

CONSTITUTION :

1. Article 14 confers on men and women equal rights and opportunities in the political, economic and social spheres. Article 15 prohibits discrimination against any citizen on the grounds of religion, race, caste, sex etc. Article 15(3) makes a special provision enabling the State to make affirmative discriminations in favour of women. Similarly, Article 16 provides for equality of opportunities in matter of public appointments for all citizens. Article 39(a) further mentions that the State shall direct its policy towards securing all citizens, men and women, equally, the right to means of livelihood, while Article 39(c) ensures equal pay for equal work. Article 42 directs the State to make provision for ensuring just and humane conditions of work and maternity relief. Above all, the Constitution imposes a fundamental duty on every citizen through Articles 15 (A) (e) to renounce the practices derogatory to the dignity of women. Article 21 – Right to life. Article 19 – Right to freedoms.

IPC :

1. Offences Affecting the Public Health, Safety , Convenience, Decency and Morals – Sections 268, 290-294
2. Offences affecting life – Sections 299-309
3. Offences of the causing of Miscarriage, of injuries to unborn children etc – Sections 312-318
4. Offences Of Hurt – Sections 319-330 & 334-338
5. Offences of Wrongful Restraint and Wrongful Confinement – Sections 339-348
6. Offences of Criminal Force and Assault – Sections 349-352; 354, 357-366; 372-374
7. Sexual Offences – Sections 375-377
8. Offence of Cruelty by Husband or Relatives of Husband – Section 498-A

9. Offences of Criminal Intimidation, Insult and Annoyance – Section2
503, 507, 509 and 510

CRPC :

125. Order for maintenance of wives, children and parents

(1) If any person having sufficient means neglects or refuses to maintain,-

- (a) his wife, unable to maintain herself, or
 - (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
 - (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or
 - (d) his father or mother, unable to maintain himself or herself,
- a Magistrate of the first class may, upon proof of such neglect or refusal order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

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

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

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

Explanation : For the purposes of this Chapter-

- (a) “minor” means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;
- (b) “wife” includes a woman who has been divorced by or has obtained a divorce, from her husband and has not re-married.

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

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

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

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

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

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

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

UNIVERSAL DECLARATION OF HUMAN RIGHTS :

- VIOLATION OF THE RIGHT TO LIFE, LIBERTY AND PERSONAL SAFETY (Art. 3)

- RIGHT TO NOT BE SUBJECTED TO TORTURE OR TO CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (Art. 5)
- RIGHT TO EQUALITY BEFORE THE LAW AND TO EQUAL PROTECTION UNDER THE LAW (Art. 7)
- RIGHT TO A FAIR TRIAL (Arts 8 &10)
- RIGHT TO FREEDOM OF MOVEMENT (Art. 13)
- FREEDOM OF ASSEMBLY AND ASSOCIATION (Art. 20)
- VIOLATION OF THE RIGHT TO IDENTITY
- RIGHT TO AFFECTION
- RIGHT TO PEACE AND ENRICHING PERSONAL RELATIONS
- RIGHT TO PROTECTION
- RIGHT TO PERSONAL DEVELOPMENT
- RIGHT TO SOCIAL AND POLITICAL PARTICIPATION
- RIGHT TO FREEDOM OF EXPRESSION
- RIGHT TO AN OPTIMUM STATE OF PHYSICAL AND MENTAL HEALTH

INTERNATIONAL LAW – HUMAN RIGHT LAW :

- The Committee on Elimination of Discrimination Against Women affirmed that violence against a woman constitutes a violation of her internationally recognised human rights – regardless of whether the perpetrator is a public official or a private person.
- Regional Courts of Human Rights have interpreted state action to include the failure of the state to prevent violence
- Article 4, U.N. Declaration on the Elimination of Violence Against Women requires the state to “exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women”. This violence may be by the state but it may also include violence in the community and in the family.
- According to this criterion, the State becomes a de facto accomplice if it does not offer women the necessary protection from violations of their rights, or when it acts in discriminatory fashion by not preventing or punishing acts of gender-based violence, thereby denying women equal protection under the law
- Scholars and human rights groups have argued that a state’s failure to prosecute individuals who are violent against women

constitutes a violation of equal protection in the implementation of law

- Using the same argument it would mean that the incapacity of the State to put an end to social, economic and cultural conditions that expose women to gender-based violence means that it is responsible for such violence, since it should actively contribute to eradicating injustices and inequalities that manifest themselves in gender relations.

