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HINDU LAW

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I INTRODUCTION

IMPORTANT JUDICIAL pronouncements in the area of Hindu Law relating to adoptions, marriage and matrimonial remedies, maintenance, custody and guardianship, Hindu joint family and succession reported during the year 2024, have been briefly analysed here.

II HINDU ADOPTIONS AND MAINTENANCE ACT, 1956

Legal progression, having outpaced Indian conservatism and patriarchy, gender neutral/friendly provisions stand in sharp contradiction to practical realities. Bearing and rearing children in a family is a woman'sresponsibility, but the entry of a child remains in the hands of the matrimonial family. The situation continues incases of infertility, as men and the matrimonial family decide who to bring and when to bring a child into the family. Women are often not consulted, and with the normalizationof her subservience and acceptance of family decisions, her sidelining in major decisions is a fact that cannot be ignored.Indian courts have reiterated that adoption is for the family, not for any single spouse, and this principle is reflected in the legislation. Thus,presently a valid adoption can be affected only with the consent of both the parents of the child to be given in adoption and taken in adoption, *i.e.,* its biological parents as also its adoptive parents. An adoption brought about with observance of the due ceremonies but without the consent of either the biological mother of the child or the adoptive mother of the child, though in their presence in the ceremonies or as a spectator, would cause a shadow on its validity.

Often, the legality/validity issue surfaces much later than the date of adoption, mostly in cases of intestacy of the alleged adoptive parents and the claim of the alleged adoptive child over their property as their class-I heir. Therefore, the claimant must effectively prove the validity by meeting all legal requirements. It is also true that mere registration of the document would not cure the defect of an otherwise defective or invalid adoption deed. In *Trilok Nath* v. *JDC*,[1] the issue concerned the validity of adoption within the meaning of the proviso to Section 7

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1 2024: AHC-LKO: 41338, decided on May 30, 2024.

of the Hindu Adoptions and Maintenance Act, 1956. Here, a Hindu man died intestate, apparently issueless, with two claimants to his property, one a nephew, and the other an alleged adopted child who sought the property as his class-I heir. In support of his adoption and the property claim, he produced a registered adoption deed, apparently executed and signed by three persons: his biological parents and his adoptive father, the latter of whom was the owner of the property he claimed. The deed did not bear the signatures of his alleged adoptive mother.

However, evidence confirmed her presence at the time of the suspected adoption, which was completed after observance of due ceremonies. The terms/ language in the adoption deed referring to the adoptive parents used "I" instead of "we,"indicating that this adoption was at the behest of only the adoptive father.Theadoptive mother's consent was not documented at any point. The court held against the validity of the adoption and dismissed the case of the alleged adoptive child as the heir to the property of the intestate. The court reiterated the requirementof the adoptive mother's consent at the time of adoption and the registration of the adoption deed.Since the adoption deed bore the signatures/ thumb impressions of three parties, the court said that if they could put their mark there, there was no reason why the alleged adoptive wife's signature/thumb impression could not be taken. Its absence indicated her lack of consent. The court clarified that consent need not be in writing and can be established by other evidence;however, in the present case, it was. However, the witnesses proved her presence and participation in the ceremonies; this was deemed insufficient to meet the legal requirements. The court held that her lack of consent rendered the adoption invalid. His case, claiming intestate property as his class-I heir, was dismissed, and the adoption was held invalid because her consent was not proved.

The validity of yet another adoption was challenged in *Moturu Nalini Kanth* v.*Gaineli Kaliprasad*,[2] though on grounds of factual improbability. Here, the adoption was through a registered adoption deed. As usual, the issue of its validity arose in connection with the property of the deceased woman (alleged adoptive mother) after her death. She had died, leaving behind a biological grandson and an alleged adoptive son. Upon her death, a Will was produced that made the aged adopted son the sole beneficiary of her property to the exclusion of everyone else, including her blood relatives. A registered adoption deed was brought in to authenticate the beneficiary'sclaim under the Will. It revealed that at the timeof the alleged adoption, the testatrix, a single woman, was 70 years old and the child to be adopted was of less than one year. In challenging the validity of this adoption, the court noted that the facts, on their face, appeared strange: a woman of such advanced age would accept the challenge of raising aninfant of such a tender age. *Secondly*, though the adoption deed was registered, it was in English. At the same time, the alleged adoptive mother was familiar only with Telugu,and it was not proved that the contents of the adoptiondeed were read over or explained to her. *Thirdly*, and most importantly, there was an utter failure on the part of the claimant

2 AIR 2024 SC 76 ; AIROnLine 2023 SC 192.

to prove the actual giving and taking of the child. The court held against the validity of the adoption and also ruled that the alleged adopted son cannot claim to be the legal representative of the deceased testatrix.

A valid adoption is equivalent to a natural birth. The consequences of a valid adoption include a change of residence of the adopted child, substitution of parentage from biological to adoptive parents, creation of new degrees of prohibited relationship, mutual rights of inheritance between the adopted child and the new parents for a complete assimilation into this family. This also requires appropriate documentation and, where necessary, the alteration of entries in the official records. Because modificationsto official registers may be required, states have introduced their own procedures and rules for authenticating such modifications.These rules and regulations may carry supplementary requirements in addition to those prescribed in the statute, but in no circumstance may they ordain the parties to take additional steps that otherwise contravene the statutory provisions or do anything that is not mandated by the statute. In *Sampad Roy* v.*Union of India*,[3] following an adoption under the Hindu Adoptions and Maintenance Act, the adoptive parents applied to the Registrar of Births and Deaths for a change of their names in the register. The registrar insisted that they must produce a registered adoption deed to effect the necessary changes inaccordance with a government direction, and their inability to do so led to a refusal to carry out the changes. The parents pointed out that, under the Act, there is no obligation to register the adoption deed. Neither the Registration Act mandates the registration of an adoption deed, nor does the HAMA provide that the adoption be affected only through a registered deed. The matter was taken to court, which ruled in favour of the adoptive parents and directed the Registrar to carry out the necessary changes inaccordance with the unregistered adoption deed.

III HINDU MARRIAGE ACT, 1955

Child marriages

The social evil of child marriage has been in existence for a long time, and despite modernisation, it refuses to die down. Though both children who are parties to such marriages are adversely affected by this decision of their parents and families, the impact on the very development of a little girl is immense. It remains a vicious cycle driven by socioeconomic determinants and their adverse effects. The reasons are deeply patriarchal,embedded in socio-cultural and religious set up and include, amongst others, a guard against aspersions on a girl's chastity and virginity, and control over her sexuality. It is also believed that early marriage would ensure a girl's malleability and that, at a tender age, she would not be able to form an informed opinion, which is seen as a desirable quality for the stability of her marriage and for her subserviencewithin the matrimonialrelationship. Investment in her education is thus also seen as less worthy. The issue has been at the forefront since independence, and concerned individuals and NGOsworking in this direction have been quite active. The results are positive yet leave room for

3 WPA No. 1030 of 2023 (High Court of Calcutta , Sep. 6, 2024).

a significant overhaul. The enactment of the Prohibition of Child Marriage Act, 2006, which replaced the earlier Child Marriage Restraints Act, 1929, with a focus on prohibition rather than prevention, has been a step in the right direction.Still, there has been extensive litigation over its uniform applicability across religions. Secondly, it does not ensure action against the betrothal of young children, which is equally dangerous. In *Society for Enlightenment and Voluntary Action* v.*Union of India*,[4] a prayer was instituted under Article 32 of the Constitution of India by an NGO, highlighting the abysmal fact that despite the promulgation of the PCMA, the rate at which child marriages are being solemnised is alarming, adversely affecting little children, specifically girls. It sought stronger enforcement mechanism, conduction of awareness programs, appointment of child marriage prohibition officers, official and support systems including education, health care, compensation ensuring protection, welfare of minors and thus prayed for issuance of practical guidelines and for passing a necessary declaration that the PCMA prevails over all personal laws and the age of marriage varying from one to the other law is subject to themandatory provision of PCMA. Furthermore, the Child Marriage Prohibition Bill, 2021, pending before Parliament, should include an express clause clarifying this position.

The court recognised a child as a national asset under the national policy and held that the state has a duty to nurture and ensure their full development. It said that the principle of *parens patriae*, where the state assumes a protective role akin to a guardian, is particularly relevant. Its intervention in preventing child marriage, along with its duty to act in the best interests of the children, enabling their safety, development and freedom from practices that harm their physical, emotional and educational prospects, is of enormous importance.[5]

In pursuance of the prayer, the court issued a notice to the Union of India on April 13, 2018, and on April 13, 2023, further directed the Ministry of Women and Child Development to file a status report elucidating the following:

i) data collected from various states bearing on the nature and extent of child marriages;

ii) steps taken to implement the provisions of PCMA; and

iii) The policies formulated by the union government to effectuate the same.

It also directed the union to collaborate with states for the appointment of child marriage prohibition officers to curb the menace of child marriages. The data submitted bythe Ministry, unfortunately, still showed the rampant presence and prevalence of child marriages in India, which is also reflectedin several adolescent pregnancieswithinmarriages. The court called for an intersectional approach and preventive strategies addressing root causes of child marriages, *i.e.,* poverty, gender equality, lack of education and entrenched cultural practices. For the successful implementation of the PCMA, the court stated that multi-sectoral

4 2024 INSC 790.

