HINDU CODE BILL

SECTION II
THE DRAFT HINDU CODE BILL
BY
DR. B. R. AMBEDKAR ALONG WITH THE THEN EXISTING HINDU CODE
AS
AMENDED BY THE SELECT COMMITTEE

NOTE

In order to give a clear picture of the amendments which the Government propose to move, the Code as proposed to be further amended is set out in this book on the left-hand side. For the sake of convenience the existing provisions of the draft Code as amended by the Select Committee are printed on the right-hand side. The actual amendments which are to be moved are shown on the left-hand side by having them either underlined or sidelined. Portions omitted are shown by asterisks; and where any page on either side of the book appears blank, it means either that there is no corresponding provision in the Select Committee's Code or that a portion of the Select Committee's Code has been omitted .

[AS PROPOSED TO BE FURTHER AMENDED]

(Changes to he made are underlined or side-lined and portions to he omitted are shown by asterisks)

A

BILL

to amend and codify certain branches of the Hindu Law

*****

BE it enacted by Parliament as follows:—

PART I—PRELIMINARY

Short title and extent .—

(1) This Act may be called the Hindu Code, 1950

(2) It extends to the whole of India except the State of Jammu and Kashmir

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[AS PROPOSED TO THE SELECT COMMITTEE]

A

BILL

to amend and codify certain branches of the Hindu Law

Whereas it is expedient to amend and codify certain branches of the Hindu Law as now in force in the Provinces of India; It is hereby enacted as

follows:—

PART I—PRELIMINARY

Short title, extent and commencement.—

(1) This Act Part I, may be called the Hindu Code, 1948

(2) It extends to all the Provinces of India.

(3) It shall come into force on the first of January, 195 .

*(2)

2. Application of Code.—(1) This Code applies—

(a) to all persons who are Hindus by religion in any of its forms or developments, including Virashaivas or Lingayatas and members of the Brahmo, the Prarthana or the Arya Samaj;

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

(c)(i) to any child, legitimate or illegitimate both of whose parents are Hindus within the meaning of this section.

(ii) to any child, legitimate or illegitimate, one of whose parents is a Hindu within the meaning of this section : provided that such child is brought up as a member of the community, group or family to which such parent belongs or belonged; and

(d) to a convert to the Hindu, Buddhist, Jain or Sikh religion.

(2) This Code also applies to any other person, who is not a Muslim, Christian, Parsi or Jew by religion :

Provided that if it is proved that 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 Code had not been passed, then, this Code shall not apply to that person in respect of those matters.

(3) The expression " Hindu " in any portion of this Code shall be construed as if it included a person who, though not a Hindu by religion is, nevertheless governed by the provisions of this Code.

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3. Definitions.—In this Code, unless the context otherwise requires,—

(i) " Aliyasantana law " means the system of law applicable to persons —

who, if this Code had not been passed would have been governed by the Madras Aliyasantana Act, 1949 (Madras Act IX of 1949);

(ii) 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

Application of Code.—(1) This Code applies,

(a) to all Hindus, that is to say, to all persons professing the Hindu religion in any of its forms or developments, including Virashaivas or Lingayatas and members of the Brahmo, the Prarthana or the Arya Samaj;

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

(c) (i) to any child, legitimate or illegitimate, both of whose parents are Hindus within the meaning of this section.

(ii) to any child, legitimate or illegitimate, one of whose parents is a Hindu within the meaning of this section; provided that such child is brought up as a member of the community group or family to which such parent belongs or belonged; and

(d) to a convert to the Hindu religion.

Part I. A page 1.

(2) This Code also applies to any other person, who is not Muslim, Christian, Parsi or Jew by religion :

Provided that if it is proved that 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 Code had not been passed, then, this Code shall not apply to that person in respect of those matters.

(3) The expression " Hindu " in any portion of this Code shall be construed as if it included a person who, though not a Hindu by religion is, nevertheless, governed by the provisions of this Code.

Part I, section 6, Page 2 and Schedule 1, page 30

(4) Notwithstanding anything contained in the Special Marriage Act, 1872 (III of1872), this Code shall apply to all Hindus whose marriages have been solemnised under the provisions of that Act prior to the commencement of this Code.

(2)

Part 1, secs. 4 andf 5, page 2.

3. Definitions.—In this Code, unless there is anything repugnant in the subject or context,—

(i) 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;

Part 1, sec 5 (d), page 2

(ii) the expression " district court " means the principal civil court of original jurisdiction and except in sections 44 and 49, includes the High Court in the exercise of its ordinary original civil jurisdiction:

Provided further that in the case of a rule applicable only to a family it *has* not been discontinued by the family;

(iv) " 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;

(v) " 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 (iv) and (v) " ancestor " includes the father and " ancestress " the mother;

(vi) " Marumakkattayam law " means the system of law applicable to persons:—

(a) who, if this Code had not been passed, would have been governed by the Madras Marumakkattayam Act, 1932 (Madras Act XXII of 1933), the Travancore Nair Act II of 11 (X), the Travancore Ezhava Act, III of 1100, the Nanjinad Vellala Act, 1101, the Travancore Kashatriya Act, 1108, the Travancore Krishnavaka—Marurnukkalhayee Act, 1115. the Cochin Thiyya Act VIII of 1107, the Cohin Nayar Act, XXIX of 1113, or the Cochin Marumakkathayam Act, XXXIII of 1113; or

(b) who belong to any community, the members of which are largely domiciled in the State of Travancore-Cochin or Madras and who, if this Code had not been passed would have been governed by any system of inheritance in which descent is traced through the female line; but does not include the Aliyasantana law;

(vii) " Nambudri law " means the law applicable to persons who, if this Code had not been passed, would have been governed by the Madras Nambudri Act, 1932 (Madras Act XXI of 1933), the Cochin Nambudri Act (XVII of 1114) or the Travancore Malayala Brahmin Act of 1106 (Regulation III of 1106); (viii) " Part " means a Part of this Code;

(ix) " prescribed " means prescribed by rules made under this Code; (x) "related "means related by legitimate kinship: Provided that illegitimate children shall be deemed to be related to their mother and to one another and their legitimate descendants shall be deemed to be related to them and to one another; and any word expressing relationship or denoting a relative shall

be construed accordingly;

(xi) " son " includes an adopted son, whether adopted before or after the commencement of this Code, but does not include an illegitimate son.

See. *5(e)*

(iii) " 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;

See. 5(e)

(iv) " 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 this Clause " ancestor " includes the father and " ancestress " the mother;

Sec.5(h)

(v) " Part " means any Part of this Code;

Sec.5(i)

(vi) " prescribed " means prescribed by rules made under this Code; (vii) " related " means related by legitimate kinship

Provided that illegitimate children shall be deemed to be related to their mother and to one another and their legitimate descendants shall be deemed to be related to them and to one another; and any word expressing relationship or denoting a relative shall be construed accordingly:

part II, sec. 2(c). page 3.

(viii) " son " includes an adopted son, whether adopted before or after the commencement of this Code, but does not include an illegitimate son.

4. Overriding effect of Code.—Save as otherwise expressly provided in this Code,—

(a) any text, rule or interpretation of Hindu law or any custom or usage in force immediately before the commencement of this Code shall cease to have effect with respect to any of the matters dealt with in this Code; and

(b) any other law in force immediately before the commencement of this Code shall cease to have effect in so far as it is inconsistent with any of the provisions contained in this Code.

Part I, sec. 3, page l.

4. Overriding effect of Code.—Save *as* otherwise expressly provided in this

Code, any text, rule or interpretation of Hindu law, or any custom or usage or any other law in force immediately prior to the commencement of this Code shall cease to have effect as respect any of the matters dealt with in this Code.

(5)

PART II.—MARRIAGE AND ANNULMENT OF MARRIAGE

CHAPTER I

Marriage

5. Interpretation.—In this Part, unless the context otherwise requires,—

(a) " district court " includes any court subordinate to the district court which may be specified in this behalf by the State Government by notification in the Official Gazette;

(b) " Sapinda relationship "—a man is a *sapinda* of any of the persons mentioned in the first column of the First Division *of* the Third Schedule and a woman is a *sapinda* of any of the persons mentioned in the second column of the said Division;

(c) " degrees of prohibited relationship "— a man and any of the persons mentioned in the first column of the Second Division of the Third Schedule and a woman and any of the persons mentioned in the second column of the said Division are within the degrees of prohibited relationship.

Explanation.—For the purposes of clauses (b) and (c) relationship includes,—

(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.

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PART II.—MARRIAGE AND DIVORCE

CHAPTER I

Marriage

Part VI, sec.1, Page 14

5. Interpretation.—In this Part, unless there is anything repugnant in the subject or context,—

(a) (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 with 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.

(b) " degrees of prohibited relationship ".— two persons are said to be within " the degrees of prohibited relationship " if one is a lineal ascendant of the other or was the wife or husband of a lineal ascendant or descendant of the other or if the two are brother and sister, uncle and niece, aunt and nephew or the children of two brothers or two sisters.

Explanation.—For the purposes of clauses (a) and (b) relationship includes,—

(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.

Illustrations

(i) C, the common ancestor is the father's mother's father's father of A and the mother's father of B. As C is the fifth generation from A in A's father's line and the third generation from B in B's mother's line, A and B are *Sapindas* of each other.

(ii) A and B are consanguine brother and sister. Their descendants within the limits of *sapinda* relationship, will be *sapindas* of each other. The descendants of their father and his *ancestors* will also be *sapindas* of A and B and their descendants within the limits of *sapinda* relationship. But the maternal grandfather of A will not necessarily be a *sapinda* of the maternal grandfather of B, nor will a son of the former maternal grandfather necessarily be a *sapinda* of a son of the latter.

(iii) A. and B are *uterine* brother and sister. Their descendants, within the limits of *sapinda* relationship, will be *sapinda* of each other. The descendants of their mother and her ancestors will also be *sapindas* of A and B and their descendants within the limits of *sapinda* relationship. But the paternal grandfather of A will not necessarily be a *sapinda* of the paternal grandfather of B, nor will a son of the former paternal grandfather necessarily be a *sapinda* of a son of the latter.

(6)

6. Forms *of* Hindu marriage.—Save as otherwise expresely provided herein, no marriage between Hindus shall be recognised as valid unless it is solemnised— (a) as a *Dharmik* marrige, or (b) as a civil marriage, or

(c) in accordance with the provisions of section 24A in cases to which that section applies.

(7)

General provisions for a Dharmik marriage

7. Essentials for a valid Dharmik marriage.—A Marriage between any two Hindus solemnised in the *Dharmik* form shall be a valid marriage, if the following conditions are fulfilled, namely:— (i) neither party has a spouse living at the time of the marriage; (ii) neither party is an idiot or a lunatic at the time of the marriage;

(iii) the bridegroom has completed the age of eighteen years and the bride the age of fifteen years at the time of the marriage; (iv) the parties are not within the degrees of prohibited relationship;

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

(vi) where the bride has not completed her sixteenth year, the consent of her guardian in marriage has been obtained for the marriage.

(8)

General provisions for a Civil marriage

8. Essentials for a valid Civil marriage.—A Marriage between any two Hindus solemnised in the Civil form shall be a valid marriage, if the following conditions are fulfilled, namely:— (i) neither party has a spouse living at the time of the marriage;

(ii) neither party is an idiot or a lunatic at the time of the marriage; (iii) the bridegroom has completed the age of eighteen years and the bride the age of fifteen years at the time of the marriage; (iv) the parties are not within the degrees of prohibited relationship;

(v) each party has, if he or she has not completed the age of twenty one years at the time of the marriage, obtained the consent of his or her guardian in marriage: Provided that no such consent shall be required if the bride is a widow.

Part IV, Sec 1. Page 15.

6. Forms of Hindu marriage—Save as otherwise expressly provided herein, no marriage between Hindus shall be recognised as valid unless it is solemnised either as a sacramental marriage or as a civil marriage in accordance with the provisions of this Part.

(6)

Sacramental marriage

Part IV, sec.3, page 15.

7. Conditions relating to a sacramental marriage.— A marriage between any two Hindus may be solemnised in the sacramental form, if the following conditions are fulfilled, namely:—

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

(2) neither party is an idiot or lunatic at the time of the marriage;

(3) the bridegroom has completed the age of eighteen years and the bride the age of fourteen years at the time of the marriage;

(4) the parties are not within the degrees of prohibited relationship;

(5) the parties are not *sapindas* of each other unless the custom or usage governing each of them permits of a sacramental marriage between the two;

(6) where the bride has not completed her sixteenth year the consent of her guardian has been obtained for the marriage.

(7)

Part IV, sec. 7, page 16.

10. Conditions relating to a civil marriage.—For a civil

marriage between any two Hindus, the following conditions must be fulfilled, namely:—

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

(2) neither party is an idiot or a lunatic at the time of the marriage;

(3) the bridegroom has completed the age of eighteen years and the bride the age of fourteen years at the time of the marriage;

(4) the parties are not within the degrees of prohibited relationship;

(5) each party has, if he or she has not completed the age of twenty one years, obtained the consent of his or her guardian in marriage: Provided that no such consent shall be required in the case of a widow.

(8)

(9)

Formalities for a Dharmik marriage

9. Ceremonies.—(1) A *Dharmik* marriage shall not be complete and binding on the parties unless it is solemnised in accordance with such customary rites and ceremonies *of* either party thereto as are essential for such marriage.

(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.

(3) Notwithstanding anything contained in this section, no marriage solemnised in the *Dharmik* form shall, after the solemnisation thereof, be deemed to be invalid merely by reason of any irregularity in the performance of any of the customary rites and ceremonies of either party thereto

(10)

10. Registration of Dharmik marriage.—(1) For the purpose of facilitating the proof of any *Dharmik* marriage the State Government may by rules, provide that—

(a) particulars relating to such marriage shall be entered in such manner and under such circumstances as it thinks fit in the Hindu *Dharmik* marriage Register kept for this purpose; and

(b) the making of such entries shall be compulsory in the State or insuch areas or such causes as may be specified in the rules. (2) In making any rules under sub-section (1) the State Government may provide that a contravention thereof shall be punishable with fine which may extend to one hundred rupees.

(II)

Formalities for a Civil Marriage

II. Marriage Registrars.—The State Government may appoint one or more persons to be Registrars of Hindu Marriages, in this Part referred to as " the Registrar ", for the State or any part thereof and the area for which any such Registrar has been appointed shall be called his district.

(12)

12. Notice of marriage to Registrar.—When a civil marriage is intended to be solemnised under this Part, the parties to the marriage shall give notice thereof in writing in the form specified in the Fourth Scheduled to the Registrar of the district in which at least one of the parties to the marriage has resided for a period of not less than thirty days preceding the date on which such notice is given.

Part IV, sec.4, Page 15

8. Ceremonies required—(1) A sacramental marriage shall not be complete and binding on the parties unless it is solemnised in accordance with such customary rites and ceremonies of either party thereto as are essential for such marriage.

(2) Where such rites and ceremonies include the *Saptapadi* (that is, the taking of seven steps by the bride(x)in and the bride jointly before the sacred Fire) the marriage becomes complete and binding when the seventh step is taken.

(3) Notwithstanding anything contained in this section, no marriage solemnised in the sacramental form shall, after the solemnisation thereof, be deemed to be invalid merely by reason of any irregularity in the performance of any of the customary rites and ceremonies of either party thereto.

(9)

Part IV, Sec 6, page 15

9. Registration of Sacramental marriages.—(1) For the purpose of

facilitating the proof of any *Sacramental* marriage the Provincial Government may by rules, provide that—

(a) particulars relating to such marriage shall be entered in the Hindu *Sacramental* marriage Register kept for this purpose in such manner and under such circumstances as it thinks fit; and

(b) the making of such entries shall be compulsory the such causes or in such areas as may be specified in the rules.

(2) In making any rules under sub-section (1) the Provincial Government may provide that a contravention thereof shall be punishable with fine which may extend to one hundred rupees.

(10)

Part IV. Sec 8, page 16

II. Marriage Registrars—The Provincial Government may appoint one or more persons to be Registrars of Hindu Marriages, in this Part referred to as " the Registrar ", for the Province or any part thereof and the area for which any such Registrar has been appointed shall be called his district.

(II)

Part IV, sec 9, page 16

12. Notice of marriage to Registrar.—When a civil Part IV, marriage is intended to be solemnised under this Part, the page 16. parties to the marriage shall give notice thereof in writing in the form specified in the Third Scheduled to the Registrar of the district in which at least one of the parties to the marriage has resided for a period of not less than thirty days preceding the date on which such notice is given.

(12)

(13)

13. Marriage Notice Book and publication.—(1) The Registrar shall keep all notices given under section 12 with the records of his office and shall also forthwith enter a true copy of every such notice in a book furnished to him for that purpose by the State Government to be called the "Hindu Civil Marriage Notice Book" and such book shall be open for inspection at all reasonable times, without fee by every person desirous of inspecting the same.

(2) The Registrar shall also publish every such notice in such manner as may be prescribed.

(14)

14. Objection to marriage.—(1) After the expiration of thirty days from the date on which notice of an intended marriage has been given under section 12, the marriage may be solemnised unless it has been objected to under sub-section (2).

(2) Any person may, before the expiration of thirty days from the giving of any notice of an intended marriage, object to the marriage on the ground that it would contravene one or more of the conditions specified in section 8.

(3) The nature of the objection made shall be recorded in writing by the Registrar in the Hindu Civil Marriage Notice Book, and shall, if necessary, be read over and explained to the person making the objection and shall be signed by him or on his behalf.

(15)

15. Procedure on receipt of objection.—(1) If an objection is made under section 14 to an intended marriage, the Registrar shall not allow the marriage to be solemnised until the expiration of thirty days from the receipt of such objection, if there is a court of competent jurisdiction open at the time or if no such court is open at the time, until the expiration of thirty days from the opening of such a court.

