ASNSS's

MAHATMA GANDHIJI LAW COLLEGE

SANKESHWAR.

Subject:-Family Law –I

(HINDU LAW)

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Unit-I

1. Introduction

2. Concept of Dharma

3. Sources of Hindu law

4. Importance of dharma on legislation

5. Schools of Hindu law

1.INTRODUCTION

Hindu law consider being most ancient in the world .it has been in every phase. It is about 6000 year old. It has been established by common man who was hindu Magne says, "Hindu Law has the oldest pedigree of any known system of Jurisprudence and even now it shows no signs of decrepituded. The Hindu system as modified through centuries has been in existence for over five thousand years and has continued to govern the social and moral patterns of Hindu life with amazing catholicity of vision, harmonizing the diverse elements of Hindu cultural life.

2.Concept of Dharma

Hindu Law is a body of principles or rules called Dharma'. Dharma according to Hindu texts embraces everything in life. According to the Hindus, 'Dharma" includes not only what is known as law in the modern sense of the term but all rules of good and proper human conduct.

The term 'Dharma' is derived from the root dhri' which means "to sustain, 'uphold. Panini interprets Dharma as an act of religious merit, custom and usage. Thus Dharma came to mean 'morally proper, ethical duty, religious virtue, ideal, absolute truth, universal law, divine justice, conventional code of customs and traditions.

According to Manu, Dharma or law is an order of human behavior. This ordering of human relations is absolutely valid and just because it emanated from the will of God, and because it has regulated the behavior of men, in a way satisfactory to all. The rights

and duties of man established by this law are innate or inborn in him, because they are implanted by nature and not imposed from outside.

Dharma in other words an eternal moral order which is based on cosmic. Dharma has been the regulator of all human activities whether social or individual, moral or metaphysical, rational or mystical, spiritual. It is Dharma which has impelled men since Vedic ages to strive for 'righteousness'.

'Dharma' is used to mean justice (Nyaya) what is right in a given circumstance, moral, religious, pious or righteous conduct, being helpful to living beings and things, duty, law and usage or custom having the force of law and also valid Rajasasana

. Law as understood by the Hindus is a branch of Dharma an expression which signifies 'duty' and 'obligations' religious, moral, social and legal.

Hindu law is deeply rooted in Hindu philosophy and Hindu religion. Hindu philosophy and religion consist of thoughts and postulates that have prevailed for thousands of years amongst Hindu society. Hindu Philosophy Karma Philosophy Immorality of soul. The concept of birth rebirth and Moksha(Salvation).Body perishes, soul finds a new Life it is not important but aim of life is important. To achieve libration from the chain of birth and rebirth. The shastras laid down the duties of the king and also laid down the rules to guide him how he had to administer the laws. His foremost duty was to uphold the law. Administration of justice it was second important duty of the king. He was fountain of justice. He was the Highest Court. He delivered justice with the assistance of his court officers.

Basically Hindu Philosophy speaks of three courts- Puga a local court consisting of villagers of townsmen. Srenai a court consisting if members of same trade, business of calling. Kula-court consisting of relations by blood or marriage. All these courts had original jurisdiction. From their decision ultimate appeal was to the king’s court. King’s decision was final and binding. In some cases he exercised original jurisdiction and also has power to take sue moto cognizance over the case. He had both judicial and executive power in him. Though the scared law was supreme but. Decision is the customs and Rajyadesha had an overriding effect over it. Brihaspati speaks of four pillars of law rendered with means of- Dharma- Moral Law, Rules of Justice,Reason. Vyavahara Civil Law.Charitra- Customs.Rajyashasan-king’sordinance. Customs are a

unique source of law.They over ride the scared law. They are supplementary to shastric laws.Customary law (within a caste, district, family) to be inquired before administration of justice.

According to Narada “customs decide everything and override the scared law. They are immemorial usage of every province handed down from generation to generation can never be overruled on the name of shastras.” (Instances) Dharmashastras were based on customs. Scared law is subordinate to customs.Rajyashasana- Yajnavalkya and Narada give lots of importance to rajyashasana.Dharma, the king has obtained lordship, he has to be obeyed. Polity depends on him.”Sanction behind law- Prayaschitta- its means penance or expiation. Modes of undoing the wrong done to the victim and a mode to undo the wrong by the wrongdoer himself. .Every act done against dharma is a sin. It was a wrong for which the doer had to undergo Prayaschitta. It is self inflicted punishment by the wrongdoer. Mode to purify himself and his conscience. Manu describes three modes of Prayaschitta- Mahapatakas-sins like killing a brahmin, drinking of sura, violates preceptors bed, etc. Anupatakas- sins analogus to mahapatakas. Upapatakas- petty offences like unworthy offerings, usury, not reading Vedas, reading bad books, subsisting on wife’s earnings etc Prayaschitta was not only mode of purification but also punishment and none could escape it. One could escape secular punishment but not prayaschitta.Danda Secular punishment. Manu says- “danda alone governs all protected beings, alone protects them, watches over them while they sleep, the wise declare it the law.” Manu, Narada give lots of significance to it.

3.Sources of Hindu law

SYNOPSIS

A. Ancient sources

1. Shruti
2. Smriti

3. Commentaries and Digests

4. Custom

B. Modern Sources

1. Equity, Justice and good conscience

2. Precedent

3. Legislation

4. Judicial Decisions

Ancient Sources

Describing sources of Hindu law "the Vedas the smruti, are approved usage, declared to be the direct evidence of Dharma.

(1) Sruti ;-

Srutis are believed to contain the very words of God. They are supposed to be the divine utterances to be found in the four Vedas, (namely the Rig Veda, the Yajur Veda, the Sama Veda and the Atharva Veda), the six Vedangas (i.e. appendages to the Vedas) and the eighteen Upanishadas. They are mostly religious in character. In theory Sruties are considered to be the primary and paramount sources of Hindu Law.

2**. Smritis**:-

Smriti They is utterances and precepts of the Almighty, which have been heard and remembered, and handed down by the Rishis (sages) from generation to generation. The exact number of Smritis (or Codes) is not definitely known, but the earliest one seems to be the Manu Smriti. The Smritis are divided into primary and secondary Smritis, the latter being later in date; the primary Smrities are again classified into :-(i) Dharma Sutras (ii) Dharmashastras. The number of Smriti writers is almost impossible to determine but some of the noted Smriti writers enumerated by Yajnavalkya (sage from Mithila and a major figure in the Upanishads) are Manu, Atri, Vishnu, Harita, Yajnavalkya, Yama, Katyayana, Brihaspati, Parashar, Vyas, Shankh, Daksha, Gautama, Shatatapa, Vasishtha, etc The rules laid down in Smritis can be divided into three categories viz.

1. Achar (relating to morality),

2. Vyavahar (signifying procedural and substantive rules which the King or the State applied for settling disputes in the adjudication of justice) and 3.Prayaschit (signifying the penal provision for commission of a wrong).

3**. Commentaries and Digests**:-

The commentaries though professing and purporting to rest on the Smritis, explained, modified and enlarged the traditions recorded therein to bring them into harmony and accord with prevalent practice of the day to suit the felt necessities of the time. The manusmriti and the Yajanavalkya smriti have found the greatest number of commentators.

(4) **Customs:-**

Where there is a conflict between a custom and the text of the Smritis, such custom will override Custom may be defined as a habitual course of conduct generally observed in a community. In a singular contribution of historical school of jurisprudence that it conclusively established that in early societies. Custom was the main vehicle of legal development.

Kinds of Customs

Customs may be broadly divided into:-

local custom:- Local custome, those customer which are applicable to a particular locality or like a village or a town and our binding on all inhabitants of that locality the general custom of such pros throughout the country and constitute one of the sources of a common law

Class custom: - these are the custom of a particular cast or a set of a community and they are established beyond all reasonable doubts in a case of Umara Parvati vs Bhagawati 1972, Madras 151 in this case it has been held at among the Krishnavanka community and the Chetties of Tamil Nadu. There is a custom of PatniBhagam prevalent, according to which the division of the

property is made according to the member number of wives and sons by each wife constituting a unit, and the wife's self are not entitled to initiate

Family custom:- Family custom are custom, which are confined to a particular family only and do not apply to a person who are not member of such a family, accustomed that a property should remain imperishable being held by one man at a time is another instance of a family custom

Essentials of a valid custom –

In order to be valid, a custom must satisfy the following six requirements:

A) Custom must be Ancient:-

Custom must be ancient under Hindu law in memorable custom has has efficiency of law ancient custom by itself is in a force of law so custom must be used of a long-standing nature, which would indicate that a common consent. It has been accepted as a law governing, a particular locality class or a family in a **Babu Narayan Lakha's Vs Sabu Shah 1949ALJ 360** pre-council said that in India custom need not to be a memorable, but the requirement of a long usage is essential.

b) **Custom must be certain: -** It must not be a Volk ambitious in a definite in order to make a custom, definite and certain universality. Its observance is necessary if a custom change from time to time, there will be no university. The recognition of any custom can be extended only when a clarity or unambiguity is proved

c) **Custom must be reasonable: -** Customer must be reasonable, reasonable means custom should not be contrary to public policy they must be in accordance with the rule of the justice equity and good science or unreasonable. Custom is wide custom differ from place to place and reasonableness is a matter of a social value therefore, reasonableness of accustom is determined on the context of society in which it exists

d) **Continuity:-** continuity of a custom is a essential for acceptance of a valid custom continuity of a custom is essential as its antiquity to obtain a

legal existence of for a custom clear proof of its continuous observance is necessary

e) Uniform:- to make a custom valid one, it is necessary that it is absurd uniformly there must be uniformity in its observance if it is not observed informally, then it is not invalid

custom not a oppose to public policy:- customer which is opposed to public policies avoid Raghav Verma Vs Ravi Verma 1876 4IA 76 the privy council in this case held that a custom permitting the trustee of a religious endowment to sell the trust was wide and contrary to public policy

f) Not a positive to law:- in order that custom to be a valid one, it must not opposed to allow for the time being enforce a custom must not be contrary to mandatory provisions of a law law it includes not only a statutory law, but also a mandatory track of Dharmashasthara, but here by being opposed to the law we mean, opposed to a statutory law search, custom cannot be given effect hence a custom must confirm a statute law

The following are examples of customs, which the Courts have refused to recognize:-

(a) A caste custom, authorising a wife to abandon her husband, and marry again without his consent.

(b) A custom permitting a husband to dissolve his marriage without the consent of the wife by paying a fixed sum of money.

(c) The custom among dancing girls of adopting one or more daughters.

(d) A custom in South India, according to which a man could marry his daughter's daughter.

Burden of proof The burden of proof of a custom of Hindu Law which is derogatory to that law is upon the person who asserts it. Conversely, when a custom has been proved, the burden of proving its discontinuance lies on the party who alleges such discontinuance.

Modern Sources:-

(1) **Justice, equity and good conscience**:-

In the absence of any specific law in the Smriti, or in the event of a conflict between the Smritis, the principles of justice, equity and good conscience would be applied. The Supreme Court has observed in Gurunath v. Kamlabai (A.I.R. 1955 S.C. 206), in the absence of any clear Shastric text, the Courts have the authority to decide cases on principles of justice, equity and good conscience.

(2) **Precedent:-**

Precedent is called to be a source of Hindu Law in two sense:-

Firstly:-All the important principles and rules of Hindu Law have now been embodied in case law. In such matters, recourse to original sources is not necessary. Reference to leading decision is enough. In this sense, precedent or case law is the source, by and large, of most of the law rules and principles of Hindu law.

Secondly:-Precedent is a source of law in the sense that by the process of judicial interpretation, doctrines, principle and rules of law stand modified or altogether new principles, doctrines and rules have been introduced in the body of Hindu Law.

(3). **Judicial decisions**:-

Judicial decisions on Hindu Law are sometimes spoken of as a source of law. Almost all the important points of Hindu Law are now to be found in the law reports and to this extent it may be said that the decisions on Hindu Law have superseded the commentaries. In Shri Krishna Singh v. Mathura Ahir, (1981) 3 S.C.C. 689, it was observed that in applying Hindu law, the Judge should not introduce his own concepts of modern times, but should enforce the law as derived from recognised and authoritative sources of Hindu law, i.e. Smritis and commentaries, as interpreted in the judgments of the various High Courts, except where such law is altered by any usage or custom, or is modified or abrogated by statute.

(4**) Legislation**:-

Several enactments had come into force with the coming of British rule in India, and kept coming after the British departure. These legislative enactments which declare abrogate or modify the ancient rules of Hindu Law, thus form an additional modern

source of Hindu Law. The Hindu Law Committee, appointed in 1941, recommended that this branch of the law should be codified in gradual stages. However, the most important enactments were those which came in force 1955 and 1956, namely the Hindu Marriage Act, the Hindu Minority and Guardianship Act, the Hindu Succession Act, Hindu Adoption and Maintenance Act. Several amendments have been made in the four principal Acts referred to above. Notable amongst such amendments was the one passed in 1976, which has radically modified in Hindu Marriage Act, as for instance, by introduction, for the first time amongst the Hindus, the concept of divorce by mutual consent.

4). IMPORTANCE OF DHARMA SHASTRA ON LEGISLATION:

The Dharma Shastras were meant for people who were driven by the illusory world, who would engage in desire oriented actions and needed to be regulated for the purpose of maintaining or preserving the moral, social and political order. They were composed to emphasize the importance of leading a virtuous and divine oriented life on earth and remain on the side of God for a better tomorrow and harmonious today.

Dharma-shastra is the "science of dharma" and is a set of texts which teach the eternal immutable dharma found in the Vedas. The Dharma-shastras expanded and remodeled in verse form the Dharmasutras. Both these groups of texts are commonly translated as "The Law Books" but this is misleading. Dharma means a great deal more than "Law" and in classical Hindu thought there was no distinction between religion and law. In socio-religious terms dharma upholds private and public life and establishes social, moral, and religious order. As the basis for the legal system dharma is a system of natural laws with specific rules derived from an ideal, moral, and eternal order of the universe. The most short statements on dharma are found in the Dharma-shastras and Dharmasutras, which can be divided into three categories: 1)rules for good conduct, 2)rules for legal procedure, and3) rules for penance.

The Dharma-shastras prescribed rules for all of society, so that each person might live according to dharma. These texts are attributed to ancient rishis, seers or sages. Manu

was the most important of these and his Manava Dharma-shastra (Laws of Manu) is the most famous of the texts. It is also called the Manusmrti from smrti, what is remembered. It is in the form of the dharma revealed by Brahma to Manu, the first man, and passed on through Bhrigu, one of the ten great sages. A divine origin is claimed for all the Dharma-shastras to facilitate their general acceptance. The Manusmrti describes the creation of the world by Brahma, Manu's own birth, the sources of dharma, and the main ceremonies of the four stages of life. This was to evolve into the successive stages of life. To reach the fourth stage of renunciation it was necessary to pass through the other three stages. Other chapters deal with the duties of a king, the mixed castes, the rules of occupation in relation to caste, occupations in times of distress, expiations of sins, and the rules governing specific forms of rebirth. Though a theoretical textbook, the Manusmiti deals with the practicalities of life and is largely a textbook of human conduct. After Manu came Dharma-shastras attributed to Yajnavalkya, Vishnu, Narada, Brhaspati, Katyayana, and others. The later Dharma-shastras are nearly pure legal textbooks. The Manusmrti is considered superior to the other Dharma-shastras. The Dharma-shastras claim to be divine in origin and to have been passed on by ancient rishis who cannot be identified as historical figures. Manu is found as early as the Rg Veda (c, 1200 BCE), where he is described as Father Manu, progenitor of the human race. In the Satapatha Brahmana of around 900 BCE, Manu is clearly the father of mankind when he follows the advice of a fish and builds a ship in which he alone among men survives the great flood. Afterwards he worships and performs penance and a woman, Ida or Ila, is produced and he starts mankind with her. Manu was also the first king and the first to kindle the sacrificial fire. As the originator of social and moral order, he is the rishi who reveals the most authoritative of the Dharma-shastras. Manu's text, the Manusmrti or Manava Dharma-shastra is the earliest of the Dharma-shastras. Its date is uncertain, being somewhere between 200BCE and 100 CE. It probably reached its present form around the second century CE. In the section of the text on rajadharma, the king's dharma, there are passages on Hindu law. It was these passages which were first noted by Western scholars and so the text became known as the Laws of Manu. The Manusmrti gives a place to the ruling groups of invading peoples such as the Sakas, ahlavas, and the Greeks, who were called the Yavanas. In this the

Manusmrti was accommodating the new social realities to the theoretical pattern. Yavanas, Sakas, Pahlavas and other foreign invaders are described by Manu as lapsed katriyas, of the warrior class. These warriors had lost their status for not following dharma, but by performing appropriate expiatory sacrifices and acknowledging the brahmans as religious leaders they could come into the fold of the orthodox community.. There were other aspects of Manu's text which brought theory in line with actual practice and social reality. In his theory of mixed castes he has an elaborate system of marriages between the four classes (varnas), producing the many castes. Already occupational groups or guilds had set up closed patterns of endogamy characteristic of a caste, so Manu was fitting his theory to the facts. It is argued whether the Dharma-shastras painted an ideal picture that did not correspond to real life. However, it is more likely that the Dharma-shastra, though stylized and systematized, were compendia of existing customs and practices that provided the overall theoretical framework for everyone to practice their traditionally recognized ways of life. Early in the sixteenth century there were several surges of religion-cultural creativity among Bengali Hindus

Mitakshara- Rights in the joint family property is acquired by birth, and as a rule, females have no right of succession to the family property. The right to property passes by survivorship to the other male members of the family.

Dayabhaga- Rights in the joint family property are acquired by inheritance or by will, and the share of a deceased male member goes to his widow in default of a closed heir. Due to the emergence of various commentaries on SMIRITI and SRUTI, different schools of thoughts arose. The commentary in one part of the country varied from the commentary in the other parts of the country.

5.SCHOOLS OF HINDU LAW

Synopsis

a.Introduction

b.Mitakshera school

c.Dayabhaga school

d.Difference between both school

a.INTRODUCTION

The Hindu scriptures were not uniformly interpreted by the Hindu scholars, and this gave rise to diverging opinions on the interpretations of particular text. Colebrook, the European scholar of Hindu law, spoke of this divergence as representing schools of Hindu Law. The works which was received universally became the subject of subsequent commentaries. The commentatotor put his own gloss on the ancient text, and his authority, having been receive in one and rejected in another part of India results in to schools. MITAKSHARALiteral meaning of word Mitakshara is a concise work. It is a running commentary on the code of Yajnavalka smriti. It has been written by an eleventh century jurist by the name of Vijnaneshwar, and prevails in all parts of India except in Bengal it is orthodox school of Hindu law. It is subdivided into four schools prevailing in different parts of India. These different schools have the same fundamental principles, but differ in matters of details, especially with reference to the topics of adoption and inheritance. These four Mitakshara sub schools are as follows Name of School Area of Application The Banaras School Northern India The Mithila School Bihar The Dravida or Madras School Southern IndiaThe Maharashtra or Bombay School Western India DAYABHAGA It is followed mainly in Bengal. It is not a commentary on any particular code, but is a digest of all the codes. It has been written by Jimutavahana, who lived sometime in the twelfth century. It is reformist School of Hindu law. It is not divided in to any sub-schools. On all those matters on which Dayabhaga School was silent Mitakshara School will prevail. The Mitakshara and Dayabhaga Schools differed on important issues as regards the rules of inheritance. However, this branch of the law is now codified by the Hindu Succession Act, 1956, which has dissolved the differences between the two. The main divergence between the two in matters connected with the joint family system has now been diluted further after the 2005 Amendment of the Hindu Succession Act, which has abolished the gender inequality which existed prior to the said amendment.

. SCHOOLS OF HINDU LAW •

There are two main schools of Hindu Law,
the Mitakshara and the Dayabhaga.

b. Mitakshara school

The Mitakshara (literally meaning "a concise work") is a running commentary on the code of Yajnavalkya. It has been written by Vijnaneshwar (11th century) and prevails in all parts of India, except in Bengal.

c. The Dayabhaga School,

Which is followed mainly Bengal, is not a commentary on any particular code, but is a digest of all the codes. It has been written by Jimutavahana, 12th century. It may also be noted that the Mitakshara is the orthodox school, whereas the Dayabhaga (or the Bengal school, as it is sometimes called) is the reformist school of Hindu Law. The Dayabhaga School is considered to be a dissident school of the old Benares School. The Dayabhaga is not divided into any sub-schools. However, the Mitakshara is sub-divided into four schools prevailing in different parts of India. These different schools have the same fundamental principles, but differ in matters of details, especially with reference to the topics of adoption and inheritance.

