

Provisions of Maintenance of Wife under Hindu Adoption and Maintenance Act 1956 And It's Application by the Courts

Dr. Shwetta Bajaj

Institute of Law and Research Faridabad, Haryana, India

Abstract:-The concept of maintenance of the wife is based on the matrimonial tie and obligates the husband to maintain his wife during his life time. This moral and social obligation of the husband has its roots in the Classical Hindu Law and later the same has been incorporated as a legal liability in various statutes. Despite the provision of maintenance of wife in the Cr. P. C and Hindu Marriage Act 1955, the provision for maintenance of wife had been incorporated in Hindu Adoption and Maintenance Act 1956, shows that through Section 18 of the Act , the specific provision was made for maintenance of wife taking note of our social values and that a non-earning wife without any means is considered to be dependent on the husband and the question of her maintenance consequential to the dependence cannot be left at the sweet will of the husband. The paper deals with analysis of the provision in depth, the judicial trend while applying the law and the lacuna persisting in the law highlighting the desirable amendment too.

I. INTRODUCTION

Mulla's Hindu Law (Sixteenth Edition) sets out the position in law prior to the enactment of 1956 Act. The Manager of a joint Mitakshara family is under a legal obligation to maintain all male members of the family, their wives and their children. On the death of any one of the male members he is bound to maintain his widow and his children. An heir is legally bound to provide, out of the estate which descends to him, maintenance for those persons whom the late proprietor was legally or morally bound to maintain (para 544). A wife is entitled to be maintained by her husband, whether he possesses property or not. When a man with his eyes open marries a girl accustomed to a certain style of living, he undertakes the obligation of maintaining her in that style (para 554). A Hindu widow is, in the absence of special circumstances, entitled to reside in the family dwelling house in which she lived with her husband (para 562). The maintenance to be allowed to a widow should be such an amount as will enable her to live consistently with her position as a widow, with the same degree of comfort and reasonable luxury as she had in her husband's house, unless there are circumstances which affect, one way or the other, her mode of living there. A widow who is entitled to maintenance may sue, inter alia, for a charge on a specific portion of her husband's estate for her maintenance and residence (para 579). The Hindu Adoption & Maintenance Act, 1959, was enacted to amend and codify the law relating to adoptions and maintenance among Hindus, and it defines

maintenance in Section 3 (d) to include "(1) In all cases, provision for food, clothing, residence, education and medical attendance and treatment."

Hindu law-givers did not deny maintenance even to an unchaste wife, provided she continued to live with her husband though in such a case she was entitled to starving maintenance¹.

II. OBJECT & SCOPE OF SECTION 18 OF THE HINDU ADOPTION & MAINTENANCE ACT, 1956

Section 18 of the Act provides for maintenance of wife. Maintenance has been so defined in clause (b) of Section 3 of the Hindu Adoption and Maintenance Act, 1956 as to include therein provision for residence amongst other things. For the purpose of maintenance the term 'wife' includes a divorced wife.

The doctrine of maintenance to the wife sprang from her matrimonial tie and obligates husband to maintain his wife during his lifetime regardless of his possessing any property. Such moral obligation was made a legal liability since it arose under the nature of relationships that existed between Hindu Male member and dependants it can be enforced against heirs of deceased Hindu including donees or gratuitous transferees also who receive property during the lifetime of male Hindu either under gift or any conveyance. Even joint family property could be charged².

Under S. 18 (1) once the relationships of husband and wife is established the wife can get maintenance as a matter of course it is only under S. 18 (3) that the said obligation is completely extinguished.³

So long as the husband is alive a wife is not dependant within the meaning of S.21 During the existence of her husband the wife's right to be maintained is proclaimed and preserved under S.18 (1)⁴.

Section 18 does not affect adversely summary remedy under S. 24 Hindu Marriage Act⁵.

¹ Parami vs mahadevi (1909) 34 Bom 278

² AIR 1984 (NOC) 265 (1984)1

³ AIR 1968 Cal 305 (307)PLJ (HC) 354

⁴ 1977 Tax LR 1111(1116) (1978)Andh WR 179 DB

⁵ (1974) 76 Pun LR (D) 33: 1974 Rajdhani LR 180

The fact that the wife has been living apart for a number of years and that she can earn for herself are not justifiable grounds for disallowing maintenance it is the primary duty of the husband to maintain his wife and that duty was recognized even in the ancient texts of the Hindu law givers⁶.

