

HINDU ADOPTION AND MAINTENANCE ACT, 1956 (HAMA)

The Hindu Adoption and Maintenance Act (popularly known as HAMA) deals with the legal methods of adopting a child. Any person who is a Hindu by religion can adopt a child. The process of adopting a child has to comply with the rules prescribed in the HAMA Act. Also the HAMA act lays down the procedure and the legal obligations a Hindu has to comply with, while providing maintenance to his family members.

Thus one part of the act deals with Adoption and the other part deals with Maintenance.

SECTION 1

Short Title and Extent

This act may be called the Hindu Adoptions and Maintenance Act, 1956.

Section 2

Application of the Act:

This act applies to all those persons who are

- Hindu by religion
- Buddhist, Jain or Sikh by religion
- Not Muslims, Jews, Parsis or Christians by religion.
- Governed by the Hindu Law or any of the custom or the usage as part of the Hindu Law

In short we can say that the HAMA applies to every person living in India who is not a Muslim, Parsi, and Christian & Jew.

Section 3

Definition:

The expression 'Custom & Usage' signify any rule, which is observed continuously or have been observed uniformly for a long time. OR has obtained the force of law among the Hindus and it is certain that the rule is reasonable and do not oppose to any public policy.

Maintenance includes

1. Provision for food, clothing, residence, education and medical attendance and treatment to all family members.
2. In case of an unmarried daughter, the reasonable expenses for her marriage.
3. Minor- a person who has not attained majority i.e. who has not completed his or her age of 18 years.

Section 4

Overriding effect of the Act:

Any rule/text or interpretation which came into force before the commencement of this act, shall cease to have effect in respect to any matter for which a provision is made in this act- in other words, this section simply says that any law which was governed by the Hindus before the HAMA came into existence, will have no effect and only the law governed by HAMA will be into force.

Chapter II

Section 5

Adoption to be regulated by this Chapter

According to Sec.5 of HAMA, no adoption will be valid in the eyes of the law unless it is made under the provisions of this Act. Also any adoption which is void will not create or destroy any rights in the adoptive family.

What is Adoption?

The word adoption has not been described anywhere in the Act itself, but finds its place in the uncodified Hindu law. According to Manusmriti, Adoption means taking someone else's son and raising him as his own.

The HAMA has made the word Adoption wider by replacing the word son with child. A child includes both son and daughter. Hence, no adoption can be made without the procedure mentioned in this act, or we can say that any adoption made without the procedures mentioned in this act, will be void.

Section 6

Requirements for a Valid Adoption

Under the HAMA, only a Hindu can adopt a child if he or she abides by the essentials which are provided in Section 6. An adoption will be considered lawful only when the following conditions are satisfied:

- Any person, who is adopting a child, has the capacity and the right to take in adoption.
- The person, who is giving in adoption, should be in a capacity of doing so.
- The person being adopted is capable of being taken into adoption.
- The adoption is in compliance with the other conditions mentioned in the act.

For Example: in ***Kumar Sursen vs. State of Bihar, AIR 2008***, it was held that the law does not recognise an adoption by a Hindu of any person other than a Hindu.

M Gurudas vs. Rasaranjan, AIR 2006, the court was of the view that it would be necessary to bring into record, that the actual ceremony of giving and taking the child took place. Then only it will be considered as a legal adoption.

Suma Bewa vs. Kunja Bihari Nayak, AIR 1998, the court emphasised upon the Factum of Adoption. The judgement read as – the law is well settled that the adoption displaces the natural law of succession and therefore, a person who seeks to displace the natural succession to the property alleging on adoption must prove the factum of adoption and its validity by placing sufficient material on ground.

Another Important Case law, ***Devgonda Raygonda Patil vs. Shyam Gonda Ray Gonda Patil, AIR 1992***- the court made it very clear that Sec.6 does not bar a lunatic person from being adopted.

