Joint Hindu Family

Status is by birth; there is no agreement.

There is no agency among coparceners.

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

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

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

15.3:Change under Hindu Succession Act.

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

The following is an outline of the changes. ,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter -16
Leading cases

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

A Joint family consisting of six coparceners executed a deed:

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

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

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

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

Held:

There was partition.

Joint tenancy is converted into tenancy in common.

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

Lord Westbury stated :

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

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

Raghavamma V. Kenchamma (SC)
Puttarangamma V. Ranganna (SC)
Kalyani V. Narayanan (SC)

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

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

Muralidhar.

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

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

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

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

In this case, the supreme court overruled its earlier decision:

Narain Devi V. Rama Devi (1976).

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

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

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

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

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

(i) As T got the property in lieu of her maintenance, and as she [1] was in possession, she became the absolute owner & hence, has the J * right to alienate.

(ii) Sn.l4(2) had a limited scope. It applied only when the female Hindu got the property for the first time as under a gift, will decree, order or award, with a restriction thereof. But, when the female get a property under a pre-existing right, Sn. 14(2) could not control Sn.l4(l). If it is allowed to control, Sn.l4(l) will become meaningless, and the very objective of abolishing widow's limited estate would be defeated.

(Hi) As sich, T became absolute owner & her alienation of - o ^ property was valid.

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

Ch:16.5 Sawan Ram V Kalavati-

ReferCh:3.4P.26.

Ch:16.6 Brig Narain V Mangal prasad-

ReferCh:13.2.

Ch:16.7 Hemraj V Khemchand-

ReferCh:13.2.

Ch:16.8 Arunachala Mudaliar v Muruganatha-

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

Ch:16.9.Venkayyammav.venkataramanayyamma- . ;„

Refer Ch:6(4).

Ch:16.10 Hanuman Prasad v. Boboe.

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

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

Chapter-17
Marimakkatkayam, Aliyasantana &Namboodri Law Salient Features

1. Marummakathayam Law :

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

Marummakathayam :

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

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

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

Features of Tarwad :

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

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

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Ch:16.12. Peddasubbiah v. Akkamma:

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

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

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

1. Allahabad decision was no longer good law.

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

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

Ch: 16.14. Amarendra Mansingh V.Sanatan singh.

Refer Ch.7.

The court held:(Lord Bruce.) :

1. The authority of a manager (mother) of a Joint Hindu family, was similar to a guardian of an infant heir.

2. In Hindu Law under exceptional circumstances, transfer may be made for legal necessity, These are:

(i) Apat-Kale-time of distress, (ii) Kutumbarte-

benefit of family, (iii) Dharmarte-pious

purposes.

3. "The mother had a.limited and qualified power. It can only be exercised rightly in case of need and for benefit of the estate"-the court said.

4. The actual pressure on the estate and danger to be averted-are the tests. The objective, terms & conditions and nature of aliena tion should be for legal necessity only.

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

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

i) That notice was withdrawn by B. ii) It was duly

conveyed to coparceners.

iii) It is not open to B, to withdraw, as notice had already been received by coparceners.

iv) Withdrawal will not restore original family status.

under this Act :-

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

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

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

Aliyasantana Law :-

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

Namboodris Law :-

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

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

Special Provisions :-

The Hindu Succession Act has provided for special provisions:

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

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

Leading cases: Kalyani V Narayanan

Sundari V. Laxmi.

iii) Succession to males is as follows :

1. First, on heirs of class 1 schedule.

2. Secondly, on heirs of class2.

3. If there are no heirs of classes 1& 2, then on relatives, agnates or cognates. . .

iv) Succession to females :

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

1. firstly, on sons, & daughters (including) children of prede ceased son or daughter and the mother.

2. 2 secondly on father and the husband.

3. Thirdly on the heirs of mother.

4. fourth on the heirs of Father, on the heirs of husband,

5. Fifthly Marumakkathayam and Aliyasantana system, the above changes have been made by the Hindu Succession Act 1956.However in respect of maintenance, marriage, etc. the customs and usage continue to govern if not repugnant to Hindu Succession Act.

