MAINTENANCE RIGHTS OF WOMEN IN VOID MARRIAGES UNDER HINDU LAW: A SOCIO-LEGAL CRITIQUE

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Abstract

Financial independence in matrimonial relations decides the length and breadth of the relationship in contemporary Hindu society. To a great extent, marriage provides emotional, psychological, social, spiritual and financial support to the spouses. However, marriage status determines the fate of matrimonial rights and remedies. In the absence of a due legal status of marriage, married women become victims of socio-economic and legal vulnerabilities, which are unique to women, wherein they have no legal provisions towards victim compensation in the existing matrimonial laws. Different judicial pronouncements have provided different remedies, including maintenance under various laws, to the women whose marriages were not validly solemnised. But at the same time, it infringed upon the marital rights of wives whose marriages have been duly solemnised under Hindu law. The authors of this paper examine the discrepancies in law regarding the maintenance rights of women in void marriages and propose suitable mechanisms to provide financial assistance to such women when they are found to be destitute, either by their husbands, in-laws, or the legal system.

I Introduction

MARRIAGE AS a primary institution is very significant even in contemporary Hindu society. Hindu law recognises marriage as one of the fundamental objects of one's life. As an institution, marriage not only regulates the sexual behaviour of its parties but also validates and legitimizes offspring born out of legal wedlock, bestows social recognition and provides them with ample rights. It also imposes obligations on wives and husbands, inculcating in them righteous behaviour not only towards each other but also towards family members and society at large. Since time immemorial, this institution has been renowned for its contributions to human civilisation, despite differences of opinion among scholars on its impact. This institution has witnessed numerous transitions across countries, where some individuals do not marry and create a family on their own, remaining solo or as members of either their father's or brother's family or relatives. State-made mechanisms can control external behaviour, but internal conflicts can only be controlled by religion or faith in the religion or its mechanisms. Therefore, even social scientists recognise marriage and religion as institutions among others and respect them highly.

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With the progress in civilisation, people have forgotten their purpose in life and have suffered from the pursuit of their goals. Becoming liberal towards these institutions and their individuality grows manifold day by day and year after year. As a result, many individuals do not marry, and live-in relationships or situationships are increasing in contemporary society, where these cohabiting partners avoid all marital obligations enshrined in *shastras* and customary practices, opting to remain free from marital obligations to each other. In some cases, they produce children without planning to have a family and are least bothered about the social and legal consequences of such relationships, as well as the socio-legal status of children born out of such relationships. Indian society has yet to accept such kinds of relationships, and it may take some more time to accept children from such types of relationships. The lawmakers enacted a law in 2005, *viz.*, the Protection of Women from Domestic Violence Act, to provide legal protection to such live-in partners, but they have yet to protect and provide a legal remedy to the children born to such cohabitors. One can imagine that when such co-habitants and their children do not receive due social recognition and legal protection, it raises questions about how they should behave in family and society, and what kind of citizens they should be in a nation-state, ultimately challenging social control and social order.

In the same way, if a duly solemnised marriage is not treated differently from a non-duly solemnised marriage among Hindus, how should the 'spouse' of a duly solemnised marriage behave better than the non-duly solemnised person? The existing legal mechanism takes care of children born out of 'void' and 'voidable' marriages. However, it treats the women involved in 'void' and 'voidable' marriages with different parameters in different cases, which creates unhealthy practices among marriageable people. Such a social and legal system provides no incentive for righteous and law-abiding young individuals who wish to start their families by following social norms and legal processes.

Further, in cases of void marriages, there has always been one of the parties to such marriage at fault for whether he or she has concealed the material facts of his or her previous marriage or information regarding 'within the degrees of prohibited relationship' or '*sapindas* to each other' which he or she could have revealed before entering into the marriage with the second man or woman. The other party is aggrieved or a victim of such a marriage, who has also been treated otherwise by family members and society at large. Such a marriage becomes even more complex if a child is born out of it. One should not forget the poverty, education and financial dependency of women even in contemporary Indian society, as such factors are significant in terms of prosperity and empowerment of women. But in the present set-up of legal framework and social norms, it is the women who suffer many times more than men in such marriages. In marital proceedings, the courts of competent jurisdiction award

maintenance to the petitioner, *pendent lite* or permanent alimony to such a party who does not either have sufficient means to maintain herself or himself or has no means to maintain herself or himself against the respondent. Such a justice dispensation system views the maintenance award as justice to the petitioner, considered the innocent party, and as *punishment* to the respondent, who has committed a matrimonial offence or is found to be at fault in marital obligations.

Furthermore, in the context of void marriages under Hindu law, the application of victimology principles is imperative in recognising the inherent injustice faced by women who enter such marriages in good faith. Victimology, as the study of victimisation, focuses on understanding the experiences of victims, including their rights, needs, and the reparative mechanisms available to them. When a woman unknowingly enters into a void marriage, one that lacks legal validity due to factors such as bigamy, degrees of prohibited relationship, *sapinda* relationship, or other statutory violations, she becomes a victim not only of her spouse's deceit or non-disclosure but also of societal prejudices and legal shortcomings that fail to protect her interests. This victim status is compounded by the socio-legal and economic vulnerabilities, particularly in patriarchal societies where women are often financially dependent and socially stigmatised following the breakdown of marital relationships. Unlike men, women are disproportionately affected by void marriages due to the deep-rooted gender biases that pervade legal interpretations and societal norms. Victim compensation in such cases, rooted in compensatory jurisprudence, should not be limited to maintenance or alimony tied to the status of a 'legally wedded wife'. Instead, it should encompass a broader understanding of damage or harm, including emotional distress, social alienation, and financial instability, thus warranting a distinct framework for victim compensation in such marriages, irrespective of marital legality. By viewing women in void marriages as victims, the law must acknowledge the multifaceted damage or harm they endure and pave the way for legal reforms that extend beyond traditional maintenance laws. Recognising these women as victims aligns with the broader victimological perspective that emphasises restorative justice and the state's duty to protect all individuals from damage or harm, including those arising from the misuse of marital norms. Legislative amendments that explicitly include victim compensation for women in void marriages would serve as a corrective measure, ensuring that the legal system not only punishes the guilty party but also provides tangible support to the aggrieved. This approach upholds the principles of equity, good conscience, and justice, reinforcing societal trust in the legal system and promoting a balanced and fair adjudication of marital disputes.

Therefore, a considerable responsibility lies with lawmakers to enact timely and suitable laws in accordance with society's needs, and with courts to adjudicate marital matters while maintaining a balance with a socio-legal approach. This approach enables young,

brilliant, and marriageable-age individuals to gain confidence and honour the institutions of religion and marriage, making their lives more meaningful. This paper broadly ponders upon the maintenance rights of Hindu women in void marriages and attempts to suggest a way forward in dealing with such women's sufferings.

II Hindu marriage and the law

Under ancient Hindu law, marriages took many forms, with social, economic, and legal consequences. However, after the enactment of the Hindu Marriage Act, 1955, there is only one form of marriage, which is monogamous in its nature as solemnised under Sections 5 and 7 of the Hindu Marriage Act, 1955. The Act of 1955 codified the ancient Hindu law of marriage and provided a uniform marriage law to Hindus. Marriage is essentially the voluntary union of a man with a woman to the exclusion of all others for life. Justice S. Rajendra Babu of the Supreme Court of India rightly opined, "*The basic unit of society is the family, and that marriage creates the most important relation in life, which influences morality and civilization of people, than any other institution.*"[1] Section 5 of the Hindu Marriage Act, 1955, provides the conditions for a Hindu marriage, which are the prerequisites that the intended parties must fulfil. Once both intended parties fulfil these conditions, they are required to solemnise their marriage as per the customary rites and ceremonies applicable to the parties as provided by section 7 of the said Act. Only after the duly solemnization of marriage are parties bestowed with the legal status of being a 'legally wedded husband' and 'legally wedded wife'. This status brings them matrimonial rights and remedies in the matrimonial home. Further, Justice B.V. Nagarathna of the Supreme Court of India in *Dolly Rani* v. *Manish Kumar Chancha,l* [2] observed that, "the Hindu Marriage Act, 1955, solemnly acknowledges both the material and spiritual aspects of this event in the married couple's lives. Besides providing a mechanism for the registration of marriages in order to confer the status of a married couple and acknowledge rights *in personam* and rights *in rem,* a special place is given to rites and ceremonies in the Act. It follows that the critical conditions for the solemnizing of a Hindu marriage should be assiduously, strictly and religiously followed. This is for the reason that the genesis of a sacred process cannot be a trivial affair. The sincere conduct of and participation in the customary rites and ceremonies under Section 7 of the Hindu Marriage Act, 1955 ought to be ensured by all married couples and priests who preside over the ceremony."[3]

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1 *Sumedha Nagpal* v. *State of Delhi*, (2000) 9 SCC 745, 748.

2 2024 SCC OnLine SC 754.

3 *Id.,* at 16.

