

FAMILY LAWS: DOWRY, MARRIAGE AND DIVORCE



Notes

We all know that certain laws address family matters and domestic relations in India. These are family laws that are different for every community, such as Hindus, Muslims, Christians, Parsis or Jews. These family laws are concerned with legal issues involving family relationships, *viz.*, matrimony, divorce, maintenance of children, spouse and parents, adoption, succession, and custody of children. These days, the joint family system is more or less replaced by a nuclear family, which has changed the values, norms and structure of the family as an institution. Traditional thinking is giving way to new ideas and practices. The advent of technology in our lives and the use of the internet and social platforms to connect and communicate have changed the rules of communication within the family. In this lesson, you will understand the new challenges faced by the family, the norms of marriage that are under going a change. Therefore, you will also be able to understand the need for new laws to address the new kind of challenges such as divorce, demand for dowry and legality of marriage, and the enacting various family laws being.



OUTCOMES

After completing this lesson, learner:

- knows the legal age of marriage.
- appreciates the legal validation of marriage through registration.
- acquaints with different family laws.
- explains the new problems and challenges of family and its legal solutions.

The Constitution of India provides gender equality through Articles 14 and 15. It prohibits “discrimination on the grounds of religion, race, caste, sex or place of birth”¹. Gender justice revolves around gender equality. It evolves strategies to (Article 15) the society, where every

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human is treated equally irrespective of gender. It necessarily involves shifting from arbitrariness to a justified, balanced, fair relationship within society. It, hence, aims to challenge inequality and provide equal opportunities to both sexes in every field.

15.1 MARRIAGE LAWS IN INDIA

In India, there are several laws that come separately under the marriage and family laws. These refer to determining the age of marriage as well as the process of its legal registration in different communities.

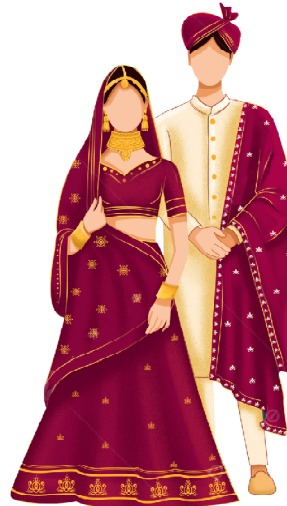


Figure 15.1 Marriage: A Social Institution

15.1.1 Institution of Marriage

Let us understand the social and legal meaning of marriage. Marriage is a social union between spouses that establishes rights and obligations between the two. It has different meanings in different cultures and religions, but typically, marriage is an institution in which interpersonal relations are acknowledged or sanctioned along with family ties. Marriages are performed in different societies, cultures, and religions differently. A marriage is said to be valid only if it is recognized by the law of the state.

Marriages are sacramental under Hindu law. The word sacramental means that it is sacrosanct, inviolable and immutable. Muslim law considers marriage as a civil contract. Parsi marriage is also like a civil contract brought into existence after a religious ceremony called “Aashirwad”. Marriage between Jews is also a contract called “Katuba”.

In India, marriage can be solemnized between two people where the male is above 21 years of age respectively. In case of contravention, the Hindu Marriage Act, 1955 provides for the punishment of simple imprisonment exceeding 15 days or with fine which may extend to 1000 or both. Child marriage is prohibited in India. Earlier, the “Child Marriage Restraint Act, 1929” prohibited child marriage. However, this law has been replaced with a new enactment,



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“the Prohibition of Child Marriage Act, 2006”, which is more effective. There are different laws to justify marriage on a legal basis. Some of these laws are given below:

- **“The Hindu Marriage Act, 1955” as amended by “The Marriage Laws (Amendment) Act, 1976 and 1999”:** As per this law, a Hindu marriage is not so much of a religion. It is a result of mutual consent to marriage by either party. For a lawful marriage, the groom must have attained the age of 21 years and the bride must have attained the age of 18 years. The marriage of a maiden and a widow is treated equally.
- **Muslim Personal Law :** Muslim law has not been codified in India. Hence, laws regulating Muslim marriages are mostly based on the interpretation of the holy Quran by scholars. However, Muslim law provides for certain kinds of prohibitions for marriage. For instance, a Muslim is not allowed to marry foster relationships such as a foster mother or the daughter of his foster mother. There are also prohibitions on marriage within the relationship by consanguinity or by affinity.

