PRESENTATION

BY

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TOPIC:- NRI MARRIAGES - ISSUES AND CHALLENGES WITH SPECIAL REFERENCE TO CUSTODY OF CHILDREN
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Introduction: Before going to the main topic I have to go in brief what is the meaning of marriage.

Marriage means finding a universal definition of marriage may be a quite challenge as there are so many different views understandings of what exactly constitute a marriage. These differences occurs from culture to culture and even within a culture from person to person. Now a days definition of marriage have also changed significantly over the centuries and decades but generally every one understands the meaning of marriage is when two people make a public pledge or commitment to live together and share their lives in a way i.e. recognized legally, socially and some times religiously. This sharing of two lives entails myriads of facets involving a bonding of their lives, soles and spiritual and a physical, emotional, mental and spiritual union is called marriage.

Whereas coming to our main subject i.e. NRI marriages it is generally understood marriage between a women from India and Indian man residing in another country called as NRI marriage, either as Indian citizen or as citizen of that other country

The problem is especially related to Indian women who get
rapped in deceptive matrimony with overseas Indians. They also ignore that in case of things going wrong in NRI marriage, the woman’s recourse to justice is greatly constrained and complex. The aggravated risk in such marriage is the woman is being ‘isolated’ far away from home in an alien land, facing language constraints, communication problems, lack of proper information about the local criminal justice, police and legal system. The problem is manifold and it incorporates issues like dowry and various other types of harassment of married women in foreign countries, marriages of convenience, concealment of earlier existing marriage by the husband before marrying an Indian woman. Another very important issue which needs attention is lack of social security faced by an Indian woman in a foreign country when the marriage is not working. The situation is worsened by lack of support network of friends and family and monetary constraints which leaves the deserted wife completely helpless and stranded.

Here is the list of some of the typical instances of the issues that could arise in NRI marriages:

- **Woman** married to an NRI who is abandoned even before being taken by her husband to the foreign country of his residence.

- **Woman** brutally battered, assaulted, abused both mentally and physically, malnourished, confined and ill treated and forced to flee or was forcibly sent back.

- A quick engagement, followed by a massive wedding, a huge dowry and a honeymoon, after which the NRI husband flies out of
• India while the wife waits for her visa.

• The menace of 'honeymoon brides' is a big problem to deal with as over 20,000 brides have not seen their husbands after their honeymoon.

• Woman who reached the foreign country of her husband's residence and waited at the international airport there only to find that her husband would not turn up at all.

• NRI husband was already married in the other country to another woman.

• Husband had given false information on any or all of the following: his job, immigration status, earning, property, marital status and other material particulars, to con her into the marriage.

• Woman who approached the court, either in India or in the other country, for maintenance or divorce but repeatedly encountered technical legal obstacles related to jurisdiction of courts, service of notices or orders, or enforcement of orders or learnt of the husband commencing simultaneous retaliatory legal proceeding in the other country.

These problems have emphasized the requirement of provisions to protect these women and very importantly making them aware of their rights and social security means that are available for them.

Reasons for Break up of Such Marriages

In the first place the marriage was entered into for reasons other than for the making of a family. This could be true for both — the boy as well as the girl. Obviously in such a situation no effort is made to make a success of the marriage but it is only the ulterior motive on each one's part that is sought. Thus a boy after getting dowry that he/ his family wanted does not see any use of continuing the relationship and hence breaks up. A girl tries to save her marriage at any cost till she can go abroad.
• The period of waiting to get permanent resident status in the foreign country is very prolonged in some cases and sometimes very difficult. In some countries it is granted to only those persons who are married to a national of that country. The situation is even more difficult in the case of those who gone abroad without a proper visa.

• Since the reason for marrying an NRI is to go abroad and get an opportunity for legal stay in that country, it really does not matter if the marriage works or not. The attitude of many a girl is that if the marriage does not work out, one can always leave one’s partner and marry someone else.

• When the girl goes abroad, the actual reality is different from the rosy picture that she had in mind. There may still be poverty in store for her. Her social isolation is acute – she may not know the local language, people whom she meets are her husband’s extended family or their friends while her own parental support is missing. She is at the mercy of her husband’s family and they control her completely. The girl almost always is subjected to unreasonable demands for dowry which cannot be fulfilled by her parents. She is taunted for every little thing and many a times inhuman treatment is meted out to her – physical as well as mental torture.

• Girls are becoming more aware and demand more freedom and self-respect than they did earlier, while the men though living abroad do not have a broad outlook, more so the parents of the boy. There are different standards for the boy and the girl.

When the problem arised in the NRI marriages it becomes very difficult to solve as early as possible to live together or to turn up the marriage. Some of the legal provisions in the aspect of procedure which will apply relating to the NRI marriages i.e.

• Order 10 of C.P.C and Section 13, 20 and section 151 of Civil Procedure Code

• Section 44 (A) of Civil Procedure Code
• Section 488 and 188 of Criminal Procedure Code
• Section 125 and 126 of Criminal Procedure Code
• Section 19 of Hindu Marriage Act
• Section 10 of Passport Act etc.

Some of the case laws pronounced by the apex courts in India and the applicability of the Judgments passed by the Foreign courts in India,

1. Harmeetha Singh Vs Rajat 102 (2003) DLT 822 in this case the Delhi High Court made some observation that if the husband succeeded in obtaining a divorce decree in US that decree would be unlikely to receive recognition in India as the Indian Court had jurisdiction in the manner and the jurisdiction of the US courts would have to be established under section 13 C.P.C. the court then sent that till the US decree was recognized in India till the US decree was recognized in India, he would be held guilty of committing bigamy in India and would be liable to face criminal action for that. The court also said that since the wives stay in the US was very transient, temporary and casual and she may not be financially capable of prosecuting litigation in the US court.

