

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Changing Paradigms and Critical Evaluation

In the recent past, the traditional understanding of guardianship under Hindu law has come under scrutiny, with many arguing for a more equitable approach that doesn't automatically prefer the father over the mother. Critics argue that the traditional preference for the father as the natural guardian reflects patriarchal biases and overlooks the welfare of the child, which should be paramount in any determination of guardianship.

Moreover, in light of changing societal norms and the evolving understanding of children's rights, the judiciary's role becomes even more critical. Given the diverse circumstances and complexities of modern family life, there is an increased recognition that the court must exercise its discretion and evaluate each case on its individual merits, rather than blindly adhering to the traditional father-first hierarchy.

Impact of the Personal Laws (Amendment) Act, 2010

It is also worth mentioning that the Personal Laws (Amendment) Act, 2010, amended Section 6 of the Hindu Minority and Guardianship Act, 1956. The amendment was brought to remove the preference given to the father over the mother as the natural guardian of the minor and treat both parents equally. This legal change reflects a shift towards a more gender-equal understanding of guardianship in Hindu law. However, in the absence of

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the mother, the father's guardianship rights stand unaltered.



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Q. A) SECTION 6 DOES NOT RECOGNIZE AN ADOPTION BY A HINDU OF ANY PERSON OTHER THAN HINDU'. COMMENT.

B) WRITE A NOTE ON INTER-COUNTRY ADOPTION.

A) ADOPTION OF A NON-HINDU UNDER SECTION 6 OF THE HINDU ADOPTIONS AND MAINTENANCE ACT, 1956

The Hindu Adoptions and Maintenance Act, 1956 (HAMA) governs adoption among Hindus in India. This Act is a personal law applicable to Hindus, which includes Buddhists, Jains, and Sikhs and those who are not Muslims, Christians, Parsis, or Jews, unless it is proved that such persons are not governed by this Act. Adoption is the process through which the adopted child is permanently separated from his biological parents and becomes the legitimate child of his/her adoptive parents with all rights, privileges, and responsibilities.

Section 6 of HAMA and Its Implications

Section 6 of HAMA enumerates the requisites for a valid adoption. One of these requirements, as stated in Section 6(v), is that the person being adopted must be a Hindu. Therefore, it explicitly prohibits a Hindu from adopting a non-Hindu. This provision reflects the religious nature of adoption under Hindu law, where adoption is considered a sacrament and not merely a legal act.

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As per the Act, the purpose of adoption is to secure the performance of one's religious and spiritual duties, ensure the continuance of one's lineage, and bring bliss and solace in this and the other world. Since only a Hindu is believed to be capable of fulfilling these religious obligations, adoption of a non-Hindu is not permitted under the Act.

Case Law Precedents and Critiques

The courts in India have upheld the provision of Section 6(v) in various cases. For example, in **Pratap Singh v. State of Orissa (AIR 1962 Ori 104)**, it was held that a non-Hindu cannot be adopted by a Hindu.

However, this provision has been criticized for being discriminatory and restrictive, especially in the present-day context where the primary objective of adoption is to secure a loving and caring family for a child rather than fulfill religious obligations.

B) Inter-Country Adoption

Introduction

Inter-country adoption refers to the process where a child habitually resident in one country is adopted by an individual or couple resident in another country. Given its cross-border nature, inter-country adoption involves complex legal procedures and is governed by various international conventions, domestic laws, and regulations.

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Legal Framework for Inter-Country Adoption in India

In India, inter-country adoptions are primarily governed by the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015, and the guidelines issued by the Central Adoption Resource Authority (CARA), the central authority for adoption in India. CARA, an autonomous body under the Ministry of Women and Child Development, has been designated as the Central Authority for overseeing both in-country and inter-country adoptions in accordance with the Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption, 1993.

The primary aim of these regulations and guidelines is to ensure the best interests of the child in all decisions related to adoption. Hence, in-country adoptions are given preference over inter-country adoptions to ensure that children grow up in their cultural and linguistic environment to the extent possible.

Process of Inter-Country Adoption

The process of inter-country adoption involves several steps, including preparation of a home study report of the prospective adoptive parents (PAPs) by a competent authority in their country of residence, registration of PAPs in India's Child Adoption Resource Information and Guidance System, matching of PAPs with a legally free child, obtaining a No Objection Certificate from CARA, and securing the adoption order from a competent

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court in India. Once the adoption order is obtained, the adoptive parents can apply for the child's passport, and upon issuance, the child can travel to the adoptive parents' country of residence.

Key Legal Precedents and Guidelines

Several Indian court rulings have shaped the landscape of inter-country adoption. For instance, in the case of **Laxmikant Pandey vs. Union of India (AIR 1984 SC 469)**, the Supreme Court issued several guidelines to protect the interest of children in inter-country adoption. Subsequent rulings in this case have shaped the guidelines further.

Challenges and Criticisms

Despite the presence of legal safeguards, inter-country adoption faces numerous challenges. These include the risk of child trafficking, illegal adoptions, and the misuse of the system by unscrupulous elements. Critics argue that the system needs to be more transparent and accountable, with better enforcement of existing regulations and stronger international cooperation.

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Q. 'THE YEAR 2005 HAS BROUGHT A RELIEF TO THE VICTIMS OF DOMESTIC VIOLENCE'. DISCUSS THIS STATEMENT IN THE LIGHT OF THE MEANING OF THE WORD 'DOMESTIC VIOLENCE' UNDER THE ACT AND THE EXPANSION OF THE SAME BY RELEVANT CASE LAWS.

The year 2005 was a turning point in the history of women's rights in India. The Protection of Women from Domestic Violence Act (PWDVA), 2005, was passed, which represented a shift in the legal recognition of the complexities and nuances of domestic violence. Before this act, domestic violence, a widespread and insidious issue, did not have a comprehensive legal mechanism for redress.

The Protection of Women from Domestic Violence Act, 2005

The PWDVA was passed with the objective of providing more effective protection to women who are victims of violence within the family. It recognizes the woman's right to live in a violence-free home and provides legal remedies against all forms of domestic violence.

Understanding Domestic Violence as per PWDVA, 2005

Section 3 of the Act provides a comprehensive definition of domestic violence, which includes not just physical violence, but also other forms such as sexual, verbal,

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emotional, and economic abuse. This broad definition acknowledges the multifaceted nature of domestic violence, which extends beyond just physical harm and can encompass actions that cause emotional distress, financial instability, and sexual abuse.

Additionally, the Act also includes a woman's right to secure housing (Section 17) and the right to monetary relief (Section 20) to cover losses suffered as a result of the violence.

Expansion of the Term 'Domestic Violence' through Case Laws

Over the years, the Indian judiciary has played a significant role in expanding the understanding and scope of domestic violence.

In a landmark case, **S.R. Batra v. Taruna Batra (2007)**, the Supreme Court held that a wife is only entitled to claim a right to residence in a shared household, and a shared household would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member.

This judgment received criticism for its narrow interpretation of 'shared household.' The Supreme Court in **Satish Chander Ahuja v. Sneha Ahuja (2020)**, overruled the decision in the S.R. Batra case. The Court held that the right to residence under the Domestic Violence Act is not an ephemeral or transient right but

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extends to cover situations where the wife may require alternative accommodation if it is impossible for her to live in the shared household.

Furthermore, in the case of **V.D.Bhanot v. Savita Bhanot (2012)**, the Supreme Court extended the applicability of the Act retrospectively to instances of abuse occurring before the Act came into force if the period of abuse extended into a time after the Act was passed.

Importance of Implementing Agencies

The efficacy of the PWDVA, 2005, also hinges on the successful operation of its implementing agencies, namely, Protection Officers, service providers, and medical facilities. The Act assigns various duties to these officers to ensure the victim's safety, ranging from providing information about the victim's rights to preparing a "Domestic Incident Report."

Role of NGOs and Legal Services Authorities

The Act further includes the assistance of non-governmental organizations (NGOs) and Legal Services Authorities (LSAs) in the enforcement mechanism. They are empowered to facilitate the victim's access to justice, with duties like getting the victim medically examined and ensuring she is not victimized by her aggressor. This assistance plays a significant role in creating an accessible and supportive environment for the victims of domestic violence.

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Critique of the Act

Despite these strides forward, the Act has been critiqued for its limited scope and operational challenges. The Act is only applicable to aggrieved women and not men. Its application is also limited to live-in relationships and does not include other relationships outside marriage, such as dating relationships. In terms of implementation, reports of underfunded Protection Officers, unawareness among women about their rights under the Act, and the existence of patriarchal biases among law enforcement agencies present considerable challenges.

Landmark Judgment and Its Impact

The Supreme Court, in the case of **Indra Sarma vs. V.K.V Sarma (2013)**, recognized that women in live-in relationships are also entitled to all the protections given under the PWDVA, 2005. This judgment was vital in expanding the scope of the Act and signified a move towards recognizing evolving social realities in India.

The Future of Domestic Violence Legislation in India

Despite the challenges in implementing the PWDVA, 2005, it is an essential step towards addressing the issue of domestic violence in India. To improve its effectiveness, steps need to be taken to eliminate operational bottlenecks, create greater awareness about the Act, and ensure its protections are expanded and interpreted to cover all forms of domestic relationships.

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Q. A) WRITE A NOTE ON LIVE-IN RELATIONSHIP

B) WRITE A NOTE ON IVF

Q9(A): LIVE-IN RELATIONSHIPS IN INDIA

In India, a society marked by conventional norms and traditions, the concept of live-in relationships represents a significant deviation from societal expectations about the institution of marriage. Live-in relationships, or cohabitation, refers to a situation where two adults live together in a relationship that bears semblance to a marriage, but without legally being married.

Legal Status of Live-In Relationships

Live-in relationships are not illegal in India, but they are not explicitly recognized by law either. However, the courts, through various judgments, have given legal sanctity to such relationships and have also conferred certain rights to parties in a live-in relationship, acknowledging the changing social realities.

The Supreme Court, in the landmark judgment of **S. Khushboo vs Kanniammal & Anr (2010)**, held that a live-in relationship comes within the ambit of the right to life under Article 21 of the Indian Constitution. The court further observed that living together is a right to life and not a criminal offense.

Rights and Legal Protections in Live-In Relationships

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The Protection of Women from Domestic Violence Act, 2005, has provided a significant amount of rights to live-in partners. In **Indra Sarma vs V.K.V Sarma (2013)**, the Supreme Court held that a woman in a live-in relationship would be entitled to maintenance if she fulfills certain parameters.

Moreover, the Supreme Court, in **D. Velusamy vs D. Patchaiammal (2010)**, laid down specific conditions for a live-in relationship to be considered a 'relationship in the nature of marriage' under the Domestic Violence Act. It stated that not all relationships will amount to a relationship in the nature of marriage and get the benefit of the Act.

Children Born Out of Live-In Relationships

In **Tulsa vs Durghatiya (2008)**, the Supreme Court held that a child born out of a live-in relationship might not be illegitimate by law, provided the parents have a locatable legal obligation between them. The child is entitled to inherit the property of the parents. This stand was reiterated in **Bharata Matha & Ors vs R. Vijaya Renganathan & Ors (2010)**, where the Supreme Court stated that child born out of a live-in relationship is not illegitimate.

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Q9(B): IN-VITRO FERTILIZATION (IVF) IN INDIA

In-Vitro Fertilization (IVF) is a process of fertilization where an egg is combined with sperm outside the body, in a laboratory dish, and then implanted in a woman's uterus. In India, IVF has become increasingly popular and has offered hope to many couples who cannot conceive naturally.

Legal Aspects of IVF

In India, there are no codified laws governing IVF procedures, and it largely operates under a self-regulated mechanism. However, the Indian Council of Medical Research (ICMR) has provided certain guidelines for ART (Assisted Reproductive Technology) clinics.

These guidelines, while not legally binding, provide a framework for ethical practices, rights of the parties involved, including the surrogate mother, and responsibilities of ART clinics. They cover important areas such as informed consent, confidentiality, handling of the embryos, and the prohibition of sex selection, except for avoiding sex-linked genetic diseases.

Rights and Protections

IVF has raised complex legal and ethical issues, particularly relating to the rights of the child, the donors, and the parents. The ICMR guidelines recommend that an IVF child has the right to information about their genetic parents. However, the donor's identity is usually

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kept confidential unless the donor agrees to reveal their identity.

The question of the legal status of the embryo has also been debated. The ICMR guidelines indicate that the couple or individual that has availed of IVF services should be the legal parents of the child, but it does not explicitly mention the legal status of the unused embryos.

Regulation of IVF Clinics

In the absence of a legislative framework, there have been reports of malpractices by some ART clinics. To address these concerns, the **Assisted Reproductive Technologies (Regulation) Bill** has been drafted, which aims to establish a national ART registry, accredit ART clinics, and regulate the operation of these clinics.

Ethical and Social Implications

IVF has also raised ethical and societal issues. From an ethical perspective, concerns relate to the creation, use, and destruction of human embryos. From a societal perspective, issues like commercialization of surrogacy, the high cost of IVF procedures, and the physical and psychological impact on the women undergoing these procedures are significant.

The Future of IVF Legislation in India

Given the growing popularity of IVF and the emergence of related issues, there is a pressing need for comprehensive legislation. The proposed Assisted

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Reproductive Technologies (Regulation) Bill is a step in the right direction and is expected to bring uniformity in the standards of IVF clinics, protect the rights of donors, surrogates, and children born through ART, and penalize malpractices.



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PAPER 2

PART A

QUESTION 1: WRITE SHORT NOTES ON THE FOLLOWING

A) FORMS OF MARRIAGE

Marriage is a universal institution recognized and respected throughout the world. As a foundational social institution, it encompasses a wide range of social and legal aspects. In India, due to its vast diversity and pluralism, various forms of marriage are recognized, each with its unique customs, rituals, and legal implications. This diverse tapestry of marriage forms is chiefly shaped by religion, which plays a central role in guiding matrimonial laws in the country.

Hindu Marriages

According to the **Hindu Marriage Act, 1955**, a marriage may be solemnized in accordance with the customary rites and ceremonies of either party. There are two key forms of marriage in Hindu law:

1. **Brahma Marriage:** This is considered the highest form of Hindu marriage. The girl is gifted in marriage to a boy, both of whom are of the same varna. No dowry is involved, and the girl's father hosts the wedding.

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2. **Asura Marriage:** This form of marriage involves the groom giving dowry to the bride's parents. Though once a common practice, it has been widely discouraged due to the social and legal issues associated with dowry.

In the landmark case of **Seema v Ashwani Kumar** (2006), the Supreme Court made registration of marriage compulsory for safeguarding women's rights.

Muslim Marriages

Muslim law in India recognizes the contractual nature of marriage. The **Nikah** (marriage contract) is the central element. It can be:

1. **Nikah-e-Tamam:** A permanent marriage where the relationship is ongoing unless ended by divorce or death.
2. **Nikah-e-Mutah:** A temporary marriage with a predetermined duration. This form is more recognized by the Shia sect and is controversial within the Sunni sect.

