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CHAPTER I

INTRODUCTION

NATURE AND SCOPE OF HINDU LAW:

As the Hindu religion in an ancient onethe early history of Hinduism is difficult to date. There is no precise definition of the term Hindu. The people living around and beyond the Sindhu river were termed by the Greeks as Hindus. Ancient Hindu Law is not the result of any legislation governing the Hindus. The Hindu law is deeply rooted in the Hindu Philosophy and Hindu religion. Hindu law is supposed to be of divine origin, being derived from the Vedas. Vedas are considered as the voice of the deity. Law, as understood by the Hindus, is a branch of Dharma, i.e., the duties and the rules of conduct of the Hindu community.

WHO ARE HINDUS ?

The persons to whom Hindu law applies may be put under the following categories:

- 1) to any person who is a Hindu ,Buddhist, Jaina or Sikh by religion.
- 2) to any person who is born of Hindu parents.
- 3) to any person who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law.

This can be divided into:

1. Hindus by religion, i.e., converts to Hinduism
2. Hindus by birth

HINDU BY RELIGION :

Any person who practices and professes Hindu religion is a Hindu. In the following cases the Court has tried to define Hindu and to interpret the main philosophy of Hinduism.

Shastri V. Muladas, 1966 SC 1119 The Supreme Court held that various sub sects of Hindus such as Swaminarayan, Satsangis, are also Hindus by religion because they follow the same basic concept of Hindu Philosophy.

The Supreme Court in **Perumal v. Ponnuswami, AIR 1971 SC 2352**, observed that a person may be a Hindu by birth or by conversion. A mere theoretical allegiance to the Hindu faith by a person born in another faith does not convert him into a Hindu, nor is a bare declarations that he is a Hindu is sufficient to convert him to Hinduism. But a bona fide intention to be converted to the Hindu faith accompanied by conduct unequivocally expressing that intention may be sufficient evidence of conversion. No formal ceremony of purification is necessary to effectuate conversion.

In **Mohandas v. Devaswom Board 1975 KLT 55**, Jesudas, famous play back singer, was a catholic Christian by birth. He used to render devotional music in a Hindu temple and used to worship the presiding diety. He also filed a declaration stating that he was the follower of Hindu faith. It has been held that such a bonafide declaration amounts to his acceptance of Hindu faith and becomes a Hindu by conversion.

HINDU BY BIRTH:

- a. When both the parents are Hindus: Children born on Hindu parents are Hindus. Such a child may be legitimate or illegitimate.
- b. When one parent is Hindu: this category is further divided into following heads:
 - i. at the time of his birth one of the parents was Hindus and
 - ii. he is brought up as a member of the tribe, community, group or familyto which Hindu parent belonged at the time of the birth of thechild.

Sapna v. State of Kerala, 1993 ker 75, the child of Hindu father and Christian mother was held to be Christian.

SOURCES OF HINDU LAW:

The Hindus believed that their law is of divine origin to them. This is positive law emanated from the deity. It is not codified law, but extracted from various religious test, commentaries, usages and customs, and judicial decisions.

The sources of Hindu law can be classified in the following two heads

1. ANCIENT SOURCES

- i. Sruti
- ii. Smriti
- iii. Digests and commentaries
- iv. Custom

2. MODERN SOURCES

- i. Equity, justice and good conscience
- ii. Precedent and
- iii. Legislation

ANCIENT SOURCES:

SRUTI: Literally sriti means, 'what was heard' the sruti is believed to contain the very words of the Deity. The sruti comprises of:

- i. The Rik-Veda
- ii. The Sum-Veda
- iii. The Yajur-veda
- iv. The Atharva-Veda and their respective Branhanas.

The sruti is considered as the fundamental source of Hindu Law. But sruti did not deal with the rules of law in systematic manner, it only dealt with the life of our early ancestors.

SMRITI: The word 'Smriti' is derived from the word "smri" and literally Smriti means, that which was remembered. In Smriti the language is of human origin but the rules are divine However, Smritis e.g. Manusmriti, Yajnavalkya Smiriti and the Smritis of Vishnu, Narad, Parashar, Apastamba, Vashisht, Gautam, etc.

The Smritis may be divided into :

1. Early Smritis, dharmasutras and
2. Later Smritis, Dharmasastras

Dharmasutras are written in prose style. Whereas Dharmasastras are in metrical verses. The main Dharmasutras are, the Apastamba, Gautama, Baudhayana, and Vasi??ha Dharmasutras. The Dharmasastra literature bears the names of Manu, Yajnavalkya, Brhaspati, Narada etc. Amongst them Manu smriti was considered as the supreme authority. "Whatever Manu says is the medicine"(Veda).

