



MOHANLAL SUKHDIA UNIVERSITY, UDAIPUR

FACULTY OF LAW

FIRST YEAR BACHELOR OF LAWS

(Effective from Session 2019-20)

V (PAPER CODE - 6004)

(PAPER NAME – FAMILY LAW – I (HINDU LAW))

Max. Marks: 100

Min. Marks: 36

Note: A. In order to ensure that students do not leave out important portions of the syllabus, examiners shall be free to repeat the questions set in the previous examination.

B. Leading cases prescribed under this paper may be read whenever they are relevant.

1. **Introduction to Hindu Law** - Nature and Origin of Hindu Law, Hindu by religion, Hindu by birth, Hindu by declaration, Migration, domicile and change of religion, Schools of Hindu Law-(I) Mitakshra School(II) Dayabhaga School,

Application of Hindu Law, who are governed by Hindu Law, Conversion.

2. **Sources of Hindu law**-Ancient sources, Modern sources of Hindu Law and Codification of Hindu law.

3. **Hindu family** - Definition, Characteristics of family, Types of family, Joint family and Coparcenary,

Karta - who can be Karta, his position, powers, duties and liabilities.

4. **Marriage** - Marriage under the **Hindu Marriage Act, 1955**, Concept of Hindu Marriage, Inter caste and Inter-sub caste Marriage, Different among Sagotra, Sapinda and Prohibited Degrees, Full-Blood, Half-Blood and Uterine-Blood, Conditions for Valid Marriage, Restitution of Conjugal Rights, Judicial Separation, Distinction between Judicial Separation and Divorce, Voidable Marriage, Dissolution and Nullity of Marriages, Grounds of Divorce, Jurisdiction of Foreign Court Judgments in Family Matters.

Rights and duties of husband and wife, legitimacy of child under valid, voidable and void Marriage, Registration of Marriage and its effect, Live in relation and its effect on society. Maintenance – “pendente lite” and permanent alimony

5. **Adoption and Maintenance**- Adoption in Hindu Law, Origin and objects of adoption, Customary adoption, Concepts of adoption, Debts, its types and father's power of alienation for antecedent debts.

Changes introduced by the Hindu Adoptions and Maintenance Act, 1956, Requisites of a valid Adoption, Capacity of male Hindu & female Hindu to take in adoption, Persons capable of giving in adoption , Persons who may be adopted ,Other conditions of valid adoption ,Effects of adoption, Right of adoptive parents to dispose of their properties

Maintenance Under Hindu Law- Maintenance of wife, widowed daughter-in-law, children, aged parents and other dependants, Amount of maintenance,

6. **Minority and Guardianship** - The Hindu Minority and Guardianship Act, 1956 ,Objects, Definitions of 'Minor' and 'Guardian', Kinds of Guardian, Natural Guardians and their powers, Testamentary Guardians and their powers, Incapacity of Minor to act as guardian of property , De-facto Guardian, Guardian not to be appointed for minor's undivided interest in joint properties ,Welfare of minor and Guardian appointed by court.

7. **Succession** – The Hindu Succession Act 1956, General rules of succession, Kinds and sources of property in Hindu Law, coparcenary and separate property, Devolution of Mitakshara property under the Act, General principles of inheritance, classification of Heirs, Succession to Mitakshara Coparcener's, intestate and testamentary succession, women's property right in

Omitted

Omitted

coparcenary property, Succession to the Property of Female Hindu , Succession to the Property of a Male Hindu

8. Partition and its incidents and alienation of coparcenary property.

LEADING CASE:

1. Githa Hariharan v. Reserve Bank of India (1999) 2 SCC 228
2. Lily Thomas v. Union of India, AIR 2000 SC 1650
3. N.G. Dastane v. S. Dastane, AIR 1975 SC 1534
4. Naveen Kohli v. Neelu Kohli, AIR 2006 SC 1675
5. Seema v. Ashwani Kumar, (2006) 2 SCC 578

CASES FOR READING:

1. Amardeep Singh v. Harveen Kaur, 2017 SCC OnLine SC 1073
2. Guru Nath v. Kamla Bai, A.I.R. 1955, S.C. 280.
3. Hirachand Srinivas Managaonkar v. Sunanda, AIR 2001 SC 1285
4. Samar Ghosh v. Jaya Ghosh, 2007 (3) SCJ 253
5. Saroj Rani v. Sudarshan Kumar, AIR 1984 SC 1562

SUGGESTED READINGS :

1. Shriniwas, M.M. : Principles of Hindu Law
2. Raghavacharya : Hindu Law – Principles & Precedents.
3. Mulla : Principles of Hindu Law
4. Derrett, J.D.M. : Modern Hindu Law
5. P. Dewan : Modern Hindu Law
6. Tahir Mahmood : Hindu Law
7. केसरी यु.पी.टी.- हिन्दू विधि
8. पारस दीवान – आधुनिक हिन्दू विधि
9. UPD Kesari : Hindu Law

Hindu Law

①

Who is Hindu?

A person can be called as a Hindu, who:

- Is a Hindu by religion in any form.
- Is a Buddhist, Jaina or Sikh by religion.
- Is born from Hindu parents.
- Is not a Muslim, Parsi, Christian or Jews and are not governed under Hindu law.
- Lodge in India.

On 14th January 1996, the SC of India in the landmark case *Sastri vs Muldas* [AIR 1996 SC 1119] expressly defined the term 'Hindu'.

This case is related to the Swami Narayan temple in Ahmedabad. There are a group of people called the Satsangi who were managing the temple and they restricted non-Satsangi and they are Harijans to enter the temple. They argued that Satsangi is a different religion and they are not bounded by Hindu law. The SC of India held that the Satsangi, Arya Samajis and Radhaswami, all these belong to the Hindu religion because they are originated under Hindu philosophy.