These four sub-schools are as follows:-

(a) The Benares School, which prevails in northern and north-western India except in rural Punjab where its authority has been considerably modified by customary law. The main authorities of the school are: the Virmitrodaya and the Nirnaya Sindhu.

(b) The Mithila School, which has most of its followers in Bihar. The main authorities are: the Vivada Chintamani, the Vivada Ratnakara, the Madana Parijata and the Vyavahara Mayukha.

(c) The Dravida or Madras School, which prevails in southern India. The principle authorities are the Smriti Chandrika, the Parashara Madhaviya, the Saraswati Vilasa and the Vyavahara Nirnaya.

(d) The Maharashtra or Bombay School, which prevails in western India. The main authorities of the school are: the Viramitrodaya and the Nirnaya-Sindhu.

d.The differences between the Mitakshara and Dayabhaga Schools:-

The fundamental points of difference between the Mitakshara and Dayabhaga Schools as follows: Mitakshara Dayabhaga

(1) As regards Joint Property Right to property by death (of the last owner) ; hence son has no right to ancestral property during father's lifetime. Mitakshara. Right to property arises by birth (of the claimant) ; hence the son is a co-owner with the father in ancestral property. After the commencement of the Hindu Succession (Amendment) Act, 2005, the daughter of a religious coparcener is also a coparcener. Father has a restricted power of Father has absolute power of alienation, and Alienation, and son can claim partition son cannot claim partition or even even against the father Maintenance. The interest of a member of the Joint The interest of every person would, on his family would, on his death, passed death, pass by inheritance to his heirs, like to the other members by survivorship. Widow or daughters. Section 6(3) of the Hindu Succession Act, as substituted by the Hindu Succession (Amendment) Act, 2005 abolishes the principle of survivorship.

(2) As regards Alienation Members of joint family cannot dispose of their shares while undivided.

3) As regards Inheritance any member of joint family may sell or give away his share even when undivided. The principle of inheritance is Consanguinity (i.e., blood-relationship). But cognates are postponed to agnates. The principle of inheritance is spiritual efficacy (i.e., offering of pandas). Some cognates, like sister's sons are preferred to many agnates. Mitakshara and Dayabhaga arose out of their differences in the meaning of the word "Sapinda". According to Dayabhaga 'Sapinda' means of the same 'pinda' means a ball of rice which is offered by a Hindu as obsequies to their deceased ancestors. The term 'Sapinda' thus connotes those related by the duty of one to offer 'pinda' to the other.

On the other hand, Vijnaneswara defined 'Sapinda' relationship as the relationship arising between two persons through their being connected by particles of one body. This fundamental difference in the term "Sapinda"resulted in the formulation of the rules of law, which were in material respect quite distinct from each other.

Application of Hindu Law

1. Introduction
2. Hindus by Religion
3. Hindus by Birth
4. Hindus by Conversion
5. Hindus by Declaration.
6. Persons who are not Muslim, Christian, Parsi or Jew

1. Introduction

It is extremely difficult, though not impossible; to define the Hindu religion in the way the other religions are defined. It includes numerous views and ways of life. The term 'Hindu' is not to be found anywhere in the Dharmashastras. It is a foreign word. It is derived from the word ' sindhu ' it is the name of a river in Indian sub-continent. The word ' Sindhu ' was mis - spelled as 'Hindu 'by t h e Persians. The sub-continent came to be known as Hindustan and its people as Hindus. The word 'Hindu' does not signify a religion; it refers to a territory or nation. Hindu law is a personal law. So, Hindu law should define 'who is a Hindu', and upon whom the Hindu law applies. Word Hindu - a Greek word; who called inhabitants of the 'Indus valley' as 'Indoi' then it was extended to all persons who lived beyond valley. Who are Hindus - When a question arises as to whom Hindu law applies; the obvious answer is that Hindu law applies to Hindus. The question again arises as to who are Hindus? The term 'Hindu' is a general term embracing all those who are commonly so known. The term 'Hindu' denotes all those persons who profess Hindu religion either by birth, or by conversion to the Hindu faith. **Yagna-purusbasji v / s muldas**, the Supre Court accepted the working formula evolved by tilak regarding Hindu religion. In short, a person who carries a Hindu way of life and whom is known by others to be a Hindu can be said to be a Hindu.

(Includes Hindu. Jain, Sikh & Buddhist)

1. Hindus by Religion

2. Hindus by Birth

3. Hindus by Conversion

4. Hindus by Declaration

5. Persons who are not Muslim, Christian, Parsi or Jew. Or who are domiciled in India & not governed by any other law

2.Hindus by Religion- any person who is Hindu, Jain, Sikh or Buddhist by religion, - may be of two categories - Those who are originally Hindus, Jains, Sikh or Buddhist by religion; and Those who are converts or reconverts to Hindu, Jain, Sikh or Buddhist religion**. Abraham Vs. Abraham (1863)**.

3. Hindus by Birth –

any child, legitimate or illegitimate, both of whose parents are Hindu, Jain, Sikh or Buddhist by religion. Or one of whose parents is a Hindu,jain,sikh,Buddhist and who is brought up as a member of the tribe, community, group or family to which such parents belongs or belonged. Any person who is not a Muslim,Christian, Parsi or Jew and who is domiciled in India and not governed by any other law. In **sapna v/s state of kerala,** the child of a hindu father and Christian mother was held to be Christian. **Bhaghyavathi v / s lakshmi**, the court held Devedasis are Hindu.

Followers of Hindu Religion: - any person, who follows Hindu Religion in any of its form or development, either by practicing it or by professing it, is a Hindu.And as such includes a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj. Hindu religion is multifaceted and it is difficult to say with precision what is Hinduism. A bold attempt to define Hindu in terms of religion was made by J. Gajendragadkar in Shastri **Yagnapurushdasji v. Mooldas (AIR 1966 SC 1119). In Perumal v/S. Ponnuswami (AIR 1971 SC 2352),** it was held that a person may be a Hindu by birth or by conversion and for conversion 1.bonafide intention, together with 2.Conduct,expressing that intention, are sufficient evidence of conversion.In **Commissioner of Wealth Tax v. R. Sridharan (1976) 4SCC 489}** son of a Hindu father and Christian mother - held: Hindu because father had unequivocally declared

that he and his son are HUF (Hindu Undivided Family) viz- , a person is a Hindu, unless it is shown that he had converted to a non Hindu religion.

In other words, any person who is a Hindu sikh buddist jain by religion is a Hindu if; 1. He practices, professes or follows any of these religions; and 2. Remains a Hindu even if he does not practice, profess or follows the tenets of anyone of these religions.

4. Converts and Reconverts to Hinduism (apostasy)

a. A convert is a person who renounces his faith and adopts another

b. Usual way is by undergoing the ceremonies of a conversion prescribed by religion to which the conversion is sought..

c. u/HL, a person does'nt lose his faith by mere renunciation nor does he belong to another faith by merely professing or practicing it

d. thus if a non Hindu becomes admirer of Hinduism, so much so that he starts practicing or professing it -not become a Hindu

e. Dharmashastra not prescribe any ceremony 'coz there was no provision for conversion it says ' a Hindu is born not made'

f. among Hindus only Aryasamajists prescribe the ceremony of. shuddhi but after this the person Is called Aryasamajist Hindu not converted to Hinduism In **J. Das v/s State of Kerala (1981):-** Held: if a Hindu of higher caste becomes shareholder of the Kerala Scheduled Castes And Scheduled Tribes Welfare Board it does not mean that he has been accepted as a member of SC and thus become a SC In **Varmani Vs Varmani** (1943);- A person who ceases to be a Hindu by converting to a non- Hindu religion will, again become Hindu if he reconverts to any of 4 religion i.e. HJSB(Hindu sikh buddist jain). Not necessary he reconverts to the same religion from which he converted to the non Hindu religion So, a Jain converts- Islam then converts to Sikhism - Hindu technically- not a case of reconversion but double conversion**. Guntur Medical College v Mohan Rao AIR 1976 SC 1904 Facts**: a SC converted to Christianity then reconverted to Hinduism. He and his children are SC only if members of that caste admit him to their fold. In Kusum v Satya (1903):- Rituals of expiation and repentance are required. In the case of D. P. Rao v Sudarsana Swami (1940):- Rituals of expiation and repentance are required not required S. Anbalagan v B. Devarajan AIR 1984 SC

411for reconversion to Hindu no particular ceremony or any expiatory rite is necessary, unless practice of caste makes it mandatory. Hindu by declaration

In Mohandas vs Dewasan Board (AIR 1975 KLT 55) Judiciary gone a step further from the preposition propounded by SC in Perumal vs Ponnuswami Facts: Jesudas famous Bollywood playback singer used to perform devotional songs in a Hindu temple and worshipped there like Hindu a catholic Christian by birth also filed declaration, ' I declare that I am a follower of Hindu faith.' Held: Jesudas was Hindu and cannot be prevented from entering the temple. Hence, a non Hindu will become a Hindu by following these prepositions if he

a. undergoes a formal ceremony of conversion or reconversion prescribed by the caste or community to which he converts or reconverts

b. expresses a bonafide intention

c. accompanied by conduct unequivocally expressing that intention

d. Acceptance of him as a member of the community

e. Bonafide declaration by the person that he is a Hindu.

Persons to whom Hindu law does not apply-The uncodified Hindu law does not apply 1) To the illegitimate children of a hindu father by a christian mother and whom are brought up as Christian. 2) To the Hindu converts to Christianity. 3) To convert form Hindu to the Mohammedan faith but the conversion must be bonafide

Unit-II

1. Marriage and kinship

2. Hindu marriage act-1955

3. Matrimonial remedies

4. Maintenance and alimony

5. Dowry Prohibition

1.Marriage and kinship

a. Introduction

b. Marriage sacramental or contract

c. Nature and concept of a marriage under Old Hindu

d. Hindu marriage act, 1955

e. Changes brought by the act

f. Condition for the marriage

g. Ceremony of Hindu marriage

h. Registration of a marriage

i. Void and voidable marriage

a. Introduction:-

Hindu marriage arranged in a heaven, but Solemnized on the earth with a Vedic Mantra and choice In order to make it moral and human race to attain Moksha. It is linked with the Hindu philosophy of life. This institution last for 2500 years, yes, which aims Moksha through Dharma and it, is possible through the marriage. It is believed to be that it is protected through the spiritual powers, marriage fulfill for aims of life, Dharma, Artha, Kama, moksha Marriage under Hindu, Marriage in Hinduism is one of the 16 sacraments (Sanskaar). Hindu marriage harmonizes two individuals for ultimate eternity so

that they can pursue dharma, Artha, and karma. It is a union of two individuals as spouses and is recognized by livable continuity

b) Marriage as sacrament or contract: –

Probably no other people have achieved to idealize the institution of marriage as the hindus have done. Even in the patriarchal society of the rigvedic in Hindu, we find the following passage in the manu smriti; I hold your hand for saubhayagya (good luck)that you may grow old with your husband, you are givento me by just, the creator,the wise and by the learned people. According to manu, Husband and wife are united to each other not merely in this life but even after death, in the other world.

Marriage as a sacramental union implies that it's a sacrosanct Hindu conceived of their marriage as a union primarily meant for the performance of religious and spiritual duties.

First, the marriage between man and woman is of religious and not a contractual union.

Secondly, a sacramental union implies that it is a permanent union; marriage is a tie which once tied cannot be untied.

Thirdly, the sacramental union means that it is on eternal union;it is valid not merely in this life but in lives to come. Wife is also ardhangini (half of man),

According to the satpatha brahamana, "the wife is verily the half of the husband man is only half not complete until he marries “Marriage is one of the essential samskaras (sacraments) for every Hindu. "He only is a perfect man who consists of his wife, himself and his offspring" Thus, Hindus conceived of marriage as a sacramental union, as a holy union.this implies several things first, the modern concept of marriage is contractual in nature. It receives the ideals of liberty and equality (free volition of individuals). Today, it is an established notion of the west that marriage, to be effective, must be an agreement voluntarily entered into by both parties In the light of modern concept of marriage could we say that Hindu marriage continues to be sacrament? By recognising the divorce and widow remarriage the first two characteristics of sacramental marriage have been waived. However, the third characteristic is still retained. To sum up the Hindu marriage has not remained a sacrament and has also not become a contract, but it has a semblance of both.

c) Nature and concept of Hindu marriage under old law:-

Marriage under the Hindu marriage Act 1955 no longer remains a sacrament-an eternal union of spiritual purposes .Under the Act, provisions for the divorce are laid down,remarriage of a widow woman or a widower is possible. Therefore, the sacramental character of the Hindu marriage has been done away by this act. However Hindu marriage has not become a contract also, because essential requirements of contract are lacking in the Hindu marriage. Marriage of person of unsound mind or of a minor is not void though the agreement entered into by these persons are void. Marriage of a person of unsound mind is voidable and marriage of a minor is valid marriage, though punishable under the act and Child marriage restraint Act 1929. Therefore marriage under the Hindu Marriage Act has not become a contract.

Object:-

The object of a marriage was sublime means it has wonderful quality that affects deeply. According to apasthamba" marriage was meant for doing good deeds and for entertainment of Moksha" The main features of Hindu marriages to perform the religious duties and begetting of a son who enable man not suffer from the hell. It is in dissolvable tie cannot be untied.

The concept of marriage is to establish a relationship between husband and wife. Based on Hindu law, the marriage is a sacred tie and last of ten sacraments that can never be broken. In India no concept of Divorce was recognized before 19th Century. Primary Legislation for Hindu marriage- Hindu marriage Act, 1955

d) Types of Hindu Marriage

1**. Approved**

1. Brahma- When boy has completed his student hood (brahmcharya)he is married with the girl on basis of his knowledge of vedas. The bride is given as a gift to the groom by the father generally known as the arranged marriage that is mostly followed in India.

2. **Daiva:**- Daughter given in lieu of Dakshina if she gets over the age of marriage and doesn't get husband. The Daiva form of marriage was slightly different from the Brahma form of marriage in the sense that the suitor was an official priest.

3**. Arsha**- the Groom (sage) presents a bull or a cow to girl's father because the Groom doesn't have special qualities. (This is not considered a noble marriage because noble marriages don't have monetary transactions involved)

4**. Prajapatya** -The Prajapatya form of marriage is an orthodox form where the parental approval figures and the economic complications of betrothal are bypassed. The prajapatya form of marriage is construed to be inferior to the first three forms because here the gift is not free but it loses its dignity due to conditions which should not have been imposed according to the religious concept of a gift the Father of Bride goes looking for a groom and not the other way round.

2. **Unapproved types of marriage**

5**. Gandharva**-The Gandharva form of marriage is the union of a man and a woman by mutual consent. According to Manu "The voluntary connection of a maiden and a man is to be known as a Gandharva union which arises from lust". 6. **Asura;-**In the Asura form of marriage, the bride was given to the husband in payment of a consideration called 'sulka" or bride-price. When the bridegroom, having given its much wealth as he can afford to the father or paternal kinsmen and to the damsel herself, takes her voluntarily as his bride ' it Is called the Asura Marriage. In short Groom is not at all compatible with bride but the father of the bride likes wealth and the groom is happy to give him that.

7**. Rakshsa**- Groom will battle the bride's family, take away the bride and convince her to marry. In simple terms the 'Rakshasa' form of marriage may be described as marriage by capture, resembling the right of a victor to the person of the captive in war.

8**. Paischacha**- Worst kind of marriage, the groom will forcefully marry the bride and won't even give money or anything for it. It is the worst form of marriage among the Hindus. When the lover secretly embraces the damsel, either sleeping of flushed with strong liqueur, or disordered in her intellect, that sinful marriage, called paishacha is the eighth and the lowest form. This form of marriage was the most abominable and reprehensible, originating from a

sort of rape committed by man upon a damsel either when asleep or when made drunk by administering in toxic

2) Hindu Marriage Act, 1955 Hindu Marriage Act, 1955

It has reformed Hindu law of Marriage. It is a landmark in the history of social legislation. It has not simply codified the Hindu law of marriage but has introduced certain important changes in many respects. The Hindu marriage contemplated by the Act hardly remains sacramental. The Act has brought in some changes of far reaching consequences which have undermined the sacramental nature of marriage and rendered it contractual in nature to a great extent. The Hindu law of marriage, as the British rulers of India found, interpreted and applied, was, in a nutshell, as follows:

1. Marriage was a holy sanskar, it could be solemnized in one of the eight forms recognized by law;
2. The solemnization would be according to the Shastric or customary rites;
3. One could marry at any age, as there was no lowest age of marriage;
4. Inter-religious and inter-caste marriages were prohibited, but the latter could be sanctioned by custom;
5. Marrying within one's gotra or pravara was not allowed, except among the Shudras;
6. Husband and wife would live together, the latter would be submitting to the wishes of the former, and the former would maintain the latter;
7. Marriage was indissoluble; divorce was not permitted unless recognized by custom;
8. Death did not dissolve a marriage and therefore a widow could not remarry unless permitted by custom so to do. The courts in India recognized, interpreted and applied all these principles in their minute's details. Changes brought about by the Hindu Marriage Act, 1955 the new Act has made radical and substantial changes in the institution of marriage.

5) <u>The following changes are important</u>:-

1. A Hindu marriage-is now not so much concerned with religion.

It is more a result of mutual consent than sacramental [Sections

5(ii), (iii),

2. Marriages amongst Hindu, Jains, Sikhs and Buddhists are now Valid Hindu marriages in the eyes of the law (Section 2).

3. As per Section 3 the difference between the Mitakshara and Dayabhaga schools in connection with the expression "prohibited degrees of relationship" for the purpose of marriage is now removed. The strict rule prohibiting marriages within the limits of Sapinda relationship, as defined in the Smritis, have been considerably relaxed. Some new degrees of relationship have also been added. Thus one cannot now marry a person who was the wife of the brother of the other.

4. Monogamy amongst the Hindus is introduced for the first time by the Act. Bigamy is now punished under the Indian Penal Code. The conditions and requirements of a valid marriage are now very much simplified as is evident from the provisions of Sections 5 and 17 of the Act.

5. Caste considerations for inter-caste and inter-communal marriages have now been made irrelevant, eliminating all restrictions thereupon.

6. There were different kinds of marriages in vogue before the Act. Now they are of no consequence and the only form of marriage will be that accepted by the parties as prevailing in his or her community (Section 7).

7. The Act now makes no distinction between the marriage of a maiden and the marriage of a widow.

8. The ancient Hindu law did not prescribe any age for marriage but it is now a condition of marriage that the bridegroom must have completed 21 years and the bride must have completed the age of 18 years (Section 5).

9. The Act now lays down conditions of a valid marriage and does not recognise any particular form of a Hindu marriage (Section 5).

10. For a valid Hindu marriage no particular ceremony is prescribed by the Act. Sections11.

12. And 7 lay down that such a marriage can be solemnized in accordance with the customary rights and ceremonies of any one of the parties to the marriage.

13. Provision for registration of Hindu marriages has been provided for the first time (Section 8).

14.Eliminating restrictions based on gotra, pravara and Sapinda relationship the Act makes provisions for judicial separation, for divorce and for annulment of marriages (Section 10 to 14).

15.Provisions for restitution of conjugal rights of the parties (Section 9).

16. After a valid divorce either party may remarry (Section 15).

17. Provisions for legitimacy of children born out of alliances which may be subsequently declared annulled or void or voidable (Section 16).

18.Provisions for maintenance pendent lite and for expenses of legal proceedings (Section 24).