Under Muslim law, after “the Child Marriage Restraint Act”, there is a restriction on the marriage of a Muslim male under 18 years of age and a Muslim female under 15 years of age. A guardian has the right to get a minor or a child with unsound mind married. The age of marriage, under Muslim law, is the age of puberty, i.e., 15 years. Marriage before the age of 7, even if contracted by a lawful guardian, is void.

- **“The Indian Christian Marriage Act (ICMA), 1872”:** Under this Act, a marriage is legitimate if at least one of the parties is a Christian. Special conditions have been laid under this Act for solemnizing a Christian marriage. ICMA, 1872 lays down the requirement for issuing a 14 day preliminary notice before the date of marriage if the marriage is to be contracted and solemnized under this Act. There are designated persons who may solemnize the marriages and issue the marriage certificate. There is no fixed age for marriage in this Act.
- **Other personal laws on Marriages:** The Parsi Marriage and Divorce Act (PMDA) invalidates child marriage. However, the Act does not lay down the provisions for an invalid marriage.

The Jewish personal law in India is uncodified. However, under personal law, age at marriage is identified with puberty, which is fixed at 12 years.



INTEXT QUESTIONS 15.1



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1. What is meant by age at marriage as per the Hindu Marriage Act?
2. State the features of “Prohibition of Child Marriage Act 2006”.
3. State the personal laws of marriage in Muslims and Christians.

15.2 LEGAL VALIDATION OF MARRIAGE THROUGH REGISTRATION?

We should know that the registration of marriage was made mandatory by the Supreme Court of India in 2006. A solemnized marriage can be registered under Section 7 of the Hindu Marriage Act, 1955 (HMA) or the Special Marriage Act, 1954 (SMA).

The Special Marriage Act (SMA), 1954

The original Special Marriage Act was enacted in 1872

It was moved by an eminent jurist and Legislative Council member named Henry Maine,

It was enacted following a campaign launched in 1860 by Brahma Samaj, especially Keshab Chandra Sen, for simpler marriage ceremonies.

Illustration 15.1 Origin of Special Marriage Act

SMA is applicable to all the citizens of India, irrespective of their religion. Registration under the HMA is limited to an already solemnised marriage. It excludes the registration of marriage solemnised by a Marriage Registrar. SMA, on the other hand, provides for the solemnisation of marriage and the registration by a Marriage Officer.

As per HMA, for the solemnization of marriage between two Hindus, we need to abide by the following conditions:

- Neither party has a spouse living at the time of the marriage,
- Neither party is incapable of giving valid consent to marriage in consequence of unsoundness of mind,
- Though capable of giving valid consent, neither of them has been suffering from any mental disorder or is unfit for marriage and procreation of children,



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- Neither has been subject to recurrent attacks of insanity or epilepsy.
- The bride has completed the age of 18 years, and the bridegroom, the age of 21 years at the time of marriage,
- The parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits a marriage between them,
- The parties are not a lineal ascendant of the other (Sapindas), unless the custom or usage governing each of them permits marriage between the two.

The HMA also defines the degree of prohibited relationship– Two individuals are said to be covered under the degrees of prohibited relationship if –

- One of them is the lineal ascendant of the other,
- One was the husband or wife of the lineal ascendant or descendant of the other,
- One of them was wife of the brother or the father's or mother's brother or the grandfather's or grandmother's brother of the other,
- They are brother and sister, aunt and nephew, uncle and niece, or children of brother and sister or two brothers or two sisters.”²

Any marriage falling in the above categories will be considered void under this Act.

The Act provides certain exception to give due regard to the prevailing customs. If there is a custom governing the parties, they are eligible to marry even if they fall under the degrees of the prohibited relationship as per the Act.

