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Hindu Marriage Act 1955

- **Overview of Hindu Marriage Act 1955**

The Hindu Marriage Act 1955 is a personal law applicable exclusively to Hindus, coming into effect on 18th May 1955. Despite its name, the Act's applicability extends beyond Hindus to include Sikhs, Jains, and Buddhists, thus covering all Indic religions. Additionally, the Hindu Marriage Act 1955 applies to individuals who have converted or re-converted to Hinduism, Buddhism, Jainism, or Sikhism. It mandates monogamy, outlines the essential ceremonies for a valid marriage, and provides for the registration of marriages.

- **Abolition of Same Caste Condition:** The Hindu Marriage Act 1955 abolished the requirement for marriages to be within the same caste, validating inter-caste marriages.
- **Monogamy Requirement:** Section 5(i) mandates monogamy as essential for a Hindu marriage.
- **Codified Conditions and Ceremonies:** Section 5 outlines the conditions for a Hindu marriage, and Section 7 details the required ceremonies.
- **Marriage Registration:** Section 8 provides the procedure for marriage registration, emphasizing its importance for legal and statistical purposes. The Supreme Court mandated the compulsory registration of all marriages across India.
- **State Compliance:** States like Andhra Pradesh, Goa, Bihar, Karnataka, Mizoram, Meghalaya, Tamil Nadu, Chhattisgarh, Rajasthan, Tripura, and Sikkim have aligned their laws with the Supreme Court's order on marriage registration.
- **Penalty for Bigamy:** Contravention of Section 5(i) results in punishment for bigamy under the Indian Penal Code, as specified in Section 17 of the Hindu Marriage Act 1955.
- **Matrimonial Relief:** Section 9 provides for the restitution of conjugal rights, while Sections 11 and 12 address the nullity of marriages as void or voidable.
- **Judicial Separation and Divorce:** Grounds for judicial separation and divorce are detailed under Section 13(1), with special provisions for wives under Section 13(2).
- **Irretrievable Breakdown of Marriage:** Section 13(1A) includes grounds for the irretrievable breakdown of marriage.
- **Legitimacy of Children:** Section 16 ensures the legitimacy of children born from void and voidable marriages, with provisions for maintenance under Sections 24 and 25.

- **Features of Hindu Marriage Act 1955**

The Hindu Marriage Act 1955 outlines several unique features that govern the institution of marriage among Hindus in India. Below are the special characteristics of the Act:

Prohibition of Bigamy

The law forbids a man from marrying more than one wife simultaneously. Section 5 of the Hindu Marriage Act 1955 explicitly prohibits bigamy, ensuring that a man cannot have two living wives simultaneously. This provision aims to promote monogamy and uphold the sanctity of marriage.

Minimum Age for Marriage

The Hindu Marriage Act 1955 sets the legal age for marriage to prevent child marriages. According to Section 5(iii) of the Act, the bridegroom must be at least 21 years old, and the bride must be at least 18 years old at the time of marriage. This age requirement ensures that both parties are mature enough to understand and fulfill their marital responsibilities.

Restitution of Conjugal Rights

Section 9 of the Hindu Marriage Act 1955 provides for the recovery of marital rights, known as the restitution of conjugal rights. This provision allows a spouse to petition the court for a decree to restore their right to cohabit with their partner. Conjugal rights refer to the mutual rights and obligations inherent in a marriage, such as living together and providing companionship.

Mental Competence and Consent

The Hindu Marriage Act 1955 emphasizes the mental well-being and competence of both parties at the time of marriage. According to Section 5(ii)(a), (b), (c), a marriage is considered void if either party was mentally incompetent at the time of marriage. Additionally, both partners must give their legally binding consent. This provision ensures that marriages are entered into voluntarily and with full understanding of the implications.

Traditional Rites and Privileges

A marriage is deemed valid under the Hindu Marriage Act 1955, if it is performed with traditional rites and privileges. This means that the customary ceremonies and rituals, which are integral to Hindu culture, must be observed for the marriage to be legally recognized. Furthermore, in legal terms, post-marriage, children are considered the legitimate offspring of the father, who has a duty to protect and care for them.

Marriage under Hindu Law

Introduction

- Marriage is a sacred tie and is considered a sacrament under Hindu Law. Also, it is one of the necessary samskaras irrespective of any caste.
- The Hindu Marriage is primarily governed by Hindu Marriage Act, 1955 (HMA) which reformed the Hindu Marriage Law.
- The Act applies to all Hindus, including Buddhists, Sikhs, and Jains, and it provides guidelines for the registration and solemnization of Hindu marriages.