Another important exposition of section 13 of CPC came in th Judgment of Supreme Court in Narasimha Rao Vs Venaktalakshmi (1991) 2 SCR 821, in this court the Supreme court had given much
important to section 13 of CPC which place an important roll as to admissibility of the foreign judgments a strict application with the provision while in execution of the foreign decrees. Section 13(a) state that foreign judgment shall not be recognized if it has not been pronounced by a court of competent jurisdiction. Section 13(b) state that if a foreign judgment has not be given on the merits of the case. Section 13(c) state that where the judgment is founded on a refusal to recognize the law of this country. Section 13(d) state that makes a foreign judgments unenforcible on the ground that the proceedings which is obtained are opposed to natural justice. Section 13(f) state that when such judgments would obviously be in breach of matrimonial law in force in this country.

In Vikas Aggarwal Vs Anubha (AIR 2002 SC 1796) the Supreme Court struck off in a maintenance suit filed by the wife on the reasons that he did not appear before the Hon'ble High Court inspite of several opportunities for his personal appearance and for his clarifications to the court but he proceeded to get a decree in divorce petition in the US court, on such a reason he did not appear before the court and also he taken pleas that he would be arrest in the case under section 498-A IPC filed by the wife. In this circumstance the Supreme court held that order 10 of CPC is an enabling provision that gives powers to courts for certain purpose the court also can exercise inherent power under section 151 of CPC to
advance in the interest of justice and it was open for the court to pass a suitable consequential order under section 151 of CPC as may be necessary for ends of justice or to prevent the abuse of the process of the court.

In another case Venkata Perumal Vs State of A.P II (1998) DMC 523 the Andhra Pradesh High court held that there is no necessity to get sanction as contemplated under section 188 of Cr.P.C is required to prosecute and held that even otherwise it is not a condition precedent to initiate criminal proceedings and the same can be obtained if need be during trial and hence it could not be said that the proceedings were liable to be quashed on that ground. The court also refused to influence its decision with divorce decree from the US court produced by the husband since in any case the FIR had been lodged by the wife prior to the US courts decree.

In another case Neeraja Saraph Vs Jayant Saraph (1994) 6 SCC 461 in this case the wife after receiving a petition for annulment of marriage filed by her NRI husband from the US court wife filed a suit for damages for her mental agony on that the trial court passed a decree for Rs.22 lakhs in appeal the High court stayed the operation of decree on a condition of deposit Rs.1 lakh with the court, on second appeal by the wife the Supreme Court modified the High Court order in favour of the wife by enhancing the deposit amount to Rs.3 lakhs.
Even though the order was on a limited ground in an interim application, this case shows the feasibility of suit for damages by wife. It is also pertinent that the court passed some obiter observations as follows.

"Feasibility of legislation safeguarding interests of women may be examined by incorporating such provisions as -

a. No marriage between a NRI and an Indian woman which has taken place in India may be annulled by a foreign court;

b. Provision may be make for adequate alimony to the wife in the property of the husband both in India and abroad;

c. The decree granted by Indian courts may be make executable in foreign court both on principle of comity and by entering into reciprocal agreement like section 44(A) of the Civil Procedure Code which makes a foreign decree executable as it would have been a decree passed by that court;

In another case Rajív Tayal Vs Union of Indian and others (124 (2005) DLT 502: 2005 (85) DRJ 146), in this case the wife also having an available remedy under section 10 of the Passport Act for impounding and or revocation of the Passport of her NRI husband if he fail to response to summons by the Indian courts. In this case the husband taken plea that he is living in the abroad and subjecting him to the criminal process in India would be an unfair burden and also he taken same plea that he had not been served with the summons, in this aspects the court held that merely
going by abroad a person could not claim a status superior to that of a citizen of India. It would then be open to such an accused to misuse the process of law and to make a mockery of the Indian Judicial System by asking for such a special procedure which in any case totally apposed to the principles of criminal jurisprudence, hence the court held that there was no merit in the husband's plea as to invalidity of section 10(e) and (h) of the Passport Act being violating of articles 14, 19 and 21 of the Constitution.

Whereas coming to the custody of child in the present issue the appex court in Marggarate Pulparampil Vs Dr. Chacko Pulparampil (AIR) 1970 Ker 1) the Hon'ble Kerala High court held in this judgment not only recognized the important principle of real and substancial connection to establish the courts jurisdiction to decide custody issues but also recognized the availability of the remedy of writ of habeas corpus to claim custody of child who has been legally removed by a parent and the court felt that the interest of child were of paramount consideration and also laid down the safe guard for ensuring the parental rights of the father in India by giving some guidelines.

In another case Kuldeep Sindhu Vs Chanan Singh (AIR 1989 P & H 103) the High court of Punjab and Haryan took the view that it was in the best interest of the children that the mother who
was in other country be alone to take back the children from India to other country. In anther cases i.e. Sarita Sharma Vs Sushil Sharma ([2000] 1 SCR 915) and Dhanvanthi Joshi Vs Madhav under (1998) 1 SCC 112, the view of the Hon'ble courts only concentrating on the best interest of the child and safe custody of them, for such a reason the courts liberalized the law according to the circumstance to give custody by giving priority to the mother.

Conclusion:-

Prevention is better than the cure though the marriages are held in the heaven not decided by the persons but it does not cause pain to both spouses it should be happy marital life of both partners however whereas coming to the present topic before going to prefer NRI marriages the both parties should be cautious and made proper inquiries as to the occupations and their families of both spouses but ultimately the victim is the women hence there is a need as follows -

There is a need to provide for the following provisions for the welfare of the victims:

1. Simplification of procedure for quick issuance of visa by foreign Missions in India to deserted women to enable them to contest the proceedings filed by NRI / PIO husband in a foreign land.

