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CHAPTER I

INTRODUCTION

NATURE AND SCOPE OF HINDU LAW:

As the Hindu religion in an ancient onethe early history of Hinduism is difficult to date. There is no precise definition of the term Hindu.The people living around and beyond the Sindhu river were termed by the Greeks as Hindus. Ancient Hindu Law is not the result of any legislation governing the Hindus. The Hindu law is deeply rooted in the Hindu Philosophy and Hindu religion. Hindu law is supposed to be of divine origin, being derived from the Vedas. Vedas are considered as the voice of the deity. Law, as understood by the Hindus, is a branch of Dharma, i.e., the duties and the rules of conduct of the Hindu community.

WHO ARE HINDUS ?

The persons to whom Hindu law applies may be put under the following categories:

1) to any person who is a Hindu ,Buddhist, Jaina or Sikh by religion.

2) to any person who is born of Hindu parents.

3) to any person who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law.

This can be divided into:

1. Hindus by religion, i.e., converts to Hinduism
2. Hindus by birth

HINDU BY RELIGION :

Any person who practices and professes Hindu religion is a Hindu. In the following cases the Court has tried to define Hindu and to interpreat the main philosophy of Hinduism.

Shastri V. Muladas, 1966 SC 1119 The Supreme Court held that various sub sects of Hindus such as Swaminarayan, Satsangis, are also Hindus by religion because they follow the same basic concept of Hindu Philosophy.

The Supreme Court in **Perumal v. Ponnuswami, AIR 1971 SC 2352**, observed that a person may be a Hindu by birth or by conversion. A mere theoretical allegiance to the Hindu faith by a person born in another faith does not convert him into a Hindu, nor is a bare declarations that he is a Hindu is sufficient to convert him to Hinduism. But a bona fide intention to be converted to the Hindu faith accompanied by conduct unequivocally expressing that intention may be sufficient evidence of conversion. No formal ceremony of purification is necessary to effectuate conversion.

In **Mohandas v. Devaswom Board 1975 KLT 55**, Jesudas, famous play back singer, was a catholic Christian by birth. He used to render devotional music in a Hindu temple and used to worship the presiding diety. He also filed a declaration stating that he was the follower of Hindu faith. It has been held that such a bonafide declaration amounts to his acceptance of Hindu faith and becomes a Hindu by conversion.

HINDU BY BIRTH:

a. When both the parents are Hindus: Children born on Hindu parents are Hindus. Such a child may be legitimate or illegitimate.

b. When one parent is Hindu: this category is further divided into following heads:

   i. at the time of his birth one of the parents was Hindus and

   ii. he is brought up as a member of the tribe, community, group or familyto which Hindu parent belonged at the time of the birth of thechild.

   Sapna v. State of Kerala, 1993 ker 75, the child of Hindu father and Christian mother was held to be Christian.

SOURCES OF HINDU LAW:

The Hindus believed that their law is of divine origin to them. This is positive law emanated from the deity. It is not codified law, but extracted from various religious test, commentaries, usages and customs, and judicial decisions.

The sources of Hindu law can be classified in the following two heads

1. ANCIENT SOURCES

i. Sruti

ii. Smriti

iii. Digests and commentaries

iv. Custom

2. MODERN SOURCES

i. Equity, justice and good conscience
ii. Precedent and
iii. Legislation

ANCIENT SOURCES:

SRUTI: Literally sriti means, 'what was heard' the sruti is believed to contain the very words of the Deity. The sruti comprises of:

i. The Rik-Veda
ii. The Sum-Veda
iii. The Yajur-veda
iv. The Atharva-Veda and their respective Branhanas.

The sruti is considered as the fundamental source of Hindu Law. But sruti did not deal with the rules of law in systematic manner, it only dealt with the life of our early ancestors.

SMRITI: The word 'Smriti' is derived from the word "smri" and literally Smriti means, that which was remembered. In Smriti the language is of human origin but the rules are divine However, Smritis e.g. Manusmriti, Yajnavalkya Smiriti and the Smritis of Vishnu, Narad, Parashar, Apastamba, Vashisht, Gautam, etc.

The Smritis may be divided into :

1. Early Smritis, dharmasutras and
2. Later Smritis, Dharmasastras

Dharmasutras are written in prose style. Whereas Dharmasastras are in metrical verses. The main Dharmasutras are, the Apastamba, Gautama, Baudhayana, and Vasi??ha Dharmasutras.The Dharmasastra literature bears the names of Manu, Yajnavalkya, Brhaspati, Narada etc. Amongst them Manu smriti was considered as the supreme authority. "Whatever Manu says is the medicine"(Veda).

DOCTRINE OF FACTUM VALET:

The doctrine 'Quod fieri factum valet' literally means that 'what ought not to be done, become valid when done.'This doctrine was applied on the grounds of equity, justice and good conscience. The doctrine was applied in the following two cases:

1. When the objection to an act is merely on moral or religious grounds
2. To the acts which are prohibited by texts are not rendered invalid.

By the application of the doctrine any act which is void in law cannot be made valid.

DIGEST AND COMMENTARIES: The writings of the smritis were followed by the texts like Digests and Commentaries or Nibandhas which were based on these smriti. When the the smritis were not clear on certain topics and did not cover all topics, the smritis did not agree with each other on all matters and many contained conflicting texts, thus the need for further analysis, systematisation and assimilation of law arose. This need was satisfied by the digests and commentaries. The authors of commentaries and digests codified and supplemented the rules in the smritis in accordance with their own views and reasoning and also in the light of the usage and customs. The following are the commentaries:

- Commentaries on Manu by Medhatithi, Govinda Raj etc
- Commentaries on Yajnavalkya etc.

CUSTOM: Customs have played a very important part in the Hindu jurisprudence a nd much of our Hindu law is nothing but recognized customs. It is an important and independent source of Hindu law.

DIFFERENT KINDS OF CUSTOM

- Family Customs: it is a custom prevalent to particular families.
- Class or caste custom: it is a custom that is prevalent in particular castes or classes.
- Local or territorial customs: it is a custom that prevails in a particular locality or territory.

ESSENTIALS OF VAID CUSTOM:

The following are the essentials for a vaild custom.

- Ancient
- Continuous
- Certain
- Reasonable
- Not Immoral
- Not opposed to public policy
- Not opposed to statutory law

These are discussed in details as follows:

- **Ancient:**

  It is necessary that custom should be ancient. The term ancient means that it belongs to antiquity, what is antiquity will depend on each case. What is necessary to be proved is that usage has been acted upon in practise for such a long time and that it has been, by common consent, submitted to be a custom and be accepted as a governing rule.

- **Continuous:**

  Continuity of a custom is as essential as its antiquity. If not followed for some time continuously, the custom's continuity is broken, irrespective of the fact that it was deliberate or accidental. Discontinuance destroys a custom.

- **Certainty:**

  It is necessary to prove that a custom is certain. Vague obligations as to existance of custom will not be sufficient.

- **Reasonable:**

  An unreasonable custom is void. What is reasonable or unreasonable is a matter of fact. Thus, what is reasonable is to be determined by the cotemporary values of society.

- **Not Opposed to Public Policy:**

  The custom whch is opposed to public policy is void.

- **Not opposed to statutory law:**

  A Custom opposing the statutory law is considered to be void.

r **MODERN SOURCES:**

EQUITY, JUSTICE AND GOOD CONSCIENCE: when law was silent on a matter, they should decide the cases in accordance with equity, justice and good conscience. The expression "equity, justice and good conscience" means the rules of English law as modified to suit the Indian circumstances and conditions.

PRECEDENT: Precedence means decided case laws. Precedent is the source by and large, where most of the principles and rules of modern Hindu law are also applied.

LEGISLATION: Various Acts passed by the legislature from time to time which are considered as the sourse of Hindu Law. The following are the enactments which are considered as the souce of Hindu law:

- Hndu Marriage Act 1955
- Hindu Succession Act 1956
- Hindu Adoption And Maintenance Act,1956
- Hindu Minority And Guardianship Act, 1956

SCHOOLS OF HINDU LAW:

Hindu law has two main schools:

1. Mitakshara school and
2. Dayabhaga school.

The Mitakshara owes its name to Vijnaneshwar on the Yajanavalkaya and the Dayabhaga is from Jimutavahana's digest. The Mitaksara school prevails in the whole of India except Bengal and Assam . The Dayabhaga school prevails in Bangal and Assam.

DIFFERENCE BETWEEN MITAKSARA AND DAYABHAGA SCHOOL:

1. The Mitakshara is the orthodox school, whereas the Dayabhaga is a reformist school.
2. The Mitaksara School in case of inheritance based on the principle of propinquity, while the Dayabhaga School is based on the principle of religious efficacy.
3. The Mitaksara School is based on the doctrine of son's in case of joint Hindu Family, whereas the in Dayabhaga School there is no such doctrine and so long as the father is alive the son have no right by birth.

CHAPTER II

HINDU MARRIAGE

Marriage is one of the social institutions established to control and regulate the life of mankind. It is closely associated with the institution of family.the Hindu Marriage has not remained a sacramental marriage and at the same time has not become a contract, though it has semblance of both . It has semblance of a contract as consent is of some importance, it has semblance of a sacrament.

