

Matrimonial disputes and Remedies

It is said that the marriage are made in heaven. True couples, who do not have any dispute really find their marriages are made in heaven. They feel heavenly, but those, who have matrimonial disputes, do not feel that their marriages are made in heaven. They feel that their marriages are made in hell and really matrimonial dispute do make one's life hell.

It is unfortunate that we Indian are not in the habit of seeking legal advice or finding out legal implication of anything before starting that thing. This apathy is found much more in a matrimonial life. First of all, what are the legal requirements of valid marriage? How should a valid marriage be performed? What can happen if there are disputes after marriage? What are rights of the husband and wife? If it has come to a point of breakdown, how divorce can be obtained? What happens to joint property? What happens to children after divorce? Is it easy to obtain a Divorce? How much time it takes to obtain a Divorce. Moneywise how much it will cost in legal fees and other expenses to obtain a Divorce? Majority of the people do not take the trouble to find out answer to these questions until these eventualities arise. There are forced to seek answer.

First of all, in Indian to marry, a male should be 21 years of age and more. A women should be of 18 years or more. They both should not ne have married before and if they are married their earlier marriage should have been terminated through death of their spouse or divorce granted by a competent court of law.

Many obtain Divorce by executing Divorce Deed. This is not legal and not accepted unless and until there is proven age old custom prevailing amongst them to

terminate marriage by executing Divorce Deed. Even if you have such ancient practice in your community to obtain Divorce by executing Divorce Deed, it is advisable that you obtain a divorce from a competent court of law.

Many people are under an impression that if they have stayed separately from their husband or wife for 5-7 or more years, their marriage is automatically terminated and they are divorced. This belief is utterly wrong. Even if husband and wife stayed separately for their whole life, and if they are not divorced, they continue to remain married.

Law which is governs matrimonial issues in India are:

- a) Hindu Marriage Act, 1955.
- b) Special Marriage Act, 1954
- c) The Parsi Marriage and Divorce Act, 1936 (Amendment 1988)
- d) The Muslim Marriage Act, 1939
- e) Indian Divorce Act,1869
- f) Indian Penal Code,1860
- g) The Code of Criminal Procedure Code, 1973
- h) Hindu Adoption and Maintenance Act, 1956
- i) Guardian and Wards Act, 1890
- j) Hindu Minority and Guardianship Act, 1956
- k) The Protection of women from Domestic Violence Act, 2005

The object of this simple booklet is to provide basic information and tips relating to matrimonial disputes. We however strongly suggest that as before marriage we try to match the horoscopes of couple, it would be in the interest of everyone

to seek proper legal advice from a professional concerning all issues, good or bad, which could arise in one's matrimonial life.

- 1) If you are marrying according to religion rites, take care to see that all the religious rites and ceremonies required to perform a marriage, according to your religion, are performed. Many times important religious ceremonies are omitted either because the priest performing the ceremony is in a hurry, as he has to perform another marriage or the bride and/or bridegroom and/or their parents are in a hurry to complete the marriage ceremony. In present days it is possible to have entire marriage ceremony video recorded and photographed. It is advisable to have both.
- 2) Many couples do not bother to know the name of the person performing the religious ceremony of their marriage. If they are getting married before Marriage Registrar appointed under the Special Marriage Act, they do not take the trouble of knowing the full name of the Marriage Registrar. It is always better to know this persons full name and contact details.
- 3) It is advisable to preserve receipt of payment of Marriage Hall, Caterer's Bill, if marriage performed under Special Marriage Act, then the receipt of the fees paid to the registrar's office.
- 4) A marriage, in whatever way performed, it should be registered and parties should obtain the Marriage Certificate.
- 5) "Court Marriage" is a misnomer. No court in India performs a marriage. What is known as "Court Marriage" is a marriage performed under the Special Marriage Act, before the Registrar of marriages.