Section 7

Capacity of a Male Hindu to take in Adoption

This section simply speaks of conditions required to be fulfilled if a male Hindu wants to adopt a child. These are the essentials required for a male Hindu which needs to be fulfilled in case he wants to go for a legal adoption:

1. The male Hindu should be of unsound mind
2. He should be a Major that is above the age of 18 years
3. Should be capable enough to take a girl or a boy into adoption
4. Must have a wife living, whose consent is necessary for adoption, which means that a male Hindu cannot adopt a child without the consent of his wife.

The consent of the wife is not necessary only in the following circumstances:

- If she is a lunatic or of unsound mind- has been declared such from a competent court of jurisdiction
- Has completely renounced from the world- has given up on the whims and fancies of life
- Has ceased to be a Hindu- has converted into any other religion.

5. If at the time of the adoption, a male Hindu has more than one wife living, then the consent of all the wives is necessary unless the consent of one of them is not required if they come in the category of any of the reasons mentioned above.

In ***Bhola & ors. Vs. Ramlal & ors.*** the plaintiff had two wives and the validity of adoption was in question as the consent of one of the wives was missing before adoption. The plaintiff contented that his wife had absconded and should be considered as dead. But the Court held that even though the wife is absconding but she cannot be considered dead unless the husband had not heard from her for at least 7 years. Thus, it can't be a valid adoption unless the consent of both the wives is obtained.

In another similar case of Ghisalal v. Dhapubai (Dead) by Lrs. & Ors, the Court has held earlier also that, “*consent of wife is mandatory for proving adoption.*”

In M Vanaja v. M Sarala Devi (Dead), Civil Appeal No. 8814 of 2010 Court laid emphasis on two things:

- *Consent of the wife before a male Hindu adopts a child;*
- *Proof of ceremony of actually giving and taking in adoption.*

SECTION 8

Capacity of a Female Hindu to adopt

Sec.8 states that for a female Hindu to adopt a child, following conditions need to be fulfilled:

1. She should have attained the age of maturity
2. Should be of sound mind
3. She should be either a widow, or divorced or unmarried in order to adopt.

In other words, a married Hindu female is not eligible to go in for legal adoption, she can adopt a child legally only when:

- Her marriage has been dissolved
- Her husband is dead
- Her husband has finally and completely renounced the world
- Has ceased to be a Hindu
- Has been declared by a competent court of jurisdiction to be of unsound mind.

The Hindu Adoption and Maintenance Act, 1956 empowers a woman to go in for a legal adoption. This can be classified under two categories:

- Adoption by a Female Hindu (unmarried)
- Adoption by a Female Hindu (married)

Effect of Adoption by an unmarried Hindu Female:

Upon the marriage of the adoptive mother, her adoptive child will be treated as a step son or step daughter of her husband. She will continue to be the adoptive mother of her adoptive child.

There is no bar on a married man to go in for a legal adoption provided that he has taken the consent of his wife. Now if the wife gives consent, then the adoption is said to be a legal one.

Further, depending on the circumstances, there can be two types of adoptive children:

- The child adopted by the Hindu female, will be called the child of the Hindu female only.
- Child adopted by both husband and wife, will be the adoptive child of both the spouses.

This kind of distinction is necessary when both the adoptive parents die leaving behind the property for their adoptive child and the question of subsequent succession arises.

In *Narinderjit Kaur vs. Union of India*, AIR 1997 P&H, 280 case, where a child was given in adoption willingly by her natural parents and was taken in adoption by the adoptive mother through her attorney, it was held to be a valid adoption. It was also held that the subsequent marriage of the adoptive mother does not invalidate the adoption.

Effect of Adoption by a Married Hindu Female:

A married woman cannot adopt at all during the subsistence of her marriage. She can only adopt a child in the following conditions:

- Her marriage has been dissolved
- Her husband is dead
- Her husband has finally and completely renounced the world
- Has ceased to be a Hindu
- Has been declared by a competent court of jurisdiction to be of unsound mind.

A clear gender bias can be observed under Sec.8 of HAMA. Whereas in Sec.7 a married man can take a child into adoption with the consent of his wife, Sec.8 does not permit a married female to take into adoption even with the consent of her husband. For her to become an adoptive mother after marriage, the above conditions need to be fulfilled.

