

## Chapter 1. INTRODUCTION

India is a multi-linguistic, multi-cultural and multi-religious state of more than a billion people, of which almost half comprise females. The principles of fairness and equity are enshrined in the Constitution of India, that unequivocally mandates gender equality. Such equality – truly in fact and deed - is imperative for the development of India, for no country if it is to prosper can afford to underutilize or suppress half its human resources that women represent. Discrimination and violence against women do not just victimize the individual women, but do indeed hold back whole sections of society. Guaranteeing rights to women is an investment in making the whole nation stronger and self-reliant.

In India, it is particularly the Personal law that principally governs the lives of women, though to many, the exact dimension and how it controls the lives of each one of us may not be very clear. Simply stated, Personal law is the set of rules which govern the behavior of individuals *vis a vis* their family i.e. spouse, parents, children etc. As often seen, law by itself is no deterrent against crime. In fact it is the attitude of society in general and the individual in particular that determines the effectiveness of any legal system. Thus, laws are nothing but codified social behaviour, so in order to make the law effective there is equally a back-up requirement for social education and social transformation. As a matter of fact, conditioned by the old historical and patriarchal social baggage even the provisions of personal law often betray a certain underlying bias that tends to treat women as if they essentially were the property of a man and that all her entitlements are not a function of her right but a function of her status as the property of the male *vis a vis* whom her rights are sought to be enforced.

It has been widely observed that the rights that women have under personal law are often usurped. Though the law provides for a judicial procedure to enforce the law by way of courts as well as the penalty for violating the law, women being socially and economically subservient are either unaware or unable to enforce these legal rights through courts. Most common people are apprehensive and reluctant to approach the court because the language of the law is difficult and the procedure often extremely complicated, for example, if two people are faced with the same legal problem, depending on where they reside, their religion etc., the court of jurisdiction and remedy available to them may be different.

### WHY THE NEED FOR THIS DIRECTORY?

The whole purpose of preparing this directory is to de-mystify the law and the legal process for women, so that women and women's organizations can know and enforce their legal rights. It proceeds from the premise that perfect knowledge casts out fear and liberates. Ironically, as far as rights of women are concerned mostly their rights and legal entitlements are not only often inadequate but merely in letter, never being implemented. This Directory besides being a tool for lawyers, will play an important role in familiarizing ordinary non-legal people with their legal rights and entitlements and will ensure that people armed with this information will be more vigilant, thereby preventing their rights from being curtailed and also more confident thereby more eager to have their rights enforced.

While this Directory facilitates, on the one hand, the dissemination of legal information and enables the user to supplement their cases with judgments to get justice in court, it on the other hand also facilitates a comparative and holistic study of personal laws in India. After 50 years of independence, when we evaluate the rights guaranteed to women under the various personal laws, we find the laws inadequate and unequal on the touchstone of the Constitutional Guarantee of the Right to Equality. As discussed in detail in the introduction to each section the reader will find that the laws governing women's rights accord a woman often a secondary status to their male counter parts. However, a study of the case law compiled in this Directory also at the same time points to an encouraging trend whereby courts by their liberal interpretation of the statutory provisions have leveled the playing field for women by making the implementation of law more egalitarian.

## THE INDIAN LEGAL SYSTEM

The Indian legal system is based on a three-tier structure of courts. At the bottom of the system are the District Courts. In each district there is a court, which is headed by a District judge. Subordinate to the District judge are the civil judges (who adjudicate upon civil disputes, arising in the jurisdiction of the district) and magistrates (who adjudicate upon criminal matters arising within the area of the police station under their jurisdiction). Similarly each state has a High Court having jurisdiction over the whole state, and the Union of India has a Supreme Court that has jurisdiction over the whole country.

Generally speaking (though there maybe specific provisions for appeal and revision in each law) any party who is aggrieved by an order of a Civil Judge or a Magistrate can appeal to the District or Sessions Judge. And if aggrieved by an order of the Sessions Judge can appeal against the same to the High Court. Similarly appeals against the orders of the High Court will lie to the Supreme Court.

It is important to mention here that both the Supreme Court and High Court have original jurisdiction, which means they can hear matters directly. These matters pertain to the enforcement of fundamental rights. Any citizen of India whose fundamental rights have been violated can approach either a High Court of their state or the Supreme Court and seek direction for enforcement of their fundamental rights.

Many readers may be wondering what is the difference between a fundamental and legal right. To understand this it is important to understand the three-tier structure of the law in India. The supreme legal document, which defines the basic rights of every citizen of the country and which lays the foundation for the legal and administrative system in the country, is the Constitution of India. The Constitution of India gives certain basic rights to all its citizens, which are known as the Fundamental Rights. These include the right to equality which provides that every citizen is equal before the law; the right to life so that no citizen is deprived of their life or liberty except by the due process of law; the right to religious freedom and the right against exploitation. These fundamental rights if violated can be enforced directly through the Supreme Court or the High Courts. Then, there are statutory laws that are enacted by the Parliament or state legislatures, which govern various aspects of social and commercial intercourse. These statutes are bound to be in consonance with the Constitution and cannot have any provision that violates any right or entitlement provided under the Constitution. Statutory law includes laws such as the Indian Penal Code, Customs Act, Contract Act, etc. These laws apply uniformly to all citizens

irrespective of their religion or caste. However, family interaction and entitlement in India is governed by personal law, which is the law whether codified by the legislature or not, but which is laid down by the religion which governs a particular individual.

## **PROBLEMS OF WOMEN**

Women in India though common in need and circumstance are divided by caste, religion, social and regional customs. Hence, even after 50 years of Independence, issues fundamental to all women such as, maintenance, custody, physical and mental security in marriage, fair and equal divorce entitlements, continue to elude them .

To understand the importance and utility of this Directory it is very important to understand the social and economic status of women in India. As the readers of this book may be aware, in India we do not have a uniform civil code and therefore family and succession related issues are governed by the relevant personal law. Despite facing common problems the legal rights of women are different depending on the entitlements under the personal law. It is in this context that compilations like this become important in bringing together in a single text all the laws that effect women.

Women in India face multiple hurdles in getting legal redress of their problems. These problems arise not only as a result of different laws governing women but also from the fact that there is no common court having jurisdiction over women's issues. As a result women have to run to different forums to seek each relief separately. For example, Hindu women are governed by the Hindu Marriage Act for divorce, Hindu Adoption and Maintenance Act for maintenance, Guardians and Wards Act for custody, and the Hindu Succession Act for inheritance; Muslims are governed by the Shariat Act and the Muslim Women Protection of Rights Act; Christian women are governed by the Indian Divorce Act and the Indian Succession Act. Each of these Acts vests jurisdiction in a different court. This multiplicity of litigation increases the physical and financial burden of litigation manifold. Above all, there is the problem of ignorance of the law. Most women and many service providers including doctors, social workers and often lawyers are not aware of the specific scope and extent of the legal rights of women both under the statute and judicial precedent.

The inability of women to access justice through the legal system is magnified by the fact that most women are not economically independent and lack the financial capacity to contest a legal battle. Even socially, women are mostly restricted within the sphere of family and home, and live outside the legal system. Therefore, when women face issues of domestic violence and the family support structure breaks down they find themselves vulnerable and remediless. It is this socio-economic vulnerability that encourages discrimination and violence against women.

## **OBJECTIVE OF THIS DIRECTORY**

Thus, the primary objective of this manual is to provide the reader the latest judgments on all aspects of civil law concerning women. The intended target readership of this book include mainly service providers such as lawyers, NGO's working in grass root areas, women litigants themselves and even judges. On account of the wide ambit of proposed usership for this book, the methodology adopted in compiling the Directory has been kept simple. The basic idea behind the preparation of this compilation being to provide quick and easy access to the law-governing

women of different religions on their civil rights on the issues of marriage, divorce, maintenance, dowry and inheritance. Thus the objective of compiling this Directory is :

- To create awareness in the language of the people;
- To shed light on violence against women by bringing to life judgments through cases law;
- To raise awareness towards issues of women and children;
- To place emphasis on the rights of women in order to understand that the freedom to choose is fundamental to dignity;
- To spread awareness of law through judgments of the Supreme Court and High Courts.

The Directory has been formulated like a dictionary wherein catch words have been identified under each of the above categories and catalogued in alphabetical order, all the Supreme Court judgments under each catch word have been sourced and reproduced in the manual. A reading of these judgments will not only familiarize the reader with the judicial precedent and the prevailing law on that issue, but the said judgments can also be cited by legal service providers in court matters. For example, under the title of maintenance, various relevant catchwords have been identified such as quantum, right to residence and judgments on the said issue have been compiled together.

The undeniable conclusion from this exercise of exhaustive compilation is that law is both an instrument of social change and a function of social structures and morality. While domestic violence and succession issues continue to be governed by personal laws and are symbols of the continuance of a feudal patriarchal structures in society, the constitutional recognition of equality has accelerated change in legal entitlements both in terms of legislation and statutory interpretations by the judiciary. However, the impact of positive legislation and interpretation can only percolate social change if women are empowered with the knowledge and means to access the law. This book is an effort to hand women an instrument to understand and use the law.

## Chapter 2. CONSTITUTION

“All Human Rights for All”, was the mandate of the Universal Declaration of Human Rights (UDHR) adopted by the United Nations on 10<sup>th</sup> December, 1948 nearly 51 years ago. After India attained independence, the people of India gave to themselves a new Constitution, containing fundamental rights, which incorporated all the human rights, mentioned in the UDHR. The language of human rights carries great rhetorical force of uncertain practical significance. In other words, the meaning and scope of each right has to be clarified, the content and location of any co-relative duties to which it gives rise must be spelt out, and the permissible range of exceptions and limitations specified.

### HISTORY

The framers of our Constitution were men of vision and ideals. They wanted an idealistic and philosophical base upon which to raise the administrative superstructure of the Constitution. The Preamble to the Constitution declares India's goal and Part III gives a constitutional mandate for certain Human Rights - called Fundamental Rights and also provides modes of enforcing them. The only restriction or the only basis of discrimination in any of the rights will be as mentioned under the Constitution in context of rational grounds such as health, morality, public order. Special provisions for special categories such as women, children, schedule castes and schedule tribes are provided.

### PHILOSOPHY BEHIND THE FUNDAMENTAL RIGHTS

Addressing the Constituent Assembly, Pandit Nehru told the members: “ the first task of the Assembly is to free India through a new Constitution, to feed the starving people, and to clothe the naked masses, and to give every Indian the fullest opportunity to develop himself according to his capacity.” The Constitution of India is thus the first and foremost a social document which symbolises the hopes and aspirations of the people.

It was in an atmosphere surcharged with human suffering and yet a firm resolve not to succumb to it, that the Constituent Assembly which was set up to frame the Constitution, embarked upon its task on December 9, 1946. They were aware of the full blossoming of the concept of Human Rights in the writings of the “philosophies” such as Voltaire, Rousseau, Diderot, Rayal, d'Alembert and others, and of the concrete expression given to it in the various Declarations of Rights of the American Colonies and in the American Declaration of Independence. They were aware of the fact that the first ten amendments to the Constitution of the United States of America contained certain rights akin to Human Rights; the Constitution of Eire contained a chapter headed “Fundamental Rights” and another headed “Directive Principles of State Policy”; and that the Constitution of Japan also contained a chapter headed “Rights and Duties of the People”.

### EQUALITY, HUMAN DIGNITY AND VALUE

The Constitution of India assures equality for both sexes. Article 14 of the Constitution provides equality before law. Article 15 prohibits discrimination on the basis of sex, but permits discrimination in favour of women. Some Directive Principles of State Policy of the Constitution of India apply to women specifically. Article 39 states that the State shall direct its policy towards securing that men and

women equally have the right to an adequate means of livelihood. That there is equal pay for equal work for both men and women and that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Article 42 makes provision for just and humane conditions of work and maternity relief .

### **RIGHT TO LIFE**

Each expression used in the Fundamental Rights enhances human dignity and value. It lays foundation for a society where rule of law has primacy and not arbitrary or capricious exercise of power. Right to life as guaranteed by the Constitution was given new dimension in *Francis Coralie Mullin vs. The Administrator, Union Territory of Delhi*, (1981) 2 SCR 516 where the question arose as whether it was limited to protection of limb or faculty or does it go further and embrace something more. The Supreme Court held that “We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings.”

The right to life is also available to non-citizens. In the case of *Chairman, Railway Board and Others vs. Chandrima Das (Mrs) and Others*, (2000) 2 SCC 464, the Supreme Court held that Smt. Hanuffa Khatoon, was, nevertheless, entitled to all the constitutional rights available to a citizen so far as “right to life” was concerned. She was entitled to be treated with dignity and was also entitled to the protection of her person as guaranteed under Article 21 of the Constitution.