2. Introduction of a system of cross check / consent, when a NRI/PIO husband wants to cancel sponsorship of his spouse’s visa.
Cancellation should not be permitted as long as dependency of the aggrieved women continues as per Indian law so as to enable her to continue to stay and contest proceedings in the foreign land without being deported and thus deprived of the opportunity to contest the case.

3 Grant of ex-parte divorce by foreign courts be barred in the case of marriages solemnized in India as per Indian law.

4. Procedural delay/low priority to issue LOC/RCN against accused NRI/PIO husband in cases of marital discord needs to be addressed.

5. Cases of domestic discord to be included in the scope of extradition treaties.

- Difficulty and consequent delay in serving judicial processes issued by Indian courts through the Indian Missions abroad to be addressed.

- Simplification of procedure to facilitate extradition/deportation of errant husband and cancellation of passport to face civil/criminal trial in India especially if judicial processes of Indian courts are not responded to.

- Need to develop mechanisms to enable quick tracking of NRIs/PIOs in case of desertion. Funds may also need to be allocated for location of such persons through agencies available for the purposes.

- Recognition of NCW as an authorized body to directly make applications before foreign courts and foreign missions on behalf of aggrieved women where so required.

Thanking you,

By

A. Manjulatha

(A. MANJULATHA)

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Paper Presentation on the topic

**MAPPING BEST PRACTICES BY ALL THE STAKEHOLDERS UNDER DOMESTIC VIOLENCE ACT 2005.**

For the workshop on 22.07.2017

**Meaning of Stake Holder :-**

A stake holder is anybody who can affected or is affected by an organization strategy or project. They can be internal or external and they can be at senior or junior levels. Any person that an outcome or practice will have an effect on.

**Introduction :-**

In the September 2005, the Indian Parliament passed the Protection of Women from Domestic Violence Act (PWDVA) , which came into force from October 26, 2006. The Protection Women Domestic Violence Act (PWDVA) was the result of a long and concerted Campaign Against Domestic Violence by the women's movement in India. It was a landmark legislation as it in some measure vindicated the constitutional promise of equality, non-discrimination and the right to life and liberty for women. It also marked compliance by the Indian state with it international obligations, especially under the convention against elimination of all forms of Discrimination Against Women (CEDAW). The Act was a civil law that sought to provide emergency relief to women in the form of Protection orders, residence orders, and Monetary relief and compensation orders. It also provided for an inbuilt mechanism to facilitate the entire system of access to justice. It identified specific functionaries such as the protection officers and services providers whose primary duty was to assist women in accessing reliefs provided under the law.
Domestic Violence Against Women:

Violence against women is present across the world cutting across boundaries of culture, class, education, income, ethnicity and age.

Domestic violence against women is a serious crime in all section of the society all over the world. Statistics shows that the situation is not improving as fast as it should. For the majority of the women in India, the overall picture of progress is bleak and is getting bleakes. The sex-disaggregated data on education levels, work force participation and life expectancies show male-female gaps. Female foeticide, child marriage, sexual assault and sexual harassment, discrimination at home and work place, unequal pay scale for the same work etc. are playing women as well as society.

It is pitiable to report that independence has not brought freedom for a majority of women. Even today patriarchy continues to control women’s interest and desires. It is painful to note that despite the constitutional guarantee of equality for all (men & women) women are not on an equal footing with men.

There is no definite cause of domestic violence. Any trivial excuse or behavior can become a cause of violence.

Role of protection officers in resolving domestic violence cases emphasized:

Protection Officers nominated by the state government under protection of women from Domestic Violence Act for conduction enquiries into cases of violence should play a pivotal role in resolving issues with a positive approach.

Most Indian women, despite preferring complaints, are not inclined to break their marital bondage. Protection Officers should exercise their responsibility carefully and arrange for additional sittings between affected persons and their spouses.

Protection Officers provides a bridge between the woman and the court and the other functionaries/services within the Act Protection Officers work as officers of the court and render assistance to the court in dispensing justice.

Suggested Best Practice:
• Protection Officers must be employed full time, exclusively to fulfill their role under the Act.

• The state must provide adequate infrastructure for the Protection Officers to have some qualification is the social sciences, social work or law.

• It is desirable for Protection Officers to have some qualification is the social sciences, social work or law.

I understand this as the beginning of an onward journey to ensure a safer society for our women and girls with a prime objective to respect their fundamental right to life with dignity. I also see this as an important tool to advocate for effective implementation of Protection of Women from Domestic Violence Act (PWDVA) 2005. On behalf of CARE we are very excited and pleased to take the report forward and work. Closely with the other organization and critical stakeholders on this important issue.

**Recommendation to improve the effectiveness of implementation of Act:**

(a) Generate awareness about the Act among the community during discussions with women survivors of domestic violence it was evident that the level of awareness about the law is low. The interaction with various community level stakeholders also indicated that the awareness about the Act was significantly low. Whereas, Section-II of the Protection of Women from Domestic Violence Act (PWDVA) itself delivers on legal awareness through publicity in media including television, radio and print media. Therefore, it is suggested that a systematic legal awareness programme must be launched.

• A massive awareness campaign involving the community and different stakeholders, social organizations, government agencies, institution etc. for behavior change and gender equality is required.

• Proper publicity of different acts relating to prevention of violence against women, particularly Protection of Women from Domestic Violence Act (PWDVA) 2005 is essential.
• Media has to be considered as critical stake holder for generating a massive awareness and education on the issue of ending all kinds of violence against women.

