

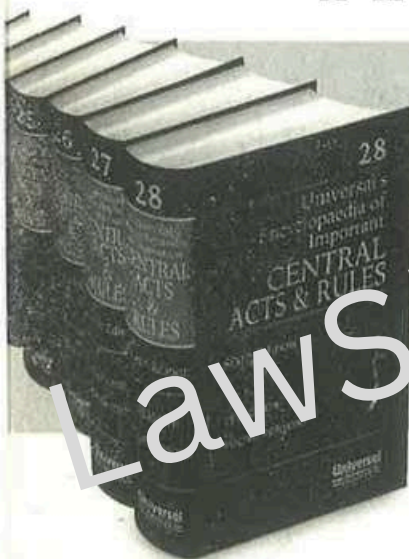
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- The Hindu Marriage Act, 1955 (25 of 1955)
- The Hindu Succession Act, 1956 (30 of 1956)
- The Hindu Minority & Guardianship Act, 1956 (32 of 1956)
- The Hindu Adoptions & Maintenance Act, 1956 (78 of 1956)
- The Hindu Disposition of Property Act, 1916 (15 of 1916)

② Saraj + sudoshon  
Criminal offences are not violative of sec 14 and 21 of constitution

③ A groom of 25 years marries a bride of 15 years of age under hindu law, is valid but punishable

with State Anandenis

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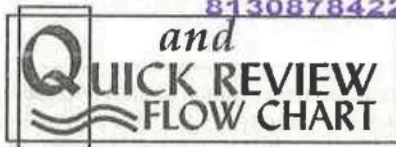
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Hindu law is a personal law

came into force  
13 May, 1955

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Came into force

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13 May, 1955

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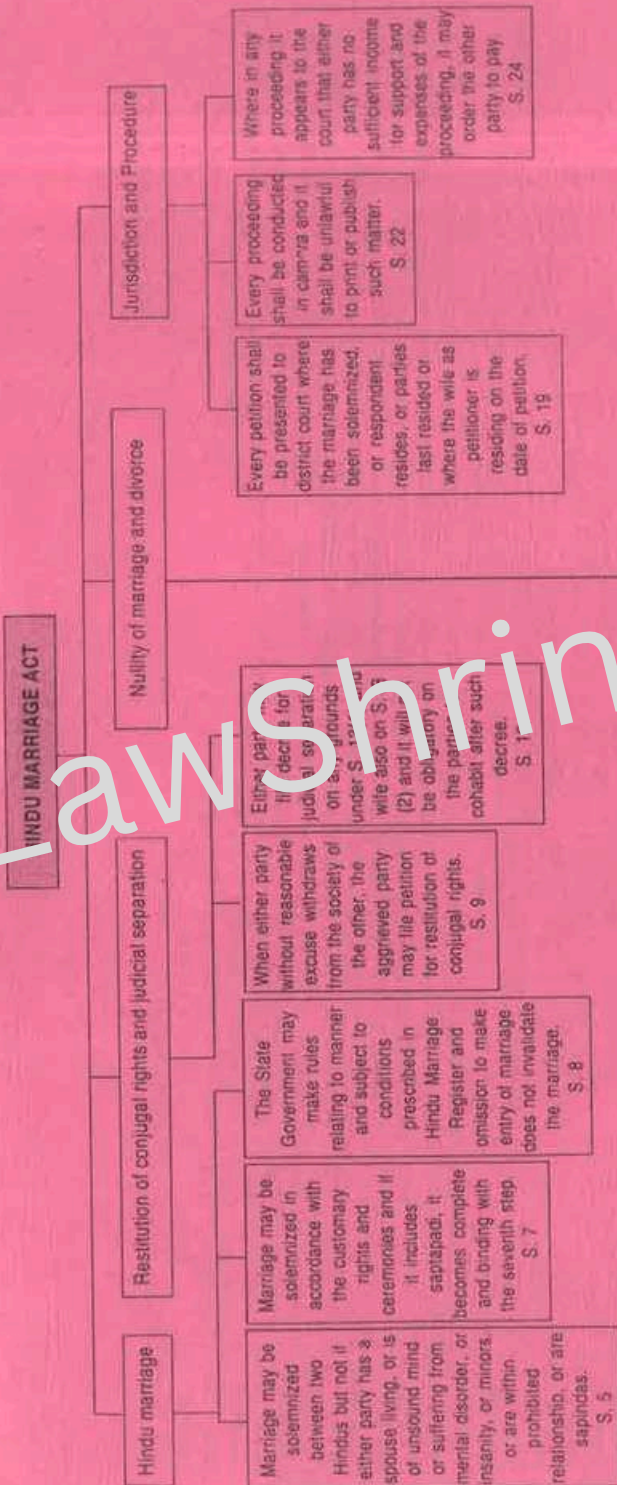
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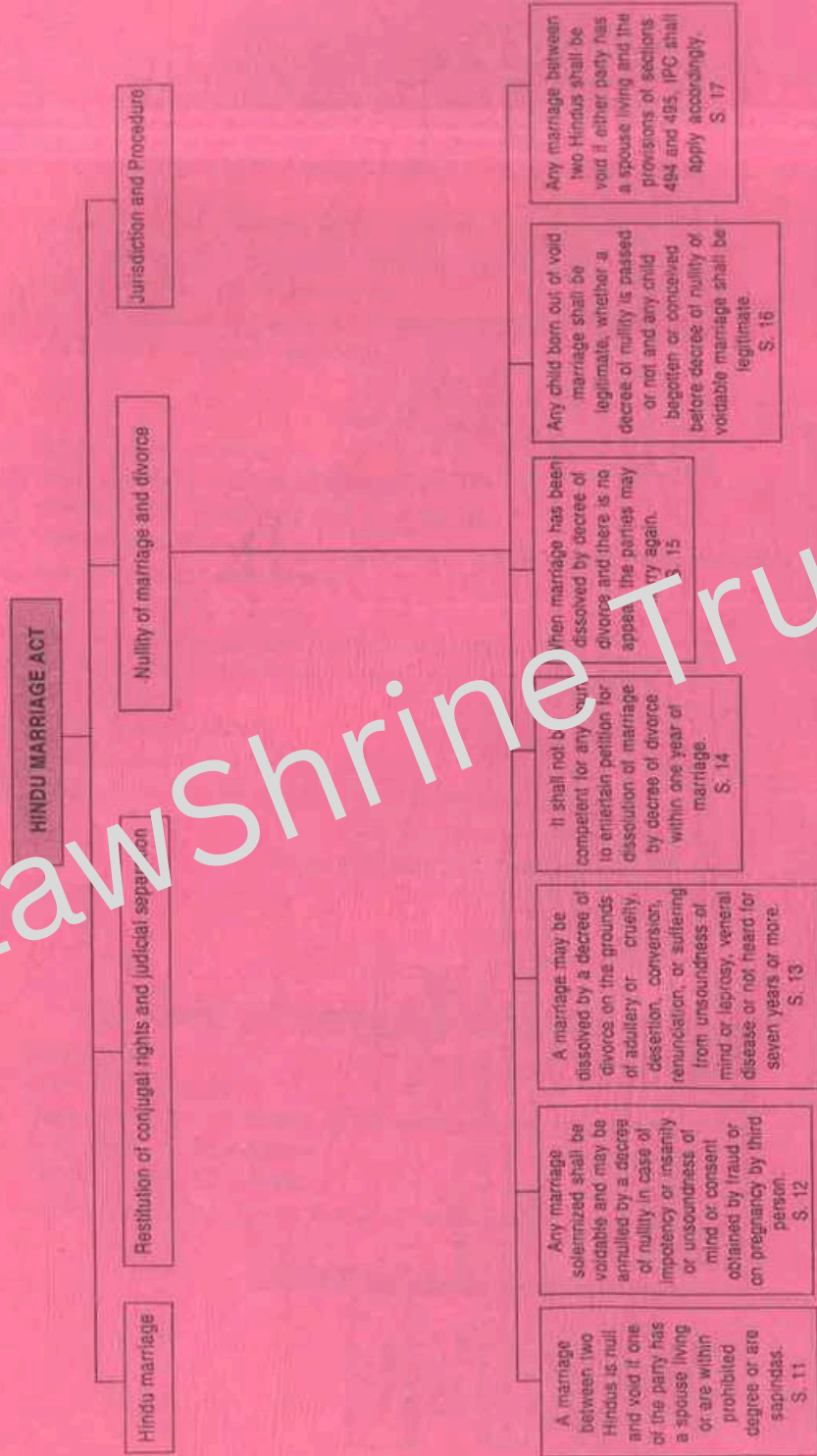
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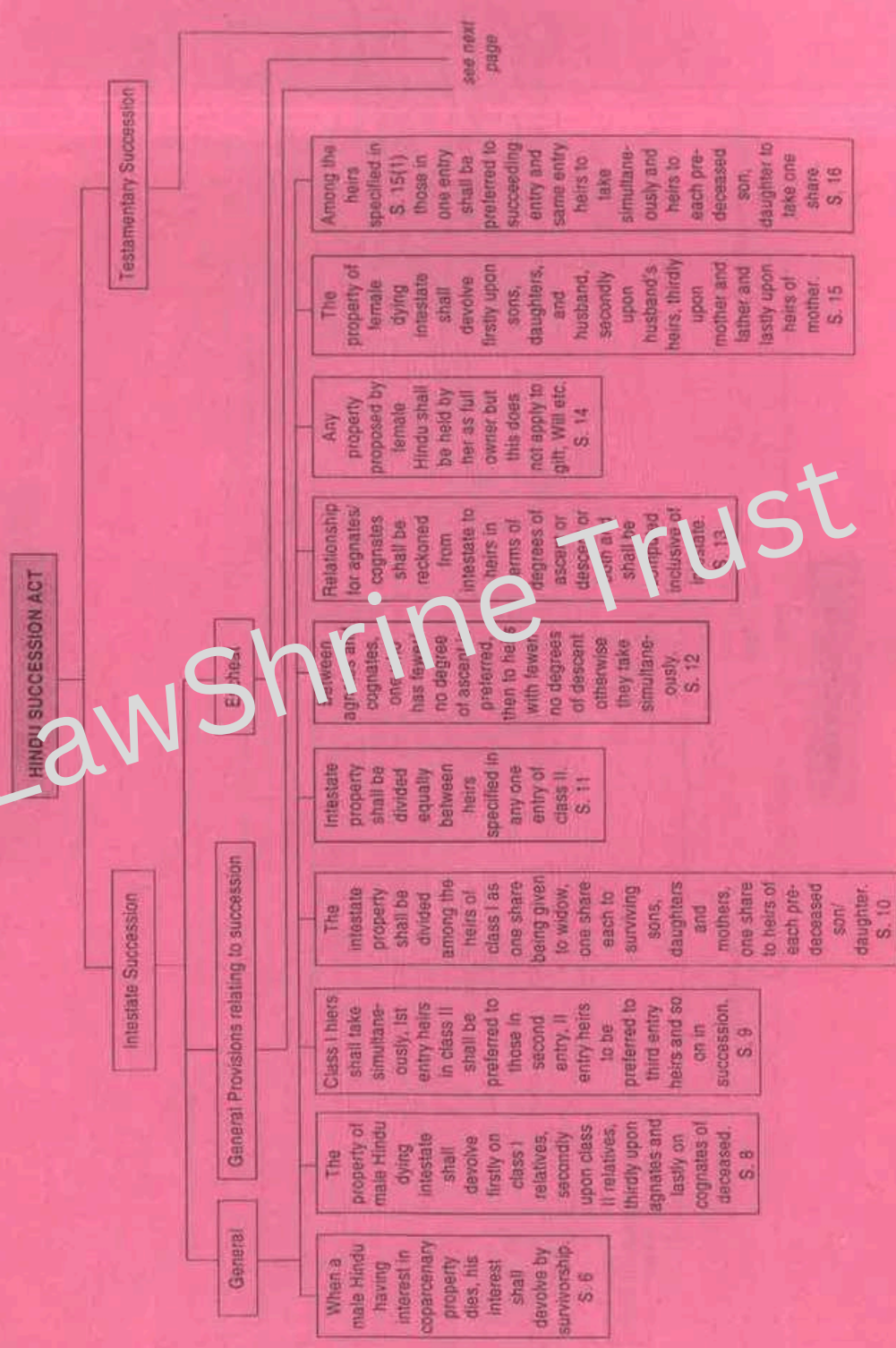


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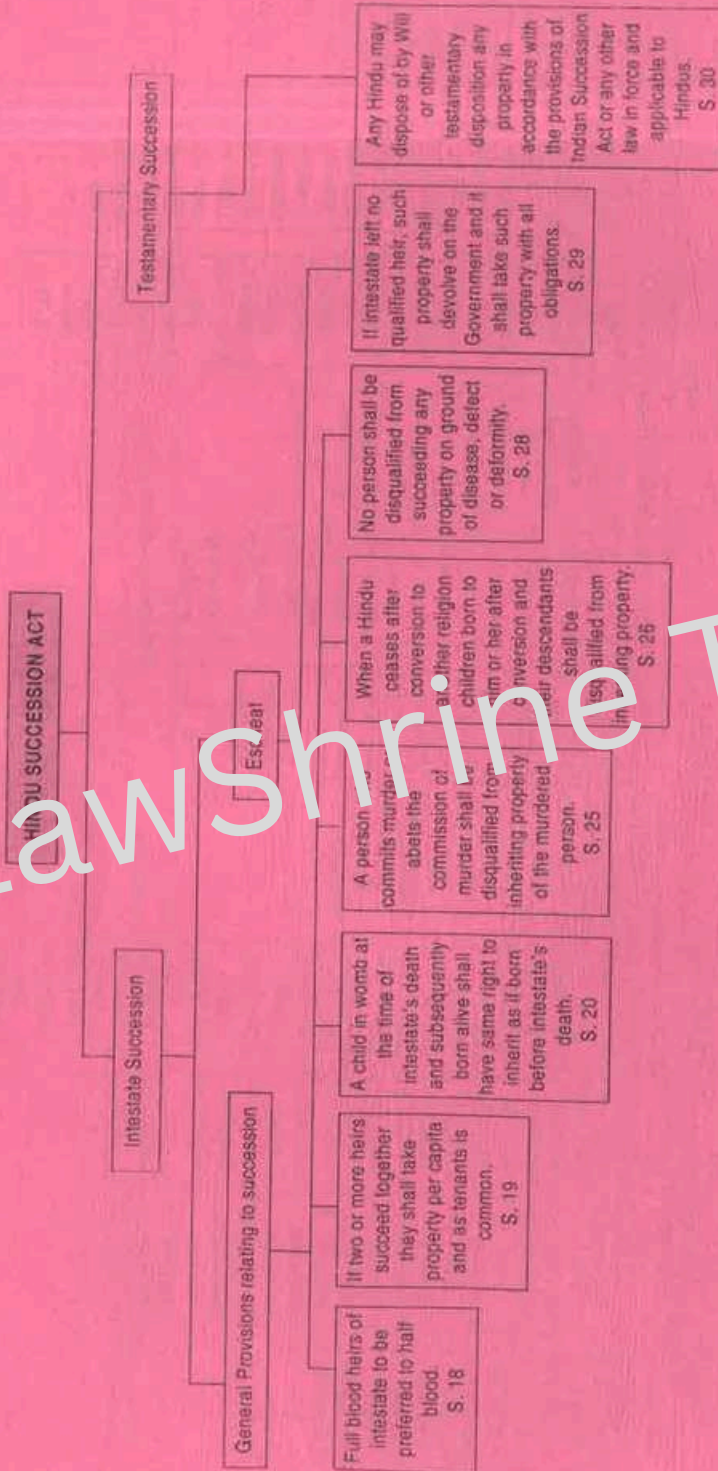
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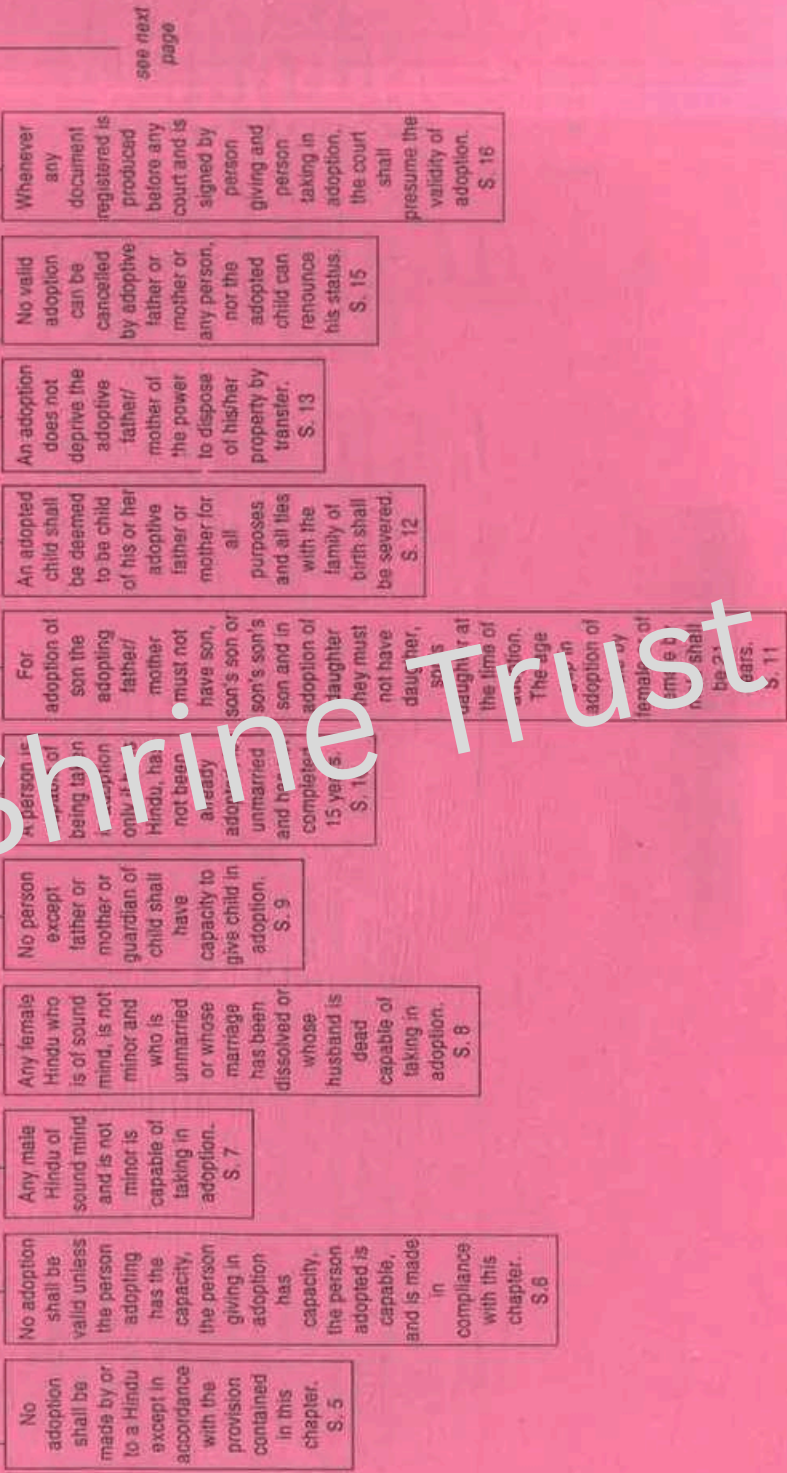


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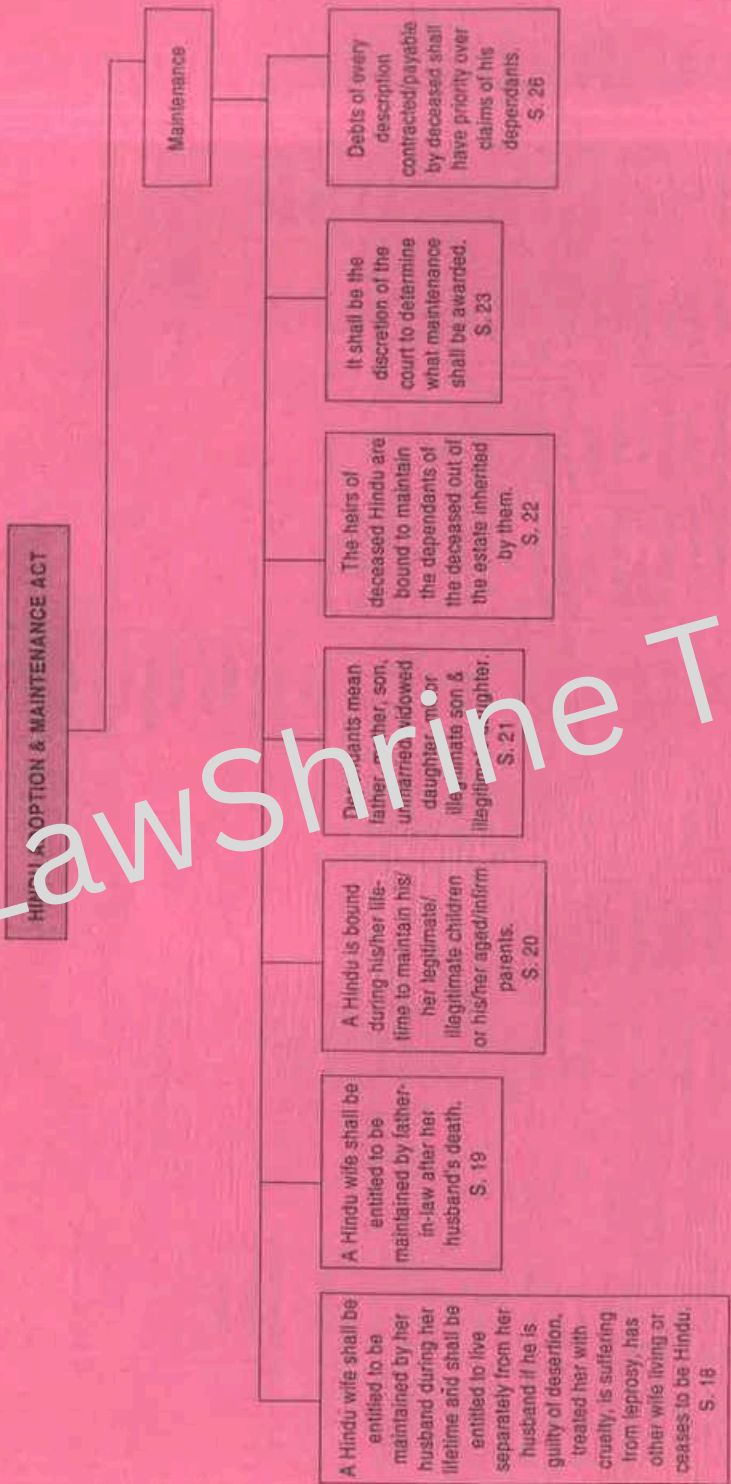
HINDU ADOPTION & MAINTENANCE ACT

Maintenance

Adoption



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HINDU MORTGAGE & GUARDIANSHIP ACT

General

The natural guardian of minor's person & property is  
(i) in case of boy or unmarried girl - father and then mother  
(ii) in case of illegitimate boy/unmarried girl - mother and then father  
(iii) in case of married girl - her husband.  
S. 6

Natural guardianship of adopted minor son passes on adoption to adoptive father and after that to adoptive mother.  
S. 7

Natural Guardian shall have power to do all acts which are necessary, reasonable and proper for minor's benefit.  
S. 8

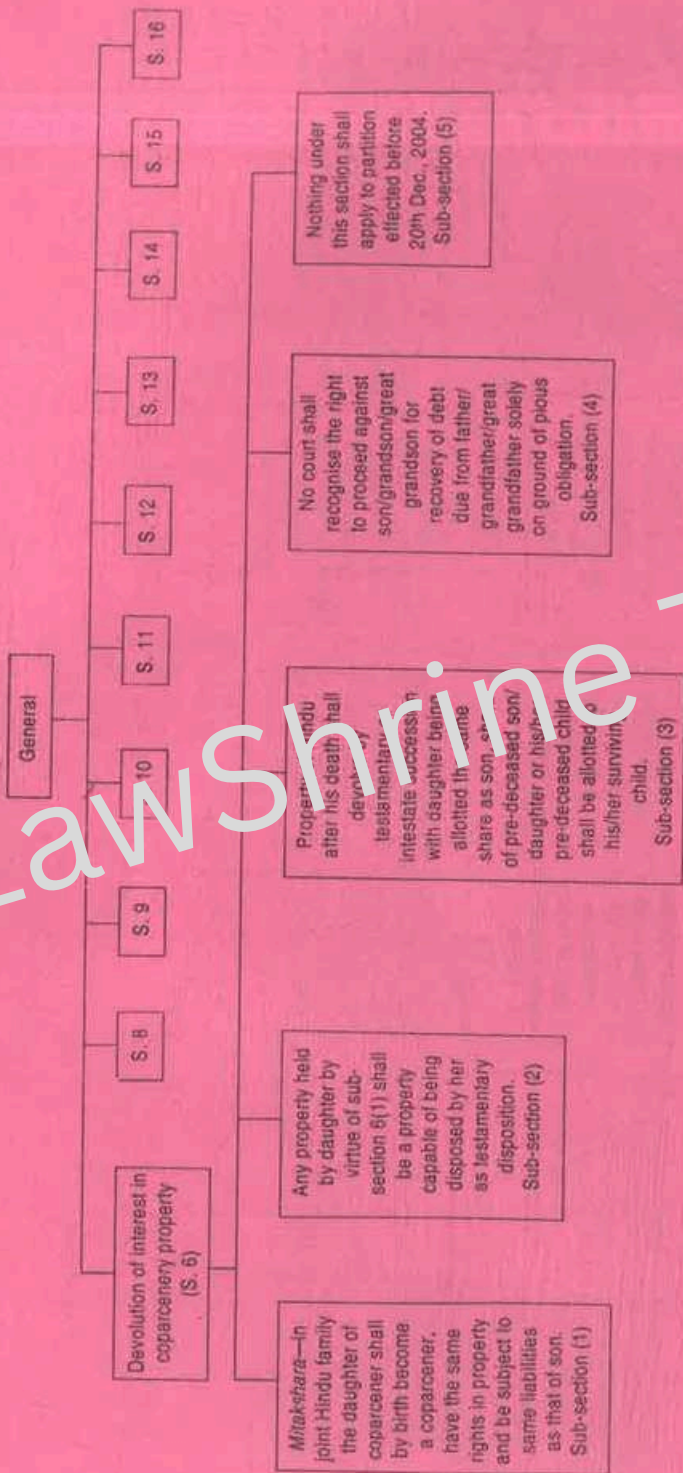
A minor shall be incompetent to act as guardian of the property of a minor.  
S. 10

De facto guardian shall not be entitled to dispose of or deal with the minor's property.  
S. 11

No person shall be appointed as guardian for the undivided interest of the minor in joint family property.  
S. 12

In appointment of guardian of Hindu minor by Court the welfare of minor shall have paramount consideration.  
S. 13

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## THE HINDU MARRIAGE ACT, 1955

### INTRODUCTION

Marriage, according to Hindu Law, is a holy *sanskar* (sacrament) and not a contract unlike Muslim Law. The maxim "*conjunctio martit et peminiae est de nature*" means that to keep husband and wife together is the law of nature and the maxim "*viret unor consentur in lege una pensona*" means that husband and wife are considered one in law. *Kanyadan* (formal donation of the bride by her father) and *saptpadi* (circumambulation of holy fire by the bride and the groom) have basic importance in Hindu marriages.

Eight forms of marriage were described, four of which were *dharmya* (regular) forms and the rest were *adharmya* (irregular) forms. The choice of life-partner was limited only to one's own *dharma* (religion) and *jati* (caste) only. Polygamy was permitted in Hindu society but not polyandry. Widow remarriage was also not permitted.

Legislation of laws relating to Hindu marriage began from the year 1829 when *sati* was abolished by law and declared an offence at the instance of Raja Ram Mohan Roy.

In 1856 Hindu Widows' Remarriage Act legalised the marriage of Hindu widows. In 1860 Indian Penal Code prohibited polygamy. In 1866 Native Converts Marriage Dissolution Act facilitated divorce for Hindus accepting Christian faith. In 1872 Special Marriage Act was passed but it excluded Hindus.

In 1869 the Indian Divorce Act was passed but this too remained inapplicable to Hindus.

In 1891 a penal law, enforced in State of Mysore, prescribed punishment for men marrying girls below the age of eight years and for men above the age of fifty, marrying girls below fourteen years.

In 1909 the Anand Marriage Act legalised the marriage ceremony common among the Sikhs called Anand.

In 1923 by an amendment of Special Marriage Act inter-religious civil marriages between Hindus, Buddhists, Sikhs and Jains were legalized. In 1929 Child Marriage Restraint Act was passed.

In 1937 Arya Marriage Validation Act recognized the legality of inter-caste marriages and marriages with converts to Hinduism among the followers of Arya Samaj.

In 1946 Hindu Marriage Disabilities Removal Act legalized inter-marriage between the sub-divisions of same caste and those within one's *gotra* and *pravara*. In 1946 Hindu Married Women's Right to Separate Residence and Maintenance Act was passed. In 1949 Hindu Marriages Validity Act legalized inter-religious marriages.

In 1947 the Hindu Code as drafted by Rau Committee was introduced in the Legislative Assembly and was referred to Select Committee of the Constituent Assembly of India on 9th April, 1948. The Select Committee submitted its report

on 29th August, 1948 and the revised draft Bill based on the report of the Select Committee was discussed at considerable length by the Provisional Parliament but the Bill could not be passed before the dissolution of the Provisional Parliament and it lapsed. The earlier Bill was considerably revised and the Hindu Marriage Bill was introduced in the Parliament.

