



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

### KEYWORDS

Right to Maintenance, Hindu Adoption and Maintenance Act,

**Dr. Prativa Panda**

Reader, University Law College, Utkal University, BBSR-4

**ABSTRACT** Maintenance law in India relating to Hindu female can be classified into two types. The first type envisages maintenance following a divorce, or some other matrimonial remedy, such as, nullity of marriage. The second type envisages maintenance during the subsistence of marriage. This concept further stems from Article 15(3) reinforced by Article 39 of the Constitution of India. It is a measure of social justice and an outcome of the natural duty of a man to maintain his wife, children and parents, when they are unable to maintain themselves. The object of maintenance is to prevent immorality and destitution and ameliorate the economic condition of women and children. In the first category the maintenance can be claimed under the Section 25 of Hindu Marriage Act 1955 and in the second category maintenance to wife, parent and children under Section 125 of CrPC and Hindu Adoption and Maintenance Act, 1956. In this paper an attempt has been made to ascertain the nature and scope of the alimony and maintenance of wife, widow and dependent under Hindu Adoption and Maintenance Act 1956.

### INTRODUCTION:

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." Under Hindu law, a person has personal obligation to maintain his wife, children and aged and infirm parent.

**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**,<sup>3</sup> it was held that it is a liability created by Hindu Law and arises out of *jural relation* of the parties.

### 1. 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) 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 wilfully 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 injuries 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**<sup>4</sup>, 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. The suit under section 18 of the Act may take decades to decide, the wife in the first instance be forced to face starvation and then subsequently is granted maintenance from the date of filing of suit. Such a view will be against the very intent and spirit of section 18 of the Act. It is settled law that a court empowered to grant a substantive relief is competent to award it on interim basis as well, even though there is no express provision in the statute to grant it.<sup>5</sup>

**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.<sup>6</sup>

**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<sup>7</sup>.

(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<sup>8</sup>

### 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 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 coparcenary 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. Meena Mishra*<sup>9</sup>, 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.

#### Section 20 of the Act runs as:-

(1) Subject to the provisions of this section a Hindu is bound, during his or her lifetime, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents. (2) A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor. (3) The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends in 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 earnings or other property. Explanation- In this section "parent" includes a childless step-mother

Under this provision of the Act not merely the father but mother is also under a legal obligation to maintain-

1. Son or illegitimate son.<sup>10</sup>
2. Daughter or illegitimate daughter.<sup>11</sup>
3. Aged and infirm parents.<sup>12</sup>

### 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.

**Section 21 defined dependants:** For the purposes of this chapter "dependants" means the following relatives of the deceased.

- (i) his or her father.
- (ii) his or her mother,
- (iii) his widow, so long as she does not re-marry.
- (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 in 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 grand-son, from the estate of his father or mother or 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 grand-daughter from her father's or mother's estate and in the case of a grand-daughter 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.

### Maintenance of dependants (Section 22):

(1) Subject to the provisions of sub section (2) 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.<sup>13</sup> Where no property is inherited by the brothers from their father, they cannot be compelled to contribute for the marriage of their sister<sup>14</sup> 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.<sup>15</sup>

### Amount of maintenance (Section 23):

**Section 23 of the Act provides the amounts maintenance which is a person entitled to. It runs as follows:-**

(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, and in doing so, the court shall have due regard to the considerations set out sub-

section (2), or sub-section (3), as the case may be, so far as they are applicable. 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.<sup>16</sup>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.<sup>17</sup>

**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.<sup>18</sup>

**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 its 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<sup>19</sup>

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