



The legal provisions pertaining to maintenance under Hindu law need to be reviewed

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ABSTRACT: The notion of maintenance under Hindu law is the subject of this paper. It seeks to support and care for the wife, kids, and elderly parents. The Court has complete discretion on maintenance; there is no set amount. Maintenance is not only a legal right; it is a fundamental human right. The goal of Section 125 of the Cr.P.C. is to indirectly safeguard each person's fundamental human right. The clause guarantees its residents a level of living and expresses the fundamental duty. These also preserve the spirit of the Constitution's Article 21.

KEYWORDS: *Maintenance, Amount of Maintenance, right, obligation and lacunae*

1. INTRODUCTION

Maintenance is a right to care and assistance. The topic of upkeep holds a specific position in Hindu law. Various Indian laws acknowledge the right to maintenance. It is possible to view maintenance as a man's personal responsibility to raise a family, to care for and support their members. These would be the wife, kids, and elderly parents. It also covers members who are not eligible to inherit due to their disability.

Every basic need, including clothing, food, and housing, is covered under the right to maintenance. According to Dharmashastra, the people who are entitled to maintenance may be divided into two groups: those for whom the Dharmashastra establishes a general responsibility and those for whom it establishes a binding duty. Aside from this, despite the fact that maintenance is covered in depth, there are some circumstances in which there are no legal requirements pertaining to maintenance, which creates gaps in the current maintenance legislation and causes hardship for the person who is wronged.

2. HISTORICAL BACKGROUND OF HINDU LAW

Hindu law, as used historically, refers to the set of rules that were applicable to Buddhists, Jains, Sikhs, and Hindus in British India. Hindu law in contemporary academia also refers to legal theory, jurisprudence, and philosophical insights into the essence of law that were found in the ancient and medieval periods. It is among the world's earliest conceptions of jurisprudence.

Following the introduction of colonial control to South Asia, the phrase "Hindu Law" was coined. The British colonial authorities determined in 1772 that the European common law system would not be applied in India and that Muslims would be governed by "Muslim law" and Hindus by "Hindu law."



Muslim law, known as Fatwa-e-Alamgiri, was codified prior to British colonial authority. However, throughout the 601 years of Islamic rule, laws were not established for non-Muslims, including Buddhists, Sikhs, Jains, Parsis, and Hindus. Manusmriti, one of the Dharma treatises, is the Dharmashastra from which the core of Hindu law was developed. In an effort to promote legal diversity during the British colonial era, Hindu and Islamic law was constructed. During this time, people were subject to distinct civil and criminal laws depending on their respective religions.

3. PURPOSE OF MAINTENANCE AND PROBLEM

The purpose of Section 125 Cr.P.C., 1973 is to protect relatives—that is, dependents who are unable to support themselves—from starving, becoming destitute, or becoming vagrants. It was passed in order to safeguard elderly parents, women, and children. The provision of aid to impoverished and destitute women, abandoned children, and parents with disabilities is the primary objection to section 125 Cr.P.C. For this reason, some people are forced to provide for their dependents that are unable to support themselves.

Various laws acknowledge the right to upkeep. The wife, kids, and parents who are ill must consequently get some support. In order to address this issue, the government has attempted to pass legislation. The laws pertaining to maintenance are enshrined in the following Indian communities: (a) the Hindu and Muslim Personal Law; and (b) the 1973 Code of Criminal Procedure. Section 125 of the Cr.P.C., 1973 states that its requirements are applicable regardless of the personal law that governs and guides the respected individuals in question (*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 authority to give away his possessions in a will or gift in order to deny his widow support. As a personal right, the right to maintenance cannot be transferred, and the same is true for the right to future maintenance. Future rights are not attachable during the execution of a decree. Nonetheless, maintenance arrears may be linked.²

4.2. The Hindu Adoption and Maintenance Act, 1956

This act becomes operative on December 21, 1956. Sections 18 through 28 of its thirty sections deal with upkeep. It formalized the law and made amendments. All previous rules or practices pertaining to upkeep among Hindus that are covered by this statute are superseded by it. Section 20 deals with the maintenance of elderly parents and children, whereas Section 18 deals with the maintenance of a wife. Section 22 addresses dependents' maintenance. The amount of maintenance is discussed in Section 23.

¹ AIR 1970 SCC 446

² Section 60, Civil Procedure Code.



4.3. Persons entitled to be maintained

4.3.1. Maintenance of Wife

A wife has the legal right to receive maintenance from her husband for as long as she lives.³ A Hindu husband is therefore required by law to provide for his wife. It was decided in the *Naranbhai v. Mahadeo* case that the spouse must fulfill this legal duty regardless of whether he has property.⁴ As long as her husband is alive, the wife is not considered a dependent under section 21 and cannot demand maintenance from her or her husband's family, unless they are in possession of her husband's property.