In *Malti Roy Chaudhary vs. Sudhindranath Majumdar*, AIR 2007 Cal 4 case, the court held that where a married woman has taken into adoption with the consent of her husband, it was considered as an invalid adoption. The Court also observed that there is no denying that the HAMA has considerably improved the position of women with respect to their adopted rights; there still exist bias related to their gender as well as marital status.

Other Important case Laws related to Sec.8 of HAMA:

Dashrath Ramchandra Khairnar (1976) BOM L.R.426 case- even though the husband consented to his wives adoption through an agreement, the adoption was still considered invalid.

In ***Lalitha vs. Union of India, AIR 1991 Karnataka 186 case-*** the court held that since a woman in married status falls into a different class, she cannot complaint of discrimination or violation of Art.14 of the constitution.

Points to Remember:

1. **Adoption by a wife of void or voidable marriage-** if a marriage has been declared void under Sec.11 of the Hindu Marriage Act, then the position of the wife is same that of an unmarried Hindu female. Thus, she has the right to go in for a legal adoption. While the wife of a voidable marriage is a lawful wedded wife of her husband as long as that marriage is not declared voidable by a competent court, hence the adoption by a wife of a voidable marriage will be null and void.
2. **Adoption by a divorced wife-** a wife after divorce does not remain a wife. Her position is the same that of an unmarried female. Hence she is eligible to go in for a legal adoption.
3. **Adoption by a Widow-** formerly a widow could not adopt without the consent of her deceased husband, but after the passing of the HAMA the position of the widow has been changed. Now she can adopt for herself. She can become the adoptive mother of her child in her own right.
4. **Widow's right to adopt in the presence of a daughter in law-** in the case of Ashabai Kate vs.Vithal Bika Nade, AIR 1900 SC 670, a father and a son died leaving behind their respective widows. The daughter in law delivered a posthumous female child and re-married. Soon after, the mother in law adopted a son but this adoption was declared invalid by the Court. The Court held that the mother in law has no right of adoption in the presence of her daughter in law and this right does not revive even after the remarriage of the daughter in law.

Section 9

Persons capable of giving in Adoption

The rule under Sec.9 says that only the Guardians and the parents can give the child for adoption. Only the biological father has the right to give the child for adoption after taking consent of the child's biological mother.

If the mother of the child wants to give the child for the adoption, she can do so only when:

- The father is dead or
- Of unsound mind
- Has renounced the world completely or
- Has converted into some other religion.

This section demarks a clear distinction between the biological parents and the adoptive parents. Only the Biological parents can give the child for adoption, adoptive parents can not give the child for further adoption.

Can a Guardian give a child for adoption?

If both the biological parents of the child are dead or where the facts of the parentage of the child are unknown, then a guardian can give the child for adoption. Apart from this condition, a guardian can give a child for adoption if

- Both the parents have renounced the world
- Have become lunatic or of unsound mind
- Have abandoned their child
- Have converted into any other religion.

But a Guardian must take the permission of the court before giving the child for adoption. Court usually gives the permission after being satisfied on the following grounds:

- Adoption is being done for the welfare of the child
- No payment has been made in any form in exchange of the child.

Who is a Guardian?

A person appointed by the parents or the Court to take care of the child and his/her property.

For the purpose of Adoption, a Court means only a Civil Court or a District Court within the local limits of whose jurisdiction the child to be adopted ordinarily resides.

