Marriage is considered to be one of the important components of the Indian Society. According to ancient Hindu Law, Marriage is the last of the ten sacraments and is a sacred tie, which can never be broken. The Rig Veda and the Atharva Veda provide a detailed story of Marriage.

Marriage can be defined as union between man and woman for certain social and sometimes religious purposes. Even during the primitive period, people had the idea of the individual ownership as regards his weapons, implement and dress as well as their women also. Thus, there would be some degree of permanence regarding such union between man and woman, which would be maintained by force if necessary. Again, indefinite sexual relation is less favourable to the welfare of the children than any definite form of that relation. In the promiscuity, the rearing of children has to be solely depended on maternal care. Again, under the law of the survival of the fittest in struggle for existence, those group having definite sexual relations have more advantage than those of indefinite sexual relation. Thus, Marriage became a practice, formed a custom and finally the custom passed into law.¹

Marriage is considered one of the important components of the Indian Society. To the Hindu, the importance of marriage is heightened by the sanction of religion. According to the Ancient Hindu Law, Marriage is the last of the ten sacraments and is a sacred tie, which can never be broken. It is a well settled doctrine of the Hindu religion that one must have a son to save him from the suffering of hell. Marriage is essential also because all the religious ceremony and the rites are to be performed by a Hindu in the companionship of the wife otherwise they will not bear any fruits.² Wives (Women) have been considered to be better halves and the religious partnership of their husbands which mean that half part of a man is his wife and that without being married, the personality of a man remains imperfect.³

According to Hindu Law, marriage is a gift of the bride by the father of the bride and accepted by the bridegroom as his wife. The religious duty of giving away the girl in marriage by way of gift has been entrusted to the father or her guardian in his absence. But the father at the time of choosing the bridegroom, he also has the duty to choose the person with his good qualities, virtues and character. The sincere fulfilment of the duty of the father would lead him to self satisfaction and spiritual bliss. The Hindu girls did not have much freedom to choose their bridegrooms. Boudayana, a Smritikara, states that a maiden should be given in marriage to one who is endowed with good qualities and who is a celibate.⁴

² U.P.D Kesari and Dr. Aditya Kesari, Modern Hindu Law (7th Ed. 2009), p. 34.
⁴ Yajnavalkya, p. 1-54 & 55.
After marriage the husband acquires guardianship over his wife.

In the Shastra, wife is referred to by several name. The wife is not just Patni (wife) but Dharampatni (Partner) and Ardhangini (half of her husband). According to Vedas marriage is a union of “bones with bones, flesh with flesh and skin with skin, the husband and wife” become as if they were one person.\(^5\) Brihaspati says that in the scripture and in the code of law, as well as in popular practice, a wife is declared to be half the body of her husband, equally sharing the fruits of pure acts.\(^6\)

Manu lays down:

Wife is a divine institution given by gods. One should not think that one has obtained her by choice. To be mothers were women created and to be fathers men, the Veda ordained that Dharma must be practised by man together with his wife.\(^7\) The purpose of marriage, even according to RigVeda, was to enable a man by becoming a householder, to perform sacrifices to the god and to procreate sons. Procreation of a son was given more importance, because it was believed that only the son could rescue the parents from the hell called “Put”. The first and foremost inequality between the boy and the girl crept in since the birth of the child.\(^8\)

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8 Ibid.
The Rig Veda and the Atharva Veda provide a detailed story of marriage. According to the mantras and the rituals of the Grihya Sutras, at the time of marriage bride – groom went to the house of the bride’s father. With an appropriate mantra before the fire some offerings were made and marriage obligations had also been made. After that family of the girl was changed. That mantras were charms to keep the evil away. After the bride the fire was carried away to a chariot to the house of the bride-groom. This journey was called Vahatu which is also the name of the entire marriage ceremony in the Veda. When they reached the house of the bride-groom, they install the fire in the bride groom house as house fire (Grihyagni). The most important of this was the magic of the mantras. It made the wife as Grihapatni, a legitimate wife with dignity. There was not a complete absent of carrying away of girl by capture or physical union of man and women by attraction of mutual affection. But Vedas or even the Grihas Sutras did not recognise such girl as patni or Grihapatni. Vedic Marriage was essentially a spiritual union by magic mantras by which the wife became, for all social and the religious purposes, one with her husband. She held a dignified position.⁹

As Hindu Society was largely spread, the different form of marriage had always been conducted amongst the Hindus, apart from those recognised by custom.

According Smiritis, there were eight forms of marriage:


The first four forms of marriage i.e. Brahma, Daiva, Arsha and the Prajapatya is essentially consisted the gift of the girl by the father to groom were regarded “regular” or dharmya form of marriage. The remaining four forms Asura, Gandhava, Rakshasa and Paishacha were known as “irregular” or adharmya forms of marriage.

In Brahma form of marriage the bride-groom learned in the Veda was invited and gifted the bride by the father. Gift indicated that gift with water to the bridegroom. The son of such wife set free ten ancestors, ten descendants and himself from sin. This type of marriage was called the Brahma form because of its prevailing mostly, amongst Brahmanas. It was recognised the best form of marriage. But this form of marriage is not agreeable with the enlightened modern notions because of making the bride as a subject of gift instead of being one of the contracting parties.10

Daiva form of marriage:

This form also involved a gift of the girl. According to Yajnavalkya in this form of marriage the bride was gifted to the family priest attending a

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10 Supra Note 1, p. 79 & 80.
sacrifice for her father at the time when the sacrificial fee should be given. It was believed that the fruit/result of this form of marriage was similar with that of Brahma form of marriage. This form was also prevailing among the Brahmanas when the performance of great sacrifices was most common. It was known as Daiva as being the Ceremony of the Devas or Gods.\textsuperscript{11}

\textit{Arsha form of marriage}:

In this form of marriage the daughter was given by father after receiving one or two pairs of cow or bullock. The cattle was the price of the girl.\textsuperscript{12}

\textit{Prajapatya form of marriage}:-

According to Manu, it was also a gift of the bride by the father with due honour saying distinctly "May both of you perform together your civil and religious duties. The difference between this form and Brahma form was according to Yajnavalkya that the bridegroom being a suitor, an applicant for the bride's hand. In Brahma form bridegroom was voluntarily invited by the father to accept the bride. According to Hindu notions regarding the marriage, gift loses a portion of its merit if the gift is not voluntarily made. Therefore, \textit{Prajapatya} form was inferior to the Brahma form.\textsuperscript{13}

\textsuperscript{11} Ibid. pp. 80 & 81.
\textsuperscript{12} Ibid.
\textsuperscript{13} Ibid. pp. 81 & 82.
In all these four forms of marriage, gift by the father was essential part of the marriage. These were the approved form of marriage. In contrast with these forms of marriage, the remaining four forms are independent of any gift by the father.

**Asura form of marriage:**

In this form the bride was purchased by paying a suitable price by the bride-groom to the father and the paternal kinsmen and to the bride herself and took her voluntarily as his bride. Manu was against this form of marriage. According to him, father should not receive a gratuity when he gave his daughter in marriage. It marked a very low state of society. This form of marriage was adopted by lower class/caste of people in Hindu Society.\footnote{Ibid.}

**Gandharva form of Marriage:**

It was love marriage and was completed by consummation with the consent of the Bride. This form of marriage depends upon the agreement of the contracting parties. This was formally practiced by military class of people and the latter it was also in practice among Rajahs and the Chiefs.\footnote{Ibid.}
**Rakshasa form of Marriage:**

This form was conquest of girl by force without her consent after defeating her Kinsmen and friends in the battle field. This form shows it could only be in practice when it was lawless stages. This form of marriage was condemnale one.16

**Paisacha form of Marriage:**

According to Manu this sinful form of marriage, it was the ravishment of girl while she was either sleeping or drunk or out of sense. It was condemned and prohibited for all the classes of people. This was enumerate as a form marriage, only out of regard for the honour of the unfortunate girl.17

This inferior form of marriage might be in practice amongst persons who were not Aryan but adopted Arya culture and the religion. Thus such form of marriage came to be adopted gradually in the sacred literature of the Hindus. The original ancient Vedic form of marriage was a spiritual union by magic mantras. The wife held a dignified position. She became one with her husband for all social and the religious purposes. In inferior from of marriage by capture or purchase the wife was treated as chattel of which the husband as the owner and the master. The wife did not enjoy as

16 Ibid.
17 Ibid. pp. 79–87.
Patni who had the honour the dignity but a little better than dasi (maid). After the introduction of these marriage, the woman never had a better status. She was treated as a useful a cow and a source of offspring.\textsuperscript{18}

When the bride was started to be looked upon as a chattel who can be given by the father to priest as a fee, she could also be given for a price e.g. for a pair of cows. Thus gradually, ceremonial marriage was also diversified into distinct classes and also started departure from the original Vedic form of marriage. In further stage we found revival of orthodox Shastric law which except the Brahma form of marriage all other forms were excluded from sacred law. But there is evidence that other form of marriages were survived in custom in different parts of the Country.\textsuperscript{19}

Age of Bride:

According to Rig Veda in ancient time the bride and bride groom should be adult persons at the time of marriage. Though, if a girl stayed unmarried for long it was taken as misfortune but remaining as an old maid was not treated as committing a sin. In Rid Veda (X:85), the marriage of Surya and Soma was clearly an adult marriage. There was betrothal before marriage and marriage ceremony followed. With mantras offering were made to the God to keep away evil genii. The bride and bride-groom hand

\textsuperscript{18} Ibid.
\textsuperscript{19} Ibid.

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in hand prayed for common life, long life, progeny, prosperity etc. It shows that it will be completely inconsistent with pre-pubertal marriage of girls. In all the Grihya Sutras generally indicated that marriage was to be consummated on the fourth night after marriage and if the girl was in her monthly course then, consummation was to be postponed for three days thereafter.\(^{20}\)

In course of time, customs of early marriage grew up. It might be because of many reasons. Parents of bride wanted to prevent their daughters from undesirable consequences of growing up marriage. Where taking the bride price was a custom, the parents might want to prevent from cheating the bride price by running away their daughter with a lover. Whatever the reasons, this development grew up in societies where the ownership of children by the father was established and girls became to be taken as chattels.\(^{21}\)

In ancient Vedic India wife was addressed with respect by her husband and she had voice in family affairs. At the same time, She also respected her husband. But in course of time this status of wives had a radical change. It might be because of the adoption of such forms of marriages like by capture, sale, etc as well as early marriage. At that time their status was a little better than a slave. It started comparing them with


\(^{21}\) Supra Note 7, pp. 100 & 101.
cows. The husbands exercised an amount of dominion over the wives. The only duty of wives was to produce sons. One of the system of that time was that a sonless man use his wife to get a son by another person not only after the death of her husband, but also during the life time of husband. It was the darkest days of woman.  

With regards to the widows there was no provision for widow remarriage in ancient Vedic India. Marriage was looked upon as union in this life and hereafter. Most of the Smritikars generally prohibited widow remarriage. However, number of instances are cited about widows remarrying. Ordinarily these marriages were regarded as Gandharva marriages, which was one of the unapproved forms of marriage. There was no prohibition for a widower in remarrying. This was another instance of inequality embedded through Sastras. According to Manu, the sacred text did not allow remarriage of widows, and it is condemned by the learned as fit for animals. He also stated that a maiden could be given only once. He did not allow a widow even to mention the name of another man in connection with marriage. The ideal laid down for a wife was even her self-immolation as a Sati. Manu contemplates the case of a woman who, abandoned by her husband, or as a widow of her own accord, marries a second husband, in which case the son born of such marriage was called a

\[\text{\textsuperscript{22}}\text{Ibid.}\]
\[\text{\textsuperscript{23}}\text{Ibid.}\]
"The Offspring of Lust". But he in some way allowed the virgin widow to remarry.\textsuperscript{24} The life of widow was in the state of rigorous subjugation and the extreme austerity. It promoted to self-immolation of widows on the funeral pyre of her husband. Later on this practice was known as Sati. There was no provision for Sati in the Vedas; this practice was encouraged by those persons who were entitled to inherit to the deceased. It was more frequent in Bengal where widows were entitled to inheritance under law of inheritance.\textsuperscript{25}

But the British period saw the period of renaissance. The British people very cautiously brought substantial changes in personal laws of Hindu. It was done in a piecemeal manner. The English people encouraged women to pursue academic pursuits of life. In the arena of marriage, Hindu Widow’s Remarriage Act, 1856 was passed. The Act was mainly to remove all legal obstacles to the marriage of Hindu widows. British rulers also made law for the abolition of evil practice of Sati in 1829. By passing the Child Marriage Restraint Act, 1929, the minimum age of marriage was raised to fourteen for the girls and eighteen for boy’s. Punishments were also provided.

\begin{footnotesize}
\begin{itemize}
  \item \textsuperscript{24} R.K. Moorkerji, \textit{Chandragupta Maurya and His times}, Madras University, Sir William Meyer Lectures (1940-41), (Ed. 1966, Reprint 1988), pp. 161-63.
  \item \textsuperscript{25} Ibid.
\end{itemize}
\end{footnotesize}
After considering the ritual of marriage in the various Grihyasutras, there was no provision for polygamy. The bride and the bride-groom had to perform a sacrifice after lighting the Grihya Fire. There was no provision for several wives for performing Grihya sacrifice. It might be from the days of degradation of woman status polygamy became recognised institution by customary law everywhere in India. Polygamy mainly committed especially amongst the Kings and the Chief. But the effect of polygamy was not a divorce for a first wife, she would continue to remain as a wife. She had to be maintained properly. She was the Patni or the Grihya Patni even though the husband might have other wives and the concubines. One of the reasons for polygamous marriage was to get male issues which were the main object of Hindu marriage. But such marriage was not treated as legal and sacrificial marriage. Monogamous marriage was the only lawful marriage.26

Polyandry:

Under the provision of the Hindu Law, marriage is regarded as sacrament and an indissoluble union. But a man may have a plurality of wives, it forbids the second marriage of a woman even after the death of her first husband. According to Manu, “the holy nuptial texts are applied solely to virgins, not to the girls who have lost their virginity; since those

26 Ibid.
women are in general excluded from religious ceremonies. Their husbands are to be avoided with great care; their children should not be admitted to social meetings; neither they nor their daughter are to be taken in marriage.”

Thus in Hindu society divorce and re-marriage of wife was unknown even though it was permitted by custom among the inferior classes.

But in the late Smritis like Narada and other later Smritis, the right to re-marriage of wife was provided under certain circumstances such as (i) after the husband’s death, (ii) if he was impotent; (iii) stayed away too long without providing for the wife etc.