- **Solemnization of marriage**

- The marriage renders to be valid if it is performed between a Hindu couple according to the **customary ceremony and rituals of each party or any one of them as mentioned by Section 7 of HMA.**

Section 7 - Ceremonies for a Hindu marriage —

(1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.

(2) Where such **rites and ceremonies include the Saptapadi (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire)**, the marriage becomes complete and binding when the seventh step is taken.

- Customary Ceremony and Rituals means that the marriage may be solemnised as per the customs of the community. For instance, a community may provide for a mere exchange of garlands, while another may require a more elaborate yajna ritual. The Act takes into account these differences

- **Essential Conditions for the Valid Marriage**

According to the **Section 5 of HMA**, following are the essentials of the valid marriage:

- Neither party has a spouse living at the time of the marriage.
- At the time of marriage, neither party:
 - **Is incapable of giving a valid consent** to it in consequence of unsoundness of mind; or
 - 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 procreation of children; or**
 - Has been **subject to recurrent attacks on insanity.**
- The **bridegroom has completed the age of 21 years** and the **bride, the age of 18 years** at the time of the marriage.
- The **parties are not within the degrees of prohibited relationship** unless the custom or usage governing **each of them** permits of a marriage between the two;
- The **parties are not sapinda of each other**, unless the custom or usage governing each of them permits of a marriage between the two.

- **Monogamy**

- **Section 5(i) of the HMA prohibits polygamy and polyandry.**
- It says that **neither party should have a living spouse at the time of the marriage.**
- **Failure to this condition would make the marriage null and void under Section 11 of HMA.**
- The party at fault would be **liable for bigamy under sections 494 and 495 of the Indian Penal Code, 1860 and Section 17 of HMA.**
- In **Smt. Yamunabai Anantrao Adhav v. Ranantrao Shivram Adhav (1988)**, the Supreme Court (SC) has held that a **marriage with a person who has a living spouse is totally null and void under Section 11, it cannot be treated as voidable under Section 12 of HMA.**

- **Consent of Parties**

- This provision has been **mentioned under Section 5(ii) of HMA.**
- Both parties should give their **free and informed consent** to the marriage.
- If either **party is forced** into the marriage or is unable to **give consent due to mental illness or incapacity, the marriage is considered voidable.**

- **Age of the Parties**

- **At the time of enactment** of the Act, the **legal age for the marriage of boy and girl was 18 years and 15 years respectively.**
- However, later on, by virtue of **amendment in Child Marriage Restraint Act, 1929 in the year 1978**, changed the **minimum age to 21 years and 18 years for boy and the girl respectively.**

- **Punishment**

- **Section 18 of HMA says in the case of contravention of the condition specified in clause (iii) of section 5 of HMA punishable with rigorous imprisonment which may extend to two years or with fine which may extend to one lakh rupees, or with both.**

- **Degrees of Prohibited Relationship**

- **Section 5 (iv) of HMA prohibits marriage of persons falling within prohibited degree of relationship.**
- **Section 3(g) of HMA: Degree of Prohibited Relationship**
- Degrees of **prohibited relationship** - Two persons are said to be within the degrees of prohibited relationship:
 - If one is a lineal ascendant of the other; or
 - If one was the wife or husband of a lineal ascendant or descendant of the other; or
 - 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
 - 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.
- If any **marriage is solemnized within the prohibited degree of relationship, then such marriage would be considered as void under section 11 of HMA.**

- Apart from this, violation of this clause would amount to **simple imprisonment of upto 1 month or a fine of Rs. 1000/-** or both under **Section 18(b) of the Act.**

- **Sapinda Relation**

- **The Sapinda relation** has been defined under **Section 3(f)(i) of HMA.**
- The sapinda relationship extends to a person as far as the **third generation (inclusive) in the line of ascent through the mother** and as far as the **fifth generation (inclusive) in the line of ascent through the father.**
- **Punishment**
- Marriage under **sapinda relation punishable with imprisonment up to 1 month or a fine of Rs. 1000/-** or both under **Section 18(b) of HMA.**

Ceremonies of Hindu Marriage

- **Section 7** of the HMA, talks about the **ceremonies of a Hindu marriage.**
- There must be the **performance of some spiritual ceremonies** at the time of marriage.
- **Saptapadi**, which generally means **taking seven steps around the holy fire** under the mandap at the time of marriage, is a fundamental and common ceremony performed among various Hindu communities.
- The **marriage will be considered complete** and valid upon the **completion of the seventh round around the holy fire.**