THE HINDU MARRIAGE ACT 1955

Section 5: Conditions for a valid Hindu Mrriage:

Section 5 of the Hindu Marriage Act, 1955 provides for the conditions for valid Hindu marriage:

1. Neither party should have a spouse who is alive at the time of the marriage.
2. Neither party can be mentally unsound and therefore incapable of giving valid consent to the marriage at the time of the marriage.
3. If at the time of the marriage, either party though capable of giving a valid consent has been suffering from mental disorder which makes that party unfit for marriage and the procreation of children, the marriage will not be valid.
4. If either party has been subject to recurrent attacks of insanity or epilepsy, the marriage will not be valid.
5. The bridegroom should have completed the age of twenty one years and the bride, the age of eighteen years at the time of the marriage.
6. The parties should not be within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the them.
7. The parties should not be sapindas of each other unless the custom or usage governing each of them permits of a marriage between the two.

Bigamy: A bigamous marriage is a void marriage Under the Hindu law.

Mental Capacity: At the time of the marriage, neither party can be mentally unsound or either party though capable of giving a valid consent has been suffering from mental disorder which makes that party unfit for marriage and the procreation of children, the marriage will not be valid or if either party has been subject to recurrent attacks of insanity or epilepsy, the marriage will not be valid.

Age of Marriage: The bridegroom should have completed the age of twenty one years and the bride, the age of eighteen years at the time of the marriage.

Prohibition on Account of Relationship: The parties should not be within the degrees of prohibited relationship, the parties should not be sapindas of each other.

Section 3(f):"Sapinda relationship" The Hindu Marriage Act, 1955:

- **i.** with reference to any person extends as far as the third generation (inclusive) in the line of ascent through the mother, and the fifth (inclusive) in the line of ascent through the father, the line being traced upwards in each case from the person concerned, who is to be counted as the first generation;
- **ii.** two persons are said to "sapindas" of each other if one is a lineal ascendant of the other within the limits of sapinda relationship, or if they have a common lineal ascendant who is within the limits of sapinda relationship with reference to each of them;

Section 3 (g): Section 3(g) in The Hindu Marriage Act, 1955:

Degrees of prohibited relationship: two persons are said to be within the degrees of prohibited relationship-

- **i.** if one is a lineal ascendant of the other; or
- **ii.** if one was the wife or husband of a lineal ascendant or descendant of the other; or
- **iii.** if one was the wife of the brother or of the father's or mother's brother or of the grandfather's or grandmother's brother of the other; or
- **iv.** if the two are brother and sister, uncle and niece, aunt and nephew, or children of brother and sister or of two brothers or of two sisters;

Section 7: CEREMONIES: As per Section 7 Saptapadi is an essential part of the ceremonies of marriage, its non performance will invalidate the marriage. Saptapadi is consisted in performing a ceremony of taking seven steps before the sacred fire by the bride and the groom. The performance of Saptapadi marked the completion of a marriage. It made the marriage irrevocable.

Section 8: REGISTRATION OF MARRIAGE: Section 8(1) of Hindu Marriage Act provides that for the the State government may make rules providing that the parties to any such marriage may have the

particulars relating to their marriage entered on such manner and subject to such conditions, as may be prescribed in a Hindu Marriage Register kept for the purpose. The Act does not contain the rules of registration and it is the State Government who have been authorised to frame them.

Section 9 : Restitution of conjugal rights: 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 and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

Theessentials of restitution of Conjugal Rights:

1. one party must have withdrawn from the society of the other
2. the withdrawal must be without any reasonable reason, and
3. the aggrieved party applies for the restitution of conjugal rights.

Once these conditions are fulfilled, the District Court may decree of restitution of conjugal rights to bring about cohabitation between the parties.

Section 10: JUDICIAL SEPARATION: When either party to a marriage, may present a petition praying for a decree for judicial separation on any of the grounds specified in sub-section (1) of section 13, and in the case of a wife also on any of the grounds specified in sub-section (2) thereof and where a decree for judicial separation has been passed, it shall no longer be obligatory for the petitioner to cohabit with the respondent, but the court may, on the application by petition of either party and on being satisfied of the truth of the statements made in such petition, rescind the decree if it considers it just and reasonable to do so.

DIFFERENCE BEWEEN JUDICIAL SEPARATION AND DIVORCE:

A Decree of Divorce brings a marriage to an end and Judicial Separation does not. In judicial separation it is a husband and wife living separately. A petition for Judicial Separation can be sought on the five grounds which are available for divorce but it is not necessary to prove that the marriage has irretrievably broken down nor the marriage is dissolved by judicial separation.

Section 11: VOID MARRIAGES- 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. A marriage is void and is annulled and considered to be no marriage if it satisfies any of the provisions contained in Section 11 of Hindu Marriage Act, 1955.

Section 12 : VOIDABLE MARRIAGES:

Any marriage solemnised, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:

(a) that the marriage has not been consummated owing to the impotence of the respondent or

(b) that the marriage is in contravention of the condition specified in clause (ii) of section 5 or

(c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner,the consent of such guardian was obtained by forceor by fraud as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent or

(d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.

According to subsection (2) no petition for annulling a marriage

(a) on the ground specified in clause (c) of sub-section (1) shall be entertained if:

(i) the petition is presented more than one year after the force had ceased to operate or, as the case may be, the fraud had been discovered or

(ii) the petitioner has, with his or her full consent, lived with the other party to the marriage as husband or wife after the force had ceased to operate or, as the case may be, the fraud had been discovered;

(b) on the ground specified in clause (d) of sub-section (1) shall be entertained unless the court is satisfied

(i) that the petitioner was at the time of the marriage ignorant of the facts alleged;

(ii) that proceedings have been instituted in the case of a marriage solemnised before the commencement of this Act within one year of such commencement and in the case of marriages solemnised after such commencement within one year from the date of the marriage; and

(iii) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of [the said ground].

Sunder Lal Soni v. Smt. Namita Jain, AIR 2006 MP 51.

Non-disclosure of age and factum of having major children by husband at the time of marriage amounts to fraud and suppression of material facts having bearing on marriage. Marriage founded on fraud from

very inception is a nullity.

Babui Panmate v. Ram Agya Singh, AIR 1968 Pat 190.

Misrepresentation as to the age of the bridegroom made to the mother who acted as an agent and the daughter consented for the marriage believing the statement to be true. It was held that the consent was vitiated by fraud

Sction 13 : GROUNDS FOR DIVORCE UNDER THE HINDU MARRIAGE ACT, 1955

The following are the grounds for divorce mentioned under the Hindu Marriage Act, 1955.

Adultery - after the solemnisation of the marriage, had voluntary sexual intercourse with any person other than his or her spouse

Cruelty - after the solemnisation of the marriage, treated the petitioner with cruelty

Desertion - has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition Conversionhas ceased to be a Hindu by conversion to another religion.

Mental Disorder - has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Leprosy - has been suffering from a virulent and incurable form of leprosy

Venereal Disease - hasbeen suffering from venereal disease in a communicable form

Renunciation - has renounced the world by entering any religious order

Not Heard Alive - has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive.

Section 13(2) of The Hindu Marriage Act, 1955:

A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the following grounds:

Husband having more than one wife living: that the husband had married again before such commencement or that any other wife of the husband married before such commencement was alive at the time of the solemnisation of the marriage of the petitioner

Rape, sodomy or bestiality: that the husband has, since the solemnisation of the marriage, been guilty of rape, sodomy orbestiality

Decree or order of maintenance: a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards.

Marriage before attainment of the age of fifteen years: that her marriage was solemnised before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.

SECTION 13B:DIVORCE BY MUTUALCONSENT: The Conditions required under section 13B of the Hindu Marriage Act are as follows:

i) Husband and wife have been living separately for a period of one year or more,

ii) that they are unable to live together and

iii) that both husband and wife have mutually agreed that the marriage has totally broken down, and the marriage should be dissolved.

On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.

Sction 14:NO PETITION FOR DIVORCE TO BE PRESENTED WITHIN ONE YEAR OF MARRIAGE: It shall not be competent for any court to entertain any petition for dissolution of a marriage by a decree of divorce, unless at the date of the presentation of the petition one year has elapsed since the date of the marriage. According to subsection (2) In disposing of any application under this section for leave to present a petition for divorce before the expiration of one year from the date of the marriage, the court shall have regard to the interests of any children of the marriage and to the question whether there is a reasonable probability of a reconciliation between the parties before the expiration of the said one year.

Section 15. DIVORCED PERSONS WHEN MAY MARRY AGAIN: When a marriage has been dissolved by a decree of divorce and either there is no right of appeal against the decree or, if there is such a right of appeal, the time for appealing has expired without an appeal having been presented, or an appeal has been presented but has been dismissed, it shall be lawful for either party to the marriage to marry again.

Section 16:LEGITIMACY OF CHILDREN OF VOID AND VOIDABLE MARRIAGES: Notwithstanding that marriage is null and void under section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976)*, and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.According to subsection (2) where a decree of nullity is granted in respect of a voidable marriage under section 12, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity. Accoriding to subsection (3) Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under section 12, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents.Though the children illegitimate be treated as legitimate, nothwithstanding the marriage is void or voidable.

Section 24: MAINTENANCE PENDENTE LITE AND EXPENSES OF PROCEEDING

Where in any proceeding under this Act 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, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regards to the petitioner's own income and the income of the respondent, it may seem to the Court to be reasonable Under Section 24 of the Act of 1955, an order of maintenance is only pendentelite proceedings. This is also termed as interim or temporary maintenance.

Section 25 :PERMANENT ALIMONY AND MAINTENANCE:

Section 25 provides for the grant of permanent alimony and maintenance to any of the party to a marriage at the time of passing any decree under the Act or at any time subsequent thereto.

CHAPTER III

HINDU ADOPTIN AND MAINTENANCE

Adoption is a legal process by which a child adopted is given perental rights by the adoptive parents as biologicalparents. According to Section 2(aa) of the The Juvenile Justice (Care and Protection of Children) Amendment Act, 2006,"adoption" means the process through which the adopted child is permanently separated from his biological parents and become the legitimate child of his adoptive parents with all the rights, privileges and responsibilities that are attached to the relationship. A child can be adopted under Hindu Adoption and Maintenance Act, 1956. The following are the essential provsions for a valid adoption under the Act.

