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Hindu law

MITAKSHARA AND DAYABHAGA Differences:

The two schools Mitakshara and Dayabhaga spring from the same source the ' Smriti'. Vignaneswara's commentary about the 10th century, applicable throughout the territory of India, came in the form of 'Mitakshara' (a treatise). Jimutavahana's commentary, the 'Dayabhaga' became operative in particular areas in India, namely, Bengal and Assam. The two systems may be compared to the Branches of a single tree, the Smriti. Mr. Cole-Brooke called them the Schools of Hindu law. Differences : Mitakshara Dayabhaga 1. Heritage : Recognises, two classes 1. There is no such division. All sorts of heritage-obstructed and non- property is considered obstructed (appratibanda daya and ted, Saprathibandadaya.) 2. The right of the coparcener arises- 2. The right does not arise by birth only. This is the corner- birth alone. His right arises on the death of his father. 3. Recognises a coparcenary between- 3. Dayabhaga does not recognise between the father and sons. Right such a coparcenary. The son has to partition is recognised. The father is the head of the family is the absolute owner of the property and who may alienate property for authorises to dispose of at his legal necessity. 4. Religious efficacy is not the 4. Religious efficacy is the ruling guiding rule. The nature of sue- principle in finding out the or cession is by survivorship. Ag- er of succession, nates are preferred to cognates. 5. The widow of a coparcener, 5. Dayabhaga recognises the right 5. The widow of a coparcener, 5. Dayabhaga recognises the right enjoyed a limited estate for her of a widow in an undivided family life time. After her death she to succeed to her husband's share property reverted to the Revert- if he dies without issue. She may sue (heirs of the husband). in such cases enforce-a partition This has been abolished under Sn. on her own accord. 14 of Hindu Succession Act.1956. These are the major differences between these two schools though the source is "the smriti".

Hindu Ancient Sanskrit texts have not used the word "Hindu". Hindu is derived from Indus' or v Sindu' and it denoted the people living east of the river Sindu. Etymologically Hindu means a person to whom "Meanness" is an offence. The meaning given by Tilak to "Hindu" was accepted by the courts. "A Hindu is a person who respects Vedas with devotion, considers road to salvation as varied, and realisation that plurality of "Gods" was the basic truth". In interpreting, the courts have put a liberal construction, to construe who a Hindu is. Hindu includes a Hindu by birth, by religion, by conversion or reconversion; it also includes Virashivas, Lingayats, Brahmo, Arya and Prarthana Samajits, Buddhists, Jains and Sikhs. Statutory Definition: The four Acts: The Hindu Marriage Act, The Hindu Succession Act, The Minority and Guardianship Act and the Hindu Adoptions and Maintenance Act, have specified the persons who are governed by Hindu Law. The Hindu Law applies: i) to Hindus by birth and to Hindus by religion in any form. This includes Virashiva, Lingayats, and followers of Brahmo, Prarthana and Arya Samajits. ii) to any person

who is a Buddhist, Jaina, or Sikh by religion. iii) to any person domiciled in India and who is not a Muslim, Christian, or Jew by religion; The presumption is that a person domiciled in India is a Hindu if he is not a Muslim, Christian, Parsi, Jew by religion. The Act in the Explanation further provides as follows: iv) The following persons are Hindus, Buddhists, Jains or Sikhs. a) Children (legitimate or illegitimate) of parents who are both Hindus, Buddhists, Jains or Sikhs. b) Children (legitimate or illegitimate) of parents one of whom is a Hindu, Buddhist, Jain or Sikh.

Origin

Hindu law is thought to be divine law. God revealed it to humans through the Vedas. The notion of life described in the Vedas has been extended and polished by different phases and ascetics. Ancient Hindu legislators were not monarchs, but sages, who could be considered semi-divine individuals due to their deep intellectual speculation and foresight, as well as strong sympathy for man-to-man social dealings. It was these thinkers who established Hindu law, which can be found in the dharmasutras, dharmashastras, and the Artha sastra of Kautilya as explained and elaborated by various nibandhas and later era commentary.[6] The concept of "the rule of law" was acknowledged from the outset in ancient India. Hindu law dates back roughly 6000 years.

