Marriages in India – Legal Interventions and Reforms

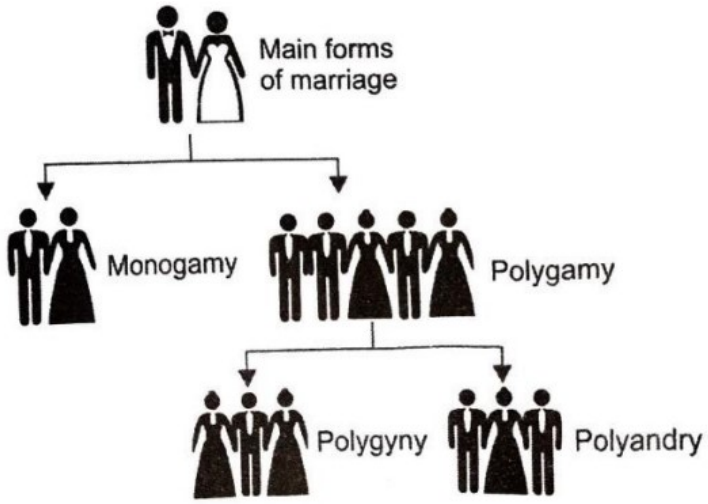
Mains: *GS I – Salient features of Indian Society*

Why in News?

Over the years, there have been significant changes in marriage and maintenance laws.

What is marriage?

- **Marriage** – It is a legally recognized, socially sanctioned union, typically between a man and a woman, forming a partnership with rights, obligations, and the purpose of creating a family and continuing lineage.
- **Types** – The two main forms of marriages are
  - **Monogamy**
  - **Polygamy**
- **Monogamy** – One man marries one woman at a time, and it is most common globally.
- **Polygamy** – Marriage with two or more spouses simultaneously.
- This includes two types
  - **Polygyny**
  - **Polyandry**
- **Polygyny** – It is a form of polygamy where one man is married to multiple women.
- This includes two forms
  - **Sororal Polygyny** – Man marries sisters simultaneously.
  - **Non-sororal Polygyny** – Man marries unrelated women for social, economic, or political reasons.
- **Polyandry** – It is the form where one woman is married to multiple men at the same time
- This includes two types
  - **Fraternal Polyandry** – Woman marries brothers, seen in Khas tribes of Uttaranchal.
  - **Non-fraternal Polyandry** – Woman marries unrelated men, practiced by the Nair caste in Kerala.
- **Other Forms –** There are other forms of Marriage also
  - **Endogamous** – Restricts marriage within one's own group.
  - **Exogamous** – Requires marriage outside one's own group.
  - **Inter-caste Marriage** – Union of individuals from different castes.
  - **Child Marriage** – Marrying children before puberty



How the monogamous family emerged?

- **Prior to emergence of monogamy** – Before the monogamous family, there existed a state of unregulated sexual relations.
- **Influence of economic conditions** – In *The Origin of the Family, Private Property and the State* (1884), Friedrich Engels argues that changes in material conditions shape the organisation of family relations.
- Engels looks at the emergence of the monogamous family as an economic institution designed to ensure the inheritance of private property.
- **Indian context of sambandham** – Anthropologist Kathleen Gough's extensive work on the Nayars of Kerala shows that they followed a matrilineal kinship system in which property and lineage were traced through women.
- Their marital practices were not monogamous but based on *sambandham*.

Sambandham *is a form of visiting relationship with the husband without involving cohabitation.*

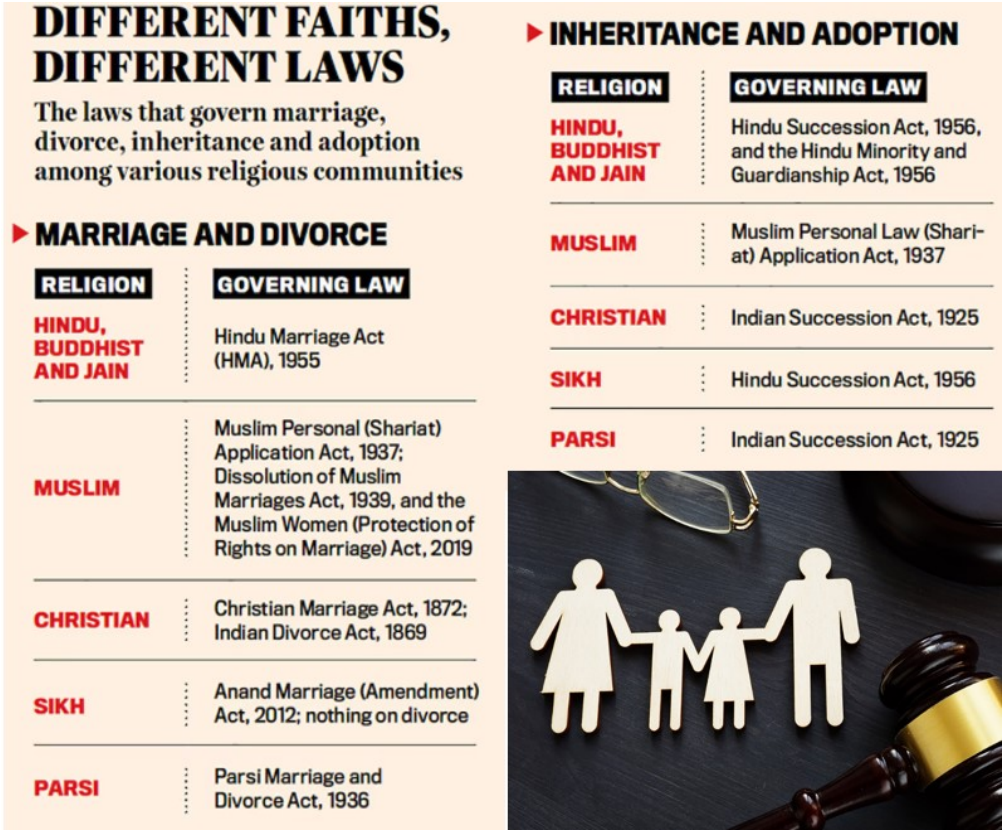
- Children belonged to the mother's matrilineal joint family, known as the *taravad*, and the maternal uncles were the key male authority figures.
- A woman was also allowed to have more than one husband.
- However, Gough saw the practice of *sambandham* as a form of legitimate marriage.
- **British intervention** – But colonial interventions and subsequently the Hindu Marriage Act, 1955 saw such practices as immoral and illegal.
- **Cases of polyandry in India** – It has also existed in several parts of India, such as among *the Hatti community* in the Sirmaur district in Himachal Pradesh and the Jaunsar Bawar region in Uttarakhand.
- The members of the Hatti, community see themselves *as descendants of Pandavas from the Mahabharata.*
- They practice *jodidara* – a form of polyandry to prevent land fragmentation.
    - **For instance**, the recent marriage of Sunita Chauhan to two brothers, Kapil Negi and Pradeep Negi, created quite an internet storm, also reigniting debates about the legality of polyandry in India.