In *B.P. Achala Anand Vs. S. Appi Reddy and Anr.*⁷ it was observed by the Court that a Hindu wife is entitled to be maintained by her husband. She is entitled to remain under his roof and protection. She is also entitled to separate residence if by reason of the husband's conduct or by his refusal to maintain her in his own place of residence or for other just cause she is compelled to live apart from him. Right to residence is a part and parcel of wife's right to maintenance. The right to maintenance cannot be defeated by the husband executing a will to defeat such a right⁸. The right has come to be statutorily recognized with the enactment of the Hindu Adoption and Maintenance Act, 1956.

III. THE RIGHT OF MAINTENANCE UNDER SECTION 18 DIFFERS FROM THE RIGHT ENSHRINED U/S 24 OF HINDU MARRIAGE ACT

In the case of *Chand Dhawan v. Jawaharlal Dhawan*⁹, on the rights of the wife to receive any maintenance either under Section 18 of Hindu Adoptions and Maintenance Act or under Section 24 of the said Act, the Supreme Court stated that the preamble to the Hindu Marriage Act suggests that it is an Act to amend and codify the law relating to marriage among Hindus. Though it speaks only of the law relating to marriage, yet the Act itself lays down rules relating to the solemnization and requirements of a valid Hindu marriage as well as restitution of conjugal rights, judicial separation, nullity of marriage, divorce, legitimacy of children and other allied matters. Where the statute expressly codifies the law, the court as a general rule, is not at liberty to go outside the law so created, just on the basis that before its enactment another law prevailed. Now the other law in the context which prevailed prior to that was the uncodified Hindu law on the subject. Prior to the year 1955 or 1956 maintenance could be claimed by a Hindu wife through court intervention and with the aid of the case-law developed. With effect from December 21, 1956, the Hindu Adoptions and Maintenance Act is in force and that too in a codified form. Its preamble too suggests that it is an Act to amend and codify the law relating to adoptions and maintenance among Hindus. Section 18(1) of the Hindu Adoptions and Maintenance Act, 1956 entitles a Hindu wife to claim maintenance from her husband during her lifetime. Sub-section (2) of Section 18 grants her the right to live separately, without forfeiting her claim to maintenance, if he is guilty of any of the misbehaviors enumerated therein or on account of his being in

one of objectionable conditions as mentioned therein. So while sustaining her marriage and preserving her marital status, the wife is entitled to claim maintenance from her husband. On the other hand, under the Hindu Marriage Act, in contrast, her claim for maintenance pendente lite is durated (sic) on the pendency of a litigation of the kind envisaged under Sections 9 to 14 of the Hindu Marriage Act, and her claim to permanent maintenance or alimony is based on the supposition that either her marital status has been strained or affected by passing a decree for restitution of conjugal rights or judicial separation in favour or against her, or her marriage stands dissolved by a decree of nullity or divorce, with or without her consent. Thus when her marital status is to be affected or disrupted the court does so by passing a decree for or against her. On or at the time of the happening of that event, the court being seisin of the matter, invokes its ancillary or incidental power to grant permanent alimony. Not only that, the court retains the jurisdiction at subsequent stages to fulfill this incidental or ancillary obligation when moved by an application on that behalf by a party entitled to relief. The court further retains the power to change or alter the order in view of the changed circumstances. Thus the whole exercise is within the gammit (sic gamut) of a diseased or a broken marriage. And in order to avoid conflict of perceptions the legislature while codifying the Hindu Marriage Act preserved the right of permanent maintenance in favour of the husband or the wife, as the case may be, dependent on the court passing a decree of the kind as envisaged under Sections 9 to 14 of the Act. In other words without the marital status being affected or disrupted by the matrimonial court under the Hindu Marriage Act the claim of permanent alimony was not to be valid as ancillary or incidental to such affectation or disruption. The wife's claim to maintenance necessarily has then to be agitated under the Hindu Adoptions and Maintenance Act, 1956 which is a legislative measure later in point of time than the Hindu Marriage Act, 1955, though part of the same socio-legal scheme revolutionizing the law applicable to Hindus.