The origins of these legal and religious speculations must be traced back to the Vedic Deity Varuna's idea of Rita, or Natural Order. From the previous brief historical outline, it is clear that Hindu law was initially territorial in nature, applying to all residents of Aryavarta or India. However, after the arrival of the Muslims, it could no longer be considered to be downright territorial; it was now limited to the Hindu community alone

Application of Hindu Law

The name "Hindu" initially appeared in Old Persian text. It was taken from the Sanskrit word Sindhu, which was the old local term for the Indus River in the Indian subcontinent's north-western region. A Hindu is someone who practices Hinduism. Because there is no specific definition of Hinduism, determining somebody is a Hindu is extremely difficult. As a result, a negative definition is considered, with the term "who is not a Hindu".

The Hindu law applies to the following people, according to Section 2 of the Hindu Marriage Act, 1955:

By	Religion:
An individual is regarded as a Hindu if he or she practises any of the following religions: Hindu, Jain, Buddhist, or Sikh. The Supreme Court ruled in <i>Sastri v. Muldas</i> that Hindu sects such as the Swaminarayan, Arya Samaj, and Satsangis are also Hindus. Furthermore, when individuals convert to Hinduism or perhaps even return to it, they are labelled a Hindu. <i>Perumal v. Ponnuswami</i> , a significant decision, held that people could become a Hindu if he or she shows a willingness to do so and performs Hindu practises to prove that desire.	

By Birth:
A child is Hindu by birth if he or she is born to Hindu parents. When one of the parents is Hindu, a child is also a Hindu if raised in a Hindu household.

If a person is not a Muslim, Jew, Parsi, or Christian, he or she is a Hindu. When an individual is not subject to any other law, he or she is subject to Hindu law.

Sources of Hindu Law

The sources of Hindu law can be categorized under two heads:

Ancient and
Modern

Ancient Sources of Hindu law

Sruti, Smriti, and Custom are the three primary ancient sources of Hindu law. Commentaries and digests, in addition to these three texts, are considered ancient Hindu law sources.

Sruti is a Sanskrit word that means "something which can be heard." The Vedic people's lives are often described in Srutis. It is made up of the six Vedangas, the Upanishads, and the four Vedas, which are:

The Rig Veda (which is the oldest of the four and includes songs and hymns);

The Yajur Veda (which comprises rituals and mantras);

The Sama Veda (which contains musical notes and prayers); and

The Atharva Veda (which contains musical notes and prayers) (contains magical spells).

"The Sruti is, in theory, the primary and paramount source of Hindu law and is believed to be the language of divine revelation." [13] As a result, it is the fundamental foundation of Hindu Law, yet it is not legally enforceable.

Smriti comes from the Sanskrit word "smri," which means "to remember." Smriti, in basic terms, pertains to God's words that the sages forgot to tell in one's original form, but which the sages recalled and wrote in their own words. Thus, Smriti translates to "that which is remembered."

"Though the Smritis are not in the exact language of the God, they embrace what the sages learned from discoveries, and they are regarded to have arisen from the God in the context that they embrace what the sages remembered from revelations. Thus, Smritis suggests human authorship, putting human action into the substantive and procedural proclamation of law." The Dharmasutras [old Smriti] and the Dharmashastras [new Smriti] are the main two types of Smriti.

Dharmasutras:

These were written between 800 and 200 BC. They comprised local rituals and customs as well as Vedic preaching on various tasks that a person must carry out in various relationships. Sutras have

a short and straightforward meaning that is easy to memorise. The Sruta Sutra (ritual related), the Grihya Sutra (domestic-related), and the Dharma Sutra (discipline related) are the three types of sutras (law-related). The Gautama (legal and religious topics), the Baudhayan (marriage and inheritance concerns), the Apastamba, and the Vashistha were the four important thinkers of the Dharma Sutra (remarriage of virgin widows).

