17/08/2021

Unit III: Adoption, Maintenance and Guardianship

→ Family Law-I | GGSIPU LLB 201 | Third Semester.

→ Three themes: ADOPTION creates a parent-child legal relationship; MAINTENANCE provides financial support; GUARDIANSHIP protects a minor.

→ Main laws: Hindu Adoptions and Maintenance Act, 1956 (HAMA); Hindu Minority and Guardianship Act, 1956 (HMGA); Guardians and Wards Act, 1890.

→ We also study Muslim maintenance (nafaqa), Muslim guardianship, and inter-country adoption.

→ Aim: explain each rule in easy words and support it with sections and leading cases.

REMEMBER: CHILD WELFARE + FAMILY RESPONSIBILITY

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Family Law - I
GGSIPU - 2021
Unit - III

17/08/2021

Meaning and Nature of Adoption

→ Adoption is the legal process of recognising a child as a child of adopting parent or parents.

→ Under HAMA, a valid adoption changes the child's legal family relationship, subject to important statutory safeguards.

→ It is more than giving shelter, schooling or financial assistance.

→ It creates a permanent parent-child status with inheritance and other legal consequences.

→ Example: caring for a nephew informally is not automatically a completed legal adoption.

REMEMBER: ADOPTION IS A LEGAL STATUS, NOT ONLY CARE

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Family Law - I
GGSIPU 2021
Unit III

17/08/2021

Why Adoption Matters

→ Adoption offers children the opportunity for care, affection and a secure family environment.

→ It also imposes long-term parental duties on adoptive parents.

→ The child's welfare must take priority over an adult's wish merely to obtain an heir.

→ Under modern Indian law, statutory procedures aim to prevent trafficking, exploitation and illegal payments.

→ A correct exam answer discusses purpose, valid procedure, and the effect on the child's status.

REMEMBER : THE CHILD IS THE CENTRE OF ADOPTION LAW

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Adoption: Relevant Legal Routes

→ HAMA, 1956 provides personal-law rules for Hindus, Buddhists, Jains and Sikhs who fall within its scope.

→ A secular adoption route is available under the Juvenile Justice (Care and Protection of Children) Act, 2015.

→ The exact procedure depends on which route applies and the child's legal status.

→ Shabnam Hashmi v Union of India, (2014) 4 SCC 1 recognised that eligible persons may use the secular statutory adoption framework irrespective of religion.

→ Do not assume every adoption follows one identical procedure.

REMEMBER:
HAMA ROUTE AND SECULAR JJ ACT ROUTE

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Family Law-I
GGSIPU 2021
Unit III
Page 5

17/08/2021

HAMA Section 6: Validity Conditions

→ Section 6 asks four central questions about a Hindu adoption.

→ 1. Does the person taking the child have capacity and the right to adopt?

→ 2. Does the person giving the child have capacity to give in adoption?

→ 3. Is the child legally capable of being adopted?

→ 4. Have all other statutory conditions been fulfilled?

→ A missing essential requirement makes the claimed adoption legally defective.

REMEMBER:
CAPACITY TO TAKE + GIVE + BE ADOPTED + CONDITIONS

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Family Law-I (GGSIPU)
2021
Unit III

17/08/2021

Section 7: Male Hindu Adopter

→ A male Hindu of sound mind who is not a minor can take a child in adoption.

→ If he has a living wife, her consent is ordinarily required.

→ The Act provides exceptions where the wife has finally renounced the world, ceased to be Hindu, or been judicially declared of unsound mind.

→ Where more than one wife is living, the relevant consent rules must be followed.

→ Example: a husband must not bypass the required living wife's consent.

REMEMBER:
MALE ADOPTER: CAPACITY + REQUIRED SPOUSAL CONSENT

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Section 8: Female Hindu Adopter.

→ A female Hindu of sound mind who is not a minor may take a son or daughter in adoption.