- **Registration of Marriage**

- **Section 8(1) of HMA** enables the State Governments to make rules for the purpose of registration of marriage.
- **Section 8(2)** mentions that regardless of what is stated in sub-section (1), the State Government can, if it deems necessary or appropriate, mandate the submission of the details mentioned in sub-section (1) within the entire state or specific regions, either universally or for specific cases. In instances where such directives are issued, anyone **who violates any such regulation established in this regard may face a fine of up to twenty-five rupees.**

- **Case Law**

- **Seema v. Ashwani Kumar (2006):** The SC stated that registration of a marriage should establish the legal presumption of marriage, necessitating that individuals of all religious backgrounds must register their marriages in the state where the marriage took place. The court also directed that the State and Central Government should endeavour to create rules/regulation/procedure for registration of marriages.

- **Judicial Precedents of Hindu Marriage Act 1955**

The judiciary has played an important role in interpreting and shaping the Hindu Marriage Act 1955 through various landmark judgments. The courts have provided clarity on several provisions, ensuring the Act remains relevant and effective in contemporary society.

Bipin Chander JaiSinghBhai Shah Vs Prabhawati (1956)

The court held that the essential conditions for desertion include (i) the absence of consent and (ii) absence of conduct giving the matrimonial home to form the necessary intention to desert. Desertion is inferred from the facts and circumstances of each case, considering the purpose revealed by those facts or by conduct and expression of intention, both before and after the act of separation. The case for judicial separation on the grounds of desertion was dismissed.

Sarla Mudgal Vs Union Of India (1995)

The Supreme Court held that a second marriage performed after conversion to another religion, without dissolving the first marriage, is illegal and amounts to bigamy under Indian law. The court emphasized that such actions violate secularism and equality principles enshrined in the Indian Constitution. The judgment highlighted the importance of upholding the sanctity of marriage and preventing its abuse through manipulative practices like conversions solely to circumvent legal provisions against bigamy.

Dastane Vs Dastane (1975)

The Supreme Court recognized mental cruelty as a valid ground for divorce, marking a landmark judgment. The wife's actions, including threatening to end her life and verbally abusing the husband, were deemed mental cruelty. The court stated that cruelty should be assessed based on whether it caused reasonable apprehension in the petitioner's mind. However, the husband's act of engaging in sexual intercourse with his wife led to condonation of cruelty, and thus, the divorce petition was not granted.

Lily Thomas Vs Union Of India (2006)

The Supreme Court ruled that converting to Islam solely to avoid an existing marriage and enter a second one is not valid. A marriage cannot be dissolved under Hindu law merely by changing religion without a divorce decree. The court held that any second marriage during the subsistence of the first marriage, even after conversion, would be void and punishable under Section 17 of the Hindu Marriage Act 1955, read with Section 494 of the IPC. The court discussed the implications of a Uniform Civil Code, emphasizing gradual progressive change rather than immediate uniformity.

- **Registering a marriage**

A marriage cannot be registered unless the following conditions are fulfilled:

a ceremony of marriage has been performed; and

the parties have been living together as husband and wife

Additionally, the parties must 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.

Section 8 of the Hindu Marriage Act allows a state government to make rules for the registration of Hindu marriages particular to that state, particularly with respect to recording the particulars of marriage as may be prescribed in the Hindu Marriage Register.

Registration provides written evidence of marriage. As such, the Hindu Marriage Register should be open for inspection at all reasonable times (allowing anyone to obtain proof of marriage) and should be admissible as evidence in a court of law.

- **Divorce**

Although marriage is held to be divine, the Hindu Marriage Act does permit either party to divorce on the grounds of unhappiness, or if he or she can prove that the marriage is no longer tenable.

A petition for divorce usually can only be filed one year after registration. However, in certain cases of suffering by the petitioner or mental instability of the respondent, a court may allow a petition to be presented before one year.

- **Grounds for divorce**

A marriage may be dissolved by a court order on the following grounds:

Adultery - the respondent has had voluntary sexual intercourse with a man or a woman other than the spouse after the marriage.

Cruelty - the respondent has physically or mentally abused the petitioner.

Desertion - the respondent has deserted the petitioner for a continuous period of not less than two years.

Conversion to another religion - the respondent has ceased to be a Hindu and has taken another religion.

Unsound mind - the respondent has been diagnosed since the marriage ceremony as being unsound of mind to such an extent that normal married life is not possible.

Disease - the respondent has been diagnosed with an incurable form of leprosy or has venereal disease in a communicable form.

Presumption of death - the respondent has not been seen alive for seven years or more.