#### **STATEMENT OF OBJECTS AND REASONS**

The Hindu Code as drafted by the Rau Committee was introduced in the Legislative Assembly in 1947 and was referred to a Select Committee of the Constituent Assembly of India (Legislative) on 9th April, 1948. The Select Committee submitted its report on the 29th August, 1948 and their revised draft was discussed at considerable length by the Provisional Parliament, but as the Bill could not be passed before the dissolution of that Parliament it now stands lapsed.

2. As stated earlier by Government, the Code is now being split up into separate parts for the purpose of facilitating discussion and passage in Parliament, and the present Bill is the first of a series of such parts and deals with marriage and divorce. The earlier Bill has now been considerably revised, one significant change being the omission of all provisions relating to civil marriages, a subject dealt with in the Special Marriage Bill now pending before the Council of States (*see* the Special Marriage Act 43 of 1954).

#### **ACT 25 OF 1955**

The Hindu Marriage Bill having been passed by both the Houses of Parliament received the assent of the President on 18th May, 1955. It came on the Statute Book as THE HINDU MARRIAGE ACT, 1955 (25 of 1955).

#### **LIST OF AMENDING ACTS**

1. The Hindu Marriage (Amendment) Act, 1956 (73 of 1956) (w.e.f. 20-12-1956).
2. The Repealing and Amending Act, 1960 (58 of 1960) (w.e.f. 26-12-1960).
3. The Hindu Marriage (Amendment) Act, 1964 (44 of 1964) (w.e.f. 20-12-1964).
4. The Marriage Laws (Amendment) Act, 1976 (68 of 1976) (w.e.f. 27-5-1976).
5. The Child Marriage Restraint (Amendment) Act, 1978 (2 of 1978) (w.e.f. 1-10-1978).
6. The Marriage Laws (Amendment) Act, 1999 (39 of 1999) (w.e.f. 29-12-1999).
7. The Marriage Laws (Amendment) Act, 2001 (49 of 2001) (w.e.f. 24-9-2001).
8. The Marriage Laws (Amendment) Act, 2003 (50 of 2003) (w.e.f. 23-12-2003).
9. The Prohibition of Child Marriage Act, 2006 (6 of 2007) (w.e.f. 1-11-2007).

# THE HINDU MARRIAGE ACT, 1955

(25 of 1955)<sup>1</sup>

[18th May, 1955]

*An Act to amend and codify the law relating to marriage among Hindus.*

BE it enacted by Parliament in the Sixth Year of the Republic of India as follows:—

## PRELIMINARY

**1. Short title and extent.**—(1) This Act may be called the Hindu Marriage Act, 1955.

(2) It extends to the whole of India except the State of Jammu and Kashmir\*, and applies also to Hindus domiciled in the territories to which this Act extends who are outside the said territories.

## COMMENTS

### Territorial application

The Act will apply to Hindu domiciled in India even if they resides outside India. If the requirement of domicile in India is omitted altogether, the Act shall have no nexus with India which shall render the Act vulnerable on the ground that extra-territorial operation has no nexus with India. This extra-territorial operation of law is saved not because of nexus with Hindus but Hindus domiciled in India. Holding that the Act applies to Hindus irrespective of their domicile would extend the extra-territorial operation of the Act all over the world without any nexus with India which interpretation if approved, would make such provision invalid. Further, this will render the words "domiciled" in section 1(2) of the Act redundant, *Sondur Gopal v. Sondur Rajini*, AIR 2013 SC 2678.

**2. Application of Act.**—(1) This Act applies—

- (a) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Mahimo, Prarthana or Arya Samaj,
- (b) to any person who is a Buddhist, Jaina or Sikh by religion, and
- (c) to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

*Explanation.*—The following persons are Hindus, Buddhists, Jainas or Sikhs by religion, as the case may be:—

- (a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jainas or Sikhs by religion;
- (b) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged; and

1. The Act has been extended to Union Territory of Dadra and Nagar Haveli by Regulation 6 of 1963, sec. 2 and Sch. I (w.e.f. 1-7-1965) and Pondicherry by Regulation 7 of 1963, sec. 3 and Sch. I (w.e.f. 1-10-1963). The Act has been extended to Sikkim by S.O. 311 (E), dated 28th April, 1989 (w.e.f. 1-5-1989).

\* The Act has been made applicable to the State of Jammu and Kashmir by the J&K Hindu Marriage Act, 1955 (J&K Act 7 of 1955).

- (c) any person who is a convert or re-convert to the Hindu, Buddhist, Jaina or Sikh religion.

(2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

(3) The expression "Hindu" in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.

#### STATE AMENDMENT

**Pondicherry.**—In section 2, insert the following sub-section, namely:—

"(2A) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the Renoncants of the Union territory of Pondicherry." [Vide Regn. 7 of 1963, sec. 2 and Sch. (w.e.f. 1-10-1963).]

#### COMMENTS

##### Applicability of the Act

The marriage between the members of Scheduled Tribes is not governed by the Hindu Marriage Act in the light of section 2(2). Rather their marriage would be governed only by their Santhal customs and usage. *Dr. Surrajmani Stallee Kujur v. Durgoo Churan Hansdah*, AIR 2001 SC 938.

**3. Definitions.**—In this Act, unless the context otherwise requires,—

- (a) the expressions "custom" and "usage" signify any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family;

Provided that the rule is certain and not unreasonable or opposed to public policy, and

Provided further that in the case of a rule applicable only to a family it has not been discontinued by the family;

- (b) "district court" means, in any area for which there is a city civil court, that court, and in any other area the principal civil court of original jurisdiction, and includes any other civil court which may be specified by the State Government, by notification in the Official Gazette, as having jurisdiction in respect of the matters dealt with in this Act;

- (c) "full blood" and "half blood"—two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife and by half blood when they are descended from a common ancestor but by different wives;

- (d) "uterine blood"—two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands;

*Explanation.*—In clauses (c) and (d), "ancestor" includes the father and "ancestress" the mother;

- (e) "prescribed" means prescribed by rules made under this Act;

- (f) (i) "*sapinda* relationship" with reference to any person extends as far as the third generation (inclusive) in the line of ascent through the mother, and the fifth (inclusive) in the line of ascent through the father, the line being traced upwards in each case from the person concerned, who is to be counted as the first generation;

Rule relating to "sapinda relationship" are based on principle of exogamy. According to rule of endogamy, a person is not permitted to marry within same tribe.

(ii)

other if one is a limits of sapinda ascendant who is reference to each of

Prohibited degree and Sapinda relationship are may overlap each other

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(g) d wi

(i)

(ii)

A party is regarded as not having the mental capacity to solemnize the marriage if suffering from unsoundness of mind or mental disorder or insanity or epilepsy

real ascendant or

father's or mother's brother's brother of the

(iii)

(iv)

if the two are brother and sister, uncle and niece, aunt and nephew, or children of brother and sister or of two brothers or of two sisters;

Explanation For the purposes of clauses (f) and (g) relationship includes -

- (i) relationship by half or uterine blood as well as by full blood;
- (ii) illegitimate blood relationship as well as legitimate;
- (iii) relationship by adoption as well as by blood;

and all terms of relationship in those clauses shall be construed accordingly.

4. Overriding effect of Act - Save as otherwise expressly provided in this Act,-

- (a) any text rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;
- (b) any other law in force immediately before the commencement of this Act shall cease to have effect in so far as it is inconsistent with any of the provisions contained in this Act.

In modern Hindu law, marriage has become monogamous

HINDU MARRIAGES

Conditions for a Hindu marriage.-A marriage may be solemnized by any two Hindus, if the following conditions are fulfilled, namely:-

- (i) neither party has a spouse living at the time of the marriage; *Monogamy*
- (ii) at the time of the marriage, neither party-
  - (a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or
  - (b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or
  - (c) has been subject to recurrent attacks of insanity <sup>2[\*\*\*];</sup>

1. Subs. by Act 68 of 1976, sec. 2, for clause (ii) (w.e.f. 27-5-1976).  
 2. The words "or epilepsy" omitted by Act 39 of 1999, sec. 2 (w.e.f. 29-12-1999).

In Smt. Haridharinder Kaur v. Harmander Singh and Saroj Rani v. Sudarshan Kumar Article 9 was held not violative of sec. 21 of constitution

- (iii) the bridegroom has completed the age of <sup>1</sup>[twenty-one years] and the bride, the age of <sup>2</sup>[eighteen years] at the time of the marriage;
- (iv) 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;
- (v) the parties are not *sapindas* of each other, unless the custom or usage governing each of them permits of a marriage between the two;

<sup>3</sup>[\*\*\*]

Any marriage in contravention of specified in s 5 shall be void and null

#### COMMENTS

#### Burden of Proof

The material made available documentary and oral, not supporting that the wife is christian. Held that the marriage is not illegal and void; *T. Perumal v. R. Nesammal*, AIR 2004 Mad 37.

#### Child Marriage

Any marriage solemnized in contravention of clause (iii) of section 5 is neither void nor voidable, the only consequence being that the persons concerned are liable for the punishment under section 18 and further if the requirements of clause (iv) of subsection (2) of section 13 as inserted by the marriage laws (Amendment) Act, 1976 are satisfied, at the instance of the bride, a decree of divorce can be granted; *P. Venkataraman v. State*, AIR 1977 AP 43.

#### Necessity for a Hindu Marriage

(i) A marriage between a Hindu man who converted as Christian and a Christian lady in a Hindu form is not a valid marriage. According to section 5 of the Act marriage can be solemnized between two Hindus; *M. Vijayalakshmi v. K. Devabalan*, AIR 2003 Ker 363.

(ii) To draw an inference merely from the fact that the spouses had no co-habitation for a short period of about a month, is neither reasonable nor permissible. To brand the wife as unfit for marriage and procreation of children on account of the mental disorder, it needs to be established that the ailment suffered by her is of such a kind or such an extent that it is impossible for her to lead a normal married life; *R. Lakshmi Narayan v. Sawathi*, AIR 2001 SC 2110.

#### Scope

If a man and a woman are living under the same roof and cohabiting for a number of years, the law would raise presumption that they lived as husband and wife; *S.P.S. Balasubramanyam v. Suruttayan*, AIR 1992 SC 756.

**6. Guardianship in marriage.**—[Rep. by the Child Marriage Restraint (Amendment) Act, 1978 (2 of 1978), sec. 6 and Sch. (w.e.f. 1-10-1978)].

**7. Ceremonies for a Hindu marriage.**—(1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.

(2) Where such rites and ceremonies include the *saptapadi* (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken.

#### STATE AMENDMENTS

##### Section 7A

**Pondicherry.**—After section 7, insert the following section, namely:—

1. Subs. by Act 2 of 1978, sec. 6 and Sch., for "eighteen years" (w.e.f. 1-10-1978).
2. Subs. by Act 2 of 1978, sec. 6 and Sch., for "fifteen years" (w.e.f. 1-10-1978).
3. Clause (vi) omitted by Act 2 of 1978, sec. 6 and Sch. (w.e.f. 1-10-1978).

Sec 11 if parties solemnized in any other form void

7A. Special provision regarding suyamariyathai and seerthiruththa marriages.—(1) This section shall apply to any marriage between any two Hindus, whether called suyamariyathai marriage or seerthiruththa marriage or by any other name, solemnised in the presence of relatives, friends or other persons—

- (a) by each party to the marriage declaring in writing, to be understood by the parties and by at least two other persons (which is the presence of the wife or, as the case may be, her husband; or
- (b) by each party to the marriage garlanding the other, or by any finger of the other; or
- (c) by the tying of the thali.

(2) (a) Notwithstanding anything contained in section 17, in accordance with any custom or usage applicable to either party to the other marriage solemnised after the commencement of the Hindu Marriage (Pondicherry Amendment) Act, 1971, shall be good and valid in law.

(b) Notwithstanding anything contained in section 17, in accordance with any custom or usage applicable to either party to the other marriage solemnised after the commencement of the Hindu Marriage (Pondicherry Amendment) Act, 1971, shall be good and valid in law.

(3) Nothing contained in this section shall be deemed to—

- (a) render valid any marriage referred to in clause (b) of sub-section (2), if before the commencement of the Hindu Marriage (Pondicherry Amendment) Act, 1971,—
  - (i) such marriage has been dissolved under any custom or law; or
  - (ii) the woman who was a party to such marriage has, whether during or after the life of the other party thereto, lawfully married another; or
- (b) render invalid a marriage between any two Hindus solemnised at any time before such commencement, if such marriage was valid at that time; or
- (c) render valid a marriage between any two Hindus solemnised at any time before such commencement, if such marriage was invalid at that time on any ground other than that it was not solemnised in accordance with the customary rites and ceremonies of either party thereto:

Provided that nothing contained in this sub-section shall render any person liable to any punishment whatsoever by reason of anything done or omitted to be done by him before such commencement.

Any child of the parties to a marriage referred to in clause (b) of sub-section (2) shall be deemed to be their legitimate child:

Provided that in a case falling under sub-clause (i) or sub-clause (ii) of clause (a) of sub-section (3), such child was begotten before the date of the dissolution of the marriage or, as the case may be, before the date of the second of the marriages referred to in the said sub-clause (ii)."

[Pondicherry Act 14 of 1971, sec. 2 (w.e.f. 9-7-1971).]

adu.—After section 7, insert the following section, namely:—

Special provision regarding suyamariyathai and seerthiruththa marriages.—(1) This section shall apply to any marriage between any two Hindus, whether called suyamariyathai marriage or seerthiruththa marriage or by any other name, solemnised in the presence of relatives, friends or other persons—

HMA does not prescribe the ceremonies requisite for solemnization of marriage but leaves it to the parties to choose a form of ceremony - Hindu marriage which in accordance with any custom or usage applicable to either party

Customary rites and ceremonies of either party are obligatory for a valid marriage.

Non registration  
of marriage 438  
of HMA → does  
not make the  
marriage law  
void for breach  
of penalty

party to the marriage declaring in any language understood by the other party that each takes the other to be his wife or, as the case may be, her wife or husband; or  
or  
party to the marriage garlanding the other or putting a ring upon the finger of the other; or  
or  
the tying of the thali.

Notwithstanding anything contained in section 7, but subject to the other provisions of this Act, all marriages to which the section applies solemnised after the commencement of the Hindu Marriage (Madras Amendment) Act, 1967, shall be valid in law.

Notwithstanding anything contained in section 7 or in any text, rule or regulation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of the Hindu Marriage (Madras Amendment) Act, 1967, or in any other law in force immediately before such commencement or in any judgment, decree or order of any court, but subject to the provisions of this Act, all marriages to which this section applies solemnised at any time, whether before or after the commencement of the said Act, shall be deemed to have been, with effect on and from the date of the solemnisation of each such marriage, respectively, good and valid in law.

(3) Nothing contained in this section shall be deemed to—

(a) render valid any marriage referred to in clause (b) of sub-section (2), if solemnised before the commencement of the Hindu Marriage (Madras Amendment) Act, 1967,—

- (i) such marriage has been dissolved under any custom or law; or
- (ii) the woman who was a party to such marriage has, whether during or after the life of the other party thereto, lawfully married another; or

(b) render invalid a marriage between any two Hindus solemnised at any time before such commencement, if such marriage was valid at that time; or

(c) render valid a marriage between any two Hindus solemnised at any time before such commencement, if such marriage was invalid at that time on any ground other than that it was not solemnised in accordance with the customary rites and ceremonies of either party thereto:

Provided that nothing contained in this sub-section shall render any person liable to any punishment whatsoever by reason of anything done or omitted to be done by him before such commencement.

(4) Any child of the parties to a marriage referred to in clause (b) of sub-section (2) born of such marriage shall be deemed to be their legitimate child:

Provided that in a case falling under sub-clause (i) or sub-clause (ii) of clause (a) of sub-section (3), such child was begotten before the date of the dissolution of the marriage or, as the case may be, before the date of the second of the marriages referred to in the said sub-clause (ii)."

[Vide Tamil Nadu Act 21 of 1967, sec. 2 (w.e.f. 20-1-1968).]

8. Registration of Hindu marriages.—(1) For the purpose of facilitating the proof of Hindu marriages, the State Government may make rules providing that the parties to any such marriage may have the particulars relating to their marriage entered in such manner and subject to such conditions as may be prescribed in a Hindu Marriage Register kept for the purpose.

(2) Notwithstanding anything contained in sub-section (1), the State Government may, if it is of opinion that it is necessary or expedient so to do, provide that the entering of the particulars referred to in sub-section (1) shall be compulsory in the State or in any part thereof, whether in all cases or in such

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ified, and where any such direction has been issued, any  
any rule made in this behalf shall be punishable with fine  
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ide under this section shall be laid before the State  
s may be, after they are made.  
arriage Register shall at all reasonable times be open for  
be admissible as evidence of the statements therein  
d extracts therefrom shall, on application, be given by the  
to him of the prescribed fee.  
ng anything contained in this section, the validity of any  
in no way be affected by the omission to make the entry.

UTION OF CONJUGAL RIGHTS AND  
JUDICIAL SEPARATION

Aims at p

9. Restitution of conjugal rights.—<sup>1</sup>[\*\*\*] When either the husband or the  
wife has, without reasonable excuse, withdrawn from the society of the other,  
the aggrieved party may apply, by petition to the district court, for restitution of  
conjugal rights and the court, on being satisfied of the truth of the statements  
made in such petition and that there is no legal ground why the application  
should not be granted, may decree restitution of conjugal rights accordingly.

<sup>2</sup>[Explanation.—Where a question arises whether there has been reasonable  
excuse for withdrawal from the society, the burden of proving reasonable excuse  
shall be on the person who has withdrawn from the society.]

<sup>3</sup>[\*\*\*]

Constitutional - tested both  
nationally -> Shree Anil Kumar v. Sudarshan Kumar  
COMMENTS

Marital Obligations

If a consent decree for restitution of conjugal rights under section 9 of the Hindu  
Marriage Act, 1955 is passed, it will not be a nullity. If it is not challenged in appeal or  
by way of other remedy available under the law and becomes final, it cannot be ignored  
and can form the basis of divorce proceedings under section 13(1A) of the Hindu  
Marriage Act, 1955; Case of Rani v. Sudarshan Kumar, AIR 1984 SC 1562.

Reasonable excuse

where it is found that conduct of husband created reasonable apprehension in mind  
of wife that it would be unsafe for her not to stay with husband, the decree for restitution  
of conjugal rights in favour of husband cannot be granted; Kamaladevi v. Shiva Kumar  
Swamy, AIR 2003 Kar 36.

Restitution decree—Limitation

For obtaining a divorce on failure of getting restitution of conjugal rights even after  
spouse has to wait for one year. Thus the restitution decree and the second  
or divorce might be a slightly more expeditious way for getting relief; Karabi Das  
Das, AIR 2003 Cal 61.

Restitution of conjugal rights

petition for restitution of Conjugal Rights, alternative relief of divorce cannot be  
these prayers are mutually destructive of each other and, therefore, cannot be  
ther; Baldev Raj v. Bimla Sharma, AIR 2006 HP 33.

law which would give an exclusive right to the husband to decide upon the  
the matrimonial home without considering the merits of the claim of the wife  
contrary to Article 14 and unconstitutional for that reason; Swaraj Garg v. K.M.  
1978 Del 296.

brackets and figure "(1)" omitted by Act 68 of 1976, sec. 3(a) (w.e.f. 27-5-1976).

by Act 68 of 1976, sec. 3(a) (w.e.f. 27-5-1976)

section (2) omitted by Act 68 of 1976, sec. 3(b) (w.e.f. 27-5-1976).

Section 31A sub(1)-2

where the wife  
is not comply  
with decree for  
restitution of  
conjugal rights  
U/s 9 of HMA  
and instead  
files divorce  
and maintenance  
she would  
be entitled  
to claim  
maintenance

Ujra v. Anand - T. Sareema v. Venkata Subrah

Sec 9 not violative  
of Article 21 of Const.

T. sareema v. Venkata Subrah  
U conjugal rights

Petition must be filed in family courts only

if there is no  
resumption of  
cohabitation  
between the  
parties within  
10 years of the  
decreed of  
judicial  
separation or  
cessation of  
conjugal life  
then the marriage  
can be dissolved  
by decree of divorce  
on petition of either  
party

**Withdrawal without reasonable excuse or just cause**

Wife is under an obligation to live with her husband in his house except in case of distinct and specific misconduct on the part of the husband. This obligation has been further buttressed by clear statutory recognition in the Hindu Marriage Act; *Kailash Wati v. Ayodhya Parkash*, 1977 (79) PLD 1000 (SC).

**10. Judicial separation.**—(1) Either party to a marriage solemnized before or after the commencement of this Act, may apply for a decree for judicial separation on any of the grounds specified in sub-section (1) of section 13, and in the case of a wife also on the grounds specified in sub-section (2) thereof, as grounds on which a decree might have been presented.]

(2) Where a decree for judicial separation has been passed, the parties shall be obligatory for the petitioner to cohabit with the respondent, may, on the application by petition of either party and on being satisfied that the truth of the statements made in such petition, rescind the decree if it just and reasonable to do so.

**COMMENTS**

usually, Bigamy, S.D = adultery

**Consideration by Court**

It has also to be kept in mind that before granting the prayer for permanent alimony the relationship between parties to the marriage every attempt should be made to maintain the sanctity of the relationship which of importance not only for the individuals or their children but also for the society. It would be too hazardous to lay down a general principle of universal application; *Hirachand Srinivas Manganankar v. Sitanda*, AIR 2001 SC 1285.

**Desertion**

To constitute desertion, there must be cessation of cohabitation without cause thereof and consent thereto and with a intention to abandon which is wilfully persisted in for the space of the statutory period. A mere severance of the relation is not sufficient, since there may be separation without desertion and desertion without separation. Continued separation of husband and wife which may be consistent with no intention to wilfully desert, is not desertion within the meaning of statute; *Bipin Chandra v. Prabhavati*, AIR 1977 SC 176.

Marital relations are subject to the effect of judicial separation but only after permission from the court.

10 years of desertion for filing suit for judicial separation.

**NULLITY OF MARRIAGE AND DIVORCE**

**11. Void marriages.**—Any marriage solemnised after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto [against the other party], be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5.

Behind prohibited relationship

**COMMENTS**

was challenged in *U. Umeswari v. Parnaswami* **Not clear**

**Injunction restraining the other from performing bigamous marriages**

There is no provision in the Hindu Marriage Act, 1955 under which a wife, apprehending her husband's taking second wife, can apply for and obtain an injunction restraining him from doing so. She cannot do so under section 11 or 17 or any other provision of the Act; *Umashanker v. Radhadevi*, AIR 1967 Pat 220.

**12. Voidable marriages.**—(1) Any marriage solemnised, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:—

1. Subs. by Act 68 of 1976, sec. 4, for sub-section (1) (w.e.f. 27-5-1976). Earlier sub-section (1) was amended by Act 73 of 1956, sec. 2 (w.e.f. 20-12-1956).
2. Ins. by Act 68 of 1976, sec. 5 (w.e.f. 27-5-1976).

① concealment of a pre marriage pregnancy

- 1(a) that the marriage has not been consummated owing to the impotence of the respondent; or] ↳ can be physical / mental
- (b) that the marriage is in contravention of the condition specified in clause (ii) of section 5; or
- (c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner <sup>2</sup>[was required under section 5 as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, 1978 (2 of 1978)\*], the consent of such guardian was obtained by force <sup>3</sup>[or by fraud as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent]; or
- (d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner. (voidable)

(2) Notwithstanding anything contained in sub-section (1), no petition for annulling a marriage—

- (a) on the ground specified in clause (c) of sub-section (1) shall be entertained if—
  - (i) the petition is presented more than one year after the force had ceased to operate or, as the case may be, the fraud had been discovered; or
  - (ii) the petitioner has, with his or her full consent, lived with the other party to the marriage as husband or wife after the force had ceased to operate or, as the case may be, the fraud had been discovered.
- (b) on the ground specified in clause (d) of sub-section (1) shall be entertained unless the court is satisfied—
  - (i) that the petitioner was at the time of the marriage ignorant of the facts alleged;
  - (ii) that proceedings have been instituted in the case of a marriage solemnised before the commencement of this Act within one year of such commencement and in the case of marriages solemnised after such commencement within one year from the date of the marriage; and

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Impotency  
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is bound to  
is a ground  
for annulling  
marriage  
voidable

- 1. Subs.
- 2. Subs.
- \* Date
- 3. Subs.
- 4. Subs.

COMMENTS

Concealment of pre-marriage grounds for voidable marriage

ent of marriage merely on humanitarian ground. The Court itself of the absence of collusion between the parties to the date of decree of nullity in case of voidable marriages annuls the marriage from date of marriage

sec. 6(a)(i), for clause (a) (w.e.f. 27-5-1976).  
 sec. 6 and Sch., for "is required under section 5" (w.e.f. 1-10-1978).  
 -10-1978.  
 sec. 6(a)(ii), for "or fraud" (w.e.f. 27-5-1976),  
 sec. 6(b), for "the grounds for a decree" (w.e.f. 27-5-1976).

marriage to bring about its end. If there is reasonable suspicion that the petition for annulment is collusive, it will be dismissed; *Shantabai v. Tarachand*, AIR 1966 MP 8.

#### Misrepresentation as a fraud

(i) Non-disclosure of age and factum of having major children by husband at the time of marriage amounts to fraud and suppression of material facts having bearing on marriage. Marriage founded on fraud from very inception is a nullity; *Sunder Lal Soni v. Smt. Namita Jain*, AIR 2006 MP 51.

(ii) Misrepresentation as to the age of the bridegroom made to the mother who acted as an agent and the daughter consented for the marriage believing the statement to be true. It was held that the consent was vitiated by fraud; *Babui Parmate v. Ram Agya Singh*, AIR 1968 Pat 190.

13. Divorce.—(1) Any marriage solemnised, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party—

1[(i) has, after the solemnisation of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or]

1[(ia) has, after the solemnisation of the marriage, treated the petitioner with cruelty; or]

1[(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or]

(ii) has ceased to be a Hindu by conversion to another religion; or

2[(iii) has been 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.

Explanation.—In this clause,—

(a) the expression "mental disorder" means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

(b) the expression "psychopathic disorder" means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment; or]

(iv) has 3[\*\*\*] been suffering from a virulent and incurable form of leprosy; or

(v) has 3[\*\*\*] been suffering from venereal disease in a communicable form; or

(vi) has renounced the world by entering any religious order; or

(vii) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive; 4[\*\*\*]

1. Subs. by Act 68 of 1976, sec. 7(a)(i), for clause (i) (w.e.f. 27-5-1976).

2. Subs. by Act 68 of 1976, sec. 7(a)(ii), for clause (iii) (w.e.f. 27-5-1976).

3. Certain words omitted by Act 68 of 1976, sec. 7(a)(iii) (w.e.f. 27-5-1976).

4. The word "or" omitted by Act 44 of 1964, sec. 2(i)(a) (w.e.f. 20-12-1964).

Divorce by mutual consent in India by Hindu Marriage Act 1976

adultery not a ground for divorce

leprosy

grounds for divorce for husband and wife

adultery

insanity

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During the pendency of appeal  
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the parties are not competent  
to contract another marriage and  
their incapacity to do so is  
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⊙ Dastane v. Dastane

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which they were parties; or

- (ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of <sup>4</sup>[one year] or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.]

(2) A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground,—

grounds  
of divorce  
under sec 13  
(1A)

- (i) in the case of any marriage solemnised before the commencement of this Act, that the husband has married again before such commencement or that any other wife of the husband married before such commencement was alive at the time of the solemnisation of the marriage of the petitioner:

Provided that in either case the other wife is alive at the time of the presentation of the petition; or

- (ii) that the husband has, since the solemnisation of the marriage, been guilty of rape, sodomy or <sup>5</sup>[bestiality; or]
- <sup>6</sup>[(iii) that in a suit under section 18 of the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), or in a proceeding under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) [or under the corresponding section 488 of the Code of Criminal Procedure, 1898 (5 of 1898)], a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards; or

1. Ins. by Act 68 of 1976, sec. 7(a)(iv) (w.e.f. 27-5-1976).
2. Clauses (viii) and (ix) omitted by Act 44 of 1964, sec. 2(i)(b) (w.e.f. 20-12-1964).
3. Ins. by Act 44 of 1964, sec. 2(ii) (w.e.f. 20-12-1964).
4. Subs. by Act 68 of 1976, sec. 7(b), for "two years" (w.e.f. 27-5-1976).
5. Subs. by Act 68 of 1976, sec. 7(c)(i), for "bestiality" (w.e.f. 27-5-1976).
6. Ins. by Act 68 of 1976, sec. 7(c)(ii) (w.e.f. 27-5-1976).

option of  
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available  
to wife alone?



Requirements of Emormentality

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Supreme Court only

Kumar Jain

v. Maya Jain

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(vii) The levelling of false allegation by one spouse about the other having alleged illicit relations with different persons outside wedlock amounted to mental cruelty; *Jai Dayal v. Shakuntala Devi*, AIR 2004 Del 39.

(viii) Due to the criminal complaint filed by the wife, the husband remained in jail for 63 days and also his father and brother for 20 to 25 days. Therefore, even though the case of cruelty may not have been proved but as the facts emerging from the record clearly indicate that the living of the two as husband and wife would not only be difficult but impossible, the court has no alternative but to grant a decree of divorce; *Poonam Gupta v. Ghanshyam Gupta*, AIR 2003 All 51.

(ix) Unless the entire genesis of the quarrels in the course of which, one of the spouses holds out a threat to take his or her life is placed before the court, the very fact that some threat in the course of a quarrel is held out, cannot be viewed in isolation or construed as mental cruelty to the other spouse; *Swami Sundar v. G.V. Sundar*, AIR 2003 Kar 86.

