



EMPOWERING WOMEN

STRENGTHENING FAMILIES FAMILY LAWS TO EMPOWER WOMEN

*Legal Awareness Programme by National Legal Services Authority
in collaboration with National Commission for Women*

About National Legal Services Authority

The National Legal Services Authority (NALSA) has been constituted under the Legal Services Authorities Act, 1987 to provide free Legal Services to the weaker sections of the society. The Chief Justice of India is the Patron-in-Chief and the Senior most Hon'ble Judge, Supreme Court of India the Executive Chairman of the Authority. Presently, NALSA is housed at 12/11, Jam Nagar House New Delhi-110011.

Public awareness, equal opportunity and deliverable justice are the cornerstones on which the edifice of NALSA is based. The principal objective of NALSA is to provide free and competent legal services to the weaker sections of the society and to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organize Lok Adalats for amicable settlement of disputes. Apart from the abovementioned, functions of NALSA include spreading legal literacy and awareness, undertaking social justice litigations etc.

Legal Awareness/Literacy

NALSA along with other Legal Services Institutions undertakes various awareness activities in order to make people aware of their rights and about the role, activities and functioning of the legal services institutions. A variety of tools are used in order to achieve this objective like conducting seminars, lectures; distribution of pamphlets; participation in Doordarshan programmes, broadcasting jingles, live phone-in programmes etc; floating mobile multi-utility vans for spreading awareness through public interactions; nukkad nataks; short documentaries; cultural programmes by school children on legal issues; various competitions like painting, essay writing, debates and declamation etc. on legal issues.

Specific issues are taken up for legal literacy programmes varying from place to place depending upon the needs of a locality and its people. Internship programmes are organised for law students to promote the role and importance of legal services activities. Legal Aid Clinics are also being run in law colleges to further the attainment of objectives of Legal Services. Various legal literacy programmes are organized at school and college levels.



Legal Aid Services provided by NALSA

Legal Services includes providing Free Legal Aid to those weaker sections of the society who fall within the purview of Section 12 of the Legal Services Authority Act, 1987. It also entails creating legal awareness by spreading legal literacy through legal awareness camps, print media, digital media and organizing Lok Adalats for the amicable settlement of disputes which are either pending or which are yet to be filed, by way of compromise.

NALSA also undertakes necessary steps by way of social action litigation with regards to any matter of special concern to the weaker sections of the society. Legal services also encompass facilitating the beneficiaries to get their entitlements under various government schemes, policies and legislations.

Free legal aid is the provision of free legal services in civil and criminal matters for those poor and marginalized people who cannot afford the services of a lawyer for the conduct of a case or a legal proceeding in any Court, Tribunal or Authority. These services are governed by Legal Services Authorities Act, 1987 and headed by the National Legal Services Authority (NALSA).

Provision of free legal aid may include:

- Representation by an Advocate in legal proceedings.
- Payment of process fees, expenses of witnesses and all other charges payable or incurred in connection with any legal proceedings in appropriate cases;
- Preparation of pleadings, memo of appeal, paper book including printing and translation of documents in legal proceedings;
- Drafting of legal documents, special leave petition etc.
- Supply of certified copies of judgments, orders, notes of evidence and other documents in legal proceedings.

Free Legal Services also include provision of aid and advice to the beneficiaries to access the benefits under the welfare statutes and schemes framed by the Central Government or the State Government and to ensure access to justice in any other manner.

According to Section 2© of the Legal Services Authorities Act, 1987, "legal services" includes any service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter.