- 6) "Court Marriage" or marriage performed before Registrar of Marriages if performed only with a view to receive a visa of a foreign country [specially USA] and after the visa is received parties have an intention to perform marriage according to their religious rites and then only start living as husband and wife then such marriages are considered a fraud. They are performed not to live as husband and wife but only to receive visa.
- 7) If you marry someone residing abroad and desire to migrate to the country where your spouse is residing, you are entirely dependent on your foreign spouse. He may at times decline to support you and may withdraw the petition filed for your benefit.
- 8) In India a petition for divorce can be filed only where the marriage was performed or where the parties last resided together or where the respondent, against whom the petition for divorce is filed, is residing. In America this is not the case. A USA court will assume jurisdiction even if marriage is not performed in America or the parties have not resided together in America or the Respondent against whom the Petition is filed is not residing in America. The Respondent, be a husband or a wife, even if he or she has not put his or her foot on the USA soil, then also if the Petitioner is residing in America, the USA court will entertain the Petition and pass orders.
- 9) If the Marriage is performed under Hindu Marriage Act or under Special Marriage Act, a Divorce can be obtained on the following grounds;
 - **Adultery** – The act of indulging in any kind of sexual relationship including intercourse outside marriage is termed as adultery.

- **Cruelty** – A spouse can file a divorce case when he/she is subjected to any kind of mental and physical injury that causes danger to life, limb and health. The intangible acts of cruelty through mental torture are not judged upon one single act but series of incidents. Certain instances like the food being denied, continuous ill treatment and abuses to acquire dowry, pervert sexual act etc are included under cruelty.
- **Desertion** – If one of the spouses voluntarily abandons his/her partner for at least a period of two years, the abandoned spouse can file a divorce case on the ground of desertion.
- **Conversion** – In case either of the two converts himself/herself into another religion, the other spouse may file a divorce case based on this ground.
- **Mental Disorder** – Mental disorder can become a ground for filing a divorce if the spouse of the petitioner suffers from incurable mental disorder and insanity and therefore cannot be expected to stay together.
- **Leprosy** – In case of a 'virulent and incurable' form of leprosy, a petition can be filed on this ground.
- **Venereal Disease** – If one of the spouses is suffering from a serious disease that is easily communicable, a divorce can be filed. The sexually transmitted diseases like AIDS are accounted to be venereal diseases.
- **Renunciation** – A spouse is entitled to file for a divorce if the other renounces all worldly affairs by embracing a religious order.
- **Not Heard Alive** – If a person is not seen or heard alive by those who are expected to be 'naturally heard' for a continuous period of seven years, the person is presumed to be dead. The other spouse should need to file a divorce if he/she is interested in remarriage.
- **No Resumption of Co-habitation** – It becomes a ground for divorce if the couple fails to resume their co-habitation after the court has passed a decree of separation.
- The following are the grounds for divorce in India on which a petition can be filed only by the wife.
 - If the husband has indulged in rape, bestiality and sodomy
 - If the marriage is solemnized before the Hindu Marriage Act was enacted and the husband has again married another woman in spite of the first wife being alive, the first wife can seek for a divorce.

- A girl is entitled to file for a divorce if she was married before the age of fifteen and renounces the marriage before she attains eighteen years of age.
- If there is no co-habitation for one year and the husband neglects the judgment of maintenance awarded to the wife by the court, the wife can file for a divorce.

10) Based on the Dissolution of Muslim Marriage Act, 1939, a Muslim woman can seek divorce on the following grounds in India.

- The husband's whereabouts are unknown for a period of four years.
- The husband has failed to provide maintenance to the wife for at least two years.
- The husband has been under imprisonment for seven or more years.
- The husband is unable to meet the marital obligations.
- If the girl is married before fifteen and decides to end the relationship before she turns eighteen.
- The husband indulges in acts of cruelty.
- A Muslim now cannot give Divorce to his wife by pronouncing 3 times Talak.. Talak.... Talak..

11) A Christian can obtain Divorce on the ground mentioned in Indian Divorce Act, which are as follows:

- Adultery
- Conversion to another religion
- One of the couples suffering from an unsound mind, leprosy or communicable venereal disease for at least two years before the filing of the divorce.
- Not been seen or heard alive for a period of seven or more years.
- Failure in observing the restitution of conjugal rights for at least two years.

- Inflicting cruelty and giving rise to mental anxiety that can be injurious to health and life.
- Wife can file a divorce based on the grounds of rape, sodomy and bestiality.

12) The following are the grounds for divorce in India included in the Parsi Marriage and Divorce Act, 1936 and the amendment of the same in 1988.