(x) A husband cannot ask his wife that he does not like her company, but she can or should stay with other members of the family in matrimonial home. Such an attitude is cruelty in itself or the part of the husband; *Yudhishter Singh v. Sarita*, AIR 2002 Raj 382.

(xi) A threat to commit suicide by the wife amounts to infliction of mental cruelty on the husband but it should not be uttered in a domestic tiff; *Pushpa Rani v. Vijay Pal Singh*, AIR 1992 All 220.

(xii) A solitary instance of cruelty would not constitute cruelty so as to grant a decree of divorce rather the behaviour of the other party has to be persistently and repeatedly treating the other spouse with such cruelty so as to cause a reasonable apprehension in the mind of the husband/wife that it will be harmful or injurious for him or her to live with the other party. The expression "persistently" means continue firmly or obstinately and the expression "repeatedly" means to say or do over again; *Vimlesh v. Prakash Chand Sharma*, AIR 1992 All 261.

cial cases can be of infinite variety. It may be subtle or even gross in nature and words; *Ravi Kumar v. Julmi Devi*, (2010) 4 SCC 476; *2 SCALE 289 (2)*.

ground for dissolution of marriage may be defined as wilful conduct of such character as to cause danger to life, limb or health, or to give rise to a reasonable apprehension of such a danger. The conduct has to be considered in the light of the norms of marital ties to which the parties belong, their social values, status, and character to live. Cruelty need not be physical. If from the conduct of the husband an inference can be legitimately drawn that the treatment of the wife causes apprehension in the mind of the other spouse, about her safety when this conduct amounts to cruelty; *Maya Devi v. Jagdish*

relations against husband of having illicit relationship and such conduct in her written statement constitute mental cruelty of such character as to give rise to a reasonable apprehension of such a danger. Husband is entitled to a decree of divorce; *Ma Srivastava v. Arvind Kumar Srivastava*, AIR 2006 All 7.

(vii) The levelling of false allegation by one spouse about the other having alleged illicit relations with different persons outside wedlock amounted to mental cruelty; *Jai Dayal v. Shakuntala Devi*, AIR 2004 Del 39.

(viii) Due to the criminal complaint filed by the wife, the husband remained in jail for 63 days and also his father and brother for 20 to 25 days. Therefore, even though the case of cruelty may not have been proved but as the facts emerging from the record clearly indicate that the living of the two as husband and wife would not only be difficult but impossible, the court has no alternative but to grant a decree of divorce; *Poonam Gupta v. Ghanshyam Gupta*, AIR 2003 All 51.

(ix) Unless the entire genesis of the quarrels in the course of which, one of the spouses holds out a threat to take his or her life is placed before the court, the very fact that some threat in the course of a quarrel is held out, cannot be viewed in isolation or construed as mental cruelty to the other spouse; *Swami Sundar v. G.V. Sundar*, AIR 2003 Kar 86.

(x) A husband cannot ask his wife that he does not like her company, but she can or should stay with other members of the family in matrimonial home. Such an attitude is cruelty in itself or the part of the husband; *Yudhishter Singh v. Sarita*, AIR 2002 Raj 382.

(xi) A threat to commit suicide by the wife amounts to infliction of mental cruelty on the husband but it should not be uttered in a domestic tiff; *Pushpa Rani v. Vijay Pal Singh*, AIR 1992 All 220.

(xii) A solitary instance of cruelty would not constitute cruelty so as to grant a decree of divorce rather the behaviour of the other party has to be persistently and repeatedly treating the other spouse with such cruelty so as to cause a reasonable apprehension in the mind of the husband/wife that it will be harmful or injurious for him or her to live with the other party. The expression "persistently" means continue firmly or obstinately and the expression "repeatedly" means to say or do over again; *Vimlesh v. Prakash Chand Sharma*, AIR 1992 All 261.

**Desertion**

Without any reason, simply for the love and affection towards the father, no married daughter would stay with her father abandoning her husband. The theory of abnormal relationship has not been established by the petitioner and it is totally false. Therefore, there is no desertion by the wife; *P. Kalyanasundaram v. K. Paquialatchamy*, AIR 2004 Mad 43.

**Insanity**

Defence of insanity is not available on that the offending spouse is not capable of knowing what he is doing if the conduct is held to be cruelty regardless of motive or intention to be cruel. Insanity, therefore, should not bar the relief claimed by the wife; *Trimabak Narayan Bhagwat v. Kumudini T. Bhagwat*, AIR 1967 Bom 80.

**Intention to bring cohabitation permanently to an end**

Where there is a break down of the marriage, this in itself should be a cause for which divorce should be available under law. It would then be immaterial to inquire as to which of the two parties is at fault; *Swaraj Garg v. K.M. Garg*, AIR 1978 Del 296.

**Scope**

Section 13 does not envisage luxury. The provisions are meant to preserve the meaning of life. Personal laws may be different from laws of equity nonetheless they

*Tyotksh chandra v. Meena - Case related to constructive desertion*

Desertion of minimum - 2 yrs. (Atakulya Period for desertion)

Intention to desert factum of separation without any reasonable cause  
without consent & for continuous period of 2 years.

are based on equitable judicious perception for appreciation of facts and circumstances in their light; *Ram Lakhan v. Prem Kumari*, AIR 2003 Raj 115.

#### Solitary ground for divorce

Frivolous and vexatious litigation instituted and fought under the pressure of some family members cannot be used as a ground to contend that the marriage has irretrievably broken down and the marriage is, for all practical purposes, dead. Acceptance of such argument will mean, that in all matters wherever matrimonial litigation went on for five to ten years, the divorce must follow. The marriage cannot be dissolved on this solitary ground; *Neeta Kirit Desai v. Bino Samuel George*, AIR 2003 Bom 7.

[13A. Alternate relief in divorce proceedings.—In any proceeding under this Act, on a petition for dissolution of marriage by a decree of divorce, except in so far as the petition is founded on the grounds mentioned in clauses (ii), (vi) and (vii) of sub-section (1) of section 13, the court may, if it considers it just so to do having regard to the circumstances of the case, pass instead a decree for judicial separation.] *Bipinchandra v. Prabhavati*.

#### COMMENTS

##### Breakdown theory

It would not be very reasonable to think that the relief which is available to the spouse against whom a decree for restitution has been passed, should be denied to the one who does not insist on compliance with the decree passed in his or her favour. In order to be a 'wrong' within the meaning of section 23(1)(a) the conduct alleged has to be something more than a mere disinclination to agree to an offer of reunion, it must be misconduct serious enough to justify denial of the relief to which the husband or the wife is otherwise entitled; *Dharmendra Kumar v. Usha Kumar*, AIR 1977 SC 228.

[13B. Divorce by mutual consent.—(1) Subject to the provisions of this Act, a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was solemnised before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (6) of 1976, on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.]

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnised and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.]

#### COMMENTS

##### Period of six months, i.e., cooling period - Scope

Section 13B itself provides for a cooling period of six months on the first motion being moved, in the event the parties changed their minds during the said period. Accordingly, after the initial motion and the presentation of the petition for mutual divorce, the parties are required to wait for a period of six months before the second motion can be moved, and at that point of times, if the parties have made up their minds that they would be unable to live together, the Court, after making such inquiry, as it may consider fit, grant a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree. It is no doubt true that the Legislature had in its wisdom stipulated a cooling period of six months from the date of filing of a petition for mutual divorce till such divorce is actually granted, with the intention that it would save the institution of marriage; *Devinder Singh Narula v. Meenakshi Nagia*, 2012 AIR (SC) 2890; 2012 (8) SCC 580; 2012 (7) JT 519; 2012 (7) SCALE 473.

##### Period of six months not mandatory

As provided in sub-section (2) of section 13B the period of six months cannot be taken as mandatory, because if it is mandatory the very purpose of liberalised concept

- (1) Ins. by Act 68 of 1976, sec. 8 (w.e.f. 27-5-1976).  
Date of commencement 27-5-1976.

Comment  
Theory

of divorce by mutual consent will be frustrated, especially when the parties live separately and there was no chance of reunion; *K. Thiruvengadam v. Thiruvengadam*, AIR 1976 Mad 176.

#### Transitional period

(i) The period of 6 to 18 months provided in section 13B is a period which is intended to give time and opportunity to the parties to reflect on their relations during the transitional period the parties or either of them may have second thoughts; *K. Thiruvengadam v. Thiruvengadam*, AIR 2003 Raj 155.

(ii) The period of living separately for one year must be in fact and not in law. The presentation of petition. The expression 'living separately' connotes living as husband and wife. It has no reference to the place of living. The parties may be living in the same house and yet they may not be living as husband and wife. The parties must not perform marital obligations; *Sureshta Devi v. Om Prakash*, AIR 1992 SC 1904.

(iii) The period of six to eighteen months time is given in divorce to give time and opportunity to the parties to reflect on their marital relations and friends. Mutual consent should continue till the divorce petition is presented to the court. The court should be satisfied about the *bona fides* and consent of the parties at the time of enquiry the court gets no jurisdiction to make a decree of divorce. The court is held to have the power to make a decree solely based on the initial consent of the parties. There can be unilateral withdrawal of consent. Held, that since consent of the wife was obtained by fraud and wife was not willing to consent, there could be unilateral withdrawal, of consent; *Sureshta Devi v. Om Prakash*, AIR 1992 SC 1904.

#### Withdrawal of consent

One of the parties may withdraw his/her consent at any time before the passing of decree, even after expiry of 18 months from date of filing of petition; *Hitesh Bhatnagar v. Deepa Bhatnagar*, AIR 2011 SC 1637; (2011) 5 SCC 234; JT 2011 (5) SC 176; (2011) 4 SCALE 724.

**14. No petition for divorce to be presented within one year of marriage.—**  
(1) Notwithstanding anything contained in this Act, it shall not be competent for any court to entertain any petition for dissolution of a marriage by a decree of divorce, <sup>1</sup>[unless at the date of the presentation of the petition one year has elapsed] since the date of the marriage:

Provided that the court may, upon application made to it in accordance with such rules as may be made by the High Court in that behalf, allow a petition to be presented <sup>2</sup>[before one year has elapsed] since the date of the marriage on the ground that the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent, but if it appears to the court at the hearing of the petition that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the court may, if it pronounces a decree, do so subject to the condition that the decree shall not have effect until after the <sup>3</sup>[expiry of one year] from the date of the marriage or may dismiss the petition without prejudice to any petition which may be brought after the <sup>4</sup>[expiration of the said one year] upon the same or substantially the same facts as those alleged in support of the petition so dismissed.

(2) In disposing of any application under this section for leave to present a petition for divorce before the <sup>5</sup>[expiration of one year] from the date of the marriage, the court shall have regard to the interests of any children of the marriage and to the question whether there is a reasonable probability of a reconciliation between the parties before the expiration of the <sup>6</sup>[said one year].

#### COMMENTS

#### Death of male Hindu before coming into force of the Hindu Succession Act, 1956

Mother of male Hindu would not possess any right to his property. Merely because mother was in possession of suit property along with his widow after his death, it would

1. Subs. by Act 68 of 1976, sec. 9(i)(a), for certain words (w.e.f. 27-5-1976).
2. Subs. by Act 68 of 1976, sec. 9(i)(b)(1), for "before three years have elapsed" (w.e.f. 27-5-1976).
3. Subs. by Act 68 of 1976, sec. 9(i)(b)(2), for "expiry of three years" (w.e.f. 27-5-1976).
4. Subs. by Act 68 of 1976, sec. 9(i)(b)(3), for "expiration of the said three years" (w.e.f. 27-5-1976).
5. Subs. by Act 68 of 1976, sec. 9(ii)(a), for "expiration of three years" (w.e.f. 27-5-1976).
6. Subs. by Act 68 of 1976, sec. 9(ii)(b), for "said three years" (w.e.f. 27-5-1976).

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Irretrievable breakdown of marriage → Not a ground for divorce under HMA

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15. Divor dissolved by decree or, if without an a has been distr again.

[\*\*\*]

Scope and Obj

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*Padmakar Patil v. Rukminibai Vishnu Vekhande*, AIR 2003 SC 3109.

16. Legitimacy of children of void and voidable marriages.—(1)

Notwithstanding that marriage is null and void under section 11, any child of such marriage who would have been legitimate if the marriage had been valid shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976)\* and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.

(2) Where a decree of nullity is granted in respect of a voidable marriage under section 12, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.

(3) Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring title on any child of a marriage which is null and void or which is annulled by a decree of nullity under section 12, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents.]

COMMENTS

Rights of son born out of void or voidable marriage

Son born out of illegitimate relation does not acquire any rights under section 16 of the Act; *Babulal v. Naithibai*, AIR 2013 MP 134.

Status of Children from void & voidable marriage

Section 16 of the Act, while engrafting a rule of fiction in ordaining the children, though illegitimate, to be treated as legitimate, notwithstanding that the marriage was void or voidable chose also to confine its application, so far as succession or inheritance by such children is concerned, to the properties of the parents only a laudable and noble act of the legislature indeed in enacting section 16 to put an end to a great social evil; *Jinia Keotin v. Kumar Sitaram Manjhi*, (2003) 1 SCC 730.

17. Punishment of bigamy.—Any marriage between two Hindus solemnized after the commencement of this Act is void if at the date of such marriage either party had a husband or wife living; and the provisions of sections 494 and 495 of the Indian Penal Code (45 of 1860), shall apply accordingly.

1. Proviso omitted by Act 68 of 1976, sec. 10 (w.e.f. 27-5-1976).

2. Subs. by Act 68 of 1976, sec. 11, for section 16 (w.e.f. 27-5-1976).

\* Date of commencement 27-5-1976.

② Children born out of illegitimate

void or voidable marriages

u/s 11 and 12 of Hindu marriage

Act, are deemed to be legitimate

and can inherit all family property  
Property of their parents only

③ A Hindu wife is not entitled

for separate residence

and maintenance if she

↳ becomes unchaste

↳ ceases to be Hindu by conversion

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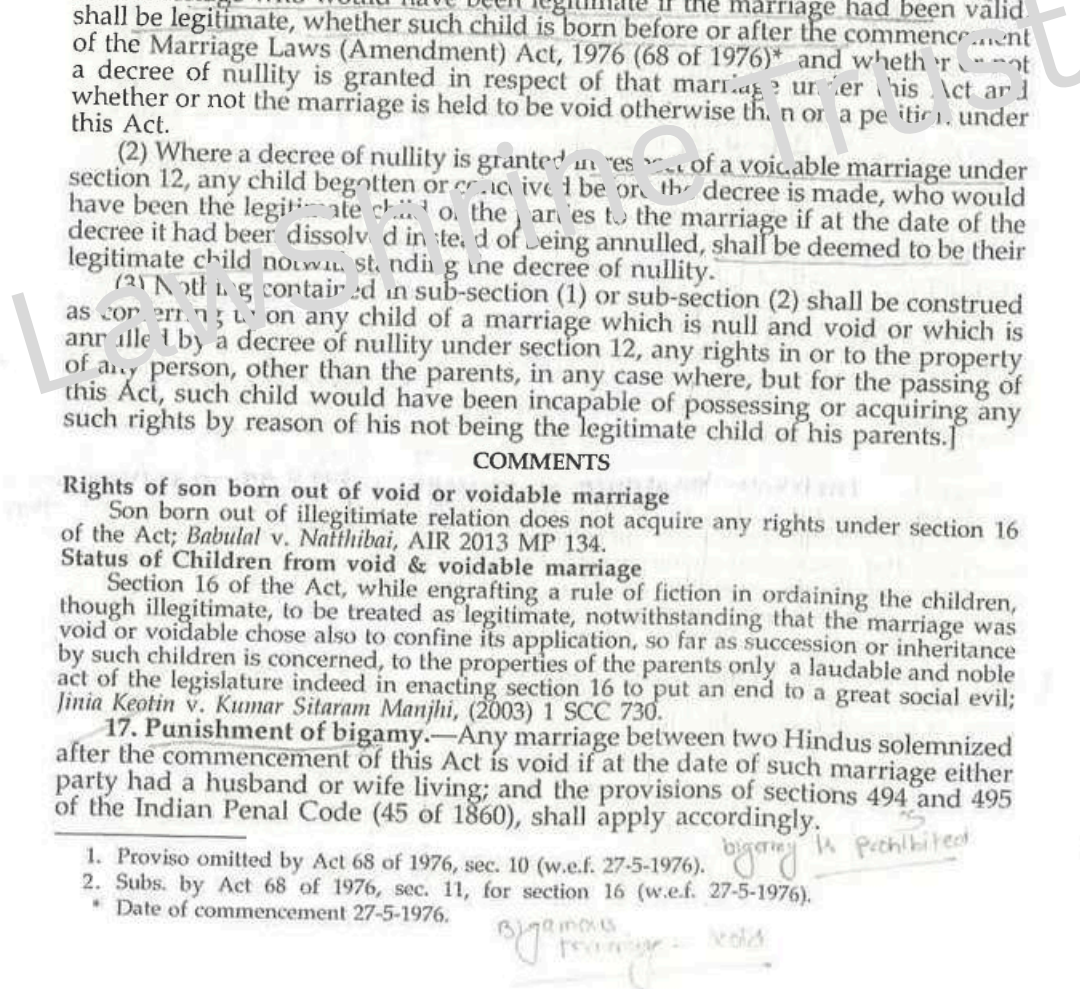
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of the will executed by her mother; *Ramabai*



Bigamous marriage - void

bigamy is prohibited

## COMMENTS

**Condition for second marriage to be valid**

The mere admission by the respondent that he had contracted second marriage is not enough. The impugned marriage must have been solemnized that is, the marriage should have been celebrated or performed with proper ceremonies and in due form; *Bhaurao v. State of Maharashtra*, AIR 1965 SC 1564.

**Essential ceremonies required for bigamy**

If the marriage is not a valid marriage, it is no marriage in the eyes of law. If the marriage is not a valid one according to the law applicable to the parties, no question of its being void by reason of its taking place during the life of the husband or wife of the person marrying arises. Having regard to section 17 of the Act the essential ceremonies set out under the Act had not been conducted and merely because there was distribution of sugar or gur it would not constitute a valid marriage; *Surjit Kaur v. Garja Singh*, AIR 1994 SC 135.

**18. Punishment for contravention of certain other conditions for Hindu marriage.**— Every person who procures a marriage of himself or herself to be solemnised under this Act in contravention of the conditions specified in clauses (iii), (iv), <sup>1</sup>[and (v)] of section 5 shall be punishable—

<sup>2</sup>(a) in the case of contravention of the condition specified in clause (iii) of section 5, with rigorous imprisonment which may extend to two years or with fine which may extend to one lakh rupees, or with both;]

(b) in the case of a contravention of the condition specified in clause (iv) or clause (v) of section 5, with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both, <sup>3</sup>[\*]

<sup>4</sup>[\*\*\*]

**JURISDICTION AND PROCEDURE**

<sup>5</sup>[1. Court to which petition shall be presented.—Every petition under this Act shall be presented to the district court within the local limits of whose original civil jurisdiction—

- (i) the marriage was solemnised, or
- (ii) the respondent, at the time of the presentation of the petition, resides, or
- (iii) the parties to the marriage last resided together, or
- <sup>6</sup>[(iiia) in case the wife is the petitioner, where she is residing on the date of presentation of the petition, or]
- (iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is, at that time, residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of him if he were alive.]

1. Subs. by Act 2 of 1978, sec. 6 and Sch., for "(v) and (vi)" (w.e.f. 1-10-1978).

2. Subs. by Act 6 of 2007, sec. 20, for clause (a) (w.e.f. 1-11-2007). Clause (a) before substitution, stood as under:

"(a) in the case of a contravention of the condition specified in clause (iii) of section 5, with simple imprisonment which may extend to fifteen days, or with fine which may extend to one thousand rupees, or with both;".

3. The word "and" omitted by Act 2 of 1978, sec. 6 and Sch. (w.e.f. 1-10-1978).

4. Clause (c) omitted by Act 2 of 1978, sec. 6 and Sch. (w.e.f. 1-10-1978).

5. Subs. by Act 68 of 1976, sec. 12, for section 19 (w.e.f. 27-5-1976).

6. Ins. by Act 50 of 2003, sec. 4 (w.e.f. 23-12-2003).

## COMMENTS

**Jurisdiction of the Court**

If a marriage is solemnised at a place within the municipal limit and the party reside there only, the family Court would have exclusive jurisdiction to deal with case. The case cannot be transferred to district court on a ground that the husband resides outside the limits of municipal corporation; *Arjun Singhal v. Pushpa Karwel*, AIR 2003 MP 189.

**20. Contents and verification of petitions.**—(1) Every petition presented under this Act shall state as distinctly as the nature of the case permits the facts on which the claim to relief is founded <sup>1</sup>[and, except in a petition under section 11, shall also state] that there is no collusion between the petitioner and the other party to the marriage.

(2) The statements contained in every petition under this Act shall be verified by the petitioner or some other competent person in the manner required by law for the verification of plaints, and may, at the hearing, be referred to as evidence.

**21. Application of Act 5 of 1908.**—Subject to the other provisions contained in this Act and to such rules as the High Court may make in this behalf, all proceedings under this Act shall be regulated, as far as may be, by the Code of Civil Procedure, 1908.

## COMMENTS

**Decree under Hindu Marriage Act and decree under Code of Civil Procedure are not same**

Decree under the Hindu Marriage Act and decree under Code of Civil Procedure are not of the same nature and character. A decree passed under section 10 of the Hindu Marriage Act may be rescinded by the Trial Court itself "on the application by the petitioner of either party on being satisfied of the truth of the statement made in petition if it consider just and reasonable to do so". But decree passed under Code of Civil Procedure can in no circumstances be rescinded, altered, cancelled, or modified by the Trial Court; such decree may be rescinded or changed only by the Higher Court; *Baby Deb v. Ajit Deb*, AIR 2008 Cal 49.

**21A. Power to transfer petitions in certain cases.**—(1) Where—

- (a) a petition under this Act has been presented to a district court having jurisdiction by a party to a marriage praying for a decree for judicial separation under section 10 or for a decree of divorce under section 13; and
  - (b) another petition under this Act has been presented thereafter by the other party to the marriage praying for a decree for judicial separation under section 10 or for a decree of divorce under section 13 on any ground, whether in the same district court or in a different district court, in the same State or in a different State,
- the petitions shall be dealt with as specified in sub-section (2).

(2) In a case where sub-section (1) applies,—

- (a) if the petitions are presented to the same district court, both the petitions shall be tried and heard together by that district court;
- (b) if the petitions are presented to different district courts, the petition presented later shall be transferred to the district court in which the earlier petition was presented and both the petitions shall be heard and disposed of together by the district court in which the earlier petition was presented.

1. Subs. by Act 68 of 1976, sec. 13, for "and shall also state" (w.e.f. 27-5-1976).

2. Ins. by Act 68 of 1976, sec. 14 (w.e.f. 27-5-1976).

(3) In a case where clause (b) of sub-section (2) applies, the court or the Government, as the case may be, competent under the Code of Civil Procedure, 1908 (5 of 1908), to transfer any suit or proceeding from the district court in which the later petition has been presented to the district court in which the earlier petition is pending, shall exercise its powers to transfer such later petition as if it had been empowered so to do under the said Code.]

## COMMENTS

**Applicability**

Section 21A of the Act is applicable when two separate petitions for divorce have been filed one after the other in two different places. Section 21A deals with a specific circumstance when two different petitions have been filed at two different places, either within the same district, or in two different districts. Since the provision deals with a specific circumstance, it does not control other conditions/circumstances under which a transfer application may be moved; *Anshu Bhatnagar v. Rajendra Bhatnagar*, AIR 2013 Raj 28.

<sup>1</sup>[21B. Special provision relating to trial and disposal of petitions under the Act.—(1) The trial of a petition under this Act shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion unless the court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

(2) Every petition under this Act shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date of service of notice of the petition on the respondent.

(3) Every appeal under this Act shall be heard as expeditiously as possible, and endeavour shall be made to conclude the hearing within three months from the date of service of notice of appeal on the respondent.]

<sup>1</sup>[21C. Documentary evidence.—Notwithstanding anything in any enactment to the contrary, no document shall be inadmissible in evidence in any proceeding at the trial of a petition under this Act on the ground that it is not duly stamped or registered.]

<sup>2</sup>[22. Proceedings to be *in camera* and may not be printed or published.—(1) Every proceeding under this Act shall be conducted *in camera* and it shall not be lawful for any person to print or publish any matter in relation to any such proceeding except a judgment of the High Court or of the Supreme Court printed or published with the previous permission of the Court.

(2) If any person prints or publishes any matter in contravention of the provisions contained in sub-section (1), he shall be punishable with fine which may extend to one thousand rupees.]

<sup>2</sup>23. Decree in proceedings.—(1) In any proceeding under this Act, whether defended or not, if the court is satisfied that—

- condonation applied to adultery and cruelty
- (a) any of the grounds for granting relief exists and the petitioner <sup>3</sup>[except in cases where the relief is sought by him on the ground specified in sub-clause (a), sub-clause (b) or sub-clause (c) of clause (ii) of section 5] is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief, and
- (b) where the ground of the petition is the ground specified <sup>4</sup>[\*\*\*] in clause (i) of sub-section (1) of section 13, the petitioner has not in any manner been accessory to or connived at or condoned the act or acts complained of, or where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty, and

1. Ins. by Act 68 of 1976, sec. 14 (w.e.f. 27-5-1976).

2. Subs. by Act 68 of 1976, sec. 15, for section 22 (w.e.f. 27-5-1976).

3. Ins. by Act 68 of 1976, sec. 16(a)(i) (w.e.f. 27-5-1976).

4. The words "in clause (f) of sub-section (i) of section 10, or" omitted by Act 68 of 1976, sec. 16(a)(ii) (w.e.f. 27-5-1976).

- <sup>1</sup>[(bb) when a divorce is sought on the ground of mutual consent, such consent has not been obtained by force, fraud or undue influence, and]
- (c) <sup>2</sup>[the petition (not being a petition presented under section 11)] is not presented or prosecuted in collusion with the respondent, and
- (d) there has not been any unnecessary or improper delay in instituting the proceeding, and
- (e) there is no other legal ground why relief should not be granted, then, and in such a case, but not otherwise, the court shall decree such relief accordingly.

(2) Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties:

<sup>3</sup>[Provided that nothing contained in this sub-section shall apply to any proceeding wherein relief is sought on any of the grounds specified in clause (ii), clause (iii), clause (iv), clause (v), clause (vi) or clause (vii) of sub-section (1) of section 13.]

<sup>4</sup>[(3) For the purpose of aiding the court in bringing about such reconciliation, the court may, if the parties so desire or if the court thinks it just and proper so to do, adjourn the proceedings for a reasonable period not exceeding fifteen days and refer the matter to any person named by the parties in this behalf or to any person nominated by the court or the parties (and) name any person, with directions to report to the court as to whether reconciliation can be and has been, effected and the court shall in disposing of the proceeding have due regard to the report.]

<sup>4</sup>[(4) In every case where a marriage is dissolved by a decree of divorce, the court passing the decree shall give a copy thereof free of cost to each of the parties.]

#### COMMENTS

##### Burden of Proof

Where the connivance is doubtful, the presumption is always in favour of an absence of intention. In a case husband invited the adulterer and then decamped and gave him the opportunity for, or otherwise actively promoted the adultery, that would give rise to a presumption of connivance in the husband. Connivance by husband cannot be inferred from the mere circumstances and it must strictly be proved; *K.J. v. K.*, AIR 1952 Nag 395.

##### Difference between force, fraud or undue influence and collusion

Force, fraud or undue influence is quite distinct and different from collusion. In the case of force, fraud or undue influence, one party is subjected to the same by the other party without the consent or volition of the former. In the case of collusion, there would be a meeting of minds to attain something by the joint effort of both parties. In other words, in the case of collusion, there would be consensus between two parties to do or not to do something; *Hari Kumar S/o Rghavan Pillai v. Sudha B. D/o Ramchandran Kurup*, AIR 2013 Ker 22.

##### Scope and Object

Section 23 (1) (a) provides that before passing the decree for divorce, the Court shall record its satisfaction regarding existence of the ground of divorce and further shall see that the wrong doer is not taking benefit by getting the decree of divorce; *Rajneesh v. Savita*, AIR 2003 Raj 280.

<sup>5</sup>[23A. Relief for respondent in divorce and other proceedings.—In any proceeding for divorce or judicial separation or restitution of conjugal rights, the

1. Ins. by Act 68 of 1976, sec. 16(a)(iii) (w.e.f. 27-5-1976).
2. Subs. by Act 68 of 1976, sec. 16(a)(iv), for "the petition" (w.e.f. 27-5-1976).
3. Ins. by Act 68 of 1976, sec. 16(b) (w.e.f. 27-5-1976).
4. Ins. by Act 68 of 1976, sec. 16(c) (w.e.f. 27-5-1976).
5. Ins. by Act 68 of 1976, sec. 17 (w.e.f. 27-5-1976).

Applicant for maintenance  
can be made to  
10/10/2011

respondent may not only oppose the relief sought on the ground of petitioner's adultery, cruelty or desertion, but also make a counter-claim for any relief under this Act on that ground; and if the petitioner's adultery, cruelty or desertion is proved, the court may give to the respondent any relief under this Act to which he or she would have been entitled if he or she had presented a petition seeking such relief on that ground.]

24. Maintenance *pendente lite* and expenses of proceedings.—Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable:

[Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be.]

corresponds to S-24 of Indian Divorce Act & special marriage Act

COMMENTS

Consideration for amount of maintenance

The court is required to take into consideration the income of the parties before deciding the quantum of the interim maintenance. The court has to keep in view the need of the applicant and paying capacity of the non-applicant. *Palmarathi v. C. Lakshminarayana*, AIR 2002 Kant 424.

