

Special Rules for Parsi Intestates

The Indian Succession Act, 1925 lays down special and detailed rules governing intestate succession among Parsis, recognising their distinct personal law. **Sections 50 to 56** deal comprehensively with the manner in which property devolves when a Parsi dies without leaving a will.

1. **General Principles of Parsi Intestate Succession** - Section 50 lays down certain foundational principles applicable to all cases of intestate succession among Parsis:

1. **Children conceived before death:** There is no distinction between a child born during the lifetime of the intestate and a child conceived before death but born alive thereafter. Such a child is treated as if born before the intestate's death and is fully entitled to inheritance.
2. **Exclusion of predeceased lineal descendants:** If a lineal descendant (such as a child) dies before the intestate without leaving a widow, widower, or any lineal descendants, that person is ignored while calculating the shares of inheritance.
3. **Effect of remarriage of widows or widowers:** If the widow or widower of any relative of the intestate remarries during the lifetime of the intestate, such person loses the right to inherit and is treated as if they did not exist at the time of the intestate's death.

2. **Succession Where Intestate Leaves Widow/Widower, Children and Parents** - Section 51 governs cases where the intestate leaves **close family members**:

1. **Widow or widower and children:** When a Parsi dies leaving a widow or widower and children, the property is divided equally among the widow or widower and each child.
2. **Children only:** If the intestate leaves children but no widow or widower, the children inherit the property in **equal shares**.
3. **Presence of parents:** If one or both parents are alive in addition to the widow/widower and children, each parent receives a share **equal to half the share of a child**.

3. **Share of Predeceased Child Leaving Lineal Descendants** - Section 53 applies when a child of the intestate has died before the intestate, but has left descendants:

1. **Predeceased son:** The son's widow and children inherit the share that the son would have taken, as if the son had died immediately after the intestate.
 - If the son leaves only a widow (or widow of a lineal descendant) but no children, the remaining portion of his share reverts back and is redistributed

among other heirs.

2. Predeceased daughter: The daughter's share is divided **equally among her children**.
 3. Further predeceased descendants: If grandchildren or more remote descendants have also predeceased the intestate, the same rules apply recursively, ensuring representation down the line.
- 4. No Lineal Descendants but Presence of Widow/Widower (Section 54)** - Where the intestate leaves **no lineal descendants**, but leaves a widow or widower, the following rules apply:
1. **Only widow or widower**: The widow or widower receives **one-half** of the property.
 2. Widow/widower plus widows/widowers of lineal descendants: The intestate's widow or widower receives one-third, and another one-third is shared equally among the widows or widowers of lineal descendants.
 3. Only widows or widowers of lineal descendants: If there is one such widow or widower, they receive one-third; if more than one, they collectively receive two-thirds, divided equally.
 4. Distribution of residue: The remaining property is distributed among relatives listed in Part I of Schedule II, according to proximity of relationship, with **equal treatment of males and females**.
- 5. No Lineal Descendants and No Widow/Widower (Section 55)** - If the intestate leaves **neither lineal descendants nor any widow or widower**, the property devolves upon the **next-of-kin** listed in **Part II of Schedule II**. Preference is given based on closeness of relationship, and persons of the same degree inherit **equally**, irrespective of gender.
- 6. Absence of All Specified Heirs (Section 56)** - Where **no relatives** are entitled to succeed under any of the preceding provisions, the property is distributed **equally among the nearest surviving relatives**, determined solely by the degree of kinship to the intestate.

Marriages Between Parsis – Requisites, Remarriage and Bigamy

The Parsi Marriage and Divorce Act, 1936 governs marriages among Parsis in India and lays down specific conditions for the validity of marriage, restrictions on remarriage, and penal consequences for bigamy. Sections 3, 4 and 5 collectively ensure the sanctity of marriage, monogamy, and social order within the Parsi community.

1. Requisites for Validity of a Parsi Marriage - Section 3 lays down the **essential conditions** that must be fulfilled for a Parsi marriage to be legally valid. A marriage shall be **invalid** if any of the following conditions are violated:

(a) Prohibited Degrees of Relationship - A marriage is void if the parties are related to each other within the **degrees of consanguinity or affinity** specified in **Schedule I** of the Act. This provision prevents marriages between close blood relatives or relations by marriage, thereby safeguarding social morality and public health.

(b) Mandatory Religious Ceremony - For a Parsi marriage to be valid, it must be solemnized according to the traditional Parsi ceremony known as “**Ashirvad**”. The ceremony must be performed: By a **Parsi priest**, and

- In the presence of **two Parsi witnesses**, other than the priest.

Failure to perform the marriage in this prescribed religious manner renders the marriage invalid, even if all other formalities are fulfilled.

(c) Minimum Age Requirement

- **Male**: must have completed **21 years**
- **Female**: must have completed **18 years**

This requirement applies irrespective of whether the Parsi has changed religion or domicile. A marriage contracted in violation of the age requirement is invalid.

(d) Legitimacy of Children of Invalid Marriages - Section 3(2) provides an important protective measure by stating that **children born out of an invalid Parsi marriage shall be treated as legitimate**, provided they would have been legitimate if the marriage were valid. This provision ensures that children do not suffer legal or social disadvantages due to defects in their parents’ marriage.

2. Prohibition of Unlawful Remarriage - Section 4 enforces the principle of strict monogamy among Parsis.

(a) Bar on Second Marriage - No Parsi is permitted to contract another marriage during the lifetime of his or her spouse, whether that spouse is a Parsi or not. A second marriage is permitted only if:

- A **lawful divorce** has been obtained, or
- The previous marriage has been **declared null and void**, or
- The marriage has been **legally dissolved** by a competent court.

This restriction applies even if the earlier marriage was solemnized under the earlier Parsi Marriage and Divorce Act, 1865.

(b) Effect of Contravention - Any marriage contracted in violation of this provision is **void ab initio**, meaning it has no legal existence from the very beginning.

3. Punishment for Bigamy - Section 5 provides the penal consequences for unlawful remarriage. If a Parsi contracts a second marriage during the lifetime of a spouse without obtaining a lawful divorce or annulment, such person is liable to be punished under **Sections 494 and 495 of the Indian Penal Code, 1860**, which deal with the offence of **bigamy**.

The punishment may include:

- Imprisonment, and/or
- Fine, depending on the gravity of the offence and circumstances such as concealment of the first marriage.

Attestation, Revocation, Alteration and Revival of Wills (*Sections 67–73, Indian Succession Act, 1925*)

Chapter V of the Indian Succession Act, 1925 deals with the legal principles governing the attestation of wills, revocation of wills, alteration of wills, and revival of revoked wills. These provisions ensure certainty, authenticity, and protection against fraud in testamentary dispositions.

1. Effect of Gift to an Attesting Witness - Section 67 clarifies the legal effect of giving a benefit under a will to an attesting witness. A will does **not become invalid** merely because it gives a benefit, such as a bequest or appointment, to a person who attests it, or to the spouse of such a witness. However, the **benefit itself becomes void** in so far as it concerns:

- The attesting witness,
- The spouse of such witness, or
- Any person claiming through them.

The object of this provision is to prevent undue influence or conflict of interest while preserving the validity of the will itself.

Explanation: If a person is a legatee under a will and later attests a **codicil** that merely confirms the will, he does **not lose his legacy**.

2. Competency of Witness Despite Interest or Executorship - Section 68 removes disqualification of witnesses based on interest.

A person is **not disqualified** from being a witness to:

- Prove the execution of a will, or
- Prove its validity or invalidity,

merely because:

- He has an interest under the will, or
- He has been appointed as an executor.

This provision ensures that technical objections do not defeat genuine testamentary intentions.

3. Revocation of Will by Marriage - Section 69 provides that **every will is automatically revoked by the marriage of the testator**.

Exception: A will made in exercise of a **power of appointment** is not revoked by marriage if, in the absence of such appointment, the property would not have passed to the testator's executor, administrator, or heirs under intestacy.

Explanation: A power of appointment refers to the authority given to a person to decide how property, which he does not own, should be distributed.

4. Revocation of Unprivileged Will or Codicil - Section 70 specifies the **exclusive modes** by which an unprivileged will or codicil may be revoked. Such revocation can occur only by:

1. Marriage of the testator;
2. Execution of a subsequent will or codicil;
3. A written declaration of intention to revoke, executed in the same manner as a will; or
4. Physical destruction of the will (burning, tearing, or otherwise destroying) by the testator, or by someone in his presence and under his direction, with the intention to revoke.

Illustrations:

- If a later unprivileged will expressly revokes an earlier one, it amounts to valid revocation.

- If a privileged will revokes an earlier unprivileged will, the revocation is valid.

5. Effect of Alterations in an Unprivileged Will - Section 71 deals with alterations made **after execution** of an unprivileged will.

Any obliteration, interlineation, or alteration made after execution has **no legal effect** unless:

- It renders the original words illegible, or
- It is executed with the same formalities as a will.

If the testator and witnesses sign near or opposite the alteration, or refer to it in a memorandum duly signed, the altered will is deemed to be **validly executed**. This provision safeguards against tampering and unauthorized changes

6. Revocation of Privileged Will or Codicil (Section 72)

1. An unprivileged will or codicil;
2. Any act showing intention to revoke, accompanied by formalities sufficient for a privileged will; or
3. Burning, tearing, or destroying the will with the intention to revoke.

Explanation: It is not necessary that the testator be in circumstances allowing him to make a privileged will at the time of revocation.