(2) The person objecting to the intended marriage may File a suit in the district court having local jurisdiction, for a declaration that such marriage contravenes one or more of the conditions specified in section 8 and the court in which such suit is filed shall thereupon give the person presenting it a certificate to the effect that such suit has been Field.

(3) If the certificate referred to in sub-section (2) is lodged with the Registrar within thirty days from the receipt by him of the objection, if there is a court of competent jurisdiction open at the lime or if no such court

Part IV, sec 10, page 16

13. Marriage Notice Book and publication.—(1) The Registrar shall keep all notices given under section 12 with the records of his office and shall also forthwith enter a true copy of every such notice in a book furnished to him for that purpose by the Provincial Government to be called the " Hindu Civil Marriage Notice Book " and such book shall be open for inspection at all reasonable times, without fee by every person desirous of inspecting the same.

(2) "The Registrar shall also publish every such notice in such manner as may be prescribed.

(13)

Part Iv, sec11, page 16

14. Objection to marriage.—(1) Alter the expiration of thirty days from the date on which notice of an intended marriage has been given under section 12, the marriage may be solemnised unless it has been objected to under sub-section (2).

(2) Any person may, before the expiration of thirty days from the giving of

any notice of an intended marriage, object to the marriage on the ground that it would contravene one or more of the conditions prescribed in clauses (1), (2), (3), (4) and (5) of section 10.

(3) The nature of the objection made shall be recorded in writing by the Registrar in the Hindu Civil Marriage Notice Book, and shall, if necessary, be read over and explained to the person making the objection, and shall be signed by him or on his behalf.

(14)

Part IV, sec 12, page 17

15. Procedure on receipt of objection.—(1) If an objection is made under section 14 to an intended marriage, the Registrar shall not allow the marriage to be solemnised until the expiration of thirty days from the receipt of such objection, if there is a court of competent jurisdiction open at the time, or, if no such court is open at the time, until the expiration of thirty days from the opening of such a court.

(2) The person objecting to the intended marriage may file a suit in the District Court having local jurisdiction (or in any other Court empowered in this behalf by the Provincial Government and having such jurisdiction) for a declaration that such marriage contravenes one or more of the conditions prescribed in clauses (1), (2), (3), (4) and (5) of section 10 and the court in which such suit is Filed shall thereupon give the person presenting it a certificate to the effect that such suit has been filed is open at the time within thirty days from the opening of such a Court, the marriage shall not be solemnised until the decision of such court has been given and the period allowed by law for appeal from such decision has elapsed, or, if there is an appeal from such decision, until the decision of the appellate court has been given.

(4) If such certificate is not lodged in the manner and within the period laid down in sub-section (3), or if the decision of the court is that the marriage does not contravene any of the conditions specified in section 8, the marriage may be solemnised by the Registrar to whom the notice of marriage has been given.

(5) If the decision of the court is that the marriage contravenes any of the conditions specified in section 8, the marriage shall not be solemnised.

(16)

16. Power of court to fine when' objection not reasonable'.—If it appears to the court before which the suit is filed that the objection was not reasonable and *bonafide,* it may impose on the person objecting a fine not exceeding one thousand rupees and award it or any part thereof to the parties

to the intended marriage.

(17)

17. Declaration by parties and witnesses.—(1) Before the marriage is solemnised, the parties and three witnesses, shall, in the presence of the Registrar, sign a declaration in the form specified in the Fifth Schedule and where either party has not completed the age of twenty-one years, the declaration shall also be signed by his or her guardian, except in the case of a widow.

(2) Every declaration made under sub-section (1) shall be countersigned by the Registrar.

(3) If the certificate referred to in sub-section (2) is lodged with the Registrar within thirty days from the receipt by him of the objection, if there is a court of competent jurisdiction open at the time or if no such court is open at the time within thirty days from the opening of such a Court, the marriage shall not be solemnised until the decision of such Court has been given and the period allowed by law for appeal from such decision has elapsed or if there is an appeal from such decision, until the decision of the appellate court has been given.

(4) If such certificate is not lodged in the manner and within the period laid down in sub-section (3), or if the decision of the court is that the marriage does not contravene any of the conditions prescribed in clauses (1), (2), (3), (4) and (5) of section 10, the marriage may be solemnised by the Registrar to whom the notice of marriage has been given.

(5) If the decision of the court is that the marriage contravenes any of the conditions prescribed in clauses (1), (2), (3), (4) and (5) of section 10, the marriage shall not be solemnised.

(15)

Part IV, Sec 10, page 17

16. Power *of* court to fine when objection not reason- If it appears to the court before which the suit is tiled that the objection was not reasonable and *bonafide,* it may impose on the person objecting a fine not exceeding one thousand rupees and award it or any part thereof to the parties to the intended marriage.

(16)

Part IV, Sec 14, page 17

17. Declaration by parties and witnesses.—(1) Before the marriage is solemnised, the parties and three witnesses shall, in the presence of the Registrar, sign a declaration in the form specified in the Fourth Schedule and where either party has not completed the age of twenty one years, the declaration shall also be signed by his or her guardian, except in the case of a

widow.

(2) Every declaration made under sub-section (1) shall be countersigned by the Registrar.

(18)

18. Place and form of solemnisation.—(1) The marriage may be solemnised,— (a) at the office *of* the Registrar, or

(b) at such other place within reasonable distance there from as the parties may desire, upon such conditions and on the payment of such additional fees as may be prescribed.

(2) The marriage may be solemnised in any form: Provided that it shall not be complete and binding on the parties unless each party says to the other in the presence of the Registrar and the three witnesses, I (A) take thee, (B), to be my lawful wife (or husband).

(3) The marriage shall be solemnised in the presence of the Registrar and the three witnesses.

(19)

19. Certificate of marriage—(1) When the marriage has been solemnised, the Registrar shall enter a certificate thereof, in the form specified in the Sixth Schedule in a *book.* to be kept by him for that purpose and to be called the " Hindu Civil Marriage Certificate Book " and such certificate shall be signed by the parties to the marriage and the three witnesses.

(2) On a certificate being entered in the Hindu Civil Marriage Certificate Book by the Registrar, the certificate shall be deemed to be conclusive evidence of the fact that a civil marriage has been solemnised and that all formalities as respects the signatures of witnesses to the marriage have been complied with.

(20)

20 When marriage not solemnised within three months after notice, new notice required—Whenever a marriage is not solemnised within three calendar months after notice thereof has been given to the Registrar, as required by section 12 or where the person objecting to the intended marriage has filed a suit in a court of competent jurisdiction and the decision of such court has been given, within three calendar months of the date on which the period allowed by law for appeal from such decision expires, or if there is an appeal from such decision, within three calendar months from the date of decision of the appellate court, the notice and all other proceedings thereon shall be deemed to have lapsed and no Registrar shall allow the marriage to be solemnised until a new notice has been given in the manner prescribed in this Chapter.

18. Place and form of solemnisation.—(1) The marriage may be solemnised,—

(a) at the office of the Registrar, or

(b) at such other place within reasonable distance there from as the parties may desire, upon such conditions and, on the payment of such additional fees as may be prescribed. (2) The marriage may be solemnised in any form: Provided that it shall not be complete and binding on the parties unless each party says to the other in the presence of the Registrar and the three witnesses, I (A) take thee, (B), to be my lawful wife (or husband).

(3) The marriage shall be solemnised in the presence of the Registrar and the three witnesses.

(18)

Part IV, Sec 17, page 18

19. Certificate of marriage.—(1) When the marriage has been solemnised, the Registrar shall enter a certificate thereof, in the form specified in the Fifth Schedule in a book to be kept by him for that purpose and to be called the " Hindu Civil Marriage Certificate Book" and such certificate shall be signed by the parties to the marriage and the three witnesses.

(2) On a certificate being entered in the Hindu Civil Marriage Certificate Book by the Registrar, the certificate shall be deemed to be conclusive evidence of the fact that all formalities as respects the signatures of witnesses to a Civil marriage have been complied with.

(19)

(New)

20 When marriage not solemnised within three months (New) after notice, new notice required.—Whenever a marriage is not solemnised within three calendar months after notice thereof has been given to the Registrar, as required by section 12 or where the person objecting *to* the intended marriage has Filed a suit in a court of competent jurisdiction and the decision of such court has been given, within three calendar months of the date on which the period allowed by law for appeal from such decision expires, or if there is an appeal from such decision, within three calendar months from the date of decision of the appellate court, the notice and all other proceedings thereon shall be deemed to have lapsed and no Registrar shall allow the marriage to be solemnised until a new notice has been given in the manner prescribed in this Chapter.

(20)

(21)

Registration <u>of Dharmik</u> marriage as civil marriage

21. Procedure for registration of certain Dharmik Marriages.—

(1) Where any two Hindus have gone through a *Dharmik* form of marriage,—

(a) before the commencement of this Code, and doubts are entertained as respects the validity of any such marriage by reason of the provisions of any text, rule or interpretation of Hindu Law or any usage or custom in force at the time of the marriage, or

(b) after the commencement of this Code and such marriage is invalid by reason of the fact that it is in contravention of the provisions contained in clause (v) of section 7.

such persons may, at any time apply to the Registrar of the district in which either of them has resided for not less than thirty days immediately preceding the application to have their marriage registered as if it were a civil marriage solemnised before the Registrar.

(2) Upon receipt of any such application, the Registrar shall give public notice thereof in such manner as may be prescribed and after allowing a period of thirty days for objection and after hearing any objections received within that period the Registrar, if he is satisfied—

(a) that the ceremony of marriage was performed on the date mentioned in the application and that the parties have been living together as husband and wife ever since;

(b) that the conditions specified in clauses (i), (ii), (iii) and (iv) of section 8 are satisfied as between the parties to the marriage on the date of the application; and

(c) that, where either party not being a widow at the time of the marriage has not on the date of the application completed the age of twenty one years, the consent of his or her guardian in marriage has been obtained to the registration of the marriage as a civil marriage. shall enter a certificate of the marriage in the Hindu *Dharmik* Marriage Register in the form specified in the Seventh Schedule and such certificate shall be signed by the parties to the marriage as well as by three witnesses. (3) Upon the entry of any such certificate as is specified in sub-section

(2),the marriage shall be deemed to have been valid for all purposes and all children born after the date on which the parties went through the *Dharmik* form of marriage (whose names shall also be entered in the Certificate and the Hindu *Dharmik* Marriage Register) shall, in all respects, be deemed to be and always to have been the legitimate children of their parents.

(4) Any party to such marriage aggrieved by any order passed under this section may appeal against that order to the district court as defined in section 3 within the local limits of whose jurisdiction the Registrar exercises

jurisdiction and the decision of the district court on such appeal shall be final.

Part IV, Sec 18, page 18

18. Procedure for registration of certain Sacramental Marriages.—(1) Where any two Hindus have gone through a sacramental form of marriage,—

(a) before the commencement of this *Code* and doubts are entertained as respects the validity of any such marriage by reason of the provisions of any text, rule or interpretation of Hindu Law or any usage or custom in force at the time of the marriage, or

(b) after the commencement of this Code and such marriage is invalid by reason of the fact that it is in contravention of the provisions contained in clause (5) of section 7.

such persons may, at any time apply to the Registrar of the district in which either of them has resided for not less than thirty days immediately preceding the application, to have their marriage registered as if it were a civil marriage solemnised before the Registrar.

(2) Upon receipt of any such application, the Registrar shall give public notice thereof in such manner as may be prescribed and after allowing a period of thirty days for objection and after hearing any objections received within that period the Registrar, if he is satisfied—

(a) that the ceremony of marriage was performed on the date mentioned in the application and that the parties have been living together as husband and wife ever since;

(b) that the conditions in clauses (1) to (4) of section 10 are satisfied as between the parties to the marriage on the date of the application; and

(c) that, where either party not being a widow at the time of the marriage has not on the date of the application completed the age of twenty-one years, the consent of his or her guardian in marriage has been obtained to the registration of the marriage as a civil marriage; shall enter a certificate of the marriage in the Hindu Sacramental Marriage Register in the form specified in the Sixth Schedule and such certificate shall be signed by the parties to the marriage as well as by three witnesses.

(3) Upon the entry of any such certificate as is specified in sub-section (2),the marriage shall be deemed to have been valid for all purposes and all children born after the date on which the parties went through the Sacramental form of marriage (whose names shall also be entered in the Certificate and the Hindu Sacramental Marriage Register) shall, in all respects, be deemed to be, and always to have been, the legitimate children of their parents.

(4) Any party to such marriage aggrieved by any order passed under this section may appeal against that carder to the district court within the local

limits of whose jurisdiction the Registrar exercises jurisdiction, and the decision of the district court on such appeal shall be final.

(21)

(22)

Use of marriage records

22. Marriage records to be open to inspection etc.—The Hindu *Dharmik* Marriage Register and the Hindu Civil Marriage Certificate Book shall, at all reasonable times, be open for inspection and shall be admissible as evidence of the truth of the statements therein contained.

Certified extracts there from shall, on application be given by the Registrar on payment to him of the prescribed fee.

(23)

23. Transmission of copies of entries in marriage records to the Registrar General of Births, Deaths and Marriages.—The Registrar shall send to the Registrar General of Births, Deaths and Marriages for the State within which his district is situate at such intervals as may be prescribed, a true copy in the prescribed form and certified by him of all entries made by him in the Hindu *Dharmik* Marriage Register and the Hindu Civil Marriage Certificate Book since the last of such intervals.

Part IV, Sec 19, page 18

22. Marriage records to he open to inspection etc.— The Hindu Sacramental Marriage Register and the Hindu Civil Marriage Certificate Book shall, at all reasonable times, be open for inspection and shall be admissible as evidence of the truth of the statements therein contained.

Certified extracts there from shall, on application be given by the Registrar on payment to him of the prescribed fee.

(22)

Part IV, Sec 20, page 18

23. Transmission of copies of entries in marriage records to the egistrar General of Births, Deaths and Marriages.—The Registrar shall send to the Registrar General of Births, Deaths and Marriages for the Province within which his district is situate, at such intervals as may be prescribed, a true copy in the prescribed form and certified by him of all entries made by him in the Hindu Sacramental Marriage Register and the Hindu Civil Marriage Certificate Book since the last of such intervals.

(23)

(24)

Guardianship in marriage

24. Priority among guardians in marriage.—(1) Subject to the provisions of Part IV, wherever the consent of a guardian in marriage is necessary under

this Part the persons entitled to give such consent shall be the following in the order specified hereunder, namely,—

(1) the father;

(2) the mother;

(3) the brother;

(4) any other relative, the nearer being preferred to the more remote.

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Explanation.—In determining which of the two relatives is nearer for the purposes of entry (4) above, the test shall be, which of them is first entitled to inherit to the ward's heritable properly according to the rules of intestate Succession in Part VII.

(2) No person shall be entitled to act as a guardian in marriage under the provisions of this section unless such person has himself completed his or her twenty first year.

(3) Whether any person entitled to be the guardian in marriage under the foregoing provisions refuses or is by reason of absence, disability or other cause, unable or unfit, to act as such, the person next in order shall be entitled to be the guardian in marriage.

(4) Nothing in this Part shall affect the jurisdiction of a court to prohibit by injunction and intended marriage arranged by the guardian in marriage, if in the interests of the minor, the court thinks it necessary to do so.

Part IV, Sec 22, page 19

24. Guardianship in marriage.—(1) Subject *to* the provisions of Part IV, wherever the consent of a guardian in marriage is necessary under this Part the persons entitled to give such consent shall be the following in the order specified hereunder, namely,—

(1) the father;

(2) the mother;

(3) the paternal grandfather.

(4) The brother by full or half blood, a brother by full blood being preferred to one by half blood and as between brothers both by full or half blood, the elder being preferred;

(5) the paternal uncle by full or half blood, subject to the like rules of preference as are set out in entry (4) above;

(6) the maternal grandfather;

(7) the maternal uncle, subject to the like rules of preference as are set out in entry (4) above.

(8) any other relative, the nearer being preferred to the more remote and as between relatives related in the same way, subject to the like rules of

preference as are set out in entry (4) above.

Explanation.—In determining which of the two relatives is nearer for the purposes of entry (8) above the test shall be, which of them is first entitled to inherit to the ward's heritable property according to the rules of intestate succession in Part VII.

(2) No person shall be entitled to act as a guardian in marriage under the provisions of this section unless such person has himself completed his or her twenty-first year.

(3) Where any person entitled to be the guardian in marriage under the foregoing provisions refuses or is by reason of absence, disability or other cause, unable or unfit, to act as such, the person next in order shall be entitled to be the guardian.

(4) Nothing in this Part shall affect the jurisdiction of a court to prohibit by injunction an intended marriage arranged by the guardian, if in the interests of the minor, the court thinks it necessary to do so.

(24)

(25)

Special provisions for a valid marriage between Marumakkattayees, etc.

24A. Conditions relating to marriage of Marumakkattayam or Aliyasantana female.—(1) A marriage solemnised after the commencement of this Code between a female who, if this Code had not been passed, would have been governed by the Marumakkaltayam or Aliyasantana law and a male Hindu, shall be a valid marriage if the conditions specified in section 7 are fulfilled;

Provided that the condition specified in clause (v) of the said section shall not apply to any such marriage.

(2) Every marriage under this section shall be openly solemnised in accordance with the customary rites and ceremonies, if any, prevailing in the community to which the parties belong or either of them belongs;

Provided that no such marriage shall be deemed to be invalid merely by reason of any irregularity in the performance of any of the rites and ceremonies aforesaid.

(3) Notice of every marriage under this section shall be given by such person to such authority in such form and within such time as may be prescribed.

