17/08/2021

Unit IV: Civil Marriage and Emerging Trends

→ Family Law-I | LLB 201 | GGSIPU 2021 Syllabus.

→ This unit examines civil marriage and changing family relationships in India.

→ Topics: Special Marriage Act, 1954; surrogacy; live-in relationships; domestic violence; same-sex relationships.

→ Study both the written law and important judgments interpreting dignity, privacy and individual choice.

→ Method for each answer: concept → law → case → simple example → conclusion.

REMEMBER:

FAMILY LAW PROTECTS CHOICE, SAFETY AND DIGNITY

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Meaning and Purpose of Civil Marriage

→ Civil marriage means a marriage solemnised under a secular statute rather than only a religious personal-law ceremony.

→ The Special Marriage Act, 1954 provides a legal path for eligible persons, including persons of different religions.

→ The parties do not ordinarily need to convert to each other's religion to use this law.

→ The Act covers marriage conditions, notice, solemnisation, registration, matrimonial relief and divorce.

→ Example: two adults of different faiths may marry under the statute when conditions are fulfilled.

REMEMBER — SPECIAL MARRIAGE ACT = SECULAR MARRIAGE ROUTE

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Unit IV - Family Law - I
(LLB 201)

17/08/2021

Why the Special Marriage Act Exists

→ It provides a common statutory procedure that can be used irrespective of many personal-law distinctions.

→ It protects the choice of consenting eligible adults to enter a lawful marriage.

→ The Act sets minimum legal conditions and creates official proof of marriage.

→ It also supplies rules for separation, dissolution, maintenance and custody.

→ It should be interpreted alongside constitutional dignity, privacy, equality and freedom of choice.

REMEMBER –
CONSENTING ADULTS + LEGAL PROCEDURE + PROTECTION

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Unit IV : Family Law - I
(LLB 201)

17/08/2021

Section 4: Conditions of Marriage

→ Section 4 requires that neither party has a spouse living at the time of marriage.

→ Both must satisfy statutory requirements of mental capacity and valid consent.

→ The man must be at least twenty-one years old and the woman at least eighteen years old under the text.

→ The parties must not fall within prohibited degrees of relationship, subject to recognised custom where the Act allows it.

→ If any essential condition fails, the marriage may face a legal challenge.

REMEMBER — NO LIVING SPOUSE + CAPACITY + AGE + RELATIONSHIP

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Unit IV : Family Law-I (LLB 201) 17/08/2021

Section 5: Notice of Intended Marriage

→ The parties provide the prescribed written notice to the Marriage Officer of the relevant district.

→ At least one party must have resided in that district for not less than thirty days immediately before notice.

→ Notice begins the statutory process; it is not itself the final marriage ceremony.

→ A correct notice and documentary proof help the authority check statutory conditions.

→ Example: a couple cannot treat an informal email about marriage as the statutory solemnisation.

REMEMBER — NOTICE + THIRTY-DAY RESIDENCE RULE

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Sections 6 and 7 : Notice and Objections

→ Section 6 deals with the Marriage Notice Book and the notice procedure under the Act.

→ Section 7 permits objections within thirty days on the ground that marriage would violate a Section 4 condition.

→ A personal dislike, caste prejudice or religious objection alone is not a statutory marriage impediment.

→ Publication and privacy concerns have produced important constitutional debate.

→ The key test is lawful eligibility, not whether a family approves of the relationship.

REMEMBER — AN OBJECTION MUST RELATE TO SECTION 4

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Sections 8 to 10 : Inquiry

→ When a valid legal objection is made, the Marriage Officer conducts the inquiry required by the Act.

→ Section 8 concerns inquiry into an objection and decisions within the statutory framework.

→ The Act provides routes for challenging certain decisions; personal disapproval is not sufficient.

→ Authorities should assess legal documents fairly and avoid unnecessary harassment.

→ Example: a groundless objection based only on different religion should not determine legal eligibility.

REMEMBER — CHECK THE LAW, NOT FAMILY PRESSURE

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Sections 11 and 12 : Ceremony

→ Before solemnisation, the parties and three witnesses sign the declaration in the presence of the Marriage Officer.

→ The marriage may be solemnised in a form the parties choose, subject to statutory requirements.

→ Each party makes the prescribed acknowledgement accepting the other as spouse before the official and witnesses.

→ A religious ritual is not required for a civil marriage under the Act.