- The *Hindu Marriage Act, 1955* – Prohibits polyandry.
- But it is protected by the Himachal Pradesh High Court as part of customary law for the Hattis, who are a Scheduled tribe (ST) community.
- Such cases highlight the tensions between customary and constitutional laws, with opposition from women's organisations.
- **Cases in other countries** – In neighbouring Sri Lanka, polyandry in *Kandyan areas* was tied to landholding patterns.
- Anthropologist Edmund Leach has shown that the practice prevented the fragmentation of agricultural land among brothers by maintaining property jointly.
- **British intervention** – The British colonial administration discouraged and delegitimised polyandry amongst the Kandyan.
- Through such interventions, material and legal conditions promoted monogamy as the preferred mode of marriage.

What are the issues between Cultural norms and gendered power structures?

- **Social pressure** – In contemporary times, matrilineal societies like the Khasis in Meghalaya are under social pressure.
- Groups like Syngkhong Rympei Thymmai (or 'Home Hearth Restructured') are advocating for the abolition of matriliny, arguing that it 'emasculates' men.
- **Existence of patriarchal control** – Although matriliny gives women more visibility and property rights, patriarchal control is still exercised in key areas like decision-making and leadership.
- **Raised conflict** – This tension between cultural norms and gendered power structures draws attention to a broader challenge in reforming family institutions.
- **Regulation of practices** – It is found that regulating practices like dowry and domestic violence are relatively easier than making the institution of marriage equitable.
- **The concept of public and private** – Both globally and in India, feminist movements have pressed for legal interventions to bridge the gap between the public and the private.
- The slogan*, personal is political*, captures this shift in feminist discourse.
- The issues like housework, domestic violence, and dowry that have been historically relegated to *'family matters' are incorporated within the legal framework.*
    - **For instance**, the Dowry Prohibition Act, 1961 and its subsequent amendments in 1976 and 1984 redefined dowry from a personal matter to a punishable crime.
- The Protection of Women from Domestic Violence Act (PWDVA) was enacted in 2005 to protect women of all communities from domestic abuse.

What are the laws that governs marriages in India?



What are the measures needed to bring reforms in marriage?

- **Clear judicial interpretation** – A more consistent and standardised judicial interpretation of existing grounds for divorce like cruelty, desertion, and adultery may help reduce the influence of moralistic or subjective biases.
- **Gender equal provisions** – Making child custody laws more gender-equal would help encourage co-parenting and healthier models of separation.
- **Reforms in divorce** – The divorce process itself needs to be streamlined and made more accessible.
    - **For instance**, in cases of abuse, the mandatory mediation or "cooling off" period may be reconsidered.
- At the same time, it is important to recognise that while the law is a significant site for bringing reform, it is not sufficient on its own.
- **Need for social interventions** – Marriage as an institution reflects broader social inequality, and therefore, meaningful reforms require social interventions alongside legal reforms.
- It is important to recognise that while the law is a significant site for bringing reform, it is not sufficient on its own and needs to be complemented by social interventions.
    - **For example**, West Bengal has the highest proportion of females (6.3%) getting married before the age of 18 years followed by Jharkhand (4.6%).
    - Both significantly above the national level of 2.1%, according to the latest statistical report of the Sample Registration System (SRS) published this month.
- It must be noted here that women's rights activists have seen law as a significant site for seeking social reform in issues related to gender and marriage to address the gender parity gap.
- There are other social identities, such as caste, community, religion, etc. that have been seen as impediments to gender equity further complicating efforts to reform

marriage and gender norms through legal means.

Reference

[The Indian Express| Marriage and Reforms]