### **PERSONAL LAW**

The Constitution promises equality but a parallel regime of personal laws prevails and is justified on the ground that they are permitted in view of the express guarantee of the freedom of religion under Article 25 of the Constitution of India.

### **INTERNATIONAL COVENANTS AND DECLARATIONS**

The Supreme Court has held that the International Covenants and Declarations as adopted by the United Nations have to be respected. The meaning given to the words in the Declarations and Covenants, has to be such as would help in effective implementation. In the case of *Vishaka & Ors v. State of Rajasthan* [1997 (006) SCC 241 SC : 1997 (084) AIR 3011 SC] the Supreme Court held that “it is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law.”

### **TRINITY OF LIBERTY, EQUALITY AND FRATERNITY**

According to Dr. Ambedkar in his closing speech in the Constituent Assembly the principles of liberty, equality and fraternity are not to be treated as separate entities but in a trinity. They form the union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality. Equality cannot be divorced from liberty. Nor can equality and liberty be divorced from fraternity. Without equality, liberty would produce supremacy of law. Equality without liberty would kill individual initiative. Without fraternity,

liberty and equality would not become a natural course of things. Courts, as sentinel qui vive, therefore must strike a balance between the changing needs of the society.

### **COURTS AS SENTINELS**

Courts, play an important role in striking a balance between the changing needs of the society and protection of the freedom of the individual. Freedom can never exist without order. It is essential that freedom be exercised under authority and order should be enforced by authority which is vested solely in the executive. The Supreme Court and the High Courts are the protectors of constitutional rights. Courts by way of several judgements have elaborated the exact extent and nature of the guarantee given by the Constitution. These judgements in fact have clarified the law to a large extent.

*The purpose of collating cases pertaining to the constitutional rights of women is to show how courts have either struck down statutory provisions, customs, social practices which are derogatory to women, or treat women unequally to men, or have interpreted them in a manner that they stop offending the fundamental rights provided under the Constitution of India.*

## **CONSTITUTION OF INDIA**

### **PART III**

#### **FUNDAMENTAL RIGHTS**

**Article 14. Equality before law.**- *The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.*

**Article 15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.**- *(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.*

*(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to-*

*(a) access to shops, public restaurants, hotels and places of public entertainment; or*

*(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.*

*(3) Nothing in this article shall prevent the State from making any special provision for women and children.*

*[(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.]*

**Article 16. Equality of opportunity in matters of public employment.**- *(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.*

*(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.*

*(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office [under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment.*

[(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.]

[(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. reservation on total number of vacancies of that year.]

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

**21. Protection of life and personal liberty.**- No person shall be deprived of his life or personal liberty except according to procedure established by law.

### **DIRECTIVE PRINCIPLES OF STATE POLICY**

**Article 39. Certain principles of policy to be followed by the State.-**

The State shall, in particular, direct its policy towards securing-

- (a) that the citizens, men and women equally, have the right to an adequate means of livelihood;
- (b) ....
- (c) ....
- (d) that there is equal pay for equal work for both men and women;
- (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
- (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

**Article 42. Provision for just and humane conditions of work and maternity relief.-**

The State shall make provision for securing just and humane conditions of work and for maternity relief.

**Article 43. Living wage, etc., for workers.-** The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

#### **LIST OF CASES**

##### **CRIMES AGAINST WOMEN**

C1.

Sanaboina Satyanaryana vs. Govt. of A.P. & Others

##### **NO PERSON CAN BE COMPELLED TO BE WITNESS AGAINST HIMSELF**

C2.

Mrs. Teeku Dutta vs. State & Another

##### **NUMBER OF CHILDREN**

C3.

Javed & Others vs. State of Haryana & Others

**PREFERENCE TO WOMAN FOR APPOINTMENT OF PRINCIPAL**

C4. Vijay Lakshmi vs. Punjab University & Others

**PROCEDURE FOR ARREST OF WOMAN**

C5. Naga People's Movement of Human Rights vs. Union of India

**RIGHT TO POSITIVE DISCRIMINATION**

C6. Air India Cabin Crew Association vs. Yeshawinee Merchant & Others

**SEX SELECTION/SEX DETERMINATION TESTS**

C7. Central Enquiry into Health & Allied themes & Others vs. Union of India & Others

**SEXUAL HARASSMENT**

C8. Apparel Export Promotion Council vs. A.K. Chopra

**STATUS OF FEMALE**

C9. State of Jammu & Kashmir & Others vs. Dr. Susheela Sawhney

**WOMEN WORKERS**

C10. Smt. Bimla Rani & Others vs. Appellate Authority Equal Remuneration Act, 1976,  
The Cooperative Store Ltd.

C11. Municipal Corporation of Delhi vs. Female workers (Muster Roll) & Another

### Chapter 3. MARRIAGE AND DIVORCE

Marriage is the formal union of a man and a woman, typically as recognized by law, by which they become husband and wife. It is of tremendous social and legal importance. It is at the center of how we structure our families; it is the primary way that people acknowledge, and accept responsibility for, the person they have chosen, above all others, to be with for the rest of their lives. The foundation of marriage is based on religion. All religions delineate a moral and social code of conduct. Every religious text provides for the method of a valid marriage, the duties of the spouses the nature and circumstances that entitle a spouse to a divorce.

In India marriage and its dissolution is regulated by personal laws but the Child Marriage Restraint Act 1929 supercedes personal law. In essence personal law determines the qualification for being entitled to get married, the manner in which the marriage is to be solemnized, the number of spouses (wives/ husbands) that a person is entitled to marry. There has been continuous development of personal law by amendment and judicial interpretation which has made them far more egalitarian. Illustratively speaking prior to the amendment a Christian women could only get a divorce if they could prove that their husband was guilty of two matrimonial offences such as cruelty and adultery, however subsequent to the amendment they are entitled to a divorce by merely proving one matrimonial offence such as adultery. Similarly the provision for divorce on the grounds of cruelty under the Hindu Marriage Act has been expanded by successive judgments, which have broadened the scope of cruelty to encompass mental cruelty such as neglect, taunts and verbal abuse as grounds for divorce. Courts of law have suo moto interpreted Shariat Act liberally on several occasions granting relief under muslim personal law and clarifying the legal rights of women under the Shariat. This has been further followed by a proactive stance taken by the Muslim Personal Law Board which has proposed to frame and circulate a model *nikahnama* to secure the interests of women and delineate the right of *khulla* (divorce at the behest of a women) guaranteed under the Shariat to muslim women.

The major problem in law governing marriage and divorce is the piece meal nature of the law which has slotted divorce, maintenance and custody as independent causes of action. As a result women have to face and initiate litigation in multiple fora. To remedy this situation the Legislature enacted the Family Courts Act, which provides for single window relief in matrimonial matters. Unfortunately most states have failed to enact and set up family courts therefore this legislation has remained ineffective.

It has been justifiably argued that there is a need for a Uniform Civil Code homogenising the personal laws. In the Constitution of India, Article 44, under the Directive Principles of State Policy specifically states that “The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India”. However, due to certain reasons this has not been complied with. It has been suggested that the Law Commission draft a comprehensive legislation, incorporating the “present-day concept of human rights for women”.

#### THE HINDU PERSONAL LAW

*“Om samjnatu vishwedev sampo hridaynino  
Samatvishwa sandhat samohdrishti dadhatunoh”*

*-Shukla Yajurveda*

Originally marriage under Hindu Law was considered a religious and sacramental union. In the above quotation the couple is invoking the blessings of the Gods to combine their hearts and souls, and to make their union inseparable like the union of the two sacred rivers Ganga and Yamuna. Despite the fact that they are two bodies they should be one in soul.

Hindus conceived of marriage as a union primarily meant for the performance of religious and spiritual duties. It could not take place without the performance of sacred rites and ceremonies and it was considered a permanent and eternal union. There was no requirement for the consent of the parties to a marriage and a marriage was not rendered null and void due to lack of consent. Therefore marriages of lunatics and minors were legal. In fact even courts of law in India have upheld such a marriage as was held in *Amirthammal vs. Vallimayil* AIR 1942 Mad. 693. Therefore the concept of divorce was unimaginable and did not exist.

The Hindu personal law has been codified in the form of Hindu Marriage Act (for short "the Act"), 1955 and is applicable to Hindus, Buddhists, Jains or Sikhs, any person who is born to Hindu parents and any person who is not a Muslim Christian, Parsi or Jew, and who is not governed by any other law. For the first time the concept of divorce was introduced in the Hindu Marriage Act by way of amendment. Hindus can seek to put an end to their marriage by either obtaining a declaration that the marriage between them was a nullity on grounds specified in Section 11 or to dissolve the marriage between them on any ground mentioned in Section 13 of the Act. Section 29 of the Act saves the rights recognized by customs or conferred by special enactment to obtain the dissolution of marriage before or after commencement of the Act.

The seven grounds of divorce provided under the Act include: incurable virulent disease, insanity, mental disorder, incurable or virulent leprosy, cruelty, adultery and change of religion. In various judgments wherein it has been held that a party cannot take advantage of its own conduct and where it is found that either party to a marriage conducted itself in a manner resulting in marital misconduct by the other party such party was not entitled to any relief.

The right to divorce by mutual consent was recognized by the Hindu Marriage Act 1955 after amendment in 1976, wherein it is recognized that marriages fail not because of fault or guilt of any party to the marriage, but because the couple realize that they are temperamentally incompatible and they are unable to live together.

The scope and definition of these rights have been defined and redefined by successive judicial pronouncements. For instance the concept of cruelty has expanded over the years from being merely physical cruelty by a spouse to mental cruelty. While defining the scope and intensity of cruelty the court has also in many instances taken into account the educational and social status of the women.

This reflects social and legal acceptance of the fact that marriage is not eternal and individual happiness of the spouses out weighs the social significance of continuing a marriage.

## **MUSLIM PERSONAL LAW**

The Quran says:

*And among His signs is this, that He created for you mates from among yourselves, that you may dwell in tranquillity with them, and He has put love and mercy between your hearts. Undoubtedly in these are signs for those who reflect. (30:21)*

*And Allah has made for you your mates of your own nature, and made for you, out of them, sons and daughters and grandchildren, and provided for you sustenance of the best. (16:72)*

These verses clearly show that in contrast to other religions, which consider celibacy or monasticism as a great virtue and a means of salvation, Islam considers marriage as one of the most virtuous and approved institutions. The importance of the institution or marriage receives its greatest emphasis from the following hadith of the Prophet,

*“Marriage is my sunna. Whosoever keeps away from it is not from me.”*

The word *zawaj* is used in the Quran to signify a pair or a mate. But in common parlance it stands for marriage. The Shariat prescribes rules to regulate the functioning of the family so that both spouses can live together in love, security, and tranquillity. Marriage in Islam has aspects of both ‘*ibadah*’ (worship) of Allah and ‘*mu’amalah*’ (transactions between human beings).

As described in the Holy Quran marriage is a contract between two sane consenting persons. Who if minors at the time of marriage have the right to repudiation on attaining majority. The Quran accords a special solemnity and status to this contract. However it grants complete freedom to the parties to settle their own terms, including restricting each other from such actions which Islam permits but does not make obligatory including the freedom of a man to contract a second marriage.

The unique feature of Muslim personal law is that consent is a prerequisite for marriage. Courts in India have held that the marriage of a girl without her consent is invalid and is voidable at her instance. *Hassan Kutti vs. Jainabba* AIR 1928 ( Mad) 1285, *Sayyad Mobin vs. Khatija* AIR 1939 Bom 489, *Adam vs. Manmad* ( 1990) 1 KLT 705.

As mentioned earlier the Child Marriage Restraint Act 1929 supercedes personal law. The minimum age of marriage prescribed by it has been incorporated in the codified personal laws but since Muslim law is not codified, it is pertinent to reiterate here that it applies to Muslims also and any adult contracting the marriage of a minor will be liable to punishment under the Act. The Act does not effect the legality and validity of the marriage as such which will be governed by personal law and can be invalidated only at the option of the minor on attaining majority by exercise of her right to repudiation. The courts in India have held that any kind of judicial verdict in any judicial proceeding confirming the exercise of the option of puberty is enough for this purpose. *Mafizuddin Vs. Rahima Bibi* AIR 1934 Cal 104, *Batoolan vs. Zaboora* AIR 1952 MB 30, *Nizamuddin vs. Huseni* AIR 1960 MP 212, *Pirmobamed vs. State of Madhya Pradesh* AIR 1960 MP 24.