No resumption of cohabitation after a decree of judicial separation for a period of at least one year.

In addition, a wife may also seek a divorce on the grounds that:

In case of marriage that took place before the Hindu Marriage Act 1955 was enacted, **the husband was already married** and that any other wife of the husband was alive at the time of the marriage ceremony.

The husband, after marriage, has been found **guilty of rape, sodomy or bestiality**.

Co-habitation has not been resumed within a year after an order for maintenance under Section 125 of the Criminal Procedure Code or alternatively, under the Hindu Adoptions & Maintenance Act 1956.

The wife was under-age when she married and she repudiates the marriage before attaining the age of 18 years.

- **Alimonies (permanent maintenance)**

At the time of the decree of divorce or at any subsequent time, the court may decide that one party should pay to the other an amount for maintenance and support. This could be a one off payment, or a periodical (such as monthly) payment. The amount to be paid is at the discretion of the court.

Hindu Minority and Guardianship

Introduction

- Guardianship means “a bundle of rights and powers which a person gets in relation to the person and property of a minor child”.
- In the Hindu religion, there was no guardianship law as all the family members always stayed together. If the parents were not there, then the other members of the family would take care of the child.
- Therefore, to have a proper guardianship law in the country, the **Hindu Minority and Guardianship Act, 1956** (hereafter, Act) was enacted.

Minor & Guardian Defined

- According to **Section 4(a) of the Act**, minor means a person who has not completed the age of 18 years.
- A guardian is a person who has the right and the authority to take care of the child and the properties of the child.
- According to **Section 4(b) of the Act**, a guardian means a person having the care of the person of a minor or of his property or of both his person and property, and includes—
 - A natural guardian.
 - A guardian appointed by the will of the minor’s father or mother.
 - A guardian appointed or declared by a court.
 - A person empowered to act as such by or under any enactment relating to any court of wards.

Types of Guardians

The types of guardians are described as follows:

- Natural Guardian
- Testamentary Guardian
- De Facto Guardian
- A Guardian appointed by the Court

Natural Guardian - Section 6

- Section 6 of the Act mentions the natural guardians to be:
 - The natural guardians 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 an 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 an **illegitimate boy or an illegitimate unmarried girl** - the mother, after her - the father.
 - (c) In the case of a **married girl - the husband.**
 - Provided that no person 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 by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi).
 - Explanation - In this section, the expressions “father” and “mother” do not include a stepfather and a stepmother.

Powers of Natural Guardian - Section 8

- The guardian may act and do everything which is necessary for the benefit and in the interest of the minor.
- The guardian cannot mortgage, charge, gift, sell, or exchange the immovable property of the minor. He can do so only with the permission of the court.
- The guardian, if required, can lease any part of the property **for a period of five years** but not beyond that. If the lease is to be made exceeding five years, then the permission of the court is required.
- If the guardian does not follow the rule and disposes of the immovable property, then it shall be voidable at the option of minor or any other person claiming on behalf of the minor.
- No Court shall grant permission to the natural guardian to do any act which is not in the interest of the minor.
- The court shall allow the guardian to transfer or lease the property only when it finds necessary to do so in the interest or advantage of the minor.

Testamentary Guardians - Section 9

- The guardian who is appointed by will or a testament of a person is known as a testamentary guardian.

- The provisions regarding testamentary guardian are as follows:
 - (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 a 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 the 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 a girl, cease on her marriage.

De Facto Guardianship

- A de facto guardian means a self-appointed guardian.
 - He is a person who, by reason of fact, becomes the guardian of a child. After the death of natural guardians, any person who takes care of the child's well-being and necessities becomes the de facto guardian.
 - He is a person who takes continuous interest in the welfare of a minor's person or in management or administration of minor's property without any authority of law.
 - Alienation of property made by de facto guardian without court's intervention is void.
- De Facto guardian is not allowed to dispose or deal with the property of the minor, and it is given that the guardian does not have the right to take any debt according to section 11 of the Act.
- In the case of **Amanat Hussain and Anr. v. Sahida Begum and Ors (2015)**, The Gauhati High Court ruled that property transfers conducted by de facto guardians are equivalent to those carried out by de jure guardians according to Hindu Law. If such transfers lack proper justification, they can be contested and are voidable.

Guardian Appointed or Declared by Court

- The courts are empowered to appoint guardians under the Guardians and Wards Act, 1890.
- The Hindu Minority and Guardianship Act is supplementary to Guardians and Wards Act.
- The District Court may appoint any person as the guardian whenever it finds that it is necessary for the benefit of the child.