Hindu by Religion:

- If any person follows the religion by practising it or by claiming it can be called as a Hindu.

Conversion and Reconversion to Hinduism:

- Under the codified Hindu law, any person if converted to Hinduism, Buddhism, Jainism or Sikhism can be called as a Hindu.
- From the case of *Perumal vs Poonuswami*, we can say that a person can be called a Hindu by conversion.
- For conversion, the person should have a bonafide intention and also shouldn't have any reason to be converted.
- Reconversion basically happens, when a person is Hindu and gets converted into ~~any four~~ to a non-Hindu religion and he will again become Hindu if he/she gets converted into any four religions of Hindu.
- If a person is born from a Hindu family, he/she is a Hindu.
- When one of the parents of a child is Hindu and he/she is brought up as a member of the Hindu family. eg. Rajeev Gandhi & Sanjay Gandhi.
- If a child is born from a Hindu mother and a Muslim father and he/she is brought up as a Hindu then he/she can be considered as a Hindu. We can explain that a child religion is not necessarily that of a father.
- The codified Hindu Law lays down that a person who is not a Muslim, Parsi, Christian or Jews is governed by Hindu Law is a Hindu.

To whom Hindu Law apply

1. Hindus by birth
2. Off shoots of Hinduism
3. Persons who are not Muslims, Christians, Parsis or Jews
4. Converts to Hinduism
5. Recanverts to Hinduism
6. Harijans
7. Aboriginal Tribes

To whom Hindu law does not apply

- to converts from the Hindu to the other religion.
- to the illegitimate children of a Hindu father by Christian mother and who are brought up as Christians.

Extent of the application of Hindu Law

[हिन्दू विधि के लागु होने की सीमा]

Extent:

- 1 Inheritance
- 2 Religious usages & Institution
- 3 Other matters

Express Legislation
(संप्रति विधान)

A

- i) Adoption
- ii) Maintenance
- iii) Marriage
- iv) Succession
- v) Minority & guardianship

Justice, Equity & Good Conscience

B

- i) Family Relations
- ii) Wills
- iii) Gifts
- iv) Partition

Imp. Sources & Branches of Hindu Law

Ancient

- a) Shrutis
- b) Smritis
- c) Commentaries & digests
- d) Customs

Modern

- a) Judicial decisions
- b) Legislations
- c) Justice, Equity and Good conscience

Ancients :—

- 1 Shru~~tis~~ Shrutis → It is derived from the word "Shru" means listen/hear. This is regarded as oldest ^{source} of Hindu Law. Eg.: Vedas & Upanishads
- 2 Smritis → It means literally remembered. It is opposite of Shruti. It divided into 2 parts:-
 - a) Primary
 - b) SecondaryPrimary are further divided into 2 types:-
 - (i) Dharma Sutra → In Prose style (STET)
 - (ii) Dharma Shastra → In Slokas [eg. Manu Smriti, Yagavalkya, Narad, Vishnu, Deval, Vrisabati, Katyayan, Vyasa]
- 3 Commentaries & digests → They are prepared which collected all the text of Law on certain points at one place & gave means to ascertain be law.

Atmaram v/s Bajirao, PV Concil, 1953

In this case it was the decision was to consider commentaries, & when any dispute b/w commentaries and digest occurs.

Customs →

(3)

Devanai Achi v/s Chidambaram 1954

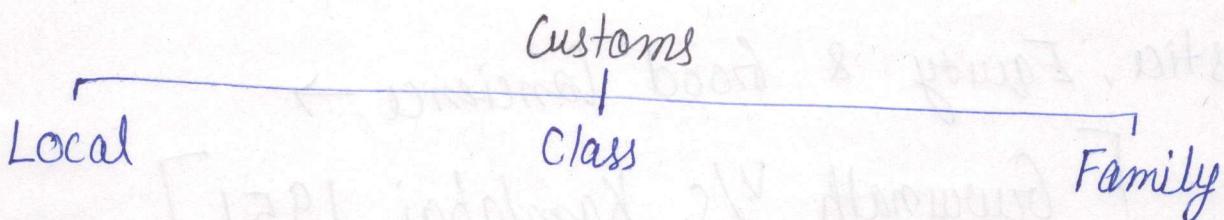
It was laid down that a custom to have the force of law must be ancient, certain, reasonable & it can not be enlarged by parity of reason.

What are customs?

→ Custom is rule which a particular family or in a particular district has from long long uses obtain the force of Law.

Kinds of Custom →

There are 3 types of customs



Local → Any country, state, district, town.

Class → Caste / sector / particular profession.

Family → Particular family.

Essentials of the customs:

- 1) Ancient
- 2) Invariability & continuity
- 3) Reasonableness
- 4) Clarity & Unambiguity
- 5) Not opposed to morality or public policy.
- 6) Not opposed to express provision of Law.
- 7) Omus [एमीट एमीट]

Modern Sources →

1) Judicial Decision → They are pronounced by court upon the various points have also developed as source of law.

The decision of privy council, Supreme Court, & those of High court constitute presidents to become important source of law.

2) Legislation → Hindu marriage Act 1955, Special marriage Act, 1954, Hindu minority guardianship Act 1954, Hindu succession Act, 1954, Prohibition of child marriage Act 2006.

3) Justice, Equity & Good Conscience →

[Gurunath v/s Kamlabai 1951]

The decision should be taken mindfully so that one ruling won't overlap any other rule or act.

Schools

Mitakshra

Dayabhag

Mitakshra →

written by Vigyaneshwar in the later part of 11th century.

It is based on Yageshwar Vagyaralya Smriti.

This is applied all over the India, except Bengal and Assam.