19. Permanent alimony and maintenance (Section 25).

20. The custody, maintenance and education of minor children during the pendency of legal proceedings

6) Conditions for a Hindu marriage:-

Section 5 gives a marriage may be solemnized between any two Hindus, if the following conditions are fulfilled:

i. Neither party has a living spouse at the moment of marriage. It is not permissible to have two living wives at the same point in time, which amounts to bigamy. Yamunabai vs Anant Rao 1988 Supreme Court held that in a bigamous marriage the second wife has no status of a wife because the second marriage is Null and void Apostasy to Islam: Supreme Court in Sarla Mudgal Vs Union of India held that there was no automatic dissolution of marriage by apostasy of a spouse to another religion. The second marriage of Hindu apostate to Islam during substance of first marriage is violation of the provision of Hindu Marriage Act Decision in Sarla Mudgal case was a reviewed in Lily Thomas versus Union of India 2006 the court held that marriage solemnized according to one personal

laws cannot be dissolved according to another personal because of the change of religion of parties

Effect of contravention of Section 5(i) a) The marriage will be null and void under section 11 b) The person will be liable for punishment for bigamy under section 17 of Hindu Marriage Act read with section 82 of BNS

ii) A. At the time of marriage, neither party is giving consent Because of unsoundness of mind

B. suffering from mental disorder of such a kind or to an extent where he/she is unfit for marriage and the procreation of Children

c. Is subject to recurrent attacks of insanity Effect of contravention of Section 5(ii) if the marriage takes Place in contravention of 5(ii) then the marriage will be voidable

iii) Bridegroom is 21years; bride is 18 years, originally the age fixed By Hindu Marriage Act was 18 years for bride groom and 15 Years for the bride. The Child Marriage Restrain (Amendment) Act1978 fixed the minimum age of the bridegroom to 21 years and minimum age of the bride to 18 years

Effect of contravention of Section 5(iii) The Hindu Marriage Act Does not provide for any effect of contravention of this provision. Thus according to this the marriage in contravention of this section is neither void nor voidable. The only consequence which Hindu Marriage Act provides is the punishment under Section 18 Further if the requirements of the section 13(2) (iv) are satisfied then at the instance of brides, a decree of divorce on the ground of option of puberty can be granted. The Prohibition of Child Marriage Act, 2000 provide every marriage shall voidable at the option of contracting party who was a child at the time of marriage

iv) Parties are not within degrees of prohibited relationship unless the custom or usage governing each of them permits for such a marriage

Section 3 (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 fathers or mothers brother or of the grand fathers or grandmothers 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;

Rules for Prohibited relationship

I) Full/half/uterine relationship. Legitimate/illegitimate relationship Blood/adoption relationship. Effect of contravention of Section 5(iv) a marriage in contravention of the section is void under section 11 Section 18 also prescribed simple imprisonment which may extend to one month or with fine which may extend to 1000 rupees or with both

Parties are not sapindas of each other, unless custom or usage permits.

Section 3 (f) Sapinda

ii. "Sapinda relationship" with reference to any person extends as far as the third generation (inclusive) in the line of assent through the mother, and the fifth (inclusive) in the line of assent through the father, the line being traced upward in each case from the person concerned. Who is to be counted as the first generation

iii. Two person are said to be "spindas" 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;

Rules for sapinda - Always goes upwards Mother-3rd generation Father-5th generation Full/half/uterine relationship Legitimate/illegitimate relationship Blood/adoption relationship Effect of contravention of Section 5(v) The marriage in contravention of the section is void under section 11 Section 18

7) - Ceremonies for Hindu marriage.

The act does not prescribe any particular form of ceremony to be performed by the parties.

i. A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.

ii. Where such rites and ceremonies include the Saptapadi (that is the taking of seven steps by the bridegroom and the bride jointly before the fire), the marriage becomes complete and binding when the seventh step is taken. Saptapadi as well as Kanyandan is not a mandatory ceremony to make a Hindu Marriage valid. This section gives statutory recognition to the marriage under Hindu law as a sacrament In Bhaurao Vs state of Maharashtra 1965 the supreme court held that unless a marriage is celebrated on performed with proper ceremonies in due form it cannot be said to have been solemnized

Sec. 8- Registration of Hindu marriages.

For the purpose of facilitating the proof of Hindu Marriages, the State Government may make rules providing that the parties to any such marriage may have the particulars relating to their marriage entered in such manner and subject such to conditions as may be prescribed in a Hindu Marriage Register kept for the purpose. Notwithstanding anything contained in sub-section (1) the state Government may, if it is of opinion that it is necessary or expedient so to do, provide that the entering of the particulars referred to in sub-section (1) shall be compulsory in the State or in any part thereof, in all cases or in such cases as may be specified, and whether 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. All rules made under this section shall be laid before the State legislature, as soon as may be, after they are made. The Hindu Marriage Registrar shall at all reasonable times be open for inspection, and shall be admissible as evidence of the statements therein contained and certified extracts there from shall, on application, be given by the Registrar on payment to him of the prescribed fee. Notwithstanding anything contained in this section the validity of any Hindu Marriage shall in no way be affected by the omission to make the entry. A registration of a Hindu Marriage is not compulsory.

In Seema vs. Ashwani Kumar 2006 Supreme Court ordered compulsory registration of marriage irrespective of their religion. It director at the Central and the state governments to make relevant rules to the effect

3) Matrimonial Remidies

1. Restitution of Conjugal Rights. (Sec.9)
2. Judicial Separation. (Sec.10)

3. Void and Voidable Marriage (Sec.11 & 12)
   (Nullity and Annulment of Marriage)
4. Divorce (Sec.13)
5. Divorce by Mutual Consent (Sec.13B)

. 1) **Restitution of Conjugal Rights. (Sec.9)**

INTRODUCTION:-

The very purpose of marriage is to unite legally. It lay down that the legally wedded couple must live together throughout the life sharing pleasure and pains. However, in some cases, matrimonial disputes take place due to misunderstanding or indifferent attitudes between the husband and the wife. In such cases, to provide relief to the aggrieved spouse, certain matrimonial remedies are incorporated in the Hindu Marriage Act, 1955. Those matrimonial remedies are:

1) RESTITUTION OF CONJUGAL RIGHTS:-

It is a well establishes principle that both the spouses are equally entitled to matrimonial society and comfort (consortium) of the other. In case one spouse happens to leave the other from the matrimonial society without any reasonable cause, the other (deserted) spouse can file a petition in the District Court for the restitution of conjugal rights.

For instance, if a husband, without any reasonable cause leaves his wife and lives elsewhere, wife can file a petition for the restitution of conjugal rights of the Hindu Marriage Act, 1955.A provision to this effect has been provided for under Section 9, which runs as follows: "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 there is no legal ground why the application should not be granted may decree restitution of conjugal rights.

Essentials are:

1) has withdrawn from the society of the other,
2) without reasonable excuse,
3) the court is satisfied of the truth of the statements made in the petition, and
4) There is no legal ground why the application should not be granted the explanation added to the section provides that where a question arises whether there has been reasonable excuse for withdrawal from society, the burden of proving reasonable excuse shall be on person who has withdrawn from society CONSTITUTIONAL VALIDITY SECTION 9 OF HMA, 1955 obeyed the decree and the decree-holder has applied to sale of the attached prop so that out of the proceeds of the sale, he could get such compensation as the court proceeds to award. In a decree for restitution of conjugal rights, the party, against whom the decree is passed, cannot be compelled physically to restore cohabitation. A court is not competent to direct that the wife or husband be, bodily handed over to the spouse and restraint him or her of liberty until he or she is willing to render him or her conjugal rights. The decree in **Meaning: -** India is used as a stepping stone for getting a decree of divorce under Section 13(1-A) of the Act after the expiry of one year from the date of the decree of restitution of conjugal rights.

2) JUDICIAL SEPARATION (SECTION 10)

Judicial Separation means suspension of Conjugal Rights for some. i.e., one year. Section 10 of the Hindu Marriage Act deals with judicial separation.

This section lay down:-

Section 10(1) - 'Either party to a marriage, whether solemnized before or after the commencement of this Act, may present a petition praying for a decree of Judicial Separation on any of the ground 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. Section 10(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 inst and reasonable to do so.' During the period of Judicial Separation, the parties to the marriage have no obligation to live together or cohabit with each other. During the course of judicial separation either party may be entitled to get maintenance from the other if the situation so warrants. But, during this period the husband or the wife would not acquire the competence to marry fresh. The right of fresh marriage would be available to them only after the dissolution of marriage. Section 10 provides that either party to marriage may present a petition praying for a decree of judicial separation on any of the grounds specified in sub-section (1) of Section 13 and in case of wife also on any of the grounds specified in sub-section (2) thereof, as grounds on which a petition for divorce might have been, the section has been completely overhauled. The grounds of Judicial Separation are virtually the same which have been provided to be grounds of divorce under Section 13(1) and (2) of the Act and accordingly the judicial separation, under the amended Act of 1976, can be obtained under following grounds: • Before 1976, the grounds available for Judicial Separation were: i) Desertion ii) Cruelty iii) Leprosy iv) Venereal Disease Insanity or Unsoundness of Mind Adultery. After the Amendment Act of 1976, the ground available for Divorce and Judicial Separation are common as detailed below

A) Grounds available for both Husband and Wife:

i) Adultery il) Cruelty iii) Desertion iv) Conversion Unsoundness of mind vi) Leprosy vii) Venereal Disease Renunciation of World Presumed Death.

. iv) Conversion: Where the other party has ceased to be a Hindu by conversion another religion. v) Unsoundness of mind: Where the other party has been of incurable 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. v) Leprosy: Where the other party has been suffering from a virulent and an incurable form of

leprosy. vii) Venereal Disease: Where the other party has been suffering from venereal disease in a communicable form. viii) Renunciation of world: Where the other party has renounced the world by entering any religious order. ix) Presumed Death: Where the other party 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.

B) Grounds available to Wife Alone:

i) Bigamy

ii) Rape, Sodomy or Bestiality.

iii) Non-resumption of cohabitation after decree or order of maintenance.

IV) Option of Puberty.

. EFFCETS JUDICIAL SEPARATION:

Following are the consequences of judicial separation.

i) That the marriage tie is not dissolved.

ii) That after the passing of the decree of judicial separation, the husband and the wife is not bound to live together or dine together as judicial separation is separation from bed and board.

iii) After the decree of judicial separation it will not be obligatory for the parties to cohabit with each other.

iv) It does not prevent the parties from subsequently resuming cohabitation and living together as husband and wife as originally they did. It is not necessarily for them to undergo the ceremony of marriage again because their original marriage still subsists in spite of the decree of judicial separation.

v) A fortiori if either spouse marries during that period, he or she will be guilty of Bigamy and will be liable for punishment prescribed by Section 17 of this Act.

vi) The Petitioner, if she be the wife, becomes entitled to alimony from the Husband. And if he is the husband he can claim maintenance from wife under Section 25 of this Act.

vii) The wife shall, from the date of the decree and till separation continues, be considered as a femme sole, i.e., "independent woman' with respect to property of every description.

viii) The mutual rights and obligations arising from the marriage are suspended and the rights and duties prescribed by the decree are substituted.

3) Nullity of Marriage

1) A Void marriage: - It is no marriage at all; court considers a void marriage as if the marriage never existed in the first place. Void ab initio i.e. void from inception. A Voidable marriage is binding and valid until the decree from court is passed for annulling it

Sec. 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

2) 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: —

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 was required under section 5 as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, 1978 (2 of 1978)],

(d) 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

(e) 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 marriage 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 take place since the discovery by the petitioner of the existence of the said ground.

Summary:-

If the condition number II and III are violated then it is a Voidable marriage. Also Voidable under Section 12, if the marriage is not been consummated owing to impotence of the respondent, the respondent is pregnant at the time of marriage by some other person other than petitioner or if the consent is obtained by fraud or force.

In Hindu marriage Act, 1955 in Sec.5 (iii) the minimum age limit for marriage is given, but we can also see that if the bride or groom are not of the minimum age the marriage is 'Voidable' and not void'. This is not the case in Special marriage Act, 1954 where it is considered a void marriage. This child marriage is still punishable under Section18 of Hindu marriage act and also under Prohibition of Child Marriage act, 2006.

P. Venkataramana v. State (1977) A woman filled complaint against his husband under section. 494 (bigamy) Husband defended himself with the fact that his first marriage was void. As he was 13 years old and his wife was only 9 years old at the time

of marriage. Court held the marriage was only voidable and not void so the 2nd marriage would constitute an offence under section 494 IPC. Legitimacy of children of void and voidable marriage [section 16]

section 16 provides that even if the marriage is Null and void under section 11, any child of such marriage who would have been legitimate If the marriage have been valid, shall be legitimate whether or not a decree of nullity is granted in respect to the marriage under this act and whether or not the marriage is held to void otherwise than on the petition under this act.

where the decree of nullity is granted in respect to voidable marriage under section 12, any child begotten or conceived before the decree is made, who would have been 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.

The above provision shall not confer any child of marriage which is Null and void or voidable any rights in law to the property of any person other than the parents.

5.Divorce

1) Adultery
2) Cruelty
3) Desertion
4) Conversion (to other religion);
5) Insanity:
6) Leprosy.
7) Vinral Disease:
8) Renunciation of World:
9) Unheard for 7 years:
10) After deerce of Judicial separationt

. Grounds available to wife alone are: In addition to the above, the bollowing grounds are available to a wife to file a petition

i) Bigamy

ii) Sexual Offences;

iii) Decree of Order awarding maintenance:

iv) Repudiation of the marriage.

i Adultery:

Adultery is the consensual sexual intercourse been a marked person with another (of opposite sex other than spouse voluntary during the subsistence of the marriage. Since adultery is a serious offence, the Court must be satisfied beyond all reasonable doubts. it is an offence, Adultery can be committed by a man, not by a woman. The sexual intercourse must have been committed with the consent of the woman, who is the wife of another man. The criminal action is filed against the man (adulterer) only, not against the woman (as an abettor), In Matrimonial Law also, it is an offence. It is a ground against adulterer only for a matrimonial relief of Judicial separation or Divorce. To invoke matrimonial relive on the ground of adultery, the marriage must be valid and subsisting at the time of filing the petition. Sexual intercourse with the respondent, when he/ she is unconscious under influence of drug or liquor does not amount to adultery. Saran Readian vs. Sarusmari AIR 1967. Tad.85. this case, husband returned home late and found his wife with unrelated person in the bedroom. Madras High Court held that adultery may be inferred unless the act can be explained by some innocent explanation. Close movements (Jokes, Accompanying in Cinema Hall etc.) do not constitute adultery. In Veera Reddi v. Kistamma. [1969 Mad. 235], the Madras High Court held that the wife was guilty of adultery by observing that despite the disruption of the relation between the spouses, the wife gives birth to a child. Wives

Fault

ii)Cruelty:-

Before 1976 Amendment, Cruelty was a ground for Judicial separation only. Now, it is a ground for both Judicial separation and divorce. "Cruelty" means "such conduct as to cause physical violence of causing bodily hurt or danger to the person of the petitioner

Definition of Cruelty: It is very difficult to define the expression "Cruelty" In Russel vs. Russel (1897) A.C. 395, It is defined as *Conduct of such a character as to have caused danger to life, limb or health, bodily or mental, or as to give rise to reasonable apprehension of such danger?. The concept of cruelty varies from time to time and from society to society depending upon socio economic conditions. –

In Sobha Rani Vs Madhukar Reddi [AIR 1988 SC 121], the Supreme Court observed that the word "cruelty? has not been defined in the Act, the word is used in Section 13(1)(ia) of the act with reference to human conduct or behavior in relation to or in respect of matrimonial duties or obligations, It is a course of conduct of one which is adversely affecting the other. After passing Marriage Laws (Amendment) Act, 1976 cruelty has been a ground of divorce.

In A.Jyachandra v. Aneel Kaur (AIR 2005 SCW 163), the Supreme Court has expressed the view about cruelty. The expression "cruelty' has been issued in relation to human conduct or human behavior. It is a conduct in relation to or in respect of matrimonial duties and obligations. The cruelty may be mental or physical, intentional or unintentional. If it is a physical, the Court will have no problem in determining it.

i)The alleged acts constituting cruelty should be proved according to the law of evidence:

ii)" There should be an apprehension in the petitioner's mind of real injury or harm from such conduct;

iii)The apprehension should be reasonable having regard to the socio-economic and psycho-physical condition of the parties;

iv) The petitioner should not have taken advantage of his position;

v) The petitioner should not by his or her conduct have condoned the acts of cruelty.

Classification of Cruelty: In the Modern law, cruelty may be classified as :

(1) Physical Cruelty; and

(2) Mental Cruelty.

I) Physical Cruelty: It is is an act of violence by one spouse to another resulting in injury to body, limb or health or causing reasonable apprehension.

2). Mental Cruelty: Mental Cruelty can be defined as that conduct which inflicts such mental pain and suffering as would make it not possible for the party to live with the

other. It must be of such a nature that the parties cannot reasonably be expected to live together. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. Mental cruelty includes use of abusive language, causing mental agony etc. N. Sreepadachandra us. Vasantha, 1970 Mys. 232 is a good illustration on mental cruelty. In this case, the act of wife in abusing and insulting the husband in public was held to be cruelty 1) Frequent demand for dowry.

ii)Returning home late at night to the house in a drunken condition.

iii） Imputing unchastity to the wife.

iv) False charge against wife that she was not a virgin.

v) Compelling the wife to adopt the life of a prostitute.

vi) Marry another woman.

vii) Imposing a condition by the husband on the educated wife not to do a service.

ix)Ill-treatment of children.

iii) Desertion:-

Before the amendment of 1976, desertion was a ground for judicial separation only. Now, it is a ground for both the judicial separation and divorce. Desertion means "leaving/ abandoning the spouse by the other spouse without reasonable cause." The spouse who deserts is called 'deserting spouse' and the other, who is deserted is called 'deserted spouse". Desertion is "a withdrawal not from a place, but from a state of things". According to Rayden, 'Desertion is the separation of one spouse from the other with an intention on the part of the deserting spouse of bringing cohabitation permanently to an end without reasonable cause and without the consent of the other spouse, but the physical act of departure by one person does not necessarily make that spouse the deserting party.'

a) Actual desertion.

(b) Constructive desertion, and

(c) Willful neglect.

Actual desertion. — The following are the constituent elements of desertion:

(1) The factum of separation,

(2) Animus deserdendi (intention to desert),
(3) Desertion should be without any reasonable cause,
(4) Desertion should be without the consent of the other party, and
(5) The statutory period of two years must have run out before a petition is presented.
The first two elements apply to the deserting part, i.e., the deserting spouse Must have left the other party with an intention to forsake or abandon him or her permanently. The elements No. 3 and No. 4 apply to the deserted spouse, i.e., he or she must not have given his or her consent or provided a reasonable cause of desertion.' The last element is the statutory requirement of the period before the expiry of which a petition is not maintainable. Thus, for the success of a petition on the grounds of desertion, it is incumbent on the part of the petitioner to prove all the fiveelements. Sinha, J. quoted from Pratt vs. Pratt. That what is required of a petitioner is to prove that throughout the entire statutory period, the respondent has,without cause, been in desertion but if on the facts it appears that a petitioner had made it plain to his deserting wife that he would not receive her back, or if he had expelled all the advances which she might have made towards resumption of married life, he could not complain that she had persisted without the cause in her desertion. In the present case, by end of June, the marriage of wife's cousin was over and in July she could return to her matrimonial home, but then on July 15, 1947, she received the letter of her husband's solicitor. Subsequently, the husband countermanded all steps of the wife to come back to the matrimonial home by his aforesaid telegram, "Must not send Prabha". On these facts, the Supreme Court concluded: "It follows that the wife was not in desertion though she left her husband's home without any Fault on the part of the plaintiff which could justify her action in leaving him, and that after the lapse of a few months stay at her father's place she wasWilling to go back to her matrimonial home." The petition was dismissed."

(b) Constructive desertion:-Desertion is not withdrawal from a place but from a state of things", i.e., from cohabitation. It was held in Savitri Pandey v Preni Chand Pandey, that desertion means withdrawing from matrimonial obligations and not withdrawal from place. If a party withdraws from cohabitation, it is he/she who is guilty of desertion, despite the fact that he/she continues to live in the matrimonial home. If a spouse

creates a situation or conducts himself/herself in a manner that the other spouse is compelled to leave the matrimonial home, then the spouse who forced the other party to leave the matrimonial home is the deserter and not the spouse who left the matrimonial home. Take an example suppose a husband tells his wife that everything is over between them, they will not talk to each other, they will not meet each other, they will not go out in each other's company and they will meet only at breakfast table, and if necessary, talk about children. In such a situation, the wife has two alternatives : she may leave the matrimonial home, as she may feel that she cannot stand such indignities and humiliation, or she may continue to stay there in the interest of the children or because she has no other place to go. In either case, it is the husband who is the deserter. In Lang v. Lang^ the House ofLords said that if one spouse by his words and conduct compels the other.spouse to leave the marital home, the former would be guilty of desertion,though it is the latter who is physically^ separated from the other.

Wilful neglect.—Explanation to Section 13(1), Hindu Marriage Act lays down that "desertion includes wilful neglect of the petitioner by the other party to the marriage". Stibbarao, J. expressed the view that 'wilful neglect' is designed to cover constructive desertion and thus it must satisfy the ingredients of desertion."* It is submitted that wilful neglect adds a new dimension to the notion of desertion, inasmuch as if the offending spouse consciously neglects the other party without any intention to desert, it would nonetheless amount to desertion. There it has been said that an act of omission done by accident of inadvertence is not wilful, nor is it, on the other hand, absolutely necessary that to be wilful, the act or omission should be deliberate and intentional. Thus, it will amount to wilful neglect if a person consciously acts in a reprehensible manner in the discharge of his marital obligations, or consciously fails in a reprehensible manner in the discharge of these obligations. In short, it connotes a degree of neglect which is shown by an abstention from an obvious duty, attended by knowledge of the likely result of the abstention. However, failure to discharge or omission to discharge, every marital obligation will not amount to willful neglect. Failure to fulfill basic marital obligations, such as denial of company or denial of martial intercourse, or denial to provide maintenance will amount to willful neglect.

