



RJS

Rajasthan Judicial Services

Rajasthan High Court (RHC)

Volume - 6

Hindu Law, Muslim Law, The Specific Relief Act 1963, Interpretation of Statutes & The Rajasthan Rent Control Act 2001



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Hindu Law

Chapter -1 Nature of Hindu Law

1. Divine Origin of Hindu Law

- ✓ Hindu law is believed to be of divine origin.
- ✓ It is based on the belief that rishis or sages, who had attained spiritual enlightenment, were in communication with God and received the law as divine revelation.
- ✓ Thus, Hindu law is not man-made, but considered to be revealed law.

2. Law as a Part of Dharma

- ✓ According to Hindu jurists, law is the enforceable part of Dharma.
- ✓ Dharma is a broader concept than law:
 - a. Includes religious, moral, legal, physical, and metaphysical rules.
 - b. It governs not just external conduct but also internal purity and righteousness.
- ✓ Dharma does not emanate from the sovereign or state, unlike modern legal theories (e.g., Austin's command theory).

3. Sources and Evolution

- ✓ Mayne's view: Hindu law is the law of the Smritis as interpreted and developed in Sanskrit commentaries and digests.
- ✓ It has been modified and supplemented by custom, and this entire body is recognized and applied by the courts.

4. Dynamic and Evolving Nature

- ✓ According to Dharmashastra writers, Hindu law is dynamic in nature.
- ✓ It is meant to respond to the changing needs and requirements of society over time.
- ✓ Emphasizes flexibility and adaptability, rather than rigid adherence to ancient rules.

5. Role of the Sovereign

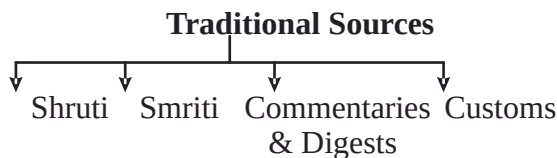
- ✓ Under Hindu law, the King (sovereign) is not the creator of law.
- ✓ Contrary to Austin's theory, the King is merely the enforcer of Dharma, not its source.
- ✓ The King himself is subject to Dharma and is bound to uphold and protect it.

6. Personal Nature of Hindu Law

- ✓ Hindu law is a personal law, not territorial law (lex loci).
- ✓ This means it applies to persons based on religion, not geography.
- ✓ Therefore, when a Hindu migrates from one part of the country to another, he carries with him the laws and customs of his origin.

Sources of Hindu Law

A. Traditional Sources



1. **Shruti:** Derived from 'Sru' (means 'heard').

- ✓ Contains divine revelations to sages.
- ✓ includes 4 Vedas:
 - i. Rig Veda – hymns to nature.
 - ii. Yajur Veda – rituals and mantras.
 - iii. Sam Veda – musical prayers.
 - iv. Atharva Veda – magic and incantations.
- ✓ Upanishads (Vedanta): conclude the Vedas; highest Hindu philosophy.
- ✓ Note: Not of practical legal use today.

2. **Smriti:** Means 'remembered' (by Rishis).

- ✓ Principal source of Hindu law.
- ✓ Divided into:
 - Primary: Dharma Sutras and Dharma Shastras (e.g., Manu, Yajnavalkya).
 - Secondary: later compositions.
- ✓ Courts interpret cautiously.

3. **Commentaries & Digests:** Explain and modify Smriti traditions to align with practices.

- ✓ Important commentaries:
 - Mitakshara (by Vijñaneshwar),
 - Dayabhaga (by Jimutvahana),
 - Others: Viramitodaya, Smriti Chandrika, etc.
- ✓ Interpret law, not legislate it.

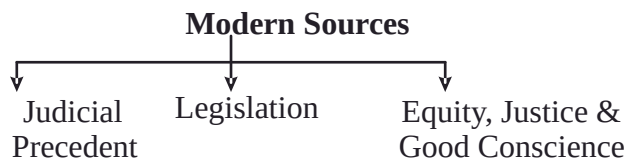
4. **Customs:**

- ✓ Highly authoritative.
- ✓ Defined in Section 3(a) of Hindu Marriage Act, 1955.
- ✓ Must be: Ancient, Continuous, Certain, Reasonable, Not immoral, Not opposed to law/public policy.
- ✓ Important cases:
 - Deivanai Achi v. Chidambaram (1954),
 - Harprasad v. Sheo Dayal (3 IA 254),
 - Mst. Karipal Singh v. Bacchhan Singh (1958),
 - Mahant Bhagwan v. Girija Nandan (1972),
 - Saraswati Ammal v. Jagadammbal (1953).

