Paper-7 Module-22

Women and law relating to Marriage

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(B) Description of Module

Subject Name	Women's Studies
Paper Name	Women and Law
Module Name	**Women and law relating to Marriage**
Module ID	**Paper-7 Module-22**
Pre-requisites	None
Objectives	1. To Know the law of marriage applicable to various religious communities. 2. To highlight modern changes in the ancient practices pertaining to marriage among various religious groups. 3. To study the law of marriage available for inter-religious marriage and as an option to religious law in case of intra-religious marriage.
Keywords	Personal law,Sacrament, Solemnised, Child marriage, Bigamy, Registration of marriage, Prohibited

	degrees,Consanguinity, Affinity, Sapinda Relation.

Women and law relating to Marriage

Introduction

In India family laws as compared to other civil laws are unique, and display a lack of uniformity in their application. A variety of different laws are in vogue and application depends on multiple factors, like the religion, tribe of the parties, domicile, community, sect within the community etc. These laws had their roots either in religion or were deeply influenced by personal laws which owed their allegiance to religion and customs. Hindus were govered by the Shastric and the customary laws depending upon the region and the specific school of community a particular family belonged to. Muslims followed the Muslim Law based on pre-Islamic customs prevalent in Arabia, as modified by the Quran, *Hadith* and other sources of Islamic Law. The Parsis had their own customary law. The two major Christians communities in India were the East Indian Christians, that followed the European customs and the native Christians, who were either converts or descendants of converts of the non-Christian communities, mainly Hindus and Muslims and followed their distinct customary laws, which were also given judicial recognition. Jews were governed by their own customary laws. The laws of the followers of some of these religious communities are now codified in the form of statutes, while for others they are still only partly codified.

Though Part IV, Article 44 of the Indian Constitution provides that the State shall endeavour to secure a uniform civil code applicable throughout India and a number of judicial decisions advising the State to enact a uniform family law for all, irrespective of religion (*Sarla Mudgal* v. *Union of India* AIR 1995 SC 1531; *Mohd. Ahmed Khan* v. *Shah Bano Begum* AIR 1985 SC 945), the uniformity has not yet been brought into the family laws. Followers of different religious communities are still governed by different laws in these matters, though there are some laws enacted by the legislature, which are applicable to all irrespective of religion. In this module, we are going to discuss the family laws relating to marriage, applicable in India to different religious communities.Along with the different laws applicable on the basis of religion of the parties, there is an optional law i.e. Special Marriage Act, 1954, which is available to all as an alternative to their personal law.

Hindu law of Marriage

The Hindu law is mainly derived from the *Vedas* (*Shrutis*), the *Smritis, Sadachar* (good morals i.e. Custom) and self-satisfaction (a desire arising out of a righteous determination). The other sources of Hindu laws which came into existence later are commentaries on the Smritis, digests or essays on the various topics of law, legislations, judicial decisions, and the principles of justice, equity and good conscience.

According to the Hindu view of life, marriage is a sacrament. Being a sacramental union it has to be solemenized by performing essential ceremonies, either shastric or customary. It is considered a permanent union which cannot be dissolved. Hindu law prohibits marriage outside the caste and marriage within the gotra. Child marriages were permitted. A Hindu male was permitted to have any number of wives, but a Hindu female was not permitted to have more than one husband. Even the remarriage of widows was not permitted. This position continued till 1955. However, the mariage of widows was made permissible in 1856 by the Hindu Widows' Remaariage Act, 1856 and child marriages were restrained by the Child Marriage Restraint Act, 1929.

