

HINDU LAW

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Class-room live lectures edited, enlarged
and updated

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E-book based on live lectures

Edited, enlarged with Amendments, Case law

INTRODUCTION

Hindu Dharma-is one of the oldest jurisprudences of the legal world. The written Smritis are: Manusmriti, Yajnavalkya Smriti and Naradasmriti. These are as old as 13th Century *B.C.* The term Dharmasastra applies to these Smritis generally. The Sanskrit treatises on these Smritis, appeared as commentaries and Digests. The most important of them are 1) Mitakshara written by Vijnaneswara(1100 A.D.) (2) Dayabhaga written by Jimutavahana (1300 A.D.). These two are called the School of Hindu Law. Mitakshara is being followed in all parts'of India except Bengal & Assam where Dayabhaga has its sway.

Apart from these commentaries there are others held by jurists with great esteem:- 'Smriti Chandrika' by Deva Nanda Bhatt,' Vivada Ratnakara' by Chandeswara, 'Parasara madhaviya' by Madhavacharya, 'Vivada Chinthamani', by Vachaspati, 'Saraswati Vilasa' by Pratapa Ruradeva, 'Vyavahara Nirnaya' by Varadaraja, 'Nirnaya sindhu' by Kamalakara, 'Daitaka Mimamsa' by Nanda Pandita, 'Dattaka Chandriks' by Kubera etc.

This list shows the formidable resources. A gleaning into these can be had by reading the 'History of Dharmasastra's by Dr.Maha mahopadyaya Kane.

For a Thorough Knowledge on Hindu Law one must sit with these great masters.

To the students and beginners this is a list for their future reading & specialisation. We have now the codified Hindu Law in the form of Acts and also the uncodified Hindu Law, and also the decisions of our Supreme Court and various High courts;

Hindu Law

(i) Uncodified Law

1. Sources of Hindu Law,
2. Mithakshara & Dayabhaga Schools.
3. (i) Stridhana (ii) Widow Yestate (iii) Reversioners.
4. (i) Mithakshara Copairenary-Characteristics-Kartha-Alienatir Partition-re-union.
(ii) Dayabhaga Law.
(iii) Property: Self acquired, Ancestral, Joint Venture Acquisitions. Gains of Learning Act.
5. Debts: (a) Liabilities-Nature, Meaning, Scope.
(b) Antecedent Debts.
- (c) Pious obligation-Doctrine-Scope-(Vyavaharika i Avyavaharika Debts.).
6. Gifts.
7. Wills.
8. Benami Transactions.
9. Religious & Charitable Endowments.
10. Law of Damdupat.
11. Conversion.

(ii) Codified Hindu Law

1. **Hindu Marriage Act 1955 & Amendments 1976**-valid, void and voidable Marriages-Restitution of conjugal rights-Nul Divorce,
2. Hindu Adoption & Maintenance Act 1956.
i) Adoption:- Doctrine & its scope-changes made in the N., Act-invalid adoptions-Kritrima-Ilaloni ii) Maintenance: Nature-extent-persons entitled-amounts-Right to Maintenance how protected against alienations etc..
3. **Hindu Minority & Guardianship Act 1956**-Types of Guardian ship powers-Functionns-Defacto Guardian-Minor's interest.
4. **Hindu Succession Act 1956:**
i) Intestate Succession-General ii) General Provisions relating to Succession, iii) Testamentary Succession, iv) Sn. 14: Abolition of Widow's estate-Reference to old Law. compari son thereof. Disqualification & exclusion from inheritance. Marumakkathayam, Aliyasantana & Nambcodri Law.

QUESTIONS-BANK

1. What are the various sources of Hindu Law. Explain each source in detail.
2. Distinguish between Dayabhaga and Mitakshara School.
3. State & explain the conditions of a valid Hindu Marriage. Distinguish a void from a voidable Marriage.
4. (i) Explain 'Restitution of Conjugal rights' and 'Judicial Separation*'.
(ii) Enumerate the various grounds on which a divorce can be claimed under the Hindu Marriage Act. Examine in detail 'Desertion' and 'Cruelty' as grounds for divorce.
5. What is Adoption? Who can adopt & who can be taken in Adoption? What are the essentials of a Valid Adoption? Refer to the changes effected by the Adoption & Maintenance Act 1956 and recent legislation.
6. Who are the Guardians recognised by the Hindu Minority and Guardianship Act? What are their powers and functions. Refer to their powers of alienation.
7. Define Maintenance. Explain when can a wife claim Maintenance from her husband?
8. State & Briefly explain the General Provisions relating to succession common to male & female under the Hindu Succession Act 1955.
9. Explain the essential features of a Mitakshara Coparcenary. What are the different kinds of coparcenary property? What is the position under the Hindu Succession Act 1956? >
10. (i) Explain a) Ancestral Property
b) Self Acquired Property.
c) Joint Venture Property.

(ii) Who is a Karta? What are his powers and functions? When can he alienate the joint Hindu Property.
11. Who is Partition? What are the different modes of effecting partition? 'Once is a partition made' Explain.
12. What is Benami Transaction? Discuss the position of a Benamidar.
13. (i) What is Stridhana? Discuss its origin & Development.
(ii) Write a note on Widows estate. What are the changes made in Sn.14 of the Hindu Succession Act.

14. What are "antecedent debts?" Explain with cases
15. Write an essay on Pious Obligations Refer to decided cases.
16. (1) How are religious & charitable endowments created? Write* a note on debutter ^property.
 - • «(2) Who is a Shebmt or Maharit? What are his poWeps & functions, Can he be rembvedi Refer to leading cases.
17. Write short notes on :-
 - Legal Necessity.
 - Sapratibandhadaya and Apratibandadaya.
 - Hindu
 - Gains of learning Act 1930.
 - Factum Valet, Sapirida, Damdupat Rule.
 - Full blood, Half Blood; Uterine blood.
 - Agnate; Cognate.
 - Non-Saudayika.
 - Illatom & Dwavamshayana.
 - De facto Guardian.
 - Bandhus, Samanodakas.
 - Succession to females.
 - Per capita, Per Stirpes.
 - Manusmriti, Ramnad Case.
 - Approvier's Case, Hanuman Prasad's Case.

Hindu - Law

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HINDU LAW

CHAPTER -1

Sources of Hindu Law

Ch.1. Sources:

Hindu Law is one of the oldest systems of personal law.

Its sources are :

Veda Smriti Sadachara Sampada Priyamatmanaha.

Evam Chalurvidam Prahuhu Sakshat Dharmasya lakshanam.

i) Vedas ii) Smritis iii) Custom iv) Equity & Good Conscience are the four sources of Dharma

v) Judicial precedents and vi) Legislation, are two additional sources.

The concept of Dharma is of great protean significance. An excellent elaboration of it is found in the History of Dharma Sastras by Prof.. Kane (Vol. 1). English jurists also used the term. "Dharma", as this had wider significance and value than "Law".

i) Vedas :

The meaning is 'Revelation'. The earliest sacred book among the Hindus were called the vedas. The main work of compilation was made by ' Vedavyasa'. It is he who classified the Vedas into Rigveda, Yajurveda, Samaveda & Atharvanaveda. Each Veda in turn consists of *SAMHITHS & BRAHMANAS*.

Samhita (Mantras) is a collection of Mantras. Mantra is the derivative of 'Man', which means 'to think'. These are thoughts that illumined the darkest regions and recesses of the human mind. There are millions of them.

The mantras have been give theological exposition in the Brahmarias, Series of injuctions are provided, In later years collections of these became essential and were epitomised in the form of sutras (Thead). The Sutras were a bewildering maze of vedic rituals; and presented a clue to the intricate labyrinth of Brahmanas.

ii) Smriti :

Means that which is 'Remembered'. The dark unfathomed caves of vedic ocean contained innumerable gems of the purest ray serene but only a few could dive down to bring them to the light of the day. Such gems were the distilled wisdom of the ages. But they were learnt by heart and were remembered. They were transferred by words, from generation to generation.

Three division are of interest. Srauda sutras, Grithya sutras and

Dharma sutras(Rituals, domestic ceremonies and forensic law). The Dharma sutras were the legal maxims dealing with the law of the Government, of the people and of the society. It was from these that Manu, Yajnavalkya and others have drawn freely. The primary authors of the smritis are the great sages, like Angiras, Yama, Apasthamba, Brihaspati, Daksha, Gouthama, Vasista.

Among the great works Manu Smriti is of paramount authority. Whatever Manu said was medicine. It was a collection of the laws and also the theological and metaphysical speculation running to 1.8 divisions.

Next in order comes Bhashyas-commentaries Yajnavalkya Smrit; and Narada smriti. There are also many other commentaries and digests. Commentaries on the code of Manu and Yajnavalkya smriti are illuminative. The most authoritative and celebrated of all are: the text; Mitakshara by VIJNANESWARA and Dayabagha b> JIMUTAVAHANA. These two Mitakshara and Dayabhaga are, in particular, commendable schools (called so by Colebrook) for the interpretation of Hindu Law, The Mimamsa rules of Jaimini are also of some consequence.

Other Bhashyas:

Veeramitrodaya by Mitramisra, Vivade Ratnakara by Chandeswara, Smriti Chandrika by Devan and Bhat Vyvashara Mayuka by Nilakanta, Kubera's Dattaka Chandrika (South India) Dattaka Mimamsa by Nanda Pandit (North, India).

iii) Custom :

The third source is Sadachara, i.e., the usage of Virtuous men. It was not a written law. But it grew from the consent of all men. Custom as defined by Austin means the positive law enshrined by Judicial recognition upon pre-existing custom. As per the word 'Sadachara' the practices of good men were considered as superior evidence of the prevalence of Dharma. **In the Ramnad case (i.e., Collector of Madurai V. Muttu Ramalingam) it was held that**

['Under the Hindu system, clear proof of usage would outweigh the written texts of law.](#)

In this case M was a Zamindar. In 1795, his property was taken over by British, as he had waged war against the Govt. But the property was returned to his sister Rani Mangaleswari in 1803. She had no issues. She took Annaswami in adoption. He too had no issues, he took Ramaswamy in adoption. He too had no issues. When he died, his wife Rani Parvati took Muthu Ramalingam in adoption. This was rejected by Revenue Dept. as void.

Rani Parvati filed a suit for declaration that the adoption was valid and the court decreed in her favour. The collector, appealed to the Privy Council. Held, taking adoption after the death of the husband.

band, with the consent of the relatives was a custom in vogue in Madurai and this custom had been established. Hence, it upheld the adoption as valid.

Custom must have a long usage, and must not be contrary to justice, equity and good conscience. It must be self-consistent and complete by itself. It must have been acted upon for a long time as was declared by the Supreme Court in Saraswathi Ammal Vs. Jagadambal.

Custom may be local, Regional or peculiar to a family. If the above requisites are fulfilled, the courts recognise them as "law".

Thus, this is an independent source of law. iv)

Equity and Good conscience :

As a source of law this has no independent treatment. It is relative and dependent on the circumstances. Primarily this was the domain of the courts.

v) Judicial Precedents :

Though in point of time this is of recent origin, the contribution by the judiciary to the field of Hindu Law is commendable. A number of decisions of the courts are quoted and followed.

vi) Legislation :

The final but an important source is legislation. Sweeping changes have been made by effecting changes to various statutory enactments. Innovations additions and changes have been made. The Caste Disabilities Removal Act of 1850, abolished the Law which penalised the renunciation of Hindu religion. The Hindu Widow's Remarriage Act legalised widow remarriages. Child Marriage Restraint Act 1929 made the child marriages punishable. Special Marriages Act 1954 provided for marriage by Registration.

The recent statutes: The Hindu Marriage Act, the Hindu Adoptions and Maintenance Act, The Hindu Minority and Guardianship Act, The Hindu Succession Act, have revolutionised the old law in their respective areas.

Ch. 1.2 MITAKSHARA AND DAYABHAGA

Differences:

The two schools Mitakshara and Dayabhaga spring from the same source the 'Smriti'. Vignaneswara's commentary about the 10th century, applicable throughout the territory of India, came in the form of 'Mitakshara' (a treatise). Jimutavahana's commentary, the 'Dayabhaga' became operative in particular areas in India, namely, Bengal and Assam. The two systems may be compared to the Branches of a single tree, the Smriti. Mr. Cole-Brooke called them the Schools of Hirjdu law.

Differences :

Mithakshara

1. Heritage : Recognises, two classes of heritage-obstructed and non-obstructed (appratibanda daya and Saprathibandadaya.)

2. The right of the coparcener arises *by birth* only. This is the cornerstone of Mithakshara.

3. Recognises a coparcenary between the father and sons. Right to partition is recognised. The Head of the family is the Kartha who may alienate property for legal necessity.

4. Religious efficacy is not the guiding rule. The nature of succession is by survivorship. Agnates are preferred to cognates.

5. The widow of a coparcener enjoyed a limited estate for her life time. After her death the property reverted to the Reversioners (heirs of the husband). This has been abolished under Sn. Succession Act.1956.

Dayabhaga

1. There is no such division. All property is considered obstructed,

2. The right does not arise by birth alone. His right arises on the death of his father.

3. Dayabhaga does not recognise such a coparcenary. The son has no partition. The father is the absolute owner of the property and authorises to dispose of at his pleasure.

4. Religious efficacy is the ruling principle in finding out the order of succession,

5. Dayabhaga recognises the right of a widow in an undivided family to succeed to her husband's share if he dies without issue. She may in such cases enforce a partition on her own accord. 14 of Hindu

These are the major differences between these two schools though the source is "the smriti".

Ch. 1.3 Hindu

Ancient Sanskrit texts have not used the word "Hindu". Hindu is derived from Indus' or 'Sindu' and it denoted the people living east of the river Sindu. Etymologically Hindu means a person to whom "Meannes" is an offence. The meaning given by Tilak to "Hindu" was accepted by the courts. "A Hindu is a person who respects Vedas with devotion, considers road to salvation as varied, and realisation that plurality of "Gods" was the basic truth". In interpreting, the courts have put a liberal construction, to construe who a Hindu is.

Hindu includes a Hindu by birth, by religion, by conversion or reconversion ; it also includes Virashivas, Lingayats, Brahmo, Arya and Prarthana Samajits, Buddhists, Jains and Sikhs.

Statutory Definition :

The four Acts:

The Hindu Marriage Act, The Hindu Succession Act, The Minority and Guardianship Act and the Hindu Adoptions and Maintenance Act, have specified the persons who are governed by Hindu Law.

The Hindu Law applies :

i) to Hindus by birth and to Hindus by religion in any form. This includes Virashiva, Lingayats, and followers of Brahmo, Prarthana and Arya Samajists.

ii) to any person who is a Buddhist, Jaina, or Sikh by religion.

iii) to any person domiciled in India and who is not a Muslim, Christian, or Jew by religion;

The presumption is that a person domiciled in India is a Hindu if he is not a Muslim, Christian, Parsi, Jew by religion.

The Act in the Explanation further provides as follows:

iv) The following persons are Hindus, Buddhists, Jains or Sikhs.

a) Children (legitimate or illegitimate) of parents who are both Hindus, Buddhists, Jains or Sikhs.

b) Children (legitimate or illegitimate) of parents one of whom is a Hindu, Buddhist, Jain or Sikh.

c) Converts or re-converts to Hindu, Buddhist, Jaina or Sikh religion.

v) The Acts shall apply to members of Schedules Tribes according to Notification by the Central Govt.

vi) Conversion :

According to Hindu Sastras "a Hindu is born, and, not made". But, this has been changed and a non-Hindu can become a Hindu by conversion. This is established in a series of cases.

The courts have held that a *formal ceremony is not necessary*

for conversion to Hinduism ; If the conversion is with *bona fide* intention, and the person has taken to a Hindu mode of life and has followed its usages and customs, or the community has approved of him he is a Hindu.

If a child has been brought up as a Hindu, according to the usages and Customs of the Hindus, and, the community has approved of him, the child is a Hindu. No formal conversion is necessary.

Leading Cases:

In **Perumal V. Ponnuswamy**, the Supreme Court held that mere declaration by a person that he is a Hindu, will not convert him into Hinduism. The persons bonafide intention in his conversion to Hindu faith and his conduct as evidence thereof are sufficient. No formal ceremony is necessary.

In **Commissioner of Wealth Tax V Sridharan** the Supreme Court has held that the son of a Hindu father and Christian mother (under Special Marriage Act), was a Hindu as the father had bonafide intention and had declared his family as a Hindu Undivided Family.

Abraham V Abraham, the Privy Council decided that the petitioner was a Christian, and, hence Hindu Law was not applicable,

Hindu Law does not apply to :

- i) Illegitimate child of a Hindu father by a Christian mother, brought up as Christian.
- ii) Hindu converted to Christianity, or to Muslim or Jewish parsi religion.

CHAPTER - 2

MARRIAGE AND DIVORCE

Ch. 2.1. Hindu Marriage :

a) **Introduction** : Marriage, according to Ancient Hindu Law , is a samskara or a sacrament and also an indissoluble union. The writings of the Smritikaras and the commentators, had settled Hindu Law of Marriage until the Britishers interfered by making certain changes. " by legislation.

b) **Legislation** : The first Act, which introduced some changes, was the Hindu Women's Remarriage Act 1856. This was followed by the Special Marriage Act 1872. The Hindu Marriage Disabilities Removal Act 1946 validated sagotra and sapravara marriages. Many Regional Acts have also been made.