- The District Court has the power to appoint or declare a guardian in respect of the person as well as for separate property of the minor or for both.
- While appointing guardian, the court shall take into consideration various factors like age of child, gender, personal law of child etc. But the main motive is the welfare of the children.
- Under Section 13 of the Act, under the appointment of any person as guardian, the welfare of the child is the paramount consideration.
- **In Mohini v. Virendra (2017)**, The SC has held that while appointing or declaring a person as the guardian of the minor, welfare of the minor shall be the paramount consideration.

Grounds of Removal of a Guardian

- There are certain grounds that are necessary to be considered before the removal of the guardian which are stated below:
 - When he uses the property of a minor for his personal use.
 - When he renounces the world and becomes a Sanyasi.
 - When he ceases to be a Hindu.
 - The court can remove him if it finds that it is not in the best interest of the child.

Hindu Adoptions and Maintenance Act 1956

The Hindu Adoptions and Maintenance Act 1956 was passed to amend and codify the laws relating to adoption and maintenance among Hindus. This legislation forms a part of the Hindu Code Bill and aims to address the legal framework governing the adoption of children and the provision of maintenance to individuals within the Hindu community. The Act came into force on 21st December, 1956. It extends to the whole of India including the State of Jammu & Kashmir.

Key Features of Hindu Adoptions and Maintenance Act 1956

Application of the Act

Section 2 deals with the applicability of the act. The Act applies to-

- Hindus by religion in its various forms, including Virashaivas, Lingayats and followers of the Brahmo, Prarthana, and Arya Samaj
- Buddhists, Jains, and Sikhs by religion
- Any person not being a Muslim, Christian, Parsi, or Jew, provided that such individuals would be governed by Hindu law in the absence of this Act.

Explanation:

Persons considered Hindus, Buddhists, Jains or Sikhs under this Act includes

- Any child whose parents are both Hindus, Buddhists, Jains, or Sikhs, legitimate or illegitimate.
- Any child whose one parent belongs to the above religions and who is raised in that religious tradition.
- Any child who has been abandoned or whose parentage is unknown and is brought up in any of the religions mentioned.
- Converts or re-converts to Hinduism, Buddhism, Jainism, or Sikhism.

Section 2 also states that the Act shall not apply to the members of the Scheduled Tribes within the purview of Article 366(25) of the Constitution of India.

Requisites of a valid Adoption

According to Section 6 of the Act, an adoption to be considered legally valid, the following conditions must be fulfilled-

- The person adopting must have both the capacity and the right to adopt.
- The person giving the child up for adoption must possess the legal capacity to do so.
- The child being adopted must be capable of being adopted as per the provisions of the Act.
- The adoption must comply with all other legal conditions mentioned in the Chapter.

The capacity of a Male Hindu to Adopt

Section 7 of the Act lays down the conditions in which a Hindu male have the legal capacity to adopt a child

- The male must have attained the age of majority i.e., he must be at least 18 years old.
- He must be of sound mind.
- If the male is married and his wife is alive and in such a case her consent is absolutely necessary for the adoption to be valid. The wife's consent is a legal requirement unless she is incapable of giving consent due to reasons such as insanity or any other incapacitating conditions.
- If the male has multiple wives, the consent of all wives is required for the adoption to proceed.

The capacity of a Female Hindu to Adopt

Section 8 of the Act provides the conditions under which a Hindu female may adopt a child-

- The female must have attained the age of majority i.e., she must be at least 18 years old.
- She must be of sound mind.
- She must be either a widow, divorced or unmarried in order to have the capacity to adopt.

- If she has a husband who is alive, she will not have the capacity to adopt a child except with the consent of her husband.

Person capable of giving in adoption

According to Section 9 of the Act, only the parents and guardian of a child can give them up for adoption. The provisions regarding who can give a child for adoption are as follows-

1. Only the biological father of the child has the authority to give the child up for adoption.
2. The consent of the biological mother is necessary for the adoption to proceed.
3. A mother can give the child up for adoption under the following circumstances-If the father is dead.
 - If the father is of unsound mind.
 - If the father has renounced the world.
 - If the father has converted to another religion.

Section 9 clarifies that “father” and “mother” refer exclusively to the biological parents of the child. Adoptive parents do not have the authority to give the child up for further adoption.

Persons who may be adopted

Section 10 of the Act lays down the conditions given for a person to be adopted-

- The child must be a Hindu.
- The child must not have been previously adopted.
- The child must be under the age of 15 years.
- The child must not be married.