In 1955 the Hindu Marriage Act (HMA, 1955) was enacted which came into force on May 18, 1955. The Act is a comprehensive statute relating to the law of marriage applicable to all Hindus, domiciled in India, accept the scheduled tribes. The main object of the HMA, 1955 was to modify, codify and unify law relating to marriage among Hindus. Section 2 of the HMA, 1955 defines a Hindu as a person who is Hindu (in any of its forms or developments), Buddhist, Sikh or Jain by religion (by birth or by conversion). Section 4 of the HMA, 1955 gave overriding effect to the provisions of the Act, 1955 over any contrary text, rule, interpretation and custom or usage relating to Hindu marriage. Section 7 of the HMA, 1955 retained the sacramental nature of Hindu marriage by providing that a Hindu marriage has to be solemnized in accordance with the customary rites and ceremonies of either bride or the groom. The Hindu marriage is required to be solemnized necessarily by the performance of *Shastric* ceremonies and rites as prescribed by Hindu law or the customary ceremonies and rites in substitution of *Shastric* ceremonies, which prevails in the caste or community to which one of the parties belong. If the marriage is not properly solemnized by performing all necessary ceremonies, it will not be valid. For performing the marriage under the HMA, 1955 both the parties to the marriage must be Hindus. Section 5 of the HMA, 1955 specified five conditions for a valid marriage, which are:

1. Monogamy for both male and female---neither party to the marriage should have a spouse living at the time of marriage.
2. Mental capacity —neither party should lack the mental capacity of a normal person.
3. Age for marriage—the bridegroom must have completed 21 years of age and the bride must have completed 18 years of age at the time of marriage.
4. Parties to the marriage must not fall within the degrees of prohibited relationships, unless the custom or usage governing each of them permits a marriage between the two.
5. Parties to the marriage must not be *sapindas* of each other, unless the custom or usage governing each of them permits of a marriage between the two.

The Registration of the marriage is not compulsory as per the HMA, 1955. To be a valid marriage it must be properly solemnized, registration will neither validate an otherwise invalid marriage nor invalidate an otherwise valid marriage. Non-solemnization of required ceremonies will result in no marriage and will not give the status of husband and wife to the parties and legitamcy to their children (*Bhaurao Shanker* v. *State of Maharashtra* AIR 1965SC1564). However, in *Seema* v. *Ashwani Kumar* (2006) 2 SCC 578, the Supreme Court has directed the government to a enact law for the compulsory registration of marriages so as to protect the rights of women. The court observed that in a large number of cases unscrupulous persons, denying the existence of an earlier marriage, tried to take advantage of the situation because of the absence of any official record of the marriage. The court also observed that the compulsory registration of marriage would be a step in the right direction for the prevention of child marriage which is still prevalent in many parts of the country. In the opinion of the court the registration of marriage would come within the ambit of vital statistics in List III, Entry 30 in the VII schedule of the Indian Constitution.

The HMA, 1955 has introduced major changes in the earlier Hindu laws for the protection of the rights of the women. It has prohibited a second marriage or any subsequent marriage (i.e bigamy) by husband during the existence of the earlier marriage, thereby protecting the interest of the first wife. The bigamous mariage is void and penal under the HMA, 1955 and the penalty is provided under section 494 and 495 of the Indian Penal Code, 1860. Even by conversion from Hinduism to any other religion, the person who is already married as per the HMA, 1955 is prohibited to marry. So long as the earlier marriage exists, another marriage cannot be performed, not even under any other personal law, and on such a marriage being performed, the person would be liable to be prosecuted for the offence of bigamy

under section 494 of the Indian Penal Code, 1860. (*Sarla Mudgal* v. *Union of India* (1995) 3 SCC 635; *Lilly Thomas* v. *Union of India* AIR 2000 SC 1650). In these cases Hindu husband changed their religion to Islam which permits a male to have four wives and marry again. The Supreme Court held all such marriages illegal..

Child marriages are always harmful for the girl by inhibiting her physical and mental growth. The HMA, 1955 prescribes the marriage age as one of the conditions for marriage, though it has not provided that such a marrige will be invalid or void. Such a marriage is punishable under section 18 of the HMA, 1955 with imprisonment and fine both. In 2006 the Prohibition of Child Marriages Act (Act, 2006) was enacted, which is applicable to all, irrespective of religion. As per this Act, 2006 the child marriage is voidable at the option of child party to the marriage, which he or she can exercise within two years from not remaining a child (i.e girls between 18-20 years of age and boys from 21-23 years of age). The Act, 2006 protects the rights of the female to a child marriage for claiming maintenace and residence from the husband, or if he is a minor, from his relatives. The Act declares children born out of such a marriage to be legitimate for all purposes (Section 6 of the Act, 2006). In certain special cases the 2006 Act, provides that the child marriage will be null and void (Section 12 of the Act, 2006). The court is given power to issue injunction prohibiting child marriages, violation of which will result in void marriage (Section 13 and 14 of the Act, 2006). A male adult (above 18 years of age) contracting a child marriage is liable to be punished with rigorous imprisonment which may extend to two years and shall be liable to fine which may extend to one lakh rupees, unless he proves that he has reasons to believe that the marriage was not a child marriage. The women cannot be punished under the provisions of the Act, 2006.

