MARRIAGE AND ADOPTIONS LAW IN INDIA AND THEIR EFFECT ON SUCCESSION

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1. Marriage laws in India

Marriage, an institution which is the bedrock of family life, which is the basis of the formation of the modern societal system, an institution resting on a man and a woman living in an intimate personal relationship for the purpose of begetting and rearing children, has pushed out other societal systems that anthropologist and sociologists identify. Marriage started gaining ground at the same time as individual property rights. It sought to, and has, curtail unlimited polygamy in men and ascertain paternity of children. Worldwide, the property rights' legal systems and the laws to regulate all aspects of human lives have evolved from this institution of marriage.

In India marriages were traditionally regulated by customs and societal norms. This is visible today in the wide variety of acceptable limits within which cognates and agnates can get married without it falling under the definition of incest. Today, marriages in India are regulated in accordance with the personal laws of the religion professed by the parties to the marriage. For inter-religious and inter-nation marriages we have the Special Marriage Act, 1954 and the Foreign Marriage Act, 1969 respectively. Thus, we have laws that regulate the essential conditions for a valid marriage, the grounds of dissolution, maintenance of spouse and children, adoption, guardianship, inheritance, succession etc.

Marriage among Hindus

Marriage in Hinduism is both an obligatory duty (dharma) and a samskara (sacrament). Unless a person renounces life and accepts the life of a renouncer (sanyasi), he is expected to marry and lead a householder's life. It is an essential aspect of the four ashramas (brahmacharya, grihastha, vanaprastha and sanyasa)[1] and the four aims (purusharthas) of human life, namely, dharma, artha (wealth), kama (sensuous pleasures) and moksha (salvation). Various customary laws and practices with respect to Hindu Marriages have now been unified under the Hindu Marriages Act, 1955.

Marriage among Muslims

Marriage among Muslim is a civil contract as it is meant for procreation of children and legalizing sexual intercourse. Characteristic features of Muslim marriage are; acceptance of the proposal of marriage by the bride; capability of the bridegroom to enter into a marriage contract; preference system i.e. parallel cousins (father's brother's daughters) and cross cousins (mother's brother's daughters) are given preference; and marriage is valid only if it is free from legal complications.

Marriage among Christians

The Christian community has two major denominations: Catholics and Protestants. The Catholic owe allegiance to the Pope. The Pope is the supreme authority in the Catholic Church. All the teachings of the Catholic Church have the approval of the Pope. The Protestants have several denominations or groups. Hierarchical approach is limited within each denomination.

As per the teaching of the Catholic Church marriage is a sacrament (but not for others). There is no provision for divorce. However, a marriage can be declared null and void if one of the spouses is already married and the partner from the first marriage is still alive. A marriage can also be declared null and void in case if the spouse is of unsound mind, impotent etc. at the time of marriage. But the procedure to get a marriage declared null and void from Church is very tedious as the clearance has to come from the Vatican.

In India religion and region determine the applicability of marriage laws, the same have been mentioned as below:

a) Hindu Marriage Act, 1955
b) Muslim Personal Law
c) The Indian Christian Marriage Act, 1872
d) Paris Marriage and Divorce Act, 1936
e) Special Marriage Act, 1954
f) Foreign Marriage Act, 1969

2. Hindu Marriage Act, 1955

As part of the Hindu Code Bill, the Hindu Marriage Act was enacted by Parliament in 1955 to amend and to codify marriage law between Hindus (the definition of Hindus includes Sikhs, Jains and Buddhists). As well as regulating the institution of marriage (including validity of marriage and conditions for invalidity).

The Act applies to all forms of Hinduism (for example, to a person who is a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or AryaSamam) and also recognises offshoots of the Hindu religion as specified in Article 44 of the Indian Constitution. Notably, these include Jains and Buddhists. The Act also applies to anyone who is a permanent resident in the India who is not Muslim, Jew, Christian, or Parsi by religion.

Conditions for marriage

Section 5 of The Hindu Marriage Act specifies that conditions must be met for a marriage to be able to take place. If a ceremony takes place, but the conditions are not met, the marriage is either void by default, or voidable.