Important Judgements:

Pawan Kumar Santhalia and Anr. Vs. the State of West Bengal
_(2003)3CALLT1 (HC), I (2004) DMC359

Vinod Krishnan vs. Missionaries of Charity I (1998) DMC266

Pawan Kumar Santhalia and Anr. Vs. the State of West Bengal (2005)2CALLT427 (HC)

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Section 10

Persons who may be Adopted

Any person can be adopted if

- He or she is a Hindu- the child to be adopted should be a Hindu by birth. Whether the child related to the adopter by blood or marriage or is a total stranger is not significant. The caste of the child is also immaterial.
- Has not already been adopted- this condition is imposed for the welfare of the adopted child, so that he does not become a drifter. Although for the benefit and the welfare of the child, it's at the discretion of the Court if it wants to give directions for subsequent adoptions.
- Has not been married- if a child of higher age is adopted, they may find it difficult to adjust in the new family and in a new environment. Also they may not develop an intimacy or affection with their new parents. That's why such a condition has been imposed.
- Has not completed the age of 15 years- the child should be below the age of 15 years at the time of the adoption but if any of the customs or usage applicable to the parties permit the adoption in higher age group, then a child above the age of 15 years can also be adopted.

In *Maya Ram vs. Jai Narain, AIR 1989 P&H 2003* case, Punjab & Haryana High Court held that the adoption of a married Jat Boy above the age of 15 years is valid, since it was a custom in prevalent in that community.

In *Damodarlal vs. Lain Lal, AIR 1985 Rajasthan 55* Case, the court held that adoption of the Brother's Daughter's Son could not be said to be invalid on the ground that the adoptive father and the natural mother of the adoptee fell within the prohibited degrees of marriage.

SECTION 11

Other Conditions for a Valid Adoption

The HAMA prescribes a certain set of rules which should be complied with for a necessary legal adoption. These rules are:

1. **Sec.11 (1)** states that if a Hindu male or female desire to adopt a son, then they should not be having a prior living son, grandson or even great grandson at the time of the adoption.

2. **Sec.11 (2)** states that if one wishes to adopt a daughter, then the adoptive parents should not be having a living daughter or a granddaughter from their son at the time of the adoption.

For both the above Sub-Clauses it is immaterial whether the son, daughter, grandson, granddaughter or the great grandson is legitimate, illegitimate or adoptive.

Though the subsequent birth of a child after the adoption will not make the adoption invalid.

Also if the son, grandson or the great grandson has converted into any other religion, then the parents can adopt for another son. This condition will be considered valid.

In *Sandhya Supriya Kulkarni vs. Union of India, AIR 1998, Bombay 228* case, the provisions which prohibit a person from adopting a second son or daughter were challenged. The court held that it was out of its ambit to comment on the personal laws contained in Part III of the constitution. However the Court observed that the Parliament can re-consider relaxing certain conditions in regards to these provisions.

3. **Age difference between Adopter and Adoptee-** as per the sub clause(3), if the person to be adopted is a female and the person adopting a male, then the age difference between the adoptive father and the female should be minimum 21 years.

And According to sub clause (4) of the section, if the person to be adopted is a male and the person adopting a female, then the age difference between the adoptive mother and the male has to be minimum 21 years.

Both these conditions are laid to prevent the sexual exploitation of the adopted child. However there is no restriction on the age condition if both the adopter and the adoptee are of same sex.

4. **Simultaneous Adoption:** Sub clause (5) of sec.11 states that the same child cannot be adopted simultaneously by two or more persons. Here by two persons it's meant two friends or two distinct relatives, but two persons as in a husband or a wife can adopt a child simultaneously.
5. **Ceremonies of Adoption:** sub clause(6) says that the adoptive child should be actually given or taken by the natural parents or by the guardian or under their authority with an intent to transfer the child from the family of its birth to the adoptive parents.

Points to Remember:

- The performance of the ceremony of adoption can be delegated to some other person but the power of adoption cannot be delegated. Means, this power needs to be exercised by the person who is giving in the adoption and the person who is taking the child in his or her custody.
- Also the main purpose behind the performance of such a ceremony is its evidentiary value. The purpose behind this corporeal giving and taking is to secure the due publicity.
- It's nowhere mentioned in the Act that the consent of the child is mandatory while giving him for adoption. Even the protest of the child is immaterial.

Important case Laws:

In ***Sita Bai vs. Ram Chandra, AIR 1970, SC 343***- the court held that the mere physical act of giving and taking is not sufficient for a valid adoption unless such giving and taking is accompanied with the intention to give and take the child in adoption.