✓ Essentials of Valid Custom

- Ancient: Must be practiced long enough to be accepted (e.g., *Golak Chand v. Praveen Kumari*).
- Invariable & Continuous: Should not be discontinued.
- Clear & Unambiguous: Must be clearly proved.
- Reasonable: Should be logical and fair (*Prandhamayya v. Navrathna*).
- Not Immoral/Public Policy Violating: Should not promote immorality (*Hira v. Radha*).
- Not Opposed to Any Law: Cannot contravene statute law (*Collector of Madura v. Mootoo Ramalinga*).

B. Modern Sources



1. **Judicial Precedent:** Binding court decisions.

- ✓ *Luhar Amritlal v. Doshi Jayantilal* (1960): Precedents integrated into Hindu Law.
- ✓ Impact: Reformed adoption rules, debt doctrines, and definitions like 'Streedhan'.

2. **Legislation:**

- ✓ Major laws:
 - Caste Disabilities Removal Act, 1850,
 - Hindu Marriage Act, 1955,
 - Hindu Succession (Amendment) Act, 2005,
 - Transfer of Property Act, 1882.
 - Reformed and codified Hindu Law.

3. **Equity, Justice & Good Conscience:** Applied where no law exists.

- ✓ Origin in ancient Hindu texts.
- ✓ *Gurunath v. Kamlabai* (1951): Recognized as a valid source.

Schools of Hindu Law

A. **Mitakshara School**

- Commentary on Yajnavalkya by Vijnaneshwar.
- Applicable all over India except Bengal & Assam.
- **Features:**
 - a. Son/daughter gets ancestral property by birth.
 - b. Father's alienation rights are limited.
 - c. Coparceners can't dispose of shares without partition.
 - d. Inheritance based on consanguinity.
 - e. Sapinda: Blood relation (same body particles).

➤ **Sub-Schools:**

1. Benaras (North India, incl. Orissa),
2. Mithila (Tirhoot, N. Bihar),
3. Dravida (Madras),
4. Bombay (Gujarat, Maharashtra),
5. Punjab (custom-dominant).

B. Dayabhaga School

- Digest by Jimutvahana.
- Supreme in Bengal and Assam.
- **Features:**

1. No birthright in ancestral property.
2. Father has full control over all property.
3. Shares can be disposed of, even undivided.
4. Inheritance based on spiritual efficacy.
5. Sapinda: Ritual relation (rice-ball offerings).

Differences between the Mitakshara and Dayabhaga Schools of Hindu Law:

Point of Difference	Mitakshara School	Dayabhaga School
Basis of Right to Property	Arises by birth; son and after the 2005 amendment, daughter becomes coparcener in ancestral property.	Arises on death of the last owner; no coparcenary rights during father's lifetime.
Father's Power of Alienation	Restricted; can alienate only under legal necessity or benefit of estate.	Absolute; father can alienate property as he pleases.
Right to Partition	Son/daughter can claim partition even against the father.	Son has no right to claim partition or even maintenance.
Disposal of Shares in Undivided Family	Coparceners cannot dispose of undivided shares independently.	Members can dispose of their property even while undivided.
Basis of Inheritance	Consanguinity (blood relationship).	Spiritual efficacy (capacity to offer oblations).
Preference of Heirs	Agnates preferred over cognates.	Certain cognates (e.g., sister's sons) preferred over agnates.
Doctrine of Factum Valet	Recognised to a limited extent.	Fully recognised and applied.
Prevalence	Followed in most parts of India (except Bengal and Assam).	Followed mainly in Bengal and Assam.

Who are Hindus?

A. Governed by Hindu Law

1. Hindus by religion (including Virashaiva, Lingayat, Brahmo, Arya, Prarthana Samaj).
2. Buddhists, Jains, Sikhs.
3. Others domiciled in India not being Muslim, Christian, Parsi, or Jew unless proven otherwise.