→ Following the 2010 amendment, a married woman also has independent statutory capacity, subject to her living husband's consent.

→ Consent exceptions include the husband's final renunciation of the world, conversion away from Hinduism, or judicial declaration of unsound mind.

→ This provision recognises women's legal capacity to adopt.

→ Exam tip: do not repeat an older rule that a married Hindu woman can never adopt.

REMEMBER: FEMALE HINDUS ALSO HAVE STATUTORY CAPACITY

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Section 9: Who May Give a Child?

→ Section 9 deals with persons competent to give a child in adoption.

→ The father or mother may give the child, subject to the statutory consent requirements of the other parent.

→ A guardian may give the child only under specified circumstances and with prior permission of the court.

→ The court considers the welfare of the child before authorising a guardian's act.

→ Example: a distant relative cannot simply give another person's child away without legal authority.

REMEMBER — PARENTAL AUTHORITY OR COURT-AUTHORISED GUARDIAN

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Section 10 : Child Eligible for Adoption

→ The child must be Hindu within the Act's scope.

→ The child must not already have been adopted.

→ The child must ordinarily be unmarried, unless a valid custom permits otherwise.

→ The child must ordinarily be below fifteen years of age, unless an applicable custom permits adoption above that age.

→ Examine all conditions together, including proof of any relied-upon custom.

REMEMBER — HINDU + NOT ADOPTED + AGE AND MARITAL CONDITIONS

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Section 11: Other Conditions

→ A person adopting a son ordinarily must not already have a living Hindu son, son's son or son's son's son in the prohibited line.

→ For adopting a daughter, the equivalent statutory bar concerns an existing Hindu daughter or son's daughter.

→ An adoptive father taking a daughter must be at least twenty-one years older; an adoptive mother taking a son must meet the same age-gap rule.

→ The same child cannot be adopted simultaneously by two or more persons, except the family status recognised by law.

→ The child must actually be given and taken in adoption.

REMEMBER — SAME-SEX CHILD RESTRICTIONS + 21-YEAR AGE GAP

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Giving and Taking Ceremony

→ HAMA requires an actual giving and taking of the child with the intention to transfer the child to the adoptive family.

→ It is an important legal act, not a merely decorative ritual.

→ Performance of a religious datta homam ceremony is not essential to every valid HAMA adoption.

→ Facts such as the persons present, intention, and conduct may help prove the event.

→ A signed paper alone should not be assumed to cure the absence of essential statutory conditions.

REMEMBER – ACTUAL GIVING AND TAKING IS CRUCIAL

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Section 12: Effects of Adoption

→ After valid adoption, the child is deemed the child of the adoptive parent or parents from the adoption date.

→ The legal ties with the birth family are generally replaced by those with the adoptive family.

→ Certain statutory exceptions preserve marriage prohibitions and property already vested before adoption.

→ An adoption cannot divest another person of an estate already vested in that person.

→ The child's legal status and rights should be evaluated under Section 12.

REMEMBER — ADOPTION CHANGES FAMILY STATUS, WITH EXCEPTIONS

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Adoption and Property Rights

→ A validly adopted child generally receives the position of a child in the adoptive family for legal purposes.

→ Section 12 does not take away property already vested in the child before adoption.

→ Nor does it ordinarily strip a third person of an estate already vested before the adoption.

→ Section 13 permits adoptive parents to dispose of property, subject to any applicable agreement and property law.

→ Distinguish succession consequences from automatic ownership of every family asset.

REMEMBER — NO AUTOMATIC DIVESTING OF VESTED ESTATES

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Finality, Proof and Payments

→ Under Section 15, an adoption that is validly made cannot simply be cancelled at will.

→ Section 16 creates a rebuttable presumption for a registered adoption document that satisfies the statutory description.

→ Section 17 prohibits receiving or giving payment or reward in consideration of an adoption.

→ Record-keeping helps prove legitimacy, but compliance with the substantive law remains important.