DOCTRINE OF FACTUM VALET:

The doctrine 'Quod fieri factum valet' literally means that 'what ought not to be done, become valid when done.' This doctrine was applied on the grounds of equity, justice and good conscience. The doctrine was applied in the following two cases:

1. When the objection to an act is merely on moral or religious grounds
2. To the acts which are prohibited by texts are not rendered invalid.

By the application of the doctrine any act which is void in law cannot be made valid.

DIGEST AND COMMENTARIES: The writings of the smritis were followed by the texts like Digests and Commentaries or Nibandhas which were based on these smriti. When the the smritis were not clear on certain topics and did not cover all topics, the smritis did not agree with each other on all matters and many contained conflicting texts, thus the need for further analysis, systematisation and assimilation of law arose. This need was satisfied by the digests and commentaries. The authors of commentaries and digests codified and supplemented the rules in the smritis in accordance with their own views and reasoning and also in the light of the usage and customs. The following are the commentaries:

- u Commentaries on Manu by Medhatithi, Govinda Raj etc
- u Commentaries on Yajnavalkya etc.

CUSTOM: Customs have played a very important part in the Hindu jurisprudence a nd much of our Hindu law is nothing but recognized customs. It is an important and independent source of Hindu law.

DIFFERENT KINDS OF CUSTOM

- n Family Customs: it is a custom prevalent to particular families.
- n Class or caste custom: it is a custom that is prevalent in particular castes or classes.
- n Local or territorial customs: it is a custom that prevails in a particular locality or territory.

ESSENTIALS OF VAID CUSTOM:

The following are the essentials for a vaid custom.

- u Ancient
- u Continuous
- u Certain
- u Reasonable
- u Not Immoral
- u Not opposed to public policy
- u Not opposed to statutory law

These are discussed in details as follows:n **Ancient:**

It is necessary that custom should be ancient. The term ancient means that it belongs to antiquity, what is antiquity will depend on each case. What is necessary to be proved is that usage has been acted upon in practise for such a long time and that it has been, by common consent, submitted to be a custom and be accepted as a governing rule.

n **Continuous:**

Continuity of a custom is as essential as its antiquity. If not followed for some time continuously, the custom's continuity is broken, irrespective of the fact that it was deliberate or accidental. Discontinuance destroys a custom.

n **Certainty:**

It is necessary to prove that a custom is certain. Vague obligations as to existence of custom will not be sufficient.

n **Reasonable:**

An unreasonable custom is void. What is reasonable or unreasonable is a matter of fact. Thus, what is reasonable is to be determined by the cotemporary values of society.

n **Not Opposed to Public Policy:**

The custom which is opposed to public policy is void.

n **Not opposed to statutory law:**

A Custom opposing the statutory law is considered to be void.

r **MODERN SOURCES:**

EQUITY, JUSTICE AND GOOD CONSCIENCE: when law was silent on a matter, they should decide the cases in accordance with equity, justice and good conscience. The expression "equity, justice and good conscience" means the rules of English law as modified to suit the Indian circumstances and conditions.

PRECEDENT: Precedence means decided case laws. Precedent is the source by and large, where most of the principles and rules of modern Hindu law are also applied.

LEGISLATION: Various Acts passed by the legislature from time to time which are considered as the source of Hindu Law. The following are the enactments which are considered as the source of Hindu law:

- ç Hindu Marriage Act 1955
- ç Hindu Succession Act 1956
- ç Hindu Adoption And Maintenance Act, 1956
- ç Hindu Minority And Guardianship Act, 1956

SCHOOLS OF HINDU LAW:

Hindu law has two main schools:

1. Mitakshara school and
2. Dayabhaga school.

The Mitakshara owes its name to Vijnaneshwar on the Yajanavalkya and the Dayabhaga is from Jimutavahana's digest. The Mitaksara school prevails in the whole of India except Bengal and Assam . The Dayabhaga school prevails in Bangal and Assam.

DIFFERENCE BETWEEN MITAKSARA AND DAYABHAGA SCHOOL:

1. The Mitakshara is the orthodox school, whereas the Dayabhaga is a reformist school.
2. The Mitaksara School in case of inheritance based on the principle of propinquity, while the Dayabhaga School is based on the principle of religious efficacy.
3. The Mitaksara School is based on the doctrine of son's in case of joint Hindu Family, whereas the in Dayabhaga School there is no such doctrine and so long as the father is alive the son have no right by birth.

CHAPTER II

HINDU MARRIAGE

Marriage is one of the social institutions established to control and regulate the life of mankind. It is closely associated with the institution of family. The Hindu Marriage has not remained a sacramental marriage and at the same time has not become a contract, though it has semblance of both. It has semblance of a contract as consent is of some importance, it has semblance of a sacrament.