→ The solemnisation step matters : sending a notice does not itself create the completed marriage.

REMEMBER — DECLARATION + THREE WITNESSES + SOLEMNISATION

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Section 13: Marriage Certificate

→ After solemnisation the Marriage Officer enters the certificate in the Marriage Certificate Book.

→ The certificate is signed by the parties and the three witnesses as required.

→ The certificate serves as strong statutory proof of the marriage's solemnisation.

→ It assists with official records, identification of marital status and later family-law proceedings.

→ Remember the order: notice → eligibility inquiry → declaration → solemnisation → certificate.

REMEMBER: CERTIFICATE PROVIDES STATUTORY PROOF

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Registration of Earlier Marriages

→ Chapter III of the Special Marriage Act deals with registration of marriages celebrated in other forms.

→ Section 15 lays down conditions that must be met for such registration.

→ Registration under this chapter is different from solemnising a new marriage under Chapter II.

→ The Marriage Officer checks the required statutory conditions and process.

→ Example: a couple married in a ceremony may examine this registration route if they qualify.

REMEMBER:
REGISTRATION AND NEW SOLEMNISATION DIFFER

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Void and Voidable Marriages

→ Section 24 concerns nullity of marriages that violate the relevant statutory conditions.

→ Section 25 concerns voidable marriages on specified grounds, subject to statutory limits.

→ VOID means a fundamental legal defect. VOIDABLE means the marriage may be annulled through judicial process.

→ Do not confuse nullity with ordinary divorce; divorce dissolves a legally subsisting marriage.

→ In a problem, identify the precise factual defect before citing the section.

REMEMBER:
SECTION 24 = VOID; SECTION 25 = VOIDABLE

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17/08/2021

Divorce under the Special Marriage Act

→ Section 27 provides statutory grounds for divorce, including cruelty and desertion in the circumstances described.

→ Section 28 provides a route for divorce by mutual consent when the legal requirements are satisfied.

→ Mutual-consent petitions require the parties to agree to dissolution and meet the statutory separation condition.

→ A judicial decree, rather than a private declaration, determines divorce under this Act.

→ Exam tip: distinguish contested divorce from consent-based divorce.

REMEMBER: SECTION 27 GROUNDS;
SECTION 28 MUTUAL CONSENT

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Financial and Child Relief under SMA

→ Section 36 deals with alimony during proceedings in the situations provided.

→ Section 37 deals with permanent alimony and maintenance by judicial order.

→ Section 38 deals with custody, maintenance and education of minor children.

→ The court considers evidence of needs, means and welfare rather than applying an automatic identical award.

→ A marriage dispute may involve several different remedies in one set of proceedings.

REMEMBER :

MAINTENANCE AND CHILD WELFARE ARE DISTINCT QUESTIONS

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Cases on Choosing a Spouse

→ Lata Singh v State of U.P., (2006) 5 SCC 475 recognised the freedom of a major to marry a person of choice.

→ Shafin Jahan v Asokan K.M., (2018) 16 SCC 368 affirmed the importance of adult choice in marriage.

→ Families may advise, but adults' lawful choices cannot be cancelled simply because relatives disagree.

→ The Constitution protects personal autonomy, dignity and the right to make intimate decisions.

→ Illustration: refusal based only on religion or caste is not a lawful substitute for the statutory test.

REMEMBER: ADULT CHOICE OF SPOUSE DESERVES LEGAL PROTECTION

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Family Law - I

Unit - IV

17/08/2021

Meaning of Surrogacy

→ Surrogacy is an arrangement in which a woman carries and gives birth to a child for intending parent or parents.

→ It may involve assisted reproductive technology, such as embryo transfer.

→ It raises questions about consent, health, parentage, payment and the child's status.

→ Surrogacy is not the same as adoption: adoption transfers an existing child's legal parentage through a separate process.

→ The first legal duty is to protect the surrogate, the child and all persons involved.

REMEMBER:

SURROGACY INVOLVES PREGNANCY FOR INTENDING PARENTS

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Types of Surrogacy

→ TRADITIONAL SURROGACY : the surrogate provides the egg and bears the pregnancy.

→ GESTATIONAL SURROGACY : the surrogate carries an embryo without being its genetic mother.

→ ALTRUISTIC ARRANGEMENT : no commercial fee for carrying, apart from permitted expenses under the relevant rules.