Other conditions for a valid Adoption

Section 11 provides certain conditions for a valid adoption which are as follows-

- According to Section 11(i), a Hindu male or female wishing to adopt a son must not have a living son, grandson, or great-grandson at the time of adoption. This applies regardless of whether the son is legitimate, illegitimate, or adopted.
- Similarly, Section 11(ii) states that a person wishing to adopt a daughter must not have a living daughter or a granddaughter from their son at the time of adoption. Again, the legitimacy of the daughter or granddaughter is irrelevant.
- A Hindu male who wishes to adopt a girl child must meet the capacity requirements provided in Section 7. Additionally, Section 11(iii) specifies that he must be at least 21 years older than the girl child being adopted.
- For a Hindu female to adopt a male child, she must fulfill the capacity requirements specified in Section 8. Furthermore, she must be at least 21 years older than the child she wishes to adopt.
- Section 11(v) states that the same child cannot be adopted by multiple people simultaneously.
- Section 11(vi) indicates that a child must be given up for adoption according to the Act’s guidelines by their biological parents or guardian.
- In cases of abandoned children or those whose parents are unknown, the intention must also be to transfer the child from the place or family where they have been raised to their adoptive family.

Maintenance of Wife

According to Section 18 of the Act, a Hindu wife irrespective of when she was married, is entitled to maintenance from her husband during her lifetime. A Hindu wife can live separately from her husband without losing her right to maintenance under certain conditions:

- If the husband deserts her and abandons her without reasonable cause or consent.
- If he treats her with cruelty and causes her to reasonably fear harm.
- If he has another wife living.
- If he keeps a concubine in the same house or lives with a concubine elsewhere.
- If he converts to another religion.
- Any other cause that justifies her living separately.

Section 18 also states that a wife cannot claim separate residence and maintenance if she is unchaste or has converted to another religion.

Maintenance of Widowed Daughter-in-law

According to Section 19 of the Act-

- A Hindu widowed daughter-in-law is entitled to maintenance from her father-in-law after the death of her husband. Provided that she cannot maintain herself through her earnings or property or from her deceased husband's or estate of the parents or from her children.
- The obligation of the father-in-law to provide maintenance is not enforceable if he lacks the means to do so from coparcenary property and this obligation ceases if the daughter-in-law remarries.

Maintenance of Children and Aged Parents

According to Section 20 of the Act-

- A Hindu has a lifelong obligation to maintain their legitimate or illegitimate children and aged or infirm parents.
- A minor child can claim maintenance from either parent.
- The obligation to maintain aged or infirm parents or unmarried daughters extends only if they cannot support themselves through their own earnings or property.

Special Marriage Act, 1954

Marriage is one of the most significant social institutions in India. Traditionally, it has been governed by religion and custom — the Hindu Marriage Act for Hindus, the Muslim Personal Law for Muslims, and other personal laws for different religious communities. However, with the rise of inter-faith unions and individuals who prefer secularism over religion-based marriage, the need for a **civil form of marriage** was felt. To fulfil this, the **Special Marriage Act, 1954** was enacted.

This law provides a **legal framework for civil marriages**, allowing individuals to marry irrespective of religion, caste, or creed. It represents India's commitment to secularism and personal liberty under the Constitution, ensuring that marriage is a **personal choice** free from religious control or societal pressure.

Historical Background of Special Marriage Act, 1954

The idea of a secular marriage law in India dates back to the 19th century. During British rule, marriage was largely governed by religious customs, leaving no option for individuals who did not wish to marry under religious ceremonies.

The 1872 Act

In 1872, Sir Henry Sumner Maine introduced **Act III of 1872**, also known as the **Special Marriage Act, 1872**. The law aimed to permit "dissenters" — individuals who did not follow any particular religion — to marry freely under a civil law. However, the Act required both parties to **declare that they did not profess any religion**, which meant that Hindus, Muslims, Christians, or others could not marry under it without renouncing their faith. This made the law restrictive and impractical.

The 1954 Reform

After independence, India needed a more inclusive and secular law. As a result, the **Special Marriage Act, 1954** was passed by the Parliament. Unlike the earlier law, the 1954 Act allowed individuals of **any religion or faith** to marry under it, without renouncing their religion. It also covered **Indian citizens living abroad**, giving them the right to marry under Indian law regardless of where they lived.

The new law had three primary objectives:

1. To provide a **special form of marriage** for individuals, irrespective of religion or faith.
2. To provide for **registration of marriages** celebrated in other forms.
3. To provide for **divorce and related remedies**.

This marked a major step in India's legal evolution, promoting equality, liberty, and secularism in personal relationships.

