

Need for a relook on legal provision regarding Maintenance under Hindu Law

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ABSTRACT: *This paper deals with the concept of Maintenance under the Hindu Law. It aims at providing support and care to wife, children and Aged parents. There is no fixed amount of maintenance, it is solely upon the discretion of the Court. Maintenance is part and parcel of basic human right and not merely a legal right. Section 125 of Cr.P.C. intends to protect indirectly the basic human right of individual. The provision also reflects the constitutional obligation and insures a standard of living to its citizens. These also uphold the spirit of Article 21 of the Constitution.*

Key Words: *Maintenance, Amount of Maintenance, right, obligation and lacunae.*

1. INTRODUCTION

Maintenance is a right to be supported and be taken care of. Under Hindu law, the subject of maintenance occupies a special place. The right to claim maintenance is recognized under different laws in India. Maintenance may be taken as a personal obligation of a man to rear up a family, to look after and support their family member. These would include children, wife, aged parents. It also includes those members who on account of their disabilities are disentitled to inheritance.

The right to maintenance includes all necessities of life such as clothes, food and shelter. According to Dharmashastra, the persons entitled to maintenance can be classified into categories, firstly, the persons about whom Dharmashastra lay down a binding duty and secondly about whom they lay down a general duty.

Apart from this, in spite of detailed provisions relating to maintenance there are some situations under which there are no legal provisions regarding maintenance which constitute lacunae in the present law of maintenance and the person aggrieved suffers due to this problem.

2. HISTORICAL BACKGROUND OF HINDU LAW

As a historical term, Hindu Law refers to code of laws applied to Hindus, Jains, Sikhs, Buddhists in British India. In modern scholarship, Hindu Law also refers to legal theory, jurisprudence and philosophical reflections of nature of law discovered in ancient and medieval era. It is one of the oldest jurisprudence theories in the world.

The term 'Hindu Law' is a colonial construction and it emerged after the colonial rule arrived in South Asia. In 1772, the British colonial officials decided that European common Law system would not be implemented in India and the Hindus would be ruled under their "Hindu Law" and Muslims would be ruled under "Muslim Law".

Prior to British Colonial rule, Muslim law was codified as **Fatwa-e-Alamgiri**, but for non-muslims such as Hindus, Buddhists, Sikhs, Jains, Parsis, laws were not codified during the 601 years of Islamic rule. The substance of Hindu law was derived from a Dharmashastra named **Manusmriti**, one of the treatises of Dharma.

The construction of Hindu law and Islamic law was an attempt at legal pluralism during the British colonial era, where people were subjected to different civil and criminal law based on the religion of plaintiff and defendant.

3. PURPOSE OF MAINTENANCE AND PROBLEM

Section 125 Cr.P.C., 1973 aims at prevention of starvation, destitution and vagrancy of the relatives i.e. dependants who are unable to maintain themselves. It is enacted to protect women, children and old parents. The main objection of section 125 Cr.P.C. is to provide relief to deserted and poor wives, discarded children and disabled parents. For this, compulsion is imposed on certain person to maintain their dependants who are unable to maintain themselves.

The right to claim maintenance is recognized under different laws. Wife, children and infirm parents, therefore must receive some subsistence. Government has therefore tried to deal with this problem by

enacting certain acts in legislature. Under various communities in India, the provisions for maintenance are enshrined namely, (a) in Hindu and Muslim Personal Law, (b) in the Code of Criminal Procedure, 1973. The provisions of section 125 Cr.P.C. , 1973 are enforceable whatever may be the personal law by means of which the respected persons concerned are guided and governed-*Nanak Chand V. Chandra Kishore*.¹

4. MAINTENANCE UNDER HINDU LAW

4.1. Law prior to Hindu Adoption and Maintenance act, 1956

A Hindu had no right to dispose of his property by way of gift or will to defeat his widow's right for maintenance. The right to maintenance is a personal right and it cannot be subject to transfer and similarly the right to future maintenance cannot be transferred. In execution of a decree, future right is not attachable. However arrears of maintenance can be attached.²

4.2. The Hindu Adoption and Maintenance Act, 1956

This act came into force on 21st December, 1956. It has 30 sections in which sections 18 to 28 relate to maintenance. It amended and codified the legislation. It prevails over all other laws or usages regarding maintenance among Hindus for which provision is made under this act.