This is further divided into 5 parts :-

- a) Banaras School
- b) Mithila School
- c) Dravid School / Madras School
- d) The Bombay / Maharashtra School
- e) Punjab School

Dayabhaga →

- Written by Jimutvahan.
- This is followed in West Bengal and Assam.
- The composition was done b/w 1090 - 1130 AD according to Kane.
- The main 3 points on which it is considered :-
 - a) Succession
 - b) Partition
 - c) Women Property right.
- The important texts :
 - (i) Dayatanya
 - (ii) Daya ~~Karm~~ Bram Sangrah
 - (iii) Veer Mitrodaya
 - (iv) Dattaka Chandrika

Joint Family & Coparcenary

(संयुक्त परिवार) (सेंटरीपर्सन)

Joint Family It consists of all persons lineally descended from a common ancestor & includes their wives & unmarried daughters.

It includes also illegitimate (अवैय) children also.

How can we add a member in JF?

By adoption & by marriage

widow ~~women~~ women is staying at father's home then she is also included in the JF

Fundamental Principle of Jointness:- is Sapindaship.

Comm. of Income Tax

vs.

Suryeet Singh

(1976)

minimum two male members are required for formation of Joint family.

Members of Joint Family:-

5 Types of male members:

- Persons directly lineally connected in the main line.
- Collaterals (सम्पर्कीय) (cousins)
- Any person related by adoption.
- Dependents
- Son born out of marriage b/w a male hindu & Christian woman.
& under special marriage act, 1954.

Females:

- The wife or widow of dependent male members.
- Maiden daughters (unmarried)
- Widower women who is ~~is~~ staying in father's home.

Hindu Coparcenary : (joint property)

- It includes those members who acquire & interest by birth in the joint property called as coparcenary property.

Ramavadh

vs

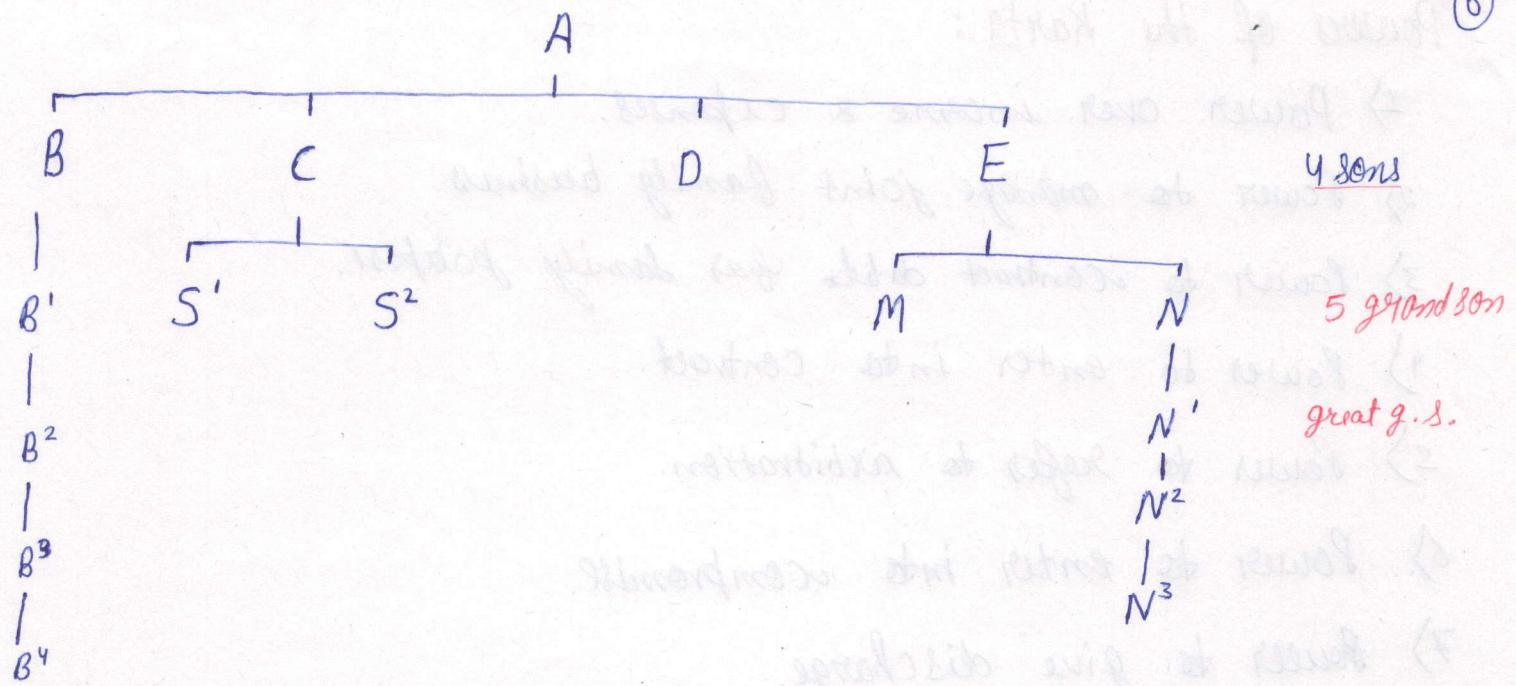
Kedarnath (1976)

- Allahabad HC decided that:

- Such a corporate body with its property is purely a creature of Law, it can't be created by an Act of parties, except; in so far as adoption a stranger could be admitted to it.

Character of Mitakshara in Coparcenary:

- The male decedent upto 3 generations from a common ancestor constitute a coparcenary.
 - By birth, • common ancestor
 - By Hindu Succession Amendment Act, 2005 woman also a common ancestor constitutes a Coparcenary.
- The Members can demand for partition.
- Each of the coparcenary has control over the entire property along with others till partition is affected.
- Their ownership and the right of possession is common.
- The coparcenary property could be alienated (~~but not~~) only in case of ~~necessity~~ necessity and that too with the consent of other coparceners.
- On the death of any of the coparceners, his share devolves on the other coparceners, by the rule of survivorship & not by succession.