Thus, the status of Hindu woman under old ancient Hindu legal system was far from satisfactory. The old ancient Hindu law and the customs which were made by male had taken a good care to assign woman an inferior status in the family and the society. It had reached a maximum degree of deterioration when the practices of child marriage, Sati, the ill-treatment to widows, polygamy and denial of education to women had been prescribed by the society. A Hindu woman once married remained wedded to the husband in a tie not dissolved even by the death of her husband. But husband was free from this disability even during the lifetime of the wife.

27 Quoted in Supra Note 1, p. 188.
28 Quoted in Supra Note 2, p. 47.
After passing Hindu Marriage Act, 1955:

After the World War II and with the event of the Indian independence, the Indian Parliament took up the problem of codifying Hindu Law. Even though, marriage bill was strongly opposed by the Hindu orthodoxy, Hindu Marriage Act, 1955 was passed. Hindu marriage Act, 1955 makes monogamy the rule both for men and women. The evil custom of polygamy was given a mortal blow. Divorce is permissible to both husband and wife under certain conditions. This legislation has improved the legal status of Hindu women. It has made path for women leading to equality of status.

Hindu marriage which was considered to be a religious duty, a sacrament has under gone a change. It is more a result of mutual consent than sacramental. No doubt that the enactment, which was supposed to bring a new era in the field of personal laws applicable to Hindus, has become a code in itself, but all the purposes for which this act was brought in could not be achieved due to various reasons. Section 5(ii) & (iii) of the Act says-at the time of the marriage, neither party...

(ii)

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

(c) has been subject to recurrent attacks of insanity;

(iii) The bride-groom completed the age of 21 years and the bride, the age of 18 years at the time of the marriage.

Monogamy:-

The Hindu Marriage of 1955 was based on a concept of equality where the spouses were deemed equal and has equal rights and the obligations towards each other. Section 5(i) introduces monogamy which is essentially the voluntary union for life of one man with one woman to the exclusion of all others. Monogamy means that one is permitted to have one wife or husband at one time. Before this Act came into force polygamy was permitted. Before 1955 under ancient Hindu Law Polyandry was prohibited. Except in the Gandharva form of marriage, the consent of the bride was not necessary. In spite of the fact that the marriage took place without the consent or against her will the Hindu women always respected the marriage as sacrament and her husband as God (Pati Parameswara). So, she could only obey him, she could follow him, never expressed her
opinion either to him or to the society. If the husband took another wife, the Hindu wife never complained against it. It was not uncommon for a Hindu male to marry as many times as he wished. He was envied by his friends, but was never looked down. The woman was taught from the childhood to follow the husband, father and son in whosoever’s custody she was. A woman was supposed to leave the husband’s house only once that is after her death, but not otherwise. It may be the reason for not having any express provision or authority for strict rule of monogamy among the Hindus. With the changing of time equality is conferred on both husband and wife. Now, therefore, the mutual obligation of the spouses will have to be ascertained from the statute. Section 5(i) of Hindu Marriage Act, 1955 prohibits bigamy, Section 11 makes a bigamous marriage void and Section 17 makes it a penal offence under section 494 and 495 of Indian Penal Code (45 of 1860). In *Smt. Santosh Kumari Vs Surjeet Singh* 29, the wife prayed that her lawfully wedded husband be allowed to take second wife on account of her ill-health, she could not satisfy the sexual desire of her husband and had failed to provide male child. But she also prayed that she would continue to be his legally wedded wife and her husband maintain her daughter (from her husband). He should also perform the marriage of the daughter. The trial court passed a declaratory decree to that effect. But the Himachal Pradesh High Court quashed the decree.

29 AIR 1979 SC 713.
Though the bigamy is a matrimonial wrong under section 5 (1) and the 17 of Hindu Marriage Act, 1955 and it is also an offence under the provisions of Indian Penal Code, 1860, it has to be proved which is not an easy task. The wife has to provide all the proof of compliance of essential marriage ceremonies. Performance of certain Shastric ceremonies is still necessary for a valid Hindu marriage. One of the indispensable ceremony to be performed in Hindu marriage is the Saptapadi. Near the vivahamandap the bridegroom leads the bride for seven steps in the north-eastern direction while reciting certain hymns. The bridegroom and the bride make certain prayers and also make vows i.e.

“Give thy heart to my religious duties may thy mind follow mine. Be thou consentient to my speech. May Brihaspati unite thee unto me”.

These vows imply marriage to be an exclusive union. It implied monogamy. But in course of time, the observance of these marriage vows became only for the wife. The marriage became monogamous and a sacrament only for her. But the Shastric Ceremonies and rites are still necessary. Section 7 of the Hindu Marriage Act, 1955 says that (i) A Hindu marriage may be solemnised in accordance with the customary rites and ceremonies of either party thereto; (ii) Where such rites and ceremonies include the Saptapadi (that is, taking of seven steps by the bridegroom and the bride jointly before the Sacred fire), the marriage becomes complete and binding when the seventh step is taken.

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The performance of necessary ceremonies is a vital question in bigamy case. In *Dr. N.A. Mukerji Vs State*\(^{31}\) - a physician was prosecuted for bigamy. It was alleged that their ceremonies of marriage at three different times were performed; one was the moon ceremony, second was of exchange of garlands in the Kali Temple after walking seven steps, and the third ceremony was performed before the Guru Granth Sahib, since the woman was Sikh. The court held that performance of such mock ceremonies of marriage does not constitute valid ceremonies, and therefore, the prosecution for bigamy failed.

If the marriage is not a valid marriage, it is no marriage in the eyes of law. If the marriage is not a valid one according to the law applicable to the parties, no question of its being void by reason of its taking place during the life time of the husband or wife of the person marrying arises. Having regard to Section 17 of the Act, the essential ceremonies set out under the Act had not been conducted and merely because there was distribution of sugar or *gur* it would not constitute a valid marriage.\(^{32}\)

Under the Hindu Marriage Act, 1955 parties are free to solemnize their marriage by customary rites and ceremonies prevalent on either side. But it is essential that such ceremonies and rites must be proved to be ancient, continuous and definite and that should have been recognized

\(^{31}\) AIR1969 All.489

\(^{32}\) Surjit Kaur Vs Garja Singh, AIR 1995 Sc 135.
either in the community of the bride or bridegroom. If Saptapadi and invocation before the sacred fire are made, the marriage is validly solemnized under the Shastric Law.33 Sometimes the court construed the word “solemnized” in a strict manner. In Joyita Saha Vs Rajesh Kumar Pandey34, the priest had stated that the respondent bridegroom with the appellant wife, both the parties sat together and ‘homa’ was performed. However, the ceremonies were neither performed strictly according to Hindu rites or customs nor were ceremonies of ‘Sapatapadi’ and Kanyadan performed. Further, according to the priest, on the advice of the respondent the entire ceremony was rushed through and completed within 45 minutes, whereas, normally it would have taken over two hours on these facts the Calcutta High Court held that no marriage was solemnized according to Hindu rites and customs.

In Gopal Lal Vs State of Rajasthan,35 Supreme Court held that where a spouse contracts a second marriage while the first marriage is still subsisting, the spouse would be guilty of bigamy under section 494, Indian Penal Code if it is proved that the second marriage was a valid one in the sense that the necessary ceremonies required by law or by custom have been actually performed. The voidness of the Marriage under Section 17 of the Hindu Marriage Act is in fact one of the essential ingredients of Section

33 Chakki Vs Ayyappan, AIR 1989 Ker. 89.
35 AIR1979SC713.
494 I.P.C. because the second marriage will become void only because of the provision of Section 17 of the Hindu Marriage Act. What Section 17 of the Hindu Marriage Act contemplates is that the second marriage much be according to the ceremonies required by law. If the bigamous marriage is performed secretly and stealthily without strictly observing all the ceremonies makes it more difficult to prove even though the husband commits bigamy. In Priya Vs Suresh\(^{36}\), it was held by the Apex Court that the second marriage cannot be taken to be proved by the mere admission of the parties, essential ceremonies and rites must be proved to have taken place.

In S. Nagalingam Vs Sevagam\(^ {37}\), the appellant married respondent alleged that the appellant started ill-treating her and on many occasions she was physically tortured. As a result of ill-treatment and severe torture inflicted she left her marital home and started staying with her parents while so, the respondent came to know that the appellant entered into another marriage. Admittedly, the marriage of the appellant with the respondent was subsisting at the time of the alleged second marriage. The Metropolitan Magistrate held that an important ceremony, namely, “Saptapadi” had not been performed and therefore, the second marriage was not valid and no offence was committed by the appellant. But Supreme

\(^{36}\) 1971 (1) SCC 864.
\(^{37}\) AIR 2001 S.C. 3576.
Court held that there was a valid second marriage and the appellant was guilty of the offence of bigamy. Section 7 applies to any marriage between two Hindus solemnized in the presence of relatives, friends or other persons. Any of the ceremonics, namely garlanding each other or putting a ring upon any finger of the other or tying a thali would be sufficient to complete a valid marriage. As per evidence in this case, it clearly shows that there was a valid marriage in accordance with the provisions of Section 7 of the Hindu Marriage Act. It was deposed that the bridegroom brought the “Thirumangalam” and tied it around the neck of the bride and thereafter the bride and the bridegroom exchanged garlands three times and the father of the bride stated that he was giving his daughter to “Kanniyathan” on behalf of and in the witness of “Agnidevi” and the father of the bridegroom received and accepted the “Kanniyathan”. “Saptapadi” was held to be an essential ceremony marriage applicable to them that was an essential ceremony. Therefore, it was proved that the appellant had committed the offence of bigamy as it was done during the subsistence of his earlier marriage.

The Hindu marriage under the Act is a ceremonial marriage to be solemnized according to the customary rites and the ceremonies of one of the two parties. The absence of essential ceremony rites and the ceremonies would amount to failure of ceremonial marriage or solemnization of
marriage. Above the requirement solemnization of ceremonial marriage, there must be no incapacity in the parties to marry one another arising from the prohibited degrees of relationship or sapinda relationship except where there is customs or usages governing both the parties dispensing with the bar arising from the prohibited degree of relationship and Sapindaship. Hindu marriage Act permits only monogamous marriage but in the absence of fulfilment of above conditions, a Hindu male can marry another woman legally. In the Hindu Society it is happen very rarely that a Hindu female marrying with another male even her first marriage is not a valid marriage under the provisions of the Hindu Marriage Act, 1955. Polyandry had been prohibited by customs and the old Hindu law long before the passing of Hindu Marriage Act, 1955. Even though monogamy has been introduced by the provisions of Hindu Marriage Act, 1955, in practice Hindu women are still suffering from bigamous marriage without full curable remedy.

Matrimonial Relief under Hindu Marriage Act, 1955:

In the olden days Hindu women always respected the marriage as sacrament and her husband as god. She could only obey him, she could follow him, never expressed her opinion either to him or to the society. When the husband took another wife, the Hindu wife never complained against him. Hindu women was taught from the childhood to follow the

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father, husband and son in whosoever custody she was. Because of all these reasons Dharmashastras did not contain any provision like restitution of conjugal rights and divorce. Though there was no conjugal relationship, the Hindu wife and husband had to live under one roof till death. It was taken as the fault of the wife if she could not bear him a son. So had to take another wife.

The wife was not authorized to do religious acts independently of her husband or without his consent. Manu ordains that there is no separate yajna for women (independently of the husband) nor vrata(vows) nor fasts (without his consent). Similarly Katyayana propounds a sweeping rule that whatever a woman does to secure spiritual benefit after death without the consent of her father (when she is unmarried) or her husband or her son, becomes fruitless for the purpose intended. As the foremost duty of the wife was to honour and serve the husband, she must always stay with him and she had a right of residence in the house. A wife was further entitled to be maintained in the house by the husband. Narada does not allow the husband or wife to lodge a complaint against one another with their relations or with the king. Though a judicial proceeding between husband and wife as plaintiff defendant before the king is forbidden, still, if the king comes to know personally or indirectly of wrong done by the one to the other, the king must bring round the husband or the wife to the path of duty by appropriate punishment, otherwise the king incurs sin. There were
certain matters of which the king could take cognizance without the complaint of anybody: they were called aparadhas among which were included the murder of a woman, adultery, pregnancy of a widow from some person other than the husband, abortion.39

Divorce was unthinkable in the Smritis. According to Manu, the marital union can be released neither by sale nor by other way, as he says let mutual fidelity continue till death since it is the highest dharma.40 However Kautilya allowed divorce under certain circumstances. According to him if the marriage was entered in the Brahma, Praja Patya, Arsha and Daiva forms, it cannot be dissolved but if the marriage was entered in Gandharva, Asura and Rakhasa forms then it may be dissolved by mutual consent of the marrying parties in case where both hate each other.41

As a matter of fact there has been gradual erosion of sacramental character of Hindu marriage since 1955. When the Hindu Marriage Act 1955 was passed, it was kept in view that if circumstances exist which show that conjugal life has become impossible either by reason of matrimonial offence or by reason of disease, other specified circumstances then reality must be recognized and provisions should be made for terminating the bond of marriage.

For the first time, Hindu Marriage Act, 1955 has made changes by providing specific matrimonial remedies to Hindu women. The Act provides following types of Matrimonial reliefs:

1. Restitution of Conjugal Rights.
2. Judicial Separation
3. Divorce

**Restitution of Conjugal Right**:

Even before the passing of the Hindu Marriage Act 1955, Courts in India passed decrees for restitution of the Conjugal Right. Even question had been arisen whether Court had jurisdiction in the cases of such types. The concept of such type of relief was borrowed from English Law. It originated in the religious courts of England. Such court could issue a decree of “restitution of conjugal rights”. If the unwilling spouse disobeyed the order of the court, the spouse was punished. But this provision was repealed in 1970. During the British period the provision of restitution of conjugal right was introduced into Indian Law. The fundamental rule of this right is that one spouse is entitled to the society and the comfort of the other spouse and where either spouse has abandoned or withdrawn from the society of the other without reasonable excuse or cause the Court

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should grant a decree for restitution of conjugal right. It also can be a ground for divorce.43 Under this provision a spouse who wants to save marriage from disruption can sincerely approach the Court for restitution of Conjugal rights. A petition may be made to the District Court for the purpose. If the court is satisfied of the truth of the statement made in the petition it may grant a decree for restitution of conjugal rights. The Explanation attached to the Section 9 clarifies that when the question as to the existence of a reasonable excuse for withdrawal from the other person’s society arises, the burden of proof to prove the same shall be on the person who has withdrawn from the society. The expression ‘conjugal rights’ connotes two ideas (i) right of the couple to have each other’s society and (2) the right to marital intercourse. The law expects every husband and wife not to withdraw from the society of the other i.e. living together and part company only occasionally or to live apart and meet occasionally, of course not due to dispute or discord but by mutual understanding according to their need. Withdrawn from the society of the other without reasonable excuse means drawing back or departed from this style of living together.44

Withdrawal from the society of the petitioner means cessation of cohabitation by a voluntary act of the respondent. Where the husband dumped his wife at her father’s house and thereafter totally neglected her, it

42 Ibid. p. 641.
was held that husband had withdrawn from the society. Cohabitation means living together as husband and wife in the circumstances as they exist. If the parties are forced to live separately because of the requirement of their employment but meet together whenever circumstances permit, they are cohabiting. In such situation the matrimonial home is at two places, the place where husband is living and the wife is living.45

The question of constitutionality of Section 9 arose in T. Sareetha Vs T. Venkata Subbaiah.46 The question was whether the remedy of Restitution of Conjugal Right violates the right of privacy guaranteed by the Article 21 of the Constitution. In this case the husband had applied for a decree of restitution of conjugal rights. The Andhra Pradesh High Court observed that "a decree for restitution of conjugal rights constituted the grossest form of violation of individual’s right to privacy. It denies the woman her free choice whether, when and the how she is to become the vehicle for the procreation of another human being. A decree of restitution of conjugal rights deprives a woman of control over her choice as to when by whom the various parts of her body is to be sensed. The provision of Section 9 is therefore unconstitutional being not only against Article 21 but also being violation of Article 14 of the constitution. Though theoretically the remedy is available to both the parties, in practice it is resorted almost exclusively by the husband against the wife.