Section 18 is in regard to maintenance of wife and section 20 in regard to maintenance of children and aged parents. Section 22 talks about maintenance of dependants. Section 23 talks about amount of maintenance.

4.3 Persons entitled to be maintained

4.3.1 Maintenance of Wife

It is a legal right of a wife to be maintained by her husband during her lifetime³. Consequently, a Hindu husband is legally bound to maintain his wife.

In the case of *Naranbhai v. Mahadeo*, it was held that whether the husband possesses property or not, the husband has to discharge this legal obligation.⁴ The wife is not a dependant as defined under section 21 as long as her husband is alive and during that time she cannot claim to be maintained by her or her husband's relative, unless they have her husband's property in their possession.

In *Bouramma v. Siddappa Jivappa Patarad*, it was held that an agreement between husband and wife to live separately cannot take this right away.⁵ Under this section, where the marriage, dissolved is the divorcee wife cannot claim maintenance under this section. She should resort to section 25, HMA. It is legal obligation of the husband to pay for wife's separate residence and is also bound to maintain her. The wife is entitled to maintenance on grounds of desertion, cruelty, virulent, leprosy of the husband, concubinage, another wife of husband, any other justified cause. Under section 18(3) there are two conditions under which a Hindu Wife is not entitled to separate residence and maintenance. They are:

1. Unchastity
2. Apostacy

Apart from these two conditions a wife is not entitled to maintenance when she resides separately without any justification or when she lives separately as a result of compromise and waives her right of maintenance. These two grounds have been evolved from the judicial pronouncements.

Recently, the court observed *Surjit Singh v. Gurdev Singh* in that if a wife is living in adultery, there was no ground to deny her intrinsic maintenance, particularly when she was not in a position to maintain herself.⁶

4.3.2 Widowed daughter-in-law

In *Rani Bai v. Yadunandan Ram*, it was held by the court that woman is entitled to be maintained by her husband, a mother she is entitled to be maintained by her son or daughter, a daughter she is entitled to be maintained by her father or another and a widow she is entitled to be maintained from the estate of her husband or by her father-in-law.⁷ Section 19 of the Act says that the father-in-law has a moral obligation to maintain the widow of his son.

According to section 19, a widowed daughter-in-law is entitled to maintenance from her father-in-law if she is unable to maintain herself out of her own earnings or other property, or if she is unable to obtain

¹ AIR 1970 SCC 446

² Section 60, Civil Procedure Code.

³ Section 18 (1) of Hindu Adoption and Maintenance Act, 1956.

⁴ (1881) 5 Bom 99, 103

⁵ (2003) 1 HLR 337 (Kant)

⁶ AIR 2007, Digest of Cases, P. & H. 134

⁷ AIR 1969 SCC 604

maintenance from the estate of her husband or father or mother or son or daughters or if the father-in-law has no coparcenary property in his possession out of which she has not obtained a share or if she has remained unmarried.

Section 19(2) lays down the conditions in which the liability to maintain the daughter-in-law comes to an end. These conditions are:-

1. When the father-in-law does not have any means for maintenance out of coparcenary property of his deceased son;
2. When the widowed daughter-in-law got any share in that coparcenary property;
3. When the daughter-in-law marries again;
4. When she gets converted into other religion.

The Calcutta High Court held in *Kanailal v. Pushparani Pramanik* that section 19(2) applies to parties governed by Mitakshara law only.⁸

In a recent case the Madras High Court observed that a widowed daughter-in-law is liable to be maintained by her father-in-law if her husband is not known for more than seven years and deemed to have died.

4.3.3 Aged infirm parents and the children

Section 20 of the act is regarding maintenance of aged infirm parents, legitimate and illegitimate children. As per section 20(1), a Hindu is bound during his lifetime to maintain his or her legitimate or illegitimate children and aged parents.