Section 6 of the Hindu Adoption and Maintenance Act, 1956 provides for the requisites of a valid adoption- The following are the requisites of a valid adoption:

i) the person adopting has the capacity, and also the right, to take in adoption;

ii) the person giving in adoption has the capacity to do so

iii) the person adopted is capable of being taken in adoption, and

iv) the adoption is made in compliance with the other conditions mentioned in this Chapter.

Section 7 provides for the capacity of male Hindu to take in adoption- the essentials of valid adoption by a Hindu male:

1. Any male Hindu who is of sound mind and

2. Is not a minor has the capacity to take a son or a daughter in adoption

3. If a person has more than one wife living at the time of adoption, the consent of all the wives in necessary

Accoring to the proviso, if he has a wife living, he shall not adopt except with the consent of his wife unless the wife has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

The consent of wife is necessary in case of adoption by a male.

Section 8 of the Act provides for the capacity of a female Hindu to take in adoption.-

Any female Hindu-

a) who is sound mind,

b) who is not a minor, and

c) who is not married, or if married, whose marriage has been dissolved or whose husband is dead or has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

Has the capacity to take a son or daughter in adoption

Section 9 provides for capacity of a person for giving in adoption. The following are the provisions for giving in adoption:

1) No person except the father or mother or the guardian of a child shall have the capacity to give the child in adoption.

2) the father, if alive, shall alone have the right to give in adoption, but such right shall not be exercised save with the consent of the mother unless the mother has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

3) The mother may give the child in adoption if the father is dead or has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

4) Where both the father and mother are dead or have completely and finally renounced the world or have abandoned the child or have been declared by a court of competent jurisdiction to be of unsound mind or where the parentage of the child is not known, the guardian of the child may give the child in adoption with the previous permission of the court to any person including the guardian himself.

5) Before granting permission , the court shall be satisfied that the adoption will be for the welfare of the child, due consideration being for this purpose given to the wishes of the child having regard to the age

and understanding of the child and that the applicant for permission has not received or agreed to receive and that no person has made or given or agreed to make or give to the applicant any payment or reward in consideration of the adoption except such as the court may sanction

Section 10 provides for the Persons who may be adopted-

No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely :-

i) he or she is Hindu , i.e, male or female

ii) he or she not already been adopted, where a child already been adopted then the child cannt be taken in adoption.

iii) he or she has not been married, unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption. Married peson cannt be taken in adoption.

iv) the child must not have completed the age of fifteen years, unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being take in adoption.

Section 11 provides for the other conditions for a valid adoption -

In every adoption, the following conditions must be complied with:-

i) if the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son, son's son or son's son's son (whether by legitimate blood relationship or by adoption) living at the time of adoption.

ii) if the adoption is of a daughter, the adoptive father or mother by whom the adoption is made must not have a Hindu daughter or son's daughter (whether by legitimate blood relationship or by adoption) living at the time of adoption.

iii) if the adoption is by a male and the person to be adopted is a female, the adoptive father is at least twenty-one years older than the person to be adopted.

iv) the same child may not be adopted simultaneously by two or more persons.

v) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family or its both (or in the case of an abandoned child or child whose parentage is not known, from the place or family where it has been brought up) to the family of its adoption.

Section 12 provides for the effects of adoption-

An adopted child shall be deemed to tbe the child of has or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be served replaced by those created by the adoption in the adoptive family. The Proviso says that-

a) the child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth.

b) any property which vested in the adopted child be before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth.

c) the adopted child shall not divest any person of any estate which vested in him or her before the adoption.

Section 18 provides for Maintenance of wife.

Under Sub-section (1) the Hindu wife shall be entitled to, be maintained by her husband during her lifetime. Sub-section (2) gives her a right to live separately from her husband without forfeiting her claim to maintenance provided any of the conditions mentioned in clauses (a) to (g). Sub Section (1) provides thata Hindu wifeshall be entitled to be maintained by her husband during her life time. Subsection (2) provides that a Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance under the following circumstances:

a) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or willfully neglecting her.

b) if has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injuries to live with her husband.

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

d) if he has any other wife living.

e) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere.

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

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

Sub section(3) provides that a Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.

Section 19 of the Act lays down a moral obligation upon the father-in-law to maintain his daughter-in-law. A Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained after the death of her husband by her father-in-law, provided that she is unable to maintain herself out of her own earnings or other property or, where she has no property of her own, is unable to obtain maintenance-

1. from the estate of her husband or her father or mother, or
2. from her son or daughter, if any, or his or her estate.

Section 20. provides for the Maintenance of children and aged parents-

1. a Hindu is bound, during his or her lifetime, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.

2. A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.

3. The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends in so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property.

The explanation says that the "parent" includes a childless step-mother.

Section 21. Dependants defined.-For the purposes of this Chapter "dependants" mean the following relatives of the deceased:-

i) his or her father;

ii) his or her mother;

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

iv) his or her son or the son of his predeceased son or the son of a predeceased son of his predeceased son, so long as he is a minor; provided and to the extent that he is unable to obtain maintenance, in the case of a grandson from his father's or mother's estate, and in the case of a great grand-son, from the estate of his father or mother or father's father or father's mother;

v) his or her unmarried daughter, or the unmarried daughter of his predeceased son or the unmarried daughter of a predeceased son of his predeceased son, so long as she remains unmarried: provided and to the extent that she is unable to obtain maintenance, in the case of a grand-daughter from her father's or mother's estate and in the case of a great-grand-daughter from the estate of her father or mother or father's father or father's mother;

vi) his widowed daughter: provided and to the extent that she is unable to obtain maintenance-

a) from the estate of her husband, or

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

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

vii) any widow of his son or of a son of his predeceased son, so long as she does not remarry: provided and to the extent that she is unable to obtain maintenance from her husband's estate, or from her son or daughter, if any, or his or her estate; or in the case of a grandson's widow, also from her father-in-law's estate;

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

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

Section 22 of the Hindu Adoptions and Maintenance Act, 1956 provides for:

1) Subject to the provisions of sub-section (2) the heirs of a deceased Hindu are bound to maintain the dependants of the deceased out of the estate inherited by them from the deceased.

2) Where a dependant has not obtained, by testamentary or intestate-succession, any share in the estate of a Hindu dying after the commencement of this Act, the dependant shall be entitled, subject to the provisions of this Act, to maintenance from those who take the estate.

3) The liability of each of the persons who takes the estate shall be in proportion to the value of the share or part of the estate taken by him or her.

4) Notwithstanding anything contained in sub-section (2) or sub-section (3), no person who is himself or herself a dependant shall be liable to contribute to the maintenance of others, if he or she has obtained a share or part, the value of which is, or would, if the liability to contribute were enforced, become less than what would be awarded to him or her by way of maintenance under this Act.

Section 23 of the Hindu Adoptions and Maintenance Act, 1956 provides for:

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

2) In determining the amount of maintenance, if any, to be awarded to a wife, children or aged or infirm parents under this Act, regard shall be had to-

a) the position and status of the parties;

b) the reasonable wants of the claimant;

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

d) the value of the claimant's property and any income derived from such property, or from theclaimant's own earnings or from any other source;

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

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

a) the net value of the estate of the deceased after providing for the payment of his debts;

b) the provision, if any, made under a will of the deceased in respect of the dependant;

c) the degree of relationship between the two;

d) the reasonable wants of the dependant;

e) the past relations between the dependant and the deceased;

f) the value of the property of the dependant and any income derived from such property, or from his or her earnings or from any other source;

g) the number of dependants entitled to maintenance under this Act.

CHAPTER IV

MINORITY AND GUARDIANSHIP

The Hindus Minority and Guardianship Act, 1956 is an Act to amend and codify the law relating to minority and guardianship among Hindus.

The objects of the enactment This is to deal with the law relating the minority and guardianship. Under the Indian Majority Act, 1875, a person attains majority on his completing the age of 18 years but it before the completion of that age he has a guardian appointed by the court, he attains majority on completing the age of 21 years. That Act applies to all persons including Hindus but an exception is made with respect to the capacity of any persons to act in the matter of marriage, dower, divorce , and adoption . Marriage and divorce have already been dealt with so far as Hindu are concerned .

Guardians may be divided into three classes, namely:

1) natural guardians,
2) testamentary guardians, and
3) guardians appointed under the Guardians and Wards Act, 1890.

This Act does not codify the entire Hindu Law relating to guardianship but only amends and codifies certain parts of the law relating to minority among Hindus, and it is only in respect of the points and matters specifically dealt within it that the law relating minority and guardianship among Hindus is codified in this enactment, i.e., the Hindu Minority and Guardianship Act, 1956. The enactment does not purport to give the whole law on the subject guardianship. The Act is principally intended to declare as to who are the persons entitled to act as the natural guardians of a Hindu minor in respect of the person and property of the minor and to impose certain restrictions on the powers of such guardians.

Section 6 of the Act provides for the categories of persons to be termed as natural guardian. The following are the persons to be termed as naturalguardian:

The natural guardian of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are-

a) in the case of a boy or unmarried girl- the father, and after him, the mother, provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;

b) in the case of illegitimate boy or an illegitimate unmarried girl- the mother, and after her, the father;

c) in the case of married girl -the husband:

PROVIDED that no persons shall be entitled to act as the natural guardian of a minor under the provisions of this section-

a) If he has ceased to be a Hindu ,or

b) If he has completely and finally renounced the world becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi)

Explanation In this section, the expression "father" and "mother" do not include a step- father and a step-mother.