→ COMMERCIAL ARRANGEMENT : payment extends beyond allowable expenses to compensation for the service.

→ The legal acceptability of each model depends on the applicable country's legislation.

REMEMBER.:
TRADITIONAL / GESTATIONAL;
ALTRUISTIC / COMMERCIAL

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Reasons People Consider Surrogacy

→ It may be considered where pregnancy is medically difficult or unsafe for an intending parent.

→ Some people seek it after repeated infertility treatment or serious reproductive-health problems.

→ Family-building needs may be shaped by disability, age and personal circumstances.

→ Ethical issues arise if financial pressure affects a surrogate's freedom to consent.

→ Law must balance reproductive choice with healthcare standards and protection against exploitation.

REMEMBER —

REPRODUCTIVE CHOICE REQUIRES INFORMED CONSENT

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Family Law - I
LLB 201
Unit IV

17/08/2021

Ethical Concerns about Surrogacy

→ Possible concerns include unequal bargaining power, pressure on women and poor medical follow-up.

→ Payment can raise risks of exploitation if the surrogate has little meaningful choice.

→ The child's legal parentage, nationality and protection against abandonment must be clear.

→ Privacy, healthcare, insurance and reliable consent procedures are essential safeguards.

→ There are also questions about excluding some intending parents from otherwise lawful arrangements.

REMEMBER — CONSENT + HEALTH + CHILD PROTECTION + FAIRNESS

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Surrogacy Bill: 2021 Syllabus Context

→ On 17 August 2021, the Surrogacy (Regulation) Bill, 2019 was under parliamentary consideration; it was not yet the 2021 Act.

→ The Bill proposed regulation of clinics and restrictions on commercial surrogacy.

→ It emphasised altruistic surrogacy within a proposed eligibility framework.

→ A Parliamentary Select Committee reported on the Bill in 2020.

→ For an exam dated 2021, call these proposals, not an already operative law.

REMEMBER — A PROPOSED BILL IS NOT THE SAME AS AN ENACTED ACT

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Surrogacy: Arguments and Safeguards

→ **SUPPORTING CONCERNS:**
reproductive autonomy, help with infertility and carefully regulated family building.

→ **CRITICAL CONCERNS:**
possible commodification, discrimination and coercion of economically vulnerable women.

→ **SAFEGUARDS:**
medical consent, counselling, legal parentage rules, clinic oversight and transparent expenses.

→ A sound answer presents both positions without assuming that every surrogate is exploited or every arrangement is safe.

→ The child's welfare and the surrogate's independent consent remain central.

REMEMBER — BALANCE CHOICE WITH PROTECTION AGAINST EXPLOITATION

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Surrogacy: Comparative Approaches

→ Different countries have taken different approaches to surrogacy regulation.

→ Some prohibit commercial payments; others allow regulated arrangements or restrict surrogacy altogether.

→ Cross-border arrangements create especially difficult parentage and nationality questions.

→ Baby Manji Yamada v Union of India, (2008) 13 SCC 518 illustrates complex cross-border surrogacy questions.

→ Comparative study should ask: who may become a parent, who can act as surrogate and how is the child protected?

REMEMBER — COMPARE ELIGIBILITY, PAYMENTS AND CHILD'S STATUS

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Family Law-I
LLB 201
Unit IV
Page 22

17/08/2021

Meaning of a Live-In Relationship

→ A live-in relationship generally means two people living together in an intimate domestic partnership without formal marriage.

→ It is not automatically a legally solemnised marriage.

→ Adults may choose cohabitation for personal, economic or emotional reasons.

→ Indian law does not generally make consensual adult cohabitation a criminal offence merely for being unmarried.

→ The legal consequences depend on facts and the particular statute invoked.

REMEMBER — LIVE-IN IS NOT THE SAME AS A FORMAL MARRIAGE

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Reasons and Legal Position of Live-In

→ Reasons may include companionship, personal autonomy, mutual support or a wish to understand compatibility.

→ Constitutional privacy and personal liberty support adult freedom to make private choices.

→ S. Khushboo v Kanniammal, (2010) 5 SCC 600 discussed the legitimacy of consensual adult cohabitation.

→ Social disapproval alone does not make an adult relationship criminal.

→ However, a live-in partner does not receive every spousal right automatically.