5 *Id.*, para 207.

coordination is required, prioritising prevention over protection and protection overpenalisation. It acknowledged the adverse impact of criminalisation of the practice on the families and thus called for widespread awareness and education about child marriages. The court formulated specific guidelines for achieving the task of eliminating child marriages while bearing in mind the delicate socio-economic interplay and directed that:

i) The State Government and the Union Territories must appoint officers solely responsible for the functioning of CMPO at the district level.And also that no additional duties be given to them to impede their focus;

ii) Their resources need to be met.

iii) There has to be cooperation between the CMPO and local law enforcement agencies.

iv) There have to be quarterly performance review to assess, effectiveness of child marriage preventive initiatives taken by the CMPOs, the responsibilities and the outcome of the reported cases, the engagement of the officers with the community and called for mandatory training for CMPOs every six months so that they are abreast with the latest legal provisions, and the best practices for community engagements, advocacy skills to promote child rights, raise awareness about the negative impact of child marriages taking in account the cultural sensitivity and social factors.

v) At the District level, the court said that, in addition to CMPOs, collectors and the Superintendent of Police in every District should be made responsible for actively preventing child marriages. The police would have a duty to prosecute all who facilitate or solemnise child marriages, assist, promote or bless these marriages, even if reported in a public event or the media. There was a special emphasis on preventing mass marriages as the court said that, in the garb of mass marriages, manytimeschild marriages are also solemnised.

vi) The court called for the establishment of a specialised police unit. For this purpose, it was necessary to integrate the Special Juvenile Police Unit into the Child Marriage Prohibition Framework. SJPU, already trained in handling juvenile and sensitive cases, will be deployed to manage cases of child marriages as well. The court also called for the establishment of a special unitto prohibit childmarriage.

vii) As far as Judicial measures are concerned, the court empowered the Magistrate to take *suo moto* action and prevention of injunctions, exploration of special fast task courts for child marriages, mandatory action against neglectful public servants, community involvement including annual action plans and community centric capacity building, adoption of child marriage free villages initiatives, awareness campaigns led by CMPOs in schools, religious institutions and Panchayats, comprehensive sexuality and rights education, educational materials and community awareness

tools and targeted community awarenesscampaigns, empowerment programs for girls and young women, helpline awareness and reporting mechanism.

viii) With respect to training and capacity building, it called for training for community health workers and educators, law enforcement and judicial officers, teachers and school administrators, local leaders and community influencers, health care providers, educational and social support, monitoring responsibility with Ministry emphasising the role of training Panchayat, sarpanch and local leaders calling them to attend training programs and community awareness programs,furthering individual initiatives, and technological driven initiatives for reporting child marriages, creation of a Centralised Reporting Portal, leverage technology to support services and technology driven monitoring of attendance.

ix) Ministries were asked to allocate a special budget for it, and for the provision of compensation for girls opting out of marriage and for the identification of and support for at-risk children.

With respect to the PCMA, the court said[6] that:

> The PCMA is a central legislation governing the subject. We resist making a declaration and restrict ourselves to making suggestions for the scrutiny of the Union; the legal question on these issues, however, remains open if it were to come before a constitutional court in appropriate proceedings. The Prohibition of Child Marriages Amendment Bill, 2021, expressly seeks to override various personal laws.

It noted,[7] that while PCMA seeks to prohibit child marriage, it does not stipulate a betrothal. Marriage fixed during minority also adversely affects and violates free choice, autonomy, agency and childhood, taking away from them their choice of partner and life paths before they mature and form the ability to assert their agency and suggested that Parliament may consider outlawing betrothals.

Marriages between *sapindas*

Legislative control over entry into marriage is multifaceted, and one of these is the provision for degrees of prohibited relationships. Degrees of prohibited relationship are an essential component of marriage, and their violation renders the marriage invalid, attracting penal consequences and financial sanctions. All Matrimonial laws provide for such prohibitions, and parties covered under such a prohibition are ordained not to marry each other. The persons prohibited from marrying each other vary under various family laws, giving rise to numerous inter-personal legal conflicts and contradictions. An additional variation arises from the relaxation of the essential conditions,sanctionedby established customary practices. Thus, there can be a situation in which two persons are prohibited from

6 *Id*., para 212.

7 *Id*.,para 215.

marrying under their personal law. Nevertheless, they may validly marry if the community to which they both belong permits such an alliance. Under the Hindu Marriage Act, 1955, the rule outlawing endogamy is enshrined in section 5(iv) and (v), a section titled "conditions for a Hindu marriage"

It says: "A marriage may be solemnised between any two Hindus, if the following conditions are fulfilled, namely,

1…….

4. The parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits amarriage between the two;

5. The parties are not sapindas of each other, unless the custom or usage governing each of them permits a marriage between the two.

Thus, the prohibition on account of a *Sapinda* relationship, unique to Hindus, can also be ignored in the presence of an established custom or usage that enables such a marriage. In *Neetu Grover* v. *Union of India*,[8] a writ was filed under Article 226 of the Constitution by a Hindu woman for a declaration that Section 5 (v) of the Hindu Marriage Act, which prohibits a marriage between *sapindas*, is violative of Article14 and 21 of the Constitution, insofar as it creates an unreasonable classification permitting parties to marry despite being blood relatives in communities that have a sanctioned custom supporting it. Secondly, it limits the parties'choice of whom to marry.

Her case was that her marriage was solemnisedwith her grandmother's brother's son, with the full consent and participation of her family and friends. The parties came from Khatri communities. However, after marriage, the husband, invoking Section 5(v) of the Hindu Marriage Act, 1955, got the marriage declared as null and void. She contended that, despite voluntarily marrying her, he, by invoking section 5(v), unilaterally escaped his matrimonial obligations attached to the marriage, which remains an essential social institution. She brought forward several similar cases in which the marriage was still functioning and subsisting despite statutory prohibitions and the fact that the parties were blood or close relatives.

The court dismissed her prayer and, upholding the validity of section 5(v), observed that both parties were within the degrees of prohibited relationships and that the wife was unable to prove the existence of any custom in her community permitting such marriages. Her main contention was that her marriage to her distant cousin was consensual, and he, by getting the marriage declared void, has successfully abdicated his responsibilities. Therefore, such a provision is an instrument of exploitation in the hands of men such as her distant cousin. She accordingly justified her marriage onthe grounds ofparental consent. The court pointed out that the exception to the rule was the existence of a custom or usage to the contrary and not parental consent, and further observed that custom and

8 AIR 2024 Delhi 105.

usage signify any rule, which,having been continuously and uniformly observed for a long time has obtained the force of law among Hindus in any local area, tribe, community, group or family. With respect to the constitutionality of the impugned provision the court said, thatthere is a presumption of constitutionality of the statute enacted by the Parliament, and a statute can be declared unconstitutional only if it is proved before the court that the legislature did not have the necessary competence to pass such a statute or that the provisions of such a statute violate the fundamental rights guaranteed under the Constitution, or that the legislature has abdicated its essential legislative function or that the impugned provision is arbitrary, unreasonable or vague in any manner, or in case of state law if it seeks to operate beyond the boundaries of the state.

The court observed,[9] while holding that, in their opinion, no tenable grounds in law challenging the said impugned provisions were placed before them during argument or pleading,

i) Marriage is a social institution conditioned by culture, religion, customs, and usages; it is a sacrament in some and a contractual arrangement in others, and it reflects the institution's customary and religious moorings.Even though identifying the purpose or object of marriage is akin to finding the purpose of human existence, it does not render it meaningless or abstract for those who understand and practice it in their own way.

ii) In India, the multiverse of marriage as a social institution is not legally regulated by a single governingauthority. Until the colonial codification of regulations governing marriage and family commenced, the rules governing thesematters were largely customary, often rooted in religious practices.Colonial regimes engaged in codification, and within the first half-decade after the promulgation of the Constitution, indigenous codification and reform of personal laws governing marriage and family were underway. At the same time, it left room for customary practices to coexist, often providing legislative force to such practices, both with respect to their solemnisation and to prohibited degrees, as illustrated in section 5(iv) and 5 (v).Legal regulation includes solemnisation, the choice and number of partners, the age of marriage, and other factors governing entry into and exit from marriage.

iii) The most important aspect is that the choice of partner is not absolute and is subject to two-fold controls: the age of the partner and exclusion owing to prohibited degrees, which is statutorily engraved.

iv) Though the institutional space of marriage is conditioned and occupied synchronously by legislative interventions, customary practices and religious beliefs, legislative accommodation of customary and spiritual practices is not gratuitous and, to some extent, conditioned by the right to

9 *Id.,* para 6.

> religion and right to culture, constitutionally sanctified in the Article 25 and 29 of the Constitution. The institution of marriage is a product of our social and constitutional realities. Therefore, the right to choose a spouse and the right of the consenting couple to be recognised within this institution of marriagecannot but be said to be restricted.

Since the right to choose a partner is not absolute and is subject to regulations, the court held that the provisions providing prohibited degrees and *sapindas* are not violative of Article 21 of the Constitution. Secondly, section 5 reflects the state's intent at societal reform through codification. The court also said that regulation with respect to degrees of prohibited regulation was an imperative necessity, or else it may give rise to incestuous relationships.

As there is no absolute right to marry under the Constitution to qualify as a fundamental freedom, the court dismissed the petition, holding that the petitioner had failed to plead any legal ground for challenging the restrictions imposed under section 5, nor had they identified the basis of those restrictions. The contention of discrimination under article 14 was also held untenable as a reasonable classification based on the existence of a valid custom or usage in the community to which the parties belong was made out under the section.

A prelude to this case was an earlier petition presented by the husband in the High Court of Delhi.[10] He had pleaded and successfully prayedfor a decree of nullity stating that his wife was his father's sister's granddaughter. The parties were from the *Jhangi* and *Khatri* communities. Pursuant to matrimonial disputes, the husband filed a petition praying to declare his marriage as void, in violation of section 5(v) of the Act, as,according to him, both parties were *sapindas* of each other. The wife argued that the community from which they come permits such marriages, and therefore, their case would be covered by the exception provided in section 5 itself. She did bring in some cases where, despite the parties being in a *Sapinda* relationship, the marriage was solemnised, but the court said that, in all cases, they failed to prove such a custom, as they were all enacted after 1955; for a custom to be proven, old cases were required. The husband had also pleaded for divorce on grounds of cruelty by the wife, which was proved before the court, but since the marriage, in the opinion and as per its decision, was held as a nullity, the judgment on the divorce issue was not pronounced.

The facts of the present case do leave some open ends. The relationship described by the parties and depicted in the facts is that the wife was the husband's father's sister's granddaughter. The term 'granddaughter' refers to both a son's daughter and a daughter's daughter. It must be noted that the section requires that the parties not be *sapindas* of each other. Thus, the relationship has to be viewed from both sides, as there may be cases in which one is a sapinda of the other, while the other is not. Sapinda relationship extends to five degrees on the father's side and three degrees on the mother's side, the parties themselves constituting the first degree.

10 *Gulshan Grover* v. *Neetu Grover*, Sep. 5, 2023, High Court of Delhi.

Section 3 provides as follows:

> (f) (i) sapinda relationship- 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 be 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.

To determine whether the parties are sapindas of each other, the first step is to trace a common ancestor and then count the degrees of relationship on both sides.