Consideration for fixing maintenance *pendente lite*

(i) If maintenance is being paid under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) the same though can be taken into consideration while granting maintenance *pendente lite* under section 24 of the Hindu Marriage Act, 1955 (25 of 1955), yet it cannot be the sole ground for declining such maintenance; *Neelam Kalia v. Rajesh Kalia*, AIR 2013 HP 76.

(ii) As far as maintenance *pendente lite* and expenses of proceedings are concerned, no distinction has been made under section 24 of the Act relating to right of a wife for maintenance preferred under section 12 or 13 of the Act; *Sandeep Kumar v. State of Jharkhand*, A.O. 2004 Jhar 22.

(iii) If the divorce proceeding has terminated adversely to his client but an appeal is pending. Whether the appeal ends in divorce or not, the wife's claim for maintenance *qua* wife under the definition contained in the explanation (b) to section 125 of the code continues unless parties make adjustments and come to terms regarding the quantum or the right to maintenance. It is clear that mere divorce does not end the right to maintenance; *Captain, Ramesh Chander v. Veena Kaushal*, AIR 1978 SC 1807.

Entitlement for maintenance sec 24 of HMA and 125 of CrPc → independent of each other.

(i) During the pendency of the divorce proceedings an applicant who establishes that she has no sufficient independent income for her to claim maintenance *pendente lite*; *Manokaran v. Devaki*, 1982 1 Cr.L.J. 1022 (S.C.).

(ii) Section 24 entitles not only the wife but also the husband to claim maintenance *pendente lite* on showing that he has no independent source of income. The husband will have to satisfy the court that either due to physical handicap or disability he is unable to earn and support his livelihood. Held that since the husband was physically handicapped and was not mentally ill and only because his business could not be granted any maintenance, it being opposed to public policy; *Kanchan v. Kamalendra*, AIR 1993 Bom 493.

Maintenance & expenses during pendency of proceedings

Provisions of section 24 of the Hindu Marriage Act provide for maintenance by the earning spouse in favour of non-earning spouse during the proceedings before the court. Therefore an application seeking maintenance and medical expenses incurred by a dependent spouse is definitely maintainable in an application under section 24; *R. Suresh v. Chandra M.A.*, AIR 1983 SC 1807.

Sec 24 corresponds to Sec 36 of Indian Divorce Act. Sec 36 of Indian Divorce Act provides for maintenance during pendency of proceedings. However, the wife's claim for maintenance is independent of her ability to earn. If she is unable to earn, she is entitled to maintenance under Sec 24 of HMA.

1. Ins. by Act 49 of 2001, sec. 8 (w.e.f. 24-9-2001).

## Scope

(i) Pending an application either under Rule 5 of Order 9 or Rule 9 of Order 9 or Rule 13 of Order 9 of the Code of Civil Procedure a spouse is entitled to maintain an application under section 24 of Hindu Marriage Act, 1955. The expression "proceedings under the Act" appearing in section 24 cannot be given a narrow and restrictive meaning; *Vinod Kumar Kejriwal v. Usha Vinod Kejriwal*, AIR 1993 Bom 168.

(ii) Section 125(1)(d) has imposed a liability on both the son and the daughter to maintain their father or mother who is unable to maintain himself or herself; *Dr. Vijaya Manohar Arbat v. Keshireo Rajaram Sawai*, AIR 1987 SC 1100.

(iii) The direction by the Civil Court is not a final determination under the Hindu Adoptions and Maintenance Act but an order *pendente lite* under section 24 of the Hindu Marriage Act to pay the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioners own income and the income of the respondent, it may seem to the Court to be reasonable; *Captain Ramesh Chander v. Veena Kaushal*, AIR 1978 SC 1807.

**25. Permanent alimony and maintenance.**—(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall <sup>1[\*\*\*]</sup> pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant, having regard to the respondent's own income and other property, if any, the income and other property of the applicant <sup>2</sup>, the conduct of the parties and other circumstances of the case, it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may at the instance of either party vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has re-married or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, <sup>3</sup>[it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just].

## Income of husband

While determining the quantum of permanent alimony the income of the husband has to be kept in mind; *Ira Das v. Ramesh Ranjan Mallick*, AIR 2003 Ori 62.

Alimony vs  
q's can be  
ordered by  
a court  
exercising  
jurisdiction  
under HMA

## Alimony - Factors for determination

In determining permanent alimony, no arithmetic formula can be adopted as there is no mathematical exactitude. It shall depend upon the status of the parties, their needs, the financial capacity of the husband and other obligations. The alimony cannot be excessive or affect the living condition of the other party. It is for the court to see that the wife lives with dignity and comfort and not in want. Living need not be luxurious but simultaneously she should not be left destitute. The Court has to act with pragmatic sensibility to such an issue so that the wife's needs are not met any kind of manmade misfortune; *U. Sree v. U. Srinivas*, 2012 (12) SCALE 98.

"while the applicant remains unmarried" omitted by Act 68 of 1976, (w.e.f. 27-5-1976).

Act 68 of 1976, sec. 18(a)(ii), for "and the conduct of the parties" (w.e.f.

Act 68 of 1976, sec. 18(b), for "it shall rescind the order" (w.e.f. 27-5-1976).

## COMMENTS

application U/s 25  
only on passing of decree  
not when decree  
is determined

q/v/b/  
to husband  
& wife  
both

**Relevant consideration for determination of permanent alimony and maintenance**

Court has to consider the status of parties, their needs, capacity of husband to pay, having regard to reasonable expenses for his own maintenance and others whom he is obliged to maintain. Amount of maintenance fixed should be such as she can live in reasonable comfort considering her status and mode of life she used to live; *Vinny Parmvir Parmar v. Parmvir Parmar*, AIR 2011 SC 2748; JT 2011 (7) SC 553: (2011) 7 SCALE 741.

**Second marriage of husband**

Once the husband has contracted a second marriage, the first wife is entitled in law to claim for separate residence and maintenance; *Ashabi B. Takke v. Bashasab Takke*, AIR 2003 Kant 172.

**26. Custody of children.**—In any proceeding under this Act, the court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible, and may, after the decree, upon application by petition for the purpose, make from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending, and the court may also from time to time revoke, suspend or vary any such orders and provisions previously made:

[Provided that the application with respect to the maintenance and education of the minor children, pending the proceeding for obtaining such decree, shall as far as possible, be disposed of within sixty days from the date of service of notice on the respondent.]

## COMMENT

**Custody: Mother or Father**

Considering the welfare of the children in the peculiar facts of the case the custody of children should be with the mother; *Anita Krishnakumar Kachba v. K.R. Kachba*, AIR 2003 Bom 23.

**27. Disposal of property.**—In any proceeding under this Act, the court may make such provisions in the decree as it deems just and proper with respect to any property presented, at or about the time of marriage, which may belong jointly to both the husband and the wife.

## COMMENTS

**Scope**

Section 27 is attracted only when the property presented at or about the time of marriage is alleged to belong jointly to both the spouses. Section 27 can only relate to a limited class of property that is owned jointly by the spouses which has been presented at or about the time of marriage. It is not permissible to bring in property brought after marriage as it would expand the scope of section 27. Held that jewellery presented at the time of marriage comes within section 27 of the Act but furniture brought after the marriage would not come within section 27 of the Act; *Subhash Lata v. V.N. Khanna*, AIR 1992 Del 14. See also *Sangeeta Balkrishna Kadam v. Balkrishna Ramchandra Kadam*, AIR 1994 Bom 3.

**28. Appeals from decrees and orders.**—(1) All decrees made by the court in any proceeding under this Act shall, subject to the provisions of sub-section (3), be appealable as decrees of the court made in the exercise of its original civil jurisdiction, and every such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the court given in exercise of its original civil jurisdiction.

1. Ins. by Act 49 of 2001, sec. 9 (w.e.f. 24-9-2001)

2. Subs. by Act 68 of 1976, sec. 19, for section 28 (w.e.f. 27-5-1976).

(2) Orders made by the court in any proceeding under this Act under section 25 or section 26 shall, subject to the provisions of sub-section (3), be appealable if they are not interim orders, and every such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the court given in exercise of its original civil jurisdiction.

(3) There shall be no appeal under this section on the subject of costs only.

(4) Every appeal under this section shall be preferred within a <sup>1</sup>[period of ninety days] from the date of the decree or order.]

<sup>2</sup>[28A. Enforcement of decrees and orders.—All decrees and orders made by the court in any proceeding under this Act shall be enforced in the like manner as the decrees and orders of the court made in exercise of its original civil jurisdiction for the time being are enforced.]

#### COMMENTS

##### Enforcement of decree

In the context of the prevailing circumstances, the payment of interim alimony and litigation expenses, *pendente lite* to a spouse, who is financially weaker than the other, with a view to enable him or her to conduct the proceedings in a matrimonial cause and secure speedy justice, should be regarded as a *sine qua non* of justice and the argument that resort to execution proceedings can be had against the defaulting spouse or that other proceedings can be taken cannot be countenanced, especially when enforcement of such orders otherwise than by execution is neither prohibited nor excluded by section 28A of the Act. It was held that when there is deliberate default on the part of respondent husband to pay the maintenance and litigation expenses to the wife, his defence of divorce should be struck down: *C.S. Manjula v. Velayudhan Asari*, AIR 1993 Ker 181.

#### SAVINGS AND REPEALS

29. Savings.—(1) A marriage solemnised between Hindus before the commencement of this Act, which is otherwise valid, shall not be deemed to be invalid or void to have been invalid by reason only of the fact that the parties thereto belonged to the same *gotra* or *pravara* or belonged to different religions, castes or sub-divisions of the same caste.

(2) Nothing contained in this Act shall be deemed to affect any right recognised by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage, whether solemnized before or after the commencement of this Act.

(3) Nothing contained in this Act shall affect any proceeding under any law for the time being in force for declaring any marriage to be null and void or for annulling or dissolving any marriage or for judicial separation pending at the commencement of this Act, and any such proceeding may be continued and determined as if this Act had not been passed.

(4) Nothing contained in this Act shall be deemed to affect the provisions contained in the Special Marriage Act, 1954 (43 of 1954) with respect to marriages between Hindus solemnised under that Act, whether before or after the commencement of this Act.

30. Repeals.—[Rep. by the Repealing and Amending Act, 1960 (58 of 1960), sec. 2 and First Schedule (w.e.f. 26-12-1960).]

1. Subs. by Act 50 of 2003, sec. 5, for "period of thirty days" (w.e.f. 23-12-2003).

2. Subs. by Act 68 of 1976, sec. 19, for section 28 (w.e.f. 27-5-1976).

① Separate property of a Hindu male dying intestate is succeeded by - widow (?)

## THE HINDU SUCCESSION ACT, 1956

### INTRODUCTION

The joint and undivided family is the condition of a Hindu society. The joint family traces its origin to the ancient patriarchal system. The law of heirship had close connection with the doctrine—"He who inherits the property, also offers the *pinda*". The law of inheritance comprises rules which govern devolution of property on the death of a person upon other persons solely on account of their relationship to the former.

Till the middle of 19th century the Hindu Law of Succession in its traditional form remained in application in the country without any reform. The *Mitakshara* law as well as the *Dayabhaga* law remained in force in various parts of India. The courts in British India and in Indian States kept on applying and interpreting their rules and provisions.

It was for the first time in 1850 in British India a rule forming part of Hindu Law of Succession was abrogated by the Central Legislature in the form of Caste Disabilities Removal Act, 1850. In the area of testamentary succession reforms were made by the following enactments: Hindu Wills Act, 1870, Hindu Transfer and Bequests Act, 1914, Hindu Disposition of Property Act, 1916. The Hindu Wills Act, 1870 was later incorporated into the Indian Succession Act, 1925.

Hindu Gains of Learning Act, 1930 modified the traditional joint family law.

Hindu Inheritance (Removal of Disabilities) Act, 1928 modified the traditional rules of Hindu law that disqualified heirs on the ground of certain bodily and mental disease and deformity from inheriting the property.

Hindu Law of Inheritance (Amendment) Act, 1929 modified the traditional law of inheritance relating to son's daughter, daughter's daughter, sister and sister's son.

Hindu Women's Right to Property Act, 1937 sought to improve the legal position of women regarding inheritance of property being survivors of male Hindus under the laws of succession and joint family.

It was felt that the Hindu Code should be prepared. The Hindu Law Committee which was formed to prepare the Hindu Code in 1914 was revived in 1944. It was presided over by Sir Benegal Narsing Rau. The original draft of the provisions relating to intestate succession contained in Rau's Committee Bill underwent substantive changes in the hands of Select Committee which considered the Rau Committee Bill in 1948. Based on the scheme adopted by the Select Committee the Hindu Succession Bill was introduced in the Parliament.

### STATEMENT OF OBJECTS AND REASONS

This, the third instalment of the Hindu Code, seeks to amend and codify the law relating to intestate succession. The original draft of the provisions relating to intestate succession contained in the Rau's Committee Bill underwent substantial changes in the hands of the Select Committee which considered the Rau's Committee Bill in 1948. This Bill follows to a large extent the scheme

adopted by the Select Committee but takes into account the various suggestions made from time to time for the amendment of the Select Committee's version of the Bill. In particular, special provisions have been included for regulating succession to the property of intestates governed by the *Marumakkattayam*, *Aliyasantana* or *Nambudri* Laws of Inheritance.

#### ACT 30 OF 1956

The Hindu Succession Bill having been passed by both the Houses of Parliament received the assent of the President on 17th June, 1956. It came on the Statute Book as THE HINDU SUCCESSION ACT, 1956 (30 of 1956).

#### LIST OF AMENDING ACTS AND ADAPTATION ORDERS

1. The Hindu Adoptions and Maintenance Act, 1956 (78 of 1956) (w.e.f. 21-12-1956).
2. The Adaptation of Laws (No. 3) Order, 1956.
3. The Repealing and Amending Act, 1960 (58 of 1960) (w.e.f. 20-12-1960).
4. The Repealing and Amending Act, 1974 (56 of 1974) (w.e.f. 20-12-1974).
5. The Hindu Succession (Amendment) Act, 2005 (39 of 2005) (w.e.f. 9-9-2005).

28.92

LawShrine Trust

*Came into effect on 9th September 2005*  
**THE HINDU SUCCESSION ACT, 1956**

(30 of 1956)

[17th June, 1956]

*as amended by*

**The Hindu Succession (Amendment) Act, 2005 (39 of 2005)**

*An Act to amend and codify the law relating to intestate succession among Hindus.*

BE it enacted by Parliament in the Seventh Year of Republic of India as follows:—

CHAPTER I

PRELIMINARY

**1. Short title and extent.**—(1) This Act may be called the Hindu Succession Act, 1956.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

**2. Application of Act.**—(1) This Act applies—

- (a) to any person, who is a Hindu by religion in any of its forms or developments including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj;
- (b) to any person who is a Buddhist, Jaina or Sikh by religion; and
- (c) to any other person who is not a Muslim, Christian, Parsi or Jew by religion unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

*Explanation.*—The following persons are Hindus, Buddhists, Jainas or Sikhs by religion, as the case may be:—

- (a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jainas or Sikhs by religion;
- (b) any child, legitimate or illegitimate one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged;
- (c) any person who is a convert or re-convert to the Hindu, Buddhist, Jaina or Sikh religion.

(2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

(3) The expression "Hindu" in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.

## STATE AMENDMENT

Pondicherry.—In section 2, after sub-section (2) insert—

“(2A) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the Renouncants of the Union territory of Pondicherry.”

[Regulation 7 of 1963, sec. 3 and First Sch. (w.e.f. 1-10-1963).]

## COMMENTS

**Applicability of the Act**

The petitioner's mother after marrying the petitioner's father changed her religion and name. The petitioner was not able to prove that she was a member of the Hindu community as she could not show *bona fide* intention of being converted to the Hindu faith accompanied by conduct or unequivocally expressing that intention, thereby failing to avail the opportunity of section 2(b) of the Act; *Sapna Jacob v. State of Kerala*, AIR 1993 Ker 75.

**3. Definitions and interpretation.**—(1) In this Act, unless the context otherwise requires,—

(a) “agnate”—one person is said to be an “agnate” of another if the two are related by blood or adoption wholly through males;

(b) “aliyasantana law” means the system of law applicable to persons who, if this Act had not been passed, would have been governed by the Madras Aliyasantana Act, 1949, or by the customary *Aliyasantana law* with respect to the matter for which provision is made in this Act;

(c) “cognate”—one person is said to be cognate of another if the two are related by blood or adoption but not wholly through males;

(d) the expression “custom” and “usage” signify any rule which having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family;

Provided that the rule is certain and not unreasonable or opposed to public policy; and

Provided further that in the case of a rule applicable only to a family it has not been discontinued by the family;

(e) “full blood”, “half blood” and “uterine blood”—

(i) two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife, and by half blood when they are descended from a common ancestor but; by different wives;

(ii) two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands;

*Explanation.*—In this clause “ancestor” includes the father and “ancestress” the mother;

(f) "heir" means any person, male or female, who is entitled to succeed to the property of an intestate under this Act;

(g) "intestate"—a person is deemed to die intestate in respect of property of which he or she has not made a testamentary disposition capable of taking effect; (will not making a will, and)

(h) "marumakkattayam law" means the system of law applicable to persons—

(a) who, if this Act had not been passed, would have been governed by the Madras Marumakkattayam Act, 1932 (Madras Act XXII of 1933); the Travancore Nayar Act (II of 1100K); the Travancore Ezhava Act (III of 1100K); the (VII of 1108K) Travancore Nanjinad Vellala Act (IV of 1101K); the Travancore Kshatriya Act (VII of 1108K); the Travancore Krishnanvaka Marumakkathayee Act (VII of 1115K); the Cochin Marumakkathayam Act (XXXIII of 1113K); or the Cochin Nayar Act (XXIX of 1113K); with respect to the matters for which provision is made in this Act; or

(b) who belong to any community, the members of which are largely domiciled in the State of Travancore-Cochin or Madras [as it existed immediately before the 1st November, 1956,] and who, if this Act had not been passed, would have been governed with respect to the matters for which provision is made in this Act by any system of inheritance in which descent is traced through the female line;

but does not include the *aliyasantana* law;

(i) "nambudri law" means the system of law applicable to persons who, if this Act had not been passed, would have been governed by the Madras Nambudri Act, 1932 (Madras Act XXI of 1933); the Cochin Nambudri Act (XVII of 1113); or the Travancore Malayala Brahmin Act with respect to the matters for which provision is made in this Act;

(j) "related" means related by legitimate kinship:

Provided that illegitimate children shall be deemed to be related to their mothers and to one another, and their legitimate descendants shall be deemed to be related to them and to one another; and any word expressing relationship or denoting a relative shall be construed accordingly.

(2) In this Act, unless the context otherwise requires, words importing the masculine gender shall not be taken to include females.

#### COMMENTS

*Coparcenary property is known as Joint family property.*

#### Scope of illegitimate children

A child of void marriage is related to its parents within the meaning of section 3(1)(j) of Hindu Succession Act by virtue of section 16 of Hindu Marriage Act, 1955. Proviso to section 3(1)(j) is confined to those children who are not clothed with legitimacy under

1. Ins. by the Adaptation of Laws (No. 3) Order, 1956.

section 16 of Hindu Marriage Act; *Rasala Surya Prakasarao v. Rasala Venkateswararao*, AIR 1992 AP 234.

#### Heirs

Under clause (f) of sub-section (1) of section (3) agnates of deceased are also heirs; *Basanti Devi v. Raviprakash Ramprasad Jaiswal*, (2007) 11 SCR 444.

**4. Over-riding effect of Act.**—(1) Save as otherwise expressly provided in this Act,—

- (a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;
- (b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act.

[\*\*\*]

## CHAPTER II

### INTESTATE SUCCESSION

#### General

**5. Act not to apply to certain properties.**—This Act shall not apply to—

- (i) any property succession to which is regulated by the Indian Succession Act 1925, by reason of the provisions contained in section 21 of the Special Marriage Act, 1954;
- (ii) any estate which descends to a single heir by the terms of any covenant or agreement entered into by the Ruler of any Indian State with the Government of India or by the terms of any enactment passed before the commencement of this Act;
- (iii) the Valiamma Thampuram Kovilagam Estate and the Palace Fund administered by the Palace Administration Board by reason of the powers conferred by Proclamation (IX of 1124) dated 29th June, 1949, promulgated by the Maharaja of Cochin.

#### STATE AMENDMENT

Kerala.—Kerala State has passed an Act for the partition of the Valiamma Thampuram Kovilegam Estate and the Palace Fund [*vide* Kerala Act 16 of 1961, sec. 10]. Section 10 of Kerala Act 16 of 1961 reads as under:

“10. Amendment of the Hindu Succession Act, 1956.—Clause (iii) of section 5 of the Hindu Succession Act, 1956 (Central Act 30 of 1956), shall be omitted with effect on and from the date of execution of the partition deed under section 6.”

*Father is not claim 1 heir  
by claim II Red*

1. Sub-section (2) omitted by Act 39 of 2005, sec. 2 (w.e.f. 9-9-2005). Sub-section (2), before omission, stood as under:

“(2) For the removal of doubts it is hereby declared that nothing contained in this Act shall be deemed to affect the provision of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings.”

*Coparcenary property of Hindu devolved by survivorship and can be partitioned*

✓ 6. Devolution of interest in coparcenary property.—(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005\*, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,—

- (a) by birth become a coparcener in her own right in the same manner as the son;
- (b) have the same rights in the coparcenary property as she would have had if she had been a son;
- (c) be subject to the same liabilities in respect of the said coparcenary property as that of a son,

and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

(2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force in, as property capable of being disposed of by her by testamentary disposition.

(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005\*, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,—

- (a) the daughter is allotted the same share as is allotted to a son;
- (b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and

1. Subs. by Act 39 of 2005, sec. 3, for section 6 (w.e.f. 9-9-2005). Section 6, before substitution, stood as under:

"6. Devolution of interest in coparcenary property.—When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:

Provided that, if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.

Explanation 1.—For the purposes of this section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

Explanation 2.—Nothing contained in the proviso to this section shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein."

\* Date of commencement 9-9-2005

*delete doggy*

*Lawchurne Trust*

*Nothing Partition*

3

2

- (c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

*Explanation.*—For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

(4) After the commencement of the Hindu Succession (Amendment) Act, 2005\*, no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt:

Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005\*, nothing contained in this sub-section shall affect—

- (a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or
- (b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.

*Explanation.*—For the purposes of clause (a), the expression “son”, “grandson” or “great-grandson” shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005\*.

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004.

*Explanation.*—For the purposes of this section “partition” means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court.]

**STATEMENT OF OBJECTS AND REASONS [The Hindu Succession (Amendment) Act, 2005]**

Section 6 of the Act deals with devolution of interest of a male Hindu in coparcenary property and recognises the rule of devolution by survivorship among the members of the coparcenary. The retention of the Mitakshara coparcenary property without including the females in it means that the females cannot inherit in ancestral property as their male counterparts do. The law by excluding the daughter from participating in the coparcenary ownership not only contributes to her discrimination on the ground of gender but also has led to oppression and negation of her fundamental right of equality guaranteed by the Constitution having regard to the need to render social justice to women, the States of Andhra Pradesh, Tamil Nadu, Karnataka and Maharashtra have made necessary changes in the law giving equal right to daughters in Hindu Mitakshara coparcenary property. The Kerala Legislature has enacted the Kerala Joint Hindu Family System (Abolition) Act, 1975.

It is proposed to remove the discrimination as contained in section 6 of the Hindu Succession Act, 1956 by giving equal rights to daughters in the Hindu Mitakshara coparcenary property as the sons have.

\* Date of commencement 9-9-2005.

## STATE AMENDMENT

## Sections 6A to 6C

**Karnataka.**—After section 6, insert the following sections, namely:—

**6A. Equal rights to daughter in co-parcenary property.**—Notwithstanding anything contained in section 6 of this Act—

- (a) in a joint Hindu family governed by *Mitakshara* law, the daughter of a co-parcener shall by birth become a co-parcener in her own right in the same manner as the son and have the same rights in the co-parcenary property as she would have had if she had been a son inclusive of the right to claim by survivorship and shall be subject to the same liabilities and disabilities in respect thereto as the son;
- (b) at a partition in such a joint Hindu family the co-parcenary property shall be so divided as to allot to a daughter the same share as is allotable to a son:

Provided that the share which a predeceased son or a predeceased daughter would have got at the partition if he or she had been alive at the time of the partition, shall be allotted to the surviving child of such predeceased son or of such predeceased daughter:

Provided further that the share allotable to the predeceased child of a predeceased son or of a predeceased daughter, if such child had been alive at the time of the partition, shall be allotted to the child of such predeceased child of the predeceased son or of such predeceased daughter, as the case may be;

- (c) any property to which a female Hindu becomes entitled by virtue of the provisions of clause (a) shall be held by her with the incidents of co-parcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force, as property capable of being disposed of by her by will or other testamentary disposition;
- (d) nothing in clause (b) shall apply to a daughter married prior to or to a partition which had been effected before the commencement of Hindu Succession (Karnataka Amendment) Act, 1990.

**6B. Interest to devolve by survivorship on death.**—When a female Hindu dies after the commencement of the Hindu Succession (Karnataka Amendment) Act, 1990, having at the time of her death an interest in a *Mitakshara* co-parcenary property, her interest in the property shall devolve by survivorship upon the surviving members of the co-parcenary and not in accordance with this Act:

Provided that if the deceased had left any child or child of a pre-deceased child, the interest of the deceased in the *Mitakshara* co-parcenary property shall devolve by testamentary or intestate succession as the case may be under this Act and not by survivorship.

**Explanations.**—(1) For the purposes of this section the interest of female Hindu *Mitakshara* co-parcenary shall be deemed to be the share in the property that would have been allotted to her if a partition of the property had taken place immediately before her death, irrespective of whether she was entitled to claim partition or not.

(2) Nothing contained in the proviso to this section shall be construed as enabling a person who, before the death of the deceased had separated himself or herself from the co-parcenary, or any of his or her heirs to claim on intestacy a share in the interest referred to therein.

**6C. Preferential right to acquire property in certain cases.**—(1) Where, after the commencement of Hindu Succession (Karnataka Amendment) Act, 1990 an interest in any immovable property of an intestate or in any business carried by him or her, whether solely or in conjunction with others devolves under

sections 6A or 6B upon two or more heirs and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

(2) The consideration for which any interest in the property of the deceased may be transferred under sub-section (1) shall in the absence of any agreement between the parties, be determined by the court, on application, being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of or incidental to the application.

(3) If there are two or more heirs proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred.

*Explanation.*—In this section 'court' means the court within the limits of whose jurisdiction the immovable property is situate or the business is carried on, and includes any other court which the State Government may by notification in the Official Gazette specify in this behalf.

[Vide Karnataka Act 23 of 1994, sec. 2 (w.e.f. 30-7-1994).]

#### COMMENTS

##### Disposal of undivided interest in property

A wife inherited the interest of her deceased husband in the family property, she continued to be a member of the family and the property including that of her's was held by the family. As a female heir, having inherited property under section 6, she cannot be treated as having ceased to be a member of the family without her volition. Though she can dispose of her undivided interest in the co-parcenary property by a Will or sale for a valuable consideration, she cannot make a gift of such interest without the prior consent of the other coparceners; *Kanna Gounder v. Arjuna Gounder*. AIR 2003 Mad 157.

##### Devolution of interest

A wife cannot herself demand a partition, but if a partition does take place between her husband and his sons, she is entitled to receive a share and to hold and enjoy that share separately; *Man Singh v. Ramkala*, AIR 2011 SC 1542, JT 2011 (13) SC 550: (2010) 13 SCALE 250.

##### Partition of coparcenary property

(i) The contention of the petitioners that there was automatic partition amongst the heirs of the deceased *Kanna* on his death has been negatived because it is only when the deceased had left his surviving female heirs as provided in proviso to section 6 of the Act, a notional partition is deemed to have taken place in the joint family property for the purpose of ascertaining the share of the deceased in the joint family properties which comes to the share of the female heirs. If there are male heirs there is no automatic partition; *Shivgonda Balgonda Patil v. Director of Resettlement*, AIR 1992 Bom 72.

(ii) The heirs will get his or her share in the interest which the deceased had in the coparcenary property at the time of his death in addition to the share which he or she received or must be deemed to have received in the notional partition; *Gurupad v. Hirabai*, AIR 1978 SC 1239.

(iii) The fiction in the explanation of section 6 of the Act should be carried to a narrow extent only with a new point to implement the purpose for which it was introduced. When there were only two coparceners and one of them died, then if any person other than the coparcener is entitled to a share as a result of severance of the share of the deceased coparcener, the share of such other person will become fixed; *Shushilabai v. Naraynarao*, AIR 1975 Bom 257.

(iv) The deceased coparcener's share gets fixed on the date of his death, subsequent fluctuations in the fortunes of the coparceners do not affect it; *Karuppa v. Palaniammal*; AIR 1963 Mad 254.

##### Scope

The interpretation of provisions of section 6, its proviso and *explanation* 1 thereto with legislative intent in regard to the enlargement of share of the female heirs, qualitatively and quantitatively; *Gurupad v. Hira Bai*, AIR 1978 SC 1239.

**7. Devolution of interest in the property of a tarwad, tavazhi, kutumba, kavaru or illom.**—(1) When a Hindu to whom the *marumakkattayam* or *nambudri* law would have applied if this Act had not been passed, dies after the commencement of this Act, having at the time of his or her death an interest in

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① As a result of no changes introduced by Hindu Succession (Amnd) Act, 2005, The daughter of a coparcener in Joint Hindu Family, governed by Mitakshara law, becomes a coparcener -  
w.c.g. 9/9/2005

(2) When a Hindu to whom the *aliyasantana* law would have applied if this Act had not been passed, dies after the commencement of this Act, having at the time of his or her death an undivided interest in the property of a *kutumba* or *kavaru*, as the case may be, his or her interest in the property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not according to the *aliyasantana* law.