When coparcenary comes to an end

Imp.

Who can be Karta

has observed he has a

Imp Short Note.

Powers of the Karta :

- 1) Power over income & expenses.
- 2) Power to manage joint family business.
- 3) Power to contract debts for family purpose.
- 4) Power to enter into contract.
- 5) Power to refer to arbitration.
- 6) Power to enter into compromise.
- 7) Power to give discharge.
- 8) Power to acknowledge debts.
- 9) Power to represent suits.
- 10) Power to alienation.

Duties & Liability of Karta :

- 1) Duties of render a/c's.

Hindu Marriage Act, 1955

Sacrament (~~सिद्धी~~)
in Hindu

Contract (~~सिद्धी~~)
in Muslim

Definition: Acc. to Ragunandan; the acceptance of bride as his wife by the bride groom in a gift by her parents is defined as marriage.

Difference b/w in Sagotra, Sapinda & Prohibited relationship:

Sec-3 (definition) (~~सात्रा और गोत्र~~) Sec-5

Sagotra: — those who are born in same gotra.
Sa + Gotra

↓
Same/Similar

[Chella Ram v/s Satate]
6 Aug 2020
(Raj HC)

→ The marriage is possible in same gotra but it should not be in Sapinda & Prohibited relation.

Sec 3 (f)

Sapinda: with referance to any person extends as far as the third generation (inclusive) in the line of ascent through the mother, and the fifth (inclusive) in the line of ascent through the father, the line being traced upwards in each case from the person concerned, who is to be counted as the first generation.

Sec 3(g)

Degrees of Prohibited Relation - two persons are said to be within the "degrees of prohibited relationship" -

- (i) if one is a lineal ascendant of the other; or
- (ii) if one was the wife or husband of a lineal ascendant or descendant of the other; or
- (iii) if one was the wife of the brother or of the father's or mother's brother or of the grandfather's or grandmother's brother of the other; or
- (iv) if the two are brother and sister, uncle & niece, aunt and nephew or children of brother and sister or of two brothers or of two sisters.

Imp. Short Note. It is also included in Sec 3(g)

Sec 3(c) → Full blood / Half blood / Uterine-Blood → Sec 3(d)

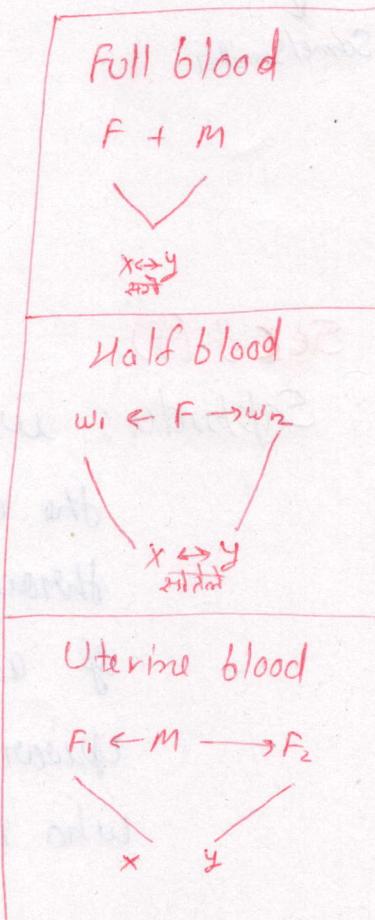
Full blood and half blood : two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same to some wife and by half blood when they are descended from a common ancestor but by different wives.

Exception:

Usage / Custom : - In this case they can get married in prohibited relationship.

Custom : - should be very old.

- It should be favor of general public



Sec 3(f) - list of all relations comes under Prohibited relationship.

Sec 5 — Conditions for a Hindu marriage.

A marriage may be solemnized b/w and two Hindus, if the following conditions are fulfilled:-

- Monogamy (5th Article) - Neither party has a living spouse at the time of marriage.

Sec-17 has a provision; if a person gets married by another & and if he/she has the spouse already then he/she will be treated as per IPC - 494/495.

Lily Thomas v/s UOI
 AIR 2000

→ By conversion we can't avoid the provision IPC 494/495.

[जनक शास्त्र अधीन न होता]

पर्याप्त वाद करता है। Conversion के बाद वह वाद नहीं करता।]

Shrim
 Smt. Yamuna Bai Anant Rao Adhar
 V/15
 Ananth Rao Shivram Adhar
 1988

→
void ab initio
 SEC - 11
 - There is no right given to second wife.

In Short Note
 Definition
 Lastest case

Legal Consequences of second marriage:

1) Such a marriage would become null & void under SEC - 11.

2) The erring party to such a marriage would be liable to be prosecuted under Sec-17. of HMA. and punished under sec - 494 & 495 of the IPC.

Imp.

3) ~~ST/SC~~ HMA will not be applied on ~~ST~~ (Scheduled tribes). As per Art 366 (2s) list.

case of
exception

← [Dr. Surajmani v/s Durga Charan Hansda]
 AIR 2001

(ii) Lunacy : (Unsoundness of mind)

→ Marriage Law (Amendment) Act 1976

a) At the time of marriage is incapable of giving a valid consent due to it in consequence of unsoundness of mind.

b) Procreation of children & liable to maintenance.

c)

Q Is husband liable for divorce in case when a wife has epilepsy (Maff).

Ans → No epilepsy was removed.

[Triveni Singh v/s State of UP
AIR 2008]

- wife was HIV positive
- He file case for divorce
- only mental disease will be considered.

Q If a wife marries herself in a marriage with insanity. Is it void or voidable?

Ans voidable (sec-12)

Q Diff void & voidable

Sec 13

Condition of Marriage

Monogamy

Lunacy

Age

Void

Voidable

Voidable

- The break of this condition (Age) did not affect marriage.

And is ~~void~~ & punishable under sec -18.

Guardian/parents/ priests etc.