HINDU LAW :

Hindu Adoptions and Maintenance Act, 1956

18. Maintenance of wife

(1) Subject to the provisions of this section, a Hindu wife, whether married before or

after the commencement of this Act, shall be entitled to be maintained by her

husband during her lifetime.

(2) A Hindu wife shall be entitled to live separately from her husband without

forfeiting her claim to maintenance-

(a) if he is guilty of desertion, that is to say, of abandoning her without reasonable

cause and without her consent or against her wish, or of wilfully neglecting her;

(b) if he has treated her with such cruelty as to cause a reasonable apprehension in

her mind that it will be harmful or injurious to live with her husband;

(c) if he is suffering from a virulent form of leprosy;

(d) if he has any other wife living;

(e) if he keeps a concubine in the same house in which his wife is living or habitually

resides with a concubine elsewhere;

(f) if he has ceased to be a Hindu by conversion to another religion;

(g) if there is any other cause justifying her living separately.

(3) A Hindu wife shall not be entitled to separate residence and maintenance from

her husband if she is unchaste or ceases to be a Hindu by conversion to another

religion.

19. Maintenance of widowed daughter-in-law

(1) A Hindu wife, whether married before or after the commencement of this Act,

shall be entitled to be maintained after the death of her husband by her father-in-law:

PROVIDED and to the extent that she is unable to maintain herself out of her own

earnings or other property or, where she has no property of her own, is unable to

obtain maintenance-

(a) from the estate of her husband or her father or mother, or

(b) from her son or daughter, if any, or his or her estate.

(2) Any obligation under sub-section (1) shall not be enforceable if the father-in law

has not the means to do so from any coparcenary property in his possession out of

which the daughter-in-law has not obtained any share, and any such obligation shall

cease on the re-marriage of the daughter-in-law.

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 insofar 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.

21. Dependants defined

For the purposes of this Chapter "dependants" means the following relatives of the

deceased:

(i) his or her father;

(ii) his or her mother;

(iii) his widow, so long as she does not re-marry;

(iv) his or her son or the son of his predeceased son or the son of predeceased son

of his predeceased son, so long as he is a minor:

PROVIDED and to the extent that he is unable to obtain maintenance, in the case of

a grandson from his father's or mother's estate, and in the case of a great grandson,

from the estate of his father or mother or father's father or father's mother;

(v) his or her unmarried daughter, or the unmarried daughter of his predeceased son

or the unmarried daughter of a predeceased son of his predeceased son, so long as

she remains unmarried:

PROVIDED and to the extent that she is unable to obtain maintenance, in the case of

a grand-daughter from her father's or mother's estate and in the case of a great

grand-daughter from the estate of her father or mother or father's father or father's

mother;

(vi) his widowed daughter:

PROVIDED and to the extent that she is unable to obtain maintenance-

(a) from the estate of her husband, or

(b) from her son or daughter if any, or his or her estate; or

(c) from her father-in-law or his father or the estate of either of them;

(vii) any widow of his son or of a son of his predeceased son, so long as she does

not remarry:

PROVIDED and to the extent that she is unable to obtain maintenance from her

husband's estate, or from her son or daughter, if any, or his or her estate; or in the

case of a grandson's widow, also from her father-in-law's estate

(viii) his or her minor illegitimate son, so long as he remains a minor;

(ix) his or her illegitimate daughter, so long as she remains unmarried.

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.

23. Amount of maintenance

(1) It shall be in the discretion of the court to determine whether any, and if so what, maintenance shall be awarded under the provisions of this Act, and in doing so the court shall have due regard to the considerations set out in sub-section (2), or sub-section (3), as the case may be, so far as they are applicable.