B. Explanation to Section 2: Includes

1. Child of two Hindu parents (legitimate or not).
 2. Child of one Hindu parent was brought up as Hindu.
 3. Converts to Hinduism (no ceremony needed, just intention and conduct):
 - a. Mohan Das v. Dewaswom Board,
 - b. Perumal v. Poonuswami.
- Scheduled Tribes: Not governed unless notified by Central Govt.
- Other Important Rulings
1. Chandrasekhar v. Kulandaivela: Atheist/dissenter can still be Hindu.
 2. Maneka Gandhi v. Indira Gandhi: Upbringing as Hindu is decisive.
 3. Yagnapurushdasiji v. Muldas: Key traits of Hinduism:
 - a. Reverence for Vedas,
 - b. Diverse paths to salvation,
 - c. Polytheism accepted.

Chapter-2

Hindu Marriage – Whether a Sacrament or a Contract?

1. Traditional View: Marriage as a Sacrament

- Religious Character since Vedic Period: Hindu marriage has always been a settled institution with a strong religious and spiritual character, deeply rooted in Vedic traditions.
- Raghunandan's Definition: Marriage is described as the acceptance by the bridegroom of a girl given by her guardian, highlighting its solemn, ritualistic nature.
- Tikait Munmobinti v. Basant Kumar, 1 LR 28 Cal 758: Marriage is not just a civil or social union but a sacramental and indissoluble one – "a union of flesh with flesh, bone with bone – to continue even in the next world."
- Religious Completion of the Self: As per Shastras, a man is incomplete without a wife. Only through marriage does he become whole, indicating spiritual and ritualistic importance.

2. Judicial Interpretation of Sacramental Nature

- Gopal Kishan v. Mithilesh Kumari, AIR 1979 All. 316: The Allahabad High Court held that under Hindu law, marriage is not a contract but a sacrament. It is:
 - ✓ For religious and spiritual duties, not for physical gratification.
 - ✓ Solemnized through sacred rites and ceremonies.
- Saptapadi and Change in Gotra:
 - ✓ During Saptapadi (seven steps), the bride adopts the Gotra of the groom.
 - ✓ This marks the creation of a religious kinship, not merely a legal relationship.

3. Spiritual Significance of Hindu Marriage

- Last of the Ten Sacraments: Marriage is the final Samskara (sacrament) prescribed by Hindu religion, considered purifying in nature.
- Shivanandy v. Bhagawanthymma, AIR 1962 Mad. 400: Marriage is binding for life.
- The tie formed by saptapadi before the sacred fire is religious.
- A religious tie cannot be untied, signifying permanence.

4. Deviation from Sacramental Nature in Modern Times

- Emergence of Social Evils:
 - ✓ Dowry, bigamy, drugs, and drunkenness undermined the sanctity of marriage.
 - ✓ The bride began to be seen as property rather than an equal partner.
 - ✓ Women became victims of harassment, with no remedy under traditional practices.
- Dowry System as a Distortion: Voluntary gifts (Stridhan) turned into demanded dowry, making marriage transactional.
- Subordination of Women: Husbands treated wives as inferior, contrary to the principle of partnership in a sacrament.

5. Codification & Reforms: Hindu Marriage Act, 1955

- Need for Legal Protection and Reformation: Social degradation led to the codification of Hindu Marriage Law in 1955 to:
 - ✓ Provide legal remedies for cruelty, dowry, bigamy etc.
 - ✓ Amend the traditional concept of marriage.
- **Effect on Sacramental Nature:**
 - ✓ The sacramental nature has been diluted, but not completely abolished.
 - ✓ Though many contractual elements have been introduced (e.g., consent, age, monogamy, divorce), marriage under Hindu law still retains a religious flavor.
- **Conclusion**
 - ✓ Marriage under Hindu Law is primarily a sacrament, though contractual features have been introduced post-1955.
 - ✓ It is not a pure contract in the sense of civil law but is a blend of spiritual, social, and legal obligations.
 - ✓ The core concept of sacred union still survives, but modern law has infused elements of individual autonomy and legal remedy.