In ***Shankar vs. Savitiri 50 IC 599*** case, the Court held that the gift and acceptance must be affected with the corporeal delivery of the boy.

In ***Srinivasan vs. John Bentick AIR 1989 Mad.334*** case, the Court held that strict proof of adoption is required since it changes the natural line of succession. If the process of adoption is challenged after a long period of time then the proof of burden lies on the person who is challenging it.

SECTION 12

EFFECTS OF ADOPTION

Adoption changes the life of a child in several ways. Not only the child gets a new family, a new environment but is also inherits the rights in the property of his adoptive parents. Hence in ***Dani Raiji vs. Chandra Prava, 1971 Guj.188*** case the Court rightly interpreted the expression 'Effects of adoption' as all the legal consequences flowing from an adoption.

The main purpose behind this section is to abolish the theory of Relation back, which was prevalent in the uncodified Hindu Law. With the abolition of the theory of relation back, the act gives an adoptive child equal rights and status in the new family as if the adopted child was born naturally into the family.

These rights include:

- The adopted child shall be considered as the child of their adoptive parents for all purposes.
- The adoptive parents shall have all the parental obligations and rights.
- The child shall have all the rights and obligations of a son or a daughter.

However there are certain conditions also that the adopted child must abide by:

- The adopted child should not be involved with anyone from their biological family and should not marry anyone from their birth family.
- If the child possessed any property before the adoption, that property still remains with him. However, he shall be liable to all the obligations attached with that property and if it requires, he has to maintain his biological family as well.
- It is the duty of the adopted child not to deprive any member of his birth family of any property that he held before the adoption.

But for all these rights and obligations to be inculcated, it is important to have a valid adoption. In *Sri Chandra Nath Sadhu & ors. Vs. The State of West Bengal & Ors.* The High Court of Calcutta stated that a void adoption will not create any rights in the adoptive family for anyone that could have been obtained from a valid adoption, nor will any existing rights end in the child's biological family.

In *Kesharbai Jagannath Gujjar vs. State of Maharashtra, AIR 1981 BOM 115* case, the Bombay High Court held that the adopted son is not deprived of the status given to him of a natural born son as Sec.12 of HAMA 1956 provides.

In *Khazan Singh vs. Union of India, AIR 1980 Delhi 60* the Court held that the adoptee has to be treated from the date of his adoption as if he was born in the adoptive family for all practical purposes. From that date he has to forget that he belonged to his previous family except for the purpose mentioned in the section itself.

SECTION 13

Rights of Adoptive Parents to dispose of their Property

According to the rules stated in this Section, unless a different condition is expressed in the contract, the adoptive parents have a right to dispose of their original property by a transfer *inter vivos* or by will. By *inter vivos* it is meant transfer between two living persons.

This section can be interpreted as the adoption will not have any effect on the rights of the adoptive parents to dispose of their property. They still hold absolute rights in disposing of any of their property, irrespective of the procedure of adoption.

Also, since an adopted son is given the status of a natural son, he becomes a member of the coparcenary of the adoption.

For example, if there is a joint family consisting of 2 brothers A and B. A being issueless adopts C. After the adoption of C, C also becomes a part of the coparcenary along with A and B and hence acquires all rights and privileges in the family which a coparcener enjoys.

K is the owner of an ancestral as well as some other property. He adopts C, a male child. Now the adoption of C will not affect the self acquired property K, he can use that property in any manner as he likes. But C after his adoption will acquire interest in the ancestral property held by his father in the same manner as if he was born in the same family. Thus C and K will be entitled to equal share in the ancestral property. But if K would have alienated the ancestral property before C was taken into adoption, then C would be bound by that alienation to the same extent as a natural born son could have been.

Important Case Laws:

In *Ugre Gowda v. Nage Gowda by Lrs. And Ors. 27 July, 2004*, the Supreme Court observed that, an adoption of a son does not deprive the adoptive mother of the power to dispose of her separate property by transfer or by will. Hence, such adoption would not divest the widow of the suit property which vested in her by succession on the death of her husband.