THE END

REFERENCE SECTION

Selected Sections

THE HINDU MARRIAGE ACT, 1955

(1) **This Act applies-**

(a) **to any person who is a Hindu by religion** in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,

(b) to any person who is a Buddhist, Jaina or Sikh by religion, and

(c) to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

(2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.(3) The expression "Hindu" in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.

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

(a). the expressions "**custom" and "usage"** signify any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family: Provided that the rule is certain and not unreasonable or opposed to public policy; and Provided further that in the case of a rule applicable only to a family it has not been discontinued by the family;

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

(d) "**uterine blood"**-two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands.Explanation.-In clauses (c) and (d), "ancestor" includes the father and

"ancestress" the mother;

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

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

(i) if one is a lineal ascendant of the other; or(ii) if one was the wife or husband of a lineal ascendant or descendant of the other ; or(iii) if one was the wife of the brother or of the father's or mother's brother or of the grandfather's or grandmother's brother of the other; or(iv) if the two are brother and sister, uncle and niece, aunt and nephew, or children of brother and sister or of two brothers or of two sisters ; [(i) relationship by half or uterine blood as well as by full blood;

(ii) illegitimate blood relationship as well as legitimate;(iii) relationship by adoption as well as by blood ; and all terms of relationship in those clauses shall be construed accordingly].

5. Conditions for a Hindu marriage.

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

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

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

(iii) the bridegroom has completed the age of 21[twenty- one years] and the bride the age of 18[eighteen years] at the time of the marriage;

(iv.) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;

(v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two.

Formalities

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

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

.8. **Registration of Hindu marriages.**

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

(2) Notwithstanding any thing contained in sub-section (1), the State Government may, if it is of opinion that it is necessary or expedient so to do, provide that the entering of the particulars referred to in sub-section (1) shall be compulsory in the State or in any part thereof, whether in all cases or in such cases as may be specified, and where any such direction has been issued, any person contravening any rule made in this behalf shall be punishable with fine which may extend to twenty-five rupees.

RESTITUTION OF CONJUGAL RIGHTS AND JUDICIAL SEPARATION

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

10. Judicial separation.

(1)Either patty to a marriage, whether solemnized before or after the commencement of this Act, may present a petition praying for a decree for judicial separation on any of the grounds specified in sub-section (1) of section 13, and in the case of a wife also on any of the grounds specified in sub-section (2) thereof, as grounds on which a petition for divorce might have been presented.]

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

NULLITY OF MARRIAGE AND DIVORCE

11.**Void marriages.** Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party

thereto against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5.

12.Voidable marriages.

(1)Any marriage solemnized, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:- 5[(a) that the marriage has not been consummated owing to the importance of the respondent ; or] (b) that the marriage is in contravention of the condition specified in clause (ii) of section 5 ; or (c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner the consent of such guardian was obtained by force or by fraud as to the nature of the ceremony or as to any material fact or circumstances concerning the respondent]; or (d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.

(2) Notwithstanding anything contained in sub-section (1), no petition for annulling a marriage- (a) on the ground specified in clause (c) of sub-section (1) shall be entertained if- (i) the petition is presented more than one year after the force had ceased to operate or, as the case may be, the fraud had been discovered; or (ii) the petitioner has, with his or her full consent, lived with the other party to the marriage as husband or wife-after the force had ceased to operate or, as the case may be, the fraud had been discovered; (b) on the ground specified in clause (d) of sub-section (1) shall be entertained unless the court is satisfied- (i) that the petitioner was at the time of the marriage ignorant of the facts alleged; (ii) that proceedings have been instituted in the case of a marriage solemnized before the commencement of this Act within one year of such commencement and in the case of marriages solemnized after such commencement within one year from the date of the marriage; and (iii) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of 2[the said ground].

13. Divorce.

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

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

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

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

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

1[(iii) has been incurably of unsound mind, or has been suffering continuously

or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

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

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

(iv) has been suffering from a virulent and incurable from of leprosy; or(v) has been suffering from venereal disease in a communicable from ; or

(vi) has renounced the world by entering any religious order; or (vii) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive.