Nature of Marriage after the Hindu Marriage Act, 1955

Introduction of Dynamic Changes

- The Hindu Marriage Act, 1955 reformed traditional Hindu law by incorporating legal, secular, and modern elements into the institution of marriage.
- Though sacramental aspects remain, the Act has partially transformed Hindu marriage into a legal contract by introducing rights, duties, and remedies.

Key Features Indicating Transformation

a. Provision for Divorce

- ✓ Section 13: Marriage can now be dissolved on fault-based grounds (adultery, cruelty, desertion, etc.).
- ✓ Section 13B: Introduced mutual consent divorce, a clear contractual element, allowing dissolution by joint will of parties.
- ✓ Impact: Dilutes the traditional idea of an indissoluble union.

b. Widow Re-marriage

- ✓ Reinforced the right to remarry for widows, first granted under Hindu Widows' Remarriage Act, 1856.
- ✓ No bar in the 1955 Act to such marriages.
- ✓ Impact: Moves away from the concept of eternal, once-in-a-lifetime union.

c. Inter-Caste Marriages

- ✓ Section 29: Validates inter-caste marriages retrospectively.
- ✓ Lata Singh v. State of U.P. (2006) 5 SCC 475: Upheld legality of inter-caste marriage if essential conditions are satisfied.
- ✓ Impact: Rejects caste-based restrictions, aligning marriage more with individual autonomy than religious norms.

d. Monogamy

- ✓ Section 17: Enforces monogamy. Marriage is void if either party has a living spouse.
- ✓ Bigamy is a punishable offence under IPC/BNS.
- ✓ Impact: Introduces equality and legality into marital relationships.

Modern Legal Elements Introduced

e. Conditions of Marriage (Sections 5 & 7)

- ✓ Simplification of valid marriage conditions.
- ✓ Sapinda prohibition was retained but restricted to certain degrees, making it more practical.
- ✓ Ceremonial requirements remain, but no specific form mandated—flexibility introduced.

f. Matrimonial Reliefs

- ✓ Reliefs such as:
 - Restitution of conjugal rights
 - Judicial separation
 - Nullity of marriage
 - Divorce
- ✓ These did not exist under old Hindu law.
- ✓ Impact: Legal remedies reinforce contractual characteristics.

g. Legitimacy of Children (Section 16)

- ✓ Children from void and voidable marriages are declared legitimate.
- ✓ Impact: Protects interests of children, highlighting the social function of law.

h. Maintenance & Alimony (Sections 24 & 25) Provides for:

- ✓ Interim maintenance
- ✓ Permanent alimony
- ✓ Ensures financial security, especially for women.

i. Custody of Children (Section 26)

- ✓ Discretionary powers given to courts for custody, maintenance, and education of children.
- ✓ Child's welfare is paramount.

j. Prohibited Degrees of Relationship [Section 3(g)]

- ✓ Removes regional differences (Mitakshara vs Dayabhaga).
- ✓ Uniform rule laid down on prohibited degrees.

Abolition of Traditional Marriage Forms

1. Prior to 1955: Different forms of marriages (Brahma, Gandharva, Asura, etc.).
2. After the Act: These classifications are abolished.
3. No specific form is mandated—any customary ceremony is sufficient.

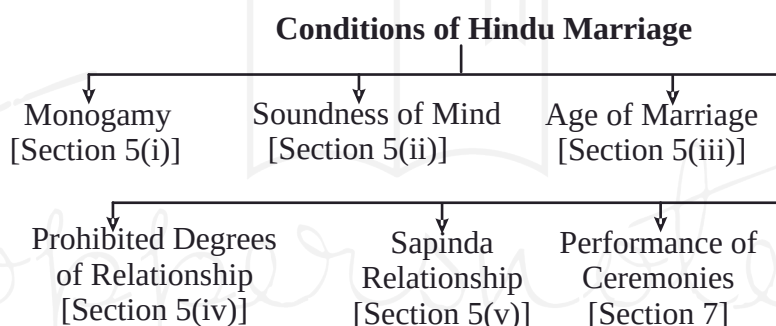
➤ Conclusion

1. The Hindu Marriage Act, 1955 has not completely stripped Hindu marriage of its sacramental character, but has significantly modernized and contractualized it.
2. It now stands as a blend of sacrament and contract, retaining rituals but incorporating legal rights, duties, and remedies.
3. Reflects changing social values, individual rights, and state intervention in personal laws.