7. Revival of Unprivileged Will (Section 73)

1. A revoked unprivileged will or codicil can be revived only by:
 - Re-execution of the will, or
 - Execution of a codicil showing clear intention to revive it.
2. If a will was **partly revoked** and later wholly revoked, revival of the whole does not revive the part previously revoked unless a contrary intention is clearly expressed.

Certification of Marriages between Indian Christians (*Indian Christian Marriage Act, 1872*)

The Indian Christian Marriage Act, 1872 prescribes a detailed statutory procedure for the certification and registration of marriages between Indian Christians. The object of these

provisions is to ensure legality, transparency, consent, and proper record-keeping of Christian marriages.

1. Licensing of Persons to Grant Marriage Certificates - Under Section 9, the **State Government** is empowered to grant a license to any Christian, either:

- By name, or
- By virtue of holding a particular office,

authorising him to **grant certificates of marriage between Indian Christians**.

Such a license may be revoked by the same authority that granted it. Every grant or revocation of license must be published in the Official Gazette, ensuring public notice and authenticity.

2. Issue of Certificate of Notice and Declaration (Section 17) - When a notice of marriage has been given, any **Minister of Religion** who consents or intends to solemnize the marriage shall issue a **certificate** confirming:

- That the notice of marriage has been duly given, and
- That the required declaration has been made.

However, the certificate can be issued only if the following conditions are satisfied:

1. **Waiting period:** At least **four days** must have passed since the receipt of the notice.
2. **No lawful impediment:** The Minister must be satisfied that there is no legal obstacle to the marriage.
3. **No prohibition:** The issue of the certificate must not have been forbidden by any authorized person.

3. Declaration Before Issue of Certificate (Section 18) - Before issuing the certificate, one of the parties intending to marry must personally appear before the Minister and make a solemn declaration stating:

1. That he or she believes there is no impediment of kindred, affinity, or other lawful hindrance to the marriage; and
2. Where either or both parties are minors, that the **required consent** has been obtained, or that no person in India is legally authorized to give such consent.

This declaration ensures voluntariness and legal capacity.

4. Power to Prohibit Issue of Certificate (Section 20) - Any person whose **consent is required** for the marriage (such as a parent or guardian of a minor) is legally empowered to **prohibit the issue of the certificate**.

Such prohibition must be:

- Given **in writing**,
- Addressed to the Minister, and
- Signed by the person prohibiting, stating his or her name, residence, and relationship to the parties.

This provision safeguards the interests of minors.

5. Issue of Certificate in Case of Minority (Section 22) - When either party to the marriage is a **minor** and the Minister is not satisfied that the required consent has been obtained, he shall **not issue the certificate** until the expiry of **fourteen days** from the receipt of the notice of marriage. This additional waiting period acts as a protective measure against forced or improper marriages involving minors.

6. Ensuring Understanding of the Certificate (Section 23) - Before issuing the certificate to Indian Christians, the Minister must ascertain whether the parties **understand the meaning and legal effect** of the notice or certificate.

If the person is not cognizant of its purport, the Minister must:

- Translate, or
- Cause it to be translated,

into a language that the person understands. This ensures **informed consent**.

7. Validity Period of Certificate (Section 26) - A certificate issued by the Minister becomes **void** if the marriage is **not solemnized within two months** from the date of its issue.

If the certificate becomes void:

- All proceedings based on it lapse, and
- A **fresh notice** and certificate must be obtained before the marriage can be solemnized.

8. Forwarding of Certificate after Solemnization (Section 34) - After the marriage is solemnized, the person officiating the marriage must:

- Detach the certificate from the marriage register book, and
- Send it **within one month** to the **Marriage Registrar** of the district where the marriage took place. The Registrar then records and processes the certificate.

9. Entry, Numbering and Transmission of Certificates (Sections 35 and 36) - The Marriage Registrar must:

- Enter copies of certificates **in chronological order** in a designated book;
- Assign a **certificate number** and an **entry number** to each copy.

Thereafter, the Registrar shall:

- Add the entry number to the original certificate, and
- Send the certificate, with his signature or initials, to the **Registrar General of Births, Deaths and Marriages** at the end of each month.
This ensures permanent and centralized record-keeping.

Dissolution of Marriage by Mutual Consent (*Section 10A, Indian Divorce Act, 1869*)

Section 10A of the Indian Divorce Act, 1869 introduces the concept of **divorce by mutual consent** for Christian marriages. This provision recognizes that when both spouses have mutually decided that the marriage has irretrievably broken down, the law should allow them to dissolve the marriage peacefully and with dignity.

1. Right to File a Petition for Mutual Consent Divorce - Under Section 10A(1), a **joint petition** for dissolution of marriage may be presented to the **District Court** by **both spouses together**. This provision applies irrespective of whether the marriage was solemnized **before or after** the commencement of the Indian Divorce (Amendment) Act, 2001.

The petition can be filed on the following cumulative grounds:

1. The parties have been **living separately for a period of two years or more**;
2. They have **not been able to live together** as husband and wife; and
3. They have **mutually agreed** that the marriage should be dissolved.

The requirement of living separately does not necessarily imply physical separation alone, but indicates absence of marital cohabitation and marital obligations.

2. Cooling-Off Period and Second Motion - Section 10A(2) provides for a **cooling-off period** between the filing of the petition and the passing of the decree.

- After filing the joint petition, both parties must make a **second motion** to the Court.
- This motion can be made **not earlier than six months** and **not later than eighteen months** from the date of presentation of the petition.
- If the petition is withdrawn by both parties during this period, no decree will be passed.

The object of this waiting period is to provide the spouses with an opportunity for **reconciliation and reconsideration** of their decision.

3. Role of the Court - Before granting the decree of divorce, the Court must:

1. **Hear both parties** personally;
2. Conduct such **inquiry as it deems fit**; and
3. Satisfy itself that:
 - A valid marriage was solemnized, and
 - The statements made in the petition are **true and genuine**.

Only after such satisfaction can the Court grant relief.

4. Decree of Dissolution - Once the Court is satisfied that all statutory conditions have been fulfilled, it shall pass a **decree declaring the marriage dissolved**. The dissolution takes effect **from the date of the decree**, and not from the date of filing of the petition.

Judicial Separation under the Indian Divorce Act, 1869 (*Sections 22–26*)

Chapter V of the Indian Divorce Act, 1869 deals with the concept of **judicial separation**, which allows spouses to live apart without dissolving the marriage. Judicial separation suspends certain marital rights and obligations while the marital bond itself continues to exist.

1. Abolition of Divorce *a Mensa et Toro* and Introduction of Judicial Separation (Section 22) - Section 22 abolishes the old ecclesiastical remedy of **divorce a mensa et toro** (divorce

from bed and board). In its place, the Act provides for **judicial separation**, which may be obtained by either the husband or the wife.

Judicial separation may be granted on any of the following grounds:

1. **Adultery**;
2. **Cruelty**; or
3. **Desertion for a continuous period of two years or more.**

A decree of judicial separation has the **same effect** as divorce *a mensa et toro* under the earlier law, along with additional legal consequences provided under the Act.

2. Procedure for Obtaining Judicial Separation (Section 23) - Under Section 23, either spouse may apply for judicial separation by filing a **petition before the District Court.**

The Court may grant the decree if:

- It is satisfied that the **allegations in the petition are true**, and
- There exists **no legal bar** to granting such relief.

Once granted, the decree legally authorizes the spouses to live separately.

3. Property Rights of a Separated Wife - Section 24 confers significant property rights upon a wife who has obtained judicial separation. From the date of the decree and during the continuance of separation:

- The wife is deemed to be **unmarried (a spinster)** in relation to any property she acquires or which devolves upon her.
- She may **deal with such property freely**, as if she were an unmarried woman.
- If she dies intestate during the period of separation, such property devolves as if her husband were already dead.

Exception: If the wife resumes cohabitation with her husband, all property then held by her shall remain her **separate property**, subject to any written agreement made between the spouses during separation.

4. Contractual Capacity and Right to Sue (Section 25) - Section 25 treats a judicially separated wife as an **independent legal person.**

During the period of separation:

- She is considered unmarried for the purposes of **contracts, civil wrongs, and legal proceedings**.
- She may **sue and be sued in her own name**.
- The husband is **not liable** for her acts, contracts, or costs incurred during separation.

Exception: If alimony has been ordered and the husband fails to pay it, he remains liable for **necessaries supplied to the wife**. Further, the wife may still join her husband in exercising any **joint power** conferred upon them.

5. Reversal of Decree of Judicial Separation (Section 26) - Section 26 allows for the reversal of a decree of **judicial separation** in certain circumstances.

If a decree was passed:

- In the **absence of one spouse**, and
- On the ground of **desertion**,

the absent spouse may apply to the same Court for reversal by showing:

- That the decree was obtained in his or her absence, and
- That there was a **reasonable excuse** for the alleged desertion.

The Court may reverse the decree if satisfied of the truth of these claims. However, such reversal **does not affect the rights of third parties** arising from contracts, debts, or acts entered into by the wife during the period between the decree and its reversal.

Nullity of Marriage under the Indian Divorce Act, 1869

(Sections 18, 19, 21 and 43)

Chapter IV of the Indian Divorce Act, 1869 deals with **nullity of marriage**, that is, cases where a marriage is declared **null and void** in the eyes of law. A decree of nullity treats the marriage as having no legal existence from the beginning due to the presence of certain fundamental defects at the time of marriage.