REMEMBER — CONSENSUAL COHABITATION IS NOT ITSELF A CRIME

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Domestic Relationship under DV Act

→ Section 2(f) of the 2005 Domestic Violence Act includes relationships in the nature of marriage in the statutory definition.

→ This can extend certain civil protections to qualifying live-in partnerships.

→ Not every casual or short relationship qualifies automatically.

→ Courts evaluate shared household, duration, public presentation, intention and other relevant circumstances.

→ The law protects eligible women from domestic abuse; it does not convert every live-in arrangement into marriage.

REMEMBER —

LOOK FOR A RELATIONSHIP IN THE NATURE OF MARRIAGE

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Case: D. Velusamy (2010)

→ D. Velusamy v D. Patchaiammal, (2010) 10 SCC 469.

→ The Supreme Court examined when a live-in arrangement may be treated as a relationship in the nature of marriage.

→ Relevant factors include long cohabitation, shared household and holding out socially as spouses.

→ A merely casual arrangement does not automatically satisfy the legal test.

→ Use this case in questions about protection or maintenance claimed from an informal partner.

REMEMBER: VELUSAMY = QUALIFYING RELATIONSHIP FACTORS

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Case: Indra Sarma (2013)

→ Indra Sarma v V.K.V. Sarma, (2013) 15 SCC 755.

→ The Court discussed factors relevant to a relationship in the nature of marriage under Section 2(f).

→ Duration, financial arrangements, domestic arrangements, children and socialisation may be examined.

→ The Court recognised that the legal assessment is fact-sensitive and cannot rest only on the label live-in.

→ Explain the facts fairly and then apply the statutory test.

REMEMBER:

INDRA SARMA = CASE-BY-CASE ASSESSMENT

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Family Law - I
Unit 4

17/08/2021

Rights and Children in Live-In Unions

→ A child's rights should not be casually denied because parents were unmarried.

→ Long cohabitation may raise a presumption of marriage in some circumstances, but it is rebuttable and fact-dependent.
(D. Velusamy v. D. Patchaiammal, (2010) 10 SCC 469)

→ Questions of property, succession, maintenance and custody have distinct statutory rules.
(Indra Sarma v. V.K.V. Sarma, (2013) 15 SCC 755)

→ A live-in partner should not assume automatic succession rights identical to a legally married spouse.
(Tulsa & Ors. v. Durghatiya & Ors., (2008) 4 SCC 520)

→ For a problem question, separate the child's rights from the adults' marital status.
(Badri Prasad v. Dy. Director of Consolidation, (1978) 1 SCC 524)

REMEMBER :
CHILDREN'S RIGHTS REQUIRE SEPARATE LEGAL ANALYSIS

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Family Law - I
Unit - 4
Page - 28

17/08/2021

Meaning of Domestic Violence

→ Domestic violence means abusive behaviour within a legally recognised domestic relationship.

→ Abuse may be physical, sexual, emotional, verbal or economic.

→ Violence is not confined to visible injury; threats, humiliation and deprivation may also harm a person.

→ The Protection of Women from Domestic Violence Act, 2005 provides important civil relief and protection.

→ The law focuses on safety and effective remedies, not on forcing someone to remain in danger.

REMEMBER : ABUSE IS NOT LIMITED TO PHYSICAL INJURY

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Why Domestic Violence Occurs

→ Contributing factors can include coercive control, rigid power inequalities and financial dependence.

→ Alcohol misuse, isolation or family pressure may worsen risk, but none excuses abuse.

→ Domestic violence occurs across social and economic groups.

→ Survivors may face barriers to reporting due to fear, stigma, lack of money or lack of support.

→ Law, counselling, shelter, medical support and safe reporting systems all matter.

REMEMBER:
EXPLAIN CAUSES WITHOUT BLAMING THE SURVIVOR.

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Family Law - I
Unit 4
Page 30

17/08/2021

Key Definitions in the DV Act

→ Section 2(a) defines an aggrieved person as a woman in a qualifying domestic relationship who alleges domestic violence.

→ Section 2(f) defines a domestic relationship, including relations by marriage, blood, adoption and relationships in the nature of marriage.

→ Section 2(s) concerns a shared household.

→ The statutory meaning of respondent must be read in light of the Supreme Court's Hiral P. Harsora decision.

→ Definitions decide whether a particular remedy is available.