Conditions of Hindu Marriage

Introduction

- For a Hindu marriage to be valid under the Hindu Marriage Act, 1955, certain essential conditions must be fulfilled as laid down in Sections 5 and 7. These conditions are primarily related to:



- The Supreme Court in **Lila Gupta v. Laxmi Narain (1978) 3 SCC 258** clarified that contravention of conditions under Section 5(i), (iv), and (v) renders a marriage **null and void** under Section 11, while contravention of Section 5(ii) renders the marriage **voidable** under Section 12.

Monogamy – Section 5(i)

- Hindu marriage is valid only if neither party has a spouse living at the time of the marriage.

- **Legal Consequences:** Section 17, HMA: Marriage in contravention of Section 5(i) is void.

The guilty person is punishable under:

Section 494 IPC – Marrying again during the lifetime of spouse.

Section 495 IPC – Concealment of the first marriage from the second spouse.

- **Void Marriage:**

- ✓ A second marriage while the first is subsisting is void under Section 11, HMA.
- ✓ Bigamy is strictly prohibited.
- ✓ The rule applies equally to men and women after enactment of HMA.
- ✓ Parties to such void marriages can contract a valid marriage only after obtaining a legal decree of nullity or divorce.

➤ **Position under Old Hindu Law:**

- ✓ Male Hindus could solemnize a second marriage.
- ✓ Female Hindus were barred from marrying again while first husband was alive.

➤ **Judicial Interpretations:**

- ✓ Smt. Yamunabai Anant Rao Adhar v. Anant Rao Thiraram Adhar, AIR 1988 SC 644
Marriage in violation of Section 5(i) is void.
The "second wife" has no legal status.
- ✓ Priya Bala v. Suresh Chandra, AIR 1971 SC 1153
Mere admission of second marriage is not sufficient.
Prosecution must prove solemnization of second marriage.
- ✓ Sarla Mudgal v. Union of India, AIR 1995 SC 1531
Conversion to Islam does not dissolve Hindu marriage.
Second marriage after conversion is invalid.

➤ **Fresh Marriage after Void Marriage:**

If first marriage was void (under Section 11), parties can remarry without penalty.

➤ **Injunction against Second Marriage:**

Legal Basis:

- ✓ Section 21, HMA: Civil Procedure Code applies where the Act is silent.
- ✓ Specific Relief Act, Section 38(1): Injunction may be granted to prevent breach of marital obligations.

Relevant Judgments:

- ✓ Shankarappa v. Basamma, AIR 1964 Mys 247
The High Court permitted an injunction against a second marriage.
- ✓ Chitra Sengupta v. Dhruva Jyoti Sengupta, AIR 1988 Cal 98
Calcutta High Court upheld the injunction where the first marriage was valid and subsisting.
- ✓ Elizabeth Skariah v. Aby Skariah, AIR 2002 Delhi 307
Delhi High Court granted permanent injunction against contracting a second marriage without legal divorce.

General Judicial Practice:

Despite judgments, courts generally prefer not to grant injunctions if alternate remedies (e.g., divorce, restitution) are available.

➤ **Illustration:**

Ravi, a Hindu male, is legally married to Meera. Without divorcing Meera, he marries Sneha. Here:

- ✓ Ravi's second marriage to Sneha is void.
- ✓ Sneha has no legal status as wife.
- ✓ Ravi is liable to be punished under Section 494 IPC.

Soundness of Mind [Section 5(ii)]

- A marriage is valid only if:
 - (a) Neither party is incapable of giving valid consent due to unsoundness of mind.
 - (b) Though capable of giving consent, neither suffers from mental disorder making them unfit for marriage and procreation.
 - (c) Neither has recurrent episodes of insanity.
- **Legal Nature:** Contravention renders the marriage voidable, not void.
- **Remedy** under Section 12(1)(b), HMA: Marriage can be annulled on petition by aggrieved party.
- **Key Element – Time Factor:**
 - 1. The unsoundness must exist at the time of marriage.
 - 2. Subsequent mental illness is not grounds under this clause.
- **Judicial Precedent:**

Rameswari Nandan v. Bhagwati Saran, 1980 SCJ 514
Confirmed that such marriages are voidable and not automatically void.
- **Legal Test:**
 - 1. Degree and nature of mental defect is considered.
 - 2. The test is whether the disorder renders the party unfit to understand the nature of the marriage and duties involved.