*Explanation.*—For the purposes of this sub-section, the interest of a Hindu in the property of a *kutumba* or a *kavaru* shall be deemed to be the share in the property of the *kutumba* or *kavaru* as the case may be that would have fallen to him or her if a partition of that property *per capita* had been made immediately before his or her death among all the members of the *kutumba* or *kavaru*, as the case may be, then living, whether he or she was entitled to claim such partition or not under the *aliyasantana* law, and such share shall be deemed to have been allotted to him or her absolutely.

(3) Notwithstanding anything contained in sub-section (1), when a *sthanamdar* dies after the commencement of this Act, *sthanam* property held by him shall devolve upon the members of the family to which the *sthanamdar* belonged and the heirs of the *sthanamdar* as if the *sthanam* property had been divided *per capita* immediately before the death of the *sthanamdar* among himself and all the members of his family then living, and the shares falling to the members of his family and the heirs of the *sthanamdar* shall be held by them as their separate property.

*Explanation.*—For the purposes of this sub-section, the family of a *sthanamdar* shall include every branch of that family, whether divided or undivided, the male members of which would have been entitled by any custom or usage to succeed to the position of *sthanamdar* if this Act had not been passed.

#### STATE AMENDMENT

Kerala.—In section 7, in sub-section (3)—

- (a) between the words "him" and "shall", the words "or her", between the words "himself" and "and", the words "or herself" and between the words "his" and "family" in the two places where they occur the words "or her" shall be respectively inserted;

- (b) in the *Explanation*, the word "male" shall be omitted;
- (c) the existing *Explanation* shall be numbered as *Explanation I* and the following *Explanation* shall be added, namely:—

"*Explanation II*.—The devolution of *Sthanam* properties under sub-section (3) and their division among the members of the family and heirs shall not be deemed to have conferred upon them in respect of immovable properties any higher rights than the *sthanamdar* regarding eviction or otherwise as against tenants who were holding such properties under the *sthani*."

[*Vide Kerala Act 28 of 1958, sec. 27 (w.e.f. 18-5-1958).*]

11/Manel 8. **General rules of succession in the case of males.**—The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter—

- (a) firstly, upon the heirs, being the relatives specified in class I of the Schedule; — 510 men btaya hai
- (b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;
- (c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and
- (d) lastly, if there is no agnate, then upon the cognates of the deceased.

#### COMMENTS

##### Ownership of property

When a Hindu inherits the property from his father under section 2 he takes it as his separate property and not as joint family property *vis-a-vis* his sons; *Commissioner of Wealth-tax v. Chander Sen*, AIR 1986 SC 1, 2.

##### Scope

The property in section 8 includes agricultural land also; *Tukaram Genba Jadhav v. Laxman Genba Jadhav*, AIR 1994 Bom 247.

9. **Order of succession among heirs in the Schedule.**—Among the heirs specified in the Schedule, those in class I shall take simultaneously and to the exclusion of all other heirs; those in the first entry in class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession.

10. **Distribution of property among heirs in class I of the Schedule.**—The property of an intestate shall be divided among the heirs in class I of the Schedule in accordance with the following rules:—

Rule 1.—The intestate's widow, or if there are more widows than one, all the widows together, shall take one share.

Rule 2.—The surviving sons and daughters and the mother of the intestate shall each take one share.

Rule 3.—The heirs in the branch of each pre-deceased son or each pre-deceased daughter of the intestate shall take between them one share.

Rule 4.—The distribution of the share referred to in Rule 3—

- (i) among the heirs in the branch of the pre-deceased son shall be so made that his widow (or widows together) and the surviving sons

intestate -> without making will

- and daughters gets equal portions; and
- (ii) among the heirs in the branch of the pre-deceased so made that the surviving sons and daughters

Thirukamma  
v. Seshareddy  
(AIR 1977)  
↓  
Right of a female Hindu  
u/s (1)(2)  
of section 14  
of HSA

COMMENTS

Expression 'widow' - Meaning thereof

The word 'widow' mentioned among Class I heirs is lady who is under the provisions of the Hindu Marriage Act, 1955 and who is a widow by virtue of death of her husband. If her marriage with her husband is annulled by law, on his death she would not get status of widow under Class I heirs. *Laxmbai v. Anasuya*, AIR 2013 Kar.

11. Distribution of property among heirs in class II of the Schedule so that they share equally

12. Order of succession among agnates and cognates

Order of succession among agnates or cognates, as the case may be, shall be determined in accordance with the rules of preference laid down hereunder:

Rule 1.—Of two heirs, the one who has fewer or no degrees of ascent is preferred.

Rule 2.—Where the number of degrees of ascent is the same or none, that heir is preferred who has fewer or no degrees of descent.

Rule 3.—Where neither heirs is entitled to be preferred to the other under Rule 1 or Rule 2 they take simultaneously.

COMMENTS

Succession among agnates and cognates

The number of cognates is larger than the number of agnates as the agnate traces his relationship to the propositus wholly through males, while a cognate is not required to trace his or her relationship with the propositus wholly through males. Held that after the failure of class I and class II heirs, the respondents being agnates should inherit instead of cognates; *Prabhu Lal v. Sitawa Lal*, AIR 1994 Raj 149.

13. Computation of degrees — (1) For the purposes of determining the order of succession among agnates or cognates, relationship shall be reckoned from the intestate to the heir in terms of degrees of ascent or degrees of descent or both, as the case may be.

(2) Degrees of ascent and degrees of descent shall be computed inclusive of the intestate.

(3) Every generation constitutes a degree either ascending or descending.

14. Property of a female Hindu to be her absolute property.—(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation.—In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as *stridhana* immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

23 March 2024  
 this is correct  
 if a female Hindu is the absolute owner of property possessed -> possession thru chain [lawful] must be widow at that time

## COMMENTS

**property**

Absol (i) to widow in lieu of her maintenance, after coming into force of  
 Hindu (ii) ripens into full estate and widow becomes absolute owner in view  
 of sec (iii) Act; *Santosh v. Saraswathibai*, AIR 2006 Kant 85.

was (iv) had a limited widow's estate in the scheduled properties which  
 in vic of her maintenance and the same ripened into an absolute estate  
 own ns of section 14 (1) of the Act. Thus, the Act made her an absolute  
 owner *lappa Marve v. Yelubai*, AIR 2003 Karn 396.

beco (v) possessed by a Hindu female, irrespective of how it was acquired,  
 of s property after coming into force of the Act in view of the operation  
 of s *dhary v. Ajudhia*, AIR 2003 NOC 126 (HP).

she had given the property to *Sarjabai* only for a limited period, hence  
 won absolute owner under sub-section (1) of section 14. The property  
 to l earned by sub-section (2) of section 14 as the court should give effect  
 to l e testator; *Bhura v. Kashiram*, AIR 1994 SC 1202.

(v) Sub-section (2) of section 14 must be read as a proviso or exception to sub-section (1) of section 14 and its operation must be confined to cases where property is acquired for the first time as a grant without any pre-existing right. If the female had an existing interest in the property, the interposition of any instrument will not affect the operation of sub-section (1) of section 14 and the property will be held by the female as her absolute property; *M. Shamugha Udayar v. Sivanandam*, AIR 1994 Mad 123.

(vi) When some property is allotted to the widow in lieu of her claim for maintenance, she becomes its absolute owner; *V. Thammal v. Sessa Reddy*, AIR 1977 SC 1944.

(vii) The right of the alien is co-extensive with that of the widow; *Jagat Singh v. Teja Singh*, AIR 1970 Cal 139 (F 3).

**Extent**

(i) The words "any property possessed by a female Hindu" include actual as well as constructive possession. Even when the property is in the possession of a trespasser, she is in its constructive possession; *Mangal v. Ratno*, AIR 1967 SC 1786.

(ii) The word 'possessed' is used in the broad sense and in the context means the state of owning or having in ones hand or power; *Gurumalappuru v. Setra*, AIR 1959 SC 577.

**Scope**

(i) The expression "female Hindu" in the heading of section 14 of the Act as well as the expression "any property possessed by a female Hindu" have to be given a wider interpretation in consonance with the wishes and desires of the framers of the Constitution. The expression 'female Hindu' would take in "daughter" also. Therefore, limited interest of daughter in property would get enlarged to full right after the commencement of the Act; *Jose v. Ramakrishnan Nair Radhakrishnan*, AIR 2004 Ker 16.

(ii) If no property is given in lieu of maintenance and only a sum of money is given, then section 14 does not apply; *Sulabha v. Abhimanyu*, AIR 1983 Ori 71.

**15. General rules of succession in the case of female Hindus.**—(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,—

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husband; — S 8 Consider husband at death

(c) thirdly, upon the mother and father;

207 Law Commission Report proposed to amend section 15 in case of female dying intestate leaving herself acquired prop. with no heirs

12 March  
DIT

14(2) is more in the nature of proviso or exception to sub sec (1)  
 Jagjit Singh

- (d) fourthly, upon the heirs of the father; and
  - (e) lastly, upon the heirs of the mother.
- (2) Notwithstanding anything contained in sub-section (1),—
- (a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and
  - (b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.

#### COMMENTS

##### Extent

(i) When a female inherits property from her brother, inheritance to it is governed by section 15(1) of the Act 1956; *Balasaheb v. Jaimala*, AIR 1978 Bom 44.

(ii) Son and daughter include son and daughter by natural birth legitimate or illegitimate; *Gurbachan v. Khichar Singh*, AIR 1971 Punj 240.

##### Succession on death of Hindu female

(i) The object of section 15(2) is to ensure that the property left by a Hindu female does not lose the real source from where the deceased female had inherited the property, one has no option but to hold that son or daughter (including the children of any pre-deceased son or daughter) of such a Hindu female will mean the son or daughter begotten by the Hindu female from the husband whose property she had inherited, and not the son or daughter whom she had begotten from a husband other than the one, whose property she had inherited. If such property is allowed to be drifted away from the source through which the deceased female has actually inherited the property, the object of section 15(2) will be defeated; *Dhanistha Kalita v. Ramakanta Kalita*, AIR 2003 Gau 92.

(ii) Hindu female inherited property from her deceased husband. If the property is allowed to be inherited by a son or daughter, whom the deceased female had begotten not through her husband, whose property it was, but from some other husband then, section 15(2)(b) will become meaningless and redundant; *Dhanistha Kalita v. Ramakanta Kalita*, AIR 2003 Gau 92.

(iii) The intent of the Legislature is clear that the property, if originally belonged to the parents of the deceased female, should go to the legal heirs of the father. So also under clause (b) of sub-section (2) of section 15, the property inherited by a female Hindu from her husband or her father-in-law, shall also under similar circumstances, devolve upon the heirs of the husband. It is the source from which the property was inherited by the female, which is more important for the purpose of devolution of her property. The fact that a female Hindu originally had a limited right and later acquired the full right, in any way, would not alter the rules of succession given in sub-section (2) of section 15; *Bhagat Ram (D) by L.Rs. v. Teja Singh (D) by L.Rs.*, AIR 2002 SC 1.

(iv) The mother became an absolute owner of the property which she inherited from her husband after his death in 1950 but after the Hindu Succession Act, 1956 came in force, before 1956 her interest being limited. Hence, it has been held that the property

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after the death of the mother shall be inherited by her son and daughter under section 15(1)(a) and not under any other provision of law; *Debahari Kumbhar v. Sribatsa Patra*, AIR 1994 Orj 86.

**16. Order of succession and manner of distribution among heirs of a female Hindu.**—The order of succession among the heirs referred to in section 15 shall be, and the distribution of the intestates property among those heirs shall take place according to the following rules, namely:—

**Rule 1.**—Among the heirs specified in sub-section (1) of section 15, those in one entry shall be preferred to those in any succeeding entry and those included in the same entry shall take simultaneously.

**Rule 2.**—If any son or daughter of the intestate had pre-deceased the intestate leaving his or her own children alive at the time of the intestate's death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate's death.

**Rule 3.**—The devolution of the property of the intestate on the heirs referred to in clauses (b), (d) and (e) of sub-section (1) and in sub-section (2) to section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's as the case may be, and such person had died intestate in respect thereof immediately after the intestate's death.

**17. Special provisions respecting persons governed by *marumakkattayam* and *aliyasantana* laws.**—The provisions of sections 8, 10, 15 and 23 shall have effect in relation to persons who would have been governed by the *marumakkattayam* law or *aliyasantana* law in this Act had not been passed as if—

(i) for sub-clauses (c) and (d) of section 8, the following had been substituted, namely:—

“(c) thirdly, if there is no heir of any of the two classes, then upon his relatives, whether agnates or cognates.”;

(ii) for clauses (a) to (e) of sub-section (1) of section 15, the following had been substituted, namely:—

“(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the mother;

(b) secondly, upon the father and the husband;

(c) thirdly, upon the heirs of the mother;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the husband.”;

(iii) clause (a) of sub-section (2) of section 15 had been omitted;

(iv) section 23 had been omitted.

*General provisions relating to succession*

**18. Full blood preferred to half blood.**—Heirs related to an intestate by full blood shall be preferred to heirs related by half blood, if the nature of the relationship is the same in every other respect.

#### COMMENTS

**Preference of full blood heirs over half blood heirs**

Heirs related to intestate by full blood are preferred to heirs related by half blood. Plaintiff being related by half blood is not entitled to inherit property; *P. Jayaramaiah v. Aragonda Munemma*, AIR 2005 AP 26.

14 March

**19. Mode of succession of two or more heirs.**—If two or more heirs succeed together to the property of an intestate, they shall take the property,—

(a) save as otherwise expressly provided in this Act, *per capita* and not *per stirpes*; and

(b) as tenants-in-common and not as joint tenants.

**20. Right of child in womb.**—A child who was in the womb at the time of the death of an intestate and who is subsequently **born alive** shall have the same right to inherit to the intestate as if he or she had been born before the death of the intestate, and the inheritance shall be deemed to vest in such a case with effect from the date of the death of the intestate.

**21. Presumption in cases of simultaneous deaths.**—Where two persons have died in circumstances rendering it uncertain whether either of them, and if so which, survived the other then, for all purposes affecting succession to property, it shall be presumed, until the contrary is proved, that the younger survived the elder. → *ye sabuttable Presumptio of law*

**22. Preferential right to acquire property in certain cases.**—(1) Where, after the commencement of this Act, an interest in any immovable property of an intestate, or in any business carried on by him or her, whether solely or in conjunction with others, devolves upon two or more heirs specified in class I of the Schedule, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

(2) The consideration for which any interest in the property of the deceased may be transferred under this section shall, in the absence of any agreement between the parties, be determined by the court on application being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of or incident to the application.

(3) If there are two or more heirs specified in class I of the Schedule proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred.

*Explanation.*—In this section, “court” means the court within the limits of whose jurisdiction the immovable property is situate or the business is carried on, and includes any other court which the State Government may, by notification in the Official Gazette, specify in this behalf.

**23. Special provision respecting dwelling houses.** [23. Special provision respecting dwelling houses. by the Hindu Succession (Amendment) Act, 2005 (39 of 2005), sec. 5].]

1. Section 23, before repeal by Act 39 of 2005, stood as under—  
 “23. *Special provision respecting dwelling houses.*—If a male intestate has left behind him or her both male and female heirs specified in class I of the Schedule and the property of the intestate includes a dwelling-house wholly or partly in the possession of his or her family, then, notwithstanding anything contained in this Act, if any such female heir chooses to acquire the dwelling-house, such female heir to claim partition of the dwelling-house shall not be entitled to divide their respective shares therein; but the female heir shall be entitled to a right of residence therein:

Provided that where such female heir is a daughter, widow or a female who has been separated from her husband or is a widow, she shall be entitled to a right of residence therein only if she is unmarried or has been separated from her husband or is a widow.

*@ A transfer made in violation of Hindu Suce- - even Act, is voidable*

## STATEMENT OF OBJECTS AND REASONS [The Hindu Succession (Amendment) Act, 2005]

Disqualify

Section 23 of the Act disentitles a female heir to ask for partition in respect of a dwelling house wholly occupied by a joint family until the male heirs choose to divide their respective shares therein. It is also proposed to omit the said section so as to remove the disability on female heirs contained in that section.

24. Certain widows re-marrying may not inherit as widows.—[Rep. by the Hindu Succession (Amendment) Act, 2005 (39 of 2005), sec. 5 (w.e.f. 9-9-2005).]

25. Murderer disqualified.—A person who commits murder or abets the commission of murder shall be disqualified from inheriting the property of the person murdered, or any other property in furtherance of the succession to which he or she committed or abetted the commission of the murder.

26. Convert's descendants disqualified.—Where, before or after the commencement of this Act, a Hindu has ceased or ceases to be a Hindu by conversion to another religion, children born to him or her after such conversion and their descendants shall be disqualified from inheriting the property of any of their Hindu relatives, unless such children or descendants are Hindus at the time when the succession opens.

When dead

27. Succession when heir disqualified.—If any person is disqualified from inheriting any property under this Act, it shall devolve as if such person had died before the intestate. — *claus khajam*

28. Disease, defect, etc., not to disqualify.—No person shall be disqualified from succeeding to any property on the ground of any disease, defect or deformity, or save as provided in this Act, on any other ground whatsoever.

Escheat

29. Failure of heirs.—If an intestate has left no heir qualified to succeed to his or her property in accordance with the provisions of this Act, such property shall devolve on the government; and the government shall take the property subject to all the obligations and liabilities to which an heir would have been subject.

## STATE AMENDMENTS

Andhra Pradesh.—After Chapter II, insert the following Chapter, namely:—

## "CHAPTER IIA

## SUCCESSION BY SURVIVORSHIP

29A. Equal rights to daughter in coparcenary property.—Notwithstanding anything contained in section 6 of this Act—

- (i) in a joint Hindu family governed by Mitakshara Law, the daughter of a coparcener shall by birth, become a coparcener in her own right in the same manner as the son and have the same rights in the coparcenary property as she would have had if she had been a son, inclusive of the right to claim by survivorship; and shall be subject to the same liabilities and disabilities in respect thereto as the son;
- (ii) at a partition in such a joint Hindu family the coparcenary property shall be so divided as to allot to a daughter the same share as is allotable to a son: *separate property of a Hindu male dying intestate*

1. Section 24, before repeal by Act 39 of 2005, stood as under: *is succeeded by*

"24. Certain widows re-marrying may not inherit as widows.—Any heir who is related to an intestate as the widow of a pre-deceased son, the widow of a pre-deceased son or the widow of a brother shall not be entitled to succeed to the property of the intestate as such widow, if on the date the succession opens, she has re-married."

*Mother*

Provided that the share which a pre-deceased son or a pre-deceased daughter would have got at the partition if he or she had been alive at the time of the partition shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter:

Provided further that the share allotable to the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, if such child had been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or of the pre-deceased daughter as the case may be;

- (iii) any property to which a female Hindu becomes entitled by virtue of the provisions of clause (i) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force, as property capable of being disposed of by her by will or other testamentary disposition;
- (iv) Nothing in clause (ii) shall apply to a daughter married prior to or to a partition which had been effected before the commencement of the Hindu Succession (Andhra Pradesh Amendment) Act, 1986.

29B. *Interest to devolve by survivorship on death.*—When a female Hindu dies after the commencement of the Hindu Succession (Andhra Pradesh Amendment) Act, 1986 having at the time of her death an interest in a *Mitakshara* coparcenary property, her interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:

Provided that if the deceased had left any child or child of a pre-deceased child, the interest of the deceased in the *Mitakshara* coparcenary property shall devolve by testamentary or intestate succession as the case may be, under this Act and not by survivorship.

*Explanation I.*—For the purposes of this section the interest of a female Hindu in *Mitakshara* coparcener shall be deemed to be the share in the property that would have been allotted to her if a partition of the property had taken place immediately before her death irrespective of whether she was entitled to claim partition or not.

*Explanation II.*—Nothing contained in the proviso this section shall be construed as enabling a person who before the death of the deceased, had separated himself or herself from the coparcenary or any of his or her heirs to claim on intestacy a share in the interest referred to therein.

29C. *Preferential right to acquire property in certain cases.*—(1) Where, after the commencement of the Hindu Succession (Andhra Pradesh Amendment) Act, 1986 an interest in any immovable property of an intestate or in any business carried on by him or her, whether solely or in conjunction with others, devolves under section 29A or section 29B upon two or more heirs, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

(2) The consideration for which any interest in the property of the deceased may be transferred under this section shall, in the absence of any agreement between the parties, be determined by the court on application being made to

under *Mitakshara* school coparcenary interest devolves  
by survivorship

it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of or incidental to the application.

(3) If there are two or more heirs proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred.

*Explanation.*—In this section 'court' means the court within the limits of whose jurisdiction the immovable property is situate or the business is carried on, and includes any other court which the State Government may, by notification in the Andhra Pradesh Gazette, specify in this behalf."

[Vide Andhra Pradesh Act 13 of 1986, sec. 2 (w.r.e.f. 5-9-1985).]

**Maharashtra.**—After Chapter II, insert the following Chapter, namely:—

"CHAPTER IIA

**SUCCESSION BY SURVIVORSHIP**

29A. *Equal rights of daughter in coparcenary property.*—Notwithstanding anything contained in section 6 of this Act—

- (i) in a joint Hindu family governed by the *Mitakshara* Law, the daughter of a coparcener shall, by birth, become a coparcener in her own right in the same manner as a son and have the same rights in the coparcenary property as she would have had if she had been a son inclusive of the right to claim by survivorship; and shall be subject to the same liabilities and disabilities in respect thereto as in the case of a son;
- (ii) at a partition in a joint Hindu family referred to in clause (i), the coparcenary property shall be so divided as to allot to a daughter the same share as is allotted to a son:

Provided that the share which a pre-deceased son or a pre-deceased daughter would have got at the partition if he or she had been alive at the time of the partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter:

Provided further that the share allotable to the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, if such child had been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or of the pre-deceased daughter as the case may be;

- (iii) any property to which a female Hindu becomes entitled by virtue of the provisions of clause (i) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force, as property capable of being disposed of by her by will or other testamentary disposition;
- (iv) nothing in this Chapter shall apply to a daughter married before the date of the commencement of the Hindu Succession (Maharashtra Amendment) Act, 1994;
- (v) nothing in clause (ii) shall apply to a partition which has been effected before the date of the commencement of the Hindu Succession (Maharashtra Amendment) Act, 1994;

29B. *Interest to devolve by survivorship on death.*—When a female Hindu dies after the date of the commencement of the Hindu Succession (Maharashtra Amendment) Act, 1994, having, at the time of her death, an interest in a *Mitakshara* coparcenary property by virtue of the provisions of section 29A, her interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:

Provided that, if the deceased had left any child or child of a pre-deceased child, the interest of the deceased in the *Mitakshara* coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.

*Explanation I.*—For the purposes of this section, the interest of a female Hindu in *Mitakshara* coparcener property shall be deemed to be the share in the property that would have been allotted to her if a partition of the property had taken place immediately before her death, irrespective of whether she was entitled to claim partition or not.

*Explanation II.*—Nothing contained in the proviso to this section shall be construed as enabling a person who, before the death of the deceased, had separated himself or herself from the coparcenary or any of his or her heirs to claim on intestacy a share in the interest referred to therein.

29C. *Preferential right to acquire property in certain cases.*—(1) Where, after the date of the commencement of the Hindu Succession (Maharashtra Amendment) Act, 1994 an interest in any immovable property of any intestate or in any business carried on by him or her, whether solely or in conjunction with others, devolves under section 29A or section 29B upon two or more heirs, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

(2) The consideration for which any interest in the property of the deceased is to be transferred under this section shall, in the absence of any agreement between the parties, be determined by the court on application being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of or incidental to the application.

(3) If there are two or more heirs proposing to acquire any interest under this section, then, the heir who offers the highest consideration for the transfer shall be preferred.

*Explanation.*—In this section "court" means the court within the limits of whose jurisdiction the immovable property is situate or the business is carried on, and includes any other court which the State Government may, by notification in the Official Gazette, specify in this behalf."

[Vide Maharashtra Act 39 of 1994, sec. 2 (w.e.f. 22-6-1994).]

Tamil Nadu.—After Chapter II, insert the following Chapter, namely:—

#### "CHAPTER IIA

#### SUCCESSION BY SURVIVORSHIP

29A. *Equal rights to daughter in coparcenary property.*—Notwithstanding anything contained in section 6 of this Act,—

- (i) in a joint Hindu family governed by *Mitakshara* Law, the daughter of a coparcener shall by birth become a coparcener in her own right in the

same manner as a son and have the same rights in the coparcenary property as she would have had if she had been a son, inclusive of the right to claim by survivorship; and shall be subject to the same liabilities and disabilities in respect thereto as the son;

- (ii) at a partition in such a Joint Hindu Family the coparcenary property shall be so divided as to allot to a daughter the same share as is allottable to son:

Provided that the share which a pre-deceased son or a pre-deceased daughter would have got at the partition if he or she had been alive at the time of the partition shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter:

Provided further that the share allottable to the pre-deceased child of pre-deceased son or of a pre-deceased daughter, if such child had been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or of the pre-deceased daughter, as the case may be;

- (iii) any property to which a female Hindu becomes entitled by virtue of the provisions of clause (i) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force, as property capable of being disposed of by her by will or other testamentary disposition:

- (iv) nothing in this Chapter shall apply to a daughter married before the date of the commencement of the Hindu Succession (Tamil Nadu Amendment) Act, 1989;

- (v) nothing in clause (ii) shall apply to a partition which had been effected before the date of the commencement of the Hindu Succession (Tamil Nadu Amendment) Act, 1989.

**29B. Interest to devolve by survivorship on death.**—When a female Hindu dies after the date of the commencement of the Hindu Succession (Tamil Nadu Amendment) Act, 1989, having at the time of her death, an interest in a *Mitakshara* coparcenary property by virtue of the provisions of section 29A, her interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:

Provided that if the deceased had left any child or child of a pre-deceased child, the interest of the deceased in the *Mitakshara* coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.

*Explanation I.*—For the purposes of this section, the interest of a female Hindu *Mitakshara* coparcener shall be deemed to be the share in the property that would have been allotted to her if a partition of the property had taken place immediately before her death, irrespective of whether she was entitled to claim partition or not.

*Explanation II.*—Noting contained in the proviso to this section shall be construed as enabling a person who, before the death of the deceased had separated himself or herself from the coparcenary or any of his or her heirs to claim on intestacy a share in the interest referred to therein.

Robbery  
u/s 30  
includes.  
L self acquired Prop.  
L undivided share in the joint - share @ - coparcenary Prop.

29C. Preferential right to acquire property in certain cases.—(1) From the date of the commencement of the Hindu Succession (Tamil Nadu) Act, 1989, an interest in any immovable property of business carried on by him or her, whether solely or jointly with others, devolves under section 29A or section 29B upon any one of such heirs proposes to transfer his or her interest in such property or business, the other heirs shall have a preferential right to acquire it for the consideration so determined, if any person proposing to acquire it is not willing to acquire it for the consideration so determined, or liable to pay all costs of, or incidental to, the application.

(2) The consideration for which any interest in the property may be transferred under this section shall, in the absence of any agreement between the parties, be determined by the court on application made in this behalf, and if any person proposing to acquire it is not willing to acquire it for the consideration so determined, or liable to pay all costs of, or incidental to, the application.

(3) If there are two or more heirs proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred.

Explanation.—In this section "court" means the court within the limits of whose jurisdiction the immovable property is situate or the business is carried on and includes any other court which the State Government may, by notification in the Tamil Nadu Government Gazette, specify in this behalf.

[Vide Tamil Nadu Act 1 of 1990 sec. 2 (w.r.e.f. 25-3-1990).]

CHAPTER III  
TESTAMENTARY SUCCESSION

30. Testamentary succession.—(1) Any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so disposed of by him or by her, in accordance with the provisions of the Indian Succession Act, 1925 (39 of 1925), or any other law for the time being in force and applicable to Hindus.

Explanation.—The interest of a male Hindu in a Mitakshara coparcenary property or the interest of a member of a tarwad, tavazhi, illom, kutumba or kavaru in the property of the tarwad, tavazhi, illom, kutumba or kavaru shall notwithstanding anything contained in this Act or in any other law for the time being in force, be deemed to be property capable of being disposed of by him or by her within the meaning of this section.

4[\*\*\*] L br. 30 is to be of Hindu limit of male

CHAPTER IV  
REPEALS

31. Repeals.—[Rep. by the Repealing and Amending Act, 1960 (58 of 1960), sec. 2 and Sch. I (w.e.f. 26-12-1960).]

- 1. The brackets and figure "(1)" omitted by Act 58 of 1960, sec. 3 and Sch. II (w.e.f. 26-12-1960).
- 2. Subs. by Act 39 of 2005, sec. 6, for "disposed of by him" (w.e.f. 9-9-2005).
- 3. Subs. by Act 56 of 1974, sec. 3 and Sch. II, for "sub-section" (w.e.f. 20-12-1974).
- 4. Sub-section (2) omitted by Act 78 of 1956, sec. 29 (w.e.f. 21-12-1956).

\* a Hindu has a right to alienate his interest in Mitakshara coparcenary by will

## THE SCHEDULE

(See section 8)

## HEIRS IN CLASS I AND CLASS II

## Class I

After the institution of suit for partition by a member of joint family  
 Li more in no effect in the status by virtue of birth and death.

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 deca  
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 a pre-

widow; mother; son of a pre-deceased son; daughter of a pre-deceased daughter; daughter of a pre-deceased daughter; son of a pre-deceased son of a pre-deceased son; daughter of a pre-deceased son of a pre-deceased son; widow of a pre-deceased son of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased daughter; daughter of a pre-deceased son of a pre-deceased daughter of a pre-deceased son].

