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INDIAN FAMILY LAW: MARRIAGE, DIVORCE AND MAINTENANCE

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Introduction

The Indian legislature encompasses various laws that govern matrimonial relationships inclusive of divorce, child custody, alimony, and inheritance. Due to the pluralistic society the family laws are significantly influenced by the religious customs and traditions. The marriage laws like *The Hindu marriage Act, 1955* which governs the matrimonial aspects among Hindus, Buddhists, Jains and Sikhs. The act set the conditions for a valid marriage, registration of marriages, restitution of conjugal rights etc. And certain other laws were also enacted in order to protect and construct the pluralistic society, such laws are *The Muslim Personal Law (Shariat) Application Act, 1937* governs marriage among Muslims, The Christian Marriage Act, 1872, governs and provides provision for marriage and marriage registrations, The Special Marriage Act, 1954 provides special framework for marriage and divorce for individuals of any religion. The amalgamation of diverse religious and secular laws which reflects the Indian culture and religious laws in the form of Indian Family law. The laws aim at addressing the family issues by balancing the traditional customs with the contemporary needs of the society and individuals. The family laws not only focus on the validation of marriage it also includes the legal remedies for divorce and maintenance. The Indian family laws ensure the social order and protect individual rights within family relationships. The laws provide a legal framework for the union and dissolution of marriage, alimony, to ensure justice and support for needed parties, especially women and children.

The Hindu Marriage Act, 1955:

This act governs marriages among Hindus, Buddhists, Jains and sikhs.

- a. This act provides conditions for valid marriage u/s. 5:
 - i. Neither party should have a living spouse at the time of marriage

- ii. Consent from both the parties
 - iii. Age: male-21 years and female- 18 years
 - iv. Mental soundness
 - v. Shouldn't fall within degrees of prohibited relationship.
 - vi. No sapinda relationship
- b. U/s. 7 of the act Ceremonies of marriage, the solemnization of marriage must be according to customary rites.
 - c. Such marriage can be registered u/s.8 of the act where the registration serves as legal proof and can be beneficial in protecting rights.
 - d. Restitution of conjugal rights sec.9 either parties can file, if the other party withdraws without reasonable cause from the society then the court may decree restitution.
 - e. Judicial separation u/s. 10 either party can seek judicial separation on grounds of adultery, cruelty, desertion (2 years), conversion to another religion, incurable mental disorder, and contagious disease.
 - f. Sec 11 to 13B of the act states nullify of marriage and divorce
 - g. Maintenance and Alimony (sec.24 and 25)
 - i. Interim maintenance (sec 24) - during the pendency of proceedings)
 - ii. Permanent alimony (sec 25) - upon divorce or judicial separation
 - h. Legitimacy of children (sec.16)
 - i. Custody of children (sec. 26)
 - j. Settlement of property (sec. 27)

2. Muslim Marriage

The Muslim Personal Law (Shariat) Application Act, 1937. was enacted to establish that Muslim Personal laws under various aspects of personal law which includes marriage, divorce, inheritance and succession and ensure the laws are according to Islamic principles.

- a. The act mandates that personal laws (marriage, dissolution of marriage, inheritance) will be governed by their personal laws (shariat) rather than by any customary practices sec. 2 of the act states about the abolition of customary law.
- b. Marriage and Divorce:

- i. Nikah (marriage) is recognised as a civil contract requiring mutual consent, at least two adult witnesses and the provision of Mahr (dower) from the groom to the bride.
- ii. Under Muslim customs various forms of divorce are recognised like Talaq (by the husband), khula (initiated by the wife), mubarat (mutual consent) and talaq-e- tafweez (delegated divorce).
- c. Maintenance (Nafaqah) financial support and maintenance obligations between family members, particularly spouses and children.

3. Christian Marriage

The Christian Marriage Act, enacted in 1872 provides a legal framework for the solemnization and registration of marriage among Christians in India. The act provides procedures and requirements for the solemnization of Christian marriage, which can be done by a licensed minister of religion or a registrar appointed under the act. There shall be publication notice of the intended marriage must be publicly announced in the church or chapel where the marriage is to take place, or at the local register's office. The marriage ceremony must adhere to the rites and ceremonies of the Christian church, which includes exchange of vows, rings, prayers and blessings according to Christian traditions. The act provides registration of marriage with the registrar of the district where the marriage takes place. The act specifies certain grounds for nullity of Christian marriage (existence of a prior marriage, lack of consent, or coercion). The divorce and dissolution of marriage, maintenance and alimony among Christians are governed by the Indian Divorce Act, 1869.