Section 8 provides for the powers of the natural guardian. The following are the powers of the natural guardian:

1. To do acts necessary and for the benefit of the child. The natural guardian of a Hindu minor has power, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.
2. To do acts for the benefit of the property with the permission of the Court
3. Power to enter into any contract.

Accoriding to sub sec (4) , no court shall grant permission to the natural guardian to do any of the acts mentioned in sub-section (2) except in case of necessity or for an evident advantage to the minor.

Section 9 of the Act provides for the Testamentary Guardians and their powers.

1) A Hindu father entitled to act as the natural guardian of his minor legitimate children may, by will, appoint a guardian for any of them in respect of the minor's person or in respect of the minor's property (other than the undivided interest referred to in section 12) or in respect of both.

2) An appointment made under sub-section (1) shall have no effect if the father predeceases the mother, but shall revive if the mother dies without appointing, by will, any person as guardian.

3) A Hindu widow entitled to act as the natural guardian of her minor legitimate children and Hindu mother entitled to act as the natural guardian of her minor legitimate children by reason of the fact that the father has become disentitled to act as such, may, by will, appoint a guardian for any of them in respect of the minor's person or in respect of the minor's property (other than the undivided interest referred to in section 12) or in respect of both.

4) A Hindu mother entitled to act as the natural guardian of her minor illegitimate children may, by will, appoint a guardian for any of them in respect of the minor's person or in respect of the minor's property or in respect of both.

5) The guardian so appointed by will has the right to act as minor's guardian after the death of the minor's father or mother, as the case may be, and to exercise all the rights of a natural guardian under this Act to such extent and subject to such restrictions, if any, as are specified in this Act and in the will.

6) The right of the guardian so appointed by will shall, where the minor is girl, cease on her marriage.

DE FACTO GUARDIAN:

Section 11 provides for de facto guardian of a minor. De facto guardian is neither a natural guardian nor a testamentaray guardian. No person shall be entitled to dispose of, or deal with, the property of a Hindu minor merely on the ground of his or her being the de facto guardian of the minor. Section 11 of te Act does not recognize the power of a defacto guardian.

CHAPTER V

THE HINDU SUCCESSION

The Hindu Succession Act, 1956 has amended and codified the law relating to intestate succession among Hindus. The Act deals with the right in property. The Act brought about changes in the law of succession among Hindus and woman has given an important place to inherit property as well as an heir .However, it does not interfere with the special rights of those who are members of Hindu Mitakshara coparcenary except to provide rules for devolution of the interest of a deceased male in certain cases.

Section 8: General rules of succession in the case of males. -The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter-

a) Firstly, upon the heirs, being the relatives specified in class I of the Schedule;

b) Secondly, if there is no heir of class II then upon the heirs, being the relatives specified in class II of the Schedule;

c) Thirdly, if there is no heir of any of the two classes, then upon the agitates of the deceased; and

d) Lastly, if there is no agnate, then upon the cognates of the deceased.

Section 9. Orders of succession among heirs in the Schedule.-Among the heirs specified in the Schedule, those in class I shall take simultaneously and to the exclusion of all other heirs; those in the first entry in class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession.

Section 10. Distributions, of property among heirs in class I of the Schedule. -The property of an intestate shall be divided among the heirs in class I of the Schedule in accordance with the following rules:

Rule 1. - The intestate's widow, or if there are more widows than one, all the widows together, shall take one share.

Rule 2. - The surviving sons and daughters and the mother of the intestate shall each take one share.

Rule 3. - The heirs in the branch of each pre-deceased son or each pre-deceased daughter of the intestate shall take between them one share.

Rule 4. - The distribution of the share referred to in Rule 3-

i) Among the heirs in the branch of the pre-deceased son shall be so made that his widow (or widows together) and the Surviving sons and daughters gets equal portions; and the branch of his predeceased sons gets the same portion;

ii) Among the heirs in the branch of pre-deceased daughter shall be so made that the surviving sons and daughters get equal portions.

Section 14 provides for females to be the absolute owner of property. Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Section 15 provides for the general rules of succession in the case of female Hindus. -

1) **The property of a female Hindu dying intestate shall devolve according to the rules set out ill section 16,-**

a) Firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

b) Secondly, upon the heirs of the husband;

c) Thirdly, upon the mother and father;

d) Fourthly, upon the heirs of the father; and

e) Lastly, upon the heirs of the mother.

2) **Notwithstanding anything contained in subsection (1),-**

a) Any property inherited by a female Hindu from tier father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and

b) Any property inherited by a female Hindu from tier husband or from her father-in-law shall devolve, in

the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in subsection (1) in the order specified therein, hill upon the heirs of the husband.

Section16. Order of succession and manner of distribution among heirs of a female Hindu-The order of succession among the heirs referred to in Section 15 shall be and the distribution of the intestate's property among those heirs shall take place according, to the following rules, namely:

Rule 1. - Among the heirs specified in subsection (1) of Section 15, those in one entry shall be preferred to those in any succeeding entry and those including in the same entry shall take simultaneously.

Rule 2. - If any son or daughter of the intestate had pre-deceased the intestate leaving his or her own children alive at the time of the intestate's death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate's death.

Rule 3. - The devolution of the property of the intestate on the heirs referred to in clauses (b), (d) and (e) of sub-section (1) and in subsection (2) to Section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's as the case may be, and such person had died intestate in respect thereof immediately after the intestate's death.

Section 18. Full blood preferred to half blood. -Heirs related to an intestate by full blood shall be preferred to heirs related by half blood, if the nature of the relationship is the same in every other respect.

Section 20. Right of child in womb. -A child who was in the womb at the time of the death of an intestate and who is subsequently born alive have the same right to inherit to the intestate as if he or she had been born before the death of the intestate, and the inheritance shall be deemed to vest in such a case with effect from the date of the death of the intestate.

A child in mother's womb is presumed to be born before the death of the intestate . the important this is that the child must be in the womb and the chils must born alive.

Section 21. Presumption in cases of simultaneous deaths. -Where two persons have died in circumstances rendering it uncertain whether either of them, and if so which, survived the other then, for all purposes affecting succession to property, it shall be presumed, until the contrary is proved, that the younger survived the elder.

Disqulification from inheritance:

Section 24. Certain widows re-marrying may not inherit as widows. -Any heir who is related to all intestate as the widow of a pre-deceased soil, the widow of a pre-deceased Son of a pre-deceased son or the widow of a brother shall not be entitled to succeed to the property of the intestate as such widosw, if oil the date the succession opens, she has re-married.

Section 25. Murdered disqualified. -A person who commits murder or abets the commission of murder shall be disqualified from inheriting the property of the person murdered, or any other property in furtherance of the succession to which he or she committed or abetted the commission of the murder.

Section 25 disqualifies a murderer from inheriting property of the person murdered.

Section 26. Convert's descendants disqualified. -Where, before or after the commencement of this Act, a Hindu has ceased or ceases to be Hindu by conversion to another religion, children both to him or her after such conversion and their descendants shall be disqualified from inheriting the property of any of their Hindu relatives, unless such children or descendants are Hindus at the time when the succession opens.

Section 27. Succession when heir disqualified. -If any person is disqualified from inheriting any property under this Act, it shall devolve as if such person had died before the intestate.

The disqualified is deemed to have died before the intestate.

Section 28. Disease, defect, etc. not to disqualify.-No person shall be disqualified from succeeding to any property on the ground of any disease, defect or deformity, or Save as provided in this Act, on any other ground whatsoever.

CHAPTER VI

THE SPECIAL MARRIAGE

The main feature of The Special Marriage Act, 1954 is a marriage between any two persons belonging to any religion or creed may be solemnized under this Act.

Section 4 Conditions relating to solemnization of marriages:

A marriage between any two persons may be solemnized under this Act, if at the time of the marriage the following conditions are fulfilled:

a) neither party has a spouse living;

i) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

ii) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or

iii) has been subject to recurrent attacks of insanity.

b) the male has completed the age of twenty-one years and the female the age of eighteen years;

c) the parties are not within the degrees of prohibited relationship and

d) where the marriage is solemnized in the State of Jammu and Kashmir, both parties are citizens of India domiciled in the territories to which this Act extends.

Section 5 of the Act deals with the notice of intended parties requiring at least one of them must have resided in the district for a period of not less than 30 days immediately preceding the date on which such notice is given to the Marriage Office of the district.

Section 6 requires the Marriage Office to make copies of all notices open for inspection at all reasonable times, without fee, by any person desirous of inspecting the same, and to publish every notice by affixing a copy at some conspicuous place in the office.

If either of the parties to an intend marriage is not a permanent resident in the district in which the notice has been given, then the Marriage officer of that district has to send the notice to Marriage Officer of the district in which the parties may have permanent residence and that officer has to publish it.

Section 7 enables any person before the expiry of 30 days from the date on which such notice has been published, to object to the marriage on the grounds that it will contravene one or more of the conditions specified in section 4 viz neither party has a spouse living, neither party is incapable of giving a valid consent in consequence of unsoundness of mind, the requirement of minimum age and that they are not within the prohibited degree of relationship.

Section 8 requires the Marriage Officer to inquire into the objection and satisfy himself that it does not prevent the solemnization of the marriage. If the objection is upheld within 30 days, either party to the intended marriage can appeal to the district court, whose decision shal be final.

Section 9 provides for the power of the Marriage officer. The following are the powers of the Marriage Officer summoning and enforcing the attendance of witnesses and examining them on oath;

a) discovery and inspection;

b) compelling the production of documents;

c) reception of evidence of affidavits; and

d) issuing commissions for the examination of witnesses; and any proceeding before the Marriage Officer shall be deemed to be a judicial proceeding.