46 AIR1983 AP 356.
But the Delhi High Court in *Smt. Harvinder Kaur Vs Harmander Singh* 47 has observed that Section 9 has not violation of Article 14 and 21 of the constitution. The object of restitution decree was to bring about cohabitation between estranged parties so that they could live together in the matrimonial home in amity. The leading idea of Section 9 was to preserve the marriage. It did not enforce sexual intercourse. It was fallacious to hold that the restitution of conjugal right constituted the starkest form of governmental invasion of marital privacy.

However, above views were considered by Supreme Court in *Saroj Rani Vs Sudarshan Kumar* 48 and it has been held that conjugal rights are not mere creatures of the statute. Such a right is inherent in the very institution of marriage itself. The court holding that in privacy of home and married life, neither Article 21 nor Article 14 of the Constitution has any room. The Court observed that there are sufficient safeguard in section 9 to prevent it from being tyranny. So the only sanction decree for the restitution of conjugal right is by attachment of property against disobedience of a decree for restitution of conjugal rights where the disobedience follows as result of wilful conduct. It can not be said the section is violative of Articles 14 and 21 of the constitution of India, if the purpose of the decree for restitution of conjugal rights is understood in its proper perspective and if the method of its execution in case of disobedience is kept in view.

47 AIR1984 Delhi 66.
48 AIR 1984 SC 1562.
From the time immemorial, Hindu society in India very much inclined to justify and uphold that wife should serve her husband like a slave. After marriage she is transferred to the family of her husband and all rights including her surname has to change to identify her in the new family. Indian Hindu society also teaches and compels the woman to believe that pious duty is to perform the role of housewife after duly married and do whatever her husband wants. Even though the restitution of conjugal right is available to both husband and wife but most of the time, husbands try to use this provision for their benefit and to use their wives in whatever way they want. In a series of husband petitions for restitution of conjugal right, our High Courts have held that the wife’s refusal to resign her job at the instance of the husband had amounted to ‘withdrawal from his society’. The question of withdrawal from the society has come in an interesting manner in several cases in the situation where both spouses were employed were living at two different places. In *Surinder Vs Gurdeep* 49, the husband and wife made arrangement that whenever possible either on holiday or by taking leave they visited and live together for as long as was possible either at the husband’s place or at wife’s place, and in this way they continue to live together. But when for some reasons and some misunderstanding relationship soured, the husband asked the wife to resign or give up her job and join him at his place. On wife’s refusal to

49 AIR1973 P&H 134.
obey him he filed a petition for restitution of conjugal right alleged that she had withdrawn from his society. The Court passed the decree in favour of husband holding that the wife much join him there otherwise it would be deemed that she has withdrawn from the society of her husband.

But in Pravinden Vs Sureshbhai\textsuperscript{50} Gujarat High Court express a different view and held that mere refusal to resign the job will not amount to withdrawal from the society.

It is true that married life means joint living of the parties to the marriage for mutual happiness. But with education and high literacy of woman and with recognition of equal right to woman in the Constitution and abolition sex distinction in all walks of life it is quiet necessary to change this orthodox concept of wife as Dashi and expectation from her to subject herself to husband’s wishes. Otherwise all the rights will be useless which are made available to woman for development and benefit. It will only be a weapon to destroy the institution of marriage which is the very foundation of civil society.

Sometimes the restitution of conjugal rights is also tried to be used as a means to escape from liabilities and responsibilities. But courts have

\textsuperscript{50} AIR1975 Guj. 69.
stopped in time. In *Dharmishthaben Vs Hasmukhbhai*\(^{51}\) a husband filed for restitution of conjugal right as a counter blast to wife’s application for maintenance and obtained the decree. His behaviour, however, was bad and he disallowed his wife to enter the house. It was held that the restitution case was filed with ulterior motive to avoid liability to pay maintenance and that the husband could not escape liability to maintain her. A decree of restitution of conjugal rights obtained by a husband cannot help him in denying maintenance to the wife.

Similarly in *Surjeet Singh Vs Rajendra Kaur*\(^{52}\) it was held that a maintenance application of the wife could not be rejected merely on the ground that the husband had obtained a decree for restitution of conjugal rights.

Prevailing attitude of male dominated Indian Hindu Society which has been deep rooted since time immemorial is quite necessary to be examined at the time of making laws. Many rights may be conferred and many provisions may be made for keeping equal status and development of Indian women but because of old culture most of the Hindu women even in this modern time are reluctant to enjoy these rights. Instead, men have been trying to use these provisions like restitution of conjugal rights for their benefit and free from liabilities. It is, therefore, necessary to make such provisions not to be used in wrong way.

\(^{51}\) 1990 Cri.LJ 2132 (Guj.).

\(^{52}\) 1990 Cri.LJ NOC 137 (All.).
Judicial Separation and Divorce:

Marriage in the Shastras was viewed as a sacrament. The relationship of husband and wife, once established through proper customs and rituals, was believed to be irrevocable. The wife could not cut herself off even in case the husband died for she could live as a part of the family that was still alive and not dead with the husband. "Let man and woman, united in a marriage, constantly exert themselves that they may not be disunited and may not violate their mutual fidelity."\(^{53}\)

"A man, who always remains united with his wife and children, is the ideal person. Husband is declared to be one with his wife. Neither by sale nor by repudiation is a wife released from her husband."\(^{54}\)

Manu went so far that a marriage entered even by force or fraud is indissoluble.\(^{55}\)

Naturally, a question of dissolution of Hindu marriage cannot arise. There was no evidence of prevalence of divorce during the Muslim period and British period among the Hindus in India. The reasons for this were that British Courts in India accepted the authority of Manu who was against the practice of divorce. Social conditions of that time were also not

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\(^{54}\) Ibid.

acceptable to such practice. And another reason was that Hindu Pandits in the early British court did not support such practice. The history of origin of divorce in India can be traced from the British Indian courts just before the Indian independence.  

However, such Hindu notions regarding the divorce did not mean that the need of divorce was not realised. Customary form of divorce was prevailing among the lower classes and castes. Customary mode of divorce was very simple, very few formalities were needed and was purely private act of the parties. But in some community a forum such as Panchayat or a family council was necessary.

**Judicial Separation :-**

The remedy of judicial separation was unknown to the *Shastric* Hindu Law. But the British Indian courts permitted in certain cases maintenance to wife and also separate residence from her husband. Later on the Hindu Married Women’s Right to Separate Maintenance and Residence Act, 1946 gave statutory right to Hindu married woman to claim separation and maintenance from her husband. This kind of enactment resembled judicial separation now incorporated in Section10 of the Hindu Marriage Act, 1955.  

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56 Ibid.
Section 10 of the Hindu Marriage Act, 1955 provides provision for judicial separation. When under certain circumstances it becomes difficult for one party to continue in the society of the other, law allows separation. The decree of judicial separation does not sever or dissolve the marriage. It is a remedy lesser than divorcé. As a result of judicial separation active marital life between the spouses is suspended. But they are not allowed to contract another alliance. If the separated parties who live apart under the decree of judicial separation desire to make a compromise, the court may rescind such a decree of separation if it thinks proper. And couple may resume their normal life without again undergoing a marriage ceremony. The effect of an order under Section 10 the Hindu Marriage Act granting judicial separation is to permit spouses to live apart and to afford opportunity to reconcile. In *Narasimha Redy Vs Basamma* the court held that after a decree of judicial separation it is no longer obligatory on the part of the petitioner to cohabit with the respondent; however, neither spouse can contract another marriage until the marital bond is ended by a decree of divorcé. A marriage after a separation decree and before divorce amounts to bigamy.

The grounds for obtaining the decree of judicial separation are the grounds enumerated in Section 13 of the Hindu Marriage Act, 1955 for

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seeking decree of divorce. Thus, similar grounds for seeking decree of judicial separation and for decree of divorce are provided by the Hindu Marriage Act.

The decree of judicial separation provides an opportunity for reconciliation and adjustment between the husband and wife, however after a certain period it becomes valid ground for seeking decree of divorce.\(^{60}\)

By the Marriage Laws (Amendment) Act of 1976, Section 10 of the Hindu Marriage Act, 1955 was radically changed and now the grounds for both the husband and the wife are the same as the grounds for divorce. They are adultery, cruelty, desertion, conversion, unsound mind, venereal disease, incurable leprosy, renunciation of the world, presumption of death and failure to comply with a decree of restitution of conjugal rights, etc. Apart from the aforementioned grounds, a Hindu wife may invoke any of the following grounds available exclusively to her viz. remarriage by husband, husband being found guilty of rape, sodomy or bestiality, non-resumption of co-habitation in spite of a decree for maintenance of wife and option of puberty, i.e. at the option of the wife if her marriage was performed before she reached the age of 15 years and she repudiates the marriage after attaining the age of 15 years but before she reaches 18 years.

\(^{60}\) Section 13(1A)(i) of Hindu Marriage Act, 1955.
of age. However Supreme court in *Darshan Prasad Vs Civil Judge II Gorakpur* held that when a wife merely lives separately from husband but not obtain decree for judicial separation under Hindu Marriage Act, 1955, she cannot be held judicially separated wife.

**Divorce:**

Divorce was most radical social reform. After passing Hindu Marriage Act it is greatly changed and Hindu marriage today has assumed more or less the nature of a contract for the mutual benefit of the parties concerned, duly aided by different legal provisions and reforms. The issue of divorce then came as a natural consequence. Though it has been started to think about divorce, it is still reserved as the last resort. This led to development of the concept that marriage could be dissolved only in those cases where a party to the marriage violated its sanctity by his or her acts or behaviour. When marriage came to be accepted as a contract, it was not regarded like an ordinary contract. There is a social interest in the preservation and protection of the institution of marriage. It was, therefore, inevitable to consider marriage as a special contract and being a special contract, the marriage could not be put to an end like an ordinary contract. It is true, that so long as the practice of Sati and child marriage

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61 Section 13(2) of Hindu Marriage Act, 1955.
62 AIR 1992 SC 967.
existed, nobody thought about the widow remarriage or divorce. Marital incompatibilities were hardly taken into consideration, but there has been a great change. Marriages no longer take place between children but between adults. There is no guarantee whatsoever those marriages would be successful, and no wonder there are so many unhappy marriages today. It becomes the duty of our society to give a practicable solution to such unhappy couples by making divorce possible. Instead of talking about the glory of our ancient culture and doing nothing about it it is true indeed that sacramental concept did provide much needed stability to the institution of marriage. But at whose cost? It made the wife option less. Hindu Marriage Act, 1955 emphasizes stability, but with humane option. The primary objective of the Hindu Marriage Act 1955 is to preserve and protect a Hindu Marriage, rather than allow it to disintegrate. Severance of marriage is therefore to be permitted only on substantial grounds. Divorce, according to Section 14 of the Hindu Marriage Act, will not ordinarily be granted within one year of the marriage.\footnote{Virendra Kumar, “Uniform Civil Code Revisited: A Juridical Analysis of John Vallamatton”, \textit{J.I.L.I.} Vol.45 July-December 2003, p. 332.}

According to section 23 (1) (a) to (c) even where a ground for divorce is made the court will have to satisfy itself (i) that the petitioner is not seeking to take advantage of his own wrong or disability (ii) where the petition is founded on adultery, the petitioner has not in any manner
connived at or condoned the act or acts complained of (iii) that the petition
is not the result of any collusion between the spouses or its presentation is
not marked by any unnecessary or improper delay and (iv) that there is no
other legal ground against granting the relief prayed for.

The right to divorce is granted by Section 13 of the Hindu Marriage
Act 1955. The principal grounds of divorce are (1) Adultery (2) Cruelty (3)
Desertion (4) Conversion (5) Insanity or mental disorder (6) Leprosy (7)
Venereal disease (8) Renouncing the world (9) Unheard of for seven years
or more (10) no cohabitation after judicial separation (11) failure to comply
with the decree of restitution.

The additional grounds on which the wife alone could seek divorce
are (1) Bigamy (2) Rape, sodomy, bestiality (3) Maintenance decreed to
wife (4) Repudiation of marriage by wife before she is 18 years of age.
These special grounds have been incorporated by Marriage Laws
(amendment) Act 1976. Thus a Hindu wife is granted certain special
grounds against the husband which places her in a better position as
compared to a Muslim or a Christian wife.

Adultery:

A petition for divorce under section 13(1) (i) of the Hindu Marriage
Act, will lie at the instance of husband or wife if the other party has after
the solemnisation of the marriage committed even a single act of adultery. Before the Amendment of 1976 it was necessary to show that the spouse was living in adultery. Taking into consideration the fact that it is very difficult to prove even a single act of adultery, the requisite changes were made by the Amendment of 1976. The expression “had voluntary sexual intercourse with any person other than his or her spouse” has been used instead of “adultery”.