1. Petition for Decree of Nullity (Section 18) - Under Section 18, **either the husband or the wife** may present a **petition to the District Court** seeking a declaration that the marriage

is **null and void**. The jurisdiction to grant such a decree lies exclusively with the District Court.

2. Grounds for Grant of Decree of Nullity (Section 19) - Section 19 enumerates the specific grounds on which a marriage may be annulled. A decree of nullity may be granted on any of the following grounds:

(a) Impotency - If the respondent was **impotent** at the time of the marriage and continued to be impotent at the time of filing the suit, the marriage may be declared void. Impotency refers to the incapacity to consummate the marriage.

(b) Prohibited Degrees of Relationship - A marriage is void if the parties are related to each other within the **prohibited degrees of consanguinity or affinity**, whether such relationship is natural or legal. Such marriages are considered invalid due to close blood or marital ties.

(c) Unsoundness of Mind - If either party was a **lunatic or idiot** at the time of the marriage, the marriage may be annulled. This ground protects the requirement of mental capacity to enter into a valid marriage.

(d) Bigamy - A marriage is void if, at the time of marriage, the former husband or wife of either party was **alive**, and the previous marriage was still legally subsisting.

(e) Consent Obtained by Force or Fraud - Even though not expressly listed in the clauses, the section preserves the **jurisdiction of the District Court** to annul a marriage where the consent of either party was obtained by **force or fraud**.

3. Confirmation of Decree (Section 20) - Section 20, which earlier required confirmation of the District Court's decree, has been **omitted** by the Indian Divorce (Amendment) Act, 2001. As a result, the decree of nullity passed by the District Court is **final**, subject to appeal.

4. Legitimacy and Succession Rights of Children (Section 21) - Section 21 protects the rights of children born from annulled marriages in specific circumstances.

Where a marriage is annulled on the ground that:

- A former spouse was living, but the parties entered the marriage **in good faith** believing the former spouse to be dead; or
- The marriage is annulled on the ground of **insanity**,

children begotten before the decree of nullity shall:

- Be **specifically mentioned in the decree**, and

- Be entitled to **inherit the property** of the parent who was legally competent to marry at the time of the marriage, in the same manner as legitimate children.

This provision prevents innocent children from being disadvantaged due to defects in their parents' marriage.

5. Custody of Children in Suits for Nullity (Section 43) - Section 43 empowers the District Court to make **orders regarding minor children** in proceedings for nullity of marriage.

The Court may, at any stage of the proceedings:

- Pass **interim or final orders** concerning the custody, maintenance, and education of minor children; and
- Direct steps to place such children under the **protection of the Court**, if necessary.

The welfare of the child remains the **paramount consideration**.

Conjugal Rights under Parsi Law

Conjugal rights under Parsi law are governed mainly by **Section 36** and **Section 32A** of the **Parsi Marriage and Divorce Act, 1936**, as amended. These provisions recognise the **mutual right and obligation of spouses to live together and maintain marital society**, and also provide consequences when such cohabitation is not resumed despite judicial intervention.

1. Meaning of Conjugal Rights - The term **conjugal rights** refers to the **right of a husband and wife to live together, share the matrimonial home, and enjoy each other's company**, including emotional and physical companionship. Under Parsi law, marriage creates a **legal duty on both spouses to cohabit**, unless there exists a lawful and reasonable cause for living separately.

2. Restitution of Conjugal Rights (Section 36) - Section 36 provides the remedy of **restitution of conjugal rights** when one spouse unjustifiably withdraws from the society of the other.

(a) Grounds for Filing the Suit

A suit for restitution of conjugal rights may be filed when:

- The **husband deserts the wife** or ceases to cohabit without lawful cause, or
- The **wife deserts the husband** or ceases to cohabit without lawful cause.

The deserted spouse may approach the Court seeking an order directing the other spouse to **resume cohabitation**.

(b) Role of the Court

The Court may grant a decree for restitution of conjugal rights if it is satisfied that:

1. The allegations of desertion or withdrawal from cohabitation are true, and
2. There is **no just or legal ground** for the respondent to refuse cohabitation, such as cruelty, adultery, or threat to life or dignity.

Thus, restitution is **not automatic** and depends upon judicial satisfaction of fairness and justice.

3. Effect of a Decree for Restitution of Conjugal Rights - A decree for restitution of conjugal rights is a **direction of the Court** requiring the defaulting spouse to resume marital life. However, the Court **does not physically compel cohabitation**. The decree acts as a **legal opportunity for reconciliation** and restoration of the marriage.

4. Non-Resumption of Cohabitation as a Ground for Divorce (Section 32A) - Section 32A introduces an important consequence when judicial efforts fail.

(a) Grounds for Divorce

Either spouse may file for divorce if:

1. **There is no resumption of cohabitation for one year or more** after a decree of judicial separation; or
2. **There is no restitution of conjugal rights for one year or more** after a decree for restitution of conjugal rights.

This provision recognises that **continuing a dead marriage serves no purpose** and allows dissolution where reconciliation has failed.

(b) Nature of the Provision

This ground is considered a **fault-neutral ground**, as the focus is on the **breakdown of marriage**, rather than blame.

5. Restriction on Grant of Divorce (Section 32A(2)) - The law imposes an important safeguard to prevent misuse.

A decree of divorce **shall not be granted** if the petitioner:

- Has **failed or neglected to comply with a maintenance order** passed under:
 - Section 40 of the Parsi Marriage and Divorce Act, or
 - Section 125 of the Code of Criminal Procedure, 1973.

This ensures that a spouse **cannot avoid financial responsibility** while seeking divorce.

6. Purpose and Significance of Conjugal Rights under Parsi Law - The provisions relating to conjugal rights serve multiple objectives:

- To **preserve the institution of marriage** by encouraging reconciliation,
- To provide a **legal remedy against unjustified desertion**,
- To balance **individual dignity with marital obligations**, and
- To permit divorce where cohabitation is impossible despite judicial intervention.

Devolution of Property of a Christian Male Dying Intestate

The devolution of property of a **Christian male dying intestate** (i.e., without leaving a valid will) in India is governed by the **Indian Succession Act, 1925**, particularly **Sections 31 to 49**. These provisions lay down a **uniform scheme of succession** applicable to Christians, irrespective of region or denomination.

1. Meaning of Intestate Succession - A person is said to die **intestate** when he dies **without making a valid will**. In such cases, the property of the deceased does not devolve according to his wishes, but strictly according to the **statutory rules provided under the Indian Succession Act, 1925**.

2. General Rule of Succession - Section 31 provides that the property of an intestate Christian shall devolve upon his **lineal descendants**, or upon those relatives who are legally entitled under the Act. The law gives **priority to the immediate family**, such as the wife and children, before moving to more remote relatives.

3. Case I: Intestate Christian Male Leaving a Widow and Lineal Descendants (Section 33) - When a Christian male dies intestate leaving behind:

- A **widow**, and
- **Lineal descendants** (children, grandchildren, etc.),

the property devolves as follows:

(a) Share of the Widow - The widow is entitled to **one-third (1/3rd)** of the entire property of the deceased.

(b) Share of Lineal Descendants - The remaining **two-thirds (2/3rd)** of the property devolves upon the **lineal descendants**, who inherit **per stirpes**, meaning:

- Each child takes an equal share, and
- If a child has predeceased the intestate, his or her share passes to his or her children.

This provision ensures **financial security of the widow** while also safeguarding the rights of children.

4. Case II: Intestate Christian Male Leaving a Widow but No Lineal Descendants (Section 33) - If a Christian male dies intestate leaving:

- A **widow**, but
- **No lineal descendants**,

then the distribution depends on the existence of other relatives.

(a) Widow and Kindred

- The widow is entitled to **one-half (1/2)** of the property.
- The remaining **one-half** devolves upon the **kindred** of the deceased (such as parents, siblings, etc.).

5. Case III: Intestate Christian Male Leaving Only a Widow (Section 33) - Where the intestate:

- Leaves a **widow**, and
- Leaves **no lineal descendants and no kindred**,

the widow becomes entitled to the **entire property** of the deceased absolutely.

6. Case IV: Intestate Christian Male Leaving Lineal Descendants but No Widow (Section 34) - If the intestate leaves:

- **Lineal descendants**, but
- **No widow**,

the **entire property** devolves upon the lineal descendants equally, following the rule of **per stirpes** distribution.

7. Case V: Intestate Christian Male Leaving No Widow and No Lineal Descendants (Sections 35–49) - In the absence of both widow and lineal descendants, the property devolves upon **kindred** in the following order of preference:

1. **Father** – inherits the entire property.
2. If the father is not alive, then:
 - **Mother**, brothers, and sisters inherit simultaneously.
3. In the absence of parents and siblings:
 - The property devolves upon **more remote relatives**, such as:
 - Nephews and nieces,
 - Paternal and maternal grandparents,
 - Uncles, aunts, and their descendants.

The Act provides a detailed table to determine the **degree of relationship** and proportion of inheritance.

8. Principle of Equality and Gender Neutrality - Under the Indian Succession Act:

- **Sons and daughters inherit equally**,
- No distinction is made on the basis of gender, and
- Illegitimate children, unless legitimated, generally do not inherit.

This reflects the **secular and egalitarian nature** of Christian succession law in India.

9. Nature of the Widow's Right

The widow takes her share:

- **Absolutely**, and
- Not as a limited estate.

She becomes the **full owner** of the property inherited and may dispose of it freely.