Section 20(3) says about obligation of a person to maintain his or her aged or infirm parent or unmarried daughter. The obligation extends as long as they are unable to maintain himself or herself out of his or her own earnings or other property.

A legitimate or illegitimate child, as long as he or she is a minor may claim maintenance from his or her father or mother.⁹

4.3.4 Dependents of the deceased

According to Section 22(1) of the act, the dependants of the deceased are entitled to be maintained by the heirs of the deceased. The liability is limited. It extends upto the estate inherited by them. This sub-section applies to the dependent of the person who died before 21st December, 1956. Each person inheriting the estate would be liable proportionate to share which they get as heirs.

According to Section 22(4), a person who himself is a dependent shall not be liable to contribute maintenance of others if he or she obtained share or part, the value of which would become less than what would be awarded to him or her as maintenance, if the liability to contribute were enforced.

Now the question arises who are dependents?

Section 21 of the act defines dependants. According to section 21, the following persons are dependants of a Hindu, male or female:

1. the father,
2. the mother
3. the widow,
4. the minor legitimate son,
5. the minor illegitimate son,
6. the minor legitimate unmarried daughter,
7. the minor illegitimate unmarried daughter,
8. the widowed daughter,
9. the son's widow
10. the grandson's widow
11. the son's unmarried daughter,
12. the grandson's unmarried daughter,
13. son's son's minor son

5. AMOUNT OF MAINTENANCE

It shall be the discretion of the court to determine whether any, and if so what, maintenance shall be awarded under this Act.

5.1. Award of maintenance to wife, children or infirm parents [Section 23(2)]

In *Kampanna v. Chima Nachammal*, In determining the amount of maintenance, if any, to be awarded to wife, children

⁸ AIR 1979 Cal. 172

⁹ Section 20 (2) of Hindu Adoption and Maintenance Act, 1956.

and infirm parents, regard shall be given to following five considerations :¹⁰

1. The position and status of the parties;
2. The reasonable wants of the claimant;
3. If the claimant is living separately, whether he (or she) is justified in doing so;
4. The value of the claimant's property and any income derived from such property, or from the claimant's own earnings or from any other source; and
5. The number of persons entitled to maintenance under the Act [Section 23(2)].

5.2 Award of maintenance to a dependant [Section 23(3)]

The court shall give regard the following in awarding maintenance to a dependant:

1. The net value of the estate of the deceased, after providing for the payment of his debts;
2. The provisions made in respect of the dependant under a will of the deceased.
3. The degree of relationship between the two;
4. The reasonable wants of the dependant;
5. The past relations between the dependant and the deceased;
6. The value of the property of the dependant and income derived from it, if any, or from his earnings or from any other source; and
7. The number of dependants entitled to maintenance under the Act.

5.3 The claimant should be a Hindu [Section 24]

According to section 24, no person is entitled to maintenance if has ceased to be a Hindu by conversion. The court has laid down that an unmarried daughter who has converted to other religion, cannot claim maintenance for the period even before her conversion.- *Sunderambal v. Pillai*¹¹

5.4 Alteration in the amount of maintenance [Section 25]

The amount of maintenance, whether fixed by a decree of court or by agreement may be altered subsequently if there is a material change in the circumstances justifying such alteration.

The courts have ample power to vary, modify or even discharge any order fixing the amount of maintenance made by a decree of court or alter the agreement if entered into by the parties. The power of the court is absolute.

6. LACUNAE IN THE PRESENT LAW OF MAINTENANCE

6.1 No provision for right to maintenance in case of second wife

According to the present law, a person cannot remarry while the first marriage is in subsistence. The second marriage contracted by a person is illegal and not valid in law. The Hindu marriage act does not provide maintenance to the second wife. Though judicial precedent is available for the maintenance of second wife, but due to absence of the clear provisions regarding the maintenance it depends upon the discretion of the judges. Such absence provides loophole in the Indian laws. These are exploited by the husbands to defend themselves. Therefore, there is a need to make clear and strict laws for the second wife.