Desertion must be for a continuous period of two years.—

To constitute a ground for judicial separation or divorce, desertion must be for the entire statutory period of two years, preceding the date of presentation of the petition. It has been said that desertion is a continuing offence; it is an inchoate offence. This means that once desertion begins, it continues day after day till it is brought to an end by the act or conduct of the deserting party. It also means that the offence of desertion is not complete even if the period of two years is complete. It may still be brought to an end by any act or conduct of the deserting spouse. It is inchoate. It becomes a complete offence only when the deserted spouse files a petition for a matrimonial relief. But before filing the petition,

4) Conversion (to other religion);

– In case either of the two converts himself /herself into another religion, the other spouse may file a divorce case based on this ground.

5) **Insanity (Unsoundmind):**

the mantel disorder is a ground for both judicial separation and divorce. 'Mental unsoundness' implies some unusual feature of the mind which has landed to make it different from the normal and has in fact impaired a man's capacity to look after his affairs in a manner in which another person without such mental irregulanty would be able to do in a matter of his own. Before 1976 Amendment, the respondent must have been incurably of unsound mind for a period of 2 years for Judicial separation, and 3 years for divorce preceding the date of the petition. The 1976 Amendment changed the position. Now, the respondent has been incurably of unsound mind or has been suffering from mental disorder that the petitioner cannot reasonably be expected to live with the respondent (Eg.:-epilepsy).In Ram Narayan v. Rameshwari (1989 SC 149), the Supreme Court said that in schizophrenic mental disorder, the petitioner should prove not merely the said mental disorder, bur should also establish that on that

account the petitioner could not reasonably be expected to live with the respondent.

6) **Leprosy**:

The Marriage Laws (Amendment) Act, 1976 has made leprosy a ground both for judicial separation and divorce. No duration of leprosy is specified. Under the clause, the petitioner is required to show that the respondent has been suffering from virulent and incurable leprosy. Thus, two conditions are necessary: it must be (i) virulent, and (ii) incurable. With the advance in medical science, leprosy is now mostly curable in its carly stages. It seems that some period must elapse when virulent leprosy becomes incurable. Malignant or venomous leprosy is called virulent leprosy. A mild type of leprosy which is capable of treatment is neither a ground for divorce nor for judicial separation. But lepromatous leprosy which is malignant and contagious and in which prognosis is usually grave in virulent leprosy (Annapurna Vs Nabakishore, 1965 Ori. Sometimes the spread can be arrested by a long period of treatment, but relapses in it are frequent

7) Renunciation of world:

The petitioner can seek divorce, if the respondent has renounced the world by entering any religious order. The renunciation requires relinquishment of all property and worldly affairs. Hindus recognize Sanyasa Ashram as the last of the four ashrams into which the life of a Hindu is organized. According to Hindu religion, every Hindu is required to enter the last ashram in his old age entering into this ashram amounts to civil death. One of the ceremonies that is performed before one enters this ashram is one's own funeral rites.In Somasundaram v. Vaithilinga (AIR 1981 Mad 794), the Court has held that a Sudra cannot enter the order of Sanyasi. Hence, unless a usage to the contrary is established, a Sudra is not supposed to renounce the world by entering any religious order.

8) Unheard for seven years:

If the whereabouts of one spouse are unknown for a period of seven years, the other spouse can presume his/her death and can institute a petition for dissolution of the marriage.Under Evidence Act a person is presumed to be dead if he is not heard of as alive or seven years or more by those Who would have normally heard from him or

about him had he been alive. The burden of proving that such a person is at dead, but alive lies on him who affirms it. In such situation only will the second marriage not be valid; the spouse can also be prosecuted for bigamy. To avoid the risk of missing spouse re-appearing rendering the second marriage void, clause (vii) of Section 13(1) provides that a petitioner may obtain a decree of dissolution of marriage on this ground. Once the marriage is dissolved, the petitioner is free to marry again and even if the missing spouse returns the next day of the passing of the decree or much before the second wedding, he can do nothing. It may be noted that if the second marriage is performed on the basis of presumption of death without getting a decree of divorce, no person other than the missing spouse can question the validity of the second marriage

9) After decree of judicial separation: If the disputing spouses do not reconcile/resume matrimonial life within one year from the date of the decree under Section 10 (Judicial Separation), either of the spouses can file a petition for divorce under Section 13. (Before the 1976 Amendment the period was two years).

10) After the decree for restitution of conjugal rights: If the parties do not rejoin/resume matrimonial home within one year or upwards after obtaining the decree for Restitution of Conjugal Rights, either of the parties can resort to file a petition for divorce

i) Sexual Offences: A wife can file a petition under Section13 if her husband is guilty of certain sex offences viz, rape, sodomy, bestiality etc. Section 13(2)(ii) of the Hindu Marriage Act, 1955 enables the wife to obtain divorce where the husband has since the solemnization of the marriage been guilty of rape, sodomy or bestiality. The expressions 'rape' or 'sodomy' have been defined in Sections 63 of the BNS. Section 63 defines 'rape' unnatural offences (i.e. sodomy or bestiality, etc.). The word rape' means having sexual intercourse with a woman against her will or without her consent or by force, or with consent where the man knew that he is not her husband and she believes herself to be lawfully married, or with or without her consent where she was under 16 years of age. But the Hindu Marriage Act does not define the expression'rape"

Sodomy means copulation between male persons. It is an unnatural sexual act and was made punishable under Section 63of BNS, when such an act was with any

man, woman or animal. But it may not be strictly called sodomy if the act is with a woman

Bestiality means sexual union by a human being against the order of nature with an animal. In the Oxford Dictionary 'bestiality' is given the meaning 'of or like a beast brutish, barbarous, depraved, lustful or obscene." The word 'bestiality" means beastly character or conduct; also unnatural connection with a beast, also brutish or irrational character or conduct and degraded conduct. It would seem therefore that where a married man is guilty of any of the above conduct, the woman is entitled to have the marriage dissolved by a decree of divorce under the provisions of this clause of sub-section(2)ofSection13oftheAct.

No Resumption of Co-habitation – It becomes a ground for divorce if the couple fails to resume their co-habitation after the court has passed a decree of separation.

The following are the grounds for divorce in India on which a petition can be filed only by the wife.

1) If the husband has indulged in rape, bestiality and sodomy.
2) If the marriage is solemnized before the Hindu Marriage Act and the husband has again married another woman in spite of the first wife being alive, the first wife can seek for a divorce.

3) Repudiation of the marriage:-

A girl is entitled to file for a divorce if she was married before the age of fifteen and renounces the marriage before she attains eighteen years of age.

4) If there is no co-habitation for one year and the husband neglects the judgment of maintenance awarded to the wife by the court, the wife can contest for a divorce.

Bars to Matrimonial Relief (Hindu Marriage Act, 1955)

When petitioners take advantage of their own wrong then they are barred from getting this relief

Taking Advantage of One's Own Wrong:

A person can't get relief if the matrimonial offense occurred because of their own actions or fault.

An agreement between spouses to feign grounds for divorce(like fabricating desertion or cruelty) to get a divorce, preventing genuine consent from being seen as valid.

Coadonation:

Forgiving a matrimonial offense (like adultery or cruelty) with the intention to restore the relationship, this then bars future relief for that specific offence.

Connivance:

Willingly allowing or encouraging the other spouse's misconduct (e.g., turning a blind eye to adultery).

Improper or Unnecessary Delay:

Filing for relief after an unreasonable delay, suggesting the petitioner didn't genuinely see the act as a grievance or is trying to take advantage.

Accessory:

Actively participating in or aiding the respondent's matrimonial offense.

Doctrine of Strict Proof:

Requiring a high standard of proof for matrimonial offenses, especially adultery, ensuring relief isn't granted lightly.

Purpose of these Bars

- To uphold the sanctity and integrity of marriage.
- To prevent parties from manipulating the legal system or profiting from their own misconduct.

- To ensure fairness, making sure petitioners come to court with clean hands, as per equitable principles.

4) Maintenance and Alimony

Section 24 of the Hindu Marriage Act, 1955 (HMA) states the provisions for maintenance pendent lite and expenses of proceedings. Maintenance is a human right along with a legal right. Section 24 of HMA basically provides for temporary maintenance to the spouse during the pendency of litigation. Meaning of Maintenance It is financial support aided by the father or the husband towards his children or wife respectively. The maintenance is also known as alimony, which refers to the payment against the expenses and all the necessities of the dependents. The maintenance shall be granted irrespective of the parties living together or not and irrespective if the divorce has been granted or not as per Hindu Laws.

Pendente Lite means providing living expenses and financial support to the wife and children while the suit is pending between the parties. The provision provides a gender-neutral right to apply this remedy to both husbands and wives, as the case may be. Fundamentals of the Section 24 of Hindu Marriage Act. Expenses of Proceedings Section 24 govern the expenses occurring during the pendency of the proceedings under Hindu Marriage Act. These expenses include the fees of lawyers, court fees, stamp duties, traveling expenses and other related expenditures. The objective is to ensure that the financially weaker spouse can effectively participate in the legal process without being burdened by the associated costs. Discretion of the Court. The power to grant maintenance pendente lite and expenses of proceedings is merely a discretionary power vested in the Court. This discretion allows the court to consider the individual circumstances of the case and make a fair and just determination regarding the amount of maintenance and expenses to be awarded. The court adjudges the sufficiency of income, assets, and needs of both parties while granting the maintenance under this Section Temporary Nature: It is important to note that the maintenance awarded under Section 24 is temporary in nature. It is intended to provide financial support only during

the pendency of the legal proceedings.The Court has the discretion to decide on granting final maintenance while concluding the case. Provisions of Section 24 of the Hindu Marriage Act It states that: When under any proceeding any of the spouse has no independent income sufficient to proceed with the litigation proceedings then the court may order the respondent to pay the expenses of the proceedings to the petitioner and to pay a sum considering the income of the respondent to maintain the petitioner. It is provided that the application of the petitioner under this section be disposed of within 60 days from the date of service of notice on the respondent.

Maintenance is provided during the pendency of the divorce petition and not afterwards. Maintenance is provided during and post-divorce petitions. Only spouses are entitled for the maintenance under this section. Spouses, children (legitimate or illegitimate), parents all are eligible for claiming maintenance under this section. Maintenance is awarded considering the living standard, income and needs of the parties. Maintenance is awarded based on the needs of the claimants and the ability of the respondent to pay

Permanent alimony:-

Maintenance in India is primarily governed by **Section 25 of the Hindu Marriage Act, 1955 (HMA)**, allowing courts to order a spouse to pay recurring (monthly/periodical) or gross sum support, considering factors like income, property, conduct, and needs, at the time of any decree (even for void marriages) or later, with provisions for variation if circumstances change, ensuring justice for the economically weaker party

Provisions:-

- **Discretionary Power**: Courts have wide discretion to decide on permanent alimony/maintenance.
- **Timing**: Can be sought when any decree (divorce, judicial separation, restitution of conjugal rights or even for void marriages) is passed, or even later.
- **Types of Payment**: Can be a lump sum (gross sum) or periodic payments (monthly/quarterly/yearly) for the applicant's lifetime or a specific term.
- **Factors Considered**: Court looks at:

- Income, assets, and liabilities of both spouses.
- Conduct of the parties (e.g., cruelty, desertion).
- Age, health, and earning capacity.
- Needs of the applicant.

- **Security**: Payments can be secured by a charge on the respondent's immovable property.
- **Variation/Modification**: Orders can be modified if there's a significant change in circumstances.

Important Clarifications

- **Alimony vs. Maintenance**: "Alimony" often implies a lump sum, while "maintenance" refers to ongoing support, but under Section 25, both concepts are covered.
- **For Void Marriages**: The Supreme Court has clarified that even if a marriage is declared void (e.g., bigamy), a spouse can still claim permanent alimony under Section 25, depending on facts.
- **Wife's Independence**: A financially independent wife may not necessarily be denied alimony if the court finds it just, though recent rulings emphasize fairness and financial capacity.

Procedural Aspects

- **Application**: An application must be made to the court.
- **Income Affidavits**: Strict adherence to disclosing true income and assets is required.
- **Interim Maintenance (Section 24)**: This is for financial support *during* the court proceedings, distinct from permanent support.

In essence, Section 25 aims to prevent financial hardship and ensure a spouse can maintain a reasonable standard of living after marital breakdown, ensuring justice by balancing the interests and capabilities of both parties.

CUSTODY OF CHILDREN (SECTION 26)

During the proceedings the court may pass interim orders with respect to custody of

children. Maintenance and education of minor children, consistently with their wishes, wherever possibleDoctrine of Factum valet:-The doctrine of factum valet was quite well known to Hindu law text - writers that is a fact cannot be altered by a hundred texts. The doctrine in the case of marriage of a minor was that the factum of marriage, which was solemnized, could not be undone by reason of a large number of legal prohibitions that 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 hindu marriage act shall cease to have effect in so far as it is inconsistent with any of the provisions of the Act.

7)Dowry Prohibition

1) Introduction
2) Meaning and definition
3) Giver, taker and demander are dowry offenders
4) Dowry offenses are partly cognizable
5) Trial of dowry offences
6) Dowry prohibition officers

1) Introduction

Hindu marriage always considered Kanyadhana It is always with the Dakshina . Later, it was vardhakshina. Bride was ducked with the costly garments and ornaments bride was presented to the groom. Then only the marriage was completed. What Dakshina was constituted with the property which was given with the love and affection.The quantum of the reduction was according to the financial position of the father. It was a type of financial security to husband and wife, but in course of time it has become an evil and spread it everywhere it spread it to other communities to to remove this evil

from the society in 1961 Parliament past the dowry private wish act which was applicable to Muslim Christian and parties and Jews. It did not prove to be effective after the several amendments in Indian status could not remove this then the joint parliament committee gave a report for the failure of the act according to them there were two reasons for the fail of the act. The first was all parents that was cash or kind second was unless they are given in consideration in the marriage.

Definition of a dowry

It is a property or valuable security given to the prior directly or indirectly that is by one party to the marriage to other party to the marriage to buy the parents of either party or any other person to the marriage at any time before or after the marriage. In case of Pavan Kumar was state of Haryana AIR 1998 Supreme Court 956 in this case it was held at continued demand of a scooter TV, etc., and connection with the marriage falls under the definition of the dowry In the original act, the word consideration for a marriage substituted by by in connection with the marriage so whatever do not constitute wedding gear presence will constitute as a dowry so safeguards have been given. The presence at the time of a marriage are to be put in a lease present should be according to the financial status of a giver, such a present should not be before or after marriage .

Giver taker and demand are Dowry offenders

it is a offense who take dowry directly or indirectly from the parents or the guardians and for such the punishment will be originally it was six month imprisonment or fine of 5000 or more or both can be awarded now it is enhanced minimum and a maximum punishment given in an amending act 1986 gives five year imprisonment final of ₹15,000 or more if dowry amount is more than more than 15,000 or Court will impose a sentence of imprisonment. It will not less than five years and take it in record that is in writing the joint parliament committee is of opinion that giver of a dowry, not to be treated as a offender parents give it when they are forced the person who commit this act is an offender.

Transfer of a dowry to the bride:-

Actually, receiver is not a bride. It is either by husband or some other person of in-laws so in such cases act lay down the dowry should be transferred to the bride within three months of receipt if bride is a minor then three months after her attaining majority so before transfer, he holds it as a trustee as a benefit for the bride. It is not transferred in a given period then it is an offense punishment will be the same as ofas of to the taker The Court has no discretionary power in punishment if bride dies before the transfer of the dowry then it will go to her hairs if woman dies within seven years of her marriage, it will go to her children if no children then to her parents the act provide that court will make an order, directing the offender to transfer dowry to the pride or her heirs if he fails to give such then court is required to pass an order directing the amount equal to the value of a dowry, he should give it to the bride or her heirs.

Dowry offenses are partly cognizable:-

neither original act or amending act made as a cognizable offense they have made it for the purpose of investigation as cognizable by this the police have a freedom to make investigation of such offense the act give no person accused of the dowry offense. Police can arrest without the warrant or without the order of the magistrate first class dowry offenses are non-compound table. It means they are not free to compromise or can take a bail. An agreement to giving, and taking dowry is wide that is it cannot be enforced in the court of law

Trials of dowry offenses:-

In Metropolitan cities, Metropolitan and magistrate or magistrate of first class can try dowry offenses. The cognizant of dowry offenses can be taken by the magistrate only or on the basis of the police report. Complaint might be by the parents relatives or recognizing welfare organizations like NGO non-governmental NGO rise, India foundation, Shagun and government organizations like national commission for a woman state commission for woman, national legal service authority, dowry, prohibition, officers, and other helpline The complaint which was made after one year of a commission of the offense was not acceptable, cause they forget that it is totally different from the theft and decoity such offenses brought to the light after a lapse of time so the amending act has been removed this limitation now it can be made after any

time of a such offense, but if complaint is after considerable delay, the court may not entertain such complaints

Dowry prohibition officer:-

Under section 8B of amendment act1986. The state government can appoint such dowry officers, two different area of the state. These officers would serve all possible aid and advice to the person who is subject to the dowry who is tortured or harassed by the dowry.

UNIT-III

1) Hindu undivided Family

2) Karta

3) Doctrine of Pious Obligation

4) Partition

5) Religious and charitable Endowment

1) Hindu undivided Family

Hindu Joint Family

1. **Composition of joint family**:

The Hindu Joint Family is peculiar to Hindu society only. It consists of the common ancestor and all his lineal descendants upto any generation together with the

wife or wives (or widows) and unmarried daughters of the common ancestor and of the lineal male descendants. It has to be clearly understood that the existence of the common ancestor is necessary for bringing a joint family into existence; for its continuance common ancestor is not a necessity. The death of the common ancestor does not mean that the joint family will come to an end.

2. Corporate personality and composite family:

A Hindu Corporate personality and composite family A Hindu joint family is not a corporation. A Hindu joint family has no legal entity distinct and separate from that of the members who constitute it. It is not a juristic person either. Hindu family is a unit and in all affairs it is represented by its karta or head.

3. Hindu Undivided Family:

For the purposes of assessment of tax, the revenue statutes use the expression, 'Hindu Undivided Family'. This appears to be slightly different from the definition of a Hindu Joint family. For instance, for the purpose of revenue statutes, there can be an undivided family consisting of a man, his wife and daughters or even of two widows of a sole surviving coparcener. A single male or female cannot make a Hindu joint family even if the assets are purely ancestral.

4 Presumption of jointness:

This has been an accepted proposition that every Hindu family is presumed to be joint family. The undivided joint family is the normal characteristic of a Hindu family. Presumption is that the members of the family are living in a state of jointness, unless contrary is proved

5. No presumption that joint family holds joint property:

There is no presumption that joint family possesses joint property. It has not been seen that normally a Hindu joint family is joint in estate, but there is no presumption that the properties held by a member of joint family properties. Daughter has also been made a coparcener by virtue of section 6(1) of the Hindu Succession (Amendment) Act, 2005.

6 Coparceners:

Coparcenery is a narrow body of persons within a joint family, and consists of the father, son, son's son's and son's son's son. Like joint family, to begin with, it consists of the father and his three male lineal descendants; in its continuance, the existence of the father-son relationship is not necessary. Thus, a coparcenery can consist of grand-father and grand-son, of brothers, of uncle and nephew and so on.

7. **Incidents of coparcenership**:

The incidents of coparcener ship are: A coparcener has an interest by birth in the joint family property, though until partition takes place, this is an unpredictable and fluctuating interest which may be enlarged by deaths and diminished by births in the family; every coparcener has the right to be in joint possession and enjoyment of joint family property- both these are expressed by saying that there is community of interest and unity of possession. Every coparcener has a right to be maintained including a right of marriage expenses being defrayed out of joint family funds

8. **Unpredictable and fluctuating interest:**

The most remarkable feature of interest by birth is that the interest by which a coparcener acquires by birth is not a specified or fixed interest. At no time before partition can it be predicted that he is entitled to so much share n the family property.