HMA provides for punishment if marriages are solemnized within the degrees of prohibited relationship. Such marriages are considered null and void. “The parties of such a marriage are liable to be punished with a simple imprisonment for a period of one month or fine or Rs. 10000/- or with both.”³

The Hindu Marriage Act, 1955, under Section 7, lays down the ceremonies to be followed in a Hindu marriage. It states that a Hindu marriage can be solemnized in accordance with customary rites and ceremonies of either of the parties. It states, “Where the rites and ceremonies include the *Saptapadi* (taking seven steps by the bride and the groom jointly around the sacred fire), the marriage becomes complete and binding after the seventh step is taken. These ceremonies may vary according to the customs and traditions followed by the parties.”⁴

**Notes****15.3 THE SPECIAL MARRIAGE ACT, 1954**

The Special Marriage Act (SMA) deals with both registrations as well as solemnisation of marriage. Section 4 of the Act provides for the conditions for marriage. These conditions are substantially similar to those laid down under Section 5 of HMA. According to this Act, no religious ceremonies are a prerequisite for a marriage to be complete. Section 4 of the Act lays down the following conditions for any marriage to be regarded as a legal marriage:

- “Neither of the party should have a spouse living at the time of marriage
- The physical and mental capacity of both parties must be as per the section.
- The age of the parties, i.e. the female has completed the age of eighteen, and the male has completed the age of twenty-one.
- The parties are not within the degree of prohibited relationship provided that custom governing one of the parties permit such a marriage between them.”⁵

15.4 ADVANTAGES OF REGISTERING MARRIAGES UNDER THE SPECIAL MARRIAGE ACT

Let us try to understand the advantages of registering a marriage under SMA.

- The registration certificate is valuable evidence of marriage as it is a government document.
- This document becomes useful if any spouse wants to go out of the country.
- The document becomes useful if a person dies without a nomination for a bank deposit or life insurance policy to get this money in the name of the husband/wife.
- Registration helps in prevention of child marriages and, thereby, helps in preventing the trafficking of girls.
- Before registration, the Registrar has to verify if the marriage had actually taken place in accordance with the personal law applicable to the spouses. Before issuance of the marriage certificate, the Registrar will mention this in a special column in the presence of the spouses.
- As per the mandate of the Central Government, the states have to make birth registration compulsory. The states have been asked to make the registration of marriages compulsory. States have been given the power to legislate since they are in a better position to know the social structure and local conditions prevailing therein.

15.5 PERMANENT ALIMONY AND MAINTENANCE UNDER THE SPECIAL MARRIAGE ACT, 1954

Section 36 of the Special Marriage Act, 1954 provides for the alimony pendente lite. It lays down that “Where in any proceeding under Chapter V or Chapter VI of this Act, it is incorporated 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, 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.”⁶

The provisions related to permanent alimony and maintenance are provided under Section 37 of the Special Marriage Act 1954. It states that “Any Court exercising jurisdiction under Chapter V or Chapter VI may, at the time of passing any decree or at any time subsequent to the decree, on an 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’s property, such gross sum or such monthly or periodical payment of 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.”

It also states that “if the District Court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under subsection (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.”⁷

Further, it has been provided that “If the District Court is satisfied that the wife in whose favours an order has been made under this section has remarried 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.”⁸

Special Marriage Act 1954 also makes provision for the custody of children. Section 38 provides that **during** “any proceeding under Chapter V or Chapter VI, the District Court may, from time to time, pass such interim orders and make such provisions in the decree as it may seem to it to be just and proper for the custody, maintenance and education of minor children, consistently with their wishes wherever possible, and may, after the decree, upon application by petition for the purpose, make, revoke, suspend or vary, from time to time, all such orders and provisions concerning the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending.”⁹



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INTEXT QUESTIONS 15.2

1. State the necessary conditions required under the Special Marriage Act 1954 for any marriage to be regarded as lawful.
2. Describe the advantage of registering marriages under The Special Marriage Act 1954.
3. Under the Special Marriage Act 1954, what is the legal procedure for obtaining permanent alimony and maintenance?

15.6 MAINTENANCE RIGHTS OF WOMEN UNDER INDIAN LAW

The provisions on maintenance for neglected persons have been dealt with under

Section 125 of Criminal Procedure Code, 1973. This Section also gives a wife the right to claim maintenance from her husband.

A woman can be called the legal “Wife” of a man only if their marriage has not been proved null and void as per the law applicable to them. A legally wedded wife is entitled to many rights, including the right to residence at the house of her husband and the right to have an equal share in the property of her husband.