[Bhukhan v/s Kaushalya Bai 2012]

Punishment:

Upto 1 Lakh Fine

OR

Upto 2 years prison

OR

Both

[~~Pinniti Venkataswamy v/s State of AP v/s NC (1977)~~]

Sec (5)(3) void-ab-initio may not start |

Q (2014)

The age of girl is less than 15 years & boy's age too. Check the validity of this marriage.

[Mohinder Kaur v/s Major Singh 1972]

Sec (5)(3) void-ab-initio apply nahi hoga.

- Girl age 12 year
- Boy was also minor.

Dec 13 (2)(iv)

- After 15 years she denied the marriage before 18

- This marriage was voidable (because she denied before 18).

Note: If a girl deny for a marriage after 18; then it will she has to file a case for divorce.

Sec 10 दावत करने का प्रक्रिया इस कानून की अनुमति
in case of minor.

(iv) Prohibited Relationship: (Sec 3(g))

- Prohibition as to prohibited¹ relationship.
- The marriage is void from standing as per Sec 11
- Punishment 18(1) :
 - Simple imprisonment
 - OR - 1000 Rs fine
 - OR Both

[Smt. Shaktala Devi v/s Amarnath 1982]

decision → The condition of valid marriage under sec 5(4) of the act stand qualified by custom.

6 March 2021

Sapinda Definition 3(f)(i)

Mother - 3

Father - 5

Case Arun Laxman Rao Navalkar

V/s

Meena Arun Navalkar (2006)

Facts - If customs & or usage which are older & may sapinda marriage.

Sec 6 :- Guardianship (Not important)

It is removed from Act of 1958. in 1978 (Child marriage restriction Act)

Sec 7 :- Ceremonies of Marriage

- Without Shaftpadi the marriage is void.
(सौन करि क विवाह शाफ्टी नहीं होता)
 - If no shaftpadi, we've to prove the custom.
- This sec doesn't prescribe any particular form of ceremony for the ~~form~~ ^{solemnisation} of the marriage. But leaves to party to choose any form of marriage.

Q Jambay & his
got married acc.
to arya sevay
ceremony. Is it
valid?

Sec 8 :- Registration of marriage & Its Act

- Registration is necessary?
 - If required; and it is done by state govt.
- When it is compulsory & parties didn't register;
 - no effect on marriage.
 - no benefit of govt services given to married couple.
 - Rs. 25/- is the fine.

[Seema V/S Ashwini Kumar]
AIR 2006

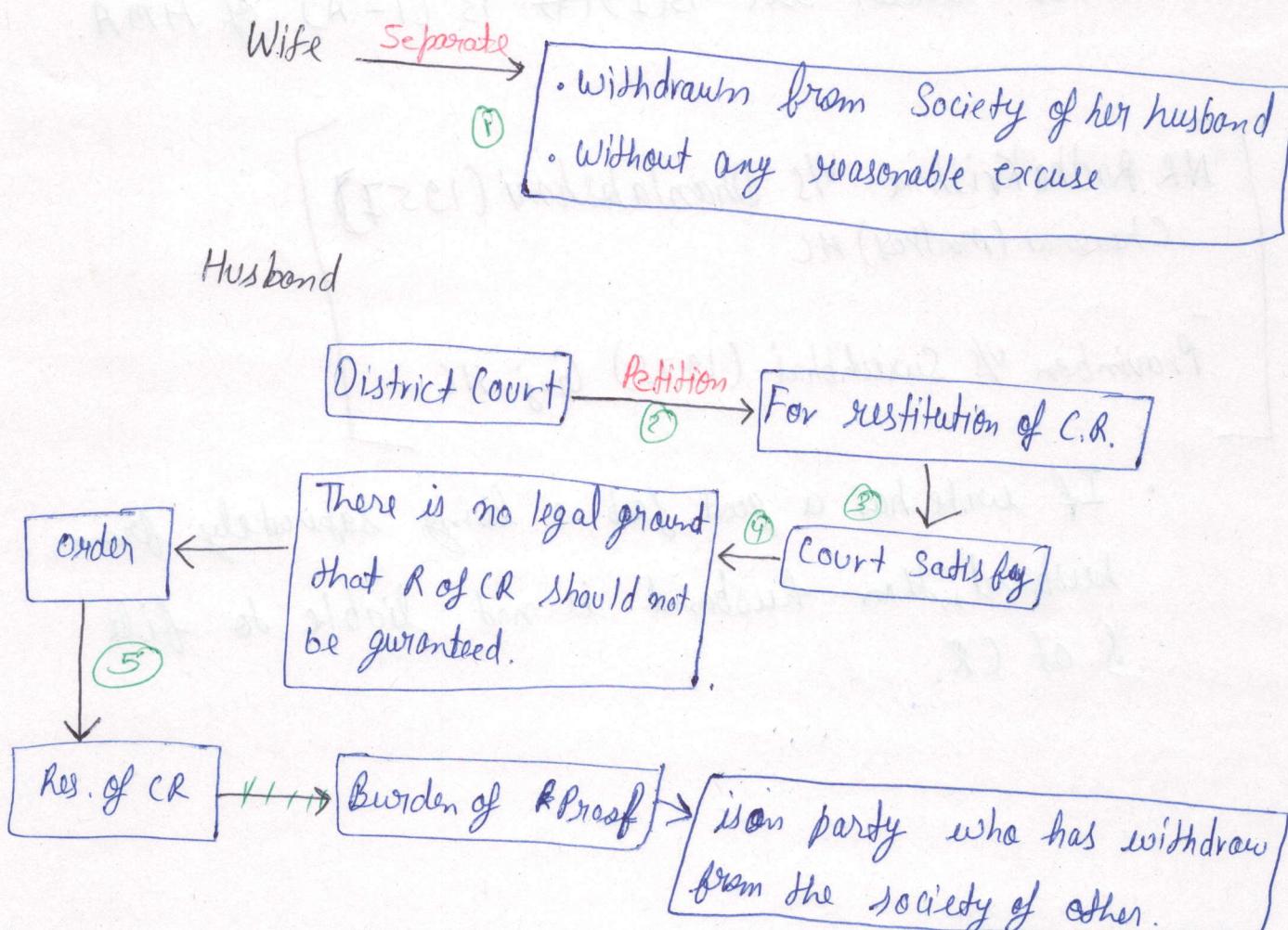
- Registration is compulsory for all marriages except Nagaland.