It seems that where a married man contracts a bigamous marriage after the commencement of the Hindu Marriage Act, 1955, his first wife can file a petition for divorce under this provision. The second marriage would be void and its consummation amounts to extra-marital sex. The word “voluntary” which was added by Amendment Act of 1976 shows that if a person has been involved in an involuntary sexual act with a person other than his or her spouse (whether or not it amounts to rape under the Indian Penal Code) the later cannot ask for relief on the ground under Section 13.65

It is very difficult to produce direct evidence to prove an act of adultery. The act of adultery, therefore, has to be inferred by the attending circumstances. But it must be proved beyond all reasonable doubts and the circumstantial evidence should be such that it should lead only to one inference i.e. the respondent has committed adultery.66

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65 Dass Vs Dass, AIR 1982 MP 120.
66 Parvati Vs Shiva Ram, AIR 1989 HP. 29.
In *Mirapala Venkata Ramana Vs Mirapala Peddiraj*\(^7\) husband filed a divorce petition against the wife on the ground of her adultery without impleading the adulterer as a part. He court held that in such case adulterer is a necessary party and ought to have been made second respondent. Besides this, the husband failed to establish his ground. Andhra Pradesh High Court observed that casting aspersion against a woman that she is unchaste woman that too a married woman with children is a very serious thing and unless there is cogent evidence beyond any pale of doubt such a finding should not be recorded.

There is no specific provision under the Hindu Marriage Act in regard to joint the adulterer as a co-respondent in a suit for divorce on ground of respondent’s adultery. However, in exercise of the powers conferred by Section 14 and 21 of the Act, various High Courts have made rules requiring adulterer as a necessary party.

In *Arun Kumar Agarwal Vs Radha Arun and another*\(^8\) Karnataka High Court held that even though the Hindu Marriage (Karnataka) Rules, 1956 does not provide for adulterer to be joined as a necessary party but in determining whether the spouse of the petitioner had voluntary sexual intercourse with another, the court would be in a better position if the adulterer is made as co-respondent to adjudicate upon the controversy.

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67 AIR 2000, AP 328.
68 AIR 2003 Kant. 508.
Apart from that, even public interest and principle of natural justice require that the person named as adulterer should have an opportunity to defend his reputation.

In *Ram Kumar Vs Raksha*69 the husband filed a petition for divorce on grounds; inter alia, of wife having illicit relations with some other person. The name of that person was not disclosed nor was he impleaded as party. The court held that the husband’s petition could not be allowed as under rule 10 of the Hindu Marriage (Punjab) Rules, 1956, if a petition is presented by the husband on ground of adultery, he is required to implead the alleged adulterer as co-respondent. The husband’s petition was consequently held to be not maintainable because of not joining of necessary party.

Mere suspicion as to extra marital sex is not sufficient for granting divorce. But that does not mean that petition on the ground of adultery is not to be decreed for the want of direct evidence. It is generally difficult to get direct evidence of such act as it is done in privacy. Therefore, standard of proof of extra-marital sex in the divorce proceedings can be based on circumstantial evidence and strong probabilities corroborating each other.70

69 AIR 2003 P&H. 334.
70 Mani Shankar Vs Radha Devi AIR Raj. 33.
Another important thing is that due to the mere suspicious, children are not deprived of united parents or who have fair chances of getting united.\textsuperscript{71} Though blood test may indicate possibilities of paternities of a child but court cannot compel any party to submit to a blood test. Regarding this Supreme Court has laid down following principle in \textit{Goutam Kundu Vs State of West Bengal}.\textsuperscript{72}

1) The courts in India cannot order blood test as a matter of course.

2) Whenever applications are made for such prayers in order to have roaming enquiry the prayer for blood test cannot be entertained.

3) There must be a strong prima facie case that the husband must establish non-access in order to dispel drive away 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 bastard and the mother as an unchaste woman.

\textsuperscript{71} R.Revathi Vs Union of India AIR 1988 SC835.
\textsuperscript{72} AIR 1993 SC2295 2301.
5) No one can be compelled to give sample of blood for analyse.

According to Section 23 (I) (b) condonation of adultery is an absolute bar to granting relief by way of judicial separation under section 10 or divorce under section 13.

Admission or confession of adultery is admissible, but the court would also rely upon the circumstantial evidence to corroborate the admission or confession and satisfy itself that there is no collusion. If so satisfied, it is open to the court to grant relief.73

Section 13(I)(i) says that any marriage solemnised, whether before or after the commencement of this Act, may on a petition by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party has, after the solemnisation of the marriage, had voluntary sexual intercourse with any person other than his or her spouse. It must have been noticed that the words “had voluntary sexual intercourse with any person other than his or her spouse”. Where there was allegation that wife was living in adultery against her wishes, held that since, sexual intercourse with a person other than her spouse was not voluntary, it would be no ground for divorce.74

73 N.C.Das Vs Chinmayee Dass AIR 1982, MP 120
74 Awadish Kumar Sinha Vs State of Bihar 2002, Cri.LJ NOC 175 (Pat).
Cruelty:

Apart from rape and dowry violence there is different kind of cruelty- physical and mental. Cruelty— which sexually leads to the death of the young married woman. The legal concept of cruelty and the kind or degree of cruelty which necessarily to amount to a matrimonial offence has not been defined by any statute of the Indian Legislature relating to a marriage and divorce. The cruelty has not been defined anywhere, the result being that in the delicate relationship of husband and wife, acts of cruelty are infinitely variable and have been changing complexion with increasing complexities of life in the background of differing cultural levels and social norms. The legal concept of cruelty has varied from time to time and from society to society with the change in social and economic conditions. At one time it was thought that the objective of matrimonial law was to punish the guilty party rather than to protect the innocent party. The modern law takes the view that the objective is to accord protection to the innocent party. Regarding the concept of cruelty there are many case laws in India as well as abroad.

Since the human nature is basically the same everywhere, the foreign decisions on cruelty can be helpful to us. But it should not be forgotten that in India a very large number of couples living in the joint family has its own challenges and its peculiar problems which may not arise elsewhere.

Cruelty itself was not a ground for relief by way of divorce prior to the Marriage Laws (Amendment) Act of 1976. But it was only a ground for the relief of judicial separation under Section 10. The expression “Cruelty” has nowhere been defined in the Act. In the statement of objects and reasons of the Amending Act of 1976, the object was stated to be to liberalise the provisions relating to divorce. It seems that the object was to withhold giving a definition exclusive or inclusive which will meet every particular act or conduct and not fail in some circumstances. Legislature, therefore, has left to the courts to determine on the facts and circumstances of each case whether the conduct amounts to cruelty. Cruelty in matrimonial law may be of infinite variety. That is basically the reason why courts have never tried to give an exclusive definition of cruelty. Acts or conduct constituting cruelty can be so numerous and varied that it would be impossible to fit them into any watertight compartments. Cruelty may be subtle or brutal. It may be
physical or mental. Under the English Statute, Matrimonial Causes Act, 1973 cruelty is one of the facts indicating of a breakdown of marriage, and the wordings of the clause are such as to give cruelty a very elastic meaning. The wordings of the clause is “The respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent”

In *Dr. N.G. Dastane Vs Mrs. S. Dastane*\(^7\) the Supreme Court critically examined the matrimonial ground of cruelty as it was stated in the Old Section 10 (I) (b) and stated that the enquiry in any case covered by the provision had 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 the petitioner to live with the respondent. It was also pointed out that it was not necessary, as under English law that the cruelty must be of such a character as to cause danger to life or limb or health, or as to give rise to a reasonable apprehension of such a danger though, of course, harm or injury to health, reputation, the working character or the like would be an important consideration in determining whether the conduct of the respondent amounts to cruelty. What was required was that the petitioner must prove that the respondent has treated the petitioner with such

\(^7\) AIR 1975 SC 1534
cruelty as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the respondent.

Under the Modern Hindu Law Cruelty is a ground both for judicial separation and divorce. At one time under the English Law intention of cruelty was an essential element of cruelty. But subsequently it no longer remained an essential element of cruelty. Under Hindu law also intention to be cruel is not an essential element of cruelty. If the act or conduct is intentional, obviously it amounts to cruelty. There cannot be a graver matrimonial offence than to set out the act or conduct with intention to wound or humiliate the other spouse which seriously affects mental or physical health of the other spouse.

In *P.L. Sauyal Vs Sarla* the wife was crazy to get the love and affection of her husband, and with that in view she consulted a Fakir who gave her some potion to be administered to the husband. She administered the same to the husband which resulted in his getting seriously ill. The husband had to be admitted to the hospital where he remained for sometime. During the illness of her husband she attended on him day and night. On discharge from the hospital the husband petitioned for judicial separation on the ground of

78 AIR 1961 Punj.125.
wife's cruelty. After reviewing some leading English Cases, the learned judge said that willful intention to injure is not an essential element of cruelty. If conduct or act results in a reasonable apprehension in the mind of the petitioner that it would be harmful or injurious to live with the respondent, it is enough and the acts and conduct complained of would amount to cruelty.

In *N. Sreeacedharya Vs Vasantha* the court found that the wife abuses at her husband over most trivial matters. She not merely abused him at home but she did so in public. He became a laughing stock. She used to say that she wanted her husband to be killed in some accident so that she could have his insurance money and provident fund. All this obviously made the husband miserable and he used to have sleepless nights and started keeping ill health the court held that this was a clear case on mental cruelty.

False accusation of adultery or infidelity cruelty came to be established at an early period. The husband constantly called wife a prostitute, a woman of street. If a spouse is subjected to false accusation of adultery, insults, abuses, humiliation false charges of immorality, it would make married life impossible to be endured and would make a very unhappy and miserable existence. This type of cruelty is worst than the acts of physical cruelty.  

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79 AIR1970 Mys.232
80 Krishna Vs Alok AIR 1985 Cal.431
In India among Hindus most wives still live in the joint families with its advantages and disadvantages. In such situation, there may be cruel act or conduct of other members of the family not of the respondent. The question is whether such act or conduct of other family member will amount to cruelty.

In *Shyam Sunder Vs Santadevi* the wife, soon after the marriage, was locked up, kept without food, ill treated by the members of the joint family, while the husband stood there idly, without least caring to protect his wife. The wife filed the case under the Hindu Married Women’s Right to Separate Residence and Maintenance Act, 1946. It was held that an intentional omission to protect his wife from the ill-treatment of the members of the joint family amounts to cruelty on the part of the husband. It is the husband’s karma (duty) to protect his wife. He is pati (protector).

It is well established that in considering whether acts and conduct of respondent amount to cruelty, one should consider all the circumstances and background of the parties while doing so, several factors such as social stating, background, custom, traditions, caste and community upbringing, public opinion prevailing in the locality, etc. will have to be taken into account.

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81 AIR 1962 Ori 60.
82 Supra Note.75, p. 134.
Merely by showing that the parties are unhappy because of the unruly temper of a spouse or matrimonial wrangling fall considerably short of the conduct which can amount to cruel treatment. There may be unhappiness in a marriage and the court cannot for that cause alone find cruelty. Ordinary wear and tear of married life does not amount to cruelty. Conduct amounting to cruelty must be something more than the ordinary wear and tear of marriage.

In *Vijay Kumar Ramchandra Bhate Vs Neela Vijoy Kumar Bhate* a wife filed a divorce petition against the husband on ground of cruelty alleging incidents which caused her mental agency affecting her health. The family court viewed these to be normal wear and tear to matrimonial life. However, allegations made by the husband in his written statement against her character with enumeration of incidents and instances, and branding her as an unchaste woman keeping illicit relations with the son of a neighbour were held to be “grave assault on character honour, reputation, stating as well as health of the wife”. Even though these allegations were taken later withdrawn by amending the written statement, the court held that the husband could not be absolved of

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*83* Nirmala Vs Manohar AIR 1991 Bom 259.

*84* Maya Vs Brijnath AIR 1982 Del 240.

*85* AIR 2003 SC 2462.
leveling them. The divorce decree in favour of the wife was upheld in appeal. The court observed “The position of law in this regard has come to be well settled and declared that levelling disgusting accusations of unchastity and indecent familiarity with a person outside wedlock and allegations of extra marital relationships is a grave assault on the character, honour, reputation, status as well as the health of the wife”. Even though these allegations were later withdrawn by amending the written statement, the court held that the husband could not be absolved of leveling them. The divorce decree in favour of the wife was upheld in appeal. The court observed “the position of law in this regard has come to be well settled and declared that leveling disgusting accusations of unchastity and indecent familiarity with a person outside wedlock and allegations of extra marital relationships is a grave assault on the character, honour, reputation, stating as well as the health of the wife. Such attitude to the wife would amount to worst form of insult and cruelty sufficient by itself to substantiate cruelty in law, warranting the claim of the wife being award.

The court further clarified that the section (on cruelty) does not stipulate any particular period or duration to be necessary to constitute cruelty. It is not the length nor the numerical count of such incident nor continuous course of such conduct but “the
intensity, gravity and stigmatic impact of it when meted out even once and the deleterious effect of it on the mental attitude, necessary for maintaining a conducive matrimonial home.

In *Pushpa Vs Mukesh Kuma*\(^6\) the wife filed a petition on ground of cruelty alleging dowry demands, physical beating, and torture coupled with the fact that when the husband was informed about her delivery no one came to see them until after eight months when the husband and his father came to enquire about the money demanded. On refusal by her father there was a quarrel and a police case was registered. The trial court dismissed the wife’s petition on the ground that the wife’s sister, who was married to the husband’s elder brother, did not support the petitioner’s case. On appeal the court held that the elder sister’s statement could not be relied upon as she had more stake in saving her own marriage and so could not be expected to go against them to support the petitioner. The petition was thus granted.

This is now a well established proposition of law that harassing a wife by a person related to her with a view to coercing her to meet any unlawful demand, including demand for dowry, amounts to cruelty.

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\(^6\) AIR 2003 P and H 239.
In *Rajni Vs Subramanian*\(^{87}\) a Division Bench of the Kerala High Court observed that the cruelty alleged may largely depend upon the type of life of parties are accustomed to or then economic and social conditions, their culture and human values to which they attach importance. Judged by standards of modern civilization in the background of cultural heritage and the traditions of our society, a young educated woman is not expected to endure harassment in domestic life whether mental or physical, intentional or unintentional. Her sentiments have to be respected, her ambitions and aspirations taken into account, in making adjustments and her basic needs provided, though grievances arising from temperamental disharmony are irrelevant. If she resent unfair or unreasonable demand for dowry and decides to keep away from the husband on account of the persistent and dubious approach to compel her parents to yield, the wife cannot be found fault with.

It is true that married life means joint living of the parties to the marriage for mutual conjugal happiness and sexual life. But there is a revolutionary change regarding the concept of marriage with education and high literacy in women and with the recognition of equal rights to women in the constitution and abolition of sex

\(^{87}\)AIR 1990 Ker. 2-3.
distinction in all walks of life. The provisions of the constitution do not permit discrimination on the ground of sex. In *R. Prakash Vs Sneh Lata*\(^88\) the court expressly emphasised the concept of complete equality of spouses. The husband had filed a divorce petition on the ground of cruelty of the wife based on her refusal to leave her job. The conduct and behaviour of the husband was indicative of his indifference towards his wife and child. The court observed that the orthodox concept of the Hindu wife is that she is expected to be Dharampatni, Ardhangini, etc. The literal meaning is that she has to follow the husband. This orthodox concept of wife and expectation from her to subject herself to husband’s wishes has undergone a revolutionary change with education, and high literacy in women and with recognition of equal right in the constitution and abolition of sex distinction in all walks of life. She is a partner in marriage with equal status and equal right with the husband. The court held that the wife’s insistence on her continuing with her employment and refusing to leave her job was not cruelty as to entitled the husband to a decree of divorce.