However, suppose in a case the conditions specified in Clauses (i),[4] (iv)[5] and (v)[6] of Section 5 of the Hindu Marriage Act, 1955 are contravened; in that case, Section 11 of the said Act[7] may declare, by following due process of law, such marriages as null and void. The annulment of such a marriage declared under Section 11 of the said Act does not confirm the status of being a 'legally wedded husband' or 'legally wedded wife', and such a 'party' without the status loses matrimonial rights and remedies in law and faces social mores. Section 11 of the said Act deals with different kinds of marriages that are declared void. One such marriage occurs when a woman contracts it with a man who has a spouse living at the time of the marriage, or when a man contracts it with a woman who has a spouse living at the time of the marriage. Such a marriage falls under the category of polygamy, which is not permitted under the Hindu Marriage Act, 1955. A court of competent jurisdiction declares such a marriage as void *ab initio* by following due process of the law. Another marriage that falls into this category is one contracted by parties who are 'within the degrees of prohibited relationship' or *'sapindas* to each other'. These marriages are also void in their nature unless a 'custom or usage' governing each of them permits such a marriage. If no custom permits the marriage of two persons 'within the degrees of prohibited relationship' or '*sapinda* relationship', in such a case, the marriage is considered to be null and void and does not confer any status on the parties. Both parties are considered relatives because they are either 'within the degrees of prohibited relationship' or '*sapindas* to each other'. As they are relatives of each other, social norms and Hindu law prohibit their marriage. The first category, where section 5(i) read with section 11 of the said Act, has no bearing on any custom or usage which may or may not apply to each of the parties to such a marriage. Still, in the eyes of the law, such a marriage is void *ab initio* and is to be considered non-existent. As a result, such a marriage does not create any legal status for the parties involved. However, in another category, 'custom' or 'usage' may play a vital role in legalizing, legitimizing and validating such a marriage between two heterosexuals who are either 'within the degrees of prohibited relationship' or '*sapindas* to each other', and such a marriage remains valid in the eyes of the law and also confirms legal status on the parties. While observing the reasons and objects of Section 11 of the Hindu Marriage Act, 1955, Justices L.M. Sharma and M.M. Punchhi of the Supreme Court of India in *Maharani Kusumkumari* v.

4 S. 5(i) reads as "neither party has a spouse living at the time of the marriage".

5 S. 5(iv) reads as "the parties are not within the degrees of prohibited relationship, unless the custom or usage governing each of them permits of a marriage between the two".

6 S. 5(v) reads as "the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two".

7 S.11 reads as "Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto, against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5".

Kusumkumari Jadeja[8] case opined that, "there is no reason to interpret Section 11 in a manner which would narrow down its field. With respect to the nature of the proceeding, what the court has to do in an application under Section 11 is not to bring about any change in the marital status of the parties. The effect of granting a decree of nullity is to discover the flaw in the marriage at the time of its performance and accordingly to grant a decree declaring it to be void".[9]

Further, if a marriage contravened the conditions specified in Clause (ii) of Section 12 of the Hindu Marriage Act, 1955, such a marriage may be annulled by a court of competent jurisdiction on the grounds mentioned in section 12. Such 'spouses' will bear the consequences of the marriage being annulled by following the due process of law. Therefore, the marital status determines the claim of 'spouses' on matrimonial rights and remedies in law. If any marriage is declared null and void under Section 11 of the Hindu Marriage Act, 1955 or annulled by a decree of nullity under section 12 of the said Act, the parties involved in such a decree lose certain matrimonial rights and remedies. However, Section 16 of the Hindu Marriage Act, 1955, provides the law relating to the status of children born out of wedlock, governed under Sections 11 and 12 of the Hindu Marriage Act, 1955, and also provides them with legal remedies.

In regards to the maintenance of a 'legally wedded spouse', there are provisions in Hindu personal law, such as the Hindu Marriage Act, 1955 and the Hindu Adoptions and Maintenance Act, 1956 and also in public law, such as earlier the Code of Criminal Procedure, 1973 and after July 1, 2024 as replaced by the Bharatiya Nagarik Suraksha Sanhita, 2023, and the Protection of Women from Domestic Act, 2005 that apply to all women irrespective of their personal law. The Hindu Adoptions and Maintenance Act, 1956, the Bharatiya Nagarik Suraksha Sanhita, 2023 and the Protection of Women from Domestic Act, 2005, provide maintenance only to the 'wife', whereas the Hindu Marriage Act, 1955, provides maintenance to both 'spouses', subject to the provisions laid down in Sections 24 and 25 of the Hindu Marriage Act, 1955. Section 24 provides for maintenance *pendente lite* and expenses of proceedings to either the 'wife' or the 'husband', as the case may be, who has no independent income sufficient for their support and the necessary expenses of the proceeding. At the same time, Section 25 of the said Act provides permanent alimony to the parties thereto. Nevertheless, to claim any remedy, more specifically, the maintenance alimony by a married Hindu woman, the High Court of Bombay held that, "it is a fundamental principle of law that in order to claim relief from the court of law, there must be a legal right based on legal status. When the status of a woman as 'wife' is not recognised by the provisions of the Hindu Marriage Act, 1955, which confers the right for

8 (1991) 1 SCC 582.

9 *Id.* at 588.

permanent alimony, she cannot be entertained for a grant of relief in the absence of recognition of her status by the said Act."[10] Such matrimonial remedies were in different forms under old Hindu law. *Shastric* texts emphasised duties or obligations to be followed in married life, and both 'husband' and 'wife' were under obligations against each other in their married life.

Justice A.K. Mukherjea of the Supreme Court of India in *Swarajya Lakshmi* v. *G.G. Padma Rao*[11] case opined that, "Marriage, according to Hindu law, is a sacrament and a holy union for the performance of religious duties. There can be no question of either endangering or rupturing that relationship on account of the conduct of the parents. That is why marriage, even though brought about during the minority of either party thereto, does not make the marriage invalid. Divorce and dissolution of marriage are concepts which were alien to Hindu law before the statute stepped in to modify the traditional law."[12] Hence, marriage is a significant socio-legal institution in the life of Hindus, providing them with social recognition and legal protection. Further, Justice B.V. Nagarathna of the Supreme Court of India in *Dolly Rani* v. *Manish Kumar Chanchal*[13] observed that, "we urge young men and women to think deeply about the institution of marriage even before they enter upon it and as to how sacred the said institution is, in Indian society. A marriage is not an event for 'song and dance' and 'wining and dining' or an occasion to demand and exchange dowry and gifts by undue pressure leading to possible initiation of criminal proceedings thereafter. A marriage is not a commercial transaction. It is a solemn foundational event celebrated so as to establish a relationship between a man and a woman who acquire the status of a husband and wife for an evolving family in future which is a basic unit of Indian society. A Hindu marriage facilitates procreation, consolidates the unit of family, and solidifies the spirit of fraternity within various communities. After all, a marriage is sacred, for it provides a lifelong, dignity-affirming, equal, consensual and healthy union of two individuals. It is considered to be an event that confirms salvation upon the individual, especially when the rites and ceremonies are conducted. The customary ceremonies, with all its attendant geographical and cultural variations, are said to purify and transform the spiritual being of an individual."[14] Therefore, marriage as an institution must be honoured with its socio-legal and spiritual character. While observing customary rites and ceremonies, one may face some difficulties, or the concealment of material facts by one of the parties may create problems. These can be resolved through open dialogue with the other intended party or their family

10 *Bhausaheb* v. *Leelabai*, AIR 2004 Bom 283.

11 (1974) 1 SCC 58: AIR 1974 SC 165.

12 *Id.* at 170.

13 *Supra* note 2.

14 *Supra* note 2 at 15-16.

members, relatives, friends, or colleagues, but it should be done with care and caution well in advance.

Status in marriage

A duly solemnised marriage conforms to its parties' status as 'legally wedded wife', 'legally wedded husband', 'wife' and 'husband' or 'spouse'. Unless a marriage is appropriately solemnised by following customary rites and ceremonies between two heterosexual Hindus, they are called the intended parties to the marriage and not the 'wife', 'husband' or 'spouse'. Therefore, to conform to the marital status of a person, there must be a duly solemnised marriage of that person with another person of the opposite gender by following certain customary rites and ceremonies. To have conclusive proof of marriage among Hindus, Section 8 of the Hindu Marriage Act, 1955 provides that, "for the purpose of facilitating the proof of Hindu marriage, the state government may make rules providing that the 'parties' to any such 'marriage' may have the particulars relating to their marriage entered in such manner and subject to such conditions as may be prescribed in a Hindu Marriage Register kept for the purpose". Therefore, after due process, the intended parties to a marriage become legally wedded 'wife', 'husband' or 'spouse' and are honoured with the marital status. Being a legally wedded 'wife' or legally wedded 'husband' or 'spouse' conforms to a bundle of matrimonial rights and remedies in law.

Section 9 of the Hindu Marriage Act, 1955, provides the restitution of conjugal rights, a matrimonial remedy, intending to restore conjugal comforts between the 'wife' and the 'husband'. So, this remedy is available only to the parties to a lawfully solemnised marriage, and both are the 'wife' and the 'husband' of each other. Therefore, Section 9 of the Hindu Marriage Act, 1955 reads as, "*when either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights*". Justice Sabyasachi Mukharji of the Supreme Court of India in *Saroj Rani* v. *Sudarshan Kumar Chadha*[15]case held that, "*In India, it may be borne in mind that conjugal rights, i.e. the right of the husband or the wife to the society of the other spouse, is not merely a creature of the statute. Such a right is inherent in the very institution of marriage itself.*"[16]Justice B.S. Chauhan of the Supreme Court of India further cemented the same in *Inderjit Singh Grewal* v. *State of Punjab*[17]case, opining that, "*Conjugal rights are not merely a creature of statute but inherent in the very institution of marriage.*"[18] Therefore, the parties' marital status empowers them to claim restitution of conjugal rights as a matrimonial remedy against the other party who has withdrawn from society without any reasonable cause.