After independence, under the 'Hindu Code Bill', a number of changes were contemplated. Four major Acts were made. Concerning marriage, the Hindu Marriage Act 1955 was made. This was "amended by the Marriage Law Amendment Act 1976.

Ch. 2.2. Conditions of a Valid Marriage :

S.5 of the Hindu Marriage Act enumerates the various conditions of a valid Hindu Marriage. They are as follows :

i) Parties must be Hindus :

The marriage may be solemnised between two Hindus. The word 'Hindu' is defined broadly by Sn. 2. Accordingly, Hindus by religion. Virashaivas, Lingayaths, Brahmo Arya or Prarthana Samagists; Sikhs, Buddhists and Jains are within the definition. However, the Act does not apply to : Muslims, Christians, Jews and Parsis, by religion. Hence, if one of the parties is not a Hindu, this Act will not apply. Special Marriage Act applies.

Thus, the Act has provided for inter-caste and sub-caste marriages. Further, persons who are deemed Hindus as per the 'Act' may also marry. Under Hindu Marriage Disabilities Removal Act, Hindus having the same gotra or pravara may also marry. Widows may also marry (Act of 1856). These are enabling acts.

ii) No spouse living :

Neither party should have a spouse living at the time of the marriage. Hence only monogamous marriages are recognised and Bigamy under Sn. 494 I.P.C. is punishable. Thus polygamy is abolished. A divorcee may marry after one year of the date of the final decree of divorce.

If this condition is violated, the marriage becomes void, **iii)**

Unsoundness of mind:

If a party to the marriage is incapable of giving consent (at the time of the marriage) due to

- i) unsoundness of mind
- ii) mental disorder to such an extent as to be unfit for marriage and procreation of children
- iii) recurring attacks of insanity or epilepsy, the marriage is voidable.

The 1955 Act had provided Idiocy and lunacy as grounds. But 1976 amendment has provided for above tests in respect of the mental incapacity and of its nature at the time of the marriage.

If this condition is violated the marriage is voidable. iv)

Age of Marriage :

The Act lays down that the age of the bridegroom should be 21 years and that of the bride 18 years. Earlier the 1955 Act had fixed the limits at 18 and 15.

If this condition is violated, the parties are liable for punishment (Imprisonment or fine), but the marriage is not void or voidable.

v) Prohibited degrees of relationship :

The parties to the marriage should not be related within the prohibited degrees of relationship. However, if a custom or usage governing both the parties allows, then the marriage is valid. The custom or usage, of course, must not be against public policy, e.g. marriage with a niece was held void (Raman Gowda V. Shivaji).

Persons who come within the prohibited degrees are mentioned in Sn.3 (g).

- a) If one is a lineal ascendant of the other
- b) If one was the wife or husband of a lineal ascendant or decedent of the other.
- c) If the two are related as brother and sister, uncle and niece, children of two brothers, or of two sisters etc.

If this condition is violated the marriage becomes void ab initio and the parties become punishable.

vi) Sapinda Relationship:

The parties to the marriage must not be sapindas of each other.

The Act provides a custom or usage, as an exception, if it permits each of the parties, but, this should not be against public policy.

Sapinda relationship as understood by Mithakshara and Dayabhaga schools is retained by the Act. Sapinda is 3 degrees on mother's side and 5 degrees on the father's side. If this condition is

violated, the marriage become void ab initio

vii) Consent by Guardian:

This is repealed. The reason is that the age limit of the bride and the bridegroom is raised to 18 and 21 respectively.

viii) Ceremonies:

Sn. 7 provides that the Hindu Marriage is to be solemnised according to the customary rites and ceremonies of either party to the marriage.

Where 'saptapadi' is part of the ceremony, the marriage becomes complete and binding when the 7th step is taken by the bride and the bridegroom before the sacred fire.

Hence, saptapadi is optional but must be performed if it is part of the customary rites and ceremonies of the parties. In Ram Singh V. Sushila Rai the Supreme Court, declared the marriage as void, as this customary ceremony common to both parties, had not been performed

ix) Registration (optional):

Provisions are made to get the Hindu marriage, duly performed as per the rites and ceremonies of parties, registered at the office of the sub-registrar of marriages. Application in prescribed form should be filed duly signed by all parties concerned. A certificate of Registration will be issued by the Registrar if all formalities have been complied with. This is only an enabling provision, to register, after the Hindu marriage is duly performed (Sn. 8).

Ch. 2.3. Void, Voidable marriages :

The Hindu Marriage Act has classified marriages into Valid, Void and Voidable marriages. (Conditions of valid marriage are stated above Ch. 1.2. conditions (i) to (viii).

Void and Voidable Marriages

Void :

i) If an essential requisite of the marriage is violated, the marriage is void ab initio.

ii) The spouses are not recognised as husband and wife. They do not get the Marital status. Children are considered legitimate, and are entitled to maintenance only. They get no status on coparcener with rights there of. (sn.16).

iii) Either of the spouses may put an application for the annulment of the marriage.

iv) Circumstances : Sn. 11

a) Marriage within the prohibited degrees of relationship, is

void ab initio.

(b) Marriage within the sapinda relationship is void ab initio.

e) Marrying a second time when the first wife is living (Bigamous marriage).

d) Non-observance of saptapadi where according to custom it must be observed as part of the customary rites and ceremonies (Ram Singh and Sushila Bai).

Voidable :

i) If there is violation under special circumstances affecting the interests of a spouse.

ii) The spouses, have status as husband and wife until the marriage is declared void, by the court, at the option of the affected party. Hence, the marital status changes, when the court declares the marriage as void. Children are legitimate and have the right to maintenance sn . 16.

iii) Only the affected spouse may prefer an application to set aside the marriage.

iv) Circumstances : Sn. 12

a) Consent obtained by force or fraud.

Application should be filed within one year of the force or fraud and the petitioner should not have lived with the other spouse, after the force or discovery of fraud.

b) If the wife is pregnant at the time of the marriage by a person other than the husband the marriage is voidable at the instance of husband. At the time of the marriage, he must be ignorant of the fact, and he must file an application within a year of knowing the facts. Leading cases: (Supreme Court) M.M. Nanavati V. Sushila; Shivaguru V. Saroja. The facts were proved in both these cases. Divorce was granted.

c) Husband impotent and marriage not consummated. (Lead ing case Yuvaraja Singh V. Yuvarani Kumari).

d) Spouse incapable of giving consent, due to unsoundness of mind and mental disorder.

Ch. 2.4. Restitution of Conjugal Rights (Sn. 9) :

Where a spouse withdraws from the society of the other without reasonable cause, the aggrieved party may apply to the District court for a decree of restitution of conjugal rights. The court looks to the truth of the statement made, the validity of the reasons tendered and also to whether there are any other grounds to reject the application. If it finds satisfactory answers to the above, it gives a decree.

(Gangamma Vs. Hanumanthappa). If a spouse is suffering from incurable or infectious diseases, the court will not issue a decree for restitution.

Scope of the decree : The decree given by the court is merely ;i directive to the parties to realise their duties or responsibilities and to live together. The court can only lead a horse to water, but cannot make it drink!

Restitution is based on the theory that both husband and wife are entitled to the society of each other. There was no remedy in case a spouse did not oblige undar this. This was introduced in England through the Court to enforce by a decree and force the spouse to return to the other. Since the decision of Jadunath Bose V. Shamsonisa Begam, the Courts have taken jurisdiction in India. This section gives this Jurisdiction to the District Court. With amendment of 1976, the burden of showing the reason is on the spouse who has withdrawn from the company of the other.

. Sn 2.5 Judicial Separation :

Sn. 10 of the Hindu Marriage Act provides for Judicial separation. The Amendment of 1976 has made drastic changes in as much15

as the grounds for judicial separation are the same as for divorce. Earlier, there were different grounds.

Petition : The petition should be presented to the District Judge praying for a decree for judicial separation. The grounds must be set out. Here also there are two additional grounds for the wife as in the case of petition for divorce.

When the decree is passed, it shall no longer be obligatory for the petitioner to cohabit with the other spouse. Such a decree may be rescinded if the court is satisfied with the truth of the statements made by a party or by both. This is an extraordinary power of the Court. A petition may be made for marriage solemnised before or after the Act.

This remedy is opposed to restitution of Conjugal rights. In restitution, the party seeks a direction from the court to force the other spouse to resume cohabitation but in judicial separation the party seeks permission to secure freedom from the other. The marriage tie is not broken in either case.

Ch. 2.6. Grounds for Judicial Separation :

Briefly the Grounds are :

1. Adultery.
2. Cruelty.
3. Desertion for 2 years.

4. Conversion.
5. Unsoundness of mind or mental disorder.
6. Virulent leprosy.
7. Venereal diseases in a communicable form.
8. Renunciation (sanyasa).
9. Disappearance for 7 years.

Additional Grounds to the wife (Bigamy) to get judicial separation :

- i) Husband marrying again.
- ii) Husband guilty of rape, sodomy or bestiality.
- iii) Decree of maintenance by Court to wife and non cohabitation for one year.

iv) Wife marrying before 15 years of age but repudiating the marriage before attaining 18.

(For details and explanation with cases refer grounds for divorce).

Ch. 2.7. Grounds for divorce. Sn. 13.

The last desperate resort of the couple is divorce according to the Hindu Marriage Act 1956 and the Amendment Act of 1976.

The aggrieved party may file an application to the District Court. The party must establish any one of the grounds stated in this Act to obtain a decree of divorce. There are eleven grounds. In addition, the wife has four special grounds for divorce. The court may conduct in camera proceedings. Only on clear proof of any one of the statutory grounds, the court may grant a decree for divorce.

Grounds:

i) Adultery: The Amendment has omitted the reason 'living in adultery'. Hence if the wife or husband had, after solemnisation of marriage, sexual intercourse with any other person than the spouse, it will suffice.

Adultery is a secret act and hence proof is difficult. Circumstantial evidence may be established to lead to a fair inference. High standard of proof is required. It must go beyond suspicion. Mere opportunity available to the spouse is not enough. Mere letters by paramour will not suffice. (Supreme Court: Chandra Mohini V. Avinash Prasad) The leading case is *Russel V. Russell*: Evidence of non-access to the wife, during a period prior to the birth of a child, was not allowed by the House of Lords.

The other leading cases are *Laxman Vs. Meena and Pushpadevi v. Radheshyam* (1972).

ii) **Cruelty** : One of the spouses treating the other with cruelty, is a ground for divorce. Cruelty is of two kinds (i) Physical and (ii) Mental: Violence to life, limb or danger to health is physical (Birch V. Birch). In Russel V. Russell, the House of Lords held that legal cruelty is any conduct which would make marital life physically impossible.

Mental Cruelty : Intention of one spouse to inflict cruelty is necessary, though not essential; ill-treatment, attributing unchastity., etc. In fact cruelty may be of infinite variety.

In Dastane V. Dastane (1975) the Supreme Court laid down the standard of proof and held the court is satisfied when there is a preponderance of probabilities test.

Physical injury or mental injury is judged by the court. Poster v. Poster; Gipsy; v. Gipsy ; Poring for prostitution (coleman v. ~oleman) ill-treating pregnant wife: King v. king, etc

iii) **Desertion** : For two years, before presenting the application.

The leading cases are :

i) Bipinchandra V. Prabhavati ii) Tickler V Tickler iii) Lakshman V. Meena wife wilfully deserting husband iv) Brewer V. Brewer.

For desertion two essentials are to be proved.

- 1) The factum of separation
- 2) Animus deserendi i.e., intention to bring cohabitation permanently to an end without the consent of the other party.

Desertion is a matter of inference to be drawn from the various facts and circumstances.

Desertion commences when the fact of separation and .animus deserendi co-exist. But it is not necessary that they should commence at the same time. The De facto separation may have commenced without the necessary animus or it may be that the separation and the animus deserendi coincide in point of time.

Desertion means the desertion of the petitioner by the other spouse to the marriage without reasonable cause and without the consent or against the wish of that party. This also includes the wilful neglect of the petitioner by the other spouse. In its essence desertion means the intentional personal forsaking and abandonment of one spouse by the other (Bipinchandra Vs. Prabhavati). It is the total repudiation of the obligation of the marriage. Devi singh v. Susheela and Jyotichandra v. Meera Guha.

iv) **Conversion** : If the other spouse has ceased to be a Hindu by conversion to another religion, the affected party may file a petition for divorce. Conversion to Christian, Muslim or Jewish

religion is a ground for divorce. Of course, a party cannot take advantage of his own conversion to claim divorce.

v) **Unsoundness of mind** : Incurable unsoundness of mind or continuous mental disorder of such dimension that the other spouse cannot reasonably live together.

Mental disorder means mental illness, undeveloped mind, Psychopathic disorder or Schizophrenia. The disorder shows abnormal aggressive or seriously irresponsible conduct of the person.

Unsoundness :

As per 1976 Amendment unsoundness should be incurable or permanent in nature, Banidevi v. banerji: wife had incurable unsoundness.

If husband did not submit for medical examination, inference can be drawn against him Shanta Devi v. Ramesh Chamda.

vi) **Leprosy** : It must be virulent and incurable. Under the

amendment Act of 1976, no period is fixed. But, the other spouse must be suffering from this disease upto the date of the decision (Padma Rao V. Swaraj Laxmi).

vii) **Venereal disease**: The other spouse must be suffering from venereal disease in a communicable form. The Amendment has omitted the period of time. The petitioner should not take advantage of this ground by himself communicating this disease to the other spouse.

viii) **Renunciation** : There must be a genuine renunciation to enter the religious order, Sanyasa. This is civil death when there is complete and final withdrawal from all worldly affairs, hence, the other spouse may get the marriage dissolved.

ix) **Disappearance** : If the other spouse is not heard of for 7 years and above there is a presumption of death and hence, this is a ground for divorce. The burden is on the party asserting that the other spouse has disappeared (Evidence Act).

x) **Non cohabitation** : If there has been no resumption or cohabitation for one year and above after the decree for judicial separation, then, this can be a ground for divorce.

xi) No **restitution** : If for one year or above, there is no restitution of conjugal rights it is a ground for divorce.

xii) **Special grounds for the wife** : In addition to the above grounds, the wife has the following grounds for divorce.

a) Remarriage by husband.

b) Rape, Sodomy or bestiality of the husband.

c) If the wife has obtained a decree for maintenance (S. 125

Cr. P. C.) etc. provided since the date of the decree there is no cohabitation for one year.

d) If the wife is married before 15 years of age, and if she repudiates before attaining 18 years, she may file a petition for divorce.

Ch. 2 (8) Divorce by Mutual consent:

Sn. 13 (b) provides that any spouse may file a petition for divorce in the District court on the ground.

- a) That they are living separately for one year or above.
- b) That they have not been able to live together.
- c) That they have mutually agreed that the marriage should be dissolved.

Procedure:

(i) After 6 months of filing the application, but before 18 months, (if the parties have not withdrawn the case), the court if satisfied about the statements made, may pass a decree for divorce :

ii) No petition can be filed within one year of the marriage.

Exception : Exceptional hardship of the petitioner is a special circumstance to entertain a petition within one year. The court will issue suitable orders regarding children, if any.

The court examines whether there forced is consent fraud or undue influence. No specific reasons, as in case of divorce, under sn13, need be proved.

The court endeavours to reconcile' if not possible, a decree of divorce may be passed. Leading cases Sumatidevi v. Premnath. Ravi shakar v. Sharada.

It was held that nothing more than what 13(B) says need be proved before the court.

No petition within one year of marriage in entertained except in exceptional circumstances Meghanath Nayar v. Susheela : Here the court has given examples of exceptional hardship:

Amendment to Sn 13 by adding 13 C D and E to make divorce easier

Not yet passed by Parliament. May 2012 For text see **Reference Section Page 93**

CHAPTER-3

ADOPTION

Ch. 3.1. Meaning and Object:

i) Son meaning 'Putra' is one who saves the father from the hell called 'Puth'. Hence, in order to perform the obsequies of the parents, a son was essential. (Aputrasya Gatirnasti). In the absence of this aurasa (natural born) son, an adopted son was taken to perpetuate the lineage and to perform the obsequies. It was felt that such a person must be Saunaka (reflection of a son). Two forms of adoption became recognised 'dattaka form' .and 'kritrjma' form. The ancient commentaries available are Nanda pandita's Dattaka Mimamsa (Bengal) and Kuberas Dattaka Chandrika (South India). Adoption is an invention of the Hindus. The legend has instances of "Sunashepa" adopted by Harischandra ; Vedic story tells how Rishi Atri gave his only son in adoption to Aurasa.

ii) Object : It is both religious and secular. This is clear from Amarendra Mansingh V. Sanatan Singh where the Privy Council held that adoption was more religious and that the secular aspect was secondary. The other cases are: Balagangadhar Tilak's case, Hem Singh V. Harnam Singh (Supreme Court).

Ch. 3.2. Changes in Adoption Law :

Many changes were introduced by the Hindu Adoptions and Maintenance Act 1956. Briefly they may be stated as follows :

i) The religious or spiritual aspect of adoption is relegated to the background. Adoption is more secular according to the Act.

ii) A Hindu Male may adopt a boy or girl. A Hindu Female may adopt a boy or girl. Further a Hindu Female may adopt in her own rights. As regards the adoption of daughters, the Act has followed Nandapandita's commentary in Dattaka Mimamsa, thatputra includes

daughter, giving independent capacity for a female to adopt.

iii) The Act has deviated from Vasista's text that a wife may adopt only with the consent of the deceased husband.

iv) Sn. 12 provides that the adopted child is the child of its adoptive mother and also of father. (Subhas Misir Vs. Thyagi Misir), from the date of adoption.

v) Further it is provided that the adopted child shall not divest any person of any estate which is vested in him or her prior to adoption. This clearly abrogates the rule of the divestiture of estate which was the cause of ruinous litigation for about a century.