(2) In determining the amount of maintenance, if any, to be awarded to a wife,

children or aged or infirm parents under this Act, regard shall be had to-

(a) the position and status of the parties;

(b) the reasonable wants of the claimant;

(c) if the claimant is living separately, whether the claimant is justified in doing so;

(d) the value of the claimant's property and any income derived from such property,

or from the claimant's own earnings or from any other source;

(e) the number of persons entitled to maintenance under this Act.

(3) In determining the amount of maintenance, if any, to be awarded to a dependant under this Act, regard shall be had to-

- (a) the net value of the estate of the deceased after providing for the payment of his debts;
- (b) the provision, if any, made under a will of the deceased in respect of the dependant;
- (c) the degree of relationship between the two;
- (d) the reasonable wants of the dependant;
- (e) the past relations between the dependant and the deceased;
- (f) the value of the property of the dependant and any income derived from such property; or from his or her earnings or from any other source;
- (g) the number of dependants entitled to maintenance under this Act.

24. Claimant to maintenance should be a Hindu

No person shall be entitled to claim maintenance under this Chapter if he or she has ceased to be a Hindu by conversion to another religion.

25. Amount of maintenance may be altered on change of circumstances

The amount of maintenance, whether fixed by a decree of court or by agreement, either before or after the commencement of this Act, may be altered subsequently if there is a material change in the circumstances justifying such alteration.

26. Debts to have priority

Subject to the provisions contained in section 27 debts of every description contracted or payable by the deceased shall have priority over the claims of his dependants for maintenance under this Act.

27. Maintenance when to be a charge

A dependant's claim for maintenance under this Act shall not be a charge on the estate of the deceased or any portion thereof, unless one has been created by the will of the deceased, by a decree of court, by agreement between the dependant and the owner of the estate or portion, or otherwise.

28. Effect of transfer of property on right to maintenance
Where a dependant has a right to receive maintenance out of an estate, and such estate or any part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right or if the transfer is gratuitous; but not against the transferee for consideration and without notice of the right.

THE HINDU SUCCESSION (AMENDMENT) BILL, 2004

A BILL

further to amend the Hindu Succession Act, 1956.

2. For section 6 of the Hindu Succession Act, 1956 (hereinafter referred to as the

principal Act), the following section shall be substituted, namely:—

'6. (1) On and from the commencement of the Hindu Succession (Amendment)

Act, 2004, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,—

(a) also by birth become a coparcener in her own right; the same manner as the son here;

(b) have the same rights in the coparcenary property as she would have had if

she had been a son;

(c) be subject to the same liabilities and disabilities in respect of the said coparcenary property as that of a son,

and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference

to a daughter:

Provided that nothing contained in this sub-section shall apply to a daughter

married before the commencement of the Hindu Succession (Amendment) Act, 2004.

(2) Any property to which a female Hindu becomes entitled by virtue of subsection

(1) shall be held by her with the incidents of coparcenary ownership and shall

be regarded, notwithstanding anything contained in this Act or any other law for the

time being in force in, as property capable of being disposed of by her by will or other testamentary disposition.

(3) Where a Hindu dies after the commencement of the Hindu Succession

(Amendment) Act, 2004, his interest in the property of a Joint Hindu family governed

by the Mitakshara law, shall devolve by testamentary or intestate succession, as the

case may be, under this Act and not by survivorship, and the coparcenary property

shall be deemed to have been divided as if a partition had taken place and,—

(a) the daughter is allotted the same share as is allotted to a son;

(b) the share of the pre-deceased son or a pre-deceased daughter, as they

would have got had they been alive at the time of partition, shall be allotted to

the surviving child of such pre-deceased son or of such pre-deceased daughter;

and

(c) the share of the pre-deceased child of a pre-deceased son or of a predeceased

daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of

the pre-deceased so or a pre-deceased daughter, as the case may be.

Explanation.— For the purposes of this sub-section, the interest of a Hindu

Mitakshara coparcener shall be deemed to be the share in the property that would

have been allotted to him if a partition of the property had taken place immediately

before his death, irrespective of whether he was entitled to claim partition or not.