9. **Right of maintenance**:

Every coparcener and every other member of the joint family has a right of maintenance out of the joint family property. The right of maintenance subsists through the life of the member so long as family remains joint. Female members and other male members who do not get a share on partition, either because they have no right, such as an unmarried daughter or because they are disqualified from getting a share, such as an idiot or lunatic coparcener, are entitled to maintenance even after partition. Unmarried daughters, have a right to be married out of the joint family funds. 10.

10.**Illegitimate son as a coparcener**:

Hindu law has never considered ab illegitimate child as a filis nullius. An illegitimate son, particularly the dasiputra has always been regarded as a member of his putative father's joint family and as such has a right to be maintained out of the joint

family funds during his entire life. However, he has not been considered as a coparcenor.

11. Coparcener between a sane and insane person:

There can be coparcenaries between a sane and insane person. A Coparcener gets his right in the Corparcenory property by birth and there is nothing in Hindu law which shows that such a right is irrevocably extinguished on a supervening insanity. Under Hindu law, an insane Coparcener has not right to claim partition has not right to a share if partition takes place, but this does not make him cease to be a Coparcener.

12. Corparcenory between a father and sons born of civil marriage:

If a Hindu performs a marriage under the Special Marriage Act, 1954, with a non-Hindu, his interest in the joint family property is severed. But does it mean that there cannot be a Corparcenery between such a Hindu and a son born to him out of the marriage. A Corparcenery will come into existence between him and his son provided his son is a Hindu.

13. Corparcenory within the coparcener:

It is possible that separate Coparcenaries may exist within a corparcenory. The Supreme Court considered in Bhagan v Reoti S.C 287 Where it was observed that: “Hindu law recognizes only the entire joint family or one or more branches of that family as a corporate unit or units and that the property acquired by that unit in the manner recognized by law would be considered as joint family property. Coparcenary is a creature of Hindu law. The law also recognizes a branch of the family as a subordinate corporate body.”

14. No female can be a coparcener:

In Mitakashara coparcener, no female except a daughter can be its member, though they are members of the joint family. It means no female except daughter has any interest by birth in the joint family property. She has no right of survivorship or partition, though if a partition takes place, certain females are entitled to a share. Widow of a son is not a coparcener. This is new subject to Section 6(1) of the Hindu Succession (Amendment) Act, 2005 even female can be coparcener

Features of Coparcenery:

1. Coparcenery is a creation of law and not by the fact of parties. Only, in case of adoption, the adopted son becomes a Coparcener foe the properties of the adoptive father.
2. A female can be a member of coparcenary.
3 .Unity of ownership is the essence of a Coparcenery. When the property is undivided, share in the property is unpredictable. The interest of a member in the family enlarges by deaths and diminishes by births in the family. There is community of interest and unity of possession between all the members of the family. The Coparcenery property is held in collective ownership by all the coparceners in a quasi corporate capacity.
4. There may be maintenance holders without being Coparceners in the common estate.
5. If the manager or other members in the family make invalid alienations, then the Coparceners have right to invalidate them.
6. The Coparcener is a corporate entity and in all transactions the Karta represents.

Rights of Coparceners:

The following are the rights of a Coparcener:

1. Every Coparcener is entitled to community of interest and unity of possession of Coparcener's property along with the other Coparceners.
2. A Coparcener's share gets defined only when a partition takes place.
3. Every Coparcener is entitled to joint possession of the coparcenery property and also its enjoyment. In case, a coparcener is not allowed for joint possession or enjoyment of property, then he can enforce his rights by a civil suit.
4. Every coparcener is entitled to maintenance out of income of the coparcenery property.
5. Every coparcener is entitled for partition of the coparcenery property.

6. Sole surviving coparcener entitled to all property. Karta: The karta is usually a person who is the senior most male member in a Hindu Joint Family. He is the head of the family and exercises administrative control of all the coparcenery property including even charitable properties. He represents the family in all contracts.

2) Karta:-

Karta Joint Hindu Family is a patriarchal family and the head of the family is called Karta Karta or manager of the joint family occupies a unique position unlike any other member of the family.Karta is the senior most male member of the family who acts as the representative of the family and acts on behalf of the family. There is a fiduciary relationship between the Karta and the other family members

WHO CAN BE KARTA;-

Senior most Male Member It is a presumption of the Hindu law that ordinarily the senior most male member of the joint Hindu family is the Karta. He does not owe his position to agreement or consent of other coparceners. So long as the father is alive, he is the Karta. Junior Male Member In the presence of the senior male member, a junior member cannot be the Karta. But if all the coparceners agree, a junior male member can be a Karta More than One Karta a joint Hindu family cannot have two Kartas under Hindu law. However, family members may authorize a junior coparcener to manage family affairs or business through express or implied consent. Female Members as Karta According to Hindu sages, only a coparcener can be a Karta Since females cannot be coparceners, they cannot be the Karta of the joint family The Hindu Succession (Amendment) Act, and 2005 allows daughters to be included as coparceners of the Hindu Undivided Family.

POSITION OF KARTA;-

It's unique. The position of Karta is sui generis. The relationship between him and other members are not that of principal or agent or partners. He manages all the affairs and business of the joint family. He stands in fiduciary relationship with other members but he is not a trustee Karta is accountable to none. The only exception to this rule is, in case of fraud, misappropriation or conversion, he is held accountable He is the master and no one can question him as to what he received and what he spent Karta obtains no reward for his service

RESPONSIBILITIES OF KARTA;-

Karta is responsible to maintain all members of the family, coparceners and others. He responsible for the marriage of all unmarried members. A Karta is supposed to be the HUF's representative on all legal, social, religious and revenue associated situations and litigations that involve immovable property of the HUF. He has to pay taxes and

other dues on behalf of the family and he can be sued for all his dealings on behalf of the family with outsiders

POWERS/RIGHTS OF KARTA;-

Powers can be understood under two heads. Power of Alienation of Joint Family Property Other powers

1. Powers of Management –
2. Right to Income
3. Right to Representation
4. Power of Compromise
5. Power to refer a Dispute to Arbitration
6. Power of Acknowledgement
7. Karta's Power to Control Debts
8. Loan on Promissory Note
9. Power to Enter into Contracts
10. Power of Alienation —

No one among the family members can alienate joint family property. But Karta has the power to alienate the property under three circumstances -a) Legal Necessity b) Benefit of Estate c) Indispensable Duties

3) DOCTRINE OF PIOUS OBLIGATION

1. Introduction
2. Avyavharika debts
3. Vavharika debts
4. Liabilities

1. Introduction:-

a son is under a pious obligation to discharge his father's debts out of his ancestral property even if he had not been benefited by the debts, provided the debts are not avyavaharika. The sons get exonerated from their obligation to discharge the debt of their father from the family assets only if the debt was one tainted with immorality or illegality. Doc of pious obligation.The duty that is cast upon the son being religious and moral, the liability of the son for the debt must be examined with reference to its character when the debt was first incurred. If at the origin there was nothing illegal or repugnant to good morals, the subsequent dishonesty of the father is in not discharging his obligation will not absolve the son from.liability for the debt. In Hindu law there are two mutually destructive principles, one the principle of independent coparcenary rights in the sons which is an incident of birth, giving to the sons vested right in the coparcenary property, and the other the pious duty of the sons to discharge their father's debts not tainted with immorality or illegality, which lays open the whole estate to be seized for the payment of such debts. According to the Hindu law givers his pious duty to pay off the ancestors' debts and to relieve him of the death torments consequent on non-payment was irrespective of their inheriting any property, but the courts rejected this liability arising irrespective of inheriting any property and gave to this religious duty a legal character. Son's pious obligation If a debt contracted by the father has not been repaid during his lifetime, by himself, it must be restored, after his death, by his sons. Should they separate, they shall repay it according to their respective shares. If they remain united, they shall pay it in common, or the manager shall pay it for the rest, no matter whether he may be the senior of the family or a younger member, who, during the absence of the oldest, or on account of his incapacity, has undertaken the management of the family estate. Mukherjea J., delivering the judgment of the Supreme Court in Sidheshwar Vs Bhubaneshwar Prasad, has once again discussed this question. According to the learned Judge, the doctrine of pious obligation. “Has its origin in the conception of Smriti writers who regard non-payment of debt as a positive Sin, the evil consequences of which follow the undischarged debtor even in the after world. It is for the purpose of rescuing the father from his torments in the next world that an obligationis imposed upon the sons to pay their father's debts." A series of decisions in the courts of modern India have changed the traditional interpretation of the liabilities

of the son, grandson, and great-grandson. The traditional distinction was that the son was liable to pay the principal and the interest, the grandson was liable to pay only the principal but no interest, and the great-grandson was liable only to the extent that the paternal estate came into his hands. The son, grandson, and the great-grandson are liable equally for ancestral debts, but not personally liable, and that their liability is co-extensive and confined to the extent that they have joint property in their possession. It was not essential for the son to prove criminal liability against the father in respect of the debt in question in order to claim exemption from payment of such debt. The learned Judge pointed out that the son can claim immunity only when the father's conduct is utterly repugnant to good morals or is grossly un-iust or is flagrantly dishonest.

2)Avyavaharik debts

We will look as to what is meant by Avyavaharik debts.

Colebrooke. Defined it as a liability incurred for a cause repugnant to good morals. If it is unrighteous or wholly improper they cannot be called vyavaharika or legal debts. It may be that the debts incurred by the father for defending himself against criminal action against others or defending himself in an action brought by others are legal in several circumstances, If a debt was incurred to defend the rights of the family and to safeguard its interests, it is certainly legal in nature. If a debt is not tainted with illegality at its inception it may be binding on the son. The son may not be able to claim immunity from the debts in such cases. But, where the father's conduct which prompted the incurring of the debt, is utterly: repugnant to good morals or is grossly unjust or flagrantly dishonest, then certainly the son can claim immunity from its liability. The learned author Mulla of Hindu Law (at pages 350 and 351 in l3th edition) places any debt which is avyavaharika which is rendered by Colebrooke as equivalent to a debt for a cause "repugnant to good morals" in the list of Avyavaharika debts. It is further stated that the fundamental rule is that the sons are not liable for the debts incurred by father which are Avyavaharika. Colebrooke translates it as "debts for a cause repugnant to good morals." Aparaka explains it as not righteous or proper. In a decision of a Full Bench in Bombay High Court it was held that Avyavaharika debt means illegal, dishonest or immoral one. It is not essential for the son to prove criminal liability of the father in order to claim exemption. So, where a person in possession of property, to

which he is not entitled, disposes of that property and deprives the rightful owner of that property, his conduct is dishonest and the son is not liable for the debts arising out of such conduct Lord Dunedin of the Privy Council defined the antecedent debts as antecedent in fact as well as in time i.e. not a part of transaction impeached.

Thus two conditions are necessary –

1. The debts must be prior in time and
2. The debts must be prior in fact.

The father himself can alienate the joint family property for the discharge of his personal debt and son can challenge it only if the debts are tainted. This means that the father can do it indirectly also. The pious obligation of the son to pay off the father debt exits whether the father is alive or dead. It is open to father during his life time, to convey joint family property including the interest of the son to pay off antecedent debts not incurred for family necessity or benefit provided the debts are not tainted with immorality. The father cannot do so after filing of the suit for partition.

Burden of proof:-

The obligation on son to pay off their father's personal debts is religious obligation and if they want to wriggle out of it? They can do so only if the debts are tainted the son also have to show that creditor had the notice or knowledge that the debts was tainted. The Apex Court in Luhar Marit Lal Nagji v. Doshi Jayantilal Jethalal, relying upon the judgments of the Privy Council referred to enunciated the principles thus: "the sons who challenge the alienations made by the father have to prove not only that the antecedent debts were immoral but also that the purchasers had notice that they were so tainted." The learned judge points out that the doctrine, as formulated in the original texts, has indeed been modified in some respects by judicial decisions. That under the law as it now stands, the obligation of the sons is not a personal obligation existing irrespective of the receipt of any assets, and that it is a liability confined to the assets received by him in his share of the joint family property or to his interest in the same. In Venkatesh Dhonddev Deshpande v. Sou. Kusum Dattatraya Kulkarni, the observations of the Supreme Court are as follows:-Whether father is the Karta of a Joint Hindu family and the debts are contracted by the father in his capacity as manager and head of the family for family purposes, the sons as members of the joint family are bound to pay the debts

to the extent of their interest in the coparcenaries property. Further, where the sons are joint with their father and the debts have been contracted by the father for his own personal benefit, the sons are liable to pay the debts provided they are not incurred for illegal or immoral purposes. When a mortgage has been created by the father the term 'avyavaharika' as given by Mr. Colebrooke makes the nearest approach to the true conception the term as used in the Smrthi text, and that the term does not admit of a more precise definition. The expression was doubtless originally meant to render 'avyavaharika' it cover all the cases enumerated in the smiritis. It is, therefore, expedient to use the term 'illegal or immoral' purposes then 'avyavaharika' which as defined In Keshav Nandan Sahay Vs. The Bank of Bihar it was said that sons are liable under the theory of pious obligation for the preparation debts incurred by the father. The doctrine of pious obligation cannot apply to the wife and she, therefore, cannot be liable to the creditors on the principles applicable to the sons. On a partition between a coparcener and his sons, a share is allotted to the wife in her own right and she cannot be treated as mere representative of the husband. The principle is based upon ancient Hindu texts which do not mention the wife in the category of the sons and there is no statutory enactment ex- tending that doctrine so as to include her to defendant for paying off the debts.

3)vyavaharik debt

High Courts, as follows:-"Even if "any loan is taken by the father for his personal benefit which is found as vyavaharik debt and not avyavaharik, the sons are liable to discharge their father's debt under the doctrine of pious obligation and in this view the matter if any alienation the joint family property is subsequently made to discharge such antecedent debt or loan of the father, such alienation would be binding on the sons." Pious obligation includes both spiritual as well as material aspects and makes the heir(s) responsible/liable for spiritual duties, like performing the last rites of the deceased, paying back debts accrued by the deceased and also fulfilling other responsibilities left incomplete in respect of the joint family. Once pious obligation is abrogated, the concept of joint family also suffers a blow. "The doctrine of pious obligation under which sons are held liable to discharge their father's debts is based solely on religious considerations; the doctrine inevitably postulates that the father's

debts must be vyavaharik. If the debts are not vyavaharik or are avyavaharik the doctrine of pious obligation cannot be invoked." The principle relating to the liability of the sons for debts incurred by the father may be briefly recapitulated.

4) Liability:-

This liability of the sons, which had its origin in an obligation of piety and religion, has since metamorphosed into one of legal liability but this 'does not, however, extend to debts tainted with immorality. The liability is not, however, personal in the sense that the creditor of the father cannot proceed either against the person or separate Property of the sons, but such liability is Restricted to the interest of the sons in the family property. It is settled that if the debt is contracted by the father after partition, the son cannot be made liable If, however, the debt is a pre-partition debt, the share of the sons would be liable even after partition, if the debts of the father are not immoral or illegal and the partition arrangement does not make any provision for the discharge of such debts. In case a creditor institutes a suit for the recovery of a debt against the father before partition and obtains a decree, the sons would be liable to discharge the decree passed against the father even after the partition. • Even in respect of a pre-partition debt, if a suit is instituted against the father, after partition, but he dies and his separated sons are impleaded as legal representatives, the remedy of the decree-holder against the shares allotted to the sons on partition, would be in execution and not by way of an independent suit. If, however, after partition, a suit is instituted against the father on a pre-partition debt and a decree is obtained against him, such a decree cannot be executed against the sons and a separate suit has to be brought against the sons in order to enable creditor to realize the amounts out of their shares. Thus the liability of the interest of the sons in such cases to discharge the debts incurred by the father is undisputed, though the method and manner of its enforcement by the creditor would vary and the sons must be afforded every opportunity, be it in a suit or execution proceedings to question the binding nature of the debt' or liability. After amendment of 2005 After the commencement of the Hindu Succession (Amendment) Act, 2005, no court shall recognize 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.

4) Partition

1. Introduction

2 .Meaning of a partition

3. Property liable to partition

4. Allotment of shares

5. Modes of a partition

6 .Effects of a partition

7 .Reopening of a partition

8 .Reunion of a partition

9. Effect of a reunion

1. Introduction:-

Partition means bringing a joint status to an end. On partition, the joint family ceases to be joint, and nuclear families or different joint families come into existence. For instance, if a partition takes place in a joint family consisting of A and his two sons, B and C, there will come into existence three separate families of A, B and C. Or suppose a joint family consists of three brothers. A, B and C and their three sons, AS, BS and CS. If three brothers partition, their sons not partitioning from them, there will come into existence three joint families, consisting of A and his son AS, B and his son BS, and C and his son CS.

2 .Meaning of a partition

Under the Dayabhaga school,when coparceners partition, it means division of property in accordance with the specific shares of the coparceners, since the Dayabhaga coparceners have ascertained and specified shares. But under the Mitakshara school, partition does not merely mean division of property into specific shares, it also means division of status, or severance of status or interest. It is because the interest of the Mitakshara coparceners is unspecified. Thus,

under the Mitakshara school, partition means two things: (i) Severance of status or interest, and (ii) Actual division of property in accordance with the shares so specified, known as partition by metes and bounds. Severance of status is quite distinct for the de facto division into specific shares of the joint property. The former is a matter of individual decision, the desire to sever him and enjoy his undefined and unspecified share separately from others; while the latter is a resultant consequent of his declaration of intention to sever but which essentially a bilateral action is. It may be arrived at by agreement, by arbitration or by suit.' Partition among members of undivided family cannot be considered as disposition or conveyance or assignment or settlement. It is also not a transfer in strict sense. Mere separate living without recording any family statement in revenue records does not lead to an inference of partition.

3) Properties in capable of division:-

Rule of the property partition of such property

1) Imperative property that is property, which is descendant to one member only either by the custom or by under any provision of law or by the terms of grant

2) Property in dividable by nature

3) Family idols and religious which are object of worship

4) separate property of a member Certain provisions to be made before the partition From the properties which are liable to partition provision must be first made for Debts incurred for the joint family, which are payable out of the joint family property Maintenance of a dependent female members and disqualified heirs Marriage, expenses of fun and married daughter of the last male holder, but not of the collaterals Expenses for the funeral ceremony of a widow and the mother of the last male holder Narayan versus RV V Rang Anandhan AR 1970 6SE1715 In this case, the Supreme Court stated that while dividing the family estate, the joint family should take account of the both tits and the assets and to make provision for the discharge of the debts Partition of a joint family property may take place at the instance of the following personsSons grandsons (also daughters of the coparceners) 1)After born sons(and after born daughter of the copaceners)

After born son are of two sets:-

1) Those born as well, as begotten after the partition

2) Those born after partition, but begotten before it or those in their mother's womb at the time of the partition

3)Illegitimate sons, and estimate son among the three generation classes has no interest in the property and cannot claim partition but entitled to maintenance out of his father's estate

4) Widows: - she is not a Copacener but she is entitled to share when the partition is made

5) Alien's:- of a Copacener interest whenever such alienation is a valid has also a right of partition

6) Female sharers: - A) wife's B) widow mother C) parental grandmother

7) adapted children's;- Adopted children are treated natural born child and they can demand partition

5) Allotment of shares:-

The following are the rules for the allotment of share Sohna partition

1) on the partition between father and his children. Each child takes a share equal to that of his father.

2)a joint family consist of a brother, they take equal shares on a partition

3) each branch take per stripe as regards every other branch, but members of the same branch take per capital as regards each other

4)on the death of a coparcener leaving issue, his right to share on a partition passes to his issues,provided each issue be within the limit of coparcenery i e within the limit of the 4th degree from the common ancestor

FEMALE SHARE:-

The female who take share on a partition are The wife. Willowed mother, widowed grandmother, and daughter.

6) Mode of a partition

1) Partition by mayor declaration to separate:-

Intention by the member of joint family to separate himself from the joint family and enjoy his share in independent is partition by mere declaration to separate Partition by

notice:-independent in a joint status may be affected by serving a notice by a coparcener, including his intention to separate and enjoy the property independently or demanding the partition of property

2) Partition by will:-

Partition may be effected by the coparcener making a will, and I will containing a clear intention to his coparcener s that his desire to be independent himself from the joint family, or containing and assertion of his right to separate

3) Conversion to another religion:-

Conversion to another religion operate as a partition of a joint status as between him and the other members of the family

4) Marriage under special marriage act 1954:-

If any coparcener married under special marriage act, separate himself from himself and the other members oftheir family

5) Partition by agreement:-

The agreement between members of the joint family to hold and enjoy the property in a certain defined share as separate owner operates as a partition, although the property itself has not been actually divided by the meets and bonds

6) Partition by arbitration:-

An agreement between the members of the joint family, whereby they appoint an arbitrator to arbitrate and divide the property operates as a partition from the date thereof

6. Partition by father:-

The father may also cause a severance of the Sons without their consent.1 father, can I get share of his sons fix and also get them separated2 but he does not have a right to get a joint family property partition through the will. 3although he could do the same with their consent

7. Partition by Suits:-

by filing a suit for a partition effect severance in the joint family status and suit effects, immediate severance of the joint status.