(4) Where a marriage is solemnised under the provisions of this section between a female who, if this Code had not been passed, would have been governed by the Marumakkattayam or Aliyasantana law, and a male Hindu who would not have been governed by such law, it shall be lawful for the parties to make a declaration in the notice given under sub-section (3) that

they desire to be governed by the special provisions contained in this Part with respect to annulment of Marumakkattayam or Aliyasantana marriages, and unless any such declaration is made,—

(a) nothing contained in any such special provision (except this section) shall apply to either of the parties; and

(b) Chapters II and III of this Part shall apply to, or in relation to, such marriage as they apply to, or in relation to, a *Dharmik marriage.*

(5) If any person fails to give notice of a marriage as required by subsection (3), he shall be punishable with fine, which may extend to fifty rupees;

Provided that the failure to give any such notice shall not invalidate the marriage or affect the legal rights of the parties to, or of the issue of, such marriage.

(26)

Penalties, etc

. ***25.*** **Bigamous marriage and punishment therefore.-**—Any person who during the lifetime of his or her spouse, if the marriage of such-person with such spouse has not been annulled in accordance with the provisions of this Code, or, at any time before the commencement of this Code, in accordance with the law, custom or usage in force at the time, contracts any other marriage after the commencement of this Code, shall be subject to the penalties provided in sections 494 and 495 of the Indian Penal Code (Act XLV of 1860) for the offence of marrying again during the lifetime of a husband or wife.

(27)

26. Penalty for signing false declaration or certificate.—Every person making, signing or attesting any declaration or certificate required under this Part, containing a statement which is false and which he either knows or believes to be false or does not believe to be true, shall be guilty of the offence described in section 199 of the Indian Penal Code (Act XLV of 1860).

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Part IV, Sec 24, page 19

25. Bigamous marriage and punishment therefore.—

Any person who during the lifetime of his or her spouse, if the marriage of such person with such spouse has not been dissolved by a Court of competent jurisdiction, contracts any other marriage after the commencement of this Code, shall be subject to the penalties provided in sections 494 and 495 of the Indian Penal Code 1860 (XLV of 1860) for the offence of marrying again during the lifetime of a husband or wife.

(26)

Part IV, Sec 22, page 18

26. Penalty for signing false declaration or certificate—Every person making, signing or attesting any declaration or certificate required under this Part, containing a statement which is false and which he either knows or believes to be false or does not believe to be true, shall be deemed to be guilty of the offence described in section 199 of the Indian Penal Code 1860 (XLV of 1860).

(27)

(28)

CHAPTER II

Restitution of conjugal rights and judicial separation

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

(29)

28. Answer to petition for restitution of conjugal rights.—Nothing shall be pleaded in answer to a petition for restitution of conjugal rights which would not be a ground for judicial separation or for a decree of annulment of marriage.

(30)

29. Judicial separation.—Either party to a marriage, whether solemnised before or after the commencement of this Code, may present a petition to the district court praying for a decree for judicial separation on the ground that the other party—

(a) has deserted the petitioner without cause for a period of not less than two years immediately preceding the presentation of the petition;

(b) has been guilty of such cruelty as to render it unsafe for the petitioner to live with the other party; or

(c) has, for a period of not less than one year immediately preceding the presentation of the petition, been suffering from venereal disease

in a communicable form and not contracted from the petitioner; (d) is suffering from a virulent form of leprosy; or (e) has been habitually of unsound mind since the date of the marriage; or

(f) has committed adultery during the marriage. *Explanation.*—In this section, the expression " to desert " with its grammatical variations and cognate expressions, means to desert the other party to a marriage without reasonable cause and without the consent or against the wish of such party.

New

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

(28)

32. Answer to petition for restitution of conjugal (New) rights.— Nothing shall be pleaded in answer to a petition for restitution of conjugal rights which would not be a ground for judicial separation or for a decree of dissolution of marriage.

(29)

Judicial Separation

Part IV, Sec 30, page 21

33. Judicial separation.—Either party to a marriage whether solemnised before or after the commencement of this Code, may present a petition to the District Court praying for a decree for judicial separation on the ground that the other party—

(a) has deserted the petitioner for a period of *not* less than two years; or

(b) has been guilty of such cruelty as to render it unsafe for the petitioner to live with the other party; or

(c) has been suffering from incurable venereal disease in a communicable form, not contracted from the petitioner for a period of not less than one year immediately preceding the presentation of the petition; or (d) is suffering from a virulent form of leprosy; or (c) has been habitually of unsound mind since the date of marriage; or

(f) has committed adultery during the marriage. *Explanation.*—In this section, the expression " to desert " with its grammatical variations and cognate expressions, means to desert the other party to a marriage without reasonable cause and without the consent or against the wish of such party.

(30)

(31)

CHAPTER III

General provisions relating to annulment of marriage

30. No marriage to be annulled except by order of court.— Notwithstanding anything contained in this Part, no marriage solemnised, whether before or after the commencement of this Code, shall be deemed to have been lawfully annulled except by a decree of a competent court passed

in that behalf.

(32)

30A. Modes of annulment of marriage.—A marriage may be annulled by a decree of nullity, if it is void for any of the reasons set out in section 31, or by a decree of dissolution, if it is voidable for any of the reasons set out in section 32, or by a decree of divorce for any of the reasons set out in section 33, as the case may be.

Nullity of Marriages

31. Grounds for a decree of nullity.—(1) Any marriage solemnised before the commencement of this Code may be annulled by a decree of nullity—

(a) if by' reason of the provisions of any law in force at the time of the marriage such marriage was invalid on the ground that either party had a spouse living at the time of the marriage or

(b) if the parties at the time of the marriage were within the degrees of prohibited relationship as defined by clause (c) of section 5: Provided that no such marriage shall be annulled under the provisions of clause (b) of this sub-section if it was valid under the provisions of any law in force at the time of the marriage.

(2) Any marriage solemnised after the commencement of this Code may be annulled by a decree of nullity—

(a) if, purporting to be a *Dharmik* marriage, it contravenes any of the conditions specified in clauses (i), (iv) and (v) of section 7.

(b) if, purporting to be a civil marriage, it contravenes any of the conditions specified in clauses (i) and (iv) of section 8: Provided that nothing contained in this section shall apply to any case falling within the prohibition contained in clause (v) of section 7, if, before the institution of any proceeding for the annulment of marriage, the marriage is registered as a civil marriage under section 21.

34. No marriage to be avoided except by order of court.— Notwithstanding anything contained in this Part, Do marriage solemnised, whether before or after the commencement of this Code, and whether such marriage is void or voidable, shall be deemed to have been lawfully dissolved unless a decree has been pronounced by a Competent Court declaring that the marriage is dissolved either on a petition for dissolution or in any other proceeding in which the validity of the marriage is in issue.

(31)

(32)

Part IV, Sec 29 (2)(ii), page 2

28. Void marriage.—(1) Any marriage solemnised before the commencement of this Code shall be void

(a) if by reason of the provisions of any law in force at the time of the marriage such marriage was invalid on the ground that either party had a spouse living at the time of the marriage; or

(b) if the parties at the time of the marriage were within the degrees of prohibited relationship as defined by clause (b) of section 5; Provided that no such marriage shall be deemed to be void under the provisions of clause (b) of sub-section (1) if it was valid under the provisions of any law in force at the time of the marriage.

(2) Any marriage solemnised after the commencement of this Code shall be void—

(a) if, purporting to be a sacramental marriage, it contravenes one or more of the conditions specified in clauses (1), (4) and (5) of section 7;

(b) if, purporting to be a civil marriage, it contravenes any of the conditions specified in clauses (1) and (4) of section 10: Provided that in the case mentioned in clause (a) of sub-section (2) the condition specified in clause (5) of section 7 shall not apply when the marriage is subsequently registered at any time as a civil marriage under section 21, before any petition for dissolution is presented to any Court.

(34) *Dissolution of Marriage* 32. **Grounds for a decree of dissolution,**—(I) Any marriage solemnised before the commencement of this Code may be annulled by a decree of dissolution on the ground that either party to the marriage was an idiot or a lunatic at the time of the marriage.

(2) Any marriage solemnised after the commencement of this Code may be annulled by a decree of dissolution—

(a) if, purporting to be a *Dharmik* marriage, it contravenes any of the conditions specified in clauses (ii). (iii) and (vi) of section 7;

(b) if, purporting to be a civil marriage, it contravenes any of the conditions specified in clauses (ii), (iii) and (v) of section 8:

Provided that, unless there was force or fraud, a *Dharmik* marriage shall not, after it has been completed, be deemed to be invalid or even to have been invalid merely on the ground that the consent of the bride's guardian in marriage to the marriage was not or had not been obtained.

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29. Voidable marriages.—(1) Any marriage solemnised Part IV, before the commencement of this Code shall be voidable if page 15. either party to the marriage was an idiot or lunatic at the time of the marriage.

(2) Any marriage solemnised after the commencement of this Code shall be voidable—

(a) if, purporting to be sacramental marriage, it contravenes any of the conditions specified in clauses (2), (3) and (6) of section 7;

(b) if, purporting to be a civil marriage, it contravenes any of the conditions specified in clauses (2), (3) and (5) of section 10: Provided that unless there was force or fraud, a sacramental marriage shall not, after it has been completed, be deemed to be invalid or ever to have been invalid merely on the ground that the consent of the bride's guardian to the marriage was not or had not been obtained.

(3) Any marriage, whether solemnised before or after the commencement of this Code, shall be voidable on any of the grounds specified in section 30.

(4) Where a period of limitation is prescribed for the presentation of any petition under this Part and no petition is presented within the time prescribed, the marriage shall be deemed to be valid and always to have been valid for all purposes.

36. Dissolution of marriage.—(1) Subject to the provisions of section 35, either party to a marriage may at any lime present a petition for dissolution of marriage to the District Court on any of the ground's which makes a marriage void or voidable.

(2) Nothing in sub-section (1) shall be deemed to authorise a Court to pass a decree—

(i) in the case of marriage solemnised before the commencement of this Code which was valid at the time of solemnisation, on the ground—

(a) that a former wife of the male party was living at the time of the marriage; or

(b) that the parties are within the degrees of prohibited relationship as defined by clause (b) of section 5;

(ii) in the case of a voidable marriage, whether solemnised before or after the commencement of this Code, on the ground that either party was an idiot or lunatic at the time of the marriage or that the respondent was impotent at the time of the marriage and continued to be so until the institution of the proceeding, unless the petition for dissolution is

(35)

Divorce

33. Grounds for a decree of divorce.—Any marriage, solemnised whether before or after the commencement of this Code, may be annulled by a decree of divorce on any of the following ground's namely:—

(i) either party to the marriage was impotent at the time of the marriage and continued to be so until the institution of the proceeding;

(ii) the husband is keeping a concubine or the wife has become the concubine of any other man or leads the life of a prostitute;

(iii) either party to the marriage has ceased to be a Hindu by conversion to another religion;

(iv) either party is incurably of unsound mind and has been continuously under treatment for a period of not less than Five years preceding the petition; and

(v) either party is suffering from a virulent form of leprosy. (vi) either party has not resumed marital intercourse for a period of two years or upwards after a decree or order for judicial separation had been passed against the other party;

(vii) either party has failed to comply with a decree for restitution of conjugal rights for a period of two years or upwards presented within three years after the solemnisation of the marriage, or in the case of a marriage solemnised before the commencement of this Code, within two years of such commencement; or

(iii) in the case of a voidable marriage, whether solemnised before or alter the commencement of this Code, on the ground that the consent of the petitioner or where the consent of his or her guardian is requisite, the consent of such guardian was obtained by force or fraud, unless the petition for dissolution is presented within one year after the force had ceased to operate or the fraud had been discovered: Provided that the Court shall dismiss such petition if—

(a) in the case of a voidable marriage solemnised before the commencement of this Code the force had ceased to operate or the fraud had been discovered before such commencement and the petition for dissolution is presented more than one year after the commencement of this Code; or

(b) (b) the petitioner has, with his or her free consent, lived with the other party to the marriage as husband and wife after the force had ceased to operate or the fraud had been discovered, as the case may be.

(34)

30. Other grounds for dissolution of marriage.—A Part IV,

Sect's 29 & marriage, whether solemnised before or after the commencement of this Code, may be dissolved on any of the following grounds, namely, that—

(i) either party to the marriage was impotent at the time of the marriage and continued to be so until the institution of the proceeding;

(ii) the husband is keeping a woman as a concubine or the wife has become the concubine of any other man or leads the life of a prostitute;

(iii) either party to the marriage has ceased to be a Hindu by conversion to another religion;

(iv) either party is incurably of unsound mind and has been continuously under treatment for a period of not less than five years preceding the petition; and

(v) either party is suffering from a virulent and incurable form of leprosy.

38. Further grounds for dissolution.—Either party to a (New) marriage whether solemnised before or after the commencement of this Code, may present a petition to the District Court praying that his or her marriage may be dissolved on the ground that the other party—

(a) has not resumed marital intercourse for a period of two years or upwards after a decree or order for judicial separation had been passed against the respondent; or

(b) that the respondent has failed to comply with a decree for restitution of conjugal rights for a period of two years or upwards.

(35)

(36)

34. Right to have marriage annulled.—(1) A decree of nullity of marriage may be obtained either by a party to the marriage or by a Proctor or by any person affected by, or having an interest in, the marriage either on a petition for annulment by a decree of nullity or on a plea raised in any other proceeding.

(2) A petition for a decree of dissolution or for divorce shall lie only at the instance of a party to the marriage:

Provided that no party shall be entitled to take advantage of his or her own default or disability for the purpose of relief.

(37)

35. Appointment of Proctors.—(1) The State Government may appoint one or more Proctors for the State or any part thereof who shall have the right—

(i) to appear or intervene either *suo moto* in any proceeding for the annulment of any marriage, where in the opinion of the Proctor it is expedient in the public interest so to do or at the instance of any court;

(ii) to initiate any proceeding for the annulment of any marriage where the appropriate remedy for annulment is by a decree of nullity.

(2) The State Government may make rules regulating the manner in which the right of the Proctor shall be exercised and all matter incidental to or consequential on any exercise of the right.

35. Persons entitled to present petition for dissolution.—(1) Where a marriage, whether solemnised before or after the commencement of this Code, is impugned on the ground that it is a void marriage, the plea may be entertained by the Court either—

(i) on a petition for dissolution presented by either party to the marriage; or

(ii) on an issue being raised in any proceeding by any person affected by or having an interest in the marriage.

(2) Where a marriage, whether solemnised before or after the commencement of this Code, is impugned on the ground that it is a voidable marriage, no such plea shall be entertained by the Court except at the instance of either party to the marriage:

Provided that no party shall be entitled to take advantage of his or her own default or disability for the purpose of relief.

(36)

(37)

(38)

36. No petition for divorce to he presented within three years of marriage.—(1) notwithstanding anything contained in this Part, it shall not be competent for any court to entertain any petition for a decree for divorce, unless at the date of the presentation of the petition three years have elapsed since the dale 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 before three years have 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 expiry of three years from the date of the marriage or may dismiss the petition without prejudice to any petition which may be brought after the expiration of the said three years upon the same or substantially the same facts as those proved 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 expiration of three years from the date of the marriage, the court shall have regard to the interests of any children of the marriage and to the question whether there is a reasonable probability of a reconciliation between the parties before the expiration of the said three years.

(39)

Effect of annulment of marriage

37. **Liberty to parties to marry again.**—When a marriage has been annulled by a decree of a competent court and no appeal has been presented against such decree or when any such appeal has been dismissed, it shall be lawful for the respective parties to the marriage to marry again as if the prior marriage had been annulled by death.8)

50. Liberty to parties to marry again.—When six (New) months after the

date of an order of a High Court confirming the decree for dissolution of marriage made by a District Judge have expired,

or when six months after the date of any decree of a High Court dissolving a marriage have expired and no appeal has been presented against such decree,

or when any such appeal has been dismissed or when as a result of such appeal any marriage is dissolved, it shall be lawful for the respective parties to the marriage to marry again *as* if the prior marriage had been dissolved by death.

(39)(40)

38. Consequences of annulment of marriage-—(1) Where a marriage is annulled by a decree of nullity, the parties thereto shall be deemed never to have been married, nor to have been related to each other as husband and wife:

Provided that where a marriage is annulled by a decree of nullity on the ground that a former husband or wife was living and it is adjudged that the subsequent marriage was solemnised in good faith and that one or both of the parties fully believed that the former husband or wife was dead, children begotten before the decree is passed shall be specified in the decree and shall in all respects to be deemed to be, and always to have been, the legitimate children of their parents.

(2) Where a marriage is annulled by a decree of dissolution or a decree of divorce, the parties shall cease to be related to each other as husband and wife from the date of the decree, and any children begotten of the marriage shall in all respects be deemed to be, and always to have been, the legitimate children of their parents and their names shall be specified in the decree.

(41)

Jurisdiction and procedure

39. Extent of power to grant relief under this Part.—Nothing contained in this Part shall authorise any Court.—

(a) to make decrees of nullity of marriage except where the marriage has been solemnised in India and the petitioner is resident in India at the time of presenting the petition.

(b) to make decrees of dissolution or divorce, except where the parties to the marriage are domiciled in India at the time of presenting the petition; or

(c) to grant any relief under this Part other than a decree of nullity of marriage or a decree of dissolution or divorce, except where the petitioner resides in India at the time of presenting the petition.

(d) 37. Effect of declaring marriage *null and void.*—(1) Where a marriage is dissolved on the ground that it is a void marriage, or where a marriage has

been declared to be void, the marriage shall be deemed to have been void *ab initio,* and any children begotten of the marriage shall be deemed to be, and always to have been, illegitimate:

Provided that where a marriage is dissolved or declared to be void on the ground that a former husband or wife was living and it is adjudged that the subsequent marriage was solemnised in good faith and that one or both of the pities fully believed that the former husband or wife was dead, children begotten before the decree is made shall be specified in the decree and shall in all respects be deemed to be, and always to have been, the legitimate children of their parents.