According to the ruling in *Bouramma v. Siddappa Jivappa Patarad*, a husband and wife's agreement to live apart cannot be immediately revoked.⁵ When a marriage is dissolved, the divorced woman is not entitled to support under this clause. She ought to turn to Section 25 of the HMA. The husband is legally required to support his wife and to pay for her separate housing. Due to the husband's leprosy, concubinage, cruelty, abandonment, another wife, or any other justifiable reason, the wife is entitled to support. A Hindu wife is not entitled to separate housing and support in two circumstances, as stated in section 18(3). They are:

1. Unchastity
2. Apostacy

With the exception of these two circumstances, a woman who lives apart without cause or who compromises and gives up her claim to maintenance is not entitled to maintenance. The legal rulings have led to the development of these two foundations. According to a recent court ruling in *Surjit Singh v. Gurdev Singh*, a woman who is living in adultery cannot be denied interim maintenance, especially if she is unable to support herself.⁶

4.3.2. Widowed daughter-in-law

According to the court's ruling in *Rani Bai v. Yadunandan Ram*, a woman has the right to maintenance from her husband, a mother's from her son or daughter, a daughter's from her father or another, and a widow's from her husband's or her father-in-law's estate.⁷ According to Section 19 of the Act, the father-in-law is morally obligated to provide for his son's widow.

Section 19 states that a widowed daughter-in-law is entitled to maintenance from her father-in-law if she is unable to support herself without her own income or other assets, if she is unable to receive maintenance from her husband, father, mother, son, or daughters, if the father-in-law has no coparcenary property in his possession of which she has not received a share, or if she has remained single.

The terms under which the obligation to support the daughter-in-law ends are outlined in Section 19(2). These circumstances are:

- i. When the father-in-law does not have any means for maintenance out of coparcenary property of his deceased son;
- ii. When the widowed daughter-in-law got any share in that coparcenary property;

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



- iii. When the daughter-in-law marries again;
- iv. When she gets converted into other religion.

In *Kanailal v. Pushparani Pramanik*, the Calcutta High Court ruled that section 19(2) only applies to parties subject to Mitakshara law.⁸ In a recent judgment, the Madras High Court noted that if a widowed daughter-in-law's husband is presumed dead after more than seven years, she may be entitled to maintenance from her father-in-law.

4.3.3. Aged infirm parents and the children

Section 20 of the legislation deals with the maintenance of both legal and illegitimate children as well as elderly, infirm parents. A Hindu is required to support their elderly parents and children, whether they are illegitimate or legitimate, for the duration of their lives, according to section 20(1).

A person is required to provide for their elderly or disabled parent or unmarried daughter, according to Section 20(3). The responsibility lasts as long as they are unable to support themselves using their own income or other assets. As long as they are still minors, both biological and adopted children are eligible to receive maintenance from their parents.⁹

4.3.4. Dependents of the deceased

Section 22(1) of the statute stipulates that the deceased's heirs have the right to provide maintenance for their dependents. There is a limit on the liability. It even reaches the estate they inherited. This subsection covers the dependant of the deceased prior to December 21, 1956. In proportion to their part as heirs, each inheritor would be held accountable. A dependent person is exempt from paying maintenance to others under Section 22(4) if they get a share or portion of anything that would be worth less than the amount of maintenance they would receive if the need 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 grand son's widow
11. the son's unmarried daughter,
12. the grand son's unmarried daughter,
13. son's son's minor son

⁸ AIR 1979 Cal. 172

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



5. AMOUNT OF MAINTENANCE

The court will decide whether or not maintenances will be granted under this Act and, if so, what they will be.

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

In *Kampanna v. Chima Nachammal*, weight will be given to the following five factors when deciding how much maintenance, if any, should be granted to the wife, children, and elderly parents: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 to 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]

Section 24 states that no one who has converted to another religion is eligible for maintenance. According to the court's ruling, an unmarried daughter who has changed to a different faith is not eligible to receive maintenance for the time leading up to her conversion. *Pillai v. Sunderambal*.¹¹

5.4. Alteration in the amount of maintenance [Section 25]

If there is a significant change in the circumstances that warrants it, the maintenance amount—whether set by an agreement or a court decree—may be changed later. Any order determining the amount of maintenance made by a court decree or altering an agreement that the parties have agreed into can be changed, modified, or even discharged by the courts. The court has ultimate power.

