

The Right of Hindu Wife to Maintenance under Hindu Adoption and Maintenance Act.

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INTRODUCTION

Marriage is the very foundation of any society. It is sine qua non for family peace and stability. Being so, legislatures all around the world have given certain rights and imposed certain obligations on husband and wife which are important constituents of any family. In ancient times, marriage was considered to be decided by the God and divinity was associated with it. It is considered to be a sacred social institution. Marriage, according to the Hindu Law, is a holy union for the performance of religious duties. Marriage is not a contract but it is a Sanskar or Sacrament". The Sanskar ordained that once a maiden is given in marriage, she must preserve her chastity as much after as before her husband's death." According to the Mahabharata, Wife is not only a source of Dharma, Artha and Kama" but also a source of Moksha". In Ramayana, Wife is said to be the very soul of her husband. She is Grihini, Sachiva" [wise

Counselor] and Sakhi [friend of her husband]. She is Griha Laxmi, Ardhangini (half of him) and Samarajyi". Hindu marriage protects a woman by guaranteeing her legal rights for restitution of conjugal rights in case of desertion, legitimacy of the children, relief in case of cruelty, adultery, impotency, claim of maintenance and alimony etc. and order for maintenance to wife who is unable to maintain herself. Husband and wife are two wheels of a family chariot and it is but natural that in the course of time they unknowingly enter into a state of discord. Notwithstanding enactment of a plethora of laws, the male dominated society of India doesn't allow even a modicum of improvement in the status of a married woman.

With the result, the Indian home has become the safest place for men to commit violence against women who are defenceless. To overcome this age-old disability, The Hindu Marriage Act (HMA), 1955, The Hindu

Succession Act (HAS), 1956, The Hindu Adoption and Maintenance Act (HAMA), 1956 and The Hindu Guardian and Wards Act (HGWA), 1956 have been enacted. The State tries to empower married women through its policies and laws mentioned above. But due to their ineffective implementation, the Constitutionally-mandated concept of equality" continues to be a mere paper blessing, far divorced from the touch of reality. So much so Hindu wife is not entitled to maintenance by spouse's family under Hindu Adoptions and Maintenance Act, 1956. This paradox is the result of patriarchal norms and values institutionalized by the State. This leads to creation of inferior image of a woman which is an age-old tragic reality of Indian society. The Researcher here tries to adumbrate and justify rights of maintenance of a Hindu married woman, whose husband is unable to provide maintenance to her under Hindu Adoptions and Maintenance Act, 1956

Objectives of the Section 18 of Hama Act, 1956

a. To analyze response of Indian judiciary and legal luminaries to Right of the Hindu wife to Maintenance under Hindu Adoptions and Maintenance Act, 1956

b. To compare the status of:

i. Right to Maintenance of the Hindu wife u/S.18 of Hindu Adoptions and Maintenance Act, 1956

ii. Right to Maintenance of widowed daughter-in-law u/S.19 of Hindu Adoptions and Maintenance Act, 1956

iii. Right to Maintenance of a Hindu wife, whose husband is unable to provide maintenance to her under Hindu Adoptions and Maintenance Act, 1956?

c. To study Right to maintenance in classical Hindu law

d. To suggest remedial measures to alleviate sufferings of a woman whose husband is unable to provide maintenance to her under Hindu Adoptions and Maintenance Act, 1956 in India?

Right to Maintenance of Hindu Women under Hindu Adoption and Maintenance Act

The right of maintenance arises from the concept of an undivided family. The head of such family is bound to maintain its members, their wives and their children. It is declared by Manu that "the aged mother and father, the chaste wife, and an infant child must be maintained even by doing a hundred misdeeds."

Definition of Maintenance: It is a right to get necessities which are reasonable. Section 3(b) of the Hindu Adoptions and Maintenance Act, 1956 defines maintenance. According to this section Maintenance include

(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 an incident to her marriage, (c) “minor” means a person who has not completed his or her age of eighteen years.

In **State of Haryana v. Smt. Santra**, it was held that it is a liability created by Hindu Law and arises out of jural relation of the parties

Nature and Extent of the Right of Maintenance under the Hindu Adoptions and Maintenance Act, 1956:

(A) Maintenance of Wife: Section 18 of the Hindu Adoptions and Maintenance Act, 1956 deals with the maintenance and separate residence of wife.

(1) A Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her life time.

(2) A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance

(a) If he is guilty of desertion, (b) if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband. (c) If he is suffering from a virulent form of leprosy. (d) If he has any other wife living. (e) If he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere. (f) If he has ceased to be a Hindu by conversion to another religion. (g) If there is any other cause justifying living separately.

(3) A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.

Interim maintenance: In **Purusottam Mahakud v. Smt. Annapurna Mahakud**, Supreme Court held that the right to claim interim maintenance in a suit is a substantive right under section 18 of the Act. Since no form is prescribed to enforce the said right civil court in exercise of its inherent power can grant interim maintenance.