IV. NO MAINTENANCE TO WIFE IF RESTITUTION OF CONJUGAL RIGHTS BY HUSBAND SUCCEEDS.

In *Manju Kamal Mehra V/s. Mr. Kamal Pushkar Mehra*¹⁰, it was held by High Court of Judicature of Bombay that no maintenance to be paid to wife if restitution of Conjugal rights by husband succeeds. The Court held that when the husband has succeeded in obtaining a decree of restitution of conjugal rights against the wife, it is implied that the wife was required to join the company of the husband at her matrimonial home and therefore, there is no question of maintenance at least from the date of the said order.

⁶ AIR 1959 madh pra 349 350

⁷ (2005 (2) SCALE 105)

⁸ (See: MULLA, Principles of Hindu Law, Vol. I, 18th Ed. 2001, paras 554 and 555)

⁹ (1993) 3SCC 406

¹⁰

V. RIGHT OF MAINTENANCE UNDER SECTION 18 -- GROUND TO RESIST AN APPLICATION FOR RESTITUTION OF CONJUGAL RIGHTS UNDER S.9 OF HINDU MARRIAGE ACT

A wife who has obtained a decree for conjugal rights on a refusal by the husband to keep her is entitled to apply for grant of maintenance under S. 25 of Hindu Marriage Act without filing a suit for the same under S. 18 of this Act and the court can in its discretion grant it¹¹. If the wife is held entitled to live separately and claim maintenance in the proceedings by husband for restitution of conjugal rights it will amount to declaration of status or legal character within the meaning of S. 41 Evidence Act and binding on both the parties¹². The legal grounds to resist an application for restitution of conjugal rights under S.9 of Hindu Marriage Act includes the grounds available for maintenance under S.18 of this Act. These grounds are however not exhaustive¹³.

VI. REMEDY UNDER SECTION 18 OF THE ACT & SECTION 125 CR.P.C.

Remedy for maintenance under section 18 of the Act and under section 125, Code of Criminal Procedure are both available to the wife and these remedies are co-existent, mutually complementary, supplementary and in aid and addition of each other. Hence, the remedy resorted to under either of the two cannot foreclose the remedy under the other Act. The very fact that despite the provisions for maintenance of wife being there under the Cr.P.C., while enacting the Hindu Adoptions and Maintenance Act in the year 1956 through Section 18 thereunder, the specific provision was made for maintenance of wife, goes to show that Section 18 is a specific provision with regard to the maintenance of wife in this special enactment as compared to the provisions in the Cr.P.C., with regard to the wives, children and parents and that the provisions under the Cr.P.C., have to be read only in aid and addition to the specific right conferred with regard to the maintenance of wife under Section 18 of the Hindu Adoptions and Maintenance Act, 1956 and not in derogation or denial thereof. Maintenance under section 125 cannot foreclose claim under section 18. Application for maintenance may be filed in the court within whose jurisdiction the cause of action arose.

VII. RIGHT OF MAINTENANCE WHEN WIFE LIVES WITH HUSBAND. SECTION 18 (1)

The modern Hindu law—lays down that a Hindu wife is entitled to be, maintained by her husband during her life time¹⁴, Sub-section (3) of S. 18 lays down that "a Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceased to be a Hindu by conversion to another religion." It is submitted that this provision is applicable to sub-section (2) of S. 18 which

provides for separate residence and maintenance for wife in certain cases. It cannot be applicable to the case of the wife who lives with her husband, i.e. to sub-section (1). This is made clear by S. 24 which lays a general disqualification; a non-Hindu cannot claim maintenance. Thus, a wife who has ceased to be a Hindu cannot claim maintenance under the modern law; she could not also claim it under the old law. But an-unchaste wife, who lives with her husband, can claim maintenance against her husband under the modern law. Her excommunication or the conversion of her husband shall not lead to forfeiture of her right of maintenance.

VIII. S. 18(2), - GROUNDS FOR AWARD OF MAINTENANCE WITHOUT DIVORCE

The sub section provides for the provision for grant of maintenance to wife who lives apart from her husband.

A wife who lives apart from the husband is also entitled to maintenance if she lives separate from her husband for a justifiable cause. Section 18(2) of the Hindu Adoption and Maintenance Act, 1956 lays down the ground on which wife may live separate and claim maintenance.