(3)FF

!!

(2)F D(3)

!!

(1) H DD(2) DS(2)

Mother/father

!

W(1)

(Fig i)

In the present case, the relationship, viewed from H's perspective, shows that the common ancestor is within five generations of H on the paternal side; therefore, W would be a sapinda of H. However, from W's perspective, if she were related to D, who happens to be H's father's sister through her son (DS), the relationship would be within five degrees of separation on the father's side. H would also be a *sapinda* of W. However, if she were related to D through her daughter, then the situation would be different. Since this is a maternal line, the common ancestor must be within three generations. As the common ancestor is in the fourth generation, beyond three generations, which is the requirement of the law, H would not be a *sapinda* of W., since W is a sapinda of H. At the same time, H is not a sapinda of W; this means that they are *not sapindasof each other* and can validly marry. The relationship depicted in English does not convey the exact relationship, and the vernacular language should have been used to describe W as the granddaughter of H's father's sister, through her son or daughter. In the former case, the prohibition would apply; in the latter, it would not.

Requisite ceremony requirement

Solemnisation validity is integral to the validity of a Hindu marriage. Post its valid solemnisation, it is eligible to be categorised as a marriage, *i.e.,* whether it is valid, void or voidable, the same has to be seen in reference to the conditions

stipulated in section 5, 11 and 12. If it is not appropriately solemnised, it cannot even be called a marriage, and its categorisation would be unnecessary. Further, without a valid solemnisation, the parties would not get the status of husband and wife, and no matrimonial rights or remedies would flow from this union. Mutual rights of inheritance and legitimacy of children can be secured only through a validly solemnised and legally compliant marriage. In *Dolly Rani* v. *Manish Kumar Chanchal*[11], two commercial pilots, both professing the Hindu religion, became engaged and decided to marry later. Soon after their engagement, they obtained a certificate of marriage from one local organisation, *i.e.,*"*Vedic Jan Kalyan Samiti*," in November 2021, without observing any ceremonies of marriage and got the certificate registered as a certificate of marriage in Uttar Pradesh in October 2022, and started living together in an intimate relationship akin to marriage. They were hoping to solemnise their marriage on November 17, 2022. During their time living together as spouses, problems surfaced between the two, and the woman filed several criminal cases against the man under sections 498A and relevant sections of the Dowry Prohibition Act, C 1961, while the man filed for divorce in the Family court in Bihar. The wife then moved the court for the transfer of matrimonial proceedings. After that, they applied to the Supreme Court to declare their alliance invalid for non-observance of the requisite ceremonies and to quash all criminal cases filed by her against the man. The court, exercising its powers under article 142, did so while observing and emphasising the importance of marriage and of performing ceremonies. A Hindu marriage, the court said, *is not a song-and-dance* or *a wining-and-diningevent*. It is also not an occasion to demand dowry,as thismayleadto criminal proceedings. Calling it a serious matter,the court observed that it is a Sanskar of great social importance. They emphasised the meaning and purpose of *saptapadi*, as well as the essential rituals for a valid Hindu marriage.

In *V. Anand Kumar* v. *M Viswa Bharathi*,[12] the couple married in 1991, according to the facts on record, at a temple in Andhra Pradesh, in a straightforward ceremony in the presence of friends. According to the husband, no marriage ceremonies were performed; instead, they had signed a joint statement styled as a "*friendship and companion agreement*" to be together, and had exchanged garlands in the presence of friends. The wife insisted that they had indeed married, though in a simple ceremony, in the presence of her parents, relatives and friends. It was not clear whether any ceremonies were performed. The parties lived together with each other, had two children born to them out of this relationship and due to disputes and failed mediations, the woman filed a petition praying for restitution of conjugal rights. She also, along with her children, filed another petition under Section 20 of the Hindu Adoptions and Maintenance Act, 1956, claiming maintenance for herself and her two children. Her elder child had become a major by the time the matter was adjudicated by the family court, and by the time the

11 2024 INSC 355; May 1, 2024, Supreme Court of India, bench of Justice Augustine Massey and J Nagaratna.

12 Appeal Nos. 258, 291 and 312 of 2011 (High Court of Telangana, June 7, 2024).

matter came before the high court, the children were already 31 and 32 years old. The family court heard the matter, disbelieved the husband, ruled in favour of the marriage, directed him to resume cohabitation within two years, and awarded maintenance to both the wife and the minor child. The husband went on appeal. It is unclear whether any ceremonies for the marriage were held. Even though the wife denied her signature on the statement, the court asked the husband to prove her signature, but he failed to discharge the burden. Holding in favour of the wife, the court said that prolonged cohabitation indicates a marital relationship. If it is proved that a marriage has taken place, it would be presumed to have been valid. A blank denial of its solemnisation, without any further proof, would be sufficient, and his case was dismissed. The court held that the marriagewasvalid.

Restitution of conjugal rights as a counter to matrimonial reliefs

The legislative objective of protecting the institution of marriage by bringing bickering parties together through the decree of restitution conjugal rights has been used and misused many times by parties to attain motives other than the preservation of their marriage. It is also filed as a counter to defeat the wife's maintenance application under section 125 of the CrPC, or as a counter to the divorce petition filed by one of the parties, to highlight and establish the wrongdoing on the part of the petitioner. Two cases under the survey highlighted that. In *Shashikala* v. *B S Mahadevappa*,[13] the wife filed a petition under Section 125 of the Cr PC against the husband, claimingmaintenance. He filed a petition praying for a decree of restitution of conjugal rights, which was granted in his favour, establishing that the wife had withdrawn from his society without a reasonable excuse. Despite the grant of the decree and the court'sdirections to her to give her husband conjugal company,the wife failed/refused to join him. Thefamilycourt dismissed herapplicationformaintenance,holding that under section 125(d), if the wife, without reasonable cause, refuses to live with the husband, she may forfeit her right tomaintenance. She appealed to the high court. The high court held that section 125 is a piece of social welfare legislation aimed at preventing destitution and vagrancy amongst women. Thus, despite her living away from her husband as she had made unsubstantiated allegations of cruelty, torture and demand of dowry, she would nevertheless be entitled to claim maintenance from him. Given the husband's financial situation, he was directed to pay maintenance to the wife and the child from the marriage. Again, in *Pradeep Tripathi* v. *Priyanka Pandey,*[14]the parties married and moved into the matrimonial home. The husband was posted in Mumbai, and the wife insisted on living with him, as she did not want to live with his family and would not allow him to have any contact with them. She fought with him over a trivial issue, threatened to commit suicide and implicated him in criminal cases. The husband was so terrified by her attitude that he had to go alone to his younger sister's wedding. She picked quarrels over minor or non-existent issues and lodged a criminal complaint against her husband, implicating

13 NC:2024: KHC:14466. RPFC No. 104 of 2018 c/w RPFC Nos. 134 of 2017 and 131 of 2019 (High Court of Karnataka, Feb. 23, 2024).

all his relatives. The case,lacking substance, was later dropped, and all of them were acquitted of all criminal charges. The husband, aggrieved by her behaviour, filed a petition praying for a decree of divorce on the grounds of her cruelty. As a counterclaim, the wife filed a case for restitution of conjugal rights, stating that his attitude had driven her out of the house. Unsuccessful at the family court level, the husband filed an appeal in the high court, which ruled in his favour, granted him a divorce decree, and dismissed the wife's case, terming it a counter and an afterthought.

Divorce by mutual consent and mandatory one-year embargo under section 14

Termination of a valid marriage under the Act, through divorce, though permissible, is subject to the fulfilment of certain stipulated conditions. Divorce by mutual consent is, by far, the most appropriate means to culminate an unhappy/ unwanted marriage, and it mandates a specific procedural requirement before the parties can avail of it. Reading Section 13B with section 14 makes it clear that the Act postulates a mandatory wait for a minimum period of one year from the date of the solemnisation of the marriage before a petition praying for divorce can be presented in the court. Section 13B also mandates that the parties must have been living apart for atleast1 year before they can file a mutual consent divorce petition. Together, the legislative intent to prevent hasty separations has been well-intended and well-documented. Legal provisions are explicit and allow relaxation, permitting the premature filing of a divorce petition only in cases of exceptional depravity or hardship. These expressions may vary from case to case, and it is left to the court to determine which cases are covered by these expressions and are grave enough to justify a pre-time presentation of a petition. A judicial ambivalence is apparent in similarly situated cases where relief is denied in one and granted in others. For every young, newly married but unhappily married person, their case is highly traumatic. It should qualify as exceptional hardship and depravity, and a review of precedents and raised hopes for a matching outcome is severely crushed when the courts refuse to treat his case as one covered by the exception. Unfortunately, seemingly parallel cases are decided differently by different courts.

In *Chaitanya Mudaliar* v. *Anjali Nair*,[15] the parties married at Ranchi, Jharkhand, on 15thFebruary, 2024. Two days later, the reception was held in Jabalpur. Thereafter,the parties came to Hyderabad to be with the husband's brother, as they had arranged to leave for Indonesia and Singapore for their honeymoon. The marriage remained unconsummated as the wife was initially unwell and later told the husband that she was against this marriage; the same was brought about without her consent, and she had no intention to continue with it. Despite her husband's protests, she remained adamant, and after the flights intended to allow them to enjoy their honeymoon were cancelled,the parties returned to Jabalpur. On the 13th day of their marriage, they filed a mutual consent-based petition praying for a decree of divorce under section 13B. Also, they applied for a waiver of the

14 First Appeal No. 1505of 2019.

15 First Appeal No. 1503 of 2024 (High Court of Madhya Pradesh, Sept. 18, 2024).

one-year initial locking period under section 14, citing exceptional depravity and hardship.

The prayer was dismissed at both the family court and the high court as premature. On the other hand, in *B.G. Veerendra Patil* v. V.*B. Rashmi*,[16] on parallel facts, the High Court of Karnataka granted relief by waiving the one-year waiting period under section 14, allowing the parties to break their marriage bond and go their separate ways within one year of their marriage. The parties were married on June 14, 2023, and filed a mutual consent-based petition for a decree of divorce on October 10, 2023.Simultaneously, they also prayed for a waiver of the one year, citing exceptional hardship. The wife statedthatshe was not willing to marry but had been forced/coerced into marriage by her parents. She was unwilling to continue with this marriage; it was never consummated, and the husband should not be penalised for it. The court observed that, in its considered opinion, it makes out a case for the grant of leave, and that leavemust be granted. When the wife was forcibly married to the husband, this is a fit case for the court to exercise its discretion and grant leave under Section 14 of the Hindu Marriage Act. In the facts and circumstances of the case, theone-year period had already elapsed. The court allowed their petition praying for the waiver. It is noteworthy that in both cases, the wife had pleaded that she was forced into this marriage by her parents, a fact that was made clear by her. Second, that the marriage was unconsummated and thirdly, in both cases, a divorce petition by mutual consent, along with a prayer for waiver of the statutory period, was filed, but with diametrically opposite results.