(2) Where a marriage is dissolved on any of the grounds Part IV, specified in sections 29 and 30, any children begotten of the page 21. ' marriage shall in all respects be deemed to be, and always to have been, the legitimate children of their parents and their names shall be specified in the decree. (40)

Jurisdiction and procedure

39. Extent of power to grant relief under this Part.—Nothing contained in this Part shall authorise any Court.—

(a) to make decrees for dissolution of marriage—

(i) in the case of a void marriage or in the case of (New) a voidable marriage which contravenes the provisions of clause (2) of section 7 or clause (2) of section 10 or which can be avoided on the ground that either party to the marriage was important at the time of the marriage and continued to be so until the institution of the proceeding, unless the marriage has been solemnised in a Province and the petitioner is resident in the Province at the time of presenting the petition; or

(ii) in the case of a voidable marriage, not falling within sub-clause (i) of clause (a) of this section, unless the parties to the marriage are domiciled in a Province at the time when the petition for dissolution is presented; or

(b) to grant any relief under this Part, other than a decree for dissolution of marriage except where the petitioner resides in a Province at the time of presenting the petition. (41) (42)

40. Court to which petition should be made and hearing *in camera.*—(1) Every petition under this Part shall be presented *to* the district court within the local limits of whose ordinary original civil jurisdiction the marriage was solemnised or the husband and wife reside or last resided together.

(2) A proceeding under this Part shall be conducted *in camera* If either party so desires or if the Court thinks tit to do so. (43)

41. Contents and verification of petitions.—(1) Every petition presented under this Part shall state, as distinctly as the nature of the case permits, the

facts on which the claim to relief is founded and every petition for the annulment of any marriage or for judicial separation shall 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 Part 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.

(44)

42. **Application of the Code of Civil Procedure.**—Subject to the other provisions contained in this Part, all proceedings under this Part between party and party shall be regulated, as far as may be, by the Code of Civil Procedure, 1908 (Act V of 1908).(45)

43. Decree in proceeding.—In any petition presented under this Part, whether defended or not, if the court is satisfied that any of the grounds for granting relief exists and that the petition has not been presented or prosecuted in collusion with the respondent or that the adultery complained of, if any, has not *been* connived at or condoned, the court shall decree such relief accordingly.

Sec. 3(2 **Ind. Div.**

40. **Court to which petition should be made.**—Every petition under this Part shall be presented to the District Court Act within the local limits of whose ordinary original civil jurisdiction the husband and wife reside or last resided together.

48. Suits may be heard within Closed doors.—A proceeding under this part shall be conducted *in camera* at the instance of either party or if the Court thinks fit to do so. (42)

41. Contents and verification of petitions.—(1) Every **Sec. 10**

Ind. Div. petition presented under this Part shall state, as distinctly as Act.

the nature of the case permits, the facts on which the claim to relief is founded and every petition for a decree of dissolution of marriage, or of judicial separation shall 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 Part 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. (43)

42. Application of the Code of Civil Procedure.— S 15, Ind. Div. Act

Subject to the other provisions contained in this Part, all proceedings under this Part between party and party shall be regulated, as far as may be, by the

Code of Civil Procedure, 1908 (V of 1908). (44)

43. **Decree in proceeding.**—In any petition presented under this Part, whether defended or not, if the court is satisfied that any of the grounds for granting relief exists and that the petition has not been presented or prosecuted in collusion with the respondent or that the adultery complained of, if any, has not been connived at or condoned, the court shall decree such relief accordingly. (45)

(46) *Other orders that may be passed in annulment proceeding*

44. Alimony, *pendente lite.*—Where in any proceeding under this Part, it appears to the court that the wife has no independent income sufficient for her support and the necessary expenses of the proceeding, it may, on the application of the wife, order the husband to pay to her the expenses of the proceeding, and monthly during the proceeding such sum not exceeding one-fifth of her husband's net income as to the court seems reasonable.

(47)

45. **Permanent alimony.**—(1) Any court exercising jurisdiction under this Part may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose, order that the husband shall, while the wife remains chaste and unmarried, secure to the wife, for her maintenance and support, if necessary, a charge on the husband's property of such gross sum or such monthly or periodical payment of money for a term not exceeding her life as, having regard to her own property, if any, her husband's property and the conduct of the parties, shall be deemed just.

(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 wife in whose favour an order has been made under sub-section (1) or (2) has remarried or has not remained chaste, it shall rescind the order.(48)

46. Custody **of children.**—In any proceeding under this Part, 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, revoke, suspend or vary, 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 the proceeding for obtaining such decree were still pending.

45. Alimony, *pendente lite.*—Where in any proceeding See. 6, under this Part, it appears to the court that the wife has no Bombay independent income sufficient for her support and the necessary expenses of the proceeding, it may, on the application of the wife, order the husband to pay to her the expenses of the proceeding, and monthly during the proceeding such sum not exceeding one-fifth of her husband's net income as to the court seems reasonable. (46)

Sec. 6 Bombay jurisdiction

46. Permanent alimony.—(1) Any court exercising under this Part may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose, order that the husband shall, while the wife remains chaste and unmarried, secure to the wife, for her maintenance and support, if necessary, a charge on the husband's property of such grass sum or such monthly or periodical payment of money for a term not exceeding her life as, having regard to her own property, if any, her husband's property and the conduct of the parties, shall be deemed just.

(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 wife in whose favour an order has been made under sub-section (1) or (2) has remarried or has not remained chaste, it shall vary or rescind the order.

(47) Bombay Act. sec.l5, Part

47. Custody **of children.**—In any proceeding under this, 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, revoke, suspend or vary,, 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 the proceeding for obtaining such decree were still pending. (48)(49)

47. **Disposal of property.**—Any court exercising jurisdiction under this Part may at the time of passing any decree make such provisions in the decree as it may deem just and proper as respects—

(i) any property which belonged jointly to the husband and the wife immediately before the decree;

(ii) any property which belongs to the wife, whether by way of dowry as

defined in section 93 or otherwise, and which is in the possession of the husband.

(50) *Execution of, and appeals from, decrees and orders*

48. Enforcement of, and appeal from, decrees and orders.—All decrees and orders made by the court in any proceeding under this Part shall be enforced in like manner as the decrees and orders of the court made in the exercise of its original civil jurisdiction are enforced, and may be appealed from under the law for the lime being in force:

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Provided that there shall be no appeal on the subject of costs only.(49)

49. Enforcement of and appeal from orders and (new) decrees.—All decrees and orders made by the court in any proceeding under this Part shall be enforced in like manner as the decrees and orders of the court made in the exercise of its original civil jurisdiction are enforced, and may be appealed from under the law for the time being in force: Provided that—

(a) there shall be no appeal from a decree of a District (New) Court for dissolution of marriage or from the order of the High Court confirming or refusing to confirm any such decree;

(b) (b) there shall be no appeal on the subject of costs only.

(50) (51)

CHAPTER IV

Special provisions for annulments of Maruakkattayam or Aliyasantana marriage

49. Annulment of Marumakkattayam or Aliyasantana marriage.— (1) Save as provided in sub-section (4) of section 24A, a marriage solemnised under that section may be annulled— (a) by a decree of nullity under section 49A; (b) by an order of divorce under section 49B; (c) by a registered instrument of dissolution executed by the parties to the marriage:

Provided that, if the female party to the marriage has not completed the age of eighteen years, no marriage shall be annulled by an order of divorce before she completes that age.

(2) The annulment of a marriage by a registered instrument of dissolution shall take effect from the dale of the registration of the instrument. (52)

49A. Grounds for a decree of nullity of Marumakkattayam or Aliyasantana marriage.—(1) Any marriage solemnised before the commencement of this Code under the Marumakkattayam or Aliyasantana law may be annulled by a decree of nullity,—

(a) if by reason of the provisions of any law in force at the time of the marriage, such marriage was invalid on the ground that either party had a spouse living at the time of the marriage; or

(b) if the parties at the time of the marriage were within the degrees of prohibited relationship as defined by clause (c) of section 5: Provided that no marriage so solemnised shall be annulled under the provisions of clause (b) of this sub-section, if it was valid under the provisions of any law in force at the time of the marriage.

(2) Save as provided in sub-section (4) of section 24A, a marriage solemnised under that section, may be annulled by a decree of nullity if it contravenes the condition specified in clause (i) or clause (iv) of section 7.

(3) Where a marriage is annulled by a decree of nullity under this section, the parties thereto shall be deemed never to have been married, nor to have been related to each other as husband and wife:

Provided that where a marriage is annulled by a decree of nullity on the ground that a former husband or wife was living and it is adjudged that the subsequent marriage was solemnised in good faith and that one or both of the parties fully believed that the former husband or wife was dead, children begotten before the decree is passed shall be specified in the decree and shall in all respects be deemed to be and always to have been the legitimate children of their parents.(51)(52) (53)

49B. Petition and procedure for divorce in respect of Marumakkattayam or Aliyasantana marriage.—(1) Save as provided in sub-section (4) of section 24A, any party to a marriage under that section may present a petition to the district court for the annulment of such marriage by an order of divorce.

(2) The petition shall specify the place where, the date on which, and the name and address of the guardian, if any, with whose consent, the marriage was solemnised.

(3) A copy of such petition shall be served on the respondent at the cost of the petitioner.

(4) On the motion of the petitioner, made not earlier than six months and not later than one year after the date of the service of the copy of the petition aforesaid, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after such enquiry as it thinks fit that a marriage which is valid under section 24A was solemnised between the parties and that such marriage complied with both the conditions specified in clauses (i) and (iv) of section 7, by order in writing declare the marriage annulled.

(5)The annulment of the marriage shall take effect from the date of the order, and either party to the marriage shall then be at liberty to marry again subject to the provisions of this Part.

(6) Where a marriage is annulled by an order of divorce under this section, the parties shall cease to be related to each other as husband and wife from

the date of the order, and any children begotten of the marriage shall in all respects be deemed to be and always to have been the legitimate children of their parents.(54)

50. Application of certain provisions to Marumakkattayam or Aliyasantana marriage.—(1) The provisions of sections 39 to 48 inclusive shall apply, as far as may be, to proceedings for the annulment under this Chapter, whether by a decree of nullity or by an order of dissolution, of any marriage solemnised under section 24A.

(2) Nothing contained in this section shall affect the operation of subsection (4) of section 24A, and save as provided in sub-section (1), nothing contained in Chapter II or Chapter III shall apply to, or in relation to, any marriage solemnised under that section.(53)(54) (55)

CHAPTER V *Savings*

51. Saving of prior marriages and special provisions therefore.—(1) A marriage solemnised between Hindus before the commencement of this Code, which is otherwise valid, shall not be deemed to be invalid or ever to have been invalid by reason only of the fact that the parties thereto belonged to the same *gotra* or *pravara* or belonged to different castes or sub-divisions of the same caste.

(2) A marriage which was solemnised before the commencement of this Code between a female who was governed by the Marumakkattayam or Aliyasantana law at the time of the marriage and a male Hindu and which is valid and subsisting at the commencement of this Code shall continue to be a valid marriage, and the special provisions contained in this Code with respect to annulment of Marumakkallayam or Aliyasantana marriages shall apply to, or in relation to, such marriage in like manner as they apply to, or in relation to, a marriage between persons both of whom are governed by that law.

(3) A conjugal union of a female belonging to any of the communities specified in clause (b) of the definition of" Marumakkattayam law " in section 3 with a male Hindu, whether governed by that law or not, which was openly solemnised before the commencement of this Code with the customary ceremonies prevailing in the community to which the parties belong or either of them belongs shall be deemed for all purposes [including sub-section (2)] to be and always to have been a valid marriage if the parties to the union are not related to each other in such degree of consanguinity or affinity that conjugal union between them is prohibited by any custom or usage of the community to which they belong or either of them belongs:

Provided that nothing contained in this sub-section shall be deemed to invalidate any dissolution of the marriage effected before the commencement of this Code in accordance with the custom prevailing in the community to

which the pities belong or either of them belongs.

51 A. Dissolution before or after Code of certain valid marriages not to effect rights of children.—Where a marriage solemnised before the commencement of this Code between a female governed by the Marumakkaltayam or Aliyasantana law at the time and a male Hindu is a valid marriage by reason of any law , whether in force at the time of the marriage or passed subsequently, or by reason of sub-section (3) of section 51, the dissolution of the marriage, whether by death or otherwise and whether before or after the commencement of this Code, shall not affect in any way the legal status or rights under this Code of the children of such marriage or of their descendants.

Part IV page 15

27. Saving of prior marriages .—A marriage solemnised between Hindus before the commencement of this Code, which is otherwise valid, shall not be deemed to be invalid or ever to have been invalid, by reason only of the fact that the parties thereto belonged to the same *goira* or *pravara* or belonged to different castes or sub-divisions of the same caste.

Part I page 22 sec 17

51. Savings.—(1) Nothing contained in this Part shall be , deemed to affect any right conferred by the Madras, Marumakkaltayam Act, 1932 (Madras Act XXII of 1932) to obtain the dissolution of a sacramental marriage, whether solemnised before or after the commencement of this Code.

(2) Nothing contained in this Part shall affect any proceeding under any other law for the time being in force for dissolution of marriage or for nullity of marriage or for judicial separation pending at the date of the commencement of this Code, and any such proceeding may be continued and determined as if this Code had not been passed.

(55)

51B. Saving of pending proceedings*—Nothing contained in this Part shall affect any proceeding under any other law for the time being in force for the annulment of any marriage or for judicial separation pending at the date of the commencement of this Code, and any such proceeding may be continued and determined as if this Code had not been passed.

(56) PART III-ADOPTION

CHAPTER I *Adoption generally*

52. **Prohibition of adoption in contravention of this Part.**—(1) No adoption shall be made after the commencement of this Code by or to a male Hindu except in accordance with the provisions contained in this Part.

(2) Except in the cases referred to in sub-section (2) of section 66, any adoption made in contravention of this Part shall be void.

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

(57)

53. Requisites of a valid adoption.—No adoption shall be valid unless—(i) the person adopting has the capacity, and also the right, to lake

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; (iv) the adoption is completed by a physical giving and taking; and (v) the adoption complies with the other conditions mentioned in this Part.

(58) *Capacity to take in adoption*

54. Capacity of a male Hindu to take in adoption.—Any male Hindu who is of sound mind and has completed the age of eighteen years has the capacity to take a son in adoption;

Provided that a Hindu who has a wife living shall not adopt except with the consent of his wife or, if he has more than one wife, except with the consent of at least one of such wives, unless the wife or all the wives, as the case may be, is or are incapable of giving consent.

Explanation.—For the purposes of this section, a wile shall be deemed to be incapable of giving consent if she is of unsound mind or has *not* attained the age of eighteen years.

PART III-ADOPTION CIIAVTHR I *Adoption generally*

52. Prohibition of adoption in contravention of this part VI, secs. 1, 17,

Part.—(1) No adoption shall be made after the commencement of this Code by or to a male Hindu except in accordance pages 24, 27 with the provisions contained in this Part.

(2) Except in the case referred to in sub-section (2) of section 66, any adoption made in contravention of the provisions of this Part shall be void.

(3) An adoption which is void shall neither create any rights in the adoptive family in favour of any person which he could not have acquired except by reason of the adoption nor destroy the rights of any person in the family of birth. (56)

Part VI [page 24

53. 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; (iv) the adoption is completed

by a physical giving and taking; and (v) the adoption complies with the other conditions mentioned in this

Part. (57)

Capacity to take in adoption

Part VI sec. 5(1), *page 24*

54. Capacity of a *male* Hindu to take in adoption.—, Any male Hindu who is of sound mind and has completed the age of eighteen years has the capacity to take a son in adoption:

Provided that a Hindu shall not adopt except with the consent of his wife or, if he has more than one wife, except with the consent of at least one of such wives, unless the wife or all the wives, as the case may be, is or are incapable of giving consent.

Explanation.—For the purposes of this section, a wife shall be deemed to be incapable of giving consent if she is of unsound mind or has not attained the age of eighteen years. (58) (59)

55. Capacity of widow to take in adoption.—(1) Any Hindu widow who is of sound mind and has completed the age of eighteen years has the capacity to take a son in adoption to her husband. Provided that—

(a) her husband has not prohibited her from adopting, and (b) her power to adopt has not terminated;

(2) Nothing in sub-section (1) shall be deemed to prevent a Hindu widow who has not completed the age of eighteen years from adopting a boy named by her husband in any authority conferred on her in the manner hereinafter provided. (60)

56. Authority or prohibition in regard to adoption.—(1) Any male Hindu who has the capacity to take a son in adoption as aforesaid may authorise his wife to adopt a son to him after his death, or prohibit her from doing .so.

(2) Where there are more wives than one, the authority may be given to, or the prohibition imposed on, any or all of them.

(3) Where a Hindu who has left two or more widows, has expressly authorised any one or more of them to adopt a son, he shall be deemed to have prohibited the others from adopting.(61)

57. **Manner of giving authority or imposing prohibition or revoking the same.**—(1) No authority to adopt, and no prohibition of adoption, shall be valid unless given or imposed by an instrument registered under the Indian Registration Act, 1908 (XVI of 1908), or by a will executed in accordance with the provisions of section 63 of the Indian Succession Act, 1925 (XXXIX of 1925).

(2) Any authority or prohibition 80 given or imposed may be revoked either by an instrument registered, or a will executed, as aforesaid.

(3) If the authority or prohibition is given or imposed by a will, it may also be revoked in any of the other modes set out in section 70 of the Indian Succession Act, 1925 (XXXIX of 1925), as modified by Schedule III to that Act.

55. Capacity of widow to take in adoption.—(1) Any part VI, Hindu widow who is of sound mind and has completed the page 24. age of eighteen years has the capacity to take a son in adoption to her husband; Provided that—

(a) her husband has not expressly or impliedly prohibited her from adopting; and

(b) her power to adopt has not terminated.