REMEMBER :
AGGRIEVED PERSON + DOMESTIC RELATIONSHIP + HOME

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Section 3: Forms of Domestic Violence

→ Section 3 of the 2005 Act covers physical abuse and harm to bodily health or safety.

→ It also covers sexual abuse and verbal or emotional humiliation.

→ ECONOMIC ABUSE can include unlawful deprivation of financial resources or restrictions on property access.

→ Threats and harassment connected with unlawful demands may be relevant.

→ The court looks at the entire pattern of conduct, not only one isolated incident.

REMEMBER:

PHYSICAL + SEXUAL + EMOTIONAL + ECONOMIC

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Family Law - I
Unit 4
Page 32

17/08/2021

Section 17: Right to Reside

→ Section 17 recognises an aggrieved woman's right to reside in the shared household under the statutory conditions.

→ The right is not necessarily dependent on owning the house or holding the title deed.

→ It does not mean that every property dispute is decided only by the residence provision.

→ The court may need to balance rights and issue an appropriate residence order.

→ Satish Chander Ahuja v Sneha Ahuja, (2021) 1 SCC 414 is important on shared household interpretation.

REMEMBER:

RESIDENCE RIGHTS DO NOT ALWAYS REQUIRE OWNERSHIP

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Sections 18 and 19: Court Orders

→ Section 18 allows protection orders to restrain further domestic violence and specified harmful conduct.

→ Section 19 concerns residence orders and related protections for the aggrieved person.

→ Courts can frame orders to address safety and living arrangements according to legal conditions.

→ Such orders aim to prevent harm while disputes are resolved.

→ Example: a protection order may prohibit threats or contact forbidden by the court.

REMEMBER – SECTION 18 PROTECTION;
SECTION 19 RESIDENCE

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Sections 20 to 23: Relief

→ Section 20 covers monetary relief for expenses and losses caused by domestic violence.

→ Section 21 concerns temporary custody orders for children.

→ Section 22 allows compensation and damages in appropriate cases.

→ Section 23 permits interim and ex parte orders where statutory requirements are met.

→ Applications under Section 12 and assistance from protection officers are also important in practice.

REMEMBER —

MONEY + CUSTODY + COMPENSATION + URGENT RELIEF

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Important Domestic Violence Cases

→ Hiral P. Harsora v Kusum N. Harsora, (2016) 10 SCC 165.

→ The Supreme Court invalidated the limiting words 'adult male' in the definition of respondent, widening who may be proceeded against.

→ Satish Chander Ahuja v Sneha Ahuja, (2021) 1 SCC 414.

→ considered the broad statutory concept of shared household.

→ D. Velusamy and Indra Sarma are important for qualifying live-in relationships.

→ Remember the legal issue and holding, not only the case names.

REMEMBER —
HARSORA = RESPONDENT ; AHUJA = SHARED HOUSEHOLD

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Same-Sex Relationships: Background

→ A same-sex relationship is an intimate relationship between people of the same sex.

→ Discussions in family law concern personal autonomy, social recognition, dignity and equal protection.

→ Legal treatment varies across countries and has changed considerably over time.

→ Sexual orientation is a dimension of identity; prejudice or stigma is not a valid legal substitute for analysis.

→ Study separately: lawful consensual conduct, protection from discrimination and the legal status of marriage.

REMEMBER — PERSONAL LIBERTY AND MARRIAGE STATUS ARE DISTINCT

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Unit - IV

Constitutional Rights and Equality

→ Article 14 protects equality before the law and equal protection of laws.

→ Article 15 prohibits specified forms of discrimination; constitutional arguments about sex and sexual orientation have been important.

→ Article 21 protects life and personal liberty, including dignity and privacy.

→ Justice K.S. Puttaswamy v Union of India, (2017) 10 SCC 1 recognised privacy as a fundamental right.

→ The exercise of individual rights must be examined through constitutional reasoning, not stereotypes.

REMEMBER — EQUALITY + PRIVACY + DIGNITY

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Section 377 and Navtej Johar

→ Section 377 IPC historically criminalised certain acts described as against the order of nature.

→ Navtej Singh Johar v Union of India, (2018) 10 SCC 1 decriminalised consensual same-sex sexual acts between adults.

→ The ruling did not remove offences involving coercion, minors or other unlawful conduct.

→ The decision affirmed dignity, liberty, equality and sexual autonomy.

→ Decriminalisation of conduct and legal recognition of marriage are different questions.