A marriage may be declared void if it contravenes any of the following:

a) Either party is under age.The bridegroom should be of 21 years of age and the bride of 18 years.
b) Either party is not of a Hindu religion.Both the bridegroom and the bride should be of the Hindu religion at the time of marriage.
c) Either party is already married. The Act expressively prohibits polygamy. A marriage can only be solemnized if neither party has a living spouse at the time of marriage.
d) The parties are sapindas or within the degree of prohibited relationship.

As per classical Hindu Law, the Hindu marriages are divided into three types of marriages:

(a) Shastric Marriages Shastric Marriage: The ancient Hindu law recognised three forms of Shastric marriages as regular and valid. These were **Brahma** (bride given gift by father), **Gandharva** (mutual agreement of bride and bridegroom) and **Asura**(bride virtually sold by

the father). The first and the third are arranged marriage whereas the second one is love marriage.

(b) Customary Marriages In terms of the law, a **valid customary** union must satisfy three requirements. The couple must consent to a **customary marriage** in accordance to **customary** law; couple must be older than 18 years or have parental consent; and the **marriage** must be negotiated and entered into or celebrated according to **customary** law.

(c) Statutory Marriages (a) Arya Samaj Marriage and (b) Anand Marriage

Arya Samaj Marriage:

Based on Vedic principles, all the hymns spelled during marriages are explained to the bride and groom. The marriage is just like Hindu marriage, marriage is centered around fire and is observed as the transition of wedding couple from *Brahmacharya to Grihastha Ashram.*

Who are eligible for an Arya Samajmarriage

- Age of the groom must be 21 and bride 18.
- Any person who is Hindus, Buddhists, Jains, Sikhs can perform Arya Samaj Marriage.
- Any person who is not Muslims, Christians, Parses or Jews can also perform Arya Samaj Marriage.
- Inter-Caste Marriages and Inter-Religious Marriages can also be performed in an Arya Samaj Marriage provided none of the marrying persons are Muslims, Christians, Parses or Jews.
- If a non-Hindu couple would like to perform the marriage, the Samaj allows them to get converted through a process called Shuddhi. Muslims, Christians, Parses or Jews, if, out of their free will and consent are ready to convert and embrace Hindu Religion, the Arya Samaj Mandir perform a ritual called shuddhi meaning purification for such conversion, and thereafter, such a convert can perform Arya Samaj Marriage.

Some Important Case laws in relation to Hindu Marriages:

SarlaMudgal Vs. UOI (1995 SCC 2 635) –
It was held that the conversion does not automatically dissolve the first marriage and so the prosecution under Section 494 of IPC stays.

Megh Prasad Vs. Bhagwantin Bai (AIR 2000 CHH 255) – It was held that second marriage with consent shall be bigamous and void thereby illegal.

BhauraoLokhande Vs. State of Maharashtra (AIR 1965 SC 1564) –It was held that "Solemnized" means to celebrate marriage with proper ceremonies and in due form with intention that parties should be considered to be married.

Surjit Kaur Vs. Garja Singh (AIR 1994 SC 135) –It was observed that mere fact of joint living for a long time without any ceremonies would not constitute a marriage.

Ashok Kumar Vs. Usha Kumari (AIR 1984 Del 347) – When two persons are socially recognized as a married couple, a strong presumption is raised in favour of their lawful marriage duly solemnized with the help of customary rites and ceremonies.

3. **Muslim personal Law:**

Marriage is a matrimonial relation between two persons of the opposite sex and gives legalization of procreation of child. It creates such a bonding which treats a unique union and is one oftheoldest institutions of human civilization. "Marriage though essentially a contract is also devotional act, its objects are the right of enjoyment, procreation and the regulation of personal life in the interest of society."

In order to be lawful, a Muslim marriage must fulfil the following conditions:

- **Marital capacity of the bride and the bride groom:**

Capacity means the competence of a person to enter into a contract of marriage. Both the parties, in order to enter into a valid marriage contract

must be of sound mind and must have attained puberty i.e. the age of 15 years. Marriage of minors and lunatics can however be contracted with the consent of their guardians. But the minor has the option to either repudiate or affirms the marriage when he attains puberty.