Similar verdicts were also observed in cases where the months' waiting period was waived after filing a petition praying for a decree of divorce by mutual consent under section 13B. The requirements for filing a joint petition praying for a divorce by mutual consent are as follows:

i) The parties have to show that they were living away from each other for a period of one year or upwards;

ii) The reason is that they have not been able to live together, and

iii) They have mutually decided to end their marriage.

After filing this joint petition, the parties must wait at least 6 months but no more than 18 months. Within this period, they again have to move a second motion reaffirming the facts stated in the first petition, and then the court would end their marriage. The six- to eighteen-month waiting period is considered an impediment to the plans of many couples who want an immediate culmination, and they pray for its waiver. In *Darpan* v. *Vishakha*[17], the parties married in 2022 and, soon thereafter, separated due to matrimonial turbulence. They then filed a petition praying for a decree of divorce by mutual consent and another application for waiver of the months, stating that there was no hope of reconciliation and that further delay would only prolong their agony. The Family Court at Ganganagar

16 2024: KHC: 45658.

17 S.B. Civil Writ Petition No. 173 of 2024 (High Court of Rajasthan , Jodhpur Bench, Jan. 5, 2024).

rejected their application for waiver. They filed an appeal to the high court that observed that while practically the time for six months was already over by the time the application came to the high court for hearing, in principle, the decision of the family court in rejecting the application outrightly was incorrect as the waiting time period of six months is not mandatory but only directory and can be waived off. In complete contrast, in *Paras Prajapati* v. *Rekha Prajapati*,[18]the court reached a different conclusion and issued a different verdict. The parallel facts showed that the parties married, separated, and then, after one year, filed a petition praying for a decree of divorce on mutual consent and, after a week, filed another application for waiver of the one-year period, which the Jabalpur family court rejected. The high court permitted a waiver, stating that the waiting period is only directory and not mandatory, and a waiver application can be filed after one week of filing the first joint petition.

Maintenance

A valid marriage confers the status of husband and wife of the parties and creates mutual matrimonial rights and liabilities. For this, the marriage should be valid, with no aspersions on its authenticity. Monogamy is one of the primary rules for the validity of a Hindu marriage under the Hindu Marriage Act,1955. One of the most important and accepted obligations of the husband during the subsistence of a valid marriage is providing for his spouse and his progeny. Financial vulnerability of an Indian woman is an entrenched reality with very few exceptions. Accordingly, multiple forums are available to her to ensure her sustenance with dignity,for filing a maintenance petition under the Hindu Adoptions and Maintenance Act, 1956, as also under section 125 of the CrPC, the existence of a valid marriage is the primary criterion.

On the other hand, the Hindu Marriage Act, 1955, empowers a woman to claim interim maintenance and permanent alimony and maintenance, but only where a matrimonial petition is pending in court awaiting adjudication and culminates in the passing of a matrimonial decree by the court. The presumption, therefore, is that only a valid marriage entitles a wife to claim maintenance from her husband. In *Roma Rajesh Tiwary* v. *Rajesh Dinanath Tiwary*,[19] the main issue was whether the wife of a marriage declared null on account of her bigamy is still entitled to claim maintenance under Section 25 of the Hindu Marriage Act, 1955. Here, W's marriage to H was performed while her previous marriage had not yet ended. She had a daughter from this union. The husband filed a petition praying for a decree of nullity, which was granted in his favour, and the wife applied for maintenance. The husband's main contention was that, since the marriage was void and the court had granted a decree of nullity, the wife could not claim maintenance. The court read Section 25 of the Hindu Marriage Act, 1955, which provides as follows:

> Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application

18 MPHC-JBP:53148 (High Court of Madhya Pradesh , Oct. 23, 2024).

19 2024:BHC-AS:5134 (DB) (High Court of Bombay, Jan. 19, 2024).

> made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property…….

The court delved into the meaning of the expression *at any time after the passing of the decree* 'and held that it includes a reference to a decree of nullity; therefore, she would beentitled to claim maintenance from him. Again, in *Seema Devi* v. *Brinda Prasad*,[20]a Hindu woman W filed a criminal complaint under section 125 of CrPC, claiming maintenance from her husband, alleging that they were married and she was the legally wedded wife of H. They had been married for 22 to 23 years, were living together as husband and wife in the quarter allotted to the H, but for the past 5-6 years, he had failed to maintain her. On the side of H, there was a denial, and he stated that their marriage was void because W was already married to H1. There were matrimonial proceedings between W and H1, which were converted into a divorce by mutual consent, and the final divorce decree was issued only in 1999. However, even before that, W had started living with him, and even if they were married, the said marriage, being in contravention of section 5 (i), was void. He was under no obligation to maintain her. On detailed evidence and after examining the matter, the family court concluded that, since W's marriage with her first husband was subsisting at the time of her wedlock with H, it was void under the Hindu Marriage Act, 1955.Thus, she cannot invoke section 125 of the CrPC. The high court, on the other hand, said that section 125 entails summary proceedings, and the doctrine of factum valet can be applied to this case, as they have been living together for a long time as husband and wife. Thus, a marriage was presumed, and she was granted Rs 15000 per month as maintenance, as she had no income and the husband was earning Rs 50000 per month.

Application of the doctrine of factum valet appears not only strange but bizarre in light of her proven bigamy. Presumptions are applied in cases of confusion about solemnisation or observance of due rites and ceremonies. Factum valet can never and should never be used in the face of a violation of a legal provision.

Live-in-relationship and police protection demand

Indian society still frowns upon the desire of young people to live together in an intimate relationship, with an attempted curb on their sexual desires, and corrective measures sought to be imposed on them, forcing them to be in a traditional marital setup, is very evident. Sexual experimentation, same-sex marriage may lead to catastrophic and horrendous consequences, where it is an interfaith union with the girls' family leaving no effort to separate and punish them, resorting to nothing, even the dishonour killings of their own daughter. Petrified couple seek police protection after living in fear and hiding, only to get reprieve in some cases and denial in others. Often, there is a complete lack of realisation on their

20 Cr. Rev. No. 760 of 2020 (High Court of Jharkhand, Nov. 28, 2024).

part that their conduct may violate the written rule of law. Even grown-up men and women may enter alliances despite being married to others, yet seek protection from interference by their respective spouses, presuming it is permissible. Two cases under review showed the desperation of couples to evade interference from their own kith and kin, after they themselves had violated the law. In the first case, it was an interfaith couple who had flouted the state's anti-conversion law. At the same time, in the latter, the call for protection came from a married woman eloping with another man, leaving her lawfully wedded husband behind. In *Mamta* v. *State of Uttar Pradesh*,[21] a young couple eloped to be together in an intimate physical relationship, without any intentionoftyingthe knot. They alleged that, being major and of sound mind, they were living together in a live-in relationship of their free choice, but the girl's parents and relatives fiercely opposed it. The parties were an interfaith, interreligious couple, with the girl Hindu and the boy Muslim. The girl further stated that her parents, along with some anti-social elements, were interfering in their personal lives and sought police protection by filing a complaint against her parents with the local SSP. Failure to obtain relief from the police, they approached the courts with a prayer that the police be directed to provide them with protection of their life and liberty. Their main arguments were the decriminalisation of live-in relationships, their tacit recognition under the DVA,[22] and their constitutional right to live with dignity and privacy. They relied on both *Lata Singh* v. *State of UP and Shafin Jahan* v. *Asokan* to argue that once the parties have attained majority, they are free to enter into marriage, conversion, or any intimate relationship, even short of marriage. The state opposed their protection application, contending that this union violated the state's anti-conversion law. The government counsel contended,

i) that under Muslim law, the faith that the boy came from, live in relationships are not permitted and hence their relationship does not carry any meaning.

ii) Under the DVA, as explained by the apex court[23], the concept of eligibility for a relationship like marriage to be recognised is that the parties should be subjected to. Thus, since the boy was a Muslim, and his religion did not permit a live-in relationship, they were not eligible to be living in a relationship like marriage as per the DVA and cannot seek any protection.

iii) Whether the parties still shared the same religion or the girl had converted to another religion was unclear. The counsel argued that the parties have violated section 7 and 8 of the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021. Here, it is specifically provided that no person shall attempt to convert another through misrepresentation, force, coercion, inducement, etc., or through solemnization of marriage or even through a relationship like marriage that is expressly provided under the explanation to section 3.

21 2024 AHC LIND 178 (All) (Mar. 14, 2024).

22 Protection of Women from Domestic Violence Act, 2005(Act No. 43 of 2005).

23 AIR 2011 SC 479.

Under the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021, sections 8 and 9, requires the making of a declaration at least 60 days in advance by the person intending to convert to another religion before a judicial authority such as divisional magistrate that the said person intended to convert, to another religion voluntarily and that there is no force, coercion or inducement for the same by anyone. After such a declaration, there is also a provision for a notice and an inquiry into the intention or real motive for such conversion.

The court also explored whether the relationship fell within the term' relationship like marriage' under the DVA, so that any legal or protective status could be given to them. Thus, they considered the possibility of inferring a common-law marriage between the two, as expounded by the apex court in *D. Velusamy* v. *Patchiammal*.[24] In this connection, the court analysed the nature of the present relationship and its duration. The court noted that Muslim law doesn't permit any relationship short of marriage, such as living together without getting married. Any demonstration or indulgence in any activity of a sexual nature before marriage or outside marriage is *zina*, that is, absolutely forbidden in Islam, calling for severepunishments. The court noted that not all relationships fall under the term "Relationships like marriage" and may not be protected by law. For example, any relationship that otherwise is in contravention of law, such as of polygamous nature, or where the parties who are currently in alive in relationship are actually not permitted to marry if they so desire or which is immoral, such as a person having relationship with a woman as a keep, solely for sexual gratification, would not be eligible to protective legal umbrella. The court held that '*live-in relationship*' is a broader term.