THE HINDU MARRIAGE ACT 1955

Section 5: Conditions for a valid Hindu Marriage:

Section 5 of the Hindu Marriage Act, 1955 provides for the conditions for valid Hindu marriage:

1. Neither party should have a spouse who is alive at the time of the marriage.
2. Neither party can be mentally unsound and therefore incapable of giving valid consent to the marriage at the time of the marriage.
3. If at the time of the marriage, either party though capable of giving a valid consent has been suffering from mental disorder which makes that party unfit for marriage and the procreation of children, the marriage will not be valid.
4. If either party has been subject to recurrent attacks of insanity or epilepsy, the marriage will not be valid.
5. The bridegroom should have completed the age of twenty one years and the bride, the age of eighteen years at the time of the marriage.
6. The parties should not be within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the them.
7. The parties should not be sapindas of each other unless the custom or usage governing each of them permits of a marriage between the two.

Bigamy: A bigamous marriage is a void marriage Under the Hindu law.

Mental Capacity: At the time of the marriage, neither party can be mentally unsound or either party though capable of giving a valid consent has been suffering from mental disorder which makes that party unfit for marriage and the procreation of children, the marriage will not be valid or if either party has been subject to recurrent attacks of insanity or epilepsy, the marriage will not be valid.

Age of Marriage: The bridegroom should have completed the age of twenty one years and the bride, the age of eighteen years at the time of the marriage.

Prohibition on Account of Relationship: The parties should not be within the degrees of prohibited relationship, the parties should not be sapindas of each other.

Section 3(f): "Sapinda relationship" The Hindu Marriage Act, 1955:

- i. with reference to any person extends as far as the third generation (inclusive) in the line of ascent through the mother, and the fifth (inclusive) in the line of ascent through the father, the line being traced upwards in each case from the person concerned, who is to be counted as the first generation;
- ii. two persons are said to "sapindas" of each other if one is a lineal ascendant of the other within the limits of sapinda relationship, or if they have a common lineal ascendant who is within the limits of sapinda relationship with reference to each of them;

Section 3 (g): Section 3(g) in The Hindu Marriage Act, 1955:

Degrees of prohibited relationship: two persons are said to be within the degrees of prohibited relationship-

- i. if one is a lineal ascendant of the other; or
- ii. if one was the wife or husband of a lineal ascendant or descendant of the other; or
- iii. if one was the wife of the brother or of the father's or mother's brother or of the grandfather's or grandmother's brother of the other; or
- iv. if the two are brother and sister, uncle and niece, aunt and nephew, or children of brother and sister or of two brothers or of two sisters;

Section 7: CEREMONIES: As per Section 7 Saptapadi is an essential part of the ceremonies of marriage, its non performance will invalidate the marriage. Saptapadi is consisted in performing a ceremony of taking seven steps before the sacred fire by the bride and the groom. The performance of Saptapadi marked the completion of a marriage. It made the marriage irrevocable.

Section 8: REGISTRATION OF MARRIAGE: Section 8(1) of Hindu Marriage Act provides that for the the State government may make rules providing that the parties to any such marriage may have the

particulars relating to their marriage entered on such manner and subject to such conditions, as may be prescribed in a Hindu Marriage Register kept for the purpose. The Act does not contain the rules of registration and it is the State Government who have been authorised to frame them.

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

The essentials of restitution of Conjugal Rights:

1. one party must have withdrawn from the society of the other
2. the withdrawal must be without any reasonable reason, and
3. the aggrieved party applies for the restitution of conjugal rights.

Once these conditions are fulfilled, the District Court may decree of restitution of conjugal rights to bring about cohabitation between the parties.

Section 10: JUDICIAL SEPARATION: When either party to a marriage, may present a petition praying for a decree for judicial separation on any of the grounds specified in sub-section (1) of section 13, and in the case of a wife also on any of the grounds specified in sub-section (2) thereof and where a decree for judicial separation has been passed, it shall no longer be obligatory for the petitioner to cohabit with the respondent, but the court may, on the application by petition of either party and on being satisfied of the truth of the statements made in such petition, rescind the decree if it considers it just and reasonable to do so.

DIFFERENCE BETWEEN JUDICIAL SEPARATION AND DIVORCE:

A Decree of Divorce brings a marriage to an end and Judicial Separation does not. In judicial separation it is a husband and wife living separately. A petition for Judicial Separation can be sought on the five grounds which are available for divorce but it is not necessary to prove that the marriage has irretrievably broken down nor the marriage is dissolved by judicial separation.

Section 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. A marriage is void and is annulled and considered to be no marriage if it satisfies any of the provisions contained in Section 11 of Hindu Marriage Act, 1955.

Section 12 : VOIDABLE MARRIAGES:

Any marriage solemnised, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:

- (a) that the marriage has not been consummated owing to the impotence of the respondent or
- (b) that the marriage is in contravention of the condition specified in clause (ii) of section 5 or
- (c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner, the consent of such guardian was obtained by force or by fraud as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent or
- (d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.