Dharma Shastra
In Dharmashastra, our moral code of conduct is stated. It was based on Dharmasutras and was more precise and systematic when compared to other texts. The three most important issues that the Dharma Shastra deal with are Aachara; Vyavahar; and Prayaschitta

Manusmriti is a Sanskrit word that means: It is considered the most authoritative source of Hindu law. Manu, its creator, is regarded as the first human being. All of the granthas and sutras are collected in Manusmriti. It is generally accepted and respected that the latter will lose if a fight emerges between it and other smritis.

Yajnavalkya Smriti
It appeared after Manusmriti and contained more logical and apparent views. However, it primarily dealt with civil law. Law, according to Yajnavalkya, is the king of kings, and the king's role is limited to enforcing the law.

Narada Smriti
He gave importance to regular customs. This Smriti did not deal with any religious or moral issues. It wholly concentrates on civil practices and laws.

Commentaries and Digests
"The law of the Smritis was empiric and regressive, and in the course of time, several commentaries and digests (Nibandhas) were written on it. The authority of several commentators varied in different districts, and thus arose the schools of law which are operative in different parts of India." [19] The two schools of Hindu law are Dayabhaga and Mitakshara. Moreover, it is only because of the numerous commentaries available from various authorities that these schools could evolve and be properly studied.

In the case *Anjubai v. Hemchandra Rao*, it was opined "that commentaries do not enact the law, but they explain and interpret the law and are evidence of the congeries of customs which form the law".

Custom

In India, Custom is the most widely used and recognized source of Hindu law. Customs were valued in all of the Srutis and Smites. However, usage is not the same as Custom since usage is a common practice. Specific basic requirements must be met for a custom to be valid, namely:

Custom must be put into practice over a long period.

It must not be immoral or ethically repugnant

In some places, it is regarded as a law.

The tradition must be consistent in its essence.

It must also be specific and not wavering or vague.

It must be reasonable and not in violation of any public policy or law.

It should not be discarded.

Hindu law considers Custom to be the third source of law. Custom ('Achara') has been regarded as the ultimate 'dharma' since the beginning. According to the Judicial Committee, "custom" refers to a regulation that has gained legal force in a certain family, class, or district via lengthy usage. The majority of Hindu law is founded on conventions and traditions that individuals observe all over the country. Even smites have placed a premium on customs. They regarded customs as the supreme law, advising kings to judge based on customs after careful theological deliberation.

These customs are of four types:

Local

Customs:

These are the customs that exist in a specific geographic location. In the case of *Subbane v. Nawab*, the Privy Council stated that a custom has legal force because it has been observed for a long time in a particular location.

Family

Customs:

These are traditions that have been passed down through generations in a family. This applied to all families, regardless of their location. They are less complicated to abandon than other practices. The Privy Council noted in *Soorendranath v. Heeramonie* and *Bikal v Manjura*[26] that family practises have long been recognised as Hindu law.

Caste

and

Community

Customs:

These are the traditions that a specific caste or community adheres to. It binds the individuals of such a caste or group. This is, without a doubt, among the most important legal sources. For instance, the majority of the law of Punjab is of this type. This is likewise the case with the Custom of marrying a brother's widow in several societies.

Guild

Customs:

These are the customs that traders adhere to.

Modern

Sources:

Many changes were made to Hindu law as a result of the arrival of the British. The modern sources of Hindu law arose as a result of this. The three Modern sources are equity, fairness, good conscience; precedents and judicial decisions; and legislation.

Equity, Fairness, And Good Conscience:

Sometimes, a dispute may arise before a Court cannot be resolved by applying an existing rule from any accessible sources. Although such a situation is uncommon, it is feasible since not every circumstance that emerges has a matching law governing it. In the lack of law, the courts have no choice but to resolve the dispute, yet they are obligated to do so. The Courts use core values, norms, and criteria of fairness and appropriateness to decide such situations. It is referred to as the principles of justice, equality, and good conscience. Natural law is another name for them. Since about the 18th century, when the British administration made it plain that the above concept would be implemented in the lack of regulation, this concept now has the stature of a source of law in our country.