In contrast, '*relationship like marriage*' is a specific term, and parties in the latter category can seek legal protection, while in other cases they cannot. Here, according to the court, the man, having entered into a live-in relationship, was clearly in conflict with the permissible limits of his religion. He had done something impermissible, and therefore, his relationship could not be called a relationship like marriage. Having also violated the UP Prohibition of Unlawful Conversion Act, 2021, the court dismissed their case, holding that they had failed to prove a domestic relationship through long cohabitation, joint accounts, joint property, or any other form of financial security. They had not applied for marriage under the Special Marriage Act or for conversion, indicating that they wanted to live together without getting married and, as a result, are not entitled to a judicial remedy for their actions. Freedom of religion, the court said, is not absolute.

Situational conflict may also emerge when men and women secured in their domestic marital framework decide to leave the sanctity of the social institution for love outside wedlock without resorting to the available legal separation mechanism. Married toone, leaving him to live with another person in a live-in relationship, and then seeking police protection and judicial intervention against interference in the new setup by the legally wedded spouse, appears straight out of melodrama,

24 *Ibid.*

but with few takers. Those who conflict with both social and legal norms cannot seek judicial protection at will. In *Asha Devi* v. *State of Uttar Pradesh*,[25] a married woman left her husband and began living with another man in a live-in relationship. They sought police protection and, upon failure to obtain it, filed a writ in the High Court under article 226 of the Constitution of India, praying that they be protected from interference in their lives by the husband of the woman and her family members. They, being major and of sound mind, have voluntarily decided to live together. The main issue before the court was whether a woman who was married, and had not sought divorce from her husband, yet chose to live with another man, is entitled to judicial protection, and whether their conduct, which may amount to a criminal offence under sections 494/495, justifies the grant of an order of protection. The court considered the apex court's verdict in *D. Velusami*.[26]It held that, since neither was eligible to get married, their living together cannot be termed a 'Relationship like marriage'. Since the woman was already legally wed to someone else and chose to leave him for another man, her conduct, in itself, does not justify thegrant of judicial protection. Thecourt dismissed herprayerfor protection.

IV HINDU MINORITY AND GUARDIANSHIP ACT, 1956

Guardianship of a boy: father vs maternal grandfather

One of the most unfortunate aspects of a matrimonial breakup is the burden it places on the children from this union. The separation of spouses deprives a child of the company of one parent, which is detrimental to a child's normal, healthy development. Remarriage of the custodial parent poses an additional issue, making the child more vulnerable. In *Manoj Ghodehwar* v. *Yashwant Meshram*[27], the parties separated after marriage due to marital turbulence, and the wife left the matrimonial home with their son to live with her parents. The son was placed ina nearby school and had the company of his maternal grandparents. The mother filed for divorce against the father on the grounds of his cruelty and secured the decree in her favour. Subsequently,she remarried and moved in with her second husband, while the son remained with the maternal grandparents.

The father had initially shown no interest in seeking custody of the child or even meeting with him. The wife filed a maintenance application on behalf of the child as against the father,andin response tothat, he sought his son's custody, claiming that he is his natural and legal guardian. The mother argued that the father, though the legal guardian, was not at all interested in the child and that the child's welfare required that he continue to be with the maternal grandparents. According to the maternal grandfather, the father of the boy used to beat his mother, and therefore, he was also terrified of him. At the time the case came before the court, the child was 14 years old. He was in a position to express his opinion and categorically stated that he had little or no connection with his father and would wish to be in the company of his maternal grandfather. The maternal

25 2024 AHC 69223 (All) (Apr. 2, 2024).

26 *D Velusami* v. *Patchiammal,* AIR 2011 SC 479.

27 Misc. Appeal No. 368 of 2020, High Court of Madhya Pradesh (Jan. 18, 2024).

grandfather, who was of comfortable financial means, had a trade in grains and was looking after him well. The court examined the case and ruled in favour of continuing the custody with the maternal grandparents. The court prioritised the child's welfare over any parent's rights in determining the custody and guardianship battle. It said that if the minor's interests so demand, the legal guardian can be denied custody, and the child can be with the relative where his interests and welfare would be best served. The father was thus denied his custody, even though, under the law, he is the natural guardian, and the custody was allowed to continue with the maternal grandfather.

V HINDU JOINT FAMILY

Devolution of ancestral property and alienation

Under Hindu law, a person can own separate property and/or a share in the coparcenary property. The devolution of both kinds of property varies. The intestate's stipulated heirs inherit separate property upon his demise, whereas incoparcenary property, the coparceners acquire an interest by birth in their own right. Post promulgation of the Hindu Succession Act, 1956, the character of property inherited under its provisions in the hands of the heirs remains their separate property in all cases *vis-a-vis* their descendants, whether males or females, and none of them can acquire a right in it while their father is alive. A share in the ancestral property, on the other hand, can be demarcated and possessed by the coparceners simply by requesting its partition. There can never be an automatic conversion of a person's separate property into coparcenary property, either by the birth of a son or by the son's presence. The confusion about the character of property persisted this year, resulting in a lack of understanding of the entire categorisation of property under Hindu law, leading to incorrect pronouncements and misplaced rights for the litigants, even after prolonged litigation. In *Guraja Gangadhar Rao* v. *ThotakuraSambasiva Rao*,[28] a Hindu man A died in 1964, leaving behind his five sons and his self-acquired property. These five sons, through a partition, demarcated/split their respective one-fifth share of the total property. In 1970, S had a son,SS. S sold the entire property (the one-fifth share he had inherited from his father) to one D through a registered sale deed, while S was alive and had also become a major, but S showed his son SS as a minor at the time of sale. SS challenged the validity of the sale, claiming that, since the property was ancestral in his father's hands, he, being a coparcener, had acquired a right by birth in it, and that the father cannot sell the property, including his share. The court said:[29]

> In the case at hand, the father of 1st defendant, Gopalam (S), died intestate on 22.10.1964, i.e., after the commencement of the Hindu Succession Act, 1956 and the plaintiff (SS) was born in the year 1970. Till the birth of the plaintiff, the plaintiff's scheduled property is a separate property of the 1st defendant. After the plaintiff was

28 Dec. 19, 2024, High Court of Andhra Pradesh (Amravati).

29 *Id.*, para 29.

> born in 1970, it became ancestral property……It is also well settled that property inherited by a male Hindu from his father, father's father or father's father is an ancestral property. The essential feature of ancestral property according to Mitakshara law is that the sons, grandsons and the great-grandsons of the persons who inherit it acquire an interest and the right attached to such property at the moment of their birth…The share which a coparcener obtains on the partition of property is ancestral, and since he later had a son born to him, the character of the property remained ancestral.

The court observed that, until the birth of the son, the character of the property in his father's hands was that of his separate property, but, upon his son's birth, he became a coparcener in the property. The father ceased to be its exclusive owner. The court observed:[30]

> The coparcenary means the property which consists of ancestral property, and a coparcener would mean a person who shares equally with others in inheritance in the estate of the common ancestor. The coparcenary is a narrower body than the joint Hindu family, and before the commencement of the Hindu Succession (Amendment) Act, 2005, only male members of the family used to acquire by birth an interest in the coparcenary property. A coparcener has no definite share in the coparcenary property. Still, he has an undivided interest in it, and one has to bear in mind that it enlarges by death and diminishes by birth in the family. Therefore, by virtue of a partition between S and his brothers, the property share of S became his separate property till the birth of his son SS.Still,after his birth in 1970, it ceases to be his individual property, and the alienation made by him before the birth of the son could not be questioned. Still, after the son'sbirth, since the property becomes coparcenary and the son acquires an interest in it by birth, it cannot be sold.

The court also said that the present case would be governed by section 6 of the Act and not by section 8.

The pronouncement appears to be incorrect in light of both the provisions of the Hindu Succession Act, 1956 and the apex court's verdict in *Commissioner Wealth Tax* v. *Chander Sen*.[31] The facts as accepted by the court show that the property over which SS wanted a claim belonged to his grandfather originally, a Hindu male who had died in 1964, after the commencement of the Hindu Succession Act, 1956. The rule that the property inherited by a Hindu from his immediate three paternal ancestors, *i.e.,* father, father's father and father's father's father, bears the character of ancestral property was the rule before the promulgation of the Hindu Succession Act, 1956, but the alteration in the character of property is evident with the commencement of this Act. The Act clearly stipulates that after the death

30 *Id*., para 28.

31 AIR 1986 SC 1753.

of a male Hindu leaving behind his separate property, it would be inherited by his class-I heirs. In 1964, the class-I category included 12 heirs,including the son. It is noteworthy that all class-I heirs who can inherit the property have been clearly and explicitly described with no room for confusion. If the son of the intestate is alive, he alone inherits the property, and his son cannot be either an heir or a sharer in the property inherited by the father. Thus, the heir is the son, not the grandson, or the son of a living son.

The expression used in the Act is son, son of a predeceased son and son of a predeceased son of a predeceased son. This means that the turn of a grandson to inherit the property would come only when the son of the intestate is dead and has left behind him a son. Similarly, a great-grandson can inherit only after his father and grandfather have died. Even these two, i.e., son of a predeceased son (grandson) and son of a predeceased son of a predeceased son (great grandson), if and whentheyinherit, the character of the property they inherit would be separate vis-à-vis their own progeny. This shows that during the lifetime of a class-I heir, none of their children can claim a share of it. For the court to conclude that, till the birth of the son, the property in the father's hands was his separate property, and that, the moment the son is born, it becomes ancestral property, is absolutely incorrect and highly surprising. It remains his individualproperty, and his son acquires no right or interest in it during his father's lifetime. There is absolutely no automatic conversion of property linked to the birth of a son in the family from separate to ancestral. The decision is therefore not only incorrect but unfortunate.

VI HINDU SUCCESSION ACT, 1956

Exclusion of the daughter under the tribal customs

The Hindu Succession Act was enacted in 1956, granting Hindu daughters inheritance rights over their parents' property. Her total exclusion from inheriting her father'sproperty was an entrenched norm before that. Often, after the death of an intestate, his heirs do not divide the property but wait until their own time and convenience to partition it. Since there is no time limit for doing so, decades pass while the property remains in joint ownership, though the respective shares are ascertained at the time of an individual's death. Since succession opens at the time of the person's death, heirs are ascertained and their shares calculated at that very moment. Later amendments may bring in new heirs, but do not open succession in their favour for *pre-morteme* eventualities.