- Continuous absence of seven years.
- Non-consummation of marriage within one year.
- Unsound mind provided the other spouse was unaware of the fact at the time of marriage and the divorce must be filed within three years of marriage.
- Pregnancy by some other man, provided the husband was unaware of the incident during the time of marriage and that he must not have undergone sexual intercourse after he came to know about the situation. The divorce must be filed within two years of marriage.
- Adultery, bigamy, fornication, rape, or any other type of pervert sexual act.
- Act of cruelty
- Suffering from venereal disease or forcing the wife into prostitution.
- Sentenced to prison for seven years or more
- Desertion for two or more years.
- Non-resumption of cohabitation after passing an order of maintenance or a decree of judicial separation.

13) If a Hindu decides to marry a Muslim it is not compulsory for that Hindu wife or Husband to convert herself/himself to Muslim. They can get marriage to each other under the Special Marriage Act, and both can perform their own religion.

- 14) Laws of inheritance will change if person are married under Special Marriage Act.
- 15) It is necessary for everyone, young or old, to make his own Will and have the same registered. This will obviate disputes amongst legal heirs after their death.
- 16) The belief that Will should be made after one become senior citizen is erroneous. We see many young deaths around us.
- 17) It is not compulsory that one must in his/her Will give his or her properties to their children only. Many wrongly believe that daughters could not be given anything in Will.
- 18) Many also think all the children should be given equally in the Will. A person can give all his self acquired property to any one whom he or she wishes. He may give this self acquired property to any outsider or to charity. It is not necessary that it should be given to own children only.
- 19) It is always advisable to prepare Will through competent advocate. It is also advisable to have the Will registered. Executors appointed in the Will should be such persons who are your well-wishers and not persons who would harass your legal heirs.
- 20) Will is required to be attested by two persons. Take care that they do are younger than you and are not the person to whom you have given bequests in your Will.
- 21) If you are owning a flat in a cooperative society, you must have nominated your wife or husband or son or daughter as your nominee. Please note that, that nominee does not become the owner of the flat after your death, if you

have made a Will then the person to whom you have given your flat in the Will shall become the owner. If you have not made Will then your legal heirs shall be the owner of your flat. Nominee does not become the owner. If you desire that after your death your nominee should be the owner of flat then you must make your Will and give your flat to that nominee in your Will.

- 22) Normally when we invest our monies in Fixed deposits with Bank or other financial institutions, we mention someone as our nominee. That nominee is entitled to receive the money but is not the owner of that money. Your legal heirs or the person to whom you have given your property in your Will will be the owner of that money. So if you intent that he person whom you have nominated in your Fixed Deposit should also receive that amount then you must make a Will and give the amount of the fixed deposit to that nominee.
- 23) Husband many times make his wife a proprietor of their business, which they are carrying on, at times instead of they themselves they make their wife as partner in a business. The business is actually carried on by them. The wife is totally unaware about the affairs of that in the even if anything goes wrong. They would be held responsible for that business, such wife are made to sign cheques disnonoured then the creditors will hold, those wife responsible and if they file Criminal complaint for such dishonoured cheque then the wife will be the accused and required to attain Magistrate court and Magistrate will punish them not their husband.
- 24) In our society normally the husband is accepted to pay the Bills. If there is a matrimonial dispute it is wife who claim maintenance form the husband. Husband do not claim maintenance from wife. However this is not the law.

This is not the rule, if the wife is earning and husband is not, then the husband can claim maintenance from his wife.

- 25) While awarding maintenance, the court normally considered the proven income of the husband and award 1/3 of that amount to the wife. If there are children depending upon number, age of the children further 1/3 amount is ordered to be paid them.
- 26) If a Petition for Divorce is contested in Mumbai, it may take 3 to 4 years or more for the case to be decided. In many cases the time taken to resolve a dispute is unbelievably lengthy. Once the family court passes a decree the aggrieved party can approach High Court and from High Court decision to Supreme Court also. It is therefore prudent not to litigate but to have differences resolved amicably, tried to reunite and if the same is not possible then to take Divorce by Mutual Consent. Even obtained Divorce by Mutual consent involves about 6 month time.
- 27) In a matrimonial dispute child is the greatest sufferer. Normally if the child is of tender age custody is given to mother, however father is generally granted visitation rights.
- 28) If the matrimonial dispute cannot be resolved amicably div cannot be obtained by Mutual Consent then other remedies are to request the court to refer the matter to Mediator. Mediator are normally sitting Judges or practicing advocate and they try to resolve the differences and dispute of the parties. Their aim is to unite the parties, but if same is not possible then they try to see that parties do not wash dirty linen in open court and separate each other amicably.

29) This are few of the important things of life, if you would follow them, you will obviate many difficulties from your life.