15 AIR 1984 SC 1562: (1984) 4 SCC 90.

16 *Id.*, at 101.

17 (2011) 12 SCC 588.

18 *Id.,* at 597.

Section 10 of the Hindu Marriage Act, 1955, provides another matrimonial remedy called 'judicial separation' to the parties to a marriage based on the grounds as laid down in Section 13 of the Hindu Marriage Act, 1955. Therefore, this remedy only applies to the legally wedded 'wife' or 'husband'. The same principle applies to Section 13 of the Hindu Marriage Act, 1955, which provides a matrimonial remedy known as divorce. To get the dissolution of one's duly solemnised marriage, one must file a petition while fulfilling one or more grounds for divorce as provided under Section 13 of the Hindu Marriage Act, 1955 and provide sufficient evidence to prove that ground before a court of competent jurisdiction.

However, when a question of nullity or annulment comes for consideration, one must distinguish between the dissolution of a 'duly solemnized marriage' and a 'marriage which had never been solemnized properly', but only an attempt had been made by one of the parties, and another party had knowingly concealed the material facts; hence, such a marriage is defectively solemnized. Section 11 of the Hindu Marriage Act, 1955, deals with such marriages and provides a provision for the nullity of such marriages. Which reads as "*any marriage solemnised after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto against the other party, be so declared by a decree of nullity*…" meaning thereby that such a decree of nullity does not confer any status on the parties to such a marriage. Therefore, a decree of divorce is different from a decree of nullity of marriage. A decree of divorce is available to the legally wedded 'wife' or 'husband' and only to persons in a duly solemnized marriage, whereas a decree of nullity of marriage is available to the parties of a defective marriage, which was never duly solemnized and, hence, has not conformed any status on its parties being a legally wedded 'wife' or 'husband'.

The High Court of Andhra Pradesh in *Abbayolla M. Subba Reddy* v. *Padmamma*[19]case held that, "Section 5(i) of the Hindu Marriage Act, 1955, states that the marriage may be solemnized between any two Hindus if neither party has a spouse living at the time of the marriage, which introduced monogamy among Hindus. The word 'spouse' means a lawfully wedded husband or wife. Therefore, a valid marriage can be solemnized after the commencement of the Hindu Marriage Act, 1955, only as per the provisions of the said Act. It must be shown that the parties to the marriage must be either 'single' or 'divorcee' or a 'widow' or 'widower', and only in such cases, they are competent to enter into a valid Hindu marriage. If, at the performance of the marriage rites and ceremonies, one or the other had a 'spouse' living, and the earlier marriage had not already been set aside, the later marriage is no marriage at all and is in contravention of the condition laid down in Section 5(i) of the said Act, and is void ab initio."[20]

19 AIR 1999 AP 19.

20 *Id.* at 25.

Further, while considering the scope of Section 11 of the Hindu Marriage Act, 1955, Justices Ramratna Singh and Anwar Ahmad of the High Court of Patna in *Banshidhar Jha* v. *Chhabi Chatterjee*[21] held that, "A marriage which contravenes the conditions referred to in Section 5 is in law no marriage at all being void ipso jure, and it is open to the party to the marriage even without recourse to the court to treat it as a nullity. Neither party is under any obligation to seek the declaration of nullity under this Section, though such a declaration may be asked for the purpose of precaution or record."[22] Cementing the observation made by the Patna High Court, it becomes pertinent to mention D.F. Mulla, who opined, "The person, an innocent party to a bigamous marriage, may go to a court for a declaration that a bigamous marriage is null and void. That would be for the purpose of precaution or record or evidence. That the bigamous marriage is non-existent and simply because there is no recourse to the court, it cannot be said that it exists unless and until a decree is passed declaring it to be null and void."[23] Furthermore, Justices Ranganath Misra and Lalit Mohan Sharma of the Supreme Court of India in *Yamunabai Anantrao Adhav* v. *Anantrao Shivram Adhav*[24] case held that, "the marriages covered by Section 11 are void ipso jure, that is, void from the very inception, and have to be ignored as not existing in law at all if and when such a question arises. Although the section permits a formal declaration to be made on the presentation of a petition, it is not essential to obtain in advance such a formal declaration from a court in a proceeding specifically commenced for the purpose."[25] Therefore, the mere fact that the parties had not approached the court for a declaration as contemplated under Section 11 of the Hindu Marriage Act, 1955, does not in any way alter the conditions or status. Hence, it cannot be said that the marriage is valid and subsisting in the eyes of the law. Furthermore, Justices J.M. Panchal and H.L. Gokhale of the Supreme Court of India in *A. Subash Babu* v. *State of AP*[26] held that, "when a court of law declares a second marriage to be void on a petition presented by the husband who contracts the second marriage on the ground that he has a spouse living at the time of marriage, it only brings untold hardships and miseries in the life of the woman with whom the second marriage is performed apart from shattering her ambition to live a comfortable life after marriage."[27] However, bigamous marriages were recognised under old Hindu law, but after the Hindu Marriage Act, 1955 came into force, such marriages are not

21 AIR 1967 Pat 277.

22 *Id* . at 279.

23 Sunderlal T. Desai (rev.), D.F. Mulla, *Hindu Law* 687 (N.M. Tripathi Pvt. Ltd. Bombay, 14th edn. 1974).

24 AIR 1988 SC 644: (1988) 1 SCC 530.

25 *Id.* at 534.

26 (2011) 7 SCC 616: AIR 2011 SC 3031.

27 *Id.* at 3036-3037.

permitted, and even a custom is of no avail by reason of the overriding effect of the said Act as provided in Section 4 of the said Act.

Once there is a lawfully solemnized marriage between two Hindus, so long they live in wedlock, they remain 'husband' and 'wife', but if, due to any reason, the said marriage gets dissolved by following due process of law applicable to them that the status being a legally wedded 'wife' or legally wedded 'husband' changes to 'divorcee'; hence, they still carry a status but different in the eyes of the law and society. However, in the case of nullity of marriage between two Hindus, whose marriage is declared by a court of competent jurisdiction as null and void or void *ab initio*, such parties are not conformed with the status being legally wedded 'wife' or legally wedded 'husband'; hence, they will have no status either during subsistence of such marriage or after nullity of their marriage. Therefore, they cannot be called 'divorcees'. The woman remains a 'spinster', and the man is a 'bachelor'. Hence, no filial, spiritual, social, or legal relationship or status remains connected between them as they become two independent individuals as they were earlier. In contrast, after the due dissolution of a duly solemnized marriage through a legal divorce, both the 'divorcees' remain connected in many ways. In a case, the death of one among them dissolves the marriage; in that case, the surviving spouse becomes a 'widow' or 'widower' as the case may be, and in the case of a 'widow', she becomes the Class-I heir to her deceased 'husband', and the husband- 'widower' becomes his deceased wife's legal heir under the Hindu Succession Act, 1956. It happens because they still carry the status, though changed due to circumstances in the wedlock, of being a 'widow' or 'widower' due to one's death in marriage. Whereas, if a decree of divorce dissolves the marriage, the 'spouse' who does not have sufficient means to maintain herself or himself is entitled to get maintenance or alimony under the Hindu Marriage Act, 1955.

Further, Section 18 of the Hindu Adoptions and Maintenance Act, 1956, is another example of such a relationship, wherein, if a 'divorced wife' commits certain prohibitory acts, as mentioned in Section 18, she forfeits her right to separate residence, maintenance, etc. A question relating to the expression, 'any other wife living', as mentioned in Section 18(2)(d) of the Hindu Adoptions and Maintenance Act, 1956, came up before the High Court of Karnataka, wherein Justice N.D.Venkatesh, in *Subbegowda* v. *Honnamma*[28] case, held that," The expression 'any other wife' in Section 18(2)(d) means any other legally wedded wife. Therefore, even if the husband is living with another woman treating her as his wife, it cannot be said that he has any other wife living within the meaning of Section 18(2)(d)."[29] The court further held that, "While the personal law governing the parties prohibits bigamous marriage, on a

28 AIR 1984 Kant 41.

29 *Id.*, at 44.

parity of reasoning, it can also be stated that the expression 'Hindu wife' in Section 18 means only a 'legally wedded wife' and not a wife whose marriage is void under the provisions of the Hindu Marriage Act, 1955. The second marriage or bigamous marriage being void cannot create a legal status of "husband" and "wife" between the parties. That marriage is void ab initio, and the woman cannot get the status of a "wife", nor can the male get the status of "husband" to her. Therefore, she cannot get the right to claim maintenance under Section 18 of the Act."[30]

It is a settled law that a wife becomes *Sapinda-gotraja* of her husband's family on marriage. After that, she becomes an integral part of her husband's family as its member for all religious, social and legal purposes. In this regard, a division bench of the Supreme Court of India consisting of Justice Arijit Pasayat and Justice S.H. Kapadia, while dealing with a marital case of dowry death, opined that, "Marriages are made in heaven, which is an adage. A bride leaves the parental home for the matrimonial home, leaving behind sweet memories therewith a hope that she will see a new world full of love in her groom's house. She leaves behind not only her memories but also her surname, gotra and maidenhood. She expects not only to be a daughter-in-law but a daughter in fact."[31] Therefore, marriage significantly impacts the personal lives of its parties, and after the duly solemnization of marriage, they become connected in many ways, and accordingly, their social and legal status changes.