The Supreme Court case **Shayara Bano v. Union of India** (2017) outlawed the practice of triple talaq, enhancing the rights of Muslim women in marital relationships.

Christian Marriages

Christian marriages in India are regulated by the **Indian Christian Marriage Act of 1872**. The marriage

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ceremony is conducted by a priest, and the ceremony must include an expression of intent by both parties and the pronouncement that they are husband and wife.

Special Marriage Act

In addition to the religious-based marriage laws, India also has the **Special Marriage Act, 1954** that provides a secular avenue for couples of different or same religions or those who want to bypass religious ceremonies.

QUESTION (B): CONSENT THEORY OF DIVORCE

The consent theory of divorce is premised on the mutual agreement of both parties involved in a marriage to legally terminate their relationship. Under this theory, both parties, recognizing their irreconcilable differences, can mutually agree to end the marriage.

Divorce by Mutual Consent under Hindu Law

The concept of mutual consent divorce was introduced in Hindu law by the **Hindu Marriage (Amendment) Act, 1976**, which added **Section 13B** to the Hindu Marriage Act, 1955. The Supreme Court in **Sureshta Devi v Om Prakash** (1991) clarified that mutual consent should continue till the divorce decree is passed and that the waiting period of six months could be waived in certain circumstances.

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The judgment of **Amardeep Singh v Harveen Kaur** (2017) further added that the six-month waiting period is not mandatory and can be waived by the court if all efforts for mediation and reconciliation have failed.

Khula and Mubara'at under Muslim Law

In Muslim law, consent-based divorce can take the form of **Khula** or **Mubara'at**. In Khula, the wife proposes the dissolution of marriage, typically in exchange for her dowry. This mechanism allows the wife to initiate divorce proceedings without the need for the husband's agreement. Conversely, Mubara'at is a form of mutual consent divorce where both parties desire separation.

The landmark case of **Danial Latifi v Union of India** (2001) interpreted the Muslim Women (Protection of Rights on Divorce) Act, 1986 and affirmed the Muslim woman's right to maintenance even after the period of iddat.

Irretrievable Breakdown of Marriage

A relatively recent development in Indian divorce law is the concept of **"irretrievable breakdown of marriage."** This theory suggests that if a marriage has broken down beyond repair, it should be legally dissolved, even if only one spouse consents. The Supreme Court in several cases like **Naveen Kohli v Neelu Kohli** (2006) and **Rishikesh Sharma v Saroj Sharma** (2007) acknowledged the principle of "irretrievable breakdown of marriage" but noted that it

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was for the legislature to incorporate it into statutory law. The Law Commission of India in its **217th Report** also recommended including this ground in the Hindu Marriage Act.

Divorce by Mutual Consent under Special Marriage Act

Under the **Special Marriage Act, 1954**, mutual consent divorce is recognized under **Section 28**. The conditions and procedures are similar to those in the Hindu Marriage Act, 1955.

QUESTION (C): EFFECTS OF ADOPTION

Adoption is a legal process whereby an individual takes on the parenting responsibilities for a child from the child's biological parents. The adopted child is given all the rights, privileges, and responsibilities that a biological child would have. Adoption in India is governed by several laws, primarily the **Hindu Adoption and Maintenance Act, 1956 (HAMA)** and the **Juvenile Justice (Care and Protection) Act, 2000** for non-Hindus.

Recognition of Adoption Agencies: The legal adoption process in India involves the use of recognized adoption agencies. These agencies facilitate the adoption process, including the screening and selection of prospective adoptive parents and matching them with eligible children.

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Court Decree: In all adoption cases, a court decree or order is required to formalize the adoption. This decree is legally binding and establishes the parent-child relationship between the adoptive parents and the adopted child. The court ensures that the adoption is in the best interests of the child.

Consent: Consent of all parties involved, including the biological parents (if known), the child (if capable of giving consent), and the adoptive parents, is a crucial element of the adoption process.

Rights of an Adopted Child

Under HAMA, an adopted child is treated as a biological child with all corresponding rights. These include:

1. **Right to Inheritance:** The adopted child becomes a coparcener and can inherit the property of adoptive parents as a biological child would.
2. **Right to be Treated as a Child:** Adopted children have the right to receive the same treatment as any biological child would in the family.
3. **Severance of Ties with Biological Family:** Post adoption, the adopted child loses all rights and obligations in the biological family, including the right to inherit.

The case of **Lakshmi Kant Pandey vs Union of India** (1984) played a significant role in developing legal principles and procedural safeguards concerning

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adoptions. This landmark case reaffirmed the importance of following the legal adoption process and recognized that a child adopted without a valid court decree is not entitled to the rights and privileges of a natural-born child.

Duties and Obligations of Adoptive Parents

Adoptive parents assume all the responsibilities and duties towards the adopted child that they would have towards a biological child. These include providing education, maintaining the child, protecting the child's rights, and treating the child as a member of the family.

Duties and Obligations of an Adopted Child

Just like a biological child, an adopted child also has duties and obligations towards his/her adoptive parents. This includes taking care of them in their old age and performing religious rites and ceremonies.

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QUESTION (D): KHYAR-UL-BULUGH

The concept of **Khyar-ul-bulugh** is unique to Muslim law. "Khyar" means option, and "bulugh" refers to puberty or majority. Thus, Khyar-ul-bulugh gives an option to a person who has been contracted into a marriage by his/her guardians during minority to either ratify the marriage or repudiate it upon attaining the age of puberty.

1. **Age of Puberty:** Khyar-ul-Bulugh operates on the principle that when a minor, usually defined as someone who has not yet reached the age of puberty, becomes capable of understanding the implications and responsibilities of marriage, they can exercise their right of choice.
2. **Consent in Marriage:** In Islamic law, marriage is typically considered valid with the consent of both parties. However, minors are not considered legally competent to give their full consent. Khyar-ul-Bulugh allows them to withhold or confirm their consent once they reach the age of puberty.
3. **Significance:** This concept is significant in Islamic family law as it recognizes the evolving maturity of minors and ensures that they are not bound by a marriage contract made on their behalf before they reach the age of consent.
4. **Application:** The application of Khyar-ul-Bulugh may vary among different schools of Islamic

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jurisprudence (madhabs), and there can be differences in the interpretation of when a minor reaches the age of puberty. Some consider physical signs of puberty, while others focus on mental and emotional maturity.

5. **Legal Safeguards:** To protect the interests of minors, Islamic family law often requires the presence and consent of a guardian (usually the father) in marriage contracts. The concept of Khyar-ul-Bulugh serves as an additional layer of protection for minors once they attain the capacity to make informed decisions.

Legal Implications

1. **Right to Repudiate the Marriage:** The person who was a minor at the time of the marriage has the right to repudiate the marriage upon attaining puberty. The option should be exercised immediately after attaining puberty, and any significant delay may result in the implied ratification of the marriage.
2. **Right to Ratify the Marriage:** If the person continues to cohabit with their spouse after reaching puberty, it is considered as ratification of the marriage.

In the case of **Abdul Kadir v. Salima** (1886), it was held that a Muslim girl married by her father at the age of 11, repudiated the marriage immediately after attaining puberty. The court upheld her right to do so.

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QUESTION (E): DE-FACTO GUARDIAN

A De-facto guardian, a term rooted in the legal traditions of many countries, refers to a person who is not a child's legally appointed guardian but nonetheless cares for the child as such. The concept is recognized under Hindu Law in India, specifically mentioned in the **Hindu Minority and Guardianship Act, 1956**.

De-facto Guardian under Hindu Law

Section 11 of the Hindu Minority and Guardianship Act, 1956 explicitly mentions a de-facto guardian, stating that no person shall be entitled to dispose of, or deal with, the property of a Hindu minor merely on the ground of his or her being the de-facto guardian of the minor. This provision is premised on the protection of minor's rights over their property.

The de-facto guardian has no power to bind the minor or the minor's estate by a contract, even if it is for the supposed benefit of the minor. A de-facto guardian also cannot mortgage or charge, or transfer by sale, gift, exchange, or otherwise, any part of the immovable property of the minor.

Legal Implications

The role of a de-facto guardian in the eyes of the law is significantly restricted, especially concerning the property rights of the minor. Any transfer of immovable property done by a de-facto guardian can be declared null and void.

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In the landmark case of **Prakash & Ors vs. Phulavati & Ors** (2016), the Supreme Court held that the rights under the amended Hindu Succession Act, 2005, accrue by birth, and thus, a daughter could not be deprived of her share in property by a de-facto guardian.

However, it's also worth noting that the de-facto guardian can make decisions concerning the minor's person, such as decisions related to education, medical treatment, etc., provided they are in the best interests of the minor.



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PART B

QUESTION 2: WHAT IS RESTITUTION OF CONJUGAL RIGHTS? DISCUSS ITS CONSTITUTIONAL VALIDITY WITH THE HELP OF DECIDED CASES ON THE SUBJECT.

The principle of Restitution of Conjugal Rights (RCR) is a unique aspect of matrimonial law in India. It refers to the right of a married person to the society of their spouse. The primary aim of this provision is to encourage reconciliation and cohabitation between estranged married couples, thereby preventing the breakdown of marriage.

Restitution of Conjugal Rights under Various Laws

Under Indian law, the concept of RCR is codified under **Section 9 of the Hindu Marriage Act, 1955, Section 32 of the Parsi Marriage and Divorce Act, 1936, Section 22 of the Special Marriage Act, 1954, and Section 36 of the Indian Divorce Act, 1869.** In Muslim Law, though there is no statutory provision, the principle is recognized based on the interpretation of religious texts and traditions.

The provision essentially stipulates that when either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply to the court for restitution of conjugal rights. The court, upon being satisfied with the truth of

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the statements made in such a petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

Constitutional Validity of RCR

The constitutional validity of RCR came under scrutiny in the landmark case of **T. Sareetha v. T. Venkata Subbaiah** in 1983 by the Andhra Pradesh High Court. The court struck down Section 9 of the Hindu Marriage Act, 1955, arguing that it violated **Article 14 (Equality before Law)** and **Article 21 (Protection of Life and Personal Liberty)** of the Constitution of India. The court held that it was a "savage and barbarous" remedy violating the right to privacy and human dignity guaranteed by Article 21 of the Constitution.

However, this judgment was subsequently overruled by the Supreme Court in **Harvinder Kaur v. Harmander Singh Choudhry** in 1984. The apex court held that the RCR provision does not force an unwilling spouse to have sexual intercourse or to live physically together, nor does it compel the spouses to live together at all. The court further argued that the decree of RCR merely directs the erring spouse to cohabit and take part in marital obligations. Therefore, it was held not to be violative of Articles 14 and 21 of the Constitution.

Again in 1985, in the case of **Saroj Rani v. Sudarshan Kumar Chadha**, the Supreme Court reaffirmed its stance on the constitutional validity of RCR. The Court

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held that the decree of RCR does not force the unwilling spouse to physically return to the company of the petitioner, but merely imposes a legal obligation to live together, which if not adhered to, may constitute a ground for divorce.

Interplay with Personal Laws

The principle of RCR has an interesting interplay with personal laws in India. In **Ahmedabad Women Action Group (AWAG) v. Union of India**, the petitioners contended that the provisions of Muslim personal law authorizing polygamy and oral divorce violated Articles 14, 15, and 21 of the Constitution. However, the Supreme Court declined to examine these aspects, emphasizing the need for legislative intervention.

The interplay of personal laws and the principle of RCR further highlights the complex and sensitive nature of matrimonial laws in India. While personal laws permit practices tailored to religious customs, the civil laws like RCR try to establish a secular baseline aimed at safeguarding the rights of spouses within a marriage.

Criticisms and Concerns

Despite its constitutional validity, RCR has faced criticism. Critics argue that it preserves patriarchal norms by enforcing spousal cohabitation, thereby infringing on the individual's autonomy and freedom of choice. They claim that it does not adequately account for

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cases where the marital relationship is harmful or abusive.

Role of Judiciary

The judiciary, over the years, has played a significant role in interpreting and applying RCR. Courts have tried to balance the principle's objective of preventing the breakdown of marriages with the need to protect individuals' fundamental rights.

Recommendations for Reform

Various law commissions and scholars have proposed reforms to make RCR more gender-neutral and respectful of individual autonomy. These include placing greater emphasis on counseling and mediation, re-evaluating the decree's enforcement mechanisms, and considering changes in societal norms and values.

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QUESTION3: JUDICIAL SEPARATION IS CONSIDERED TO BE THE STEPPING STONE TOWARDS DIVORCE. DO YOU AGREE WITH THE STATEMENT? EXPLAIN

Judicial separation and divorce are two important concepts in matrimonial law. While both provide a legal recourse for couples facing marital discord, their implications and consequences are distinct. Judicial separation, recognized under **Section 10 of the Hindu Marriage Act, 1955**, allows a married couple to live apart for a certain period, preserving the marital status legally. On the other hand, divorce legally dissolves the marriage. The statement that judicial separation is considered the stepping stone towards divorce suggests that it often precedes and leads to divorce. To evaluate this statement, one needs to delve deeper into the nature and consequences of both concepts.

Understanding Judicial Separation

Judicial separation allows a couple to live apart while maintaining the legality of their marriage. During this period of separation, the couple is expected to introspect on their relationship, resolve their differences, and potentially reconcile.

Under the Hindu Marriage Act, 1955, a decree of judicial separation can be obtained on any of the grounds enumerated in Section 13(1) and Section 13(1A), such as adultery, cruelty, desertion, conversion, unsoundness of mind, venereal disease, renunciation of the world, and

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presumption of death. The primary difference between the two sections lies in their relationship with the decree of judicial separation. Section 13(1A) allows either spouse to present a petition for the dissolution of marriage by a decree of divorce if there has been no resumption of cohabitation for one year or more after the decree of judicial separation.

Judicial Separation as a Stepping Stone to Divorce

From a practical perspective, judicial separation may often be a precursor to divorce. The decree provides the couple with an opportunity to live separately and consider if they can reconcile their differences or if dissolution of marriage is the best course of action. If the period of judicial separation does not lead to reconciliation and cohabitation is not resumed, it can indeed provide a ground for divorce under Section 13(1A). This is why judicial separation can be seen as a stepping stone to divorce.

In the case of **Naveen Kohli vs. Neelu Kohli (2006)**, the Supreme Court observed that once a marriage has broken down beyond repair, it would be unrealistic for the law not to recognize this fact and that it may be advantageous for the parties to dissolve the marriage by divorce. This suggests an acceptance of the progressive move from judicial separation to divorce when reconciliation is unlikely.

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Contrasting Perspectives

However, the characterization of judicial separation as a stepping stone to divorce should not undermine its original purpose - to facilitate reconciliation. The intent of the provision is to provide a buffer period for the couple to reflect on their marital relationship without the immediate finality of divorce.

