

## **SEMESTER-II**

### **LM-114-GENERAL PRINCIPLES OF HINDU LAW AND HINDU LAW RELATING TO STATUS CREDIT-4**

#### **TOPIC-8: MAINTENANCE**

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#### **INTRODUCTION**

- The Hindu Law of Maintenance may be studied under following three heads:
  1. Personal obligation to maintain certain relations,
  2. Obligation of a person to maintain the dependants of another, whose property has devolved on him, and
  3. Obligations of the joint family to maintain its members.<sup>1</sup>

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<sup>1</sup> Dr. Paras Diwan, *Modern Hindu Law*, 233 (Allahabad Law Agency, Delhi, Twentieth Edition, reprint 2011)

- “The aged parents, a virtuous wife, and an infant child must be maintained every by doing a hundred misdeeds”, says Manu as cited at the Mitakshra.<sup>2</sup>
- This famous saying from the ancient and original law given, who is reverently called the first Patriarch or the first expositor of Hindu Law, indicates the depth and extent of the normal obligation of a Hindu son, a Hindu husband and a Hindu father to maintain his parents, wife and minor child.<sup>3</sup>
- The liability of a Hindu to maintain others, however, has **two facets**:
  - In some cases such liability arises from the mere relationship of a Hindu with others and is quite independent of his possessing any property. Such a liability is **personal liability** which a Hindu has to discharge towards his aged parents, virtuous wife and infant child.
  - In some other cases the liability of a Hindu to maintain others is dependent upon his **possessing the property of the family** to which the persons entitled to maintenance may belong. The concepts of the joint Hindu family, commonly called Hindu undivided family (H.U.F.) and the coparcenary are the two unique contributions by the Hindu Law to the way of life to any society of the human race.<sup>4</sup> (points made and emphasis supplied)
  - The right of the widow to maintenance out of the estate of her deceased husband in the hands of his heir or successor is in the nature of a burden upon the estate subject to which he takes the property and her right is to be maintained in comfort having regard

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<sup>2</sup> *Radhey Shyam And Ors. vs Meera Devi And Anr.* II (1997) DMC 581, 1997 (1) WLC 567 Para 11

<sup>3</sup> *Ibid*

<sup>4</sup> *Ibid*

to the extent of the assets of her husband **taken over by his successor.**<sup>5</sup>

- The standard of comfort must necessarily vary with the means of the family due regard being also paid to the wants of the other members of the family who also have to be maintained out of the income of the family properties.... Each case has to be decided upon its facts.<sup>6</sup>
- Where the assets of the husband which have been taken over are comparatively small, it has been held that the widow may be awarded even the whole of the income from her husband's share as it was at the time of his death. But in other cases there is no fixed ratio between the income derivable from the husband's share and the proportion thereof which should be awarded to her for her maintenance.<sup>7</sup>

#### **MAINTENANCE OF WIFE [SECTION 18(1)]:**

- A Hindu wife is entitled to be maintained by her husband during her life time.
- Every hindu wife can claim maintenance from husband if she lives with him.
- A Hindu wife after she attains puberty is according to law and custom bound to reside with her husband in conjugal life and he is also bound to live with her and is under a personal obligation to maintain her suitably quite irrespective of his having any properties, ancestral or self-acquired. A wife under normal circumstances has to share the comforts or discomforts of her conjugal life with her husband in whatever station of life he may be placed. If he is frugal and economical she must perforce be

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<sup>5</sup> *S. Srinivasa Ayyar And Anr. vs Lakshmi Ammal Alias Yogambal* (1928) 54 MLJ 530 Para 12

<sup>6</sup> *Ibid*

<sup>7</sup> *Ibid*

content to live as he does. If, on the other hand, he lives a life of comfort and luxury she shares that also with him.<sup>8</sup>

### **Maintenance of Separately Living Wife [Section 18(2)]:**

- A Hindu wife shall be entitled **to live separately** from her husband without forfeiting her claim to maintenance in case of:
  1. **Desertion by Husband:** that is to say, of abandoning her
    - i. without reasonable cause and
    - ii. without her consent or
    - iii. against her wish, or
    - iv. of wilfully neglecting her;
  2. **Cruelty by Husband:** 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;
  3. **Polygamy:** if he has any other wife living;
  4. **Keeping Concubine:** if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere;
  5. **Husband ceased to be a Hindu :** if he has **ceased to be a Hindu** by conversion to another religion;
  6. **Other justified Cause:** if there is any other cause justifying her living separately.
  
- ***Maharaja Nadar vs Muthukani Ammal AIR 1986 Mad 346 Para 28***
  - “Mere diminution of physical comfort in her husband's house is not a cause justifying her to live away from her husband and claim separate

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<sup>8</sup> S. *Srinivasa Ayyar And Anr. vs Lakshmi Ammal Alias Yogambal* (1928) 54 MLJ 530 Para 12

maintenance. *Vasuntharadevi v. Ramakrishna* (1947) 2 Mad U 544: AIR 1949 Mad 100.