❖ **The proposal and Acceptance:**

The proposal of the marriage and its acceptance must be carried out in one and the same meeting in the presence of two male witness or one male and two female witness. The proposal and acceptance may be made by the parties themselves or by their agents on their behalf. The witness should be from Muslim community and be sound mind. Absence of witness does not render a marriage void, it only makes it irregular. In fact the shias don't consider it as a necessary condition at all.

❖ **Marriage with near relatives:**

A person is prohibited to marry another who is related to him by consanguinity, affinity or fosterage (fosterage means a child sucking milk from the breast of a women for a certain period) Consangunity (ascendants such as the mother, grandmother, mother in law etc. descendants such as daughter, granddaughter, among real sister and brothers, granddaughter of the brother).

Some Important Case laws in relation to Muslim Marriages:

- **Abdul Kadir Vs. Salima (1886 8 All 149)** – It was held that "Dower" under the Muslim law, is a sum of money or other property promised by the husband to be paid or delivered to the wife in consideration of the marriage and even when no dower is expressely fixed or mentioned at the time of marriage ceremony, the law confers the right of dower upon the wife.

- **Hamira Bibi Vs. Zubiad Bibi (AIR 1916 PC 46) –**Court analyzed this notion of dower as:

✓ Essential incident of Muslim law
✓ Must be specific
✓ Payable before consumption
✓ Lien over husband's property

- **Maina Bibi Vs. Choudhary Vakil Ahmed (52 IA 145) –**Court discussed the 'Right of retention'. Maina Bibi retained her deceased husband's property. Court said that the retention was valid till the dower debt is paid.

4. Special Marriages Act, 1954

Religion based marriage laws left people who wanted to have inter-religion marriages with no options but to go for the device of forced conversion either at Arya Samaj, a Church or with a Qadi. To give an option to individuals to solemnise marriages without such forced conversions, the Special Marriage Act, 1954 was enacted. This Act includes Hindus, Muslims, Christians, Sikhs, Jains, and Buddhists marriages. This act applies to all Indian states, except Jammu & Kashmir. This Act applies not only to Indian citizens who belong to different castes and religions but also to Indian nationals who live abroad.

For this special form of marriage, the conditions that must be followed are not very different from the requirements of other normal marriages that happen within the caste.

These are the conditions to qualify for a marriage under this Act:

- The bridegroom must be at least 21, and at the time of the marriage, the bride must be at least 18 years of age. This is the minimum age limit respectively for a boy/girl to marry.
- At the time of their marriage, both parties must be monogamous; i.e., they must be unmarried and at that time should not have any living spouse.

- In order to be able to decide for themselves, the parties should be mentally fit, i.e., they must be sane at the time of marriage.
- They should not be related to each other through blood relationships; i.e. they should not be subjected to prohibited relationships that otherwise act as a ground for dissolving their marriage.

A marriage under the Special Marriage Act, 1954 enables people from two distinct religious backgrounds to unite in the marriage bond. Unlike personal laws, the Special Marriage Act's applicability extends to all Indian citizens regardless of their religion. Although marriage laws allow only the registration of an already solemnized marriage under personal laws, the Special Marriage Act provides for both solemnizations and legal registration.

Some Important Case laws in relation to Special Marriages Act, 1954:

Maneka Gandhi vs. Indira Gandhi AIR 1985 Del 114; LoranaJoanee Williams vs. Dy. Commissioner cum Marriage Officer, Hoshiarpur AIR 2007 (DMC) 62 (P&H); Nirmal Das Bose vs. Mamta Gulati AIR 1997 All 401

5. Indian Christian Marriage Act, 1872

This is an act of the Parliament of India regulating the legal marriage of Indian Christians. It was enacted on July 18, 1872, and applies throughout India, excluding territories such as Cochin, Manipur, Jammu, and Kashmir.

Initially enacted by the British-Indian administration, Christian marriages in the country are performed by an authorised Minister or Priest in a church. After the marriage ceremony is completed, the minister or priest registers the marriage and issues a certificate of marriage in the name of the couple and thereby, makes it official.