The right to receive maintenance from her husband has been provided under Section 18 of the Hindu Adoption and Maintenance Act, 1956. As per this Act, a Hindu wife has a right to claim maintenance if her husband is guilty of cruelty, desertion, polygamy or has a venereal disease, thereby enforcing her rights in divorce. Under Section 25 of this Act, the amount of maintenance fixed by the court or by agreement may be altered subsequently provided some material change in the circumstances that justify such alteration. This child is also entitled to receive maintenance. Husband and wife have to provide for the maintenance of their minor child. The husband must financially support her wife if she is incapable of earning.

15.7 THE HINDU MARRIAGE ACT - GROUNDS OF DIVORCE

Under HMA, originally, divorce was only based on the fault theory. Section 13 clause 1 provides nine faults as grounds for divorce which are available to both the husband and the wife to be claimed against the other while two fault grounds as mentioned in clause 2, which only the wife could claim to seek a divorce.

Clause 1A was added in Section 13 in 1964 by an amendment to recognize the breakdown of a marriage. Later, in 1976, another amendment introduced two additional fault grounds of divorce for the wife and a new Section 13B was added for divorce by mutual consent.

The various grounds on which a decree of divorce can be obtained are as follows-

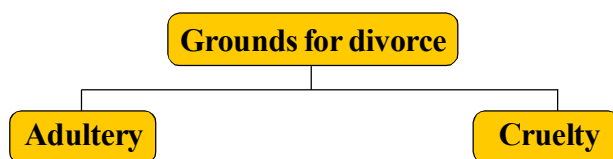


Figure 15.3 Grounds for divorce under Hindu Marriage Act

**Notes**

- **Adultery** Though adultery may not have been recognized as a criminal offence in all countries, according to HMA adultery, is a valid ground for divorce. In adultery, there must be voluntary or consensual sexual intercourse between a married person and another, whether married or unmarried, of the opposite sex, not being the other's spouse, during the subsistence of the marriage.
- **Cruelty:** The concept of cruelty is a changing concept. The modern concept of cruelty includes both mental and physical cruelty. Acts of cruelty are behavioural manifestations stimulated by different factors in the life of spouses and their surroundings. Therefore, each case has to be decided on the basis of its own set of facts.
- **Some Instances of Cruelty are as follows:** False accusations of adultery or unchastely, the demand of dowry, refusal to have marital intercourse, children, impotence, drunkenness, a threat to commit suicide, and the wife's writing false complaints to an employer of the husband.

The additional grounds provided to the wife under clause 2 of Section 13 are as follows:

- **Pre-Act Polygamous Marriage:** This clause states the ground for divorce as "That the husband has another wife, alive at the time of the solemnization of the marriage of the petitioner."
- **Rape, Sodomy or Bestiality:** Under this clause, a divorce petition can be presented if the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality.
- **Non-Resumption of Cohabitation after a Decree/Order of Maintenance:** If a wife has obtained an order of maintenance in proceedings under Section 125 of the Code of Criminal Procedure, 1973 or a decree under Section 18, Hindu Adoption & Maintenance Act, 1956 and cohabitation has not been resumed between parties after one year or upwards, then this is a valid ground for suing for divorce.
- **Repudiation of Marriage:** This provision provides a ground for divorce to the wife when the marriage was solemnized before she attained the age of fifteen years, and she has repudiated the marriage but before the age of eighteen. Such repudiation may be expressed (written or spoken words) or may be implied from the conduct of the wife (left her husband & refused to come back). Moreover, this right (added by the 1976



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amendment) has only a retrospective effect, i.e. it can be invoked irrespective of the fact that the marriage was solemnized before or after such amendment.


INTEXT QUESTIONS 15.3

1. What is meant by maintenance under the Hindu Marriage Act 1955?
2. What are the essential conditions for a valid Hindu Marriage under the HMA, 1955?
3. Discuss the various grounds of Divorce under the HMA 1955.
4. State the grounds on which a Hindu wife can claim maintenance and separate residence from her husband.