(2) Nothing in sub-section (1) shall be deemed to prevent a Hindu widow who has not completed the age of eighteen years from adopting a boy named by her husband in any authority conferred on her in the manner hereinafter provided. (59)

56. Authority or prohibition in regard to adoption.— part VI, in page 24 (1) Any male Hindu who has the capacity to take a son, adoption as aforesaid may authorise his wife to adopt a son to him after his death, or prohibit her from doing so.

(2) Where there are more wives than one, the authority may be given to, or the prohibition imposed on, any or all of them.

(3) Where a Hindu who has left two or more widows, "has expressly authorised any one or more of them to adopt a son, he shall be deemed to have prohibited the others from adopting. (60)

Part VI page 24

57. Manner of giving authority or imposing prohibition, or revoking the same.—(1) No authority to adopt, and no, prohibition of adoption, shall be valid unless given or imposed by an instrument registered under the Indian Registration Act, 1908 (XVI of 1908), or by a will executed in accordance with the provisions of section 63 of the Indian Succession Act, 1925 (XXXIX of 1925).

(2) Any authority or prohibition so given or imposed may be revoked either by an instrument registered, or a will executed, as aforesaid.

(3) If the authority or prohibition is given or imposed by a will, it may also be revoked in any of the other modes set out in section 70 of the Indian Succession Act, 1925 (XXXIX of 1925), as modified by Schedule III to that Act. (61) (62)

58. Right *to* adopt as **between** two **or more** widows.—Where a Hindu has left two or more widows with capacity to take a son in adoption to him, the right to adopt is determined as between them in accordance with the following provisions :—

(a) If he has granted to all or any of them authority to adopt, indicating the order of preference in that behalf, the right to adopt shall follow that order.

(b) If he has given no such indication, the right to adopt shall follow the order of the seniority of the widows to whom authority has been granted, as determined by section 59.

(c) If he has neither authorised nor prohibited an adoption, the right to adopt shall follow the order of the seniority of the widows as determined by section 59.

(d) A widow having the right to adopt under clause (b) or clause (c) may renounce it in favour of the next senior widow by a registered instrument, if she does not so renounce it and if, without just cause, she either refuses, or fails within a reasonable time, to exercise her right when called upon to do so by the next senior or any other widow, the right shall pass to the next senior widow, and so on down to the last widow in the order of seniority. (63)

59. Seniority among wives and widows.—For the purpose of this Part, seniority among the wives or widows of a person is determined by the order in which they were married to him, the woman who was married earlier being reckoned senior to the woman who was married later. (64)

60. Widow's right to adopt not exhausted by previous exercise.— A widow may, subject to the provisions of this Part, adopt several sons in succession, one after the death of another, unless the authority, if any, conferred upon her by her husband otherwise provides.

Part VI, page 25.

58. Right to adopt as between two or more widows.— Where a Hindu has left two *or* more widows with capacity to take a son in adoption to him, the right to adopt is determined as between them in accordance with the following provisions :—

(a) If he has granted to all or any of them authority to adopt, indicating the order of preference in that behalf, the right to adopt shall follow that order.

(b) If he has given no such indication, the right to adopt shall follow the order of the seniority of the widows to whom authority has been granted, as determined by section 59.

(c) If he has neither authorised nor prohibited an adoption, the right to adopt shall follow the order of the seniority of the widows as determined by section 59.;

(c) A widow having the right .to adopt under clause (b) or clause (c) may renounce it in favour of the next senior widow by a registered instrument, if she does not so renounce it and if, without just cause, she either refuses, or fails within a reasonable time, to exercise her right when called upon to do so by the next senior or any other widow, the right shall pass to the next senior

widow, and so on down to the last widow in the order of seniority.

(d) (62) Part VI, page 25.

(e) 59. Seniority among wives and widows.—For the purpose of this Part, seniority among the wives or widows of a person is determined by the order in which they were married to him, the woman who was married earlier being reckoned senior to the woman who was married later. (63)

Part V page 25.

(f) 60. Widow's right to adopt not exhausted by previous, exercise.—-A widow may, subject to the provisions of this Part, adopt several sons in succession, one after the death of another, unless the authority, if any, conferred upon her by her husband otherwise provides.

(g) (64) (65)

61. Termination of widow's right.—(1) A widow's right to adopt terminates—

(a) when she remarries, or

(b) when any Hindu son of her husband dies leaving him surviving a Hindu son, widow or son's widow, or

(e) if she *ceases* to be a Hindu.

Explanation.—In this sub-section, son means a son, son's son, or son's sons' s son, whether by legitimate blood relationship or by adoption.

(2) The widow's right to adopt shall not revive after it has once terminated. (66) *Capacity to give in adoption*

62. Persons capable of giving in adoption.—(1) No person except the father or mother of the boy shall have the capacity to give the boy in adoption.

(2) Subject to the provisions of clauses (b) and (c) of sub-section (3), 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 where she is capable of giving consent.

(3) The mother may give the boy in adoption— (a) if the father is dead,

(b) if he has completely and finally renounced the world in any of the modes set forth in sub-section (1) of section 110 of Part VII,

(c) if he has ceased to be a Hindu, or (d) if he is not capable of giving consent:

Provided that the father has not prohibited her from doing so by an instrument registered under the Indian Registration Act, 1908 (XVI of 1908), or by a will executed in accordance with the provisions of section 63 of the Indian Succession Act, 1925 (XXXIX of 1925).

(4) The father or mother giving a boy in adoption must be of sound mind and must have completed the age of eighteen years.

Explanation.—For the purpose of this section,—

(i) the expressions " father ", or " mother " do not include an adoptive father

or an adoptive mother; and

(ii) a father or mother shall be deemed to be incapable of giving consent if he or she, as the case may be, is of unsound mind or has not completed the age of eighteen years.

Part V, sec. l0 page 25.

61. Termination of widow's right.—(1) A widow's right, to adopt terminates—

(a) when she remarries; or

(b) when any Hindu son of her husband dies leaving him surviving a Hindu son, widow or son's widow; or

(c) if she ceases to be a Hindu.

Explanation.—In this sub-section, son means a son, son's son, or son's son's son, whether by legitimate blood relationship or by adoption. (2) The widow's right to adopt shall not revive after it has once terminated. (65)

Capacity to give in adoption

Part V, page 25.

62. Persons capable of giving in adoption.—(1) No person except the father or mother of the boy shall have the capacity to give the boy in adoption.

(2) Subject to the provisions of clauses (b) and (c) of sub-section (3), 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 where she is capable of giving consent. (3) The mother may give the boy in adoption— (a) if the father is dead;

(b) if he has completely and Finally renounced the world in any of the modes set forth in sub-section (1) of section 110 of Part VII; (c) if he has ceased to be a Hindu; or (d) if he is not capable of giving consent:

Provided that the father has not prohibited her from doing so by an instrument registered under the Indian Registration Act, 1908 (XVI of 1908), or by a will executed in accordance with the provisions of section 63 of the Indian Succession Act, 1925 (XXXIX of 1925).

(4) The father or mother giving a boy in adoption must be of sound mind and must have completed the age of eighteen years. *Explanation.—F*or the purposes of this section,—

(i) the expressions " father ", or " mother " do not include an adoptive father or an adoptive mother; and

(ii) a father or mother shall be deemed to be incapable of giving consent if he or she. as the case may be, is of unsound mind or has not completed the age of eighteen years. (66) (67)

Capacity to be taken in adoption

63. Who may be adopted.—(1) No female shall be adopted by or to any male or female Hindu.

(2) No boy shall be capable of being taken in adoption, unless the following conditions are satisfied, namely, that— (i) he is a Hindu; (ii) he has not been married; (iii) he has not been already adopted; (iv) he has not completed the age of fifteen years. (68)

64. Certain persons declared capable of being adopted.—For the avoidance of doubt, it is hereby declared that the adoption of the following persons is permissible, namely :— (i) the eldest or the only son of his father;

(ii) the son of a woman whom the adoptive father could not have legally married, and in particular, is daughter's son, sister's son, or mother's sister's son: and (iii) a stranger although near relatives of the adoptive father exist.

(69) *Essential ceremonies*

65. Completion of adoption.—An adoption is not valid and binding unless the boy to be adopted is physically given and taken in adoption by the parents concerned or under their authority, with intent to transfer him from the family of his birth to the family of his adoption.

Explanation.—The performance of the *Datta homan* is not essential to the validity of an adoption.

Part VI, Sec. 3, page 24.

Part VI, sec. 13, page 26.

Capacity to be taken in adoption

63. Who maybe adopted.—(1) No female shall be adopted by or to any male or female Hindu.

(2) No boy shall be capable of being taken in adoption, unless the following conditions are satisfied, namely, that— (i) he is a Hindu; (ii) he has not been married; (iii) he has not been already adopted; (iv) he has not completed the age of Fifteen years.

(67) **Part VI,** page 26.

64. Certain persons declared capable of being adopted.—For the avoidance of doubt, it is hereby declared that the adoption of the following persons is permissible, namely:—

(i) the eldest or the only son of his father; (ii) the son of a woman whom the adoptive father could not have legally married, and in particular, is daughter's son, sister's son, or mother's sister's son; and (iii) a stranger although near relatives of the adoptive father exist.

(68)

Essential ceremonies

Part VI, sec. 15, page 26.

65. Completion of adoption.—An adoption is not valid and binding unless the boy to be adopted is physically given and taken in adoption by the parents

concerned or under their authority, with intent to transfer him from the family of his birth to the family of his adoption.

Explanation.—The performance of the *Datta homan* is not essential to the validity of an adoption.

(69)

(70) *Other conditions for adoption*

66. Other conditions.—(1) In every adoption, the following conditions must be complied with :—

(i) The adoptive father by or to whom the adoption is made must have no Hindu son, son's son, or son's son's son (whether by legitimate blood relationship or by adoption) living at the time of adoption.

Explanation.—A person not actually born at the time of adoption, although he may then be in the womb and is subsequently born alive, is not said to be living at the time of adoption for the purposes of this clause.

(ii) The same boy may not be adopted simultaneously by or to two or more persons nor may two or more boys be simultaneously adopted by or to the same person.

(iii) Every adoption must be made with the free consent of the person giving and of the person taking in adoption.

(2) Where the consent of the person giving or of the person taking in adoption has been obtained by coercion, undue influence, fraud, misrepresentation or mistake, either party may sue for a declaration that the adoption is invalid: Provided that the Court shall dismiss such suit—

(a) if the suit is Filed more than two years after the coercion or undue influence had ceased or the fraud, misrepresentation or mistake had been discovered; or

(b) if the person whose consent has been so obtained has confirmed the adoption after the coercion, undue influence has ceased, or after the fraud, misrepresentation or mistake has been discovered, as the case may be, and such confirmation does not prejudice the rights of others. (3) Where no suit is brought within the lime limit specified in clause (a) of sub-section (2) or Where an adoption has been confirmed under clause (b) of the said sub-section it shall be deemed to be valid and effectual for all purposes as from the date of adoption.

Part VI, **sec. 16,** page 26.

Other conditions for adoption 66. Other conditions.—(1) In every adoption, the following conditions must be complied with :—

(i) The adoptive father by or to whom the adoption is made must have no Hindu son, son's son, or son's son's son (whether by legitimate blood relationship or by adoption) living at the time of adoption.

Explanation.—A person not actually born at the time of adoption, although he may then be in the womb and is subsequently born alive, is not said to be living at the time of adoption for the purposes of this clause.

(ii) The same boy may not be adopted simultaneously by or to two or more persons nor may two or more boys be simultaneously adopted by or to the same person.

(iii) Every adoption must be made with the free consent of the person giving and of the person taking in adoption.

(2) Where the consent of the person giving or of the person taking in adoption has been obtained by coercion, undue influence, fraud, misrepresentation or mistake, either party may sue for a declaration that the adoption is invalid: Provided that the Court shall dismiss such suit—

(a) if the suit is filed more than two years after the coercion or undue influence had ceased or the fraud, misrepresentation or mistake had been discovered; or

(b) if the person whose consent has been so obtained has confirmed the adoption after the coercion, undue influence has ceased, or after the fraud, misrepresentation or mistake has been discovered, as the case may be, and such confirmation does not prejudice the rights of others. (3) Where no suit is brought within the time limit specified in clause (a) of sub-section (2) or where an adoption has been confirmed under clause (b) of the said sub-section it shall be deemed to be valid and effectual for all purposes as from the date of adoption.

(70)

(71) CHAPTER II *Effects of adoption*

67. Effects of adoption.—An adopted son shall be deemed to be the son of his adoptive father for all purposes with effect from the date of the adoption and from such date all his ties in the family of his birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family.

Provided that—

(a) he cannot marry any person whom he could not have married if he had continued in the family of his birth;

(b) any property which vested in him before the adoption shall continue to vest in him subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his birth;

(c) the adopted son shall not divest any person of any estate which vested in him or her before the adoption, except in the manner and to the extent specified in section 68. (72)

68. Divesting of estates by adoption.—Where, after the commencement

of this Code, a widow makes an adoption, the adopted son shall take—

(a) one-half of the estate inherited by her and her co-widows, if any, as the heirs of the adoptive father

* * * *;

(b) if the adoption is made after the death of a son, son's son, son's son's son of the adoptive father, one-half of the estate the adoptive mother and her co-widows, if any, inherited from the adoptive father, and in addition, one-half of the estate inherited by the adoptive mother as the heir of her son, son's son, or son's son's son, the share in the estate in each case being determined as it stood immediately before the adoption:

Provided that if the whole estate or any part thereof inherited by her or them is impartible by custom, usage or by the terms of any grant or enactment, the adopted son shall have the whole of such impartible estate as it stood immediately before the adoption in addition to what he may be entitled to under clause (a) or clause (b).

* * * * *

CHAPTER II Effects of adoption Part VI, page 27

67. Effects of adoption.—An adopted son shall be deemed to be the son of his adoptive father for all purposes with effect from the date of the adoption and from such date all his ties in the family of his birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family.

Provided that—

(a) he cannot marry any person whom he could not have married if he had continued in the family of his birth;

(b) any property which vested in him before the adoption shall continue to vest in him subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his birth;

(c) the adopted son shall not divest any person of any estate which vested in him or her before the adoption, except in the manner and to the extent specified in section 68. (71) Part VI, sec. 19, page 27.

68. Divesting of estates by adoption.—(1) Where, after the commencement of this Code, a widow makes an adoption, the adopted son shall take—

(a) one-half of the estate inherited by her and her co-widows, if any, as the heirs of the adoptive father as it stood immediately before the adoption;

(b) if the adoption is made after the death of a son, son's son, son's son's son of the adoptive father, one-half of the estate the adoptive mother and her co-widows, if any, inherited from the adoptive father, and in addition, one-half of the estate inherited by the adoptive mother as the heir of her son, son's son, or son's son's son, the share in the estate being determined as it stood

immediately before the adoption:

Provided that if the whole estate or any part thereof inherited by her or them is impartible by custom, usage or by the terms of any grant or enactment, the adopted son shall have the whole of such impartible estate as it stood immediately before the adoption in addition to what he may be entitled to under clause (a) or clause (b).

(2) The provisions of sub-section (1) shall apply in respect of agricultural land, wherever situate in the Provinces of India. (72) (73)

69. Right of adoptive to dispose of their properties.—Subject to any agreement to the contrary, an adoption does not deprive the adoptive father or mother of the power to dispose of his or her property by transfer *inter vivos* or by will. (74)

70. **Determination of the adoptive mother in case of adoption by widower.**—(1) Where a Hindu who has a wife living adopts a son, she shall be deemed to be the adoptive mother.

(2) Where a Hindu has more than one wife living—

(i) that wife in association with whom or with whose consent he makes the adoption, or

(ii) if more than one wife has been so associated or has so consented, the senior most in marriage among the wives so associated or consenting; shall be deemed to be the adoptive mother, and the other wives the stepmothers, of the adopted son.

(3) Where a widower adopts at any time after his wife's death, the wife who died last immediately preceding the adoption, shall be deemed to be the adoptive mother, and any other predeceased wife or any wife subsequently married by him shall be deemed to be the step-mother, of the adopted son, unless the adoptive father has directed or given a clear indication that some other of such wives shall be deemed to be the adoptive mother; in which case, any predeceased wife who is not the adoptive mother and any wife subsequently married by the adoptive father shall be deemed to be the stepmothers of the adopted son.

(4) Where a bachelor adopts, any wife subsequently married by him shall be deemed to be the step-mother of the adopted son.

Part VI, page 27.

69. Right of adoptive parents to dispose of their properties.—Subject to any agreement to the contrary, an ' adoption does not deprive the adoptive lather or mother of the power to dispose of his or her property by transfer *inter vivos* or by will. (73) **Part VI, sec. 22** page 27, 28.

70. Determination of the adoptive mother in case of adoption by widower.—(1) Where a Hindu who has a wife living adopts a son, she shall be

deemed to be the adoptive mother.

(2) Where a Hindu has more than one wife living—

(i) that wife in association with whom or with whose consent he makes the adoption, or

(ii) if more than one wife has been so associated or has so consented, the senior most in marriage among the wives so associated or consenting;

shall be deemed to be the adoptive mother, and the oilier wives the stepmothers of the adopted son.

Part VI sec 22*(3),* page 28.

(3) Where a widower adopts at any time after his wife's death, the wife who died last immediately preceding the adoption, shall be deemed to be the adoptive mother, and any other predeceased wife or any wife subsequently married by him shall be deemed to be the step-mother, of the adopted son, unless the adoptive father has directed or given a clear indication that some other of such wives shall be deemed to be the adoptive mother; in which case, any predeceased wife who is not the adoptive mother and any wife subsequently married by the adoptive father shall be deemed to be the stepmothers of the adopted son.

(4) Where a bachelor adopts, any wife subsequently married by him shall be deemed to be the step-mother of the adopted son. (74) (75)

71. Determination of the adoptive mother in case of adoption by widow.—(1) Where one of several widows of a deceased Hindu makes an adoption, she shall be deemed to be the adoptive mother, and the other widows the step-mothers, of the adopted son.