Grounds of Divorce under Christian Law in India

Divorce among Christians in India is governed by the **Indian Divorce Act, 1869**, as substantially amended by the **Indian Divorce (Amendment) Act, 2001**. The Act applies uniformly to all Christians in India and provides **equal grounds of divorce to both husband and wife**, thereby ensuring fairness and gender equality.

Section 10 of the Indian Divorce Act, 1869 enumerates the grounds on which a Christian spouse may seek dissolution of marriage by filing a petition before the District Court or the Family Court having jurisdiction.

1. Adultery - Adultery is one of the most common and traditional grounds of divorce. A Christian spouse may seek divorce if the other spouse has voluntarily engaged in sexual intercourse with any person other than his or her spouse after the solemnization of marriage.

The act must be:

- Voluntary, and
- Proven through circumstantial or direct evidence.

Even a **single act of adultery** is sufficient to constitute a ground for divorce.

2. Conversion to Another Religion - Divorce may be sought if the respondent has ceased to be a Christian by conversion to another religion. Conversion fundamentally alters the religious foundation of a Christian marriage. The law recognises that compelling a Christian spouse to continue in such a marriage may cause mental and social hardship.

3. Unsoundness of Mind - A decree of divorce may be granted if the respondent:

- Is **incurably of unsound mind**, or
- Has been suffering continuously or intermittently from **mental disorder** of such a kind and to such an extent that the petitioner **cannot reasonably be expected to live**

with the respondent.

The condition must be:

- Medically established, and
- Of serious and permanent nature.

4. Leprosy - Divorce can be sought if the respondent has been suffering from **virulent and incurable leprosy**.

The disease must be:

- Of a serious form, and
- Incurable in nature.

This ground exists primarily to protect the physical health and well-being of the petitioner.

5. Venereal Disease - If the respondent has been suffering from a **venereal disease in a communicable form**, divorce may be granted.

The disease must:

- Be communicable, and
- Exist for a significant period after marriage.

This ground safeguards the petitioner against health risks and social stigma.

6. Desertion for a Continuous Period of Two Years - Desertion occurs when one spouse:

- **Abandons the other without reasonable cause**, and
- **Without consent**, and
- **With the intention to permanently end cohabitation**.

To constitute desertion under the Act:

- The desertion must continue for **at least two years immediately preceding the presentation of the petition**.

7. Cruelty - Cruelty is a broad and significant ground for divorce.

Cruelty may be:

- **Physical cruelty**, such as violence or abuse, or
- **Mental cruelty**, such as humiliation, false accusations, or persistent abusive conduct.

The conduct must be of such a nature that it causes **reasonable apprehension** in the mind of the petitioner that it is unsafe or improper to continue marital life.

8. Non-resumption of Cohabitation After Judicial Separation - Under Section 10 read with Section 22, divorce may be sought if:

- A decree of **judicial separation** has been passed, and
- There has been **no resumption of cohabitation for a period of two years or more** thereafter.

This ground recognises the permanent breakdown of marriage despite judicial intervention.

9. Non-compliance with Decree for Restitution of Conjugal Rights - Divorce can also be claimed if:

- A decree for **restitution of conjugal rights** has been passed, and
- There has been **no restitution for a period of two years or more**.

Such continued non-compliance indicates unwillingness to continue marital obligations.

10. Presumption of Death - A spouse may seek divorce if the other spouse:

- Has **not been heard of as being alive for a continuous period of seven years or more** by persons who would naturally have heard of him or her if alive.

This provision enables the surviving spouse to legally end an uncertain marital status.

11. Divorce by Mutual Consent (Section 10A) - The Act also recognises **divorce by mutual consent**, where:

- Both spouses have been living separately for **at least two years**,
- They have not been able to live together, and
- They have mutually agreed to dissolve the marriage.

A joint petition is filed, followed by a **cooling-off period of six months**, after which the court may grant divorce if satisfied.

Concept of Maintenance under the Parsi Marriage and Divorce Act, 1936 and its Comparison with Christian Law

Maintenance is a legal obligation imposed to ensure that a spouse is not left destitute as a consequence of marital breakdown. Under personal laws in India, provisions relating to maintenance are designed to secure financial support, dignity, and subsistence for a dependent spouse. In the context of Parsis, maintenance is governed by Section 40 of the Parsi Marriage and Divorce Act, 1936, whereas for Christians, maintenance is governed primarily by Sections 36 and 37 of the Indian Divorce Act, 1869. Though both statutes aim at financial protection, they differ significantly in scope, duration, conditions, and philosophy.

Maintenance under the Parsi Marriage and Divorce Act, 1936

Statutory Provision: Section 40 of the Parsi Marriage and Divorce Act deals with **permanent alimony and maintenance**. The provision is gender-neutral and progressive in nature, allowing **either the wife or the husband** to claim maintenance.

1. Nature and Timing of Maintenance - Under Section 40(1), the Court may grant maintenance:

- **At the time of passing any decree** (divorce, nullity, judicial separation), or
- **At any time subsequent thereto**, upon application by either spouse.

The maintenance may be awarded as:

- **A lump sum (gross sum)**, or
- **A monthly or periodical payment.**

The duration of such maintenance may extend **up to the lifetime of the applicant**, depending on what the Court considers just.

2. Factors Considered by the Court - The Court exercises wide discretionary power and considers:

- The **income and property of the defendant**,
- The **income and property of the applicant**,
- The **conduct of both parties**, and
- The **overall circumstances of the case**.

This ensures that maintenance is not mechanical but based on **equity and fairness**.

3. Security for Maintenance - The Court may, if necessary, secure the maintenance amount by creating a charge on the movable or immovable property of the defendant, thereby ensuring enforceability of the order.

4. Power to Modify or Rescind Maintenance - Under Section 40(2), the Court may:

- **Vary, modify, or rescind** the maintenance order if there is a **change in circumstances** of either party, such as loss of income or financial improvement.

This reflects the **dynamic nature of maintenance obligations**.

5. Effect of Remarriage and Conduct - Section 40(3) provides that maintenance may be altered or cancelled if:

- The recipient **remarries**, or
- If the wife **does not remain chaste**, or
- If the husband **has sexual intercourse outside wedlock**.

Thus, **post-decree conduct** directly affects the continuance of maintenance.

Judicial Interpretation - In *Bai Tahira v. Ali Hussain* (though under secular law), the Supreme Court emphasised that maintenance must serve the purpose of preventing destitution. Parsi courts have followed a similar equitable approach while exercising discretion under Section 40.

Maintenance under Christian Law (Indian Divorce Act, 1869)

Relevant Provisions

- **Section 36** – Interim maintenance (alimony pendente lite)
- **Section 37** – Permanent alimony

Key Features of Christian Maintenance Law

1. **Primarily Wife-Centric** - Unlike Parsi law, maintenance under the Indian Divorce Act is traditionally **available only to the wife**, not the husband.
2. **Permanent Alimony is Discretionary** - Under Section 37, the Court may grant permanent alimony to the wife upon divorce or judicial separation, considering:
 - Husband's income and property
 - Wife's conduct
3. **Upper Limit on Amount** - Historically, Christian law restricted permanent alimony to **one-fifth of the husband's income**, reflecting a conservative approach.
4. **Chastity as a Condition** - Maintenance may be denied or revoked if the wife is found to be **unchaste**, reflecting a moralistic standard not equally applied to husbands.
5. **No Provision for Security by Charge** - Unlike the Parsi Act, Christian law does not expressly provide for securing maintenance through a charge on property.

Case Law - In *Molly Joseph v. George Sebastian* (1996), the Supreme Court upheld the constitutional validity of Christian maintenance provisions but noted the need for progressive interpretation to align with gender justice.

Aspect	Parsi Law	Christian Law
Eligibility	Wife and husband	Primarily wife
Nature	Lump sum or periodic	Mostly periodic

Duration	Up to lifetime	Discretionary, limited
Security	Charge on property allowed	No express provision
Conduct standards	Applies to both spouses	Mainly wife-centric
Flexibility	Highly flexible	Comparatively rigid

Domicile of a Married Woman

Domicile is a legal concept which determines the personal law applicable to an individual, especially in matters relating to marriage, divorce, succession, and capacity. It denotes the country which a person considers to be his or her permanent home. The domicile of a married woman has historically been treated differently from that of an unmarried person or a man. Under traditional common law, a married woman's domicile was dependent upon that of her husband. However, with the development of constitutional principles of equality and individual autonomy, this concept has undergone significant evolution.

Meaning and Kinds of Domicile - Domicile may broadly be classified into three kinds:

1. **Domicile of origin** – acquired at birth.
2. **Domicile of choice** – acquired by residence coupled with intention to reside permanently.
3. **Domicile of dependence** – assigned by law to certain persons such as minors and, historically, married women.

The domicile of a married woman traditionally fell under the category of **domicile of dependence**.

Traditional Rule: Dependent Domicile of a Married Woman

Under English common law, which influenced Indian private international law, a married woman was deemed incapable of having an independent domicile. Upon marriage, her domicile automatically changed to that of her husband, irrespective of her residence or personal intention.

The rationale behind this rule was the doctrine of **unity of spouses**, which considered husband and wife as one legal entity, represented by the husband. Consequently, even if the wife lived separately or belonged to a different country, her domicile followed that of her husband. This principle was applied in early Indian cases and affected the determination of applicable personal law in matrimonial and succession matters.

Exceptions to the Traditional Rule - Even under classical common law, certain exceptions were recognised:

1. **Judicial Separation or Desertion** – If the husband permanently deserted the wife, she could acquire an independent domicile.