• Inclusion of genders equality and rights of women in the education system from primary to higher level will contribute immensely.

(b) Increase access of Survivors to institutions and its coverage.

• Various institutions like the service provider, office of the Protection Officer and short stay use shelter and help lines are mostly present is the district headquarters. During the discussion with survivors, one of the difficulties quoted was access to these services. On the other end, due to vast geographical areas of district, it is also difficult for a single protection officer and service provider to cover the entire area for various purposes. Therefore, if is recommended that the Institutional arrangement like appointment of protection officer and service provides should be extended to block level in the rural area and cities in urban areas. It is also recommended that there is a need to expand a system which is available and accessible as well as, easy to deliver services.

• Most of the short stay and shelter homes are not fully equipped. It is recommended to strengthen and make functional short stay home and shelter at district level. Notification of the service providers needs to be completed.
(c) Counsellors need to be equipped with necessary skills and other requirements.

Section 14 of the Act deals with the provision for counseling. As per the provision, the magistrate may direct the respondent or aggrieved person either singly or jointly, at any stage of the proceeding, to undergo counseling with any member of a service provider who possesses such qualification and experience in counseling as may prescribed. It is also recommended to holding training programme for capacity building of different institution/law enforcement officers, police, judges other court personnel, prosecutors, PRI members, service providers, counselors and other stake holders to providers, counselors and other stake holders to identify and respond more effectively to the cases of violence against women.

(d) Co-ordination among the various institutions.

There are various actors operating under the Protection of Women from Domestic Violence Act (PWDVA) like the Protection Officers service provider, shelter home, medical system legal service, counseling and police etc. Effective co-ordination among these stakeholders and convergence of services will improve the efficiency of service deliver.

(e) Effective delivery of legal services.

Legal services are made available to the survivors through the legal services committees operation at different level. However, most of time it is difficult for the Professional Officers to ensure legal services to the aggrieved persons and the aggrieved has to approach various institutions for any single case. All cases of domestic violence should be tried according to the time frame provisions of the Protection of Women from Domestic Violence Act (PWDVA).
(f) Ensure Medical assistance with in Health system.

The study has highlighted how domestic violence is affecting the overall health of the women. And during discussions, it was evident that getting medical assistance from various institution. Under the Protection of Women from Domestic Violence Act (PWDVA) is one of the challenges women are facing. Bearing this in mind it is recommended to appoint a particular person in the health system.

**Conclusion :-**

Ending all kinds of violence against women and establishing gender equality is an uphill task. To achieve this task, society administration and various stakeholders are required to be aware, sensitized and trained.

I Hope this study becomes a step forward, towards the direction of research on women related issues and is useful for all organizations and stakeholders working on the subject.

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Paper on Law relating to maintenance under different enactments, to be presented in the workshop to be held on 22-07-2017

In this paper, I am asked to present the law of maintenance under different enactments to be provided to wife, children and aged parents.

2) The concept of maintenance is meant to remove the vagrancy and starvation. It plainly means, the support to lead normal life. With reference to wife, the term maintenance means an allowance that the husband gives to his wife when she is unable to maintain herself as an obligation and a natural duty to maintain. The objectives of maintenance are

1. To prevent immorality.
2. Destitution.

Maintenance not only includes the basic necessities such as food, clothing, residence etc, but it also includes the status and the comfort of the person. In other words, such dependent person should continue to live in the same status and condition as before such necessity arises. Say for example a deserted woman or a divorced wife is entitled to lead life with same comforts as she would receive at her matrimonial home.

3) So far the parents are concerned, it can be said that they are no less than Gods. They are the reason for our existence in this world. Hence, in their old age, they shall be taken care of in a proper manner.

4) When we talk about the maintenance of children, it is our moral and legal duty to nurture them in the proper way. We witness even the animals and birds, taking care of their young ones for some time.
5) **Maintenance under Section 125 Cr.P.C.-**

Before taking up the law of maintenance under various enactments, I shall deal with section 125 Cr.P.C. first. Previously, we have section 488 Cr.P.C, which provides maintenance for the wife, children and parents under section 488 Cr.P.C. There was no difference between a minor child or a major with regard to the women, the child is considered to be a child till she is married. The concept of minor was not there under section 488 Cr.P.C. However, in 1973 a new code was brought into force, with effect from 1-4-1974 and section 125 Cr.P.C has been incorporated and the word 'minor child' has been introduced under Sec.125 (1) (b) and (c).

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,

6) With this new law, necessity of payment of maintenance was restricted to only during the minority of children. If the child is a male, it ceases by attaining majority. In case of girl child also, the liability to pay maintenance ceases on attaining majority by marriage. The only exemption is that in case the child is suffering with any physical or mental abnormality or injury, which made her unable to maintain herself. Now, in view of this introduction of minority in 1973 Act, purposefully omitting the word child, it can be understood that the children who attained majority, may be male or female, are debarred from claiming maintenance under section 125. This is our understanding. However, the understandings of this concept by the Apex Court is different.
7) **Jagadeesh Jugthawath Vs Manjulatha 2002 (5) SCC 422**

The full bench of the Supreme Court observed that the right of a dependant girl for maintenance extends to beyond attainment of the majority. It was an application under section 125 Cr.P.C and the family court award maintenance till the girl marries, but not attaining majority. It was noted that under section 20 (3) of Hindu Adoption and Maintenance Act, the right of a minor girl for maintenance till her marriage is recognised. The High Court accepted the said reasoning, though there is a statutory limitation under section 125 Cr.P.C. When the matter reaches the Supreme Court, the Supreme Court also accepted the reasoning given by the Hon’ble High Court, in confirming the order, passed by the Family Court.