In the case of **Savitri Pandey vs. Prem Chandra Pandey (2002)**, the Supreme Court held that the object of the provision for judicial separation was to bring about a reconciliation between the parties if possible. This underlines the judicial acknowledgment of the principle of reconciliation inherent in the concept of judicial separation.

Judicial Separation vs. Divorce

It is crucial to further understand the comparative implications of judicial separation and divorce. While both grant a couple the right to live separately, the legal consequences differ. In a judicial separation, the marriage is not dissolved and remains intact, which means the parties are not free to remarry. Further, the spouses still have certain obligations and responsibilities towards each other.

However, in the case of divorce, the marriage is completely dissolved. Both parties are freed from all marital obligations and are free to remarry. The rights and duties that are associated with marriage, such as

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maintenance, child custody, and property division, are settled permanently during the divorce proceedings.

The Role of Judiciary in Upholding the Institution of Marriage

Courts play a significant role in the implementation of the provisions for judicial separation and divorce. In most cases, courts strive to maintain the sanctity of the marital institution. Therefore, the decree of judicial separation is generally viewed as a measure to provide an opportunity for reconciliation between the estranged parties.

Several judgements, like the **Rajesh Burmann vs. Mitul Chatterjee (Burmann) 2016**, illustrate this point where the court observed that the primary purpose of incorporating provisions like judicial separation is to provide a chance for the couple to reconsider their decision. This further shows the reluctance of courts to treat judicial separation as a mere formality before the divorce proceedings.

The Shift in Societal Perception and Legal Practice

Over time, with the transformation of societal norms and attitudes towards marriage and divorce, the use of judicial separation as a stepping stone towards divorce has become increasingly common. The stigma associated with divorce has somewhat diminished, and couples often opt for judicial separation as a precursor to the final dissolution of marriage.

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Simultaneously, the interpretation and application of laws have evolved to reflect these changes. Courts are increasingly recognizing the futility of prolonging a marriage that has broken down irretrievably, and therefore, they grant divorce in such cases. The shift in the legal perspective was highlighted in the landmark case of **Manish Goel vs. Rohini Goel (2010)**, where the Supreme Court acknowledged that forcing the parties to continue in a dead marriage would amount to a useless and an empty formality.

The Practical Implication of Judicial Separation

Practically, the period of judicial separation often provides couples with an opportunity to assess their relationship objectively, which may result in either reconciliation or acknowledgment of irretrievable breakdown leading to divorce. In a way, this period serves as a stepping stone to either marital reunion or divorce, depending upon the outcome of introspection and efforts made by the couple.

Furthermore, the provision of judicial separation also gives couples who might have religious or moral objections to divorce, a chance to live separately and figure out the future course of their relationship without dissolving the marriage legally.

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QUESTION 4: IS MUSLIM MARRIAGE A CONTRACT? DISCUSS ITS NATURE

The nature of marriage in Islam is a topic that has been discussed and debated extensively. In traditional Islamic jurisprudence, marriage, also known as "Nikah," is considered not just a sacrament but primarily a contract or "Aqd". This contractual nature of Muslim marriage distinguishes it from the sacramental understanding of marriage in many other religions. The essence of this contractual concept is based on mutual consent, consideration, and specified terms and conditions agreed upon by both parties.

Conceptual Understanding of Nikah

In Arabic, the word 'Nikah' means 'to unite' or 'to bind'. It is a solemn contract ('Aqd') that the bride and the groom enter into and has legal and social implications. In the eyes of Islamic law, or 'Sharia', marriage is a civil contract, which requires proposal ('Ijab') from one party and acceptance ('Qubul') from the other.

The contract's primary purpose is to legalize sexual intercourse and the procreation of children, provide a lawful framework for the members of the family, and regulate social life.

Elements of the Contract

Just like any other contract, the marriage contract under Muslim law also has essential elements that must be fulfilled.

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1. **Parties:** The parties to a Muslim marriage must be a male and a female Muslim who are competent to contract. Both parties must have attained the age of puberty and must be of sound mind. They should not be within the prohibited degrees of relationship.
2. **Proposal and Acceptance:** A marriage proposal is a declaration of the intent to marry, made by one party to the marriage contract to the other. The acceptance, on the other hand, is a declaration that the other party willingly agrees to the marriage.
3. **Consideration (Mahr):** Mahr or dower is a sum of money or other property that the husband agrees to give the wife. It is a mandatory component of a Muslim marriage contract. It can be prompt (Muajjal) or deferred (Muwajjal), but a portion of it is usually given at the time of the marriage, and the balance is deferred to a later date.
4. **Free Consent:** For the validity of the marriage contract, it is essential that there is free consent from both parties. If the consent is obtained by coercion, fraud, or undue influence, the contract can be considered void.
5. **Witnesses:** The presence of two adult witnesses at the time of the proposal and acceptance is

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another essential condition for a valid Muslim marriage contract.

Nature of Contract

Islamic law perceives marriage as a strong legal contract rather than a sacrament. However, it's not just a mere civil contract but has religious and moral sanctity attached to it. The contractual nature of a Muslim marriage means it can be dissolved, and stipulations can be laid down at the time of entering into the contract.

The contract's stipulations can relate to various matters, such as the wife's right to divorce (Talaq-e-Tafweez), the prohibition on the husband taking a second wife, the amount of Mahr, and so forth. The inclusion of these conditions depends on the parties' mutual consent at the time of contract formation.

However, the contractual nature doesn't deprive the institution of marriage of its sanctity. The Prophet Muhammad is reported to have said, "When a man marries, he has fulfilled half of his religion, so let him fear Allah regarding the remaining half."

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THERE ARE CERTAIN CIRCUMSTANCES AND PROVISIONS UNDER WHICH A MUSLIM WOMAN CAN RELEASE HERSELF FROM MARITAL TIE. EXPLAIN

In Muslim law, marriage or Nikah is essentially a contract, as discussed earlier, and like any other contract, it can be dissolved under certain circumstances. The dissolution of marriage can happen from the husband's side traditionally known as 'Talaq,' but there are also legal provisions that empower a Muslim woman to seek dissolution or release from the marital tie. The various circumstances and provisions can be broadly classified into four categories: Khula, Mubaraat, Faskh, and Li'an.

Khula

Khula is a form of divorce in Islamic law initiated by the wife. According to traditional jurisprudence, Khula is the right of a wife in Islam to seek dissolution of the marriage contract from her husband in exchange for a monetary compensation returned to the husband, often the Mahr (dower) which he had given her.

This right of Khula was recognized in the Prophet Muhammad's time. It's based on the tradition of the Prophet wherein the wife of Thabit b. Qays requested the Prophet for a divorce from her husband.

Khula is a right available to the wife, but it requires the husband's consent. Therefore, it provides an avenue for a woman to exit an unhappy or problematic marriage.

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However, the dependency on the husband's consent can sometimes be a drawback if the husband refuses to grant the Khula.

Mubaraat

Mubaraat is another form of dissolution of marriage contract where both parties mutually agree to part ways. The term 'Mubaraat' comes from the Arabic word 'Barat,' which means 'to depart'. In Mubaraat, both the husband and wife desire separation, with neither party exercising undue influence over the other. The offer can be made from either side.

In a Mubaraat divorce, all obligations and expectations cease to exist once the separation occurs. This type of dissolution is usually preferred when the marital relationship has deteriorated to an extent where reconciliation is not possible.

Faskh

Faskh is a form of dissolution of Muslim marriage which can be initiated by a Muslim woman through judicial intervention. This mode of dissolution is applicable when the husband exercises his authority of Talaq in an unjust manner or when the wife can present valid grounds for dissolution. It is usually carried out by a Qazi or a Muslim Judge.

Grounds for Faskh can include non-payment of Mahr, impotence of the husband, cruelty, absence of the husband for a long period without a valid reason,

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husband suffering from leprosy or any venereal disease, or if he has any other wife living.

The Dissolution of Muslim Marriages Act, 1939, extended the scope of Faskh, allowing a Muslim woman to approach the court for the dissolution of her marriage. This Act provides several grounds on which a woman can seek divorce, such as the husband's cruelty, his failure to provide for her maintenance, his long absence without communication, and others.

Li'an

Li'an is a special form of dissolution of marriage used when the husband makes an accusation of adultery against his wife but has no evidence to support his claim. Under the doctrine of Li'an, if a husband accuses his wife of adultery and the wife denies it, both the husband and wife are required to swear by the veracity of their claims in front of the judge. If they both swear, the marriage is dissolved, and they cannot remarry.

This practice of Li'an protects a woman's rights by providing her with a means of escape from a marriage where she has been unjustly accused. However, it's a rare and exceptional form of dissolution and is not frequently used in modern times.

Talaq-e-Tafweez

Talaq-e-Tafweez is an important provision for a Muslim woman, although it's not a method of dissolution in itself. Under this provision, the husband delegates his power of

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pronouncing Talaq to his wife or any other person. This delegation can be made at the time of executing the Nikahnama or even after the marriage.

Once the power is delegated, the wife can dissolve the marriage under the circumstances specified in the delegation. This provision allows a Muslim woman to exit the marriage if the conditions under which she would want to do so are specified in the marriage contract. The Talaq-e-Tafweez has been upheld by the Indian judiciary in several cases, including in the landmark case of **Zeenat Begum vs Shri Md. Yusuf Khan (1981)**, where the Andhra Pradesh High Court held that the delegation of power to the wife to divorce is valid.

The Muslim Women (Protection of Rights on Divorce) Act, 1986

This Act was enacted following the judgment in the Shah Bano case to protect the rights of Muslim women who have been divorced by, or have obtained divorce from, their husbands. The Act sets out the rights of a Muslim woman to fair provision and maintenance from her husband after the divorce until she remarries. It is not a provision for a woman to seek dissolution of marriage but rather a means to ensure her financial security after the dissolution has occurred.

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DISCUSS THE PROVISIONS RELATING TO MAINTENANCE OF WIVES UNDER CODE OF CRIMINAL PROCEDURE, 1973

Maintenance, under Indian law, is the provision made for an individual to live by the means of another when the person is legally required to do so. Maintenance to wives is a legal obligation placed upon husbands in India to provide financial support. It's recognized across various personal laws of different religions and also under the secular laws. One of the important legislations providing for the maintenance of wives is the Code of Criminal Procedure (CrPC), 1973. The pertinent provision is **Section 125** of the Code which provides an effective remedy for neglected persons to seek maintenance.

Section 125 of CrPC

Section 125 of the CrPC provides a legal obligation for a person to maintain his wife, children, and parents if they are unable to maintain themselves. It's a measure of social justice specifically aimed at preventing vagrancy and destitution.

The section applies to all individuals regardless of their religion. This section is applicable not just to legally wedded wives but also to divorcées who aren't remarried. The principle underlying this provision is that the wife, children, and parents should not be left destitute.

In determining the maintenance to be awarded under Section 125, the court takes into consideration the

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husband's income and the wife's own assets and earning capacity. The maintenance amount should be such that the wife is able to live in reasonable comfort considering her status and the lifestyle she was used to in her matrimonial home.

Key Case Laws

The judiciary has played a vital role in shaping the interpretation and application of Section 125. The courts have broadened the scope of maintenance under this section through their progressive judgments.

In the landmark case of **Mohd. Ahmed Khan vs. Shah Bano Begum (1985)**, popularly known as the Shah Bano case, the Supreme Court held that a Muslim husband is liable to provide maintenance to his divorced wife even after the period of iddat, under Section 125. This judgment was significant as it upheld the right of Muslim women to maintenance under Section 125, overriding the Muslim personal law.

However, the decision in Shah Bano was politically controversial and led to the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986. The Act shifted the responsibility of maintaining divorced Muslim women from the husband to her relatives and the Waqf Board. However, the Supreme Court in the case of **Danial Latifi vs. Union of India (2001)** interpreted the Act to mean that a Muslim husband must make "reasonable and fair" provision for his divorced wife's

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maintenance, which includes her entire lifetime or until she remarries.

In the case of **Savitaben Somabhai Bhatiya vs. State of Gujarat (2005)**, the Supreme Court held that a woman in a live-in relationship is not entitled to maintenance under Section 125 of CrPC. However, in a more recent judgment, **Chanmuniya vs. Virendra Kumar Singh Kushwaha (2010)**, the Supreme Court held that a broad interpretation should be given to the term 'wife' to include even those cases where a man and woman have been living together as husband and wife for a reasonably long period.

The case of **Rajnesh vs. Neha (2020)** is another landmark judgment where the Supreme Court issued comprehensive guidelines for determining maintenance in matrimonial matters, and streamlined the process of adjudication of maintenance cases, ensuring consistency and uniformity in courts across the country.

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DISCUSS THE PROCEDURE FOR GETTING MARRIED UNDER THE SPECIAL MARRIAGE ACT, 1954

The Special Marriage Act (SMA), 1954, is a secular legislation that allows individuals of different religions, castes, and nationalities to marry under a common law in India. It also allows for interfaith marriages without necessitating the parties to renounce their religion. The Act sets out a specific procedure for registration of marriages and outlines certain conditions that must be fulfilled for a marriage to be recognized under this law.

Eligibility

Before diving into the procedure, it is essential to mention the eligibility conditions under the SMA. The parties to the marriage must fulfill the following conditions:

1. Neither party should have a living spouse at the time of marriage.
2. Both parties must be of sound mind and capable of giving valid consent.
3. Neither party should be suffering from a mental disorder that makes them unfit for marriage or procreation.
4. Both parties should have attained the age of marriage, which is 21 for males and 18 for females.

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5. The parties should not fall within the prohibited degree of relationship, unless a custom governing at least one of the parties permits such a marriage.

Procedure for Marriage under SMA, 1954

Once the eligibility conditions are fulfilled, the procedure to get married under SMA, 1954 is as follows:

Notice of Intended Marriage (Section 5): The parties to the intended marriage must give a written notice to the Marriage Officer of the district in which at least one of the parties has resided for at least 30 days immediately preceding the date on which the notice is given. This notice is then published to invite objections, if any.

Objections to Marriage (Section 6-7): Any person may, within 30 days from the publication of the notice, object to the marriage on the grounds that it would contravene one or more of the conditions specified in Section 4. The Marriage Officer shall not solemnize the marriage until he has inquired into the objection and is satisfied that it does not prevent the solemnization of the marriage.

Declaration by Parties and Witnesses (Section 11): Before the marriage is solemnized, the parties and three witnesses must sign a declaration in the presence of the Marriage Officer, who shall also sign the document.

Solemnization of the Marriage (Section 12): The marriage may be solemnized at the office of the Marriage

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Officer, or at such other place within a reasonable distance as the parties may desire. The parties may choose to exchange rings or garlands as a token of acceptance of each other.

Registration of the Marriage (Section 13): After the marriage has been solemnized, the Marriage Officer enters the marriage certificate in the Marriage Certificate Book. The parties and the three witnesses must sign the certificate. The entry of the certificate in the book is deemed conclusive evidence of the lawful marriage.