A marriage in violation of degrees of prohibited relationship and sapinda relation will be void under section 11 of the HMA, 1955 and punishable under section 18 of the HMA, 1955. Close blood relatives including ascendants, descendants, uncles, aunts and cousins are included in prohibited degrees. Similarly, close relatives by marriage like ascendants and descendants of spouse and spouse of ascendants and descendants and also brother's widow are included within the prohibited relation. Sapindas are blood relatives. If the custom applicable to both the parties to the marriage permits marriage between these relatives, the marriage in that case is valid.The marriage in violation of mental capacity requirement is voidable under section 12 of the HMA, 1955. A voidable marriage is a marriage which exists unless it is annulled by a decree of the court. Under section 12 of the HMA, 1955 the marriage is voidable if it has not been consummated due to the impotency of the other party.

A party to the marriage can also file a petition under section of 12 of the HMA, 1955 for annullment of marriage if his/her consent to the marriage was obtained by force or fraud as to the nature of ceremony or as to any material fact or circumstance concerning the other party. If the wife is pregnant at the time of marriage by a person other than the husband, husband can claim annullment of the marriage.

Muslim Law of Marriage

Indian Muslims are governed by the uncodified Muslim law, enjoined in the holy Quran, the teachings of the Prophets, judicial decisions, and a few legislative enactments. The Muslim Personal Law (Shariat) Application Act, 1937 (Shariat Act) expressly directs courts in India to apply Muslim law to all Muslims. There are two major sects of Muslims in India: Shias and Sunnis. The *Hanafi* school, one of the schools of the Sunni's covers a vast majority of Muslims all over India. The *Shafii* school is another school of Sunni's, found mostly in southern India. Under Shia, the *Ithana Ashari* school is prevalent. The *Ismaili* school of Shias constitutes the smallest minority group among the Muslims.

A muslim marriage (*nikah*) is a contract made between two persons of opposite sexes. It is not a sacramental union. However, as per Tahir Mahmood, *nikah* is a solemn pact between a man and a woman soliciting each others life companionship which in law takes the form of a contract. The Quran does not treat marriage as an ordinary contract. The Prophet describes *nikah* as his sunnat. It is only the form of marriage that in Muslim law is contractual and non ceremonial; marriage itself as a concept is not merely a contract. Being contractual in form, it accords full contractual freedom to the parties to a proposed marriage. It enables the parties to settle their own special terms, specially to restrict each others freedom, in respect of those actions which Muslim law permits but do not make obligatory e.g. men's supposed freedom in respect of bigamy and divorce.

Being a contract in form, the essential conditions for a valid marriage under Muslim law relate to formalities for a contract and valid capacity for a contract i.e. age and mental condition. The other equally essential conditions are marital status, religion of the parties and pre-existing relationship between them, if any. In Sunni law marriages are of three kinds i.e. valid (*sahih*), void (batil) and irregular (*fasid*). In Shia law marrigae can either be valid (*sahih*) or void (*batil*).

The formalities required for a Muslim marriage are:

1. Offer (*Ijab*)—The marriage should be proposed by or on behalf of either party thereto.
2. Acceptance (*Qubool*)—The proposal should be accepted by or on behalf of the other party.
3. Consideration (*Mahr*).