Precedents And Judicial Decisions:

The pyramid of Courts was developed after the beginning of British control. The theory of precedent was formed based on the premise of treating similar cases similarly. The Privy Council's judgements are now obligatory on all subordinate courts in India unless modified or revised by the Supreme Court, whose judgements are binding on all courts except itself. Occasionally, judicial judgements on Hindu law are referred to be a source of law. For example, when there were disagreements between individuals during the British rule in India, English judges turned to Hindu Pandits for help in interpreting local Sanskrit laws and using them to settle the conflicts. Thus these cases become precedent.

Legislation:

legislation is codified laws of parliament, which plays an essential role in forming Hindu law according to modern society. Some major elements of Hindu Law have indeed been codified since the Attainment of independence. The Hindu Marriage Act of 1955, the Hindu Adoptions and Maintenance Act of 1956, the Hindu Succession Act of 1956, the Hindu Minority and Guardianship Act of 1956, and others are just a few examples of crucial statutes. All point dealt with by the codified law is definitive after codification. If an express saving is provided for in the enactment itself, the enactment supersedes all preceding law, whether based on tradition or otherwise. The old textual law contains to have application in situations not specifically covered by the codified law.

Conclusion:

As previously stated in this thesis, Hindu law is thought to be a divine law formed by sages and those who claim to have formed it by directly communicating with God. However, there is no evidence to support this assumption. Hindu law is exceedingly patriarchal, casteist, and not modern

in nature. The irreversible breakdown concept as a legal reason for divorce is not yet recognized under the Hindu Marriage Act, 1955, and even the Supreme Court has expressed their worry about this. The most legitimate objection is that the statutes only provide a negative definition of a "Hindu," which does not stand up to the scrutiny of time. It could be suggested that comprehensive codification of Hindu law, free of ambiguity, is a pressing need.

Hindu Marriage act divorce

Introduction -

Divorce is a process by which the marriage comes to end. After Divorce both Husband and Wife revert to their unmarried status and are free to marry again. Section 13 of Hindu Marriage Act, 1955 deals with Divorce. According to Section 13 of the said Act either the parties (Husband or wife) to the marriage can file a petition in the court for the dissolution of Marriage. However, a petition cannot be filed within one year of the marriage.

2) Various Grounds for obtaining Divorce under Hindu Marriage Act, 1955

Section 13 of Hindu Marriage Act 1955

Section 13 of Hindu Marriage Act runs as follows -

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 —

(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

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

Explanation: In this clause —

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

(b) the expression "psychopathic disorder" means a persistent disorder or disability of mind

(whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party and whether or not it requires or is susceptible to medical treatment; or

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

(v) has been suffering from venereal disease in a communicable form; or

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

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

Explanation:

In this sub-section, the expression "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 willful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expression shall be construed accordingly.

(1) 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 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 one year or upward after the passing of a decree of 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 the 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 bestiality; or

(iii) that in a suit under section 18 of the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), or in a proceeding under section 125 of the Code of Criminal Procedure, 1973, (Act 2 of 1974) or under corresponding Section 488 of the Code of Criminal Procedure, 1898 (5 of 1898), a decree or order, as the case may be, has been passed against the husband awarding maintenance to

the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards ;

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(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the

Introduction

- The term succession is not defined anywhere in the **Hindu Succession Act, 1956 (HSA)**.
- In general, succession can be defined as transmission of rights and obligation in an estate, of a deceased person to his heir or heirs.
- This Act applies to Hindus, Buddhists, Jains, and Sikhs, but not to Muslims, Christians, Parsis, or Jews.

Types of Succession

- **Intestate Succession:**
 - This kind of succession applies when a Hindu dies without leaving a will.
 - The interstate property is distributed among legal heirs according to the Act.
- **Testamentary Succession:**
 - It is based on a valid will left by the deceased.
 - It allows the person to determine how their property will be distributed.

Types of Property

- **Coparcenary Property:**
 - Any Joint family property which is inherited by birth is a coparcenary property.
 - This property also includes daughters as coparceners (since 2005 amendment).
- **Separate Property:**
 - An individually owned property is known as Separate Property.
 - This kind of property follows different rules of succession than coparcenary property.
- **Property of a Female Hindu:**
 - Under this special rule apply for property inherited by a woman.
 - It also includes concepts like Stridhan (woman's property).