Mukund Singh vs. Wazir Singh SC
(1972)4SCC178; 1971(III) LC205 (SC)

Dinaji and ors. Vs. Daddi and ors.
SC AIR1990SC1153;

SECTION 14

Determination of Adoptive Mother in certain Cases

This section discusses the ways of determining the mother of an adopted child. Sec. 7 states that for a Hindu male to adopt a child, it is necessary to obtain the consent of his wife. Sec.14 provides with the rules of determining the adoptive mother.

Sec.14 (i) - where a Hindu who has a living wife, adopts a child, that wife will be called the adoptive mother of the adopted child.

Sec.14 (ii)- where a Hindu who adopts a child and has more than one wife living, in such a case the senior most in marriage amongst them shall be the adoptive mother of the adopted child and the others will be called as Step Mothers.

Sec.14 (iii) - where a widower or a bachelor adopts a child and when he subsequently marries a woman, that woman will be called the Step Mother (not mother) of that adopted child.

Sec.14 (iv) - where a widow or an unmarried woman adopts a child, any person whom she later marries will be the step father of that child.(not father).

Important Case Laws:

Amar Nath Vs. Munnu and ors., Delhi: 6(1970) DLT73

Padmati Danamma (Died) by Lr and Another vs. Manamma and Others, Andhra Pradesh, 2000(1) ALD290; 2000(1) ALT218

Bat Chanchal Guardian of Minor Rameshchandra Pranshanker Vs. Manishank.
Gujarat: (1971)12GLR576

SECTION 15

Valid adoption not to be cancelled

This section simply answers one question: Can a valid Adoption be cancelled?

And the answer is NO!

An adoption which has been made on valid grounds cannot be cancelled in anyways.

Neither the adoptive parents, nor the adopted child has any right to cancel a valid adoption.

Also, after attaining majority, if an adopted child wants to cancel the adoption and return back to his or her biological family, the law does not permit him to do so.

Hence, Sec. 15 under HAMA makes it very clear that once a legal adoption is made, it's final and for life. There is no looking back after that for both the adoptive parents and the adopted child.

Important Case Laws

Reetika Kaur vs. Darshan Singh Combaw and ors.Delhi, 2013 HC

Neela and Others vs. Raja alias Rajapan - Court Judgment, Chennai High Court, 2017

Mst. Asa Bai vs. Prabhulal and ors. - Court Judgment, Rajasthan High Court, 1959

SECTION 16

Presumption as to Registered Documents relating to Adoption

Sec.16 emphasis on the authentic implementation of HAMA.

The Sec. Speaks about the documents needed at the time of the adoption.

It says whether any document registered under any law for the time being in force, when produced before any court claiming to record an adoption made and is signed by the person giving and person taking into the adoption, the Court shall presume that the adoption is made under the said provisions of this act unless and until it is disapproved.

SECTION 17

Prohibition of Certain Payments

It has been observed in several situations that the concept of adoption is often misused. Children are adopted and are later on sold for money. Thus Sec.17 of HAMA is the most important provision to prevent child trafficking. It prohibits any kind of payment in exchange of the adopted child.

According to the provisions of Sec.17, no payment can be received or made during an adoption by anyone. It prohibits the intake of any kind of reward in monetary or non monetary ways for adopting a child or giving them for adoption.

If any person is caught in making or receiving the payments in any form during the adoption process, they shall be liable for imprisonment for up to 6 months and/or fine.

Important Case Laws

Bansilal Vyas vs. Commissioner of Income-tax, 1975 HC, AP

Commissioner of Gift-tax Vs. Smt. Gollapudi Santhamma, 1977 HC, AP

Child Welfare Committee vs. Govt. of N.C.T. of Delhi and ors., 2008

Maintenance

Section 18 Maintenance of wife:

Section 18(1) provides that a Hindu wife is entitled to be maintained by her husband during her lifetime when she lives with him.