Muslim personal law unlike other personal laws always recognised the right to divorce unilaterally by either party, consensually by both parties and by operation of the guilt theory. Unlike other personal laws the whole of the Muslim law in India has not been codified except for three statutes, The Muslim Personal Law (Shariat) Application Act 1937, Dissolution of Muslim Marriage Act 1939 and Muslim Women ( Protection of Rights on Divorce ) Act 1986.

Unilateral right of divorce granted to a man under Muslim personal law is known as *talaq*. A detailed study of Islam which is unfortunately not adopted in social practice defines the conditions in which *talaq* ought to be pronounced. These are of dissuasive nature and men are discouraged from exercising this right.

As per the *Quran* men pronouncing *talaq* may follow the model code of conduct by pronouncing *talaq* three times at the gap of three menstrual cycles, this is the preferable form of *talaq* and is known as *talaq e sunnat*. A man may also pronounce *talaq* three times in one sitting however this is denounced and such conduct is known as improper *talaq*. Even the Pakistan High Court has frowned upon such *talaq* and in its judgments has only accepted the proper form of *talaq*. At this stage it is relevant to point out that a proper perspective on *talaq* has been given by Barul Islam J. of the Assam High Court in *Ziauddin Ahmed vs. Anwar Begum* (1978) and *Rukhia Khatton vs. Abdul Khalif Lashak* (1979) *Islamic and Comparative Law quarterly* Vol. II 1982 p. 38 & 213

Simultaneously a Muslim women has a parallel right of *khulla*, in which she is entitled to dissolution of the marriage by *khulla* at her instance without the consent of her husband. The only difference between *khulla* and *talaq* is that a women-seeking *khulla* may at the instance of her husband forsake her right to *Mahr* (dower).

In addition, women in India are entitled to seek divorce under the Muslim Personal Law (Shariat) Application Act 1937, Dissolution of Muslim Marriage Act 1939 on the ground of the husband's disappearance for a period of four years or more, if the husband fails to provide his wife maintenance, impotency of husband, if the husband is suffering from insanity, cruelty, option of puberty.

It is important to mention here that bigamy and differentiation between co-wives has been regarded by courts in India as a ground of cruelty entitling a woman to resist a plea of restitution of conjugal rights. The court has held in *Itwari vs. Ashari* AIR 1960 All 684 and *Raz vs. Amina* AIR 1976 Kant 201 that such conduct amounts to cruelty.

### CHRISTIAN PERSONAL LAW

*“Have you not read that the one who made them male and female,  
And said, ‘For this reason a man shall leave his father and mother  
And he who joined to his wife, and the two shall become one flesh  
So they are no longer two but one flesh.’*

*Therefore what God has joined together, let no one separate.”*

*-Matthew 19: 4- 6*

Christianity regarded marriage as indissoluble. The Roman Church became the supreme ecclesiastic authority governing matrimonial matters. The ecclesiastic court recognized the right to separation but no spouse had the right to remarry during the life of the other spouse.

The issue of divorce or dissolution of marriage was in many respects responsible for the division of the Christian world into the Catholics and Protestants. The Protestants considered marriage as a dissoluble union and under the jurisdiction of civil courts. It was in these circumstances that the Church of England separated from the Vatican. In 1857, the first Matrimonial Causes Act was passed and the jurisdiction in England was transferred from the ecclesiastic courts to the civil court.

During the early days of English settlement in India, the marriage laws prevailing in England were sought to be introduced over marriage of native Christians. The law prior to 1850 was laid down by Sir Erkin Perry, the Chief Justice of Bombay in *Maclean v. Gristall (Perry's O.C. 75)*. Priests were not necessary in the days of the East India Company. Collectors and judges acted as their substitutes.

The Indian Christian Marriage Act 1872 was enacted to consolidate and amend the law relating to the solemnization in India of the marriages of Christians. This Act was the product of consolidation of different small statutes of marriage of the Indian Christians. It also amended certain laws on the subject and repealed Act 5 of 1852 and Act 5 of 1865.

The Indian Divorce Act came into force in 1869. In 1937 by way of amendment desertion, insanity and cruelty were added as grounds for divorce. In 2001 the Indian Divorce Act was further amended to remove gross gender inequalities, and women got the right to divorce on a single count of adultery or cruelty without having to prove two matrimonial offences of adultery coupled with cruelty. Mutual consent was also added as a ground for divorce.

The Courts have always taken a liberal interpretation and in fact, prior to amendment by way of legislation, a Division Bench of the Kerala High Court directed the State Government to bring in an amendment seeking to delete the provision under Section 17 of the Indian Divorce Act which says that a decree for a dissolution of a Christian marriage passed by District Courts should be confirmed by a Full Bench of the High Court. The Court observed that the procedure prescribed by the provision “prolongs the agony of the affected parties, even though none of the parties is desirous of preferring an appeal” against the District Court decrees. Therefore, there was “no justification for the continuation of this procedure”, especially when no such procedure had been prescribed by other Acts dealing with dissolution of marriages, viz, the Special Marriage Act 1954 and the Hindu Marriage Act 1955.

The Bench said that there was “an urgent need” for making suitable amendments to the Act. Quoting Supreme Court verdicts, the Judges said that the “remedy lies in the legislature in the instant case” as the subject matter fell under Entry 5 of the Concurrent List in the 7th Schedule of the Constitution. (The State Government has the power to bring an amendment to the Acts on subjects falling under the concurrent list).

## **THE PARSİ PERSONAL LAW**

A group of Zoroastrians came to India, having fled religious persecution in Persia (*now Iran*) and came to be known as Parsis. The personal law has been codified in the Parsi Marriage and Divorce Act, 1936. The number of Parsis is small and is now diminishing at an alarming rate.

The Parsi personal law is one of the most comprehensive and modern laws. Bigamy is not only prohibited but Section 5 also provides for punishment for bigamy. Section 4 not only incorporates the minimum age prescribed by the Child Marriage Restraint Act, 1929 but also Section 11 incorporates provisions for penalty for solemnizing marriage contrary to Section 4. Confidentiality is ensured in matrimonial cases and Section 43 specifically states that suits are to be heard in camera and may not be printed or published.

## **SPECIAL MARRIAGE ACT, 1954**

This introduction would be incomplete without mentioning that though in India we don't yet have a Uniform Civil Code, but the Special Marriage Act was enacted by the legislature in 1954 and provides a uniform law for any citizen of India and by all nationals in foreign countries irrespective of the faith, which either party to the marriage may profess. The parties may observe any ceremonies for the solemnization of their marriage but certain formalities are prescribed before the marriage can be registered by the magistrate officers. For the benefit of Indian citizens abroad, the Act provides for the solemnization and registration of the marriage between citizens of India in a foreign country. The provisions of the Special Marriage Act are akin to the provisions of the Hindu Marriage Act with the exception that the solemnization of the marriage is solemnized before a registrar after giving 30 days prior notice of the intended marriage in the presence of two witnesses.

The conditions relating to solemnization of Special Marriage are given in Section 4 according to which the parties should not be within the degrees of prohibited relationship. However there is a proviso which states "provided that where a custom governing at least one of the parties permits of a marriage between them, such marriage may be solemnized, notwithstanding that they are within the degrees of prohibited relationship". This section came into criticism by some sections of the Muslim community as being exclusionary since Islam permits marriage amongst cousins.

### ***THE CHILD MARRIAGE RESTRAINT ACT 1929***

**Section 3:** *Whoever, being a male above eighteen years of age and below twenty one, contracts a child marriage (shall be punishable with simple imprisonment which may extend to fifteen days or with fine which may extend to one thousand rupees, or with both).*

**Section 2:** *Definitions – In this Act, unless there is anything repugnant in the subject or context:*

- (a) "Child" means a person who, if a male, has not completed twenty one years of age, and if a female, has not completed eighteen years of age;*
- (b) "Child marriage" means a marriage to which either of the contracting parties is a child;*
- (c) "Contracting party" to a marriage means either of the parties whose marriage is (or is about to be) thereby solemnized; and Hindu Marriage Act, 1955.*

**Section 5: Conditions for a Hindu Marriage** – *A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely: -*

- (iii) the bridegroom has completed the age of twenty one years and the bride, the age of eighteen years at the time of the marriage;*

**Section 13 (2)** . *A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground –*

- (iv) that her marriage ( whether consummated or not) was solemnized before she attained the age of fifteen years and she has repudiated the marriage after attaining the age but before attaining the age of eighteen years.*

*Explanation – This clause applies whether the marriage was solemnized before or after the commencement of the Marriage Laws (Amendment Act 1976).*

### **THE HINDU MARRIAGE ACT, 1955**

**Section 5. Conditions for a Hindu marriage.**- A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:-

- (iii) *the bridegroom has completed the age of twenty-one years and the bride, the age of eighteen years at the time of the marriage;*

### **THE DISSOLUTION OF MUSLIM MARRIAGES ACT 1939**

**Section 2: Grounds for decree for dissolution of marriage:** A women married under Muslim Law shall be entitled to obtain a decree for dissolution of her marriage on anyone or more of the following grounds, namely: -

- (vii) *that she, having been given in marriage by her father or other guardian before she attained the age of fifteen years, repudiated the marriage before attaining the age of eighteen years:  
provided that the marriage has not been consummated.*

### **THE INDIAN CHRISTIAN MARRIAGE ACT, 1872**

**Section 60. On what conditions marriages of (Indian) Christians may be certified:** Every marriage between ( Indian) Christians applying for a certificate, shall without the preliminary notice required under Part III, be certified under this part, if the following conditions be fulfilled and not otherwise :-

- (1) *the age of the man intending to be married shall not be under twenty one years and the age of the women intending to be married shall not be under eighteen years.*

### **THE PARSII MARRIAGE AND DIVORCE ACT, 1936**

**Section 3. Requisites to validity of Parsi Marriages**[(1)] No marriage shall be valid if-

- (c) *in the case of any Parsi (whether such Parsi has changed his or her religion or domicile or not) who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age.*

#### **LIST OF CASES**

##### **AGE**

- M1. Mst. Shabnam vs. Mohd. Shafiq  
M2. Ramesh vs. Rajpati  
M3. Muzaffar Ali Sajjad & Others vs. State of Andhra Pradesh

##### **ADULTERY**

- M4. Dr. Kiran Robinson vs. Ajeet Malcolm Robinson & Others  
M5. Ram Kumar @ Ramender Kumar vs. Smt. Raksha @ Galabo

- M6. Ajant Bhuiya vs. Smt. Lairinmawii Kiangte

##### **BIGAMY**

- M7. Muhamma Latheef, s/o K. Sainudheen vs. Nishath  
M8. D. Jeyaraj vs. The Managing Director, Tamil Nadu Agro Industries Corporation Ltd.  
M9. Elizabeth Skariah vs. Aby Skariah & Others  
M10. D. Vijayalakshmi vs. D. Sanjeeva Reddy  
M11. S. Rama @ Vijayalakshmi vs. State of Andhra Pradesh  
M12. Murugesan & 15 Others vs. Ramalakshmi  
M13. S.G. Jingade & Others vs. Smt. Satyavathi  
M14. Dr. Prem Mittal vs. State of Rajasthan & Others

##### **CRUELTY**

- M15. Muhamma Latheef vs. Nishath  
M16. D.N. Sharma vs. Usha Sharma  
M17. Vijay Kumar Ramchandra Bhate vs. Neela Vijay Kumar Bhate

- M18. Dr.P.K.Tomar vs. Smt. Archana
- M19. Poonam Gupta vs. Ghanshyam Gupta
- M20. Dr. Kiran Robinson vs. Ajeet Malcolm Robinson & Others
- M21. Monika Sanctis vs. Henry Joseph & Another
- M22. Smt. Pushpa vs. Mukesh Kumar
- M23. Mrs. Indu Bala Toppo vs. Francis Xavler Toppo
- M24. Navneet Kumar vs. Meena Kumari
- M25. Veeran Sayvu Ravuthar vs. Beevathumma
- M26. Katherine vs. Mr. Samuel Denial @ Chand

- M27. Piyush Kumar Rastogi vs. Smt. Archana Varshney
- M28. Amna Khatoon vs. Md. Kashim Ansari
- M29. "A" vs. "B"
- M30. Lini Mohan John vs. Mohan John
- M31. Gajendra vs. Smt. Madhu Mati
- M32. Devram Bilve vs. Indumit
- M33. Smt. Abha Agarwal vs. Sunil Agarwal
- M34. Smt. Depika @ Baby vs. Naresh Chandra Singhania

**CUSTOM**

- M35. Subramani & Others vs. Chandralekha
- M36. Jasbir Singh vs. Inderjeet Kaur
- M37. Dr. Surajmani Stella Kujur vs. Durga Charan Hansdah & Another