12 March 2021

[Satyam Kumar & other V/S State of UP]

- Advocate never authorised by law any registrar as a marriage officer.
- The marriage certificate issued by him would be a void document.

Restitution of Conjugal Rights



[Rita & Prajapati v/s Sanjay Kumar ^{AIR} (2017) HC Jarkhand]

- The term reasonable excuse has not been defined under HMA.
- The reasonable excuse is question of fact in each case and it to be considered to facts and circumstances of each case.

[Dev Probha Nayak v/s Arun Kumar Saraf]
AIR 2014 Chhattisgarh

- Where R. of CR b/w parties to marriage for a period of 1 year & respondent didn't own the decree passed under sec-9 of HMA, after passing of decree R of CR the other party was entitled divorce under sec-13(1)(a) 13 (1-a) of HMA.

[NR Radha Krishna v/s Dhanlakshmi (1957)]
Chennai (Madras) HC

Pravimben v/s Surushbhai (1975) Guj, HC

- If wife has a good job & living separately from husband, then husband is not liable to file R. of CR.

(11)

[Rakesh Dulichand Jaiswal vs Vaishali Rakesh Jaiswal]
AIR 2018 Bom.

[Suman Singh vs Sanjay Singh AIR 2017 SC]

Sec 10 : Judicial Separation

- Fully based on sec - 13. (Same ground mention in sec - 13)
- Apply for both marriages which happened before 1955 and after 1955.
- Ground 10(1)
 - Physical relation
 - Cruelty
 - Desertion (जल्दी से छोड़ना) [~~2 years~~, 2 years]
before filing the case.
 - Infidelity (कृप्ति) (incurable or incurable) [1 year before filing case in 1955 Act]
[marriage Law (A.) Act removes 1]
(1976)
 - Venereal (वैरेनियल की विवाहीत)

sec 13 (1) - Ground for H.W.
sec 13 (2) - Ground only for w.

- Imp.
- Mental disorder (6A) has definition
 - Psychopathic disorders (6B) has definition
 - Conversion to other religion
 - Renounced the world (जन्मसार्व धर्मात्म) by entering any religious order.
 - Presumed death [7 years]
- Ground 10(2) only for wife
- Multiple marriage by husband.
 - Rape by husband (accused or convicted for rape)
 - Hindu Adoption and Maintenance Act, Sec 18 - 2. Maintenance to wife
 - 1 year of separation → H.W like separate → wife go for divorce. (CrPC - 125)
 - Reputation of marriage (15 years to 18 years)

~~Characteristic~~ Characteristic of JS: (Judicial Separation)

- 1) JS puts the obligation to co-habitation to an end. Although it doesn't affect marital relationship.
- 2) The normal marital life is restored.
- 3) During the operation of the decree parties to marriage can't remarry & adultery.
- 4) In case of remarriage such party would be liable for the offence of bigamy.

Effect of JS.

6 Differences b/w JS & divorce

JS

- 1) It merely stands superseded.
- 2) There is no right to entitle to remarry.
- 3) The grounds are less serious.
- 4) The possibility of reunion of the spouses is present.
- 5) It is a less drastic state.
- 6) A single act of physical relation outside the marital relationship is sufficient.
- 7) Desertion for 2 years is essential for JS.
- 8) Unsoundness of mind for not less than 2 years.

Divorce

- 1) The relationship of husband & wife ceases to exist.
- 2) Parties to such marriage become entitled to remarry.
- 3) The grounds are more serious.
- 4) ~~No~~ No reunion of the spouses is possible in divorce.
- 5) More drastic/remedial state.
- 6) Living in adultery is necessary for divorce.
- 7) For divorce respondent not heard for 7 years (presumption death).
- 8) Unsoundness of mind continuously more than 2 years.

Effects of JS:

- 1) Marriage is not dissolved.
- 2) End of Boundaries
- 3) No re-marry
- 4) Petitioner who may be (husband/wife) claim maintenance.
- 5) Stridhan { Property of women.
 → Right of from the date of decree till separation
- 6) Independent women
- 7) Obligation arising from marriage suspended.

Nullity of Marriage

Sec 11 to 12

Short Note

(12)

Sec - 5 (i), (iv), (v) → Void ab initio

- (i) Monogamy : ~~marrying~~ one spouse is living.
- (ii) Prohibited relationship : ~~Ex~~ customs are exception.
- (iii) Sapinda relationship : in absence of custom [exception]

Ibsa facts → 2nd wife सिद्धि (राज्य)

Sec 11 → void marriage

Sec 12 → voidable marriage

[Indra Sharma v/s B K V Sharma AIR 2014]

2nd wife ने rights decide अपने पते।

No maintenance claim & No property right नहीं in husband.
Can't file a suit against his husband.

Sec 12 : Voidable Marriage -

Ground: ① That the marriage hasn't been consummated
due to the impotency of respondent.

② Sec 5 (2) - Unsoundness of mind.

③ Sec 5 (3) - Consent by fraud / force when age is b/w 15-18
given by guardian. [It was before Act]

④ § That the respondent was at the time of marriage
pregnant by some person other than the petitioner.