Training Modalities used by NALSA

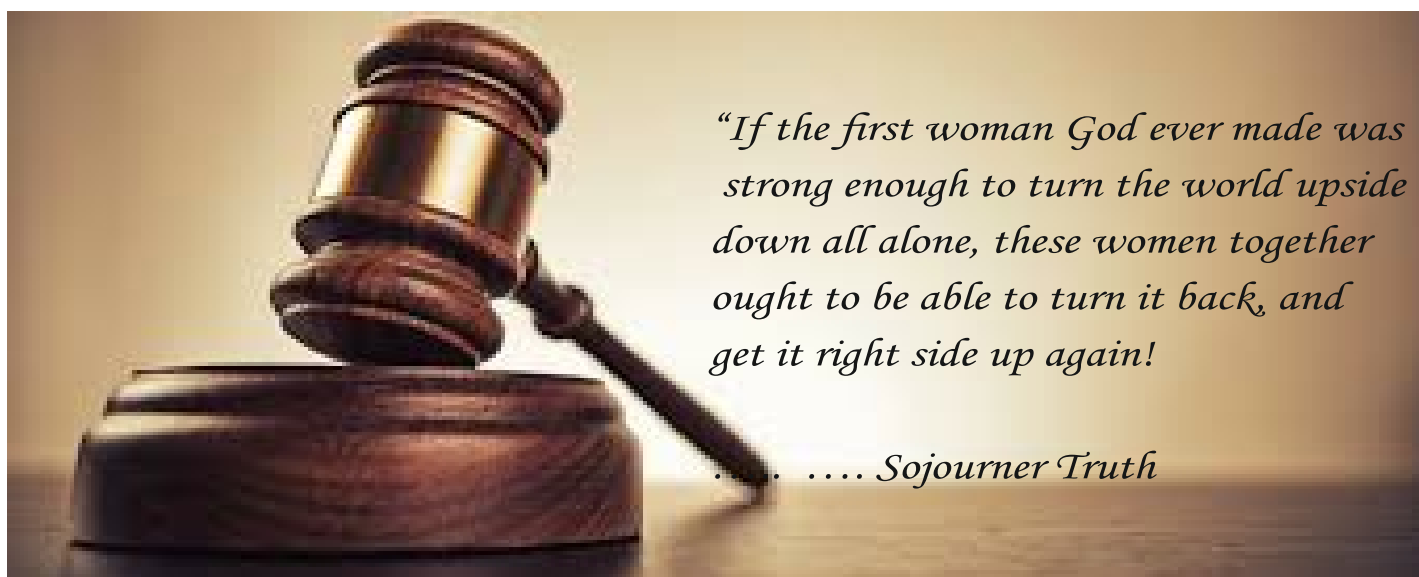
- Organise legal awareness programs on scheduled basis to suit the Urban & Rural literate and illiterate women of India.
- Induct innovative methodologies to impart training to Resource persons
- Organise Free legal aid camps
- Develop publicity material like videos, documentary films, street plays, dramas, dance, songs, etc
- Publish reading material for education purpose.



Bringing LEGAL AWARENESS in women

Illiteracy, lack of financial resources and social backwardness are major factors that hinder women from accessing justice. There are other invisible barriers: lack of courage to exercise legal rights, the proclivity to suffer silently the denial of rights, and geographical and spatial barriers are examples. Such barriers keep women disempowered and subjected to exploitation by those empowered otherwise. This results in their being shoved away from the mainstream, and they become constrained in contributing to the nation's development.

Empowering women and bringing them to join the mainstream is now one of the top agendas worldwide. NALSA has been contributing towards this goal over the years. It has travelled a long way from being a body constituted to support free legal aid to the needy to today's National protector of the victims against all kind of atrocities, be it urban or rural parts of the society. Now, with a paradigm shift in the concept of legal services, Legal Services Authorities are reaching out to the people to facilitate 'access to justice' to all in the most practicable and economical manner. It is now a facilitator of the government schemes also and strives hard to make sure that the benefits reach the beneficiaries



INNOVATION IN LEGAL LITERACY PROGRAMMES and TRAINING THE TRAINERS

NALSA is committed to improve the lives of women. Innovation filled minds are diligently working with NALSA in endlessly delivering meaningful programmes for the welfare of women in India. Training the Trainers to bring Legal Awareness in women is an initiative of NALSA, ensuring to reach the last hand in the line that is waiting for justice. The innovative Training modules ensure that the end purpose is met exemplarily.

Training modules and necessary tools to shift women from “survive” to “thrive and flourish mode” are now being employed in carrying out the literacy and awareness programs. The pandemic COVID 19 has topsy-turved the lives of many. The marginalized people are the worst affected with an uncertainty looming on their heads. Well equipped Legal awareness and educational programmes for women will enable them to overcome their pathetic stressful living conditions. Technology is the best medium of communication today. Reaching to the last corner in the remotest place in India is now possible with the use of technology. Keeping in pace with the times, webinars and other Online modes of engaging women to participate in the programmes with the use of various electronic platforms is our primary focus. Cost effective, engaging online and accessible modules are introduced with Live online sessions in the form of lectures, classes, exercises, videos, power point presentation, Documentary films, interactive sessions, Group discussions, Competitions etc. As it is said that “Girls relate to stories that are practical to them and role models that look like them or have gone through similar things”, these are woven into examples in the training modules.