In this regard the leading cases are :

- i) Ramachandra Vs. Balaji
- ii) Anam Vs. Shankar
- iii) Sririvas. Vs. Narayan
- Bhuvanewari Vs. Neel Kamal. ...

V&) As regards the ceremonies to be performed in adoption, the Act clearly states that Dattahoma is not essential. It is optional. The secular character is introduced into the system of adoption.

Ch. 3,3. Essentials of a valid adoption .

The Act specifies four requisites for a valid adoption :

- i) The person adopting must have the capacity to adopt and must have the right to take in adoption.
- ii) The person giving in adoption must have the capacity to give in adoption.
- iii) The adoptee Dattaka must be capable of being adopted.
- iv) The adoption must comply with the other conditions specified in the Act.

Explanation of each condition:

i) A Hindu male only could take a boy in adoption according to old law, A female could not adopt. A widow could adopt only with the consent of the deceased husband. According to the new Act, a Hindu male or female has the capacity to adopt. A female may adopt for herself in her own right. The consent of the husband is not required.

The adoptive father or mother must be a Hindu. The Hindu male must be (1) of sound mind, (2) not a minor and (3) wife's consent is necessary. But, if the wife has renounced the world or has become a convert to some other religion or is of unsound mind as declared by the court, then consent is not necessary. In case of more than one wife> the consent of all is necessary.

A Hindu female may take a child in adoption. At the time of adoption, she must be of sound mind and not a minor. She must be unmarried or a widow or a divorcee. However, a wife may take-in adoption if her husband has renounced the world, has been declared by the court as of unsound mind or has become convert to other religion.

ii) Person giving in adoption :

Father, Mother or Guardian may give in adoption. A father may give in adoption with the consent of his wife. However, if the wife has renounced the world, or converted to some other religions, or has been declared to be of unsound mind by the court, consent is not

necessary. A Mother may not give when the child's father is alive. However, if he has renounced the world or has become a convert or a lunatic, his consent is not necessary. The Guardian may give in adoption with the permission of the District Court. The Guardian gets the right when both father and mother of the child are dead, or of unsound mind or when they have renounced the world.

If the child has no father, mother or guardian, then it could not be taken in adoption according to the Act. However, in 1962, an amendment was made. According to this, whether the child is legitimate or illegitimate or an orphan it could be taken in adoption provided it is a Hindu according to the Act. The permission of the court is necessary.

Hi) Adoptee : According to old law only a boy answering certain qualifications could be taken in adoption. A daughter, an orphan or an illegitimate son, or a person born blind, dumb, deaf could not be taken in adoption. (There was also another restriction. The adoptive father must have been in a position to marry the mother of the boy, in her maiden state). There were also restriction relating to age.

According to the new Act, the adoptee may be a boy or a girl, the person must be a Hindu, must not be married, must be within 15 years of age and must not have been already taken in adoption.

iv) The other restrictions :-

a) The adoptive father or mother must not have a living son, son's son or Son's Son's son (adopted or Aurasa).

b) If the daughter is to be taken in adoption, the adoptive father or mother must not have a daughter or son's daughter living.

c) If a male wants to take a girl in adoption, he must be elder to her at least by 21 years. If a female is to take a boy in adoption, she must be elder to him at least by 21 years. This is a rule of prudence.

d) The same child cannot be taken in adoption by 2 or 3 persons.

e) There must be actual giving and taking, with an intention to transfer the child. Suffice it, if the parties know that they are transferring the child from its natural family to the adoptive family.

Registration of adoption is not necessary, but only optional. However, Dana and Sweekara-Giving and taking are essential.

The mere execution of an adoption deed is not adoptio™ Their must be the physical act of giving and taking.

S. Ghosh Vs. Krishna Sundari (Calcutta).

Adopted boy sued after attaining majority. There was no actual Dana and Sweekara, therefore the adoption was invalid.

f) Formalities: Dattahomam (i.e. offering clarified butter to fire

by way of religious oblation) is optional. Hence, performance of datta homam is not essential..

Ch. 3.4. Legal effects of adoption :

Art. 12 sets out the legal effects of a valid adoption.

i) The adopted child is deemed to the child of the adoptive father and adoptive mother for all purposes, and effects. This is effective from the date of adoption and from such date all the ties of the child in the natural born family are severed and replaced by the new family. Hence, the adopted child cannot renounce and return to his family. Further, adoption once made cannot be cancelled. This has secured the position of the adopted child.

However certain exceptions have been provided.

i) The adopted child cannot marry any person whom it could not have married if it were continued in the natural-born family.

ii) Any property vested in the adopted child before adoption in his natural-born family continues to vest in him. Hence, he is entitled to his property in his natural-born family including his undivided coparcenary interest. Any obligations like maintenance attached to that property continues and hence, his such property is liable. But there is no personal obligation.

iii) The adopted child shall not divest any person of any estate which is vested in or her, before the adoption, i.e., no divestiture in the adoptive family.

iv) Doctrine of 'relation back': If a widow took a boy in adoption, it related back to the death of the adoptive father for purposes of continuing the line and of divesting of the property.

The leading case is **Amarendra Vs. Santan Singh** : In this case one Raja Brijendra died unmarried. His collateral succeeded, to the estate. As the family custom prevented females from succeeding to

the Raja; Indumati the mother of the Raja, adopted Amarendra to her husband Brijendra. Question was whether this adoption dated back to the death of the Raja, and divested Benamali of the estate. The Privy Council held that she could be divested. Hence, Amarendra succeeded.

This was explained by the Supreme Court in Srinivas Vs. Narayan. It stated that adoption dated back to the date of death of Brijendra. This doctrine has no application now.

Other leading cases:

i) **Subash Misir Vs. Thagir Misir** : The Supreme Court held that a child adopted by the widow was the child of both the adoptive widow and her deceased husband. Hence, they are adoptive parents.

ii) The leading case is :

Sawan Ram V. Kalavanti (1967), the Supreme Court held that an adopted son was a preferential heir. A died leaving a widow B. B alienated a part of the property of A. Sawan Ram a collateral, challenged and claimed as reversioner. B adopted D (Deep Chand). Then B died. D brought a suit. It finally went to the Supreme Court which held that Deep Chand became a member of the adoptive family of A, and, that the adoption was not only to herself but also to her deceased husband. (The property was vested in the widow B, as per Sn. 14d. of the Hindu Succession Act, and hence, the adopted son succeeded to it).

Ch. 3.5. Dwayamshana adoption :

It means son of two fathers. It is only a variety of dattaka form. It is of two kinds : Anitya i.e., incomplete and Nitya i.e., Absolute.

Anitya is initiated by the natural father. The 'boy' is considered as son of two fathers but incompletely. This is not in vogue.

Nitya is recognised by law. There is a condition 'This is the son of both of us' natural and adoptive fathers. This is an agreement. There may be an implied condition.

The formalities are the same as dattaka-giving and taking. But, the stipulation is an addition. As the adopted boy is the son of two fathers, he is equally the son of two mothers.

The son inherits to both the families.

This type of adoption was held valid in *malakappa v. mallappa*(1976).

Ch. 3.6. Kritrima adoption :

This is obsolete except in some areas in the West Coast of India. Some features :

i) The boy may give himself in adoption. His consent is essential. Consent of both parties essential.

ii) A male may adopt; a female may adopt. A wife may adopt to herself even during the lifetime of her husband.

iii) The person must be of the same caste; He must be of age to give consent.

iv) Ceremonies not necessary, v) The boy inherits to both the families.

Ch. 3.7. Illatom adoption :

This is a customary form. Illatom is the affiliation of a son-in-law in consideration of the management of the family property. In vogue in parts of A P. Tamilnadu and among Reddies and kawars.

CHAPTER- 4

MAINTENANCE

Ch.4.1. Meaning :

Sn. 3. (b) of the Hindu Adoptions and Maintenance Act defines maintenance.

Maintenance is defined as including (i) in all cases, provisions for food, clothing, residence, education, medical attendance and treatment, (ii) Maintenance in case of an unmarried daughter includes also the reasonable expenses of her marriage.

This definition is merely declaratory and explanatory and not exhaustive. Maintenance may stem as a liability under two circumstances (i) as dependent on the possession of the property and (ii) independent of the possession of the property, that is a personal liability.

Manu has specified the persons who are entitled to maintenance : i.e., aged parents, virtuous wife and minor children. According to Manu, 'these persons must be maintained irrespective of the income ; Even by doing misdeeds, they must be maintained.

There are provisions for

- 1) Maintenance of wife Sn. 18.
- 2) Maintenance of widowed daughter in law Sn. 19.
- 3) Maintenance of children and aged parents Sn. 20.
- 4) Maintenance of dependents Sn. 22.

Ch. 4.2. Maintenance of wife :

Sn. 18 provides that a Hindu wife is entitled to be maintained by her husband during her life-time, when she lives with him. However, when she lives separately she may claim maintenance as a matter of right, from her husband during her lifetime, only under special circumstances as stated in the Act.

i) Husband is guilty of desertion :

This means abandoning her without any reasonable cause, and without her consent or against her will. He may have even wilfully neglected her (Desertion : Same as understood in the ground for divorce. Refer Ch. 2.7).

ii) Cruelty:

When the husband treats her with cruelty, she may claim maintenance. Cruelty must be of such a nature as to cause a reasonable fear that it will be injurious to live with him. (Cruelty : same as understood in the ground for divorce. Refer Ch. 2.7).

iii) Leprosy :

If the husband is suffering from a virulent form of leprosy, the wife may live separately and claim maintenance.

vi) Another wife :

If the husband is having another wife living, the wife may refrain from the company of her husband and claim maintenance.

v) Concubine:

If the husband has kept a concubine in the same house or has been habitually residing with her or living with her, the wife may claim maintenance by living separately.

vi) Conversion:

If the husband becomes a convert to any other religion the wife may live separately and claim maintenance.

vii) Any other cause :

The Act after enumerating the above reasons leaves a discretion to the court to consider any other reason that may be substantiated by the wife. Her living separately from her husband must have a justifiable cause. The leading case is Russell V. Russell.

Exceptions : The Act has provided certain exceptions also. If the wife is unchaste, or ceases to be a Hindu by conversion to some other religion, she is not entitled to claim maintenance. **Ch.**

4.3. Maintenance of widow by father-in-law.

If the husband is dead, the widow may claim maintenance from her father-in-law subject to certain conditions :

- a) She must be unable to maintain herself out of her own earning or other property.
- b) She is unable to obtain maintenance from the estate of her husband or her father or mother.
- c) She is unable to obtain maintenance from her son or daughter, if any, or his or her estate.

Exception :

If the father-in-law has no means or

If she has obtained already her share in her husband's property or

If she ceases to be a widow as on her remarriage, she is not entitled to claim maintenance.

Ch. 4.4. Maintenance of children and aged parents

A Hindu is bound during his or her lifetime, to maintain the children and the aged or infirm parents. A minor child (legitimate or illegitimate) may claim maintenance from the father or mother.

This obligation to maintain extends only as long as the person to be maintained is unable to maintain himself or herself.

In case of an unmarried daughter the obligation extends even after minority if she is unable to maintain herself.

Special feature: A Hindu female is also under an obligation to maintain her children and aged parents, if they are unable to maintain themselves. There was no such law in Old Hindu law.

Ch. 4.5. Maintenance of dependants :

Sn. 21 defines who are dependants of a 'Hindu'. Sn. 22 deals

with the right of a dependant against the estate of a deceased Hindu.

a) The heirs of the deceased Hindu are bound to maintain the dependants out of the estate of the deceased Hindu. This is subject to certain conditions.

i) The dependant has not received any share in the estate of the deceased then, he can claim the maintenance.

ii) The liability to pay maintenance is on all those who get the estate. They must pay proportionately.

iii) One dependant heir need not contribute to the other dependant if what he gets is itself less.

b) Dependants :

The following "'relatives' are entitled to maintenance from the estate of the deceased male or female Hindu (Propositus).

i) Father

ii) Mother

iii) Widow, so long as she remains unmarried

iv) Son, son of a predeceased son provided he is a minor and unable to maintain himself.

v) Unmarried daughter or the unmarried daughter of a predeceased son provided she is unable to maintain herself.

vi) Widowed daughter if she is unable to maintain herself from the estate of her husband or from son/daughter or from father in law.

vii) Any widow of the son, or a widow of predeceased son as long as she remains unmarried.

viii) Minor illegitimate children (son or daughter)

Ch. 4.6. Amount of maintenance : Sn. 23.

The quantum (amount) of maintenance is determined by the court at

its discretion. Its discretion is judicial. The Act has given certain factors which must weigh with the Court

to award maintenance. There cannot be any mathematical certainty, but the court must take all factors into consideration.

i) In respect of wife, children and parents the following factors are important.

- a) The position and status of the parties
- b) Reasonable wants
- c) Claimants separate living -justified or not ?
- d) Claimants income, property and other sources
- e) The number of persons entitled to maintenance under the

Act

ii) In respect of maintenance of dependants : the factors are

- a) Net value of the assets of the deceased after paying all debts.
- b) Provisions for dependants in the will if any
- c) The degree of relationship
- d) Reasonable wants
- e) Past relations if any
- f) Assets of the dependant
- g) The number of dependents

Further, the claimant should be a "Hindu" The amount fixed by the court (or by agreement) may be altered, if there is material change in circumstances.

CHAPTER - 5

GUARDIANSHIP

Ch. 5.1. Guardian :

The Hindu Minority and Guardianship Act defines 'guardian' in Sn. 4.

Guardian means a person having the care of the person of a minor or of his property or of both his person and property. They are

- i) Natural Guardian
- ii) Testamentary Guardian
- iii) Court Guardian
- iv) Guardian under Court of Wards

v) De facto Guardian : Though not prohibited by the Act, he is subject to restrictions under Sn.II.

Ch. 5.2. Natural Guardians :

A Natural Guardian may be in respect of a minor as well as his property (i.e., person+property) excluding the undivided share in the joint family property. In case of a boy or unmarried girl, the natural guardian is the father and after him, the mother. Generally, for a child, below 5 years, mother is the custodian. In case of an unmarried girl, illegitimate boy, the natural guardian is the mother and after her death, the father. In case of a married girl the husband is the natural guardian.

Certain qualifications are specified to a natural guardian :

- a) He must be a Hindu.
- b) He must not have completely and finally renounced the world by becoming a sanyasi or a vanaprasta.

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In respect of an adopted son, the adoptive father is the natural guardian, and after him the adoptive mother. (Step mother and Step father are not natural guardians).

, Ch. 5.3. Powers of a natural Guardian :

The natural guardian is empowered under the Act (Sn.8) to do all acts which are necessary or reasonable and proper for the benefit of the minor. He may do all acts (1) for realisation (2) for protection (3) for benefiting the estate of the minor. However, the Act strictly prohibits the natural guardian from committing the minor under a personal covenant. This seems

to be in keeping with the decision of the privy council in **Hanuman Prasad's case**. Here a natural guardian was held authorised to alienate on the grounds of legal necessity. However, under the new Act, the sanction of the court for alienation is an essential condition in respect of immovable property.

Further the natural guardian should not, without the permission of the Court. (1) Mortgage, (2) Charge, (3) Sell, gift or exchange or (4) Lease the property above 5 years, or for period extending more than one year beyond the period of minority of the minor. Any transfer in violation of above, is voidable. While granting permission to the natural guardian the court shall look to the necessities of the minor and also the advantage to him.

The leading case is Manik Chand V. Ramchandra. The Supreme Court held that in a Contract entered into by the Guardian the test is whether it is for the benefit and interests of minor.

Ch. 5.4. Testamentary Guardian. Sn. 9.

i) He is a person appointed under a will by a person who could be the natural guardian of the minor. The guardian may be appointed for the legitimate children, for his property or for both. He cannot appoint for illegitimate children.

* ii) Under old Hindu law, a mother could not appoint a guardian, but under the Act, she may by will appoint a guardian for the minor's property or for both. (Here, in old law, father could exclude the mother of the minor from acting as a guardian by appointing some other person, but now she cannot be excluded).

iii) A **Hindu** Mother (who could act as the natural guardian) may by will **appoint** a guardian for illegitimate children.

iv) Powers: (a) The guardian so appointed has the power to act after the death of the testator.

b) He is entitled to exercise all the powers of a natural guardian (Add Ch. 5.3].

c) His power as guardian ceases, on the marriage of the minor girl.

Ch. 5.5. Court Guardian :

The court may appoint a guardian as provided for in the Court of Wards Act 1898. His appointment, powers and responsibilities are fixed by the court itself, as per the Court of Wards Act.

The Welfare of the child must be the paramount consideration

in appointing the guardian by the court. All the acts of the guardian are tested on the touchstone of the interests and benefit of the minor.

Ch.5.6. De facto Guardian :

He is a person who has in fact (i.e., factually), the care of the minor or his property or both. He has no status, under this Act (Sn. 11). This section does not bar such a person from exercising his power. Thus de facto guardian is not abolished, but his power to alienate is taken away.