- The wife must be paid maintenance after divorce until she gets married again.
- There is no minimum or the maximum amount fixed for maintenance, it is to be decided by the court according to the earning capacity of the husband.
- Maintenance under Section 18 of this Act and Section 125 of CPC are mutual and complementary to each other.

Section 18(2) provides for separate residence and maintenance for a wife in a certain case. She is entitled to be maintained by her husband even if she lives separately only under special circumstances:

- **Desertion:**
When a husband abandons his wife without reasonable cause and without her consent or against her wish or wilfully neglects her, he is guilty of desertion.
- **Cruelty:**
If a husband does cruelty with her that causes reasonable fear in the mind of the wife that living with her husband is harmful and injurious to her life, she is entitled to maintenance. The burden of proof of cruelty is on the wife.
- **Another wife is living:**
The presence of another wife of the husband is a ground to live separate and claim maintenance. It is not necessary that another wife should be living with the husband and it doesn't matter if the wife has given consent to the second marriage.
- **Concubine:**
The wife can claim maintenance if the husband keeps the concubine in the same house or has been habitually residing with her.
- **Conversion:**
If the husband ceases to be a Hindu by converting to another religion.
- **Any justifiable cause:**
It is at the discretion of the court to consider any other justifiable cause for living separately from the husband.

Section 18(3) provides for exceptions when the wife is not entitled to claim maintenance. These are:

- If wife is unchaste
- If wife has ceased to be Hindu by conversion to another religion.

In the case of *Dattu v. Tarabai 1985 Bom. 106*, the court held that by a mere resumption of cohabitation, the order of maintenance passed under Section 18(2) does not terminate. So long as the basis of separate living is not extinguished, she will be entitled to live separate and claim maintenance.

Section 19 -Maintenance of widowed daughter in law:

- (1) Father in law of a widowed daughter in law is obliged to maintain her only if:
 - If she is unable to maintain her out of her own earnings or other property
 - If she is unable to obtain maintenance from the estate of her husband or her father or mother
 - If she is unable to obtain maintenance from her son or daughter or from their estate.
- (2) But this obligation is a limited one. He is obliged to maintain the daughter-in-law only from "any coparcenary property in his possession out of which daughter-in-law has not obtained any share. Moreover, if the coparcenary property is already very meagre, he may not have any obligation to maintain the daughter-in-law.
 - In the case of *Angad Singh vs Dhan Kaur 1964 Punj. 393*, the court held that coparcenary property cannot be understood as defined in Mitakshara law as it will nullify the very purpose of the statute. The court said that it includes property which is inherited from a common ancestor i.e. ancestral property.
- (3) The claim for maintenance will be forfeited if
 - The daughter in law ceases to be a Hindu by conversion to another religion
 - She remarries

Section 20 - Maintenance of children and aged parents

Under this section, a Hindu, during his or her lifetime, is obliged to maintain the following:

1. Legitimate, illegitimate or adopted son:
 - A disobedient son or a son who refuses to reside with his father is not forfeited from claiming maintenance.
 - On attaining the majority even if the son is incapable of maintaining himself due to temporary illness, he cannot claim maintenance from the parent.
 - *Bhupati v. Basanta, 1936 Cal. 556*
2. Legitimate, illegitimate, or adopted daughter:
 - If the daughter is unable to maintain her out of her own earnings or property, parents are under obligation to maintain her. It applies to an unmarried major daughter also.
 - The daughter can claim maintenance even if she is capable of earning. To dismiss her claim for maintenance, it is necessary to show that she is actually earning or has property.
 - *Wal Ram v. Mukhtiar, 1969 Punj. 285*
3. Aged or infirm parents:

- If parents are unable to maintain themselves from their own earnings or property, they should be treated as infirm and can claim maintenance from son or daughter.
- It includes a childless stepmother but excludes a childless stepfather.