Accoriding to subsection 2 If it appears to the Marriage Officer that the objection made to an intended marriage is not reasonable and has not been made in good faith he may impose on the person objecting costs by way of compensation not exceeding one thousand rupees and award the whole or any part thereof, to the parties to the intended marriage, and any order for costs so made may be executed in the same manner as a decree passed by the district court within the local limits of whose jurisdiction the Marriage Officer has his office.

Section 13 provides for the Certificate of marriage. Accoriding to section 13 , When the marriage has been solemnized, the Marriage Officer shall enter a certificate thereof in the form specified , a book to be kept by him for that purpose and to be called the Marriage Certificate Book and such certificate shall be signed by the parties to the marriage and the three witnesses.On a certificate being entered in the Marriage

Certificate Book by the Marriage Officer, the Certificate shall be deemed to be conclusive evidence of the fact that a marriage under this Act has been solemnized and that all formalities respecting the signatures of witnesses have been complied with.

Section 15 provides for Registration of marriages celebrated in other forms. -Any marriage celebrated, , other than a marriage solemnized under the Special Marriage Act, 1872, may be registered by a Marriage Officer in the territories to which this Act extends if the following conditions are fulfilled:

a) A ceremony of marriage has been performed between the parties and they have been living together as husband and wife ever since;

b) Neither party has at the time of registration more than one spouse living;

c) Neither party is an idiot or a lunatic at the time of registration;

d) The parties have completed the age of twenty-one years at the time of registration;

e) The parties are not within the degrees of prohibited relationship;

Provided that in the case of a marriage celebrated before the commencement of this Act, this condition shall be subject to any law, custom or usage having the force of law governing each of them which permits of a marriage between the two; and

f) The parties have been residing within the district of the Marriage Officer for a period of not less than thirty days immediately preceding the date on which the application is made to him for registration of the marriage.

The following are the consequenes of marriage under this Act:

Section 19 : Effect of marriage on member of undivided family. -The marriage solemnized under this Act of any member of an undivided family who professes the Hindu, Buddhist, Sikh or Jaina religion shall be deemed to effect his severance from such family.

Section 20. Rights and disabilities not affected by Act. -Subject to the provisions of Section 19, any person whose marriage is solemnized under this Act shall have the same rights and shall be subject to the same disabilities in regard to the right of succession to any property as a person to whom the Caste Disabilities Removal Act, 1850 (21 of 1850) applies.

Section 21. Succession to property of parties married under Act. -Notwithstanding any restrictions contained in the Indian Succession Act, 1925 (39 of 1925) with respect to its application to members of certain communities, succession to the property of any person whose marriage is solemnized under this Act and to the property of the issue of such marriage shall be regulated by the provisions of the said Act and for the purposes of this Section that Act shall have effect as if Chapter III of Part V (Special Rules for Parsi Intestate) had been omitted therefrom.

21A. Special provision in certain cases. -Where the marriage is solemnized under this Act of any person who professes the Hindu Buddhist, Sikh or Jaina religion with a person who professes the Hindu, Buddhist, Sikh or Jaina religion, Section 19 and Section 21 shall not apply and so much of Section 20 as creates a disability shall also not apply.]

Understanding Section 9 of Hindu Marriage Act, 1955

Marriage in Smt. Saroj Rani v. Sudarshan Kumar Chadha, 1984, is contemplated to be a bond where both husband and wife should share a common life where they will share happiness and will stand by each other even in miseries.

Section 9 of the HMA, 1955 talks about restitution of conjugal rights that states that in a situation where a husband or wife withdraws from the society of the other spouse without giving them any reasonable cause then the other spouse has the remedy to file a petition before a district court for restitution of conjugal rights. If the court is satisfied that the statements presented in the petition are true and there is no legal bar in granting the remedy of restitution then the court may pass the decree of restitution of conjugal rights.

This Section states that the court may grant a decree for restitution of conjugal rights under the following conditions:

1. When either of the party without giving any reasonable cause has withdrawn from the society of the other spouse;
2. The court is satisfied with the fact that the statements made in the petition are true;
3. There is no legal ground on which the petition shall be declined.

Under this Section, the term 'society' means cohabitation and companionship that a person expects in a marriage. The term 'withdrawal from society' means 'withdrawal from a conjugal relationship'.

In Mrs. Manjula Zaverilal v. Zaverilal Vithal Das, 1973, the Court stated that when the aggrieved party files a petition for the restitution of conjugal rights and proves that the defending party has withdrawn from the society of the aggrieved party then the defending party shall thrive to prove that there was a reasonable cause to abandon or leave their spouse.

Essential elements of Section 9 of Hindu Marriage Act, 1955

Following are the essential elements of Section 9 of the Hindu Marriage Act, 1955:

1. The marriage between the applicant and defendant is legal, valid, and existing.
2. The defendant should withdraw from the society of the applicant.
3. Such withdrawal from society should be unjust and unreasonable.
4. The court should be satisfied that the petition and facts stated by the applicant are true.
5. The court should be satisfied that there exists no legal ground to refuse the decree.

Grounds for judicial separation(Section-10)HM ACT,1955

The grounds for separation/divorce are mentioned under Section 13 of the HMA. The following are the grounds for separation which can be sought by any aggrieved party and can be brought in front of the court for suitable action.

1. **Adultery** – Any party to a marriage can seek judicial separation on the ground that their significant other has or had sexual intercourse with a person other than them. The burden of proof lies on the party seeking separation. [Section 13(1)(i)]

This can be inferred from the case of **Subarama Reddiar v. Sakaswathi Ammal; (1966) 79 LW 382 (Mad) (DB),** that if the spouse successfully proves the presence of an adulterous relationship of their partner then judicial separation to the party can be granted by the Court.

2. **Cruelty –** Any party causing mental or physical torture on the other resulting in harming one's physical or mental health can be considered as a valid ground for judicial separation. [Section 13(1)(ia)]

It was held in the case of **Manisha Tyagi v. Deepak Kumar; (10th Feb 2010),** that the respondent (the wife) was accused of cruelty by the husband and to which divorce was granted by the District Court and the High Court. Challenging the same before the Supreme Court, the Court mentions that there was a lack of evidence against the respondent hence providing the parties judicial separation to contemplate their status of the marriage in the said time.

3. **Conversion** – if any party to marriage converts their religion from Hindu to any other religion, then in such cases the aggrieved party can file a petition for judicial separation in the court seeking relief. [Section 13(1)(Ii)]

It was explained in the case of **Madanan Seetha Ramalu v. Madanan Vimla,** that the wife had converted into Christianity to which the court granted judicial separation and then divorce on the application by the husband.

4. **Unsoundness of mind –** If any party to a marriage is suffering from unsoundness of mind or such intermittent ineffectiveness of the mind that it makes it impossible for the other party to reside together, then in such case the aggrieved party may seek judicial separation [Section 13(1)(iii)]. Further, this Section explains two kinds of disorder – Section 13(1)(iii -a) mental disorder includes mental illness which is either arrested or incomplete development of mind and on the other hand Section 13(1)(iii-b) includes psychopathic illness which includes disorders like schizophrenia that involves a persistent or a disability of the mind making it difficult for the other person to live under a common roof.

The case of **Anima Roy v. Prabadh Mohan Ray; (AIR 1969)** explained that if the unsoundness of mind is not traced around the time of marriage then the court cannot grant judicial separation to the parties.

5. **Leprosy** – Any party can seek judicial separation from the other party on the grounds of a type of leprosy that is incurable and very dangerous for the health of any person. Here leprosy is a chronic skin condition that is contagious and causes discolouration and lumps on the skin. [Section 13(1)(iv)]
6.

It was further explained by the case of **M. Jasmine Devapriya v. A. Stephen Dhanraj; 2017,** that if the aggrieved party can prove beyond reasonable doubt that it is not possible to cohabit together due to communicable and incurable disease then judicial separation can be granted.

6. **Venereal disease** – if any party to a marriage has an incurable or a communicable disease about which the other party did not know at the time of marriage then the aggrieved party can seek judicial separation for the same ground.[Section 13(1)(v)]

Grounds for judicial separation exclusively available to the wife:

Following are the grounds that are exclusively available to the wife for seeking judicial separation.

1. **Bigamy** – If it has come to the belief of the wife that her husband has married another woman in the existence of their married life then such aggrieved wife can file a petition under judicial separation proving to the court about the existence of another woman. [Section 13(2)(i)]
2. **Other crimes-** If the wife is to believe that certain charges like rape, sodomy and bestiality are committed by her husband then in such cases the petition for judicial separation can be filed in the court. [Section 13(2)(ii)]
3. **Revoke marriage due to age-** If the girl is made to marry any person before attaining the age of 15, then she can repudiate the marriage before attaining the age of 18 by filing for judicial separation. [Section 13 (2)(iv)].

Void Marriage, Section-11 under Hindu Marriage Act, 1955

A void marriage is a marriage that is invalid or illegitimate. A void marriage is void from the beginning, void ab initio. A decree for void marriage is a judicial declaration of pre-existing fact. Section 11 states that any marriage solemnised shall be deemed null and void by a decree of nullity if it violates the provisions of Section 5 (i), (iv), and (v).

Grounds for void marriage

The grounds of void marriage are as follows:

Bigamy

Bigamy is the act of marrying someone else while remaining legally married to someone. HMA, 1955, prohibits bigamy under Section 5(i). Section 17 deals with the punishment of bigamy. Any marriage solemnised between two Hindus, including Buddhist, Jaina, or Sikh is void if either party had a husband or wife living at the time of the marriage and is subject to the provisions of Sections 494 and 495 of the Indian Penal Code, 1860.