15.8. SOME IMPORTANT FAMILY LAWS
15.8.1 The Dowry Prohibition Act 1961

This legislation prohibits the request, payment or acceptance of a dowry “as consideration for the marriage”. “Dowry” under this law is defined as “any property or valuable security given or agreed to be given directly or indirectly by one party to a marriage to the other party in marriage or by the parent of either party to a marriage or by any other person, to either party to the marriage or any other person.” It can be given at, before or any time after the marriage. However, it should be connected with the parties to the marriage. The Act excludes dower or mahr if Muslim Personal Law (Shariat) is applicable to the parties.

Section 3 of this Act punishes asking or giving dowry with imprisonment which shall not be less than five years. Additionally, it provides a fine which shall not be less than Rs. 15000 or the amount of the value of such dowry (whichever is more).

15.8.2 Dowry and Indian Penal Code

The Dowry Prohibition Act (DPA), 1961, is applied to all people irrespective of religion. Under this law, punishment has been prescribed for giving, taking or abetting the giving or taking of dowry.

The Indian Penal Code 1860, under Section 304B, provides punishment if the death of a woman is caused “by burns or bodily injury or occurs otherwise than under normal circumstances, within seven years of marriage, and if 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 of dowry”. Death falling in this category is called “dowry death”, and it shall be deemed that such husband or relative has caused her death. Section 113B was inserted in the Indian Evidence Act 1872 for the presumption of dowry death.



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15.8.3 The Child Marriage Restraint Act, 1976

This act is an amendment to the Child Marriage Act of 1929. It is so socially embedded in the traditional, cultural and religious roots of Indian communities that even after considerable sensitization by NGOs and government agencies along with multiple laws, it is a hard battle to fight.

Child marriage, as per the Act is a contract of marriage between the parties where either the male party has not completed twenty-one years of age, or the female party has not completed eighteen years of age. The party who was a child at the time of marriage can repudiate the marriage, whether solemnized before or after this Act commenced, provided it is declared void before his/her second year of maturity.

If the husband is praying for nullifying the marriage, then the court may pass the decree that the husband or his family shall be responsible to maintain the girl till the time she is remarried. If there are any children born out of that marriage, then the court shall decide the residence of the child, as to with whom the child shall reside and how visits of the other parent shall be organized. The court shall be driven by the best interest of the child. Furthermore, a child conceived before the marriage, declared void, shall be considered a legitimate child.

15.8.4 The Prohibition of Child Marriage Act, 2006

The Child Marriage Restraint Act 1929 could not produce the results as envisaged. Therefore, a new law was passed, the Prohibition of Child Marriage Act 2006. The Act prevents child marriages by laying down enhanced punishment of rigorous imprisonment for two years and/or a fine of Rs. 1 lakh.

Under the Act, a child is defined as a male below 21 years of age and a female below 18 years of age. It defines “minor” as a person who has not attained the age of majority as per the Indian Majority Act 1875. The Act also includes provisions for the maintenance of a girl child. It imposes liability upon the husband to pay maintenance if he is a major. In case her is a minor, his parents have the liability to provide maintenance.

The Act makes child marriage voidable at the option of the parties. However, the child marriage shall be void if the consent to marriage was obtained by fraud or deceit or if the child was enticed away from his lawful guardians and the sole purpose of marriage was to use the child for trafficking or other immoral purposes. Under this Act, Child Marriage Prohibition Officers are appointed and it is their duty to prevent child marriages, and sensitize people about it.

15.8.5 The Protection of Women from the Domestic Violence Act, 2005

The Domestic Violence Act (the DV Act), 2005 defines domestic violence as “any act, omission or commission or conduct of the respondent, which includes the threat or actual abuse”. The purpose behind the enactment of this Act was to provide an effective remedy to women

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pertaining to domestic violence and secure their rights under the Constitution. It includes five types of domestic violence, viz., physical, verbal, emotional, economic and sexual. Emotional violence includes the presence of other victims of violence in the family and marriage without consent. Economic violence includes violence related to *Stridhan*, dowry and property. Sexual violence includes sexual abuse of one partner by the other and marital rape.

15.8.6 Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994

Violence against female children occurs right before they are born. Female feticide is the most common mechanism to eliminate a girl child, even before birth.