The Code of Criminal Procedure, 1973or the Bharatiya Nagarik Suraksha Sanhita, 2023, being a public law, codified and defines 'wife' as, "*'wife' includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried*", meaning thereby that a woman must hold the status being a 'legally wedded wife' or 'divorcee' making her entitled to claim maintenance against her husband, existing or former. Justices Arijit Pasayat and S.H. Kapadia of the Supreme Court of India in *Savitben Somabhai Bhatiya* v. *State of Gujarat*[32] case held that, "marriage of woman in accordance with Hindu rites with a man having a living spouse is a complete nullity in the eyes of the law. Such a woman is, therefore, not entitled to the benefit of Section 125 of the Code of Criminal Procedure, 1973(Cr P.C.) or the Hindu Marriage Act, 1955. The scope of Section 125 of the Cr P.C. cannot be enlarged by introducing any artificial definition to include a woman not lawfully married in the expression 'wife.'"[33] However, Justices Ranjana Prakash Desai and A.K. Sikri of the Supreme Court of India in *Badshah* v. *Urmila Badshah Godse,*[34] while dealing with a marital matter on maintenance claimed by a woman in plural marriage under Section 125 of the Code of Criminal

30 Referred from para 16, *Abbayolla M. Subba Reddy* v. *Padmamma*, AIR 1999 AP 19.

31 *Kamesh Panjiyar* v. *State of Bihar*, AIR 2005 SC 785: (2005) 2 SCC 388.

32 (2005) 3 SCC 636: AIR 2005 SC 1809.

33 *Id.,* at 1813.

34 AIR 2014 SC 869.

Procedure, 1974 held that, "purposive interpretation needs to be given to the provisions of Section 125 of the Cr P.C. while dealing with the application of destitute wife or hapless children or parents under this provision, the court is dealing with the marginalized sections of the society. The purpose is to achieve 'social justice', which is the Constitutional vision enshrined in the Preamble of the Constitution of India. The preamble to the Constitution of India clearly signals that we have chosen the democratic path under the rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving social justice. Therefore, it becomes the bounden duty of the courts to advance the cause of social justice. While giving an interpretation to a particular provision, the court is supposed to bridge the gap between the law and society. Of late, in this very direction, it is emphasized that the courts have to adopt different approaches in 'social justice adjudication', as a mere 'adversarial approach' may not be very appropriate. There is a number of social justice legislations giving special protection and benefits to vulnerable groups in the society."[35] The authors are entirely in agreement with the approach the Supreme Court of India took in the preceding judgment on 'social justice adjudication' while helping a destitute or hapless woman, but we have failed to understand that the court has not paid much attention towards the woman in the same marital matter who was a 'legally wedded wife' of Badshah. If any financial benefits are to be given to the second woman in a marriage whose marriage was never solemnised due to the man having his spouse living at the time of marriage, it would be at the cost of a 'legally wedded wife'. Hence, the court could have considered compensatory jurisprudence while providing financial support to the destitute woman in plural marriage and could have provided her one-time financial support rather than considering her eligible for maintenance, which is a matrimonial right of a 'legally wedded wife'.

The position under the Protection of Women from Domestic Violence Act, 2005, is different as it provides the right to reside in a shared household, protection orders, residence orders, monetary reliefs, custody orders, and compensation orders to a woman who is living in a domestic relationship with a man. Section 2(f) of the Protection of Women from Domestic Violence Act, 2005 defines such a relationship that,"*domestic relationship means a relationship between two persons who live or have, at any point in time, lived together in a shared household when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family*". Under the Protection of Women from Domestic Violence Act, 2005, legitimacy towards the relationship between two heterosexuals is identified, legalised and protected. Justices P. Sathasivam and Ranjan Gogoi of the Supreme Court of India in *Deoki Panjhiyara* v. *Shashi Bhushan Narayan Azad* [36] case held that, "*until the invalidation of the*

35 *Id.* at 875.

36 (2013) 2 SCC 137.

marriage between the appellant-wife and the respondent-husband is made by a competent court, it would only be correct to proceed on the basis that the appellant continues to be the wife of the respondent so as to entitle her to claim all benefits and protection available under the Protection of Women from Domestic Violence Act, 2005."[37]

Therefore, a duly solemnised marriage is a prerequisite to acquiring status as a 'wife', 'husband', or 'spouse' among Hindus. Once the status is confirmed in the eyes of the law, such a spouse gets matrimonial rights and remedies, and these remedies are executed not only during the marriage but also after the dissolution of the marriage. For example, a person who is not married cannot be divorced. Justices Markandey Katju and T.S. Thakur of the Supreme Court of India in *D. Velusamy* v. *D. Patchaiammal*[38]case held that, "when the respondent claiming to be the appellant's wife and the appellant, however, claiming that he was having a prior marriage out of which a son was also born, and therefore the respondent was not his legally wedded wife. In the face of the appellant's assertion, the respondent could not claim to be the appellant's wife unless it was proved that the appellant was not already married".[39]

Further, some of the high courts in the following cases, *Arun Laxmanrao Navalkar* v. *Meena Arun Navalkar*[40]; *Ranjana* v.*Tej Bhan Sharma*[41]; *Megh Prasad* v. *Bhagwantin Bai*[42];*Prabhjot Singh* v.*Prabhjit Kaur*[43]; *Sarita Bai* v.*Chandra Bai*[44]; *Harkanwalpreet Singh* v.

37 *Id.* at 145.

38 (2010) 10 SCC 469: AIR 2011 SC 479.

39 *Id.* at 481.

40 AIR 2006 Bom 342. Wherein the marriage was among the sapinda relationship.

41 AIR 2007 Del 246. Wherein the wife failed to prove her previous marriage was dissolved by customary divorce.

42 AIR 2010 Chh 25. Wherein the husband married to another woman with the consent of his spouse living and also there was no evidence to prove that the second woman had obtain a divorce from her previous husband.

43 AIR 2010 (NOC) 994 (P&H). Wherein the marriage was performed under threat, parties were within the degree of prohibited relationship and no custom was found in place to validate such marriage.

44 AIR 2011 MP 222. Wherein the husband married to another woman while having spouse living at the time of his second marriage.

45 AIR 2014 P&H 60. Wherein the wife had spouse living at the time of her second marriage, though they were living for a considerable time.

46 AIR 2015 P&H 127. Wherein the subsistence of previous marriage of the wife was not disclosed at the time of second marriage whereas the husband had disclosed his status of prior marriage and divorce from his first wife.

47 AIR 2016 Cal 276. Wherein the parties were found to be in sapinda relationship to each other.

48 AIR 2016 P&H 186. Wherein the wife was found to be already married when she contacted her second marriage and her *Panchayati* divorce could not override the provisions of the law.

49 AIR 2016 Pat 200. Wherein the husband was already married when contacted his second marriage.

Harshpreet Kaur[45]; *Sukhbir Kaur* v. *Harpreet Singh*[46]; *Priyanka Das* v. *Sujit Kumar Das*[47]; *Narinder Singh Mangat* v. *Harjinder Kaur*[48]; *Arti Jaiswal* v. *Pawan Chaudhary*[49]; *Meenal Sahu* v. *Krishna Kumar Sahu*[50]; *Mayank Giri* v. *Divya Giri*[51]; *Namitha S. Nair* v. *Ravikanth*[52]; *Vilasini* v. *Prasanna*[53]; *Shankar Prasad* v. *Radheshyam Devsharan*[54]; *Saket Nishad* v. *Pooja Nishad*[55]; *Manti Sahu* v. *Mahesh Ganjeer*[56]; and *Nirmala Devi* v. *Anil Kumar Tiwari,*[57] had not considered marriage to be appropriately solemnized due to violation of one or other pre-requisite of a valid Hindu marriage; hence, they were declared to be null and void, resulting in non-conforming legal status on the parties to such marriages.

While considering the question of whether a second wife of a void marriage can maintain her claim under Sections 494 and 495 of the Indian Penal Code, 1860, Justices J.M. Panchal and H.L. Gokhale of the Supreme Court of India in *A. Subash Babu* v. *State of AP*[58] case held that, "though Section 11 of the Hindu Marriage Act, 1955 provides that any marriage solemnized, if it contravenes the conditions specified in clause (i) of Section 5 of the said Act, shall be null and void, it also provides that such marriage may on a petition presented by either party thereto, be so declared. Though the law specifically does not cast an obligation on either party to seek a declaration of nullity of marriage, and it may be open to the parties even without recourse to the court to treat the marriage as a nullity, such a course is neither prudent nor intended and a declaration in terms of Section 11 of the Hindu Marriage Act, 1955 will have to be asked for, for the purpose of precaution and/or record. Therefore, until the declaration contemplated by Section 11 of the Hindu Marriage Act is made by a competent court, the woman with whom the second marriage is solemnized continues to be the wife within the meaning of Section 494 of the Indian Penal Code, 1860 and would be entitled to maintain a complaint against her husband. Even otherwise, the second wife suffers several legal wrongs and/or legal injuries

50 AIR 2017 Chh 206. Wherein the wife during her previous marriage under consideration for its nullity married to another man and concealed substantial facts of her previous marriage.