For the marriage to be valid under the Indian Christian Marriage Act of 1872, specific requirements need to be fulfilled. According to the Act, it

is a necessity that either one or both the
parties involved in the marriage be Christians, therefore, a marriage is legitimate if at least one of the parties is Christian.

According to The Indian Christian Marriage Act of 1872, the following are required to be fulfilled to constitute a valid marriage.

- ✓ The age of the Bridegroom must not be under twenty-one years and, the age of the Bride must not be under eighteen years.
- ✓ Both the parties of the marriage must give voluntary consent to the ceremony and should not be obtained by misrepresenting facts or under compulsion or undue influence.
- ✓ Neither party should have a living spouse at the time of the marriage.
- ✓ The marriage must be performed in the presence of a person licensed to grant a certificate of marriage and at least two reliable witnesses.

Some Important Case laws in relation to The Indian Christian Marriages Act, 1872:

- **Lily Thomas vs. UOI (SCC 200 2 224) – It was held that the conversion does not automatically dissolve the first marriage and so the prosecution under Section 494 of IPC stays.**
- **In the case of Kamawati vs. Digbijoy, Privy Council it was held that converted Christians will not be governed by old law i.e. his previous religion and only by indian Succession Act, 1925.**
- **In Francis v. Tellis (Madras HC), out of two brothers, one of them converted to Christianity. It was held that upon his death it would not be possible for the other brother to succeed to the entire estate by way of the doctrine of survivorship.**
- **Christian law do not recognise children born out of wedlock and deal only with legitimate marriages (*Raj Kumar Sharma vs. Rajinder Nat Diwan AIR 1987 Del 323*).**

6. The Foreign Marriage Act, 1969

Foreign Marriage Act was passed in the year 1969 and it provides provisions for marriages of Indian citizens who are outside the territories of India One of the prerequisites to solemnise a marriage under this Act, one of the parties must be a citizen of India. In Foreign countries, the marriage must be solemnised through a Marriage Officer.

Once a marriage is proposed to be solemnised under this Act, The Marriage Officer needs to be given a notice of not less than thirty days. Another pre-requisite of solemnisation under this marriage is that one of the parties of the marriage has to reside in the particular district (where notice of marriage is given) for at least one month before the date of solemnisation of marriage. It is very important that a marriage between the Indian Citizen and the other party does not violate the rules of either country. Three witnesses are required for the solemnisation of the marriage.

The Foreign Marriage Act statesfollowing conditions for solemnisation of marriage:

a) Neither party has a spouse living;
b) neither party is a lunatic or idiot;
c) The bridegroom has completed the age of twenty-one years and the bride is of eighteen years at the time of the marriage.
d) The parties are not within the degrees of prohibited relationship

Some Important Case laws in relation to The Foreign Marriages Act, 1969:

- **Sheena Rhea v Amit Waxhaw (2012) 131 DRJ 568-** The court declared that Indian court will not recognize the decree of the foreign court in matrimonial cases.
- **Satyr v Tea Singh (1975) AIR 105 -** The Court upheld that due to lack of jurisdiction, the decree of the Nevada Courts cannot receive recognition in India courts

- **Vienna Kaila v Jetliner Nat Kaila (1996) 54**
  AIR Delhi- The Supreme Court declares that the judgment of the foreign court which are against the Indian law will not be binding and hence could not operate as res judicator.

7. Paris Marriage and Divorce Act, 1936

The Parsi Marriage is also regarded as a contract through a religious ceremony of *Ashirvad* is necessary for its validity. 'Shrived' literally means blessings. A prayer or divine exhortation to the parties to observe their marital obligations with faith.

Requisites to the validity of Parsi marriages

- ❖ Marriage is not valid if both the contracting parties are related to each other in any of the degrees of consanguinity i.e. people descended from the same ancestors.
- ❖ In Parsi Law, a marriage is not valid if it is not solemnized by the priest in presence of two Parsi witnesses.
- ❖ A marriage will not be considered if the male is not 21 years old and the female has not completed 18 years of age.
- ❖ If the marriage is not valid as per the points are given above, any child of such marriage who would have been legitimate had the marriage been valid, shall be legitimate.