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

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

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

(i) in the case of any marriage solemnized before the commencement of this Act, that the husband had married again before such commencement or that any other wife of the husband married before such commencement was alive at the time of the solemnization of the marriage of the petitioner: Provided that in either case the other wife is alive at the time of the presentation of the petition ; or

(ii).that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or 6[bestiality; or]

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

parties has not been resumed for one year or upwards;

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

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

13B.Divorce by mutual consent.

(1)Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976, (68 of 1976.) on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that thy have mutually agreed that the marriage should be dissolved.

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

Proposed Amendment to Sn 13 to make divorce easier

Not yet passed up to May 2012

3. After section 13B of the Hindu Marriage Act, the following sections shall be inserted, namely:—
'**13C (***1*) A petition for the dissolution of marriage by a decree of divorce may be presented to the district court by either party to a marriage [whether solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 2010], on the ground that the marriage has broken down irretrievably.
(*2*) The court hearing a petition referred to in sub-section (*1*) shall not hold the marriage to have broken down irretrievably unless it is satisfied that the parties to the marriage have lived apart for a continuous period of not less than three years immediately preceding the presentation of the petition.

(*3*) If the court is satisfied, on the evidence, as to the fact mentioned in subsection (*2*), then, unless it is satisfied on all the evidence that the marriage has not broken down irretrievably, it shall, subject to the provisions of this Act, grant a decree of divorce.
(*4*) In considering, for the purpose of sub-section (*2*), whether the period for which the parties to a marriage have lived apart has been continuous, no account shall be taken of any one period (not exceeding three months' in all) during which the parties resumed living with each other, but no other period during which the parties lived with each other shall count as part of the period for which the parties to the marriage lived apart.
(*5*) For the purposes of sub-sections (*2*) and (*4*), a husband and wife shall be treated as living apart unless they are living with each other in the same household, and reference in this section to the parties to a marriage living with each other shall be construed as reference to their living with each other in the same household.
13D. (*1*) Where the wife is the respondent to a petition for the dissolution of marriage by a decree of divorce under section 13C, she may oppose the grant of a decree on the ground that the dissolution of the marriage will result in grave financial hardship to her and that it would in all the circumstances be wrong to dissolve the marriage.
(*2*) Where the grant of a decree is opposed by virtue of this section, then,—
(*a*) if the court finds that the petitioner is entitled to rely on the ground set out in section 13C; and
(*b*) if, apart from this section, the court would grant a decree on the petition, the court shall consider all the circumstances, including the conduct of the parties to the marriage and the interests of those parties and of any children or other persons concerned, and if, the court is of the opinion that the dissolution of the marriage shall result in grave financial hardship to the respondent and that it would, in all the circumstances ,be wrong to dissolve the marriage, it shall dismiss the petition, or in an appropriate case stay the proceedings until arrangements have been made to its satisfaction to eliminate the hardship.
13E. The court shall not pass a decree of divorce under section 13C unless the court is satisfied that adequate provision for the maintenance of children born out of the marriage has been made consistently with the financial capacity of the parties to the marriage.

14. No petition for divorce to be presented **within one year** of marriage.

(1)Notwithstanding anything contained in this Act, it shall not be competent for any court to entertain any petition for dissolution of a marriage by a decree of divorce, 1[unless at the date of the presentation of the petition one year has elapsed] since the date of the marriage: Provided that the court may, upon application made to it in accordance with such rules as may be made by the High Court in. that behalf, allow a petition to be presented 1[before one year

has elapsed] since the date of the marriage on the ground that the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent, but if it appears to the court at the hearing of the petition that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the court may, if it pronounces a decree, do so subject to the condition that the decree shall not have effect until after the 1[expiry of one year] from the date of the marriage or may dismiss the petition without prejudice to any petition which may be brought after the 1[expiration of the said one year] upon the same or substantially the same facts as those alleged in support of the petition so dismissed. (2) In disposing of any application under this section for leave to present a petition for divorce before the 1[expiration of one year] from the date of the marriage, the court shall have regard to the interests of any children of the marriage and to the question whether there is a reasonable probability of a reconciliation between the parties before the expiration of the 1[said one year].