NALSA in collaboration with National Commission for Women will conduct training programmes for the resource persons to enhance the capacities of women by making them aware of their rights and protections under various laws.



“Each partner to a marriage is equally responsible to keep the sanctity of marriage intact”

–Former CJI Hon'ble Shri Justice Dipak Misra

INTRODUCTION

In India, the Family Laws comprises a broad set of rules regarding family matters which includes marriage, divorce, adoption, inheritance etc. These laws also provide certain legally enforceable rights and duties that arise when one gives legal validation to the status of interpersonal relationships. The importance of family laws is to preserve and strengthen the institutions of marriage and family, to ensure welfare of children in case of marital breakdown and to use law as a vehicle to bring about social change and empower women.

The Family Laws in India are divided into five broad sets which are- Hindu law that governs all Hindus (including) Buddhists, Jains and Sikhs; Muslim Personal laws for the Muslims (most of the Muslim laws are uncodified); Christian laws for the Christians; Parsi law for the Parsi's. These laws have also been amended from time to time by parliamentary legislation, to meet up the needs of changing society.

Marriage among Hindus- Hindu Marriage Act, 1955

Conditions for a valid Hindu Marriage

- **Religion**- The bride as well as the bridegroom must be a Hindu,
- **Status**- Neither party should have a spouse living at the time of the marriage,
- **Mental capacity**- They must be of sound mind,
- **Age**- The bridegroom must have completed the age of twenty one years and the bride the age of eighteen years at the time of the marriage;
- **Prohibited degrees of relationship**- The parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;
- **Sapindas**- The parties are not sapindas of each other (close relation to each other such as cousins), unless the custom or usage governing each of them permits a marriage between the two.



Vijay Kumar Ramchandra Bhate v. Neela Vijay Kumar Bhate, AIR 2003 SC 2462- Mental cruelty does not depend on numerical counts if accusations of unchastity and extra marital relationships. It is the intensity, gravity and stigmatic impact thereof which counts.



Solemnization of marriage among Hindus

Hindu marriage can be solemnized according to the customary rites and ceremonies of either the bride or the bridegroom. If such rites and ceremonies include saptapadi, the marriage becomes complete and binding when the seventh step is taken.



Registration

Registration of Hindu Marriage is mandatory according to law.

Marriage among Muslims

As contained in Sharia- There are two Schools of Islamic law are Sunni Law and Shia Law. Majority of Sunni Muslims in India are governed by the Hanafi School and Shias by the Ithna Ashari School.

Conditions for a valid marriage among Muslims

- Nikah- Proposal for marriage and acceptance of the proposal
- Adult and sane- The parties must be competent.
- Witnesses- There must be two witnesses. The witnesses must also be sane and adult.
- A muslim male is allowed to marry four wives at a time in certain situations.
- Mahr is a sum of money which a muslim male agrees to pay to the bride in consideration of marriage

Sarla Mudgal v. Union of India, AIR 1995 SC 1531- The case was related to practice of solemnizing second marriage by conversion to Islam, with first marriage not being dissolved. The Court held that the first marriage would have to be dissolved under the Hindu Marriage Act, 1955. The man's first marriage would therefore, still be valid and under Hindu law, his second marriage, solemnized after his conversion, would be illegal under Section 494 of the Indian Penal Code, 1860. Sarla Mudgal judgment was hailed as precedent for Uniform Civil Code.

Marriage Restraints under Muslim Law

Absolute Prohibitions

Consanguinity (qurabat) i.e. Relationship by blood/ Affinity (mushawarat) i.e. relation by marriage and Fosterage.

Relative Prohibitions

Unlawful conjunctions/ Marriage with the fifth wife/ Marriage without witnesses is irregular as per Sunni law/ Marriage during Iddatis irregular as per the Sunni law and void as per the Shia law/ Marrying pregnant woman, and Marrying his divorced wife.



Marriage among Christians- Christian Marriage Act, 1872

The Act applies to all persons practicing Christian religion, including Indian Christians i.e. Indians converted to Christianity and their descendants.



Conditions for a valid marriage among Christians

- Neither the bride nor the bridegroom has a spouse living at the time of marriage.
- The bridegroom must have attained the age of 21 years and the bride must have attained the age of 18 years.
- The bride as well as the bridegroom must be of sound mind at the time of marriage.