According to subsection (2) no petition for annulling a marriage

- (a) on the ground specified in clause (c) of sub-section (1) shall be entertained if:
 - (i) the petition is presented more than one year after the force had ceased to operate or, as the case may be, the fraud had been discovered or
 - (ii) the petitioner has, with his or her full consent, lived with the other party to the marriage as husband or wife after the force had ceased to operate or, as the case may be, the fraud had been discovered;
- (b) on the ground specified in clause (d) of sub-section (1) shall be entertained unless the court is satisfied
 - (i) that the petitioner was at the time of the marriage ignorant of the facts alleged;
 - (ii) that proceedings have been instituted in the case of a marriage solemnised before the commencement of this Act within one year of such commencement and in the case of marriages solemnised after such commencement within one year from the date of the marriage; and
 - (iii) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of [the said ground].

Sunder Lal Soni v. Smt. Namita Jain, AIR 2006 MP 51.

Non-disclosure of age and factum of having major children by husband at the time of marriage amounts to fraud and suppression of material facts having bearing on marriage. Marriage founded on fraud from

very inception is a nullity.

Babui Panmate v. Ram Agya Singh, AIR 1968 Pat 190.

Misrepresentation as to the age of the bridegroom made to the mother who acted as an agent and the daughter consented for the marriage believing the statement to be true. It was held that the consent was vitiated by fraud

Section 13 : GROUNDS FOR DIVORCE UNDER THE HINDU MARRIAGE ACT, 1955

The following are the grounds for divorce mentioned under the Hindu Marriage Act, 1955.

Adultery - after the solemnisation of the marriage, had voluntary sexual intercourse with any person other than his or her spouse

Cruelty - after the solemnisation of the marriage, treated the petitioner with cruelty

Desertion - has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition Conversion has ceased to be a Hindu by conversion to another religion.

Mental Disorder - has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Leprosy - has been suffering from a virulent and incurable form of leprosy

Venereal Disease - has been suffering from venereal disease in a communicable form

Renunciation - has renounced the world by entering any religious order

Not Heard Alive - 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.

Section 13(2) of The Hindu Marriage Act, 1955:

A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the following grounds:

Husband having more than one wife living: that the husband had married again before such commencement or that any other wife of the husband married before such commencement was alive at the time of the solemnisation of the marriage of the petitioner

Rape, sodomy or bestiality: that the husband has, since the solemnisation of the marriage, been guilty of rape, sodomy or bestiality

Decree or order of maintenance: a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards.

Marriage before attainment of the age of fifteen years: that her marriage was solemnised before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.

SECTION 13B: DIVORCE BY MUTUAL CONSENT: The Conditions required under section 13B of the Hindu Marriage Act are as follows:

- i) Husband and wife have been living separately for a period of one year or more,
- ii) that they are unable to live together and
- iii) that both husband and wife have mutually agreed that the marriage has totally broken down, and the marriage should be dissolved.

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

Section 14: NO PETITION FOR DIVORCE TO BE PRESENTED WITHIN ONE YEAR OF

MARRIAGE: It shall not be competent for any court to entertain any petition for dissolution of a marriage by a decree of divorce, unless at the date of the presentation of the petition one year has elapsed since the date of the marriage. According to subsection (2) In disposing of any application under this section for leave to present a petition for divorce before the expiration of one year from the date of the marriage, the court shall have regard to the interests of any children of the marriage and to the question whether there is a reasonable probability of a reconciliation between the parties before the expiration of the said one year.

Section 15. DIVORCED PERSONS WHEN MAY MARRY AGAIN: When a marriage has been dissolved by a decree of divorce and either there is no right of appeal against the decree or, if there is such a right of appeal, the time for appealing has expired without an appeal having been presented, or an appeal has been presented but has been dismissed, it shall be lawful for either party to the marriage to marry again.

Section 16:LEGITIMACY OF CHILDREN OF VOID AND VOIDABLE MARRIAGES: Notwithstanding that marriage is null and void under section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976)*, and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act. According to subsection (2) where a decree of nullity is granted in respect of a voidable marriage under section 12, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity. According to subsection (3) Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under section 12, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents. Though the children illegitimate be treated as legitimate, notwithstanding the marriage is void or voidable.

Section 24: MAINTENANCE PENDENTE LITE AND EXPENSES OF PROCEEDING

Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regards to the petitioner's own income and the income of the respondent, it may seem to the Court to be reasonable Under Section 24 of the Act of 1955, an order of maintenance is only pendentelite proceedings. This is also termed as interim or temporary maintenance.