Both *Ijab* and *Qubool* must be in definite words so as to result in a complete and not an inchoate transaction and must not convey a mere intention or promise to marry. In Sunni law, the presence of at least two witnessess who must be male Muslims or one male Muslim and two female Muslims are essential for solemnizing the marriage. Under Shia law the presence of witnessess is not compulsory. Offer and acceptance has to be made orally in a single sitting. The parties contracting a marriage must be acting under their free will and consent. The consent should be without fear or undue influence or fraud. The marriage being contractual in form, the parties to the marriage must have the capacity to enter into the contract i.e. must be major and of sound mind. However, for the purpose of marriage, majority is to be obtained on attainment of the age of puberty, which, unless otherwise proved to be attained earlier, is assumed to be attained at the age of fifteen. The marriage of a Muslim girl or boy who has attained puberty without her/his consent is void (*Gulam Kubra Bibi* v. *Mohd. Shafi Mohd. Din*, AIR 1940 Pesh 2).If the party to the marriage is minor or is of unsound mind, consent of the marriage guardian is essential i.e father and in the absence of the father, the father's father. A minor party to the marriage has the option to repudiate marriage on attaining puberty, provided the marriage has not been consummated (*Gulam Sakina* v. *FalakSher Allah Baksh*, AIR 1950 Lah. 45).

The provisions of the Prohibition of Child Marriage Act, 2006 have overriding effect over the Muslim law of marriage related to child marriage and all the consequences discussed in the previous part of the module apply to the Muslim child marriages also.

A Muslim wife is entitled to *mahr* which belongs absolutely to her. It is a sum of money or other property which the wife is entitled to receive from the husband in consideration of the marriage. The word consideration is not used in the sense in which it is used in the Indian Contract Act, 1872. It is an obligation imposed upon the husband as a mark of respect to the wife. It is payable by the husband to the wife on marriage, either by an agreement between the parties (specified dower) or by operation of law (proper dower). It may either be prompt or deferred. The prompt dower is payable on demand anytime after the marriage. The wife may refuse herself to her husband if the prompt dower is not paid on demand. The deferred dower is payable on the happening of the event specified. In either case it is payable immediately on dissolution of marriage, either by death or divorce. Dower is in essence a

security for the wife.

Muslim law strictly prohibits polyandry i.e. a woman having more than one husband at a time. A Muslim male is permitted to marry upto four wives, provided he treats them with equality, but if he is apprehensive that he will not be able to do justice between them and treat them with perfect equality, he is enjoined to marry one wife only. The fifth marriage of a Shia male is void. The marriage with a fifth wife of a Sunni male is irregular and it becomes valid if he divorces any one of the earlier four or anyone of them dies.

Under Shia law no Muslim, whether male or female, can marry a non-Muslim in the *nikah* form. Any marriage in violation of this rule is totally void. A Sunni Muslim woman cannot marry any man who is not a Muslim. But a Sunni male can marry a Muslim female or *kitabia*. Marriage with the kitabia i.e. a woman who believes in revealed religion possessing a divine book namely, Islam, Christianity and Judaism is valid under Sunni law, but he cannot marry an idolatress or fire-worshipper.

A marriage solemnized in violation of absolute incapacity or prohibition is void both in Sunni as well as Shia law. Such an incapacity arises from consanguinity, affinity and fosterage. Consanguinity means blood relationship and bars a man to marry-

1. His mother or grandmother, how high so ever;
2. His daughter and granddaughter, how low so ever;
3. His sister full, half and uterine;
4. His niece or great niece, how low so ever;
5. His aunt (paternal or maternal) or great aunt, how high so ever.

Affinity means relations by marriage. A man is prohibited from marrying

1. His wife's mother or grandmother, how high so ever;
2. His wife's daughter and granddaughter, how low so ever;
3. Wife of his father or paternal grandfather, how high so ever;
4. Wife of his son or son's son or daughter's son, how low so ever.

When a child under the age of two years has been suckled by a woman other than its own mother, the

mother becomes the foster mother of the child. A man may not marry his foster mother or her daughter or his foster sister.