Key Case Laws

The Supreme Court in the case of **Seema vs. Ashwani Kumar (2006)** held that it is mandatory for the parties to a marriage to register their marriage. This is applicable to all persons, irrespective of their religion. The Court also said that the non-registration of a marriage would invite penalties.

In **Bhaurao Lokhande vs. State of Maharashtra (1965)**, the Supreme Court held that the second marriage of a man under the SMA, during the lifetime of his wife, is void.

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WHO IS A NATURAL GUARDIAN? DISCUSS HIS POWERS AND LIABILITIES

The concept of 'natural guardianship' refers to the inherent right and responsibility of parents to take care of their minor children. The term 'natural guardian' is primarily codified under the Hindu Minority and Guardianship Act, 1956 (HMGA). The Act, which complements and supplements the Guardian and Wards Act, 1890, designates who can be considered as a 'natural guardian' and lays out their powers and liabilities.

Who is a Natural Guardian?

Section 6 of the HMGA stipulates the natural guardians of a Hindu minor in respect of the minor's person as well as in respect of the minor's property. The father is the first natural guardian of a boy or an unmarried girl. The mother is the natural guardian of an illegitimate boy or an illegitimate unmarried girl. However, the custody of a minor who has not completed the age of five years shall ordinarily be with the mother. In the absence of the father and the mother, the custody goes to the paternal grandfather.

However, it should be noted that the father's right is subject to the proviso that he is not disqualified. The mother becomes the natural guardian of the child only after the father according to Section 6(a) of HMGA. This position was altered in the case of Githa Hariharan vs. RBI, where the Supreme Court held that the mother can

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also be the natural guardian even during the lifetime of the father if he is not capable of acting as such.

Powers of a Natural Guardian

Under Section 8 of the HMGA, a natural guardian has the power to do all acts that are necessary or reasonable for the benefit of the minor. The guardian can represent the minor in all legal and administrative procedures that concern the minor or their property. The guardian is responsible for taking care of the minor's personal needs like health, education, support, and welfare, as well as managing the minor's property.

However, the guardian's powers are not absolute. Certain limitations are imposed on the guardian to protect the minor's interests. The guardian cannot, without the permission of the court:

1. Mortgage, charge, or transfer by sale, gift, exchange, or otherwise, any part of the immovable property of the minor.
2. Lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

Liabilities of a Natural Guardian

The natural guardian is legally obliged to look after the minor's person and property. They should act in the best interest of the minor. If the guardian's actions or

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omissions are detrimental to the minor's interest, they can be held liable.

For example, if the guardian sells the minor's property without the court's permission, the sale could be set aside. If the guardian fails to take care of the minor's personal needs or fails to protect the minor's property, they could be held liable for negligence. Further, the court can remove the natural guardian if they continuously fail in their duty towards the minor.

The interpretation and enforcement of the laws related to guardianship have evolved over the years, reflecting the societal and judicial understanding of the best interest of the child. The landmark judgement in the **Githa Hariharan vs. RBI case** set a significant precedent by emphasizing the role of the mother as a natural guardian, thereby challenging the traditional notion that the father is always the primary caretaker. This judgement underlines the judiciary's role in interpreting the law in a manner that aligns with the principles of gender justice and child welfare.

In a bid to ensure that the child's best interests are secured, the law has been reformed time and again. The powers of the guardian are constantly scrutinized and evaluated to shield the minor's interests from any form of abuse. The liabilities of a natural guardian, on the other hand, are established to guarantee accountability, and they emphasize the paramount importance of the minor's welfare over any other consideration. If a guardian

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misuses his powers or fails to fulfil his responsibilities, the law ensures that corrective measures are taken.

However, despite the progressive interpretation and vigilant application of the law, there exist certain issues that need attention. The applicability of these laws mainly to Hindus, excluding other religious communities, is a key concern. It is vital to have a unified law regarding guardianship that applies to all children, irrespective of their religion. Moreover, the concept of joint guardianship, where both parents have an equal say in the child's upbringing, is yet to be recognized and enforced.



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Q9. A) WRITE NOTES DIVORCE BY MUTUAL CONSENT

B) WRITE NOTES CRUELTY AS A GROUND FOR DIVORCE

A: DIVORCE BY MUTUAL CONSENT

Divorce by mutual consent is a simplified and faster method to end a marriage where both parties agree on the terms of divorce. This concept was introduced in the Indian legal system through the Marriage Laws (Amendment) Act, 1976, which amended the Hindu Marriage Act, 1955, and the Special Marriage Act, 1954.

Legislative Provision

The concept of divorce by mutual consent is codified under Section 13B of the Hindu Marriage Act, 1955 and Section 28 of the Special Marriage Act, 1954. This provision allows a husband and wife to seek a decree of divorce by presenting a joint petition before the court on the ground that they have been living separately for at least one year and they have not been able to live together, and they have mutually agreed that the marriage should be dissolved.

Legal Procedure:

1. **Filing the Petition:** Both spouses jointly file a petition for divorce in the family court having jurisdiction over their residence. The petition must state that both parties have been living separately for

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over a year, they have not been able to live together, and they have mutually agreed to end the marriage.

2. **Cooling-Off Period:** After filing the petition, there is a mandatory six-month waiting period. This period is intended to provide time for reconciliation and to ensure that both parties genuinely wish to proceed with the divorce.
3. **Second Motion:** After the cooling-off period, both spouses file a second motion confirming their intent to divorce. They must reiterate their consent and agreement to end the marriage.
4. **Settlement Agreement:** The parties must reach an agreement on various aspects, including alimony or maintenance, child custody, visitation rights, division of property and assets, and any other relevant matters.
5. **Court Scrutiny:** The court reviews the settlement agreement to ensure it is fair and in the best interests of any children involved. The court may also question the parties to ascertain their consent.
6. **Issuance of Decree:** If the court is satisfied with the consent and agreement, it grants the divorce decree, which legally terminates the marriage.

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Landmark Judgments:

1. **Amardeep Singh vs. Harveen Kaur (2017):**
In this case, the Supreme Court clarified that the six-month cooling-off period was not mandatory, and courts could waive it if there was no possibility of reconciliation.
2. **Naveen Kohli vs. Neelu Kohli (2006):** The Supreme Court emphasized the importance of adhering to the terms of the settlement agreement and that any violation could lead to contempt of court proceedings.
3. **Vijaykumar Ramchandra Bhate vs. Neela Vijaykumar Bhate (2003):** The Supreme Court ruled that if the consent of one party was not genuine or was obtained under duress, the divorce petition would not be granted.

Benefits:

1. Divorce by mutual consent is generally quicker and less adversarial than contested divorces.
2. It allows couples to maintain an amicable relationship, which can be particularly important if they have children together.
3. It provides a more efficient and peaceful resolution to the dissolution of a marriage.

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B: Cruelty as a Ground for Divorce

Cruelty is recognized as a valid ground for divorce under various matrimonial laws in India, reflecting the legal system's commitment to protect individuals from abusive relationships.

Legislative Provision

Under the Hindu Marriage Act, 1955, cruelty was initially a ground for judicial separation under Section 10(1)(b). It was later made a ground for divorce under Section 13(1)(ia) by the Marriage Laws (Amendment) Act, 1976. Similarly, Section 27(1)(d) of the Special Marriage Act, 1954, and Section 2(viii) of the Dissolution of Muslim Marriages Act, 1939, recognize cruelty as a ground for divorce.

Key Aspects:

1. **Grounds for Divorce:** To seek divorce on the grounds of cruelty, it is essential to prove that the behavior of the offending spouse was cruel to the extent that it justifies the dissolution of the marriage.
2. **Mental Cruelty:** Indian courts have recognized that mental cruelty can be equally, if not more, damaging than physical cruelty. Thus, a pattern of mental cruelty can also be a valid ground for divorce.

Definition and Interpretation

Cruelty in matrimonial laws is not defined, allowing the courts to interpret it in a broad and flexible manner. It

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includes both physical and mental cruelty. Physical cruelty refers to acts causing bodily harm or danger to life, limb or health. Mental cruelty is more complex and includes acts causing mental pain, distress, and suffering.

The Supreme Court in the landmark case of **Shobha Rani vs. Madhukar Reddi**, laid down a broad interpretation of cruelty, stating that it is not necessary to prove that physical violence was used. If from the conduct of the spouse it is established or an inference can be legitimately drawn that the treatment of the spouse is such that it causes apprehension in the mind of the other spouse about his or her mental welfare, it amounts to cruelty.

The interpretation of cruelty has further evolved to incorporate modern societal understanding. In **Samar Ghosh vs. Jaya Ghosh**, the Supreme Court listed out instances of behavior that might come under the umbrella of cruelty, like constant and unjustifiable denial of sex, false allegations of adultery, and persistent demand for dowry.

V. Bhagat vs. D. Bhagat (1994): In this case, the Supreme Court clarified that cruelty must be of a grave and weighty nature to warrant divorce. Trivial altercations or ordinary wear and tear of married life do not qualify as cruelty.

Appanna vs. Saraswatamma (1964): This case established that cruelty need not be physical; mental cruelty can also constitute grounds for divorce. The court

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held that persistent insults, accusations, and humiliation could amount to cruelty.

Burden of Proof

In divorce proceedings based on cruelty, the burden of proof lies on the petitioner to establish the allegations. The standard of proof required in these cases is a preponderance of probabilities rather than beyond reasonable doubt. This means that if the court finds that the claim of cruelty is more likely than not, the court may grant a divorce decree.



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PAPER 3

PART A

QUESTION 1: WRITE SHORT NOTES ON THE FOLLOWING

WRITE A SHORT NOTE ON DESERTION AS GROUND FOR DIVORCE UNDER THE HINDU MARRIAGE ACT, 1955.

The Hindu Marriage Act, 1955 (HMA) in **Section 13(1)(ib)** provides desertion as a ground for divorce. Desertion, in this context, refers to the abandonment of one spouse by the other without reasonable cause and without the consent of the other. It should also be noted that desertion includes both the intention to bring cohabitation permanently to an end (animus deserendi) and the fact of physical separation (factum deserendi).

1. **Understanding Desertion:** Desertion as a legal concept is primarily associated with the notion of a 'marriage breakdown.' It can be perceived as a remedy granted to the deserted spouse, addressing an existing matrimonial disability.
2. **Essential elements of Desertion:** For desertion to be used as a ground for divorce, certain conditions must be met, these include:

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- **Factum of Separation:** It implies that there must be physical separation of the parties. The spouse who leaves the other must show an intention to sever the marital tie permanently.
 - **Animus Deserendi:** This refers to the intention to desert. The person who deserts their spouse must have the intention to bring the matrimonial consortium to an end.
 - **Absence of reasonable cause:** There should be no fair and reasonable grounds for the spouse to leave.
 - **Absence of consent:** There should be no consent from the other spouse for such desertion.
 - **Statutory period:** A continuous period of at least two years immediately preceding the presentation of the petition.
3. **Constructive Desertion:** It occurs when one spouse by his/her words or conduct forces the other to leave. In such cases, the spouse causing the other to leave is deemed to have deserted the other.

A significant case law that highlights these concepts is **Savitri Pandey v. Prem Chandra Pandey** (AIR 2002 SC 591). The Supreme Court observed that desertion

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involves the deserting spouse leaving the matrimonial home without any justification, and without the consent or against the wish of the other spouse, along with no evidence of the deserting spouse intending to return.

WRITE A SHORT NOTE ON DIVORCE BY MUTUAL CONSENT UNDER HINDU AND MUSLIM LAW.

1. Under Hindu Law

The Hindu Marriage Act, 1955 was amended in 1976 to introduce the concept of divorce by mutual consent by adding **Section 13B**. As per this section, both parties to a marriage may present a petition for divorce if:

- They have been living separately for a period of one year or more,
- They have not been able to live together, and
- They have mutually agreed that the marriage should be dissolved.

After the filing of the petition, a period of six months (cooling-off period) is given for reconciliation. If after the end of six months, the parties still wish to get divorced and they have failed to reconcile, the court may pass a decree of divorce. An essential case is **Sureshta Devi v. Om Prakash** (1991 AIR 536), where the Supreme Court clarified that the mutual consent should continue till the

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divorce decree is passed and it is not a mere formality to initiate the divorce proceedings.

2. Under Muslim Law

In Muslim law, there isn't a provision for divorce by mutual consent in the same way as in Hindu law. However, a similar concept does exist, known as **Khula** and **Mubarat**.

- **Khula:** It is a form of divorce where the wife proposes the divorce, typically offering the husband compensation – often, but not necessarily, returning her mehr (dower), in exchange for releasing her from the marital bond. The husband's consent is required for Khula. It is an extrajudicial mode of divorce, which means it doesn't require the court's intervention, though parties may resort to legal recourse if mutual agreement fails.
- **Mubarat:** Mubarat is another form of mutual divorce in Muslim law, where both the husband and wife desire separation. The offer of separation in Mubarat may proceed from the wife, or it may also proceed from the husband. Once it's accepted, it operates as a single irrevocable divorce (talaq-i-bain), and the marital tie is severed. The wife is entitled to her entire dower in Mubarat.

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In both Khula and Mubarat, the intention to part from each other should be explicit, and the proposition can be oral or written. Once the agreement is made, it is irrevocable.

Noteworthy is the landmark case of **Shamim Ara v. State of U.P. and Anr** (AIR 2002 SC 3551) where the Supreme Court held that a Muslim man cannot arbitrarily divorce his wife but must provide valid reasons. The court noted the presence of preconditions like arbitration, and the reason for divorce being acceptable in the eyes of the law. This judgment has been significant in curbing arbitrary divorces and ensuring women's rights in Muslim marriages.

WRITE A SHORT NOTE ON OPTION OF PUBERTY UNDER HINDU AND MUSLIM LAW.

1. Under Hindu Law

The option of puberty, also known as the doctrine of repudiation, is not explicitly recognized in Hindu Law. Historically, child marriages were prevalent in Hindu societies, but the modern law does not support this practice. With the passing of the **Child Marriage Restraint Act, 1929**, now amended and replaced by the **Prohibition of Child Marriage Act, 2006**, the legal age for marriage has been set to 18 for females and 21 for males. Any marriage conducted below these ages is punishable by law but is not declared void, rather it is

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"voidable" at the option of the minor upon reaching the age of majority.

2. Under Muslim Law

Muslim Law recognizes the **doctrine of puberty or Khyar-ul-Bulugh**. This doctrine is applicable when a marriage is contracted by a guardian for a minor boy or girl. Under this doctrine, upon attaining puberty, the minor has the option to either ratify the marriage or repudiate it. This right can be exercised by the minor:

- immediately after attaining puberty,
- if the marriage has not been consummated, and
- the minor should repudiate the marriage before the age of majority under the Indian Majority Act (i.e., before 18 years of age).

If the marriage is consummated, the right to repudiate the marriage ceases. The Supreme Court, in the case of **Abu Kausar v. The State (NCT of Delhi)** [(2013) 9 SCC 784], held that the option of puberty is a personal right and cannot be taken away by the act of consummation by the husband.