Classes of Heirs

- **Class I Heirs:**
 - They receive priority in intestate succession.
 - It Includes children, spouse, mother, and certain others.
- **Class II Heirs:**
 - They inherit only if there are no Class I heirs.
 - It includes father, siblings, and other relatives.
- **Agnates:**
 - Those who are related through male lineage are agnates.
 - They Inherit property after Class I and II heirs.
- **Cognates:**
 - Those who are related through female lineage are cognates.
 - They inherit after agnates.

What are the General Rules of Succession in Males?

- **Section 8: General Rules of Succession for Males:**
 - It applies to property of a male Hindu dying intestate.
 - It specifies order of succession: Class I heirs, then Class II, then Agnates, then Cognates
 - In this Class I heirs inherit simultaneously and to the exclusion of other heirs.
- **Section 9: Order of Succession Among Heirs in the Schedule:**
 - This section is related to Class II heirs, Agnates, and Cognates.
 - Under this within each group, heirs in higher entries exclude those in lower entries.
 - It states that the heirs in the same entry take simultaneously.
- **Section 10: Distribution of Property Among Class I Heirs:**
 - This section specifies how property is divided among Class I heirs.
 - It states that the equal distribution of property must be amongst son, daughter, widow, and mother.
 - Children of deceased Parents get their parent's share out of the ancestral property.
 - **The rules states in the provisions are as:**

- **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—
- Among the heirs in the branch of the pre-deceased son shall be so made that his widow (or widows together) and the surviving sons and daughters get equal portions; and the branch of his pre-deceased sons gets the same portion.
- Among the heirs in the branch of the pre-deceased daughter shall be so made that the surviving sons and daughters get equal portions.
- **Section 11: Distribution of Property among Class II Heirs:**
 - This section states that heirs in a higher entry (hierarchy wise) take the entire property.
 - It also states that if multiple heirs are in the same entry, property will be divided among them equally.
- **Section 12: Order of Succession among Agnates and Cognates:**
 - This section states that the proximity of relationship determines priority of distribution of property.
 - The closer relatives exclude more remote ones from succeeding property.
 - Those who belong to the same degree inherit the property simultaneously.
- **Section 13: Computation of Degrees:**
 - This section states the procedure of how to calculate degrees of relationship while distributing property as:
 - **For Agnates:** Count upwards to common ancestor, then downwards to heir.
 - **For Cognates:** Similar, but one step further to include the common female ancestor.
 - **The rules for distribution stated under this provision are:**
 - **Rule 1**—Of two heirs, the one who has fewer, or no degrees of ascent is preferred.
 - **Rule 2**—Where the number of degrees of ascent is the same or none, that heir is preferred who has fewer or no degrees of descent.
 - **Rule 3**—Where neither heir is entitled to be preferred to the other under Rule 1 or Rule 2, they take simultaneously.

Landmark Judgements

- **Vineeta Sharma v. Rakesh Sharma (2020):**
 - In this case the [Supreme Court](#) ruled that daughters have equal coparcenary rights in Hindu Undivided Family (HUF) property by birth, regardless of whether the father was alive when the 2005 amendment came into effect. This decision impacts the application of Section 8 regarding the inheritance rights of daughters.
- **Revanasiddappa v. Mallikarjun (2011):**

- In this case the Supreme Court ruled that illegitimate children have inheritance rights to their father's separate property under Section 8. However, they cannot claim rights in ancestral property. This judgment expanded the interpretation of "son" in Section 8 to include illegitimate sons for certain inheritance purposes.

Conclusion

The general rules of succession have significantly changed the landscape of property inheritance for Hindu males in India, promoting gender equality and ensuring a more balanced distribution of assets among heirs. The law aims to provide a more equitable distribution of property among heirs, moving away from traditional patriarchal systems. In the absence of a will, the property is distributed according to these statutory rules.

Section 24 of Hindu Marriage Act

Introduction

- Section 24 of the Hindu Marriage Act, 1955 (HMA) states the provisions for maintenance *pendente lite* and expenses of proceedings.
- Maintenance is a human right along with a legal right.
- Section 24 of HMA basically provides for temporary maintenance to the spouse during the pendency of litigation.