Muslim law prohibits contemporaneously marrying two women so related to each other by consanguinity, affinity or fosterage, that they could not have lawfully intermarried with each other if they had been of different sexes (unlawful conjunction). Thus a Muslim cannot marry two sisters or an aunt and her niece. Such a marriage in Shia law is void while in Sunni law it will be irregular, irregularity to be removed by divorcing the wife who is a hindrance to this marriage or by her death (*Chand Patel* v. *Bismillah Begum* (2008) 1 DMC 588 (SC)).

On dissolution of marriage by death and divorce the Muslim wife is required to observe a period of seclusion called *iddat*. *Iddat* for death of the husband is four months and ten days or till the termination of the pregnancy whichever is later. The Iddat for divorce is three menstual cycle if the wife is subject to menstruation or three lunar months or till the termination of the preganancy. Marriage of a woman undergoing *iddat* is void in Shia law and irregular in Sunni law.

Christian law of Marriage

The persons who are followers of the Christian religion are Christians. Any one who is not a Christian may become a Christian by conversion to Christianity only if it is established that he truly believes and professes the Christian faith. Baptism, if duly administered and received, may be an important circumstance to conclude that one has become a Christian. The descendants of an Indian native who has converted are also Christians because in India the religion of a child is the same as that of his parents.

The law regulating solemnization of marriages among Indian Christians is laid down in the Indian Christian Marriage Act of 1872 (Act, 1872).The Act, 1872 extends to the whole of India except the territories which, immediately before the 1st November, 1956, were comprised in the State of Travancore-Cochin, Manipur and Jammu and Kashmir. Therefore this Act does not apply to marriages of Christians solemnized in the territories of the former States of Travancore and Cochin which now form part of Kerala and Tamil Nadu. However, civil marriages among Christians in the former State of Cochin are governed by the provisions of the Cochin Christian Civil Marriage Act, 1920. There is no statute regulating solemnization of marriages among Christians in Jammu and Kashmir and

Manipur.The provisions of canon law concerning marriage are also recognised as the personal law of Catholics in India. It is the customary law or personal law that prevails among them. As far as sects or schools are concerned, India has all sects of Christians - Protestants, Catholics and others. Christians, particularly in respect of ceremonies of marriage, are governed by their own sects.

The Act, 1872 lays down an elaborate procedure for the solemnization of marriage. It is specifically provided under section 4 of the Act, 1872 that every marriage in India between persons, one or both of whom is or are a Christian or Christians, shall be solemnized in accordance with the provisions of the Act, 1872 and any such marriage solemnized otherwise than in accordance with such provisions shall be void. Thus a Christian marriage not performed under the Act, 1872 will be void. A Christian marriage is usually solemnized by a Minister of Religion licensed under the Act, 1872 (section 6 of the Act, 1872). Registration of marriage in the register of marriages kept in the church called Marriage Register Book is compulsory under the Act, 1872 (section 27-37 of the Act, 1872). Thus a certificate of marriage should be issued for a valid marriage. The Marriage Registrar is free to solemnize the marriage in such form of ceremonies as he thinks fit to adopt, though the presence of two witnesses, other than the marriage registrar is essential (section 25 of the Act 1872).

The Christian law does not allow bigamy in any form. A bigamous marriage is a void marriage under the Act, 1872 (section 60(2) of the Act 1872). The minimum age prescribed for marriage is 18 years for girls and 21 years for boys (section 60(1) of the Act 1872). The consent of the parties, if they are of marriageable age is essential. However, a minor can marry under the Christian law, with the consent of his or her father/guardian/mother (Section 19 of the Act, 1872). The provisions of Prohibition of Child Marriage Act, 2006 discussed earlier is applicable to Christian marriage also. The Act 1872 is only concerned with the form in which the marriage is to be solemnized and does not deal with objections to the validity of the marriage. Section 88 of the Act, 1872 provides that nothing in this Act, 1872 shall be deemed to validate any marriage which the personal law applicable to either of the parties forbids him or her to enter into. Personal law in the section includes any personal law, apart from any personal law as to the form of the marriage, forbidding either of the parties to enter into a contract of marriage with one another. A marriage between a Roman Catholic woman and a Jew under the provisions of the Act, 1872 is null and void as the personal law of the Roman Catholic forbids such a marriage. Personal law means that part of law which relates to absolute impediments to any marriage at all between the parties, even marriage according to the rites of their own Churches, impediments such as prohibited degrees of consanguinity and affinity. Further a person of unsound mind has no capacity to marry under the Act,

1872. The Christian law lays down that if either party to the marriage is an idiot or lunatic at the time of marriage, a decree of nullity can be obtained on that basis. This provision does not relate to post-marriage idiocy or lunacy. A marriage among near relations is prohibited and invalid under the prohibited degrees of consanguinity or affinity.