7) Effect of a partition:-

1. Joint status comes to an end

2. Coparcenery also comes to an end

3. Share is also determined

4. Partition doesn't end the family and the other relation

5. Suit for a partition:-who can file a suit for a partition it is every adult coparcener and a purchaser of a coparcener property or coparcenery property at the sale in execution of a degree, such purchaser can demand partition

6. Suit by minor:-Hindu law doesn't make any difference between the minor and the major. Coparcener in regards to their rights in the joint family properties

7. Parties to the suit:-

8. The head of all the branches

9. Female, who, are entitled to share in a partition they are daughter of a coparcener wife, mother, and grandmother

10. The purchaser of the interest of coparcener

11. All the person who are entitled to partition or have a sharing a partition, which include female shares and to have a provision made for a maintenance and a marriage and Aliens of undivided interest are necessary parties to the suit for a partition

8) Reopening of a partition:-

1. General rule is that partition once made cannot be reopened, but there are certain exceptions to this. They are when a son is conceived at the time of a partition do not bond before the partition can reopen it

   2 hands be forgotten as well as born after the partition demand for a reopening of a partition. If his father entitled to share has not reserved a share for himself.

   3 disqualified coparcener after the removal of disqualification or missing coparcener on his return can reopen the partition 2. A partition reopened by a minor on majority, if the partition is made during his minority was unfair 3. If a person has obtained unfair advantage in the division of the partition may be reopened for adjustments of the share

9) Reunion: -

General rule is that reunion cannot happen, but there is a exception which says that reunion is that a member of a joint family once separated reunited with the father, brother or paternal uncle, but not with any other relations according to Mitakshara and Dayabhaga reunion an only take place between father and son or within the brothers with a paternal uncle and nephews.

Effect of the reunion: - 1. The effect of the reunion is to revert and United members to their status as members of the joint Hindu family

5) Religious and charitable endowment:-

1) Introduction
2) History
3) Meaning
4) Essentials of Endowment
5) Temples and Maths
6) Shebaits and Mahants
7) Devolution of the Office
8) Debutter property:-

1) Introduction:-

The religious and charitable endowment are not included in one of the 18 titles of the law but but incidentally, along the history of Hindus, the great empasis has been placed on the gift for religious and charitable purpose, and this also helped our Court to develop a law of religious and charitable endowment in the modern Hindu law. The religious charitable endowment is essentially a judge made a law and our court still busy in their endurance and developing interpretation of law in regards to the endowment.

2) History:-

It is certain that temple and maths did not exist in the Vedic period in the Dharmasastra and Dharma Sutra period also but the temples in some form existed. It is not easy to save an exactly idol worship came into existence. The age of Pune is uncertain between fourth and eighth century the worship of Pura courts become very popular later the institution of math was known to the Vidi Koreans, Greer Supras, which did not approve the aestheticism, even when the last stage of the Life. in India, institution of math is essentially a contribution of Buddhism in 18 century, the great sankeracharya who established the vote at four extremities of India, the institution ofmath came into existence which was followed up by other great leaders afterSankerachara, the Ramanja or a place of pride in the development and spread of the institution of math the followers of Ramanuj I have several sect and sub sects came into existence with coming of the existence of maths

3) Meaning:-.

Endowment means dedication of a property for religious and charitable purpose for the benefit of a public or some section of a public for advancement of religious knowledge, commerce, health, safety, or for the benefit of the mankind by opening and idols, hospitals, schools, universities, for the poor Endowment of the properties are set apart for the gifting of such property and these endowment are of two types A, private B, public Private endowment is only for the family purpose, and public endowment are for the benefit of a large public of a specified class For example :-idols, shrines, temples, moves are charitable endowment, even Dharma Shale Hospital College, feeding, poor construction of tanks, well etc. are the benefits of the public Religious and movement is a one with the object to subservient to the religion and charitable endowment is the one the main object to solve or benefit to public or mankind. A Hindu of a sound mind major with absolute intention, according to law should establish religious or charitablely endow it. There is a no need of trust it should be clearly specified to the property which intended to dedicate it for the purpose of endowment Writing is not necessary if it is through the will then it must be in writing and attested by 2 witness When donor completely devote himself from the property dedicated, he cannot revoke it through trust or derive any benefit from them And if the property or idle is not in existence at the time of the gift or on the test will not be invalid Charitable Endowments Charitable

endowments are established to support charitable activities and provide assistance to the less fortunate. These endowments are typically used to fund hospitals, orphanages, old-age homes, and other charitable institutions. Some examples of charitable endowments include funds for the construction of a hospital, funds for the provision of free medical services, and funds for the care of the elderly

4) Essentials of Endowment:-

For the creation of a valid endowment, the following points must exist:

1. Absolute Dedication of Property: The dedication of the property must be absolute and in perpetuity. The donor must dedicate the property for a charitable cause and divest himself from any beneficial interest in the property.

2. Object must be Definite: The dedication made needs to be clear and definite. For example, if the endowment is for a charitable purpose, it needs to be clear for what it has been made.

3. Property must be Definite: The property being dedicated needs to be definite. Any uncertainty with regards to the subject matter of the endowment might challenge the validity of such endowment.

4. Person setting or creating the Endowment should be competent: It is absolutely necessary that the person creating the endowment is legally competent to do so. The person creating the endowment must be major, of sound mind and not legally disqualified to make the endowment.

5. Endowment must not be opposed to law: Such endowment must not be opposed to law. The endowments made should be for valid purposes.

5) Temples and Maths:-

The religious needs of the Hindus are served by Temples and Maths. God is worshipped in temples. It is usual to install a particular idol in the temple representing the deity as an aid to concentration in worship. The Maths is monasteries where Hindu scriptures are studied by monks or sanyasis. They are centers for preaching and propagating Hinduism. For these purposes property may be dedicated resulting in a religious endowment. A religious endowment may be set up orally by dedicating the property for the particular religious object in view. Thus property may be given to idols

and Maths and the particular purpose for which it should be applied may also be specified.

6) Shebaits and Mahants:-

Shebaits and Mahants play an important role in managing endowments. Shebaits are the custodians or caretakers of a religious institution or property, while Mahants are the heads of a religious institution or math. Both Shebaits and Mahants are responsible for managing the affairs of the institution and ensuring that the endowment funds are used for the purpose for which they were intended. Shebaits are appointed by the founder or a governing body of the religious institution. They are responsible for maintaining the institution, performing religious ceremonies and festivals, and managing the endowment funds. Shebaits have the power to lease out the institution's property and to use the endowment funds for the benefit of the institution. Mahants, on the other hand, are the heads of a religious institution. They are responsible for managing the affairs of the math department, performing religious ceremonies and festivals, and managing the endowment funds. Mahants have the power to appoint Shebaits and to use the endowment funds for the benefit of the math. Shebaits and Mohants: The Manager of a temple is called Shebait or Dharmakarta. The Manager of a Muth is called a Mohant or Matadhipati. In Vidyavaruthi v. Baluswami, 44 Mad. 831 (PC), the Privy Council pointed out that the Dharmakarta of a temple is not the legal owner of the endowed property. He is only the Manager. The Supreme Court has pointed out in Sirut Math case as regards the office of Mohant: "In the office of Mohantship, the elements of office and property, of duties and personal interest are blended together and neither can be detached from theother". The head of the Mutt is a saintly religious preacher and his devotees and disciples present offerings at his feet. These are entirely in the personal disposition of interest of the Shebait in debut tar property, ie. Property of the deity. Alienatory Powers: The alienatory power of the Shebait and the Mohant over the endowed property is analogous to the power of limited owners. That is, this power is governed by the rule in Hanooman Persaud's case.

7) Devolution of the Office:-

It is open to the Shebait to nominate his successor. A similar power is enjoyed by the Mohant. Custom and practice regulates the devolution of the office. right to

management in such a case is virtually a property right and the heir of the Shebait succeeds to the office.

8)Debutter property:-

Property absolutely dedicated to religious or charitable purpose is called debutter property. Debutter means literally belonging to a deity. Where the dedication is absolute and complete, the possession and management of the property belongs, in the case of a deosthana or temple, to the manager of the temple, called shebait but the property vests in the idol; and in case of math that is an abode for students of religion, to the head of the math called mahant. Power of alienation of debutter property: As a general rule, the property given to religious worship/and charities connected with it is inalienable. It is however, competent for the shebait of the mahant to charge the property by incurring debts and borrowing money on a mortgage for the purpose of religious worship and for the benefit and preservation of the property. The power can be exercised only in cases of actual necessity. The power of the shebait or a mahant alienate the debutter property is analogous to that of manager for an infant heir as defined in Hanuman Prasad v. Mst. Babooee (1856) 6 M.I.A. 393, a deity being looked upon as a particular minor. Thus he can alienate the property only in a case of need or for the benefit of the estate. He cannot grant a permanent lease of the debutter property except for legal necessity. The duties and powers of a Mahant are similar to those of a shebait.

UNIT-IV

1) Inheritance

2) Hindu Succession act 1956

3) Stridhana

4) Amendments to Hindu Succession act

5) Gift

6) Wills

1) Inheritance and Succession

Inheritance

The law of inheritance came later after the joint family. It was applied only to the property belonging exclusively to a person as distinguished from the property held by the joint family, several difficulties and complications to the difference in law of inheritance among two major schools where seen The first step is a direction was taken in 1937 by passing a Hindu one's right to the property act then came the Hindu succession act which came into four on June 1956 Changes brought above the Hindu succession act

Uniformity of application: - They gives a uniform system of inheritance and applied to all the person maybe but not by survivorship and effect of this that right of equal share with that of male member. Inheritance to a separate property .The system of inheritance to a separate or self property of a male dying intestate, which given under Mitakshra and Dayabhaga are abolished and a uniform system is introduced

2) Hindu Succession act 1956: -

The Hindu Succession Act, 1956 is a landmark legislation that governs the rules of inheritance and succession among Hindus in India. This Act brought about a significant transformation by codifying and unifying the personal laws related to succession applicable to Hindus, Buddhists, Jains, and Sikhs. Before this Act, Hindu succession law was largely governed by two traditional schools of law—the Mitakshara and the Dayabhaga—which had different rules regarding the devolution of property. The Act

simplified and unified these rules, giving clarity and uniformity to the inheritance process.

1. Historical Background and Need for Hindu Succession Act, 1956
2. Applicability of Hindu Succession Act, 1956 (Section 2)
3. Definitions under Hindu Succession Act, 1956
4. Properties outside the Scope of the Act (Section 5)
5. Salient Features of the Hindu Succession Act, 1956
6. Understanding Coparcenary Property and Its Devolution (Section 6) 1. Before the 2005 Amendment 2. After the 2005 Amendment
7. Types of Succession under Hindu Succession Act, 1956
8. Intestate Succession Rules in the Case of Males (Section 8 and Schedule)
9. Disqualifications of Heirs
10. Succession in the Case of Females (Sections 15–17)
11. Important Legal Principles
12. Significant Case Law Highlights
13. Impact of the 2005 Amendment

Historical Background and Need for Hindu Succession Act, 1956

Historically, Hindu succession law was fragmented and varied by region due to the existence of two major schools: Mitakshara School Predominant in most parts of India, this school followed the principle of survivorship for joint family property, meaning ancestral property passed to surviving male coparceners automatically. For separate property, inheritance rules applied. Dayabhaga School, Found mainly in Bengal, this school recognized succession as the sole mode of inheritance, even for joint family property. These differing customs resulted in confusion, inconsistency, and often discrimination against women, particularly daughters, in matters of inheritance. The Hindu Succession Act, 1956 was enacted to. Unify the rules of inheritance for all Hindus regardless of region. Replace customs that discriminated against women. Clarify the position regarding ancestral (joint family) and separate property. Provide a comprehensive legal framework for succession, both intestate and testamentary. Applicability of Hindu Succession Act, 1956 (Section 2) The Act extends to the whole of India (except Jammu & Kashmir until it was reorganised). Its applicability covers Hindus:

Including Virashaiva, Lingayat, Brahmo Samaj, Prarthana Samaj, and Arya Samaj followers. Buddhists, Jains, and Sikhs. Persons who have converted to or from these religions. Legitimate and illegitimate children of Hindu parents or those raised as Hindus. However, the Act excludes, Persons governed by the Special Marriage Act, 1954, under whose marriages succession is governed by that Act. Scheduled Tribes, unless notified otherwise by the Central Government. This wide scope ensures that the Act governs the vast majority of succession cases involving Hindus and related religions in India. Key Definitions under Hindu Succession Act, 1956 Understanding certain terms defined under Section 3 is essential to grasp the Act's framework. 1. Agnate: A person related by blood or adoption entirely through males. For example a paternal uncle's son. 2. Cognate: A person related by blood or adoption, but not exclusively through males. For example, maternal relatives. 3. Heir: Any person entitled to inherit property from a deceased person who died intestate. 4. Intestate: A person who dies without leaving a valid will. 5. Related: Legitimate kinship. 7. Illegitimate children are considered related to their mother and to one another. Properties outside the Scope of the Act

(Section 5) Certain properties are excluded from the Act's jurisdiction. Those governed by the Indian Succession Act, 1925, especially concerning marriages under the Special Marriage Act. Estates governed by princely covenants or agreements prior to the commencement of this Act. Certain estates, like the Valliamma Thampuran Kovilagam Estate, administered under special proclamations. Salient Features of the Hindu Succession Act, 1956 The Act introduced several important features that revolutionised Hindu inheritance law:

1. Uniformity Across Regions: The Act unified succession laws across India, replacing varied regional customs of Mitakshara and Dayabhaga schools.

2. Overriding Effect (Section 4): It overrides any inconsistent Hindu law, custom, or usage, ensuring the Act's provisions prevail.

3. Coparcenary Reform: The doctrine of survivorship for joint family property was modified, and daughters were eventually granted equal rights as sons to coparcenary property.

4. Absolute Ownership for Women: Women were granted absolute ownership of their property (inherited or acquired), abolishing the earlier concept of limited ownership.

5. Recognition of Unborn Child's Rights (Section 20): A child conceived but not yet born at the time of the intestate's death is entitled to inherit, assuming the child is born alive.
6. Preference to Full Blood Relations (Section 18): Full-blood relations inherit before half-blood relations.
7. Tenancy-in-Common (Section 19): Co-heirs inherit property in distinct shares rather than joint ownership.
8. Limited Grounds for Disqualification: The Act limits disqualifications for inheritance to only murder and conversion from Hinduism. Understanding Coparcenary Property and Its Devolution (Section 6) Coparcenary is a key concept in Hindu joint family property, referring to those who acquire ownership rights in ancestral property by birth. Traditionally, coparceners were male descendants in a joint Hindu family. Before the 2005 Amendment .The coparcenary property was inherited by male members through survivorship, excluding daughters. On the death of a coparcener intestate, his interest would devolve on surviving male coparceners. Female heirs could inherit only through succession if there were no surviving male coparceners. After the 2005 Amendment The Hindu Succession (Amendment) Act, 2005, marked a historic change by conferring equal coparcenary rights to daughters. Highlights include: Daughters became coparceners by birth with the same rights and liabilities as sons. Upon the death of a coparcener, the property is treated as if partitioned, with daughters receiving shares equal to sons. This right is retrospective, regardless of the daughter's gender equality

Section 8 of the act Class of heirs: -

Intestate Succession -Succession means succeeding or following in general day to day language, but here it means succeeding or passing of rights of property from one to another. There are two types of property in Hindu Family .Joint Family Property and Separate property

1) Joint Family Property which is also called Coparcenary property is devolved according to rules of Coparcenary or through partition.
2) Separate Property devolves via two ways: 1. Testamentary Succession (i.e. through will but that could be the case only when the person who died made a will before dying) 2. Intestate Succession (when the person dying didn't leave any will) Hindu Succession

Act, 1956. It provides for the rules and procedures for Intestate Succession Intestate Succession of Hindu male.

Section 8:- General rules of succession in the case of males.

The property of a male Hindu dying intestate shall devolve according to the provisions

Firstly, upon the heirs, being the relatives specified in class I of the Schedule;

Secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in the class II of the Schedule.

Thirdly, if there is no heir of any of the two classes. Then upon the agnates of the deceased; and

Lastly, if there is no agnate, then upon the cognates of the deceased.

CLASS I, CLASS II AGNATES COGNATES

Class - 1 Heir:-

1. Mother 2.Widow 3.Daughter 4.Son 5. Widow of a Pre deceased son. 6. Son of a Pre deceased son. 7. Daughter of a Pre-deceased son. 8. Widow of a predeceased son of a predeceased son. 9. Son of a predeceased son of a predeceased son. 10. Daughter of a predeceased son of a predeceased son. 11. Daughter of a Pre deceased daughter. 12. Son of a Pre deceased daughter. 13. Son of a Pre-deceased daughter of a Pre-deceased daughter. 14. Daughter of a Pre-deceased daughter of a Pre-deceased daughter. 15. Daughter of a Pre-deceased son of a predeceased daughter. 16. Daughter of a Pre deceased daughter of a Pre deceased son.

2. **Section 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 it 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. CLASS I HEIRS Mother Here the term mother also includes an adoptive mother Moreover, if there is an adoptive mother the natural mother has no right to succeed to the property of the intestate. A mother is also entitled to inherit the property of her illegitimate son by

virtue of Section 3(1) Jaya lakshmi Amma and Ors vs. T.V. Ganesalyer (1971) The unchastely of the mother is no bar as to her inheriting from her son. Even if she is divorced or remarried she is entitled to inherit from her son. Son, daughter Adopted children also included, children born out of void/voidable marriage also illegitimate children [acc. to Sec.16 of Hindu Marriage Act. 1955] Widow.Sec16 they are legitimate x haueort over Parent property But cannot claim ancestral of coparcener Property If there is more than one widow then they will inherit one share jointly.(Widow of the dead is entitled to inherit from ex-husband's property even if she remarries after his death Section 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. Section 11.Distribution of property among heirs in class ll of the Schedule. The property of an intestate shall be divided between the heirs specified in any one entry in class ll of the Schedule so that they share equally.

Class ll Heirs

i)Father. (includes adoptive father, father is not entitled to property from illegitimate son unlike mother but he is entitled to inherit property from children born out of void and voidable marriages)

ii) 1. Son’s daughter's son 2.Son's daughter's daughter 3.Brother 4. Sister. (Brothers and sisters inherit simultaneously. Here the term brother; includes both a

full and a half brother. However, a full brother is always preferred to a half brother (according to Section 18)) Uterine brother is not entitled to the intestate's property. However when the intestate and his brother are illegitimate children of their mother. They are related to each other as brothers under this entry

. iii)1.Daughter's son's son 2.Daughter's son's daughter 3.Daughter's daughter's son 4.Daughter's daughter's daughter.

iv) 1.brother's sons 2.Sister's son 3.Brother's daughter 4. Sister's daughter.

v) Father's Father; father's mother.

vi.Father's widow; brother's widow.

vii.Father's brother; father's sister.

vii. Mother's father; mother's mother.

ix. Mother's brother; mother's sister.

Arunachalathammal v. RamachandranPillai (1962) It was contended that the different heirs mentioned in one entry (in this case Entry I of Class II are subdivisions of that particular entry and they do not inherit simultaneously but here again there is a question of preference i.e. the first subdivision inherits and then in its absence the later. The question arose because there were in his case. One brother and five sisters of the intestate and no other heir and the brother contended that in a brother being in subcategory (3) of entry I was to be preferred over sister who was in subcategory (4) of entry I and thus he was entitled to the full property. However the same was negated and It was held that all heirs in an entry inherit simultaneously and there is no preference to an heir in a higher subcategory within an entry to an heir in a lower subcategory in the same entry If there is no class I or Class II heirs then the property will go to Agnates of the intestate (Section 8) Section 3 (1) (a) **"agnate"** - one person is said to be an "agnate" of another if the two are related by blood or adoption wholly through males; Agnates of the intestate do not include widows of lineal male descendants because the definition of agnates does not include relatives by marriage but only relatives by blood or adoption. There is no limit to the degree of relationship by which an agnate is recognized. Hence, an agnate however remotely related to the intestate may succeed as an heir. This relationship does not distinguish between male and female heirs. There is also no distinction

between those related by full and half blood. However, uterine relationship is not recognized. there are no class I or Class II heirs and no agnates then the property will go to Cognates of the intestate

COGNATES;-

(Section8) Section 3(1) (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: It does not matter if the intervention in the line of succession is by one or more females. So long as there is at least one females intervening, it is a cognate relationship Cognate relationship is also not based on marriage and only on blood or adoption. Hence widow or widowers of those related by cognate relationship do not fall under this category and hence they are not entitled to succeed on this ground. Following are the Categories of agnates and cognates

Agnates and Cognates who are descendants, Ex. Agnates- son's son, son's son's daughter Cognate- daughter's son, son's daughter's daughter

Agnates or Cognates who are ascendants, Ex. Agnates- Father's father's father Cognates- father's mother's father. Agnates or cognates who are collateral i.e. related to the intestate by degree of both ascent and descent. Ex- Agnate- father's brother's son Cognate- Mother's brother's son. Section 12 says that descendants shall be preferred over ascendants that in turn shall be preferred over collaterals.