Some Important Case laws in relation to Paris Marriage and Divorce Act, 1936:

- ***Raj Kumar Sharma vs. Rajinder Nat Diwan (AIR 1987 Del 323*) -** Paris law do not recognise children born out of wedlock and deal only with legitimate marriages.
- **Dr. Hormusji M. Kalapesi v. Dinbai H. Kalapesi (AIR 1955 Bom 413 (DB) –**It was held that even an unchaste wife had an absolute right to a starving allowance for her maintenance and that this right would be enforceable even where the wife had been divorced on the ground of her adultery.
- **Pistonji Kekobund Bharucha vs. Aloo (AIR 1984 Bom 75) -** It was held that it was not necessary that seven delegates must be present at the

time of verdict under Sections 44 and 20 of
the Paris Marriage and Divorce Act, 1936 and therefore there was no illegality where the decision on questions of facts by five delegates was made.

8. Live in relationship

In simple terms can be explained as a relationship in the nature of marriage where both partners enjoy individual freedom and live in a shared household without being married to each other. It involves continuous cohabitation between the parties without any responsibilities or obligations towards one another. There is no law tying them together and consequently either of the partners can walk out of the relationship, as and when, they will to do so.There is no legal definition of live in relationship and therefore the legal status of such type of relationships is also unsubstantiated. The Indian law does not provide any rights or obligations on the parties in live relationship. Live in relation i.e. Cohabitation is an arrangement whereby two people decide to live together on a long term or permanent basis in an emotionally and/or sexually intimate relationship. The term is most frequently applied to couples who are not married. The primary difference between live-in relationships and marriage is that marriage has received the societal stamp of approval and live-in relationships are yet to do so.

Some relevant case laws for Live in relationship:

- ***Badri Prasad vs. Dy. Director of Consolidation*** **(***Air 1978 SC 1557)* –
- This was the first case in which the SC recognized live in relationship and interpreted it as a valid marriage. In this case, the Court gave legal validity to a 50 year live in relationship of a couple. It was held by Justice Krishna Iyer that a strong presumption arises in favour of wedlock where the partners have lived together for a long term as husband and wife.
- ***Tulsa &Ors vs. Durghatiya&Ors***[(*2008*) 4 SCC 520] –
- The SC provided legal status to the children born from live in relationship. It was held that one of the crucial pre-conditions for a child born from live-in relationship to not be treated as illegitimate are that the parents must have lived under one roof and co-habited for a considerably

long time for society to recognize them as husband and wife and it must not be a "walk in and walk out" relationship. Therefore, the court also granted the right to property to a child born out of a live in relationship.

- ***D.Velusamy vs. D.Patchaiammal****CRIMINAL APPEAL NOS. 2028-2029 OF 2010*
- The judgment determined certain pre-requisites for a live in relationship to be considered valid. It provides that the couple must hold themselves out to society as being akin to spouses and must be of legal age to marry or qualified to enter into a legal marriage, including being unmarried.
- Here, the court relied on the concept of 'palimony' which was used in the USA for grant of maintenance in live in relationships. The concept of palimony was derived in the case of **Marvin vs. Marvin**, a landmark judgment of the California Superior Court.
- ***S. Khushboo vs. Kanniammal&Anr****(2010) 5 SCC 600*
- The Supreme Court in this case dropped all the charges against the petitioner who was a south Indian actress. The petitioner was charged under Section 499 of the IPC and it was also claimed that the petitioner endorsed pre-marital sex and live in relationships. The court held that living together is not illegal in the eyes of law even if it is considered immoral in the eyes of the conservative Indian society. The court stated that living together is a right to life and therefore not 'illegal'.
- **Indra Sarma vs. V.K.V.Sarma***2013 (14) SCALE 448* - SC has illustrated five categories where the concept of live in relationships can be considered and proved in the court of law.
- **BharathaMatha v. R. Vijaya Renganathan**(AIR 2010 SC 2685)- The Supreme Court held that a child born out of a live-in relationship may be allowed to inherit the property of the parents (if any) and therefore be given legitimacy in the eyes of law.