Pre-natal diagnosis refers to determining the sex of the child in the mother's womb. 'Fetus' means an unborn human from after the third month of pregnancy until birth. If the fetus is found to be female, then the same is aborted. Hence, 'feticide' means the destruction of a fetus at any time prior to birth. Infanticide is practised after a girl child is born. The girl child is killed after birth. This is regarded as murder in law.

The PCPNDT Act makes it illegal to determine the sex of the unborn baby. This Act was enacted on 20 September 1994 with the intent to prohibit the prenatal diagnostic technique for determination of the sex of the fetus, which leads to female feticide. It aimed to put a check on female feticide. Under this Act, the radiologist/sinologist/gynaecologist is not allowed to divulge the sex of the fetus. Anybody working contrary to the spirit of this act is liable to face the strict action of implementing authorities and punishments as decided by the court.



WHAT YOU HAVE LEARNT

- Women are subjected to multiple layers of violence and abuse. Over the last few decades, the status of women in India has been subjected to many changes. In ancient times, women enjoyed equal status as that of men. The scenario changed during the medieval period. Soon after, it led to the movement for equal rights of women by various reformers.
- In the 21st-century India, women are participating in every sphere of life. Their involvement in education, sports, politics, media, art and culture and service sectors, science and technology, *etc.*, has been increasing ever since. Society transforms over time, and appropriate laws need to be devised to address the emerging challenges.
- The Constitution of India envisions a just society that provides equality to women in all matters and their civil, political and economic rights. For instance, women have the same political rights through adult franchises.
- Sexual harassment of women at workplace has been a subject of concern. In 2013, the sexual harassment of women at workplace (precaution, prohibition and redressed) Act

was passed to provide a safe working environment for women.



TERMINAL EXERCISE

1. What is the advantage of adhering to the legal age of marriage? Explain.
2. What is the legal framework for registering marriages in India?
3. What is the legal validation of marriage through registration?
4. Highlight the need for compulsory registration of marriage to tackle child marriage.
5. Explain the concept of “domestic violence”?
6. Explain “custody disputes”?
7. What is the role of the Dowry Prohibition officer at a district level?
8. Name any four important family laws related to marriage and dowry.



ANSWERS TO INTEXT QUESTIONS

15.1

1. It is 21 years or more for men and 18 years or more for women.
2. (i) The age at marriage under this Act for girls is 18 years and more, and for a man, 21 years and above.
 - (ii) A girl can obtain the decree of nullity if she entered into a child marriage within 2 years of attaining the age of 18 years.
1. (i) The Hindu Marriage Act 1955
 - (ii) Muslim personal law
 - (iii) The Indian Christian Marriage Act 1872

15.2

1. (i) Age of marriage is 21 or more for men and 18 or more for women.
 - (ii) No party should have a spouse living at the time of marriage.
 - (iii) The parties should not be within the degree of prohibited relationship as provided under the Act except when the customs governing one of the parties



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permit such a marriage between them.

- (iv) Act does not provide for any religious ceremonies as a prerequisite before a marriage is completed.

2. Advantages for Registration of Marriages

- Provides a government certificate which is a valuable evidence of marriage
- It is useful for going abroad- visa purposes
- It can be used for nomination in bank, insurance and property matters.
- Prevents child marriages.

3. “Any court, on an application made to it for alimony and maintenance, can order that the husband shall secure to the wife for her maintenance and support, if necessary, by a charge on the husband’s property, such gross sum or such monthly or periodical payment of money for a term not exceeding life.”

15.3

1. Under this Act, a Hindu wife is “entitled to claim maintenance from her husband if he is guilty of cruelty, desertion, polygamy or has a venereal disease, thereby enforcing her rights in divorce”.
2. (i) No party should have a spouse living at the time of marriage.
 (ii) The age of the parties – the female must have completed 18 years and the male the age of 21.
 (iii) The parties should not be within the degree of prohibited relationship as provided under the Act except when the customs governing one of the parties permit such a marriage between them.
3. Cruelty, desertion, polygamy or any venereal disease, adultery, or Repudiation of marriage.
4. A Hindu wife is entitled to claim maintenance for her husband under Section 18 of the Hindu Adoption and Maintenance Act if the husband is guilty of cruelty, desertion, polygamy or has a venereal disease.