Meaning of Maintenance

- It is **financial support** aided by the father or the husband towards his children or wife respectively.
- The maintenance is also known as alimony, which refers to the payment against the expenses and all the necessities of the dependents.
- The maintenance shall be granted irrespective of the parties living together or not and irrespective if the divorce has been granted or not as per Hindu Laws.

Meaning of *Pendente lite*

- The term "pendente lite" means "pending the litigation" or "during the pendency of the case".
- The said section governs interim maintenance to support livelihood and necessary expenses of any proceeding under HMA in case of insufficient or no independent income.

Meaning of Maintenance *Pendente Lite*

- Maintenance *Pendente Lite* means providing living expenses and financial support to the wife and children while the suit is pending between the parties.
- The provision provides a gender-neutral right to apply this remedy to both husbands and wives, as the case may be.

Fundamentals of the Section 24 of HMA

▪ Expenses of Proceedings:

- Section 24 governs the **expenses occurring during the pendency of the proceedings** under HMA.
- These expenses include the **fees of lawyers, court fees, stamp duties, traveling expenses** and other related expenditures.
- The objective is to ensure that the financially weaker spouse can effectively participate in the legal process without being burdened by the associated costs.

▪ Discretion of the Court:

- The power to grant maintenance pendente lite and expenses of proceedings is **merely a discretionary power** vested in the Court.
- This discretion allows the court to consider the **individual circumstances of the case and make a fair and just determination** regarding the amount of maintenance and expenses to be awarded.
- The court adjudges the sufficiency of income, assets, and needs of both parties while granting the maintenance under this Section.

▪ Temporary Nature:

- It is important to note that the maintenance awarded under Section 24 is **temporary in nature**.
- It is intended to provide financial support **only during the pendency** of the legal proceedings.
- The Court has the discretion to decide on granting **final maintenance** while **concluding** the case.

Provisions of Section 24 of the HMA

- It states that:
 - When under any proceeding any of the spouse has no independent income sufficient to proceed with the litigation proceedings then the court may order the respondent to pay the expenses of the proceedings to the petitioner and to pay a sum considering the income of the respondent to maintain the petitioner.
 - It is provided that the application of the petitioner under this section be disposed of within 60 days from the date of service of notice on the respondent.

Difference Between Section 24 of HMA & Section 125 of Code of Criminal Procedure (CrPC):

Applicable to only Hindus.	Applicable to all the citizens irrespective of religion, caste and beliefs.
Maintenance is provided during the pendency of the divorce petition and not afterwards.	Maintenance is provided during and post-divorce petitions.
Only spouses are entitled for the maintenance under this section.	Spouses, children (legitimate or illegitimate), parents all are eligible for claiming maintenance under this section.

Maintenance is awarded considering the living standard, income and needs of the parties.	Maintenance is awarded based on the needs of the claimants and the ability of the respondent to pay.
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Landmark Judgements

- **Mamta Jaiswal v. Rajesh Jaiswal (2000):**
 - The HC while declining maintenance to a highly qualified wife held that Section 24 of HMA has been enacted for the purpose of **providing monetary assistance to either spouse who is incapable of supporting himself or herself in spite of sincere efforts.**
 - However, the law does not expect persons engaged in the legal battles to remain idle solely with the objective of squeezing out money from the opposite party.
 - The court further said that “Section 24 of HMA is not meant to create an Army of idle people waiting for a dole to be awarded by the other spouse”.
- **Rupali Gupta v. Rajat Gupta (2016):**
 - The division bench of Delhi HC deprecated the claim of maintenance under Section 24 of HMA by a well-qualified spouse having an earning capacity.
- **ABC v. XYZ (2024):**
 - In this case it was held that if the husband fails to take the wife back to the matrimonial home in the absence of a stay on the decree for restitution of conjugal rights, then **it would be open to the wife to seek interim maintenance for herself.**
- **X v. Y (2024):**
 - In this case the [Delhi High Court](#) (HC) has emphasized that the possession of a graduation degree by the wife should not automatically lead to the presumption that she is purposefully refraining from employment solely to secure interim maintenance.