9. Adoptions:

Adoption means the process through which the adopted child becomes the lawful child of his adoptive parents with all the rights, privileges and responsibilities that are attached to a biological child. But since adoption comes under the ambit of personal laws, there has not been a scope in

the Indian scenario to incorporate a uniform law among the different communities which consist of this melting pot. Hence, this law is governed by various personal laws of different religions.

Adoption is not permitted in the personal laws of Muslims, Christians, Parses and Jews in India. Hence they usually opt for guardianship of a child through the Guardians and Wards Act, 1890.Indian citizens who are Hindus, Jains, Sikhs, or Buddhists are allowed to formally adopt a child. The adoption is under the Hindu Adoption and Maintenance Act of 1956 that was enacted in India as a part of the Hindu Code Bills. It brought about a few reforms that liberalized the institution of adoption.

HINDU ADOPTION AND MAINTENANCE ACT, 1956 (HAMA)

The Hindu Adoption and Maintenance Act was passed after Independence as part of modernizing and codifying Hindu Law. The Act to some extent reflects the principles of equality and social justice by removing several (though not all) gender based discriminatory provisions.

This Act deals with topics such as capacity to adopt, capacity to give in adoption, effect of adoption, gender bias and such others.

Capacity to Adopt: In this Act it is said that any adult Hindu male who is of sound mind can adopt a child. If the said man is married, the consent of the wife is necessary. Likewise, a female adult Hindu of sound mind could adopt a child if she is unmarried, Divorced, Widowed other husband suffers from certain disabilities

- ❖ Ceased to be a Hindu
- ❖ Has renounced the World
- ❖ Has been declared to be of unsound mind by the court

Under HAMA one can adopt a child of any sex as long as the adopter doesn't have another child of the same sex; which means if the adopter has a sons/he can adopt only a female child and vice –versa. on-Hindu persons such as Muslims, Christians and Persisted are governed GAWA, 1890.

Central Adoptions Resource Authority (CARA) also has provisions regarding the adoption in the country. It facilitates the inter country and inter religion adoption as well. As per Supreme Court's direction, specific guidelines have been framed by CARA in matters relating to adoptions in India.

Section 9 states that father or mother, if alive, shall have equal rights to give a son or daughter in adoption. Section 12 of the HAMA deals with the effect of adoption. It brings about severance of all ties of the child given in adoption in the family of his or her birth. The child altogether ceases to have any ties with the family of his birth.

HAMA were mostly the guidelines for the Hindu society. Another law had to be made which was sensitive to the personal laws of other religions which did not come under the Hindu Adoption and Maintenance Act of 1956. This gave rise to the Guardians and Wards Act of 1890.The Guardians and Wards Act, 1890 was a law to supersede all other laws regarding the same. It became the only non-religious universal law regarding the guardianship of a child, applicable to all of India except the state of Jammu and Kashmir. This law is particularly outlined for Muslims, Christians, Parses and Jews as their personal laws don't allow for full adoption, but only guardianship. It applies to all children regardless of race or creed. Following is an overview of the act.

MUSLIM LAW

Adoption is a little different under Islamic law than the usual adoption practices that are followed.

There are a few rules in Islam surrounding the concept of Adoption:

- An adopted child retains his or her own biological family name (surname) and does not change his or her name to match that of the adoptive family.
- An adopted child inherits from his or her biological parents, not automatically from the adoptive parents.

- If the child is provided with property/wealth from the biological family, adoptive parents are commanded to take care and not intermingle that property/wealth with their own. They serve merely as trustees.

CHRISTIAN LAW AND PARSI LAW

The personal laws of these communities also do not recognize adoption and here too an adoption can take place from an orphanage by obtaining permission from the court under Guardians and wards act. A Christian has no adoption law.

Since adoption is legal affiliation of a child, it forms the subject matter of personal law. Christians have no adoption laws and have to approach court under the Guardians and Wards Act, 1890. Christians in India can adopt children by resort to section 41 of the Juvenile Justice (Care and Protection of Children) Act 2006 read with the Guidelines and Rules issued by various State Governments.