- Cruelty and abandonment are not the only grounds on which separate maintenance could be allowed to a wife. Separate maintenance can also be awarded when the husband for reasons of his own chooses to put the wife away from him or the wife lives away from her husband for justifiable reasons.
- A wife is entitled to be maintained from her husband irrespective of his possession of any property and her right to maintenance is not lost, though curtailed to the barest necessities, by her unchastity if she continues to live with the husband.
- If the wife has to live away from her husband for a just cause, as for instance, husband's virulent leprosy, his habitual cruelty or neglect endangering her health or personal safety, or his keeping a concubine in the house, or his desertion or refusal to maintain her, then she will be entitled to separate maintenance.
- It may be said that the grounds which would be available to a wife to defeat a suit for restitution of conjugal rights would also entitle her to live apart from her husband and claim separate maintenance [vide *Matan Gini v. Jogendra* (1892) ILR 19 Cal 84, *Surampalli Bengaramma v. Brambaze* (1908) ILR 31 Mad 338, and *Sitabai v. Ramachandra*, (1910) 12 Born LR 373: 6 Ind Cas 525].

- ***Rajathi vs C. Ganesan AIR 1999 SC 2374***

“Even though wife was unable to prove that husband has remarried, yet the fact remained that the husband was living with another woman. That would entitle the wife to live separately and would amount to neglect or refusal by the husband to maintain her. Statement of the wife that she is unable to maintain herself would be enough and it would be for the husband to prove otherwise.”

### **EXCLUSIONS [SECTION 18(3)]:**

- A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is
  1. Unchaste or
  2. Ceases to be a Hindu by conversion to another religion.
- **Dattu Bhau Undage And Ors. Etc. vs Tarabai Dattu Undage And Etc. AIR 1985 Bom 106**

**Para 9** “S. 18 of the Hindu Adoptions and Maintenance Act has made provision for the separate maintenance of a wife. S. 25 of the said Act provides for the alteration of the amount of circumstances. It is needless to say that such an alteration would also include total quashing of the maintenance order if the circumstances are alleged and proved that such a quashing is necessary. The provisions of Ss. 18 and 25 of the Hindu Adoptions and Maintenance Act are practically similar to the provisions of Ss. 125 and 127 of the Cri. P.C. Thus, on principle there cannot be any difference between an order by a Criminal Court under S. 125 and a decree by a Civil Court. In view of this position, it will be very difficult for me to accept the contention of the judgment-debtors in both these matters that they can successfully resist the execution of the decree on the ground that the husband and wife have resumed cohabitation after the passing of the decree.”

- *Sm. Sankaribala Dutta vs Sm. Asita Barani Dasi And Ors. AIR 1977 Cal 289*

Para 15, “The right of a Hindu widow to maintenance out of husband's estate is conditional upon her leading a life of chastity and she may forfeit such maintenance on her remarriage under the provision of Section 2 of the Hindu Widow's Remarriage Act, 1856 or Section 22 read with Section 21(iii) of Hindu Adoption and Maintenance Act, 1956. But the interest by way of life estate created by a grant as now under consideration must be distinguished from the widow's right to receive maintenance from the estate of the deceased husband, in as much as, in case of a grant of the present nature a vested estate in the property is created by the deed -- the limit whereof is entirely dependent on the grant itself so that if in the grant there is no clause for forfeiture on the grantee's remarriage or on the grantee's ceasing to live a chaste life she cannot be said to forfeit her rights in the event of her remarriage or her living an unchaste life.”

#### **MAINTENANCE OF WIDOWED DAUGHTER-IN-LAW (SECTION 19):**

- (1) A Hindu wife shall be entitled to be maintained **after the death of her husband** by her father-in-law. Provided:
- a. she is unable to maintain **herself** out of her own earnings or other property or,
  - b. where she has no property of her own, is unable to obtain maintenance—
    1. from the estate of her husband or
    2. her father or
    3. mother, or
    4. son, if any, or his estate or
    5. daughter, if any, or her estate.

(2) Father-in-law shall have this obligation only when:

1. He has the means to do so from any **coparcenary property** in his possession
2. out of which the daughter-in-law has **not obtained any share**, and
3. any such obligation shall cease on the **remarriage** of the daughter-in-law.

***Master Daljit Singh & Ors. vs S. Dara Singh & Ors AIR 2000 Delhi 292***

- Para 9. The conditions for entitlement to maintenance by a widowed daughter-in-law from her father-in-law thus are: (1) the widowed daughter-in-law is unable to maintain from her own earnings or from her properties or (2) from the estate of her husband or father or mother; or (3) from her son or daughter or his or her estate; and (4) the obligation of the father-in-law is only to provide maintenance out of any co-parcenary property in his possession out of which the daughter-in-law has not obtained any share.