2. **Marriage Void or Voidable** – If the marriage was void ab initio, the wife retained her original domicile.
3. **Husband Exiled or Civilly Dead** – In such cases, the wife could claim an independent domicile.

These exceptions indicated an early judicial discomfort with absolute dependency.

Position under Indian Law

Indian courts have gradually departed from the rigid common law rule. The Constitution of India, particularly **Articles 14 and 15**, guarantees equality and prohibits discrimination on the basis of sex. Applying these principles, Indian courts have recognised that a married woman is an independent legal person capable of acquiring her own domicile.

In **Y. Narasimha Rao v. Y. Venkata Lakshmi (1991)**, the Supreme Court emphasised that domicile must be determined based on **intention and residence**, and not merely on marital status.

Similarly, in **Satya v. Teja Singh (1975)**, the Court refused to recognise a foreign divorce obtained by a husband by fraudulently claiming domicile, thereby implicitly acknowledging the independent legal status of the wife.

Modern Rule: Independent Domicile of a Married Woman - The modern legal position recognises that a married woman:

- Does **not automatically acquire the domicile of her husband**,
- May **retain her domicile of origin**, or
- May acquire a **domicile of choice** independent of her husband by residing in a country with the intention of making it her permanent home.

This position aligns with international developments and feminist legal theory, which reject the notion of marital unity as a basis for legal dependency.

Impact of Matrimonial Legislation - Statutes such as the **Hindu Marriage Act, 1955**, **Special Marriage Act, 1954**, **Indian Divorce Act, 1869**, and **Parsi Marriage and Divorce Act, 1936** do not expressly impose a dependent domicile on married women. Jurisdiction under these Acts is determined by factors such as:

- Place of marriage,

- Last matrimonial home,
- Residence of the wife.

This further supports the concept of an **independent domicile** for married women.

Comparative Perspective - Under English law, the **Domicile and Matrimonial Proceedings Act, 1973** abolished the dependent domicile of married women. Indian courts, though lacking a specific statute, have effectively adopted the same approach through judicial interpretation.

Restitution of Conjugal Rights under Christian Law

Restitution of conjugal rights is a matrimonial remedy aimed at preserving the institution of marriage by compelling the spouses to resume cohabitation when one of them has withdrawn from the society of the other without reasonable cause. Under Christian law in India, this remedy is governed by **Section 36 of the Indian Divorce Act, 1869**. The provision reflects the principle that marriage creates mutual rights and obligations, including the duty of spouses to live together and render consortium to each other.

Meaning of Restitution of Conjugal Rights - The term “restitution of conjugal rights” refers to the restoration of marital cohabitation. When either spouse deserts the other or ceases to live together without lawful justification, the aggrieved spouse may approach the court seeking an order directing the defaulting spouse to resume cohabitation and discharge marital obligations.

Statutory Provision: Section 36, Indian Divorce Act, 1869

- Where a **husband has deserted** his wife or **ceased to cohabit** with her without lawful cause, or
- Where a **wife has deserted** her husband or ceased to cohabit with him without lawful cause,

the aggrieved party may file a **petition before the District Court** seeking restitution of conjugal rights.

Conditions for Grant of Restitution - For a decree of restitution of conjugal rights to be granted, the following essentials must be satisfied:

1. **Valid Christian Marriage** - The marriage between the parties must be valid and subsisting under Christian law.

2. **Withdrawal from Society** - One spouse must have withdrawn from the society of the other, either by desertion or refusal to cohabit.
3. **Absence of Lawful Cause** - The withdrawal must be without reasonable or lawful excuse. Lawful causes include cruelty, adultery, or conduct that makes cohabitation unsafe or intolerable.
4. **Petition by the Aggrieved Spouse** - The remedy can be sought by either the husband or the wife.
5. **Satisfaction of the Court** - The Court must be satisfied about the truth of the allegations and that no legal ground exists to deny relief.

Defences Available to the Respondent - The respondent spouse may resist the petition by proving:

- **Cruelty or adultery** by the petitioner,
- **Reasonable cause for living separately**, or
- **Any matrimonial offence** that would entitle the respondent to judicial separation or divorce.

Thus, restitution is not granted mechanically but is subject to judicial scrutiny.

Effect of Decree for Restitution - A decree for restitution of conjugal rights:

- Does not dissolve the marriage,
- Merely directs the defaulting spouse to resume cohabitation,
- Is aimed at reconciliation rather than punishment.

Failure to comply with such a decree may, however, have further legal consequences.

Non-Compliance as a Ground for Divorce - Under **Section 32A of the Indian Divorce Act, 1869**, if there is **no restitution of conjugal rights for one year or more** after the passing of a decree, either party may seek **divorce** on that ground. Thus, restitution serves as a transitional remedy that may ultimately lead to dissolution if reconciliation fails.

Judicial Interpretation - In **Russell v. Russell (1897)**, it was held that restitution of conjugal rights is founded on the obligation of spouses to live together, unless prevented by lawful cause. Indian courts have consistently held that the remedy should be exercised with caution

and should not be used to force an unwilling spouse into an oppressive or unsafe marital relationship.

Marriage Registration Provisions under the Parsi Marriage and Divorce Act, 1936

Marriage registration is an important legal requirement under the Parsi Marriage and Divorce Act, 1936. The Act makes registration of Parsi marriages compulsory to ensure official recognition, legal proof of marriage, and maintenance of public records. The registration process is closely linked with the religious solemnization of marriage and is intended to prevent disputes relating to marital status, legitimacy, and succession.

Explanation of Statutory Provisions in Simple Terms

Section 6 – Certificate and Registry of Marriage: provides that every marriage solemnized under the Act must be certified immediately after the marriage ceremony.

The important steps are as follows:

- The **officiating Parsi priest** must prepare a **marriage certificate** in the prescribed form given in **Schedule II**.
- The certificate must be **signed by**:
 - The priest,
 - Both the parties to the marriage, and
 - **Two witnesses** who were present at the marriage.
- After signing, the priest must send the certificate to the **Registrar of the place where the marriage was solemnized**.
- Along with the certificate, a **fee of two rupees**, paid by the husband, must be sent.
- The Registrar, on receiving the certificate and fee, **enters the details in the official marriage register** and retains the fee.

Thus, the Act ensures that every valid Parsi marriage is officially recorded immediately after solemnization.

Section 9 – Copy of Certificate to be Sent to Registrar-General

- Every Registrar (except the Registrar appointed by the Chief Justice of the Bombay High Court),

- Must, at intervals fixed by the State Government,
- Send a **true and certified copy** of all marriage certificates entered in his register,
- To the **Registrar-General of Births, Deaths and Marriages** of the State.

This ensures **centralised record-keeping and uniformity of marriage records** across the State.

Nature and Purpose of Marriage Registration under Parsi Law - The registration of marriage under the Parsi Marriage and Divorce Act is **mandatory**, not optional. The object of compulsory registration is:

- To provide **conclusive documentary evidence** of marriage,
- To prevent false claims of marriage or denial of marital status,
- To assist courts in matters relating to **divorce, maintenance, legitimacy of children, and succession**.

Unlike some personal laws where registration is optional, Parsi law adopts a **strict and systematic approach**.

Role of the Officiating Priest - The priest plays a central role in the registration process. He acts as:

- The **certifying authority** of the marriage,
- The link between the religious ceremony and civil registration,
- A responsible person to ensure compliance with statutory formalities.

Failure on the part of the priest to send the certificate may attract legal consequences under the Act.

Legal Effect of Registration

- Does not create the marriage but **confirms and records a valid marriage** already solemnized according to the Parsi ceremony of *Ashirvad*.
- Serves as **primary legal proof** of marriage.

- Becomes crucial in disputes involving **marital rights, divorce proceedings, maintenance claims, and inheritance.**

Evidentiary Value of Marriage Certificate - A marriage certificate entered in the Registrar's register:

- Is an **official public document**,
- Can be relied upon in judicial proceedings,
- Reduces the burden of proving the existence of marriage.

Courts generally treat registered certificates as **strong evidence**, unless proved otherwise.

Administrative Control and Record Maintenance - By requiring Registrars to send copies to the Registrar-General:

- The Act ensures **proper supervision and accountability**,
- Prevents manipulation or loss of records,
- Facilitates long-term preservation of marriage data.

This reflects the legislative intent of **transparency and administrative efficiency**.

Persons by Whom Marriages May Be Solemnized under Christian Law

Under Christian law in India, the solemnization of marriage is governed by the **Indian Christian Marriage Act, 1872**. The Act lays down **mandatory provisions** regarding the manner and authority by which marriages involving one or both Christian parties may be solemnized. Compliance with these provisions is essential because a marriage solemnized otherwise than in accordance with the Act is declared **void**. The Act ensures legal validity, uniformity, and authenticity in Christian marriages.

Section 4 – Marriages to be Solemnized According to the Act: provides that **every marriage where one or both parties are Christians must be solemnized strictly in accordance with the provisions of the Act**. If such marriage is solemnized in any other manner, it shall be **void and legally invalid**. Thus, the Act makes it compulsory for Christian marriages to be performed only through authorities recognised under the statute.

Section 5 – Persons Authorized to Solemnize Christian Marriages: specifies the **persons by whom Christian marriages may be solemnized in India**. These are as follows:

1. By a Person with Episcopal Ordination - A marriage may be solemnized by any person who has received **episcopal ordination**, provided:

- The marriage is conducted according to the **rules, rites, ceremonies, and customs of the Church** of which the minister is a member.