Relevant case laws:

Smt. Sitabai v. Ramchandra, AIR 1970 SC 343 - The legal effect of giving the child in adoption must therefore be to transfer the child from the family of its birth to the family of its adoption.

L.K. Pandey vs.UOI–The SC laid down certain guidelines for foreign adoption to safeguard the interests of the children: Applications made under the GAWA has tube disposed off within 2 months and requirement for the personal presence of the foreign national.

Barilla v. Bheru 1986 (1) HLR 81 - The consent must be obtained prior to the civil adoption takes place and not later on where the proviso is disregarded adoption is not valid.

Ashoka Naidu v. Raymond (AIR 1976 Cal. 272) - Adoption by an unmarried can also take place despite the fact that she is having an illegitimate child.

10. Effect of Marriage on Succession:

The marriages as discussed above have different impact on the succession or inheritance rights. Given below are few impacts of such marriages:

- Hindu Marriage Act, 1956:

a) If a Hindu married man dies after his marriage, his wife and mother receive an equal share (after his children are born, they also get equal shares).
b) Post 2005, it is deemed that, unless facts of the case prove otherwise, a Hindu woman continues to remain a coparcener in her father's HUF even after marriage.
c) A Hindu woman or a man can't achieve a co-larcener interest through marriage.
d) The Hindu Succession Act also states certain exceptions to the succession such as a person who commits murder.Any person who commits murder is disqualified from receiving any form of inheritance from the victim. If a relative converts from Hinduism, he or she is still eligible for inheritance. The descendants of that converted relative, however, are disqualified from receiving inheritance from their Hindu relatives, unless they have converted to Hinduism before the death of the relative.
e) After marriage, a Hindu woman's estate is first inherited by her husband (till they have children), and after the husband passes away, by the heirs of the husband.
f) A wife is entitled to an equal share of her husband's properties like other surviving, entitled heirs. If there are no other sharers, the wife has full right to inherit the entire property of her deceased husband.
g) Hindus are covered under Hindu Succession Act. If two Hindus marry under Special Marriage Act, then Section 19 of Special Marriage Act will apply to the extent of Joint family property for the purpose of succession.

- Muslim Personal Law

a) Under Muslim law, no widow is excluded from the succession regardless to whether they are living together, all widows share equally as per chariot law i.e. 1/6.
b) A childless Muslim widow is entitled to one-fourth of the property of the deceased husband, after meeting his funeral and legal expenses and debts.
c) However, a widow who has children or grandchildren is entitled to one-eighth of the deceased husband's property.

- The Special Marriage Act, 1954

a) The succession to property of persons married under this Act or any married registered under this Act and that of their children will be governed under the Indian Succession Act.
b) Any child of such marriage under SMA who would have been legitimate, if the marriage had been valid, shall be legitimate irrespective of the fact that the marriage is void or voidable.
c) If the parties to the marriage belong to Hindu, Buddhist, Sikh or Jain religions, then the succession to their property will be governed by Hindu Succession Act.
d) 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.
e) 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.
f) However, if the marriage takes place between the Hindu, Buddhist, Sikh or Jaina religion, such severance from family will not be effected.

- The Indian Christian Marriage Act, 1872

a) S. 33, S. 33-A, S. 34 of the Act govern succession for the widow. Together they lay down that if the deceased has left behind both a widow and lineal descendants, she will get one-third share in his estate while the remaining two-thirds will go to the latter.
b) If no lineal descendants have been left but other kindred are alive, one-half of the estate passes to the widow and the rest to the kindred.
c) And if no kindred are left either, the whole of the estate shall belong to his widow.
d) S. 35 lays down the rights of the widower of the deceased. It says quite simply that he shall have the same rights in respect of her property as she would in the event that he predeceased her.