**DESERTION**

- M38. Dr. Kiran Robinson vs. Ajeet Malcolm Robinson & Others
- M39. Kishan Chand vs. Smt. Munni Devi
- M40. Chetan Dass vs. Kamal Devi
- M41. Ms Santosh Kumari vs. Shiv Prakash Sharma
- M42. Gajendra vs. Smt. Madhu Mati

**FRAUD**

- M43. Benny Mathew vs. Philomena
- M44. Augustine & Another vs. Kunjamma Kuriakose & Another
- M45. Neena Abraham vs. Raji Eappen
- M46. Lilly Kutty Mathew vs. C.J. Simon

**IRRETRIEVABLE BREAKDOWN**

- M47. Mohinuddin Middyva vs. State of West Bengal & Another
- M48. Geeta Mullick vs. Brojo Gopal Mullick Misra
- M49. Susmita Acharya vs. Rabindra Kumar Misra
- M50. Chetan Dass vs. Kamla Devi
- M51. Sudhir Singhal vs. Neeta Singhal
- M52. Gajendra vs. Smt. Madhu Mati
- M53. Amna Khatoon vs. Md. Kashim Ansari

**IMPOTENCE**

- M54. Bhaswati Sarakar (nee Mukhopadyay) vs. Angshuman Sarakar
- M55. Surinder Singh vs. Nirmaljit Kaur

**JUDICIAL SEPARATION**

- M56. V. Sreedevi vs. V. Vardarajan

**LIMITATION**

- M57. Savitry Pandey vs. Prem Chandra Pandey
- M58. Supriya Chakraborty vs. Champak Kumar Chakraborty

**MAJOR**

- M59. Payal Sharma @ Kamal Sharma alias Payal Katara vs. Superintendent Nair Niketan Kalindri Vihar, Agra & Others

**MEDICAL TEST**

- M60. Sharda vs. Dharpal

**MENTAL DISORDER/UN SOUNDNESS OF MIND**

- M61. T. Hari Kumar Naidu vs. Smt. Prameela
- M62. Sudhir Singhal vs. Neeta Singhal
- M63. J. Sudhakara Shenoy vs. Mrs. Vrinda Shenoy & Another
- M64. Kakali Mukerjee vs. Gautam Mukerjee
- M65. Lissy vs. Jaison

**MUTUAL CONSENT**

- M66. Smt Chander Kanta vs. Mohinder Pratap Dogra

**NO ENTITLEMENT TO RESERVATION ON BASIS OF MARRIAGE**

- M67. Sandhya Thakur vs. Vimla Devi Khushwah & Others  
M68. Sobha Hymavathi Devi vs. Setti Gangadharara Swamy & Others

**NON PAYMENT OF MAINTENANCE**

- M69. Abdurahiman vs. Nasser  
M70. Mehafoz Alam Dastagirsab Killedar vs. Shagufta

**PERMANENT ALIMONY**

- M71. Smt. Abha Agarwal vs. Sunil Agrawal  
M72. Pavitra vs. Arun Varma (Deceased) through LR.s

**PRIVACY**

- M73. Surjit Singh Thind vs. Kanwaljit Kaur  
M74. Ms. "X" vs. Mr. "Z"

**PROMISE TO MARRY**

- M75. Deelip Singh @ Dilip Kumar, Petitioner vs. State of Bihar

**SECOND MARRIAGE AFTER CONVERSION**

- M76. Lily Thomas vs. Union of India & Others

**VALID MARRIAGE**

- M77. Joyita Saha vs. Rajesh Kumar Pandey

**VOID**

- M78. Smt. Devi Sharma vs. Chander Mohan Sharma

**VOIDABLE**

- M79. R.Lakshmi Narayan vs. Santhi

**WAITING PERIOD**

- M80. Smt Chander Kanta vs. Mohinder Pratap Dogra

## Chapter 4. MAINTENANCE

Most women perform the role of homemakers and child bearers. Though these functions have immense social and economic contribution, they are not valued financially and women get no independent remuneration for this work. Consequentially they are financially dependant on their spouse.

Hindu personal law grants both men and women a right to maintenance from a spouse who is earning a better income, while only a wife is entitled to maintenance under Muslim and Christian Personal law. The provision for maintenance is to secure to women and children an allowance upkeep and survival.

The right to maintenance is inherent to marriage as it is presumed by law that a man is under obligation to ensure the financial security of his wife. The criteria for determination of quantum of maintenance have been defined by courts to include, the husband's income, property and his legitimate expenses, extent of the wife's income and property, conduct of parties, financial needs of the wife. It is important to note that over the years the definition of financial needs of the wife have been broadened by courts beyond just needs for bare survival to the right of a wife to maintain a standard of living, which is in consonance with the standard enjoyed by her at the matrimonial home. In fact the right to maintenance has been defined by courts to include the right to residence also.

It is not necessary for a husband and wife to be seeking a divorce to be entitled to the right to maintenance. Any spouse who neglects to maintain his wife and child even while married is subject to the jurisdiction of the Court.

### **In case of a Hindu woman**

A Hindu woman can ask for maintenance under section 18 of the Hindu Adoption and Maintenance Act, 1956 if she is not divorced and under Section 24 of the Hindu Marriage Act, 1955 during divorce proceedings in court by either party.

### **In case of a Muslim women**

A Muslim woman seeking maintenance (after divorce) can file a case within the jurisdiction of the court where she resides. Under section 3(1) a & b of the Muslim Women's (Protection of Rights on divorce) Act, 1986, the husband is obliged to provide a reasonable and fair maintenance to be made and paid to the woman within the *iddat* period. However for children born out of wedlock have to be given a reasonable and fair maintenance to be made and paid to the mother on behalf of the children for a period of two years from the date of birth. The amount of maintenance the woman gets is in addition to the *mehr* amount. *Mehr* is a predetermined lump sum amount payable to a women by her husband during the course of the marriage or at the time of divorce before the completion of the *iddat* period.

### **In the case of Christian and Parsi Women**

A Christian woman is entitled to seek maintenance under Chapter IX of the Divorce Act, 1869. Whereas a Parsi woman is entitled to seek maintenance under Sections 39 to 41 of the Parsi Marriage and Divorce Act, 1936.

**All women** maintenance can seek maintenance under Section 125 of the Code of Criminal Procedure (Cr.P.C.). An order under this section is in the nature of a summary order which does not determine the rights of the parties, but its aim is to ameliorate the plight of destitute and hapless women. The benefit of the provisions of Section 125 is that being a provision of criminal law no court fee is payable. However a Muslim woman after divorce would require her husband's consent to being governed under this Act. If the husband does not consent then she can claim maintenance under the Muslim Women's (Protection of Rights on Divorce) Act, 1986.

Ironically procedural hurdles in the enforcement of the right to maintenance leave many women. To seek maintenance a woman has to approach the court by way of a civil suit and pay court fee on the basis of 10 years maintenance claimed. This amount is often prohibitive leaving destitute women remedyless due to their inability to approach the court. While the Code of Civil Procedure (C.P.C) entitles a woman who cannot pay court fee to approach the court as an indigent person but often determination of indigent person applications take very long. Keeping this in mind many courts have started granting interim maintenance during the pendency of the indigent person petition. Courts have taken a liberal interpretation in favour of women and held that a man is bound to maintain his spouse and orders to grant maintenance under Code of Criminal Procedure (Cr.P.C.) are independent of Section 24 of the Hindu Marriage Act or that matter even the Army Act.

However, there is still a long way to go before the law, procedure and judicial mindset ensure that women without being subjected to indignity and poverty are entitled to, and can enforce their right to maintenance.

#### ***THE HINDU ADOPTIONS & MAINTENANCE ACT, 1956***

**Section 18. Maintenance of wife** (1) *Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her life time.*

(2) *A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance –*

- (a) *If he is guilty of desertion that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or willfully neglecting her;*
- (b) *If he 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 living separately.*

(3) *A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.*

**Section 21. Dependants defined** – *For the purpose of this Chapter “dependants” mean the following relatives of the deceased:-*

- (i) *his or her father;*
- (ii) *his or her mother;*
- (iii) *his widow, so long as she does not re-marry;*

- (iv) *his or her son or the son of his predeceased son or the son of a predeceased son, so long as he is a minor; provided and to the extent that he is unable to obtain maintenance, in the case of a grandson from his father's or mother's estate, and in the case of great grand-son, from the estate of his father or mother of father's or father's mother;*
- (v) *his or her unmarried daughter, or the unmarried daughter of his predeceased son or the unmarried daughter of a predeceased son of his predeceased son, so long as she remains unmarried : provided and to the extent that she is unable to obtain maintenance, in the case of a grand-daughter from her father's estate and in the case of great-grand-daughter from the estate of her father or mother of father's father or father's mother;*
- (vi) *his widowed daughter: provided and to the extent that she is unable to obtain maintenance-*
  - (a) *from the estate of her husband, or*
  - (b) *from her son or daughter if any, or his her estate, or*
  - (c) *from her father-in-law or his father or the estate or either or them;*
- (vii) *any widow of his son or of a son his predeceased son, so long as she does not remarry : provided and to the extent that she is unable to obtain maintenance from her husband's estate or from her son or daughter, if any, or his or her estate, or in the case of a grandson's widow, also from her father-in-law's estate;*
- (viii) *his or her minor illegitimate son, so long as he remains a minor;*
- (ix) *his or her illegitimate daughter, so long as she remains unmarried.*

**Section 22. Maintenance of dependants;-**

1. *Subject to the provisions of sub-section (2) the heirs of a deceased Hindu are bound to maintain the dependants of the deceased out of the estate inherited by them from the deceased.*
2. *Where a dependant has not obtained , by testamentary or intestate-succession, any share in the estate of a Hindu dying after the commencement of this Act, the dependant shall be entitled, subject to the provisions of this Act, to maintenance from those who take the estate.*
3. *The liability of each of the of the persons who takes the estate shall be in proportion to the value of the share or part of the estate taken by him or her.*
4. *Notwithstanding anything contained in sub-section (2) or sub-section (3), no person who is himself or herself a dependant shall be liable to contribute to the maintenance of others, if he or she has obtained a share or part, the value of which is, or would if the liability to contribute were enforced, become less than what would be awarded to him or her by way of maintenance under this Act.*

**THE HINDU MARRIAGE ACT, 1955**

**Section 25. Permanent alimony and maintenance** (1) *Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant, the conduct of the parties and other circumstances of the case, it may seem to the court to be just and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.*

(2) If the court is satisfied that there is a change in the circumstances of either party at any time it has made an order under sub-section (1) it may at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has re-married or, if such party is the wife, that she has not remained chaste or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, it may at the instance of the other party vary modify or rescind any such order in such manner as the court may deem just.

#### **THE DIVORCE ACT, 1869**

**Section 37. Power to order permanent alimony** – Where a decree of dissolution of the marriage or a decree of judicial separation is obtained by the wife, the District Court may order that the husband shall, to the satisfaction of the Court, secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her own life, as having regard to her fortune (if any), to the ability of the husband, and to the conduct of the parties, it thinks reasonable; and for that purpose may cause a proper instrument to be executed by all necessary parties.

**Power to order monthly or weekly payments.**- In every such case the Court may make an order on the husband for payment to the wife of such monthly or weekly sums for her maintenance and support as the Court may think reasonable;

Provided that if the husband afterwards from any becomes unable to make such payments, it shall be lawful for the Court to discharge or modify the order, or temporarily to suspend the same as to the whole or any part of the money so ordered to be paid and again to revive the same order wholly or in part, as to the Court seems fit.

**Section 38. Court may direct payment of alimony to wife or to her trustee.**- In all cases in which the Court makes any decree or order for alimony, it may direct the same to be paid either to the wife herself or to any trustee on her behalf to be approved by the Court, and may impose any terms or restrictions which to the Court seem expedient, and may from time appoint a new trustee, if it appears to the Court expedient so to do.

#### **THE PARSI MARRIAGE AND DIVORCE ACT, 1936**

**Section 40. Permanent alimony and maintenance.**- (1) Any Court exercising jurisdiction under this Act may, at the time passing decree or at anytime subsequent thereto, on an application made to it for the purpose by either the wife or the husband, order that the defendant shall pay to the plaintiff for her or his maintenance and support, such gross sum or monthly or periodical sum, for term not exceeding the life of the plaintiff as having regard to the defendant's own income and other property, if any the income and other case, it may seem to the Court to be just, and any such payment may be secured, if necessary, by a charge on the movable or immovable property of the defendant.