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

16. **Legitimacy of children of void and voidable marriages.**

Notwithstanding that a marriage is null and void under section 11, any child of such marriage who would have been legitimate if the marriage had been valid, **shall be legitimate** d whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act. (2) Where a decree of nullity is granted in respect of a voidable marriage under section 12, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their **legitimate child** notwithstanding the decree of nullity. (3) Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which Is annulled by a decree of nullity under section 12, **any rights in or to the property of any person, other than the parents,** in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents.

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

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

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

JURISDICTION AND PROCEDURE

19. . Every petition under this Act **shall be presented to the district court** within the local limits of whose ordinary original civil jurisdiction-- (i) the marriage was solemnized, or (ii) the respondent, at the time of the presentation of the petition, resides, or (iii) the parties to the marriage last resided together, or (iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is, at that time, residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of him if he were alive

20. **Contents and verification of petitions.** (1)Every petition presented under this Act shall state as distinctly as the nature of the case permits the facts on which the claim to relief is founded 2 [and, except in a petition under section 11, shall also state] that there is no collusion between the petitioner and the other party to the marriage. (2) The statements contained in every petition under this Act shall be verified by the petitioner or some other competent person in the manner required by law for the verification of plaints, and may, at the hearing, be referred to as evidence.

22.proceedings to be in camera and may not be printed or published. . (2)If any person prints or publishes any matter in contravention of the provisions contained in sub-section (1), he shall be punishable with fine which may extend to one thousand rupees.]

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

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

property of the respondent. (2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just. (3) If the court is satisfied that the party in whose favour an order has been made under this section has re-married or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, 2[it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just].

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

REFERENCE SECTION

Selected Sections

THE HINDU ADOPTIONS AND MAINTENANCE ACT, 195

Sn 2(b) "**maintenance"** includes-
(i) in all cases, provision for food, clothing, residence, education and medical attendance and treatment ;
(ii) in the case of an unmarried daughter, also the reasonable expenses of and incident to her marriage;

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

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

6. **Requisites of a valid adoption.**

No adoption shall be valid unless--

(i) the person adopting has the capacity, and also the right, to take in adoption;

(ii) the person giving in adoption has the capacity to do so;

(iii) the person adopted is capable of being taken in adoption; and

(iv) the adoption is made in compliance with the other conditions mentioned in this Chapter.

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

Any male Hindu who is of sound mind and is not a minor has the capacity to takes on or a daughter in adoption:
Provided that, if he has a wife living, he shall not adopt except with the consent of his wife unless the wife has completely and finally renounced the word or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.
Explanation.-If a person has more than one wife living at the time of adoption, the consent of all the wives is necessary unless the consent of any one of them is unnecessary for any of the reasons specified in the preceding proviso.

8.**Capacity of a female Hindu to take adoption.**

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

9.**Persons capable of giving in adoptions.**

(1)No person except the father or mother or the guardian of a child shall have the capacity to give the child in adoption.
(2) Subject to the provisions of 1[sub-section (3) and sub-section (4)], the father, if alive, shall alone have the right to give in adoption, but such right shall not be exercised save with the consent of the mother unless the mother has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.
(3) The mother may give the child in adoption if the father is dead or has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent juris-diction to be of unsound mind.
4) Where both the father and mother are dead or have com-pletely and finally renounced the world or have abandoned the child or have been declared by a court of competent jurisdiction to be of unsound mind or where the parentage of the child is not known, the guardian of the child may give the child in adoption with the previous permission of the court to any person including the guardian himself.]
(5) Before granting, permission to a guardian under sub-section (4), the court shall be satisfied that the adoption will be for the welfare of the child, due consideration being for this purpose given to the wishes of the child having regard to the age and understanding of the child and that the applicant for permission has not received Or agreed to receive and that no person has made or given or agreed .to make or give to the applicant any payment or reward in consideration of the adoption except such as the court may sanction.
Explanation.-For the purposes of this section-

(i) the expressions "father" and "mother" do not include an adoptive father and an adoptive mother;
2[(ia) "guardian" means a person having the care of the person of a child or of both his person and property and includes-
(a) a guardian appointed by the will of the childs father or mother, and
(b) a guardian appointed or declared by a court; and]
(ii) " court " means the city civil court or a district court within the local limits of