- Succession for Parses

In the case of Parsis in India, the provisions of the Indian Succession Act 1925 (Act) would apply.

a) A Paris intestate's property is distributed among his heirs in accordance with sections 51-56 of the Act.
b) Sec 51 - Division of intestate's property among widow, widower, children and Parents.
c) Sec 53 - Division of share of predeceased child of intestate leaving lineal descendants
d) Sec 54 - Division of property where intestate leaves no lineal descendant out leaves a widow or widower or a widow or widower of any lineal descendant.
e) Sec 55 - Division of property where intestate leaves neither lineal descendants nor a widow or widower nor a widow of any lineal descendant.
f) Sec 56 - Division of property where there is no relative entitled to succeed under the other provisions of this Chapter

g) No share for a lineal descendant of an Intestate who dies before the Intestate.

11. Effect of Adoption on Succession

a) For Hindus, under HAMA, Sec 12, a legally adopted child is deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption. Therefore, he shall have the succession rights in the adoptive father or mother's property.
b) Muslims do not have laws related to adoption and, therefore, if they wish to adopt, they must take up the guardianship of a child under the rules laid out in the Guardians and Wards Act, 1890. Partial adoption is permitted under the Muslim personal law i.e. till the age of foster care of the adoptive child. Adoptive child inherits from his biological parents and not from his adoptive parents.
c) There is no legal adoption amongst Parsis and therefore if a Parsi couple decides to adopt a child, she or he would not enjoy automatic rights of inheritance.
d) For Christians, they may adopt under the provisions of the Juvenile Justice (Care and Protection of Children) Act 2006, the foster children will not be treated in law as children and upon the death of the foster parents their estate would be distributed among the legal heirs of the intestate as the foster child or children do not have any right of succession.

Relevant Case laws:

- **Gift Tax Officer vs. Smt. Sushilabai Himmatmal Jain2002 81 ITD 273 Pane** : The assessed took her nephew in adoption. Upon her husband's demise, she inherited all his property. Thereafter, she took sanyas and the adopted son received the rights of her son. The adoption was question by GTO. However, the court decided that HAMA provisions were complied with therefore, the adopted son shall inherit all the property.

- ***Dhanraj Joharmal* v. *Soni Bai***1925 (27) BOMLR: Joharmal adopted Dhanraj, self-identified by the parties as "kinsmen of the same caste".

Both parties belonged to the Agarwalla caste
and were Jains. Agarwallas generally adhere to Jainism and do not believe that a son, whether by birth or adoption, confers spiritual benefit on the father. Among the Agarwallas the qualifying age for adoption extends to the 32nd year.

- ***LaxminarayanFattelalRathi*v. *State of Maharashtra***1983MhLJ811 Laxminarayan adopted Durgadas, no record of any natural relationship between the two. belonged to Marwadi community. "The custom of adoption of a married person or of a person without any age limit has been accepted in the Marwadi community or the Maheshwari community as it is called. [sic]". There has been judicial recognition of the custom permitting adoption of a person irrespective of age or marital status in the Maheshwari community, which is distinct from the general Hindu Law.

- ***Gigi Agarwalani* v. *Panna Agarwalani*AIR1956Gau100**–

Gigi (widow) adopted Bidyaprakash, the son of her brother. Both belonged to Hindu Marwari community, but were subject to Jain custom regarding adoption on account of being Marwari. In matters of adoption, all Marwaris except those of Madras and Punjab and those who migrated from Joypur, Jodhpur and Bikaner, are governed by the same custom. Citing Lala Chiranji Lal's *Adoption among Marwari Agarwals* (1937), it was held that a widow of a separated brother can validly adopt without any authority from her husband or his kinsmen, and can also adopt her younger brother.

- ***Manohar Lal v. Banarsi Das (1907)ILR 29All495***

Musammat Dei (widow) adopted Mul Chand, her nephew. Both were Jains. Mulchand was 23 years, married. The rule among Jains is that a person within the age of 32 may be adopted. The only requisite ceremonies are that the adoptee is gifted and accepted. Adoption being a secular matter and not a religious matter among Jains, it is improbable that a bar should exist against married men being adopted.

- ***Uma Prasad Vs. Padmawati&Ors. ILR[1999]MP1042–***

Padmawati adopted Nirmal. They were Agarwals. It was urged that since Nirmal was above 15 years, the adoption was void and he was not entitled to half the share of property. It was held that as per Agarwals customs, he could be taken in adoption.