Solemnization of marriage among Christians

Marriage under the Act can be solemnized by –

- Person authorized by the Church or
- Registrar of Marriages

A notice in writing of the intended marriage is given by the bridegroom or the bride. The marriage is to be solemnized in the presence of two witnesses and the parties are required to take oath.

Marriage among Parsi- The Parsi Marriage and Divorce Act, 1936

Conditions for a valid marriage among Parsi

- The bride and the bridegroom are not related to each other in any of the degrees of consanguinity or affinity,
- The marriage is solemnized according to the Parsi form of ceremony called “Ashirvad” by a priest in the presence of two Parsi witnesses other than such priest;
- The bride has attained the age of 18 years and the bridegroom has attained the age of 21 years

Solemnization of marriage among Parsi

A Parsi marriage must be solemnized according to the Parsi form of ceremony called “Ashirvad”. Only a Parsi priest can solemnize the marriage. There must be two witnesses, other than the priest, in whose presence the marriage is to be solemnized.

Registration of Parsi marriage

It is compulsory to register the marriage.



“Each partner to a marriage is equally responsible to keep the sanctity of marriage intact”

- Former CJI Hon'ble Shri Justice Dipak Misra

Secular Act- Special Marriage Act, 1954

When persons belonging to different religions want to get married to each other or when persons belonging to the same religion do not wish to get married under the personal law applicable to them, the marriage has to be solemnized under the Special Marriage Act, 1954.

Validity of marriage

Conditions for validity of marriage are the same as prescribed for validity of a Hindu marriage.

Registration of marriage

According to the Act registration of marriage is mandatory.

Solemnization of marriage

- A notice signed by both the parties to the intended marriage, informing about the intention to get married in a prescribed form is to be given to the marriage officer generally located in the District Court.
- The marriage can be registered only after the expiry of 30 days from the date of notice. Within this period, objection can be raised about the illegality of the marriage.
- The applicants should get their marriage solemnized within two months of the application otherwise they will have to proceed afresh.

Case Scenario 1

Seema and Manish are consenting adults who decide to get married. They have a simple ceremony and get registered at the Marriage Registrar's office. However, it is found that through a long-lost relative that they were previously related as 4th cousins.

In the above example as both of them share a set of great-great-great grandparents and hence their marriage will not be valid under the Hindu Marriage Act.

Case Scenario 2

Manish aged 21 years marries Seema a girl aged 18 years in the year of 1985 with proper rights and rituals. Later Manish marries 'Raina'. Seema filed a petition to Court for declaring his second marriage null and void.

In the above example, Seema will succeed as the Hindu Marriage Act prohibits bigamy. Hence, the second marriage of Manish with Raina is void in the eyes of law.



DIVORCE



Procedure of Divorce among Hindus

Marriage can be dissolved by a decree of divorce if certain conditions are satisfied. Under the Act, if only one of the parties to the marriage wants to dissolve the marriage, the decree has to be obtained by way of a contested litigation. However, if both the parties are willing for divorce, the Act recognizes divorce by mutual consent also.

Grounds of Divorce among Hindus

- Adultery [Section 13(1) (i)]
- Cruelty [Section 13(1)(i)(a)]
- Desertion [Section 13(1)(ib)]
- Conversion [Section 13(1)(I)]
- Insanity [Section 13(1)(iii)]
- Venereal Disease [Section 13(1)(v)]
- Renouncing the world [Section 13(1)(vi)]
- Presumption of Death [Section 13(1)(vii)]

Lachman Utamchand Kiriplani v. Meena Alias Mota, AIR 1964 SC 40- Husband and wife judicial separation /Desertion without just cause and offer to return to matrimonial home must be shown to be bona fide Petition for judicial separation. Burden of proof lies under Hindu Marriage Act, 1955, Section 10(1)(a).

Grounds of divorce available to wife only [Section 13(2)]

- Polygamous marriage of the husband which had taken place before the present law was enacted [Section 13(2)(i)]
- Acts of Rape, Sodomy or Bestiality by the husband [Section 13(2)(ii)]
- Non-Resumption of Cohabitation after a Decree/Order of Maintenance [Section 13(2)(iii)]
- Wife who was married before she was 15 years old decides to repudiate the marriage after attaining the age of 15 years but before attaining the age of 18 years

Narendra V. K. Meena, AIR 2016 SC 4599- The persistent effort of the Respondent wife to constrain the Appellant to be separated from the family would be torturous for the husband and in the opinion of the trial Court was right when it came to the conclusion that this constitutes an act of 'cruelty'.