Section 25 :PERMANENT ALIMONY AND MAINTENANCE:

Section 25 provides for the grant of permanent alimony and maintenance to any of the party to a marriage at the time of passing any decree under the Act or at any time subsequent thereto.

CHAPTER III

HINDU ADOPTION AND MAINTENANCE

Adoption is a legal process by which a child adopted is given parental rights by the adoptive parents as biological parents. According to Section 2(aa) of the The Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, "adoption" means the process through which the adopted child is permanently separated from his biological parents and become the legitimate child of his adoptive parents with all the rights, privileges and responsibilities that are attached to the relationship. A child can be adopted under Hindu Adoption and Maintenance Act, 1956. The following are the essential provisions for a valid adoption under the Act.

Section 6 of the Hindu Adoption and Maintenance Act, 1956 provides for the requisites of a valid adoption- The following are the requisites of a valid adoption:

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

Section 7 provides for the capacity of male Hindu to take in adoption- the essentials of valid adoption by a Hindu male:

1. Any male Hindu who is of sound mind and
2. Is not a minor has the capacity to take a son or a daughter in adoption
3. If a person has more than one wife living at the time of adoption, the consent of all the wives in necessary

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

The consent of wife is necessary in case of adoption by a male.

Section 8 of the Act provides for the capacity of a female Hindu to take in adoption.-

Any female Hindu-

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

Has the capacity to take a son or daughter in adoption

Section 9 provides for capacity of a person for giving in adoption. The following are the provisions for giving in adoption:

- 1) No person except the father or mother or the guardian of a child shall have the capacity to give the child in adoption.
- 2) the father, if alive, shall alone have the right to give in adoption, but such right shall not be exercised save with the consent of the mother unless the mother has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.
- 3) The mother may give the child in adoption if the father is dead or has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.
- 4) Where both the father and mother are dead or have completely and finally renounced the world or have abandoned the child or have been declared by a court of competent jurisdiction to be of unsound mind or where the parentage of the child is not known, the guardian of the child may give the child in adoption with the previous permission of the court to any person including the guardian himself.
- 5) Before granting permission, the court shall be satisfied that the adoption will be for the welfare of the child, due consideration being for this purpose given to the wishes of the child having regard to the age

and understanding of the child and that the applicant for permission has not received or agreed to receive and that no person has made or given or agreed to make or give to the applicant any payment or reward in consideration of the adoption except such as the court may sanction

Section 10 provides for the Persons who may be adopted-

No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely :-

- i) he or she is Hindu , i.e, male or female
- ii) he or she not already been adopted, where a child already been adopted then the child cannot be taken in adoption.
- iii) he or she has not been married, unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption. Married person cannot be taken in adoption.
- iv) the child must not have 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.

Section 11 provides for the other conditions for a valid adoption -

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

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

Section 12 provides for the effects of adoption-

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

The Proviso says that-

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

Section 18 provides for Maintenance of wife.

Under Sub-section (1) the Hindu wife shall be entitled to, be maintained by her husband during her lifetime. Sub-section (2) gives her a right to live separately from her husband without forfeiting her claim to maintenance provided any of the conditions mentioned in clauses (a) to (g). Sub Section (1) provides that a Hindu wife shall be entitled to be maintained by her husband during her life time. Subsection (2) provides that a Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance under the following circumstances:

- a) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or willfully neglecting her.
- b) if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband.

- c) if he is suffering from a virulent form of leprosy.
- d) if he has any other wife living.
- e) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere.
- f) if he has ceased to be a Hindu by conversion to another religion.
- g) if there is any other cause justifying living separately.

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

Section 19 of the Act lays down a moral obligation upon the father-in-law to maintain his daughter-in-law. A Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained after the death of her husband by her father-in-law, provided that she is unable to maintain herself out of her own earnings or other property or, where she has no property of her own, is unable to obtain maintenance-

1. from the estate of her husband or her father or mother, or
2. from her son or daughter, if any, or his or her estate.

Section 20. provides for the Maintenance of children and aged parents-

1. a Hindu is bound, during his or her lifetime, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.
2. A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.
3. The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends in so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property.

The explanation says that the "parent" includes a childless step-mother.