This covers marriages performed by bishops, priests, and other ordained ministers of recognized Christian churches.

2. By a Clergyman of the Church of Scotland - A marriage may also be solemnized by a **Clergyman of the Church of Scotland**, provided:

- The ceremony is conducted according to the **customs and practices of the Church of Scotland**.

This provision recognises the distinct ecclesiastical system of the Church of Scotland.

3. By a Minister of Religion Licensed under the Act - The Act allows the State Government to **license Ministers of Religion** to solemnize marriages. Such ministers:

- Must hold a valid license issued under the Act,
- Can solemnize marriages within the limits specified in the license.

This ensures government supervision and authenticity.

4. By or in the Presence of a Marriage Registrar

A Christian marriage may be solemnized:

- **By a Marriage Registrar**, or
- **In the presence of a Marriage Registrar**, following the civil procedure prescribed under the Act.

This provision enables **civil marriages** without religious ceremonies, thereby ensuring flexibility.

5. By a Licensed Person Authorized to Grant Marriage Certificates

A marriage may also be solemnized by a person:

- Licensed under the Act to **grant certificates of marriage between Indian Christians**,
- Who performs the ceremony after issuing the necessary certificate.

This category primarily applies to **Indian Christians** and ensures administrative convenience.

Section 6 – Grant and Revocation of Licenses

- The **State Government** has the power to grant licenses to Ministers of Religion to solemnize marriages within its territory.
- Such licenses may also be **revoked** by the State Government through notification in the **Official Gazette**.

This ensures regulation and accountability of persons authorized to solemnize marriages.

Section 7 – Appointment of Marriage Registrars

The State Government may appoint:

- One or more **Christian Marriage Registrars** for a district.
- If there is more than one Registrar, one is designated as the **Senior Marriage Registrar**.

If:

- There is only one Registrar, and
- He is absent, ill, or the post is vacant,

then the **District Magistrate** (or **District Magistrate in Karnataka**) acts as the Marriage Registrar temporarily.

This ensures continuity in marriage registration and solemnization.

Section 9 – Licensing of Persons to Grant Certificates of Marriage

Section 9 empowers the State Government to:

- Grant a license to any Christian to **issue certificates of marriage between Indian Christians**.
- Such licenses may be **revoked**, and every grant or revocation must be published in the **Official Gazette**.

This maintains transparency and legal validity.

Legal Importance of Authorized Solemnization

Solemnization by authorized persons ensures:

- **Legal validity** of marriage,
- Protection against fraudulent or secret marriages,
- Certainty in matters of **divorce, maintenance, legitimacy, and succession**.

Any marriage solemnized by an unauthorized person or in violation of the Act is **void**.

Whether a Christian Woman Can Claim Maintenance *Pendente Lite* Despite Having Independent Income

Maintenance *pendente lite* refers to the financial support granted to a spouse during the pendency of matrimonial proceedings in order to enable that spouse to maintain herself and to meet the expenses of litigation. Under Christian personal law in India, the right to claim maintenance during the pendency of a matrimonial suit is governed by **Section 36 of the Indian Divorce Act, 1869**. The provision is intended to ensure that a wife is not placed at a disadvantage merely because matrimonial proceedings are ongoing.

Statutory Provision: Section 36 of the Indian Divorce Act, 1869 - Section 36 provides that:

- In any suit under the Act,
- The **wife may apply to the District Court** for maintenance during the pendency of the suit,
- The Court may order the husband to pay such **reasonable amount** for her support and for the expenses of the proceeding,
- The amount shall not exceed **one-fifth of the husband's net income**.

The provision is discretionary and subject to judicial assessment.

Object of Maintenance *Pendente Lite*

- To ensure that the wife is able to **maintain herself in a manner consistent with her status**, and
- To enable her to **effectively prosecute or defend the matrimonial proceedings**.

It is not meant to punish the husband, but to ensure **procedural fairness and economic parity** between the parties during litigation.

Effect of Independent Income of the Wife - The existence of independent income does **not automatically disentitle** a Christian woman from claiming maintenance pendente lite. Courts have consistently held that:

- The relevant question is **not merely whether the wife has some income**, but
- Whether such income is **sufficient to maintain herself and meet litigation expenses** in a reasonable manner.

If the wife's income is:

- Insufficient to meet her **basic needs**, or
- Inadequate considering the **standard of living of the parties**,

the Court may still grant maintenance pendente lite.

Judicial Approach - In **Jagdish Jugtawat v. Manju Lata (2002)**, though decided under secular law, the Supreme Court emphasized that maintenance provisions must be interpreted to prevent hardship and destitution.

Similarly, in **Savitri v. Govind Singh Rawat (1986)**, the Court recognized that maintenance provisions serve a social purpose and must be applied liberally.

Christian matrimonial courts have followed a similar approach, focusing on:

- The **earning capacity** of the wife,
- Her **actual income and liabilities**, and
- The **financial position of the husband**.

Discretion of the Court - Section 36 confers wide discretion on the Court. While determining maintenance pendente lite, the Court considers:

- The **husband's net income**,
- The **wife's independent earnings**, if any,
- The **status of the parties**, and
- The **costs of litigation**.

If the wife's income is adequate to maintain herself comfortably and meet legal expenses, the Court may:

- Reduce the amount of maintenance, or
- Reject the claim altogether.

Thus, the presence of independent income affects the **quantum**, not the **entitlement**.

Limitations under Christian Law - A distinctive feature of Section 36 is that:

- Maintenance pendente lite is available **only to the wife**, not to the husband.
- The maximum limit of maintenance is capped at **one-fifth of the husband's net income**.

This reflects the traditional structure of Christian matrimonial law, though courts now interpret it in a more equitable manner.

Comparison with Modern Developments - Under secular laws such as **Section 24 of the Hindu Marriage Act, 1955**, either spouse may claim maintenance pendente lite if they lack sufficient independent income. Christian law, though narrower in scope, is applied by courts in a manner consistent with principles of **fairness and justice**.

Temporary and Permanent Maintenance under Parsi Law

Maintenance is an important matrimonial relief intended to ensure financial support to a spouse who is unable to maintain himself or herself during or after matrimonial proceedings. Under Parsi personal law, the provisions relating to maintenance are contained in the **Parsi Marriage and Divorce Act, 1936**. The Act recognises the need for both **temporary**

maintenance (maintenance pendente lite) and permanent maintenance (permanent alimony) and empowers the court to grant such relief in a just and equitable manner.

Temporary Maintenance under Parsi Law

Statutory Basis

Temporary maintenance under Parsi law is governed by **Section 39 of the Parsi Marriage and Divorce Act, 1936**, which deals with **alimony pendente lite**.

Meaning and Purpose - Temporary maintenance refers to maintenance granted **during the pendency of matrimonial proceedings**, such as suits for divorce, judicial separation, nullity of marriage, or restitution of conjugal rights. The purpose is:

- To enable the dependent spouse to **maintain himself or herself**, and
- To provide financial assistance for **litigation expenses**, so that the spouse can effectively prosecute or defend the proceedings.

Who Can Claim Temporary Maintenance Under Section 39:

- **Either the wife or the husband** may claim maintenance pendente lite.
- The provision is **gender-neutral**, which reflects the progressive nature of Parsi matrimonial law.

Factors Considered by the Court - While granting temporary maintenance, the court considers:

- The **income and property** of both parties,
- The **financial needs** of the applicant,
- The **status and standard of living** of the parties, and
- The **costs of litigation**.

The court exercises discretion to ensure fairness and prevent misuse.

Duration - Temporary maintenance is payable **only during the pendency of the suit** and ceases once the matrimonial proceedings are finally disposed of.

Permanent Maintenance under Parsi Law

Statutory Basis - Permanent maintenance is governed by **Section 40 of the Parsi Marriage and Divorce Act, 1936**, which deals with **permanent alimony and maintenance**.

Meaning and Nature

Permanent maintenance refers to financial support granted:

- **At the time of passing the decree**, or
- **At any time after the decree**,

in matrimonial proceedings under the Act. The maintenance may be awarded:

- As a **lump sum**, or
- As **monthly or periodical payments**.

The duration of such maintenance may extend **up to the lifetime of the applicant**, subject to the discretion of the court.

Eligibility - Similar to temporary maintenance, **either spouse**—wife or husband—may apply for permanent maintenance. This highlights the **equal treatment of spouses** under Parsi law.

Factors Considered by the Court:

- The **income and property** of the defendant,
- The **income and property** of the applicant,
- The **conduct of the parties**, and
- Other relevant circumstances of the case.

This ensures that maintenance is neither excessive nor inadequate.

Security for Maintenance

The court may:

- Secure the payment of maintenance by creating a **charge on the movable or immovable property** of the defendant.

This provision ensures effective enforcement of maintenance orders.

Modification or Cancellation of Maintenance

Under Section 40(2):

- The court may **vary, modify, or rescind** the maintenance order if there is a **change in circumstances** of either party.

Under Section 40(3):

- Maintenance may be cancelled or modified if:
 - The recipient **remarries**, or
 - If the wife **does not remain chaste**, or
 - If the husband **has sexual intercourse outside wedlock**.

Thus, post-decree conduct plays an important role.

Judicial Approach - Courts have consistently held that maintenance under the Parsi Marriage and Divorce Act must be awarded in a manner that ensures **social justice and economic fairness**, without encouraging dependency or unjust enrichment.