51 AIR 2019 Jhar 19. Wherein the woman was kidnapped, forcefully made to pose for photos and no evidence leading solemnization of marriage between the parties was produced.

52 AIR 2020 Ker 19. Wherein the second marriage was contacted when the husband was having his spouse living and concealed the fact of his previous marriage.

53 AIR 2020 Ker 145. Wherein the first marriage of the husband was a child marriage and he marriage again while having spouse living.

54 AIR 2021 Chh 135. Therein an application of Section 11 of the Act was allowed and marriage was declared as void.

55 AIR 2022 Chh 19. Wherein the husband was having his spouse living on the day of his second marriage.

56 AIR 2022 Chh 150. Wherein the second marriage was contacted on an agreement between the parties, though the husband was having his spouse living at the time of marriage.

57 AIR 2022 MP 27. Wherein the wife on the date of her second marriage had a spouse living.

58 *Supra* note 26.

59 *Supra* note 26 at 3037-3038.

when the second marriage is treated as a nullity by the husband arbitrarily, without recourse to the court or where a declaration sought is granted by a competent court."[59] However, Justices Raghubar Dayal, J.R. Mudholkar and V. Ramaswami of the Supreme Court of India in *Bhaurao Shankar Lokhande* v. *State of Maharashtra*[60] case held that, "the prosecution has failed to establish that the marriage between Bhaurao Shankar Lokhande and Kamlabai in February 1962 was performed in accordance with the customary rites as required by Section 7 of the Hindu Marriage Act, 1955. It was certainly not performed in accordance with the essential requirements for a valid marriage under Hindu law. It follows, therefore, that the marriage between Bhaurao Shankar Lokhande and Kamlabai does not come within the expression 'solemnized marriage' occurring in Section 17 of the said Act and consequently does not come within the mischief of Section 494 of the Indian Penal Code, 1860 even though the first wife of Bhaurao Shankar Lokhande was living when he married Kamlabai in February 1962. Hence, the marriage of Bhaurao Shankar Lokhande with Kamlabai could be a void marriage only if it came within the purview of Section 17 of the said Act and the conviction of Bhaurao Shankar Lokhande under Section 494 of the Code of 1860 cannot be sustained."[61] Further, Justice B.V. Nagarathna of the Supreme Court of India in *Dolly Rani* v. *Manish Kumar Chanchal*[62] case observed that, "the marriage between the parties is not a 'Hindu marriage' having regard to the provisions of Section 7 of the Hindu Marriage Act, 1955. Consequently, the certificate issued by the Vadik Jankalyan Samiti (Regd.) is declared null and void. In view of the above, the certificate issued under the Uttar Pradesh Registration Rules, 2017, is also declared null and void. Therefore, the petitioner-wife and the respondent-husband were not married in accordance with the provisions of the Hindu Marriage Act, 1955, and hence, they have never acquired the status of husband and wife."[63] Therefore, socio-legal status in marriage, being a legally wedded wife or a legally wedded husband, is a prerequisite for securing a matrimonial remedy, whether principal, ancillary, or special, from a court of competent jurisdiction, following the due process of law.

III Void marriage and maintenance

In his book, 'The Law Lexicon with Maxims', Sumeet Malik mentioned relevant text on the word 'void' from *Rajasthan State Industrial Develpment and Investment Corp.* v. *Subhash Sindhi Coop. Housing Society*[64] case wherein it was held that, "the word 'void' has been defined as ineffectual, nugatory, having no legal force or effect, and unable in law to support its intended purpose. It also means merely a nullity, invalid, null,

60 AIR 1965 SC 1564.

61 *Id.* at 1567.

62 *Supra* note 2.

63 *Supra* note 2 at 17.

64 (2013) 5 SCC 427.

worthless, cipher, and ineffectual and may be ignored even in collateral proceedings as if it never were. The word 'void' is used in the sense of incapable of ratification. A thing which is found non-existent and not required to be set aside, though it is sometimes convenient to do so. There would be no need for an order to quash it. It would be automatically null and void without more ado. The continuation orders would be nullities, too, because no one can continue a nullity."[65] Justices Arijit Pasayat and H.K. Sema of the Supreme Court of India in *M.M. Malhotra* v. *Union of India*[66]case held that "the marriages covered by Section 11 of the Hindu Marriage Act, 1955 are void ipso juri, that is, void from the very inception, and have to be ignored as not existing in law at all if and when such a question arises. Although the section permits a formal declaration to be made on the presentation of a petition, it is not essential to obtain in advance such a formal declaration from a court in a proceeding specifically commenced for the purpose."[67] Sumeet Malik further referred *Dhurandhar Prasad Singh* v. *Jai Prakash University*[68] case while defining the term 'void' wherein it was held that, "the word 'void' has a relative rather than an absolute meaning. It only conveys the idea that the order is invalid or illegal and can be avoided. There are degrees of invalidity depending upon the gravity of the infirmity as to whether it is fundamental or otherwise. Furthermore, the word 'void' has several facets. One type of void acts, transactions, decrees, *ab initio* void, and to avoid the same, no declaration is necessary; the law does not take any notice of the same, and it can be disregarded in collateral proceedings or otherwise. The other type of void act, *e.g.,* a transaction against a minor without being represented by a next friend. Such a transaction is a good transaction against the whole world. So far as the minor is concerned, if he decides to avoid the same and succeeds in avoiding it by taking recourse to appropriate proceedings, the transaction becomes void from the beginning. Another type of void act may be one that is not a nullity, but a declaration has to be made to avoid the same."[69]

Marriage under the Hindu Marriage Act, 1955, gains legitimacy and validation when two heterosexual individuals duly solemnise their marriage by following Sections 5 and 7 of the Hindu Marriage Act, 1955. If all the requirements are fulfilled by both parties, in such a case, there is no issue in the eyes of the law, but if any of the conditions, *viz.*, Clauses (i), (iv) and (v) of the Hindu Marriage Act, 1955 are violated than such a marriage attracts Section 11[70] of the said Act towards its status. Subsection (i) of section 5 lays down the necessary condition for a lawful marriage, which reads

65 *Id.,* Sumeet Malik, *The Law Lexicon with Maxims* 1207, (Eastern Book Company, Lucknow, UP, 1st edn. 2016).

66 AIR 2006 SC 80: (2005) 8 SCC 351.

67 *Id.,* at 359.

68 (2001) 6 SCC 534.

69 *Supra* note 65 at 1207.

as '*neither party has a spouse living at the time of the marriage*.' Therefore, a marriage contravening this condition is void *ipso jure*, *i.e.,* void from the very inception under Section 11 of the Hindu Marriage Act, 1955, and such a marriage has to be ignored as non-existent in law. However, children born out of a void marriage are considered legitimate under Section 16(1) of the Hindu Marriage Act, 1955, and they are provided with property rights as class I heirs to their putative father under Section 16(3) of the Hindu Marriage Act, 1955. The second wife of the putative father of such children is not provided with the status of being 'wife' or 'widow' of her deceased husband. Justices D.P. Wadhwa and S.N. Phukan of the Supreme Court of India in *Rameshwari Devi* v. *State of Bihar*[71]case held that, "*the second wife was not entitled to anything, and the family pension and death-cum-retirement gratuity payments would be admissible to minor children only until they attend the majority*."[72]

Further, Section 24 of the Hindu Marriage Act, 1955 provides maintenance *pendents lite* and expenses of proceedings to both parties to a marriage. This section empowers the court of competent jurisdiction to award maintenance *pendent lite* or litigation expenses or both in any proceeding under the said Act when 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. The section requires an application from the 'wife' or the 'husband' on which the court may "order the respondent to pay the petitioner the expenses of the proceeding and monthly maintenance 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 as reasonable". While taking note of the law as laid down in section 24 of the said Act, this remedy seems to be available only to the 'wife' and the 'husband', or one must hold the status of either 'legally wedded wife' or 'legally wedded husband'. But, in the case of plural marriages, when any of its parties are filing a petition to determine the status of the marriage in question until the court of competent jurisdiction decides it by following the law, it cannot determine the status of disputing parties; hence, whether the remedy under Section 24 of the Hindu Marriage Act, 1955 is available to them or not itself is a research question. The quest for justice before a court of law takes much time, and it is quite expensive; therefore, a Hindu woman who is dependent financially on her parents or husband may be in a defective marriage and she cannot bear such a costly dispensation of the justice system until she is found either to be the 'legally wedded wife' or otherwise. Hence, she requires financial

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70 S. 11 of the Hindu Marriage Act, 1955 reads as "Void Marriage- Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto, against the other party, be so declared by a decree of nullity if it contravenes any of the conditions specified in Clauses (i), (iv) and (v) of Section 5".

71 (2000) 2 SCC 431: AIR 2000 SC 735.

72 *Id.,* at 739.

support to sustain herself and cover litigation expenses. Section 24 of the Hindu Marriage Act, 1955, appears to be intended for such purposes.

Furthermore, Section 25 of the Hindu Marriage Act, 1955, provides permanent alimony. The matrimonial remedy provided under this Section makes it obligatory for the court having jurisdiction on the matter, at the time of passing 'any decree' or at any time subsequent thereto, on an application made to it for the purpose by either the 'wife' or the 'husband' order that "*the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodically sum for a term not exceeding the life of the applicant*". The lawmakers appear to have intended two things in this Section. One, such a remedy is available only to a 'legally wedded wife' or 'legally wedded husband' mandating a lawful marriage between them; and second, such a remedy can be awarded at the time of passing 'any decree' or subsequent thereto. The second intent creates doubt about whether 'any decree' includes nullity of marriage, annulment of marriage, restitution of conjugal rights, judicial separation and divorce or if it only intends the decree of divorce. Therefore, an unambiguous application of such law is the need of the hour.