→ Exam: explain why permanent family status requires legal safeguards.

REMEMBER — VALID ADOPTION IS NOT REVOCABLE BY WHIM

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Family Law - I
Unit III
(GGSIPU 2021)

17/08/2021

Page 15

Inter-Country Adoption

→ Inter-country adoption places a child with eligible adoptive parents resident in another country.

→ The child's safety, identity, informed process and follow-up safeguards are especially important.

→ The secular adoption procedure involves the Juvenile Justice framework and Central Adoption Resource Authority (CARA) rules.

→ Foreign prospective parents must follow authorised channels, not private child transfers.

→ The objective is a secure permanent family where the child's best interests can be protected.

REMEMBER — CHILD'S BEST INTERESTS + AUTHORISED PROCEDURE

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17/08/2021

Family Law - I

Unit - III

(GGSIPU 2021)

Case: Lakshmi Kant Pandey (1984)

→ Lakshmi Kant Pandey v Union of India, (1984) 2 SCC 244.

→ The Supreme Court laid down safeguards concerning inter-country adoption to prevent abuse and exploitation.

→ The judgment emphasised scrutiny of applicants, properly recognised agencies and the welfare of children.

→ It influenced later development of institutional adoption safeguards in India.

→ Use this case while explaining why adoption is not a private commercial arrangement.

REMEMBER — LAKSHMI KANT PANDEY = INTER-COUNTRY SAFEGUARDS

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17/08/2021

Family Law-I

Unit III (GGSIPU 2021)

Case: Shabnam Hashmi (2014)

→ Shabnam Hashmi v Union of India, (2014) 4 SCC 1.

→ The Supreme Court recognised the secular statutory option of adoption available regardless of personal religion.

→ A person need not be confined to personal-law notions of guardianship when the JJ adoption route applies.

→ The court did not declare an unrestricted fundamental right to adopt in every situation.

→ Remember to distinguish adoption creating legal parenthood from mere guardianship.

REMEMBER — SECULAR STATUTORY ADOPTION IS OPEN ACROSS RELIGIONS

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Family Law-I
Unit III

17/08/2021

Maintenance: Meaning and Scope

→ Maintenance means legally required support for a person's necessary living expenses.

→ HAMA Section 3(b) describes maintenance to include food, clothing, residence, education and medical care.

→ For an unmarried daughter, the statutory definition also includes reasonable marriage-related expenses.

→ Maintenance is based on responsibility and need, not simply charity.

→ The amount depends on the applicable statute, facts and financial circumstances.

REMEMBER — FOOD + SHELTER + EDUCATION + HEALTH CARE

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HAMA Section 18 : Wife's Maintenance

→ A Hindu wife is entitled to be maintained by her husband during her lifetime under Section 18, subject to statutory rules.

→ She may have justification to live separately without forfeiting maintenance in listed circumstances.

→ Grounds include desertion, cruelty, another wife living and other legally recognised cause.

→ Statutory exceptions must also be considered where applicable.

→ Example: serious cruelty can support the wife's decision to live separately while seeking maintenance.

REMEMBER — RIGHT TO SUPPORT CAN CONTINUE DURING JUSTIFIED SEPARATION

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Separate Residence : Section 18

→ Section 18(2) lists situations in which a wife may claim separate residence and maintenance.

→ Desertion includes wilful abandonment without reasonable cause or against her wish.

→ Cruel treatment making cohabitation harmful may also justify living apart.

→ The existence of another wife or other statutorily listed circumstances may be relevant.

→ Section 18(3) contains exceptions; always read both entitlement and limitations in the statute.

REMEMBER — READ SECTION 18(2) WITH SECTION 18(3)

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Section 19: Widowed Daughter-in-Law

→ A Hindu widowed daughter-in-law may claim maintenance from her father-in-law under Section 19 in specified circumstances.