HINDU MARRIAGE ACT :

Divorce, under **section 13** of the Hindu Marriage Act 1955, can be obtained by both the spouses on the basis of any of the following 9 grounds:

- Adultery;
- Cruelty;
- Desertion for two years;
- Conversion of religion;
- Unsound mind;
- Suffering from venereal disease and/or Leprosy;
- has renounced the world;
- not heard of for 7 years;
- no resumption of co-habitation for one year after the decree of judicial separation, no restitution of conjugal rights for one year after decree for restitution of conjugal rights; Husband guilty of rape, sodomy or bestiality;
- If after an order of maintenance is passed under the Hindu Maintenance and Adoptions Act or the Criminal Procedure Code, there has been no cohabitation for one year.

In addition to the grounds, stated above, a wife may also present a petition for the dissolution of her marriage on the following grounds:

- Where the marriage was solemnized before the commencement of the Hindu Marriage Act, 1955:- 1. The husband had married again before such commencement; 2. That any other wife of the husband whom he had married before such commencement was alive at the time of the marriage;
- That the husband has, after the marriage, been guilty of rape, sodomy or bestiality;

□ That her marriage, whether consummated or not, was solemnized before she attained the age of 15 years and she has repudiated the marriage after attaining that age but before attaining the age of 18 years.

Looking at the whole procedure positively divorce may also take place with mutual consent of the parties involved. Under the Hindu Marriage Act, 1955 the spouses, who desire a divorce by mutual consent, have to present a joint petition in the court which has an appropriate jurisdiction. The parties, presenting such a petition, must claim with proof that:

- a. They have been living separately for a period of one year;
 - b. They have not been able to live together;
 - c. They have mutually agreed that marriages should be dissolved.
- Once the petition for Divorce by mutual consent is filed, the Court gives the parties 6 months` times to reconsider. The Court may pass a decree of divorce after a period of 6 months from the date of presentation of the petition and not later than 18 months after the date of presentation, incase the petition is not withdrawn.

As said above that it`s refreshing to know that a wife also can initiate a separation procedure and divorce as her lawful right under Criminal Procedure.

If any person who has sufficient means, neglects or refuses to maintain his wife (who is unable to maintain herself) then the wife can file an application before a Magistrate- I class- for maintenance. The Magistrate of the first class, upon proof of such neglect or refusal, will order such person to make a monthly allowance for the maintenance of his wife. A woman can claim maintenance from her ex-husband under law provided that she does not get remarried after divorce.

According to the Hindu Marriage Act, marriage is considered dissolved by the death of the husband or the wife or by divorce. Previously once the marriage is considered dissolved, a man could remarry immediately; however, remarriage for widows was strictly prohibited. While with a amendment in the Hindu Marriage Act widow`s remarriage was legalized, though it was and is still not accepted with a open mind in all the social classes.

Section 18(2) of the Hindu Adoption and Maintenance Act, 1956 which lays down the conditions under which a woman can claim separate residence. They are as follows:

- # If he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or of willfully neglecting her;
- # If he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband;
- # If he is suffering from a virulent form of leprosy;
- # If he has any other wife living;
- # if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere;
- # If he has ceased to be a Hindu by conversion to another religion;
- # If there is any other cause justifying her living separately.

This statutory provision allows the wife to live separately without forfeiting her claim for maintenance during the lifetime of the husband, whether she was married before or after the commencement of the Act. But a woman can only claim this right as a wife and not as a widow.

But a wife can claim such maintenance only if she is able to prove that the marriage was solemnized i.e. she must be legally married to the person against whom she is making the claim. But in the case of **Obula Konda Reddy v. Peda Venkata Lakshmana** the court held that the expression **Hindu Wife** as laid down in the Section 18 of the Hindu Adoption and Maintenance Act, 1956, would include a wife whose marriage is solemnized though the marriage is void.

Before this Act was passed in 1956, Section 19 of Hindu Woman's Rights to Separate Residence and Maintenance Act, 1946 had also provided for the provision for the claim for the separate residence on the part of the wife. Though there has not been a major changes on the grounds on which the claim can be made, certain terminology has been changed.