(2) The Court if it is satisfied that there is change in the circumstance of either party at any time it has made an order under sub-section (1), it may, at the instance of either party, vary, modify, or rescind any such order in such manner as the Court may deem just.

(3) The Court if it is satisfied that the party in whose favour an order has been made under this section remarried or, if such party is the wife, that she has not remained chaste or, if such party is the husband, that he had sexual intercourse with any woman outside wedlock, it may, at the instance of the other party, modify or rescind any such order in such manner as the Court may deem just.

**Section 41. Payment of alimony to wife or to her trustee.**- In all cases in which the Court shall make any decree or order for alimony it may direct the same to be paid either to the wife herself, or to any trustee on her behalf to be approved by the

*Court or to a guardian appointed by the Court may seem exponent and may from time to time appoint a new trustee or guardian the Court expedient so to do.*

#### **THE SPECIAL MARRIAGE ACT, 1954**

**Section 37. Permanent alimony and maintenance :-** (1) Any court exercising jurisdiction under Chapter V or Chapter VI may, at the time passing any decree or at any time subsequent to the decree, on application made to it for the purpose, order that the husband shall secure to the wife for her maintenance and support, if necessary, by a charge on the husband property such gross sum or such monthly or periodical payment or money for a term not exceeding her life as, having regard to her own property, if any, her husband's property and ability the conduct of the parties and other circumstances of the case, it may seem to the court to be just.

(2) If the district is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as it may seem to the court to be just.

(3) If the district court is satisfied that the wife in whose favour an order has been made under this section has re-married or is not leading a chaste life, it may, at the instance of the husband vary, modify or rescind any such order and in such manner as the court may deem just.

### **DAUGHTER-IN-LAW'S RIGHT TO MAINTENANCE**

#### **THE HINDU ADOPTIONS & MAINTENANCE ACT, 1956**

**Section 19. Maintenance of widowed daughter-in-law:-**1.A Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained after the death of her husband by her father-in-law:

*Provided and to the extent that she is unable to maintain herself out of her own earnings or other property or, where she has no property of her own, is unable to obtain maintenance-*

- (a) from the estate of her husband or her father or mother, or
- (b) from her son or daughter, if any, or his or her estate.

2. Any obligation under sub-section (1) shall not be enforceable if the father-in-law has 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 re-marriage of the daughter-in-law.

### **DIVORCED WOMAN'S RIGHT TO MAINTENANCE**

#### **THE MUSLIM WOMEN**

#### **(PROTECTION OF RIGHTS ON DIVORCE) ACT, 1986**

**Section 3. Mahr or other properties of Muslim woman to be given to her at the time of divorce.-** 1. Notwithstanding anything contained in any other law for the time being in force, a divorced woman shall be entitled to –

- (a) a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband;
- (b) where she herself maintains the children born to her before or after her divorce, a reasonable and fair provision and maintenance to be made and paid by her former husband for a period of two years from the respective dates of birth of such children;
- (c) an amount equal to the sum of mahr or dower agreed to be paid to her at the time of her marriage or at any time thereafter according to Muslim law; and

(d) *all the properties given to her before or at all the time of marriage or after the marriage by her relatives or friends or the husband or any relatives of the husband of his friends.*

*(2) Where a reasonable and fair provision and maintenance or the amount of mahr or dower due hasn't been made or paid or the properties referred to in clause (d) of sub-section (1) have not been delivered to a divorced woman on the divorce, she or any one duly authorized by her may, on her behalf, make an application to a Magistrate for an order for payment of such provision and maintenance, mahr or dower or the delivery of properties, as the case may be.*

*(3) Where an application has been made under sub-section (2) by a divorced woman, the Magistrate may, if he is satisfied that:*

- (a) her husband having sufficient means has failed or neglected to make or pay her within the iddat period a reasonable and the provision and maintenance for her and the children; or*
- (b) the amount equal to the sum of mahr or dower has not been paid or that the properties referred to in clause (d) of sub-section (1) have not been delivered to her.*

*Make an order, within one month of the date of the filing of the application, directing her former husband to pay such reasonable and fair provision and maintenance to the divorced woman as he may determine as fit and proper having regard to the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of her former husband or, as the case may be for the payment of such mahr or dower or the delivery of such properties referred to in clause (d) of sub-section (1) to the divorced woman:*

*(4) If any person against whom an order has been made under sub-section (3) fails without sufficient cause to comply with the order, the Magistrate may issue a warrant for levying the amount of maintenance or mahr or dower due in the manner provided for levying fines under the Code of Criminal Procedure, 1973 (2 of 1974) and may sentence such person, for the whole or part of any amount remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one year or until payment if sooner made, subject to such person being heard in defence and the said sentence being imposed according to the provisions of the said Code.*

**Section 4. Order for payment of maintenance.-** *1. Notwithstanding anything contained in the foregoing provisions of this Act or in any other law for the time being in force, where the Magistrate is satisfied that a divorced woman has not re-married and is not able to maintain herself after the iddat period, he may make an order directing such or her relatives as would be entitled to inherit her property on her death according to Muslim law to pay such reasonable and fair maintenance to her as he may determine fit and proper, having regard to the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of such relatives and such maintenance shall be payable by such relatives in the proportions in which they would inherit her property and at such periods as he may specify in his order.*

*Provided that where such divorced woman has children, the Magistrate shall order only such children to pay maintenance to her, and in the event of any such children being unable to pay such maintenance, the Magistrate shall order the parents of such divorced woman to pay maintenance to her;*

*Provided further that if any of the parents is unable to pay his or her share of the maintenance ordered by the Magistrate on the ground of his or her not having the means to pay the same, the Magistrate may, on proof of such inability being*

*furnished to him, order that the share of such relatives in the maintenance ordered by him be paid by such of the other relatives as may appear to the magistrate to have the means of paying the same in such proportions as the magistrate may think fit to order.*

*(2) Where divorced woman is unable to maintain herself and she has no relative as mentioned in sub-section (1) or such relatives or any one of them have not enough means to pay the maintenance ordered by the Magistrate or the other relatives have not the means to pay the shares of those relatives whose shares have been ordered by the Magistrate to be paid by such other relatives under the second proviso to sub-section (1), the Magistrate may, by order direct the State Wakf Board established under section 9 of the Wakf Act, 1954 (29 of 1954), or under any other law for the time being in force in a State, functioning in the area in which the woman resides to pay such maintenance as determined by his under sub-section (1) or, as the case may be, to pay the shares of such of the relatives who are unable to pay, at such periods as he may specify in his order.*

**Section 5. Option to be governed by the provisions of section 125 to 128 of Act 2 of 1974.**- *If on the date of the first hearing of the application under sub-section (2) of section 3, a divorced woman and her former husband declare, by affidavit or any other declaration in writing in such form as may be prescribed either jointly or separately, that they would prefer to be governed by the provisions of sections 125 to 128 of the Code of Criminal Procedure, 1973 (2 of 1974); and file such affidavit or declaration in the court hearing the application, the Magistrate shall dispose of such application accordingly.*

**Explanation:-** *For the purpose of this section, “date of the first hearing of the application” means the date fixed in the summons for the attendance of the respondent to the application.*

## **PENDENTE LITE/ PENDING LITIGATION**

### **THE HINDU MARRIAGE ACT, 1955**

**Section 24. Maintenance pendente lite and expenses of proceedings:-** *Where in any proceeding under this Act it appears to the court that either the wife or the husband as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding and monthly during the proceeding such sum as, having regard to the petitioner’s own income and the income of the respondent it may seem to the court to be reasonable.*

*Provided that 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.*

### **THE DIVORCE ACT, 1869**

**Section 36. Alimony pendente lite.-** *In any suit under this Act, whether it be instituted by a husband or a wife, and whether or not she has obtained an order or protection the wife may present a petition for expenses of the proceedings and alimony pending the suit.*

*Such petition shall be served on the husband and the Court, on being satisfied of the truth of the statements therein contained, may make such order on the husband for payment to the wife of the expenses of the proceedings and alimony pending the suit as it may deem just:*

*Provided further that the petition for the expenses of the proceedings and alimony pending the suit, shall as far as possible, be disposed of within sixty days of service of such petition on the husband.*

#### **THE PARSI MARRIAGE AND DIVORCE ACT , 1936**

**Section 39. Alimony pendente lite.-** *Where in any suit under this Act, it appears to the Court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the suit, it may, on the application of the wife of the husband, order the defendant to pay to the plaintiff, the expenses of the suit and such weekly or monthly sum, during suit, as having regard to the plaintiff's own income and the income of the defendant, it may seem to the Court to be reasonable.*

*Provided that the application for the payment of the expenses of the suit and such weekly or monthly sum during the suit 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.*

#### **THE SPECIAL MARRIAGE ACT, 1954**

**Section 36. Alimony pendente lite:-** *Where in any proceeding under Chapter V or Chapter VI it appears to the district court that the wife has no independent income sufficient for her support and the necessary expenses of the proceeding, it may, on the application of the wife, order the husband to pay to her the expenses of the proceeding, and weekly or monthly during the proceeding such sum as having regard to the husband's income, it may seem to the court to be reasonable.*

*Provided that the application for the payment of the expenses of the proceeding and such weekly or monthly sum during the proceeding under Chapter V or Chapter VI, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the husband.*

### **SECTION 125 CODE OF CRIMINAL PROCEDURE**

#### **CHAPTER IX: ORDER FOR MAINTENANCE OF WIVES, CHILDREN AND PARENTS**

**Section 125. Order for maintenance of wives, children and parents.—** *(1) If any person having sufficient means neglects or refuses to maintain.—*

- (a) his wife, unable to maintain herself, or*
- (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or*
- (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or*
- (d) his father or mother, unable to maintain himself or herself,*

*a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child,*

*father or mother, at such monthly rate as such magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:*

**Provided** that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

**Provided further** that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

**Provided also** that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person;

**Explanation.**—For the purposes of this Chapter.—

(a) “minor” means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;

(b) “wife” includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

**Provided** that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

**Provided further** that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

**Explanation.**—If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her, husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

**LIST OF CASES**  
**ACCESS TO MATRIMONIAL HOME**

MT1. Anu Seth & Others vs. Rohit Narain Seth & Others

**APPEAL AGAINST INTERLOCUTORY ORDER**

MT2. Ravi Saran Prasad @ Kishore vs. Smt. Rashmi Singh

**ARMY OFFICERS LIABILITY**

MT3. Capt. Suneel vs. Union of India & Others

**CONTEMPT OF COURT**

MT5. Shaheda Sarwar Khan vs. Sarwar Ahmed Rauf Khan

**DATE FROM WHICH MAINTENANCE IS EFFECTIVE**

MT6. Pradeep Kumar Pradhan vs. Dalimba Sahu

**DAUGHTER-IN-LAW'S RIGHT TO MAINTENANCE**

MT7. Balbir Kaur & Another vs. Harinder Kaur & Others

MT8. Master Daljit Singh & Others vs. S. Dara Singh & Others

**DIVORCED WIFE'S RIGHT TO MAINTENANCE**

MT9. Panditrao Chimaji Kalure vs. Gayabal

MT10. Tripura Board of Wakf & Another, vs. Smti Tahera Khatoon

MT11. Karim Abdul Rehman Shaikh, vs. Shehnaz Karim Shaikh & Others

**EDUCATIONAL EXPENSES**

MT12. Lt Col. Ravee Saharawat vs. Smt. Ujjwal Saharawat

**EVIDENCE OF HUSBAND'S INCOME**

MT13. Alka vs. Vardhman @ Pushkaraj @ Narender

**HUSBAND DENYING MARRIAGE**

MT14. Basanti Mohanty alias Raut vs. Parikhit Rout

**INTERIM MAINTENANCE**

MT15. Smt. Bubul Samantaray & Others. vs. Dharendra Kumar

MT16. Shivani Chattopadhaya vs. Siddarth Chattopadhaya.