Conclusion

Section 24 of the HMA provides interim relief to the spouse who has no source to maintain himself/herself or to bear the expenses of the litigation. The spouse needs to make an application to the court for such reliefs and the court within the given time needs to dispose of the application. This section also fulfils the requirement of Article 39 of the Constitution which ensures equal livelihood to both man and woman.

Legitimacy of Children

Introduction

A marriage affects the status of the children born from it. Children born of a valid marriage are legitimate and have all the rights and privileges which devolve upon them as legal heirs. The dissolution of the marriage of their parents does not affect their legitimacy.

- **Section 16 of [Hindu Marriage Act, 1955 \(HMA\)](#)** is a special provision which deals with the legitimacy of children both in void and voidable marriages.

Section 16 of HMA

- This section deals with the **legitimacy of children of void and voidable marriages**. It states that

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(1) 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, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976, and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is **held to be void otherwise than on a petition under this Act**.

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

(3) Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring 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.

Essential Elements of Section 16

- This section has no application where there was **no solemnization of marriage at all**.
- The children of void marriage are **legitimate** irrespective of the fact that a decree of nullity is granted or not under the HMA.
- If a voidable marriage is annulled under Section 12, the children begotten before the decree is made, **shall be deemed legitimate**.
- The children of void and voidable marriages are **entitled to the property of their parents only**.

Case Laws

- In **Lakshamma v. Thayamma (1974)** case, the Andhra Pradesh High Court held that as per the provisions of Section 16 of HMA, the **benefit of legitimacy has been conferred upon children of both void and voidable marriages**.

In **Jinia Keotin v. Kumar Sitaram Manjhi (2003)** case, the [Supreme Court](#) held that the mandate of Section 16(3) of HMA clearly expresses that there is no room to **confer upon such children any right except the property of their parents.**

Hindu Minority and Guardianship

Introduction

- Guardianship means “a bundle of rights and powers which a person gets in relation to the person and property of a minor child”.
- In the Hindu religion, there was no guardianship law as all the family members always stayed together. If the parents were not there, then the other members of the family would take care of the child.
- Therefore, to have a proper guardianship law in the country, the **Hindu Minority and Guardianship Act, 1956** (hereafter, Act) was enacted.

Minor & Guardian Defined

- According to **Section 4(a) of the Act**, minor means a person who has not completed the age of 18 years.
- A guardian is a person who has the right and the authority to take care of the child and the properties of the child.
- According to **Section 4(b) of the Act**, a guardian means a person having the care of the person of a minor or of his property or of both his person and property, and includes—
 - A natural guardian.
 - A guardian appointed by the will of the minor’s father or mother.
 - A guardian appointed or declared by a court.
 - A person empowered to act as such by or under any enactment relating to any court of wards.

Types of Guardians

The types of guardians are described as follows:

- Natural Guardian
- Testamentary Guardian
- De Facto Guardian
- A Guardian appointed by the Court

Natural Guardian - Section 6

- Section 6 of the Act mentions the natural guardians to be:
 - The natural guardians of a Hindu minor; in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are—
 - (a) In the case of a boy or an unmarried girl - **the father**, and after him, the mother: provided that the custody of a **minor who has not completed the age of five years shall ordinarily be with the mother.**

- (b) In the case of an **illegitimate boy or an illegitimate unmarried girl** - the mother, after her - the father.
- (c) In the case of a **married girl - the husband**.
- Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section:
 - (a) if he has ceased to be a Hindu, or
 - (b) if he has completely and finally renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi).
- Explanation - In this section, the expressions “father” and “mother” do not include a stepfather and a stepmother.

Powers of Natural Guardian - Section 8

- The guardian may act and do everything which is necessary for the benefit and in the interest of the minor.
- The guardian cannot mortgage, charge, gift, sell, or exchange the immovable property of the minor. He can do so only with the permission of the court.
- The guardian, if required, can lease any part of the property **for a period of five years** but not beyond that. If the lease is to be made exceeding five years, then the permission of the court is required.
- If the guardian does not follow the rule and disposes of the immovable property, then it shall be voidable at the option of minor or any other person claiming on behalf of the minor.
- No Court shall grant permission to the natural guardian to do any act which is not in the interest of the minor.
- The court shall allow the guardian to transfer or lease the property only when it finds necessary to do so in the interest or advantage of the minor.