8) **Noor Sabha Khatoon Vs Mohd Khasim 1977 (6) SCC 233**

In this judgment, the Apex Court observed that section 125 Cr.P.C and section 3(1) (b) of 1986 Act operates at different situations. It observed that the obligation to maintain female children extends till their marriage. It may be relevant at this stage to note that section 3(1) (b) did not say that the female children shall be maintained till their marriage. **Section 3(1) (b) says when the wife herself maintains the children born into her before and after her marriage, a reasonable and fair provision and maintenance to be made and paid by her former husband for the period of 2 years from the respective dates of birth of such children.**

9) Hence, undoubtedly, the Apex Court for the first time introduced the liability of a husband or a father to maintain minor girl till her marriage, without their being any provision in this statute. Now, in the later case, in 2002 i.e., Jagadeesh Jugthawath, the Apex Court took to support of its earlier judgment and
ruled that right of maintenance to a girl extends to her marriage and the reference was to provisions of Hindu Adoptions and Maintenance Act.

10) **Capacity of husband:**

To claim maintenance, the husband should have sufficient means. It was held in several cases. An able bodied person cannot escape from liability and it was said that beg, borrow of steal, one should maintain his wife. In Chhedilal singh Vs Smt.Bhanu moti 1973 ALJ 383, it was held that a boy of 16 years, reading in class VIII, supported by his father cannot be said to have means to maintain his wife.

11) **Marriage is a pre-requisite:**

Marriage is a condition precedent to seek maintenance u/s.125 Cr.P.C. In Gokul Chand Vs Pervin kumari AIR 1952 SC 231, it was held that continuous cohabitation for a long time as a married couple and their conduct as a husband and a wife may give rise to a presumption of a valid marriage.

12) **Muslim Women (Protection of Right on Divorce) Act, 1986:**

In Mohammadan law also the concept of maintenance is prevalent. The source of Mohammadan Law, the Holy Quran prescribes the maintenance to wife, the young children. They is a special statute. Muslim Women (Protection of Right on Divorce) Act, 1986. Probably, everyone of us knew the reason for this enactment. It is because of the Apex Court Judgment in Ahmad Khan Vs Shah Banu Begum AIR 1985 SC 945. The Supreme Court held that a Muslim Woman is entitled to maintenance under Section 125 of Criminal Procedure Code. Now the Government of India, with the pressure of large sections of Muslims wanted to make a law, limiting the rights of muslim divorced women for a limited period called IDDAT. However, at a later point of time, Supreme Court again interpreted
section 3 (1) (a) in such a way that the husband is obligated to pay maintenance for the rest of her life.

13) In *Danial Latifi and another v. Union of India* [2001] 7 SCC 740, the Constitution Bench, held as follows:-

"In other words, at the time of divorce the Muslim husband is required to contemplate the future needs and make preparatory arrangements in advance for meeting those needs. Reasonable and fair provision may include provision for her residence, her food, her clothes, and other articles. The expression “within” should be read as “during” or “for” and this cannot be done because words cannot be construed contrary to their meaning as the word “within” would mean “on or before”, “not beyond” and, therefore, it was held that the Act would mean that on or before the expiration of the iddat period, the husband is bound to make and pay maintenance to the wife and if he fails to do so then the wife is entitled to recover it by filing an application before the Magistrate as provided in Section 3(3) but nowhere has Parliament provided that reasonable and fair provision and maintenance is limited only for the iddat period and not beyond it. It would extend to the whole life of the divorced wife unless she gets married for a second time."

14) *The Maintenance and Welfare of Parents and Senior Citizens Act, 2007*

This act is again a social legislation to protect the destitute old aged parents. Under this Act, a person of more than 60 years has been defined as senior citizen. He is entitled to seek maintenance from his son or grand son, who
shall not be a minor. Tribunals have been constituted to receive petitions and grant maintenance.

**Parent is defined:** Parent means father or mother whether biological, adoptive or step-father or step-mother, as the case may be, whether or not the father or the mother is a senior citizen;

**Senior citizen is defined:** Senior citizen means any person being a citizen of India, who has attained the age of sixty years or above;

**Who are entitled:**
An application for maintenance under section 4, may be made—
(a) by a senior citizen or a parent, as the case may be; or
(b) if he is incapable, by any other person or organisation authorised by him; or

Maximum amount: Rs.10,000/- per month.

With regard to enforcement, it is same given under Sec.125 Cr.P.C.

15) **Maintenance of Wife under Section 18, the Hindu Adoptions and Maintenance Act, 1956**

**Section 18:** Wife:
Under the section 18(1) of the HAMA, 1956 wife is entitled to maintenance by her husband for lifetime i.e. she will be given maintenance until she dies or her husband dies. Under section 18 of this Act a Hindu wife is entitled to live separately from her husband without canceling her right to claim maintenance. The grounds under which she can live separately are:-

(1) Husband is guilty of desertion
(2) The Husband has treated her with cruelty
(3) The husband is suffering from a virulent form of leprosy
(4) The husband has any other wife living.
(5) The husband keeps a concubine elsewhere
(6) The Husband has ceased to be a hindu by conversion to another religion and
(7) if there is any other cause justifying living separately

16) But there are two bars which will prevent a wife from claiming maintenance from her husband i.e. (i) if she is unchaste or (ii) if she ceases to be a Hindu by conversion to another religion.

17) **Section 19:-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.
18. **Section 20: Maintenance of children and aged parents.**—

(1) Subject to the provisions of this section a Hindu is bound, during his or her lifetime, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.

(2) A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.

(3) The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends in so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property.

*Explanation.*—In this section “parent” includes a childless step-mother.

19) **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 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.