MT17. Smt. Prafullaben Dhirubhai Kanjiya vs. Dhirubhai Kacharbhai Kanjiya

MT18. Kalaben Kalabhai Desai vs. Alabhai Karamshibhai Desai

MT19. Merubhai Mandanbhai Odedara vs. Raniben Merubhai Odedara

MT20. Prem Kumar vs. Om Prakash

**LIMITATION**

MT21. Shahnaz Bano alias Shahnaz Khan vs. Perves Ahmed Khan

**LUMP SUM MAINTENANCE**

MT22. Smt. Partima Biswal vs. Amulay Kumar

**MONTHLY MAINTENANCE TILL PERMANENT ALIMONY PAID**

MT23. Ira Das alias Ida Das vs. Ramesh Ranjan Mallick

**NO DISTINCTION BETWEEN A WIFE AND DIVORCED WIFE**

MT24. Smt. Sanghsamitra Singh vs. Kalish Chandra Singh

**ORDER OF MAINTENANCE UNAFFECTED BY DECREE OF DISSOLUTION OF MARRIAGE**

MT25. G.V.N. Kameshwara Rao vs. G. Jabilli

**PENDENTE LITE/ PENDING LITIGATION**

MT26. Sambit Parija. vs. Smt. Surita Parija

MT27. Amarjit Kaur vs. Harbhajan Singh & Another

MT28. V. Usha Rani vs. K.L.N. Rao

MT29. Vallabhaneni Yedukondalu @ Karunakara ra vs. Vallabhaneni Nageswaramma @ Karuna Kumar

**PETITION FOR MAINTENANCE FILED SUBSEQUENTLY**

MT30. Renu Dhingra vs. Vijay Dhingra

**PUNISHMENT FOR NON-PAYMENT**

MT31. Angrej Singh @ Arjan Singh vs. State of Punjab & Others

**POWERS UNDER SECTION 482 Cr.P.C.**

MT32. Vemulapalli Rajanikumari vs. Vemulapalli Sarath Babu & Another

**QUANTUM**

MT33. Smt. Menu Chopra vs. Deepak Chopra

MT34. Bansidhar Mohanth vs. Smt. Jyoshnarani  
MT35. Lakshmi Sharan vs. Anurag Sharan

**RIGHT OF ENFORCEMENT AGAINST TRANSFEREE OF PROPERTY**

MT36. Kangal & Others vs. Smt. Atwariya Devi

**RIGHT OF RESIDENCE INHERITABLE OR NOT**

MT37. Sheela Rani (deceased by LRs) vs. Jagdish Chander Sharma

**REQUIREMENT OF FOREIGN MATRIMONIAL JUDGEMENT**

MT38. Smt. Anubha vs. Vikas Aggrawal & Others

**SECOND WIFE ENTITLED TO MAINTENANCE OR NOT**

MT39. Narinder Pal Kaur Chawla vs. Manjeet Singh Chawla

MT40. Suresh Khullar vs. Vijay

**SECTION 125 CODE OF CRIMINAL PROCEDURE, 1973**

MT41. Daniel Latifi & Another vs. Union of India

MT42. Aher Mensi Ramsi vs. Aherani Bai Mini Jetha

MT43. Patnam Vahedullah Khan vs. P. Ashia Khatoon & Another

MT44. Kumaresh Brambha vs. Bani Das & Others

MT45. Veena Devi vs. Ashok Kumar Mandal

**WIFE EARNING**

MT46. Tilak Kumari & Another vs. Sh. Anand

**VALIDITY OF MARRIAGE DISPUTED**

MT47. Susilama vs. Chandrappa

## Chapter 5. DOWRY

Dowry is a social evil, and the greed for it is growing day by day. The newspapers are replete with news items of young brides being tortured and brutally killed by burning them as a result of unsatisfied dowry demands. Civil society is outraged by the brutality of dowry to which women are subjected in their homes. In spite of stringent measures, sections of society are still boldly pursuing this chronic evil to fulfil their greedy desires.

The Dowry Prohibition Act, 1961 was enacted with the aim to check the growing menace of the social evil of dowry and make punishable not only the actual receiving of dowry but also the very demand of dowry made before, or at the time, or after the marriage where such demand is referable to the consideration of marriage.

The Statements and Objects and Reasons for enactment of the legislation are telling of the social circumstances in which the said Act was enacted.

*“The object of this Bill is to prohibit the evil practice of giving and taking of dowry. This question has been engaging the attention of the Government for some time past, and one of the methods by which this problem, which is essentially a social one, was sought to be tackled by the conferment of improved property rights on women by the Hindu Succession Act, 1956. It is, however, felt that a law which makes the practice punishable and at the same time ensures that any dowry, if given, does ensure for the benefit of the wife will go a long way to educating public opinion and to the eradication of this evil. There has also been a persistent demand for such a law both in and outside Parliament. Hence, the present Bill.”*

The Act was further amended vide Act No. 43 of 1986. The Legislature in its wisdom while providing for the definition of “dowry” has emphasized that any money, property or valuable security given as consideration for marriage “before, at or any time after” the marriage would be covered by the expression “dowry”, and this definition as contained in Section 2 of the Act has to be read whenever the expression “dowry” occurs in the Act. Under Section 3 of the Act, if a person gives or takes or abets the giving or taking dowry shall be punished. Under Section 4 of the Act mere demand of dowry is sufficient to bring home the offence to an accused. Thus, any demand of money, property or valuable security, made from the bride or her parents or other relatives, or the bridegroom or his parents or other relatives, or vice versa, would fall within the mischief of “dowry” under the Act, where such demand is not properly referable to legally recognized claim and relatable only to the consideration of the marriage.”

Other salient features of the amended Act are :

- (a) The minimum punishment for taking or abetting the taking of dowry under Section 3 of the Act has been raised to five years and a fine of rupees fifteen thousand.
- (b) The burden of proving that there was no demand or dowry will be on the person who takes or abets the taking of dowry.
- (c) The statement made by the person aggrieved by the offence shall not subject him to prosecution under the Act.

- (d) Any advertisement in any newspaper, periodical, journal or any other media by any person offering any share in his property or any money in consideration of the marriage of his son or daughter is proposed to be banned and the person giving such advertisement and the printer or publisher of such advertisement will be liable for punishment with imprisonment of six months to five years or with fine up to fifteen thousand rupees.
- (e) Offences under the Act are made non-bailable.
- (f) Provision has also been made for appointment of Dowry Prohibition Officers by the State Government for the effective implementation of the Act. The Dowry Prohibition Officers will be assisted by the Advisory Boards consisting of not more than five social welfare workers (out of whom at least two shall be women).

Consequently the Legislature introduced an amendment in 1983 in the Indian Penal Code by introducing a new Section 498A relating to cruelty to married woman. By an amendment in 1986 the offence of 'dowry death' was also inserted as Section 304B. The law of evidence was also amended by inserting Section 113 relating to presumption of abetment of suicide.

It is a well-known rule of interpretation of statutes, that the text and the context of the entire Act must be looked into while interpreting any of the expressions used in a Statute. The Courts have always looked to the object which the statute seeks to achieve while interpreting any of the provisions of the Act. In *State of H.P.* (1995 Cri LJ 4184) (SC) the Supreme Court has held that the aforesaid definition (definition of "dowry") makes it clear that the property or the valuable security need not be as a consideration for marriage, as was required to be under the unamended definition. This apart, the addition of the words "any time" before the expression "after the marriage" would clearly show that even if the demand is long after the marriage, the same could constitute dowry, if other requirements of the section are satisfied.

In *Pawan Kumar v. State of Haryana* (1998) 3 SCC 309 : (1998 Cri LJ 1144) the Supreme Court has held that it is significant that Section 4 of the 1961 Act, was also amended by means of Act 63 of 1984, under which it is an offence to demand dowry directly or indirectly from the parents or other relatives or guardian of a bride. The word "agreement" referred to in Section 2 has to be inferred on the facts and circumstances of each case. The interpretation that the appellant seeks, that conviction can only be if there is agreement for dowry, is misconceived. This would be contrary to the mandate and object of the Act. "Dowry" definition is to be interpreted with the other provisions of the Act including Section 3 which refers to giving or taking dowry and Section 4 which deals with penalty for demanding dowry, under the 1961 Act and the Indian Penal Code. This makes it clear that even demand of dowry on other ingredients being satisfied is punishable.

In *Prem Singh* (supra), the Supreme Court rejected the argument that any additional demand of dowry would not be covered by the definition of "dowry" under Section 2.

The definition of "dowry", the object of the Act and the above decisions of the Supreme Court clearly show that any property or valuable security given or agreed to be given comes within the purview of "dowry" on three occasions in which any property or valuable security comes within its purview. They are - (i) before the marriage, (ii) at the time of marriage, and (iii) "at any time" after the marriage. The

third occasion may appear to be an unending period, but the crucial words are “in connection with the marriage of the parties”. This means, giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties.

Unless there is a strong awareness in the minds of the people, unless the entire society believes that dowry is an evil, unless the entire society objects to the demand for dowry, and refuses to give dowry, the evils of dowry will remain in society. Unfortunately, despite amendments in the law to make the offence of dowry or cruelty against women stringent domestic violence is still a common occurrence in society. To make the law effective and fruitful, people should be aware of the law. It is in this light that this directory assumes significance. The purpose of compiling this directory is to make both women and men aware about a women’s right against dowry demands and to live a life free from fear and violence.

### ***DOWRY PROHIBITION ACT, 1961***

**Section 2. Definition of “dowry-** *In this Act, “dowry” means any property or valuable security given or agreed to be given either directly or indirectly-*

- a. *by one party to a marriage to the other party to the marriage; or*
- b. *by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person,*

*at or before (or any time after the marriage) in connection with the marriage of the said parties, but does not include dower or ‘mahr’ in the case of persons to whom the Muslim Personal Law (Shariat) applies.”*

*Explanation II: The expression “valuable security” has the same meaning as Section 30 of the Indian Penal Code(45 of 1860).*

**Section 3. Penalty for giving or taking dowry.** - *If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment for a term which shall not be less than five years, and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more:*

*Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than five years.*

(2) *Nothing in sub-section (1) shall apply to or, in relation to,-*

*(a) presents which are given at the time of a marriage to the bride (without any demand having been made in that behalf): Provided that such presents are entered in a list maintained in accordance with rule made under this Act;*

*(b) presents which are given at the time of marriage to the bridegroom (without any demand having been made in that behalf):*

*Provided that such presents are entered in a list maintained in accordance with the rules made under this Act;*

*Provided further that where such presents are made by or on behalf of the bride or any person related to the bride, such presents are of a customary nature and the value thereof is not excessive having regard to the financial status of the person by whom, or on whose behalf, such presents are given.*

**Section 4. Penalty for demanding dowry.**-*If any person demands directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine which may extend to ten thousand rupees:*

*Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.*

**Section 4-A. Ban on advertisement** -If any person,-

*(a) offers, through any advertisement in any newspaper, periodical, journal or through any other media, any share in his property or if any money or both as a share in any business or other interest as consideration for the marriage of his son or daughter or any other relative.*

*(b) prints or publishes or circulates any advertisement referred to in clause (a), he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to five years, or with fine which may extend to fifteen thousand rupees:*

*Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than six months.*

**Section 5. Agreement for giving or taking dowry to be void.** - Any agreement for the giving or taking of dowry shall be void.

**Section 6. Dowry to be for the benefit of the wife or her heirs.**- (1) Where any dowry is received by any person other than the woman in connection with whose marriage it is given, that person shall transfer it to the woman-

*(a) if the dowry was received before marriage, within three months after the date of marriage; or*

*(b) if the dowry was received at the time of or after the marriage within three months after the date of its receipt; or*

*(c) if the dowry was received when the woman was a minor, within three months after she has attained the age of eighteen years;*

*and pending such transfer, shall hold it in trust for the benefit of the woman.*

*(2) If any person fails to transfer any property as required by sub-section (1) within the time limit specified therefore or as required by sub-section (3), he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years or with fine which shall not be less than five thousand rupees, but which may extend to ten thousand rupees or with both.*

#### **INDIAN PENAL CODE (ACT NO.45 OF 1860)**

**Section 304B. Dowry Death-** (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with any demand for dowry, such death shall be called "dowry death" and such husband or relative shall be deemed to have caused her death.

*Explanation - For the purpose of this sub-section 'dowry' shall have same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).*

*(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.*

**Section 306. Abetment of suicide-** If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Section 498 A. Husband or relative of husband of a woman subjecting her to cruelty** - Whoever, being the husband or the relative of the husband of a woman subjects such woman to cruelty, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

*Explanation- For the purpose of this section, 'cruelty' means-*

- (a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
- (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security, or is on account of failure by her or any person related to her to meet such demand.

### **SECTION 113 B EVIDENCE ACT, 1872**

**Section 113B. Presumption as to dowry death-** When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

*Explanation- For the purposes of this section ' dowry death' shall have the same meaning as in Section 304-B of the Indian Penal Code (45 of 1860).*

#### **LIST OF CASES**

##### **ABETMENT OF SUICIDE**

- D1. K. Prema S. Rao & Another vs. Yadla Srinivasa Rao & Others
- D2. Asha Shukla vs. State of U. P. & Another

##### **ANTICIPATORY BAIL**

- D3. Bharat Chaudhary & Another vs. State of Bihar & Another

##### **APPEAL AGAINST ACQUITTAL**

- D4. State of Karnataka vs. K. Gopalakrishna

##### **APPRECIATION OF EVIDENCE**

- D5. State of Karnataka vs. M.V. Manjunathgowda & Another.

