

## Historical Perspectives And Parameter Of Maintenance Under Hindu Law In India

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### Abstract

The concept of maintenance under Hindu law has evolved significantly from ancient times to the present, reflecting societal changes and legal reforms. Historically, the duty of maintenance was considered a personal obligation arising from familial relationships, with the Karta (head) of a Hindu joint family being responsible for providing for its members. This responsibility extended to wives, children, parents, and other dependents, ensuring their sustenance and well-being. With the enactment of the Hindu Adoptions and Maintenance Act, 1956, the legal framework for maintenance was codified, outlining the rights of individuals to claim maintenance. The Act specifies that maintenance includes provision for food, clothing, shelter, education, and medical expenses. It also delineates the circumstances under which maintenance can be claimed, such as desertion, cruelty, or the husband's conversion to another religion. The amount of maintenance is determined by the court, considering factors like the claimant's status, needs, and the respondent's ability to pay.

**Keywords** Hindu Law, Maintenance, Joint family property, Hindu Marriage Act, 1955.

### INTRODUCTION

A society is the sum total of human beings, their inter-relationship and empathy coupled with sympathy for well knitted healthy bonding and better survival. Dashing accomplishment of survival needs to tolerate the hardest situations enmeshed with smooth rigors of life. Inquietude for human existence makes life misnomer if aspirations donot fructify with vibrant change of times. If maintenance interlopes to life rationally both for survival and endurance intractable habits vanish straightening the track.

According to Justice Subba Rao “personal law applies to those who profess a particular religion”.<sup>1</sup> David Pearl emphasized that “personal law interweaves a person with a particular legal regime not based only on religion but also on race, nationality, domicile, tribe or residence etc”.<sup>2</sup> Personal law sets forth the family matters, inheritance, succession, will, maintenance etc. relating to personal status of a human being best capable of withstanding the intrusions of territorial laws.

Personal law differs from private and public law as private law deals with the tussles between two private individuals whereas public laws deal with rights and duties of an individual framed by State to benefit them.

### A BRIEF NOTE ON HINDU LAW IN INDIAN PERSPECTIVES

The Hindu people believe in immortality of soul by a chain of birth and rebirth continuing till the chain is broken on attaining salvation, i.e. „Moksha“ as ultimate reward of mortality attained through „Yajnas“ or good activities. The acquisition of meaningful life, birth as human being is an opportunity for an

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<sup>1</sup> . G.C.V. Subba Rao, *Family Law in India*, 3 (Hyderabad, Gogia Law Agency, 2011)

<sup>2</sup> . David Pearl, *Interpersonal Conflict of Laws India, Pakistan and Bangladesh*, 2 (Stevens & Sons, 1981)

individual to liberate from the bondage of this chain. This idea has been persisting throughout the Hindu thought imbedded in Vedas, Samhitas, Sutras etc. also resurrected by Vedantists, Arya Samajists and other movements seeking legal reformation in modern times against misdeeds.