Divorce by mutual consent [Section 13B]

The parties to the marriage may file a petition for divorce before the Court that they are willing to separate mutually.

Procedure of filing a divorce petition

A Petition for obtaining decree of divorce has to be filed in the family Court in accordance with the provisions contained in the Act.

Divorce among Muslims

Judicial divorce by wife

(i) Physical and mental cruelty; (ii) Husband unheard of for a period of four years; (iii) Failure to pay maintenance; (iv) Husband sentenced to a term of imprisonment for a period of seven years or more; (v) Failure to perform matrimonial obligations; (vi) Insanity of husband; (vii) Impotence of husband; (viii) Leprosy; (ix) Venereal disease; (x) Option of puberty.

Divorce among Christians

(i) Adultery; (ii) Conversion to another religion; (iii) Unsoundness of mind; (iv) Venereal disease in a communicable form; (v) Unheard of for a period of seven years; (vi) Willful refusal to consummate the marriage; (vii) Non-compliance with a decree for restitution of conjugal rights; (viii) Desertion for at least two years; (ix) Cruelty; (x) A wife can also present a petition for the dissolution of her marriage on the ground that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality.

Section 10A of the Act provides for divorce by mutual consent.

Divorce among Parsi

Grounds of divorce

(i) Non-consummation of the marriage within one year after its solemnization owing to the willful refusal of the defendant (ii) Insanity (iii) That the defendant was at the time of marriage pregnant by some other person other than the plaintiff. (iv) Adultery (v) Cruelty (vi) That the defendant has since the marriage voluntarily caused grievous hurt to the plaintiff or has infected the plaintiff with venereal disease or, where the defendant is the husband, has compelled the wife to herself to prostitution. (vii) Imprisonment for seven years or more.



MAINTENANCE

Hindu Law

Under Section 25 of the Hindu Marriage Act, a Court can, at the time of passing a decree of divorce etc. order the husband to pay to the wife for her maintenance and support, a gross lump sum or monthly or periodical sum. It is payable till the lifetime of the applicant or till the applicant remarries.

Under Section 18 of the Hindu Adoptions and Maintenance Act, 1956, a Hindu wife, is entitled to be maintained by her husband during her lifetime.



Grounds to claim maintenance

A Hindu wife is entitled to live separately from her husband without forfeiting her claim to maintenance, if-

- He is guilty of desertion, that is to say, he has abandoned her without reasonable cause and without her consent or against her wish, or of willfully neglecting her;
- He has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband.
- He has any other wife living;
- He keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere;
- He has ceased to be a Hindu by conversion to another religion;
- There is any other cause justifying her living separately.

However, a Hindu wife is not entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.

Shailja & Anr. v. Khobanna, AIR 2017 SC 1174- In this case, the Supreme Court made a remarkable observation by stating that merely because the wife is capable of earning it is not a reason to reduce the maintenance awarded to her and said that whether a wife is capable of earning and is actually earning are two different factors.

Muslim Law

A divorced Muslim woman is entitled to maintenance as per the provisions of Muslim Women (Protection of Rights on Divorce) Act, 1986.

Daniel Latifi v. Union of India, AIR 2001 SC 3958- The Supreme Court upheld the constitutional validity of the Act. The Court held that a Muslim husband is liable to make reasonable and fair provision for the future of his divorced wife that extends beyond the iddat period.

Parsi Law- Parsi Marriage and Divorce Act, 1936

A Court can, at the time of passing a decree or at any subsequent point of time, order the husband to pay a lump sum or a periodical sum for her maintenance. An unchaste wife becomes disentitled to maintenance.

Christian Law- Indian Divorce Act, 1869

While passing a decree under the act, the Court can order the husband to pay a gross sum of money, or a periodically payable sum of money for any term not exceeding her own life. The amount payable is decided after considering the wife's fortune (if any), ability of the husband, and the conduct of the parties. For that purpose, the Court can cause a proper instrument to be executed by all necessary parties.

Maintenance under Special Marriage Act, 1954

Under Section 37 of the Act, a Court can, while passing a decree, order the husband to pay to the wife for her maintenance and support, if necessary, a gross sum or a monthly or periodical payment of money. The payment can be secured by a charge on the husband's property, if the Court thinks it necessary. Maintenance can be made payable for a term not exceeding lifetime of the wife. The amount is determined having regard to her own property, if any, her husband's property and ability, the conduct of the parties and other circumstances of the case.