\(^{88}\) AIR 2001 Raj 269.
**Desertion:**

Living together is the essence of marriage; living apart is its negation. When one spouse leaves the other in a manner which is not justifiable, the deserted spouse has a remedy by way of matrimonial reliefs.

Considering the fact that the majority of Indian women do not have a livelihood for themselves and their children, desertion appears to be a more serious ground than adultery and cruelty. In the case of desertion, the wife suffers more than the husband as for her it is not only the loss of marital company but is coupled with monetary insecurity also. It is, therefore, necessary that desertion for a number of years should be ground of divorce. Before the 1976 Amendment, “desertion” was a ground only for judicial separation under section 10 and not a ground for divorce. The provisions relating to desertion found under the original version of section 10(I) have now, without any change, been transferred to section 13. Now “desertion is ground for judicial separation as well as for divorce. Under the Hindu Marriage Act the main provision relating to desertion prescribed a minimum duration for which desertion must exist in order to become a ground for relief. This duration is “continuous period of not less than two years immediately
preceding the presentation of the petition. So, if a course of conduct does amount to desertion but its duration falls short of the prescribed period, no relief can be granted. According to Explanation to Sub Section (I) of Section 13 the expression "desertion means desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the willful neglect of the petitioner by the other party to the marriage and its grammatical variations and cognate expression shall be construed accordingly. Desertion is a total repudiation of obligations of marriage. Desertion is a withdrawal not from a place, but also from a state of things, or desertion is not merely an act but includes conduct. A spouse is in desertion if he runs away from the performance of his marital obligations.

It is not necessary that the husband and wife should live together every day in the same house. Business duties or certain nature of jobs would separate them for some time. In such cases, there is no desertion because there is no intention to desert the other party. On the other hand, the man and woman may live in the same house but far away from each other’s mind – this amounts to desertion. Therefore even those who are living under the same roof

\[89\] Section 13(I)(ib) The Hindu Marriage Act, 1955.
might have deserted each other. In matrimonial law the following are the constituent elements of desertion\textsuperscript{90}.

(1) The factum of separation, and (2) the intention to bring cohabitation permanently to an end – animus deserdendi (intention to desert), (3) the element of permanence which is a prime condition requires that both these essential ingredients should continue during the entire statutory period of two years immediately preceding the presentation of the petition,(4) desertion should be without any reasonable cause and without the consent of the other party.

For the offence of desertion, abandonment of matrimonial home should be accompanied by animus deserdendi. The moment they co-exist, it amounts to desertion.

In the leading case \textit{Bipin Chander Vs Prabhavati}\textsuperscript{91} Supreme Court of India explained, referring the Halsbury's Laws of England, the concept of desertion. The court held that:

\begin{itemize}
  \item[i)] In every case of desertion there must co-exist the factum of separation and animus deserdendi;
\end{itemize}


\textsuperscript{91} AIR 1957 SC 176.
ii) The above both elements need not commence at the same time, one can follow the other; and

iii) The above stated elements must subsist during the whole of the statutory duration i.e. two years ending with the filing of the petition.

Desertion is not a withdrawal from a place but a state of things. *Ashokkumar Vs Shabram Bhatnagar*[^92^], it was a petition for divorce by the husband on the ground of wife’s desertion. It was established that wife was forced to leave the matrimonial home as she was constantly and continuously harassed by the husband and his parents with the demand of dowry. It was held that wife was not guilty of desertion.

Willful neglect was designed to cover constructive desertion. Willful neglect adds a new dimension to the notion of desertion, in as much as if the offending spouse consciously neglects the other party. Without any intention to desert, it would not amount to desertion. Explanation to Section 13(1), Hindu Marriage Act lays down the “desertion includes willful neglect of the petitioner by the other party to the marriage”. Thus, it will amount to willful neglect if a person consciously acts in a reprehensible manner in the

[^92^] AIR 1989 Del. 121.
discharge of his marital obligations, or consciously fails in a reprehensible manner in the discharge of these obligations. This has been done considering the facts of our social life, where wives are deliberately neglected by her husbands, they are denied company, and they are denied sexual intercourse or are denied maintenance. Any of these acts by itself may not amount to desertion but these are acts of willful neglect which do cause untold misery to the wife. It seems for this reason that parliament specially made "willful neglect" as special type of desertion under Hindu Law\textsuperscript{93}.

In \textit{Bhavna Adwani Vs Manohar Adwani}\textsuperscript{94} Madhaya Pradhesh High Court observed that the only excuse offered by the wife not to rejoin her husband was that she wanted the husband or some elderly person in the family to take responsibility that she would not be ill treated in the marital home. Such an expectation from the husband cannot constitute a good ground or a reasonable ground for the wife to refuse to live with her husband. In marital relationship, there is no question of any responsibility being taken by the spouses of each other or by the elder members of their families. In her romantic letters sent to the husband after their long separation, she

\begin{footnotesize}
\textsuperscript{93} Dr.Paras Dewan & Peeyushi Diwan, \textit{Modern Hindu Law}, (9\textsuperscript{th} Ed. 1993), p. 135.
\textsuperscript{94} AIR 1992 MP 105.
\end{footnotesize}
did not even make a passing reference of having suffered any ill-treatment from him or his relations during her stay. The version of the wife and her father, therefore neither appears believable not reasonable. She can, therefore be held guilty of a willful neglect on the discharge of her marital obligations towards the husband.

In desertion permanent abandonment or forsaking with an intention not to return must be established. In *Nitu Vs Krishan Lati*95 the wife was living away from the matrimonial home on account of strained relationship. The husband served a registered notice through the lawyer asking her to return. The letter contained many insinuations and abuses. The Delhi High Court observed that it was certainly not a simple reminder to the wife to return to the matrimonial home, but a pre-emptory call, fought with threatening legal consequences and preceded by such allegations which no self-respecting woman, howsoever financially humble her parents or brothers might have been, would have pocketed, particularly when the insinuations were patently false and mischievous. The tone and tenor of the notice was such that no other inference could commend to any discerning mind; but that the husband was bent upon discarding the wife, and had deliberately worded the notice, which he served through a lawyer, in such a manner that the wife could take no other decision but not to return to him. The reason being that the only consequence for her would

have been to face lifelong humiliation at the hands of a husband. In view of this, the court held that no case of desertion was made out.

There is another interesting case. In *Jagdish Mangatani Vs Geeta*\(^9^6\), the issue involved was whether the wife's insistence on not leaving her job to join her husband's matrimonial home amounted to desertion thereby entitling the husband too a degree of divorce on the ground of desertion. In this case the wife was a school teacher in a Government School in Gujarat earning about Rs. 8000/- per month and the husband was working in Mumbai drawing a monthly salary of Rs. 1400/-. The wife left the matrimonial home in 1993 on the ground of delivery and never returned. She insisted that unless and until the husband earns more income and the financial insecurity is removed, she is not prepared to join him at Mumbai. For the husband it was argued that she knew about his salary even at the time of their marriage and in spite of this knowledge she married him. In 1993 she left on the pretext of delivery and never returned nor agreed to return. Thus there was factum as well as animas of desertion. The trail court decreed divorce on ground of cruelty and desertion on wife is appeal before the joint district judge the decree was sit aside as being “improper and illegal”. It held if a woman gets good designation or good job on the strength of her education and if a husband is not earning good income and is residing at another place after the marriage, wife cannot be compelled, according to orthodox Hindu mythology, to leave her good

\(^9^6\) XLIV (I) 2003 Guj Law Reporter 309.
service or status and to stay at the husband’s place. If a woman refuses to be ready for divorce and if it is so acted upon, it would be an insult to the woman’s pride and it would amount to denial of woman’s right of equality. Hence the husband’s appeal before the High Court where the issue involved was only as to whether the wife’s conduct amounted to desertion. The wife’s agreement was that she did have intention to stay in the matrimonial home but due to financing instability and increased liability specially after the birth of the child, she could not leave her government job and join her husband in Mumbai. According to the husband, after 1993, there was a clear cases of factum of separation as the wife was not prepared to come to Mumbai and he was not prepared to go to Gujarat. It was further contended that he was not at fault since the wife was aware of his salary at the time of marriage and there was no reason for her now to demand that she would not join him unless the started earning more. After considering all the facts, evidence and case law, as also vain attempts by the court to bring about reconciliation, the court came to the conclusion that the husband was stitched to a divorce desire. It was held that the respondent wife’s insistence of not leaving the job and to join her matrimonial home amounts to desertion and appellant husband is stitched for a desire of divorce. There was no alternative but to pass the order for divorce so that both persons can be free to have their own houses. Therefore, the marriage is completely broken down and no useful purpose would be served by dismissing the second appeal.
Termination of Desertion – Desertion is a continuing offence. It can be brought to an end by some act or conduct on the part of deserting spouse. Desertion comes to an end by condonation of the acts complained of. To constitute condonation or termination two elements are necessary namely forgiveness of each other’s acts and restoration of cohabitation which does simply mean just living together.\(^97\)

Desertion may be brought to an end by the deserting spouse’s genuine and bona fide offer of reconciliation. The offer must be conciliatory and not hedged with conditions or qualification. It should not be just to forestall or defeat the impending judicial proceedings\(^98\).

Hindu Women’s Right to Maintenance.

The persons are entitled to maintenance according to Dharamshastras However; the liability to maintain arises out of nature of relationship with certain category of persons and under certain circumstances, which has got nothing to do with owning or not owning property.\(^99\)

One of the necessary incidents of a joint Hindu family is the right of maintenance. Karta was bound to maintain the members of the joint family

\(^98\) Supra Note. 91, p. 140.
and in cases of daughters such maintenance extended only till their marriage. The right of a wife to claim maintenance was an incident of the status of matrimony and if the relationship of husband and wife was established as a matter of course the wife was entitled to maintenance. Mothers were also entitled to be maintained by their children. Even widows were entitled to claim maintenance.\textsuperscript{100}

The duty of maintaining the wife and other dependent members of the family who are in want, is strictly enjoined by the Hindu law, and even censurable acts, such as receiving presents from a low person, are excused if done with a view to provide maintenance for them\textsuperscript{101}.

It is also expressed by Manu, thus: “He who bestows gifts on strangers with a view to worldly fame, while he suffers his family to live in distress, though he has power to support them, touches his lips with honey but swallows poison; such virtue is counterfeit” (XI,9)\textsuperscript{102}.

Ordinarily the right to maintenance does not rest upon contract. The liability, to give maintenance is one that is “created by the Hindu law in respect of the jural relations of the Hindu family”\textsuperscript{103}.

\textsuperscript{100} Dr. Mamta Rao, \textit{Law Relating to Women & Children}, (1\textsuperscript{st} Ed. 2005), pp. 255 & 262.
\textsuperscript{102} Ibid.
\textsuperscript{103} Sidlingapa Vs Sidava Kom Sidlingapa, I.L.R. 2 Bom. 628 quoted in Ibid.
A wife forsaken without fault may, according to Yajnavalkya, compel her husband to pay her a third part of his wealth, or if poor, to provide maintenance for her. 104

The right to maintenance is founded on a text of Yajnavalkya, which is adopted by the commentators of all the school. 105

The ancient Hindu law has all along recognized the right of maintenance of all members of the joint family, males as well as females, coparceners and non-coparceners, whether they lived with the family or whether they lived outside it. All have to be maintained out of the joint family property. Ancient Hindu law enjoined that maintenance of certain relations was a personal obligation. It was the obligation of son to maintain his parents. But it was not the obligation of the daughters. It was the obligation of the father to maintain his children; the mother had no such obligation. The maintenance of the wife is a personal obligation of the husband which attaches to the husband the movement he weds her. Where a custom required that an immature wife should live with her parents, he still had an obligation to maintain her. Where parents are maintaining her the husband has had the obligation to recompense them. No other member of the family, whether joint or separate, was liable to maintain her. Her

104 Colebrooke's Digest, Bk. IV, 72 quoted in Ibid. p. 152.
position when he lived in the joint family was different. The family estate
was liable to pay for the maintenance of the wife of a coparcener. The
patriarchal society did not consider it to be her function to engage in the
earning of wealth.  

Hindu law givers did not deny maintenance even to an unchaste
wife, provided she continued to live with her husband; though in such a
case she was entitled to starving maintenance. Under the ancient Hindu
law, a wife who did not live with her husband whatever be the cause, was
not entitled to maintenance.  

Where the husband keeps a concubine in the house or treats her with
cruelty so as to endanger her personal safety, she is entitled to live apart
and claim separate maintenance. After passing the Hindu Married
Women’s Right to Separate Residence and Maintenance Act, 1946 the wife
living separate from her husband for some justifiable cause can claim
maintenance. Under Section 2 of this Act a Hindu married woman is
entitled to separate residence and maintenance from her husband on one or
more of the following grounds: (i) if he is suffering from any loathsome
disease not contracted from her; (2) if he is guilty of such cruelty towards
her as renders it unsafe or undesirable for her to live with him; (3) if he is

107 Parami Vs Mahadevi, ILR (1909) 34 Bom. 278 quoted in Ibid. p. 1348.
108 Supra Note.104, p. 1348.
109 Lalla Govin Vs Dowlat 14 WR 451; Dular Kuarri Vs Dwarka Nath (1905)32 Cal. 234, 239
quoted in Mayne’s Treatise on Hindu Law & Usage, op.cit. p.1155.
guilty of desertion, that is to say, of abandoning her without her consent or against her wish; (4) if he marries again (5) if he ceases to be a Hindu by conversion to another religion (6) if he keeps a concubine in the house or habitually resides with a concubine and (7) for any other justifiable cause. Her own unchastely, conversion to another religion or failure without sufficient cause to comply with a decree of a competent court for the restitution of conjugal rights disentitles her to separate maintenance under this Act. 110. But before passing this Act if the husband has taken another wife without justifying reason, the wife was not still entitled to leave his home, so long as the husband was willing to keep her in his house111.