Hence, he cannot sell the minors property even with courts permission. In such a case, the court may appoint a court guardian with authority to sell etc.

Hindu Law of Succession

CHAPTER - 6

MITAKSHARA COPARCENARY

Ch.6.1. Characteristics of a Mitakshara coparcenary :

The Hindu Succession Act has not changed the concept of Mitakshara Coparcenary.

The Mitakshara coparcenary is a smaller group within the Hindu Joint Family. The members of the group by virtue of relationship have a right to hold and to enjoy the property, to restrain the act of others and also to enforce a partition.

The characteristics are as follows : i)

Status of Coparceners :

They are the persons of the Mitakshara coparcenary who acquire a right to partake of the inheritance. Their right arises by birth. Mayne defines them as three generation next to the owner, in unbroken male descent, i.e., Propositus, his sons, grand sons and great grand sons, all of them constitute a single coparcenary. Each member is entitled to offer the funeral oblation (cake or Pinda). The son of the great grandson is not a coparcener so long as the common ancestor, the propositus is alive. While fresh links are being continually added to the chain of descendants by, births, earlier links are being constantly detached or removed by death. Hence, the membership of the coparcenary may be increasing or diminishing.

ii) Survivorship :

There is community of interest and unity of possession among all the members of the coparcenary - (**Katama Nachiar Vs. Raja of Shivaganga**). On the death of a coparcener the others take by survivorship. The words of Lord Westbury in **Approvier Vs. Ramasubbayyan** are classic. 'No individual member of the family while it remains undivided, can predicate that he, that particular member, has a certain definite share of the joint and undivided property'.

The Hindu Women's Right to Property Act 1937 made an in-road into the coparcenary and provided that on the death of a coparcener his interest devolved on his widow. The Hindu Succession Act 1956 has by declaring that the widow, becomes the absolute owner of the property (Sn.14), abolished limited estate.

iii) Partition :

Each member of the coparcenary has a right to claim partition. Without a partition a member cannot predicate his share in the joint

family property. The property will be fluctuating, the quantum of it in the share will be diminishing by birth and increasing by death.

iv) Heritage :

It is divided into two classes, Aprathibandadaya and Saprathibandadaya (Un-obstructed property and obstructed property). According to Mithakshara the wealth of a father becomes the property of his son, sons son and son's son's son and this is unobstructed property.

Property which devolves on parents or on brothers and collaterals on the death of the owner is obstructed property.

v) Position of women :

Women are not members of the coparcenary. "The twin principles of the right by birth and aprathibandadaya make it evident that women were kept outside the coparcenary".

vi) Son's Right :

A son as a coparcener takes his grandfather's property and father's property on the principles of right by birth and aprathibandadaya. Smriti Chandrika makes it clear that in case of grand father's property the ownership and independent power of son and father are equal but in the property of the father the ownership of father and son are unequal. The right of the son remains dormant and enables him to succeed by survivorship or by aprathibandadaya. This was clearly

affirmed in Arunachala Vs. Muruganatha (1953) (Supreme Court).

vii) Changes made by the Act of 1956 :

The Hindu Succession Act has made drastic changes in two aspects:

a) The coparcener may by a will or any testamentary document, dispose of his undivided interest in the coparcenary (Sn.6).

b) Survivorship: The rule relating to survivorship in a Mitakshara coparcenary is kept in tact, but some changes have been made in the provision to Sn.6. It states that if the Mitakshara coparcener T had died leaving a female relative (Class 1 heir) (or a male in that class who claims through such female), the interest of P in the coparcenary property devolves by intestate succession and not by survivorship i.e., the female gets the property by succession. Hence, no, survivorship.

Illustration : of Coparcenary

A

This is a case of Hindu joint and

B		C	undivided family. It consists of the
i		i	propositus 'A' and his 'sapindas' i.e.,
D		E F	A to L. B to L are all male descend
i		i i	ants. Hence, the H.U.F. consists of a
G H		I J	large number of persons as per the
:	:		illustration. It includes the wives and
K L			daughters of these persons also. How-

ever, Mithakshara coparcenary is a narrower body. This is the 'inner circle' consisting of males, that is sapindas to three degrees calculated from A. Hence, A,B,C,D and H on the one side and C,E,F,I and J; all males are members of the Mithakshara. K and L are not members as they are in the fourth degree. But, when A dies, both K and L enter the Mithakshara. Hence, the **number** will be increasing or decreasing like a chain detached at the top attached at the tail-end.

viii) **Kartha** : As head of the family, Kartha is absolute in management of the coparcenary. He is a sui generis. He may alienate the property, if for legal necessity (Ref. Chapter 8 : Karta)

THE HINDU SUCCESSION (AMENDMENT) ACT, 2005 has made drastic changes to Sn 6 to the Mithakshara Coparcenary. After its commencement, in a joint family governed by Mithakhara 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:
 Exception: Those partitions or disposition of property before the commencement of this Act are considered valid.

The female Hindu becomes entitled to disposed of by her by testamentary disposition. Her interest devolves by testamentary or intestate succession and not by

Survivorship and the coparcenary property shall be deemed to have been divided as if a partition had taken place .-

- Further,
- (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 predeceased son or of such pre-deceased daughter;etc

Ch. 6.2 Joint Hindu Family:

1. This consists of all those persons who are the descendents of a common ancestor; it includes not only the males but also the females ie, wives, widows, unmarried daughters. The daughter ceases to be a member of her husband's family.

2. A joint and undivided status is the normal position of a Hindu family. The undivided Hindu family (H.U.F) is joint not only in estate but in food, worship etc. In the family, There may or may not be any property, but the status as H. U. F continues, mere severance in food and worship will not be separation.

3. The status as member is by birth (by marriage to a male member)

4. The H. U. F may consist of a single male member (sole surviving coparcener) and widows of deceased male members.

Ch. 6.3. Kinds of Hindu joint family property :

Broadly divided into two :¹

- i) Ancestral property
- ii) Self Acquired property (separate property)

This division is relevant and important as the survivorship or succession is decided on the nature of the property.

Ch. 6.4. Ancestral property :

i) It is the property of a male Hindu in which son's son and son's son's son acquire an interest by birth. Hence, it extends from the common ancestor P to three degrees. There is unobstructed line of heritage called as *Apartibandadaya* (means without a break)

ii) The property devolves by survivorship and not by succession. This of course subject to Sn. 6 and Sn. 30 of the Hindu Succession Act 1956 in such cases, where they are applicable.

E.g.: Ancestral property :

e.g.:- P SI : ; - SSI SSS1	The propositus P dies intestate, P's property is ancestral and hence, A and B hold as Coparceners. (B acquires the right by birth). If A dies intestate, then B gets property by survivorship and not by succession. -
----------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

^eP P dies intestate (i.e., without a will),
 P's
 property is ancestral in the hands of B, C
 and
^A
 D. When P dies B, C and D take by
 B C D survivorship.

(This will not apply in the case of self acquired property of P. P may dispose of by will and may not give any property to B, C and D. But P cannot prevent B, C and D from getting ancestral property of P)

iii) Accretion to ancestral property and all purchases made or profits earned from the income or sales are 'ancestral property'.

iv) Property inherited from Mother, Maternal Grandfather or collateral is **not ancestral**. It is Saprathibandadaya. **Venkayamma Vs. Venkataramanayyama (Supreme Court)**

Facts: Two brothers A and B, members of a joint Hindu family inherited certain properties from their maternal grandfather. A died leaving his widow W. Question was whether that property passed to W by succession, or to B by survivorship. The Privy Council had held that as both A and B had inherited together it was ancestral and B got by survivorship. But our Supreme Court held that this is not ancestral property (only Agnates property is Ancestral).

v) Share allotted on partition: A coparcener's share after partition is ancestral as regards his male descendants only. But, as regards others, it is separate property and if he dies intestate with out male issues, it passes on to his heirs by succession.

vi) Property obtained by gift or under a will from paternal ancestor. This was answered by the Supreme Court in **Arunachal Madaliar V. Muruganatha** as separate property.

Facts : A had three sons B, C and D. Under his will, A gave certain properties to his wife and other relatives, and then in the schedule gave his separate properties P1, P2 and P3 to A, B and C respectively, which they may enjoy, absolutely. Held, this was not ancestral in the hands of B, C and D. It is their 'separate property'.

vii) **Doctrine of Blending** : Property thrown into common stock of the family is ancestral property. Even separate property becomes Hindu undivided property when it is thrown into the hotchpot with intention to abandon all rights over it (malleshappa v. mallappa).

THE HINDU SUCCESSION (AMENDMENT) ACT, 2005 has made drastic changes to Sn 6 to the Mithakshara Coparcenary. After its commencement, in a joint family governed by Mithakhara 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:
Exception: Those partitions or disposition of property before the commencement of this Act are considered valid.

The female Hindu becomes entitled to disposed of by her by testamentary disposition. Her interest devolves by testamentary or intestate succession and not by Survivorship and the coparcenary property shall be deemed to have been divided as if a partition had taken place .-

Further,

- (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 predeceased son or of such pre-deceased daughter; etc

Ch. 6.5. Separate property :

This is property acquired by a coparcener, without detriment to ancestral property. This is also called self-acquired property. The modes of acquiring are as follows : j) **Saprati-bandadaya:** By obstructed heritage. This is erty acquired by a Hindu by any mode other than Apratibanda-daya.

ii) Gift or grant: Any gift received by the coparcener from his father or from any person. Also govt. grants received by the coparcener.

iii) Separate earnings of a coparcener.

iv) Income of separate earnings and purchases made therefrom, or business earnings.

Separate Business : Business running in the name of members of the family: One or more members can start business e.g.: partnership firm, acquire properties without the assistance of the joint family property. Such business is separate. But if that business is thrown into the hotch pot, voluntarily then it becomes JF property.

The Supreme Court held in **Bhagvan Dayal Vs. RathiDevi** as follows :

Coparcenery is a creature of Hindu law. And it cannot be created by agreement. It is a corporate body or a family unit. Properties can be acquired and disposed off. Hence the position is that one coparcener may carry on a separate partnership business. In the present case the uncle A and two nephews B and C did not belong to the same branch, hence it cannot become the joint family property.

The *Madeva Prasad Vs. Commissioner of Income Tax, Manager of HUF* entered into a partnership as representing his family of which he was the karta, for the benefit of the family. There was a dispute in respect of the properties of the joint family, being involved, in partnership business. The court held that allowances received by Madeva Prasad directly related to the investment made by the family. Hence, it was HUF property and *not separate property*.

v) Gains of learning : All properties acquired by a coparcener by his own exertion, and those coming within the Gains of learning Act 1930, are separate properties (Add. Ch. 14.2).

vi) Share : A share on partition is a separate property if the person has no male issues.

vii) Under the doctrine of blending, separate property becomes Hindu undivided property when it is thrown into the hotchpot with intention to abandon all rights over it (*Mallesappa V. Mallappa*).

(Add Blending : Ch. 7.4)

CHAPTER - 7

PARTITION

Ch. 7.1. Partition :

Partition according to Lord Westbury in **APPOVIER'S** Case means division of title and division of property. Title means the status of jointness. The essence is the defining of the shares of the coparceners in the joint family ; there is numerical division of the property However, actual division of property by metes and bounds is not necessary. According to Mitakshara "Partition is the adjustment of specific portions of diverse rights over the aggregate commonwealth" It is the fixation of the fluctuating interests of a coparcener into a specific-share in the joint family property.

Change of status :

After the shares are so defined they may divide by metes and bounds or live together and enjoy the property. There is a change in the status. Joint status comes to an end on partition. But, this will not affect their mutual love and affection. This is the essence of partition After partition, the parties hold the property, not jointly, but as tenants-in-common, if they live together. Of course, they may live separately by dividing by metes and bounds, if they so decide.

Position under the Hindu Succession Act 1956 : Sn. 6 of the Act provides that the interest of the Mitakshara coparcener in the undivided coparcenary property, devolves by survivorship and according to the Act. However,, explanation 1 to Sn.6 provides for a notional partition. The objective is to give effect to such a partition when the deceased has left female heirs etc Hence his interest is deemed to be the share in the property that would have been allotted to him if a partition had taken place immediately before death, (irrespective of whether he was entitled to claim partition or not). This deemed share may be the subject matter for the Will or Succession according to the Act.

Eg.: (1) X has left sons A and B and ancestral property Rs.16,000/-. A has three sons and a daughter. A dies. Under the deemed partition the daughter's share can be calculated. A and B get $\frac{1}{2}$ each (Rs.8,000/- each). A has 3 sons and 1 daughter. Hence in the first round A with 3 sons i.e., 4 persons take $\frac{1}{4}$ of $\frac{1}{2}$ (i.e. Rs.2,000/- each). Now, in the second round all the three sons + One daughter take from A's share of Rs.2000/-. Hence, the daughter gets Rs.500/- (1/16th of share).

Eg.: (2) A and B are coparceners with ancestral property worth Rs.60,000/- A dies leaving a widow W, sons S₁ and S₂ and a daughter. Under notional partition, A gets $\frac{1}{2}$ i.e. Rs. 30,000. A and his two

sons as coparceners share equally ie, Rs. 10,000 each. Hence the deemed share of A is Rs. 10,000. This is to be given to all equality W D S , S2 i.e., Rs.2,500/- each.

Ch. 7.2. Modes of effecting partition :

The leading cases are : i) Rukma Bai V. Laxminarayan, 1960. ii) Girija Mandini V. Vijendro Narain, 1967. iii) Puttarangamma V. Ranganna, 1968. iv) Hanumanthappa V. Nagappa, 1972. v) Laxmichand V. Ishroo Devi, 1977.

The Supreme Court has in Rukma Bai V. Laxminarayan (1960), elaborately discussed the law relating to partition. According to it, there is the presumption of Hindu law that family is joint. There can be a division of status among the coparceners by defining the shares. Though not essential, there may be a division by metes and bounds.

Modes :

f) **By notice** : Means registered notice by a coparcener served

on the Kartha or on all other coparceners. There must be an irrevocable intention expressed in unequivocal terms for separation of the status. Notice is not condition precedent. A declaration in a proceeding showing intention is enough.

Coparcener sent a telegram 'to partition' on 4.8.67. He wrote a will and died on 6.8.67. Held testator died with the divided interest and therefore the will was valid Raghavamma Vs..Kenchamma. (Sn.6 and Explanation 1 explained by the Court).

(ii) **By Suit**: Partition may be effected by filing a suit. Minor, insane person may sue through his next friend or guardian. But the court must be satisfied that the partition would be for minor's or insane person's benefit.

Case : Peddasubbaiah Vs. Akkamma. Minor's right at a partition are precisely those of a minor. With this decision the Supreme Court set at rest the controversy between various High Courts.

iii) **By Agreement**: The Agreement may be oral or in writing. Intention to separate must have been expressed. There must be an agreement among the coparceners. Registration is optional.

iv) **By Renunciation** : Instead of seeking a partition, a coparcener may renounce the interest in the coparcenery. That member gets outside but the coparcenery may continue without him. He is severed of his status.

v) **By reference to arbitration:** A reference to arbitration amounts to severance of status (Kabadi Vs. Kabadi SC. 1962).

vi) Other modes :

a) Conversion

b) Contracting a civil marriage (Special Marriage Act).

c) **Partition by operation of law** as provided in S.6. (Notional partition).

Ch. 7.3. Re-opening of partition :

Manu said 'Once is a partition made'. However, reopening has been recognised under certain circumstances:

i) On the ground of fraud, mistake or subsequent recovery of property.

ii) On the ground that it is prejudicial to minor. In Ratnam v. Kuppaswami (1976) the Supreme court has laid down principles.

iii) On the ground of 'En vetre sa mere'

iv) Son begotten after partition, if the father has not reserved or taken a share.

Ch. 7.4 Reunion (Blending):

He who 'being once separated but dwells again through affection with his father, brother or his paternal uncle is termed reunited with him'. The reunion is restricted with these persons, only. (Ramanarayana Chowdri Vs. Panikkar) Reunion is effected by oral: agreement or subsequent conduct. This restores the undivided status. Bhagwan Dayal Vs. Revathi Devi SC. 1962. Puttarangamma Vs. Ranganna 1968. Reunion is a fact and is to be proved the court said. Reunion is Samsrita in Sanskrit. There is a junction of estate with intention to re-unite by the coparceners.

How made : It may be made without any writing, but if it is in writing it must be registered.

Effect : Status quo ante is the effect. It is called a re-united family. As this status is achieved by an agreement, the effect is not stated by commentators or by any court decision. Hence, the presumption is that the original status revives and the property devolves by survivorship.

Even separate property becomes Hindu undivided property when it is thrown in to the hotchpot with intention to abandon all rights over it (malleshappa v. mallappa).