Hindu law is pioneered by the term Dharma forged, framed and enounced by Manusmriti or Dharmashastra as the works of first Hindu progenitor Manu patronized and practiced by Hindus as standard guide on Vedic faith.<sup>3</sup>The basic tenets of Dharma appearing in Vedas were espoused in Smriti subsequently reflected in „Digests or Nibandhas and Commentaries sanctified, modified and supplemented by the approved customs, usage etc. In the post Smriti period on 7th Century some explanatory critical works were done for consolidating and enlarging the parameter of the Hindu legal system but unfortunately some of them degenerated in course of time due to non orientation and non integration. Hindu law is not only grounded on Smriti but also on prevailing usages, practices and customs accepted by people and accustomed with their observance and have become an indispensable part with law creating efficacy.<sup>4</sup>The compiled works of ancient Hindu sages emphasizes on the ideal orderly society and human conduct centered on Smriti to promote and inculcate the conduct, orderly progression of world and observation of the obligatory duties. In modern India the vibrant innovation of thinkers have radicalized the social trend and attracted the modifications of personal law dynamically right across the ancient Gupta, Mughal and British rulings. It's ingress into pre and post independent society with the laws of „Manu“ acknowledging the prevailing social and gender inequalities as basic conditions of life, proposes to govern people with changes warranted by the situations. The laws of „Manu“ are archaic, outdated and primitive in comparison to present trend of legal orientation centered in paternalistic row invested men to regulate women being subordinate, serving the privileged class, justifying oppression of women and lower castes. It encouraged different treatment to people to perpetuate the social division to consolidate power by British people during their regime. So, deep rooted study of Manusmriti can reflect its religious significance in contemporary social spate to ferret out nuances and authoritative concomitance. The current vigorous legislative thrust has to cope with the changing social issues cropping up time and again and humble attempts are being made tirelessly to drive away the juxtaposition of problems. The history of Hindu law, its codes and legal ethics punctuate the silences to its catholic and elastic tendencies and existing irregularities to streamline the lacunae. It seeks to regulate the foreign elements of religious perception of eclecticism, tolerance and other widening diversity of practices to bring congeniality removing hidden anomalies.

#### **MAINTENANCE UNDER HINDU LAW**

Law of maintenance is a strategy towards supporting the persons having no provisions of food, raiment, residence and to give both physical and mental comfort to life and limbs arising under jural relationship of undivided family. Organic existence of all persons supplemented and fed by adequate maintenance facilities is paid out including idiot, madman etc though disqualified from inheritance to conform the mundane as well as customary liability. The head or

“Karta” has to defray all the expenses of family related issues.<sup>5</sup> Under Hindu law the liability of maintenance to wife, daughters of qualified and disqualified persons has been couched in some of the ancient Hindu texts<sup>6</sup> as follows,

1. Day and night woman must be kept in dependence by the males (of) their (families), and, if, they attach themselves to sensual enjoyments, they must be kept under one's control.
2. Her father protects (her) in childhood, her husband protects (her) in youth, and her sons protect (her) in old age; a woman is never fit for independence. Moreover, other religious mandates have been lucidly

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<sup>3</sup> . Ibid

<sup>4</sup> . M and Arshad Hidayatullah, Mulla, *Hindu Law*, 27 (Lexis Nexis Butterworths, 2007)

<sup>5</sup> . *Cheruty vs. Ravu* ILR(1940) Mad 830

<sup>6</sup> . Supra note 3

emphasized in the above texts covering various aspects of personal life of Hindu as principal social, religious authority.

Under Hindu law, the maintenance to be provided to the persons entitled to it under various circumstances can be studied in the following ways.

### **PERSONAL OBLIGATION TO MAINTAIN CERTAIN MEMBERS**

Classical Hindu law givers and sages unequivocally emphasizes that the maintenance to certain persons are personal obligation. Every male or female Hindu falls under this obligation having sufficient means of income or property to maintain those who are unable to maintain him or herself. A Manu text in Mitakshara and Parasaramadhaviya said “by doing hundred misdeeds also one should maintain the virtuous wife, children and parents”.<sup>7</sup> Brihaspati said “someone may give what remains after the food and clothing of family, who leaves family naked and unfed, may taste honey at first but afterwards finds it poisonous if he makes charity or „dana“ at the cost of maintenance”.

Maintenance is an obligation to be accomplished first rather than doing other charitable activities. A Hindu is under obligation to maintain all family members irrespective of having property or not including illegitimate children not as heirs<sup>8</sup> securing it by a charge of family estate except the married daughter. Under Dayabhaga School the illegitimate son entitles to maintenance up to majority but under Mitakshara it is during father’s lifetime excluding from inheritance from regenerate classes.<sup>9</sup> Illegitimate daughter was not entitled to maintenance under old Hindu law from her putative father nor the females were under obligation to maintain children and aged infirm parents. But if father does not have property that child is not treated as higher as legitimate son and father need not maintain major illegitimate children.<sup>10</sup> A concubine taken throughout life of a male Hindu is maintained out of his ancestral or self acquired property<sup>11</sup> losing her right on incontinence or death. Accordingly, Mitakshara School depicts where there is self acquired property in the absence of other property the entitled persons to whom maintenance is imperative are aged parents, wife or minor children. Maintenance to wife irrespective of having joint or self acquired property is personal obligation of husband and can be enforced by a charge and becomes entitled so by a notice even it is alienated.<sup>12</sup> So, Hindu law on maintenance is embedded in the ancient Hindu texts via the legal epithets of British rule to the modern times expeditiously modernized with contemporary social framework. Karta has to provide maintenance minutely observing that the reasonable wants of all are satisfied and emergence of self acquired property or coparceners right of partition has not lessened the compliance of mandatory maintenance obligation to be fulfilled without flouting the social coherent norms.<sup>13</sup>