→ The obligation is limited: the law examines her ability to support herself and the availability of resources from specified family sources.

→ The father-in-law's obligation relates to means from coparcenary property in the statutory sense.

→ The obligation ceases on her remarriage.

→ Example: a court examines her need, other sources of support and the father-in-law's qualifying means.

REMEMBER — SECTION 19 IS CONDITIONAL, NOT UNLIMITED

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Section 20: Children and Parents

→ Section 20 places a duty on a Hindu to maintain legitimate and illegitimate children and aged or infirm parents, as described by the Act.

→ A minor child can claim maintenance from a parent under the statutory rule.

→ An unmarried daughter unable to maintain herself may claim support even after attaining majority under the provision.

→ The Act also protects qualifying aged or infirm parents.

→ The focus is on basic support, dependency and the statute's specific conditions.

REMEMBER — CHILDREN + DEPENDENT UNMARRIED DAUGHTERS + PARENTS

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Sections 21 and 22: Dependants

→ Section 21 defines the categories of dependants of a deceased Hindu for purposes of the Act.

→ Section 22 deals with maintenance of such dependants from the estate inherited by heirs, subject to statutory conditions.

→ It does not mean that every relative can automatically demand money from any heir.

→ The heir's liability is tied to the estate and other rules within the section.

→ Exam tip: separate a living person's support duty from obligations following a death.

REMEMBER:

DEPENDANTS' RIGHTS RELATE TO STATUTORY CONDITIONS

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Section 23: Amount of Maintenance

→ Courts consider the parties' status, reasonable needs, property and income and other statutory factors.

→ For a wife, circumstances justifying separate residence can affect the award.

→ For children, parents and dependants, individual needs and means must be examined.

→ Maintenance is not a fixed percentage applicable to all families.

→ Reasonable support means a fair amount based on the whole factual situation, not an arbitrary guess.

REMEMBER: MAINTENANCE IS FACT-SENSITIVE

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Changes in Maintenance

→ Section 25 permits alteration of a maintenance amount upon a material change in circumstances.

→ An increase in essential expenses or a significant change in paying capacity may justify review.

→ Section 26 addresses the priority of debts against maintenance claims as specified in the Act.

→ Judicial orders must be studied together with the exact statutory route used.

→ Example: loss of income or increased medical need may lead a party to seek lawful variation.

REMEMBER:

MATERIAL CHANGE CAN JUSTIFY A FRESH ASSESSMENT.

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Family Law I

Unit III

17/08/2021

Page 26

Muslim Maintenance: Nafaqa

→ Nafaqa generally means support, including necessities such as food, clothing and lodging, under Muslim law.

→ Rules differ according to the relationship: spouses, children and parents.

→ A husband's maintenance obligation toward a wife is distinct from her own property rights and mahr.

→ The precise entitlement depends on the applicable law, conduct and circumstances.

→ Do not confuse nafaqa with mahr: the former concerns ongoing support, the latter a marital obligation.

REMEMBER:

NAFAQA = SUPPORT ; MAHR = DOWER

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Nafaqa: Wife's Right

→ Traditional Muslim law recognises a wife's right to maintenance from her husband during marriage, subject to applicable rules.

→ Courts examine lawful marital status, the parties' situation and any defence recognised by law.

→ A wife need not lose her identity or property in order to claim lawful support.

→ A divorced wife's rights also involve statutory provisions, especially the 1986 Act and the general maintenance remedy.

→ Always identify whether the claimant is married, separated or divorced.

REMEMBER:

STATUS OF THE MARRIAGE AFFECTS THE REMEDY.

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Nafaqa: Children and Parents

→ Muslim law recognises family support duties toward children and certain dependent parents according to school-specific rules.

→ The child's age, inability to support himself or herself, and special need can matter.

→ Aged or infirm parents may have a claim against children who are obliged and able to provide support.

→ Separate statutory maintenance remedies can also apply regardless of the parties' personal-law background.