20) **Hindu Marriage Act, 1955:**

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:

1[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.]

21) **Sec.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 1[***] 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[s, 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.

22) **Smt. Mamatha Jaiswal Vs. Rajesh Jaiswal (2000 (4) CCC 230(M.P)):**

A lady, who is fighting a petition for divorce, cannot be permitted to sit idle and put her burden on the husband by demanding pendente lit alimony.

23) **Krishnakanth Mulashanker Vyas Vs. Reena Krishna Vyas AIR 1999 Bom. 127:**

Validity or subsistence of marriage is immaterial. A second wife in a void bigamous marriage is entitled to maintenance.

24) **The Divorce Act, 1869:**

   **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 of 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:

4[***]

5[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.]

25) Sec.37. Power to order permanent alimony. — 2[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 cause 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.
26) **Giddi Gowthami @ Jyothi Vs. Giddi Samuel (2005 (3) ALT 102):**

The application for interim maintenance has to be disposed in either way and it shall not be tagged to main application.

27) **B.P. Achala Anand v. S. Appi Reddy, (2005) 3 SCC 313:**

In the event of provision for residence of a divorced wife, having been made by the husband in the matrimonial home situated in the tenanted premises, such divorced wife too would be entitled to defend, in the eviction proceedings, the tenancy rights and rights of occupation thereunder in the same manner in which the tenant husband could have done and certainly not higher or larger than that. She would be liable to be evicted in the same manner in which her husband as tenant would have been liable to be evicted.

28) **Protection of women from Domestic Violence Act, 2005:**

**Sec. 20: Monetary relief:**

Sec.20(1) (d): for the wife, as well as her children, including an order under or in addition to an order of maintenance under Sec.125 Cr.P.C., or any other law for the time being in force.

(2) It shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

(3) Lump sum payment or monthly payments.

I believe I have dealt with the subject comprehensively. I thank the Hon'ble Administrative for his support. I thank the Hon'ble District Judge,
for his encouragement. I thank all the participant officers for bearing with me.

Thanking you,

T. Venkateswarlu,

Judge Family Court.
Divorce under Fault and no fault theory.

S.Kamalakara Reddy.
Secretary Dist., Legal Services Auth.,
Anantapuram:

Fault Divorce:

One of the spouses requests that a divorce be granted based on some fault of the other spouse.

No Fault Divorce:

It refers to a type of divorce in which the spouse who is filing for divorce does not have to prove any fault on the part of the other spouse.

Concept of divorce:

The concept of divorce is one that has become increasingly pertinent to today's society. People are bombarded by statistics about its rise and facts about the decreasing stability of the nuclear family. Rates of divorce have increased so greatly over the past few decades that people have come to fear the institution of marriage. Causes of divorce and how it has evolved over the past three decade are issues that must be addressed in order to understand this problem. The dissolution of marriage is without a doubt a problem for today's society. It is probably one of the biggest problems. Children of divorce are often left with scars that do not heal. Often children from divorced families have a more difficult time establishing intimate relationships. Recognizing the changing rates of marriage and divorce are necessary in analyzing today's family structure. One cannot deny that these divorce rates show a relevant problem that must be researched in order to understand elements of family life today.

Divorce was unknown to general Hindu law as marriage was regarded as an indissoluble union of the husband and wife. Manu has declared that a wife cannot be released from her husband either by sale or by abandonment, implying that the marital tie cannot be served in any way. It, therefore, follows that the textual Hindu law does not recognize a divorce. Although Hindu law not contemplates divorce yet it has been held that where it is recognized as an established custom it would have the force of law.

Under the Hindu Marriage Act, 1955 both the husband and the wife have been given a right to get their marriage dissolved by a decree of divorce on more than one grounds specifically enumerated in Section 13. Some of the grounds initially inserted were substituted and some more grounds came to be added. It was in the year 1964 that sub-section (1-A) was inserted by which
either party to the marriage was also given a right to apply for dissolution of marriage by a decree of divorce. **Grounds of divorce**

The Act originally recognized the fault grounds for obtaining the decree of divorce. For this purpose nine fault grounds were mentioned in the Act. Sec. 13(1) lays down these fault grounds, on which either the husband or wife could sue for divorce.

Two fault grounds have been dealt with in the sec. 13(2), on which wife alone could seek the decree of divorce.

In 1976, the grounds for divorce by mutual consent have been recognized through provision of the section 13B of the Hindu marriage Act, 1955 Says:

Any marriage solemnized, whether before or after the commencement of the Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-

- There are 9 grounds for divorce available to husband and wife both:
  - Adultery--
  - Cruelty--
  - Desertion--
  - Conversion--
  - Unsound mind--
  - Leprosy--
  - Venereal disease--
  - Renunciation of the world--
  - Presumed death--
  - There are 4 additional grounds for divorce available to only wife:
    - Bigamy--
    - Rape, sodomy or bestiality.
    - Non resumption of cohabitation after decree or order of maintenance--
    - Option of puberty--

**Theory regarding divorce:**

The provisions relating to divorce is contained in Sec 13 of Hindu Marriage Act, 1955. The Act recognizes two theories of Divorce:

- Fault theory;
- Divorce by mutual consent. (No fault theory)

Under the fault theory, marriage can be dissolved only when either party to the marriage had committed a matrimonial offence. Under this theory it is necessary to have a guilty and an innocent party and only innocent party can seek the remedy of divorce. However the most striking feature and drawback is that if both parties have been at fault, there is no remedy available. Another theory of
divorce is that of mutual consent. The underlying rational is that since two persons can marry by their free will, they should also be allowed to move out of their relationship of their own free will. However critics of this theory say that this approach will promote immorality as it will lead to hasty divorces and parties would dissolve their marriage even if there were slight incompatibility of temperament. Some of the grounds available under Hindu Marriage Act can be said to be under the theory of frustration by reason of specified circumstances. These include civil death renouncement of the world etc.