Even after the promulgation of the Hindu Succession Act, 1956, due to an express exception created in favour of tribal communities, the situation remains dismal for daughters, as most of these laws, still ancient in substance, do not favour granting succession rights to females. Seventyyears later, the exception remains part of the statute, even though society, including tribal society, has marched with the times. In *Tirath Kumar* v. *Daduram*,[32] the parties were members of the Sawara tribe of Bilaspur, Chhattisgarh. Here, a Hindu man died in 1951, leaving behind property that his two sons claimed. The daughters did not get

32 2024 INSC 1005, Civil Appeal no 13516 of 1005.

anything and wanted to invoke the provisions of the Hindu Succession Act, 1956 that was resisted by the males on two counts, one that since the death was before 1956, that is coming into the force of the Hindu Succession Act, the same does not apply to the facts of the case, and second the Act by an express mention excludes from its application the members of Scheduled Tribes and therefore the daughters cannot succeed. The apex court affirmed it, lamenting that even after around 70 years of independence, the laws lean against the rights of daughters, and hoped for legislative corrective action in this regard.

Succession rights of statutory legitimate children

A valid marriage confers legitimacy and inheritance rights upon the progeny. A special cloak of protection has been thrown around children born of void or annulled voidable marriages, conferring upon them statutory legitimacy under Section 16 of the Hindu Marriage Act, 1955, and bringing their inheritance rights on par with the legitimate offspring of their parents. However, recognition of their relatives is limited to their parents, and they are statutorily prohibited from inheriting property from any of their parents' relatives. It also throws open the question of their eligibility to take a share in the property of their putative father after the partition of the ancestral property. A couple of cases were under review on both these issues. In *Buddavva* v. *Shantappa*,[33] a Hindu man married W and had a daughter, D, with her. He had a relationship with W1, and from her again,he had a daughter, D1.

Upon his death, D1 claimed a half share in the property left by H. She could not prove the existence of a valid marriage between her parents, but sought protection under section 16. W was still alive at the timeoflitigation. Thecourt ruled in her favour and found her eligible to both the deceased's separate and ancestral property. The court said[34]that the burden was on the plaintiff to prove that W had died and, after her demise, H had married W1,but she was unable to do so. The lower court presumed a marriage and awarded each daughter an equal share. The first appellate court held that it is section 6 that has to be applied to the facts of the present case, as if the second marriage were held during the lifetime of the first wife, it would be a void marriage, and the child would be entitled to the protection of section 16 of the Hindu Marriage Act, 1955. Thus, at the time of the death of H, a notional partition would be affected with respect to his separate property, and the first legitimate daughter would get a share in it. Once the share of the deceased father is ascertained, it would constitute his individual property, andupondivision amongst his heirs, D1 would also be an heir and would receive a share. In *Salendra* v. *Surendra Kumar Soni*,[35] a Hindu man filed a suit against his biological father for claiming a share in the ancestral property. The family court declared him to be an illegitimate child as his parents were not married. On appeal to the high court, the court invoked section 16, declared him a legitimate child, and

33 2024:KHC-K:3623.

34 *Id.*, para 9.

35 ILR 2024 Chh 1865; 2024: CGHC: 301 448.

held that thewas entitled to all benefits. In *Laxmawwa* v. *Gangawwa,*[36]a Hindu man H was married to W, and during the subsistence of this marriage, he married W1 and had five children from her. The issue of inheritance of the separate propertyandthe share in the ancestral propertyarose after the father's death.

The court invoked section 16 and upheld their claim and said, the provisions of the HSA, 1956 have to be harmonized with the mandate in section 16(3) of the HMA, 1955, which indicates that a child who is conferred with legitimacy under sub sections (1) and (2) will not be entitled to rights in or to property of any person other than the parents. The property of the parent, where the parent had an interest in the property of a joint Hindu family governed under the Mitakshara law, has to be ascertained in terms of Explanation to sub-section (3), as interpreted by them.[37]They also said that the apex court in *Revanna Siddappa*'s case[38] had addressed the complex issue oflegitimacy and the property rights of children born of void or voidable marriages.While considering Section 16 of the Hindu Marriage Act and Section 6 of the Hindu Succession Act, 1956, it was held that, since the children have been conferred legitimacy, they would have similar rights to legitimate children to the property of their parents, including a share in the coparcenary property. Thus, in light of the apex court's pronouncement, the court held that the children would be entitled to their share in the property that would have been allotted to the father upon a notional partition, had it taken place. Again, in *Mallappa* v. *Padmawwa*[39]*,* H married W, who was a minor and had two children, a son and a daughter, from her. He then married W1 and had a child with her, and then died. The court held that, since the second marriage was void, the children from that marriage would take their respective shares in the separate property. In contrast, the legitimate children would take both the separate property and a share in the coparcenary property. The second wife was foundnotto be entitled to anything.

For the application of Section 16 of the Hindu Marriage Act, 1955, the marriage must have been solemnised under Hindu law, even though it was a valid or a voidable marriage. In some cases, the claimants could not demonstrate that their parents had a marriage, even though it was a void one, because the father was already married; however, the courts, on their own, presumed a marriage so that section 16 could apply. At the same time, the parties' orparents'religion was never an issue. In *T. Mallika* v.*T Mallika*,[40]a Hindu man, H, died in 1988, leaving behind several children and widows. He was married to W and had a daughter,D,from her. During the subsistence of this marriage, he married a Muslim woman, W1 and had a son, S, from her. He had a relationship with W2 without marriage, from whom he

36 2024: KHC-D:17 580.

37 *Id*., para 10.

38 *Revannasidappa* v. *MallikarjunI,* 2023 INSC 783.

39 KHC-K-7412.

40 A.S. No. 259 of 2007 (Madras HC) (July 1, 2024).

had two daughters, D1 and D2. He left behind both self-acquired and ancestral properties.

S claimed that he was the legitimate son of A under Section 16 and, as a coparcener, was entitled to a share in the ancestral property, as also in the separate property of the deceased father. D contended that W1 was a Muslim at the time of marriage, never converted to the Hindu faith and their marriage was not registered under the Special Marriage Act, 1954. As it was an inter-religious marriage, it could not be solemnised under the Hindu Marriage Act, 1955 and would not be valid under Hindu law. Therefore, it cannot even attract the application of section 16. S contended that his mother had adopted Hindu ways of life in her day-to-day routine, and he was brought up as a Hindu. The court insisted on proof of marriage. Ironically, it was satisfied only that the parties H and W1 had married. Then they were living as husband and wife, and H had also acknowledged S as his son, and the court concluded that Section 16 of the Hindu Marriage Act, 1955, could be applied to him. Further, under section 16(3), S was held entitled to a share in the separate property of his putative father, but not in the coparcenary property. D, on the other hand, was treated as a coparcener and,under the 2005 amendment, was held to be a coparcener and entitled to the ancestral property belonging to her deceased father, in light of *Vineeta Sharma*'s[41] case.The court said that herfatherdidn't need to be alive on the date the amendment was promulgated. Since she had died during the pendency of the suit, the court held that, despite the absence of an expressly made provision to address such situations, the suit should proceed. The term 'his interest' should include 'her interest' as well, and her representatives are to be brought into the picture. The judicial pronouncement againis unfortunately incorrect in awarding the share to the son. The entire property should have gone to the daughter and, in her absence,to her representatives.The application of Section 16 of the Hindu Marriage Act, 1955, to an alliance that is not a marriage recognised under this enactment was inappropriate and incorrect. Section 16 speaks of the legitimacy of children born of void and voidable marriagesthathave been annulled under section 11 and 12, respectively. It does not contemplate any other situation where marriage was solemnised or the fact of acknowledgement of the child as his own by the putative father. The marriage here was in contravention of section 5 of the Act, which says: a marriage may be solemnised between any two Hindus. The parties'religion, therefore, is a condition precedent to the validity of the marriage under Hindu law. A marriage betweena Hindu and a non-Hindu is not permissible under Hindu law, which is a religion-based law, owing to the difference in religion and cannot be called a marriage at all.Further, it cannot be categorised under section 11 or section 12, as those sections pertain to specific situations and apply only to a Hindu marriage. IF one of the parties to the marriage is a non-Hindu, by no stretch of imagination can sections 11, 12 or even 16 be attracted. When the letter of the law is unambiguous, the judiciary should not, through blatant errors,introduce conflicts.

41 AIR 2020 SC 371.

Validity of partition and daughter's inclusion as coparceners

A partition of the ancestral property would not be valid unless all the parties entitled to receive a share are parties to it, and the complete properties that can be partitioned are included. But once a party participates in a partition and gets a share, it is not open to that party to challenge the partition or its validity, unless they can prove to the court's satisfaction that their consent to participatein the agreed settlement was obtained by fraud. Property litigation is time-consuming, and over time, the enactment of new laws that amend prior positions, the creation of new rights, and judicial precedents, taken together, can add complexity to the existing situation. In *Vasant Dhondiba Choudhri* v. *Sadashiv Dhondiba Choudhri*,[42] a Hindu man died leaving behind ancestral property. His sons partitioned the property in 1999 through a registered partition deed. One of the sons, S, was a signatory to the partition deed and was present at its registration. He later refuted it, challenging its validity, arguing that he was illiterate and that the terms of the partition deed did not conformto what had been agreed upon between him and his brothers. What is notable is that in 1999, none of the sisters had a party to this partition deed.

Upon appreciation of the evidence, the lower court declared the partition void, having been obtained through fraud. The declaration of its invalidity was challenged at the high court by filing an appeal in 2015. By this time, the daughters had become coparceners and had also joined the suit. The lower appellate court found that the partition, although registered, was invalid. Consequently, they concluded that the joint family was intact as of December 2004 and, upon the partition of the joint family property, the daughters, being coparceners, would also have a share. The main issue before the present court was whether the lower courts' finding that the registered partition deed dated December 23, 1999 was illegal, as it was vitiated by fraud, was supported by relevant and admissible evidence? The court disbelieved the fraud allegations and refused to revoke or reopen it.