##### **CRUELTY**

- D6. Kaliyaperumal & Another vs. State of Tamil Nadu
- D7. State by Kamakshipalya Police, Bangalore vs. Maregowda & Others

##### **DISAPPEARANCE OF EVIDENCE**

- D8. Dhain Singh & Another vs. State of Punjab

##### **DELAY IN FILING FIR**

- D9. Ram Kishan Jain & Others vs. State of Madhya Pradesh

##### **DOWRY DEMAND**

- D10. The State of Andhra Pradesh vs. Raj Gopal Asawa & Another
- D11. The Public Prosecutor, High Court of Andhra Pradesh vs. Nese Jilara Sreeramulu

##### **DOWRY DEATH**

- D12. Yashoda & Another vs. State of Madhya Pradesh
- D13. Dhain Singh & Another vs. State of Punjab
- D14. Satvir Singh & Others vs. State of Punjab & Another
- D15. Kalu Ram vs. State of Rajasthan

##### **DYING DECLARATION**

- D16. Muthu Kuty & Another vs. State by Inspector of Police, Tamil Nadu
- D17. Mohd. Moein vs. State of Delhi
- D18. Nallam Veera Stay anandam & Others vs. The Public prosecutor, High Court of A.P
- D19. Smt. Laxmi vs. Om Prakash & Others
- D20. Arvind Singh vs. State of Bihar

##### **EVIDENCE**

- D21. Kans Raj vs. State of Punjab & Others

##### **QUASHING OF FIR**

- D22. B. S. Joshi & Others vs. State Of Haryana & Another

##### **MEDICAL WITNESS**

D23. Dhandapani vs. State by The Inspector of Police

**OMISSION OR DEFECT IN FRAMING CHARGE**

D24. K. Prema S. Rao & Another vs. Yadla Srinivasa Rao & Others

**PUNISHMENT**

D25. K. Prema S. Rao & Another vs. Yadla Srinivasa Rao & Others

**SOON BEFORE**

D26. Kamesh Panjiyar & Kamlesh Panjiyar vs. State of Bihar

D27. The State of Andhra Pradesh vs. Raj Gopal Asawa & Another

**SUICIDE NOTE**

D28. State by Kamakshipalya Police, Bangalore vs. Maregowda and Others

**VALIDITY OF MARRIAGE IN CHALLENGE**

D29. Reema Aggarwal vs. Anupam & Others

## Chapter 6. PROPERTY

The male control over property or wealth in society has necessarily tended to concentrate power in the hands of men as decision makers. The inverse and inescapable consequence of economic dependance of women is that women have been socially vulnerable and unable to resist any excesses by men. Empowerment of women, leading to an equal social status in society hinges, among other things, on their right to hold and inherit property. Acknowledging this causal relationship the legislature brought about amendments in the Hindu Succession Act thereby amending Hindu law and vesting women or female heirs with rights in ancestral property. These developments have caused social regeneration and ushered in an atmosphere of greater equality and respect for women.

In fact women owning property are less likely to encounter physical violence. When a married woman owns property it reduces violence against her significantly. Even some access to an asset, land or house, dramatically reduces the risk of violence. Hence, many state governments provide for a lower registration charges when the property is registered in the name of a woman. Yet, gender bias exists in many state laws and equal status for women remains illusive. In the Delhi Land Reforms Act, modelled after a similar law in Uttar Pradesh and Punjab, a woman's chance to inherit a piece of agricultural land after the death of her husband is difficult and if she is unmarried the task is next to impossible. This is because her claim can only stand if no one in a long list of claimants stakes a claim.

Property can be divided into two principal categories, one is ancestral property which has devolved upon an individual after the death of an ancestor, and the other is self acquired property which is the self earned property of an individual.

Like right to maintenance, custody and spousal rights, the right to property is also a function of the personal law that a woman is governed by.

### **A Hindu woman's right to property is governed by the Hindu Succession Act, 1956.**

Prior to the enactment of the Hindu Succession Act, 1956 a female Hindu only had a right to maintenance from ancestral property and a widow had a limited estate which she was disentitled to part with. The amendment in the act has gone a long way to make the law far more egalitarian.

Now, as an heir a daughter is identically placed to a son as far as inheritance of ancestral property is concerned. The only disability put on a female heir under Section 23 of the Hindu Succession Act is that a female heir cannot seek partition of the

dwelling house till the male members choose to have such a partition even though if the female heir is single or widowed she has a right of residence and maintenance.

However, there is a substantial difference in the right to succession of the property of a woman. While a man's property devolves upon his children, wife and mother at the first instance and upon his extended family at the second, the property of a woman devolves upon her children at the first instance, her husband at the second and his relatives at the third. Only in the event that her husband does not have any family does any right accrue to the family of the women. The only exception to this rule is that her family inherits property, which devolves upon a woman from her family.

The Hindu Succession (Amendment ) Bill 2004 proposes to remove the discrimination as contained in section 6 of the Hindu Succession Act, 1956 by giving equal rights to daughters in the Hindu Mitakshara coparcenary property as the sons have. It is based on the recommendations of the Law Commission of India as contained in its 174th Report on "Property Rights of Women: Proposed Reform under the Hindu Law".

The amendment which will have far reaching implications is the proposal to omit Section 23 so as to remove the disability on female heirs contained in that section. Section 23 of the Act disentitles a female heir to ask for partition in respect of a dwelling house wholly occupied by a joint family until the male heirs choose to divide their respective shares therein.

### **Christian and Parsi women's right to property is governed by the Indian Succession Act, 1925.**

Chapter 2, Sections 31 to 48 of the Indian Succession Act, 1925 provide rules of succession for Christians. Both Christian men and women have identical right of succession to ancestral property. If a man or a woman dies intestate the property will devolve such that the spouse will get a 1/3<sup>rd</sup> share and the children will get a 2/3<sup>rd</sup> share. If the parties have no children then the property will be divided such that the spouse will get half a share and the kindred descendants or relatives will get half a share. However, if the property is not worth more than 5000 /- the whole amount will go to the widow.

Christians are entitled to bequeath their estate by will. Both men and women enjoy this right. Under the law applicable to children the mother of a deceased can only get a share in the property where there are no lineal descendants.

Chapter 3, Section 50 to 56 of the Indian Succession Act, 1925 provide special rules for Parsis dying intestate. On the death of a party the entire estate is divided equally among the widow or widower, whoever survives the deceased and the children. If the deceased is spouseless the property is divided equally among the children. If the deceased is survived by parents, each parent will get a share equal to half a share of each child.

### **Right to property of a Muslim woman**

Muslims are governed by the Muslim Personal Law Shariat Application Act. Under the Muslim Personal Law there is no concept of self-acquired or ancestral property. All property is deemed to be owned by an individual in whom it vests completely. Women under Islam are considered competent heirs and inherit property absolutely in their own right. There is no concept of a limited estate of a widow in Islam and the rights of women are not restricted merely to that of maintenance.

The Quranic rule of *liz-zakari misli hazz-il-unsayain* (for the male the share of two females) applies to competing heirs of an equal degree in most cases but not to parents and uterine brothers and sisters. It has been argued that this, however, is based on the respective family responsibilities of the males and females and is not merely a gender based discrimination.

The Quran stipulates the shares to which each individual is entitled, and the quantum of the share to which an heir is entitled increases or decreases depending on the number of heirs at the time of the death of the deceased. A surviving wife invariably inherits from her deceased husband and is entitled to a 1/4<sup>th</sup> share of the property if he has not left a child or son's or grandson's child; and if he has she gets 1/8<sup>th</sup> share. If, a person has left behind two wives they have to share this entitlement equally. Whereas a surviving husband is entitled to a 1/2 share of his wife's estate if she has not left a child or son's or grandson's child; and 1/4<sup>th</sup> share if she has.

The mother of every deceased person always inherits. She gets 1/3<sup>rd</sup> if the deceased has left a child, or son's or grandson's child; and 1/6<sup>th</sup> otherwise.

Daughters of a deceased will become Quranic heirs in the absence of any son; in the presence of a son they will be non-Quaranic heirs placed with him in the preferential class of the agnates.

Islam does not permit the right of inheritance of an individual to be taken away by any action of even the property holder. Therefore, though a Muslim is empowered / entitled to make a *wasiat* (will) to avoid discord between heirs, Islam mandates that the testator obtain a "no objection" from the other heirs upon the will of the testator. It is only with such a no objection that the will shall be valid.

### **INDIAN SUCCESSION ACT, 1925**

***Section 33. Where intestate has left widow and lineal descendants, or widow and kindred only, or widow and no kindred.—***

*Where the intestate has left a widow—*

- (a) *if he has also left any lineal descendants, one-thirds of his property shall belong to his widow, and the remaining two-thirds shall go to his lineal descendants, according to the rules hereinafter contained;*
- (b) *save as provided by section 33A if he has left no lineal descendant, but has left persons who are of kindred to him, one-half of his property shall belong to his widow, and the other half shall go to those who are kindred to him, in the order and according to the rules hereinafter contained;*
- (c) *if he has left none who are of kindred to him, the whole of his property shall belong to his widow.*

### ***Special Rules For Parsi Intestates***

***Section 50. General principles relating to intestate succession.—***

*For the purpose of intestate succession among Parsis—*

- (a) *there is no distinction between those who were actually born in the lifetime of a person deceased and those who at the date of his death were only conceived in the womb, but who have been subsequently born alive;*
- (b) *a lineal descendant of an intestate who has died in the lifetime of the intestate without leaving a widow or widower or any lineal descendant or a widow or widower of any lineal descendant]*

shall not be taken into account in determining the manner in which the property of which the intestate has died intestate shall be divided; and

(c) where a widow or widower of any relative of an intestate has married again in the lifetime of the intestate, such widow or widower shall not be entitled to receive any share of the property of which the intestate has died intestate, and such widow or widower shall be deemed not to be existing at the intestate's death.

**Section 51. Division of intestate's property among widow, widower, children and parents.**—(1) Subject to the provisions of sub-section (2), the property of which a Parsi dies intestate shall be divided,—

- (a) where such Parsi dies leaving a widow or widower and children, among the widow or widower, and children so that the widow or widower and each child receive equal shares;
- (b) where such Parsi dies leaving children, but no widow or widower, among the children in equal shares.

(2) Where a Parsi dies leaving one or both parents in addition to children or widow or widower and children, the property of which such Parsi dies intestate shall be so divided that the parent or each of the parents shall receive a share equal to half the share of each child.

#### **THE HINDU SUCCESSION ACT, 1956**

**Section 14. Property of a female Hindu to be her absolute property.**—(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

*Explanation.*—In this sub-section, “property” includes both moveable and immoveable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a Civil Court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

**Section 15. General rules of succession in the case of female Hindus**— (1) The property of a female Hindu dying intestate shall devolve according to the rules set out in Sec. 16,—

- (a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;
- (b) secondly, upon the heirs of the husband;
- (c) thirdly, upon the mother and father;
- (d) fourthly, upon the heirs of the father; and
- (e) lastly, upon the heirs of the mother,

(2) Notwithstanding anything contained in sub-section (1),—

- (a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and
- (b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the

*deceased (including the children or any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.*

**Section 16. Order of succession and manner of distribution among heirs of a female Hindu.**— *The order of succession among the heirs referred to in Sec. 15, shall be and the distribution of the intestate's property among those heirs shall take place according to the following rules, namely:*

**Rule 1.**—*Among the heirs specified in sub-section (1) of Sec. 15, those in one entry shall be preferred to those in any succeeding entry and those including in the same entry shall take simultaneously.*

**Rule 2.**—*If any son or daughter of the intestate had pre-deceased the intestate leaving his or her own children alive at the time of the intestate's death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate's death.*

**Rule 3.**—*The devolution of the property of the intestate on the heirs referred to in Cls. (b), (d) and (e) of sub-section (1) and sub-section (2) of Sec. 15 shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's, as the case may be, and such person had died intestate in respect thereof immediately after the intestate's death.*

#### **LIST OF CASES**

##### **CHRISTIAN**

P1. John Vallamattom & Another vs. Union of India

##### **HINDU**

- P2. B. Chandrashekhar (D) by LRs. vs. State of Andhra Pradesh
- P3. Smt. Dhanistha Kalita vs. Ramakanta Kalita and Others
- P4. Yemanappa Dudappa Marve & Others vs. Smt. Yellubai & Others
- P5. Bhagat Ram (D) by LRs. vs. Teja Singh (D) by LRs.
- P6. Sitaben vs. Bhanabhai Madaribhai
- P7. Vidya (Smt) vs. Nand Ram alias Asoop Ram (Dead) by LRs.
- P8. Velamuri Venkata Sivaprasad vs. Kothuri Venkateswarlu

##### **MUSLIM**

P9. Mohmedbhai Rasulbhai Malek & Others vs. Amirbhai Rahimbhai Malek

## **Part II. CHILD**

### **Chapter 7. CHILD RIGHTS**

India has the largest child population in the world. Around 400 million children are under the age of eighteen constituting 40% of the population, of which around 150 million children, constituting 17.5% of India's population, are below the age of 6 years. A large number of them live in economic and social environment that impede the child's physical and mental development. These conditions include poverty, poor environmental sanitation, disease, infection, inadequate access to primary health care, inappropriate child caring and feeding practices. These make them vulnerable preys to Child labour and Trafficking.