Applicability of Special Marriage Act, 1954

The Special Marriage Act applies to:

- All Indian citizens, irrespective of religion.
- Inter-religious or inter-caste couples who wish to marry under a civil law.
- Indian nationals living abroad.
- A marriage between an Indian citizen and a foreign national in India.

The Act extends to the **whole of India** and also applies to Indian citizens domiciled abroad under the **Foreign Marriage Act, 1969**. It is a **universal law of marriage**, making it a preferred choice for those who want a legal and secular union without religious ceremonies.

Nature of Marriage under the Special Marriage Act, 1954

A marriage under the Special Marriage Act is **civil in nature**. It is not based on religious customs or rituals. Instead, it is a **contract between two consenting adults**, solemnised in front of a Marriage Officer and witnesses.

This form of marriage is governed entirely by statute — from the procedure of solemnization to divorce, maintenance, and succession. It represents equality between both partners and recognises their right to choose freely.

Conditions for a Valid Marriage under Special Marriage Act, 1954

According to **Section 4** of the Act, certain essential conditions must be fulfilled for a valid marriage:

1. **Neither party should have a living spouse:** The marriage must be monogamous. If either person is already married, the new marriage will be void.
2. **Mental capacity:** Both parties must be capable of giving valid consent. A person suffering from unsoundness of mind or mental disorder that makes them unfit for marriage cannot marry under the Act.
3. **Age:** The male must have completed **21 years**, and the female **18 years** at the time of marriage.
4. **Prohibited relationship:** The parties must not be within the degrees of prohibited relationship as defined in the **First Schedule** of the Act (for example, close blood relations). However, if the custom governing either party permits such a marriage, it may be allowed.
5. **Citizenship condition:** If the marriage is solemnised in the territory of Jammu and Kashmir (before 2019 amendment), both must be Indian citizens domiciled in India.

Procedure for Marriage under the Special Marriage Act, 1954

The procedure under the Special Marriage Act is more formal compared to religious ceremonies. It involves legal notices, waiting periods, and public declarations to ensure transparency.

Notice of Intended Marriage (Section 5)

- Both parties must give a **written notice** to the **Marriage Officer** of the district where at least one of them has resided for **30 days** prior to the notice.
- The notice must be in the form prescribed in the **Second Schedule** of the Act.

Publication of Notice (Section 6)

- The Marriage Officer enters the notice in the **Marriage Notice Book**, which is open for public inspection.
- A copy of the notice is also **affixed in a visible place** in the Marriage Officer's office.
- If one of the parties resides in another district, a copy of the notice is sent to the Marriage Officer of that district.

Objection to Marriage (Sections 7–8)

- Any person can raise an **objection** within **30 days** of publication on the ground that the marriage would violate the conditions in Section 4.
- The Marriage Officer must inquire into the objection within **30 days**.
- If the objection is upheld, the marriage cannot proceed.
- Either party may appeal to the **District Court**, whose decision is final.

Declaration by Parties and Witnesses (Section 11)

Before the marriage, both parties and **three witnesses** must sign a **declaration** in the presence of the Marriage Officer, confirming that they meet all the legal requirements.

The declaration states that neither party has a living spouse, both are of legal age, and they are not related within the prohibited degrees.

Solemnization of Marriage (Section 12)

- The marriage can be solemnized **at the Marriage Officer’s office** or at another approved place.
- The parties may adopt any form of ceremony they wish, but both must make a verbal declaration in the presence of the officer and witnesses:
“I, (A), take thee, (B), to be my lawful wife (or husband).”

Certificate of Marriage (Section 13)

- After the solemnization, the Marriage Officer enters the details in the **Marriage Certificate Book**.
- The certificate is signed by both parties and witnesses.
- This certificate is **conclusive proof** that the marriage has been legally solemnized.

Time Limit for Solemnization (Section 14)

- If the marriage is not solemnized within **three months** of giving notice, the notice and all proceedings lapse.
- A fresh notice must be filed to restart the process.

Registration of Existing Marriages

Under **Chapter III (Sections 15–18)**, marriages already celebrated in other forms can be **registered under the Special Marriage Act**, provided certain conditions are met:

- A valid marriage ceremony has already taken place.
- The couple has been living together as husband and wife since the ceremony.
- Both are of sound mind and have completed 21 years of age.
- They are not within prohibited relationship and have resided within the district for at least 30 days.

Once registered, such a marriage is **deemed to be solemnized under the Act**, and the couple’s children are considered **legitimate** in law.