Testamentary Guardians - Section 9

- The guardian who is appointed by will or a testament of a person is known as a testamentary guardian.
- The provisions regarding testamentary guardian are as follows:
 - (1) A Hindu father entitled to act as the natural guardian of his minor legitimate children may, by will appoint a guardian for any of them in respect of the minor’s person or in respect of the minor’s property (other than the undivided interest referred to in section 12) or in respect of both.
 - (2) An appointment made under sub-section (1) shall have no effect if the father predeceases the mother, but shall revive if the mother dies without appointing, by will, any person as guardian.
 - (3) A Hindu widow entitled to act as the natural guardian of her minor legitimate children, and a Hindu mother entitled to act as the natural guardian of her minor legitimate children by reason of the fact that the father has become disentitled to act as such, may, by will, appoint a guardian for any of them in respect of the minor’s person or in respect of the minor’s property (other than the undivided interest referred to in section 12) or in respect of both.
 - (4) A Hindu mother entitled to act as the natural guardian of her minor illegitimate children may; by will, appoint a guardian for any of them in respect of the minor’s person or in respect of the minor’s property or in respect of both.
 - (5) The guardian so appointed by will has the right to act as the minor’s guardian after the death of the minor’s father or mother, as the case may be, and to exercise all the rights of a natural

guardian under this Act to such extent and subject to such restrictions, if any, as are specified in this Act and in the will.

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

De Facto Guardianship

- A de facto guardian means a self-appointed guardian.
- He is a person who, by reason of fact, becomes the guardian of a child. After the death of natural guardians, any person who takes care of the child's well-being and necessities becomes the de facto guardian.
- He is a person who takes continuous interest in the welfare of a minor's person or in management or administration of minor's property without any authority of law.
- Alienation of property made by de facto guardian without court's intervention is void.
- De Facto guardian is not allowed to dispose or deal with the property of the minor, and it is given that the guardian does not have the right to take any debt according to section 11 of the Act.
- In the case of **Amanat Hussain and Anr. v. Sahida Begum and Ors (2015)**, The Gauhati High Court ruled that property transfers conducted by de facto guardians are equivalent to those carried out by de jure guardians according to Hindu Law. If such transfers lack proper justification, they can be contested and are voidable.

Guardian Appointed or Declared by Court

- The courts are empowered to appoint guardians under the Guardians and Wards Act, 1890.
- The Hindu Minority and Guardianship Act is supplementary to Guardians and Wards Act.
- The District Court may appoint any person as the guardian whenever it finds that it is necessary for the benefit of the child.
- The District Court has the power to appoint or declare a guardian in respect of the person as well as for separate property of the minor or for both.
- While appointing guardian, the court shall take into consideration various factors like age of child, gender, personal law of child etc. But the main motive is the welfare of the children.
- Under Section 13 of the Act, under the appointment of any person as guardian, the welfare of the child is the paramount consideration.
- In **Mohini v. Virendra (2017)**, The SC has held that while appointing or declaring a person as the guardian of the minor, welfare of the minor shall be the paramount consideration.

Removal of a Guardian Court - Section 13

- Section 13 of the Hindu Minorities and Guardianship Act, 1956 states about the welfare of the child and hence gives a right to the court to terminate the guardianship of any person if the appointment is not made for the welfare of the child.
- Guardianship can be ended in a situation when either the guardian has witnessed some unforeseeable circumstance, or the court feels that the guardianship was not in the welfare of the child.
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Grounds of Removal of a Guardian

- There are certain grounds that are necessary to be considered before the removal of the guardian which are stated below:
 - When he uses the property of a minor for his personal use.
 - When he renounces the world and becomes a Sanyasi.
 - When he ceases to be a Hindu.
 - The court can remove him if it finds that it is not in the best interest of the child.