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WRITE A SHORT NOTE ON INTER COUNTRY ADOPTION

Inter-country adoption refers to the legal process where a child, whose biological parents are unable to care for him/her, is adopted by parents residing in a different country.

Under Indian law, inter-country adoptions are governed by the **Hague Convention on Protection of Children and Co-operation in Respect of Inter-Country Adoption, 1993** (Hague Adoption Convention), to which India became a signatory in 2003. The **Central Adoption Resource Authority (CARA)**, an autonomous body under the Ministry of Women and Child Development, is designated as the central authority for overseeing all adoptions in India.

The **Juvenile Justice (Care and Protection of Children) Act, 2015** and the **Adoption Regulations, 2017** framed by CARA also regulate the process of inter-country adoptions.

Key Principles:

1. **Best Interest of the Child:** The central principle of the Hague Adoption Convention is that inter-country adoptions shall be made in the best interests of the child.
2. **Subsidiarity Principle:** Inter-country adoption is considered only after determining that a suitable family is not available in India.

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3. **Process of Inter-Country Adoption:** The process involves home study of the prospective adoptive parents (PAPs), obtaining an adoption order from the court, acquiring a no-objection certificate (NOC) from CARA, and obtaining a visa for the child.
4. **Non-Refoulement:** Once an adoption is completed, it cannot be annulled in the event of a subsequent breakdown of the adoptive family.
5. **Post Adoption Follow Up:** The adoption agency is also required to provide post-adoption follow-up and counseling for a period of two years following the adoption.

In the case of **L.K. Pandey v. Union of India** [(1984) 2 SCC 244], the Supreme Court took cognizance of the issue of inter-country adoption. This case led to the framing of guidelines for such adoptions, ensuring that due diligence is carried out while processing inter-country adoption applications, and the welfare of the child is prioritized.

Another significant judgment is **Jan Balaz v. Anand Municipality** [AIR 2010 Guj 21]. In this case, the Gujarat High Court recognized the principle of best interests of the child and permitted the inter-country adoption of twin children born through surrogacy in India by a German couple. The Court held that in situations where the law is silent or unclear, the Courts are expected to act in the best interest of the child.

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WRITE A SHORT NOTE ON SURROGACY

Surrogacy is a method or agreement whereby a woman agrees to bear a child for another person or people, who will become the newborn child's parent(s) after birth.

In India, the regulatory framework of surrogacy underwent significant transformation with the enactment of the **Surrogacy (Regulation) Act, 2021**. This act was the culmination of debates and discussions that had taken place in the country about the ethical, moral, and legal implications of surrogacy.

Key Features of the Surrogacy (Regulation) Act, 2021:

1. **Prohibition of Commercial Surrogacy:** The Act prohibits commercial surrogacy, which is defined as surrogacy or its related procedures undertaken for a monetary benefit or reward. This prohibition aims to prevent the exploitation of surrogate mothers and the commodification of the surrogate child.
2. **Permitting Altruistic Surrogacy:** The Act permits altruistic surrogacy, which is defined as surrogacy where no charges, expenses, fees, remuneration or monetary incentive are given, except medical expenses.
3. **Eligibility Criteria for Intended Parents and Surrogate Mother:** The Act stipulates specific eligibility criteria for intended parents and surrogate mothers. The intended parents must be Indian citizens, married for at least five years, and between

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the ages of 23-50 for women and 26-55 for men. The surrogate mother must be a close relative of the intended parents, married and have at least one child of her own.

4. **Establishment of Authorities for Regulation of Surrogacy:** The Act provides for the establishment of a National Surrogacy Board, State Surrogacy Boards, and the appointment of appropriate authorities for the regulation of the practice and process of surrogacy.
5. **Rights of a Surrogate Child:** The Act secures the rights of a surrogate child by ensuring the child is entitled to all rights and privileges available to a natural child.

Landmark Case Law: The **Baby Manji Yamada v. Union of India** [(2008) 13 SCC 518] case, where the Japanese biological father sought custody for the surrogate child after the intended mother divorced him, brought the issue of surrogacy into the limelight. The Supreme Court held that commercial surrogacy was legal in India, and the intended father could be considered the legal father.

In **Jan Balaz v. Anand Municipality** [AIR 2010 Guj 21], the Gujarat High Court provided the surrogate children (twins) with Indian citizenship, which enabled them to leave for Germany with their intended parents. It suggested that a comprehensive international treaty is required for dealing with issues arising from surrogacy agreements.

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PART B

DISCUSS THE STATUS OF FOLLOWING MARRIAGES UNDER THE HINDU MARRIAGE ACT, 1955.

A) X MARRIES Z AFTER EMBRACING ISLAM WHILE HIS FIRST WIFE W IS ALIVE,

B) A MARRIES HIS BROTHER'S WIDOW UNDER A CUSTOM HAVING THE FORCE OF LAW.

C) M, A BOY, AGED 10 YEARS, MARRIES R, A GIRL, AGED 9 YEARS.

SUBSTANTIATE YOUR ANSWERS WITH LEGAL PROVISIONS AND CASE LAW, IF ANY.

The Hindu Marriage Act, 1955, governs the legitimacy, conditions, and dissolution of marriages between individuals who are Hindus by religion in any of its forms. It provides for the essential conditions that must be fulfilled for a marriage to be recognized as valid under the law.

a) X marries Z after embracing Islam while his first wife W is alive

In this scenario, where X, originally a Hindu, converts to Islam and marries Z while his first wife W is still alive, the situation becomes complex due to the interplay of personal laws and fundamental rights.

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As per Section 5(i) of the Hindu Marriage Act, 1955, a marriage may be solemnized between any two Hindus if neither party has a spouse living at the time of the marriage. This provision essentially prohibits polygamy for Hindus. However, in this case, X has converted to Islam - a religion that permits polygamy (up to four wives), and has then married Z.

One of the critical cases to discuss in this regard would be the landmark judgment of **Sarla Mudgal, President, Kalyani & others vs Union of India & others** [(1995) 3 SCC 635]. In this case, the Supreme Court held that a Hindu marriage solemnized under the Act cannot be terminated by one spouse converting to another religion. The Court declared that the husband's second marriage, after converting to Islam without dissolving the first marriage, was void. It held that the act of conversion to Islam was not bona fide and was only a mechanism to circumvent the provisions of the Hindu Marriage Act, 1955.

In the **Lily Thomas v. Union of India** [AIR 2000 SC 1650] case, the Supreme Court reaffirmed the Sarla Mudgal case by ruling that conversion to Islam for the purpose of contracting a second marriage is an abuse of personal law and an infringement of the principles of natural justice.

Therefore, in light of the aforementioned judgments, if X's conversion to Islam is not bona fide and is merely a device to sidestep the provisions of the Hindu Marriage Act, his second marriage to Z would be considered

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invalid. However, this remains a controversial issue, with ongoing debates about personal laws and their intersection with fundamental rights.

b) A marries his brother's widow under a custom having the force of law

Section 5 of the Hindu Marriage Act provides the conditions for a Hindu marriage, and clause (v) of this section states that the parties should not be within degrees of prohibited relationship unless the custom or usage governing each of them permits such a marriage.

As per Section 3(g) of the Hindu Marriage Act, two persons are said to be within the "degrees of prohibited relationship" if one is a lineal ascendant of the other; or if one was the wife or husband of a lineal ascendant or descendant of the other; or 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; or if they are brother and sister, uncle and niece, aunt and nephew, or children of brother and sister, or of two brothers or of two sisters.

However, clause 2 of Section 5 states that a marriage which is solemnized in accordance with the customary rites and ceremonies of either party thereto may not necessarily fulfill all the conditions mentioned in Section 5.

This means that if A marries his brother's widow, under a custom or usage governing him, and the custom is

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recognized as having the force of law, this marriage would be valid. This situation exemplifies the importance of customary practices in personal laws. For a custom to have the force of law, it must be ancient, continuous, certain, and reasonable. Also, it should not be opposed to public policy.

A landmark case in this regard is **Madhavrao vs Raghavendrarao** [AIR 1970 SC 812], where the Supreme Court held that customs must be established as a matter of fact. The burden of proof is on the party asserting the custom. If the custom of marrying the brother's widow is established, then A's marriage to his brother's widow would be valid under the Hindu Marriage Act.

c) M, a boy, aged 10 years, marries R, a girl, aged 9 years

The Hindu Marriage Act, 1955, in Section 5(iii), clearly stipulates that the bridegroom should have completed 21 years of age and the bride should have completed 18 years of age at the time of marriage. The marriage between M and R, who are 10 and 9 years old respectively, clearly violates this provision.

However, it is essential to note that as per Section 11 of the Hindu Marriage Act, only those marriages are considered void where conditions specified in clauses (i), (iv), and (v) of Section 5 are not fulfilled. The conditions in these clauses relate to monogamy, degrees of prohibited relationship, and sapinda relationships. Age is

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not one of the conditions under these clauses. Thus, a marriage solemnized in contravention of the age limit condition would not be void but voidable under Section 12.

According to Section 12, such a marriage can be annulled at the request of the party who was a minor at the time of the marriage, but the petition for annulment must be filed within two years of attaining the age of majority. Hence, M or R can file for an annulment once they reach the age of majority, i.e., 18 years.

In the case of **Seema v Ashwani Kumar** [AIR 2006 SC 1158], the Supreme Court directed that marriages be registered to prevent child marriages and to ensure the minimum age condition. Although the court didn't rule on the status of child marriages, the direction emphasized the importance of adhering to the age condition.

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RADHA AND AJAY GOT MARRIED AT DELHI AS PER HINDU RITES IN 2008. THEY REMAINED HAPPY TOGETHER FOR MORE THAN A YEAR AND A SON WAS BORN TO THEM IN 2009. IN 2010, RADHA WENT TO HER PARENT'S HOUSE AND DID NOT ALLOW TO AJAY TO MEET THEIR SON AND DECIDED TO COME BACK ONLY WHEN AJAY BOUGHT A SEPARATE HOUSE AWAY FROM HIS PARENTS. BUT AJAY WANTED TO STAY WITH HIS AILING PARENTS BEING THE ONLY SON TO LOOK AFTER THEM. MOREOVER, AJAY LOVED HIS WIFE AND SON AND ALWAYS WANTED THEM TO COME AND STAY WITH HIM. IN 2011, AJAY FILED THE PETITION FOR RESTITUTION OF CONJUGAL RIGHTS ALLEGING THAT HIS WIFE HAS WITHDRAWN FROM HIS SOCIETY WITHOUT ANY REASONABLE EXCUSE. DECIDE. WHAT WOULD HAPPEN IF AJAY PROCURES A DECREE OF RESTITUTION BUT NEVER GETS HIS WIFE AND SON BACK TO HIM? SUBSTANTIATE YOUR ANSWER WITH THE PROVISIONS OF THE HINDU MARRIAGE ACT, 1955 AND JUDICIAL PRONOUNCEMENTS.

Restitution of conjugal rights (RCR) is a remedy provided under the Hindu Marriage Act, 1955 (the Act) to restore marital rights between estranged spouses. The petition for restitution of conjugal rights under Section 9 of the Act is maintainable if one party has, without reasonable excuse, withdrawn from the society of the other.

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In the present case, Ajay has filed a petition for restitution of conjugal rights against his wife Radha, alleging she has withdrawn from his society without reasonable excuse.

Interpretation of 'Withdrawal from Society' and 'Reasonable Excuse'

A significant issue in RCR cases is determining what constitutes 'withdrawal from society' and 'reasonable excuse'. 'Withdrawal from society' generally means the refusal of one party to continue living with the other. A 'reasonable excuse' is subjective and varies from case to case, depending upon the circumstances, customs, and personal beliefs of the spouses.

In the landmark case of **Harvinder Kaur vs. Harmander Singh Choudhry** [AIR 1984 Del 66], the Delhi High Court held that withdrawal from society primarily involves the refusal of marital intercourse. However, it further clarified that a mere refusal of sexual relations isn't enough, and that it must be accompanied by an intent to bring cohabitation permanently to an end.

In the case of Ajay and Radha, it appears Radha has refused to live with Ajay, hence withdrawing from his society. However, the question of whether she has a 'reasonable excuse' remains.

Radha insists on Ajay buying a separate house as a condition for her return, apparently due to issues living with his parents. Courts have previously ruled that compelling a wife to live with the husband's parents does

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not amount to cruelty. However, each case has to be judged on its unique circumstances.

Restitution of Conjugal Rights: Enforcement and Consequences

If the court, after hearing the case, is satisfied that there is no reasonable excuse for Radha's withdrawal, it may pass a decree of restitution of conjugal rights in favor of Ajay. However, it's important to note that the enforcement of such a decree is difficult. The Act does not provide for the physical enforcement of the decree. The law cannot force Radha to physically return and cohabit with Ajay.

If Radha continues to refuse to return, Ajay has limited legal options. As per Section 13(1A) of the Act, if there has been non-compliance with a decree of restitution of conjugal rights for more than one year, it serves as a ground for divorce. Ajay can file a divorce petition after one year if Radha still refuses to return.

The case of **T. Sareetha vs. T. Venkata Subbaiah** [AIR 1983 AP 356] is notable here. The Andhra Pradesh High Court held that the provision of RCR is constitutionally invalid as it violates the right to privacy and human dignity under Article 21 of the Indian Constitution. However, this decision was overruled by the Supreme Court in **Saroj Rani vs. Sudarshan Kumar Chadha** [AIR 1984 SC 1562], which upheld the constitutional validity of Section 9, observing that the

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provision promotes reconciliation and helps in preserving the sanctity of the marriage.

Implications on Child Custody

The question of their son's custody also comes into play in this situation. Under Hindu Law, the welfare of the child is the paramount consideration in deciding the question of custody.

Section 26 of the Hindu Marriage Act, 1955, empowers the court to pass interim orders in any proceeding under the Act with respect to the custody, maintenance and education of minor children, "consistently with their wishes, wherever possible".

If Ajay wants to seek custody of the son, he may do so by filing an application under Section 26. The court will make a decision based on the best interest of the child. However, it's important to note that the child's preference may also be considered if the child is capable of forming an intelligent preference.

In the landmark case of **Gita Hariharan vs. Reserve Bank of India** [1999 (2) SCC 228], the Supreme Court held that the mother can also be considered as a natural guardian and the welfare of the child is of paramount importance.