Parsi law of Marriage

The Parsi Marriage and Divorce Act was passed in 1865 (Act, 1865). The Act, was based on the Matrimonial Causes Act, 1858 of England. With changes in circumstances, certain loopholes got highlighted. To remedy these defects, the Parsi Marriage and Divorce Act, 1936 (Act, 1936) was enacted. This was further brought upto date by the Parsi Marriage and Divorce (Amendment) Act, 1988.The Act is applicable only to Parsis. The Parsis follow the Zoroastrian religion. As such, the words "Zoroastrian" and "Parsi" are synonyms. Although the original faith allows conversion, amongst Parsis, Zoroastrian religion is non-convertible religion. It was held that in India, conversion to Zoroastrian religion is against usage and customs. The word Parsi means:

- Persons who are descendants of original Persian immigrants.
- Person whose father is or was, a Parsi and mother an alien but admitted to Zoroastrian faith.
- Zoroastrians from Iran who are residing in India.

In Subsection (2) of section 52 of Act, 1936, it is also made clear that even if a Parsi ceases to be a Parsi, he will be governed by the provisions of this Act, 1936 if his marriage which was solemnized under the Act, 1936 is still exisisting notwithstanding the fact that he is not a Parsi. The concept of marriage under Parsi law is 'a marriage is valid for ever or never'. Therefore, if a marriage is not valid, for any reason whatsoever, it is null or void in the eyes of Law. Being no marriage in the eyes of law, it is void ab initio or that it did not come into existence from its inception. The marriage will be void if:

1. Parties are within a prohibited relationship of (a) Consanguinity or (b) affinity (section 3 of the Act, 1936).
2. Necessary formalities of marriage have not been performed.
3. Male has not completed the age of 21 years and female has not completed the age of 18 years (section 3 of the Act, 1936).
4. Either party to the marriage was impotent (section 30 of the Act, 1936).

Thw Aashirwad ceremony is essential for validity of a Parsi Marriage, which has to be performed by a

priest in the presence of two witnesses. The child of void marriage will not be held illegitimate and such a child is given legitimacy (section 3(2) of the Act, 1936). The Parsi Law professes monogamy and, therefore, a second marriage during the existence of a first marriage is prohibited under the Act (section 4 of the Act, 1936). The second marriage being void, section 5 of the Act, 1936 makes the second marriage penal and provides for penalty by subjecting the parties to the provision of sections 494 and 495 of the Indian Penal Code, 1860 for bigamy. Registration of marriage and certification of a Parsi marriage is mandatory (section 6 of the Act, 1936).

Jewish law of Marriage

There is no statutory law of marriage applicable to Jewish marriage in India. It is the customary Code of Law that is applied. The three important requirements of Jewish marriage are-

- Free consent
- Mental capacity
- Legal age

No marriage can take place without the consent of both parties and a marriage without consent is void. Since, consent is one of the key ingredients of marriage, the idiot, lunatic, who are incapable of giving their free consent, are barred from entering into the bond of marriage. Free consent, mental capacity and legal age are not the only three decisive factors. The three are a must but along with these three factors, there are other factors also which complement the three essential conditions required to enter into the bond of marriage. It is mandatory to perform the ceremony of betrothal and nuptial for the marriage contract to have legal validity. The groom is required to give the bride money, called *Kaseph*, another object of equal validity that too in presence of two witnesses. This ceremony is called *Kaseph Kiddushin*.The ceremony of betrothal includes the certain pronouncement of words by the husband. This requires that a benediction is pronounced at the betrothal invoking the Lord's praises and alludes to the law that the betrothed parties are not permitted to enter into a conjugal relationship before nuptial.The nuptial are called Chuppa or Nissuin and comprises the ritual of the groom taking the bride from her natal home to the bridal chamber. The ritual indicates that now she is under matrimonial authority. After the ceremony of nuptial, the marriage is considered to be valid irrespective of whether the marriage was consummated or not. Before the nuptial, the groom is required to make a commitment in writing which would entitle the wife to receive a certain sum from his estate in the case of his death or a divorce which is called *Ketubah*. This is an economic safeguard just as mahr in the case of Muslims. If the husband divorces his wife arbitrarily this will serve as a token for the wife for her