Section 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 heir is entitled to be preferred to the other under Rule 1 or Rule 2 they take simultaneously. Section 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. The order of succession among agnates and cognate is not determined merely by the total number of degrees of ascent and descent. It is subject to and regulated by Section 12 of the Act. (Sec. 14-16, Hindu Suceession Act)

3) Stridhan

Property held by women in their exclusive right has been called the "Stridan' has been recognized in early Hindu Law. The term Stridhan first occurs amongst the smritis in the Dharma Shastras of Gautam. It literally means women's property. According to Manu 'Stridhan is'

(i) what has given before the nuptial fire (Adhyagni)

(ii) what was given at the bridal procession (Adhyava hanika)

(iii) what was given in token to love Dattam Pritikarmini), and

(iv) what was received from a brother,

(v) a mother, or

(vi) a father are considered as the six forms of property of a women" The definition of Manu is supposed to be the principal definition of Stridhan. To this list of Manu, Vishnu added that (i) what is given to the wife on her suppression by a second wife (Adhivedanika). (ii) gifts made subsequent to the marriage; (iii) sulka or the gratuity for which a girl is given in marriage or the bride's price; and (iv) gifts from sons and relations. As in Mitakshara, property inherited by a woman from another woman is not stridhan, so in Dayabhaga also the property inherited by a woman from another woman is not her stridhan. The rights of a woman over stridhan are: 1. That during maidenhood, a Hindu female can dispose of her stridhan of every description

at her pleasure. 2. That during coverture (during the life-time of the husbard) she can dispose of only that kind of stridhan which is called Saudayika ie. gift from relations except those made by the husband. 3. That during widowhood she can dispose of stridhana of every description at her pleasure including movable property given by her husband but not immovable property given by him. Thus a female was an absolute owner of the stridhan property and had full rights of disposal or alienation over it and on her death the property passed to her own heirs, and not to the heirs of last male owner. However, under Mitakshara and Dayabhaga School of Hindu Law, certain stridhana may be subject to the husband's control or domination in the sense that he may use it in certain circumstances. 4. Women's Estate (Limited Estate)When a female inherited property from a male or female, was treated as her non-stridhana property over which she had no power of disposition by sale, mortgage, lease, gift or will, such property held by the female was popularly known as 'woman' estate or 'limited estate wherein she had no interest in the estate beyond her life, then on her death the property passes not to her heirs, but the next heir of the last full owner, who was called Reversioner'.This is the view of all the schools of Hindu law except the Bombay School of Mitakshara and Mayukha According to Bombay School, property inherited by a female from a female and property inherited from a male by female heirs other than those come into the gotra of the deceased owner by marriage, is stridhan.Females who come into the gotra of the deceased owner by marriage take a limited estate in the property inherited by them from a male and on their death the property passes to the next heir of the last fully owner-called 'Reversioner'.The expression 'limited estate' is used in contradiction to 'stridhan'or 'absolute estate'.

General rules of succession in case of female Hindus:-

Women were not given autonomy as a person in the past in Hindu culture, so women had limited property rights,

section 14 changed that Section 14:- Property of a female Hindu to be her absolute property. (1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16.

Firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband:

Secondly, upon the heirs of the husband

Thirdly, upon the mother and father;

Fourthly upon the heirs of the father; and

Lastly, upon the heirs of the mother. (2) Notwithstanding anything contained in sub-section 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 predeceased son or daughter) not upon the other heirs referred to in sub-section (i) In the order specified there in, 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. It is important to note that the two exceptions herein referred are confined to only the property inherited from the father, mother, husband and father-in-law of the female and does not affect the property acquired by her by gift or other by other device.

Section16.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 nay succeeding entry and those including in the same entry shall take simultaneously.

Rule 2- If any son or daughter of the intestate had predeceased 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.

these Rules- 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 s death.

GENERAL PROVISIONS RELATING TO SUCCESSION:-

Section 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. Section 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- Save as otherwise expressly provided in this Act, per capita and not per stripes: and As tenants-in-common and not as joint tenants. Section 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. Section 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.

Section 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. Section 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 descendant are Hindu at the time when the succession opens.

Section 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.

Section 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.

Section 29: Failure of heirs. ESCHEAT if an in testate 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.

4) The Hindu Succession (Amendment) Act, 2005

The Hindu Succession (Amendment) Act, 2005 was seeks to make two major amendments in the Hindu Succession Act, 1956. First, it is proposed to remove the gender discrimination in section 6 of the original Act. Second, it proposes to omit section 23 of the original Act, which dis entitles a female heir to ask for partition in respect of a dwelling house, wholly occupied by a joint family, until the male heirs choose to divide their respective shares therein. However in the instant project we have focused specifically on the changes brought in Section 6 in regards to the position of woman and has made a clause-by-clause consideration of the section thus amended.

Section 6 of the Hindu Succession Act, 1956 has been restated for convenience-Devolution of interest in coparcenary property. - When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with

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

Explanation1. For the purpose 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

The Hindu Succession (Amendment) Act, 2005- Sec.6 (I). Devolution of interest in coparcenary property.

(1)on and from commencement of the hindu succession act 2005, in a joint hindu family governed by the mitakshera law the daughterbof a coparcener shell----

(a) By birth become a coparcener in her own right 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 subsection 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 subsection (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force in, as property capable of being disposed of by her by testamentary disposition.

3. Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the

Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,-

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

(c)the share of the pre-deceased child of a pre-deceased son or of a predeceased 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 so or a pre-deceased daughter, as the case may be

5) Gift

Synopsis

Introduction

Meaning and definition of a gift

Gift to an unborn person Donato mortis causa

1)Introduction

From the very beginning gift have very important aspect of a Hindu law; the subject has been dealt with by our sages under the title of resumption of a gift. This is also a unique feature of Hindu law. Ordinarily no one challenged a gift since the donation is praised, the Hindu sages give very large power to make a gift of property according to Narada Type of deposit property borrowed for use a pledge joint family property deposit, a son, wife, entire property of one who has of spring what has been promised to another

man, these have been declared by a spiritual guide to transfer by one, even in the worst.

1 In a modern Hindu law, Hindu has a full power of transfer over his separate property. He may make a gift to living person in Dayabhaga Hindu School. He has the same power in respect of his undivided interest in the property.

2 It has also been seen that Karta is allowed to make a gift of a small portion of a joint family property for the certain purposes . Father Karta can make gift of love and affection.

3 A Hindu female holder of Shridhar had a power to dispose of property by a Gift

4 certain types of Stridhana power was subject to the Husband approval. Woman holder of a woman estate can make a gift of a small portion of her woman's estate for a certain purpose. The position of a female has been substantial modified under section 14 of Hindu succession act 1956. Now she has a full power of making gift of all her property Which she holds it. Absolutely

5 it has been also seen that holder of imperial estate has a full power of making the gift of the estate. **Definition of a gift**

Gift is a transfer of a certain existing Movable and immovable property made voluntarily, and without consideration by one person called donor to another called Donee and accepted by on behalf of the Donee.

According to Mitakshara, gift is defined as a gift consist in a relinquishment without the consideration of one's own right in the property, and the creation of another men's right is completed on that others acceptance of the gift, but not otherwise…

Under Hindu law, no writing was necessary for the validity of the gift. Hindu insisted on the delivery of the position. No gift could be completed without the delivery of the position and once the position was delivered, their remaining else to be done to complete. The gift mear registration was not enough, however , if in the form of a nature of the subject matter, delivery of position could not be made, it was enough enough to validate the gift. If the donor did all that he could do complete it, but now the provision of transfer of property act applied to Hindus gift under modern Hindu law compliance without the provision of the act, irrespective of the fact, whether the position has or not been given is necessary. So Section123 of the transfer transfer of property act provides

for the formalities for the purpose of making gift of Mobil property. The transfer of Mobil property must be affected by the registered instrument, signed by or on behalf of the donor and stated by at least two witnesses for the purpose of making of Mobil property, the transfer may be affected either by the register instrument, signed as the force or by the delivery of the position. It should be noted that transfer of property act does not dispense with the relinquishment of that gift must be accepted by the Donee execution of a gift without any acceptance of the Gift by the Donee is not enough. However, the requirement of the delivery of position is no longer in dispensable condition

Give to an unborn person

Hindu law does not recognize gift to an unborn person. This rule has now modified by the statute of the status and gift and born person can be made elsewhere. The rule in the Tagore case applies the pre-Council held that Hindu cannot dispose of the property by the gift to another living person. What Hindu cannot dispose of the person who is not in existence at the date of the testers death now union law has been made applicable to the whole of India. Expect state of Jammu and Kashmir under which gift and born person can be made gift once made and completed in all the respect cannot be.

Gift to an unborn person

In the Lord did not recognise gift to an unborn person, but now it has been modified by attitude in a certain and give to unborn person can be made elsewhere. The rule in a Tagore‘s case applies the privy council. In this case held that Hindu cannot dispose of the property by gift to a living person in favour of an unborn person Who was not in existence and the date of the gift nor can a Hindu dispose of a property by will in favour of a person who is not in the existence and the date of the person’s death. Now a Hindu Hindu transfer and bequest act 1960 Gift to unborn person can be made a gift once made and completed in all respect cannot be cancelled by a donor unless It was obtained by fraud or under the influence. A gift made with the intention to defeat or delay, the creditors is voidable at the instance of the creditor.

The following condition must be satisfied, otherwise, the gift will not be a valid

1) If the gift to an unborn person is preceded by prior disposition.

2) The gift must be of the whole of a remaining interest of a transfer in the property to the gift should not offend the rule against transferor

3) If the gift is made to a class of person with regard to some of them, it is wide as an offending.

4 if the gift to an unborn person is wide under one and two and gift intended to take effect after such gift is also void

4) Donato mortis cause: - Under Hindu Law deathbeds gifts are valid. Such gift must confirm to all the requirements of a valid gift under Hindu Law .Since Hindu law makes no distinction between gift made on death bed. A man may dispose by a gift made in contemplation of a death. Any immovable property which he could dispose of will a gift is said to be made in contemplation of death where a man who is ill and expect to die shortly of his illness delivers to another the position of any movable property to keep as a gift. In a case of the donor shall die of the illness, Such a gift maybe made oral or in writing, but the intention to pass the property in that thing given must be clear and the property must be actually delivered to donee

Wills

Introduction

Wills are only unknown to Hindu law. There was no name for the will either in Sanskrit or in any language under Hindus. However some dresses of will can be found in some text of Hindus. Katyayana says what a man has promised in a health or in sickness for religious purpose must be given; and a dies without giving it, his son shall doubtless be compelled to deliver it''.

Harita says "a promise legally made in words, but not performed in a deed, is a debt of conscience both in this world and in the next''.

Wills are certainly known to Mohammedans and contract with them During the Mohammedan rule, and later with the western rule was probably responsible for practice of testamentary instruments. The testamentary power of Hindu has now long recognition and must be considered as a completely established

under a Hindu law. A Hindu cannot by will be with the property which he could not have eliminated by the gift inter vivos but now the rule has considerably modified in

case of a governed by Mitakshara law under section 30 of Hindu succession act permits a number of mitakshara coparcenary to dispose of by his under divided interest in the property, but he has no power to dispose of it by the gift however, the position of a coparcenary under dayabhaga law has not altered in any manner, He could always dispose of his coparcenary interest by my gift or will subject to claim of such who were entitled to be maintained by him

Will is a legal declaration of intention of a tester with respect of his property, which he desired to be carried into effect after his death. Every will made by a Hindu is now required to be in writing and attested by at least two witnesses, but it just does not require a registration to make it a valid. A codicil means in instrument made in relation to the will. It is something which altering or adding to it a disposition.

subject matter

1) a separate or self acquired property
2) father can dispose of by will all his property, whether in Sital or self acquired property and a personal Court dispose of by will the whole of his interest in the joint family property
3) According to Mitakshera Law, no compass even the father could dispose of his undivided interest, even if the other compass concented
4) Do father could dispose of small portion of ancestral by way of gift. He could not do so by the will
5) Hindu female could dispose of her Shridhana by will
6) The owner of imperishable estate could dispose of by will in the absence of a special custom prohibiting, alienation or where the tenure was such a nature that it could not be alinated.

A Will or any part of a Will, the making of which has been caused right. Which of the testator is void By fraud or coercion or by such reason as takes away the free agency

6. r Codicil

7. Though a Hindu governed by Mitakshara Law cannot dispose of by

8. at least

9. Will, his undivided interest in coparcenary property, he may bequeath his

10. Codicil

11. self-acquired property to his coparceners and his undivided interest in the

12. r adding

13. coparcenary property to a third person. Such a disposition was valid and the coparcener to whom the self-acquired property was bequeathed had to elect after the testator's death, as to which of the two properties he

14. lispose

15. would take. He could not take both of them.

16. Indian

17. A Will is liable to be reduced or altered by the maker of it at any

18. which

19. time when he is competent to dispose of his property by Will.

20. The Will of a Hindu is not revoked by the marriage of the testator nor it is revoked, as regards self-acquired property, by the subsequent birth or adoption of a son.

21. rate

22. Bequest to an unborn person 23. A person capable of taking under the Will must either in fact or in contemplation of law, be in existence on the death of the testator. Under

24. ty.

25. the pure Hindu Law bequest to an unborn person or persons, not existing in contemplation of law is void. A bequest to a person not in existence at the testator's death is invalid. A child in the womb and a son adopted by a widow after the death of her husband are in contemplation of law in existence at the death of the testator.

26. However, this rule that a Will in favour of unborn person is not valid was altered by three Statutes, namely the Hindu Transfers and Bequests Act, 1914, the Hindu Disposition of Property Act, 1916, the Hindu Transfer and Bequests (City of Madras) Act, 1921. The rule as altered by these Acts may be stated as follows:

27. Subject to limitations and provisions contained in Sections 113, 114, 115 and 116 of the Indian Succession Act, 1925, no bequest shall be invalid by reason only that any person for whose benefit it may have been made was not born at the date of the testator's death. This rule is, however, not of universal application, but it is confined to the following cases namely

28. i to Wills executed on or after the 14th February, 1914 by Hindu domiciles in the State of Madras, except the City of Madras and in the case of Wills executed before the date to such of disposition thereby made as are intended to come into operation at time which is subsequent to that date: Hindu Transfers and Bequests Act, 1914. il) to Wills executed on or after the 20th September, 1916 by Hindus in any part of India except the State of Madras: Hindu Disposition of Property Act, 1916.

29. i) to Wills executed on or after the 27th March, 1921 by a Hindu domiciled within the limits of the ordinary original civil jurisdiction of the High Court of Madras, and in the case of Wills executed before that date, to such of the dispositions thereby made as are to come into operation at a time subsequent to 14th February, 1914:

30. Hindu Transfers and Bequests (City of Madras) Act, 1921.

HINDU MINORITY AND GUARDIANSHIP

Introduction:-

The Dharmashastras did not deal with the law of guardianship. During the British regime the law of guardianship was developed by the courts. It came to be established that the father is the natural guardian of the children and after his death, mother is the natural guardian of the children and none else can be the natural guardian of minor children. Testamentary guardians were also introduced i n Hindu law: It was also accepted that the supreme guardianship o f the minor children vested i n the State a s parens patrie and was exercised b y the courts. The Hindu law of guardianship of minor children has been codified and reformed b y the Hindu Minority and Guardianship Act, 1956.

The subject may be discussed under the following heads:

(i) Guardianship. of person of minors,

(ii) Guardianship o f the property of minors, and

(iii) De facto guardians, and

(iv) Guardians by affinity.

Guardianship of the person

Minor Children under the Hindu Minority and Guardianship Act, 1956, S.4 (b), minor means a person who has not completed the age of eighteen years. A minor is considered to be a person who is physically and intellectually imperfect and immature and hence needs someone's protection. In the modern law of most countries the childhood is accorded protection in multifarious ways. Guardian is "a person having the care of the person of the minor or of his property or both person and property." It may be emphasized that in the modern law guardians exist essentially for the protection and care of the child and to look after its welfare. This is expressed by saying that welfare of the child is paramount consideration. Welfare includes both physical and moral well-being.

Types of Guardians:-

Guardians may be of the following types:

1. Natural guardians,

2. Testamentary guardians, and

3. Guardians appointed or declared b y the court.

There are two other types o f guardians, existing under Hindu law,

de facto guardians, and guardians by affinity.

. **UNIT-V**

1. **Law relating to Hindu minority and guardianship.**
2. **Kinds of guardians**
3. **Duties and powers of guardians**
4. **A detail study of Hindu Adoption and Maintenance act 1956**
5. **Maintenance**
6. **Traditional rights and duties under Hindu adoption and Maintenance act 1956**

Law relating to Hindu Minority and Guardianship.

Law relating to hindu minority and guardian ship:
Kinds of guardians
Duties and powers of guardians.
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(vii) De facto guardians, and
(viii) Guardians by affinity.

This act has significantly made many changes in the position and status of the mother as the natural guardian.

Majority: - section 4: It defines the word minor as a person who has not completed the age of eighteen years.

GUARDIAN - A Guardian means a person have the care of the person of another or of his property, or of both. Section 4(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.

1. Natural guardian.

2. LA guardian appointed by the will of the minor's father or mother

3. A guardian appointed or declared by a court: and

4. Person empowered to act as such by or under any enactment relating to any court of wards. Guardian for minor's undivided interest in joint-family property. Section 12 - 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. The Karts in a joint Hindu family is the manager of all property belonging to the family. So as long as there is Karta alive, no guardian can be appointed for a minor's interest in the joint If the minor is a member of joint family governed by the Milakshara Law, the father as Karta (manager y is entitled to the management of the whole coparcenary property including the minor's interest therein, passes to the eldest son as Karta. The mother is not entitled to the custody of the undivided interest of her minor son in the joint property, if any.

KINDS OF GUARDIAN

Section 4: of the Act mention four kinds of guardians, these are:-

1. s natural guardian.

2. A guardian appointed by the will or the minor's father or mothers (testamentary guardian)

3. A guardian appointed or declared by a court, and

4. A person empowered to act as such by or under any enactment relating to any court of wards. Besides this, there are other types of guardians such as

1. De facto guardian and

2. Ad hoc gaardian.

1. NATURAL GUARDIAN

MEANING OF NATURAL GUARDIAN.

natural guardian is one who becomes so by reason of the natural relationship with the minor, In other words a natural guardian is a person having the care of the person of a minor or of his property or of both, by virtue of his natural relationship with the minor.

Section 6c- of the Hindu minority and guardianship act, runs as follows. 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) in case of a boy or an unmarried girl-the father, and after him, the mother: provided that the custody of a minor who has not completed the age of 5 years shall ordinarily be with mother

b. In the case of an illegitimate boy or an illegitimate unmarried girl-the mother, and after her, the father. In the case of a married girl the husband. Provided that no person shall be entitled to act as the natural guardian of a minor under the provision of this section.

1. If he has ceased to be a Hindu, or

2 .If he has completely and finally renounced the world by becoming a hermit or

3 .An who are natural guardians? Among the Hindus, the father is the natural guardian of his children during their minority and in the absence the mother during their minority. He may, in exercise of his discretion as guardian entrust the custody and education of his children to another, but the authority he thus confers is revocable authority The powers of the father to act as a natural guardian do not come to an end simply because the child is being looked after by his aunt and is living with her. The father is the natural guardian of the person and of the separate property of his minor children

Case law jabal Vs pathan khan. Where the father was alive but had fallen out with the mother of the minor daughter and was living separately for several years without taking any interest in the affairs of the minor who was in the keeping and care of the mother, it was held by the supreme court that in the peculiar circumstances, the father should be treated non-existent and the mother could be considered as the natural guardian of the minor's person as well as property

K.S. Mohan v. Sandhya Mohan |AIR 1993 MAD 59] The Madras High Court has held that custody of a child below the age of five years should be given to its mother and only in exceptional circumstances, the father may claim the custody of that child. STEP MOTHER There is not the natural guardians of the minor child. Illegitimate boy and girl. In case of illegitimate boy or girl the mother is the natural guardian, and in absence of the mother the father will be the natural guardian. For Married girl the husband would be the guardian, unless he has ceased to be a Hindu or he has completely and finally renounced the world by becoming a hermit or an ascetic.