Mental Cruelty as a Ground for Divorce

There's another aspect that Ajay could consider in this case. If Radha's withdrawal from the matrimonial home

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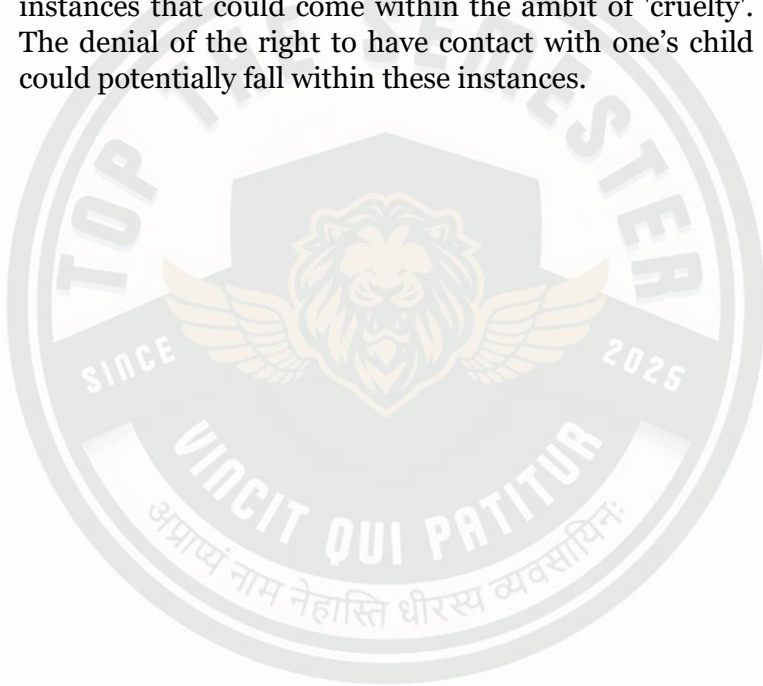
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and her denial of Ajay's right to meet their son is causing him immense mental pain and stress, he could potentially invoke mental cruelty as a ground for divorce under Section 13(1)(ia) of the Act.

In the case of **Samar Ghosh vs. Jaya Ghosh** [(2007) 4 SCC 511], the Supreme Court enumerated various instances that could come within the ambit of 'cruelty'. The denial of the right to have contact with one's child could potentially fall within these instances.



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Q4. WRITE NOTES ON THE FOLLOWING:

A) ESSENTIALS OF VALID NIKAH (MARRIAGE)

B) MEHR (DOWER)

The foundation of a Muslim family is laid down through Nikah, which signifies marriage in Islamic law. Mehr, on the other hand, represents a mandatory payment by the groom to the bride at the time of marriage. Both of these concepts play crucial roles in Islamic marital jurisprudence.

a) Essentials of Valid Nikah

Nikah in Islam represents not only a physical and spiritual union but also a legal contract. The parties to this contract are a male and a female, and the contract sets down rights and obligations for both. The essential elements of a valid Nikah are:

1. Proposal (Ijab) and Acceptance (Qubul): The contract of marriage must have a clear proposal made by or on behalf of one of the parties to the marriage, and it must be accepted by or on behalf of the other party. The proposal and acceptance must be made in one meeting.

2. Parties Competent: Both parties must be competent. In other words, they should be of sound mind, should have attained puberty, and should not be barred from marrying each other due to prohibited degrees of relationship. The legal age for marriage under the Muslim

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law is the age of puberty, which is presumed to be 15 years, unless otherwise proved.

3. Free Consent: The consent of both parties must be free. Any marriage contract entered into under coercion or undue influence is voidable.

4. No Legal Disability: Under Muslim law, legal disabilities include unlawful conjunction (a man cannot have two wives who are so related that they could not marry each other if they were of different sexes), a difference of religion (a Muslim man may marry a Christian or Jewish woman, but a Muslim woman may not marry anyone but a Muslim), and relationship by consanguinity, affinity or fosterage.

5. Presence of Witnesses: The Sunni law requires the presence of two male or one male and two female witnesses who are sane, adult and Muslim at the time of the marriage. However, the Shia law does not require witnesses.

6. Mehr (Dower): Dower is a sum of money or other property promised by the husband to be paid or delivered to the wife. It is a mandatory component of a Muslim marriage.

One should note that under Muslim law, unlike under Hindu law, monogamy is not mandatory, and a Muslim man may have up to four wives at a time.

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b) Mehr (Dower)

Mehr is a crucial component of Muslim marriage and is the amount of money or property that the husband promises to give to his wife. It is an essential element of a Muslim marriage and is seen as a mark of respect towards the wife. The following are the key characteristics and types of Mehr:

1. Nature of Mehr: Mehr is a mandatory requirement in a Muslim marriage. It is an obligation imposed upon the husband as a mark of respect towards his wife. It is neither a consideration nor a gift but is a token of respect and husband's responsibility.

2. Quantum of Mehr: The amount of Mehr is not fixed and can be any amount. It is generally decided by the parties or their families.

3. Payment of Mehr: Mehr can be prompt (Muajjal) or deferred (Muwajjal). Prompt dower is payable on demand, while deferred dower is payable on the dissolution of marriage or the death of the husband.

4. Enforcement of Mehr: The wife can sue her husband for the recovery of her Mehr. If the husband refuses to pay the Mehr, it can be a ground for divorce.

5. Remission of Mehr: The wife can remit the Mehr in favor of her husband or any other person. It must be a voluntary act and done during the wife's lifetime.

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6. Effect of Death on Mehr: In case of the husband's death, the wife's claim to her Mehr ranks as a debt against his estate. In the event of the wife's death, if the Mehr was deferred, the husband is relieved of his obligation.

Judicial Precedents & Legislative Provisions

There have been several court cases revolving around these aspects. A famous case highlighting the validity of Nikah is **Anis Begum vs Muhammad Istafa Wali Khan** [AIR 1933 All 634], where it was held that the presence of witnesses is not necessary for the validity of a Muslim marriage. Another significant case is **Abdul Kadir vs Salima** [1886 ILR 8 All 149], which stated that the presence of a priest (Qazi) is not necessary for a Muslim marriage.

On the subject of Mehr, in the landmark case of **Noor Sabah Khatoon vs Mohd. Quasim** [(1997) 1 SCC 585], it was held that Mehr is the right of the wife, and the husband must fulfill this obligation.

The **Muslim Women (Protection of Rights on Divorce) Act, 1986** is also relevant in the context of Mehr. It guarantees the right of Muslim women to claim Mehr and maintenance from her husband post-divorce until she remarries.

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DISCUSS THE VALIDITY OF THE FOLLOWING ADOPTIONS UNDER THE HINDU ADOPTIONS AND MAINTENANCE ACT, 1956 IN THE LIGHT OF THE CAPACITY TO ADOPT UNDER THE ACT.

A) SMITA, AN UNMARRIED WOMAN AGED 25, ADOPTS A SON WHO IS OF 13 YEARS OF AGE.

B) RAJESH ADOPTS A DAUGHTER WITHOUT THE CONSENT OF HIS WIFE.

EXPLAIN THE EFFECT OF A VALID ADOPTION

The Hindu Adoptions and Maintenance Act, 1956 (HAMA), provides a legal framework for adoptions among Hindus in India. It sets out conditions for a valid adoption and specifies who has the capacity to adopt. Let's assess the validity of the two provided scenarios:

a) Smita, an unmarried woman aged 25, adopts a son who is 13 years of age.

Section 8 of the HAMA gives a Hindu woman, whether married or unmarried, the capacity to adopt a son or a daughter. Therefore, Smita, being an unmarried woman, has the legal capacity to adopt.

However, the adoption should satisfy all the conditions laid down in section 11 of the Act. The relevant conditions to this scenario are:

i. The adoptive mother must not be less than 21 years older than the adoptee. In Smita's case, as she is 25 and the boy is 13, the age difference is only 12 years. This does

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not satisfy the requirement, hence making the adoption invalid.

ii. A male child can be adopted by a woman provided that she is not married or her husband is dead, has completely and finally renounced the world, has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind. As Smita is unmarried, this condition is met.

The case of **Lakshmi Kant Pandey vs. Union of India** [AIR 1984 SC 469] emphasised on the importance of meeting the age criteria to ensure the well-being and best interests of the child.

b) Rajesh adopts a daughter without the consent of his wife.

According to Section 7 of the HAMA, a Hindu male, who is of sound mind and not a minor, has the capacity to take a son or a daughter in adoption. However, Section 7 also mandates that if the adoptive father has a living wife, he shall not adopt except with the consent of his wife unless the wife has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

In Rajesh's case, as he adopts a daughter without the consent of his wife, the adoption is invalid under Section 11(ii) of HAMA, which prescribes that if a couple has the capacity and the right to take in adoption, then consent of

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both the spouses is necessary unless the conditions as mentioned in section 7 of the Act apply.

The Supreme Court, in **Adoption of Payal @ Seema** [AIR 2014 SC 985], reiterated that obtaining the consent of both parents is mandatory unless one of them suffers from a disability as laid down under Section 7 of the Act.

Effect of a Valid Adoption

Upon the completion of a valid adoption under the Hindu Adoptions and Maintenance Act, 1956, certain legal effects are imposed, as outlined under Section 12 of the Act:

1. **The child becomes the child of the adoptive parents:** The adopted child is deemed to be the child of his or her adoptive parents for all purposes with effect from the date of adoption. The child loses all ties with the birth family in terms of inheritance rights, duties, and obligations.
2. **Replacement of parents:** The adopted child's parents for all purposes are considered to be the adoptive parents, and they replace the biological parents entirely. The adopted child loses all rights of a son or a daughter, which he or she possessed in his or her biological family.
3. **Inheritance Rights:** The child inherits from the adoptive parents as a biological child would. The child becomes a member of the adoptive family and acquires the same rights as a natural-born child,

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including the right to inherit the property of the adoptive parents.

4. **Treatment as a Natural Child:** The adopted child is to be treated as a natural-born child. This means that the child will be treated with the same rights and responsibilities as a biological child.
5. **No Marriage Between Adoptee and Certain Members of Adoptive Family:** If the adoption is of a child of the opposite sex, no marriage shall be contracted between the child and the adoptive parent or any person whom the child could not have married if he or she had continued in the family of his or her birth.
6. **Termination of Adoption:** Unlike in Western jurisdictions, once an adoption is validly made, it cannot be canceled, nor can the adopted child renounce his or her status and return to the biological family.

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DESPITE THE FACT THAT WE HAVE USHERED THE ERA OF DIGITALIZATION AND READY TO CONQUER THE INACCESSIBLE PLANETS BUT STILL INDIA IS A LAND WHERE DOMESTIC VIOLENCE IS RAMPANT AND IT SEEMS THAT MODERNISM AND DIGITAL ERA LOST THE MEANING UNDER THE GARB OF FAMILY ISSUES. DO YOU AGREE? DISCUSS IN THE LIGHT OF THE RATIONALE BEHIND THE IMPLEMENTATION OF PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 AND ITS PROVISIONS.

Despite the significant strides that India has made in technology, digitalization, and space exploration, it continues to grapple with entrenched social issues like domestic violence. While the country has made significant advancements on multiple fronts, it is essential to question whether these advances have translated into tangible benefits for the most vulnerable sections of society, especially women.

The Rationale Behind the Protection of Women from Domestic Violence Act, 2005

The **Protection of Women from Domestic Violence Act, 2005** (PWDVA) was enacted as a response to the long-standing need for comprehensive legislation to protect women from domestic violence in India. Before this Act, the primary legal recourse available to a victim of domestic violence was under **Section 498A of the Indian Penal Code**, which deals

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with cruelty by a husband or his relatives, but it was seen as inadequate due to various reasons including its criminal nature and the lack of immediate and emergency relief.

The PWDVA marked a paradigm shift in understanding domestic violence. Instead of perceiving it purely as a criminal law issue, the Act recognized domestic violence as a violation of constitutional rights of women. The Act goes beyond physical abuse and acknowledges emotional, verbal, economic, and sexual abuse as forms of domestic violence.

The PWDVA provides for the right to reside in a shared household and empowers the magistrate to issue protection orders and orders for monetary relief, custody orders for children, and compensation orders. It introduced the concept of a "Protection Officer" to provide assistance to the woman for medical examination, legal aid, and safe shelter.

Provisions of the Protection of Women from Domestic Violence Act, 2005

The Act defines an "aggrieved person" as any woman who is or has been in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent (Section 2(a)).

The term "domestic violence" under the Act includes actual abuse or the threat of abuse, whether physical, sexual, verbal, emotional or economic, and covers within

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its ambit, harms or injuries that endanger the health, safety, life, limb or well-being of the aggrieved person (Section 3).

The Act also provides for the rights of a woman in a domestic relationship, which include the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same (Section 17).

Domestic Violence in the Era of Digitalization

The proliferation of technology and the digital revolution have not been able to completely eliminate the societal evil of domestic violence. The access to and use of technology have indeed increased but it's important to note that these advancements are not equally distributed and do not automatically translate into an improvement in social issues like domestic violence.

On the contrary, the digital age has given rise to new forms of violence, such as cyberbullying, online harassment, revenge porn, and stalking, often termed as cyber domestic violence. This emphasizes the need to constantly update and revise our understanding and laws related to domestic violence.

Moreover, the COVID-19 pandemic and resultant lockdowns have brought about an alarming increase in cases of domestic violence, often referred to as the "shadow pandemic". The confinement measures, though necessary for public health reasons, have inadvertently

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created conditions where women with violent partners are even more isolated and vulnerable.

Need for More Progress

Despite the existence of the PWDVA, domestic violence remains a pervasive problem in India due to a variety of factors, including societal attitudes, lack of awareness about legal rights, stigma associated with reporting, and gaps in implementation of the law. There are often barriers to the effective execution of the Act, such as the reluctance of authorities to intervene in what are seen as 'private' family matters, inadequate training of police and judicial officers in handling cases of domestic violence, and the shortage of services such as legal aid, counseling, and shelter homes.

Furthermore, there is often an economic dependency of women on their abusive partners, which acts as a barrier to seek help. Cultural norms and the stigma associated with divorce or separation discourage women from reporting abuse or seeking help. Victim-blaming attitudes prevalent in society further exacerbate this issue.

Judicial Pronouncements and their Impact

In recent years, Indian courts have delivered several significant judgments that underscore the importance of the PWDVA and the necessity for its effective implementation. In the landmark case of **Indra Sarma vs. V.K.V. Sarma (2013)**, the Supreme Court

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acknowledged the concept of 'relationship in the nature of marriage' within the ambit of domestic relationships, thereby offering protections under the PWDVA to partners in live-in relationships.

In **V.D. Bhanot vs. Savita Bhanot (2012)**, the Supreme Court highlighted that the aim of the PWDVA is to grant statutory protection to victims of violence in domestic relationships which they were not receiving under existing legislation.

Role of Digitalization

While the digital divide and cyber domestic violence are growing concerns, technology and digital tools can also play a key role in combating domestic violence. They can aid in spreading awareness, ensuring quick reporting and response, facilitating access to legal and psychosocial support services, and creating platforms for solidarity and advocacy.

In this regard, several NGOs and government initiatives have leveraged technology to help victims of domestic violence. The **National Commission for Women** in India launched a WhatsApp number for emergency response and assistance during the COVID-19 lockdown period.