Section 21. Dependants defined.-For the purposes of this Chapter "dependants" mean the following relatives of the deceased:-

- i) his or her father;
- ii) his or her mother;
- iii) his widow, so long as she does not re-marry;
- iv) his or her son or the son of his predeceased son or the son of a predeceased son of his predeceased son, so long as he is a minor; provided and to the extent that he is unable to obtain maintenance, in the case of a grandson from his father's or mother's estate, and in the case of a great grand-son, from the estate of his father or mother or father's father or father's mother;
- v) his or her unmarried daughter, or the unmarried daughter of his predeceased son or the unmarried daughter of a predeceased son of his predeceased son, so long as she remains unmarried: provided and to the extent that she is unable to obtain maintenance, in the case of a grand-daughter from her father's or mother's estate and in the case of a great-grand-daughter from the estate of her father or mother or father's father or father's mother;
- vi) his widowed daughter: provided and to the extent that she is unable to obtain maintenance-
 - a) from the estate of her husband, or
 - b) from her son or daughter if any, or his or her estate, or
 - c) from her father-in-law or his father or the estate of either of them;
- vii) any widow of his son or of a son of his predeceased son, so long as she does not remarry: provided and to the extent that she is unable to obtain maintenance from her husband's estate, or from her son or daughter, if any, or his or her estate; or in the case of a grandson's widow, also from her father-in-law's estate;
- viii) his or her minor illegitimate son, so long as he remains a minor;
- ix) his or her illegitimate daughter, so long as she remains unmarried.

Section 22 of the Hindu Adoptions and Maintenance Act, 1956 provides for:

- 1) Subject to the provisions of sub-section (2) the heirs of a deceased Hindu are bound to maintain the dependants of the deceased out of the estate inherited by them from the deceased.
- 2) Where a dependant has not obtained, by testamentary or intestate-succession, any share in the estate of a Hindu dying after the commencement of this Act, the dependant shall be entitled, subject to the provisions of this Act, to maintenance from those who take the estate.
- 3) The liability of each of the persons who takes the estate shall be in proportion to the value of the share or part of the estate taken by him or her.
- 4) Notwithstanding anything contained in sub-section (2) or sub-section (3), no person who is himself or herself a dependant shall be liable to contribute to the maintenance of others, if he or she has obtained a share or part, the value of which is, or would, if the liability to contribute were enforced, become less than what would be awarded to him or her by way of maintenance under this Act.

Section 23 of the Hindu Adoptions and Maintenance Act, 1956 provides for:

- 1) It shall be in the discretion of the Court to determine whether any, and if so what, maintenance shall be awarded under the provisions of this Act, and in doing so, the Court shall have due regard to the considerations set out in sub-section (2), or sub-section (3), as the case may be, so far as they are applicable.
- 2) In determining the amount of maintenance, if any, to be awarded to a wife, children or aged or infirm parents under this Act, regard shall be had to-
 - a) the position and status of the parties;
 - b) the reasonable wants of the claimant;
 - c) if the claimant is living separately, whether the claimant is justified in doing so;
 - d) the value of the claimant's property and any income derived from such property, or from the claimant's own earnings or from any other source;
 - e) the number of persons entitled to maintenance under this Act.
- 3) In determining the amount of maintenance, if any, to be awarded to a dependant under this Act, regard shall be had to-
 - a) the net value of the estate of the deceased after providing for the payment of his debts;
 - b) the provision, if any, made under a will of the deceased in respect of the dependant;
 - c) the degree of relationship between the two;
 - d) the reasonable wants of the dependant;
 - e) the past relations between the dependant and the deceased;
 - f) the value of the property of the dependant and any income derived from such property, or from his or her earnings or from any other source;
 - g) the number of dependants entitled to maintenance under this Act.

CHAPTER IV

MINORITY AND GUARDIANSHIP

The Hindu Minority and Guardianship Act, 1956 is an Act to amend and codify the law relating to minority and guardianship among Hindus.

The objects of the enactment This is to deal with the law relating the minority and guardianship. Under the Indian Majority Act, 1875, a person attains majority on his completing the age of 18 years but it before the completion of that age he has a guardian appointed by the court, he attains majority on completing the age of 21 years. That Act applies to all persons including Hindus but an exception is made with respect to the capacity of any persons to act in the matter of marriage, dower, divorce, and adoption. Marriage and divorce have already been dealt with so far as Hindu are concerned.

Guardians may be divided into three classes, namely:

- 1) natural guardians,
- 2) testamentary guardians, and
- 3) guardians appointed under the Guardians and Wards Act, 1890.

This Act does not codify the entire Hindu Law relating to guardianship but only amends and codifies certain parts of the law relating to minority among Hindus, and it is only in respect of the points and matters specifically dealt within it that the law relating minority and guardianship among Hindus is codified in this enactment, i.e., the Hindu Minority and Guardianship Act, 1956. The enactment does not purport to give the whole law on the subject guardianship. The Act is principally intended to declare as to who are the persons entitled to act as the natural guardians of a Hindu minor in respect of the person and property of the minor and to impose certain restrictions on the powers of such guardians.

Section 6 of the Act provides for the categories of persons to be termed as natural guardian. The following are the persons to be termed as natural guardian:

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

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

PROVIDED that no persons shall be entitled to act as the natural guardian of a minor under the provisions of this section-

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

Explanation In this section, the expression "father" and "mother" do not include a step-father and a step-mother.