Fault Divorce

Fault divorces are not as common, and in fact, most states no longer even recognize them. In the states that do recognize them, one of the spouses requests that a divorce be granted based on some fault of the other spouse. The most common grounds for granting a fault divorce are:

- Adultery
- Abandonment for a certain length of time
- Prison confinement
- A spouse is physically unable to have sexual intercourse
- Inflicting emotional or physical pain (cruelty)
- No state requires the spouses seeking a fault divorce to live apart for a specific period of time, unlike a no fault divorce. Proving fault also often provides the spouse without fault with a larger portion of the marital property or support. These two characteristics make a fault divorce more attractive to some people.

Comparative Rectitude

When both spouses seek a fault divorce and can both prove the other spouse is at fault, the court decides which one is least at fault. That party will be granted the divorce. This is called "comparative rectitude." This doctrine was created to address the problem of courts granting neither party a divorce if they were both at fault. Courts have a public policy interest in not forcing two people to stay married if they don't want to be.

Defenses to a Fault Divorce

Unlike a no fault divorce, a spouse can object to a fault divorce by disproving or presenting a defense to the fault complained of. The following is a list of common fault divorce defenses:

Connivance is an absolute defense to adultery. Connivance alleges that the complaining spouse agreed to and even participated in the infidelity. It makes sense that a couple who voluntarily participates in group sex cannot then go and complain of adultery. Similarly, a spouse who prostitutes the other or who facilitates the other's infidelity cannot thereafter claim adultery as grounds for divorce.

Condonation is a claim that the other spouse knew about the complained of conduct, forgave such conduct, and resumed the marital relationship. This is typically used to defend an adultery accusation.

Recrimination is when the complaining spouse is equally at fault or engaged in similar conduct. For example, if both spouses had affairs, neither one would be able to use adultery as grounds
for a fault divorce.

*Provocation* is where one spouse is enticed by the other spouse to act in a certain way. For example, where one spouse abuses the other spouse, which forces that other spouse to leave the marital home, the abusive spouse would not be able to then use abandonment as grounds for divorce, since it was his or her abuse that caused the other spouse to leave.

*Collusion* refers to an agreement between both of the spouses to fabricate the grounds for divorce. If one of the spouses changes his or her mind, collusion could be raised to lessen the original grounds for the fault divorce.

Proving any of these defenses can be costly, timely, and often involves the use of witnesses. Furthermore, courts have an interest in not forcing people to stay married who don't want to be married, and so usually grant divorces to people who ask, despite defenses given by the other spouse. These reasons typically defer people from attempting defenses.

**No fault theory of divorce**

Prior to 1976 Divorce only on the basis of fault theory it means marriage can be dissolved only when either party to the marriage had committed a matrimonial offence. But now Divorce can also be obtained on the basis of *no fault theory* it means divorce can obtain by the mutual consent of the parties to marriage under the marriage laws (Amendment) Act, 1976. According to *section 13-B (I)*, such a petition is required to be moved jointly by the parties to marriage on the ground that they have been living separately for a period of one year or more and they have not been to live together and also that they have agreed that marriage should be dissolved.

As per *section 13-B (II)* of the Act lays down that on the motion of both the parties made no earlier than six months after the date of the presentation of the petition referred to in sub-section (I) given above and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized and that averments in the petition are true, then pass a decree of divorce, declaring the marriage to be dissolved with effect from the date of decree.

**Essentials of divorce by mutual consent:**

According to section 13-B, there are three essentials of divorce by mutual consent-

That both the parties have been living separately for a period of one year or more;

That both the parties have not been able to live together;

That both the parties have mutually agreed that their marriage should be dissolved.

It is an important to note that the consent obtained for divorce means divorce by mutual consent not obtained by force, fraud, it means consent must be free as per section 23(1) of this Act.

The Karnataka High court in *Krishna Murti Rao v. Kamalashli*[N] has said that on filling a petition jointly by the wife and husband the following points are to be proved for getting a decree under this section:-

The parties to marriage are living separately for a period of one year or more;

They could not live together;
They have reached a compromise that they would dissolve the marriage; and
That they have consented to divorce not under any force or fraud or undue influence.

Court of competent jurisdiction there upon an application being made by both the parties at any time after six months , but before eighteen months from the date of presentation of petition, will make proper enquiries as it may deem fit. It is incumbent upon the Court to verify that the statements made in the Petition are true. This requires the Court to verify, by examination on oath, whether they have consented to dissolve their marriage, as stated in Petition. After making necessary enquiry into the facts that marriage was solemnized, that the parties have not withdrawn the joint petition in the meantime, and that their consent continues, as stated in the Petition, on the day of examining the parties on oath. The Court has to satisfy itself about the genuineness of the averments in the petition and also to find out whether the consent was not obtained by force, fraud or undue influence. If the Court is satisfied that the consent of parties was not obtained by force, fraud or undue influence and they have mutually agreed that the marriage should be dissolved, it must pass a decree of divorce. Thereupon, the Court will declare by decree that the marriages solemnized between the parties are dissolved. After presentation of the Petition for divorce by mutual consent, either of the parties may retract his or her consent at any time or at the time of examination on oath and thereupon the Petition shall be dismissed.

It therefore follows that the parties even when having stated in the Petition that they have decided to dissolve their marriage by mutual consent, have opportunity to retract or withdraw the consent at the time of examination on oath by the Court. The period of consideration of the petition only after six months of the presentation, imply that the parties are having opportunity to re think on the decision of divorce and law gives ample opportunity to save marriage.