(2) Where two or more widows jointly make an adoption, the senior most in marriage among the widows shall be deemed to be the adoptive mother, and the other widow or widows the step-mother or step-mothers, of the adopted son. (76)

72. **Valid adoption not to be cancelled.**—No adoption which has been validly made can be cancelled by the adoptive father or mother or any other person, nor can the adopted son renounce his status as such adopted son and return to the family of his birth. (77)

73. Certain agreements to he void.—An agreement not to adopt, or curtailing the rights of an adopted son, is void.

Part VI, page 28 sec. 23

71. Determination of the adoptive mother in case of adoption by widow.—(1) Where one of several widows of a deceased Hindu makes an adoption, she shall be deemed to be the adoptive mother, and the other widows the stepmothers, of the adopted son.

(2) Where two or more widows jointly make an adoption, the senior most in

marriage among the widows shall be deemed to be the adoptive mother, and the other widow or widows the step-mother or step-mothers, of the adopted son.

(75)

72. **Valid adoption not to be cancelled.**—No adoption which has been validly made can be cancelled by the adoptive father or mother or any other person, nor can the adopted son renounce his status as such and return to the family of his birth. (76)

Part VI, page 27. (77)(78)

73. Certain agreements to be void.—An agreement not to adopt, or curtailing the rights of an adopted son, is void.

CHAPTER III

Registration or record of adoptions

74. **Registration and proof of adoptions.**—(1) The State Government may, by notification in the Official Gazelle, direct that in the State or in such areas as may be specified in the notification, no adoption made under the provisions of this Part shall be valid unless evidenced by a document in writing duly registered under any law for the time being in force relating to the registration of documents.

(2) Where an adoption is required to be evidenced by a registered document under sub-section (1) no evidence shall be given in proof of such adoption except the document itself.

74A. Recording of adoptions in cases to which section 74 does not apply.—Where no notification has been issued under section 74, the State Government may, for the purpose of facilitating the proof of any adoption made under the provisions of this Part, by rules, provide that particulars relating to such adoption shall be entered in the Register of Adoptions maintained in this behalf by such authority as may be appointed for this purpose by the State Government:

Provided that an application is made to such authority in the manner specified in section 75. (79)

75. **Application when to he made and particulars to be set out therein.**—The application under section 74A shall be signed by the person taking, and the person giving, in adoption and shall be made within ninety days of the adoption, it shall state the following particulars and such other particulars as may be prescribed:— (i) the date of the adoption; (ii) the form of the adoption;

(iii) the name or names, and the age or ages, of the person or persons taking in adoption;

(iv) if the adoptive father is a married man, the name of his wife; and if he is

a widower the name of his pre-deceased wife;

If there are two or more wives or pre-deceased wives, their names, the order in which, and the dates on which, they were married to him, and the name of the wife or pre-deceased wife who is the adoptive mother, if any;

(v) if the person adopting is a woman, the name of her husband and the names of her co-wives or co-widows, if any; (vi) the name and age of the person giving in adoption; (vii) the name of the adopted boy in the family of his birth; (viii) the age of the adopted boy; and (ix) the name of the adopted boy in the family of his adoption.

CHAPTER III *Record of adoptions*

Part VI, page 29.

74. **Application for recording of adoption.**—When an adoption has been made under the provisions of this Part and the parties thereto desire to have the adoption recorded in the Register of Adoptions maintained for this purpose, they may apply in this behalf' to such authority as may be appointed for this purpose by the Provincial Government, by notification in the official Gazette, and who has jurisdiction in the place where the adoption was made.(78)

Part VI, page 29.

75. **Application when to be made and particulars to be set out therein.**—The application shall be signed by the person taking, and the person giving, in adoption and shall be made within ninety days of the adoption. It shall state the following particulars and such other particulars *as* may be prescribed :—

(i) the date of the adoption; (ii) the form of the adoption ',

(iii) the name or names, and the age or ages, of the person or persons talking in adoption;

(iv) if the adoptive father is a married man, the name of his wife; and if he is a widower the name of his pre-deceased wife;

If there are two or more wives or pre-deceased wives, their names, the order in which, and the dates on which, they were married to him, and the name of the wife or pro-deceased wife who is the adoptive mother, if any;

(v) if the person adopting is a woman, the name of her husband and the names of her co-wives or co-widows, if any; (vi) the name and age of the person giving in adoption; (vii) the name of the adopted boy in the family of his birth: (viii) the age of the adopted boy: and (ix) the name of the adopted boy in the family of his adoption. (79) (80)

76. Recording of adoption.—If the authority appointed under section 74A is satisfied that the application has been signed by the person taking and the person giving in adoption and that the adoption has taken place as stated, he

shall cause a record of the adoption to be made in the Register of Adoption.

76. Recording of adoption.—If the authority appointed under section 74A is satisfied that the application has been signed by the person taking and the person giving in adoption and that the adoption has taken place as stated, he shall cause a record of the adoption to be made in the Register of Adoption. (80)

(81) PART IV—MINORITY AND GUARDIANSHIP

77. **Definitions.**—In this Part—

(a) " minor " means a person who has not completed the age of eighteen years;

(b) " natural guardian " means any of the guardians referred to in section 78, but does not include a guardian— (i) appointed by the will of the minor's father, or (ii) appointed or declared by a court, or

(iii) empowered to act as such by or under any enactment relating to any court of wards.

(82)

78. Natural guardians of a Hindu minor.—The natural guardians of a Hindu minor, in respect of the minor's person as well as in respect of the minor's properly are—

(a) in the case of a boy or unmarried girl—the father, and after him, the mother : provided that the custody of a minor who has not completed the age of three years shall ordinarily be with the mother;

(b) in the case of an illegitimate boy or an illegitimate unmarried girl— the mother and 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 in any of the modes set forth in sub-section (1) of section 110.(83)

79. Natural **guardianship of adopted** son.—The natural guardianship of an adopted son who is a minor passes, on adoption, from the family of his birth to the family of his adoption.

PART IV— MINORITY AND GUARDIANSHIP

Part V, page 22.

77. **Definitions.**—In this Part—

(a) " minor " means a person who has not completed the age of eighteen years: (h) " natural guardian " means any of the guardians referred to in section

78, but does not include a guardian— (i) appointed by the will of the minor's father, or (ii) appointed or declared by a court, or (iii) empowered to act as

such by or under any enactment relating to any Court of Wards. (81)

Part V, page 22

78. Natural guardians of a Hindu minor.—The natural guardians of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property are—

(a) in the case of a boy or unmarried girl—the father, and after him, the mother : provided that the custody of a minor who has not completed the age of three years shall ordinarily be with the mother;

(b) in the case of an illegitimate boy or an illegitimate unmarried girl— the mother and 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 in any of the modes set forth in sub-section (1) of section 110.(82)

Part V, page 22.

79. Natural guardianship of adopted son.—The nature sec. 5 guardianship of an adopted son who is a minor passes, on adoption, from the family of his birth to the family of his adoption. (83)

(84)

80. Power of natural guardian.—(1) The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.

(2) The natural guardian shall not, without the previous permission of the court—

(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor; or

(b) lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

(3) Any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2), is voidable at the instance of the minor or any other person affected thereby.

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

(5) The Guardians and Wards Act, 1890 (VIII of 1890), shall apply to, and in

respect of, an application for obtaining the permission of the court under sub-section (2) in all respects as if it were an application for obtaining the permission of the court under section 29 of that Act, and in particular—

(a) proceedings in connection with the application shall be deemed to be proceedings under that Act within the meaning of section 4A thereof;

(b) the court shall observe the procedure and have the powers specified in sub-sections (2), (3) and (4) of section 31 of that Act; and

(c) an appeal shall lie to the High Court from an order of the court refusing permission to the natural guardian to do any of the acts mentioned in sub-section (2) of this section.

(6) In this section, " court " means the district court within the local limits of which the immovable property in respect of which the application is made, or any part thereof, is situated, or a court empowered under section 4A of the Guardians and Wards Act, 1890 (VIII of 1890).

80. Power of natural guardian.—(1) The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.

(2) The natural guardian shall not, without the previous permission of the court—

(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor; or

(b) lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

(3) Any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2), is voidable at the instance of the minor or any other person affected thereby.

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

(5) The Guardians and Wards Act, 1890 (VIII of 1890), shall apply to, and in respect of, an application for obtaining the permission of the court under sub-section (2) in all respects as if it were an application for obtaining the permission of the court under section 29 of that Act, and in particular—

(a) proceedings in connection with the application shall be deemed to be proceedings under that Act within the meaning of section 4A thereof;

(b) the court shall observe the procedure and have the powers specified in

sub-sections (2), (3) and (4) of section 31 of that Act; and

(c) an appeal shall lie to the High Court from an order of the court refusing permission to the natural guardian to do any of the acts mentioned in sub-section (2) of this section.

(6) In this section, " court " means the district court within the local limits of which the unmovable property in respect of which the application is made, or any part thereof, is situated, or a court empowered under section 4A of the Guardians and Wards Act, 1890 (VIII of 1890).

(84)

(85)

81. Revocation of authority by natural guardian.—Where the natural guardian of a Hindu minor authorises another person to take charge of the minor, the authority is revocable except—

(a) where it is not in the interests of the minor to permit revocation; or

(b) where the natural guardian has ceased to he a Hindu; or (e) where for any other sufficient cause, it is not desirable to permit revocation.

(86)

82. Testamentary guardian and his powers.—(1) A Hindu father may, by will, appoint a guardian for any of his minor legitimate children in respect of the minor's person, or in respect of the minor's property, or in respect of both;

Provided that nothing in this section shall be deemed to authorise any person to act as the guardian of the person of the minor if the mother is alive and is capable of acting as the natural guardian of her minor child.

(2) The guardian so appointed has, after the death of the father, the right to act as the minor's guardian, and to exercise all the rights of a natural guardian under this Part to such extent and subject to such restrictions, if any, as may be specified in the will.

(3) Subject to the provisions of this Part, a Hindu widow may, by will appoint a guardian for any of her minor children in respect of the person of the minor;

Provided that her husband has not already by will appointed any person to be the guardian of the person of such child.

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

(87)

83. Duty of guardian regarding religious upbringing of minor.—it shall be the duty of the guardian of a Hindu minor to bring up the minor in the religion of the father of the minor.

(88)

84. De facto guardian not to deal with minor's property.—After the commencement of this Code, no person shall be entitled to dispose of, or

deal with, the property of a Hindu minor merely on the ground of his or her being the *de facto* guardian of the minor.

Part V, page, 23.

81. Revocation of authority by natural guardian.— Where the natural guardian of a Hindu minor authorises another person to take charge of the minor, the authority is revocable except—

(a) where it is not in the interests of the minor to permit revocation '. or

(h) where the nature guardian has ceased to be a Hindu; or (c) where for any other sufficient cause, it is not desirable to permit revocation. (85)

Part V, sec. 8,

82. Testamentary guardian and his powers.—(1) A Hindu father may, by will, appoint a guardian for any of his minor legitimate children in respect of the minor's person, or in respect of the minor's property, or in respect of both;

Provided that nothing in this section shall be deemed to authorise any person to act as the guardian of the person of the minor if the mother is alive and is capable of acting as the natural guardian to her minor child.

(2) The guardian so appointed has, after the death of the father, the right to act as the minor's guardian, and to exercise all the rights of a natural guardian under this Part to such extent and subject to such restrictions, if any, as may be specified in the will.

(3) Subject to the provisions of this Part, a Hindu widow may, by will, appoint a guardian for tiny of her minor children in respect of the person of the minor:

Provided that her husband has not already by will appointed any person to he the guardian of the person of such child.

(4) The right of the guardian so appointed shall, where the minor is a girl, cease on her marriage. (86)

Part V, page 23.

83. Duty of guardian to bring up minor as a Hindu—It shall be the duty of the guardian of a Hindu minor to bring up the minor as a Hindu. (87)

Part V, sec. 1**0.** page 23.

84. De facto guardian not to deal with minor's property.—After the commencement of this Code, no person shall be entitled to dispose of or deal with, the property of a Hindu minor merely on the ground of his or her being the *de facto* guardian of the minor. (88)

(89)

85. Welfare of minor to be paramount consideration.—In the appointment or declaration of any person as guardian of a Hindu minor by a court, the welfare of the minor shall be the paramount consideration and no person shall be entitled to the guardianship by virtue of the provisions of this Part or of

section 24, if the Court is of opinion that his or her guardianship will not be for the welfare of the minor.

Part V, page 22.

85. Welfare of minor to he paramount consideration.— In the appointment or declaration of any person as guardian of a Hindu minor by a court, the welfare of the minor shall be the paramount consideration and no person shall be entitled to the guardianship by virtue of the provisions of this Part or of section 24, if the Court is of opinion that his or her guardianship will not be for the welfare of the minor. (89)

(90) PART V.—JOINT FAMILY AND CO-PARCENARY

CHAPTER I *General*

86. Abrogation of right by birth and survivorship generally.—Except in the causes and to the extent expressly provided in this Part, no Hindu shall after the commencement of this Code, acquire any right to or interest in—

(a) any property of an ancestor during his lifetime merely by reason of the fact that he is born in the family of the ancestor, or

(b) any joint family property which is founded on the rule of survivorship.

(91)

87. Joint tenancy to be replaced generally by tenancy-in-common.— Except in the cases and to the extent expressly provided in this Part, all persons holding, on the commencement of this Code, any property jointly as members of a joint family shall be deemed to hold the property as tenants-in-common, as if a partition had taken place between them as respects such property on such commencement and as if each one of them is holding his or her own share separately as full owner thereof; Provided that nothing in this section shall affect the right to maintenance and residence, if any, of the members of the joint family other than the persons who have become entitled to hold their shares separately, and any such right can be enforced as if this Code had not been passed.

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PART V.—JOINT FAMILY PROPERTY

Part IIIA, page 12.

86. Birth in family not to give rise to rights in property—On and after the commencement of this Code, no right to claim any interest in any property of an ancestor during his lifetime, which is founded on the mere fact that the claimant was born in the family of the ancestor shall he recognised in any Court.

Explanation.—In this section, " property " includes both movable and immovable properly, whether ancestral or not and whether acquired jointly with other members of the family or by way of accretion to any ancestral

property or in any other manner whatsoever.

(90)

Part IIIA, sec, 2, page 11.

87. Joint tenancy to be replaced by tenancy-in-common.—*On* and after the commencement of this Code, no Court shall recognise any right to or interest in any joint family property, based on the rule of survivorship; and all persons holding any joint family property on the day this Code comes into force shall be deemed to hold it as tenants-in-common as if a partition had taken place between all the members of the joint family as respects such property on the date of the commencement of this Code and as if each one of them is holding his or her own share separately as full owner thereof:

Provided that nothing in this section shall affect the right to maintenance and residence, if any, of the members of the joint family other than the persons who have become entitled to hold their shares separately, and any such right can be enforced as if this Code had not been passed:

Provided further that in the case of any female who becomes entitled to hold any share separately under the provisions of proviso, this section, she shall only take the limited estate known as the Hindu woman's estate under the law in force before the' commencement of this Code and on her death such estate shall revert to the persons entitled thereto under the law in force prior to the commencement of this Code.

(91)

(92)

88. Rule of pious obligation abrogated.—(1) After the commencement of this Code, no court shall, save as provided in sub-section (2), recognise any right to proceed against any male lineal descendant for the recovery of any debt due from tiny of his paternal ancestors or any alienation of property in respect of or in satisfaction of any such debt on the ground of the pious obligation of such descendant to discharge any such debt.

(2) In the case of any debt contracted before the commencement of this Code, nothing contained in sub-section (1) shall affect— (a) the right of any creditor to proceed against any such descendant, or (b) any alienation made in respect of or in satisfaction of any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as would have been the case if this Code had not been passed.

Explanation.—For the purposes of sub-section (2) the expression " such descendant " shall be deemed to refer to the male lineal descendant who was born or adopted prior to the commencement of this Code.

(93)

89. Liability of members of joint family for debts before Code not affected.—Where a debt has been contracted before the commencement of this Code by the meager or *Kurta* of a joint family for family purposes, nothing herein contained shall affect the liability of any member of the joint family to discharge any such debt, and any such liability may be enforced against all or any of the persons liable therefore in the same manner and to the same extent as would have been the case if this Code had not been passed.

88. Rule of pious obligation of Hindu son abrogated—(1) After the commencement of this Code, no court shall, save as provided in sub-section (2), recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather any alienation of property in respect of, or in satisfaction of, any such debt on the ground of the pious obligation of the son, grandson or great-grandson to discharge any such debt.

(2) In the case of any debt contracted before the commencement of this Code, nothing contained in sub-section (1) shall affect—

(a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be, or,

(b) any alienation made in respect of, or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as would have been the case if this Code had not been passed.

Explanulion.—For the purposes of sub-section (2) the expression " son, grandson, or great-grandson " shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of this Code.

(92)

89. Liability of members of joint family for debts before Code not affected.—Where a debt has been contracted before the commencement of this Code by the manager or *Karta* of a joint family for family purposes, nothing herein contained shall affect the liability of any member of the joint family to discharge any such debt, and any such liability may be enforced against all or any of the persons liable therefore in the same manner and to the same extent as would have been the case if this Code had not been passed.

(94)

CHAPTER II

Mitaksham Co-parcenary

90. Application of Chapter.—This Chapter applies to Hindus who would have been governed by the mitakshm'a school of Hindu law *if* this Code had

not been passed.