6.2 Interim maintenance to be given till determination of Paternity of Child

The Court sometimes takes a lot of time in deciding the case of paternity of child in certain cases. So the question arises that how would a child survive in such situation. The court in certain cases grants interim maintenance to the child but still number of children suffer during paternity proceedings. Therefore the courts need to take special care in such cases so that the purpose of maintenance law which is to prevent vagrancy and destitution would be served.

6.3 No right to maintenance for Hindu Child who ceases to be a Hindu

A Hindu child who ceases to be a Hindu due to conversion to another religion loses all the rights to claim maintenance under the Act of 1956. Section 24 of the Hindu Adoption and Maintenance Act, 1956 needs to be amended for the welfare of the children and their religious freedom.

6.4 Grant of maintenance in case of mutual consent

Generally maintenance is denied in case of divorce by mutual consent. In my view this is injustice on the part of aggrieved party as it can be misused by the other party. The Rajasthan High Court in a recent case held that wife cannot claim maintenance and expenses of the proceeding from the husband. Such decisions puts wife in a helpless situation and does a great injustice to her.

¹⁰ AIR 1974 Mad 329

¹¹ AIR 1961 Mad 323

6.5 Provision for maintenance for widowed daughter in law

A widowed daughter in law is entitled to claim maintenance from her father in law but neither in the act of 1956 nor in Cr.P.C any provision entitle the daughter in law to seek maintenance whose husband is alive if he is missing or absconding or has deserted her. In such situation she can get divorced but cannot claim maintenance order against her in-laws. Secondly a widowed daughter in law is not entitled to claim maintenance from her mother in law even if she has sufficient means to maintain her and her father in law is not alive.

6.6 No legal for maintenance to a women in live-in-relationship under the present law of maintenance

A women in live-in-relationship is entitled to claim maintenance under the Domestic Violence Act, 2005 but not under Hindu law and under section 125 of The Code of Criminal Procedure as she is not a legally wedded wife. In a recent case the Court held that the appellant who is a live-in-partner can seek maintenance under the Protection of Women from Domestic Violence Act, 2005 but not under section 125 of Cr.P.C as she is not the legally wedded wife. In my point of view the live-in-partner should be entitled to claim maintenance under the provisions of Hindu law also as now the concept of live-in-relationship is declared as legal and as such the person aggrieved in such a valid relationship must be same rights as a legally wedded woman and should be able to claim maintenance under the Hindu Law of Maintenance.

7. CONCLUSION AND SUGGESTIONS

Granting of maintenance is a measure of social justice. It is a fundamental duty of a man to maintain his wife, aged parents, children and near relatives so long as they are unable to maintain themselves. It can be concluded from the recent judicial decisions that the Courts have been progressively liberal in deciding cases regarding maintenance. Section 125 of Cr.P.C. intends to protect indirectly the basic human right of individual. The illegitimate child entitled to Maintenance but not an illegitimate wife. This is therefore unfortunate for the women who marries without knowing about subsistence of the first marriage of the husband. Many such lacunae in the present law of maintenance are discussed above which are needed to be taken care of.

Effective measures are need to be taken to find out ways and means to eradicate lacunae, gaps, anomalies in maintenance laws. Parliament of India can bring necessary legislations.

The maintenance cases must be considered as a secured obligation and the suggestions contained in the Law Commission's 73rd Report with requirement of upkeep claims must be actualized.

Right to seek maintenance under section 125 of the Code of Criminal Procedure is alternate method. The pendency of the proceedings before the Family Court is no bar for maintainability outside the jurisdiction of the Family Court.

The order of maintenance may be altered, varied, enhanced or modified according to the nature of the case and the economic position of the parties.

Under section 125 of Cr.P.C., the husband or father should be liable to undergo a rigorous imprisonment. The maintenance grant must be based on the basis of need and the 73rd Report of the Law Commission regarding enforcement of maintenance claim must be taken into consideration and be implemented. Women are the foundation of the society and they need to be protected. Children are the future of the society and therefore they also need to be supported and protected. Thus, the legal and moral obligation of the husband to maintain his wife and children must be recognized by the law.

It is suggested that there is room for changes and improvement in the present law of maintenance according to the present needs.