Clause (1) of the previous Act laid down the condition that, if he is suffering from any loathsome disease not contracted has been replaced by if he is suffering from a virulent form of leprosy. Even such changes can be seen to the in the Clause (3) of the 1946 Act said, If he is guilty of

desertion that is to say, of abandoning her without her consent or against her wish to which the word willful neglect has been added.

The first clause sets down the ground of desertion of the wife by the husband. Desertion generally means abandoning of the wife by the husband, under the following circumstances:

Without reasonable cause

Without her consent or against her wish

Willfully neglecting her

Desertion has been defined in the Section 13(1) of the Hindu Marriage Act, 1955 as,

Has not resumed cohabitation for a space of two years or upwards after the passing of a decree for judicial separation against that party. Thus, one can say that when the two spouses have been living separately due to the conduct of the other it is said to be desertion, but when two spouses live in two different places on the basis of their employment, it does not amount to desertion. But in most of the cases the desertion is determined from the existing circumstances. The test of preponderance of probabilities is sufficient to discharge the burden of proof so far as desertion is considered and proof beyond reasonable doubt is not necessary.

Under the matrimonial law, desertion is more of a mental act than a physical act. In its essence desertion is a total repudiation of the obligation of marriage or an abandonment of the deserted spouse with an intention to bring to bring the cohabitation to an end. To constitute a case of desertion two elements are to be established. They are:

1. The factum of separation
2. The intention to bring the cohabitation to an end (animus deserendi)

The animus deserendi must be permanent; as such a temporary intention would not lead to desertion. Furthermore, it is not necessary that both the fact of separation and animus deserendi occur in the same point of time. But a difference in this act lies from the Hindu marriage Act, as in this act it is not necessary to prove the animus deserendi. The presence of the factum of separation is sufficient to grant a decree for separate residence.

Thus one can infer that it is not necessary that desertion under this section, it is not necessary that the husband should have any animus deserendi. In many cases even Constructive desertion is noticed. The constructive desertion is the expression used to show that the spouse who forces the other to leave him, is guilty of desertion even though the

party going away from the matrimonial home as the other party. But one can never say that casual acts of sexual intercourse to be a resumption of marital relationship, where the deserting spouse was a party to such acts. After understanding the topic of desertion we now move on to clause (b) which explains the area of cruelty.

Under clause (b) where a husband treats his wife with cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband, the wife is entitled to claim the right to separate residence and maintenance. The marriage among Hindus is treated as is a holy union of husband and wife. Cruelty in married is not confined to mere physical torture, there may be cruelty caused unintentionally by the husband mentally without any physical injury. Generally to determine cruelty on the part of the husband the courts are of the opinion that the conduct of the husband should be more serious than the ordinary wear and tear of married life. The cumulative effect of the conduct taking into consideration the circumstances and background of the parties have to be examined before reaching to a conclusion. The conduct must be such that that no reasonable wife would tolerate it nor would the wife be called upon to endure it. Legal cruelty is generally determined mainly under the following heads;

1. Violence or Harassment: Actual violence or threat to such violence of such a character as to give rise to an apprehension of danger of life, limb or health will undoubtedly constitute cruelty. Use of foul and abusing language against the wife or her family, amounts to quarrels tending to disturb the wife's mental peace also amounts to cruelty.

2. Allegations of unchastity, adultery and impotence: Willful accusations made by the husband against the wife which are untrue and for which there can be no probable grounds can amount to cruelty. False charge of immorality against the wife is legal cruelty. The wife's association persisted in with another woman; raising suspicion of her practicing lesbianism is cruelty.

3. Mental cruelty: Repeated conduct of the husband which causes disgrace to the wife or subjects her to a course of annoyance would lead to mental cruelty. Habitual nagging by the mother-in law too frequent to be tolerated leading to constant dissatisfaction and mental torture would amount to cruelty. The question of mental cruelty should be decided in light of the norms of marital ties of a particular society to which the parties belong, their social values, status of the parties, their environments.