protection.

In Jews, like all religion, there exists a mutual duty of husband and wife towards each other. The ceremonies spell out in detail the mutual rights, duties and obligation between the husband and wife The husband's duty towards his wife is primarily to maintain her according to his status in life.To provide her with food, clothing, and dwelling to establish conjugal cohabitation with her. To provide her suitable medical care and nursing when she is sick.To protect her and to ransom her in the eventuality of her abduction and captivity and to provide for her burial in case of her death.Similarly, the husband is entitled to the wife's earning, to share her inheritance in property, donation, gifts except where it was given to her on the sole condition that it will be used by her only.

When the wife renounces her claim to be supported by her husband, she acquires control over her own earnings and it could be retained by her exclusively, free from husband's claim.In Jewish marriage, it is the duty of the wife to go where the husband is domiciled.The duty of a wife is to take care of the household. The wife will follow her husband to every place except she will not be obliged to follow him to a country where a different language is spoken.

Marriage under Special Marriage Act, 1954

India being a land of diversities, inhabited by people belonging to difficult cultures, castes and religions, all substantive and procedural, civil as well as criminal laws other than personal laws, are uniformly applicable. With this background, the Special Marriage Act, 1954 (Act, 1954) assumes special significance because it enables people belonging to different religious groups to inter-marry by cutting across all barriers. The Act, 1954 is, in fact, an important milestone towards national integration and towards the attainment of the constitutional goal of a uniform civil code (Article 44 of the Indian Constitution). The Act, 1954 was initially enacted in 1872 by the British government, which had inadequate provisions to meet the changed conditions. Any two persons belonging to different religions or the same religion can get their marriage solemnized under the Act. Conditions necessary for a marriage are (section 4 of the Act, 1954):

- That neither party has a spouse living at the time of marriage.
- That neither party is incapable of giving a valid consent to the marriage due to unsoundness of mind; or has been suffering from mental disorder of such a kind or to such an extent as to be

unfit for marriage and the procreation of children; or has been subject to recurrent attacks of insanity.

- That the bridegroom has completed the age of 21 years and the bride the age of 18 years at the time of marriage.
- That the parties are not within the degrees of prohibited relationship. However where a custom governing at least one of the parties permits a marriage between them, such marriage may be solemnized notwithstanding that they are within the degrees of prohibited relationship.

The age of the parties in a marriage is an essential condition under the 1954 Act. Violation of age requirement results in a void marriage. The marriage is solemnized before the Marriage Registrar in the presence of three witnesses, by signing the marriage register by parties that are marrying. No ceremonies or rites are required to be solemnized for the validity of marriage. A marriage solemnized under any other religious law can be registered under this Act, 1954. Once so registered, such a marriage will be governed by the provisions of the Act, 1954 and not by the law under which it was solemnized.

Parties who intend to get married under this Act, shall give a notice in writing in the specified form to the Marriage Officer of the district in which at least one of the parties to the marriage has resided for a period of not less than thirty days immediately preceding the date on which such notice is given (section 5 of the Act, 1954). After the marriage is solemnized, the certificate of marriage is entered in the Marriage Certificate Book by the Marriage Officer (section 13 of the Act, 1954). In *Altaf Hussain* v. *Nasreen Zohra*, AIR 1978 All 515, it was held that certificate obtained under section 13 of the Act, 1954 is conclusive evidence that a marriage was solemnized and all formalities respecting the signatures of witness have been complied with, unless proved otherwise.