Distinctive Features of Parsi Maintenance Law

1. **Gender-neutral provisions** for both temporary and permanent maintenance.
2. **Wide discretionary powers** vested in courts.
3. Provision for **lifetime maintenance**.
4. **Power to secure maintenance** by charge on property.
5. Flexibility to **modify or rescind** orders based on changing circumstances.

(i) Distribution of Property of a Parsi Male Dying Intestate

The **Parsi intestate succession** is governed by **Sections 50 to 56 of the Indian Succession Act, 1925**, which lay down special rules for Parsis. Under Parsi law, succession among lineal descendants follows the **principle of representation (per stirpes)** and not per capita distribution when children of the intestate have predeceased him leaving their own descendants.

Facts of the Case

- Feroze is a **Parsi male**.
- He had **three children**:
 - Razi
 - Farzana
 - Faizad
- All three children **predeceased** Feroze.
- They left behind the following descendants:
 - Razi → **2 children**
 - Farzana → **3 children**
 - Faizad → **4 children**
- Feroze dies **intestate**, leaving **9 grandchildren** in total.

Rule Applicable

According to **Parsi intestate succession law**:

- When a Parsi dies intestate and his children have predeceased him leaving lineal descendants,
- The **property is first divided into as many equal shares as there were children** of the intestate,
- Each branch takes **one share**, and
- The descendants within each branch divide that share **equally among themselves**.

This is known as **per stirpes succession**.

Application of Law to the Present Case

Feroze had **three children**, therefore:

- The property will be divided into **three equal shares**:
 - One share for the branch of **Razi**
 - One share for the branch of **Farzana**
 - One share for the branch of **Faizad**

Each branch will receive $\frac{1}{3}$ (**one-third**) of the total property.

Distribution Within Each Branch

1. Razi's Branch

- Razi left **2 children**
- His $\frac{1}{3}$ **share** will be divided equally among them
- Each child gets **$\frac{1}{6}$ of the total property**

2. Farzana's Branch

- Farzana left **3 children**
- Her $\frac{1}{3}$ **share** will be divided equally among them
- Each child gets **$\frac{1}{9}$ of the total property**

3. Faizad's Branch

- Faizad left **4 children**
- His $\frac{1}{3}$ **share** will be divided equally among them
- Each child gets **$\frac{1}{12}$ of the total property**

(ii) Concept of Lineal and Collateral Consanguinity

Meaning of Consanguinity - Consanguinity refers to a relationship by **blood**, that is, persons who are descended from a **common ancestor**. Under succession law, consanguinity is classified into **lineal consanguinity** and **collateral consanguinity**.

Lineal Consanguinity - Lineal consanguinity exists between persons who are **directly descended from one another**, either upwards or downwards.

Characteristics

- It follows a **straight line of descent**.
- It includes relationships between ancestors and descendants.
- It may be **ascending** or **descending**.

Examples

- Father and son
- Grandfather and granddaughter
- Mother and daughter
- Great-grandparent and great-grandchild

Legal Importance - In succession law, **lineal descendants are preferred heirs**, especially in intestate succession. Under Parsi law, property primarily devolves upon **lineal descendants**, including children and grandchildren.

Collateral Consanguinity - Collateral consanguinity exists between persons who:

- Are descended from a **common ancestor**, but
- Do not descend directly from one another.

Characteristics

- It does **not follow a straight line**.
- The relationship branches out sideways.
- Both persons trace their descent from a common ancestor.

Examples

- Brother and sister

- Uncle and nephew
- Cousins
- Aunt and niece

Legal Importance - Collateral relatives generally inherit **only in the absence of lineal descendants**. Under Parsi law, collaterals are considered only when closer heirs such as children, grandchildren, or parents are absent.

Basis	Lineal Consanguinity	Collateral Consanguinity
Nature	Direct blood relationship	Indirect blood relationship
Line of descent	Straight line	Side or branching line
Examples	Parent–child, grandparent–grandchild	Brother–sister, uncle–nephew
Preference succession	in Highly preferred	Secondary or remote

(i) Decision on Merits: Decree of Restitution of Conjugal Rights

Relevant Legal Provision - The remedy of **Restitution of Conjugal Rights** under Christian law is governed by **Section 32 of the Indian Divorce Act, 1869**, which provides that where either spouse has **withdrawn from the society of the other without reasonable excuse**, the aggrieved party may seek a decree directing the defaulting spouse to resume cohabitation.

The essential ingredients required to succeed in a petition for restitution of conjugal rights are:

1. The respondent has withdrawn from the society of the petitioner.
2. Such withdrawal is **without reasonable or lawful excuse**.
3. The petitioner is willing to resume cohabitation and perform marital obligations.

Application of Law to the Given Facts

In the present case:

- Mathew, a Christian male, is legally married to Zinea.
- Zinea left the matrimonial home on the pretext of attending her brother's marriage and **never returned**.
- Mathew made efforts to reconcile and requested her to return to the matrimonial home.
- Zinea **categorically refused** to resume cohabitation unless Mathew separates from his parents and shifts from the joint family setup.
- The matrimonial home is described as small, but there is **no allegation of cruelty, violence, dowry harassment, or danger to her safety**.

Whether Zinea Has a Reasonable Excuse

Under Christian matrimonial law, **mere dissatisfaction with the size of the house**, dislike for joint family living, frequent quarrels with in-laws, or personal discomfort **do not amount to "reasonable excuse"** unless accompanied by serious cruelty or conduct making cohabitation unsafe or intolerable.

Courts have consistently held that:

- A wife cannot insist that the husband must live separately from his parents **as a condition for cohabitation**, unless there is proven cruelty or grave misconduct by the in-laws.
- Refusal to live in the matrimonial home solely due to inconvenience or incompatibility does not justify desertion.

In the present case:

- Zinea's refusal is conditional and unreasonable.
- Her conduct amounts to **withdrawal from matrimonial society without lawful excuse**.
- Mathew has shown bona fide intention to resume marital life.

Decision on Merits - In light of the above circumstances:

- Mathew has successfully established all the essential requirements under Section 32 of the Indian Divorce Act.
- Zinea has failed to prove any legally valid ground justifying her withdrawal.

Therefore, the Court is likely to grant a decree of Restitution of Conjugal Rights in favour of Mathew, directing Zinea to resume cohabitation with her husband.

(i) Decision on Merits: Whether Mac Is Entitled to a Decree of Restitution of Conjugal Rights

Relevant Legal Position - Restitution of Conjugal Rights under Christian law is governed by Section 32 of the Indian Divorce Act, 1869. The provision allows either spouse to seek a decree directing the other spouse to resume cohabitation only when the withdrawal from marital society is without reasonable excuse.

To succeed in such a petition, the petitioner must prove:

1. That the respondent has withdrawn from the society of the petitioner.
2. That such withdrawal is without lawful or reasonable excuse.
3. That the petitioner is ready and willing to discharge marital obligations.

Application of Law to the Given Facts

- Mac and Zoe are lawfully married Christians.
- Zoe is employed as an Assistant Professor in a Central University at Bangalore.
- Mac works in Pune and insists that Zoe must resign from her job and permanently shift to Pune.
- Zoe has not refused marital cohabitation altogether. She has expressed willingness to:

- Join Mac during holidays, and
- Allow Mac to visit her at Bangalore.
- Zoe's refusal is limited only to giving up her professionally secure and respectable employment.
- Mac claims that Zoe, being his wife, is bound to obey his orders.

Whether Zoe's Conduct Amounts to "Withdrawal Without Reasonable Excuse" -

Modern matrimonial law does **not recognize the husband as the unquestioned master of the wife**. Courts have consistently held that:

- A wife is **not legally bound to sacrifice her career**, dignity, or financial independence merely because of marriage.
- Employment in a respectable profession does **not amount to desertion or withdrawal from conjugal society**.
- Marriage does not extinguish a woman's right to equality, autonomy, and professional growth under **Articles 14 and 21 of the Constitution of India**.

Zoe has not denied the marital relationship. She has only asserted her right to continue her profession while maintaining reasonable marital contact. Her conduct, therefore, **constitutes a reasonable and lawful excuse**.

Judicial Reasoning - Courts have emphasized that:

- Restitution of conjugal rights cannot be used as a tool of **coercion or domination**.
- A decree cannot be granted where it would compel a spouse to act against her personal liberty and professional independence.

Mac's demand that Zoe must resign and obey him merely because she is his wife is **legally unsustainable and patriarchal**, and contrary to contemporary matrimonial jurisprudence.

Decision on Merits

- Zoe has **not withdrawn from matrimonial society without reasonable cause**.
- Her refusal to leave her job is justified and lawful.

- Mac has failed to establish the essential ingredients required under Section 32 of the Indian Divorce Act.

Therefore, the Court is likely to dismiss Mac’s petition for Restitution of Conjugal Rights.

(i) Distribution of the Estate of George Dying Intestate

(According to the Indian Succession Act, 1925 — Christian intestate succession)

Facts Given

- George (intestate) has:
 - Two sons: John and Matthew
 - One daughter: Mary
- John predeceased George, leaving four children.
- Out of John’s four children, one child died, leaving two children.
- Mary also predeceased George, leaving one daughter.
- Matthew is alive at the time of George’s death.

Relevant Legal Provisions - Under Sections 32 to 35 of the Indian Succession Act, 1925, where a Christian dies intestate:

- The property devolves first upon **lineal descendants**.
- **Children take per capita** (equally).
- Where a child has predeceased the intestate, **his or her children take per stirpes**, that is, they collectively take the share their parent would have taken if alive.
- Further descendants represent their deceased ancestor.