4. Excessive demand of sexual intercourse or abstinence from the same: Willful denial of sexual relationship by a spouse when the other spouse is anxious for it would amount to cruelty. Though mere refusal of sexual intercourse does not per se amount to cruelty but such a constant refusal amounts to cruelty. But excessive sexual intercourse, which affects the health of the wife, would lead to cruelty.

Thus, if the husband does an act of such a character which is injurious to health, but is not necessary that it must have reached that point at which the injury has been caused, only if there is reasonable ground to believe that it will be persisted and the wife can apprehend a reasonable source of danger to her life then she can claim of separate residence under this Act.

The third ground on which a wife is entitled to live separately is where the husband is suffering from a virulent form of leprosy. Medical testimony can be of considerable assistance and even guidance but ultimately the question is one for the court and not for the experts and evidence of experts does not relieve the court from the obligation of satisfying itself beyond reasonable doubt on the question whether leprosy from which the person suffers is both of virulent and incurable form. The term virulent is not a medical term and thus can be interpreted by referring to the meaning given to it under Hindu law for excluding a person from inheritance. But unlike the 1946 Act the wife cannot claim separate residence if her husband is suffering from any other form of venereal disease.

Leprosy is considered to be such a dangerous disease that it affects adversely even the marital relations. The term 'leprosy' is generally interpreted as malignant or infectious. Under Section 10(1) of the Hindu Marriage Act, 1955 either party to a marriage is entitled to judicial separation and under Section 13(1)(iv) of the said Act, either party to a marriage is entitled to seek divorce if the other spouse is suffering from a virulent form of leprosy. But the distinguishing factor between these two Acts is that for the purpose of judicial separation the wife has to prove that the husband's illness is leading to a detriment to her life, but such a thing is not necessary for the purpose of this Act. This Act does not though specify any limitation period till which the wife can claim the separate residence, but it is always said that as soon as she comes to know about this disability of her husband. The main reason to incorporate this ground in the Act is because this disease itself is so dangerous that leads to the contracting of the disease

by any other person leaving in constant touch with the patient, and thus automatically calls for a right of separate residence.

Under clause (d) of this section a wife gets a right to live separately if the husband has any other wife living. Under the old law, second marriage by the husband was not a ground under which the wife could have claimed separate residence.

The term 'any other wife living' has been interpreted by the courts quite varied interpretation. By the word 'living' does not mean living in the same house as the husband, the fact that the wife is alive, would give rise to a cause of action on the part of the second wife to claim maintenance. Though there have been cases like that of *Annamalai Mudaliar v. Perunayee Ammal* where the phrase was interpreted to be meaning that the other wife must be living in the same house with the husband. But in another case of *Mani Bai v. Mukundarao* the court disagreed with the Mudaliar's decision. In cases of a voidable marriage under section 12 of the Hindu Marriage Act a marriage is always held to be valid, if it is recognized as so by the court. Thus even the second wife would have a right to claim maintenance and separate residence.

One may feel that this clause gives rights to the second wife to deny to reside with the husband in case his first wife is also living with him, but this assumption is quite wrong, due to the fact that even the first would have the ground to claim a separate residence. In many cases it has been seen that the husband has married again with the consent of his first wife because there was no children from the first wife. The court in these cases has also allowed the second wife to claim a separate residence, but the claim of the first wife was not acknowledged.

Thus, this ground provides the wife to refuse to live with her husband, who has another wife; it is not improper for a wife to do so. Under the next clause the wife can claim a separate residence under the ground, if her husband has a concubine who is brought to live in the same house or the husband resides with the concubine when she resides elsewhere. A concubine is known in Hindu Law as *avaruddha Stree*, which means lesser wife. Though she is not treated as a prostitute but it is indicative of a woman attached to or keeping of a man either on amorous or for other reason and who is not bound by bonds of marriage. The Privy Council held that these 'Avaruddhastree' would be entitled to maintenance also. But a wife of a void marriage can never be compared to a concubine. But even if the first wife of a void marriage is given a status of a concubine, the first wife cannot claim maintenance under this clause unless the legal requirements are fulfilled. But unlike a

concubine the wife of a void marriage can always apply for maintenance under Section 25 of the Hindu Marriage Act.