The widows of the members of the Hindu family were entitled to maintenance. After passing Hindu Women’s Rights to Property Act, 1937, the widows of deceased coparceners in a Mitakshara family became entitled to their husband’s interest in non-agricultural property. Court held that the widow of a deceased coparcener is still entitled to maintenance notwithstanding her right under the Act until and unless she claims partition. It is open to her to claim a share or maintenance which is more favourable to her and not both.112

110 Ibid, p. 1156.
111 Ibid.
112 Sorojini Devi Vs Sri Krishna Anjaneya Subramanyam, ILR (1945) Mad. 61; Gajavalli Vs Narayanaswamy ILR(1962) Mad. 204; Ramesh Chandra Vs Vedkumar 1951 Punj. 129 cited and quoted in supra note 95, p. 1158.
A Hindu widow was disentitled to her maintenance if she was leading a life of unchastity. In *Lakshmi chand Vs Anandi*\(^{113}\) the judicial committee held that the right of a Hindu widow to maintenance is conditional upon her leading a life of chastity and she loses that right if she becomes unchaste. But according to Bombay, Madras and Allahabad High courts, if the Hindu widow who reformed her ways of life is entitled to starving maintenance.

Regarding daughters, according to Hindu sages it was the father’s obligation to maintain his legitimate daughters till her marriage and to bear their marriage expenses. Even after the marriage of the daughter, the father has moral obligation to maintain her, if she was not maintained by her husband’s family. Similarly father has also the obligation to maintain his widowed daughter\(^{114}\).

Regarding the illegitimate daughters our textual law is silent about the putative father’s obligation to maintain his illegitimate daughter.\(^{115}\) The Bombay High Court held that under the old Hindu law an illegitimate daughter has no claim of maintenance against the estate of her deceased father.\(^{116}\) But privy council held that an illegitimate daughter was as much a member of his father’s family as on illegitimate son and therefore she was entitled to maintenance.\(^{117}\)

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\(^{113}\) *(1935) 62 IA250. 255; 57 All 672 cited and quoted in Ibid.*

\(^{114}\) *Supra note 104, p. 1356.*

\(^{115}\) *Ibid. p. 1357.*

\(^{116}\) *Jaiwanti Vs Gopal Bhai, AIR 1968 ILR 314.*

\(^{117}\) *Valaiappa Vs Nataraja, 58 IA 407 cited & quoted in Supra note 104, p. 1356.*
Maintenance under Hindu Adoptions and Maintenance Act, 1956:

Traditional Hindu law put personal liability on the Hindu to maintain his virtuous wife, infants, children, aged and infirm parents even they committed 100 misdeeds. This traditional law has not changed much after 1956 i.e. after passing the Hindu Adoptions and Maintenance Act, 1956. Maintenance is a right to get necessaries which are reasonable from another. Indirectly or directly right to maintenance is provided under Article 21 of the Constitution of India as the right to life includes as right to livelihood. Supreme court in Maharani Kesari Kunverba Saheb Vs. C. I.T held that maintenance does not include only food, clothes and residence but it varies according to the position and status of a person. Under the Hindu adoptions and Maintenance Act, 1956, following category of persons are entitled to claim maintenance under the Hindu Adoptions and Maintenance Act, 1956.

1) Wife
2) Widowed daughter-in-law
3) (a) Minor Children and aged parents.
   (b) Daughters
   (c) Illegitimate sons and daughters
   (d) Old and infirm parents

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119 AIR1960 SC 1343.
4) The dependents of the deceased Hindu Male. Viz.

(a) His father

(b) His mother

(c) His Widow

(d) The son, son of a predeceased son and the son of a predeceased son of a predeceased son.

(e) His widowed daughter

(f) The widow of the son and the widow of the predeceased son of a predeceased son.

(g) His minor illegitimate sons

(h) His unmarried illegitimate daughters.

Section 18 of the Hindu Adoptions and Maintenance Act, 1956 is in regard to entitlement of maintenance in the case of a wife. According to this section it is the right of a wife whether married before or after the commencement of the Hindu Adoptions and Maintenance Act, 1956 to be maintained by her husband during her lifetime. This right is an incident of status or state of matrimony. This obligation of the husband is a personal one independent of the possession of property, ancestral or self acquired by him. As long as her husband is alive, the wife cannot claim to be maintained by her relatives or by the relatives of her husband. This right

120 Jagat Krishna Vs Ajit Kumar Das, AIR 1964 Ori.75.
exists for the whole span of her marital life as it is one of the necessary concomitant of marriage between them. The liability of the husband is not affected by the fact that she is quite rich. The moral obligation of the husband has been rendered into a legal obligation, as the obligation is derived from the relationship between a Hindu male and his dependents.  

Although the Hindu wife has a right to maintenance, her husband may try to defeat the right by alienating his property in favour of a third party. In such cases, the wife is not helpless. Under certain circumstances; she can follow the property in the hands of the transferee. It is in this context that section 39. of the Transfer of Property Act, 1882 become relevant. Section 39 of the transfer of property Act says:

"Where a third person has a right to receive maintenance or a provision for advancement or marriage, from the profits of immovable property and such property is transferred, the right may be enforced against the transferee if he has notice thereof or if the transfer is gratuitous: but not against a transferee for consideration and without notice of the right, nor against such property in his hands.

If the provision of Section 39 is satisfied the wife can enforce her right against a third party in whose favour the property is transferred. In order to attract section 39 the wife would have to prove that she is entitled

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121 Jidi Konda Sita Mohalaxmi Vs Bhandapu Daiva Pd. AIR1984 NOC 265.
to be maintained from the profit of the immovable property. Thus a Hindu wife can follow the property in the hands of a gratuitous transferee or a transferee with notice.\textsuperscript{122} Under section 18 of Hindu Adoptions and Maintenance Act every female Hindu without having filed a petition for divorce, judicial separation could claim maintenance. The Madras High Court in \textit{Meera Nireshwalia Vs Sukumar Nireshwalia}\textsuperscript{123} observed that since husband sold house to third party without knowledge of his wife and third party dispossessed wife by detaining her in mental asylum. Hence, it would be wilful neglect of wife by husband issuing direction by husband to third party to get his wife evicted on this ground to live separately. It was held that the wife would be entitled to maintenance.

According to the law of the land with regard to maintenance, there is an obligation of the husband to maintain his wife, which does not arise by reason of any contract express or implied but out of jural relationship of husband and wife consequent to the performance of marriage. Such an obligation of the husband to maintain his wife arises irrespective of the fact whether he has or has no property, as it is considered an imperative duty and a solemn obligation of the husband to maintain his wife. The husband cannot be heard saying that he is unable to maintain due to financial constraints so long as he is capable of earning. In this connection it is

\textsuperscript{123} AIR 1994 Mad.168.
relevant to point out that according to sub-section (1) of section 18 of the Hindu Adoptions and Maintenance Act, 1956, a Hindu wife is entitled to the maintenance from her husband during her life time. She is entitled to claim maintenance from her husband so long as she is chaste subject to the conditions laid down in sub-section (2) of section 18 of the said Act\textsuperscript{124}.

Under section 39 of the Transfer of Property Act, 1882 Hindu wife has right to claim maintenance against a gratuitous transferee or a transferee with notice. Now the question is whether such transferee is liable for enhanced maintenance at a later stage. In \textit{Vedavathi Williams Vs Rama Bai and Ors}.\textsuperscript{125} There was a charge created in favour of the wife for existing maintenance. The property was purchased by the defendant with the knowledge of the existing interest. The question arose, whether the purchaser would be liable for enhanced maintenance. The court held that the right to receive maintenance about which section 39 of the Transfer of property Act, speaks of is not only the right to receive maintenance in the first instance but also the right to receive enhanced maintenance which may be claimed if there is a material change of circumstance.

A wife’s first duty to her husband is to fulfil her marital obligations and to remain under his roof and protection. The maintenance of a wife by her husband is a matter of personal obligation which attaches from the

\textsuperscript{124} Kirtikant D. Vadodaria Vs State of Gujarat and another, SCC 4(1996) 479.
\textsuperscript{125} AIR 1965 Mys. 265.
moment of marriage. The Hindu wife has no right to separate residence and maintenance unless there is justifying cause for doing so. Section 18(2) of the Hindu Adoptions and Maintenance Act 1956 lays down the grounds under which a Hindu wife is entitled to live separately from her husband without losing her right of maintenance. The following are the grounds:

(a) The husband is guilty of desertion i.e., the husband without any reasonable justification or without her consent or against her wishes abandons her or willfully neglects her;

(b) The husband has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband.

(c) If he is suffering from a virulent form of leprosy.

(d) If he has any other wife living.

(e) If he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere.

(f) If he has ceased to be a Hindu by conversion to another religion.

(g) If there is any other cause justifying her living separately.
“Desertion” is a ground for living separate. The Hindu Marriage Act and the Hindu Adoptions and Maintenance Act provide different remedies to a wife whose husband has been guilty of desertion. Under the Hindu Marriage Act she can sue for judicial separation if the conditions laid down in section 10(1)(a) of the Act read with the Explanation are satisfied. She can without resorting to that remedy choose to live separately from her husband, who would be bound to maintain her if it is proved that he has been guilty of desertion and the other conditions laid down in section 18(2)(a) of the Maintenance Act are satisfied. Section 10 of the Hindu Marriage Act and section 18 of the Hindu Adoptions and Maintenance Act are quite distinct and one cannot be said to control the other. The former provision deals with the matrimonial offences by either spouse which would justify the grant of a decree for judicial separation. Section 18 provides for grant of maintenance to wife alone. Section 18 of the Hindu Adoptions and Maintenance Act does not amend or abrogate the provisions of the Section 10 of the Hindu Marriage Act.\(^\text{126}\).

Kerala High Court in *Raghvan Radha Krishnan Vs Satyabhama Jai Kumar*.\(^\text{127}\) held that where the husband is guilty of desertion, it is sufficient to prove that he is living separately not that there was animus deserendi. This provision is especially designed to help a Hindu wife. Social justice

\(^{126}\) Smt.Rohini Kumari Vs Narendra Singh AIR1972 SC459.

\(^{127}\) AIR 1985 Ker.193.
warrants that a wife living separately, in order to claim maintenance under section 18 of the Hindu adoptions and maintenance act, 1956 has to prove only desertion by her husband. It is not necessary for her to prove animus deserendi.

Supreme court in Bipin Chadra Vs Prabhavati\textsuperscript{128} rightly observed that the provisions of a legislation aiming at the protection and welfare of women who are deserted or neglected have to be constructed liberally bearing in mind the objects sought to be achieved and the mischiefs intended to be curbed. It we insist on the proof animus on the part of the husband to desert his wife as a requirement proceeding to the claim for maintenance by the Hindu wife, deserted or neglected, that would not only run counter to the spirit and object of the provisions of a beneficent legislation, but also would amount to retracting from the path of social justice, which under the constitution the courts are bound to advance.

The patriarchal Hindu society did not consider it to be wife's function to engage in the earning wealth. Even in the modern Hindu society also most wives are still economically dependent on their husbands and it is the obligation of the husband to maintain his wife. Bombay High court in Dattu Bhau Undage Vs Tarabai\textsuperscript{129} held that where a decree concerning maintenance has been passed in favour of a wife living separate

\textsuperscript{128} AIR 1957 SC 176.
\textsuperscript{129} AIR 1985 Bom. 106.
from her husband and subsequently they restore normal cohabitation, it would not neutralize the effect of the decree and wife’s right to maintenance does not come to an end under the Hindu marriage Act 1955, “cruelty” is the ground for judicial separation and divorce. It is also a ground for a Hindu wife for living separately from her husband and to claim maintenance. Madras High Court in *Kamla Bai Vs Rathuvelu Mudaliar*.\(^{130}\) observed that cruelty to justify a wife to live apart from her husband, can take diverse forms. Merely not providing sufficient comforts or amenities or even not showing affection may not amount to cruelty. But if the acts are intended to convey the impression that the wife is not wanted and her presence is resented, that would amount to cruelty.

The general principle underlying “cruelty” has been that the guilty spouse should be found to have been acting in such a way as to inflict any type of injury to his spouse. This may be directly injurious to her or may affect her. Indirectly i.e. where the husband hurts/injuries the children or relatives of the wife, it will have the effect of injuring the wife and hence will amount to cruelty.\(^{131}\) Cruelty may be physical or mental. The modern view is that mental cruelty is more injurious and create in the mind of the injured spouse reasonable apprehension that it will be harmful or not safe

\(^{130}\) AIR 1965 Mad. 88.
\(^{131}\) Trimbak Narayan Bhagwat Vs Kumudevi AIR 1957 Bom. 80.
to live with the other spouse. In Maharaja Nadar Vs Muthukami Ammal\textsuperscript{132} Madras High Court held that the accusation of a wife as barren woman by her husband amounts to cruelty to her. The husband also used to ill treat the wife and beat her and even accused her of theft. The expression cruelty will include physical as well as mental cruelty.

In Gopal Vs Mithilesh \textsuperscript{133}36 the husband was found guilty of cruelty as he used to keep quite when his wife was constantly criticized and nagged by his mother. Unusual callous behaviour or neglectful behaviour or deliberate harassment of the spouse would amount to cruelty.

Under section 18(2) (d) the wife can live separately and claim maintenance if the husband has any other wife living. This can be claimed irrespective of the fact that the wife has consented to the second marriage of the husband. Under the Hindu marriage Act, 1955, second marriage during existence of previous wife would be void. In C.O.K. Reddy Vs C.P.V. Lakshmana \textsuperscript{134} the plaintiff filed a maintenance suit under Section 18. She pleaded that her husband married her after deserting his first wife. She lived with him for twelve years but left him later on account of his ill treatment. The trial court dismissed the suit on the ground that she was married in October, 1955 (after coming Hindu Marriage Act, 1955 into

\textsuperscript{132} AIR 1986 Mad. 346.  
\textsuperscript{133} AIR 1979 All. 316.  
\textsuperscript{134} AIR 1976 A.P. 43.
force) and, therefore, the marriage is void and the plaintiff not being the legal wife is not entitled to maintenance. On appeal, the district judge held that though the marriage was void, the plaintiff's status was higher than an avarudha stree (permanently kept concubine) as there was a marriage solemnised and awarded Rs. 80/- p.m. as maintenance. On appeal the High Court upheld the decision on the ground that the words Hindu wife does not mean only a lawfully wedded wife. But such an interpretation is not of much relevance today as the Hindu male can no longer marry more than one wife after the Hindu Marriage Act, 1955 and bigamy is an offence under Section 494 of Indian Penal Code, 1860.

Keeping a concubine by the husband is another ground for the Hindu woman to live separately and claim maintenance. The Bombay High Court in Kesarbai Vs Hari Bhai \(^{135}\) held that where the husband keeps a concubine in the same house or usually resides with her, there the wife acquires a right to claim maintenance by living separately. The very fact that he usually resides with the concubine proves that a married person normally lives with her without changing normal residential place. His conduct within a determined defined period, his mental attitude by frequent visit to the concubine, his statements, his relation to that lady, etc. are the factors which are to be taken into consideration for determining the fact of his usual cohabitation with the concubine.