CHAPTER - 8

KARTA

Ch. 8.1. Karta :

i) One of the cardinal principles of the Mithakshara": coparcenary is that the management is vested in the 'Karta'. As a general rule, the father of the family or if he is not alive, the eldest son, (the senior coparcener) is the karta. Even a junior member can become a karta, with the consent of all the coparceners.

ii) **Male** : Only a male member can be karta and a woman or a widow is disqualified. (C.I.T.V. Govindram Sugar Mills). Further, there cannot be two kartas in a coparcenary.

iii) Management:

The Karta is entitled to full possession of the property and is absolute in its management. He possesses the power and the right to represent the family in all its transactions. He is entitled to act without the consent of the other members or even in spite of dissent, when his act is within his legal authority and for family purpose. His act binds the others. Under him, the other coparceners have only the right to maintenance and residence. They cannot claim any specific share of the income.

iv) Legal position :

His position is Sui generis. He is not an agent of the other coparceners. He is not a trustee. He need not save or economise. If a Karta is wasting the property the only remedy is to effect partition. On partition the account is taken on the actual receipt and expenditure, not on what would have been saved prudently by the Karta.

v) Expenses :

The Kartha has absolute discretion in the manner of spending for family purpose like expenses of management, of realisation and protection of the family property, ordinary maintenance, residence, education, marriage, shradha and religious ceremonies etc. He cannot however mis-appropriate or apply the family income or property to any purpose other than family purpose. He is not accountable for past-transactions. He need not give accounts, but where the family transaction is such as to make it necessary to keep accounts, he must maintain true and accurate accounts.

vi) Suits :

Karta has legal right to represent the entire family in all its transactions, legal or otherwise. He can bind the other coparceners

by his act. He may sue or be sued in his own name. Decree passed against the Karta is binding on all coparceners. One coparcener cannot sue another coparcener. Only the Karta may sue or be sued.

vii) Family business :

A joint family may carry on a joint trade or business. Karta has the implied authority to borrow money for family business purposes so as to bind the other co-parceners. He may sell movable or immovable property or pledge the properties for the purpose of the business. This is not a partnership firm.

viii) Alienation :

Karta has the power to alienate property for reasonable consideration so as to bind the other coparceners. This right is absolute. A Karta may alienate for legal necessity.

xi) Other powers:

A Karta may refer disputes to arbitration. The award will be binding on the coparceners. He may compromise with bonafide intention. He has no right to waive a time barred debt. He may give valid discharge on behalf of the family.

Ch. 8.2. Karta's power of alienation :

i) Kartha, as the manager of the Hindu joint family is empowered to transfer or alienate the joint family property. His act binds the

other coparceners. However, his alienation is subject to certain restrictions. According to Mithakshara : 'Apatkale, Kutmbarte and Dharmarthe'. This means times of distress, for the sake of the family, and pious purposes. In other words, legal necessity, benefit of the family (or estate) and dharma or pious purposes. (Kane's Commentaries on Dharmasastras).

ii) Legal necessity:

It means

- a) Payment of Govt. revenues
- b) Maintenance of coparceners and their family
- c) Marriage expenses of coparcener and daughters
- d) Family ceremonies and funeral expenses
- e) Legal expenses spent for legal litigation to preserve the estate

I

- f) Expending towards family debts
- g) Family business expenses and discharge of family

business debts
etc.

iii) Benefit of the estate :

The touchstone to test the legal necessity is whether the alienation is for the benefit of the estate. The leading case is: *Human Prasad V. Musamat Baboe*. The question in this case was whether a mother acting as the manager (not karta, as a woman is incompetent) of an infant heir has the power to mortgage. The Privy Council held that her power was limited and qualified. It can be exercised only in case of need and for the benefit of the estate. The creditor or alienee is expected to enquire into the (a) Legal necessities and b) The bonafides. This test applies in the case of Karta also.

iv) Void alienation :

If transfers or alienations, are not for legal necessity the alienation become voidable ; (voidable at the option of the other coparceners).

The most authoritative explanation to 'the benefit of the estate' was given in *Palaniappa V. Devasikamani*. (This was the right of the mahunt over debutter property). The protection, preservation from injury and deterioration and a host of such things to save the property come within this.

Alienation includes sale, mortgage, lease ; and also for pious purpose. Leading case: *Guramma V. Mallappa* 1964. A gift made by a Karta (father), to his daughter after marriage for her maintenance ^was held valid.

CHAPTER - 9

SUCCESSION-1

Ch. 9.1. General Rules of Succession to Males

i) Sn. 8 of the Hindu Succession Act deals with succession to the property of a Hindu male dying intestate (i.e., without a will).

Firstly upon the heirs specified in Class I of the schedule.

Secondly on the heirs in class II.

Thirdly if there is no class I and II heir, on the agnates of the deceased.

Lastly, if there is no agnate, the Cognates of the deceased. **Class I heirs:**

Son, daughter, widow, mother, son of a predeceased son, daughter of a predeceased son etc.....

Class II heirs:

1. Father
2. Son's daughter's son
3. Son's daughter's daughter Brother, sister
4. Daughter's son's son
5. to 9 categories of person specified.

ii) Rules regarding order of succession :

- a) Class I heirs take simultaneously
- b) Class II heirs take in the order:: I is preferred to 2, 2 to 3, 3 to 4 etc.

iii) Agnates: Males ascendants and male descendants. Degrees

are counted. The fewer degree of relationship is preferred. Father's father, Son's son's son, etc.

iv) Cognates : related through females :

There are descendant cognates and ascendant cognates :

Son's daughter's son's son

Father's mother's father

1

Ch.9.2. General rules of succession to females

Sn. 15 of the Hindu Succession Act states the general rules of succession to female Hindu dying intestate :

- a) First, sons and daughters and the husband

- b) Second : Heirs of the husband
- c) Third : Mother and father
- d) Fourth : Heirs of the father
- e) Lastly on the heirs of the mother

Exceptions:

i) If the female has inherited any property from her father or mother, and dies without a son or daughter, then that property goes to the heirs of the father.

ii) If a female has inherited any property from her husband, or father-in-law and dies without a son or daughter that property goes to the heirs of the husband.

Property : It includes all property movable and immovable, stridhana or any estate received from any source. Sn. 14. of the Hindu Succession Act has abolished the Widow's estate. Hence, she is the absolute owner of that property held or possessed by her, whether acquired before or after 1956.

Leading cases:

Eramma V. Veerupanna; Kotturawami V. Veeravva

CHAPTER -10

STRIDHANA

a) Meaning:

According to Sn. 14 : 'Property' means property' acquired by a female Hindu by inheritance, partition, maintenance, gift from any person before, at or after her marriage. It includes whatever she gets by her own skill or exertion or by purchase, prescription, etc. It also includes any property held by her as **Stridhana** before 1956.

b) Origin and development:

Stridhana is from "*sin*", woman and "v^vdhana" property Hence, it is literally woman's property. The history of Stridhana is as old as Hindu law itself. A clear enumeration of it is in Manu Smriti:

Gifts before nuptial fire, gifts made at bridal procession, gifts made in token of love, gifts made by father, mother and brother.

Later commentators accepted these but added a few more i.e, gifts made subsequent to marriage, sulka, ornaments etc.

Vijnaneswara expanded Yagnavalkya's Text, to include property acquired by inheritance. The Privy Council deviated from Vijnaneswara and held.

(1) Property inherited by a woman from a male or a female was not Stridhana. (Bhagavan Dev Vs. Mina Bai, Shivshankar Vs. Devi Sahid).

(2) The share obtained on partition was not Stridhana (Mangala Prasad Vs. Mahadeva Prasad). However, the other 3 items were accepted by the courts.

- > Whether a property was Stridhana or not depended on
 - 1) The source of acquisition
 - 2) Her status : maiden, wife or widow at the time of acquisition
and
 - 3) The school to which she belonged

c) Importance:

In stridhana the female has (1) absolute power of alienation to any person and (2) by succession the property goes to the stridhana heirs, after her death. This is called **Soudayika**.

Property of female Hindu : Sn. 14 :

The property of a female Hindu is held by her as absolute owner according to Sn. 14 of the Hindu Succession Act 1956. This abolishes the old Hindu Law doctrine of Widow's limited estate and makes her the absolute owner with retrospective effect. Further, the concept of 'Stridhana' is enlarged to include all properties which she acquires,

and she is the absolute owner of this property also. Hence, Sn. 14 has defined the total property of the female in which she has absolute rights.

i) Widows limited estate abolished.

Sn. 14 provides that any property possessed by a female Hindu whether acquired by her before or after 1956, shall be held by her as full owner and not as a limited owner.

Exception: The female Hindu will not be a full owner if she has acquired property by gift or under a will or a court decree which has imposed certain restrictions on the property or estate.

In this section 'any property possessed' by a female Hindu is given wide meaning by the Supreme Court. The woman must have ownership with a right to possession, possession thus need not be actual, it may be constructive. It is enough if it is juridical possession. Possession should be claimed as a right and not as a trespasser. Where she is in possession in law, it would be deemed to be in possession. Hence if she is dispossessed, she has a right to recover, [of course, if her right is barred by limitation (i.e., 12 years), she cannot recover the immovable property].

The wide meaning to 'possession' was given by the Supreme Court in *Kotturuswami V. Veeravva* (1959).

A by a will authorised his wife W, to take a boy in adoption and died. W adopted 'C'. D, relative of A and a reversioner claimed the property stating that the adoption was invalid. The Supreme Court rejected and held that (i) W became the absolute owner by virtue of Sn. 14 (ii) Even if the adoption was invalid, W was in constructive possession of A's property which is permissive. Hence, it was held that W was the full owner of the property. Adoption was held valid and C succeeded.

This interpretation has been affirmed by the Supreme Court in other cases :

Eramma V. Virupanna 1959.

Mangal Singh V. Ratno 1960

Dina Dayal V. Rajaram 1970

Hence, under Sn. 14, the female Hindu becomes an absolute owner if the conditions are fulfilled. Further, Sn. 14 is retrospective in operation and hence dates back to the date of her possession.

Under old Hind law, the widows limited estate called "**non-saudhayika**" was a typical form of estate. The Hindu widow, was entitled to the full beneficial enjoyment of her husband's property for her life. On her death, the property reverted back to her husbands

heirs called reversioners. The widow had only a right to enjoy the property, but had no power to alienate, except for legal necessity. This had given birth to ruinous litigation.

Sn. 14 has abolished this limited estate and has made her the full owner and hence, the reversioners have disappeared.

CHAPTER -11

SUCCESSION-2

Ch. 11. General Rules of Succession common to Males & Females.

The general provisions relating to succession common to male and female under the Hindu Succession Act 1956 are stated in Sections 18 to 23.

i) Full blood and Half blood :

Sec. 18 provides that other things being equal full blood is to be preferred to half blood in determining the order of succession. Two persons are said to be related to each other by full blood when they are the descendants of a common ancestor by the same wife. They are related by half blood when they are descendants of a common ancestor by different wives.

ii) Per Capita, Not per stirpes :

Sn. 19 provides that the general rule governing the distribution of an inheritance among several equal heirs shall be per capita, i.e., per head and not per stirpes (i.e., not according to stock or branch). The Act has provided in some specified circumstances for per stirpes distribution.

iii) Tenants in common and not joint tenants :

Several heirs who succeed together to an inheritance after the commencement of the Act will take the inheritance as tenants in common i.e., with their share defined and ascertained. They do not take as joint tenants.

iv) Child in the womb :

One principle of Hindu law is that a son in the mother's womb at the time of partition or death of the owner (father) is considered as 'En Vetre sa Mere' (i.e., a child in existence). But the child must be subsequently born alive. As a child in existence, the Act gives vested interest in such inheritance.

v) Simultaneous Deaths:

When two persons, an intestate and his next heir, happen to die simultaneously, it becomes important to judge who died first. The Act provides that the elder of the two persons shall be presumed to have died first. This is a rebuttable presumption.

vi) Pre-emption:

The right of sons and daughters to equal shares effected by the Act may cause great practical difficulties without provisions for pre-emption. Sn. 22 provides for that. If a daughter is entitled to a share and after her marriage disposes of her share in the immovable property to a stranger, it may make the matter worse. Hence, a provision for pre-emption was made.

The right to pre-emption is the right to fore-stall a sale to a stranger (Aud Bihari Vs. Gajadhar SC. 1954). Where any co-heir wishes to sell or transfer his share or interest therein he should not transfer to a stranger, when the other co-heir is willing to acquire the share. For the fixation of the price the Act provides that in disputed cases the Court may determine. This means that Civil court is empowered to , ' fix the price. In case of competition among co-heirs the co-heirs who offer the highest amount will have the right to pre-emption.

vii) **Dwelling House:**

S.23 intends at curtailing the right of the preferential female heir of Class I over the family dwelling house when that is wholly occupied by the member of the family and the intestate. No female heir in Class I e.g. (daughter) would be entitled to claim a partition. Such female heirs are given only the right of residence in the family dwelling house.

CHAPTER -12

ENDOWMENTS

Ch. 12.1. Gift for Hindu Religious and Charitable

Endowments 1. meaning and nature :

Gifts for Hindu religious and charitable purposes are impelled by the desire to acquire 'religious merit'. There are two divisions according to Manu:

i) 'Ishta' means sacrifice. This if done by a Hindu takes him to Swarga (heaven).

ii) Turta' means charities. This if done by a Hindu takes him to Moksha. This is higher than Swarga. Hence, charities are placed on a higher footing.

Manu commends both; He says: 'Let a man practice according to his ability with a cheerful heart, the duty of Dana-Dharma, both by sacrifice and charities, if he finds worthy recipients for the gift.

Eg.: for 'Ishta': i) Vedic Sacrifices ii) Gifts to the priests iii) 6. -- Preserving the Vedas iv) Religious austerity v) Rectitude vi) Visvadeva sacrifices vii) Hospitality etc.

Eg. : to Purta (charities ;)

i) Constructing tanks, wells, temples, Dharmasalas, Goshalas, annachatras etc.

ii) Providing for places of drinking water supply (i.e., near temples etc)

iii) Relief of the sick and the poor

iv) Gift for education (Vidya-Dhana). This is specially meritorious.

4. Creation of an

Endowment:

a) Founder:

He must be a Hindu and must be of sound mind and not a minor. He must be willing to establish an endowment. He may express his purposes and create the endowment, b) Intention:

It must be clear and unambiguous. He must specify whether the endowment is for religious or for charitable purposes. The purposes must have a Hindu Shastric Basis. The endowment must not be colourable or illusory. It must not be to defraud creditors, c)

Formalities:

No writing is necessary according to Hindu Law. It may be written. Registration is not necessary (optional). When the endowment is created by will, the will must be in writing, signed and duly attested by two witnesses.

The religious ceremonies such as SANKALPA AND SAMARPANA are not required. This is evident from the case: Devaki Nandana Vs. Muralidhara.

5. Legal Status:

A Mutt or Idol is a juridical person, capable of holding legal rights, but it can act only through some person: Mahunt and Shebait. Idol or deity is the owner of the debutter property; in Mutt the property rests in the Institution. **Ch. 12.2. Status, Powers and Functions of Sheait or Mahunt:**

a) **Temple is a place of worship** and the head is called a Shebait. A Mutt is a seat or centre of theological learning and the head is called the Mahunt. The Shebait or a Mahunt occupies a significant place in the law of Endowments.

Legislation: The States are empowered under our constitution to make law relating to Endowments and many states have made Hindu

Religious and Charitable Endowments. A Commissioner is empowered to safeguard the interests of the various endowments.

Though these Acts are regulatory in nature, the Hindu Law relating to the Shebait or Mohunt remains the same.

b) Powers of a Shebait or Mohunt:

i) He acts in the capacity of a manager or custodian of the idol or the mutt institution. He is entitled to the usufruct (use) depending on the usage and custom. As the debutter property is not vested in him he cannot be compared to a trustee (in whom the trust property becomes vested). However, as regards the general duties and responsibilities his position is almost similar to a trustee.

ii) A Mahant is a spiritual head. He is a teacher or guru. He must carry on the worship in the Mutt, maintain the discipline and propagate the religion of the institution. His work is one based on non-attachment to worldly life. He is expected to meditate, study and further the development of the Mutt. The Mahant has a wide discretion; Any offerings made to him are at his disposal.

iii) In respect of debutter property the shebait has no power to alienate. He may incur debts or raise loans by mortgage provided there is a legal necessity. In **HANUMAN PRASAD Vs. BABOE** the Court held that the power to alienate was analogous to the manager of an infant heir. Hence with a view to benefiting the debutter property, property can be alienated. He cannot claim adverse possession of debutter property.

Removal : The courts have powers to remove a Shebait or Mahant for misconduct or maladministration. Any interested members of the community may sue for the production of proper accounts
CLO.

The leading cases are : Alienation: i)

Human Prasad's case

ii) Palaniappa V. Devasikamony (Privy Council explained 'legal necessity' for selling debutter property).

CHAPTER-13

PIOUS OBLIGATION.

Ch. 13.1 Doctrine of pious obligation

. i) origin :

This doctrine has its origin in the sacred Hindu texts. Brihaspati said: 'He who incurs a debt but does not repay to the creditor, will be born thereafter in the creditor's house, as a slave, a servant or a quadraped'. Narada said that the debtor's 'devotion', would vanish if he dies a debtor. These were based on the principle that 'moral' obligations took precedence over legal rights.

In *Amritlal V. Jayantilal* (1960), the Supreme Court explained this doctrine:

If a person dies a debtor, his soul may have to face, evil consequence and it is the duty of the son to save his father. The basis of the doctrine is "Spiritual" and the sole object is to confer spiritual benefit on the father. Hence, It is not intended in any sense for the benefit of the creditor.

ii) Liability:

According to the above commentators a debt is a 'runa' and there is a religious duty to discharge from the sin of the debt. This duty called pious duty is on the debtor, his son's son, and son's son's son, only. This will not extend to any further descendants, nor to any ancestors.

iii) Exemption:

As the liability is moral or religious, it follows that the liability extends only to the moral or religious debts. It does not include-illegal or immoral debts. The smritis mentioned: as illegal or immoral:

- a) Debts for spirituous liquor
- b) Debts due to lust.
- c) Debts due for gambling.
- d) Unpaid fines and tolls
- e) Debts due for anything idly promised,
- f) Avyavaharika debts, etc,

Later the word avyavaharika become applicable compendiously to denote all illegal, immoral and unlawful

debts and all debts the , cause of which is repugnant or against good morals (Colebrook). Further, the son is not liable for the criminal acts of his father.