Section 8 provides for the powers of the natural guardian. The following are the powers of the natural guardian:

1. To do acts necessary and for the benefit of the child. The natural guardian of a Hindu minor has power, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.
2. To do acts for the benefit of the property with the permission of the Court
3. Power to enter into any contract.

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

Section 9 of the Act provides for the Testamentary Guardians and their powers.

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

- 2) An appointment made under sub-section (1) shall have no effect if the father predeceases the mother, but shall revive if the mother dies without appointing, by will, any person as guardian.
- 3) A Hindu widow entitled to act as the natural guardian of her minor legitimate children and Hindu mother entitled to act as the natural guardian of her minor legitimate children by reason of the fact that the father has become disentitled to act as such, may, by will, appoint a guardian for any of them in respect of the minor's person or in respect of the minor's property (other than the undivided interest referred to in section 12) or in respect of both.
- 4) A Hindu mother entitled to act as the natural guardian of her minor illegitimate children may, by will, appoint a guardian for any of them in respect of the minor's person or in respect of the minor's property or in respect of both.
- 5) The guardian so appointed by will has the right to act as minor's guardian after the death of the minor's father or mother, as the case may be, and to exercise all the rights of a natural guardian under this Act to such extent and subject to such restrictions, if any, as are specified in this Act and in the will.
- 6) The right of the guardian so appointed by will shall, where the minor is girl, cease on her marriage.

DE FACTO GUARDIAN:

Section 11 provides for de facto guardian of a minor. De facto guardian is neither a natural guardian nor a testamentary guardian. No person shall be entitled to dispose of, or deal with, the property of a Hindu minor merely on the ground of his or her being the de facto guardian of the minor. Section 11 of the Act does not recognize the power of a defacto guardian.

CHAPTER V

THE HINDU SUCCESSION

The Hindu Succession Act, 1956 has amended and codified the law relating to intestate succession among Hindus. The Act deals with the right in property. The Act brought about changes in the law of succession among Hindus and woman has given an important place to inherit property as well as an heir. However, it does not interfere with the special rights of those who are members of Hindu Mitakshara coparcenary except to provide rules for devolution of the interest of a deceased male in certain cases.

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 of this Chapter-

- a) Firstly, upon the heirs, being the relatives specified in class I of the Schedule;
- b) Secondly, if there is no heir of class II then upon the heirs, being the relatives specified in class II of the Schedule;
- c) Thirdly, if there is no heir of any of the two classes, then upon the agitates of the deceased; and
- d) Lastly, if there is no agnate, then upon the cognates of the deceased.

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

Section 10. Distributions, 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 gets equal portions; and the branch of his predeceased sons gets the same portion;
- ii) Among the heirs in the branch of pre-deceased daughter shall be so made that the surviving sons and daughters get equal portions.

Section 14 provides for females to be the absolute owner of property. Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Section 15 provides for the general rules of succession in the case of female Hindus. -

1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,-

- a) Firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;
- b) Secondly, upon the heirs of the husband;
- c) Thirdly, upon the mother and father;
- d) Fourthly, upon the heirs of the father; and
- e) Lastly, upon the heirs of the mother.

2) Notwithstanding anything contained in subsection (1),-

- a) Any property inherited by a female Hindu from tier father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and
- b) Any property inherited by a female Hindu from tier 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 subsection (1) in the order specified therein, hill upon the heirs of the husband.

Section 16. Order of succession and manner of distribution among heirs of a female Hindu-The order of succession among the heirs referred to in Section 15 shall be and the distribution of the intestate's property among those heirs shall take place according, to the following rules, namely:

Rule 1. - Among the heirs specified in subsection (1) of Section 15, those in one entry shall be preferred to those in any succeeding entry and those including in the same entry shall take simultaneously.

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

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

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

A child in mother's womb is presumed to be born before the death of the intestate . the important this is that the child must be in the womb and the child must be born alive.

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.

Disqualification from inheritance:

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

Section 25. Murdered 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 25 disqualifies a murderer from inheriting property of the person murdered.

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

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.

The disqualified is deemed to have 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.

CHAPTER VI

THE SPECIAL MARRIAGE

The main feature of The Special Marriage Act, 1954 is a marriage between any two persons belonging to any religion or creed may be solemnized under this Act.

Section 4 Conditions relating to solemnization of marriages:

A marriage between any two persons may be solemnized under this Act, if at the time of the marriage the following conditions are fulfilled:

- a) neither party has a spouse living;
 - i) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or
 - ii) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or
 - iii) has been subject to recurrent attacks of insanity.
- b) the male has completed the age of twenty-one years and the female the age of eighteen years;
- c) the parties are not within the degrees of prohibited relationship and
- d) where the marriage is solemnized in the State of Jammu and Kashmir, both parties are citizens of India domiciled in the territories to which this Act extends.

