

Maintenance under Hindu Law

- Two Acts under Hindu Personal laws which provide for Maintenance:
 1. **Hindu Marriage Act, 1955**
 2. **Hindu Adoption and Maintenance Act, 1956**
 3. **Hindu Marriage Act, 1955**

Maintenance of wife or Husband

- **Types of Maintenance-**
 - ✓ **Temporary Maintenance-** It is also referred to as maintenance **pendente lite** which is awarded by the courts during the continuation of proceedings of the divorce. The purpose is to meet the necessary and immediate expenses of the spouse who is a party to the proceedings. On satisfaction, the court may grant it. **Section 24 of Hindu Marriage Act, 1955** deals with this kind of maintenance. Further can be claimed under **Section 125(1) of CrPC**.
 - ✓ **Permanent Maintenance-** As the term suggests, it refers to the granting of a sum on a periodical basis or on a continued basis once the proceedings have been disposed of. **Section 25 of Hindu Marriage Act, 1955**. Either of a spouse is entitled to receive it.
- **Section 24- Maintenance *pendente lite* (maintenance pending litigation) and expenses of proceeding.**
 - If husband or wife does not have income to support the necessary expenses of the proceeding in court, court can order the respondent to pay to the petitioner the expenses of the proceeding, the amount would be reasonable depending on the income would be reasonable depending on the income of the petitioner and respondent.
 - The payment must be within 60 days of service of notice.

- The maintenance *pendente lite* can be also given in a proceeding which is there to declare the **marriage null and avoid**. A valid marriage is not essential requirement for maintenance under section 24. (any proceedings in the court in mentioned in section)

Section 25- Permanent Alimony and Maintenance

- Ordered by the court at the time of passing of the decree or any time subsequent that the respondent shall pay to the applicant for her/his maintenance and support. A gross sum or a sum
- Monthly/periodically not exceeding the life of the applicant.
- The sum would be decided keeping in mind the income and property of respondent and petitioner
- The order could be modified/rescinded in case of change of circumstance.
- If the court is satisfied that the party in whose favour an order has been made under this section has re-married or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock,⁵⁷ [it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just].

Hindu Adoption and Maintenance Act, 1956

(Maintenance wife, Mother and father Children, Daughter in law and dependents)

Section 3(b) - “Maintenance” definition.

Includes-

- (i) In all cases, provision for food, clothing, residence, education and medical attendance and treatment;
- (ii) In the case of an unmarried daughter also the reasonable expenses of and incident to her marriage;

Section 18- Maintenance of wife

- Wife is entitled to maintenance from her husband. In some cases, wife is entitled to maintenance even if she doesn't live with her husband if her separate living is justified because of any of the circumstance occur
 1. Desertion
 2. Cruelty
 3. Any other living wife of husband
 4. Concubine is name house, or husband habitually
 5. Resides with a concubine elsewhere
 6. Conversion
 7. Any other cause
- Wife would be ineligible for maintenance in some cases life if she is unchaste or converts her religion from Hinduism.
- **Neelam Malhotra v .Rajinder Malhotra (1994)**
Maintenance *pendent lite* though not provided for in section 18 can be granted by the court because a suit could take years to settle and until then not granting pendente lite maintenance would be against the spirit of Section 18

Section 19- Maintenance of widowed daughter in law

- In case of death of husband her maintenance would be taken care by her **Father –in- law**
- Provided and to the extent that she is unable to maintain herself out of her own earnings or other property or, where she has no property of her own, is unable to obtain maintenance-
 - (a) From the estate of her husband or her father or mother, or
 - (b) From her son or daughter, if any, or his or her estate.