### **TO MAINTAIN DEPENDENTS ON DEVOLUTION OF PROPERTY OF DECEASED**

Second obligation relates to the maintenance of the dependents by a person on whom property of a deceased Hindu devolves. This obligation arises only on the devolution of property and not otherwise. This concept is a new vista towards the travesty of justice u/Ss 21 and 22 of the Hindu Adoptions and Maintenance Act, 1956 (hereinafter HAMA) entitling the dependents to maintenance against the property of the deceased in the hands of the heirs on whom its estate devolves wherein such rights exist by virtue of property only. As during lifetime property of a person does not devolve on anyone, so no such rights accrue to the listed dependents mentioned u/S 21 of HAMA. The obligation is tagged to the estate and not to the person and thereby not giving rise to personal obligation. A person at same time may be an heir and dependent for example widow is an heir as well as dependent but she cannot claim

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<sup>7</sup> . Mitakshara on Yajnavalkya II

<sup>8</sup> . Mitakshara I,( iii)

<sup>9</sup> . *Hargobind vs. Dharam Siangh* , (1884) 6 All 329

<sup>10</sup> . *Ammakannu vs. Appu* , (1887) 11 Mad 91

<sup>11</sup> . Mitakshara II,1,27-28; Dayabhaga XI,1, 48

<sup>12</sup> . *Manikyam vs. Vekayamma*, AIR 1957 AP10

<sup>13</sup> . Paras Diwan and Peeushi Diwan, *Law of Maintenance in India*, 6 (Deep and Deep Publication, 1998)

as dependent if she has obtained a share in deceased husband's property either by intestate or testamentary succession. In this regard one thing can be projected for consideration that as some of the dependents are occupying dual positions as heir as well as dependent their name can be discarded from either of the position making him or her a single entity to claim maintenance. On the other hand if a Hindu dies bequeathing entire property to his son, then his mother and widow is a dependent of the son against such estate and shall be maintained by the son. So, peculiar position of dependent may make them more benefited in claiming maintenance under the laws in force.

There are some persons entitled to maintenance not as dependent but on the basis of rights vested on them under old Hindu law or accretion of rights under different situations have been reflected in the later part of this investigation.

### **MAINTENANCE OF JOINT FAMILY MEMBERS NOT IMPACTED BY PARTITION**

Under Hindu law, joint family is an important institute with respect to status and existence. So long as the family remains to be joint one every member has a right of maintenance out of joint family property. When partition brings an end to the joint family status certain persons are entitled to be maintained out of the joint family property fund as they don't take a share on partition and include the members viz.

- (a) disqualified coparceners and their immediate dependents such as wife, daughter, son, and illegitimate sons,
- (b) mother, step- mother, grandmother and other females entitled to be maintained,
- (c) unmarried sisters till they are married,
- (d) widowed daughters of deceased coparceners when such coparceners become entitled to maintenance out of the property of joint family.