Similarly, Chapter III on 'Maintenance' of the Hindu Adoptions and Maintenance Act, 1956, between Sections 18 and 28, provides sufficient provisions for the maintenance of 'wife', 'widow daughter-in-law', 'children', 'aged parents', and 'dependents.' However, all these provisions are available based on the legal status of the parties. Section 18 of the said Act provides a wife provision for maintenance and separate residence in certain conditions, but it also casts obligations on her when she claims such a remedy. Further, earlier, the chapter-IX on 'Order for Maintenance of Wives, Children and Parents' of the Code of Criminal Procedure, 1973, between Sections 125 and 128, and after July 1, 2024, the Chapter-X of the Bharatiya Nagarik Suraksha Sanhita, 2023, between Sections 144 and 147, provides sufficient law relating to the maintenance of a 'wife'. The explanation (b) attached to Section 125 of the Code defines the term 'wife', which includes "*a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.*" The Bharatiya Nagarik Suraksha Sanhita, 2023, being a public law, still holds the sanctity of marriage while providing such remedy, though originally being civil in nature, for a woman under the criminal law as well, it provides maintenance to a 'wife' in case of she being neglected by her husband, despite having sufficient means to maintain her in the matrimonial home. Whereas under personal law, it is the primary obligation of the husband to maintain his wife, whether he has sufficient means to do so or he creates means to maintain her, irrespective of that. But, when the marriage is in itself in question of being solemnised properly or not, the status of being a legally wedded 'wife' or legally wedded 'husband' is confirmed or not to the parties, and the question of maintenance comes as the second. Hence, there is a need for unambiguous legal provisions to deal

with such facts and circumstances as and when they arise between the two disputed parties in a marital suit.

Justices P. Venkatarama Reddi, Krishna Saran Shrivastav and A. Hanumanthu of the Andhra Pradesh High Court in *Abbayolla M. Subba Reddy* v. *Padmamma*[73] case held that, "Section 25 should not be construed in such a manner as to hold that notwithstanding the nullity of the marriage, the wife retains her status for purposes of applying for alimony and maintenance. The proper construction of Section 25 would be that where a marriage admittedly is a nullity, this section will have no application. But, where the question of nullity is an issue and is contentious, the court has to proceed on the assumption until the contrary is proved that the applicant is the wife. In that sense, Section 25 should be appreciated. Further, as in this case, there are no proceedings between the parties, and there is no decree of the kind as envisaged under Section 14 of the Act disrupting the marital status of the respondent with the appellant. Hence, the respondent is not entitled to invoke the provisions under Section 25 of the Act. On the other hand, the respondent is seeking maintenance under Section 18 of the Hindu Adoptions and Maintenance Act, 1956. When the marriage of the respondent is void *ab initio*, she is not entitled to claim maintenance under the said Act. Hence, it is not open to the court to grant relief of maintenance under Section 25 of the Hindu Marriage Act, 1955, in the proceedings initiated under the provisions of the Hindu Adoptions and Maintenance Act, 1956. As is evident, both these statutes are codified laws on the respective subjects and by the liberality of interpretation, inter-changeability cannot be permitted so as to destroy the distinction on the subject of maintenance."[74] The court further held that, "even the principles of justice, equity and good conscience do not come to the rescue of the respondent as the subject of maintenance is covered by statute law and there is no scope to invoke those principles where the legislative enactments on the subject do not permit the grant of maintenance to a woman who was a party to a bigamous marriage."[75]

The Supreme Court of India held that, "even if the second wife, the appellant, was not informed at the time of her marriage with the respondent about the respondent's earlier marriage, her prayer for maintenance under Section 125 of the Code of Criminal Procedure cannot be allowed. The appellant cannot rely on the principle of estoppel so as to defeat the provisions of the Act. So far as the respondent treating her as his wife is concerned, it is again of no avail as the issue has to be settled under the law. It is the intention of the legislature which is relevant and not the attitude of the party. Therefore, the marriage of a woman in accordance with the Hindu rites

73 *Supra* note 19.

74 *Id.* at 30.

75 *Id.* at 30.

76 *Yamunabai Anantrao Adhav* v. *Anantrao Shivram Adhav*, AIR 1988 SC 644: (1988) 1 SCC 530, 536.

with a man having a living spouse is completely null in the eyes of the law, and she is not entitled to the benefit of Section 125 of the Cr P.C."[76] However, Supreme Court of India in *Badshah* v. *Urmila Badshah Godse*[77] case, held that, "while interpreting a statute the court may not only take into consideration the purpose for which the statute was enacted but also the mischief it seeks to suppress. The court would also invoke the legal maxim construction *'ut res magis valeat guam pereat'*, in such cases, *i.e.,* where alternative constructions are possible, the court must give effect to that which will be responsible for the smooth working of the system for which the statute has been enacted rather than one which will put a roadblock in its way. If the choice is between two interpretations, the narrower one, which would fail to achieve the manifest purpose of the legislation, should be avoided. We should avoid construction, which would reduce the legislation to futility and should accept the broader construction based on the view that the Parliament would legislate only for the purpose of bringing about an effective result. If this interpretation is not accepted, it would amount to giving a premium to the husband for defrauding the wife. Therefore, at least for the purpose of claiming maintenance under Section 125 of the Code of Criminal Procedure, 1974, such a woman is to be treated as the legally wedded wife."[78] After understanding the socio-economic and legal impacts of some of these judicial pronouncements of the Supreme Court of India, as referred, one may get confused about whether public law supersedes the specific or special law on maintenance as provided in the Hindu Marriage Act, 1955, which applies to all Hindus in matters of marriage and divorce including maintenance wherein matrimonial remedies are attached with the marital status. Maybe in the zeal of doing complete justice towards hapless women, the Supreme Court of India is creating new jurisprudence on maintenance wherein marital status is not a prerequisite to maintenance alimony; hence, only vulnerability of women is the sole criterion to award maintenance alimony under public law in void or plural marriages under Hindu law.

Justices Rakesh Kumar Jain and Harnaresh Singh Gill of the Punjab and Haryana High Court in *Sukhbir Kaur* v. *Sukhdev Singh*[79] case dealt with a question of law that "whether the appellant-wife would be entitled to permanent alimony even if a decree has been passed against her under Section 11 of the Hindu Marriage Act, 1955."[80] Before one proceeds to find the answer to the question, let's understand the facts in brief: "The marriage of the parties was solemnized on June 11, 2012, at Gurudwara Singh Sabha, Majitha Road, Amritsar as per Hindu Sikh rites and rituals. No child was born out of the said wedlock. Insofar as the status of the parties is concerned, the respondent-husband was a widower, whereas the appellant-wife, who had claimed

77 *Supra* note 34.

78 *Supra* note 34 at 877.

79 2019 SCC Online P&H 6730.

80 *Id.* at 3.

herself to be a spinster, was already married. The respondent-husband filed the petition under Section 11 of the Hindu Marriage Act, 1955 for annulment of marriage on the ground of violation of Section 5 (i) of the Hindu Marriage Act, 1955, wherein the appellant had alleged that the factum of earlier marriage was not disclosed to him at the time when their marriage was solemnized on June 11, 2012."[81] Based on these facts, the trial court declared the marriage null and void, while not accepting the validity of the Panchayati Talaknama, as it was not sustainable under the law. The appellant did not file any application for permanent alimony before the trial court and chose to file this appeal. The only prayer made by the appellant was for the grant of permanent alimony and not for setting aside the judgment and decree of the trial court. After hearing the counsel of both sides, the court referred Justices D.M. Dharmadhikari and H.K. Sema of the Supreme Court of India in the *Rameshchandra Rampratapji Daga* v. *Rameshwari Ramesh Chandra Daga*[82] case. "The facts of this case tell the tragic tale of an Indian woman who, having gone through two marriages with a child born to her apprehends destitution as both marriages have broken down: The husband, an income tax practitioner in the town of Ratlam, Madhya Pradesh. His first marriage was solemnized with the late Usha in 1963, and from her, he has two sons and one daughter. The marriage of the second wife, it is alleged, was arranged with one Girdhari Lal Lakhotia on May 15, 1979. According to the wife, the customary rituals of marriage were not completed, as in the marriage ceremony, family members quarrelled over dowry. She had filed a divorce petition (No. 76 of 1978) in the Matrimonial Court at Amravati, but it was not prosecuted, and no decree of divorce was passed. It is the case of the wife that in accordance with the prevalent custom in the Maheshwari Community, a *Chhor Chithi* or a document of dissolution of marriage was executed between the wife and her previous husband on May 15, 1979, and it was later registered."[83] With these facts and circumstances, the question before the Supreme Court of India was "whether the appellant-husband is still liable to pay the maintenance fixed per month to the wife under Section 25 of the Hindu Marriage Act, 1955."[84] The Supreme Court of India held that," We have critically examined the provisions of Section 25 in the light of conflicting decisions of the High Courts cited before us. In our considered opinion, as has been held by this court in Chand Dhawan's[85] case, the expression used in the opening part of Section 25 enabling the 'court exercising jurisdiction under the Act' 'at the time of passing any decree or at any time subsequent thereto' to grant alimony or maintenance cannot be restricted only to, as contended, decree of judicial separation under Section 10 or divorce under Section 13. When the legislature has used such a wide expression as 'at the time

81 *Id.* at 2.

