

UNIT – V

Minority, Guardianship, Adoption & Maintenance

Hindu Minority and Guardianship Act, 1956

Hindu Adoption and Maintenance Act, 1956

What We Will Cover

01

Hindu Minority & Guardianship

Kinds of guardians and their legal position

02

Duties & Powers of Guardians

Rights, responsibilities and limitations

03

Hindu Adoption and Maintenance Act

Key provisions of the 1956 Act

04

Law of Adoption

Who can adopt, who can be adopted, conditions

05

Law of Maintenance

Traditional rights and statutory rights under HAMA

Legal Framework

The Hindu Minority and Guardianship Act, 1956 (HMGA) codifies the law relating to minority and guardianship among Hindus. It is supplemental to the Guardians and Wards Act, 1890. A minor is a person who has not completed the age of 18 years.

Age of Majority

18 years under the Act. Guardian's authority continues till the minor attains majority.

Welfare Principle

The welfare of the minor is the paramount consideration in all matters of guardianship.

Natural Guardians

Father and mother are the natural guardians. Father has prior right, subject to welfare of the child.

Classification under Hindu Law

Natural Guardian

Father is the natural guardian of a Hindu minor boy or unmarried girl, and after him the mother. For an illegitimate child, the mother is the natural guardian.

Testamentary Guardian

A guardian appointed by will of the natural guardian. Can act only after the death of the natural guardian and subject to the welfare of the minor.

Guardian Appointed by Court

Appointed under the Guardians and Wards Act, 1890 when there is no natural or testamentary guardian, or when their appointment is not in the minor's welfare.

De Facto Guardian

A person who takes continuous interest in the minor and manages the minor's property without legal authority. Powers are limited; cannot alienate property.

Rights, Responsibilities and Limits

Duty of Care

Guardian must act for the welfare of the minor in all decisions concerning person and property.

Custody & Education

Responsible for the custody, education, health and upbringing of the minor.

Management of Property

Must manage the minor's property prudently and for the minor's benefit. Cannot use it for personal gain.

Limitation on Alienation

Natural guardian cannot alienate minor's immovable property without prior permission of the court (Section 8, HMGA).

Accountability

Guardian is accountable for the property and can be removed if he acts against the minor's interest.

No Personal Benefit

Guardian cannot bind the minor by personal covenants or make a profit out of the guardianship.

Salient Features of the Act

The Hindu Adoption and Maintenance Act, 1956 (HAMA) codifies the law of adoption and maintenance among Hindus. It reformed traditional rules, gave women the capacity to adopt, and provided a clear statutory framework for maintenance claims.

Secularised Adoption

Adoption is no longer only a religious/sacramental act; it is a secular legal institution.

Women's Capacity

A Hindu woman can adopt in her own right under certain conditions (widowed, divorced, etc.).

Uniform Rules

Clear conditions regarding who can adopt, who can be adopted, and the effect of adoption.

Maintenance Rights

Statutory rights of maintenance for wife, children, aged parents and other dependants.

Capacity to Adopt & Be Adopted

Who Can Adopt

- A Hindu male of sound mind, major, can adopt if he has no Hindu son, grandson or great-grandson living.
- A Hindu female can adopt if she is unmarried, widowed, or divorced, or if her husband is of unsound mind / has renounced the world / has ceased to be Hindu.
- Consent of wife is required when a married man adopts.

Who Can Be Adopted

- Must be a Hindu.
- Must not have completed 15 years (unless custom permits).
- Must not have been already adopted.
- Must not be married (unless custom permits).
- Age difference: Adoptive father/mother must be at least 21 years older than the child.

Legal Consequences

Severance from Birth Family

The child is deemed to be the child of the adoptive parents. Ties with the birth family are severed (except for certain prohibited relationships for marriage).

Rights in Adoptive Family

The adopted child acquires all rights of a natural-born child in the adoptive family, including succession rights.

Relation Back

Adoption is effective from the date of adoption. The child is treated as born in the adoptive family from that date.

Cannot Be Cancelled

A valid adoption cannot be cancelled by the adoptive parents or the adopted child. It is irrevocable.

Under Classical Hindu Law

Under traditional Hindu law, the right to maintenance was a personal obligation of the Hindu male arising from the joint family system and moral/religious duties. Certain relations were entitled to be maintained out of the joint family property or personal property.

Wife

A Hindu wife was entitled to maintenance from her husband. The right continued even after his death against his estate under certain conditions.

Children

Minor sons and unmarried daughters were entitled to maintenance. Legitimate and, in some cases, illegitimate children had claims.

Aged Parents

Sons had a duty to maintain aged parents. This was both a moral and legal obligation.

Other Dependants

Widowed daughter-in-law, minor grandchildren and certain other dependants could claim maintenance from the joint family property.

Statutory Rights of Maintenance

Wife (Sec 18)

A Hindu wife is entitled to live separately and claim maintenance if the husband is guilty of desertion, cruelty, conversion, or certain other grounds.

Children (Sec 20)

A Hindu is bound to maintain his/her legitimate or illegitimate children and aged/infirm parents.

Aged / Infirm Parents

Obligation to maintain parents extends to both son and daughter. It is a personal obligation.

Dependants (Sec 21–22)

Certain relations (widow, minor children, unmarried daughter, etc.) of a deceased Hindu can claim maintenance from the estate.

Amount of Maintenance

Court considers status of parties, reasonable wants, value of estate, and other relevant factors while fixing the amount.

Alteration & Enforcement

Amount can be altered with change of circumstances. Maintenance orders can be enforced like a decree.

KEY DISTINCTIONS & PRINCIPLES

Important Points to Remember

Welfare is Paramount

In all guardianship matters, the welfare of the minor overrides the preferential rights of natural guardians.

Section 8 HMGA

Natural guardian needs prior court permission to transfer minor's immovable property – otherwise the transfer is voidable.

Adoption is Irrevocable

Once a valid adoption is made, it cannot be cancelled. The child gains full status in the adoptive family.

Maintenance is a Right

Under HAMA, maintenance is a statutory right enforceable against the person or the estate, subject to conditions.

KEY TAKEAWAYS

Summary of Unit-V

01

Guardianship

Natural, testamentary, court-appointed and de facto guardians. Welfare of the minor is the guiding principle.

02

Powers of Guardian

Limited power of alienation – court permission required for immovable property of the minor.

03

Adoption under HAMA

Secularised institution. Women can adopt. Clear conditions and irrevocable effects.

04

Maintenance

Statutory rights under Sections 18, 20, 21–22 of HAMA for wife, children, parents and dependants.

05

Overall Reform

Both 1956 Acts modernised personal law while retaining the spirit of Hindu jurisprudence.

Thank You

*“The welfare of the child is the supreme law
in matters of guardianship and adoption.”*

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