In addition to the abovementioned people, concubines, illegitimate children having inferior status are nonetheless joint family members and are entitled to maintenance. Concubines were entitled to maintenance from the paramour's estate without living along with paramour and his family but lost the right for incontinent behavior. Entitlement of maintenance by a concubine at pre-constitution stage was condition precedent by a child born to her from the paramour<sup>14</sup> but ancient texts do not impose any condition except being a concubine.<sup>15</sup> An illegitimate child is to be maintained out of his father's estate and his father can allot a share to him but that share is usually half of the share of a legitimate son. Earlier, he was not considered a coparcener but modern Hindu law gives him such a status. An illegitimate daughter had no right of maintenance but under modern Hindu law she is entitled to maintenance. Presently Avarudhastree or concubine is disentitled from maintenance unlike the pre HAMA stage. Immature wife is to reside at parental home and maintenance can be demanded by parents from husband alone. So, in a nutshell it can be said that maintenance under Hindu law is available for persistent brunt of various laws in force to various categories of claimants.

Under Hindu Adoptions and Maintenance Act, 1956 various provisions are dealing with maintenance of wife including divorced wife<sup>16</sup>, widowed daughter in law, children and aged parents, dependents etc. They are entitled so long as the husband or wife or other persons entrusted to maintain are alive in nucleus family.

HAMA has repealed the erstwhile Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946, by Section 18 with similar entitlements. If the husband has died then the widow

<sup>14</sup> . *Rama Raja Thavar vs. Papamma*, Per Spencer, J. (1925) 48 Mad 805

<sup>15</sup> . Mitakshara's comment on Yajnavalkya II, 290

<sup>16</sup> . *Vihalal Mangaldas Patel vs. Miben Vihalal Patel*, AIR 1995 Guj 88

is claimant of maintenance from the person who is the custodian of the deceased husband's property so long as she does not inherit out of her husband's property as it is clear under the Hindu Succession Act, 1956. Moreover, the widow's entitlement of maintenance was regulated under the

Hindu Women's Right to Property Act, 1937 which allowed widow of deceased Mitakshara coparcener an interest of non-agricultural property. But the conferment of succession to the husband's property, the widow could not claim maintenance. Widow's right to maintenance is not affected by her right to share under 1937 Act unless she claims partition. She can claim either partition or maintenance whichever is deemed favorable not both.

The maintenance decree to wife can be executed after husband's death even if she inherits under 1937 Act slightly affecting the quantum.<sup>17</sup> Widow's right to maintenance simultaneously claimed from son not possessed of ancestral property and from father-in-law is not tenable except relying on any one and these provisions have now been inserted under the Hindu Succession Act, 1956. The Smrtichandrika candidly provides that obligation to maintain the widow is dependent on taking the property of deceased.<sup>18</sup> The factual analysis under textual, pre and post independence statutory parameter recognizes the entitlement of maintenance so long family relation exists particularly of husband and wife. But then dissolution or any rift to conjugal life causes the attraction of the provision of Hindu Marriage Act, 1955(hereinafter HMA) requiring such issues to be settled in a different parameter and assessment like the provisions of Sections 24, 25 of the HMA. During pendency of any proceeding in a District Court u/S 24 of HMA maintenance pendente lite and expenses can be awarded to one on the petition of the other spouse. More significantly the claims should be disposed of within sixty days of notice served to the respondent. Under Section 25 permanent alimony and maintenance can be awarded passing any decree in any suit or subsequent to such decree to be paid to the spouse by the respondent spouse.

So, it is seen that the marriage gives rise to the initiation of a family setup and its existence is accompanied by the condition of maintenance of family members. The contemporary maintenance laws are desiderata of social order and right across effective codification on this field seem to attain sterling appreciation with seldom occurring ambiguities. But freaking tendencies of people in society require amendments to curb the incendiary menace and breakdown of social relation like in marriage, bringing up children and supporting aged parents etc. leading destitution, vagrancy and other fracas.

## **CONCLUSION**

In conclusion, the historical evolution and legal parameters of maintenance under Hindu law reflect a commitment to familial responsibility and individual welfare. However, continuous reforms and societal awareness are essential to bridge the gap between legal provisions and their practical implementation.

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<sup>17</sup> . *Kripal Singh vs. Chandravati Devi*, AIR1951 All 507

<sup>18</sup> . Smrtichandrika, XI,1,34