In the case of Shiromani Jain v. Dr Ashok Kumar Jain (2017), the Hon'ble Supreme Court held that Section 17 of the Hindu Marriage Act mandates that the marriage be appropriately solemnised with the essential rites needed by law or by custom. The voidness of the marriage under Section 17 is a necessary component of Section 494 since the second marriage will become null and void only when the provisions of Section 17 are satisfied.

Parties are within the degrees of prohibited relationship

The parties to the marriage are not in a prohibited relationship unless the custom or usage permits the marriage. Section 3(g) of the HMA, 1955, defines prohibited relationships.

The following situations fall under the definition of a prohibited relationship:

1. When one is a lineal ascendant of the other. Lineal ascendant includes father, grandfather and great grandfather; or
2. When one was the wife or husband of a lineal ascendant or descendant of the other; or
3. When one was the wife of the brother or of the father's or mother's brother or of the grandfather's or grandmother's brother of the other; or
4. If the two are siblings, uncle and niece, aunt and nephew, or children of brother and sister or cousins;

Relationship includes the following:

1. Relationship by half or uterine blood and by full blood;
2. Illegitimate and legitimate blood relationship;
3. Relationship by adoption and blood.

The Punjab-Haryana Court clarified in the case of Kiran Kaur v. Jagir Singh Bamrah (2014) that the provisions of Section 23(1)(a) of the Act do not preclude any party to the marriage from filing a petition under Section 11 of the HMA, 1955, seeking a declaration that the second marriage is null and void.

Parties are Sapinda to each other

Section 3(f) defines the Sapinda relationship. A person is considered to be in a Sapinda relationship if they can be traced upward from the individual in question, who is to be counted as the first generation, to the third generation in the line of ascent via the mother, and the fifth in the line of ascent through the father. If two persons share a lineal ascendant that falls within the boundaries of a Sapinda connection with regard to each of them, or if they are one another's lineal ascendants within those parameters, they are said to be "sapindas" of one another.

Legitimacy of children of void marriages

Section 16(1) deals with the legitimacy of children of void marriages. Whether the child was born before or after the Marriage Laws (Amendment) Act, 1976, whether a decree of nullity was granted in respect of that marriage, or whether the marriage was held to be void other than on a petition under this act, it is stated that any child of a void marriage will be legitimate in the same way as the children of a valid marriage.

According to Section 16(3), even if the child of a void marriage is declared genuine, such a child can acquire the property of their parents and acquire or possess the right to ancestral property.

In the case of Balkrishna Pandurang Halde v. Yeshodabai Balkrishna Halde (2018), the Bombay High Court remarked that a child's ability to claim a share from a void marriage is restricted to the amount of their father's separate property and that they cannot make any claim during their father's lifetime. Their entitlement to their father's separate property will become available upon his death, through succession.

Voidable Marriage Section-12 under Hindu Marriage Act, 1955

The term 'voidable' means the ability to be invalidated or nullified. Section 12 of the HMA, 1955, deals with voidable marriages. A voidable marriage is a legally binding and lawful marriage. It can continue to exist until the competent court issues a decree annulling the marriage. It can be regarded as a legitimate marriage until one of the partners violates the prerequisites for marriage legality. The parties of a voidable marriage have all the rights and duties of marriage until the court dissolves the union by a decree.

Grounds of voidable marriage

The grounds of a voidable marriage are as follows:

Impotency

Impotency is the inability to perform an act of sexual intercourse. It can be a physical, psychological, or emotional aversion. Under HMA 1955, impotency would render marriage voidable under Section 12(1)(a). The ground of impotency can be claimed if either of the parties was impotent at the time of the marriage. In order to seek relief on the grounds of the impotency of the respondent, relevant facts and proofs must be established. A mere accusation cannot be made to claim the ground of impotency.

In the case of Devki Nandan Das v. Smt. Manorama Das (2022), the Chattisgarh High Court held that a false allegation of torture and impotency amounts to mental cruelty.

The Hon'ble Supreme Court ruled in Yuvraj Digvijay Singh v. Yuvrani Pratap Kumari (1969) that a party is impotent if their mental or physical state makes marital consummation a realistic impossibility.

Contravention of Section 5(ii)

A marriage shall be deemed voidable if it violates the provisions of Section 5(ii) if either the husband or the wife suffers any of the following at the time of the marriage:

1. Incapable of giving valid consent to it due to unsoundness of mind; or
2. Competent in providing valid consent but has been suffering from a mental disorder that renders them unfit for procreation; or
3. Suffering from recurring attacks of insanity.

The Andhra Pradesh High Court remarked in the case of Tallam Suresh Babu v. T. Swetha Rani (2018) that a person must prove under Section 12(1)(b) the unsoundness of mind-affecting consent, mental disorder, and severity that rendered the respondent unfit for procreation, or recurring attacks of insanity.

Consent obtained by coercion or deception

A marriage will be deemed voidable if consent is obtained by force or fraud. Force can be physical force or threat. Fraud can be committed by the nature of the ceremony, misrepresentation of age, concealment of facts, or any other circumstance of the respondent which may have affected the consent.

The consent of the guardian in the marriage of the petitioner obtained by force or by fraud will also be a ground for a voidable marriage within the ambit of Section 12(1)(c). The Child Marriage Restraint Act, 1929, has been enacted to forbid child marriages in India. It also protects and assists victims of child marriage.

The Delhi High Court remarked in Mamta Rani v. Sudhir Sharma (2014) that the concealment of the appellant's mental condition is a ground for annulment of marriage under Section 12(1)(c) of the Hindu Marriage Act, 1955.

Concealment of pre-marriage pregnancy

Concealment of pre-marriage pregnancy by the respondent is a ground of voidable marriage. The suit must be instituted within a year of the commencement of the HMA, 1955, and within a year of solemnization of the marriage after the commencement of the act. The requirements for these grounds are

1. The respondent was pregnant at the time of marriage;
2. Respondent was pregnant by someone else other than the petitioner;
3. The petitioner was unaware that the respondent was pregnant at the time of their marriage.

In the case of Neelawwa v. Maruti (2013), the Karnataka High Court held that the petitioner who is seeking the relief of decree of nullity is not liable to prove the ground under Section 12(1)(d), but needs proof to declare a marriage as a nullity. In other words, the proof necessary to establish in a civil suit that the respondent at the time of marriage was pregnant by someone other than the petitioner is more than the case of likelihood but less than proof beyond a reasonable doubt. The petitioner must establish without a shadow of a doubt that the respondent was carrying another person's child at the time of the marriage.

Grounds on which petition for voidable marriages cannot be admitted

The grounds on which a petition for voidable marriages cannot be admitted are as follows:

1. The petition is presented more than one year after the force had ceased to operate or, the fraud had been discovered; or
2. If the force had ceased to exist or the fraud had been revealed, the petitioner agreed to cohabitate with the respondent to the marriage as husband or wife.

The legitimacy of children of voidable marriages

Section 16(2) deals with the legitimacy of a child of voidable marriages. It states that if a decree of nullity is granted in a voidable marriage under Section 12, any child born or conceived before the decree is passed will be the legitimate child of the parties to the marriage if the marriage had been dissolved rather than annulled on the date of the decree, notwithstanding the decree of nullity. Any child of a voidable marriage has rights on the property of the parents.

In the case of Anil Kumar v. State of Uttar Pradesh (2022), Allahabad High Court remarked that a child born out of a void or voidable marriage is legitimate and is entitled to be included in the concept of 'family' and is therefore eligible to be nominated under the Dying in Harness Rules, 1974.

The Hon'ble Supreme Court defined the scope of Section 16(3) in the matter of Revanasiddappa & Anr v. Mallikarjun & Ors (2011). It was pointed out that Section 16(3) imposes no restrictions on such children's property rights other than confining them to their parents' property. As a result, such children will have a right to their parents' property, whether self-acquired or inherited.

An exception to void and voidable marriage

Section 5(iii) of the HMA, 1955, states that at the time of the marriage, the age of the groom should be 21 years and the age of the bride should be 18 years. This provision is neither void nor voidable. Section 18 deals with the punishment in the case of contravention of Section 5(iii) with imprisonment of up to two years or with a fine which may extend to one lakh rupees, or both.

In the case of Sh. Jitender Kumar Sharma v. State & Another (2010), the Delhi High Court held that marriages performed in violation of the age prescribed in Section 5(iii) of the HMA are not void or voidable but are punishable under Section 18 of the HMA along with the provisions of the Child Marriage Restraint Act, 1929.

In the case of Yogesh Kumar v. Priya (2021), the Punjab-Haryana High Court held that a child marriage becomes a valid marriage if no petition is filed for an annulment and the child doesn't declare it void before attaining the age of 18.

Section 13 of Hindu Marriage Act, 1955

While Clause 1 of Section 13 presents the general grounds of divorce that are available to both the parties involved in a broken marriage, Clause 1-A, introduced in the Act of 1955 by the Hindu Marriage (Amendment) Act, 1964, provides two further grounds for obtaining a divorce decree. Clause 2 of Section 13 specifically provides four grounds that can be availed for getting a divorce only by the wife. Divorce grounds can be viewed from two perspectives:

1. Marriage is an exclusive relationship, and if it is not, it is no longer considered marriage. Marriage also indicates that the parties would live in peace and trust with one another. Cruelty, or the threat of cruelty, undercuts this fundamental condition of marriage. The essential premise of marriage is that both parties will live together, however, if one party abandons the other, this premise is no longer valid. As a result, infidelity, abuse, and abandonment are all detrimental to a marriage's basis.
2. From a different perspective, the above acts are marital offences committed by one of the marriage partners. There is a semblance of crime here. Divorce is viewed in this light as a means of punishing the partner who has proved himself or herself unworthy of association. The guilt or offence theory of divorce which states that the offence must be one that is recognised as a basis for divorce is the consequence of the discussed perception.