## Class II

- I. Father.
- II. (1) Son's daughter's son, (2) son's daughter's daughter, (3) brother, (4) sister.
- III. (1) Daughter's son's son, (2) daughter's son's daughter, (3) daughter's daughter's son, (4) daughter's daughter's daughter.
- IV. (1) Brother's son, (2) sister's son, (3) brother's daughter, (4) sister's daughter.
- V. Father's father; father's mother.
- VI. Father's widow; brother's widow.
- VII. Father's brother; father's sister.
- VIII. Mother's father; mother's mother.
- IX. Mother's brother; mother's sister.

Explanation.—In this Schedule, references to a brother or sister do not include references to a brother or sister by uterine blood.

Son in class I → does not include 'Stepson'

- ① Descendant, Ascendant, collateral.
- ② A woman is not entitled to inherit as a class I heir - from her stepson

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## THE HINDU MINORITY AND GUARDIANSHIP ACT, 1956

### INTRODUCTION

Legislative provisions affecting the traditional Hindu Law of Minority and Guardianship can be traced back to a period of one hundred years earlier, i.e., 1856 before the Hindu Minority and Guardianship Act, 1956.

The Hindu Law Committee was appointed in the year 1914 to examine Hindu Law of intestate succession and marriage. Codification of Hindu Law was opposed by many who felt that there could be no legislation on Hindu Law on religious grounds and because of the spacious and complicated structure of Hindu Law there could be no legislation of Hindu Law.

The Committee appointed in 1914 ceased to function after making considerable progress and was revived in 1944. The Committee was presided over by Sir Benegal Narsing Rau. Rau Committee evolved a uniform code of Hindu Law which would apply to all Hindus by blending the elements of various schools of law which prevailed in different parts of the country.

To codify certain parts of the law relating to minority and guardianship among Hindus the Hindu Minority and Guardianship Bill was introduced in the Parliament.

### STATEMENT OF OBJECTS AND REASONS

1. This is another instalment of the Hindu Code and it deals with the law relating to minority and guardianship.

2. Under the Indian Majority Act, 1875, a person attains majority on his completing the age of 18 years but if before the completion of that age he has a guardian appointed by the Court, he attains majority on completing the age of 21 years. That Act applies to all persons including Hindus but an exception is made with respect to the capacity of any person to act in the matter of marriage, dower, divorce and adoption. Marriage and divorce have already been dealt with so far as Hindus are concerned and the definition of minor in the Bill will ensure that the age of majority is 18 for all practical purposes.

3. Guardians may be divided into three classes, namely:—

- (1) natural guardians,
- (2) testamentary guardians, and
- (3) guardians appointed under the Guardians and Wards Act, 1890, and the present Bill is supplemental to the Guardians and Wards Act, 1890, and deals with natural guardian and testamentary guardians incidentally abolishing *de facto* guardians,
- (4) the notes on clauses explain, wherever necessary, the various provisions contained in the Bill.

### ACT 32 OF 1956

The Hindu Minority and Guardianship Bill having been passed by both the Houses of Parliament received the assent of the President on 25th August, 1956. It came on the Statute Book as THE HINDU MINORITY AND GUARDIANSHIP ACT, 1956 (32 of 1956).

# THE HINDU MINORITY AND GUARDIANSHIP ACT, 1956<sup>1</sup>

(32 of 1956)

[25th August, 1956]

*An Act to amend and codify certain parts of the law relating to minority and guardianship among Hindus.*

BE it enacted by Parliament in the Seventh Year of the Republic of India as follows:—

**1. Short title and extent.**—(1) This Act may be called the Hindu Minority and Guardianship Act, 1956.

(2) It extends to the whole of India except the State of Jammu and Kashmir and applies also to Hindus domiciled in the territories to which this Act extends who are outside the said territories.

**2. Act to be supplemental to Act 8 of 1890.**—The provisions of this Act shall be in addition to, and not, save as hereinafter expressly provided, in derogation of, the Guardian and Wards Act, 1890 (8 of 1890).

**3. Application of Act.**—(1) This Act applies—

- (a) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj;
- (b) to any person who is a Buddhist, Jain or Sikh by religion, and
- (c) to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

*Explanation.*—The following persons are Hindus, Buddhists, Jainas, or Sikhs by religion, as the case may be:—

- (i) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhist, Jainas or Sikhs by religion;
- (ii) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jain or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged; and
- (iii) any person who is a convert or re-convert to the Hindu, Buddhist, Jain or Sikh religion.

~~(2)~~ Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning

1. The Act has been extended to Union territory of Dadra and Nagar Haveli by Reg. 6 of 1963 (w.e.f. 1-7-1965).

of clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

—<sup>1</sup>[(2A) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the Renoncants of the Union Territory of Pondicherry.]

(3) The expression "Hindu" in any provision of this Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.

**4. Definitions.**—In this Act,—

- (a) "minor" means a person who has not completed the age of eighteen years;
- (b) "guardian" means a person having the care of the person of a minor or of his property or of both his person and property, and includes—
  - (i) a natural guardian,
  - (ii) a guardian appointed by the will of the minor's father or mother,
  - (iii) a guardian appointed or declared by a court, and
  - (iv) a person empowered to act as such by or under any enactment relating to any court of wards;
- (c) "natural guardian" means any of the guardians mentioned in section 6.

COMMENTARY

**Guardian: Meaning.**

If a person donates property to a minor and appoints a guardian to look after the property he would not be a guardian within the meaning of the Act; *Rajalakshmi v. Ramasubramanian*, AIR 1967 Mad 113; ILR (1967) Mad 338; (1966) 1 MLJ 420.

**5. Over-riding effect of Act.**—Save as otherwise expressly provided in this Act,—

- (a) any text, rule or interpretation of Hindu Law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act.
- (b) any other law in force immediately before the commencement of this Act shall cease to have effect in so far as it is inconsistent with any of the provisions contained in this Act.

**6. Natural guardians of a Hindu minor.**—The natural guardian of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are—

- (a) in the case of a boy or an unmarried girl—the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;
- (b) in the case of an illegitimate boy or an illegitimate unmarried girl—the mother, and after her, the father;

1. Ins. by Act 26 of 1968, sec. 3(1) and Sch., Pt. I (w.e.f. 5-9-1968) (In its application to Puducherry).

(c) <sup>even if a girl is a minor</sup> in the case of a married girl—the husband:

Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section—

- (a) if he has ceased to be a Hindu, or
- (b) if he has completely and finally renounced the world by becoming a hermit (*vanaprastha*) or an ascetic (*yati* or *sanyasi*).

*Explanation.*—In this section, the expression “father” and “mother” do not include a step-father and a step-mother.

#### COMMENTS

##### Consideration for guardianship

The controlling consideration governing the custody of the children is the welfare of the children and not the right of the parents; *Rosy Jacob v. Jacob Chakramakkal*, AIR 1973 SC 2090: (1973) 3 SCR 918: (1973) 1 SCC 840.

##### Father as a natural guardian

Father is the natural guardian of a minor. In the absence of father, mother is the natural guardian. The mother of the minor children was dead, but the father was not residing with the children, who were being looked after by the aunty. It was held that though father was not residing with his children, he is still alive, has not ceased to be a Hindu or renounced the world and has not been declared unfit. He does not authorise any other person to assume the role of natural guardian and alienate the minor's property; *Essakkayal Nadder v. Sreedharan Babu*, AIR 1992 Ker 20.

##### Mother as a natural guardian

(i) In the phrase “the father and after him, the mother” the word ‘after’ need not necessarily mean after the lifetime of father. In the context in which it appears in section 6(a) it means ‘in the absence of’, the word ‘absence’ therein referring to the father's absence from the care of minor's property or person for any reason whatsoever. If the father is wholly indifferent to the matters of the minor or if by virtue of mutual understanding between the parents, the mother is put exclusively in charge of the minor or if the father is physically unable to take care of minor for any reason whatsoever, the father can be considered to be absent and mother being a recognised natural guardian can act validly on behalf of the minor as the guardian. Such an interpretation will keep the statute within the constitutional limits otherwise the word ‘after’ if read to mean a disqualification of a mother to act as guardian during lifetime of father the same would violate one of basic principles of our Constitution i.e. gender equality; *Githa Hariharan v. Reserve Bank of India*, AIR 1999 SC 1149.

(ii) Where the mother and father had fallen out and were living separately and the minor daughter was under the care and protection of her mother, the mother could be considered as the natural guardian of the minor girl; *Jajabhai v. Pathankhan*, AIR 1971 SC 315: (1971) 2 SCR 1: (1970) 2 SCC 717.

**7. Natural guardianship of adopted son.**—The natural guardianship of an adopted son who is a minor passes, on adoption, to the adoptive father and after him to the adoptive mother.

**8. Powers of natural guardian.**—(1) The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realisation, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.

(2) The natural guardian shall not, without the previous permission of the court,—

- (a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor; or
- (b) lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

(3) Any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2), is voidable at the instance of the minor or any person claiming under him.

(4) No court shall grant permission to the natural guardian to do any of the acts mentioned in sub-section (2) except in case of necessity or for an evident advantage to the minor.

(5) The Guardians and Wards Act, 1890 (8 of 1890), shall apply to and in respect of an application for obtaining permission of the court under sub-section (2) in all respects as if it were an application for obtaining the permission of the court under section 29 of that Act, and in particular—

- (a) proceedings in connection with the application shall be deemed to be proceedings under that Act within the meaning of section 4A thereof;
- (b) the court shall observe the procedure and have the powers specified in sub-sections (2), (3) and (4) of section 31 of that Act; and
- (c) an appeal shall lie from an order of the court refusing permission to the natural guardian to do any of the acts mentioned in sub-section (2) of this section to the court to which appeals ordinarily lie from the decisions of that court.

(6) In this section, "court" means the city civil court or a district court or a court empowered under section 4A of the Guardian and Wards Act, 1890 (8 of 1890), within the local limits of whose jurisdiction the immovable property in respect of which the application is made is situate, and where the immovable property is situate within the jurisdiction of more than one such court, means the court within the local limits of whose jurisdiction any portion of the property is situate.

#### STATE AMENDMENTS

**Assam.**—Section 8 of the Act shall apply to mortgages in favour of a bank subject to the modification that reference to the court therein shall be construed as reference to the Collector or his nominee and the appeal against the order of the Collector or his nominee shall lie to the Commissioner.

[Vide Assam Act 7 of 1977, sec. 8 (w.e.f. 15-6-1978).]

**Punjab.**—Same as in Assam.

[Vide Punjab Act 5 of 1979, sec. 22 (w.e.f. 18-6-1979).]

**West Bengal.**—For the purposes of West Bengal Agricultural Credit Operations Act, 1973 (34 of 1973) any reference to court in section 8 of the Hindu Minority and Guardianship Act, 1956, shall be construed as reference to the Collector and the appeal against the order of the Collector shall lie to the Commissioner.

[Vide West Bengal Act 34 of 1973, sec. 8 (w.e.f. 15-11-1973).]

## COMMENTS

**Alienation of minor's property**

Alienation of minor's property by natural guardian (Mother) of the minor, without obtaining permission of court for such alienation, is void *ab initio*; *Subhashappa P. Meti v. Maroti L. Sawarkar*, AIR 2006 (NOC) 608 (Bom).

**Consideration for guardianship: Welfare of the child**

(i) It is well settled principle that in matter relating to the custody of the minor child the interest and welfare of the child is the paramount consideration and not the convenience or pleasure of the parents; *Kumar V. Jahgirdar v. Chetana K. Ramatheertha*, AIR 2001 SC 2179.

(ii) Immovable property contemplated in section 8 means a minor's definite property and not his fluctuating indefinite interest in the joint family property. Interest is ever fluctuating depending upon exit and entry in the family by natural process or otherwise. It is only upon a partition that a definite share can be culled out. Undivided interest of a minor is left untouched. Section 8 is in *pari materia* with section 29 of Guardians and Wards Act; *Naryan Laxman Gilankar v. Uday Kumar Kashinath Kaushik*, AIR 1994 Bom 152.

(iii) A contract for the purchase of immovable property which is likely to increase in price is for the benefit of the minor; *Manik Chand v. Ramchandra*, AIR 1981 SC 519. (1980) 4 SCC 22.

(iv) Where the guardian acquires property for the benefit of the minor, no permission of court is necessary; *Than Singh v. Barelal*, AIR 1974 Mad 24.

(v) An alienation of property without the permission of the court is voidable at the option of the minor; *Iruppakutty v. Chelukutty*, AIR 1977 Ker 71.

**Limitation on power of natural guardian**

(i) Alienation made by the mother of the minor in contravention of section 8(2) are voidable at the option of minor and such alienation were required to set aside if minor wanted to avoid the transfers and regain the properties from the purchasers. If in plaint the prayer for setting aside the sale deeds was not there and such a prayer has been introduced after period of limitation which is three years from the date when minor attained majority, has elapsed, the claim for recovery of possession of property is not maintainable; *Vishwambhar v. Laxminarayana*, AIR 2001 SC 2607.

(ii) Sale transaction by a natural guardian even if beneficial for the minor is voidable and not *void ab initio*, if it is done without the previous permission of the court. Held that the minor can challenge only after attaining majority and not during his minority; *Naryan Laxman Gilankar v. Uday Kumar Kashinath Kaushik*, AIR 1994 Bom 152.

(iii) When the natural guardian *i.e.* the father dies leaving behind mother as the natural guardian and minor sons and daughters, section 8, would not apply as the interest of the minor daughter would be fluctuating undivided interest in the joint family property. But where the father dies leaving behind only his minor daughter and mother as natural guardian, the shares of the daughters become definite and the question of family property retaining the character of Joint Hindu Family property does not exist and section 8(3) is attracted and sale transactions done by mother without the previous permission of court becomes voidable at the option of minor. Held that the mother had no authority to alienate the shares of minor daughters; *Mangala v. Jayabai*, AIR 1994 Kant 276.

(iv) The notional partition between the plaintiff during his minority and his father before his death left him 3/4 share in the property and rest of the property to his mother. Held that as the minor had definite share in the property, the mother had no authority without the previous permission of the court to sell the separate property of minor; *Dhansekaran v. Manoranjthammal*, AIR 1992 Mad 214.

9. Testamentary guardians and their powers.—(1) A Hindu father entitled to act as the natural guardian of his minor legitimate children may, by will, appoint a guardian for any of them in respect of the minor's person or in respect of the minor's property (other than the undivided interest referred to in section 12) or in respect of both.

(2) An appointment made under sub-section (1) shall have no effect if the father predeceases the mother, but shall revive if the mother dies without appointing, by will, any person as guardian.

(3) A Hindu widow entitled to act as the natural guardian of her minor legitimate children, and a Hindu mother entitled to act as the natural guardian of her minor legitimate children by reason of the fact that the father has become disentitled to act as such, may, by will, appoint a guardian for any of them in respect of the minor's person or in respect of the minor's property (other than the undivided interest referred to in section 12) or in respect of both.

(4) A Hindu mother entitled to act as the natural guardian of her minor illegitimate children may, by will, appoint a guardian for any of them in respect of the minor's person or in respect of the minor's property or in respect of both.

(5) The guardian so appointed by will has the right to act as the minor's guardian after the death of the minor's father or mother, as the case may be, and to exercise all the rights of a natural guardian under this Act to such extent and subject to such restrictions, if any, as are specified in this Act and in the will.

(6) The right of the guardian so appointed by will shall, where the minor is a girl, cease on her marriage.

#### COMMENTS

##### Power to appoint testamentary guardian

(i) Where a grandmother appoints the mother as testamentary guardian for the property bequeathed to the minor, during the lifetime of the father, the mother cannot alienate the property of the minor as the grandmother has no power to appoint a testamentary guardian. Such alienation would be void *ab initio*; *Sundaramurthy v. Shanmuganadar*, AIR 1980 Mad 207.

(ii) Under this section power is conferred on the father or the mother in certain circumstances to appoint a guardian by will. This power does not extend to a donor of property; *Rajalakshmi v. Ramachandran*, AIR 1967 Mad 113: 1966 (2) MLJ 420.

(iii) A testamentary guardian cannot sell minor's property without prior permission of the court; *Duraiswamy v. Balasubramanian*, AIR 1977 Mad 304.

10. Incapacity of minor to act as guardian of property.—A minor shall be incompetent to act as guardian of the property of any minor.

#### COMMENTS

There is no conflict between this provision and section 21 of the Guardian and Wards Act as the latter relates to guardianship of the person, whereas this provision is concerned with the guardianship in respect of property and, therefore, both provisions can co-exist; *Budhi Jainar v. Dhobai Naik*, AIR 1958 Ori 7: ILR (1957) Cut 574.

11. De facto guardian not to deal with minor's property.—After the commencement of this Act, no person shall be entitled to dispose of, or deal with, the property of a Hindu minor merely on the ground of his or her being the *de facto* guardian of the minor.

Mother can be considered to be the natural guardian of minor child even when father is alive

COMMENTS

R Guardian of minor child even when father is alive  
i.e. Jijebai vimal vs. Gajre  
pr vs. Pathan Khan  
of 1952  
N. Lakshmi vs. Narayanan v. RBC

guardian done by a *de facto* guardian is void and the alienee is in the position has no right in the property. Held that the aunt of the plaintiff had the property and the alienation done was invalid and not binding the plaintiffs; *Essakyal Nadar v. Sreedharan Babu*, AIR 1992 Ker 200.  
Provisions of section 11 apply to both the categories of property of a minor, joint Hindu family property and the undivided interest of a Hindu minor in the joint family property. No distinction is made between the categories the object of section 11 of the Act is to prevent a *de facto* guardian from dealing with the property of a minor would be at liberty to deal with the undivided interest in joint Hindu Family property; *Dhanasekaran v. Manoranjthammal*, AIR 1952 Mad 214.  
A sale of minor's property by the maternal grandfather during the minority of the minor's mother, it is void. After attaining majority, the mother as natural guardian of the minor cannot ratify the sale as the maternal grandfather's sale as *de facto* guardian is void; *Kanchi Kamamma v. Appanna*, AIR 1973 AP 201: (1973) 2 An WR 74.

**12. Guardian not to be appointed for minor's undivided interest in joint family property.**—Where a minor has an undivided interest in joint family property and the property is under the management of an adult member of the family, no guardian shall be appointed for the minor in respect of such undivided interest:

Provided that nothing in this section shall be deemed to affect the jurisdiction of a High Court to appoint a guardian in respect of such interest.

COMMENTS

Appointment of guardian for minor's undivided interest

- (i) The management of the Joint Family and its affairs can be taken up not only by an adult male member of the family but also by a female member of the family like the mother; *Dhanasekaran v. Manoranjthammal*, AIR 1952 Mad 214.
- (ii) A guardian can be appointed in cases where the minor is the sole surviving coparcener; *Ratnabai v. Sitabai*, AIR 1952 Bom 160.

**13. Welfare of minor to be paramount consideration.**—(1) In the appointment or declaration of any person as guardian of a Hindu minor by a court, the welfare of the minor shall be the paramount consideration.

(2) No person shall be entitled to the guardianship by virtue of the provisions of this Act or of any law relating to guardianship in marriage among Hindus, if the court is of opinion that his or her guardianship will not be for the welfare of the minor.

COMMENTS

Custody of father

- (i) The welfare of the child is determined neither by the economic affluence nor a deep mental or emotional concern for the well being of the child. The answer depends on the balancing of all these factors and determining what is best for the child's total well being. Held that the father being a Sergeant in the Indian Army who had a record of disciplined life with a regular income, was willing to get posted to Kozhikode for the education of the minor and the parents of the father were affluent enough to look after

the minor unlike the parents of the mother (who was dead) were old, had no proper source of income and also had a mentally retarded son to look after, was in a better position to look after the welfare of the minor; *Munnodiyl Peravakutty v. Kuniyedath Chalil Velayudhan*, AIR 1992 Ker 290.

(ii) Recognition of father's absolute right to the custody of the child would render the child an inanimate property or chattel, which could be possessed and used as the owner pleases. Held that though the father was not found unfit as a guardian of his minor children keeping them in the custody of maternal grandmother subject to certain conditions; *Baby Sarojam v. S. Vijaykrishnan Nair*, AIR 1992 Ker 277.

#### Mother attending night clubs

Money alone is not sufficient to record finding regarding the welfare of the child. In case mother of minor is in the habit of attending night clubs and coming late at home during which period the minor has to be left in some care house, there is likelihood of his coming into contact with undesirable elements due to the negligence of mother. Therefore in the interest of child it will be proper that he is not left with his mother; *Amit Beri v. Sheetal Beri, wife of Amit Beri*, AIR 2003 All 18.

#### Minor left with relatives

The minor child had been left in the custody of his mother's sister and maternal grandparents due to the mother's illness. It was held that as the father is the natural guardian and was employed as a Lecturer a noble profession, the welfare of the minor is with his father and mother and not other relatives; *Ankur Tripathi v. Radhey Shyam Pandey*, AIR 1994 All 250.

#### Welfare: Paramount consideration

Though the natural guardians are enumerated in section 13, the right is not absolute and the court has to give paramount consideration to the welfare of the minor; *Mohini v. Virendra*, AIR 1977 SC 1359; 1977(2) SCC 513.

① Under the ~~Act~~, HMA, Act, the custody of a minor who has not completed the age of 5 years shall be with the mother ordinarily.

② Hanuman Prasad Pandey v. Mst. Baboee  
Case on guardianship.

③ Githa Haritharan v. RBJ

Case held that if father is wholly indifferent to the matters of the minor, or is physically unable to take care of the minor for any reason whatsoever, the father can be considered to be absent within the meaning of HMA.

## THE HINDU ADOPTIONS AND MAINTENANCE ACT, 1956

### INTRODUCTION

Adoption is the admission of a stranger by birth to the privileges of a child by a legally recognized form of affiliation. During the British rule the Traditional Hindu Law of adoption with its religious basis and sacramental elements remained in force throughout the country.

Outside British India, in Goa, Daman and Diu the Portuguese incorporated basic rules of Hindu Law of adoption in 1880. The Goan Hindu Usages Decree French Civil Code was applied to all inhabitants including Hindus in Pondicherry.

Indian Majority Act, 1875 exempted adoption from the purview of its provisions while Indian Succession Act, 1925 specifically recognized the Hindu usage of adoption.

The first legislative provision relating to right of maintenance was made under the Native Converts Marriage Dissolution Act, 1866.

In the Mysore State, the law of maintenance was reformed and codified under the local Hindu Law Women's Right Act, 1933.

Code of Civil Procedure, 1898 provided to all Indian women including Hindu wives, a speedy remedy in respect of maintenance.

Hindu Married Women's Right to Separate Residence and Maintenance Act secured to the Hindu wives the right to seek maintenance from their husbands while living separate from them on certain specified grounds.

In 1914 the Hindu Law Committee headed by Sir Benegal Narsing Rau was appointed to evolve a uniform code of Hindu Law. One of the parts of the Hindu Code as evolved by the Committee dealt with the subject of adoptions and maintenance. The recommendations of the Hindu Law Committee along with the Draft Bill was referred to the Select Committee of the Provincial Parliament in 1948. Based on the recommendations of the Select Committee the Hindu Adoption and Maintenance Bill was introduced in the Parliament to codify the law relating to adoptions and maintenance among Hindus.

### STATEMENT OF OBJECTS AND REASONS

1. This part of the Hindu Code deals with the subject of adoptions and maintenance among Hindus.

2. With the passing of the Hindu Succession Act, 1956, which treats sons and daughters equally in the matter of succession, it has now become possible to simplify the law of adoption among Hindus. The Bill provides for the adoption of boys as well as girls. There is no longer any justification for allowing a husband to prevent his wife from taking a child in adoption after his death. The adoption made by a widow will hereafter be in her own right. No person need be divested of any property, which has vested in him, by reason only of the fact that subsequent to such vesting an adoption has been made. This rule of divesting has been the cause of many a ruinous litigation.

3. In the Hindu Succession Act, 1956, a specific provision was inserted whereby it was declared that the power of a Hindu to make a testamentary disposition of his property shall not affect the right of maintenance of any heir by reason only of the fact that under the testamentary disposition the heir has been deprived of a share in the property to which he would have been entitled if the deceased had died intestate. An assurance was then given that the chapter of the Hindu Code relating to maintenance would be introduced in Parliament as soon as possible. The latter part of this Bill deals with maintenance. This chapter does not call for any detailed comments. It is largely based on the existing law as codified in the Bills of Rau Committee and the Select Committee of the Provisional Parliament in 1948.

#### ACT 78 OF 1956

The Hindu Adoptions and Maintenance Bill having been passed by both the Houses of Parliament received the assent of the President on 21st December 1956. It came on the Statute Book as THE HINDU ADOPTIONS AND MAINTENANCE ACT, 1956 (78 of 1956).

#### LIST OF AMENDING ACTS

1. The Repealing and Amending Act, 1960 (58 of 1960) (w.e.f. 26-12-1960).
2. The Hindu Adoptions and Maintenance (Amendment) Act, 1962 (45 of 1962) (w.e.f. 29-11-1962).
3. The Pondicherry (Extension of Laws) Act, 1968 (26 of 1968) (w.e.f. 24-5-1968).
4. The Personal Laws (Amendment) Act, 2010 (30 of 2010) (w.e.f. 31-8-2010).

② Legally married daughter in law, legitimate or illegitimate child and infirm parents  
↳ have right to maintenance under Hindu

③ A child of Hindu marriage which is annulled - has the right to inherit property of Father and mother both.

under HAMA mandatory requirement for adoption  
of a child is - giving and taking

## THE HINDU ADOPTIONS AND MAINTENANCE ACT, 1956

(78 OF 1956)

[21st December, 1956]

An Act to amend and codify the law relating to adoptions and maintenance among Hindus.

BE it enacted by Parliament in the Seventh Year of the Republic of India as follows:—

### CHAPTER I PRELIMINARY

1. **Short title and extent.**—(1) This Act may be called the Hindu Adoptions and Maintenance Act, 1956.

<sup>1</sup>(2) It extends to the whole of India except the State of Jammu and Kashmir.

2. **Application of Act.**—(1) This Act applies—

- (a) to any person, who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,
- (b) to any person who is a Buddhist, Jaina or Sikh by religion, and
- (c) to any other person who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

*Ex. law. i.*—The following persons are Hindus, Buddhists, Jainas or Sikhs by religion, as the case may be:—

- (a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jainas or Sikhs by religion;
- (b) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged; <sup>2</sup>[\*\*\*]
- <sup>3</sup>[(bb) any child, legitimate or illegitimate, who has been abandoned both by his father and mother or whose parentage is not known and who in either case is brought up as a Hindu, Buddhist, Jaina or Sikh; and]

1. The Act has been extended to Dadra and Nagar Haveli by Reg. 6 of 1963, sec. 2 and Sch. I. The Act has been extended to the Union territory of Puducherry by the Pondicherry (Extention of Laws) Act, 1968 (26 of 1968), subject to the following modification:—  
In section 2, after sub-section (2), insert—

“(2A) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the Renoncants of the Union Territory of Pondicherry.”.

2. The word “and” omitted by Act 45 of 1962, sec. 2(a) (w.e.f. 29-11-1962).  
3. Ins. by Act 45 of 1962, sec. 2(b) (w.e.f. 29-11-1962).

Vithalrao Gajre v. Patron Khan 62

↳ rules of minority and guardianship

(c) any person who is convert or reconvert to or Sikh religion.

(2) Notwithstanding anything contained in sub-section (1) of clause (25) of Article 366 of the Constitution unless notification in the Official Gazette, otherwise directed.

(3) The expression "Hindu" in any portion of this Act if it included a person who, though not a Hindu by birth, is a person to whom this Act applies by virtue of the provisions of this section.

**3. Definitions.**—In this Act, unless the context otherwise requires,—

(a) the expressions "custom" and "usage" shall mean any custom or usage which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family:

Provided that the rule is certain and not unreasonable or opposed to public policy: and

Provided further that, in the case of a rule applicable only to a family, it has not been discontinued by the family;

(b) "Maintenance" includes—

(i) in all cases, provision for food, clothing, residence, education and medical attendance and treatment;

(ii) in the case of an unmarried daughter, also the reasonable expenses of and incident to her marriage;

(c) "minor" means a person who has not completed his or her age of eighteen years.

**4. Over-riding effect of Act.**—Save as otherwise expressly provided in this Act,—

(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act.

## CHAPTER II ADOPTION

**5. Adoptions to be regulated by this Chapter.**—(1) No adoption shall be made after the commencement of this Act\* by or to a Hindu except in accordance with the provisions contained in this Chapter, and any adoption made in contravention of the said provisions shall be void.

(2) An adoption which is void shall neither create any rights in the adoptive family in favour of any person which he or she could not have acquired except by reason of the adoption, nor destroy the rights of any person in the family of his or her birth.

**6. Requisites of a valid adoption.**—No adoption shall be valid unless—

- (i) the person adopting has the capacity, and also the right, to take in adoption;
- (ii) the person giving in adoption has the capacity to do so;
- (iii) the person adopted is capable of being taken in adoption; and
- (iv) the adoption is made in compliance with the other conditions mentioned in this Chapter.

\* Date of commencement 21-12-1956.

Circa marriage

U. A. B. S.

↓

mother of a

Hindu child

is to be

Natural

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## COMMENTS

## Requirements for a valid adoption

(i) Under section 6 the law does not recognise an adoption other than a Hindu; *Kumar Sursen v. State of Bihar*, AIR 2008

(ii) To prove valid adoption, it would be necessary to bring been an actual giving and taking ceremony; *M. Gurudas v. Rasa*

(iii) Law is well settled that adoption displaces the natural therefore, a person who seeks to displace the natural successor an adoption must prove the factum of adoption and its valid materials on record; *Suma Bewa v. Kunja Bihari Nayak*, AIR 199

(iv) Section 6 does not bar a lunatic person from being adopted; *Patil v. Shamgonda Raygonda Patil*, AIR 1992 Bom 189.