An emphasis on child rights is important not only because it is the duty of adults taking care of a child to ensure its care and protection, but also because it is only when such rights are taken care of will the children grow up to be productive adults.

## **CONSTITUTIONAL SAFEGUARDS**

The best interests of the child are guaranteed in Part III of the Constitution of India by way of Fundamental Rights and in Part IV by way of Directive Principles.

Article 15 (3) guarantees that the State can make special provisions for children. No child below the age of 14 years shall be employed to work in a factory, mine or any other hazardous employment (Article 24).

Article 39 (f) provides that the tender age of children is not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength [Article 39 (e)], and that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that youth are protected against exploitation and against moral and material abandonment.

Article 45 provides the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.

According to Article 51A it is a Fundamental Duty of a parent or guardian to provide opportunities for education to his child or ward between the ages of six and fourteen years.

Most important of all is the amendment in Article 21 wherein the right of life includes the right to education. Article 21A guarantees that the State shall provide free and compulsory education to all children of the age of six to fourteen years. It is hoped that the induction of Article 21A and the national policy of Sarvashiksha Abhiyan will go a long way in eliminating child labour and ensuring quality life to the millions of children.

## **LEGAL DEFINITION OF CHILD**

Different statutes define a child differently. The Hindu Adoption and Maintenance Act governing the right to maintenance of a child defines a child as one who has not attained the age of 18. However under the Hindu Marriage Act the marriageable age for two consenting adults is 18 for a girl and 21 for a boy. The age prescribed for the applicability of the Child Marriage Restraint Act, which makes the marriage of children criminally culpable is also 18 for a girl and 21 for a boy. However appropriate amendment has not been made in Indian Penal Code according to which the age for statutory rape i.e. age below which a child is considered incapable of giving consent is delineated as 16, while for a married woman the age of statutory rape is defined as 15. This illustration reflects the arbitrary manner in which a child has been defined in law.

However despite its shortcomings the law acknowledges that persons below the age of 18 years are a special interest group, and on account of their young age are vulnerable emotionally, mentally and physically and are less able to fend for themselves and therefore require the care and protection of elders.

## **INTERNATIONAL CONVENTIONS**

It is a well-settled principle of international law that children require special care and assistance because of their vulnerability, their dependence on adults and their developmental needs. India is signatory to the Convention on the Rights of the Child which has been ratified by over 185 countries. The Convention emphasises social re-integration of child victims, to the extent possible without resorting to judicial

proceedings. The most important rights are enshrined in Article 2 “the right to be protected from discrimination” and Article 3 “ the right to have his or her best interest taken into account in all actions which concern him or her”.

India being a signatory to the aforementioned convention has ratified the convention by incorporating the provisions of the said Convention in its municipal law and hence the amendment in the Juvenile law. The introduction of the Juvenile Justice (Care and Protection of Children) Act, 2000, specifically state that several provisions of the Constitution including Clause (3) of Article 15, clauses (e) and (f) of Article 39, Articles 45 and 47 also impose on the State a primary responsibility of ensuring that all the needs of children are met and that their basic human rights are fully protected. Since the Convention emphasises social re-integration of child victims, to the extent possible without resorting to judicial proceedings, the Government of India has found it expedient to re-enact the existing law relating to juveniles bearing in mind the standards prescribed in the Convention of the Rights of the Child, the United Nations Standard Minimum Rules for Administration of Juvenile Justice, 1985 (The Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990) and all other relevant international instruments.

The present statute is a remedial statute actuated by a policy and beneficial object behind it. As Justice Krishna Iyer has said “They are liberally interpreted in favour of the class of citizens (in the present case the children) for the benefit of whom such legislation are passed....Their legitimate purpose is to advance human rights and relationships.” Thus special protection for minors is provided under different laws.

## **CRIMINAL LAW**

The criminal law treats both child offenders and child victims separately from their adult counter parts. The Indian Penal Code recognises the inability of a child to bear criminal intent. Section 82 of the Criminal Procedure Code provides that, “ Nothing is an offence which is done by a child under seven years of age”. While Section 83 provides that, “Nothing is an offence which is done by a child above seven years and under twelve, who has not attained sufficient maturity to understand to judge the nature and consequences of his conduct on that occasion”.

The Indian Penal Code, raises a presumption in favour of children where the child is a victim or complainant and the accused is an adult the burden of proof, which lies on the complainant to prove the allegation against the accused beyond reasonable doubt is transferred upon the accused.

It is however relevant to mention here that child sexual abuse which is rampant, remains a neglected issue in India. Both male and female children are a subject of sexual abuse and the law and the legal system are both inadequate to cope with this issue.

## **CIVIL LAW**

Civil law also recognises the inability of a minor to know his/her best interest and provides the right to repudiate any action done in the name of a minor once he/she attains the age of majority which is 18 years ( Indian Majority Act, 1875). Civil law also provides the minor a right to sue through a guardian. However, no contract or agreement is enforceable against a minor since the minor is held under the law of contract to be incapable of giving informed consent.

## GUARDIANSHIP AND CUSTODY

This brings us to the concept of guardianship. The determination of guardianship of a child is a function of the religion to which the child is known to belong as it is governed by personal law. Issues of child custody often arise where the parents of a child seek to separate or be divorced, or where either or both parents of the child dies while the child is still a minor i.e. below 18 years of age. The concept of maintenance of a minor also arises from the need to protect a minor and provide for his basic needs for survival and the onus to maintain a minor has been squarely fastened on the parents of the minor by personal law.

Under the Hindu and Christian personal law the father is considered the natural guardian of the child and it is only after the father that the mother is considered the guardian. In Muslim personal law the mother is considered the natural guardian of a minor below the age of 5 while the father is considered the guardian above that age.

Over time the parameters of determining custody of the child have undergone a drastic change. Whereas earlier, child custody issues were determined keeping in mind the rights of the parents wherein the minor was considered chattel of the parents. By and large, courts considered the father as the preferred guardian and custodian of the minor children. However today the rights approach, ushered in by several international conventions and child rights movements, has changed the criteria of determining custody issues from the rights of the parents to the welfare of the child. The welfare approach has brought into focus the acknowledgement of the identity of the child as an individual and the wishes expressed by a child are taken into consideration as criteria to determine the welfare of the child.

The Courts have often taken an activist approach. In the case of *Gaurav Jain vs. Union of India and Others* [(1997)8 Supreme Court Cases 114] the Supreme Court answered the question as to what procedure is efficacious to prevent exploitation of sex workers and to bring them and their children into the social mainstream by giving care, protection and rehabilitation.

It held that the three 'Cs', viz, counseling cajoling and correction, are necessary and passed an order to set up an Advisory Committee to make suggestions for eradicating child prostitution and to point out social aspects for the care, protection treatment, development and rehabilitation of the young victims, children's and girl prostitutes from re-light area, and get them freed from the abuses of prostitution to amend the existing law or to enact a new law, if so warranted; to prevent sexual exploitation of children and to take various measures for effective enforcement thereof.

In the Gita Hariharan case the Supreme Court diluted the severity of the Hindu Adoption and Maintenance Act which declares a father as the sole natural guardian by expanding the definition of Natural Guardian and declaring the circumstances in which a Hindu Mother could also be treated as a natural guardian.

## CASE LAW

The case law summarised in this section of the directory has sought to collate judgements of the various High Courts and the Supreme Court, pertaining mainly to the rights of a minor as a ward, to maintenance and to succession.

These judgements reflect the changing approach to custody from that of parents right to welfare of the minor. They also reflect the right of maintenance of a minor both

under personal law and under Section 125 of the Code of Criminal Procedure. The criteria of determination of maintenance has also changed from that of bare existence or subsistence to the right to enjoy the same standard as enjoyed by the parent held liable to pay such maintenance.

### **LIST OF CASES**

#### **ADOPTION**

- CH1. Namdev Vyankat Ghadge & Others vs Chandrakant Ganpat Chadge & Others
- CH2. Kabia Dusadhin vs. Sewak Dusadh & Others
- CH3. Vijayalakshamma & Another vs. B. T. Shankar

#### **CHILD BORN TO SECOND WIFE**

- CH4. Baby Devi & Others vs. Arun Kumar Aman

#### **CHILD TAKES CASTE OF FATHER**

- CH5. Sobha Hymavathi Devi vs. Setti Gangadharara Swamy & Others

#### **CUSTODY**

- CH6. Kumar V. Jahgirdar vs. Chetana K. Ramatheertha
- CH7. Govind Singh Atwal vs. Mankirat Kaur Atwal
- CH8. Paul Mohinder Gahun vs. State of NCT of Delhi & Others
- CH9. Syed Saleemuddin vs. Dr. Rukhsana & Others
- CH10. Gian Chand vs. Sudha & Another

#### **DECLARATION AS REGARDS THE ILLEGITIMACY OF THE CHILD**

- CH11. Renubala Moharana & Another vs. Mina Mohanty

#### **DIVORCE SUBJECT TO PAYING MAINTENANCE FOR FEMALE CHILD**

- CH12. Susmita Acharya vs. Dr. Rabinder Kumar Mishra

#### **FATHER'S OBLIGATION**

- CH13. Nishat Karimi vs. Iftekhar A. Karimi
- CH14. Mathew Varghese vs. Rosamma Varghese
- CH15. Noor Saba Khatoon vs. Mohd. Quasim

#### **GIFT**

- CH16. K. Balakrishnan V. K. Kamalam & Others
- CH17. M. Vijayakumari & Another vs. V.K. Devabalan & Others

#### **GRANDFATHER'S RIGHT TO CUSTODY**

- CH18. Mahendra Modi vs. Gobardhan Lal
- CH19. Amit Beri & Another vs. Smt. Sheetal Beri wife of Amit Beri

#### **HABEAS CORPUS**

- CH20. B. Kamsala vs. Bommi, The Inspector of Police & The Superintendent of Police
- CH21. Surabhai Ravikumar Minawala vs. State of Gujarat

#### **INTERIM CUSTODY**

- CH22. Smt. Anamitra Dutta Gupta vs. Soumey Duta Gupta

#### **JURISDICTION**

- CH23. Manmohan Suri & Another vs. Sunil Kumar Arora & Others
- CH24. Navin Singh vs. Smt. Jyoti Parashar & Another

#### **MAINTENANCE**

- CH25. N. Sreeramudu, s/o. N. Narayanavs. Kum. N. Lahari
- CH26. Amit Kumar Sharma vs. Vlth Addi, Bijnor & Others

#### **MOTHER AS GUARDIAN**

- CH27. Keshav s/o Ganpatrao Hedau vs. Damodhar s/o Udaramji Kandrikar
- CH28. Vivek Kumar vs. Ashok
- CH29. Balbir Kaur vs. Smt. Jit Kaur & Others

#### **PARENTAGE OF CHILD**

- CH30. Mrs. Kanchan Bedi & Another vs. Gurpreet Singh Bedi

#### **PATERNITY OF CHILD**

- CH31. Kanti Devi & Another vs. Poshni Ram

#### **PREFERENCE OF CHILD**

- CH32. Buta Ram vs. Veeru Ram

#### **SEXUAL ABUSE**

- CH33. Pavan Kumar Jha vs. Sapna Moudgil Jha

**WELFARE OF THE CHILD**

- CH34. Bimla vs. Daya Ram & Others
- CH35. Chetnaben w/o Mukunchandra Balkrishna Bhatt vs. Natwarlal Foolshanker Joshi
- CH36. Bhupinder Singh vs. Smt. Kanchan Rani Himachal
- CH37. Sarita Sharma vs. Sushil Sharma
- CH38. Jai Prakash Khadria vs. Shyam Sunder Agarwalla

**WITNESS (CHILD)**

- CH39. Meenu Sharma & Another vs. State & Others