→ In an exam, state the child's or parent's need before addressing the responsible person.

REMEMBER:

NEED + RELATIONSHIP + ABILITY TO SUPPORT

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CrPC Section 125: Maintenance

→ For the 2021 syllabus, Section 125 of the Code of Criminal Procedure, 1973 was the important secular summary maintenance remedy.

→ It provided for qualifying wives, children and parents unable to maintain themselves when a person with sufficient means neglected or refused support.

→ The provision was not restricted to members of one religion.

→ The legal definition of wife included a divorced woman who had not remarried in the relevant context.

→ Remember: this notes set follows the 2021 statutory syllabus; later procedural legislation may renumber the remedy.

REMEMBER:

SECTION 125 CrPC WAS A RELIGION-NEUTRAL REMEDY

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Shah Bano and Danial Latifi

→ Mohd Ahmed Khan v Shah Bano Begum, (1985) 2 SCC 556 addressed maintenance of a divorced Muslim woman under Section 125 CrPC.

→ The Muslim Women (Protection of Rights on Divorce) Act, 1986, later created a specific statutory framework.

→ Danial Latifi v Union of India, (2001) 7 SCC 740 interpreted the 1986 law to secure a fair and reasonable provision extending beyond iddat, made within iddat.

→ These decisions are central to women's maintenance rights.

→ Write the difference between making provision within iddat and support limited only to iddat.

REMEMBER:

SHAH BANO + DANIAL LATIFI = KEY MAINTENANCE CASES

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Guardianship : Meaning and Types

→ Guardianship concerns legal responsibility for the person or property of a minor.

→ A guardian of the PERSON attends to care, education and personal welfare.

→ A guardian of PROPERTY manages property for the child's benefit under legal limits.

→ A guardian for MARRIAGE is discussed separately in classical Muslim personal law.

→ Guardianship is different from adoption: guardianship does not automatically create an adoptive parent-child status.

REMEMBER:
PERSON / PROPERTY / MARRIAGE

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HMGA: Natural Guardians

→ Section 6 of the Hindu Minority and Guardianship Act, 1956 deals with natural guardians.

→ For a boy or unmarried girl, the text mentions the father and after him the mother, read with Supreme Court interpretation.

→ Custody of a child below five years should ordinarily be with the mother, subject to welfare.

→ For an illegitimate boy or unmarried girl, the mother is listed first.

→ Every guardianship decision must respect Section 13: the minor's welfare is paramount.

REMEMBER:
WELFARE OF THE MINOR COMES FIRST

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17/08/2021

Case: Githa Hariharan (1999)

→ Githa Hariharan v Reserve Bank of India, (1999) 2 SCC 228.

→ The Supreme Court interpreted 'after him' in Section 6(a) to mean in the absence of the father, not only after his death.

→ A mother can therefore act as natural guardian when the father is absent in the relevant sense.

→ This interpretation avoids unjustified exclusion of mothers from guardianship.

→ Exam: cite the case when the question asks who may represent a minor child.

REMEMBER: MOTHER NEED NOT WAIT FOR FATHER'S DEATH

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HMGA Section 8: Guardian's Powers

→ A natural guardian can perform acts necessary or reasonable for the minor's benefit and protection of the minor's estate.

→ But a natural guardian cannot sell, mortgage, gift or otherwise transfer the minor's immovable property in specified ways without prior court permission.

→ A transfer made in breach of Section 8 can be voidable at the minor's instance.

→ The guardian cannot bind the minor by a personal covenant beyond lawful authority.

→ Example: a sale of a minor's land needs special judicial scrutiny.

REMEMBER:
IMMOVABLE PROPERTY DEALINGS NEED STATUTORY CARE

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Family Law - I
Unit III : Adoption, Maintenance and Guardianship
GGSIPU 2021

17/08/2021

Testamentary and Court Guardians

→ Section 9 HMGA concerns guardians appointed by a parent's will, subject to its rules and the minor's welfare.