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\(^{135}\) AIR1970 Bom. 115.
Even the wife failed to establish that the woman with whom her husband was living was the women whom he had married but it was sufficiently established that he was living with her. It was held that she was entitled to maintenance. 136 Supreme Court also in Rajathi Vs C. Ganesan137 observed that where the wife is entitled to prove the husband has remarried, yet the fact remained that the husband was living with another woman, the wife would be entitled to live separately and would amount to neglect or refusal by husband to maintain her. The statement of the wife that she was unable to maintain herself would be enough. Therefore, the wife was entitled to maintenance due to neglect or refusal of husband to maintain her.

Under Section 18(2)(g) a wife can claim separate residence with maintenance when there are other grounds for claiming maintenance which are not specifically provided under clauses (a) to (f) of Section 18(2). Where the wife resides separately and claims maintenance on the ground that the husband is used in drinking, the High Court held that the wife does not acquire the right separate residence and maintenance simply because the husband drinks. But if the husband treat her with cruelty along with drinking that becomes a strong case of her maintenance and living

137 AIR1999 SC 2374.
separately\textsuperscript{138}. This clause (g) of Section 18(2) within the ambit of a reasonable person who feels that there are serious reasons for claiming separate residence. In \textit{Meera Nireshwalia Vs Sukumar Nirishwalia} \textsuperscript{139} the Madras High Court held that the wife had been living alone and all the children had been brought up by her without any assistance and help from the husband and there was a clear case of desertion, the wife was entitled to separate residence and maintenance. It was also held that the claim for maintenance by a wife can also be sustained under clause (g) of Section 18(2) even on a ground covered by one or other clause i.e. clauses (a) to (f) substantially but not fully. Merely because the wife fails to strictly prove the specific grounds urged by her, she cannot be denied relief.

Under the old Hindu law an unchaste Hindu wife did not completely forfeit her right to claim maintenance. But Section 18(3) contemplates that such a unchaste wife is not entitled to separate residence and maintenance i.e. she cannot claim it as a matter of right. According to this provision, a wife who has ceased to be Hindu by embracing another religion would not also be entitled to maintenance.

There is no express provision in the Hindu Adoptions and Maintenance Act for interim maintenance. In \textit{Indra Mal Vs Babulal} \textsuperscript{140} Rajasthan High Court observed that the power to grant interim

\begin{itemize}
\item \textsuperscript{138} Shobha Vs Bhima and others AIR1975 Ori.180.
\item \textsuperscript{139} AIR 1994 Mad. 168.
\item \textsuperscript{140} AIR 1977 Raj. 160.
\end{itemize}
maintenance is implicit and ancillary to the power to entertain a suit for maintenance and the court has power to grant interim maintenance under Section 18 of the Hindu Adoption and Maintenance Act. If there is a general right to claim maintenance under the Statute and where the relationship is undisputed, the power to grant interim maintenance flows from the statute itself. In *Sangeeta Raj Vs Piyush Chaturbhuj* 141 Bombay High Court also held that nothing debars a court from making an order for interim maintenance under Section 18. For doing real justice the court can exercise its power under Section 151 of Civil Procedure Code to grant interim maintenance on petition filed under this section. If this is not done the entire purpose of the enactment would be defeated because of the proverbial delays in disposal of cases resulting in grave hardship to the applicant who may have no means of sustenance until the final decree.

The obligation to maintain the wife remains on the husband even though the wife might be living separately. A suit under Section 18 of the Hindu Adoptions and Maintenance Act may take decade to decide, and the wife cannot be force to face starvation and then subsequently be granted maintenance from the date of the filing of suit. Such a view will be against the very intent and spirit of Section 18 of Hindu Adoptions and Maintenance Act. It is settled law that a court empowered to grant a substantive relief is competent to award it on an interim basis as well, even though there is no express provision in the statute to grant it142.

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141 AIR 1998 Bom. 151.
142 Neelam Malhotra Vs Rajinder Malhotra, AIR 1994 Delhi, 234.
According to ancient Hindu Law the father-in-law was neither under any legal obligation nor any personal obligation to provide maintenance to widowed daughter-in-law. It was merely a moral obligation. If the father-in-law received some property by survivorship on the death of his son, who died leaving behind his widow, he would be under a legal obligation to maintain the widow of such a son.\(^{143}\) According to Section 19 of the Hindu Adoptions And Maintenance Act, any wife whether her marriage took place either before the commencement of the Act or thereafter, on the death of her husband, would be entitled to maintenance from her father-in-law under the circumstances provided under Section 19 of the Act. The right to claim maintenance from the father-in-law is however conditional upon the father-in-law having in possession of coparcenary property out of which widowed daughter-in-law has not obtained any share. Supreme Court in *Rani Bai Vs Yadunandan*\(^ {144}\) held that an obligation under sub-section (1) of Section 19 of Hindu Adoption and Maintenance Act shall not be enforceable if the father-in-law had not the means to do so from any coparcenary property in his possession out of which the daughter-in-law has not obtained any share and any such obligation shall cease on the remarriage of the daughter-in-law. This section governs the right of a widowed daughter-in-law to receive maintenance after commencement of the Act. However, if the widowed daughter-in-law is put in possession of some property of her deceased father-in-law, in lieu of her right to maintenance, she cannot be deprived of those properties without securing

\(^{143}\) Prof.U.P.D.Kesari & Dr.Aditya Kesari-*Modern Hindu Law*, (7th Ed. 2009), p. 176.

\(^{144}\) AIR 1969 SC 1118.
proper maintenance for her out of the aforesaid property. But in *Smt. Balbir Kaur Vs Harinder Kaur*\(^{145}\) the Punjab and Haryana High Court though under Hindu Adoption and Maintenance Act the right to claim maintenance by widow daughter-in-law against her father-in-law is limited to the extent of coparcenary property in the hands of father-in-law out of which widowed daughter-in-law has not taken any share but under the Old Hindu Law, prevailing before the enactment of the Act, this right of maintenance to the widowed daughter-in-law against the self acquired property of her father-in-law, was available. This right is still available to the widowed daughter-in-law of the predeceased son against the self acquired property of her father-in-law as this right shall not cease to be in force because the same is not inconsistent with any provisions contained in the Act. Thus, the widowed daughter-in-law of a predeceased son is entitled to claim right of maintenance against the self acquired property of her father-in-law, whether it is in his hand or in the hand of his heir or donee.

Section 19(2) of the Hindu Adoptions and Maintenance Act provides that the daughter-in-law’s right to claim maintenance comes to an end under the following conditions:

1. Where the father-in-law does not have any means for maintenance out of coparcenary property which was owned by her deceased husband;

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\(^{145}\) AIR 2003 P&H. 174.
(2) Where the widowed daughter-in-law received any share in the coparcenary property;

(3) Where she has remarried; and

(4) Where she has converted into other religion.

In Kanailal Vs Pushparani\textsuperscript{146} the question arose before the Calcutta Division Bench whether Section 19(1) of the Act is restricted in its application to Mitakshara joint families only. It was held that while sub-section (2) of Section 19 is confined in its application to Mitakshara families, it is not so with respect to sub-section (1). It is inconceivable that the legislature will provide for the maintenance of destitute widowed-daughter-in-law of Mitakshara families only, leaving such daughter-in-law of Dayabhaga families to starvation. Sub-section (1) of Section 19 confers a right on a widowed daughter-in-law to claim maintenance from her father-in-law irrespective of whether they are governed by the Mitakshara or the Dayabhaga School of Hindu Law.

According to ancient texts, it was to be father's obligation to maintain his legitimate daughter till her marriage and to pay for her marriage expenses. It was the father's personal obligation. After the father's death she was to be maintained out of the properties of her father. The obligation ceased on her marriage. Under Hindu Adoptions and

\textsuperscript{146} AIR 1979 Cal.172.
Maintenance Act, daughter whether legitimate or illegitimate both can claim maintenance from her parents. But the obligation of the parents to maintain them would be dependent on the fact that the daughters are unable to maintain themselves by their own separate earnings and property. Daughters can claim maintenance from her parents so long as she is unmarried. There is no obligation on the parents to maintain a married daughter but on her becoming a widow, the obligation is revived. But the obligation to maintain widowed daughter exists only and to the extent that she is unable to obtain maintenance: (a) from the estate of her husband; (b) from her son or daughter; (c) from her father-in-law or from his estate. But, on her remarriage she cannot claim maintenance as she ceases to be widowed daughter. In *Balwant Kaur Vs Chanan Singh* Supreme Court held that if we read with words estate before the words father in Section 19(1)(a), then Section 22(2) read with Section 21(vi) of Hindu Adoptions and Maintenance Act, 1956 would become otiose. That is why we say that the proviso (a) to Section 19(1) creates a personal right in favour of the widowed daughter against her father during his lifetime. Any property given in lieu thereof, during his lifetime or to go to her after the father’s lifetime would certainly fall under Section 14(1) of the Hindu Succession Act, 1956, that being in lieu of a pre-existing right during the father’s lifetime. On facts, it must be held that the widowed daughter had a right

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147 Section 20(vi) of Hindu Adoptions & Maintenance Act, 1956.
against her father, during the latter’s lifetime, as she was a destitute and not taken care of by her husband or his estate. It is in lieu thereof he gave her 1/3 of his property. This provision clearly indicates that if the widowed daughter-in-law is destitute and has no earnings of her own or other property and if she has nothing to fall back upon for maintenance on the estate of her husband or father or mother or from the estate of her son or daughter, if any, then she can fall back upon the estate of her father-in-law. This provision also indicates that in case of a widowed daughter-in-law of the family if she has no income of her own or no estate of her husband to fall back upon for maintenance, then she can legitimately claim maintenance from her father or mother. On facts of the present case, therefore, it has to be held that appellant No. 1 who was a destitute widowed daughter of the testator and who was staying with him and was being maintained by him in his lifetime, had nothing to fall back upon so far as her deceased husband’s estate was concerned and she had not estate of her own. Consequently, as per Section 19(1)(a) she could claim maintenance from the estate of her father even during her father’s lifetime. This was a pre-existing right of the widowed daughter qua testator’s estate in his own lifetime and this right which was tried to be crystallized in the will in her favour after his demise fell squarely within the provisions of Section 22(2) of the Hindu Adoptions and Maintenance Act. Thus, on a conjoint operation of Sections 19(1)(9) and 22(2) read with Section 21(vi)
there is no escape from the conclusion that appellant No. 1 had a preexisting right of being maintained from the estate of the testator during the testator’s lifetime and also had got a subsisting right of maintenance from the estate even after the testator’s death when the estate would pass in favour of his testamentary heirs and the same situation would have occurred even if the testator had died intestate and appellant No. 1 could have become a Class I heir.

**Maintenance under the Hindu Marriage Act, 1955:**

In a happy marriage neither spouse thinks much about who is providing support for whom. But when the marriage begins to creak, maintenance to becomes an important question, especially for the woman and children. In the past woman were assumed to be dependent on their husbands. But now under the Hindu Marriage Act, 1955 gives both spouses equal status. Therefore, when the husband needs support after dissolution of marriage an earning wife may have to pay him maintenance. Traditional Hindu Law put personal liability on Hindu husband to maintain his wife and children. And marriage was regarded as indissoluble. After passing Hindu Marriage Act, 1955, Hindu marriage becomes dissoluble. There is also provision for permanent alimony. Alimony means the allowances which husband or the wife by court order pays to other spouse for
maintenance while they are separated or after they are divorce.\textsuperscript{149} A woman's physical structure and the performance of matrimonial functions place her at a disadvantage in the struggle of subsistence. The main reason for awarding permanent alimony to the wife seems to be that if the marriage bond is to be allowed to be severed in the larger interest of society, the same consideration of public interest and social welfare also requires that the wife should not be thrown on the street but should be provided for, in order that she may not be compelled to adopt a disreputable way of life.

Section 24 of the Hindu Marriage Act makes a provision for grant of maintenance pendent lite and expenses of proceedings to either spouse and Section 25 provides the provisions regarding payment permanent alimony and maintenance. The object of Section 24 is to ensure that a party to a proceeding does not suffer during the pendency of the proceeding by reason of his or her poverty. After passing Hindu Marriage (Amendment) Act, 2001, the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband as the case may be. In \textit{Chitralekha Vs Ranjit

it was observed that the object behind Section 24 is to provide financial assistance to the indigent spouse to maintain herself (or himself) during the pendency of the proceedings and also to have sufficient funds to depend or carry on the litigation so that the spouse does not unduly suffer in the conduct of the case for wants of funds.

During the pendency of the divorce proceedings at any point of time if the wife establishes that she has no sufficient independent income for her support, it is open to her to claim maintenance pendent lite. Provisions of Section 24 of the Hindu Marriage Act provides for support to be given by the earning spouse in favour of non-earning spouse during the pendency of proceedings before the court. Therefore, an application seeking for reimbursement of medical expenses incurred by a dependant spouse is definitely on which can be allowed in an application under Section 24 of the Hindu Marriage Act.

It can be said that the right to claim interim maintenance and expenses for the proceedings given under Section 24 is a special right irrespective of the result of the main petition for any relief covered by Section 9 to 13 of the Hindu Marriage Act. The only consideration for exercising the jurisdiction under this Section is whether the party has no

150 AIR 1977 Del. 176.
151 Monokaran Vs Devaki, AIR 2003 Mad. 212.
152 R.Suresh Vs Chandra M.A. AIR 2003 Kant. 183.
independent income sufficient for his or her support and for necessary expenses of the proceeding. Even after close of proceeding under the Act the court remains competent to order Pendente lite maintenance and expenses of litigation and it cannot be refused simply because the said litigation has ended\textsuperscript{153}.

In \textit{Pradeep Vs Shailja} \textsuperscript{154}. Delhi High Court laid down that an application under Section 24 is to be considered in the background of the following facts:

(a) the status of the parties to marriage;

(b) legitimate needs of the claimant, for example, food, clothing, medicine, place of shelter, education, etc.;

(c) the own income of the claimant;

(d) income of respondent; and

(e) the number of persons required to be maintained.

In \textit{Smt. Savitri Pandy Vs Prem Chandra Pandey}\textsuperscript{155} Supreme Court held that interim maintenance can be granted even in proceedings under Section 12(1)(a) or Section 25 of the Hindu Marriage Act, 1955. The grant of relief under this Section is not dependant either on the merits of the petition or on the decision of any particular issue or upon the ultimate

\textsuperscript{153} Amrika Singh Vs Smt.Harinder Kaur AIR 1979P&H 211.

\textsuperscript{154} AIR 1989 Del. 10.

\textsuperscript{155} AIR 2002 SC 591.
success or failure of the petition. The jurisdiction to pass and order under Section 24 arises as soon as any proceedings are instituted under the Hindu Marriage Act.