Age of Marriage [Section 5(iii)]

- Bridegroom must be ≥ 21 years
- Bride must be ≥ 18 years
- **Legal Effect of Contravention:**

The Hindu Marriage Act is silent on consequences of violating this clause.
Governed by Prohibition of Child Marriage Act, 2006.
- **Void or Voidable:**
 - ✓ Section 3, Prohibition of Child Marriage Act (PCMA) 2006: Marriage is **voidable** at option of minor.
 - ✓ Either party (if minor at time of marriage) can approach the court before completing 2 years of majority to get it annulled.
 - ✓ **Void ab initio:** Section 14, PCMA 2006: If a court has issued an injunction to stop a child marriage and the marriage still occurs, it becomes automatically void.
- **Special Provision for Girls:**

Section 13(2)(iv), HMA: If a girl is married before the age of 15, and repudiates the marriage before turning 18, she can obtain a decree for dissolution of marriage.

- **Penalty Provisions:** Section 18(a), HMA: Anyone involved in the solemnization of such child marriages shall be punished with:
 - ✓ Rigorous imprisonment up to 2 years, or
 - ✓ Fine up to Rs. 1,00,000, or
 - ✓ Both.

Beyond Degrees of Prohibited Relationship [Section 5(iv)]

- The parties to the marriage should not be within the degrees of prohibited relationship unless the custom or usage governing each of them permits such a marriage."
- **Purpose and Policy:** Prevents:
 - ✓ Physical degeneracy due to inbreeding.
 - ✓ Moral degeneration that may disrupt the joint family system, which is the traditional Hindu social structure.
 - ✓ Protects the genetic, social, and cultural integrity of Hindu society.
- **Legal Consequence of Violation:** If marriage is solemnized within prohibited degrees, it is: Void under Section 11, HMA.

Either party may file a petition for nullity of marriage.
- **Exception – Custom or Usage:** A marriage within prohibited degrees is valid if:
 - ✓ A custom or usage allows it, and
 - ✓ Such custom is:
 - a. Certain and not unreasonable
 - b. Proven in court, if challengedFrequently accepted in some South Indian and tribal communities (e.g., cross-cousin marriages)

Definition of 'Degrees of Prohibited Relationship' – Section 3(g), HMA:

Two persons are within prohibited degrees if:

1. One is a lineal ascendant of the other

- Example: Father (F) and his great-great-granddaughter (FSSSSDSD).
- Illustration:
F → FS → FSS → FSSS → FSSSS → FSSSSD → FSSSSDS → FSSSSDSD
F cannot marry FSSSSDSD as he is her lineal ascendant.

2. One was the spouse of lineal ascendant or descendant of the other]

- E.g., F cannot marry W, the wife of his great-grandson FSSSS.
- Similarly, FSSS cannot marry W, wife of FS, a lineal ascendant.

3. Marriage is between:

- a. Brother and sister
- b. Uncle and niece
- c. Aunt and nephew
- d. Children of brother and sister, or of two brothers or two sisters

➤ Includes All Types of Relationships:

- ✓ By blood, by adoption, legitimate or illegitimate
- ✓ Full-blood, half-blood, and uterine blood

➤ Definitions:

1. Full Blood – Section 3(c), HMA

➤ Two persons are related by full blood if:

- ✓ They descend from a common ancestor (e.g., father)
- ✓ Through the same wife

➤ Example: A & B are born of father F and mother M1 – they are of full blood.

2. Half Blood – Section 3(c), HMA Related by half blood if:

- ✓ They descend from a common ancestor
- ✓ Through different wives

➤ Example: A & C have same father F, but A's mother is M1, and C's is M2 – they are of half blood.