Step-by-Step Distribution

Step 1: Identify the Primary Heirs (First Generation)

If all children were alive, George’s estate would have been divided into **three equal shares**:

1. John
2. Matthew
3. Mary

Each child would have received $\frac{1}{3}$ **share**.

Step 2: Distribution of John's Share ($\frac{1}{3}$)

- John predeceased George.
- His $\frac{1}{3}$ **share** devolves upon his children.
- John had **four children**, so initially each child would get $\frac{1}{4}$ of **John's $\frac{1}{3}$ share**.

However:

- One of John's children has died, leaving **two children**.
- That deceased child's share is inherited by **his two children equally**.

Distribution of John's $\frac{1}{3}$ Share:

- Three surviving children of John → each gets **$\frac{1}{12}$**
- Two grandchildren (children of John's deceased child) → each gets **$\frac{1}{24}$**

Step 3: Distribution of Mary's Share ($\frac{1}{3}$)

- Mary predeceased George.
- She left **one daughter**.
- That daughter takes **Mary's entire $\frac{1}{3}$ share** by representation.

Step 4: Distribution of Matthew's Share ($\frac{1}{3}$)

- Matthew is alive.
- He takes $\frac{1}{3}$ **share absolutely**.

Heir	Share
Matthew (son)	$\frac{1}{3}$
Mary's daughter	$\frac{1}{3}$
John's three surviving children	1/12 each
Two children of John's deceased child	1/24 each

(i) Validity of Marriage between a Parsi Boy and a Hindu Girl According to Parsi Rituals

Facts of the Case

- Farzi is a **Parsi boy**
- Rashmi is a **Hindu girl**
- They intend to marry **according to Parsi rituals (Ashirvad ceremony)**

The issue to be examined is whether such a marriage would be **valid under the Parsi Marriage and Divorce Act, 1936**.

Relevant Legal Provision - Section 3 of the Parsi Marriage and Divorce Act, 1936 lays down the essential conditions for a valid Parsi marriage.

Conditions for a Valid Parsi Marriage - A marriage under the Parsi Marriage and Divorce Act is valid only if **all the following conditions are satisfied**:

1. Parties Must Be Parsis - The Act applies **only to marriages between Parsis**.

For a marriage to be valid under this Act, **both parties must profess the Parsi religion**.

- In the present case:
 - Farzi is a Parsi

- Rashmi is a Hindu
- Therefore, the requirement that **both parties be Parsis is not fulfilled**

2. Marriage Must Be Solemnized by “Ashirvad” Ceremony - The marriage must be:

- Solemnized according to the **Parsi form of ceremony called “Ashirvad”**
- Conducted by a **Parsi priest**
- In the presence of **two Parsi witnesses**

Even if this ceremony is performed, **it does not cure the defect of religion** if one party is not a Parsi.

3. Parties Must Not Be Within Prohibited Degrees - The parties must not be related to each other within the degrees of:

- **Consanguinity**, or
- **Affinity**, as specified in **Schedule I** of the Act

This condition is assumed to be satisfied in the present case.

4. Age Requirement

- Male must have completed **21 years**
- Female must have completed **18 years**

Again, even if this condition is fulfilled, it cannot validate the marriage if the basic requirement of religion is missing.

Conclusion on Validity - Since **Rashmi is a Hindu and not a Parsi**, the marriage **cannot be valid under the Parsi Marriage and Divorce Act, 1936**, even if:

- Parsi rituals are performed, and
- All other conditions are fulfilled.

Therefore, **a marriage between a Parsi and a non-Parsi performed according to Parsi rituals is invalid under the Act.**

Such a marriage, if intended, must be solemnized under:

- The **Special Marriage Act, 1954**, or
- After lawful conversion of the non-Parsi partner into the Parsi faith (subject to community rules).

(ii) When Is Remarriage Unlawful under the Parsi Marriage and Divorce Act, 1936?

Relevant Provision - Section 4 of the Parsi Marriage and Divorce Act, 1936 deals with **unlawful remarriage**, while Section 5 provides punishment for bigamy.

General Rule - A Parsi **cannot contract a second marriage** during the lifetime of his or her spouse **unless the first marriage has been lawfully terminated**.

Circumstances When Remarriage Is Unlawful

1. Remarriage During the Lifetime of Spouse - If a Parsi marries again:

- While his or her **first spouse is alive**, and
- Without lawful termination of the earlier marriage,

Such remarriage is **unlawful and void**.

2. Absence of Lawful Divorce - Remarriage is unlawful if:

- There is **no decree of divorce** granted by a competent court under:
 - The Parsi Marriage and Divorce Act, 1936, or
 - The earlier Parsi Marriage and Divorce Act, 1865

Mere separation or desertion does not permit remarriage.

3. Marriage Not Declared Null and Void - If the earlier marriage has:

- Not been declared **null and void** by a court, or
- Not been legally dissolved,

Any subsequent marriage is unlawful.

4. Applicability Irrespective of Religion or Domicile - The prohibition applies:

- Even if the Parsi has **changed religion or domicile**
- Even if the second spouse is **non-Parsi**

Thus, a Parsi cannot escape the law by conversion or marrying under another personal law.

Legal Consequences of Unlawful Remarriage

(a) Void Marriage - Any marriage contracted in violation of Section 4 is:

- **Void ab initio**, i.e., invalid from the beginning

(b) Criminal Liability - Under **Section 5**, such a person is liable to punishment under:

- **Sections 494 and 495 of the Indian Penal Code**, which deal with **bigamy**

(i) Whether Rustom Will Succeed in His Divorce Petition on the Ground of Cruelty

Relevant Legal Provision - Under Section 32(d) of the Parsi Marriage and Divorce Act, 1936, a Parsi spouse may seek divorce on the ground that the other spouse has treated him or her with cruelty.

Cruelty under Parsi law includes:

- Physical cruelty, and
- Mental cruelty, which makes it unreasonable for the aggrieved spouse to live with the other.

The test applied by courts is whether the conduct complained of is grave, serious, and persistent, and whether it causes reasonable apprehension of danger, injury, or mental agony.

Application of Law to the Facts

In the present case, the conduct of Rustana includes:

1. Continuous Misbehaviour and Abuse

- Persistent misbehaviour with husband and in-laws from the very beginning of marriage.

- Such conduct disturbs matrimonial harmony and constitutes mental cruelty.

2. **Threats of Suicide and False Implication**

- Repeated threats to jump from the terrace and falsely implicate the family in criminal cases.
- Threats of self-immolation by pouring kerosene.
- Courts have consistently held that **threats of suicide amount to grave mental cruelty**, as they create constant fear and psychological trauma.

3. **Obstructive and Abnormal Conduct**

- Locking herself in the house to prevent the husband from going to work.
- This conduct interferes with normal life and professional obligations.

4. **Desertion During Pregnancy**

- Leaving the matrimonial home on 26 January 2012.
- Though pregnancy itself is not a ground for cruelty, leaving without reasonable cause adds to mental harassment.

5. **False Complaints and Defamation**

- Writing false complaints to the husband's employer and colleagues.
- Filing a **false dowry complaint** in 2013.
- Filing false criminal cases has been recognized by courts as **serious mental cruelty**, damaging reputation, career, and mental peace.

Judicial View (Principle)

Courts have repeatedly held that:

- **False criminal complaints,**
- **Threats of suicide,** and
- **Conduct creating constant fear of imprisonment**

amount to **grave mental cruelty**, justifying divorce.

Conclusion on Issue (i) - Yes, **Rustom will succeed** in his divorce petition.

The conduct of Rustana is:

- Continuous,
- Serious,
- Mentally torturous, and
- Such that no reasonable spouse can be expected to live with her.

Hence, the ground of **cruelty under Section 32(d)** is clearly established, and the court is likely to grant a **decree of divorce** in favour of Rustom.

(ii) Decision on Rustana's Application for Maintenance

Relevant Legal Provision - Maintenance under Parsi law is governed by **Section 40 of the Parsi Marriage and Divorce Act, 1936**, which deals with **permanent alimony and maintenance**.

Under **Section 40(3)**:

- The court may **vary, modify, or rescind maintenance** if:
 - The wife has **not remained chaste**, or
 - The conduct of the party disentitles him or her to maintenance.

Further, maintenance is **not an absolute right**, and the court must consider:

- Conduct of the parties,
- Income and property of both spouses,
- Circumstances of the case.

Application to the Present Case

1. Conduct of Rustana

- She subjected the husband to extreme mental cruelty.

- She filed false criminal complaints and attempted to misuse legal machinery.
- Her conduct directly led to the breakdown of marriage.

2. Effect of Cruelty on Maintenance Claim

- A spouse who is **guilty of grave matrimonial misconduct**, such as cruelty, may be **denied maintenance**.
- Courts have held that maintenance cannot be used as a reward for wrongful conduct.

3. Affluent Background

- Rustana comes from a **financially affluent family**.
- If she is capable of maintaining herself, the court may reduce or deny maintenance.

4. Discretion of the Court

- Even if divorce is granted, the court has discretion to:
 - Refuse maintenance, or
 - Grant only a nominal amount, depending on facts.

Likely Judicial Decision

Given:

- Proven cruelty by Rustana,
- False and malicious complaints,
- Mental torture of the husband,
- Her financial background,

The court is likely to:

- **Reject her application for maintenance, or**

- Grant **very limited or nominal maintenance**, if at all, only in exceptional circumstances.