In Ramasubramaniam V. Sivakami Animal, two principles were laid down:

a) If the debt was not illegal at the time of taking, then subsequent dishonesty of the father will not make the debt immoral.

b) Every lapse from right conduct will not make the debt immoral.

iv) Time barred debts :

According to the Limitation Act period of limitation is 3 years (Art. 120). This is applicable to the son and the grandson etc. (Under pure Hindu law there was no period or limitation).

The liability under pious obligation exists whether the father is alive or dead.

v) Extent of liability :

The liability to pay the debts extends to the extent of coparcenary, interest and does not run against the person or his separate property Siddeswara Mukerjee V. B. Prasad(1953). It is not a personal liability, In Pannalal V. Narayani: it was held that, if after partition, a decree is obtained by the creditor against the father, in respect of prepartition debt, it cannot be executed against the son.

Ch:13.2. Pious obligation and avyavaharika debts:

The doctrine of pious obligation is based on spiritual and moral obligation of the son to save the father's soul from evil consequences. The son, son's son, and son's son's son- are liable for such debts.

Though this is the rule, there are many exceptions. Illegal or Immoral debts, Avyavaharika debts etc. are exceptions.

[Abolished by the Hindu Succession Act 2005 see supra]

2. Meaning :

"Avyavaharika debt" is not defined. It includes all debts which are "not lawful, usual or customary". According to Colebrook " It is debt for a cause, repugnant to good morals".

3. The leading case is : Hernraj V. Khemchand:

F and B, were brothers; The court had issued a decree against

F to handover a promissory note to a B. F did not handover in time. B Suffered loss, Held this debt survived to the son of F, under pious obligation.

4. Examples of Avyavaharika debt:

- i) Fine imposed on F (father), in criminal cases
- ii) Damages awarded against F for malicious prosecution.
- iii) illegal trading in opium and debt etc.

5. Antecedent debt:

The liability of the son continues in respect of an "antecedent debt" incurred by the father, and, will not end on the death of the father..

In antecedent debt, there are two separate transactions :-

- i) A debt incurred by father
- ii) A subsequent transaction by way of mortgage, sale etc. to discharge the earlier debt.

It the "debt" is not immoral, the second alienation is valid, and, will be binding on the Sons, under pious obligation.

Cases : (i) Brig Narain V. Mangal prasad :

Sitaram F had two minor sons S1 and S2. F mortgaged joint Hindu family property called "X" to A; Later he executed a second mortgage on the same property to B.

After two years he executed a third mortgage to pay off the earlier two debts, to "C"

After 4 years 'C' sued F on mortgage. It was held that the objective of the third mortgage was to discharge the earlier two debts.

Held, C was entitled to succeed under pious obligation. The reasons were: The debt was not for illegal or immoral purposes; the third mortgage was to discharge earlier debts(that is antecedent debt); the antecedent debt was a debt in fact as well as in point of time, and was an independent transaction.

3. Faquir Chand V. Harnam Kaur :

The Supreme court held that the rule relating to antecedent debt was applicable whether the debt is secured or unsecured.

A joint family had M (father) and his son S. M borrowed Rs; 75,000/- and mortgaged joint family property to discharge earlier

mortgage loan and other purposes. M Claimed that the mortgage was not for legal necessity and hence he was not liable.

Held, M was liable, as this antecedent debt not an avyavharika debt

(3) Prasad V. Govindaswamy 1982 (Supreme Court).

5. Conclusion:

The doctrine of pious obligation fixes pious duty on son to discharge the liability of father, in regard to "antecedent debt". This debt according to Dunedin, means: a debt antecedent **in Fact and in time**, that is it should be truly antecedent and not part of the same transaction which has been questioned in the court.

If the purpose is tainted with illegality or immorality, it is not for legal necessity, the doctrine of pious obligation applies. But, if it is to discharge an earlier debt, the liability continues and the son becomes liable.

Abolished by the Hindu Succession (Amendment) Act, 2005,

Hence 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:**

Exception 1 Debts before 2005 Act

2 To a partition made before 20/12/2004

("partition" means any partition made by execution of a deed of partition duly registered under the Registration Act, or partition effected by a decree of a court.')

CHAPTER -14

MISCELLANEOUS

Ch. 14.1 Factum Valet:

This doctrine was enunciated by Jimuthavahana in his Dayabhaga. Mitakshara has also recognised it. It means that when the fact is accomplished, that is, when the act is done and completed, it is legal and binding, despite contravention of 100 texts.

The doctrine applies where there is moral obligation, not where an act is legally prohibited. The Hindu texts prescribe the rule that consent must be taken of the Guardian for marriage. If the consent is not taken, then merely on that ground marriage will not be invalid. The marriage is valid when done. However if consent is obtained by fraud or force then, marriage will be voidable. Similarly if the age for marriage is less than 21 to husband, 18 to wife, the doctrine of Factum valet applies and the marriage is valid

If Father wants to sell his property the consent of sons was necessary according to Jimutavahana, but if sold it was saved by Factum valet. Derrett, a modern Hindu law critique also refers to this • and shows how this is applied in Acts of Parliament, on Hindu law.

The doctrine does not apply where there are mandatory prohibitory provisions regarding 1) Capacity to give and take in adoption 2) capacity for marriage restrictions regarding Sapinda. prohibited degrees. Marriage when the wife living.

Ch.14.2. Gains of Learning Act 1930.

Before the passing of this Act the position was that, income earned by a member of a joint family became the joint property if the training was at the expense of the joint family property vidhyadhana. However the income of member by personal labour and skill after the ordinary education from the joint family property did not become joint family property.

Leading Cases :

1) ICS Officer's Case. (Gokulchand V. Hukumchand) 2) Astrologer's Case. 3) Banker's Case. 4) Dancing girls Case-these had created doubts.

In ICS officer's case the officer was trained at the expense of
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the joint hindu family. Held the salary of the I.C.S officer was part of the property of the family and hence was liable for attachment.

In *Methuram V. Rewachand* ordinary education was given to the coparcener. Later he acquired properties. Held, this was not joint family property.

To remove the doubts, the gains of learning Act was passed with restropective effect.

According to it, all acquisition of property made subsquently by means of learning, whether such aquisitions is by ordinary or extraordinary result of such learning, they are separate property. Learning means education whether elementary, scientific, special or general training of any kind to pursue any trade, industry profession or avocation in life. Hence under this Act whether the learning has been wholly or partially imparted by joint family property or not, the gains of such learning form a separate property of the acquirer and not joint family property. (Narayana Swami v Ramkrishna)

Ch.14.3 Rule of Dandupat.

This rule of old Hindu Law according to smrutis stated that the amount of interest rcoverable at any one time should not exceed the principal amount. Hindu law provided no'period of limitation for the recovery of debts. Hence, a restrction had been imposed on the amount of interest recoverable. This restriction is the Dandupat Rule or (Dwiguna Rule)

Application of it however is to be understood with reference to place, parties and transactions 1) It was applicable in some places in India like Bombay, Calcutta etc. 2) As regards persons the rule

applied where both the parties were Hindus or enough if a Hindu the creditor may be Mohamedan or Christian. 3) It applies to secured and usecured debts.

The creditor could recover interest for 3 years. But where the rule applied the creditor could not a any one time recover more than the principal amount. There is not much relevance of this today as the Limitation Act has prescribed the period of limitation.

Ch. 14.4 Sapinda : Etymologieally, it means 'same cake'

It means 'One of the same pinda'. Pinda is the 'cake' or 'Ball of rice', offered at the Sharda ceremony. It signifies the relation connected by the same body (Mitakshara) or through a funeral obligation (Dayabhaga).

"Two persons are related by "sapinda" if thay are connected by the same genes according the Vigneshwara. This relationship is special to "Sagotra" person

[Also refer for details Ch-14.11]

According to Mitakshara the relationship extends upto 5 th degree in the mother's side and the 7 th degree on the father's side.

The Hindu Marriage Act prescribes as 3 degrees on mother's side and 5 degrees on Father's side. Hence, one is the sapinda of the other where one is the common lenial ascendent within the limits stated above.

Ch.14.5 Legal necessity:

This has special meaning and significance in the field of (i) Karta' power of alienation (ii) Mahunt or Shebait's right of alienation, (iii) Guardian's power of alienation and (iv) Widows limited estate's alienation (the latter abolished under Sn. 14 Hindu Succession Act).

It is the touchstone to test whether an alienation is valid or not.

The leading case is Hanuman Prasad's case. The power to j/ffiienate was explained by the court.

Another leding case-.Kali Shankar Vs.
Dhirendranath.

Legal Necessity has a special technical meaning

- 1) Monies paid towards arrears of revenue
- 2) Money spent in defending a suit.
- 3) Repairs effected to building etc.
- 4) Religious and charitable purposes.
- 5) Performance of funerals, shradha.
- 6) Payment of debts due.
- 7) Expenses for marriage of son or daughter.
- 8) Benefit of the estate

(2) Any expenses incurred to safeguard the property and what a prudent man would have done come under benefit of the estate, that is joint family property.

Leading Case: Muraraka Properties V. Beharilal (Transfer of properties by 8 coparceners to a company, in which they were directors, was held valid and was for benefit of the estate)

Sale of old house, expenses to improve agricultural production, mortgage of property for family trade or business etc. are examples.

Ch.14.6 Benarni Transaction:

It means without name , not own name. The reason for using such a name is 1) the luck which some names may bring. 2) to conceal family affairs from public eye. A

person buys property from his own money but in other names, he may buy in his own name but transfer it to some other name without any idea of benefiting him. The other person is Benamidar.

It is not a sham transaction; but is legally enforceable.

v Whether a person is Benamidar or not depends on

1) the source of money 2) Possession of property 3) The position of the party 4) Motive and circumstances. 5) The conduct of the parties 6) Custody of title deed, etc.

In such transactions effect must be given to real fact and not to the-benami title.

Ex :- A obtains a money decree against B; Later in execution, B's property is sold, C buys it in the name of D. D obtains a certificate of sale from the court. D cannot sue C for the property.

Innocent bonafide purchasers for value (transferees from Benamidars) are protected, if they had no notice. A benami transaction which is fraudulent to defeat creditors, or one which is opposed to public policy is void. The leading case is Laxman V. Kalicharan. Here the privy council explained a Benami transaction. A held out that his wife W was the owner of immovable property called 'k' as she had bought it from her Stridhana. When A died, W sold the property to D who bought bonafide for value. A's son S, sued D to recover the property. Held, S could not recover. The bonafide purchaser was protected.

This principle is also in Sn. 41 Transfer of property Act.

Prohibition of Benami :-

The benami Transactions (Prohibition) Act 1988 has prohibited Benami transaction in Sn 3(1). Exception : Property purchased by a person in the name of his wife or unmarried daughters, for their benefit. Further whoever enters into Benami transaction is punishable. No suit or claim by the real owner will be entertained by the courts. No defence of benami is also not entertained. Such property may be acquired by the state.

Ch. 14.7 Aprathibandadaya and Sapatibandadaya:

These are the two modes of devolution of property. According to Mitakshara, the wealth of the father becomes the property of his son, son's son and son's son's son . This is unobstructed heritage. This-extends to 3 derees from the common ancestor. Here, there is

no obstruction in the heritage and hence, it is called Apratibada(unobstructed).

P is the propositus. There is unobstructed heritage in the line of son'S, Sons Son ssl., and Son's Son's son SSSj, but the son of SSS1, is not included in the line as long as P is alive. But, when P dies, the son of SSSj enters. Hence, this is the unbroken chain that continues with male descendants. The property devolves by survivorship and not by succession.

In Saprathibandadaya, there is no such direct male link. Example

(i) Father, daughter, daughters son etc, the right of the daughter's son is obstructed by the link. This is Saprathibanda.

(ii) X, inherits certain property from his brother B. X has two sons Y and Z. Such a property is obstructed heritage. Here Y or Z cannot acquire an interest by birth. For the accrual of the right the property is obstructed by X.

Only agnates (male ascendants) property is ancestral, according to Mithakshara coparcenary. The leading cases are

- (i) Venkayamma V Venkataramanayamma.
- ii) Arunachala V. Muruganatha.

Apratibanda Daya	Saprathibandha Daya
1. Vested right is acquired by birth itself	1. There is no birth right, right is only contingent.
2. The Heritage in definite & there will be fluctuation by death or births in the coparcenary	2. The share is to be ascertained when the right to succeed accrues
3. There in survivor ship	3. There is succession only

[Dayabhaya does not make such distinctions]

2 Ch:14.8. Half Full and uterine blood.

The Hindu Succession Act 1956, has defined in Sn.3 Half blood Full blood, and uterine blood.

Full blood: Two persons are related to each other by full blood when they are born to a common ancestor by the same wife.

Half blood : Two persons are related by half blood when they are born to a common ancestor but by **differnt wives**.

Uterine blood: Two persons are related to each other by uterine blood, if they are born to a common ancestor, but by different Husbands.

Importance: The General provisions relating to succession(Sn > to 28, of the Hindu succession Act), have in Sn.18 provided for " preference of Relationship". Hence, relationship by faUblood is preferred to that of half-blood.

E.&Ddied leaving two full sisters, two half brothers, and a alt sister. Question was whether full sisters would exclude half brothers? Held, full sisters excluded two half brothers and of course half sister. Hence, two full sisters were preferred. (Yellava Gowder V Laxmi)

Ch.14.9: Agnates, Cognates:

According to the Hindu Succession Act. 1956.

Sn 3 (a) Agnate : means a person related by blood or adoption wholly through males.

Sn. 3 (c) Cognate: means a person related by blood, or adoption but NOT wholly through males. There is a female link.

Here related means related by legitimate kinship Sn 3(j)

Importance :- Sn. 12 of the H.S.Act provides for order of .. succession among agnates and cognates.. The Rules are:

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

Rule:2 Where the number of degrees of ascent is the same or norie, that heir is preferred who has fewer or no degrees of descent.

Ruie:3 Where neither heir is entitled to be preferred to the other under Rule 1 or 2, they take simultaneously.

Degrees: The order of succession among agnates or

cognates is counted from the "intestate"

The "intestate" is counted as one and then degree of ascent
2 (or descent) is computed Every generation is one degree for
purposes of calculation.

e.g. F - S - SSI - SSS2 - SSSS3

Here F is one, S is degree 2, SSI is degree 3, and so
on.

Similarly for ascent:

GGF - GF - F

Here F is one, GF is 2 and GGF is 3 (cognates are
counted like wise.)

General rules of succession (Sn.8):

The property of Hindu male dying intestate, the
devolution is:

- (i) Firstly on class 1 heirs.
- (ii) Secondly, on class 2 (if there are no class 1 heirs)
- (iii) Thirdly on the agnates of the deceased.
- (iv) Fourthly on the cognates, if there are no agnates.

Thus, the share of agnates or cognates is
determined by applying these provisions of the Act.

Examples:

1. F dies leaving his two wives W1, and W2, sons S1
and S2, daughters D1 and D2.

Here, W1 and W2 - both get one share. Hence, the
property is divided into five shares.

2. F dies leaving behind father's brother's son's son K, and
Sister's daughter's son M. K is an agnate. M is a cognate. Agnate K is
preferred to M.

3. F dies leaving behind his Father's elder brother's son S, and
Fathers younger brother's son's son's.

S (two degrees) is preferred to B three degrees.

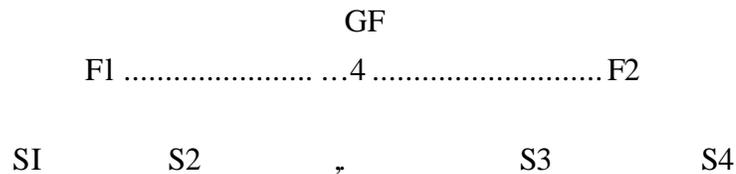
Ch. 14.10: Per capita , Per Stirpes:

Per capita means "Per head": Per

Stirpes means " Per branch":

These are used to denote, how the shares are allotted in
Mithakshara coparcenery. As between sons of a coparcenery, they

take per capita but the grandson's take their share per stirpes



The text of Yagnavalkys says "Among grandsons, the allotment of shares is according to the fathers". This recognizes the doctrine of representation.

In the above illustration: GF is the propositus. F1 and F2 take per capita, that is, equally. But, the grandson's get by per stirpes- that is, by branch. SI and S2 take per stirpes of what F1 gets. Hence F1 branch takes per capita that is 1/2 and SI and S2 by per stirpes. (1/4 each). These have been recognized by the Hindu succession Act. Further, while dealing with succession to males in Sn. 10, the Hindu Succession Act has provided for distribution of property among class 1 heirs.

Rule 3 provides that the heirs in the branch of each predeceased son or each predeceased daughter of the intestate, Shall take between them one share.(that is , on the basis of Representation). Hence, the primary heirs take per capita. Then each son and daughter in that wing is entitled to one share and mother gets one share. In the branch, of the predeceased son's the heirs in each branch take by stirpes.