Elaborating on the modalities of effecting partition, the court said that partition is a matter of individual volition and indicates a severance of status. It involves a definite and unequivocal indication of his intention to separate himself from his family and enjoy his share in severality and can also be affected orally. However, in such cases, it should be supported by evidence such as subsequent separate mutation entries, payment of taxes, cesses or levies to prove such an oral partition, or else it would not be easy to be admitted in evidence. A partition can also be affected by a deed of partition between the members, or by a deed of release, with or without consideration, that binds the executants. The actual test is the family members' intention to separate themselves; once they do, they become separate members, not joint members. Such an intention in law is not required to be in writing, but if in writing, it should indicate, on its face, a clear intention to separate, and although there may not be a partition by metes and bounds, the

42 Second Appeal No. 240 of 2011 (Bom HC) (Apr. 25, 2024).

parties may maintain their separate status. In the present case, the court held that the registered partition deed, dated December 23, 1999, evidenced the parties' intention to sever their joint family status, notwithstandingthe absence of any physical division of property; accordingly, the joint family status was severed. In such cases, a partition can be reopened only for fraud that the parties failed to prove to the court's satisfaction. If the court had held the partition deed invalid, the family's joint status would have remained intact, and, under the Hindu Succession (Amendment) Act, the daughters would have received their shares in this property. However, since the partition effected in the family was held valid by the court, and the family had not lost its joint status as of December 20, 2004, the court dismissed the case filed by the daughters, holding that they were not entitled to reopen the partition.

Again, in *Lakshman Reddy* v. *G Danamma*, in the year 1972, pursuant to a partition of ancestral property effected among the brothers, B, one of the brothers, was allotted a share. He enjoyed sharing this with his wife and family until he died in 1987. He had six daughters and four sons. One of the daughters died and was represented by her three children. In 2003, the brothers effected a partition of the property amongst themselves.They claimed that the sisters, being married, were not entitled to any share under the Karnataka Hindu Succession (Amendment) Act, 1994. At the same time, some share was given to the unmarried sisters. The partition deed was duly registered before the sub-registrar. Later, one of the brothers and sisters, citing fraud, sought the revocation of the partition deed, while the sisters left out claimed their share, alleging an illegal deprivation. The court, though it dismissed the allegation of fraud, did conclude that since some of the legitimate claimant were deprived of their shares, they were entitled to ignore the partition effected by this deed. The court held that, since B's death occurred in 1987 and he was a member of the Mitakshara Coparcenary, a notional partition would be effected, which was not done in the present case, as per the facts, and B's share would be calculated. This share would then be distributed in accordance with the provisions of the Hindu Succession Act, and the daughters would also receive their respective shares. Since one of the sons died unmarried, the court held that his share would be taken by his mother and, upon her death, divided equally among all of her surviving children.

The daughter's claim was therefore upheld due to the application of Section 6 of the Hindu Succession Act, 1956.

Succession rights of daughters

The rights in favour of daughters were created only in 1956, and before that, though the widows were granted limited ownership in the property of their husbands, which later matured into an absolute ownership, daughters' rights saw the light of the day only where the succession opened after the promulgation of the HinduSuccession Act. If the father died before 1956, a daughter was ineligible to inherit, but the widow could get the share by way of limited ownership. In 1956, she became the exclusive and absolute owner, to the exclusion ofhis daughter,

under section 14. In *Radha Bai Balasaheb Shirke* v. *Keshav Ramachandra Jhadav*,[43] a Hindu man, was married twice before 1955. From his first wife, he had two daughters, D1 and D2, and from his second wife, W2, he had another daughter, D3. His first wife predeceased him in 1930; D1 died in 1949; and he died in 1952, i.e., prior to the coming into force of the Hindu Succession Act, 1955H. His entire property was taken over by his widow, W2, as the limited owner. In August 1956, after the coming into force of the Hindu Succession Act, 1956, W2 executed a Will of these complete properties, now as the absolute owner, in favour of her daughter D3, and then died in 1973. D2, the daughter of this man from the first marriage, filed a suit to seek her share of her father'sproperty. The court rejected the daughter's claim, holding that, prior to 1956, she had no right to inherit her father's property.

Much water has flown down the Ganges since then. A daughter is not only a class-I heirto the property of her parents, but with all the gender friendly enactments enhancing her rights, has become a coparcener in her own right. There can be no denial of her rights if she chooses to enforce them. In *Maruti Janu Mhskar* v. *Muktabai Suryakant Bhoir*,[44] a Hindu man died in 1959, leaving behind his widow, two sons and three daughters. The daughters were married in 1966, 1969, and 1976, respectively. After the father's death, the property was transferred to his widow and sons. Subsequently, in 1982, the mother also died. In 1991, D3 filed a suit for partition and possession of her 1/5th share in the property left by the father. The suit was decided in her favour, and she was granted 1/5th share in the property. An appeal filed by one of the brothers, along with his wife, was dismissed, and he then filed a second appeal in the High Court. This appeal was admitted by an order dated Aug 2012. It is pertinent to note that during the pendency of the litigation, the Maharashtra Hindu Succession (Amendment) Act, 1994, was enacted, under which, for the first time, the state of Maharashtra recognised daughters as coparceners, though it excluded married daughters. Subsequently, while the case was pending final adjudication, the Hindu Succession (Amendment) Act, 2005, was enacted and, as a central enactment, overruled the state enactment's disqualification on the basis of a daughter's marital status. All daughters became coparceners in the father's joint family, whether married or not. The issue that arose for consideration here, therefore, was whether the daughter in the present case was entitled to a share in the property even though she was married on the day the Maharashtra Hindu Succession (Amendment) Act was passed.

The court held that, in light of the apex court's verdict in *Vineeta Sharma*,[45] since the litigation was pending when the Amending Act was enacted, the daughter would benefit from the amendment and become a coparcener. The central amendment had already overruled the state amendment, and therefore, the issue of whether she was married became superfluous. The daughter was held entitled

43 2024:BHC-AS:43314.

44 2024:BHC-AS:12524.

45 AIR 2020 SC 3717.

to a 1/5 share of the property, and the appeal filed by the brother and his wife was dismissed.

Effective date of daughter's inclusion as a coparcener

The much-awaited Hindu Succession (Amendment) Act was promulgated on September 9, 2005, conferring coparcenary rights on all Hindu daughters. The date becomes historical, from this date onward, a Hindu daughter, irrespective of her maritalstatus, becomes a coparcener in a Mitakshara Coparcenary and a sharer in the ancestral property held by her father or his family, in the same manner as a son. The apex court has already clarified two fundamental aspects regarding the conditions determining a daughter's eligibility to become a coparcener. One, that even though the rights have existed since September 9, 2005, a daughter does not need to be born after this date to become a coparcener. A daughter born before the commencement of the Amending Act would become a coparcener from that date. In that sense, the right created in her favour is retroactive. Secondly, her father doesn't need to be alive on the day the Amending Act is passed. She would become a coparcener if the joint family status wereintact, evenif her father were not alive on this date.

However, a fundamental question arises: if the rights are created in her favour with retrospective effect, can a daughter be treated as a coparcener if she had died before the commencement of the Hindu Succession (Amendment) Act, 2005, but had left behind her legal representatives? In other words, for a daughterto become a coparcener, is it necessary that she herself be alive on 9thSeptember 2005? If she dies before the promulgation of the Amending Act, canher legal representatives claim the benefitretrospectively on her behalf and claim the share that would have come to her if shehad been alive? In *Kamlakar Purushotum Inamdar* v. *Rajani Shriram Maliwale,*[46] a Hindu man, died in 1971, leaving behind his widow and six children, namely two sons and four daughters. Subsequently, the wife also died in 1981. He left behind him two sets of property: one self-acquired, the other ancestral. One of the daughters filed a suit claiming one-fourth of her sharein the father's property as his class-I heir, who she claimed had died intestate. Two critical issues were raised here. One: a daughter who dies before the promulgation of the Hindu Succession (Amendment) Act would still be treated as a coparcener if the status of the joint family remains intact, and, in her absence, her children can therefore be brought on the books?

Secondly, what would be the position if the property were the self-acquired property of the father and not the joint family property?

With respect to the first question, the apex court held that, although coparcenary rights are vested in the daughter from her birth, the date for asserting this right is September 9, 2005, and she must be alive on that date. If she dies before this date, she cannot be called a coparcener. The amendment is retroactive and retrospective, but the only condition is that a daughter claiming to be a

46 SA No. 336 of 2015 (Bom HC) (Jun. 14, 2024).

coparcener should be present to assert her rights. If she dies, her children cannot be substituted, as the Act saysthat '*daughter of a coparcener* 'would be a coparcener in the same manner as a son. At the same time, the deceased female was the daughter of a coparcener; her children, in her absence and beforeshe could becomea coparcener, are not. With respect to the rights of representatives, in the separate property of her father, the court held that they are class-I heirs in their own right and would inherit notwithstanding that their mother is dead, as they would represent her and receive the share. The nomenclature in Schedule I describing class I heirs is unambiguous, as both the son of a predeceased daughter and a daughter of a predeceased daughter are class I heirs of a Hindu male.

Succession to the property of a Hindu male intestate

Where a Hindu male dies intestate, his property, in the first instance, goes to his class-I heirs. The category includes, among others, his sons and daughters and children of predeceased sons and daughters. All of them would inherit together in their respective shares, as the exclusion of remoter heirs by nearer heirs is not followed under Hindu law. ScheduleI of the Act, as aforesaid, provides the heirs by their specific and unambiguous nomenclature to rule out any confusion. In *Harsha Harkant Sodha* v. *Bharat Gulabrai Vaghani*,[47], a Hindu man, A, died after 1956, leaving behind his widow and his son, B. B had two sons, S1 and S2, and a daughter, D. One son and one daughter, S2 and D, had predeceased him andleft behind them their heirs/descendants. Upon B's death in 1993, his surviving son S1 tookpossession of the entire property. The heirs of B's deceased children and the brother and sister of S1, *i.e.,* the children of S2 and D, filed a suit claiming their share in the property. They also prayed that the court appoint a receiver to prevent S1 (their uncle) from alienating the property and creating third-party rights in it. S1 contended that the property inherited by his father from his grandfather was ancestral in character, and the plaintiff, having married in 1970, was not a coparcener. Since her father had died before 2005, she could not become a coparcener even after the passing of the Hindu Succession (Amendment) Act, 2005 and therefore is not entitled to any share. The court dismissed his contention and held that, under the Hindu Succession Act, the property S inherited from his father was his separate property.Upon his death,he, in the capacity of his son and the children of his predeceased brother and sister, in the capacity of children of predeceased sons and daughter of the deceased, would inherit it as his class-I heirs. The court ruled that,although the uncle held possession of the property, he held it on behalf of all the heirs, as two-thirdsof the share in it also belonged to the deceased'sgrandchildren. The uncle'sshare was a mere one-third, and the court passed an order restraining him from alienating the propertyor creating third-party rights in it, as he had it.