[Smt. Sabna Mukherji v/s Pranab Mukherji AIR 2010]
Calcutta HC

• Physical appearance - husband filed a suit

[Kameshwar v/s Neelam AIR 2012 Raj HC]

• There is a time of 1 year when you get to know about fraud.

Short Note

Void Marriage

- 1) Void ab initio and not recognised by court
- 2) Petitioner is not punishable if he/she go to remarriage.
- 3) No liabilities & obligations are not created.
- 4) In this case the court declare the status

5) Shilvati v/s Ramnandhu 1981 Allahabad.

- Under sec 11 the person who has interest in marriage can go to the court.
- as per sec 12 Agreed person can go.
- Sec 16 → the result will be the same

Section → 11

Any of person
of the marriage

12

Agreed
person

16

result same

6) Ram pyari v/s Dharamdas 1984 Allahabad

- Sec 5 (i), (iv) & (v)
- Sec 17

voidable Marriage

- 1) Valid for all purposes by court; until the court passes the decree of nullity.
- 2) Punishable under SC-17; until the court is not passed the decree of nullity.
- 3) Liabilities & obligations are created until the court...
- 4) Here the decree changes the status.

5)

- Only husband & wife can go to the court.

Sec 13 : Divorce

Sec 14: Conditions

- It provides that no petition can be presented within one year of marriage.
- Exceptions
 - (a) exceptional hardship [असाधारण कठोर]
 - (b) exceptional debility [असाधारण दुरुप्राप्ति]

Sec 15 : [Provisions for remarriage] Limitation for the divorced person to remarry. Remarried.

- ~~Appeal~~ Appeal under 3 months.
 - Wait until the decision of appeal.

Sec 13 Divorce

(1955)

Divorce by Mutual Consent (1976)

Sec 13(a) :

The provision of divorce govern of marriage perform the before the commensement.

Grounds -

(1) Adultery :

Pre-Amendment words Living in Adultery (1976) → Remo

Living in Adultery

Continuous Adultery [usual Indulgence]

(1976)

→ Remove

↓

Replace with

Acc. to new act (1976) - Only a single act of Adultery adultery is sufficient ground for divorce

↑ definition used (after amendment of 1976)

[Rajendra V/s Smt. Sharda 1993 MP]

- To established circumstances will be considered as there is no proves to found.

(2) Cruelty : 2 Types -

(a) Physically (b) Mentally

It is considered as ground of divorce after the ammd. of 1976.

[Vinod Kumar Subhija v/s Saraswati Palani Appan
AIR 2015 SC]

* Mentally cruelty will be proven by circumstances.

[Dinesh Nagda V/S Shanti Bai Dinesh Nagda
AIR 2012 MP]

* There is no definition for cruelty.

* Conduct of such type of petitioners

साथ रहता असेहब हो जाता Unbeatable

जहाँ परि पर्वि के बीच किसी उक्त पक्षकार का आचरण उक्त सीमा के बाहर हो जाए गया हो तो उसके source का उसके साथ उसना असंगत हो जाया हो।

[Maya Devi v/s Jagdish Prashad AIR 2007 SC]

(14)

- Cruelty depends upto the
 - ↳ Status of spouses.
 - ↳ Atmosphere in which they live
 - ↳ Education
 - ↳ Property etc.

1. Cruelty: V. Imp

Basis of Cruelty

- High Temper nature of spouse.
- Vincical nature (2nd)

- When it causes disgrace to wife or indignity annoyance to wife.
- That it is impossible to live together.
- Mere unhappiness with spouse is not legal ~~as~~ cruelty.
- It must be so serious that co-habitation is not possible is legal cruelty

⇒ Act which are treated as cruelty:

→ Actual & physical violence:

[Geeta Pandey v/s Shekhar Pandey 2017 Delhi HC]

- Wife threaten to put acid on herself was mental harassment by wife.

→ Verbal abuse & insult:

→ Husband's ~~the~~ physical disability.

→ Neglect.

→ illtreatment of children [बेटे का असहायता वा जोर]

→ Drunkenness or use of drugs.

→ Communication of venereal diseases knowingly.
[बेटे का असहायता]

→ Wife is suffering from deadly disease.