Section 21 –Dependants defined:

Dependants include the following relatives of the deceased:

- Father
- Mother
- Widow, so long as she remains unmarried
- Son, son of a predeceased son provided he is minor and unable to maintain himself.
- Unmarried daughter or the unmarried daughter of a predeceased son provided she is unable to maintain herself.
- Widowed daughter if she is unable to maintain herself from the estate of her husband or from son/daughter or from father in law.
- Any widow of the son, or a widow of predeceased son as long as she remains unmarried.
- Minor illegitimate son or daughter

Lakshmi v. Sundaramma, 1981 A.P. 88

Section 22 - Maintenance of dependants:

- The heirs of the deceased Hindu are bound to maintain the dependants of the deceased out of the estate of the deceased.
- This obligation is not a personal obligation. It is limited to the estate.
- The dependant is entitled to maintenance only if he or she has not received any share in the estate of the deceased.
- The liability of the heirs who take the property of the deceased is not a joint liability. The liability of each heir is an individual liability in a proportion of the value of the share of the estate inherited by him or her.
- One dependant heir shall not be liable to contribute to the maintenance of the other dependant if what he gets is itself less.

Section 23 - Amount of maintenance

The court shall take into account the following factors before fixing the amount of maintenance.

- In respect of maintenance of wife, children, and parents
 1. The position and status of the parties
 2. Reasonable wants
 3. Whether the claimant is justified in living separately?
 4. Income, property, and other sources of the claimant

5. The number of persons entitled to maintenance under the Act
- In respect of maintenance of dependants
 1. Net value of the assets of the deceased after paying all debts.
 2. Provisions for dependants in the will if any
 3. The degree of relationship
 4. Reasonable wants
 5. Past relations between the dependant and the deceased
 6. Income, property, and other sources of the dependant
 7. The number of dependents

It must be noted that the claim of maintenance of the first category of persons, viz., the wife, the children, and the aged or infirm parents is a personal obligation of a Hindu, while of the latter is dependent upon the property inherited by the heir.

In *Kiran Bala v Bankim* 1967 Cal. 603, the court examined the income of the parties, standard of living they were used to and took into account persons whom her husband had to maintain. Her husband who was a professor in college had some private property and monthly income of Rs. 800 a month. On the basis of this, the court concluded that 75 per month will be a sufficient amount for the satisfaction of her wants (the wife had claimed Rs. 200 p.m.).

Section 24 – Claimant to maintenance should be a Hindu:

Under this Act, only a Hindu can claim maintenance.

Section 25 – Amount of maintenance may be altered on change of circumstances

This section says down that the amount of maintenance, whether fixed by a decree of a court or by agreement, may be altered subsequently if a change of circumstances justifying such alteration is shown.

Nagasuri Subbarao v. Nagasuri Kameswaramma, 2002 AP 237

Section 26 – Debts to have priority:

If maintenance is not a charge on the property of the deceased, debts of every kind contracted or payable by the deceased have priority over the claim of the dependants for maintenance.

Dau Kuer v. Sarla, (1946) 73 I.A. 208

Section 27 – Maintenance when to be a charge:

A dependant's claim of maintenance under this Act shall be a charge on the estate of the deceased or any portion thereof, unless the same has been created by the will of the deceased, by a decree of the court, by agreement between the dependant and the owner of the estate or portion, or otherwise.

In *Pokuru v. Pokuru* 1970 A.P. 33, the Andhra Pradesh High Court held that when once her right to maintenance has been declared, defined and reduced to a certainty by a decree of court, such right cannot be taken away by any subsequent alienation of such property or by partition

of such property. It also ruled that the charge created on the joint family property will subsist and continue till the lifetime of maintenance holder.

Section 28 – Effect of transfer of property on right to maintenance:

When a dependant has a right to receive maintenance out of an estate and such estate or any part thereof is transferred, the right to receive maintenance may be forced against the transferee if the transferee has notice of right, or if the transfer is gratuitous but not against the transferee for consideration and without notice of the right.

Kangal v. Aitwariya Devi 2002 All. 77

Section 30 – Savings:

If any adoption is made before the commencement of this act then nothing in this act shall affect that adoption.