In *Jayashree Jayanth* v. *N Krishnaswamy*,[48] a partition of the property took place amongst the brothers of the property that belonged to their grandfather, first

47 2024:BHC-OS:13626.

48 2023:KHC:37548-DB.

in 1955 and then in 1966, through which each of the brothers took their separate shares and the joint family status amongst them was disrupted. One of the brothers had two daughters. He transferred some shares to one of the daughters, D2, and made D1 a witness to the transfer. D1 later filed a suit against her father and the other sister, claiming that she was not given a share and that, since this constituted ancestral property and not separate property in the father's hands, she, being a coparcener, had a right by birth in it. The court, following *Uttam Singh* v. *Soubhag Singh* and *Commissioner of Wealth Tax* v. *Chander Sen*, held that, upon partition, the brothers take the property as their separate property, and that daughters do not have any share in the father's separate property while he is alive, and dismissed her suit.

Succession to the property of a Hindu female

The Hindu Succession Act, 1956, provides for two different schemes of succession depending on the sex of the intestate. In case of a male Hindu, the property devolves as per sections 8 to 13 of the enactment, and as per sections 15 to 16 where the intestate is a Hindu female. Then there is further divergence in the scheme of succession, for Hindu females, depending upon the source from which the property was acquired, which is now available for succession. Accordingly, the class of heirs provided for differs for males and females. There is an additional complexity of reversion of property in the case of female intestates. In case she dies issueless, the property that she had inherited from her parents in the capacity of their daughter would revert back to her father's heirs and the property that she might have inherited from her husband or father in law, in the capacity of the widow in the former case and son of a predeceased widow in the latter case, it would revert back to the heirs of that husband. She is not in such cases supposed to have independent heirs. In *Krothapalli Hari Prasada Rao* v. *Akkineni Alivelu Manga Tayaru*,[49] the issue of reversion/devolution of property under section 15 of the Act, in favour of the heirs of the deceased husband of the woman who died intestate and left behind property she had inherited from her husband. Here, a Hindu man had a wife, W and two daughters, D1 and D2. Upon the death of his first wife, he remarried W1. Upon his death, all the retirement benefits were taken by W1, including a share in his property. She then constructed a house on the land left by her husband with the money that she had inherited from him. All this while, D1 was married, and D2 later married W1. Subsequently, W1 married H1 and died a few years later. H1 claimed the property as her primary heir, while D1 and D2 objected, arguing that the property left by their stepmother was the one inherited by theirfather. She had died issueless; the entire property would revert to her deceased husband's heirs, i.e., her father's daughters, who would be entitled to the property to the exclusion of the second husband, who would have no claim to it. The court held in their favour and against the second husband. They observed that since the enactment of the Hindu Succession Act, by virtue of section 14, a female is now the absolute owner of the property that she inherits with absolute

49 A.S. No. 303 of 2007, High Court of Andhra Pradesh (Jan. 10, 2024).

powers over its disposal. Therefore, ordinarily, if she dies, reversion of it in favour of her deceased husband's heirs is no longer the law. Still, with respect to clause (a) of subsection (2) of section 15, if the property that she leaves was inherited by her during her lifetime from her parents in the capacity of their daughter or by her husband in the capacity of his widow, it must be given a restricted meaning. For example, if the property werenot available in the same state, *i.e.*, if the identity of the property has been changed or it has been substantially improved or substituted, the section postulating reversion would not apply. It would apply only when the property so inherited by the female remains in the same condition. A broader meaning would lead to much mischief not contemplated by the parliament, and if even property converted or altered in character is sought to be covered under the same, it may give rise to unsavoury litigations and complications, and the court also observed that the present case was an indication of the same. Here, the property was purchased by the deceased female's husband, *i.e.,* the father of the plaintiff daughters. W2 had no children from either her first or present husband. She had inherited the property from H, upon his death as his widow, who died in 1980, leaving behind W and D1 and D2.The death and pensionary benefits were also taken by W and were used to construct a house in 1984. This was evidence that D1's and D2's marriages were performed by W in 1981 and 1985, respectively. It was only in 1994 that she remarried H1, *i.e.,* ten years before this marriage, the house in dispute was constructed by W, on the site purchased by her late husband, H. The court said it did not mean the property was purchased by W with her own income, but it did show that the first husband, H, bought it and that D2 stayed in this house with W until her marriage in 1985. The house, therefore, belonged to the late husband and was partitioned among his three heirs, while H1 at that time was nowhere on the scene. Thus, the court held that the same has to revert back under section 15 (2)(b) to the heirs of her husband, from whom she had inherited the property, *i.e.,*children of H (his two daughters), as W died issueless and intestate. The claim of H1 was dismissed.

Murderer disqualified: Section 25

The enactment provides for only two disqualifications. One is religion-based, making sameness of religion between the intestate and the heirs, except for a convert heir, who is treated as a primary rule. The second is grounded in public policy principles and has universal applicability. Under section 25, a person who commits the murder of another or abets its commission in furtherance of succession is prohibited from inheriting the property of the one whose death he causes. It is sufficient to show that he has murdered the intestate, and the section under which he has been convicted is not relevant. In *Pawan Jain* v. *Sejal Jain*,[50] the issue before the court was whether a person who is accused of committing dowry death of his wife can still claim a right of inheritance fromher. Here, a woman died amongst suspicious circumstances after marriage amidst the claims of torture relating to the demand of dowry, and the court convicted her husband and her in-laws for her

50 High Court of Bombay, MANU/MH/4924/2024 (July 2, 2024).

murder. When the husband applied for the succession certificates, the deceased wife's father objected, invoking section 25 of the Act. The husband questioned his capacity to intervene. He argued that it is only when a person is convicted under section 302 of the IPC, and not under any other section, such as 304B /498A, that section 25 would be attracted. Thus, it would not result in his disqualification, as his conviction was under section 304 B rather than section 302.

The court observed that the disqualification incorporated under section 25 is based on public policy that a person who causes the death of a person whose property he seeks to inherit cannot be permitted to take advantage of his own felonious act. The court further observed that this disqualification has always been based on the principles of equity, justice and good conscience and was applicable even before their statutory incorporation, apparently intended to disqualify/disallow a person from accelerating his inheritance by causing the death of a person whose property he seeks to inherit. Secondly, the expression used in section 25, "a person who commits the murder or abets the commission of murder," is required to be so construed as to advance the primary objective sought to be achieved by the section. Though the terms murder or abet in its commission are the terms used in the Hindu Succession Act, they are neither defined nor explained in the enactment. At the same time, incorporating a technicality would defeat the very objective of their inclusion. The court further clarified that a murder is a murder, be it under section 304B or under 302; the differentiation lies in the quantum of punishment and not in dilution of the offence. Secondly, the court observed that it is not appropriate to interpret the term appearing in one enactment dealing with inheritance and succession by importing the definition of a similar term froma penal statute. Therefore, the term must be interpreted in its ordinary, everyday meaning. If understood in this way, it means causing death, or abetting it, of a person whose property is sought to be inherited by the person alleged to have incurred this disqualification. Thirdly, it is not relevant under which section a person is convicted of causingthe death of another. It may be possible that even if a person is convicted under section 302, the disqualification may not be attached if a civil court thinks so, as the factum of the person who has allegedly incurred disqualification, having murdered the deceased, has to be decided independently on evidence before it.

The court finally held that the husband was disqualified from inheriting the property of his deceased wife, he being a disqualified heir under section 25, on account of his conviction. Thus,the property was to go to her parents. Similarly, in *Rajwati* v. *Kuldeep,*[51] a Hindu woman died, and her husband and in-laws were held for her death under the Dowry Prohibition Act, 1963. Her mother filed a suit for recovery of her *stridhan* as her class-I heir seeking disqualification of her husband from inheriting her property, including jewellery, under section 25. The court held in her favour against the husband of her deceased daughter. The court termed him a disqualified heir under section 25, he having caused the death of the intestate

51 Delhi District Court (Tis Hazari), CS DJ No. 18559/2016 (Nov. 6, 2024).

and ruled that he cannot be allowed to inherit his deceased wife's property in light of section 25 of the Act.

VII CONCLUSION

The year 2024 saw several notable judicial pronouncements, some of which rendered justice, while others, unfortunately, were wrongly decided, thereby jeopardising the rightful claims of disappointed litigants trapped in the usually expensive and time-consuming litigation. Perhaps the highlight of the year was the guidelines issued by the apex court to prevent and prohibit the solemnisation of child marriages. However, it stopped short of granting the desired declaration of its overriding effect on the age-related requirement under the various personal laws in vogue in India. The court clarified the importance of observing the requisite rites and ceremoniesto create a valid relationship under the Hindu Marriage Act, emphasising the solemnity of the entire procedure. Parties in a live-in relationship, but who themselves had violated the law, were refused judicial protection. The constitutional validity of section 5(v) was upheld as incorporating a reasonable classification. Judicial ambivalence was evident, as in a parallel situation, relief was granted to some while denied to others. The mandatory one-year waiting period before the parties can present a divorce petition was waived in one case, but dismissed in others. A similar pattern was observed inwaivers of the six-month waiting period in cases of divorce by mutual consent. While granting statutory legitimacy to children born to an interfaith couple, the court incorrectly treated it as a marriage under Hindu law. It conferred a share on an illegitimate child, thus depriving the legitimate offspring of their rightful share. The judicial clarification on the date from which a daughter becomes a coparcener, as postulated in the judicial clarification, is that she must have been alive on the day the Hindu Succession (Amendment) Act, 2005, was promulgated, so that she could become a coparcener. Following the rule of public policy, the court rightfully thwarted the attempts of the husbands to succeed to the property of their wives after they were convicted of murder.