Only upon proving that at least one of the grounds mentioned under the Act, exists in the favor of the wife, maintenance is granted. These grounds are as follows:

- a) The husband has deserted her or has willfully neglected her;
- b) The husband has treated her with cruelty; Clause (b) of S. 18(2), Hindu Adoptions and Maintenance Act, gives same definition to cruelty as is given to it, in Hindu Marriage Act. The concept of matrimonial cruelty no more confines to the physical violence. It is no more necessary to prove the ground of cruelty by showing the endangering of life, limb or health through physical or personal violence. In the modern times the "cruelty" has widened its net to mental cruelty also. Any conduct which causes such mental pain and suffering as would make it impossible for the aggrieved party to live with the guilty party comes within the ambit of mental cruelty. The test is that the mental cruelty must be of such that the parties cannot be reasonably be expected to live together. The underlying reason is that a physical blow speaks for itself whereas the insults, humiliations, and the like may need the interpretation of underlying intention. Greater suffering results from psychological sufferings than bodily harm¹⁵.
- c) The husband is suffering from virulent form of leprosy/venereal diseases or any other infectious disease; Leprosy as a ground for separate residence may be of any duration, no period is prescribed, but it must exist at the time-when the claim for separate residence and maintenance is made:

¹¹ AIR 1972 Raj 313 (314) 1972 Raj LW 363

¹² (1975) 88 Mad LW 445 1977 Hindu LR 103 (107)

¹³ AIR 1981 Andh Pra 123 (124) 1981 1Andh LT 68 (DB)

¹⁴ Sec 18 (1) HAMA 1956

¹⁵ Anubha v. Vikas Aggarwal & ors. <https://indiankanon.org/doc/1965325/>

- d) The husband has any other wife living; this clause has come for interpretation in a number of cases. Any wife can claim separate residence and maintenance provided one more wife is living at the time when claim is made.¹⁶
- e) The husband keeps the concubine in the same house as the wife resides or he habitually resides with the concubine elsewhere;
- f) The husband has ceased to a Hindu by conversion to any other religion;
- g) Any other cause justifying her separate living

IX. FORFEITURE OF THE CLAIM OF MAINTENANCE. S. 18(3)

A wife entitled to separate residence and maintenance may forfeit her claim in the following three cases:

1. An unchaste wife has no right to claim separate residence and maintenance
2. A wife who has ceased to be a Hindu by conversion to religion has no right to claim maintenance.
3. Once a view was that when the wife who had cohabitation with her husband forfeits her claim for residence and maintenance, because the pre-condition of the claim is that the wife is living separately from her husband, if that pre-condition ceases to exist, the wife cannot continue to claim maintenance.¹⁷ But in *Meenakshi v. Muthukrishna*¹⁸ the court said that just because the wife had sexual intercourse with her husband, while she continued to live separate from her husband may not extinguish the decree for separate maintenance.

The Hindu Adoption & Maintenance Act, 1956, was enacted to amend and codify the law relating to adoptions and maintenance among Hindus, and it defines maintenance in Section 3 (d) to include "In all cases, provision for food, clothing, residence, education and medical attendance and treatment."

Section 18(1) of the Hindu Adoptions and Maintenance Act, 1956 entitles a Hindu wife to claim maintenance from her husband during her lifetime. Sub-section (2) of Section 18 grants her the right to live separately, without forfeiting her claim to maintenance, if he is guilty of any of the misbehaviors enumerated therein or on account of his being in one of objectionable conditions as mentioned therein. So while sustaining her marriage and preserving her marital status, the wife is entitled to claim maintenance from her husband under the aforesaid provisions.

In the case of *Chand Dhawan v. Jawaharlal Dhawan*¹⁹, on the rights of the wife to receive any maintenance either under Section 18 of Hindu Adoptions and

Maintenance Act or under Section 24 of the said Act, the Supreme Court stated that without the marital status being affected or disrupted by the matrimonial court under the Hindu Marriage Act the claim of permanent alimony was not to be valid as ancillary or incidental to such affectation or disruption. The wife's claim to maintenance necessarily has then to be agitated under the Hindu Adoptions and Maintenance Act, 1956 which is a legislative measure later in point of time than the Hindu Marriage Act, 1955, though part of the same socio-legal scheme revolutionizing the law applicable to Hindus."