General grounds of divorce

There are seven general grounds as provided by Section 13(1) which can be availed by both the parties in a marriage in order to dissolve the same.

Adultery

Section 13(1)(i) deals with adultery as a ground for divorce that is available to both parties in a marriage. Adultery is defined as voluntary sexual activity outside of marriage. It is the petitioner's responsibility to show that there was a valid marriage and that the respondent had sexual relations with someone other than him or her. At the time of the act, the marriage must be intact.

Judiciary on adultery

1. The Madras High Court had ruled in Subbarama Reddiar vs Saraswathi Amma (1996), that a single act of adultery is sufficient grounds for divorce or judicial separation. The unwritten taboos and laws of social decency in this nation, particularly in village regions, must necessarily be taken into account. Unless an excuse is given that is consistent with an innocent interpretation, the only conclusion that the court of law can draw from the fact that an unknown person was found alone with a young woman past midnight in her apartment, in an actual physical juxtaposition, is that the two have committed an act of adultery together.
2. In Joseph Shine vs Union of India (2018), the Supreme Court declared that adultery is not a crime and repealed Section 497 of the Indian Penal Code, 1860. It has been noticed that two people may separate if one of them cheats, but attaching crime to infidelity is taking things too far. Adultery is a private problem, and how a couple handles it is a matter of extreme privacy. This lack of moral commitment in marriage, which damages the relationship, has been left to the couple's discretion. They have the option to proceed with the divorce if they so want.

Cruelty

Cruelty was not a valid reason for divorce prior to 1976. It served as justification for judicial separation. Cruelty is now a cause for divorce under the 1976 Amendment Act. According to the Oxford Dictionary, the term "cruelty" hasn't been defined, yet it's been used to describe human behaviour or conduct. It's how you act around or about marriage status responsibilities and obligations. It's a pattern of behaviour that is progressing in the other direction. Cruelty can be mental or physical, and it can be purposeful or inadvertent. Cruel treatment of the petitioner after the marriage has been solemnised as a ground for divorce. Cruelty can take many forms, including physical and emotional abuse. Physically abusing or injuring one's spouse qualifies as physical cruelty. It is difficult to decide as to what constitutes mental cruelty. Cruelty is also an offence under Section 498A of the Indian Penal Code, 1860.

Some of the essential elements that constitute cruelty have been presented hereunder:

1. The alleged wrongdoing must be "grave and serious."
2. It is unreasonable to expect the petitioner spouse to live with the other spouse.
3. It has to be more serious than the "normal wear and tear of married life."

False charges of infidelity, dowry demands, an alcoholic, wife's incompetency, the partner's immoral lifestyle, incompatibility and violent partner are just a few examples of mental cruelty.

Judiciary on cruelty

1. While deciding on the case of Savitri Pandey vs Prem Chandra Pandey (2002), the Supreme Court of India had observed that cruelty has not been defined under the Hindu Marriage Act, 1955, but it is considered in marital problems as conduct that endangers the petitioner's life with the respondent. Cruelty is defined as an act that endangers a person's life, limb, or health. Cruelty, for the Act, is that one spouse has handled the other and expressed such emotions against her or him as to have inflicted bodily damage, or to have created cheap anxiety of bodily injury, suffering, or to have wounded health. Cruelty may be both physical and emotional. Other spouse analogues' behaviour that creates mental agony or anxiety about the opposite spouse's marital situation is referred to as mental cruelty. Cruelty, therefore, presupposes the petitioner's approach with such cruelty as to elicit an accessible fear that it may be damaging or destructive to him/her.
2. In the case of Smt. Nirmala Manohar Jagesha vs. Manohar Shivram Jagesha (1990), the Bombay High Court held that in a divorce case, "false, baseless, scandalous, malicious, and unproven allegations made in the written statement may amount to cruelty to the other party, and that party would be entitled to a divorce decree on that ground."
3. While deciding the 2007 case of Samar Ghosh vs Jaya Ghosh, the Supreme Court of India had opined that when cruelty takes the form of harmful reproaches, complaints, accusations, or taunts, the general rule is that the whole marriage connection must be evaluated. This rule is especially important when the cruelty takes the form of injurious reproaches, complaints, accusations, or taunts. It is undesirable to consider judicial pronouncements to create certain categories of acts or conduct as having or lacking the nature or quality that renders them capable or incapable of amounting to cruelty in all circumstances. After all, it is the effect of the conduct, not its nature, that is of paramount importance in assessing a cruelty complaint.

Whether one spouse has been cruel to the other is largely an issue of fact, and precedent cases are of little, if any, significance. The court should consider the parties' physical and mental conditions, as well as their social status, and the impact of one spouse's personality and conduct on the mind of the other, weighing all incidents and quarrels between the spouses from that perspective. Further, the alleged conduct must be examined in light of the complainant's capacity for endurance and the extent to which that capacity is known to the other spouse.

Desertion

The Indian Parliament explains in sub-section (1) of Section 13, Hindu Marriage Act, 1955 that "the expression 'desertion' means the desertion of the petitioner by the other party to the marriage without reasonable cause and the consent or against the wish of such party and includes the willful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly". In other words, desertion refers to one spouse's permanent absence or forsaking of the other for no apparent cause and without the agreement of the other. Justices R.P. Sethi and Y.K. Sabharwal of the Supreme Court of India while deciding on the case of Savitri Pandey vs Prem Chandra Pandey (2002) had viewed that there can be no desertion without previous cohabitation by the parties. Two key requirements must exist for the offence of desertion in the case of a deserting spouse:

1. The actuality of the break and
2. The willingness to finally stop cohabitation (animus deserendi).

Similarly, in the case of the deserted spouse, two components are required, namely,

1. The absence of agreement, and
2. The lack of a legal cause of action for the partner leaving the matrimonial house to fulfil the above-mentioned purpose.

Judiciary on desertion

1. The Supreme Court of India, while dealing with the case of Bipin Chander Jaisinghbhai Shah vs Prabhawati (1956), had observed that the offence of desertion is a path of behaviour that exists independently of its duration. However, as a ground for divorce, it must have existed for at least 3 years at the time before the presentation of the petition or, in the case of a cross-charge, of the answer. Desertion as a basis for divorce varies from the statutory grounds of adultery and cruelty in that the offence that gives rise to the motion of desertion isn't necessarily full, but rather inchoate until health is established. Desertion is persevering with the offence.
2. In a 2013 case of Mrs.Saraswathi Palaniappan vs Vinod Kumar Subbiah, Justice T Raja of the Madras High Court had observed that when a wife has miserably abandoned the matrimonial house, she cannot sue for recovery of conjugal rights, especially after a seven-year absence and having been found guilty of cruelty in the husband's favour.

Conversion

Section 13(1)(ii) of the Hindu Marriage Act, 1955 provides that a divorce can be granted if one spouse ceases to be Hindu and converts to another faith without the consent of the other. A person's conversion to a non-Hindu faith, such as Parsis, Islam, Christianity, or Zoroastrianism, is known as 'ceasing to be Hindu'. If a person converts to Jainism, Buddhism, or Sikhism, he remains a Hindu since Sikhs, Jains, and Buddhists are Hindus by faith and are covered within the ambit of the Hindu Marriage Act, 1955.

Judicial decisions recognizing conversion as a ground for divorce

1. In light of the 2006 case of Suresh Babu vs Leela, the Kerala High Court had observed that the Hindu Marriage Act, 1955 does not grant any rights to a Hindu spouse who converted to another religion. He or she, on the other hand, exposes himself or herself to a divorce suit by the other spouse based on such conversion. Under Section 13(1)(ii) of the Hindu Marriage Act, 1955, the spouse who is still a Hindu has the right to seek dissolution of the marriage with the partner who has converted to another faith since the marriage. The right of a non-converting spouse to remain married is unassailable. The Act makes no provision for the non-converting spouse's right to convert. The Hindu Marriage Act, 1955 also does not mention that the conversion must be done without the permission of the other spouse for that spouse to file for divorce. If the other spouse consents, a conversion does not cease to be a conversion within the meaning of Section 13(1)(ii).
2. The Delhi High Court had observed in the case of Teesta Chattoraj vs Union Of India (2012) that while conversion to another religion is a ground for divorce, a spouse may be denied divorce even if the other spouse has embraced some other religion if the former goaded the latter to such conversion.

Insanity

Section 13(iii) of the Hindu Marriage Act Be Before allows a petitioner to get a divorce or judicial separation if the respondent has been enduring mental anguish of such a nature and intensity that the petitioner cannot rationally be forced to live with the respondent. Insanity as a basis for divorce has two requirements:

1. The respondent was mentally ill for an indefinite period.
2. The respondent is suffering from a mental disease of such a nature or severity that it would be unreasonable for the petitioner to continue living with him or her.

Judiciary on insanity

1. The Supreme Court of India had declared in Ram Narayan v. Rameshwari (1988) that in cases of schizophrenia mental condition, the petitioner must prove not only the mental disorder but also that the petitioner could not fairly be expected to live with the respondent.
2. The Madhya Pradesh High Court had decided in the case of Smt. Alka Sharma v. Abhinesh Chandra Sharma (1991), that as the wife was frigid and nervous on the first evening of marriage and was found to be unable to work with domestic equipment, and fizzle to clarify the direction of peeing within the sight of all relatives, it was ruled that she was suffering from schizophrenia and that her spouse was entitled to a divorce.