Case Scenario 1

Seema is a housewife who got married a year ago with Manish. Manish never allowed Seema to work even after her several requests. One day, Manish accused Seema of having an affair and the verbal anger turned into beatings. She filed a case against Manish under the Domestic Violence Act.

In the above example, Seema is liable to get maintenance from Manish. As the allegations of Manish are baseless and he treated Seema with cruelty.

Case Scenario 2

A marriage was solemnized between Seema and Manish according to Hindu rites and ceremonies at Meerut the said marriage is registered with the Registrar of marriage. Manish has renounced the world and has left for his pilgrimage journey. After the solemnization of marriage, 'Seema' got to know that Manish was forced into marriage by his parents as his arents had an opinion that after marriage, he would change his mind.

In the above example, Seema can seek Judicial Separation and can claim maintenance from Manish.

WOMEN AND RIGHT TO PROPERTY



Not only that the customary rules of law regarding right to property, discriminated against women, but laws enacted by modern legislatures too, to a large extent discriminated against women. Over a period of time, the law is also evolving with changing times and the discrimination is being removed.

Property rights of Hindu woman

- Under the Hindu Succession Act 1956, a mother, widow, daughter along with the son , take equal share of a person's property on his death
- On the death of a female Hindu her daughter also inherits her property
- The Hindu Succession (Amendment) Act, 2005, which aimed at removing discrimination against daughters, made the following changes in the Act-

In a joint Hindu family the daughter of a coparcener-

1. Becomes coparcener by birth in her own right, in the same manner as the son;
2. Has the same rights in the coparcenary property as she would have had if she had been a son;
3. Is subject to the same liabilities in respect of the said coparcenary property as that a son, and
4. Any reference to a Hindu coparcener is deemed to include a reference to a daughter of a coparcener: -

Hence, a daughter has a similar right like son to claim partition of coparcenary property.

In a recent landmark judgment delivered in the case of Vineeta Sharma the Supreme Court has made it clear that --

- the change made in 2005 to Section 6 of the Hindu Succession Act, 1956 confers status of coparcenor on the daughter born before or after amendment in the same manner as son with same rights and liabilities.
- the rights can be claimed by the daughter born earlier with effect from 9.9.2005
- since the right in coparcenary is by birth, it is not necessary that father coparcenor should be living as on 9.9.2005.

Property rights of Muslim woman

- The husband and the wife, being equal, are entitled to inherit from each other.
- Some near females and cognates are also recognized and enumerated as heirs.
- The parents and certain other ascendants are made heirs even where there are descendants.
- The newly created heirs are given specific shares. They are called sharers
- The newly created heirs inherit the specified shares along with customary heirs, and not to their exclusion. Share of a daughter is half of the Son's share.

Mahr

A sum of money or other property which the wife is entitled to get from the husband on marriage is called 'mahr'. It can be fixed before or at the time of marriage.

Property rights of Christian woman

- Christian women are claiming a share of the father's property under Section 37 of The Indian Succession Act 1925.
- A Christian widow is entitled to 1/3rd of her husband's property.
- All children whether son or daughter gets the equal share in the remaining property.
- Where a daughter or a son is dead his/her children become entitled to their parents' share in the property.
- The child in the womb also gets the equal share in the property.
- Mother and Father are not entitled to inherit the property of a Son or a Daughter if the Son or Daughter is survived by his/ her own children or grandchildren.

Property rights of Parsi woman

- Parsi is governed by the Indian Succession Act, 1925.
- A Parsi widow and all her children get equal shares in the property of the person who has died without making a will. Each of the parents gets half of the share of each child.



Case Scenario 1

Manish and Seema were in a live-in relationship for 10 years. Naren is their son. Manish cheated on Seema which led to their break-up. Seema left the house with Naren to live in separate accommodation. Now Seema is claiming maintenance for herself and the child before the Principal Judge, Family Court.

In the above example, if a man and woman are living under the same roof and cohabiting for some years, there will be a presumption under Section 114 of the Evidence Act that they live as husband and wife and the children born to them will not be illegitimate. On the lines of the above judgment, Seema and Manish are deemed to be married and Naren is not their illegitimate child. Therefore, mother & child are both entitled for Maintenance.