**MAINTENANCE OF CHILDREN AND AGED PARENTS (SECTION 20).—**

1. Hindu is bound, during his or her life-time, to maintain his or her:
  - i. legitimate or illegitimate children and
  - ii. 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 an unmarried daughter extends in so far as they are **unable** to maintain themselves out of their own earnings or other property.
4. Parent includes a **childless step-mother**.



- ***Amireddi Rajagopala Rao And ... vs Amireddi Sitharamamma And Others 1965 AIR 1970***

Hon'ble justice K. Subba Rao, Raghuvar Dayal, J. R. Mudholkar, R. S. Bachawat and Vaidynathier Ramaswami JJ

“It is well recognised that independently of the express texts of the Mitakshara, Ch. I s. 12, V. 3, the illegitimate son of a Sudra was entitled to maintenance out of his father's estate, though his mother was not a Dasi in the strict sense and though he was the result of a casual or adulterous intercourse. It was not essential to his title to maintenance that he should have been born in the house of his father or of a concubine possessing the peculiar status therein. See: *Muttusawmy Jagavera Yettappa Naicker v. Vencataswara Yettayya* [1868] 12 M.I.A. 203,220. The illegitimate son of a Sudra was entitled to maintenance out of his father's estate, though at the time of his conception his mother was a married woman, her husband was alive and her connection with the putative father was adulterous, see *Rahi v. Govind* [1878] I.L.R.2Bom.140, *Viraramuthi Udayan v. Singaravelu* [1877] I.L.R. 1 Mad.306, *Subramania Mudaly v. Valu* [1911] I.L.R. 34 Mad.68.”

- ***Smt. Sneh Prabha vs Ravinder Kumar AIR 1995 SC 2170***

“The two daughters (aged 28 and 10 years) are living with the appellant and she has to bear the education and other expenses to support the girls. She has also to save money for the marriage of the girls. Keeping in view these circumstances, we direct Ravinder Kumar (respondent) to pay a sum of rupees 4,000/-per month to the appellant for maintaining the two daughters.” (supreme Court allowed maintenance of major child).

## **DEFINITION OF DEPENDANTS (SECTION 21):**

- For the purposes of this Chapter “dependants” mean 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 pre-deceased son or  
the son of a predeceased son of his pre-deceased 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 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

**widow of a son of his predeceased son**, so long as she does not **re-marry**:

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):**

- 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**.
- Where a dependant has not obtained, by testamentary or intestate succession, any share in the estate of a Hindu dying after the commencement of this Act, the dependant shall be entitled to maintenance from those who **take the estate**.
- The liability of each of the persons who takes the estate shall be in **proportion** to the value of the share or part of the estate taken by him or her.

- No person who is **himself or herself a dependant** shall be liable to contribute to the maintenance of others, if he or she has obtained a share or part the value of which is, or would, if the liability to contribute were enforced, become less than what would be awarded to him or her by way of maintenance under this Act.

### **AMOUNT OF MAINTENANCE (SECTION 23):**

- It shall be in the **discretion of the court** to determine whether any, and if so what, maintenance shall be awarded.
- In determining the amount of maintenance, if any, to be awarded to a wife, children or aged or infirm parents, Court shall have due regard to—
  1. the **position and status** of the parties;
  2. the reasonable **wants** of the claimant;
  3. if the claimant is **living separately**, whether the claimant 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**;
  5. the **number of persons** entitled to maintenance under this Act.

(3) In determining the amount of maintenance, if any, to be awarded to a dependent under this Act, Court shall have due regard to—

(a) the **net value** of the estate of the **deceased** after providing for the payment of his debts;

(b) the provision, if any, made under a **will** of the deceased in respect of the dependant;

(c) the degree of **relationship** between the two;

- (d) the reasonable **wants** of the dependant;
- (e) the **past relations** between the dependant and the deceased;
- (f) the value of the **property of the dependant** and any income derived from such **property**; or from his or her **earnings** or from any **other source**;
- (g) the **number of dependants** entitled to maintenance under this Act.

### **OTHER CONDITIONS:**

#### **Claimant to maintenance should be a Hindu (Section 24).—**

No person shall be entitled to claim maintenance under this Chapter if he or she has **ceased to be a Hindu** by conversion to another religion.

#### **Amount of maintenance may be altered on change of circumstances (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.

#### **Debts to have priority (Section 26).—**

Subject to the provisions contained in section 27 debts of every description contracted or payable by the deceased **shall have priority** over the claims of his dependants for maintenance under this Act.

#### **Maintenance when to be a charge (Section 27).—**

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 (Section 28).—**

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.