Maintenance pendente lite: After considering the status of the husband the wife should be awarded maintenance pendente lite, even though there is no separate provision in the Act for grant of maintenance pendente lite. The obligation to maintain the wife remains on the husband even though the wife might be living separately.

Maintenance to wife/widow: Widow has no charge on separate property of husband. Neither section 18 relating to maintenance of wife nor section 21 dealing with widow provides for any charge for maintenance on separate property of husband.

Right of Separate residence: (i) the wife had been living alone and all the children had been brought up by her without any assistance and help from the husband and there was a clear case of desertion, the wife was entitled to separate residence and maintenance. (ii) The thoughtless action of the husband of evicting the wife from the house where she had been living in collusion with the purchasers of the house and the police inflicted a deep wound on her amounting to cruelty, the wife was entitled to live separately and claim maintenance; (iii) The claim for maintenance by a wife

can also be sustained under clause (g) even on a ground covered by one or other clauses i.e. clause (a) to (f) of section 18(2) substantially but not fully. Merely because the wife fails to strictly prove the specific grounds urged by her, she cannot be denied relief.

B. Maintenance of widowed daughter-in-law. Section 19 of the Hindu adoption and Maintenance Act, provides that a widowed daughter-in-law is entitled to be maintained by her father-in-law. Section 19 runs as follows;

(1) A Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained after the death of her husband 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.

In **Raj Kishore Mishra v. Meena Mishra**, it was held that where from the estate of the parents, the daughter-in-law can maintain herself; question of father-in-law does not arise.

C. Maintenance of children and aged, infirm parents. Under Section 20 of the Act not merely the father but mother is also

under a legal obligation to maintain Son or illegitimate son.

D. Maintenance of dependants: Section 21 of the Hindu Adoption and Maintenance Act deals with the rights of the dependants of the deceased to claim maintenance from the heir of the deceased.

Maintenance of dependents (Section 22):

(1) the heirs of a deceased Hindu are bound to maintain the dependants of the deceased out of the estate inherited by them from the deceased. A person having concubine and he himself dying after the Act coming into force, would confer a right to maintenance upon the concubine. Where no property is inherited by the brothers from their father, they cannot be compelled to contribute for the marriage of their sister. Where there is no maintenance from the estate of the husband or from her son or daughter such Hindu widow, is to be taken as dependant of the father-in-law under this section as section 19 would not be having its application to such a case.

Amount of maintenance (Section 23):

Section 23 of the Act provides the amounts maintenance which is a person entitled to. (1) It shall be in the discretion of the Court to determine whether any, and if so what,

maintenance shall be awarded under the provisions of this Act. The amount payable by way of maintenance depends on the facts of each case and as such, no exception could be taken to the amount fixed by the trial Court as well as the date from which the maintenance could be claimed. The amount maintenance, whether fixed by a decree of court or by agreement, either before or after the commencement of this Act, may be altered subsequently if there is a material change in the circumstances justifying such alteration.

Maintenance when to be a charge: A dependant's claim for maintenance under this Act shall not be a charge on the estate of the deceased or any portion thereof, unless one has been created by the will of the deceased, by a decree of court, by agreement between the dependant and the owner of the estate or portion, or otherwise.

Effect of transfer of property on right to maintenance:

Where a dependant has a right to receive maintenance out of an estate, and such estate or any part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right or if the transfer is gratuitous; but not against the

transferee for consideration and without notice of the right.

Provisions of ‘Maintenance’ of the Hindu Wife under Hindu Adoptions and Maintenance Act (Hama), 1956

Under matrimonial laws, a woman can obtain maintenance from her husband only as an adjunct to proceedings for divorce or judicial separation. But if woman is a Hindu, then she can claim maintenance and the right to live apart from her husband without having to file a petition for judicial separation or divorce. 19 Under Section 18 of HAMA, 1956 a woman can claim maintenance from her husband on any of the following grounds:

Maintenance- Section 18 - Maintenance of Wife.-

(1) Subject to the provisions of this Section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her life time.

(2) A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance- (a) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause

and without her consent or against her wish or willfully neglecting her; (b) if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband; (c) if he is suffering from a virulent form of leprosy; (d) if he has any other wife living;.

(3) A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion." Under the Hindu Adoptions and Maintenance Act, 1956 as it stands today, even if the husband is a member of a joint family, his wife has no right to maintenance against the relatives of her husband who is incapacitated and therefore unable to maintain her. Under such circumstances, the aggrieved woman has only two alternative remedies available to her: i) a suit for partition in respect of her husband's estate, or ii) a divorce petition for claim of maintenance. But, alas, neither of these two alternatives brings any meaningful solace to the aggrieved woman and her children, in the face of a ruthlessly endless list of cases pending judicial adjudication in Indian Courts. It is, therefore, necessary to deeply

delve into and critically analyze the prevailing background of law in this regard.