Consequences of Marriage under the Act

Effect on Family and Religion (Section 19)

A person who belongs to a Hindu, Buddhist, Sikh, or Jaina undivided family and marries under this Act is **deemed to have severed** from the joint family. This ensures that property and inheritance rights are not automatically affected by religious laws.

Succession (Sections 20–21A)

- Succession to the property of individuals married under this Act is governed by the **Indian Succession Act, 1925**.
- However, if both spouses are Hindus, Buddhists, Sikhs, or Jainas, the Hindu Succession Act, 1956 applies.

Legitimacy of Children

Children born from a marriage under the Act are legitimate, even if the marriage is later annulled or declared void. This ensures protection of the child's rights.

Judicial Developments and Challenges

Compulsory Registration of Marriages

In **2006**, the Supreme Court directed all states and union territories to make **marriage registration compulsory**, whether performed under religious or civil law. This was to prevent child marriages, fraud, and to protect the rights of spouses and children.

Supriyo v. Union of India (2023)

In this landmark case, petitioners sought recognition of **same-sex marriages** under the Special Marriage Act. They argued that denial of such recognition violated the **fundamental rights** under Article 14 (equality), Article 15 (non-discrimination), Article 19 (freedom), and Article 21 (right to life and dignity) of the Constitution.

The Supreme Court acknowledged the right of same-sex couples to form relationships and cohabit, but it declined to extend the definition of “marriage” under the Special Marriage Act to include same-sex unions, observing that such change required **legislative action**.

Hindu Succession Act, 1956

- The term succession is not defined anywhere in the **Hindu Succession Act, 1956 (HSA)**.
- In general, succession can be defined as transmission of rights and obligation in an estate, of a deceased person to his heir or heirs.
- This Act applies to Hindus, Buddhists, Jains, and Sikhs, but not to Muslims, Christians, Parsis, or Jews.

Types of Succession

- **Intestate Succession:**

- This kind of succession applies when a Hindu dies without leaving a will.
- The interstate property is distributed among legal heirs according to the Act.

- **Testamentary Succession:**

- It is based on a valid will left by the deceased.
- It allows the person to determine how their property will be distributed.

Types of Property

- **Coparcenary Property:**

- Any Joint family property which is inherited by birth is a coparcenary property.
- This property also includes daughters as coparceners (since 2005 amendment).

- **Separate Property:**

- An individually owned property is known as Separate Property.
- This kind of property follows different rules of succession than coparcenary property.

- **Property of a Female Hindu:**

- Under this special rule apply for property inherited by a woman.
- It also includes concepts like Stridhan (woman's property).

What are the General Rules of Succession?

- **Section 18: Full blood preferred to half blood**

- This section states that relatives of full blood are given preference over half blood if the same degree.
- Two people are of full blood if they share both parents.
- They are of half-blood if they share only one parent.

- **Section 19: Mode of succession of two or more heirs**

- It states that if two heirs succeed together in a interstate property the distribution of the property shall be:
 - As per capita and not per stirpes except as otherwise provided.
 - As tenants-in-common and not as joint owners.

- **Section 20: Right of Child in Womb:**

- This section states that right of an unborn child when the interstate dies before his or her birth.
- According to this section the unborn child will have same rights as if he or she would have if he or she had been born before the death of the interstate.
- The rights shall be vested on the date of death of an interstate to the unborn child.

- **Section 21: Presumption in cases of simultaneous deaths**

- When two persons died together, it shall be presumed that the younger survived the elder for the purpose of determining succession in the property.

- **Section 22: Preferential right to acquire property in certain cases**

- This section states that Where, after the commencement of this Act, an interest in any immovable property of an intestate, or in any business carried on by him or her, whether solely or in conjunction with others, devolves upon two or more heirs specified in class I of the Schedule, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

- Sub section (2) states that the consideration for which any interest in the property of the deceased may be transferred under this section shall, in the absence of any agreement between the parties, be determined by the court on application being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of or incident to the application.

- Sub section (3) states that if there are two or more heirs specified in class I of the Schedule proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred.

- **Section 25: Murderer disqualified**

- This section states that a person who has committed or abetted murder shall not be eligible for inheriting property of the murdered person or any other property in succession of the murdered person.

- **Section 26: Convert's descendants disqualified**

- This section states that when Where, before or after the commencement of this Act, a Hindu has ceased or ceases to be a Hindu by conversion to another religion, children born 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.**

- This section states that if any person is disqualified from inheriting any property under this Act, it shall devolve as if such person had died before the intestate.

- **Section 28: Disease, defect, etc., not to disqualify**

- This section states that 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.