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RELATIONSHIP IN NATURE OF MARRIAGE AND SUCCESSION OF PROPERTY

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ABSTRACT

This paper delves into the intricate nature of marriage and the crucial aspect of property succession. It begins by providing a concise understanding of the institution of marriage and then meticulously explores the legal requisites surrounding marriage in India, emphasizing the varying conditions across different religions. Furthermore, it delves into the validation of marriage and addresses contemporary concepts such as bigamous marriage and the increasingly prevalent live-in relationships. Shifting its focus, the paper meticulously examines the succession rights governed by diverse personal laws in India. Upon concluding this paper, readers will have gained comprehensive knowledge about the governance of these two fundamental concepts and the relevant laws that encompass them.

INTRODUCTION

There are several forms of relationship among men and women which are beautiful and adoring. But these relationships can occasionally be intricate and appalling like “bigamous”, “adulterous” and “platonic”. Some of them are promoted by the society, some are tolerated and others are shunned. The laws of a society often mirror the perceptions formed about specific relationships within that society. “Marriage” in particular is considered a very sacrament event or in lawful essence, a contract where two people decide to live together for the rest of their lives after completing a set of specific rituals and religious obligations to embark on a new journey. It’s a repetitive process based on an ancient belief that even death cannot break this holy affiliation. It is quite a dissimilar concept from “live-in relationships” because a bond as pious as marriage comes with a lot of responsibilities and duties for the couple. In a representative country like India, laws related to marriage are not uniform or same. In our diverse nation, various laws govern marriage based on individuals' religious beliefs. Even minority communities adhere to specific marriage laws. These laws include the "Hindu Marriage Act 1955," the "Indian Christian Marriage Act 1872," the "Muslim Personal Law (Shariat) Application Act, 1937," and the "Parsi Marriage and Divorce Act 1936." Another notion which is

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linked to marriage is called “Succession of property” which many people puzzle with “Inheritance of property”, but both of them differ in the legal world. Understanding the distinction between them is crucial, as both involve transferring of assets and responsibilities but differ in legal implications. Inheritance involves the transfer of assets of a family to the next generation or the “heirs” upon a person's death, while succession refers to the transfer of control and ownership of a business from one entity to another. Unlike inheritance, where the transfer of assets takes place posthumously, succession often takes place during the lifespan of a person, specifically in the context of business or leadership transitions. The laws concerning inheritance are regulated under the “Hindu Succession Act, 1956”, “Muslim Personal Law (Shariat) Act, 1937”, and, “Indian Succession Act, 1925”. This blog will focus on these two topics and will discuss about how they are governed under the different set of laws which are established over the years.

LAWS WHICH GOVERN MARRIAGE AND SUCCESSION IN INDIA

There are numerous laws in our country which govern these two essential elements of our society as a result of our diverse culture. It was the year 2005 which was marked by the enactment of Domestic violence Act² which recognised, 'marriage' as a 'domestic relationship', and provided protection to women from domestic threats and intimidation. Nevertheless, the Act did not provide any clear interpretation of a relationship in the nature of marriage, which led to the challenging question of what relationships, in the context of marriage, qualify as "relationships". However, Sec. 2(f) of the Act, expresses “domestic relationship” as an association between two people or individuals who live or have, at any given point of time, lived together in a shared household, when they are related by consanguinity (same ancestor), marriage or through a relationship in the context of marriage, adoption or are family members living together as a joint family. There are also some valid conditions in order for a Hindu couple to marry each other which are defined under the Hindu marriage Act, 1955³ and they are quite simple and logical like “soundness of mind”, “parties are not related to each other by blood”, “21 years of age for male and 18 years of age for the female”, etc. It is a deep-rooted fact that the legitimacy of a marriage also affects the legitimacy of a child born as a result from that marriage and hence there are some provisions which lists the essentials

² The Domestic Violence Act 2005

³ The Hindu Marriage Act 1955

elements in recognising it. Under section 16 of HMA, a child born of a void marriage is legitimate irrespective of the fact that a verdict of nullity is granted or not. if a voidable marriage is annulled, the children born before the decree is made, are also deemed legitimate.

In contrast, the Muslim community in our country follows its own set of personal laws for marriage and succession. Their marriage has very few legal requirements, such as the "proposal and acceptance at the same time," "soundness of mind," and "capacity to marry." Although there is no legislative framework governing it, the essential elements of a valid "Muslim marriage" emphasize consent, capacity, and adherence to Islamic principles⁴. Yet they contain certain provisions which are contradictory in nature to the laws which are made for non-Muslims residing in our nation. Bigamy is one such concept which allows a man under the Muslim personal law to marry more than one wife with a unique stipulation that they can marry a maximum number of 4 wives. Even marrying your first cousin is allowed under Muslim law and the child born as a result of this relationship is not considered as incest or illegitimate⁵. The notion of "Bigamy" is however punishable as a criminal offence under IPC and second marriage is considered as "void" or negated under "Section 11" of HMA,1955(if the primary marriage is not annulled first)⁶. Nevertheless, in Islam, a male cannot marry two females who are closely related by blood, marriage, or fosterage and if they do so, then the marriage is considered irregular.

Now, succession, on the other hand, is regulated by "The Hindu Succession Act, 1956," "The Indian Succession Act, 1925," along with some other personal laws. The extent of variation and the complexities associated with these laws differ greatly and, hence, they cannot be summarized in one brief blog post. However, certain interesting features can be briefly highlighted. The secondary Act⁷ deals with two categories of succession, called "Testamentary Succession" which states that if the deceased has left a will, the property will be allocated as per it, and "Intestate Succession" which comes into effect if there is no will made by the deceased and then the practice of succession is carried as per the religious laws of the individual. Interestingly in case of intestate succession for Hindus, "The Indian Succession Act,1925" is not applicable and hence the primary

⁴ Muslim Personal Law (Shariat) Act 1937

⁵ *Ibid*

⁶ Hindu Marriage Act 1955

⁷ Indian Succession Act 1925

Act⁸ came into existence. The law categorizes legal heirs into four classes and mandates that the property should be transferred entirely to the lawful heirs in class one, encompassing the primary family members such as son/daughter, mother, wife, and widow of a deceased son. All Class I heirs possess an absolute right to the property and cannot be deprived of it, even in cases of remarriage or conversion. In the absence of Class I heirs acquiring the assets, Class II heirs are entitled to the property, followed by subsequent classes. This law, applicable only to Hindus, presumes that if two people die simultaneously and the exact time of death cannot be ascertained, the elder individual is deemed to have passed away first unless proven otherwise. This particular Act also contains certain provisions like, disqualification of murderers from inheritance rights, property inheritance for female Hindus, and recognition of the rights of unborn children to inherit property under “Section 20”. The succession laws differ for Hindus, Muslims, and Christians. The minority group of Muslims do not consider the above-mentioned laws, as they have their own set of laws for succession, just as they do for marriage. They derive their principles from the "Holy Quran" and "The Sunnah" and consider these sacred scriptures as their guiding influence in Islamic culture.

CONCLUSION

Now I would like to conclude my blog by stating that the personal laws in our country are too diverse and multifaceted to understand and hence there should be a uniform set of rules and regulations governing them. Certain Acts like the “Special Marriage Act,1954” should be implemented which provide an alternate route to religious laws for marriage to interfaith couples and correspondingly provides a large number of legal benefits like – “inheritance rights”, “succession rights” and various social benefits. Certain immoral Acts must be abolished and replaced with laws that establish uniform standards for personal conduct while also ensuring equality and respect for cultural and religious identities.

⁸ Hindu Succession Act 1956