REMEMBER – NAVTEJ = CONSENSUAL ADULT SAME-SEX CONDUCT

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Same-Sex Marriage: India and the World

→ As of the notes' 2021 date, India did not provide general legal recognition of same-sex marriage under the Special Marriage Act.

→ Some countries had recognised same-sex marriage, while others offered civil partnerships or no recognition.

→ Arguments for marriage equality concern dignity, equal benefits and family security.

→ Opposing legal positions have raised statutory interpretation and legislative design questions; critique them respectfully.

→ The key analytical distinction is personal liberty versus formal marital status.

REMEMBER — DECRIMINALISATION DOES NOT AUTOMATICALLY CREATE MARRIAGE

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Unit IV : Final Revision Questions

→ Q1. State Section 4 conditions and explain the notice-to-certificate process under the Special Marriage Act.

Sec. 4: (i) either party not already married; (ii) neither within prohibited degrees (unless custom permits); (iii) minimum age 21 for male, 18 for female; (iv) both capable of giving valid consent; (v) not of unsound mind.

Process: give notice (Sec. 5) to Marriage Officer of intended marriage → notice displayed for 30 days (Sec. 6) → objections (Sec. 7) → inquiry (Sec. 8) → if no valid objection, marriage solemnised (Sec. 11) → certificate (Sec. 13).

→ Q2. Distinguish Section 24 nullity, Section 25 annulment and Sections 27-28 divorce.

Sec. 24 (Nullity): marriage void, no legal existence (e.g. bigamy, prohibited relationship). Can be declared at instance of either party.

Sec. 25 (Annulment): voidable marriage; valid till annulled (e.g. impotence, fraud, pregnancy by another). Decree makes it void from date of decree.

Secs. 27-28 (Divorce): dissolution of a valid marriage on specified grounds (Sec. 27) by petition to District Court (Sec. 28). Marriage ends from decree.

→ Q3. Explain surrogacy types, ethical risks and the 2019 Bill as it stood in August 2021.

Types: (i) traditional (surrogate's own egg), (ii) gestational (IVF, no genetic link).

Ethical risks: exploitation of women, commodification, consent issues, health risks, status of child, abandonment, commercialisation.

2019 Bill (as in Aug 2021): allowed only altruistic surrogacy for Indian married heterosexual couples with infertility; commercial surrogacy prohibited; age/medical conditions specified; creation of National Surrogacy Board and State Boards; offences and penalties provided.

→ Q4. Apply D. Velusamy and Indra Sarma to a live-in relationship problem.

D. Velusamy v. D. Patchaiammal (2010) 10 SCC 469: laid down criteria for "relationship in the nature of marriage" (e.g. long duration, shared household, holding out to society, etc.).

Indra Sarma v. V.K.V. Sarma (2013) 15 SCC 755: wider and more nuanced test; recognised that not all live-in relationships qualify, gave categories and emphasised protection against exploitation, especially for women.

→ Q5. Explain domestic violence and remedies under Sections 17-23 of the 2005 Act.

Domestic violence: any act of physical, sexual, verbal, emotional or economic abuse in a domestic relationship (Sec. 3).

Remedies: Sec. 17 (right to reside in shared household), Sec. 18 (protection orders), Sec. 19 (residence orders), Sec. 20 (monetary relief), Sec. 21 (custody orders), Sec. 22 (compensation), Sec. 23 (interim and ex parte orders).

→ Q6. Discuss privacy, Section 377 and Navtej Johar without confusing conduct and marriage.

Privacy: recognised as a fundamental right in Puttaswamy (2017) 10 SCC 1.

Sec. 377: criminalised consensual same-sex sexual conduct.

Navtej Johar v. Union of India (2018) 10 SCC 1: read down Sec. 377 to the extent it criminalised consensual same-sex conduct between adults; affirmed dignity, equality and privacy. Did not legalise same-sex marriage (separate issue).

→ Case list: Lata Singh (2006) 5 SCC 475; Shafin Jahan (2018) 16 SCC 368; Velusamy (2010) 10 SCC 469; Indra Sarma (2013) 15 SCC 755; Hiral Harsora (2016) 10 SCC 165; Satish Ahuja (2021) 3 SCC 1; Navtej Johar (2018) 10 SCC 1.

REMEMBER — DEFINITION + SECTION + CASE + FACTS + CONCLUSION

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