**Permanent Alimony and Maintenance:**

Section 25 of the Hindu Marriage Act, 1955 provides provision for permanent alimony and maintenance. Under this Section the Court is empowered to grant permanent maintenance to either spouse at the time of passing decree or at any time thereafter at the instance of a spouse who is not able to maintain herself or himself.

The right to claim maintenance under Sections 24 and 25 is an independent right available to the parties in ancillary proceedings in any petition for any matrimonial relief under the Hindu Marriage Act, 1955 and it is not controlled by the Hindu Adoptions and Maintenance Act, 1956\(^{156}\).

The provision contained under Section 25 of the Act is a progressive law to the Hindu wife who is in financial hardship and unable to maintain herself specially during the legal proceedings. However, quantum of alimony and maintenance depends on the status and conduct of the parties who is seeking such relief. If the petition for permanent alimony and maintenance has to be filled, it should be in consequence of the petition under anyone of the reliefs mentioned in Section 9-13 of the Hindu Marriage Act, 1955.

\(^{156}\)Govindram Vs Anandibai AIR 1976 Bom. 433.
There is controversy regarding passing of decree of permanent alimony and maintenance among the decisions of court. There were opinions of courts that if the petition under any one of the Section 9-13 of the Hindu Marriage Act has been dismissed, no petition for permanent alimony and maintenance can be made under Section25. But some decisions dissented from this view. In *Kadia Hari Lal Purshottum Vs Kadia Lilavati Gokaldas*\(^ {157}\) husband’s petition for restitution of conjugal rights was dismissed. His appeal was also dismissed. In these proceedings the wife had filed a petition for permanent maintenance and alimony under Section 25, Hindu Marriage Act. The trial court accepted wife’s application and granted her permanent alimony and maintenance. In appeal the husband argued that looking to the words “at the time of the passing the decree” the Court could have jurisdiction to pass an order under Section 25 only when it passed a decree in the main proceedings. If it dismisses the main petition it could not make any order in ancillary matter. On the other hand, wife argued that the words “any decree” would include an order dismissing the petition as a decree is passed even then. Rejecting the contention of wife, the Gujarat High Court said the word “any” which proceeds the word “decree” has been used having regard to the various kinds of decrees which may be passed under the provisions of the Act. In

Shantaram Vs Hirabai\(^{158}\) the petition was allowed to be withdrawn and dismissed, and the wife and minor were not granted maintenance under this Section as there was no decree in favour of the husband.

In *S. Jagannath Prasad Vs Lalitha Kumari*\(^{159}\) the Andhra Pradesh High Court observed that the main object of Section 25 of the Act is to provide some amount for the sustenance of parties who are unable to support themselves. It cannot be said that the words “at the time of passing of the decree” under Section 25(1) mean only when the suit or petition is allowed. A decree means the expression of an adjudication. The suit or petition may either be dismissed or allowed. A relief may be given or refused. In either case, it is decree. There is no reason to give a restricted meaning to the expression “decree”. In this connection the word “any” is also significant. It indicates either allowing or rejecting.

In *Devinder Singh Vs Jaspal Kaur*\(^{160}\) it was held that Section 25(1) comes into play the moment there is a decree. The application for maintenance can be filed at any time, even after the said decree. It is not confined to any decree for divorce. The expression any decree would include a decree by which the marriage has been declared to be null.

\(^{158}\) AIR 1962 Bom. 27.
\(^{159}\) AIR 1989 A.P. 8.
\(^{160}\) AIR 1999 P&H 229.
Supreme Court in *Chand Dhawan Vs Jawaharlal Dhawan* 161 held that the matrimonial court, a court of special jurisdiction, is not meant to pronounce upon a claim of maintenance without having to go into the exercise of passing a decree which implies that unless it goes onwards, moves or leads through to affect or disrupt the marital status between the parties. By rejecting a claim the matrimonial court does make an appealable decree in terms of Section 28 of the Hindu Marriage Act, but that neither affects nor disrupts the marriage. It certainly does not pass a decree in terms Section 25 for its decision has not moved or done anything towards, or led through to disturb the marriage or to confer or take any legal character or status.

In *Rameshchandra Rampratap Daga Vs Rameshwari Rameshchandra Daga* 162 the husband and wife were married for the second time. Although the divorce petition filed by the wife was against her previous husband, a decree of divorce was not passed. The wife showed a registered document of dissolution of marriage with her previous husband in accordance with the prevalent custom in the Meheshwari Community to the present husband at the time of second marriage. There were allegations of ill treatment meted out to wife by the second husband for non-fulfilment of dowry demands. Hence, she initiated proceedings for

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162 AIR2005 SC 422.
grant of a decree of judicial separation and maintenance. Counter petition filed by the husband seeking declaration of the second marriage with the wife as nullity on the plea that on the date of second marriage, the wife's marriage with previous husband had not been dissolved by any court, The Family Court granted decree of judicial separation. The High Court reverse the finding of the Family Court and dismissed the wife's petition for a decree of judicial separation and allowed the husband's petition declaring his second marriage as null and void. There was no evidence to show that decree of divorce was obtained by the wife from her previous husband and that she obtained only a registered document from her previous husband. There was absence of establishment of the existence of customary divorce in the Vaish Community of Maheshwar. As a Hindu marriage can be dissolve only in accordance with the provisions of the Hindu Marriage Act, by obtaining a decree of divorce from a court, the finding of High Court that second marriage of wife was null and void held justified. The decree of maintenance in favour of the wife and the daughter was maintained by the High Court. The husband challenged it on the ground that where a marriage was declared to be null and void by grant of a decree, no order awarding permanent alimony or maintenance could be made in favour of an unsuccessful party under Section 25 of the Hindu Marriage Act. It is a well known and recognised legal position that customary Hindu law like Mohammedan Law permitted bigamous marriages which were prevalent in
all Hindu families and more so in royal Hindu families. Hence, it was held that bigamous marriage may be declared illegal in contravention of provision of Act. However, it could not be said to be immoral so as to deny even the right of alimony or maintenance to a spouse who was financially weak and economically dependent. High Court in holding that wife deserved to be granted maintenance under Section 25 is justified.

Section 25 of the Hindu Marriage Act, 1955 confers upon a woman whose marriage is void or is declared to be void, a right of maintenance against her husband. The right of maintenance can be enforced by her not only in proceeding under Section 25 but also in any other proceeding where the validity of her marriage is determined. It can be claimed by her not only during the lifetime of her husband but also after his death against the property of her husband. But her right of maintenance is available only during her lifetime and ceases if she remarries.\(^\text{163}\)

According to sub-section (3) of Section 25 of Hindu Marriage Act the right to maintenance of a Hindu wife comes to an end under the following circumstances:

1. Where the Hindu wife has remarried;

2. Where the wife ceases to remain chaste.

\(^{163}\) Shanta Ram Vs Dagoo Devi AIR 1987 Bom. 182.
If the court is satisfied that there is change in the circumstances of either party of any time after it has made an order for maintenance, if may according to sub-section (2) of Section 25, at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

It is also well recognised in Hindu law that right of maintenance is a substantive and continuing right and the quantum of maintenance is variable from time to time.164

**Maintenance under the Code of Criminal Procedure, 1973:**

Sections 125-128 of the Code of Criminal Procedure, 1973, provide a comprehensive scheme for the maintenance of wife, children and aged parents. Though the subject matter of these provisions is civil in nature, the primary justification for their inclusion in the criminal procedure code is that this remedy is more speedy and economical than that available in civil courts. These provisions give effect to the natural and fundamental duty of a man to maintain his wife, children and parents so long as they are unable to maintain themselves.165

By providing a simple, speedy but limited relief provision of maintenance under Criminal Procedure Code, 1973 seek to ensure that the

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164 Ram Shanker Rastogi Vs Smt. Vinaya AIR 1991 All, 255.
neglected wife, children and parents are not left beggared and destitute on
the scrap heap of society and thereby drives to a life of vagrancy,
immorality and crime for their subsistence. The provisions contained in
Sections 125-128, of Criminal Procedure Code, are measures of social
justice and falls within the constitutional sweep of Article 15(3) reinforced
by Article 39 of the Constitution of India. Supreme Court in Mohd.
Ahmed Khan Vs Shah Bano Begum held that Section 125 of Cr.P.C. is
applicable to all irrespective of their religion. It does not matter that parties
claiming maintenance belong to which personal law.

According to Section 125 (1)(a) of the Cr.P.C. wife, who is unable
to maintain herself, is entitled to claim maintenance from her husband. She
may be of any age minor major. The term includes a woman who has been
divorced by or has obtained divorce from her husband and has not
remarried.

The term “wife” appearing in Section 125(1) means only a legally
wedded wife. But it is not intended to provide for a full and final
determination of the status and personal rights of the parties. The
proceedings are simple in nature, providing a speedy and simple remedy.
Where the wife proves performance of certain marriage ceremonies, it is

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166 Bhagwan Dutt Vs Kamla Devi (1975)2 SCC 386.
167 Captain Ramesh Chadra Vs Veena Kaushal, 1979 Cr.LJ.3.
168 AIR 1985 SC 945.
immaterial whether the same satisfies all the requirements of a valid marriage. It is for the husband to have gone to a competent civil court and got his marriage annulled. In the absence of a declaration by a civil court about the legality or otherwise of the marriage the court has to presume that the said marriage is legal.\footnote{Malan Vs Balasaheb Gawade, 1989 Cr.LJ 675 (Bom.).}

The Supreme Court in \textit{Rohtas Singh Vs Smt. Ramendri}\footnote{AIR 2000 SC 952.} held that for the purpose of claiming maintenance a divorced woman will continue to have a status of wife irrespective of the ground in which the divorce was granted. The husband in that case will be bound to provide maintenance if she becomes destitute and cannot maintain herself and remains unmarried, she would be entitled to maintenance from divorced husband. It is also observed that the claim for maintenance under the first part of section 125 of Cr.P.C is based on the subsistence of marriage while claim for maintenance of a divorced wife is based on the foundation provided by Explanation (b) to Sub-Section (1) of section 125 of Cr.P.C. If the divorced wife is unable to maintain herself and if she has not remarried she will be entitled to maintenance allowance.

A wife who become a divorce by mutual consent by executing a document would fall within the scope of the inclusive definition of “wife”\footnote{Malan Vs Balasaheb Gawade, 1989 Cr.LJ 675 (Bom.).}
given in Explanation (b) to Section 125(1)\textsuperscript{172}. A divorce deed enabling the husband to avoid payment of maintenance cannot stand in the way of granting maintenance to the wife.\textsuperscript{173}

The wife stands in a unique position regarding the maintenance by her husband. If the husband offers to maintain his wife on condition of her living with him and she refuses to live with him without any sufficient reason, she will not be entitled to maintenance under Section 125. Similarly, a wife shall not be entitled to receive an allowance from her husband if she lives in adultery or if the spouses are living separately by mutual consent\textsuperscript{174}. The right of married woman to claim maintenance under Section 125 is not absolute and subject to certain conditions. However, the impotency of husband which amounts to cruelty and is a just ground for wife’s refusal to live with her husband does not disentitle the wife to claim maintenance under Section 125 of Criminal Procedure Code if she is enable to maintain herself.\textsuperscript{175} And divorce deed enabling the husband to avoid payment of maintenance cannot also stand in the way of granting maintenance to the wife.\textsuperscript{176} In \textit{Mahera Biswas Vs Swegata Biswas} \textsuperscript{177} the order of maintenance was passed by the family court but later on the parties compromised and after sometime the compromise failed and they again

\begin{footnotesize}
\begin{enumerate}
\item[173] Kaushalyabati Dinkar Mule Vs Dinkar Mahadeorao,2001 Cr.LJ 2292 (Bom.).
\item[174] Section 125(4) and (5) of Criminal Procedure Code,1973.
\item[176] Kaushalyabai Dinkar Mule Vs Dinkar Mahadeorao,2001.Cr.LJ 2292 (Bom.).
\item[177] 1998 (2) SCC 359.
\end{enumerate}
\end{footnotesize}
started living apart. Supreme Court held that in such circumstances during the compromise the order of maintenance remained suspended, however, it was not wiped out and revived after the compromise failed. The right of the wife to claim maintenance is not wiped out only by entering into compromise with the husband.

Section 125(1) Cr.P.C. makes it clear that "any person" having sufficient means neglects or refuses to maintain his wife, his legitimate or illegitimate child, his father or mother and who has attained majority, that an application can be filed for maintenance against such person, in his capacity, as husband, father or son. The man shall be deemed to have sufficient means, if a man has good income from his property he shall be said to be a man "having sufficient means, though, he himself may be incapable of doing any work. So also, if a man though he has not possessed property and has no income from any property but he is a well bodied man, it shall be presumed that he has sufficient means. Sufficient means is not confined to pecuniary resources only."\(^{178}\)

Under Section 125 of the Cr.P.C. 1973, second wife of a person having contracted marriage in the life time of the first wife, without having

\(^{178}\) Tejaram Vs Smt. Sunanda Devi, 1996 Cr.LJ 172.
obtained divorce, second wife will not be entitled to claim maintenance from her husband.¹⁷⁹

According to Section 125 of Cr.P.C. a minor legitimate or illegitimate child has a right to claim maintenance from his or her father. A minor married girl has also right to claim maintenance from her husband or her father if the husband of the minor married female child is not possessed of means to provide maintenance. But it should be until she attains her majority.

Before the year 2001, an aggrieved woman had to wait for years for getting relief from the court. But the Code of Criminal Procedure (Amendment) Act, 2001 by making amendments to maintenance provisions i.e. Sections 125-128 of the Cr.P.C. provides the provision for interim maintenance allowance. Therefore, during the pendency of the proceedings the Magistrate may order payment of interim maintenance allowance and such expenses of the proceeding. This Amendment Act 2001, removes the limit of Rs. 500/- as maintenance allowance, now it is for the court to determine the same on the basis of facts and circumstances of the particular case. According to this Amendment Act, an application filed under Section 125 of the Cr.P.C. for the monthly allowance for the interim maintenance and expenses of proceeding as far as possible be

¹⁷⁹ Khem Chand Om Prakash Sharma Vs State of Gujarat, 2000(3) SCC 753.
disposed of within 60 days from the date of the service of the notice of the application to such person. It appears that with a view to provide expeditious relief to the wife the legislature incorporated above provisions in the maintenance provisions of Criminal Procedure Code. The ceiling of rupees five hundred as maintenance allowance has also been repealed by this Amendment Act as with the cost of living index consistently rising. Retention of a maximum ceiling is not justified as it would require periodic revision.

While men and women may notionally be equal, but one has to acknowledge that Hindu society is still a male-dominated one. The main task of law should be to protect women and their rights in right earnest. Therefore, the provisions for maintenance for the wife and children should be properly maintained.