3. Uterine Blood – Section 3(d), HMA

➤ Two persons are related by uterine blood if:

- ✓ They descend from a common ancestress (e.g., mother)
- ✓ Through different husbands

➤ Example: D & B are from mother F1, but different fathers – they are of uterine blood.

➤ Specific Examples of Prohibited Relations:

For a Male:

- ✓ Female lineal ascendant (e.g., mother, grandmother)
- ✓ Wife of a lineal ascendant (e.g., stepmother) 3. Wife of a lineal descendant (e.g., son's wife)

4. Wife of:

- a. Brother
- b. Father's brother (chachi)
- c. Mother's brother (maami)
- d. Grandfather's brother (maternal/paternal)

5. Sister

6. Brother's or sister's daughter (nieces)

7. Father's or mother's sister (aunt)

8. Daughters of:

- a. Father's brother
- b. Father's sister
- c. Mother's brother
- d. Mother's sister

For a Female:

- 1. Male lineal ascendant (e.g., father, grandfather)
- 2. Husband of:
 - a. Lineal ascendant
 - b. Lineal descendant (e.g., daughter's husband)
- 3. Brother
- 4. Father's or mother's brother (uncles)
- 5. Brother's or sister's son (nephews)
- 6. Sons of:
 - a. Father's brother or sister
 - b. Mother's brother or sister

Beyond Sapinda Relationship – Section 5(v)

- A Hindu marriage is valid only if the parties are not sapindas of each other, unless a custom or usage governing either party permits such a marriage.
- **Legal Consequences of Violation:** A marriage in contravention of this rule is:
Void under Section 11 of the Act.
- Punishable under Section 18(b): The offender may face simple imprisonment up to 1 month, or fine up to ₹1000, or both.
- **Definition of Sapinda Relationship – Section 3(f)**

1. Meaning

- ✓ 'Sapinda' relationship with reference to any person extends:
 - 1. Up to 3rd generation (inclusive) on the mother's side.
 - 2. Up to 5th generation (inclusive) on the father's side.
- ✓ The person himself/herself is counted as the first generation.

2. Conditions for Being Sapinda of Each Other

- ✓ Two persons are Sapindas if:
 - a. One is a lineal ascendant of the other within the specified generational limit.
 - b. They have a common lineal ascendant who falls within the Sapinda limit for both.

3. Types of Relationships Considered

- ✓ Sapinda relationship includes:
 - Full-blood, half-blood, and uterine blood relations.
 - Legitimate as well as illegitimate relations.
 - Adoptive as well as blood relations.
- ✓ **Historical Interpretations**
 1. **Dayabhaga School:** Defined Sapinda in terms of Pinda-daan (funeral offerings). Related to religious efficacy and inheritance.
 2. **Mitakshara School:** Defined Sapinda as particles of the same body – closer genetic connection.
- ✓ **Manner of Counting Generations** Key Points:
 1. Start counting from the person concerned as Generation 1.
 2. Trace the line of ascent upward.

- ✓ **Example:**

Sapinda via Parents

Father's side:

FFFF (4th Gen)

FFF (3rd Gen)

FF (2nd Gen)

F (1st Gen)

P (Person)

FFFF is within 5th gen → Sapinda

MMM is beyond 3rd gen → Not Sapinda

Mother's side:

MMM (4th Gen)

MM (3rd Gen)

M (2nd Gen)

P (Person)

Section 7 - Performance of Ceremonies

- A Hindu marriage must be solemnized according to the customary rites and ceremonies of either the bride or the groom.
- The Act does not mandate any one form—custom is key. If Saptapadi is part of the custom, then: The marriage becomes valid and binding only when the couple takes the seventh step together before the sacred fire.

➤ **No Specific Form Mandated**

1. The Act does not prescribe a specific set of rituals or ceremonies.
2. It allows the couple to follow any customary rites and ceremonies recognized by the traditions of either party.
3. Emphasis is on solemnization, not cohabitation or community recognition.

➤ **What is Saptapadi?**

1. Saptapadi means taking seven steps by the bride and bridegroom together before the sacred fire.
2. If Saptapadi is a part of the custom being followed, then: Marriage becomes binding only when the seventh step is taken.