To this extent the rules is recognized. Hence, per capita and per stirpes help to determine, the exact share each heir is entitled to, in the coparcenery, on the demise of the propositus.

Ch: 14.11: Sapinda, Samanodaka, Bandhu,

Mithakshara prescribes three classes of heirs :-

- (i) Sagotra' Sapinda.
- (ii) Samanodaka.

(iii) Bandhu or Binnagotra Sapinda. The order of preference is also in the same order, (i) **Sagotra Sapinda are:**

a. Propositus's six male descendants and six male ancestors in the male line.

b. The six male descendants of each of these six ancestors.

C. The wives of all these male Sapinda. and (4) daughters of Sapinda, before their marriage if they are within the,? th degree. All

these are Sapinda.

ii) Samanodaka are:

- a. the male descendants and ancestors from the 8th to 14th degree including the propositus.
- b. the male descendants from the 8th to the 14th degree of his first six male ancestors, and,
- c. All the male descendants in the male line within 14 degree of his male ancestors from 8th to the 14th degree. In the absence of Samanodaka, the estate devolves on Bandhu.

3. Bandhu :-

Bandhu "has a distinct and technical meaning, and, signifies " Binnagotra Sapinda"

- Bandhu are the Sapinda, related through a female, being within 5 degrees from the common ancestor(including him).

There are three classes :

- •* 1. Atma Bandhus.

- 2. Pitru Bandhus and

- 3. Matru

Bandhus.

Inheritance:

Two tests are applied to determine whether a Bandhu is entitled to inherit:

- 1. test of degree and
- 2. test of mutuality.

In Ramachandra Mutand V. Kotekar it was held that P who claimed through his mother, but was binna gotra Sapinda beyond 5th degree could not inherit.

Ch: 14.12. Saudayika, Non Saudayika

1. "Stridhana" is married woman's private property (peculium). According to Maine, it is the settled property of the married woman, incapable of alienation by her husband.

In stridhana, the woman has :

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- i) absolute power of alienation, and
- ii) By succession, her property goes to stridhana heirs after her death. Saudayika=received from affection

Saudayika : smruti of Katyayana says : That which is obtained by married woman, or by a maiden in her father's house

from her brother or parents, is saudayika. Property got by "Labdam", "Proptam" and "dattam". Strictly speaking, saudayika was the property got by gifts from near relatives of the woman in which she had absolute rights. It was part of her stridhana.

But, if the gift was from strangers, it was subject to husband's control and hence Non saudayika. Further, widows limited estate was non-saudayika. Leading cases are: Raj am ma V. Vaj ravel u chetti Gajanana yeswant V. Panduranga govind.

Hindu Succession Act 1956; Sn.14 has abolished any such distinction. All property covered under Sn. 14 is her-absolute property.

Sn.14 says; property means property acquired by a female Hindu by inheritance, partition, maintenance, gift from any person before, at or after her marriage. It includes whatever she earns by her own skill or exertion or by purchase, etc., and also includes any property- held by her as stridhana before 1956.

Hence, the subject saudayika is only of academic importance

(Refer ch; 10 stridhana)

Ch: 14.13: Saptapadi :

The Hindu Marriage Act has prescribed various conditions of valid Hindu marriage.

One such condition is the observance of ceremonies of the marriage Sn. 7. provides that the marriage should be solemnized according to the customary rites and ceremonies of either party to the marriage.

When Saptapadi is part of the ceremony, the marriage becomes complete and binding, when the 7th step is taken, by the bride and the bridegroom, before the sacred fire.

Saptapadi is therefore optional. However, it should be performed if it is part of the customary rites and ceremonies of the parties.

In Ram Singh V. Sushila Bai, the Supreme Court declared the

marriage as void, as Saptapade which was a common rite of the marriage had not been performed by the parties.

Ch.14.14. Dasi putra :

He is the son of a Hindu concubine, "Dasi". Such a person is the illegitimate son of a brahmin, Kshatriya or vaisya. The dasi was in the continuous keeping of the putative father.

Such a son is entitled to only maintenance. He is not an "aurasa" son. His right is only personal and not heritable.

Among sudras, the dasiputra is entitled to inheritance if:

i) he is the son of a dasi sudra concubine in continuous keeping

ii) his birth was not out of adulterous or incestuous intercourse.

In Kamalammal V. Viswanath swami it was held that a sudhra dasiputra would get a share which was one half of what a legitimate son would get. Such a person inherits to his father only and not to collaterals. He takes father's separate property by survivorship with legitimate son's. His right is heritable. He has no right to partition. He does not acquire any right in ancestral property. Dasi putra inherits to his mother's Stridhana, equally with legitimate children.

Ch.14.15 Escheat:

Sn.29 of the H.S Act states that on failure of heirs, the property of the Hindu dying intestate devolves on the Government.

The intestate should have left no qualified heir to succeed to his property according to the various provisions: Sn 6,7,8,15,16 etc. of the H.S Act;

The Government takes the property subject to all the obligations and liabilities to which an heir would have been subject.

(Act. 296 of the constitution also deals with escheat, vesting the property in the state, accrued to it as successor state.)

Chapter-15

Succession-3

CHRIS.I. Disqualifications & exclusion from Inheritance:

*•. (1) Under old Hindu Law Persons under some disabilities or defects were exclude[^] from inheritance.

The disabilities were:

- 1, Unchastity.
2. Remarriage.
3. Change of religion or loss of caste
4. Taking sanyasa.
- 5, Heirs with physical and mental defects: i.e. leper, lunatic. Idiot, deaf and dumb.
- 6r Murderer of propositus. (2)

Origin:

The origin to disqualify heirs is in "smritis" Vishnu: Considers outcaste, enuchs, blind, deaf, dumb, insane persons, lepers-as disqualified, to inherit. However, he says that those who take share should maintain such persons. Mithakshara also mentioned these grounds, to exclude from inheritance. Rudra deva's Saraswati vilas excluded impotent persons, outcasts, those who were born blind, born deaf, madmen, idiots and dumb from inheritance.

The leading case is krishna v. Swami (Madras)

3. Removal of disqualifications:

1. Physical: deafness, dumbness
2. Mental: Lunacy, Idiocy.
3. Moral :unchastity

4. Religion : loss of caste, religion etc. These have been removed under Hindu Inheritance (Removal of disabilities) Act 1928.

Changes under Hindu Succession Act:

Sns : 24,25,26,& 28, deal with disqualifications :

(i) **Sn, 28:**

This section specifically states that disease, defect or deformity-are no grounds to disqualify. No disqualification is recognized except what is provided in the Hindu succession Act.

(ii) **Sn. 25 : murderer :**

Justice and public policy, a \ On principles of equity & murderer or a person who abets the commission of murder

is disqualified to inherit the person murdered or attempted at.

Law considers the murderer as non-existent. In *Radheshyam V Deputy Director* (1969) the wife Devaki murdered her husband Bissu & the court held that she would be non-existent and hence, could not claim or inherit.

(2) Sn.26: Conversion:

If a Hindu converts to any other religion and ceases to be a Hindu, he & his descendants are barred from inheriting the Hindu relative.

One exception, is provided. At the time of succession if the children or claimant is a Hindu, he may inherit.

(3) Sn : 24. Remarriage:

Remarriage is a disqualification. Hence, on the date of succession, if the widow specially motioned-in this section has remarried, she cannot inherit.

widow who cannot inherit is the widow of a predeceased son, or widow of the predeceased son of a predeceased son, or widow of brother.

widow rights

Hindu widows Remarriage Act 1856 had stated that the widow could not inherit to her husband's property on remarriage. It was held that in respect of limited estate this rule applied. A woman cannot be a widow, and also a spouse of another. But property already vested in her. [mayne's Hindu Law] will not divest on her remarriage.

Ch : 15.2 Joint Family business & Partnership distinguished.

Partnership

1. There is a contract among partners. There is no status by birth.
2. Each partner is the agent of the other partner in dealings with third parties.
3. Death of a partner may dissolve a firm (unless agreed

otherwise)

4. Partners should account for expenses; each partner can ask for accounts of profit & loss.
5. Partners may borrow in the course of business to bind other partners.

Coparceners are joint owners;
Karta may borrow
survivorship

6. Minors have some advantages under sn.30 of partnership Act. There are no special advantages to minors. Minor not liable for losses.

Joint Hindu Family

Status is by birth; there is no agreement.

There is no agency among coparceners.

Death will not dissolve. By death the interest passes by survivorship. Share will increase or decrease.

There is no accounting between coparceners & each is not liable for accounts.

- | | |
|--------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|
| 7. There is contract & implied authority to partners as per Deed. | The karta alone has implied authority; He may pledge the Joint Family property to bind coparceners. |
| 8. Registration may be made as per sn.69 of the partnership Act. | No registration, |
| 9. Female can be a partner | Female cannot be a coparceners. |
| 10. In case of insolvency of a partner, he ceases to be a partner. | Insolvency does not affect Joint status. |
| 11. Firm may be dissolved by partners or by the court. | Coparceners may sue for severance of status & file for partition. Ch: |

15.3:Change under Hindu Succession Act.

The Hindu Succession Act 1956 has brought about sweeping changes in Hindu Law.

The following is an outline of the changes.

1. The spiritual benefit theory is replaced by "Equality" Hence equality prevails. Hence, in succession, the order of succession is decided on the basis of Equality.

2. The doctrine of woman's limited estate, which was the root cause of ruinous litigation is abolished. The woman becomes absolute owner under Sn.14 of the Hindu Succession Act.

This is given restropective operation. Stridhana of whatever nature is made uniform.

3. There is the objective to have uniformity in the law of succession to both Mithakshara & Daya bhaya Schools.

4. "Stridhana" or woman's property has heirs stated in Sn.15

5. For purposes of succession sons & daughters as heirs are treated equally.

6. Unchastity of woman is not a ground for exclusion from succession:

various other grounds of disqualifications have been removed. Only those stated in Sns; 24,25,26, & 28 are recognized.

7. A coparcener may make a will in respect of his share in Mithakshara coparcenery.

8. Right by birth of son continues. A female has no such right.

9. Testamentary disposition is given, which is a drastic change in mithakshara coparcenery. A coparcener may make a will in respect of his share in the coparcenery. No such privilege existed before.

10. In respect of dwelling houses, right of pre-emption is recognized.

11. An illegitimate child may succeed to its mother's property but not to its father's property.

12. In some circumstances, undivided interest of a coparcener in Mithakshara may devolve by succession and not by survivorship. (Sn.6 with explanation).

Chapter -16

Leading cases

Ch;16.1: Appovier V. Ramasubbien (Privy Council).

A Joint family consisting of six coparceners executed a deed:

(i) They divided three properties named A,B,C, into six parts by metes and bounds ie, each took 1/6 share.

(ii) In respect of a moiety in the villages they decided to divide into 6 shares of the. produce every year.

The deed further stated , that there was no interest in each other's effects and debts, except friendship between them.

The question was whether this was a partition, even though villages were not divided by metes and bounds.

Held:

There was partition.

Joint tenancy is converted into tenancy in common.

Hence, division by metes and bounds was not essential in respect of villages.

Lord Westbury stated :

According to true notion of an undivided family in Hindu Law, no member of that family, while it remains undivided, can predicate of the Joint & undivided property, that he that particular member, has a definite share.

Hence, "Vibhaga" or partition is a severance of the status, and, there will be partition when intention is expressed unequivocally. The ratio of this decision is followed in:

Raghavamma V. Kenchamma (SC)

Puttarangamma V. Ranganna (SC)

Kalyani V. Narayanan (SC)

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Ch:16.2 Collector of Madhura V. Ramalingam (Ramnad case)

Refer Ch:l Ch : 16.3. Devaki Nandan V.

Muralidhar.

An endowment had been made in favor of an Idol. The public were visiting & worshipping without interference. The "Prathishta" ceremony had been performed. The question was whether the temple was private or public.

Held : the beneficiaries in private temple are specific;but they . are incapable of ascertainment in public temple.

As per the facts proved, it was clear that the public were having free access, & were the beneficiaries. Held, the temple was public.

Ch:16.4 Tulasamma V. Sesha Reddy (S.C.1977).

In this case, the supreme court overruled its earlier decision:
Narain Devi V. Rama Devi (1976).

It examined in detail the scope of Sn.14 of the Hindu Succession Act, and the inter-relationship between Sns 14(1) & (2).

Facts: Tulasamma's husband Venkatasubba Reddy expired in 1931, when he had joint status with his step-brother Sesha Reddy. T. filed a suit against Sesha Reddy for maintenance in 1941 & it was decreed *ex parte*.

At the execution stage, there was a compromise & certain properties were allotted to her but without any power of alienation.

In 1960, she alienated certain properties. Sesha Reddy filed a suit for declaration that the alienation was not valid & that he was not bound by it after T's death.

T claimed that under Sn.14 she had become absolute owner of the property. The supreme court held

(i) As T got the property in lieu of her maintenance, and as she was in possession, she became the absolute owner & hence, has the right to alienate.

(ii) Sn.14(2) had a limited scope. It applied only when the female Hindu got the property for the first time as under a gift, will decree, order or award, with a restriction thereof. But, when the female gets a property under a pre-existing right, Sn. 14(2) could not control Sn.14(1). If it is allowed to control, Sn.14(1) will become meaningless, and the very objective of abolishing widow's limited estate would be defeated.

(iii) As such, T became absolute owner & her alienation of property was valid.

This decision was followed by Supreme Court in *Vajia v. Thakur Bhai* (1979)

Ch:16.5 Sawan Ram V Kalavati-

Refer Ch:3.4P.26.

Ch:16.6 Brig Narain V Mangal Prasad-

Refer Ch:13.2.

Ch:16.7 Hemraj V Khemchand-

Refer Ch:13.2.

Ch:16.8 Arunachala Mudaliar v Muruganatha-

Refer Ch:6(4). p.41.

Ch:16.9.Venkayammav.venkataramanayamma- . ;,,

Refer Ch:6(4).

Ch:16.10 Hanuman Prasad v. Boboe.

The question for consideration in this case was the authority of Mother, as manager of the properties of her minor son to mortgage the properties.

The facts were that H was the minor son of B. B made certain transfers of ancestral properties of the minor. H, Challenged the transfer on the ground that he had no authority to transfer or alienate. The court held that alienation was without authority and it set aside the transfer.

Chapter-17

Marimakkatkayam, Aliyasantana & Namboodri Law Salient Features

1. Marumakkathayam Law :

This is based on matri-archal system and mother is the stock of " descent. The devolution of property is from mother to daughter, daughter to daughter & so on. This female line is Tavazhi. The family is called Tarwad. The salient feature of it that there are males & females from a common, female ancestor. The control and management is with the eldest male called "Karnavan".

Marumakkathayam :

Literally it means devolution of a man's property to his sister's children. Customs & usages are the main sources, a part from Hindu Law The basis is secular.

There were many Acts-Nair Act, Ezhava Act, Madras Marumakkathayam Act. Etc. All these are abrogated by Hindu Succession Act.

Hindu succession Act is applicable to a number of communities like Varriers, Nambiyars, Unnis, Poduvals, Chakkiars etc. living in Travancore, Cochin, Madras etc.

Features of Tarwad :

It is the Joint family. Tavazhi of a female consists of an ancestress her children and all her descendants in the female line how low-so ever. All have equal rights in tarwad properties, On the death of a person, survivorship applied.

This system was abolished by the Kerala Joint Family system (Abolition) Act 1971.

Ch:16.12. Peddasubbiah v. Akkamma:

In this case, a next friend "F" filed a suit for partition on behalf of a minor M, and the question was, whether this could sever the status of the minor from the coparcenary.

The Madras High court in such cases had held that there would be severance if it was for the benefit of the minor, from the date of the suit.

The Allahabad High court had held that separation would take place on the date of decree of the court.

1. Allahabad decision was no longer good law.

2. when the suit is filed at the instance of the minor, the partition is claimed on the date of the suit, hence, the minor's share is to be determined on the date of suit.

Ch: 16.13. Kotturawami V. Veeravva; Refer Ch 7(2)

Ch: 16.14. Amarendra Mansingh V.Sanatan singh.

Refer Ch.7.

The court held:(Lord Bruce.) :

1. The authority of a manager (mother) of a Joint Hindu family, was similar to a guardian of an infant heir.
2. In Hindu Law under exceptional circumstances, transfer may be made for legal necessity, These are:
 - (i) Apat-Kale-time of distress, (ii) Kutumbarte-benefit of family, (iii) Dharmarte-pious purposes.
3. "The mother had a limited and qualified power. It can only be exercised rightly in case of need and for benefit of the estate"-the court said.
4. The actual pressure on the estate and danger to be averted-are the tests. The objective, terms & conditions and nature of alienation should be for legal necessity only.

This decision is applied to all cases where property is looked after by person ie, Mutts, Shebait, Guardian, Karta, Trustee—etc. (Refer; Ch; 14.5) **Ch: 16.11. Puttarangamma v. Ragamma!**

In this case B had four daughters (but no son) and he constituted a H.U.F. In 1951 he sent a regd, letter to the coparceners of his unequivocal intention to separate from them. He, on his family friends advice, withdraw his notices . Amicable settlement failed. B filed a suit. The respondents contended;

- i) That notice was withdrawn by B. ii) It was duly conveyed to coparceners.
- iii) It is not open to B, to withdraw, as notice had already been received by coparceners.
- iv) Withdrawal will not restore original family status.

under this Act :-

Sn:3. Birth in the family, will not give rise to rights in property of Tarwad.