**7. Capacity of a male Hindu to take in adoption.**—A Hindu of sound mind and is not a minor has the capacity to take in adoption:

Provided that, if he has a wife living, he shall not adopt a son or daughter except with the consent of his wife unless the wife has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

*Explanation.*—If a person has more than one wife living at the time of adoption, the consent of all the wives is necessary unless the consent of any one of them is unnecessary for any of the reasons specified in the preceding section.

## COMMENTS

(i) The consent of wife envisaged in the provision to section 7 should either be in writing or reflected by an affirmative, positive act voluntarily and willingly done by her. If the adoption by a Hindu Male becomes a matter of challenge before the court, the party supporting the adoption has to adduce evidence to prove that the same was done with the consent of his wife. This can be done either by producing document evidencing her consent in writing or by leading evidence to show that wife had actively participated in the ceremonies of adoption with an affirmative mindset to support the action of the husband to take a son or a daughter in adoption; *Ghisalal v. Dhapubai*, AIR 2011 SC 641 (2011) 2 SCC 298; JT 2011 (1) SC 213; (2011) 1 SCALE 325.

(ii) During subsistence of a marriage a wife has no right to adopt, only to give consent in adoption if taken by her husband; *Malati Roy Chowdhury v. Sudhindranath Majumdar*, AIR 2007 Cal 4.

**8. Capacity of a female Hindu to take in adoption.**—Any female Hindu who is of sound mind and is not a minor has the capacity to take a son or daughter in adoption:

Provided that, if she has a husband living, she shall not adopt a son or daughter except with the consent of her husband unless the husband has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.]

## COMMENTS

## Capacity of female Hindu to adopt

(i) A female Hindu who is of a sound mind and has completed the age of eighteen years can also take a son or daughter in adoption to herself and in her own right. A

1. Subs. by Act 30 of 2010, sec. 3, for section 8 (w.e.f. 31-8-2010). Section 8, before substitution, stood as under:

"8. Capacity of a female Hindu to take in adoption.—Any female Hindu—

- (a) who is of sound mind,
- (b) who is not a minor, and
- (c) who is not married, or if married, whose marriage has been dissolved or whose husband is dead or has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind,

has the capacity to take a son or daughter in adoption."

father  
or male adopts  
a female - age  
of age must  
be 21 years

Kondiba Rama  
Patil v.  
Narayan  
Kondiba  
Patil

SC upheld  
the validity  
of adoption  
of boy of more  
than 15 years  
of age provided  
custom under  
sec 10(1V)

"Will  
not be  
transferred"

"consent  
of wife is  
necessary"

female Hindu who is unmarried or a widow or a divorcee can also adopt a son to herself, in her own right, provided she has no Hindu daughter or son's daughter living at the time of adoption. However, if she is married, a female Hindu cannot adopt a son or a daughter during the lifetime of her husband unless the husband is of unsound mind or has renounced the world; *Ghisalal v. Dhapubai*, AIR 2011 SC 644: (2011) 2 SCC 298: JT 2011 (1) SC 213: (2011) 1 SCALE 325.

(ii) There is conceptual and contextual difference between a divorce woman and one who is leading life like a divorced woman. Both cannot be equated. The appellant because of her physical deformity lived separately from her husband and too for a very long period right from the date of marriage. But in eye of law they continued to be husband and wife, because there was no dissolution of marriage or divorce in the eye of law. Son adopted by appellant invalid; *Brajendra Singh v. State of Madhya Pradesh*, AIR 2008 SC 1056.

(iii) Where there is no evidence to show that the female Hindu was seriously ill — mentally or physically, it has been held that she is in a position to adopt; *Devgonda Raygonda Patil v. Shangonda Raygonda Patil*, AIR 1992 Bom 189.

**9. Persons capable of giving in adoption.**—(1) No person except the father or mother or the guardian of a child shall have the capacity to give the child in adoption.

<sup>1</sup>[(2) Subject to the provisions of sub-section (4), the father or the mother, if alive, shall have equal right to give a son or daughter in adoption:

Provided that such right shall not be exercised by either of them save with the consent of the other unless one of them has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.]

<sup>2</sup>[(4) Where both the father and mother are dead or have completely and finally renounced the world or have abandoned the child or have been declared by a court of competent jurisdiction to be of unsound mind or where the parentage of the child is not known, the guardian of the child may give the child in adoption with the previous permission of the court to any person including the guardian himself.]

(5) Before granting permission to a guardian under sub-section (4), the court shall be satisfied that the adoption will be for the welfare of the child, due consideration being for this purpose given to the wishes of the child having regard to the age and understanding of the child and that the applicant for permission has not received or agreed to receive and that no person has made or given or agreed to make or give to the applicant any payment or reward in consideration of the adoption except such as the court may sanction.

*Explanation.*—For the purposes of this section—

(i) the expressions "father" and "mother" do not include an adoptive father and an adoptive mother; <sup>4</sup>\*\*\*]

1. Subs. by Act 30 of 2010, sec. 4(i), for sub-section (2) (w.e.f. 31-8-2010). Earlier sub-section (2) was amended by Act 45 of 1962, sec. 3(a) (w.e.f. 29-11-1962). Sub-section (2), before substitution by Act 30 of 2010, stood as under:

"(2) Subject to the provisions of sub-section (3) and sub-section (4), the father, if alive, shall alone have the right to give in adoption, but such right shall not be exercised save with the consent of the mother unless the mother has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind."

2. Sub-section (3) omitted by Act 30 of 2010, sec. 4(ii) (w.e.f. 31-8-2010). Sub-section (3), before omission, stood as under:

"(3) The mother may give the child in adoption if the father is dead or has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind."

3. Subs. by Act 45 of 1962, sec. 3(b), for sub-section (4) (w.e.f. 29-11-1962).

4. The word "and" omitted by Act 45 of 1962, sec. 3(c)(i) (w.e.f. 29-11-1962).

*Parents illegitimate not a ground*

- Person who has no surviving son is not eligible to adopt a son
- 1[(ia) "guardian" means a person having the care of the person or a child or of both his person and property and includes—
- (a) a guardian appointed by the will of the child's father or mother; and
  - (b) a guardian appointed or declared by a court; and]
- (ii) "court" means the city civil court or a district court within the local limits of whose jurisdiction the child to be adopted ordinarily resides.

10. Persons who may be adopted.—No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely:—

- Female Hindu has capacity to adopt if not married
- (i) he or she is a Hindu;
  - (ii) he or she has not already been adopted;
  - (iii) he or she has not been married, unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption;
  - (iv) he or she has not completed the age of fifteen years, unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption.

#### COMMENTS

##### Capacity to adopt

(i) Adoption of boy more than 15 years of age and married is not illegal on account of non-compliance of section 10(iii) and 10(iv) of the Act provided such custom or usage is prevalent in a community; *Hammant Laxman Salunke (D) by LRs. v. Shrinag Manjya Kanse*, AIR 2006 Bom 123.

(ii) The plaintiff being married and above 30 years of age could not prove any custom or usage being observed openly, continuously and uniformly thereby gaining the force of law in his Digamber Jain community which would validate his adoption; *Nemichand Shantilal Patni v. Bessantabi*, AIR 1994 Bom 235.

11. Other conditions for a valid adoption.—In every adoption, the following conditions must be complied with:—

1. The adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son, son's son or son's son's son (whether by legitimate blood relationship or by adoption) living at the time of adoption;
- (ii) if the adoption is of a daughter, the adoptive father or mother by whom the adoption is made must not have a Hindu daughter or son's daughter (whether by legitimate blood relationship or by adoption) living at the time of adoption;
- (iii) if the adoption is by a male and the person to be adopted is a female, the adoptive father is at least twenty-one years older than the person to be adopted;
- (iv) if the adoption is by a female and the person to be adopted is a male, the adoptive mother is at least twenty-one years older than the person to be adopted;
- (v) the same child may not be adopted simultaneously by two or more persons;
- (vi) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth<sup>2</sup> or in the case of an abandoned child or child whose parentage is not known, from

1. Ins. by Act 45 of 1962, sec. 3(c)(ii) (w.e.f. 29-11-1962).

2. Ins. by Act 45 of 1962, sec. 4 (w.e.f. 29-11-1962).

Hindu wife can adopt a boy and girl simultaneously with the consent of husband.

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was no evidence  
in hand that  
the plaintiff  
was actually  
given and  
taken in  
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the parents  
or guardians  
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plaintiff as  
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11(vi).  
Adoption  
was held  
not to have  
taken place;  
*Nemichand Shantilal Patni v. Basantabai*, AIR 1994 Bom 235.**Deed of adoption**

Neither any deed of gift and acceptance executed and registered nor deed of acknowledgment acknowledging adoption is sufficient by itself to constitute legal adoption in the absence of actual giving or taking. It is not a substitute for actual giving or taking. Omission of day or date of adoption in deed of acknowledgement is very vital. Such a deed loses all its significance. *Kaginath Behera v. Lalaram Behera*, AIR 1996 Ori 38.

**Subsequent events**

Subsequent marriage of the adoptive mother cannot invalidate the adoption; *Narinderjit Kaur v. Union of India*, AIR 1997 P&H 280.

**12 Effects of adoption.**—An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family:

Provided that—

- (a) the child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;
- (b) any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth;
- (c) the adopted child shall not divest any person of any estate which vested in him or her before the adoption.

**COMMENTS****Effect of adoption**

On adoption, adoptee gets transplanted in adopting family with the same rights as that of natural-born son. Adopted child becomes coparcener in Joint Hindu Family property after severing all his ties with natural family; *Basavarajappa v. Gurubasamma*, (2005) 12 SCC 290.

**Right in property after adoption**

An adoptee can take only that property to his adoptive family from his birth family which is already vested in the adoptee prior to adoption by inheritance or by partition

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**COMMENTS**

on 11 requiring age difference between adoptive mother and father only wanted that he should be reared up by Sankar and death and there had been no formal ceremony of adoption nor unfit to have children of their own, thereby negating the *Hemanta Kumar Mohanta*, AIR 1993 Ori 213.

father only wanted that he should be reared up by Sankar and death and there had been no formal ceremony of adoption nor unfit to have children of their own, thereby negating the *Hemanta Kumar Mohanta*, AIR 1993 Ori 213.

plaintiff was 30 years and that of the adoptive mother 48 years six months, thereby contravening the provisions of section 11(iv) as the difference between the plaintiff and mother was only 19 years and not 21 years; *Nemichand Shantilal Patni v. Basantabai*, AIR 1994 Bom 235.

There was no evidence in hand that the plaintiff was actually given and taken in adoption by the parents or guardians of the plaintiff as required under section 11(vi). Adoption was held not to have taken place; *Nemichand Shantilal Patni v. Basantabai*, AIR 1994 Bom 235.

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Provided that—

- (a) the child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;
- (b) any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth;
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On adoption, adoptee gets transplanted in adopting family with the same rights as that of natural-born son. Adopted child becomes coparcener in Joint Hindu Family property after severing all his ties with natural family; *Basavarajappa v. Gurubasamma*, (2005) 12 SCC 290.

**Right in property after adoption**

An adoptee can take only that property to his adoptive family from his birth family which is already vested in the adoptee prior to adoption by inheritance or by partition

in the natural family or as sole surviving coparcener as he becomes its absolute owner. Clause (b) of the proviso to section 12 cannot be attracted when the property has not been vested in him and is still a fluctuating coparcener property; *Devgonda Raygonda Patil v. Shamgonda Raygonda Patil*, AIR 1992 Bom 189.

#### Vested property

"Vested property" in the context of clause (b) of the proviso to section 12 means property in which indefeasible right is created, i.e., on no contingency it can be defeated in respect of particular property; *Devgonda Raygonda Patil v. Shamgonda Raygonda Patil*, AIR 1992 Bom 189.

**13. Right of adoptive parents to dispose of their properties.**—Subject to any agreement to the contrary, an adoption does not deprive the adoptive father or mother of the power to dispose of his or her property by transfer *inter vivos* or by will.

**14. Determination of adoptive mother in certain cases.**—(1) Where a Hindu who has a wife living adopts a child, she shall be deemed to be the adoptive mother.

(2) Where an adoption has been made with the consent of more than one wife, the seniormost in marriage among them shall be deemed to be the adoptive mother and the others to be step-mothers.

(3) Where a widower or a bachelor adopts a child, any wife whom he subsequently marries shall be deemed to be the step-mother of the adopted child.

(4) Where a widow or an unmarried woman adopts a child, any husband whom she marries subsequently shall be deemed to be the step-father of the adopted child.

**15. Valid adoption not to be cancelled.**—No adoption which has been validly made can be cancelled by the adoptive father or mother or any other person, nor can the adopted child renounce his or her status as such and return to the family of his or her birth.

**16. Presumption as to registered documents relating to adoption.**—Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved.

#### STATE AMENDMENT

**Uttar Pradesh.**—Renumber section 16 as sub-section (1) thereof and after sub-section (1) as so renumbered, the following sub-section (2) shall be inserted, namely:—

"(2) In case of an adoption made on or after the 1st day of January, 1977 no court in Uttar Pradesh shall accept any evidence in proof of the giving and taking of the child in adoption, except a document recording an adoption, made and signed by the person giving and the person taking the child in adoption, and registered under any law for the time being in force:

Provided that secondary evidence of such document shall be admissible in the circumstances and the manner laid down in the Indian Evidence Act, 1872."

[Uttar Pradesh Civil Laws (Reforms and Amendment) Act, 1976 (U.P. Act 57 of 1976), sec. 35 (w.e.f. 1-1-1977).]

## COMMENTS

**Burden of proof**

(i) Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act. The proof of giving and taking of child is not necessary; *Pathivada Rama Swami v. Karoda Surya Prakasa Rao*, AIR 1993 AP 336.

(ii) If the adoption is disputed, it is for the plaintiff to prove that ceremony of giving and taking has not taken place; *Devgonda Raygonda Patil v. Shamgonda Raygonda Patil*, AIR 1992 Bom 189.

**Registered Documents**

The petitioner is lawfully adopted by a Hindu lady and the Deed of adoption is registered and therefore the presumption as per the provisions of section 16 of the Act, can be drawn in favour of the petitioner. The said presumption would operate so long as there is not rebuttal by the procedure known to law; *N.R. Trivedi v. District Education Officer, Anand*, AIR 2004 Guj 53.

**17. Prohibition of certain payments.**—(1) No person shall receive or agree to receive any payment or other reward in consideration of the adoption of any person, and no person shall make or give or agree to make or give to any other person any payment or reward the receipt of which is prohibited by this section.

(2) If any person contravenes the provisions of sub-section (1) he shall be punishable with imprisonment which may extend to six months, or with fine, or with both.

(3) No prosecution under this section shall be instituted without the previous sanction of the State Government or an officer authorised by the State Government in this behalf.

## COMMENTS

**Prohibition of payment or reward in consideration of adoption**

Section 17 of the Act has been enacted by the legislature with a view to prevent trafficking of children. Where a major had agreed, after receiving considerable properties from the family into which he was to be taken in adoption, not to set up any claims with regard to certain items of the property belonging to the adopting family, the defendant could not be said to be a recipient of any payment or reward in consideration of adoption, of the plaintiff thereby not attracting section 17 of the Act; *Jupudi Venkata Vijaya Bhaskar v. Jupudi Kesava Rao*, AIR 1994 AP 134.

CHAPTER III  
MAINTENANCE

**18. Maintenance of wife.**—(1) Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her life time.

—(2) A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance—

- (a) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or of wilfully neglecting her;
- (b) if 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;

- (c) if he is suffering from a virulent form of  
 (d) if he has any other wife living;  
 (e) if he keeps a concubine in the same house or habitually resides with a concubine else who is living  
 (f) if he has ceased to be a Hindu by conversion to another religion;  
 (g) if there is any other cause justifying living separately.
- (3) A Hindu wife shall not be entitled to separate residence or maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.

Under HAMA  
 a father-in-law

is bound to provide maintenance to his

widowed daughter-in-law

and of co-parcenary property in his possession

### COMMENTS

#### Interim maintenance

The right to claim interim maintenance in a suit is a substantive right under section 18 of the Act. Since no form is prescribed to enforce the said right civil court in exercise of its inherent power can grant interim maintenance; *Purusottam Mahakud v. Smt. Annapurna Mahakud*, AIR 1997 Ori 73.

#### Maintenance pendente lite

After considering the status of the husband the wife should be awarded maintenance *pendente lite*, even though there is no separate provision in the Act for grant of maintenance *pendente lite*. The obligation to maintain the wife remains on the husband even though the wife might be living separately. The suit under section 18 of the Act may take decades to decide, the wife in the first instance be forced to face starvation and then subsequently is granted maintenance from the date of filing of suit. Such a view will be against the very intent and spirit of section 18 of the Act. It is settled law that a court empowered to grant substantive relief is competent to award it on interim basis as well, even though there is no express provision in the statute to grant it; *Neelam Malhotra v. Rajinder Malhotra*, AIR 1999 Del 234.

#### Maintenance to wife/widow

Widow has no charge on separate property of husband. Neither section 18 relating to maintenance of wife nor section 21 dealing with widow provides for any charge for maintenance on separate property of husband; *Sadhu Singh v. Gurdwara Sahib Narike*, AIR 2006 SC 3282.

#### Separate residence and maintenance

(i) The wife had been living alone and all the children had been brought up by her without any assistance and help from the husband and there was a clear case of desertion, the wife was entitled to separate residence and maintenance; *Meera Nireshwalia v. Sukumar Nireshwalia*, AIR 1994 Mad 168.

(ii) The thoughtless action of the husband of evicting the wife from the house where she had been living in collusion with the purchasers of the house and the police inflicted a deep wound on her amounting to cruelty, the wife was entitled to live separately and claim maintenance; *Meera Nireshwalia v. Sukumar Nireshwalia*, AIR 1994 Mad 168.

(iii) The claim for maintenance by a wife can also be sustained under clause (g) even on a ground covered by one or other clauses i.e. clause (a) to (f) of section 18(2) substantially but not fully. Merely because the wife fails to strictly prove the specific grounds urged by her, she cannot be denied relief; *Meera Nireshwalia v. Sukumar Nireshwalia*, AIR 1994 Mad 168.

**19. Maintenance of widowed daughter-in-law.**—(1) A Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained after the death of her husband by her father-in-law:

Provided she has no property or income she is unable to obtain maintenance—

estate of her husband or her father or mother, or son or daughter, if any, or his or her estate.

(2) A claim for maintenance under sub-section (1) shall not be enforceable if the father-in-law means to do so from any coparcenary property in his possession in which the daughter-in-law has not obtained any share, and any such claim shall cease on the re-marriage of the daughter-in-law.

20. Maintenance of children and aged parents.—(1) Subject to the provisions of this section a Hindu is bound, during his or her lifetime, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.

(2) A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.

(3) The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends in so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property.

*Explanation.*—In this section "parent" includes a child's step-mother.

21. Dependants defined.—For the purposes of this Chapter "dependants" mean the following relatives of the deceased:—

- (i) his or her father;
- (ii) his or her mother;
- (iii) his widow, so long as she does not re-marry;
- (iv) his or her son or the son of his predeceased son or the son of a predeceased son of his predeceased son, so long as he is a minor; provided and to the extent that he is unable to obtain maintenance, in the case of a grandson from his father's or mother's estate, and in the case of a great grand-son, from the estate of his father or mother or father's father or father's mother;

(v) his or her unmarried daughter, or the unmarried daughter of his predeceased son or the unmarried daughter of a predeceased son of his predeceased son, so long as she remains unmarried: provided and to the extent that she is unable to obtain maintenance, in the case of a grand-daughter from her father's or mother's estate and in the case of a great-grand-daughter from the estate of her father or mother or father's father or father's mother;

(vi) his or her widowed daughter: provided and to the extent that she is unable to obtain maintenance—

from the estate of her husband, or from her son or daughter if any, or his or her estate, or from her father-in-law or his father or the estate of either of them;

Provided she has no property or income  
 she is unable to obtain maintenance—  
 estate of her husband or her father or mother, or son or daughter, if any, or his or her estate.  
 (2) she cannot obtain maintenance from children

Laalkant Pandey v. Union of India  
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 lays down rule regarding inter country adoption

- (vii) any widow of his son or of a son of his predeceased son, so long as she does not remarry: provided and to the extent that she is unable to obtain maintenance from her husband's estate, or from her son or daughter, if any, or his or her estate; or in the case of a grandson's widow, also from her father-in-law's estate;
- (viii) his or her minor illegitimate son, so long as he remains a minor;
- (ix) his or her illegitimate daughter, so long as she remains unmarried.

**22. Maintenance of dependants.**—(1) Subject to the provisions of sub-section (2) the heirs of a deceased Hindu are bound to maintain the dependants of the deceased out of the estate inherited by them from the deceased.

(2) Where a dependant has not obtained, by testamentary or intestate-succession, any share in the estate of a Hindu dying after the commencement of this Act, the dependant shall be entitled, subject to the provisions of this Act, to maintenance from those who take the estate.

(3) The liability of each of the persons who takes the estate shall be in proportion to the value of the share or part of the estate taken by him or her.

(4) Notwithstanding anything contained in sub-section (2) or sub-section (3), no person who is himself or herself a dependant shall be liable to contribute to the maintenance of others, if he or she has obtained a share or part, the value of which is, or would, if the liability to contribute were enforced, become less than what would be awarded to him or her by way of maintenance under this Act.

**23. Amount of maintenance.**—(1) It shall be in the discretion of the Court to determine whether any and if so what, maintenance shall be awarded under the provisions of this Act, and in doing so, the Court shall have due regard to the considerations set out in sub-section (2), or sub-section (3), as the case may be, so far as they are applicable.

(2) In determining the amount of maintenance, if any, to be awarded to a wife, children or aged or infirm parents under this Act, regard shall be had to—

- (a) the position and status of the parties;
- (b) the reasonable wants of the claimant;
- (c) if the claimant is living separately, whether the claimant is justified in doing so;
- (d) the value of the claimant's property and any income derived from such property, or from the claimant's own earnings or from any other source;
- (e) the number of persons entitled to maintenance under this Act.

(3) In determining the amount of maintenance, if any, to be awarded to a dependant under this Act, regard shall be had to—

- (a) the net value of the estate of the deceased after providing for the payment of his debts;
- (b) the provision, if any, made under a will of the deceased in respect of the dependant;
- (c) the degree of relationship between the two;

- (d) the reasonable wants of the dependant;
- (e) the past relations between the dependant and the deceased;
- (f) the value of the property of the dependant and any income derived from such property, or from his or her earnings or from any other source;
- (g) the number of dependants entitled to maintenance under this Act.

#### COMMENTS

##### Quantum of maintenance

The amount payable by way of maintenance depends on the facts of each case and as such, no exception could be taken to the amount fixed by the trial Court as well as the date from which the maintenance could be claimed; *Vasantha v. Chandren*, AIR 2002 Mad 214.

**24. Claimant to maintenance should be a Hindu.**—No person shall be entitled to claim maintenance under this Chapter if he or she has ceased to be a Hindu by conversion to another religion.

**25. Amount of maintenance may be altered on change of circumstances.**—The amount of maintenance, whether fixed by a decree of court or by agreement, either before or after the commencement of this Act, may be altered subsequently if there is a material change in the circumstances justifying such alteration.

**26. Debts to have priority.**—Subject to the provisions contained in section 27 debts of every description contracted or payable by the deceased shall have priority over the claims of his dependants for maintenance under this Act.

**27. Maintenance when to be a charge.**—A dependant's claim for maintenance under this Act shall not be a charge on the estate of the deceased or any portion thereof, unless one has been created by the will of the deceased, by a decree of court, by agreement between the dependant and the owner of the estate or portion, or otherwise.

**28. Effect of transfer of property on right to maintenance.**—Where a dependant has a right to receive maintenance out of an estate, and such estate or any part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right or if the transfer is gratuitous; but not against the transferee for consideration and without notice of the right.

#### CHAPTER REPEALS AND

**29. Repeals.**—[Rep. by the Repealing and Amending Act, 1960 (58 of 1960), sec. 2 and Sch. I (w.e.f. 26-12-1960).]

**30. Savings.**—Nothing contained in this Act shall affect any adoption made before the commencement of this Act\*, and the effect of any such adoption shall be determined as if this Act had not been passed.

\* Date of commencement 21-12-1956.

(A) Report  
of law  
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of marriage

# THE HINDU DISPOSITION OF PROPERTY ACT, 1916

## INTRODUCTION

According to Hindu Law as administered in British India, a gift in favour of a person not in existence at the date of the gift was void and so also a bequest in favour of a person not in existence at the time of the testator's death. The same was the rule of Mahomedan Law, except that under the provisions of the Mussalmans Wakf Validating Act, 1913, it was competent to a Mahomedan to settle property for the benefit of unborn person even in perpetuity, provided the ultimate disposition was for the benefit of charity. To enable Hindus and Muslims to dispose of property by transfer *inter vivos* and by will for the benefit of unborn persons within certain limits it was considered essential to enact a legislation on the subject. To achieve this objective the Hindu Disposition of Property Bill was introduced in the Legislature.

## STATEMENT OF OBJECTS AND REASONS

The object of the present Bill is to enable Hindus and Mussalmans to dispose of property by transfer *inter vivos* and by will for the benefit of unborn persons within certain limits. According to the Hindu law as now administered in British India, a gift in favour of a person not in existence at the date of the gift is void; and so also a bequest in favour of a person not in existence at the time of the testator's death. The same is the rule of Mahomedan Law, except that under the provisions of the Mussalmans Wakf Validating Act, 1913, it was competent to a Mahomedan to settle property for the benefit of unborn persons even in perpetuity, provided the ultimate disposition is for the benefit of charity.

Every lawyer familiar with the Indian courts must have come across a large number of settlements and wills made by Hindus and Mahomedans for the benefit of their children and grand-children. The paramount object of the settlor in all these cases has been to provide not only for his children and grand-children then in existence, but also for those to be born hereafter, instead, however, of giving effect to the settlor's intention, the law as now administered completely defeats it. Even where a donor has only one child in existence at the date of the gift, and the gift is made in express terms for the benefit of all his children including those to be born hereafter, the law excludes from the benefit of the gift all children born subsequently to the date of the gift, to the entire subversion of the donor's intention. Similarly, the intention of testators to benefit by their wills their children and grand-children not in existence at the death of the testators is also defeated. It is to remedy these evils, and to give effect to the settlor's or testator's intention, that the present Bill is proposed. The sole object of the Bill is to enable the court to carry out settlor's or testator's intention, which, under the present state of the law, they are precluded from it. At the same time, it is recognised that this can only be done within the limits allowed by the rule against perpetuity, and these limits are prescribed in clauses 4 and 5. The effect of this Bill, if passed into law, will be to enable Hindus and Mahomedans to make dispositions of their property to the same extent, and subject to the same limitations as other communities in British India.

**ACT 15 OF 1916**

The Hindu Disposition of Property bill having been passed by the legislature received its assent on 28th September, 1916. It came on the Statute Book as THE HINDU DISPOSITION OF PROPERTY ACT, 1916 (15 of 1916).

**LIST OF AMENDING ACTS AND ADAPTATION ORDERS**

1. The Transfer of Property (Amendment) (Supplementary) Act, 1929 (21 of 1929).
2. The Government of India (Adaptation of Indian Laws) Order, 1937.
3. The Adaptation of Laws Order, 1950.
4. The Miscellaneous Personal Laws (Extension) Act, 1959 (48 of 1959).
5. The Pondicherry (Extension of Laws) Act, 1968 (26 of 1968).

LawShrine Trust

# THE HINDU DISPOSITION OF PROPERTY ACT, 1916

(15 of 1916)<sup>1</sup>

[28th September, 1916]

*An Act to remove certain existing disabilities in respect of the power of disposition of property by Hindus for the benefit of persons not in existence at the date of such disposition.*

WHEREAS it is expedient to remove certain existing disabilities in respect of the power of disposition of property by Hindus for the benefit of persons not in existence at the date of such disposition;

It is hereby enacted as follows:—

**1. Short title and extent.**—(1) This Act may be called the Hindu Disposition of Property Act, 1916.

<sup>2</sup>[(2) It extends<sup>3</sup> to the whole of India except the State of Jammu and Kashmir.]

**2. Dispositions for the benefit of persons not in existence.**—Subject to the limitations and provisions specified in this Act, no disposition of property by a Hindu, whether by transfer *inter vivos* or by will, shall be invalid by reason only that any person for whose benefit it may have been made was not in existence at the date of such disposition.

**3. Limitations and conditions.**—The limitations and provisions referred to in section 2 shall be the following, namely:—

- (a) in respect of dispositions by transfer *inter vivos*, those contained in [Chapter II] of the Transfer of Property Act, 1882 (4 of 1882), and
- (b) in respect of dispositions by will those contained in <sup>5</sup>[sections 113, 114, 115 and 116 of the Indian Succession Act, 1925 (33 of 1925)].

1. For Statement of Objects and Reasons, see Gazette of India, 1916, Pt. V. p. 2; for Report of Select Committee see Gazette of India, 1916, Pt. V, p. 76; and for proceedings in Council, see Gazette of India, 1916 Pt. VI, pp. 9, 509, 542 and 585.

2. Subs. by Act 48 of 1959, sec. 3 and Sch.I, for sub-section (2) (w.e.f. 1-2-1960).

3. This Act has been extended to Berar by the Berar Laws Act, 1941 (4 of 1941).

This Act has been extended to Puducherry by the Pondicherry (Extension of Laws) Act, 1968 (26 of 1968), subject to following modification—

In section 1, after sub-section (2), insert:—

“Provided that nothing contained in this Act shall apply to the Renoncants of the Union territory of Pondicherry.”.