However, it is incumbent upon the parties to move before the Court before eighteen months from the date of presentation of the Petition for divorce. The Court is not bound to pass decree of divorce by mutual consent after a period of eighteen months for the date of presentation of the Petition.

In Smt. Sureshita Devi v. Om Prakash, the Apex Court has held that 'living separately' for a period of one year should be immediately preceded the presentation of the petition. It is necessary that immediately preceding the presentation of petition, the parties must have been living separately. The expression 'living separately', connotes not living like husband and wife. It has no reference to the place of living. The parties may live under the same roof by force of circumstances, and yet they may not be living as husband and wife. The parties may be living in different houses and yet they could live as husband and wife. What seems to be necessary is that they have no desire to perform marital obligations and with that mental attitude they have been living separately for a period of one year immediately preceding the presentation of the petition. The meaning of the words in the Act that they 'have not been able to live together' indicates the concept of broken down marriage and it would not be possible to reconcile themselves.

In Ashok Hurra v. Rupa Bipin Zaveri, the Supreme court held that Suresshita Devi's decision that "consent can be withdrawn at any time before decree is passed" are to wide and requires reconsideration. In this case, the petition for divorce by mutual consent was pending for a considerably
long period and the wife had not withdrawn her consent within 18 months from the date of presentation of petition. Neither divorce decree could be passed nor reconciliation could be brought about between the spouses. Moreover, during the pendency of the divorce proceedings, the husband had contracted another marriage and begot a child. Civil and criminal proceedings were also filed by the spouses against each other during pendency of the suit. In view of the above facts, the Supreme Court held:

- The cumulative effect of the various aspect's in the case indisputably point out that the marriage is dead, both emotionally and practically and there is long laps of years since the filling of the petition; existence of such a state of affairs of warrant the exercise of the jurisdiction of this court under Articles 142 of the constitution and grant a decree of divorce by mutual consent and dissolve the marriage between the parties.

The USA Scenario.

Arguments for no-fault divorce

Several studies have looked at the effect of no-fault divorce on divorce rates in the United States. The studies typically find an increase in the short-term rate, but little long-term causal relationship. The most frequent explanation given is that the older laws were ineffective and not followed anyway, though there are some differing viewpoints. Economists Betsey Stevenson and Justin Wolfers, based on findings in their research, argue that domestic violence and female suicide decline in states that legalize no-fault divorce. Specifically, they report that "states that adopted no-fault divorce experienced a decrease of 8 to 16 percent in wives' suicide rates and a 30 percent decline in domestic violence." They also argue that their research proves that there is no permanent effect of no-fault divorce laws on divorce rates.

Stephanie Coontz, a professor of history at Evergreen State College, states that "in the years since no-fault divorce became well-nigh universal, the national divorce rate has fallen, from about 23 divorces per 1,000 married couples in 1979 to under 17 per 1,000 in 2005."[11] She adds that "once you permit the courts to determine when a person's desire to leave is legitimate, you open the way to arbitrary decisions about what is or should be tolerable in a relationship, made by people who have no stake in the actual lives being lived."

A 2010 New York Times editorial said that New York was "the only state where a court must find fault before granting a divorce unless the spouses have lived apart for a full year under a formal separation agreement — a proven formula for inviting false testimony, endless litigation and generally making divorce far more painful than it needs to be."[12] Later that year, New York became the final state to allow no-fault divorce. Lawyer L.M. Fenton states that "Feminist holdouts against New York's new [no-fault divorce] bill don't understand how family law affects women today", adding: "It also mystifies me that spouses could still, even in 2010, be forced to stay married to someone who refused to let go."

Fault-based grounds usually include mental cruelty, but true mental cruelty has a psychological component that can make it very difficult for the abused spouse to articulate that abuse. More to the point, the abused spouse may be terrified to describe the relationship on paper and testify
about it in a court. And of course, a controlling partner will always choose the path of most resistance to whatever it is that the other spouse wants.

The state adopted no-fault divorce later that year.

**Arguments against no-fault divorce:**

The National Organization for Women opposed the introduction of no-fault divorce in New York State because it would allow a party who actually is at fault to obtain a divorce in which "alimony, maintenance [and] property division" would be determined without the judge considering "the facts, behavior and circumstances that led to the break-up of the marriage".

A paper published in the *Harvard Journal of Law and Public Policy*, written by Douglas Allen, on the economics of same-sex marriage, argues that the introduction of no-fault divorce led to a six-fold increase in just two years, after a century of rather stable divorce rates. Also, the law increased the rate at which women entered the workforce, increased the number of hours worked in a week, increased the feminization of poverty, and increased the age at which people married.

Stephen Baskerville, a political scientist at Howard University, argues that no-fault divorce rewards wrongdoers, reduces the need of marital binding agreement contracts at the public's expense, and helps women take custody of their children at the husbands' expense in many cases where the man has done nothing wrong. He also adds that a ban on divorce will not work, because people will separate themselves and be in a permanent state of adultery, or they will create a hostile home environment for the children.

**Conclusion**

The Hindus consider marriage to be a sacred bond. Prior to the Hindu Marriage Act of 1955, there was no provision for divorce. The concept of getting divorced was too radical for the Indian society then. The wives were the silent victims of such a rigid system. Now the law provides for a way to get out of an unpleasant marriage by seeking divorce in a court of law. The actual benefactors of such a provision are women who no longer have to silently endure the harassment or injustice caused to them by their husbands. However, to prevent hasty divorces, the law lays down certain restrictions and grounds for obtaining a divorce. Before obtaining divorce, the parties may first obtain a decree for judicial separation after which divorce may be obtained.