Grounds of divorce in India :

1. Grounds for divorce under the Hindu Marriage Act, 1955
 - a. Adultery
 - b. Cruelty
 - c. Desertion
 - d. Conversion
 - e. Mental disorder
 - f. Leprosy, venereal disease
 - g. Renunciation

- h. Not heard alive or no resumption of Cohabitation.
- 2. Grounds for divorce - petition can be filed only by the wife in india.
 - a. Husband has indulged rape, bestiality, sodomy
 - b. Polygamy
 - c. Marriage of a girl before age of 18 years
 - d. No cohabitation of husband.
- 3. Dissolution of Muslim Marriage Act, 1939, a Muslim women can seek divorce
 - a. The whereabouts of the husband are unknown for 4 years
 - b. No maintenance to the wife at least 2 years
 - c. Husband under imprisonment for 7 or more years
 - d. Cruelty
- 4. Divorce under the Indian Divorce Act, 1869
 - a. Adultery
 - b. Conversion to another religion
 - c. Unsound mind, leprosy or contagious venereal disease (at least 2 years before the filing of the divorce)
 - d. Restitution of conjugal rights

Maintenance and alimony

In Indian society marriage seems to be a social enforcement on married spouses. Due to such enforcement countless matrimonial relationships are wrecked as divorce. In order to deal with aftermath the Indian laws provided special sections in the legislation which deals with maintenance and alimony of the spouses. Maintenance and alimony are financial support during and after the judicial separation/ divorce.

- a. Maintenance and Alimony (sec.24 and 25)
 - i. Interim maintenance (sec 24) - during the pendency of proceedings, this section does not differentiate between a male and a female. The court decides the maintenance depending on the factors like both spouses earnings, assets, liabilities, financial standing, employment etc.
 - ii. Permanent alimony (sec 25) - upon divorce or judicial separation
- b. Sec. 18 of the Hindu Adoptions and Maintenance Act, 1956 the entitlement for alimony can be sort on the basis of abandoned by her husband without justification

and consent, cruelty, polygamy, concubine in the same house, conversion of religion, the alimony can be claimed and the amount shall be the discretion of the court to award u/s. 23 of the act,1956.

- c. The Muslim Women (Protection of rights on Divorce) Act, 1986
 - i. Iddat period- payment should be fair and reasonable
 - ii. Equal to Mahr which was accepted during the time of marriage
 - iii. Title to the property that was given to her before or after marriage
 - iv. Muslim woman can claim maintenance if she did not remarry and unable maintain during iddat period, unable to support her children
 - v. In terms of no one to maintain her the court would order the state wakf to pay the maintenance.
- d. The Indian Divorce Act, 1869.
 - i. Sec. 36 the petitions for expenses and alimony of the pending suit. This section mandates to provide the spouse (wife) with financial support during pending litigation.
 - ii. Sec. 37 permanent alimony, the court may decree the husband to pay periodically a sum of amount for wife's financial needs that the court deems fit. In terms inefficiency the court may temporarily discharge or suspend the order.
 - iii. Sec. 38 deals with the rules regarding payment of alimony in order to ensure the wife is given alimony.

Conclusion:

Marriage is considered as a sacred institution in India, which has its deep roots in religious and cultural traditions. Indian being a pluralistic society depends on socio-religious customs and traditions. Marriage was institutionalized among the Indian society ages ago, which binds the married couples as a family in the society. Certainly institutionalization turned into a burning of many men and women to take back their positions in society. Most of the matrimonial relationships end up with the weight of responsibilities, disagreement, egos, dispartition, and societal norms. The term 'sacred' gave the relationship a new vision of being in the matrimonial relationship despite of considering the one's mental health. In various circumstances the matrimonial partners

engage in mental break down, extramarital affairs, domestic violence, marital rape, abuse both physical and mental, all these cause mental cruelty, one cannot get through these problems under the societal term of “sacred institutions” where the society plays a crucial role than the matrimonial partners itself. The respective parties are struck between individual peace and the societal norms, which are the most practiced culture in the society, that any of those acts happens the men/women are asked to remain silent in the name protecting the purity and sacredness of the institutions that were created by the society. The allegations are not on the institution itself, it’s on the system that’s been followed up, an individual has to live with mental peace and dignity, if the relationship is causing disturbance to individual growth, mental and physical health then their voice has to be heard.

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