Section 19 - Maintenance of widowed daughter-in-law.-

(1) A Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained, after the death of her husband, 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 under sub-section (1) 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."

In 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.

The Response of the Indian Judiciary and Legal Luminaries to 'Right to Maintenance of Hindu Wife' In Classical Hindu Law

It is clear from the foregoing that though, over a period of time improved rights are bestowed upon Indian Hindu women, the rights available to them do not match with the rights required. In this context Indian Judiciary is found to be ambivalent. This conclusion is fortified in violation of the Fundamental Rights, are nothing but void. On *Masilamani Mudliar vs. idol of sri swaminathswami thirukoli* where the Supreme Court came to the conclusion that the personal laws, to the extent they are 11th February 2014 a Bench of the High Court of



Punjab and Haryana consisting of Hon^{ble} Justice Paramjeet Singh in **Avtar Singh vs. Jasbir Singh**, identified the lacuna in HAMA, 1956 with regard to property and maintenance rights available to Hindu wives. In the said case, the Plaintiff was the wife of a man of unsound mind, who had sought 1/4th share in the land belonging to the family, from her father in law as maintenance for herself, her husband and her minor sons. The said share had been provided to her by her father in law through a family settlement before the Gram Panchayat; but the wife was later forcibly dispossessed of the land by her father in law and brother in law. Since the said property had been voluntarily given by the father in law to his son of unsound mind and his family through a family settlement, the substantial question of law regarding the legal obligations of the father in law in such situations was not raised and the case was decided on the basis of whether the said family settlement before the Gram Panchayat was required to be registered in order to effect the validity. However, before parting with the case, the Learned Judge made the following observations with regard to legal position of Hindu wives: “Before

parting with judgment, it would be appropriate to mention that no provision has been brought to my notice by learned counsel for the parties that if husband is insane or of unsound mind, the daughter in law who is not having any source of maintenance can claim maintenance for herself. When she has to maintain her mentally-ill husband, her condition is worse than being a widowed daughter in law. In such a situation, the wife should be deemed to be dependent upon the father in law and entitled to maintenance as provided under Section 19 of the Hindu Adoptions and Maintenance Act. Copy of this Order is sent to the Union Ministry of Law and Justice and the Law Commission of India for taking appropriate measures for amendment in the Act.”

In **Ramabai wife of Bhikaji Bhaskar v Trimbak Ganesh Desai**, the husband, an undivided member of a Hindu joint family, had deserted his wife. The wife claimed maintenance for herself and her child from the husband's relatives. The Bombay High Court held: “No doubt, the authorities do not show that the relations of a deserted wife are under a personal liability to maintain her; but they do show that she is entitled to be



maintained out of her husband's property to the extent of one-third of the proceeds of that property." The High Court thus upheld the claim of the wife to receive maintenance from her husband's relatives, even though the latter did not have a personal obligation to do so. The validity of this holding is indicated by fact that this judgment is cited in the authoritative book, Mayne's Hindu Law & Usage, to illustrate the wife's established right to receive maintenance from the husband's family members on 13 February, 1928 the Madras High Court.

In **Gopala Pattar v Parvathi Ammal** also principle the above thinking and observed: "It is difficult to see any distinction between the position of a widow who has been obliged to enforce her charge for maintenance and that of an abandoned wife who is obliged to do the same. If she has this right against her husband personally it can be enforced by the attachment and sale of his property and that property consists of an undivided share in the joint family property. A charge, therefore, so long as the husband is alive and available is not really of such a benefit to the wife for, in effect, she is able to enforce a charge in execution; but if the husband should die or abscond, her right

would be very considerably impaired, for she could no longer enforce the personal obligation, and would have to institute proceedings against the family and against the family property.

Suggestions and Recommendation

In the light of the foregoing discussion which handled the issue threadbare by delving deep into all its intricacies, the Researcher gives her unstinted support to the recommendations of the Law Commission of India which would make a large section of aggrieved daughter-in-laws in heave a sigh of relief.

The judgments delivered by various High Courts and Supreme Court from time to time cast an unavoidable legal obligation on the father-in-law to maintain his daughter-in-law in an unfortunate event of inability of daughter-in-law's husband to maintain her. This judicial thinking finds full support from legal luminaries. The above thinking lends full support to the amendments proposed by The Law Commission of India in its 252nd Report (6th January, 2015) titled "Right of the Hindu Wife to Maintenance: A relook at Section 18 of the Hindu Adoptions and Maintenance Act, 1956 to make father-in-law obliged to pay maintenance to his



daughter-in-law, whose husband is unable to provide maintenance to her under Hindu Adoptions and Maintenance Act, 1956. The researcher fully agrees with the proposed Amendment.

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