90A. Detinition.—In this Chapter,—

"ancestral properly" means any properly acquired by a male Hindu by way of inheritance from his father, father's father or father's father's father, and includes—

(a) any share in the property of any such paternal ancestor allotted to him on partition, and

(b) any accretions to ancestral property; but shall not be deemed to include—

(i) any gains of learning as defined in the Hindu Chains of Learning Act, 1930 (XXX of 1930), acquired by him;

(ii) any property acquired by him otherwise than by way of inheritance;

(iii) any property acquired by him by way of inheritance from any person other than any of the three immediate paternal ancestors, and

(iv) any other separate property in his possession, although all or any of such properties are for the time being shared by him jointly with a co-parcener.

Explanation.—Accretions to ancestral property include income from such property, property purchased or acquired out of such income or with the assistance of such properly, the proceeds of sale of such properly, and property purchased out of such proceeds;

90B. Co-parcenary.—(1) A person becomes a co-parcener if the following conditions are fulfilled, namely:— (i) that he—

(a) has either inherited any ancestral property, or (b) is born in the family of the person who has inherited any such property and is a lineal descendant of such person in the male line; and

(ii) that in the case of any person referred to in sub-clause (b) of clause (i) he is not for the time being removed more than four degrees— (a) from the person who has inherited any such property, or (b) from any of the descendants of any person who has so inherited and who is the oldest living paternal ancestor of that person in the male line.

(2) For the purpose of computing the number of degrees under sub-section (1), the person concerned and the person with respect to whom the relationship is to be traced shall each be counted as one degree.

(3) When there is a partition among the members of a co-parcenary, the co-parceners who have separated shall cease to be co-parceners with respect to each other; but it shall not be presumed, until the contrary is proved :—

(a) that each of the persons so separating has, by reason only of such separation, ceased to be a co-parcener with respect to his own descendants in the male line; or

(b) that, where only one co-parcener has so separated, the remaining members of the co-parcenary have, by reason only of such separation, ceased to be co-parceners as amongst themselves. (4) " Co-parcenary " is a body of two or more male persons who are for the lime being co-parceners.

(95)

90C. Incidents of co-parcenary property.—The following rules shall apply to any ancestral property acquired, whether before or after the commencement of this Code, by a member of a co-parcenary:—

(a) every co-parcener shall by reason of his birth in the family of the person acquiring ancestral property have an interest in the property equal to that of his father;

(b) all the members of the co-parcenary shall hold the property as joint tenants;

(c) on the death of any co-parcener (other than the sole surviving member) his interest in the property shall devolve by survivorship on the surviving members of the co-parcenary and not by succession on his heirs ;

(d) notwithstanding anything confined in clause (c), where a coparcener dies, his widow and daughter shall amongst themselves have in the property—

(i) in the case of the widow, an interest equal to that of the son, (ii) in the case of an unmarried daughter, an interest equal to onehalf of that of the son and, in the case of a married daughter, one quarter *of* that of the son.

(96)

90D. Extent of right of co-parcener to alienate co-parcenary property.—Neither any co-parcener nor any female who acquires an interest in any ancestral property by reason of the provisions contained in clause (d) of section *90C* shall, by reason merely of the fact of being a co-parcener or of having acquired such interest, be entitled to transfer or charge in any way the property except his or her undivided or other interest therein, and no court shall, in execution of any decree passed against any such member or female, proceed against any ancestral property otherwise than against the interest in the property belonging to such co-parcener or female, as the case may be.

(97)

90E. Right to claim partition of co-parcenary property.—(1) Any co-parcener and any female who has acquired an interest in ancestral properly by reason of the provisions contained in clause (d) of section 90C may, at any tune, claim partition and separate enjoyment of his or her share in the properly whether or not the other parties concerned are agreeable thereto. (2) Where any female who has acquired any such interest as is referred to in sub-section (1) dies without claiming partition and obtaining separate

enjoyment of her share in the property, her interest in the property shall, on her death, revert to the members of the co-parcenary.

(98)

90F. Right of co-parcener to buy off the share of another co-parcener, etc., in certain cases.—Notwithstanding anything contained in section 90D a co-parcener may require any other co-parcener who has ceased to be a Hindu by conversion to another religion or a female who has acquired an interest in ancestral property by reason of the provisions contained in clause (d) of section 90C to take his or her share in the ancestral property for separate enjoyment and thereupon the provisions of the Partition Act, 1893 (IV of 1893), shall apply as if there was a partition and as if the co-parcener who has ceased to be a Hindu or the female, as the case may be, were the transferee of a share of a dwelling house belonging to the co-parcenary.

(99)

90G. Allotment of shares on partition.—The following rules shall apply to regulate the allotment of shares to the members of a co-parcenary on a partition being made amongst them, namely:—

(a) where the petition is between a father and his sons, each son shall take a share equal to that of his father;

(b) where the partition is between brothers, they. shall lake equal shoes', (c) where the partition is between co-parceners belonging to different branches of the family, the property shall be divided amongst the branches equally *per stripes;*

(d) where the partition is between co-parceneras belonging to the same branch, the property shall be divided equally amongst them *per capita.*

(100)

90H. Termination of coparcenary.—So long as there is no other coparcener in the family, every person who acquires any ancestral properly shall be entitled to hold the property as an absolute owner, and on his death, the property shall devolve on his heirs by succession and not by survivorship.

(101) CHAPTER III

Marumakkattayam, Aliyasantana and Nambudri joint families

901. Special provisions repecting Marumakkattayam, Aliyasantana and Namhudri joint families.—Nothing contained in this Part shall apply to any *tarwad, tavazhi, kutumba, kavaru* or *illom* to which the Marumakkattayam, Aliyasantana or Nambudri law would have applied if this Code had not been passed, and, notwithstanding anything contained in this Code, all matters relating to the rights (whether by way of succession or otherwise) of any person in, or the management or partition of, any such *tarwad, tavashi, kutumba, kavaru* or *illom* and of its "properties shall continue to be regulated

by the law which was applicable thereto immediately before the commencement of this Code, as if that law had not been repealed by this Code.

(102)

CHAPTER IV

Miscellaneous

90J. Savings.—Nothing contained in this Part shall apply lo—

(a) any estate which descends to a single heir by a customary rule of succession or by the terms of any grant or enactment; or

(b) any estate attached to a *sthanam* (position of dignity) and enjoyed by a single person from time to time in accordance with any law, custom or usage in force in the State of Travancore-Cochin or in the districts of Malabar, South Canara *and* Nilgiris of the Suite of Madras; or

(c) the following estates situated in the State of Travancore-Cochin, namely:—

Idapally, Poonjar and Kilimanoor Estates and the Valiamma Thampuran Kovilagam Estate including the Palace Fund.

90. Saving of impartible estates.—Nothing contained in this Part shall apply to any estate which descends to a single heir by a customary rule of succession or by the terms of any grant or enactment.

(102)

(103) **PART VI.—**

WOMAN'S PROPERTY

91. Nature of woman's property.—(1) Any property acquired by a woman after the commencement of this Code shall be her absolute property.

(2) Nothing in sub-section (1) shall apply to any property acquired by a woman by way of gift or under a will where the terms of the gift or the will, expressly or by necessary implication, prescribe a restricted estate in such property:

Provided that no such implication shall arise by reason only of her sex. *Explanation.*—In this section " property " includes both movable and immovable property acquired by a woman, whether such acquisition was made before, at or after marriage or during widowhood and whether by inheritance or devise, or on partition, or in lieu *of* maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, or by her own skill or exertion or by purchase or by prescription or in any other manner whatsoever.

(104)

92. Devolution of woman's property.—(1) Where any woman dies after

the commencement of this Code any property acquired by her whether such acquisition was made before or after the commencement of this Code, shall, in so far as it consists of heritable property, devolve on her own heirs in the manner laid down in Part VII.

(2) Nothing in sub-section (1) shall apply to the property of a woman in which she had, at the time of her death, only the limited estate known as the Hindu woman's estate, and such property shall devolve as hereunder—

(i) where such limited estate was obtained by inheritance it shall devolve on the persons who under Part VII would have been the heirs of the last full owner thereof if such owner had died intestate immediately after her; (ii) where such limited estate was obtained by partition or in any other manner not herein provided for it shall devolve on the persons who would have been entitled to it if this Code had not been passed.

PART VI—WOMAN'S PROPERTY

91. Nature of woman's property.—(1) Any property Part II acquired by a woman after the commencement of this Code page 9. shall be her absolute property.

(2) Nothing in sub-section (1) shall apply to any property acquired by a woman by way of gift or under a will where the terms of the gift or the will, expressly or by necessary implication, prescribe a restricted estate in such property:

Provided that no such implication shall arise by reason only of her sex. *Explanation.*—In this section " property " includes both movable and immovable property acquired by a woman, whether such acquisition was made before, at or after marriage or during widowhood and whether by inheritance or devise, or on partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, or by her own skill or exertion or by purchase or by prescription or in any other manner whatsoever.

Part II, sec. 3, page 3.

92. Devolution of woman's property-—(1) Where any woman dies after the commencement of this Code any property acquired by her whether such acquisition was made before or after the commencement of this Code, shall, in so far as it consists of heritable property, devolve on her own heirs in the manner laid down in Part VII.

(2) Nothing in sub-section (1) shall apply to the property of a woman in which she had, at the time of her death, only the limited estate known as the Hindu women's estate, and such property shall devolve as hereunder—

(i) where such limited estate was obtained by inheritance it shall devolve on

the persons who under Part VII would have been the heirs of the last full owner thereof if such owner had died intestate immediately after her, (ii) where such limited estate was obtained by partition or in any other manner not herein provided for it shall devolve on the persons who would have been entitled to it if this Code had not been passed.

(104)

(105)

93. Dowry to be held in trust for wife.—(1) In the case of any marriage solemnised after the commencement of this Code, any dowry given on the occasion of or as a condition of or as consideration for such marriage shall be deemed to be the property of the woman whose marriage has been so solemnised.

(2) Where any dowry is received by any person other than the woman whose marriage has been so solemnised as aforesaid such person shall hold it in trust for the benefit and separate use of the woman and shall transfer it to her on her completing the age of eighteen years or if she dies before completing that age to her heirs as specified in Part VII.

Explanation.—In this section, " dowry " includes any property transferred or agreed to be transferred by or on behalf of, either party to the marriage or any of his relatives, to any relative of the other party, whether directly or indirectly on the occasion of or as a condition of or as consideration for such marriage, but does not include any small customary presents made to the bridegroom or to any relative of either party to the marriage.

Part IV, page 20.

93. Dowry to he held in trust for wife—(1) In the case of any marriage solemnised after the commencement of this Code, any dowry given on the occasion of or as a condition of or as consideration for such marriage shall be deemed to be the property of the woman whose marriage has been so solemnised.

(2) Where any dowry is received by any person other than the woman whose marriage has been so solemnised as aforesaid such person shall hold it in trust for the benefit and separate use of the woman and shall transfer it to her on her completing the age of eighteen years or if she dies before completing that age to her heirs as specified in Part VII.

Explanation.—In this section, " dowry " includes any property transferred or agreed to be transferred by or on behalf of, either party to the marriage or any of his relatives, to tiny relative of the other party, whether directly or indirectly on the occasion of or as a condition of or as consideration for such marriage, but does not include any small customary presents made to the bridegroom or to any relative of either party to the marriage.

(105)

(106) PART VII.

—SUCCESSION

CHAPTER I *Application*

94. Certain estates excluded from operation of Part.—This Part shall not apply to—

(i) any estate which descends to a single heir by a customary rule of succession or by the terms of any grant or enactment, or to any other estate specified in section 90J, or

(ii) any property which devolves by survivorship on the surviving members of a co-parcenary in accordance with the provisions of Part V, or

(iii) any property belonging to a tarwad, *tavazhi, kutumba, kavara or illom* to which the provisions of section 901 apply.

(107)

95. Application of Part.—Save as otherwise expressly provided in section 94, this Part regulates the succession to the property of a Hindu dying intestate after the commencement of this Code in the following cases, namely:—

(a) where the property is movable property, unless it is proved that the intestate was not domiciled in the territories to which this Act extends at the time of his or her death;

(b) where the property is immovable property situate in the said territories, whether the intestate was domiciled in the said territories at the time of his or her death or not.

Explanation.—For the purposes of this Part, the domicile of a Hindu shall be determined in accordance with the provisions contained in section 6 to 18, both inclusive, of the Indian Succession Act, 1925 (XXXIX of 1925).

(108)

96. No distinction between divided and undivided sons, etc., for purposes of succession.—For purposes of intestate succession, no distinction shall be made,—

(1) between a son who was divided and a son who was undivided from the intestate or between a son who was divided and a son who was reunited with him;

(2) between a female heir * * * who is a widow and one who is not a. widow or between a female heir who is poor and one who is rich or between a female heir with issue and one without issue or possibility of issue.

PART VII.—SUCCESSION

CHAPTER I

General

Part II, page 2

94. Certain estates excluded from operation of Part.—This Part shall not apply to

(i) agricultural land in Governors' Provinces; or

(ii) any estate which descends to a single heir by a customary rule of succession or by the terms of any grant or enactment.

(106) **Part II,** page 3

95. Application of Part.—Save as provided in section 94, this Part regulates the succession to the property of a Hindu dying intestate after the commencement of this Code in the following cases, namely :—

(a) where the property is movable property, unless it is proved that the intestate was not domiciled in any of the Provinces of India at the time of his or her death ;

(b) where the property is immovable property situate in any of the Provinces of India, whether the intestate was domiciled in any of the Provinces of India at the time of his or her death or not.

Explanation.—For the purposes of this Part, the domicile of a Hindu shall be determined in accordance with the provisions contained in section 6 to 18, both inclusive, of the Indian Succession Act, 1925 (XXXIX of 1925).

(107) **Part II,** Page 6. sec. **4**

96. No distinction between divided and undivided sons, etc., for purposes of succession.—For purposes of intestate and succession, no distinction shall be made,—

(1) between a son who was divided and a son who was undivided from the intestate or between a son who was divided and a son who was reunited with him;

(2) between a female heir who is married and one who Part II,

sec. 14(4) is unmarried or a female heir who is a widow and one who page 10.

is not a widow or between a female heir who is poor and one who is rich or between a female heir with issue and one without issue or possibility of issue.

(108)

(109) CHAPTER II

Intestate succession to the property of frulles

General Provisions

97. Definitions.—(1) In this Part, unless the context otherwise re-quircs,—

(a) " agnate "—a person is said to be an agnate *(gotraja)* of another if the two are related by blood or adoption wholly through males;

(b) " cognate "—a person is said to be a cognate(bandhu*)* of another in the two are related by blood or adoption wholly through males;

(c) " heir " means any person, male or female, who is entitled to succeed to the property of an intestate under this Part.

(d) " intestate "—a person is deemed to die intestate in respect of properly of which he or she has not made a testamentary disposition capable of taking effect;

(2) In this Part, unless the context otherwise requires, words unsporting the masculine sender shall not be taken to include females.

(110)

98. General rules of succession in the case of mules.—Save as otherwise expressly provided in sections 105A to 105J inclusive, the property of a male Hindu dying intestate shall devolve according to the rules set out in this Part:—

(a) firstly, upon the preferential heirs, being the relatives specified in class I of the Eighth Schedule;

(b) secondly, if there is no preferential heir of class I, then upon the preferential heirs being the relatives specified in class II of the Eighth Schedule;

(c) thirdly, if there is no preferential heir of any of the two classes, then upon his relatives being the agnates specified in section 102; and (d) lastly, if there is no agnate, then upon his relatives being the cognates specified in section 103.

(Ill)

99. Order of succession amongst preferential heirs.—As amongst the preferential heirs those in class I of the Eighth Schedule shall take together, and those standing in the first entry in class II shall be preferred to those standing in the second entry, and those in the second entry to those in the third entry and so on in succession.

CHAPTER II *intestate succession* *part II.*

Succession to the property of a Hindu male sec. 2, page 2,

Part II page 2.

97. Definitions.—(1) In this Part, unless there is anything

sec. 5, repugnant in the subject or context,—

(a) " agnate "—a person is said to be an agnale *{gotraja)* of another, if the two are related by blood or adoption wholly through males;

(b) " cognate "—a person is said to he a cognate *(bandhu)* of another in the two are related by blood or adoption but not wholly through males;

(e) " heir " means any person, male or female, who is entitled to succeed to the property of an intestate under this Part.

(d) " intestate "—a person is deemed to die intestate in respect of property of which he or she has not made a testamentary disposition capable of taking

effect;

(2) In this Part, unless there is anything repugnant in the subject or context, words importing the masculine gender shall not be taken to include females.

(109) Part II, page 4

98. Rule of succession in the case of male Hindu.— Subject to the provisions of this Part, the properly of a male Hindu dying intestate shall devolve according to the rules set out in this Part:—

(a) firstly, upon the preferential heirs, being the relatives specified in class I of the Schedule VII;

(b) secondly, if there is no preferential heir of class I, then upon the preferential heirs being the relatives specified in class II of Schedule VII ;

(c) thirdly, if there is no preferential heir of any of the two classes, then upon his relatives being the agnates specified in section 102; and

(d) lastly, if there is no agnate, then upon his relatives being the cognates specified in section 103.

(110) **Part II,** page 6.

99. Order of succession amongst preferential heirs.— As amongst the preferential heirs those in class I of Schedule VII shall take together, and those standing in the First entry in class II shall be preferred to those standing in the second entry, and those in the second entry to those in the third entry and so on in succession. (Ill)

(112)

100. Distribution of property amongst preferential heirs in class 1.— (1) The property of an intestate shall be divided among the preferential heirs in class I of the Eighth schedule so that the share of the widow shall be equal to that of each son, including a predeceased son leaving a son or a son's son living at the intestate's death, and the share of each unmarried daughter shall be half that of each son and the share of each married daughter shall be one-quarter of that of each son:

Provided that where a predeceased son leaves no son or son's son but leaves his widow or his son's widow living at the intestate's death, then the share of such predeceased son shall be half that of a son of the intestate.