¹⁰ AIR 1974 Mad 329

¹¹ AIR 1961 Mad 323



6. LACUNAE IN THE PRESENT LAW OF MAINTENANCE

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

The current legislation states that a person cannot be married again while their previous marriage is still going strong. A person's second marriage is unlawful and void under the law. The second wife is not entitled to support under the Hindu Marriage Act. Although there is court precedence for second wife maintenance, judges' discretion is exercised because there are no explicit regulations pertaining to maintenance. This lack creates a legal gap in India. The spouses take advantage of these to protect themselves. As a result, clear and stringent laws for the second wife are required.

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

In some situations, the court might take a long time to decide if a kid is their father. Thus, the question of how a child might do in such a circumstance emerges. Many children suffer throughout paternity procedures, even if the court occasionally provides the kid temporary maintenance. In order to fulfill the goal of maintenance legislation, which is to stop vagrancy and poverty, the courts must exercise extra caution in these situations.

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

According to the Act of 1956, a Hindu kid who converts to another faith and loses their Hindu identity forfeits all of their rights to maintenance. For the children's wellbeing and religious freedom, Section 24 of the Hindu Adoption and Maintenance Act, 1956, has to be changed.

6.4. Grant of maintenance in case of mutual consent

Maintenance is typically refused in divorce cases by mutual accord. Since it may be abused by the other side, I believe this to be unfairness on the part of the person that was wronged. In a recent instance, the Rajasthan High Court ruled that the wife could neither demand support or the cost of the litigation from her husband. Such choices greatly injure the woman and leave her in a powerless position.

6.5. Provision for maintenance for widowed daughter in law

Although a widowed daughter-in-law has the right to maintenance from her father-in-law, neither the 1956 Act nor the Cr.P.C. include any provisions that would allow a daughter-in-law to seek support from her husband if he is still alive, missing, absconding, or has abandoned her. She can file for divorce in this case, but she won't be able to sue her in-laws for support. Second, even if a widowed daughter-in-law has enough money to support herself and her father-in-law is deceased, she is not entitled to maintenance from her mother-in-law.

6.6. Under the current maintenance law, it is illegal for women to maintain a live-in relationship.

Because she is not a legally wedded wife, a woman in a live-in relationship is not entitled to maintenance under section 125 of the Code of Criminal Procedure or Hindu law, but she is under the Domestic Violence Act of 2005. As the appellant is not the lawfully married wife, the court ruled in a recent instance that she can claim support under the Protection of Women from Domestic Violence Act, 2005, but not under section 125 of the Cr.P.C. In my opinion, the live-in



partner should also be able to claim maintenance under Hindu law since live-in relationships are now deemed to be legal. As a result, the person who feels wronged in a legitimate relationship should have the same rights as a legally married woman and be able to claim maintenance under the Hindu Law of Maintenance.

7. CONCLUSIONANDSUGGESTIONS

A measure of social fairness is the granting of maintenance. A man's primary responsibility is to provide for his wife, elderly parents, kids, and close family members as long as they are unable to support themselves. Recent court rulings indicate that courts have been increasingly lenient in resolving maintenance-related matters. The goal of Section 125 of the Cr.P.C. is to indirectly safeguard each person's fundamental human rights. While an illegitimate wife is not entitled to maintenance, an illegitimate child is. As a result, it is regrettable for women who marry without being aware of the husband's previous marriage. As was mentioned above, there are several shortcomings in the current maintenance law that must be addressed.

In order to eliminate any gaps, inconsistencies, or inconsistencies in maintenance legislation, effective steps must be performed. The Indian Parliament has the authority to introduce the required laws. The recommendations made in the Law Commission's 73rd Report, which required upkeep claims, must be implemented, and maintenance cases must be regarded as a secured responsibility. An alternative approach is the right to request maintenance under section 125 of the Code of Criminal Procedure. Maintainability beyond the Family Court's jurisdiction is unaffected by the ongoing proceedings before the Family Court.

Depending on the circumstances of the case and the parties' financial situation, the maintenance order may be changed, varied, improved, or amended.

The husband or father should be subject to a severe jail sentence under section 125 of the Cr.P.C. The 73rd Report of the Law Commission concerning the enforcement of maintenance claims must be taken into consideration and fulfilled, and the maintenance grant must be determined by necessity. Women must be safeguarded because they are the backbone of society. Since they represent the society's future, children must also be encouraged and safeguarded. Therefore, the law must acknowledge the husband's moral and legal duty to provide for his wife and children. According to current demands, it is recommended that the current legislation of maintenance might be improved and changed.