82 AIR 2005 SC 422: (2005) 2 SCC 33.

83 *Id* .at 36.

84 *Id* . at 38.

of passing of any decree', it encompasses within the expression all kinds of decrees such as restitution of conjugal rights under Section 9, judicial separation under Section 10, declaring marriage as null and void under Section 11, annulment of marriage as voidable under Section 12 and Divorce under Section 13."[86] It is further held that, "keeping in consideration the present state of the statutory Hindu law, a bigamous marriage may be declared illegal being in contravention of the provisions of the Act, but it cannot be said to be immoral so as to deny even the right of alimony or maintenance to a spouse financially weak and economically dependent. It is with the purpose of not rendering a financially dependent spouse destitute that Section 25 enables the court to award maintenance at the time of passing 'any type of decree' resulting in a breach in a marriage relationship."[87] Further, Justices N.V. Dabholkar, Anil B. Naik and Naresh H. Patil of the High Court of Bombay in *Bhausaheb* v. *Leelabai*[88]case held that, "basically, the use of the expression "any decree" must be viewed to have been used, having regard to various kinds of decrees, which could be passed at the behest of either spouse. But, it cannot be stretched to construe section 25 (1) in such a manner that the expression "any decree" would be read as "every decree". The section, as quoted in analytical form, has indications that the wide powers indicated by the expression "any decree" are not so unbridled as to be considered as "every decree", and the controls over the powers are evident in the opening part as well as the terminal part. The section begins with the phrase "Court may" and not with the phrase "Court shall". On taking into consideration the terminal part of the Section, the Court is required to give due thought, not only to the incomes of both parties, but it is also required to take into consideration the conduct of the parties and other circumstances of the case"[89]. The court further held that, "if there can be cases of denial of maintenance to "legally wedded wife", it is difficult to accept as correct, liberal construction of Section 25 so as to entitle "illegitimate wife" to maintenance."[90]

On the other hand, learned counsel for the respondent-husband in *Sukhbir Kaur* v. *Sukhdev Singh*[91] case had pressed the decision of *Yamunabai Anantrao Adhav's*[92] case to contend that, "in the said case, the husband had contracted a second marriage when the first wife was alive. The second marriage was null and void; therefore, no decree

85 *Chand Dhawan* v. *Jawaharlal Dhawan*, (1993) 3 SCC 406.

86 *Supra* note 82 at 40.

87 *Id.* at 40-41.

88 AIR 2004 Bom 283.

89 *Id.* at 291.

90 *Id.* at 292.

91 *Supra* note 79.

92 *Yamunabai Anantrao Adhav* v. *Anantrao Shivram Adhav* (1988) 1 SCC 530: AIR 1988 SC 644.

93 *Ibid.*

of the court was required for the purpose, and the second wife was not entitled to any maintenance under Section 25 of the Hindu Marriage Act, 1955."[93] He has also referred to the judgment of the Supreme Court of India by Justices Arijit Pasayat and S.H. Kapadia in *Savitaben Somabhai Bhatiya*'s[94] case to contend that in the said case, though the dispute was regarding the award of maintenance under Section 125 of the Code of Criminal Procedure, 1973. However, the Supreme Court of India has held that "the marriage of a woman in accordance with the customary rites and ceremonies with a man having a living spouse was completely null and void in the eyes of the law. She was, therefore, not entitled to the benefit of Section 125 of the Code of Criminal Procedure, 1973 or the Hindu Marriage Act, 1955."[95] Further, the Supreme Court of India held that, "it may be noted at this juncture that the legislature considered it necessary to include within the scope of the provision an illegitimate child, but it has not done so with respect to a woman not lawfully married. However, desirable it may be, to take note of the plight of the unfortunate woman, the legislative intent being clearly reflected in Section 125 of the Code, there is no scope for enlarging its scope by introducing any artificial definition to include a woman not lawfully married in the expression 'wife'. This may be an inadequacy in law, which only the legislature can undo."[96]

Finally, the High Court of Punjab and Haryana in the case of *Sukhbir Kaur* v. *Sukhdev Singh*[97] held that this case was governed by the judicial precedent laid down by Justices D.P. Wadhwa and S.M. Phukan of the Supreme Court of India in *Rameshchandra's*[98] case. Hence, the appeal was allowed only to the extent that the question of law, which has been framed by this court, holding that the appellant would be entitled to permanent alimony under Section 25 of the Hindu Marriage Act, 1955, dehors the fact that the decree has been passed under Section 11 of the Hindu Marriage Act, 1955.[99]

The Supreme Court of India in *A. Subash Babu* v. *State of AP*[100] case held that, "when a law, such as Section 11 of the Hindu Marriage Act, 1955, declares that a second marriage by a husband, who has a living wife, with another woman is void, for breach of Section 5(i) of the said Act, it brings/attaches several legal disabilities to the woman with whom the second marriage is performed. Say, for example, she would not be entitled to claim maintenance from her husband even if she is inhumanely treated, subjected to mental and physical cruelty of a variety of kinds, etc. and is not

94 *Savitaben Somabhai Bhatiya* v. *State of Gujarat* (2005) 3 SCC 636: AIR 2005 SC 1809.

95 *Id.* at 1812.

96 *Id.* at 1813.

97 *Supra* note 79.

98 *Rameshchandra Rampratapji Daga* v. *Rameshwari Ramesh Chandra Daga,* (2005) 2 SCC 33: AIR 2005 SC 422.

99 *Supra* note 79 at 5.

100 *Supra* note 26.

able to maintain herself. The law of inheritance would prejudicially operate against her. She would suffer the outrageous, wrong and absurd social stigma of being another woman in the life of the male who contracts a second marriage with her. The members of the cruel society, including her kith and kin like parents, brothers, sisters, *etc.,* would look down upon her, and she would be left in the lurch by one and all."[101]

The court, while justifying the award of maintenance to a destitute woman in *Rameshchandra Ramespratapji Daga* v. *Rameshwari Rameshchandra Daga*[102] case, relied on moral principles instead of deciding on the merits of the case along with the legal grounds involved in the said marital matter. Further, a three judge bench consisting of Justice Abhay S. Oka, Justice Ahsanuddin Amanullah and Justice Augustine George Masih of the Supreme Court of India in the case of *Sukhdev Singh* v. *Sukhbir Kaur*[103] while dealing with the question of 'whether alimony can be granted where marriage has been declared void' held that "a spouse whose marriage has been declared void under Section 11 of the Hindu Marriage Act, 1955, is entitled to seek permanent alimony or maintenance from the other spouse by invoking Section 25 of the said Act. Whether such a relief of permanent alimony can be granted or not always depends on the facts of each case and the conduct of the parties. The grant of relief under Section 25 is always discretionary"[104]. While dealing with the discretionary element in granting relief in a matrimonial case, the Court held that "sub-section 1 of Section 25 uses the word "may." A grant of a decree under section 25 of the 1955 Act is discretionary. If the conduct of the spouse who applies for maintenance is such that the said spouse is not entitled to discretionary relief, the Court can always turn down the prayer for the grant of permanent alimony under Section 25 of the 1955 Act. Equitable considerations do apply when the Court considers the prayer for maintenance under Section 25. The reason is that Section 25 lays down that while considering the prayer for granting relief under Section 25, the conduct of the parties must be considered."[105] Furthermore, the Court while establishing difference between Section 13 and Section 11 of the Hindu Marriage Act, 1955 on granting matrimonial relief held that "while enacting Section 25(1), the legislature has made no distinction between a decree of divorce and a decree declaring marriage a nullity. Therefore, on a plain reading of Section 25(1), it will not be possible to exclude a decree of nullity under Section 11 from the purview of Section 25(1) of the 1955 Act."[106] The Supreme Court of India has delved into the technicalities and interpretations of legal provisions to demonstrate that the court has unlimited discretionary power, thereby undermining

101 *Supra* note 26 at 3036.

102 (2005) 2 SCC 33: AIR 2005 SC 422.

103 AIR 2025 SC 951: AIR online 2025 SC 70.

104 *Id.*, 961.

105 *Id.*, 961.

106 *Id.*, 958.

the core spirit of the institution of marriage. Through such judicial precedents, the matrimonial courts in the country will not look into the legal provisions with the intention of lawmakers or objects of law in upholding the institution of marriage, rather may look into the vulnerability, financial difficulties or conduct of the parties seeking maintenance, including permanent alimony, without going into the validity of marriage or deciding on the status of the parties in marriage. A woman in Sukhdev Singh's case, who married Sukhdev Singh, a widower, when she was still married to her previous husband and concealed the material facts of her previous subsisting marriage to Sukhdev Singh. The matrimonial court annulled the said marriage as the *Panchayati Talaknama* was not sustainable in the eyes of the law, and, therefore, at the time of marriage between the appellant with the respondent, she was already having a spouse and; therefore, a decree under Section 11 of the Act was passed against her declaring her marriage null and void, wherein the high court granted her maintenance, which she had not claimed before the matrimonial court. The Supreme Court of India has now granted her permanent alimony, based on her conduct and financial difficulties. Such a judicial precedent will have long-lasting negative impacts on the institution of marriage.

