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MARRIAGES & DIVORCES: IN PERSPECTIVE OF LAW

Synopsis:

- Introduction to Marriages and Divorce
- Challenges in Marriage
- Origin of Divorce
- Laws on Marriages and Divorce
- Conclusion.

- *“Chains do not hold a marriage together. It is threads, hundreds of tiny threads, which sew people together through the years” - Simone Signoret*

INTRODUCTION TO MARRIAGES & DIVORCES:

The concept of Marriage as a ‘Samskara’ has been moulded for growth of law of marriage and indeed conditioned it. Hence, the concept of marriage under Hindu law is an indissoluble union, even the death of husband did not dissolve the tie for the wife until the enforcement of legislation which permitted widow to remarry. The tribes, castes, families and sects which practices differently the custom of marriage and named the customs and ceremonies of marriage as ‘Shastras’.

CHALLENGES IN MARRIAGE:

Each Marriage is unique in its own way. It faces some own set of challenges. By acknowledging the realities of marriage and there arose the challenges in marriages between couples. The main challenges in marriage are as follows,

- 1) In-law Relationship
- 2) Trust Issues
- 3) Balancing Responsibilities
- 4) Financial Stress
- 5) Communication Issue

1. In-Law Relationship:

Conflicts with in-laws or with any family members can put burden on marital relationship, specifically if the boundaries of relations are not clearly respected. These conflicts may also arise to the extent like domestic violence, harassment which are punishable offences under eye of law.

2. Trust Issues:

Betrayal by any of the partner will lead to trust issues, which can damage and affect the marital relationship of couples. Where there will be no existence of rebuilding or repair relationship.

3. Balancing Responsibilities:

If both the partners fail to manage the responsibilities like daily household chores, childcare, parental care and other responsibilities can create burden and conflict in the house.

4. Financial Stress:

Any money related issues and disagreement of spending it, may lead to strain in marriage. The 'Dowry' may also be one element in causing financial stress.

5. Communication Issues:

Lack of effective communication leads to misunderstanding between couples and give rise to conflicts which later creates strain on marriage.

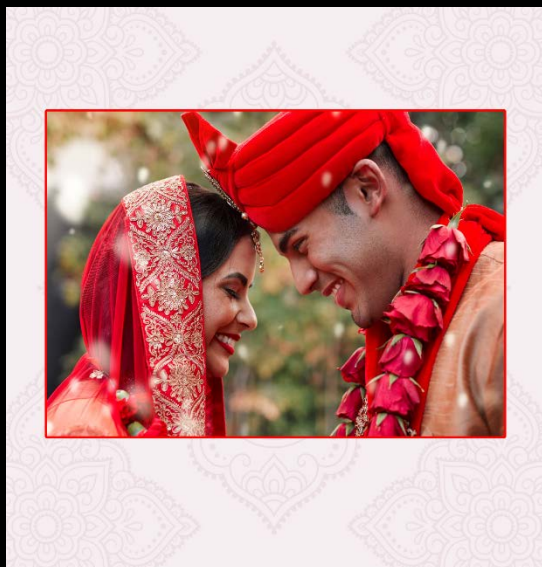
ORIGIN OF DIVORCE

In India practice of divorce was known as '*Vivaha bheda*' or '*Vivaha Vicchedan*'. Where it was regulated by religious texts, customary laws. In Ancient Hindu scriptures like Manusmriti and Dharmashastra outlined the grounds on which divorce can be granted. Hindu society permitted divorce on grounds of Adultery, Cruelty, Infertility, etc.

During Islamic reign, they introduced concept of divorce as '*Talaq*' among Muslim communities in India. Which was made in either through oral declaration or written statement.

Later in British rule, they brought legal procedures and enactments through legislations like Indian Divorce Act, 1869. Which provided the grounds for divorce.

LAWS ON MARRIAGES & DIVORCES



The laws pertaining to marriages and divorce may vary from one country to another country, influenced by cultural, religious and historical factors. In India we follow the laws like Hindu Marriage Act,1955, Muslim Marriage Act, 1939 and in recent period there was made an amendment on prohibition of child marriage in 2021.

Law Provisions on Marriages:

The concept of Marriage, according to Marriage Laws amendment Act ,1976. It is the union of man with one woman to the exclusion of others, which is satisfied by the solemnization of marriage in regards with requisite ceremonies and it creates a relation between the parties directly which is known as status of each.[1]. Hindu Marriage under this Act is monogamous marriage which should be solemnized by performance of the essential ceremonies and rituals. There must be no incapacity in parties to marry one another arising from prohibited degree of '*sapinda relationship*' [2]. There are some conditions for a marriage to be said as valid. Under Hindu Marriage Act,1955, there are provisions which proclaims in sec.5 and sec.7. which involves conditions and ceremonial requirements.

Section 5 proclaims **Conditions for a valid marriage**. They are:

- (i) Neither party has a spouse living at the time of marriage.
- (ii) [At the time of marriage, neither party.

A) Is incapable of giving a valid consent, to it in consequence of unsoundness of mind;or

B) Though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and procreation of children; or

C) has been subject to recurrent attacks of insanity.]

(iii) The bridegroom has completed the age of (21 years) and the bride the age of (18 years) at the time of marriage.

(iv) The parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;

(v) The parties are not sapindas of each other unless the custom or usage [3] governing each of them permits of a marriage between the two;

Section.7 proclaims Ceremonies for a Hindu Marriage

(1) A Hindu Marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.

(2) Where such rites and ceremonies include the Saptapadi (that is, taking of seven steps by bridegroom and bride jointly before sacred fire) the marriage becomes complete and binding when the seventh step is taken.

Law provisions on Divorce:

Section.13 of Hindu Marriage Act,1955 proclaims provision for *Divorce*

Section.13A of Hindu Marriage Act, 1955 proclaims provision for *alternative relief in divorce proceedings*

Section.13B of Hindu Marriage Act, 1955 proclaims provision on *divorce by mutual consent*.

Section.2 of The Dissolution of Muslim Marriage Act,1939 proclaims provision on *Grounds for Decree of Dissolution of Marriage*.

CONCLUSION:

In whole, marriages and Divorces are complex reflections of human relationships, which highlights the need for ongoing support, understanding, and adaptation within our communities and legal systems to promote healthier outcomes for individuals and society. ¹

[1] Relatable to section.5 of Hindu Marriage Act, 1955

[2] 'Sapinda Relationship' provided definition under section.3(f)(i) of Hindu Marriage Act 1955

[3] 'custom' and 'usage' provided under section.3(a) of Hindu Marriage Act, 1955