DISABILITIES TO BE A GUARDIAN.

According to section 6 the disability may arise.

1. DISABILITY ARISING FROM APOSTASY (change of his religion). Before the passing of the Act the right of a guardian was not affected by the change of his religion. The fact that a father had changed his religion was of itself no reason for depriving him of the custody of his child. If the father voluntarily abandoned his parental rights and entrusted the custody of the child to another person the court may not restore back the custody of the child to the father if such a course is detrimental to the interest of the child. VIJAYA LAXMI V s. INSPECTOR OF POLICE. The Madras High court held that where father converted to Islam and married a Muslim girl. He creases to be natural guardian as a matter of legal right. It would not be in the interest of child that such convert should be allowed to continue as a natural guardian and exercise the power as such.

2. CIVIL DEATH: - Any person who has completely and finally renounced the world by becoming a hermit or an ascetic forfeits his right to continue as the natural guardian of his minor child or wife.

3. MINORITY :- Minor shall be incompetent to act as guardian of the property of the minor. So, in respect of the joint family property, even if the Karta is a minor, such property is and remains under his protection.

4 AGAINST MINOR'S WELFARE :- No person shall be entitled to the guardianship of the minor, if in the opinion of the court his or her guardianship will not be for the welfare of the minor.

EFFECT OF REMARRIAGE BY WIDOW :- A Hindu widow does not, by her remarriage, lose her preferential rights of guardianship over her minor children by the deceased husband whether such marriage is permitted by custom or not

NATURAL GUARDIAN OF AN ADOPTED SON :- Section 7-that the natural guardian of an adopted son, who is a minor, passes on adoption to the adoptive father and after him to the adoptive mother. The natural father and mother do not have any right, after adoption.

NATURAL GUARDIAN AFTER ADOPTION :- After adoption the natural guardianship of the adopted child passes from his natural father to his adoptive father. Natural father after adoption can only be regarded as a defacto-guardian.

POWERS OF A NAUTRAL GUARDIAN. SECTION 8:- The natural guardian of Hindu minor has power, subject to the powers provision of this section,

1. 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. The natural guardian shall not, without the previous permission of the court Mortgage or charge or transfer by sale, gift, exchange or otherwise any part of the immovable property of the minor. or

2. Lease any part of such property for a term exceeding 5 years of for a term extending more than one year beyond the date on which the minor will attain majority.

3. Any disposal of unmovable property by a natural guardian, in contravention of subsection (1) or sub-section (20 is voidable at the instance of the minor of any person claiming under him.No court shall grant permission to the natural guardian to do any of the acts mention in sub-section (2) except in case of necessity or for an evident advantage to the minor. The guardians and wards Act 1890 shall be applicable. Court means city civil court NECESSARY OR REASONABLE AND PROPER ACTS FOR THE BENEFIT OF THE MINOR. A natural guardian has the power to place such restraint on the minor in regard to his upbringing. Education and health as may be necessary or reasonable or proper for the benefit of the minor.

MANIK CHAND V. RAM CHAND [AIR 1981 SC 519] The Supreme court clearly laid down that, the natural guardian has been empowered to do all such acts which are necessary for the welfare and benefit of the child

POWER TO ENTER INTO CONTRACTS. RUMAL SRINIWAS [AIR 1985 DEL. 153] The Delhi High court has held that any contract executed by the guardian of the miner can be specifically enforced by the minor or against the minor. Under the law the natural guardian has been empowered to enter into the contract. If the contract is in the welfare of the minor, it will be binding and will be enforceable. COMPROMISE BY NATURAL GUARDIAN: A guardian is competent to enter into a compromise on behalf of his ward.

ACKNOWLEDGMENT OF DEBT BY GUARDIAN: A natural guardian of a minor as well as a guardian appointed by the court or have power to acknowledge a debt or to pay interest on a debt so as to extend the period of limitation provided the act is for the protection or benefit of the minor's property.

FAMILY ARRANGEMENU the natural guardian has the power to enter into family settlement on behalf of the minor provided i is the nature of a bona fide compromise of doubtful claims.

POWER OF ALIENATION :- The natural guardian of a Hindu minor has power in the management of the estate to sell or mortgage any part of the estate in case of necessity or for benefit of the estate, provided the natural guardian has taken permission of the court prior to such alienation.

CONTROL OVER THE POWERS OF NATURAL GUARDIAN. PREVIOUS PERMISSION OF THE COURT- SECTION 8(2) the natural guardian without the previous sanction of the court shall do no transaction by sale. gift exchange or otherwise of any part of the immovable property of the minor and lease of any part of such property for a term exceeding 5 years of for a term extending more than one year beyond the date on which the minor will attain majority.

WHEN COURT TO GRANT PERMISSION:- I- Necessity, or 2. An evident advantage to the minor. EFFECT OF SUCH PERMISSION- Alienation made with the permission of the court, cannot be impeached by the minor or any other person except in a case of fraud of underhand dealing.

EFFECT OF TRANSFER IN CONTRAVENTION OF THE ACUE- 1f any transfer is made in contravention of the Act, it would be voidable at the option of the minor.

PROCEDURE FOR OBTAINING PERMISSION. Procedure and principles which will govern grant of permission by the court to a natural or his testamentary guardian to transfer the immovable property are prescribed by sub-section (4) (5) and (6) of the section 8 of this Act, 2. The order granting the permission shall recite the necessity or advantage, as the case may be, describe the property with respect to which the act permitted is to be done, and specify such condition, if any as the court may see fit to attach to the permission; and it shall be recorded. Dated and signed by the judge, of the court with his own hand, or when from any cause he is prevented from recording the

order with his own hand, shall be taken down in writing from his dictation and be dated and signed by him. The court may, in its discretion, impose the following among their conditions namely:-

1. The sale shall not be completed without the sanction of the court: That a sale be made to the highest bidder by public auction before the court or

2. Some person specially appointed by the court for that purpose as a time and place to be specified by the that the whole or any of the proceeds of the sale permitted shall be paid into the court by the guardian,

3. To be disbursed there from or be invested by the court on prescribed securities or to be otherwise disposed of as the court directs.

4. Before granting the permission to a guardian to do an act, the court may cause notice of the application for the permission to be given to any relative or friend of the ward who should, in its opinion, receive notice thereof, and shall hear and record statement of any person who appears in opposition to the application.

2. TESTAMENTARY GUARDIAN

Are those guardians who are appointed by a will of the natural guardian, entitled to act as a guardian for the minor . It becomes effective only after the death of the testator. section 9 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 property (other than the undivided interest referred to section 12) or in respect of both.

3. An appointment made under sub-section (l) shall have no effect if the father pre-deceases the mother, but shall revive. If the mother dies without appointing guardian by will any person as guardian. A Hindu widow entitled to act as the natural guardian of her minor legitimate children. And a Hindu mother entitled to act as the natural guardian of her minor legitimate children by reason of the fact that the father has become disentitled to act as such, may by will appoint a guardian for any of them in respect of the minor's person or in respect of the minor's property (other than the undivided interest referred to in section 12) or in respect of both

1. 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 person or in both.

2. The guardian so appointed by will has the power to act as the minor's guardian, after the death of the minor's father or mother, as the case may be, and to exercise ail the powers 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

3. The right of the guardian so appointed by will shall, where the minor is a girl, cease on her mother Who may appoint? The Act recognizes the right of the following persons to appoint guardian of the person and separate property of a Hindu minor .The father. natural and adoptive The mother, natural and adoptive The widowed mother, natural and adoptive.

WHO CAN APPLY FOR APPOINTMENT AS GUARDIAN The person desirous of being or claiming to be the guardian of the minor or Any relative or friend of the minor or The collector of the district or other local area in which the minor ordinarily resides. The minor holds property or If the minor belongs to a class the collector who has authority with respect to that class. Powers of guardian appointed by the court. The powers are the same as of the natural guardian or testamentary guardian.

DE-FACTO GUARDIAN –

A de-facto guardian of a minor, is neither a legal guardian, nor a testamentary guardian nor a guardian appointed by the court, but he a person, who himself takes over the management of the affairs of the minor, as if he was a natural guardian. Some continuous course of conduct is necessary on his part .A person having the care of properties of a minor but who is neither a natural guardian or testamentary guardian nor a guardian appointed by the court is only a de facto guardian and the restriction under section 11 will apply to his acts. According to section 11 of the Act the de facto guardian is not recognized and he cannot deal with the property of a minor. AD HOC GUARDIAN It means "for this purpose. There must be some course of conduct in that capacity, it implies some continuity of conduct, some management of the property beyond the isolated act of alienation which is being challenged. Even this type has no place in this Act.

HINDU ADOPTION AND MINTENANCE ACT, 1956

Introduction

Although there is no general law of adoption, yet it is permitted by a statute amongst Hindus and by custom amongst a few numerically insignificant categories of persons. Since adoption is legal affiliation of a child, it forms the subject matter of personal law. Muslims, Christians and Parsis have no adoption laws and have to approach court under the Guardians and Wards Act, 1890. Muslims, Christians and Parsis can take a child under the said Act only under foster care. Once a child under foster care becomes major, he is free to break away all his connections. Besides, such a child does not have legal right of inheritance. Foreigners, who want t o adopt Indian children have to approach the court under the aforesaid Act. In case the court has given permission for the child to be taken out of the country, adoption according to a foreign law, i.e law applicable to guardian takes place outside the country. Hindu Law, Muslim Law and the Guardians and Wards Act, 1890 are three distinct legal systems which are prevalent. A guardian may be a natural guardian, testamentary guardian or a guardian appointed by the court. In deciding the question of guardianship, two distinct things have to be taken into account - person of the minor and his property. Often the same person is not entrusted with both.

Adoption under Hindu Law:-

The shastric Hindu Law looked at adoption more as a sacramental than secular act. Some judges think that the object of adoption is twofold to secure one's performance of one's funeral rites and

2) To preserve the continuance of one's lineage In case Inder Singh v. Kartar Singh (AIR 1966 Punj. 258) Hindus believed that one who died without having a son would go to hell and it was only a son who could save the father from going to hell. This was one of the reasons to beget a son.

Ancient Hindu Shastras recognized Dattaka and Kritrima as types of sons. In the Hindu Shastras, it was said that the adopted son should be a reflection of the natural son. This guaranteed protection and care for the adopted son. He was not merely adoptive parents, but all relations on the paternal and maternal side in the

adoptive family also came into existence. This means he cannot marry the daughter of his adoptive parents, whether the daughter was natural-born or adopted. In the modern adoption laws, the main purpose is considered to be to provide consolation and relief to a childless person, and on the other hand, rescue the helpless, the unwanted, the destitute or the orphan child by providing it with parents. However, in the case Chandrashekhara Mudaliar vs Kulandaiveluo Mudaliar's (AIR 1963 S C 185) was held that the validity of an adoption has to be judged by spiritual rather than temporal considerations and devolution of property is only of secondary importance. Currently, the adoption under Hindu Law is governed by The Hindu Adoption and Maintenance Act, 1956.The Hindu Adoption and Maintenance Act, 1956 extends to only the Hindus, which are defined under Section-2 of the Act and include any person, who is a Hindu by religion, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj, or a Buddhist, Jaina or Sikh by religion, to any other person who is not a Muslim, Christian, Parsi or Jew by religion. It also includes any legitimate or illegitimate child who has been abandoned both by his father and mother or whose parentage is not known and who in either case is brought up a s a Hindu, Buddhist, Jaina or Sikh.

Adoption is recognized by the Hindus and is not recognized by Muslims, Christian and Parsis. Adoption in the Hindus is covered b y The Hindu Adoptions Act and after the coming of this Act all adoptions can be made in accordance with this Act. It came into effect from21st December, 1956. Prior to this Act only a male could be adopted, but the Act makes a provision that a female may also be adopted. This Act extends to the whole of India except the state o f Jammu and Kashmir. It applies to Hindus, Buddhists, Jainas and Sikhs and to any other person who is not a Muslim, Christian, Parsi by religion.

Requirements for a valid adoption:-

In the Hindu law the requirements for a valid adoption. The Act reads, No adoption is valid unless The person adopting is lawfully capable of taking in adoption The person giving in adoption is lawfully capable of giving in adoption. The person adopted is lawfully capable of being taken in adoption the adoption is completed by an actual

giving and taking and the ceremony called data human (oblation to the fire) has been performed. However this may not be essential in all cases as to the validity of adoption?

Who May Adopt:-

Capacity of male:-

Any male Hindu, who is of sound mind and is not a minor, has the capacity to take a son or daughter in adoption. Provided that if he has a wife living, he shall not adopt except with the consent of his wife, unless his wife has completely and finally renounced the world or has ceased to be a Hindu, or has been declared by a court of competent jurisdiction to be of unsound mind. 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 one of them is unnecessary for any of the reasons specified in the preceding provision.

Capacity of female:-

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 b y a court o f competent jurisdiction to be of unsound mind, has the capacity to take a son or daughter in adoption.Where the woman is married it is the husband who has the right to take in adoption with the consent of the wife. The person giving a child i n adoption has the capacity/right to do.

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

b. The father alone if he is alive shall have the right to give in adoption, but such right Shall not be exercised except 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.

c. 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.

d. 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 b y a court of competent jurisdiction to be of unsound mind or where the parentage of the child is unknown - the guardian of the child may give the child in adoption with the previous permission of the court. The court while granting permission shall be satisfied that the adoption i s for the welfare of the child and due consideration will be given to the wishes of the child having regard for the age and understanding of the child.

The court shall be satisfied that no payment or reward in consideration of the adoption except as the court may sanction has been given or taken. The person can be adopted No person can be adopted unless

a. he or she is a Hindu;

b. he or she has not already been adopted;

c. he o r 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.

d. 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.

Other conditions:-

For a valid adoption conditions are to be fulfilled

a. if the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son, son's son or son's son's son living at the time of adoption

b. if the adoption is of a daughter, the adoptive father or mother by whom the adoption is made must not have a Hindu daughter or son's daughter living at the time of adoption;

c. if the adoption is by a male and the person to be adopted is a male, the adoptive father is at least twenty one years older than the person to be adopted;

d. 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;

e. the same child may not be adopted simultaneously by two or more parents; the child to be adopted must be actually given and taken in adoption with an intent to transfer the child from the family of birth.

EFFECTS OF ADOPTION

The effects adoption is given in Sec. 12 of the act which runs as follows; "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 o r her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family,

Provided that:-

i), the child cannot marry any person whom he or she could not have married if he or she had continued i n the family of his or her birth;

ii). 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;

iii). The adopted child shall not divest any person of any estate which vested in him or her before the adoption".The doctrine of relation back has been dispensed with and therefore the adopted childcomes into existence in the adoptive family only from the date of the actual adoption. In case of Bombay High Court i n Kesarbai V/s State of Maharashtra (AIR 1981 Bom. 115)declared that the doctrine of relation back prevailing in the old Hindu law has now been completely abolished. Now the adopted child cannot divest his adoptive mother of the property which has already vested in her before the adotion. Further in G.Appaswami Chettiar V/s R.Sarangpani Chettiar (AIR 1978 SC 1051) the adoption does not vest in him or her any rights with regard to the property which had already vested in any person prior to the date of his or her adoption. In Kamali Dibya V/s Sadasive Mahapatra(1979 4 7 CLT 570) Thus if a widow, who has succeeded to her husband's estate under the Hindu Succession Act, as a full owner, makes a n adoption after succeeding to the estate,

of a son, the adopted son does not divest his adoptive mother, the widow of her estate of which she had already become absolute owner before the date of adoption. The widow is thus capable of dealing with the estate as a full and absolute owner, even after adoption.Thus a son adopted sometime after an earlier suit had been decided by which properties had been vested cannot reopen the matter and claim a share in the properties already vested.

MAINTENANCE

UNDER ADOPTION & MAINTENANCE ACT-1956

Introduction:-

Obligation of a husband to maintain his wife arises out of the status of the marriage. Right to maintenance forms a part of the personal law. Under the Code of Criminal Procedure,1973 (2 of 1974), right of maintenance extends not only to the wife and dependent children, but also to indigent parents and divorced wives. Claim of the wife, etc., however,depends on the husband having sufficient means. Claim of maintenance for all dependent persons inclusion of the right of maintenance under the Code of Criminal Procedure has the great advantage of making the remedy both speedy and cheap. However, divorced wives who have received money payable under the customary personal law are not entitled to maintenance claims under the Code of Criminal Procedure.

Under Hindu Law, the wife has an absolute right to claim maintenance from her husband. But she loses her right if she deviates from the path of chastity. Her right to maintenance is codified in the Hindu Adoptions and Maintenance Act, 1956. In assessing the amount of maintenance, the court takes into account various factors like position and liabilities of the husband. It also judges whether the wife is justified in living apart from husband. Justifiable reasons are spelt out in the Act. Maintenance pendente lite (pending the suit) and even expenses of a matrimonial suit will be borne by either, husband or wife, if the either spouse has no independent income for his or her support. The same principle will govern payment of permanent maintenance.

Maintenance under Hindu law:-

Maintenance is a right to get necessities which arereasonable from another. it has been held in various cases that maintenance includes not only food, clothes and residence, but also the things necessary for the comfort and status in which the person entitled is reasonably expected to live. Right to maintenance is not a transferable right.

Maintenance without divorce:-

The Hindu Adoptions and Maintenance Act,1956. Maintenance, in other words, is right to livelihood when one i s incapable of sustaining oneself. Hindu law, one of the

most ancient systems of law, recognises right of any dependent person including wife, children, aged parents and widowed daughter or daughter in law to maintenance. The Hindu Adoptions and Maintenance Act, 1956, provides for this right.

Maintenance as main relief for wife:-

The relief of maintenance i s considered an ancillary relief and i s available only upon filing for the main relief like divorce, restitution of conjugal rights or judicial separation etc. Further, under matrimonial laws if the husband is ready to cohabit with the wife, generally, the claim of wife is defeated. However, the right o f a married woman to reside separately and claim maintenance, even if she is not seeking divorce or any other major matrimonial relief has been recognised in Hindu law alone. A Hindu wife is entitled to reside separately from her husband without forfeiting her right of maintenance under the Hindu Adoptions and Maintenance Act, 1956.

The Act envisages certain situations in which it may become impossible for a wife to continue to reside and cohabit with the husband but she may not want t o break the matrimonial tie for various reasons ranging from growing children to social stigma. Thus, i n order t o realise her claim, the Hindu wife must prove that one o f the situations as stated in the Act, exists.

Grounds for award of maintenance: - Only upon proving that a t least one of the grounds mentioned under the Act, exists in the favor of the wife, maintenance is granted.

These grounds are as follows:

a. The husband has deserted her or has willfully neglected her;

b. The husband has treated her with cruelty;

c. The husband is suffering from virulent form of leprosy/ veneral diseases.

d. The husband has any other wife living;

e. The husband keeps the concubine i n the same house as the wife resides or he habitually resides with the concubine elsewhere;

f. The husband has ceased to a Hindu by conversion to any other religion;

g. Any other cause justifying her separate living;

Bar to relief: - Even if one of these grounds exists in favour of the wife, she will not be

entitled to relief if she has indulged in adulterous relationship or has converted herself into any other religion thereby ceasing t o be a Hindu. It is also important to note here that inorder to be entitled for the relief, the marriage must be a valid marriage. In other words,if the marriage is illegal then the matrimonial relationship between the husband and wife is non-existent and therefore no right of maintenance accrues to wife. However, thanks to judicial activism, in particular cases the presumption of marriage is given more weightage and the bars to maintenance are removed.

Other dependents who can claim maintenance: - Apart from the relationship of husband and wife other relations in which there is economic dependency are also considered to be entitled to maintenance by the Hindu Adoptions and Maintenance Act, 1956. Accordingly a widowed daughter-in-law is entitled maintenance from her father-in-law to the extent of the share of her diseased husband in the said property. The minor children of a Hindu, whether legitimate or illegitimate, are entitled to claim maintenance from their parents. Similarly, the aged and infirm parents of a Hindu are entitled to claim maintenance from their children. The term parent here also includes an issueless Stepmother