Sn:4. Joint family with Joint tenancy in property, in replaced by tenants in common, ie, each holds his own share under notional partition.

Sn:5. The rule of pious obligation of the Hindu son to discharge father's debts is abolished.

Aliyasantana Law :-

The Marumakkatayam system of Kerala is called - Aliyasantana in karnataka. The descent is through sister's children. The family is called "Kutumba" and each branch in the family is "Kayaru"

Namboodris Law :-

The Namboodris in Kerala are governed by Hindu Law. They follow Mithakshara coparcenary system and their own customs and usages. The right by birth in the family and survivorship are recognized. The properties are called Illom. Males & females have equal rights in Illom. There is no compulsory partition. Pious obligation is not recognized.

The management is with karnavan. In "Sarvasva-danam" marriage the marriage amounts to adoption of son in law to the family of the bride.

Special Provisions :-

The Hindu Succession Act has provided for special provisions:

i) It has defined marumakkatayam Law, Namboodri law and Aliyasantana Law Sn.(2)

ii) Devolution of interest in the property of Tarwad, Tavazhi, Kutumba, Kavaru, Illom is governed by the Hindu Succession Act. Under Sn.7 and after the commencement of the Act the interest of a person devolves by testamentary or interstate succession, as provided in the Act. The share of the person, is what the person would have got, on a notional partition (per capita basis) and the person gets absolute right in his share,

Leading cases: Kalyani V Narayanan

Sundari V. Laxmi.

iii) Succession to males is as follows :

1. First, on heirs of class 1 schedule.
2. Secondly, on heirs of class2.
3. If there are no heirs of classes 1& 2, then on relatives, agnates or cognates.

iv) Succession to females :

Property of females dying intestate after 17th June 1956 devolves as follows :-

1. firstly, on sons, & daughters (including) children of predeceased son or daughter and the mother.
2. 2 secondly on father and the husband.
3. Thirdly on the heirs of mother.
4. fourth on the heirs of Father, on the heirs of husband,
5. Fifthly Marumakkathayam and Aliyasantana system, the above changes have been made by the Hindu Succession Act 1956.However in respect of maintenance, marriage, etc. the customs and usage continue to govern if not repugnant to Hindu Succession Act.

THE END

REFERENCE SECTION

Selected Sections

THE HINDU MARRIAGE ACT, 1955

(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 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.

(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.

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;

(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;

(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;(ii) two persons are said to be "sapindas" of each other if one is a lineal ascendant of the other within the limits of sapinda relationship, or if they have a common lineal ascendant who is within the limits of sapinda relationship with reference to each of them;

(g) "**degrees of prohibited relationship**"-two persons are said to be within the "degrees of prohibited relationship"—

(i) if one is a lineal ascendant of the other; or(ii) if one was the wife or husband of a lineal ascendant or descendant of the other ; or(iii) if one was the wife of the brother or of the father's or mother's brother or of the grandfather's or grandmother's brother of the other; or(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 ; [(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].

5. Conditions for a Hindu marriage.

5. A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:-

(i) neither party has a spouse living at the time of the marriage

1[(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 or epilepsy;]

(iii) the bridegroom has completed the age of 21[twenty- one years] and the bride the age of 18[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.

Formalities

(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.

.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 of 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 any thing 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 cases as may be specified, and where any such direction has been issued, any person contravening any rule made in this behalf shall be punishable with fine which may extend to twenty-five rupees.

RESTITUTION OF CONJUGAL RIGHTS AND JUDICIAL SEPARATION

9. Restitution of conjugal right. 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.

10. Judicial separation.

(1) Either party to a marriage, whether solemnized before or after the commencement of this Act, may present a petition praying 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 any of the grounds specified in sub-section (2) thereof, as grounds on which a petition for divorce might have been presented.]

(2) Where a decree for judicial separation has been passed, it shall no longer be obligatory for the petitioner to cohabit with the respondent, but the court may, on the application by petition of either party and on being satisfied of the truth of the statements made in such petition, rescind the decree if it considers it just and reasonable to do so.

NULLITY OF MARRIAGE AND DIVORCE

11. Void marriages. Any marriage solemnized 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.

12. Voidable marriages.

(1) Any marriage solemnized, 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:- 5[(a) that the marriage has not been consummated owing to the impotence of the respondent ; or] (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 the consent of such guardian was obtained by force or by fraud as to the nature of the ceremony or as to any material fact or circumstances concerning the respondent]; or (d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.

(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 solemnized before the commencement of this Act within one year of such commencement and in the case of marriages solemnized after such commencement within one year from the date of the marriage; and (iii) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of 2[the said ground].

13. Divorce.

(1) Any marriage solemnized, 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 solemnization of the marriage, had voluntary, sexual intercourse with any person other than his or her spouse ; or

(ia) has, after the solemnization of the marriage, treated the petitioner with cruelty; or

(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

1[(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.- (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 require or is susceptible to medical treatment; or]

(iv) has been suffering from a virulent and incurable form of leprosy; or(v) has 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.

[Explanation.- "desertion" means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage,

[(1A) Either party to a marriage, whether solemnized before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground- (i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of 5[one year] or upwards after the passing of a decree for judicial separation in a proceeding to 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 5[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,-

(i) in the case of any marriage solemnized before the commencement of this Act, that the husband had married again before such commencement or that any other wife of the husband married before such commencement was alive at the time of the solemnization 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 solemnization of the marriage, been guilty of rape, sodomy or 6[bestiality; or]

[(iii) that since the passing of decree or order, cohabitation between the

parties has not been resumed for one year or upwards;

(iv) that her marriage (whether consummated or not) was Solemnized before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.

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.

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 solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976, (68 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 solemnized 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

Proposed Amendment to Sn 13 to make divorce easier

Not yet passed up to May 2012

3. After section 13B of the Hindu Marriage Act, the following sections shall be inserted, namely:—

‘13C (1) A petition for the dissolution of marriage by a decree of divorce may be presented to the district court by either party to a marriage [whether solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 2010], on the ground that the marriage has broken down irretrievably.

(2) The court hearing a petition referred to in sub-section (1) shall not hold the marriage to have broken down irretrievably unless it is satisfied that the parties to the marriage have lived apart for a continuous period of not less than three years immediately preceding the presentation of the petition.

(3) If the court is satisfied, on the evidence, as to the fact mentioned in subsection (2), then, unless it is satisfied on all the evidence that the marriage has not broken down irretrievably, it shall, subject to the provisions of this Act, grant a decree of divorce.

(4) In considering, for the purpose of sub-section (2), whether the period for which the parties to a marriage have lived apart has been continuous, no account shall be taken of any one period (not exceeding three months' in all) during which the parties resumed living with each other, but no other period during which the parties lived with each other shall count as part of the period for which the parties to the marriage lived apart.

(5) For the purposes of sub-sections (2) and (4), a husband and wife shall be treated as living apart unless they are living with each other in the same household, and reference in this section to the parties to a marriage living with each other shall be construed as reference to their living with each other in the same household.

13D. (1) Where the wife is the respondent to a petition for the dissolution of marriage by a decree of divorce under section 13C, she may oppose the grant of a decree on the ground that the dissolution of the marriage will result in grave financial hardship to her and that it would in all the circumstances be wrong to dissolve the marriage.

(2) Where the grant of a decree is opposed by virtue of this section, then,—

(a) if the court finds that the petitioner is entitled to rely on the ground set out in section 13C; and

(b) if, apart from this section, the court would grant a decree on the petition, the court shall consider all the circumstances, including the conduct of the parties to the marriage and the interests of those parties and of any children or other persons concerned, and if, the court is of the opinion that the dissolution of the marriage shall result in grave financial hardship to the respondent and that it would, in all the circumstances, be wrong to dissolve the marriage, it shall dismiss the petition, or in an appropriate case stay the proceedings until arrangements have been made to its satisfaction to eliminate the hardship.

13E. The court shall not pass a decree of divorce under section 13C unless the court is satisfied that adequate provision for the maintenance of children born out of the marriage has been made consistently with the financial capacity of the parties to the marriage.

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, 1[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 1[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 1[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 1[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 1[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 1[said one year].

15.Divorced persons when may marry again. When a marriage has been dissolved by a decree of divorce an either there is no right of appeal against the decree or, if there is such right of appeal, the time for appealing has expired without an appeal having been presented, or an appeal has been presented but has been dismissed it shall be lawful for either party to the marriage to marry again.

16. Legitimacy of children of void and voidable marriages.

Notwithstanding that a 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** d 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 upon 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.

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 (45 of 1860) Code shall apply accordingly.

18.Punishment for contravention of certain other conditions for a Hindu marriage. Every person who procures a marriage of himself or herself to be

solemnized under this Act shall be punishable- , with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees,

JURISDICTION AND PROCEDURE

19. . Every petition under this Act **shall be presented to the district court** within the local limits of whose ordinary original civil jurisdiction-- (i) the marriage was solemnized, 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 (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

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 2 [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 complaints, and may, at the hearing, be referred to as evidence.

22.proceedings to be in camera and may not be printed or published. . (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.]

24.**Maintenance Pendente lite and expenses 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.

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 1*** 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 as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant, 2[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, 2[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].

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 and the court may also from time to time revoke, suspend or vary any such orders and provisions previously made .

THE END

REFERENCE SECTION

Selected Sections

THE HINDU ADOPTIONS AND MAINTENANCE ACT, 195

Sn 2(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;

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.

7.Capacity of a male Hindu to take in adoption.

Any male Hindu who is of sound mind and is not a minor has the capacity to takes on or a daughter in adoption:

Provided that, if he has a wife living, he shall not adopt except with the consent of his wife unless the wife has completely and finally renounced the word 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 proviso.

8.Capacity of a female Hindu to take adoption.

8. . 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.

9.Persons capable of giving in adoptions.

(1)No person except the father or mother or the guardian of a child shall have the capacity to give the child in adoption.

(2) Subject to the provisions of 1[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.

(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.

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;

2[(ia) "guardian" means a person having the care of the person of a child or of both his person and property and includes-

(a) a guardian appointed by the will of the childs 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: -

- (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.

11. Other conditions for a valid adoption.

. In every adoption, the following conditions must be complied with: -

- (i) if the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son, sons son or sons sons 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 sons 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 1 [or in the case of an abandoned child or a child whose parentage is not known, from the place or family where it has been brought up] to the family of its adoption:

Provided that the performance of datta homam shall not be essential to the validity of an adoption.

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.

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.)Where a Hindu who has a wife living adopts a child, she shall be deemed to be the adoptive mother

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 adoptions.

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,

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.

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 leprosy;

(d) if he has any other wife living ;

(e) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine else-where ;

(f) if he has ceased to be a Hindu by conversion to another religion ;

(g) if there is any other cause justifying her living separately,

(3) A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.

.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 and to the extent that she is unable to maintain herself out of her own

earnings or other property or, where she has no property of her own, is unable to obtain maintenance-

- (a) from the estate of her husband or her father or mother, or
- (b) from her son or daughter, if any, or his or her estate.

(2) Any obligation under sub-section (1) shall not be enforceable if the father-in-law has not the means to do so from any coparcenary property in his possession out of which the daughter-in-law has not obtained any share, and any such obligation shall cease on the remarriage 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 life-time, 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 childless step-mother.

21. Dependants defined.

. For the purposes of this Chapter "dependents" 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 pre-deceased son or the son of a pre-deceased son of his pre-deceased 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 mothers estate, and in the case of a .great-grandson, from the estate of his father or mother or fathers father or fathers mother ;
- (v) his or her unmarried daughter, or the unmarried daughter of his pre-deceased son or the unmarried daughter of a pre-deceased son, of his pre-deceased son, so long as she remains unmarried: provided and to the extent that she is unable to obtain maintenance, in the case of a granddaughter from her father's or mothers estate and in the case of a great-grand-daughter from the estate of her father or mother or fathers father or fathers mother ;
- (vi) his widowed daughter: provided and to the extent that she is unable to obtain maintenance-

- (a) from the estate of her husband ; or
- (b) from her son or daughter if any, or his or her estate ; or
- (c) from her father-in-law or his father or the estate of either of them ;

- (vii) any widow of his son or of a son of his pre-deceased son, so long as she does not re-marry: provided and to the extent that she is unable to obtain maintenance from her husbands estate, or from her son or daughter, if any, or his or her estate ; or in the case of a grandsons widow, also from her father-in-laws 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 dependents.** Subject to the provisions of sub-section (2), the heirs of a deceased Hindu are bound to maintain the dependents of the deceased out of the estate inherited by them from the deceased.

(2) Where a dependent has not obtained, by testamentary or intestate succession, any share in the estate of a Hindu dying after the commencement of this Act, the dependent 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 dependent 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 claimants property and any income derived from such property, or from the claimants 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 dependent 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 dependent

(e) the past relations between the dependent and the deceased;

(f) the value of the property of the dependent and any income derived from such property; or from his or her earnings or from any other source ; . (g) the number of dependents entitled to maintenance under this Act.

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 dependents for maintenance under this Act.

27.Maintenance when to be a charge. A dependants 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 dependent and the owner of the estate or

portion, or otherwise.

28.Effect of transfer of property on right to maintenance.28.Effect of transfer of property on right to maintenance. Where a dependent has a right to receive maintenance out of an estate and such estate or any part thereof is transferred, 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.

THE END

REFERENCE SECTION

Selected sections

HINDU MINONORITY AND GUARDIANSHIP ACT, 1956

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 guardians**” means any of the guardian mentioned in section 6.

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 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 illegitimate boy or an illegitimate unmarried girl- the mother, and after her, the father;
- (c) in the case of married girl -the husband: PROVIDED that no persons 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 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.

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 realization, 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, shall apply to and in respect of an application for obtaining the 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 Guardians and Wards Act, 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.

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 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 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 girl, cease on her marriage.

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.

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. **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.

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.

THE END

REFERENCE SECTION

Selected sections HINDU SUCCESSION ACT, 1956

1. Short title and extent

(1) This Act may be called the Hindu Succession Act, 1956

3. Definitions and interpretations

(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 matters for which provision is made in this Act;

(c) "**cognate**" - one person is said to be a cognate of another if the two are related by blood or adoption but not wholly through males;

(d) 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:

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 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;

(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; the Travancore Nayar Act; the Travancore Ezhava Act; the Travancore Nanjinad Vellala Act; the Travancore Kshatriya Act;

the Travancore Krishnanvaka Marumakkathayee Act; the Cochin Marumakkathayam Act; or the Cochin Nayar Act 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 ¹[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; the Cochin Nambudri Act; 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 mother 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 imparting the masculine gender shall not be taken to include females.

4. Overriding 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 insofar as it is inconsistent with any of the provisions contained in this Act.

(2) For the removal of doubts it is hereby declared that nothing contained in this Act shall be deemed to affect the provisions 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.

INTESTATE SUCCESSION

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 Thampuran 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.

6. Devolution of interest of 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.

See **Hindu Succession Act Amendments 2005** at page 112 **Reference section**

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 the property of a tarwad, tavazhi or illom, 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 marumakkattayam or nambudri law.

Explanation : For the purposes of this sub-section, the interest of a Hindu in the property of a tarwad, tavazhi or illom shall be deemed to be the share in the property of the tarwad, tavazhi or illom, 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 tarwad, tavazhi or illom, as the case may be, then living, whether he or she was entitled to claim such partition or not under the marumakkattayam or nambudri law applicable to him or her, and such share shall be deemed to have been allotted to him or her absolutely.

(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 akutumba 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 kutumba or 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.

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;
- (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.

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 and daughters get equal portions; and the branch of his predeceased sons gets the same portion;

(ii) among the heirs in the branch of the pre-deceased daughter shall be so made that the surviving sons and daughters get equal portions.

11. Distribution of property among heirs in class II of the Schedule

The property of an intestate shall be divided between the heirs specified in any one entry in class II of the Schedule so that they share equally.

12. Order of succession among agnates and cognates

The 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.

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.

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;
- (c) thirdly, upon the mother and father;
- (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.

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 intestate's 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 including 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) of 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 Aliyantana 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 if 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.

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 stripes; 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 death of an intestate and who is subsequently born alive has 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.

22. Preferential right to acquire property in certain cases

(1) Where, after the commencement of this Act, 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, devolve 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

Where a Hindu intestate has left surviving him or her both male and female heirs specified in class I of the Schedule and his or her property includes a dwelling-house wholly occupied by members of his or her family, then, notwithstanding anything contained in this Act, the right of any such female heir to claim partition of the dwelling-house shall not arise until the male heirs choose 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, she shall be entitled to a right of residence in the dwelling-house only if she is unmarried or has been deserted by or has separated from her husband or is a widow.

24. Certain widows remarrying 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 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.

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.

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.

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 subjected.

30. Testamentary succession

Any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so disposed of by him, in accordance with the provisions of the Indian Succession Act, 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 atarwad, 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 ³[section.]

THE HINDU SUCCESSION (AMENDMENT) ACT, 2005

[5th September, 2005.]

An Act further to amend the Hindu Succession Act, 1956.

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:-

1.

Short title and commencement.

1. Short title and commencement.-(1) This Act may be called the Hindu Succession (Amendment) Act, 2005.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

3. Substitution of new section for section 6.-For section 6 of the principal Act, the following section shall be substituted, namely:-

'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, 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 predeceased son or of such pre-deceased daughter; and

(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.'

THE END