(2) The share given to a predeceased son of the intestate under sub-section (1) shall be divided as follows:—

(a) If such predeceased son has left a son or a son's son living at the intestate's death then his share shall be divided so that the share of the widow of such predeceased son shall be equal to that of a son of such predeceased son including any son who may have died before the intestate leaving a son living at the intestate's death:

Provided that if any son of such predeceased son dies before the intestate

leaving a widow but no son living at the intestate's death then the share of such son of the predeceased son shall be half that of any other son of such predeceased son.

(b) The share of any son of the predeceased son who may have died before the intestate shall be divided between his widow and his sons in equal shares.

(c) If such predeceased son has left a widow or a son's widow or widows of two or more sons but has not left a son or a son's son living at the intestate's death then the share of such predeceased son shall be divided between his widow and his son's widows so that the share of the predeceased son's widow shall be double the share of the widow of each son of such predeceased son.

(3) For the purposes of this section where a person has left more than one widow all the widows shall take between them equally the share which a single widow would have taken.

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Part II page 6.

100. Distribution of property amongst preferential heirs in class 1.—(1) The property of an intestate shall be divided among the preferential heirs in class I so that the share of the widow shall be equal to that of each son, including a predeceased son leaving a son or a son's son living at the intestate's death and the share of each daughter shall be equal to that of each son:

Provided that where a predeceased son leaves no son or son's son but leaves his widow or his son's widow living at the intestate's death, then the share of such predeceased son shall be half that of a *son* of the intestate. (2) The share given to a predeceased son of the intestate under sub-section (1) shall be divided as follows:—

(a) If such predeceased son has left a son or a son's son living at the intestate's death then his share shall be divided so that the share of the widow of such predeceased son shall be equal to that of a son of such predeceased son including any son who may have died before the intestate leaving a son living at the intestate's death:

Provided that if any son of such predeceased son dies before the intestate leaving a widow but no son living at the intestate's death then the share of such son of the predeceased son shall be half that of any other son of such predeceased son.

(b) The share of any son of the predeceased son who may have died before the intestate shall be divided between his widow and his sons in equal shares.

(c) If such predeceased son has left a widow or a son's widow or widows of

two or more sons but has not left a son or a son's son living at the intestate's death then the share of such predeceased son shall be divided between his widow and his son's widows so that the share of the predeceased son's widow shall be double the share of the widow of each son of such predeceased son.

(3) For the purposes of this section where a person has left more than one widow all the widows shall take between them equally the share which a single widow would have taken.

Illustrations

(i) The surviving heirs of an intestate are three sons. A, B and C, five grandsons by a predeceased son D, and two great grandsons by a predeceased son of another predeceased son E, A, B and C take one share each, and the branches of D and E get one share each. The grandson in D's branch and the great grandson in E's branch divide the stare allotted to their respective branches equally. Each son of the intestate, therefore, takes one fifth of the heritable property, each grandson one-twenty-fifth, and each great-grandson one-tenth.

(ii) Only a widow or daughter survives an intestate. She takes the whole of the heritable property.

(114)

101. Mode of distribution amongst preferential heirs in class II.— The property of an intestate shall be divided between the preferential heirs in any one entry in class II of the Eighth Schedule so that they share equally.

(115)

102. Agnates who are heirs.—In the absence of any preferential heirs specified in class I or class II of the Eighth Schedule, agnates of the deceased, related to the intestate within Five degrees, shall be entitled to succeed in accordance with the rules set out in this Part.

(iii) The surviving heirs are a widow and two grandsons by a predeceased son. The widow takes one share and the grandsons together take one share. The widow therefore, takes one half of the heritable property and each grandson one fourth.

(iv) The surviving heirs are a daughter and the widow of a predeceased son. The daughter takes one share, and the widow gets half a share.

(v) The surviving heirs are a son, a daughter, and the widow of a predeceased son. The son gets one share, the daughter gets one share, and the widow of the predeceased son gets half a share.

(vi) The surviving heirs are a son, a daughter, and the widow and the son of a predeceased son. The son gets one share, the daughter gets one share and the widow and the son of the predeceased son get between them one

share, which has then to be distributed equally between them. (vii) The surviving heirs are— (a) a widow,

(b) a son,

(c) a daughter,

(d) the widow of a predeceased .son,

(e) the widow and two sons of another predeceased son. The widow gets one share; the son gets one share; the daughter gets one share; the widow of the first mentioned predeceased son—(d) above—gets half a share; and the heirs mentioned in (a) above between them get one share, which has then to be distributed equally among them. (viii)The surviving heirs are— (a) a son,

(b) the widow and three sons of a predeceased son, (c) the widow of a predeceased son of the predeceased son referred to in (b). The son gets one share and the heirs in entries (b) and (c) together, get one share. The latter share should be distributed so that the widow and each of the sons in entry (b) get portion each and the widow in entry (c) gets one-half of such a portion. In the result, the intestate's son gets one-half of the heritable property, the widow of his predeceased son gets one-ninth, each of the three sons of such predeceased son also gets one-ninth, and the widow of the intestate's grandson gets one-eighteenth

(113)

101. Mode of distribution amongst preferential heirs in class II— The property of an intestate shall be divided between the preferential heirs in any one entry in class II of Schedule VII, so that they share equally. (114)

Part I, page 7.

102. Agnates who are heirs In the absence of any preferential heirs specified in class I or classs II of Schedule VII, agnates of the deceased, related to the intestate within five degrees, shall be entitled to succeed in accordance with the rules set out in this Part. (115)

(116)

103. Cognates who are heirs.—In the absence of any preferential heir and agnates, cognates of the deceased related to the deceased within five degrees, shall be entitled to succeed in accordance with the rules set out in this Part.

(117)

104. Order of succession amongst agnates and cognates.—The order of succession among agnates or cognates, as the case may be, shall be determined in accordance with the rules of preference laid down hereunder:—

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 lias fewer or no degrees of ascent.

Rule 3.—Where the number of degrees of descent is also the same or none, the heir who is in the male line is preferred to the heir who is in the female line at the first point (counting from the intestate to the heir) where the lines of the two heirs can be so distinguished.

Rule 4.—Where the two lines cannot be so distinguished, the heir who is a male is preferred in the heir who is a female.

Rule 5.—Where neither heir is entitled to be preferred to the other under the foregoing rules, they take together.

Part I. sec. 8, page 7.

103. Cognates who are heirs.—In the absence of any

preferential heir and. agnates, cognates of the deceased related to the deceased within five degrees, shall he entitled to succeed in accordance with the rules set out in this Part.

(116) Part II. Sec. 9, pages 7 & 8 .

104. Order *of* success inn amongst agnates and cognates.—The order of succession among agnates or cognates, as the case may he, shall he determined in accordance with the rules of preference laid down hereunder:—

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 ascent.

Rule 3.—Where the number of degrees of descent is also the same *or* none, the heir who is m the male line is preferred to the heir who is in the female line at the first point (counting from the intestate to the .heir) where the lines of the two heirs can he so distinguished. *Rule 4.*—Where the two lines cannot be so distinguished, the heir who is a male is preferred to the heir who is a female.

Rule 5.—Where neither heir is entitled to be preferred to the other under the foregoing rules, they take together.

Illustrations

In the following illustrations, the letters F and M stand for the father and mother respectively in that portion of the line which ascends from the intestate to the common ancestor, and the letters S and D for the son and daughter respectively in that portion of the line which descend from the common ancestor to the heir. Thus MPSS stands for the intestate's mother's father's son's son (mother's brother's son) and FDS stands for the intestate's father's daughter's son (sister's son).

(i) The competing heirs are (1) SDSS (son's daughter's son's son and (2) FDDS (sister's daughter's son). No. (1) who has no degree of ascent is

preferred to No. (2) who has one degree of ascent.

(ii) The competing heirs are (1) FDDD (sister's daughter's daughter) and (2) MFSSD (maternal uncle's son's daughter). The former who has only one degree of ascent is preferred to the latter who has two such degrees.

(iii) The competing heirs are (1) FDSS (sister's son's son) and MFSSD (material uncle's son's daughter). The former who has only one degree of ascent is preferred to the latter who has two such degrees.

(iv) The competing heirs are (1) MFDSS (mother's sister's son's son) and (2) MFFDS (mother's father's sister's son). The former who has two degrees of ascent is preferred to the latter who has three such degrees.

(v) The competing heirs are (1) MFM (mother's father's mother) and (2) FFFDSS father's father's sister's son's son). The number of degrees of ascent in both cases is the same, viz., three, but the former has no degree of descent while the latter has three such degrees. The former (1) is therefore preferred.

(117A)

105. Computation of degrees.—(1) For the purposes of determining the order of succession amongst agnates or cognates, relationship shall be reckoned from the intestate to the heir in terms of degrees of ascent, or degrees of descent, or both, as the case may be.

(2) Degrees of ascent and degrees of descent shall be computed exclusive of the intestate.

(3) Every generation constitutes a degree either ascending or descending.

(vi) The competing heirs are (1) FMF (lather's mother's father) and (2) MPFF (mother's father's father). The number of degrees of ascent in both the cases is the same, and there are no degrees of descent. "The lines of the two heirs diverge at the very first point. No. (1) being in the male line and No. (2) in the female line. No. (1) is preferred to No. (2).

(vii) The competing heirs are (1) FDSS (sister's son's son) and (2) FDDS (sister's daughter's son). The heirs are equally near both in ascent and descent. The dissimilarity in the lines occurs at the third point. At this point. No. (1) is in the male line and No. (2) father's mother's sister's son). The former is preferred.

(viii) The competing heirs are (1) FMFSS (father's mother's brother's son) and (2) FMFDS father's mother's sister's son). The former's preferred.

(ix) The competing heirs are (1) FDDS (sister's daughter's son) and (2) FDDD (sister's daughter's daughter). The former is preferred.

(117) Part II, page 7.

105. Computation of degrees.—(1) For the purposes of determining the order of succession amongst agnates or cognates, relationship shall be

reckoned from the intestate to the heir in terms of degrees of ascent, or degrees of descent, or both, as the case may be.

(2) Degrees of ascent and degrees of descent shall be computed exclusive of the intestate.

(3) Every generation constitutes a degree either ascending or descending.

Illustrations

(i) The heir to be considered is the father's mother's father of the intestate. He has no degrees of descent, but has three degrees of ascent represented in order by (1) the intestate's father, (2) that father's mother, and (3) her father (the heir).

(ii) The heir to be considered is the father's mother's father's mother of the intestate. She has no degrees of descent, but has four degrees of ascent represented in order by (1) the intestate's father, (2) that father's mother. (3) her father, and (4) his mother (the heir).

(iii) The heir to be considered is the son's daughter's son.'s daughters of the intestate. She has no degrees of ascent, but has four degrees of descent represented in order by (1) the intestate's son, (2) that son's daughter, (3) her son, and (4) his daughter (the heir).

(iv) The heir to be considered is the mother's father's father's daughter's son of the intestate, He has three degrees of ascent represented in order by (1) the intestate's mother, (2) her father and (3) the father's father, and two degrees of descent represented in order by (1) the daughter of the common ancestor, viz., the mother's father's father and (2) her son (the heir).

(117A)

(118) *Succession to the properly of male Marumakkattayts, etc.*

105 A. Rules of succession to male Murumakkattayis, etc. dying intestate.—Notwithstanding anything contained in this Chapter the separate or self-acquired property ofa male Hindu who dies intestate in respect thereof, shall—

(a) in the case of a person to whom the Maruinakkatlayam or Aliyasantana law would have applied if this Code had not been passed, devolve in the order and according to the rules contained in sections 105-C to 105-1 inclusive; and

(b) in the case of a person to whom the Namhudri law would have applied if this Code had not been passed, devolve in the order and according to the rules set out in section 105-J.

(119)

105 B. Lineal descendant defined.—In sections 105C to 105J inclusive and in section 109A and 109B, the expression "lineal descendant", used with reference to any person, means any descendant of that person, whether in

the male or female line or partly in the male and partly in the female line, and includes any child of that person. .

(120)

105 C. Devolution of property, where there is a lineal descendant.— (1) Where the intestate has left him surviving a lineal descendant or descendants and his mother or a widow or widows or both his mother mid a widow or widows, the whole of the intestate's properly shall devolve on them.

(2) In the absence of the mother and widow, the whole of the property shall devolve on the lineal descendant or descendants.

(121)

105 D. Rules of distribution.—Where there is a lineal descendant, the distribution of the property among the heirs referred to in section 105C shall be made in accordances with the following rules, namely:— (a) each child (son or daughter) shall be entitled to an equal share; (b) where a child has predeceased the intestate, the lineal descendants of such child shall, subject to the provisions of clause (e), be entitled to the share which the child would have taken had he or she survived the intestate;

(c) grand-children of the intestate by a deceased child shall be entitled in equal slides to what such child would have taken had he or she survived the intestate;

Provided that where any such grand-child has also predeceased the intestate, the lineal descendants of such grand-child shall, subject to the provisions of clause (e), be entitled to the share which the grand-child would have taken had he or she survived the intestate;

(d) the property shall devolve in the like manner on the remoter surviving lineal descendants of the intestate;

(e) the descendants of a child, grand-child or other lineal descendant of the intestate shall not be entitled to any share in his property, if such child, grand-child or other descendant is living at the time of the death of the intestate;

(0 the widow, or, where there is more than one widow, all the widows together, shall be entitled to a share equal to that of a child, such share being taken equally by the widows where there is more than one; (g) the mother shall be entitled to a share equal to that of a child.

(122)

105 E. Devolution of property, where there is no lineal descendant but there is a widower mother.—(1) Where the intestate has not left him surviving any lineal descendant but has left his mother and a widow or widows, one-half of the property shall devolve on his mother and the other half on his widow or widows in equal shares.

(2) In the absence of a widow, the whole of the property shall devolve on the

mother.

(123)

105 F. Devolution of property where there is no mother hut there is a widow or lineal descendant of mother.—(1) Where the intestate has not left him surviving any lineal descendant or his mother but has left a widow or widows and also a lineal descendant or descendants of his mother, one-half of the property shall devolve on the widow or widows in equal shares and the other half on such lineal descendimt or descendants.

(2) In the absence of any lineal descendant of the intestate's mother, the whole of the property shall devolve on the widow or widows in equal shares and, in the absence of the widow, the whole of the property shall devolve on the mother's lineal descendants.

(124)

105 G. Devolution where there is maternal grand-mother or her descendant or the father.—(1) Where the intestate has not left him surviving any of the heirs mentioned in sections 105C, 105E and 105F but has left his father and his maternal grand-mother or lineal descendant or descendants, one-half of the property shall devolve on his father and the other half on her maternal grand-mother or, in her absence, on her lineal descendant or descendants.

(2) In the absence of any lineal descendant of the maternal grand-mother the whole of the property shall devolve on the lather, and, in the absence ol' the lather, the whole of the property shall devolve on the maternal grandmother or her lineal descendant or descendants, as the case may be.

(125)

105 H. Devolution in other cases.—(1) Where the intestate has not left him surviving any ol' the heirs mentioned in sections 105C, 105B, 105F and 105G, the whole of the property shall devolve on his mother's maternal grand mother, or, in her absence, on her lineal descendant or descendants.

(2) In the absence of any such descendant, the whole of the properly shall devolve on a remoter female ascendant of the intestate in the female line or, in her absence, on her lineal descendant or descendants, the nearer ascendant and her descendants, excluding the more remote ascendant and her descendants.

(126)

105 1. Rules for distribution among lineal descendants of mother or other ascendant.—The distribution of the intestate's property or any share thereof to which two or more lineal descendants of his mother or other ascendant are entitled under the forgoing sections shall be made in accordance with the rules specified in clauses (a) to (e) of section 105C", as if

the mother or other ascendant had died intestate in respect of such property or share leaving her surviving the descendants aforesaid.

(127)

105 J. Special rules of succession to Nambudri males.—Notwithstanding anything contained in this Chapter, the separate or self-acquired property of a male Hindu who, if this Code had not been passed, would have been governed by the Numbudri law, shall, if he dies intestate in respect thereof, devolve in the order, and in accordance with the rules, specified below, namely:—

(a) where the intestate has left him surviving any lineal descendant or descendants or a widow or widows or both such descendant or descendants and a widow or widows, the whole of the property shall devolve on them in accordance with the rules specified in clauses (a) to (f) of section.

(b) where the intestate has not left him surviving any of the relatives referred to in clause (a) the property shall devolve in the order, and in accordance with the rules, specified in sections 97 to 108.

(128)

Intestate Succession to the property of female

General Provision

106. Heirs of a Hindu woman.—Except as otherwise expressly provided in sections 109A and 109B, the property of a female Hindu dying intestate shall devolve, according *to* the rules set out in this Part,—

(a) Firstly, upon the husband and children, including the children of any predeceased child, and

(b) secondly, if there is no heir specified in clause (a), then, upon the heirs specified in section 109 in the order named therein.

(129)

107.Division of shares among heirs.—(1) Where a Hindu woman dies-intestate leaving husband and children, the property of which she dies intestate shall be divided among her husband and children so that they share equally.

(2) Where a Hindu woman dies intestate leaving children but no husband, the property of which she dies intestate shall be divided among the children, so that they share equally.

(3) If any child of a Hindu woman dying intestate has died in her life time, leaving children alive at the time of her death, the children of such child shall take the share which such child would have Liken if living at the intestate's death.

(130)

108. Husband succeeds where no children.—Where a Hindu woman dies

Intestate leaving husband but no children, including children of any predeceased child entitled to succeed under section 107, the property of which she dies intestate shall devolve upon the husband.

Succession to the property of a Hindu woman

Part II, sec. 14, page 9.

106. Heirs of a Hindu woman.—Subject to the provisions of this Chapter, the property of a Hindu woman dying intestate shall devolve—

(a) Firstly, upon the husband and children, including the children of any predeceased child, and

(b) secondly, if there is no heir specified in clause (a), then, upon the heirs specified in section 109 in the order named therein.

Contents **Continued…**