X. QUANTUM OF MAINTENANCE

While granting the maintenance the Court looks to the social status of the parties and the way of life they are used to, besides how they were placed before and after the marriage and at the time of claiming the amount. Besides considering the position and status of the parties, the Court also takes into consideration the reasonable wants of the claimant, the claimant if living separately is justified or not, the income of the claimant and of the husband, the value of husband's property and number of dependants of the husband under the Act. After taking into consideration all these factors, maintenance is assessed by the Courts.

XI. RIGHT OF MAINTENANCE OF WIFE IF HUSBAND IS UNABLE OR INCAPACITATED TO PAY MAINTENANCE

The Law Commission of India while considering a copy of order sent by Hon'ble High Court of Punjab and Haryana, while passing its order dated 11.02.2014 in the matter of *Avtar Singh Vs. Jasbir Singh*, for taking appropriate measures for amending the Hindu Adoptions and Maintenance Act, 1956, w.r.t. the admissibility of maintenance to a women, whose husband is unable to maintain her formulated a Committee to undertake the study on subject matter and give recommendations. The Committee undertook an extensive study of the subject and analyzed all the pertinent laws in this regard, including the provisions of Section 18 and section 19 of Hindu Adoptions and Maintenance Act and also the classical Hindu Law. After the detailed analyses, the Commission has put its recommendations in the form of a Report,²⁰ and submitted for consideration of the Government wherein it is stated that in view of the analysis, the Commission feels it necessary that the right of a Hindu woman, whose husband is unable to provide maintenance to her, must be protected and, accordingly, recommends insertion of sub-section 4 under Section 18 as below: "Section 18 (4) - Where the husband is unable to provide for his wife, on account of physical disability, mental disorder, disappearance, renunciation of the world by entering any religious order or other similar reasons, the Hindu wife is entitled to claim maintenance during her lifetime, from members of the joint Hindu family of the husband, except

¹⁶ *Kiran v. Bankim*, 1976 Gal. 603

¹⁷ *Venkayya U Raghavamma*, 1942 Mad 1

¹⁸ 1961 Mad 380

¹⁹ (1993) 3SCC 406

²⁰ Report No.252 titled "Right of the Hindu Wife to Maintenance: A relook at Section 18 of the Hindu Adoptions and Maintenance Act, 1956"

where the husband has received his share in the joint family property.

Explanation: For the purpose of this Section, the term “mental disorder” shall have the same meaning assigned to it under the Explanation to Section 13(1)(iii) of the Hindu Marriage Act.”

XII. CONCLUSION

The piece of legislation is highly beneficial for a Hindu wife as this entitles her to reside separately from her husband if the conditions as enumerated in the relevant provision exist without forfeiting her right to claim maintenance under the Act. This comes to rescue of unfortunate hapless women who stray in a dark tunnel without any hope to see the light at its end when they either get entrapped in the marital knot on the temptation of a greener pastures shown by husband or are forced to lead miserable life by the atrocities of their husband either by inflicting cruelty, by desertion or otherwise as mentioned in the Act. So instead of ending up as emotional wreck carrying albatross of marriage around their neck, they can take recourse of law and claim their legal right of maintenance and live with dignity without terminating the knot of marriage. It is suggested that the amendment proposed

by the Law Commission must be duly incorporated in the Act so as to remove the persisting lacunae in the law.

BIBLIOGRAPHY

Books

- [1]. Kumud Desai's Indian Law of Marriage & Divorce(8th Edition) 2011 Lexis Nexis Butterworths
- [2]. Mulla "Principles of Hindu law", Vol II,19th Edition (ed S.A. Desai) Lexis Nexis, Butterworths , New Delhi, India
- [3]. MULLA, "Principles of Hindu Law", Vol. I, 18th Ed.

Reports/ Periodicals / Journals

- [4]. Supreme Court Almanac (SCALE)
- [5]. Supreme Court Cases (SCC)
- [6]. Punjab Law Reporter (PLR)
- [7]. All India Reporter (AIR)
- [8]. Andhra Weekly Reporter (Andh WR)
- [9]. Madhya Pradesh Law Journal (MPLJ)

Websites

- [10]. www.legalserviceindia.com
- [11]. www.LawyerServices.in
- [12]. <https://indiankanoon.org/doc/>
- [13]. www.lawcommissionofindia.nic.in