Leprosy

In its findings, the Law Commission of India suggested that any legislation that discriminated against leprosy patients be repealed. India is also a signatory to a United Nations resolution that advocates for the abolition of discrimination against leprosy patients. Section 13(iv) which had the provision of leprosy contained in it as a ground for divorce, has now been omitted by the Indian Parliament on 13th February 2019 with the passage of the Personal Law Amendment bill.

Venereal disease

Section 13(v) of the Hindu Marriage Act of 1995 establishes a reason for divorce in cases of infectious venereal disease. If one of the spouses has a sexually transmitted disease that is both incurable and transmissible, it might be used as a basis for divorce. The term "venereal illness" refers to a condition such as AIDS.

Judiciary on venereal disease

1. In Smt. Mita Gupta vs. Prabir Kumar Gupta (1988), the Calcutta High Court had opined that while the venereal disease is a cause of divorce, the partner who is responsible for the contagion may be denied relief even if the other partner suffers as much.
2. The Supreme Court had ruled in Mr X v. Hospital Z (1998) that either husband or wife might divorce on the grounds of venereal illness and that a person who has suffered from the disease cannot be claimed to have any right to marry even before marriage, as long as he is not healed of the condition.
3. The Madras High Court had viewed in the 2013 case of P.Ravikumar: vs Malarvizhi @ S.Kokila that any contagious infection caused by sexual intercourse is defined as a venereal disease under Section 13(v) of the Hindu Marriage Act, 1955. HIV is a sexually transmitted illness. As HIV had not been discovered in 1955, it was not included in the Act. However, because venereal disease in a communicable form is one of the grounds for divorce, any disease being venereal in a communicable form will also fall under the provisions of Section 13(v) of the Hindu Marriage Act, 1955, and thus it cannot be claimed that a petition cannot be filed on the basis that HIV positive is not included in Section 13(v) and thus divorce cannot be granted. It can very well be granted.

Renunciation

When one of the spouses decides to enter a holy order and renounces the world, the other spouse has the right to submit a divorce petition under Section 13(1)(vi) of the Hindu Marriage Act, 1955. Renouncement of the world by entering any religious order must be absolute. It is the equivalent of civil death, and it prevents a person from inheriting or exercising their right to divide.

In the case of Sital Das v. Sant Ram (1954), it was decided by the Supreme Court of India that someone is considered to have entered in a religious order if they participate in a few of the faith's ceremonies and rites. For example, if a man or woman joins a religious order but returns home on the same day itself and cohabits, it cannot be used as a basis for divorce since he has not forsaken the world.

Presumption of death

According to Section 13(1)(vii) of the Hindu Marriage Act, 1955, if a person has not been heard of as being alive for at least seven years by people who would naturally have known of it if that party had not been living, that person is presumed to have died. According to the Indian Evidence Act of 1872, if a person has not been heard from in at least seven years, he or she is deemed dead. The petitioner may be granted a divorce on this basis. However, under ancient Indian Hindu law, a presumption of death is not the same as in contemporary law; twelve years must pass before a person is deemed to have died. The presumption of death under the Act of 1955 can be rebutted if a person has been missing for the last seven years owing to unusual circumstances, such as fleeing a murder accusation.

Judiciary on presumption of death as a ground of divorce

1. It was established by the Delhi High Court, in the case of Nirmoo v. Nikkaram (1968), that if a person presumes his or her spouse's death and marries another person without getting a divorce order, the spouse might contest the validity of the second marriage after his return.
2. The aforementioned law also overrides any existing custom that allows for remarriage after less than seven years, as in the case of Parkash Chander v. Parmeshwari (1989), where it was argued that the Karewa marriage customs allow for remarriage after the husband has not been heard from for two and a half years. The Punjab and Haryana High Court concluded that while the spouse cannot be deemed to be deceased until the issue is brought before the competent court, the seven-year timeframe under Section 108 of the Indian Evidence Act, 1872 cannot be reduced to merely 2-3 years.

Section 13(1A) of Hindu Marriage Act, 1955

A spouse can file for divorce if there has been no resumption of cohabitation between the pair after one year has passed from the day the judicial separation decision was issued. The term "resumption of cohabitation" simply refers to two people living together in a harmonious relationship. If there is no bar as defined in Section 23 of the Hindu Marriage Act, 1955 the court will grant a divorce order under Section 13(1A).

Restoring conjugal rights entails resuming marital obligations. If there has been no restoration of conjugal rights for one year following the issuance of a decree under Section 9 of the Act, either spouse may file for divorce. Before awarding a divorce order, for this reason, the court must be convinced that the petitioner is not barred from exercising this right under Section 23 of the aforementioned Act.

Judicial decisions explaining Section 13(1A) of the Act of 1955

In Saroj Rani vs Sudarshan Kumar (1984), it was held by the top Court that, where a husband obtained a decree for restitution of conjugal rights only to seek a divorce under Section 13(1A)(ii) of the Act and preventing the wife from performing her conjugal duties by driving her away from the house, it will constitute misconduct under Section 23(1)(a) of the Act. This is because the husband was taking advantage of his wrongs and thus he was not entitled to any relief.

In Vishnu Dutt Sharma vs Manju Sharma (2009), the Apex Court decided that based on a cursory reading of Section 13 of the Act of 1955, the law does not provide for divorce on the grounds of irreversible dissolution of a marriage. In rare situations, however, the Court will grant a divorce to the marriage due to irreversible collapse.

The Supreme Court of India in K. Srinivas Rao v. D.A. Deepa (2013) concluded that under the Hindu Marriage Act of 1955, the irreversible collapse of a marriage is not a cause for divorce. However, if a marriage is irretrievably broken owing to enmity caused by the activities of either the husband or the wife, or both, the courts have frequently considered the irreversible dissolution of marriage as a serious problem, resulting in marital separation, among other things. A marriage that has been dissolved for all intents and purposes cannot be reconstituted by court order if the parties are unable to do so.

Special grounds of divorce

Section 13(2) of the Hindu Marriage Act, 1955 provides four grounds for the wife to seek divorce from her husband. These grounds are explained hereunder.

Bigamy (Section 13(2)(i))

If a husband already has a wife before the Act of 1955 takes effect and then marries another woman after the Act takes effect, either of the two wives may file for divorce. The sole stipulation is that the divorce petition would be granted if the other wife was still alive when the petition was presented.

Rape, sodomy or bestiality (Section 13(2)(ii))

A wife can sue her husband for divorce if the latter has committed rape, sodomy, or bestiality since the marriage was solemnised. Section 375 of the Indian Penal Code, 1860 makes rape a criminal offence. A person who has carnal copulation with an individual of the same sex or an animal, or non-coital carnal copulation with an individual of the opposite sex, is committing sodomy. Bestiality refers to a human's sexual union with an animal that is contrary to nature's order.

Decree or order of maintenance (Section 13(2)(ii))

When a decree for the wife's support has been issued under Section 18 of the Hindu Adoptions and Maintenance Act, 1956, or when an order of maintenance has been issued against the husband under Section 125 of the Code of Criminal Procedure, 1973, if two requirements are met, the wife has the option of filing a divorce petition against her husband:

a) The fact that she was living separately,

b) She and her spouse have not cohabitated for at least one year following the issuance of the decree.

Marriage before attainment of the age of fifteen years (Section 13(2)(IV))

If the marriage was consummated before the woman reached the age of 15, she may file a divorce petition. When a child bride reaches puberty, she has the option of opting out of the marriage and requesting a court repudiation of the marriage after becoming 15 but before turning 18. To safeguard people who may have been pressured into marriage, courts enable minor brides to use this privilege.

Section 13B of the Hindu Marriage Act, 1955

Section 13B of the Hindu Marriage Act, 1955 provides divorce by mutual consent of the parties in a marriage. The parties to a marriage may file a petition for dissolution of marriage by a decree of mutual consent under Section 13B(1) of the Hindu Marriage Act, 1955 because they have been living separately for one year or more, have been unable to live together, and have mutually agreed that the marriage should be dissolved. On the motion of both parties, made not earlier than six months after the date of presentation of the petition referred to in subsection (1) of Section 13B, but not later than 18 months after the said date, the court shall pass a decree of divorce, declaring the marriage to be dissolved with effect from the date of the decree, after making necessary enquiries, if the marriage is dissolved with effect from the date of the decree. Section 13B(1) of the Hindu Marriage Act read with Section 13B(2) envisages a total waiting period of 1 ½ years from the date of separation to move the motion for a decree of divorce.

Justice Indira Banerjee while deciding on the recent case of Amit Kumar v. Suman Beniwal (2021) has made the following observations concerning Section 13B of the Hindu Marriage Act, 1955:

1. Section 13B of the Hindu Marriage Act, 1955, which provides for divorce by mutual consent and took effect on 27.5.1976, is not designed to damage the institution of marriage. Section 13B puts an end to collusive divorce processes between spouses, which are frequently undefended yet time-consuming due to the rigmarole of procedures. Where a marriage has irretrievably broken down and both spouses have amicably chosen to separate, Section 13B allows the parties to avoid and/or abbreviate needless confrontational litigation.
2. In its wisdom, the legislature devised Section 13B (2) of the Hindu Marriage Act, 1955, which provides for a six-month cooling period from the date of filing the divorce petition under Section 13B (1) if the parties change their minds and reconcile their issues. If the parties still want to divorce after six months and file a request, the Court must award a divorce decree pronouncing the marriage dissolved with effect from the date of the decree, after conducting any investigations, if deemed necessary.