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WRITE NOTES ON THE FOLLOWING:

A) IVF AS HOPE OF INFERTILITY

B) SAME TAX MARRIAGES IN THE LIGHT OF THE RIGHT TO PRIVACY AS A FUNDAMENTAL RIGHT.

a) IVF as Hope for Infertility

In Vitro Fertilization (IVF), a form of Assisted Reproductive Technology (ART), has indeed emerged as a beacon of hope for countless couples grappling with infertility across the globe. By enabling the conception of a child outside the human body, IVF has facilitated parenthood for individuals who may not have been able to conceive naturally due to a variety of fertility issues.

Understanding IVF and its Impact

IVF involves fertilizing an egg with sperm in a laboratory, and then transferring the resulting embryo into the woman's uterus. This revolutionary technology has transformed the fertility landscape and has made it possible for couples to have biological children despite challenges such as blocked or damaged fallopian tubes, male factor infertility, ovulation disorders, unexplained infertility, and genetic disorders.

The arrival of **Louise Brown**, the world's first "test-tube baby" in 1978, marked a pivotal moment in reproductive medicine. Since then, millions of children have been born worldwide with the aid of IVF.

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Beyond its application for heterosexual couples, IVF also provides an avenue for single individuals and same-sex couples to have children. It has been instrumental in broadening societal definitions of family and has challenged traditional notions of parenthood.

Legal and Ethical Considerations Surrounding IVF

While IVF has unquestionably brought joy to many, it has also sparked intense ethical and legal debates. Concerns about the welfare of the child, the commodification of human life, and the potential for eugenic practices are often raised.

In India, the **Assisted Reproductive Technologies (Regulation) Bill** seeks to regulate ART services in the country. It emphasizes that a child born through ART has the same rights as a naturally conceived child. The Bill also seeks to establish a national registry of all ART clinics and banks in the country to ensure standards and quality of services.

b) Same-Sex Marriages in the Light of the Right to Privacy as a Fundamental Right

The recognition of the **Right to Privacy as a Fundamental Right** by the Indian Supreme Court in its landmark verdict in **K.S. Puttaswamy vs. Union of India (2017)** has opened a new vista in the discourse surrounding same-sex marriages in India. The court unequivocally stated that privacy includes the

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preservation of personal intimacies and that the state has no business to intrude.

Interplay of Right to Privacy and Same-Sex Marriages

This judgment laid the groundwork for the decriminalization of homosexuality in India a year later, in the case of **Navtej Singh Johar vs. Union of India (2018)**, where the Supreme Court read down Section 377 of the Indian Penal Code, which criminalized consensual homosexual sex.

The court opined that sexual orientation is an essential attribute of privacy and that discrimination against an individual on the basis of sexual orientation is deeply offensive to the dignity and self-worth of the individual.

However, despite these landmark judgments, same-sex marriages are not legally recognized in India yet. The legal recognition of same-sex marriages is often seen as the next frontier in the fight for LGBTQ+ rights in the country.

Challenges and Future Prospects

Legalizing same-sex marriages in India would entail challenging societal norms and overcoming legal hurdles. It would require changes to existing matrimonial laws, or the enactment of new laws, that do not make a gender distinction. Furthermore, issues such as adoption rights, inheritance, and taxation would also need to be addressed.

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The right to marry is not just about the legal recognition of a relationship, but also about having access to the same social and economic rights that heterosexual couples enjoy. The right to privacy, as upheld in the Puttaswamy judgment, could potentially be invoked in future litigation seeking the recognition of same-sex marriages in India. The argument could be made that the state's non-recognition of these marriages constitutes an invasion of the privacy rights of same-sex couples, as it fails to acknowledge and protect their personal intimacies.

International Perspectives

Globally, there has been a growing acceptance of same-sex marriages. Countries like the Netherlands, Belgium, Spain, Canada, South Africa, and most recently Taiwan, have legalized same-sex marriage, demonstrating a progressive shift towards equality and non-discrimination. In the United States, the landmark case of **Obergefell v. Hodges (2015)** led to the recognition of same-sex marriage across all fifty states.

The recognition of same-sex marriages in these countries was preceded by the recognition of the right to privacy and the acknowledgment that privacy encompasses one's sexual orientation and the choice of one's partner. The recognition of same-sex marriages thus has a profound connection with the recognition of the right to privacy.

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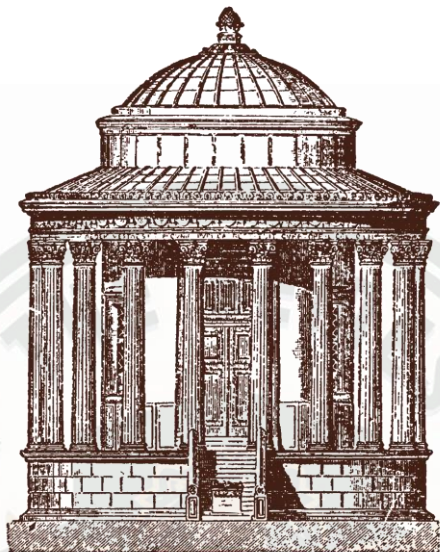
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UNIT 1

FAMILY LAW IN INDIA



Hindu Family Law

- Governs Hindus, Buddhists, Jains, Sikhs
- Hindu Marriage Act 1955, Hindu Succession Act 1956, etc.
- Conditions for Hindu marriage, e.g., no living spouse



Muslim Family Law

- Based on Quran, Hadith
- Muslim Personal Law (Shariat) via Shariat Act 1937
- Landmark: Shah Bano case (1985) for maintenance rights



Christian Family Law

- From Indian Christian Marriage Act 1872, Indian Divorce Act 1869
- Landmark: Molly Joseph vs. George Sebastian (1996) for equality



Parsi Family Law

- Parsi Marriage and Divorce Act 1936
- Landmark: Naomi Sam Irani vs. Sheriar Hirjibhoy (1985) for equality



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01 SPECIAL MARRIAGE ACT, 1954

- For interfaith marriages, secular framework



02 PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

- Protects women from various abuses
- Inclusive of all religions
- Landmark: V.D. Bhanot vs. Savita Bhanot (2010)



06

CONCLUSION

- Reflects diversity, cultural dynamics
- Calls for uniform civil code
- Evolving with changing societal norms



FAMILY LAW IN INDIA

03

FAMILY COURTS ACT, 1984

- Expeditious settlement of family disputes
- Focus on conciliation, settlement



05 ADOPTION LAWS

- Hindu Adoption Act 1956; Guardians and Wards Act 1890 for others
- Juvenile Justice Act 2015 allows any citizen to adopt
- Landmark: Shabnam Hashmi vs. Union of India (2014) for adoption rights



04 INHERITANCE LAWS

- Religion-specific
- Hindu Succession Act, 1956; Indian Succession Act, 1925; Islamic jurisprudence
- Landmark: Vineeta Sharma vs. Rakesh Sharma (2020) for daughters' rights



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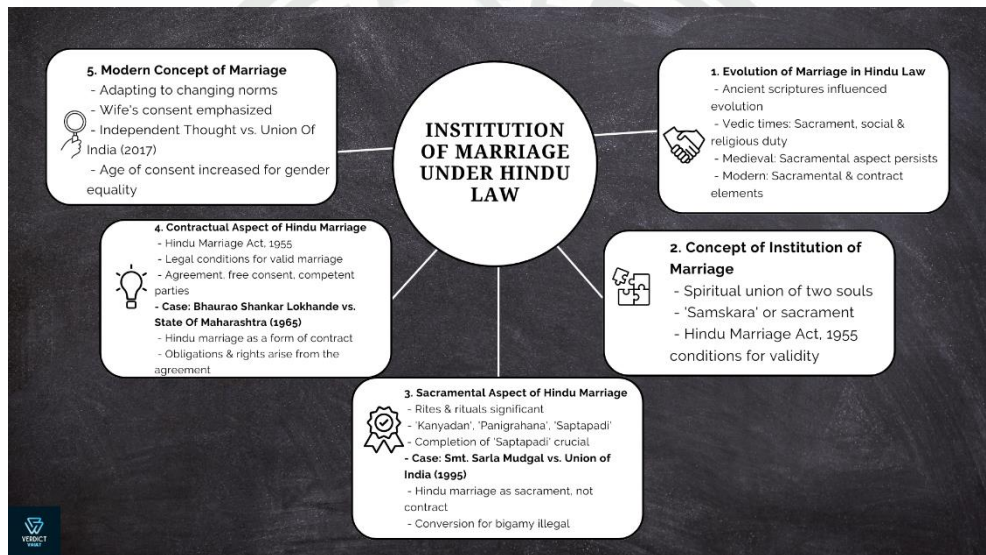
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INSTITUTION OF MARRIAGE UNDER HINDU LAW



Forms of Marriage

- Traditional eight forms in Manusmriti
- Today, only 'Brahma' form recognized
- Voluntary union with rites & ceremonies



Validity of Marriage

- Hindu Marriage Act, 1955 conditions
- Monogamy, Mental Capacity, Age, Prohibited Degrees, Sapinda Relationships
- Void ab initio under Section 11 for non-compliance



Voidable Marriage

- Section 12 of Hindu Marriage Act, 1955
- Conditions for annulment by court decree
- Impotency, Non-consummation due to mental illness, Consent by force/fraud, Pregnancy by another



Conclusion

- Hindu Marriage Act preserves sanctity, justice, fairness
- Principles of consent, choice, equality emphasized



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CASES ON INSTITUTION OF MARRIAGE UNDER HINDU LAW



Neetu vs. Bhagat Ram (2009)

- Reinforced principles of Sections 11 and 12
- Marriage void/voidable based on violated condition



Lata Singh vs. State of UP (2006)

- Upheld validity of inter-caste, inter-religious marriages
- Condemned violence, ordered protection



Independent Thought vs. Union Of India (2017)

- Raised age of consent for sexual relations
- Underlined importance of consent and gender equality



Pratibha Rani vs. Suraj Kumar (1985)

- Hindu wife's right to live separately due to cruelty
- Could claim maintenance despite living separately



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MATRIMONIAL REMEDIES



Restitution of Conjugal Rights (RCR)

- Section 9 of Hindu Marriage Act, 1955
- Petition for restoring conjugal rights
- Respondent spouse withdraws without reasonable cause
- Court may decree return and cohabitation
- Failure to comply can be grounds for divorce
- **Case: Harvinder Kaur v. Harmender Singh Choudhary (1984)**
- Constitutional validity of Section 9 challenged
- Court ruled it preserves marriage sanctity, not invasion of privacy



Judicial Separation

- Intermediate step before divorce
- Couple lives apart while legally married
- Reflect on relationship, decide to continue or dissolve



Grounds for Judicial Separation

- Same as grounds for divorce under Section 10
- No cohabitation for one year after decree can lead to divorce
- **Case: Savitri Pandey vs. Prem Chandra Pandey (2002)**
- Importance of provision for judicial separation
- Doesn't dissolve marriage; chance for reconciliation
- Divorce is last option after no chance of reunion



Conclusion

- Balance between preserving marriage sanctity and individual rights
- Safeguard interests, chance for reconciliation
- Laws evolve with societal norms while maintaining marital bond's sanctity



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DISSOLUTION OF MARRIAGE: THEORIES, FORMS & GROUNDS



Theories of Divorce

- Fault Theory: One party at fault
- Mutual Consent Theory: Agreement due to differences
- Irretrievable Breakdown Theory: Marriage broken, no fault
- Hindu Marriage Act, 1955 reflects fault theory



Forms of Divorce

- Contested Divorce: Grounds specified, trial with evidence
- Mutual Consent Divorce: Irreconcilable differences, 6-month cooling-off



Grounds for Divorce (Section 13 of Hindu Marriage Act)

- Adultery, Cruelty, Desertion, Conversion, Unsoundness of Mind
- Leprosy/Venereal Disease, Renunciation, Not Heard Being Alive
- No Resumption of Co-Habitation



Case: Naveen Kohli vs. Neelu Kohli (2006)

- Living together not pre-condition for divorce
- Recognized irretrievable breakdown as a ground



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DISSOLUTION OF MARRIAGE: THEORIES, FORMS & GROUNDS



**Under Section 13B of
Hindu Marriage Act,
1955**

- Petition for dissolution by mutual consent
- Ground: Living separately for one year or more
- Mutual agreement to dissolve marriage



**Case: Sureshta Devi
vs. Om Prakash
(1991)**

- Purpose of 'cooling-off' period clarified
- Time for introspection, not mandatory



**Case: Anil Kumar
Jain vs. Maya Jain
(2009)**

- Six-month waiting period can be waived
- Divorce can be granted earlier



**Amardeep Singh vs.
Harveen Kaur (2017)**

- 'Cooling-off' period not mandatory
- Can be waived under specific circumstances



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PROCESS OF DISSOLUTION OF MARRIAGE



1. Filing of Petition

- Parties agree on terms
- Agreements on alimony, child custody, etc.
- Joint petition filed



2. Court's Observation Period

- Six months 'cooling-off' period
- Opportunity for reconsideration



3. Second Motion

- After six months
- Parties confirm intent to divorce
- Joint statement to the court



4. Final Decree of Divorce

- Court satisfied with intent
- Decree of divorce granted



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IRRETRIEVABLE BREAKDOWN THEORY AS A GROUND OF DISSOLUTION



BACKGROUND

- Modern concept in divorce law
- Marriage dissolved when no reconciliation possible

POSITION IN HMA, 1955

- Doesn't explicitly recognize "irretrievable breakdown"
- Supreme Court grants divorce based on this concept

PROPOSED LEGAL REFORMS

- Law Commission of India - 71st Report
- Recommended including 'irretrievable breakdown' as ground
- Marriage Laws (Amendment) Bill, 2010
- Sought to amend Hindu Marriage Act and Special Marriage Act
 - New ground for divorce proposed

LANDMARK JUDGMENTS

- Naveen Kohli vs. Neelu Kohli (2006)
- Recognized 'irretrievable breakdown' as ground
 - Marriage beyond repair due to bitterness
- Rishikesh Sharma vs. Saroj Sharma (2006)
- Reiterated 'irretrievable breakdown' stance
 - Marriage beyond repair despite efforts
- Sanghamitra Ghosh vs. Kajal Kumar Ghosh (2007)
- Upheld 'irretrievable breakdown' stance
 - No chance of parties coming together

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UNIT 2

NIKAH (MUSLIM MARRIAGE): DEFINITION, OBJECT & NATURE

DEFINITION OF NIKAH

- 'Nikah' means "contract"
- Civil contract between man and woman

OBJECT OF NIKAH

- Legalize sexual relations
- Legitimate procreation of children
- Mutual rights and obligations
- Promote love, respect, peace
- Provide companionship

NATURE OF NIKAH

- Contractual in nature
- Essential elements of contract
- Formalities: witnesses, Mahr
- Public affair, family/community presence
- Equality of spouses
- Polygamy allowed (with conditions)
- Divorce permissible (last resort)



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NIKAH (MUSLIM MARRIAGE): MUTA MARRIAGE



Muta Marriage

- Temporary marriage under Shia law
- 'Muta' means 'enjoyment' or 'pleasure'
- For specified period, with dower
- Legalizes sexual relations temporarily
- Not recognized under Sunni law