Section 5 of the Act deals with the notice of intended parties requiring at least one of them must have resided in the district for a period of not less than 30 days immediately preceding the date on which such notice is given to the Marriage Office of the district.

Section 6 requires the Marriage Office to make copies of all notices open for inspection at all reasonable times, without fee, by any person desirous of inspecting the same, and to publish every notice by affixing a copy at some conspicuous place in the office.

If either of the parties to an intend marriage is not a permanent resident in the district in which the notice has been given, then the Marriage officer of that district has to send the notice to Marriage Officer of the district in which the parties may have permanent residence and that officer has to publish it.

Section 7 enables any person before the expiry of 30 days from the date on which such notice has been published, to object to the marriage on the grounds that it will contravene one or more of the conditions specified in section 4 viz neither party has a spouse living, neither party is incapable of giving a valid consent in consequence of unsoundness of mind, the requirement of minimum age and that they are not within the prohibited degree of relationship.

Section 8 requires the Marriage Officer to inquire into the objection and satisfy himself that it does not prevent the solemnization of the marriage. If the objection is upheld within 30 days, either party to the intended marriage can appeal to the district court, whose decision shall be final.

Section 9 provides for the power of the Marriage officer. The following are the powers of the Marriage Officer summoning and enforcing the attendance of witnesses and examining them on oath;

- a) discovery and inspection;
- b) compelling the production of documents;
- c) reception of evidence of affidavits; and
- d) issuing commissions for the examination of witnesses; and any proceeding before the Marriage Officer shall be deemed to be a judicial proceeding.

According to subsection 2 If it appears to the Marriage Officer that the objection made to an intended marriage is not reasonable and has not been made in good faith he may impose on the person objecting costs by way of compensation not exceeding one thousand rupees and award the whole or any part thereof, to the parties to the intended marriage, and any order for costs so made may be executed in the same manner as a decree passed by the district court within the local limits of whose jurisdiction the Marriage Officer has his office.

Section 13 provides for the Certificate of marriage. According to section 13 , When the marriage has been solemnized, the Marriage Officer shall enter a certificate thereof in the form specified , a book to be kept by him for that purpose and to be called the Marriage Certificate Book and such certificate shall be signed by the parties to the marriage and the three witnesses. On a certificate being entered in the Marriage

Certificate Book by the Marriage Officer, the Certificate shall be deemed to be conclusive evidence of the fact that a marriage under this Act has been solemnized and that all formalities respecting the signatures of witnesses have been complied with.

Section 15 provides for Registration of marriages celebrated in other forms. -Any marriage celebrated, other than a marriage solemnized under the Special Marriage Act, 1872, may be registered by a Marriage Officer in the territories to which this Act extends if the following conditions are fulfilled:

- a) A ceremony of marriage has been performed between the parties and they have been living together as husband and wife ever since;
- b) Neither party has at the time of registration more than one spouse living;
- c) Neither party is an idiot or a lunatic at the time of registration;
- d) The parties have completed the age of twenty-one years at the time of registration;
- e) The parties are not within the degrees of prohibited relationship;
Provided that in the case of a marriage celebrated before the commencement of this Act, this condition shall be subject to any law, custom or usage having the force of law governing each of them which permits of a marriage between the two; and
- f) The parties have been residing within the district of the Marriage Officer for a period of not less than thirty days immediately preceding the date on which the application is made to him for registration of the marriage.

The following are the consequences of marriage under this Act:

Section 19 :Effect of marriage on member of undivided family. -The marriage solemnized under this Act of any member of an undivided family who professes the Hindu, Buddhist, Sikh or Jaina religion shall be deemed to effect his severance from such family.

Section 20. Rights and disabilities not affected by Act. -Subject to the provisions of Section 19, any person whose marriage is solemnized under this Act shall have the same rights and shall be subject to the same disabilities in regard to the right of succession to any property as a person to whom the Caste Disabilities Removal Act, 1850 (21 of 1850) applies.

Section 21. Succession to property of parties married under Act. -Notwithstanding any restrictions contained in the Indian Succession Act, 1925 (39 of 1925) with respect to its application to members of certain communities, succession to the property of any person whose marriage is solemnized under this Act and to the property of the issue of such marriage shall be regulated by the provisions of the said Act and for the purposes of this Section that Act shall have effect as if Chapter III of Part V (Special Rules for Parsi Intestate) had been omitted therefrom.

21A. Special provision in certain cases. -Where the marriage is solemnized under this Act of any person who professes the Hindu Buddhist, Sikh or Jaina religion with a person who professes the Hindu, Buddhist, Sikh or Jaina religion, Section 19 and Section 21 shall not apply and so much of Section 20 as creates a disability shall also not apply.]