This Act has been extended to the Union territory of Dadra and Nagar Haveli by Reg. 6 of 1963.

4. Subs. by 21 Act of 1929, sec. 12, for “sections 13, 14 and 20”.

5. Subs. by Act 21 of 1929, sec. 12, for “sections 100 and 101 of the Indian Succession Act, 1865 (10 of 1865)”.

## STATE AMENDMENTS

**Gujarat.**—In section 3, in clause (b), omit figures "113".

[Vide Gujarat Act 11 of 1960, sec. 88.]

**Maharashtra.**—In section 3, in clause (b), figures "113" shall be omitted.

[Vide Bombay Act 54 of 1947.]

**4. Failure of prior disposition.**—[Rep. by the Transfer of Property (Amendment) (Supplementary) Act, 1929 (21 of 1929), sec. 12.]

**5. Application of this Act to the Khoja community.**—Where the <sup>1</sup>[State Government] is of opinion that the Khoja community in <sup>2</sup>[the <sup>3</sup>[State]] or any part thereof desire that the provisions of this Act should be extended to such community, <sup>4</sup>[it] may by notification in the Official Gazette, declare that the provisions of this Act, with the substitution of the word "Khojas" or "Khoja" as the case may be, for the word "Hindus" or "Hindu" wherever those words occur, shall apply to that community in such area as may be specified in the notification, and this Act shall thereupon have effect accordingly.

1. Subs. by the Government of India (Adaptation of Indian Laws) Order, 1937, for "Governor-General in Council".
2. Subs. by the Government of India (Adaptation of Indian Laws) Order, 1937, for "British India".
3. Subs. by the Adaptation of Laws Order, 1950, for "Province".
4. Subs. by the Government of India (Adaptation of Indian Laws) Order, 1937, for "he".

Hindoman  
Prasad  
v.  
Musamma  
Bibi

↓  
Power of a  
Karta of  
the Hindu  
Joint  
family

## HINDU LAWS

### Important Case-Law

#### POWER OF KARTA IN JOINT FAMILY

##### Power of property by karta

A permanent injunction by a coparcener against the father, a karta for preventing him from alienating the house property belonging to the joint Hindu family would not be maintainable because the coparcener had got the remedy of sale and getting it set aside in a suit subsequent to the completion of the sale. *Mar v. Ram Parkash*, AIR 1988 SC 576.

The father of a joint Hindu family has power to sell or competent to make any other transaction of the joint family property. But transaction was of benefit to the family and need not have a private character so as to be binding on the family; *Balmukand v. Kamla Wati*, AIR 1953 SC 495.

The father has complete powers of disposition over his self-acquired property. It follows as a necessary consequence that the father is quite competent to provide expressly, when he makes a gift, either that the donee would take it exclusively for himself or that the gift would be for the benefit of his branch of the family; *C.N. Arunachala Mudaliar v. C.A. Muruganatha Mudaliar*, AIR 1953 SC 495.

#### HINDU SUCCESSION

##### Ancestor—Meaning of

The word ancestor in its ordinary meaning includes an ascendant in the maternal, as well as the paternal line; but the 'ancestral estate' in which, under the Hindu law, a son acquires jointly with his father an interest by birth must be confined to the property descending to the father from his male ancestor in the male line; *Moh. Hussain Khan v. Babu Kishna Nandan Sehai*, AIR 1937 PC 233.

##### Nature and concept of joint family and coparcenary

Property of a joint family does not cease to belong to the family merely because the family is represented by a single coparcener who possesses rights which an owner of property in a sole possession; *Gowli Buddanna v. Commissioner of Income-Tax, Mysore*, AIR 1966 SC 523.

If there is no coparcenary, it does not follow that there is no undivided Hindu family. The joint status of the family does not come to an end merely because for the time being there is only one member of the family who is in possession of the family property. There is sharp distinction between 'Undivided Hindu Family' and 'Coparcenary'; *Commissioner of Income Tax v. Gomedalli Lakshminarayan*, AIR 1935 Bom 412.

Partition cannot be demanded by one more than four degrees removed from the last owner, however remote he may be from the original owner thereof; *Moro Vishuanath v. Ganesh Vithal*, (1873) 10 Bom 444.

##### Obligations of Minor members

If the family is a trading family by birth but also by a vocation, it is competent to the adult son to carry on that business after his father's death and incur debts for the purpose of that business which would bind the interest of the sons, the minor sons cannot escape liability; *Kulitalai Bank Ltd. v. S.V. Nagamanickam*, AIR 1955 Mad 670.

Alienation made for a new business by a managing member of the family was not binding on the minor members but had an exception and that was if the new business was for the benefit of the estate of the family or was for legal necessity, the alienation made even for a new business by the managing member of the family, was binding upon the minor members. It is for the Court to decide whether it was so beneficial and was such as an ordinary prudent manager would have entered into the interest of the family; *Angney Lal Narain Das v. Angney Lal Munni Lal*, AIR 1951 All 400.

**Right of a son in joint family property**

The share which a coparcener obtains on partition of ancestral property is ancestral property as regards his male issue. They take an interest in it by birth. Whether they are in existence at the time of partition or are born subsequently. Such share, is ancestral property only as regards his male issue. As regards other relations, it is separate property, and if the coparcener dies without leaving male issue, it passes to his heirs by succession; *Dipo v. Wassan Singh*, AIR 1983 SC 846.

**Right of an adopted son**

If a son is subsequently born to or adopted by the sole surviving coparcener or a new coparcener is inducted into the family or an adoption made by a widow of a deceased coparcener on alienation made by the sole surviving coparcener before the birth of a new coparcener or the induction of a coparcener by adoption into the family whether by sale, mortgage or gift would however stand, for the coparcener who is born or adopted after the alienation cannot object to alienations made before he was begotten or adopted; *Dharma Shamrao Agalawe v. Pandurag Miragu Agalawe*, AIR 1988 SC 845.

The share of an adopted son in competition with a natural born son among sudras has always been 1/5 in the family property, i.e. 1/4 of the natural born son's share; *Guramma Bhratar Chanbasappa Deshmukh v. Mallappa Chambasappa*, AIR 1964 SC 510.

**Specific performance of an agreement**

If there was neither legal necessity nor benefit to the estate by the proposed sale and the agreement therefore, could not be enforced; *Arvind and Abasaheb Ganesh Kulkarni v. Anna and Dhanpal Parsia Chougule*, AIR 1980 SC 675.

**SPECIAL RELIEF****Right for permanent injunction**

The coparcener has no right to maintain a suit for permanent injunction restraining the manager or the karta from alienating the coparcenary property and his right is only to challenge the same and to recover the property after it has come into being; *Jujhar Singh v. Giani Tarlok Singh*, AIR 1937 P&H 34.

**Requirement for partition**

There are two ingredients of a declaration of a member's intention to separate. One is the expression of the intention and the other is bringing that expression to the knowledge of the person or person affected; *A. Raghavamma v. Chenchamma*, AIR 1964 SC 136.

**Right of members of family on partition**

A member of a joint Hindu family can bring about his separation in status by a definite, unequivocal and unilateral declaration of his intention to separate himself from the family and enjoy his share in severalty. It is not necessary that there should be an agreement between all the coparceners for the disruption of the joint status; *Puttramma v. M.S. Rangamma*, AIR 1968 SC 1018.

The cause of action for a suit for partition by a minor must abate on the principle of the maxim, *actio personalis moritur cum persona*. But that maxim has application only when the action is for damages for a personal wrong, and as a suit for partition is a suit for property; *Kakumanu Pedasubhayya v. Kakumanu Akkamma*, AIR 1958 SC 1042.

When the coparceners separate and have full evidence both oral and documentary, that letter remain united. Later on again partition took place. That agreement was not of a temporary character, but was intended to be a permanent family settlement and in the circumstances cannot be impeached by and is binding upon him; *Balabux Ladhuram v. Rukhmabai*, 30 IA 130.

**RIGHT OF COPARCENER**

A Co-parcener having right in joint family property is competent to dispose of her share in property. *Mahendra Mahanta v. Tarini Devi*, AIR 2003 Ori 180.

IASMI Pandey v. Union of India → inter country adoption

① widow daughter don't have any right to maintenance.

Notes

① Sageta relationships?

Questions main valid answer has  
Please confirm.

① Secma v. Ashwani Kumar

→ SC has directed the states and central gov. to make law for compulsory registration of all marriages in India.

① Lachman Wam Chand Kripiani v. Meena  
① Bipinchandra v. Prabhavati

Concept of desertion.

① Under Hindu law marriage is a sacrament.

① A man is prohibited to marry his daughter on the ground of affinity.

① Acc. to court rulings, custody of a Hindu child upto the age of 5 yrs shall ordinarily be with the mother.

① If party condones and forgives the guilty party, then it is not possible to bring a petition for divorce on the ground of "cruelty".

↳ condonation applies to adultery and cruelty.

① J. a suit for dissolution of marriage — Both

maintenance Pende lite and permanent alimony can be granted.

① A Hindu wife may not claim maintenance from her husband ~~on the~~ → after divorce is granted.

① Shobharani v. Madhukar Reddy → acting for dowry in a mental cruelty and ground for divorce.

① K. Srinivas Rao v. D.A. Deepa → SC held that staying together under the same roof is not the condition for mental cruelty.

① Dastane v. Dastane → divorce.

Githa Keshavan  
V R S

**List of Latest Universal's Bare Acts & Rules**

• Latest • Accurate • Up-to-date • Reasonably Priced

**CIVIL, CRIMINAL, COMMERCIAL, LABOUR & SERVICES**

**A**

A-17. Actuaries Act, 2006 along with Allied Rules	65.00
A-1. Administration of Evacuee Property Act, 1950 with Rules, 1950	70.00
A-2. Administrative Tribunals Act, 1985 along with CAT (Procedure) Rules, 1987, CAT Rules of Practice, 1993 and Contempt of Courts (C.A.T.) Rules, 1992	110.00
A-3. Advocates Act, 1961	50.00
A-4. Advocates' Welfare Fund Act, 2001	35.00
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A-7. Air (Prevention and Control of Pollution) Act, 1981 along with Rules, 1982	55.00
A-15. Airport Authority of India Act, 1994 along with Rules and Regulations	70.00
A-8. Ancient Monuments and Archaeological Sites and allied Act	
A-9. Antiquities along with	
A-10. Apprenticeship Act and F	
A-11. Arbitration along with	
A-19. Architects and Regul	
A-12. Armed Forces along with	
A-18. Armed Forces along with	
A-13. Army Act,	
A-14. Army Act,	
A-16. Atomic Energy	

B-12. Bureau of Indian Standards Act, 1986 along with Rules and Regulations	100.00
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**C**

C-1. Cable Television Networks (Regulation) Act, 1995 along with allied Rules & Regulations	60.00
C-2. Cantonments Act, 2006	120.00
C-4. Carriage by Air Act, 1972 <i>see</i> Carrier Laws (Land • Sea • Air)	90.00
C-44. Carriage by Road Act, 2007	40.00
C-4. Carriage of Goods by Sea Act, 1925 <i>see</i> Carrier Laws (Land • Sea • Air)	90.00
C-4. Carriers Act, 1865 <i>see</i> Carrier Laws (Land • Sea • Air)	90.00
C-4. Carrier Laws (Land • Sea • Air)	90.00
C-5. Cattle Trespass Act, 1871	30.00
C-43. Central Educational Institutions (Reservation in Admission) Act, 2006	30.00
C-48. Central Electricity Authority Regulations	320.00
C-49. Central Electricity Regulatory Commission Rules and Regulations	275.00
C-6. Central Finance	100.00

⊙ A born <sup>Christian</sup> muslim girl brought up in a Hindu family ~~and~~ /soophange married a Hindu boy ~~as~~ Per Shariah rules. The marriage is <sup>in India.</sup>

⊙ "Will theory" has not been statutorily recognized as a theory of divorce under HMA.

<sup>option</sup> Real are: Fault, Guilt, breakdown theory.

⊙ Gandharva, Asura → form of marriage not acknowledged by HMA

B-1. Bankers' B	
B-2. Banking Cc Transfer of along with	
B-3. Banking Re allied Rules	
B-4. Bar Council allied Rules	
B-5. Beedi and Cigar Workers (Conditions of Employment) Act, 1966 along with Welfare Cess and Welfare Fund Act and Rules	60.00
B-6. Benami Transactions (Prohibition) Act, 1988	30.00
B-7. Biological Diversity Act, 2002 along with Rules, 2004	70.00
B-8. Boilers Act, 1923 along with allied Rules	65.00
B-9. Bonded Labour System (Abolition) Act, 1976 along with Rules, 1976	30.00
B-10. Border Security Force Act, 1968 along with allied Rules	140.00
B-11. Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 along with Rules, 1998 with Cess Act and Rules	140.00

C-17. Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981 along with Rules, 1984, Welfare Cess Act, 1981 along with Rules, 1984, Welfare Fund Act, 1981 and Rules, 1984	65.00
C-18. Cinematograph Act, 1952 along with Cinematograph (Certification) Rules, 1983	60.00
C-19. Citizenship Act, 1955 along with Citizenship Rules, 2009	90.00
C-20. Civil Defence Act, 1968 along with Rules and Regulations	35.00
C-50. Civil Liability for Nuclear Damage Act, 2010 with Rules, 2011	50.00

First revision of law...  
 as break down primary

C-47. Clinical Establishments (Registration and Regulation) Act, 2010 with Rules, 2012	40.00	D-6. Dowry Prohibition Act, 1961 along with Rules and Relevant Provisions of IPC & Evidence and CrPC relating to Dowry	35.00
C-21. Code of Civil Procedure, 1908	195.00	D-12. Dramatic Performances Act, 1876	25.00
C-23. Code of Civil Procedure, 1908 with State Amendments (Hb)	320.00	D-7. Drugs & Cosmetics Act, 1940	65.00
C-45. Code of Civil Procedure, 1908 with State & High Court Amendments with Letters Patent (Hb)	450.00	D-8. Drugs & Cosmetics Act, 1940 along with Rules, 1945	450.00
C-24. Code of Criminal Procedure, 1973	180.00	D-9. Drugs & Magic Remedies (Objectionable Advertisements) Act, 1954 along with Rules, 1955	30.00
C-26. COFEPOSA Act, 1974 and SAFEMFOP Act, 1976 with Rules, 2006	40.00	D-13. Drugs (Prices Control) Order, 2013	65.00
C-51. Coinage Act, 2011	30.00	<b>E</b>	
C-46. Collection of Statistics Act, 2008 with Rules, 2011	40.00	E-1. Easements Act, 1882	35.00
C-41. Commission for Protection of Child Rights Act, 2005 along with Rules	40.00	E-2. Electricity Act, 2003 along with Rules, 2005 and allied Rules and Orders	130.00
C-27. Commissions of Inquiry Act, 1952 along with Rules, 1972	30.00	E-3. Electricity (Supply) Act, 1948	60.00
C-28. Commission of Sati (Prevention) Act, 1987 along with Rules	25.00	E-5. Electricity Rules, 2005 along with allied Rules and Orders	210.00
C-29. Companies Act, 2013	350.00	E-6. Emblems and Names Act, 1953	35.00
C-53. Company Secretaries Act, 1986	50.00		
C-30. Comp			
C-31. Consti	⊙ For description		
C-33. Consi	↳ the factum and animus deserdereli must coexist		50.00
C-34. Conter	↳ description should be without any reasonable care		80.00
C-35. Contra			
C-36. Contract Act, 19	↳ as then should be timely the consent of the other party		225.00
N-6. Control (Traffic) Highwa			55.00
C-37. Copyrig			130.00
C-38. Coun. F			25.00
C-39. Credit li (Regula	↳ Statutory Period of two year must have run out before a petition is presented.		160.00
C-55. Criminal Ordina			275.00
C-56. Criminal (w.e.f. 0			30.00
C-40. Custom Finance			40.00
M-18. Cutchi N see Muslim laws		E-17. Evidence Act, 1872	60.00
<b>D</b>		E-18. Explosives Act, 1884 along with The Explosive Substances Act, 1908 and The Explosives Rules, 2008	240.00
D-1. Dangerous Machines (Regulation) Act, 1983 along with Rules, 2007	40.00	<b>F</b>	
D-11. Dentists Act, 1948	70.00	F-1. Factories Act, 1948	60.00
D-2. Depositories Act, 1996 along with Rules, 1998	40.00	F-2. Family Courts Act, 1984	30.00
D-3. Designs Act, 2000 along with Rules, 2001	60.00	F-3. Fatal Accidents Act, 1855	25.00
D-10. Disaster Management Act, 2005 along with allied Rules	60.00	P-24. Flag Code of India, 2002 see Prevention of Insult to National Honour Act, 1971	40.00
M-18. Dissolution of Muslim Marriages Act, 1939 see Muslim laws	50.00	F-16. Food Safety and Standards Act, 2006	75.00
D-4. Divorce Act, 1869	30.00	F-15. Food Safety and Standards Act, 2006 along with allied Rules, Regulations and order	450.00
D-5. Dock Workers (Regulation of Employment) Act, 1948 along with Rules, 1962, Advisory Committee Rules, 1962, Safety, Health and Welfare Act, 1986, Regulation of Employment (Inapplicability of Major Ports) Act, 1997	125.00	F-5. Foreign Contribution (Regulation) Act, 2010 along with Rules and Regulations	75.00
		F-6. Foreign Exchange Management Act, 1999	35.00
		F-7. Foreign Exchange Management Act, 1999 along with allied Rules and Regulations & Orders	275.00

A Jaychander  
 vs. Anant Kaur → Cruelty explained.

Kanwar Singh  
v. Surjan Singh

Adoption

F-8. Foreign Exchange Regulation Act, 1973 along with Rules, 1974	60.00
F-9. Foreign Marriage Act, 1969 along with Foreign Marriage Rules, 1970	30.00
F-10. Foreign Trade (Development and Regulation) Act, 1992 along with Rules, 1993	60.00
F-11. Foreigners Act, 1946 along with Foreigners Orders, 1948 with Registration of Foreigners Act, 1939 and Rules, 1992	50.00
F-12. Forest Act, 1927 along with The Forest (Conservation) Act, 1980 and Rules, 2003	90.00
F-14. Freedom of Information Act, 2002	30.00

**G**

G-1. Gas Cylinders Rules, 2004 along with Rules, 1981 and allied Orders	130.00
G-2. General Clauses Act, 1897	30.00
I-12. General Insurance Business (Nationalisation) Act, 1972 see Insurance Act, 1938	275.00
G-5. Geographical Indications of Goods (Registration and Protection) Act, 1999 along with Rules, 2002	100.00
G-7. Government Securities Act, 2006 along with Regulations	55.00
G-8. Gram Nyayalayas Act, 2008	40.00
G-6.	

⊙ A child of void marriage is :- Not entitled to an interest in which his father is a coparcener.

⊙ In the absence of any proceedings under HMA between the parents of the children, an order for the custody, maintenance and education of minor children can be passed by the

↳ District court

⊙ Matrimonial rights are not violative of art 21 and 14. ↳ Saroj v. Sudarshan

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I-7. In	
(Central) Rules, 1957 and allied Rules	120.00
I-8. Industries (Development and Regulation) Act, 1951	45.00
I-9. Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992 along with Rules, 1993	35.00
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I-19. Inland Vessels Act, 1917	70.00
I-11. Insecticides Act, 1968 along with Rules and Order	75.00
I-12. Insurance Act, 1938 along with allied Act and Rules	295.00
I-13. Insurance Regulatory and Development Authority Act, 1999 along with allied Rules and Regulations	260.00

I-14. Insurance Regulatory and Development Authority Act, 1999	35.00
I-15. Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 along with Rules, 1980	60.00
I-16. Interest Act, 1978	25.00
I-17. Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993	25.00

**J**

J-1. Juvenile Justice (Care and Protection of Children) Act, 2000 along with Rules, 2007	110.00
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**K**

M-18. Kazis Act, 1880 see Muslim laws (containing 9 Acts & Rules)	50.00
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**L**

L-1. Land Acquisition Act, 1894	90.00
L-9. Land Ports Authority of India Act, 2010	55.00
L-7. Legal Metrology Act, 2009 along with Allied Rules	415.00
L-2. Legal Services Authorities Act, 1987 along with allied Rules and Regulations	80.00
L-3. Life Insurance Corporation Act, 1956 along with Rules, 1956	4.00

Act, 2008	
Rules 325.00	
Act, 2008	55.00
Act, 1913	55.00
Act, 1938	25.00

Monuments and Inscriptions Act, 1966	
Archaeological Act, 1951	110.00

Act, 1955	50.00
Act, 1956	65.00
Act, 1966	35.00
Act, 1970	30.00
Act, 1970	35.00
Act, 1970	325.00
Act, 1970	30.00
Act, 1970	60.00

(Excise Duties) Act, 1955	30.00
M-7. Mental Health Act, 1987 along with Central Mental Health Authority Rules, 1990 and State Mental Health Rules, 1990	55.00
M-8. Merchant Shipping Act, 1958 along with allied Rules	375.00
M-21. Micro, Small and Medium Enterprises Development Act, 2006 along with allied Act and Rules	65.00
M-10. Mineral Concession Rules, 1960 see Mines & Minerals (Development and Regulation) Act, 1957	325.00
M-9. Mines Act, 1952 along with Rules, 1955 and The Mines Rescue Rules, 1985	120.00
M-10. Mines and Minerals (Regulation and Development) Act, 1957 along with Mineral Concession Rules, 1960 and allied Rules	325.00

3

Gift of Immovable Prop. by husband → not Stridhan

Universal's Bare Acts & Rules—1st Choice of Bench & Bar

Dastane v. Dastane → case related to "mental cruelty"  
 ↳ Case on adoption ↳ Adulterance

Jyotish Chandra v. Meera — Constructive desertion.

M-11. Minimum Wages Act, 1948 along with Central Rules, 1950	60.00	P-6. Payment of Bonus Act, 1965 along with Rules, 1975	40.00
M-12. Monopolies and Restrictive Trade Practices Act, 1969	50.00	P-7. Payment of Gratuity Act, 1972 along with Rules, 1972	45.00
M-13. Motor Transport Workers Act, 1961	30.00	P-8. Payment of Wages Act, 1936 along with (Procedure) Rules, 1937	50.00
M-14. Motor Vehicles Act, 1988	120.00	P-9. Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 along with Rules, 1996 and National Trust for Welfare of Persons with Disabilities Act, 1999 with Rules, 2000	80.00
M-15. Motor Vehicles Rules, 1989 along with allied Material	260.00	P-10. Petroleum Act, 1934 along with Rules, 2002	165.00
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M-17. Multi-State-Co-operative Societies Act, 2002 along with Rules, 2002	95.00	P-12. Places of Worship (Special Provisions) Act, 1991	25.00
M-18. Muslim Laws (Containing 9 Acts & Rules)	50.00	P-13. Police Acts (6 Acts in 1)	60.00
M-19. Muslim Personal Law (Shariat) Application Act, 1937	25.00	P-13. Police (Incitement of Disaffection) Act, 1992 see Police Acts (6 Acts in 1)	60.00
M-20. Muslim Women (Protection of Rights on Divorce) Act, 1986 along with Rules, 1986	30.00	P-13. Police Forces (Restriction of Rights) Act, 1966 see Police Acts	60.00
M-18. Mussalman Wakf Act, 1923, Mussalman Wakf Validating Act, 1913 & 1930 see Muslim Laws	50.00	P-14. Post Office Act, 1898	35.00
<b>N</b>			
N-1. Narcotic Drugs & Psychotropic Substances Act, 1985 along with allied Act, Rules and Order	160.00	P-15. Powers of Attorney Act, 1882	30.00
N-2. National Commission Acts [Containing 4 Acts—Women Act, 1990, Minorities Act, 1992, Backward Classes Act, 1993, Safai Karamcharis Act, 1993 and allied Information]	50.00	P-16. Prasar Bharti (Broadcasting Corporation of India) Act, 1990	40.00
N-3. National Commission for Minority Educational Institutions Act, 2004 along with allied Rule		P-17. Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 along with Rules	35.00
N-6. National Commission for Women Act, 1990		P-18. Prisons & Registration of Books Act, 1867	50.00
N-6. National Commission for Backward Classes Act, 1993			allied
N-6. National Commission for Safai Karamcharis Act, 1993			35.00
N-6. National Commission for Women Act, 1990			30.00
N-6. National Commission for Backward Classes Act, 1993			30.00
N-6. National Commission for Safai Karamcharis Act, 1993			30.00
N-11. National Commission for Women Act, 1990			100.00
N-7. National Commission for Backward Classes Act, 1993			Delhi
N-13. National Commission for Safai Karamcharis Act, 1993			pertry
N-12. National Commission for Women Act, 1990			30.00
P-9. National Commission for Backward Classes Act, 1993			ct,
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199			PS
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N-8. National Commission for Women Act, 1990			Code of
N-9. National Commission for Backward Classes Act, 1993			to the
N-10. National Commission for Safai Karamcharis Act, 1993			35.00
Ru			, 2002
			150.00
O-1. Official Languages Act, 1963	35.00	(Containing 4 Acts)	45.00
O-2. Official Languages Act, 1963	35.00	P-29. Prisoners Acts (Containing 6 Acts & Rules)	55.00
O-3. Official Secrets Act, 1923	30.00	P-29. Prisoners (Attendance in Courts) Act, 1955 see Prisoners Acts	55.00
<b>P</b>			
P-1. Partition Act, 1893	30.00	P-30. Private Security Agencies (Regulation) Act, 2005 with Rules, 2006	30.00
P-2. Parsi Marriage and Divorce Act, 1936	30.00	P-31. Prize Chits and Money Circulation Schemes (Banning) Act, 1978	30.00
P-3. Partnership Act, 1932	40.00	P-32. Probation of Offenders Act, 1958	30.00
P-4. Passports Act, 1967 along with Rules, 1980	120.00	P-45. Prohibition of Child Marriage Act, 2006 along with Allied Acts	30.00
P-5. Patents Act, 1970 along with Rules, 2003	160.00		
P-46. Payment and Settlement Systems Act, 2007	40.00		

In case of 'desertion' wife may prove  
 ↳ That the husband has abandoned her  
 ↳ that he has done so without any  
 reasonable cause and against  
 her wish and without her consent  
 ↳ that he willfully neglected her

⊙ Bigamous marriage contracted before the commencement of HMA — remains valid

Universal's Bare Acts & Rules—1st Choice of Bench & Bar 4  
Naveen Kohli v. Neelu Kohli → Irrevocable breakdown of marriage

Anand source of Hindu law

↳ Souti, Smith, digest, commentaries and codes.

P-47. Protection of Children from Sexual Offences Act, 2012	40.00	S-2. Sales Promotion Employees (Conditions of Service) Act, 1976 along with Rules, 1976	25.00
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*Shardha v. Dharmpal - Coercion in the form of a happy married life*

*Samrat Chhosh v. Jayo Chhosh*

*↳ Parameters which may be relevant in dealing with the case of mental cruelty.*

*↳ degree of restitution of conjugal rights can be executed by attachment of prop.*



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In a proceeding, on a petition for dissolution of marriage, under HMA, the court cannot pass instead a decree for judicial separation. A ground for seeking divorce is that other party, after the solemnization of marriage, has ceased to be Hindu by conversion to another religion.

While there is no case which has not thrown but if held in all norms and no case, better throw it away → irretrievable breakdown of marriage.

"Breakdown Principle" to be accepted as additional grounds for divorce.

"Sapinda relationship" rules are based on Exogamy.

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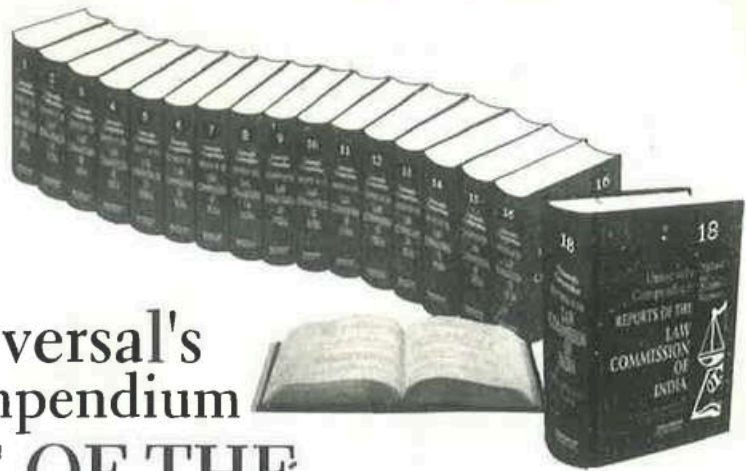
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*Sarla Mudgal v. UOI*  
 Husband converting to Islam  
 (and his wife's parents) would be guilty of bigamy.

① law commission in its report recommended "breakdown principle" to be accepted as additional ground for divorce.

② "sapinda relationship" rules are based on Exogamy

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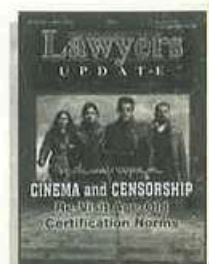
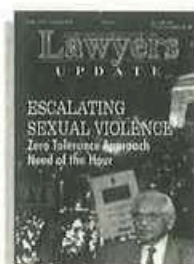
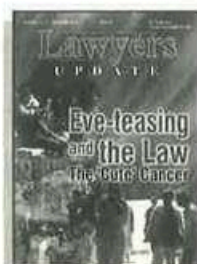
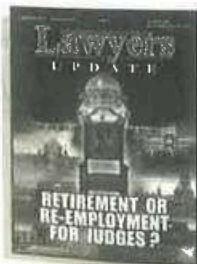
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