The term 'resides' has been many times construed by the court to mean dwelling place and indicates the place where somebody stays permanently. The phrase habitually resides has also be interpreted by the court in very many ways. By this term the emphasis is more placed on **habitually resides**, the emphasis is more on the word 'habit'. The insistence if placed on the word 'residence' would ruin the purpose of this clause as this would mean that when the husband moves away from one place to the other and keeps the concubine in the previous residence and thus escape from the ambit of this clause. Thus for applying this clause one has to apply it in such a way so as to mean, when the husband lives with the concubine the course of conduct must be spread over a longer period, his mental attitude in visiting the place of the concubine, his assertions, his involvement with such other woman, have to be considered for determining whether such a husband habitually resides with the concubine or not.

Section 18(2)(f) of this Act entitles a Hindu wife to live separately if the husband is converted to another religion. Under Section 13(1)(ii) of the Hindu Marriage Act, conversion to any other religion amounts to a ground for divorce. But this religion must not be such that he would still be considered a Hindu (e.g. if he gets converted to Jainism). A mere theological allegiance to the Hindu faith by the person born in another faith does not convert him into Hinduism, thus even if a person is by birth a Hindu, but fails to observe all the obligations of Hinduism, then he does not cease to be a Hindu. A husband who converts to another religion cannot claim that as he has converted to another religion, this law would not govern him. Thus the conversion of a husband automatically provides a wife to claim separate residence and maintenance as well from the converted husband.

Under the next and the last sub section, the Hindu wife would be entitled to live separately from her husband without forfeiting her claim to maintenance, if there is any cause justifying her living separately. The expression 'any other cause justifying her living separately' looks into the fact the husband's home is rendered miserable. It is now well settled that to constitute a cause justifying living separately, the conduct of the husband must be grave and weighty and which may cause annoyance to the wife or resented by her does not amount to reasonable cause. The conduct should be such that makes cohabitation virtually unendurable. Generally the court has to find out the root cause and the

genesis of the problem that eventually culminated in their separation and the judicial mind has to be applied to resolve this crucial question. The grounds under which such a ground can be claimed are as follows:

- # Intentional neglect
- # False Allegation of Chastity
- # Physical Torture
- # Denial of marriage
- # Comparison with any other woman

This clause is related to Section 9 of the Hindu Marriage Act. Sec. 9 says that if a spouse has withdrawn from the society 'without any reasonable' excuse then the other spouse is entitled to claim restitution of the conjugal rights. The grounds, which would be available to a wife to defeat the petition to her husband for the restitution of conjugal rights, would also entitle her to live apart from her husband and claim maintenance. Certainly a husband under Section 9 can claim the restitution of conjugal rights if such grounds prevail but he can never use it as a defense to the not granting of separate residence and maintenance to his wife.

DOMESTIC VIOLENCE ACT :

The Act seeks to cover those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or a relationship in the nature of marriage, or adoption; in addition relationship with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or living with the abuser are entitled to get legal protection under the proposed Act.

'Domestic violence' includes actual abuse or the threat of abuse that is physical, sexual, verbal, emotional and economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

Right to Secure Housing under

One of the most important features of the Act is the woman's right to secure housing. The Act provides for the woman's right to reside in the matrimonial or shared household, whether or not she has any title or rights in the household. This right is secured by a residence order, which

is passed by a court. These residence orders cannot be passed against anyone who is a woman.

Preventive Order

The other relief envisaged under the Act is that of the power of the court to pass protection orders that prevent the abuser from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the abused, attempting to communicate with the abused, isolating any assets used by both the parties and causing violence to the abused, her relatives and others who provide her assistance from the domestic violence.

The Act provides for *appointment of Protection Officers and NGOs* to provide assistance to the woman w.r.t medical examination, legal aid, safe shelter, etc.

Non-bailable Offence

The Act provides for breach of protection order or interim protection order by the respondent as a cognizable and non-bailable offence punishable with imprisonment for a term which may extend to one year or with fine which may extend to twenty thousand rupees or with both. Similarly, non-compliance or discharge of duties by the Protection Officer is also sought to be made an offence under the Act with similar punishment.