Essentials of Muta Marriage

- Duration specified
- Dower amount specified
- Consent of both parties
- Competent parties



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01 DURATION

- Muta: Temporary contract
- Nikah: Permanent contract



02 INHERITANCE RIGHTS

- Muta: Limited unless consummated
- Nikah: Mutual inheritance rights



06

NUMBER OF SPOUSES

- Muta: No limit
- Nikah: Up to four, treated equally



NIKAH (MUSLIM

MARRIAGE):

DISTINCTION BETWEEN MUTA & NIKAH

03

DISSOLUTION

- Muta: Ends automatically
- Nikah: Requires formal divorce



05 SOCIAL RECOGNITION

- Muta: Less social acceptance
- Nikah: Widely accepted



04 LEGAL RECOGNITION

- Muta: Recognized under Shia law
- Nikah: Universally recognized



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01

ABDUL KADIR V. SALIMA AND ANR (1886):

- Muta marriage for fixed term
- No inheritance rights, but child legitimate



02

RASHID AHMED V. ANISA KHATUN (1932):

- Muta: Temporary, dissolved automatically
- No need for divorce



06

SEEMA VS. ASHWANI KUMAR (2006):

- Registration of all marriages, including Muslim, mandatory
- Ensuring evidence in case of disputes



LANDMARK JUDGMENTS ON MUTA AND NIKAH

03

ANWARI BEGUM V. MOHD. TAMIZUDDIN KHAN (1933):

- Intention important in Muta marriages
- Not Muta if intention was for regular Nikah



05

SADIO ALI AND ANR. VS. THE STATE OF BOMBAY AND ANR (1952):

- Muta marriages not immoral, recognized by Shia law



04

C M HABIBULLAH VS C K KUNHAHAMED (1995):

- Validity depends on sect
- Recognized by Shia, not by Sunni



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DISSOLUTION OF MARRIAGE: TALAQ



Introduction to Talaq

- Muslim law, husband's unilateral right
- Limited right for woman to seek divorce



Conditions for Talaq

1. Competency: Sound mind, puberty
2. Free Consent: Voluntary pronouncement
3. Communication: Clear intention



Modes of Talaq

1. Talaq-e-Sunnat
 - Talaq-e-Ahsan: Pronouncement + Tuhr + Iddat
 - Talaq-e-Hasan: Pronouncement x3 + Tuhr
2. Talaq-e-Biddat (Triple Talaq)
 - Instant pronouncement x3, ends marriage
 - Declared unconstitutional by Supreme Court
3. Talaq-e-Tafweez (Delegated Divorce)
 - Husband delegates power to wife/others



Landmark Judgment: Triple Talaq Case (Shayara Bano vs Union Of India And Ors, 2017)

- Instant triple Talaq unconstitutional
- Violates fundamental right to equality
- Indian Parliament passed the Muslim Women (Protection of Rights on Marriage) Act, 2019



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DISSOLUTION OF MARRIAGE: TALAQ FORMS



Talaq-i-Ahsan

- Most approved form
- Single pronouncement during Tuhr
- Abstention from intercourse during Iddat
- Revocable during Iddat if conjugal relations resume



Talaq-i-Hasan

- Proper form of divorce
- Three pronouncements in three Tuhrs
- Abstention from intercourse during all three Tuhrs
- First and second pronouncements revocable until third



Talaq-i-Biddat

- Disapproved form (triple Talaq or instant Talaq)
- Instantaneous pronouncement three times in one sitting or Tuhr
- Irrevocable immediately, regardless of Iddat



Landmark Judgment: Shayara Bano vs Union Of India And Ors (2017)

- Talaq-i-Biddat declared unconstitutional
- Followed by Muslim Women (Protection of Rights on Marriage) Act, 2019



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DISSOLUTION OF MARRIAGE: TALAQ MODES - ILA, ZIHAR, TALAQ-UL-

TAFWEEZ

ILA (VOW OF CONTINENCE)

- Husband's vow of abstaining from sexual relations
- Requirements:
 - Swear by Allah
 - Abstain from intercourse for 4 months
 - Breaking vow within 4 months cancels Ila
 - Irrevocable if vow not broken

ZIHAR (INJURIOUS ASSIMILATION)

- Husband comparing wife to close family member
- Traditional: Wife can abstain until penance done
- Indian law: Punishable, wife can seek divorce
- Unless husband retracts, performs penance

TALAQ-UL-TAFWEEZ (DELEGATED DIVORCE)

- Husband delegates power of Talaq to wife or other
- Power may be delegated at marriage or during marriage
- Wife can pronounce Talaq under delegated power
- Wife's pronouncement as effective as husband's



VEDICT
VAULT

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Grounds for Dissolution Under the Dissolution of Muslim Marriage Act, 1939

7. Other Grounds:

- Husband has more wives, doesn't treat her equitably
- Husband a minor at marriage
- Husband not a Muslim

1. Husband's Whereabouts Unknown:

- Husband's whereabouts unknown for 4 years

2. Failure to Provide Maintenance:

- Husband fails to provide maintenance for 2 years

6. Cruelty:

- Husband habitually assaults, makes life miserable
- Any person with husband's knowledge treats her cruelly

5. Insanity or Leprosy:

- Husband insane for 2 years, leprosy, venereal disease

3. Imprisonment of Husband:

- Husband imprisoned for 7 years or more

4. Failure to Fulfil Marital Obligations:

- Husband impotent at marriage and continues to be



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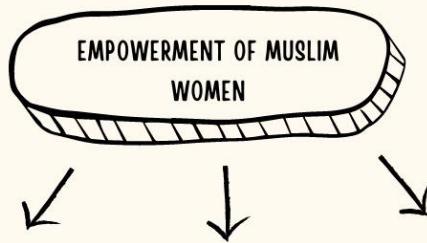
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Provides legal remedy for
Muslim women seeking divorce

Empowers women with rights
similar to men under traditional
law

Integral part of India's legal
system, foundation for
understanding Muslim
women's rights



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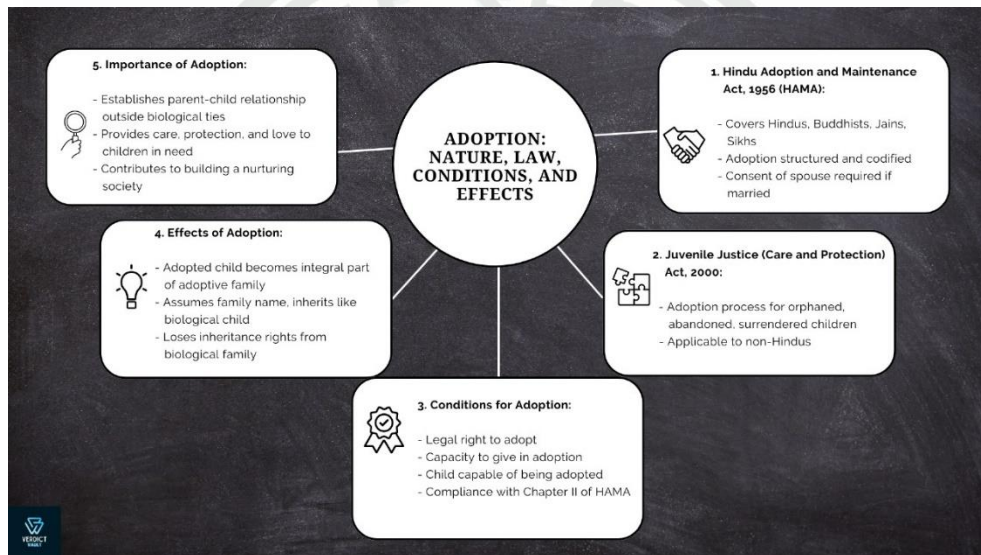
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ADOPTION: CEREMONIES, CAPABILITIES, EFFECT



1. Adoption Ceremonies

- HAMA, 1956
- No specific religious ceremony
- Section 11 of Act:
 - Requisites for valid adoption
 - No living Hindu son/daughter's son/daughter's daughter
 - Same child not adopted by multiple parents
 - Actual transfer from family of birth



2. Capabilities for Adoption

- Section 7 and 8 of HAMA
- Male Hindu's capacity to adopt:
 - Sound mind, age of majority
 - Consent of wife if married, exceptions
- Female Hindu's capacity to adopt:
 - Sound mind, not a minor
 - Not married or specific marital status



3. Effect of Adoption

- Section 12 of HAMA
- Adopted child's status:
 - Deemed child of adoptive parents
 - From adoption date, ties severed with birth family
 - New ties created in adoptive family



4. Landmark Judgements

- Lakshmi Kant Pandey vs Union of India
- 1984, Supreme Court
- Guidelines for adoption cases
- Led to CARA guidelines, adopted by Juvenile Justice Act
- Adoption of Payal @ Sharinee Vinay Pathak
- Best interest of child primary
- HAMA doesn't restrict opposite-sex adoption
- Devendra and Anr. Vs State of Uttar Pradesh
- Adopted person considered Hindu
- Governed by Hindu Succession Act, 1956



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ADOPTION: INTER-COUNTRY ADOPTION

1. Introduction

- Inter-country adoption: Adopting child from different country
- Part of Child Protection System
- Governed by Hague Convention, 1993
- Regulated by Central Adoption Resource Authority (CARA)

2. Procedure of Inter-Country Adoption

- Application: Prospective adoptive parents (PAPs) approach authorized agency or Central Authority
- Home Study Report: Agency prepares report on PAPs' eligibility
- Registration: CARA registers application in CARINGS, forwards to DCPU
- No Objection Certificate (NOC): CARA issues NOC after scrutiny and report
- Petition to Court: Adoption petition filed by Specialised Adoption Agency (SAA) or DCPU
- Adoption Order: Child given in adoption after court order

3. Important Landmark Judgments

- Lakshmi Kant Pandey vs Union of India, 1984
- Guidelines for fair and transparent inter-country adoption
- Scrutinizing adoptive parents, verifying foreign agency
- Ensuring child's welfare in adopted family



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MAINTENANCE UNDER HAMA, 1956: DEFINITION, MAINTENANCE OF WIFE, MAINTENANCE OF WIDOWED DAUGHTER-IN-LAW



1. Definition

- Maintenance: Obligation to provide for those unable to maintain themselves
- Covered by Hindu Adoptions and Maintenance Act, 1956 (HAMA)



2. Maintenance of Wife (Section 18)

- Entitlement: Hindu wife entitled to maintenance during her lifetime
- Grounds for Separate Living:
 - Desertion, cruelty, leprosy, justifiable cause
- Mutual Consent Separation: No entitlement to maintenance



3. Maintenance of Widowed Daughter-in-law (Section 19)

- Entitlement: Widowed daughter-in-law entitled to maintenance
- Conditions:
 - Unable to maintain herself
 - Estate of husband or parents-in-law insufficient
 - Father-in-law's other legal obligations



4. Landmark Judgements

- Badri Pershad vs Smt. Kanso Devi (1970)
 - Maintenance to maintain same lifestyle as husband's house
- Captain Ramesh Chander Kaushal vs Mrs. Veena Kaushal and Ors (1978)
 - Decent standard of living, considering social standing
- Bhagwan Dutt vs Kamla Devi (1975)
 - Maintenance reasonable, realistic, avoid penury
 - Measured by husband's living standard



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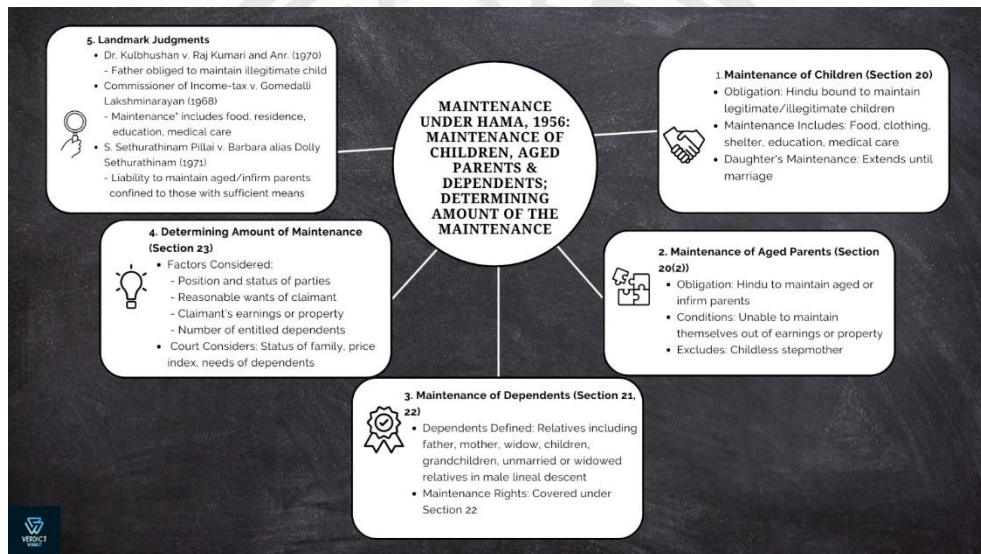
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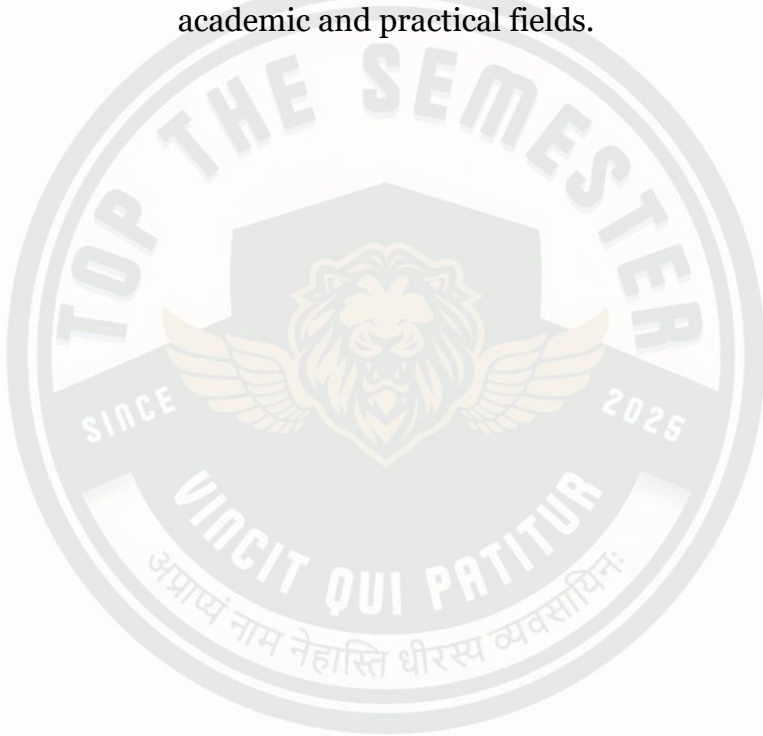
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