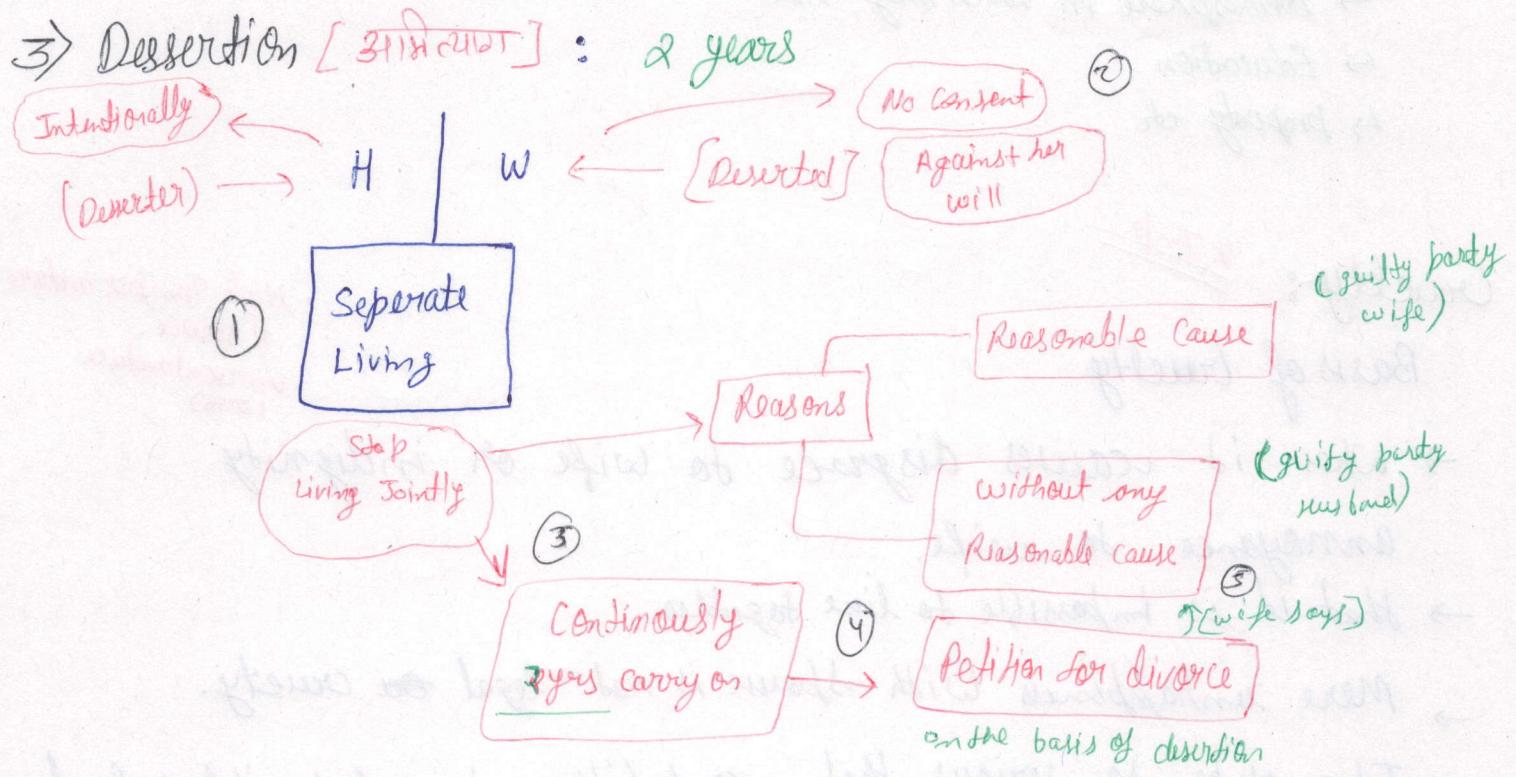
→ Lesbianism/Gayism. developing in wife spouse.

→ False charging of immorality against wife.

→ Forcing association with unproper person by husband.

[Narendra V/S K. Meena AIR 2016 SC]

- Force to live separate from the family



[Smt. Ranjeet Kaur V/S Surendra Singh Gill AIR 2012 MP.]

- Permanent forsaking (स्त्रीरुद्राय) of desertion.

- No reasonable cause.

- Abstinent Abstention of spouse.

- Desertion is matter of circumstances.

2 essential element for desertion:

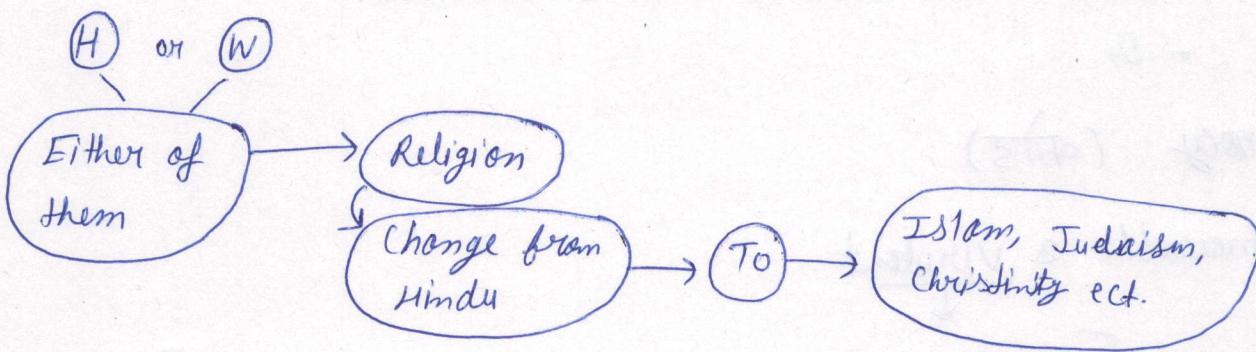
→ Factum ~~&~~ (राय)

→ Animus (अिम्प्रेशन का वाक्य)

[Ravi Kumar V/S Julmi Devi 2010 SC]

- ~~An~~ Animus desertion should be there (intention to desert) (अिम्प्रेशन का वाक्य)

4) Conversion :



Madanam Seetha Ramulu V/S Madanam Vimla 2014 AP.

5) Unsoundness of mind :

Essential Points:

- (1) Incurable unsoundness of mind
- (2) Continuous
- (3) Intermittent mental disorder
अंतरालीक
- (4) of such a nature as to disable the petitioner to live with the respondent.

What are mental disorder?

Mental disorder includes :

- (a) Mental illness
- (b) Mental arrest [मानसिक विरुद्धी जैसे high level of depression]
- (c) Incomplete development of mind [मन का अधुरा विकास]
- (d) Psychopathic disorder [मानसिक संबंधीत विकास]
OR
Disability of mind [मन की विकलांगता]
 - (i) Abnormal aggression [असामान्य आक्रामकता (गुह्यता)]
 - (ii) Seriously irresponsible [विश्वासी रूप से नहीं प्रभावी]
- (e) Schizophrenia [type of split personality]

Ramnarayan Gupta V/S Smt. Romeshwari 1988 SC

- of such a nature as to disable the petitioner to live with the respondent.

T. Jagdeshwari V/S Anand 2017 Madras HC

- Where a unsoundness of mind is incurable.

- B+

(5) Leprosy (कोट्ठ)

Incurable & Virulent
↓

[leprosy is considered to be extremely poisoness.]

Swarajya Laxmi V/S Dr. G. G. Padmarao, 1974 SC

- Labromatous Leprosy

Type:

- Malignant (धातक)
- Contagious (संक्रमक)