➤ **Importance of Customary Ceremonies: Judicial Viewpoints:**

1. **Bhaurao v. State of Maharashtra, AIR 1965 SC 1564:**
The Supreme Court ruled: "Unless a marriage is celebrated with proper ceremonies and in due form, it cannot be said to have been solemnized."
2. **Surjit Kaur v. Garja Singh, AIR 1994 SC 135:**
Held: Living together as husband and wife does not amount to a valid marriage if essential ceremonies are not performed.

- The doctrine of *factum valet* (what is done is valid) cannot override the requirement of essential ceremonies.

➤ **Customary Ceremonies and Variations**

A. **Chadar Andazi or Karewa Marriage**

1. A custom among agricultural tribes in Punjab.
2. Marriage with the brother or male relative of a deceased husband.
3. No religious ceremony required—only cohabitation is enough.
4. **Charan Singh v. Gurdial Singh, AIR 1961 Punj. 301:** Held that such marriages are valid under Section 7 if it is proven that such custom exists.

B. **Anand Karaj (Sikh Ceremony)**

1. Anand Karaj = "Joyful Union" introduced by Guru Amar Das.
2. Consists of four Laavan (hymns).
3. Legalized by Anand Marriage Act, 1909.
4. For Sikhs, marriage is valid only if Anand Karaj is performed, unless a different valid custom is established.

➤ **Legitimacy of Children – Section 16**

1. Section 16 of the Act protects children born out of void or voidable marriages.

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2. They are considered legitimate and can inherit the property of their parents (but not from other relatives).
 3. **Smt. Parayankandiyal Eravathkanapraavan Kalliani Amma v. K. Devi, AIR 1996 SC 1963:**
The Court extended the benefit of Section 16 even to children born out of marriages that are void due to non-performance of ceremonies.

Section 8 - Registration of Hindu Marriages

- Section 8 empowers the State Government to make rules regarding registration of Hindu marriages.
- Registration is optional, not mandatory, unless a State makes it compulsory via notification.
- **Key Features:**
 1. Facilitation of Proof: Purpose is to facilitate proof of marriage in legal proceedings.
 2. Hindu Marriage Register: States may establish a register where couples can record marriage particulars.
 3. Non-affecting Clause: Omission to register does not affect the validity of a Hindu marriage.
- Registration: Not compulsory under Hindu Marriage Act, but increasingly encouraged or mandated by courts and states.
- **Case : Smt. Seema v. Ashwani Kumar (AIR 2006 SC 1158):**
 1. The Supreme Court directed compulsory registration of all marriages across religions.
 2. Reason: To prevent misuse and frauds (e.g., denial of marriage, abandonment).
 3. Registration aids in asserting rights of women and children from such marriages.

Presumption as to Marriage & Live-in Relationships

- Application of the Hindu Marriage Act:
 1. The Act applies only when marriage is solemnized under Hindu customs.
 2. It does not apply to relationships in the nature of marriage (e.g., live-in relationships without solemnization).
- **Legal Presumption of Marriage:**

Tulsa & Others v. Durghatiya & Others (AIR 2008 SC 1193): If a man and woman:

 1. Cohabit for a long time, and
 2. Are accepted as husband and wife by society,
- Then court may presume a valid marriage under:
 1. Section 114, Indian Evidence Act (presumptions)
 2. Section 50, Indian Evidence Act (opinion on relationships)
- Presumption of Marriage: Can arise from conduct, long-term cohabitation and societal recognition, helping protect rights in absence of formal ceremonies.

Live-in Relationship: Legal Recognition in Maintenance Laws

- Live-in Relationships: Though not recognized as “marriage” under HMA, they may attract statutory protection, especially for maintenance and protection against abuse.
- **D. Velusamy v. D. Patchaiammal (2010) 10 SCC 469:**
 1. Introduced idea of “relationship in the nature of marriage”.
 2. A woman in such a relationship can claim maintenance under Protection of Women from Domestic Violence Act, 2005.
 3. Conditions for Valid Live-in Relationship:
 - a. Couples must present themselves as spouses.
 - b. Both must be of legal age to marry.
 - c. They must be eligible to enter into a legal marriage (e.g., not already married).
 - d. They must have cohabited voluntarily for a significant time.Mere sexual relationship or occasional cohabitation is not sufficient.