Pertinently, the courts have wide inherent powers to dispose of marital cases on maintenance under the Hindu Marriage Act, 1955, the Hindu Adoptions and Maintenance Act, 1956, the Bharatiya Nagarik Suraksha Sanhita, 2023, and the Protection of Women from Domestic Violence Act, 2005; the same should be used sparingly and only in those cases where no harm may be caused to the society. The authors have sympathy for such destitute women, but legal awards cannot be based on moral considerations. However, such judgments from the Apex court become the judicial precedent for the rest of the courts in the country. Hence, the authors appeal to the apex court for a balanced approach in marital cases and award compensation or damages instead of maintenance alimony to a woman who does not have legal status as a 'legally wedded wife'.

IV Conclusion

Marriage as an institution has undergone significant behavioural changes among married couples and their compatibility during wedlock, yet it remains important in contemporary Hindu society. It binds people and families, creating law-abiding social and legal norms. Existing generations, those that have passed, and generations yet to come provide these norms with social and legal mechanisms, validating, legitimising, and legalising them in the real world. Keeping in view the larger goals of one's life, religious texts, customary rites, and ceremonies, as well as legal provisions, have been put into place to provide socio-legal protection for marriage as an institution and its parties, thereby legitimising the marital needs. Therefore, social norms and legal provisions expect married couples to follow them sincerely and obey them in their

daily matrimonial affairs. Suppose by any chance, religious, social, customary, or legal norms are either tampered with or not followed in their letter and spirit; in that case, the legal consequences become operative, and the said party/s to such marriage suffer the consequences that may be religious, customary, or legal in nature.

Further, the registration of marriages among the intended parties, as and when they wish to marry, may prove to be a vital tool when investigating cases of non-disclosure of material facts of a previous marriage by one of the parties. Justices Arijit Pasayat and S.H. Kapadia of the Supreme Court of India in *Seema* v. *Ashwani Kumar*[107] case held that, "marriages of all persons who are citizens of India belonging to various religions should be made compulsorily registrable in their respective states where the marriage is solemnized."[108] The court further held that "if the record of marriage is kept, to a large extent, the dispute concerning the solemnization of marriages between two persons is avoided. … If the marriage is registered, it also provides evidence of the marriage having taken place and would provide a rebuttable presumption of the marriage having taken place. Though the registration itself cannot be proof of a valid marriage *per se* and would not be the determinative factor regarding the validity of a marriage, yet it has a great evidentiary value in the matters of custody of children, the right of children born from the wedlock of the two persons whose marriage is registered and the age of parties to the marriage."[109] Therefore, registration of marriage provides a sense of security to the intended marriage, and it also helps the parties in a marriage to ascertain the marital status of the other spouse. Furthermore, a pre-nuptial agreement may also be advocated among the marriageable youth, as such an agreement may help them to understand the status of both the intended parties to marriage well in advance, as marriage registration comes into being after marriage is solemnised. A pre-nuptial agreement shall carry all possible information about each intended party to a marriage, including previous marital status, if any, so that there is no scope for cheating or fraud left in the marriage. The parties live their married life peacefully due to the duly solemnization of marriage.

After due consideration of academic writings, legal provisions, and judicial pronouncements, one must reach the conclusion that marital status is a pre-requisite in getting matrimonial remedies, but when one of the parties to a marriage cheats, conceals and forges the material facts on his or her whereabouts and does not disclose to the other party, he or she suffers of this fault or wrongdoing, making the other party eligible for maintenance or compensation, as a legal remedy. The wrongdoing of one party in a defective marriage gives a chance to the other party to claim compensation by following due process of law towards the damage she/he suffered,

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107 (2006) 2 SCC 578: AIR 2006 SC 1158.

108 *Id.* at 1161.

109 *Ibid.*

whether of character, reputation, social mores or otherwise. Therefore, social awareness must be created among the marriageable youth, making them understand the consequences of marriage if not solemnised properly and possible fraud or cheating, which might be used against one of the parties. To create social awareness, non-governmental organisations, educational institutions, and government machinery can be utilised effectively by making them socially responsible and encouraging them to contribute their share to society through socio-legal content creation and the dissemination of awareness on legal provisions related to marriage among the marriageable youth. One must keep in mind that many online platforms facilitate marriage matchmaking for marriageable youth, but relevant information must be collected from such service providers. A consent clause in the document is necessary, with care and caution taken to ensure that the information will not be shared with another party unless the informant permits it.

The Hindu Marriage Act, 1955; the Hindu Adoptions and Maintenance Act, 1956; the Hindu Minority and Guardianship Act, 1956; and the Hindu Succession Act, 1956, are legislative statutes which were originally a part of the Hindu Code. These Acts were the first attempt of the then-union government when Hindu society was unprepared for the amendment and codification of Hindu personal laws. However, the government took the initiative to amend and codify ancient Hindu law with a futuristic approach. Subsequently, Hindu society adopted and followed these Acts in their letter and spirit; however, some exceptions have always been present, as every general law has exceptions. Furthermore, the Bharatiya Nagarik Suraksha Sanhita, 2023, is an example of a state welfare enactment that considers the state's perspective and provides sanctions against offenders or wrongdoers, thereby commending its subjects. Whereas the Protection of Women from Domestic Violence Act, 2005, is an example of women's empowerment, which focuses only on women's welfare. It protects women in almost all situations, regardless of their social, legal, or other status. A conjoint reading of all these statutes has provided, to a great extent, matrimonial remedies to the parties of a validly solemnised marriage, but when a marriage itself is at fault due to one or the other reason, the parties involved in such a marriage get either no remedy or an indifferent remedy, when compared with the spouse of a duly solemnised marriage.

One of the primary pillars of a democratic political governance system is the nation-state's judiciary. The judiciary protects the fundamental law of the land, provides justice to citizens, and fills gaps in existing law whenever there is no legal provision or the existing legal provisions are not interpreted or applied in a manner that ensures litigants receive due justice. Based on this premise, one can understand that the judicial law-making process is independent; hence, people have faith in the judiciary. It is expected to remain independent in its justice delivery system. Still, people doubt whether it favours social welfare, state welfare, or women's empowerment while

dispensing justice, affecting many people. In numerous cases, it has been observed that courts have awarded maintenance alimony to disputing parties who did not have a legally recognised status as spouses under Hindu law. One can understand awarding maintenance *pendente lite* or litigation expenses to a woman in a defective marriage to enable her to lead her life and defend her marital suit until it reaches its conclusion. Awarding maintenance alimony to a woman whose marriage is void *ab initio* and does not need even a decree of nullity, who has no status of being 'wife'. She may be in utter financial hardship, but when such a marriage does not find any place in Hindu law under which the said marriage is supposed to be solemnised and governed, she cannot be bestowed with a marital remedy which is meant for a woman who has the status of being a legally wedded 'wife' from a duly solemnised Hindu marriage. However, taking into consideration her financial condition, the court of competent jurisdiction may award her appropriate compensation for the damage or suffering from the man who has cheated, defrauded or injured her in a defective marriage. Therefore, when dealing with marital matters, the courts should consider both socio-economic and legal perspectives, specifically the issue of maintenance or compensation for women litigants, but must strike a balanced approach.

The author proposes that the time has come for 'marital tort' to be recognised by the judiciary when dealing with marital matters and for lawmakers to make suitable amendments to the existing personal laws. If that is done, many behavioural and compatibility issues, including the victimisation of women among parties to the defective marriage and duly solemnised marriage, may be addressed by parties suffering from marital tort, and the core marital provisions or remedies will remain intact with their original spirit. An attempt to recognise marital tort was made by Justices A. Muhamed Mustaque and Kauser Edappagath of the High Court of Kerala in *P.P. Rajesh* v. *Deepthi, P.R.*[110] case, while observing that, "no wrongs should remain unaddressed. All persons committing wrongs are liable in an action for damages. The case of cruelty set up by the respondent was satisfactorily proved, and divorce was granted. Since the respondent sustained physical as well as mental injury as a result of the conduct of the appellant, she is entitled to damages. Hence, the appellants are liable to pay damages to the respondents."[111] Further, Justices P.B. Suresh Kumar and Johnson John of the High Court of Kerala in *N. Rajees* v. *Kavitha Vasavan*[112] case also recognised marital tort while opining that, "it is true that there is no formulated rule or guideline to measure damages in the case of marital tort and that in case of any other tort, the quantum of damages ought to be fixed at a sum, which will compensate the victim, so far as money can do it, for the injury she had suffered. It cannot be

110 AIR 2021 Ker 184.

111 *Id.* at 192.

112 2023 SCC Online Ker 9442.

113 *Id.,* para 10.

disputed that the victim is entitled to general damages, which the law will presume to be natural and probable consequences of the wrongful act."[113] Therefore, in the same way, a woman who becomes a victim of societal prejudices and legal shortcomings in a void marriage can appropriately be compensated instead of providing her maintenance or alimony under Section 25 of the Hindu Marriage Act, 1955 or Section 18 of the Hindu Adoptions and Maintenance Act, 1956, or Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023 or the relevant provisions of the Protection of Women from Domestic Violence Act, 2005. If such a mechanism is set up through judicial pronouncements, there shall be no issue with the 'legally married wife'. Otherwise, lawmakers should take a call on the issue and make suitable amendments to the existing laws, providing sufficient provisions for compensation to the victims of marital tort.