→ A court-appointed or certified guardian acts under the Guardians and Wards Act, 1890 and court supervision.

→ A testamentary guardian's powers are not unlimited and must respect law and child welfare.

→ The court weighs the child's safety, relationships, needs and circumstances.

→ Remember the distinction: natural by law; testamentary by will; certified by court.

REMEMBER : NATURAL / TESTAMENTARY / COURT-APPOINTED

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Family Law-I
GGSIPU 2021
Unit-III
page 36

17/08/2021

De Facto and Affinity Guardians

→ A de facto guardian is someone who actually looks after a child without being a legally authorised guardian.

→ Section 11 HMGA restricts a de facto guardian from dealing with the minor's property merely because of such care.

→ Traditional discussion of a guardian by affinity may arise in older family-law texts, but current statutory safeguards must control.

→ A helpful relative does not automatically acquire authority to sell a child's land.

→ Section 13 HMGA always places the child's welfare at the centre.

REMEMBER — CARING FOR A CHILD DOES NOT CREATE FULL LEGAL POWER

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Family Law-I
GGSIPU 2021
Unit-III
Page 37

17/08/2021

Muslim Guardianship: Person

→ Walayat-e-nafs concerns guardianship of a minor's person under Muslim law.

→ Hizanat means custody or the day-to-day care of the child; it is distinct from broader legal guardianship.

→ Traditional rights of mothers and fathers vary with the school of law and age of the child.

→ Indian courts ultimately assess the welfare and best interests of the child in custody disputes.

→ Do not equate a parent's right with unrestricted ownership over the child.

REMEMBER — HIZANAT = CUSTODY; WELFARE IS CENTRAL

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Muslim Guardianship: Marriage and Property

→ Walayat-e-nikah refers to guardianship connected with a minor's marriage in traditional Muslim law; modern child-marriage laws must be considered.

→ Walayat-e-mal concerns management of a minor's property.

→ The father and certain legally recognised persons may act as property guardians under the applicable personal law.

→ A person merely acting as a de facto guardian has no unlimited power to transfer a Muslim minor's property.

→ Imambandi v Mutsaddi (1918) 45 IA 73 is important on limits of a de facto guardian.

REMEMBER —
PERSON / NIKAH / PROPERTY ARE DIFFERENT FUNCTIONS

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Family Law - I
GGSIPU 2021
Unit - III
Page 39

17/08/2021

Guardianship Case Notes

→ Githa Hariharan (1999): mother may be a natural guardian in the father's relevant absence.

→ Lakshmi Kant Pandey (1984): safeguards for inter-country adoption and child welfare.

→ Shabnam Hashmi (2014): religion-neutral statutory adoption route.

→ Imambandi v Mutsaddi (1918): limits of a de facto guardian dealing with a Muslim minor's property.

→ In custody problems, explain why welfare outweighs a rigid parental claim.

→ Answer structure: facts → applicable law → case → welfare analysis → conclusion.

REMEMBER — THE CHILD'S BEST INTERESTS GUIDE THE ANSWER.

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17/08/2021

Unit III : Final Revision Questions

→ Q1. List the four elements of a valid adoption under Section 6 HAMA.

→ Q2. Explain the twenty-one-year age-gap condition and giving-taking requirement.

→ Q3. Differentiate wife, widowed daughter-in-law and child maintenance under Sections 18, 19 and 20.

→ Q4. What is nafaqa? Discuss Shah Bano and Danial Latifi.

→ Q5. Compare natural, testamentary, court and de facto guardians.

→ Q6. Compare Hindu and Muslim guardianship of person, marriage and property.

→ Key words to revise: HAMA, HMGA, JJ Act, welfare, mahr, nafaqa, hizanat.

REMEMBER — SECTION + CASE + EXAMPLE + CHILD WELFARE

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