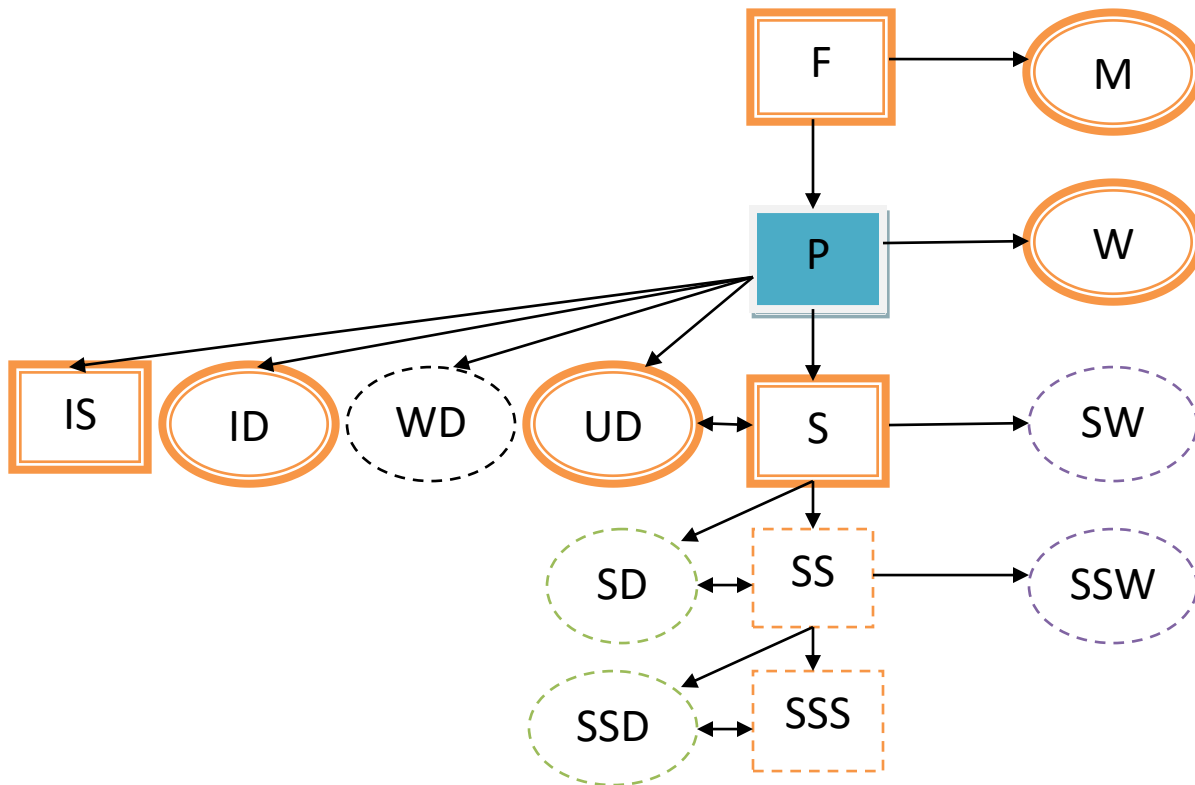
(2) Any obligation shall not be enforceable if the father-in law has not the means to do so from any coparcener property in his possession out of which the daughter-in-law has not obtained any share, and any such obligation shall cease on the re-marriage of the daughter-in-law."
- **Raj Kishore Mishra v. Smt. Meena Mishra**, Court held that the obligation of father-in-law shall not be enforceable if he has no means to maintain his daughter-in-law from any coparcenary property in his possession out of which the daughter-in-law has not obtained any share. The object of this Section is to make it clear that the widowed daughter-in-law can claim maintenance from her father-in-law only where she is unable to maintain herself out of her own property or from the estate of her husband, father, mother, son or daughter. It is also provided that the father-in-law shall be under no obligation to maintain his daughter-in-law except in cases where there is some ancestral property in his possession from which the daughter-in-law has not obtained any share.

Section 20- Maintenance of children and aged parents

- A Hindu is bound to maintain her/her legitimate /illegitimate children and aged or infirm parents.
- Children of the person can only claim maintenance as long as they are minor.
- The obligation of a person to maintain his or her aged or infirm parent or daughter who is unmarried extent is so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earning or other property,

- 'Parent' also includes a childless stepmother.

Section 21- Dependents Defined-



- (i) his or her father;
- (ii) his or her mother
- (iii) his widow, so long as she does not remarry;
- (iv) his or her son or the son of his predeceased son or the son of a predeceased son of his predeceased son, so long as he is a minor; provided and to the extent that he is unable to obtain maintenance, in the case of a grandson from his father's or mother's estate, and in the case of a great-grandson, from the estate of his father or mother or father's father or father's mother;

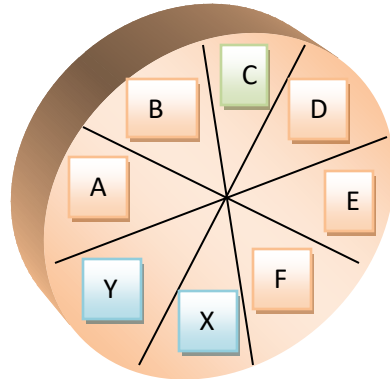
- (v) his or her unmarried daughter or the unmarried daughter of his predeceased son or the unmarried daughter of a predeceased son of his predeceased son, so long as she remains unmarried; provided and to the extent that she is unable to obtain maintenance, in the case of a granddaughter from her father's or mother's estate and in the case of a great-grand daughter from the estate of her father or mother or father's father or father's mother
- (vi) his widowed daughter; provided and to the extent that she is unable to obtain maintenance-
 - (a) From the estate of her husband; or
 - (b) From her son or daughter, if any, or his or her estate; or
 - (c) From her father-in-law **or his father or the estate of either of them;**
- (vii) any widow of his son or of a son of his predeceased son, so long as she does not remarry; provided and to the extent that she is unable to obtain maintenance from her husband's estate, or from her son or daughter, if any, or his or her estate; or in the case of a grandson's widow, also from her father-in-law's estate;
- (viii) his or her minor illegitimate son, so long as he remains a minor;
- (ix) His or her illegitimate daughter, so long as she remains unmarried.

Section 22- Maintenance of dependents.

- The heirs who take the estate of a deceased Hindu are bound to maintain the dependents of the deceased out of the estate inherited by them from the deceased if that particular dependent has not obtained, by testamentary or intestate succession, any share in the estate of a Hindu dying after the commencement of this Act
- The liability of each of the persons who take the estate shall be in proportion to the share or part of the estate taken by him or her
- No person who is himself or herself a dependent shall be liable to contribute to the maintenance of other, if he or she has obtained a share or part, the value of

which is, would, if the liability to contribute were enforced become less than maintenance under this Act.

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Dependents- A, B, C, D, E, F, **G, H**

A, B, C, D, E, F, X, Y are liable to maintain G, H