

A PRAGMATIC ANALYSIS OF RIGHT TO MAINTENANCE OF WIVES AND ITS DENIAL IN CERTAIN CASE

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Abstract

This document deals with maintenance under Hindu Marriage Law and emphasizes the situation or circumstances in which maintenance can be withheld. The concept of alimony aims to return the wife to the same comfort and living situation that she had at the time of her marriage. There is no fixed amount of support that the husband must pay to his wife and the family court decides at her discretion to determine the amount of support the husband receives, either monthly or in the form of a lump sum. The maintenance of the wife is a very complex issue under the Hindu Marriage Law. It is often referred to as a means of exploiting the husband by demanding lifelong support. Article 24 of the Hindu Marriage Act of 1955 (the Act) states that the husband or wife can claim alimony; H. Keep pending procedures. In addition, article 25 of the law establishes the reasons for permanent maintenance. The spouse's alimony refers to the payments that can be demanded from the husband. The maintenance obligation may exist during the existence of the marriage or after its dissolution. The most important aspect of maintenance is that the person who is dependent for such maintenance does not have an independent source of income to support himself or herself. The amount of alimony and the cost of the process are not specified in any of the laws on Indian marriage, with the exception of the Divorce Law.

Introduction

Need of maintenance law in India

Marriage is the very foundation of any society. It is very essential component for family peace and stability. Being so, legislatures all over the globe have given some particular rights and imposed some particular duties on husband and wife which can be vital components of any family. In historic times, marriages were taken into consideration to be determined through

the God and divinity related to it. It is taken into consideration to be a sacred social institution. Marriage, consistent with the Hindu Law, is a holy union for the overall performance of spiritual duties. Marriage isn't always an agreement however it's a Sanskar or Sacrament". The Sanskar lays down that when a female is in marriage, she needs to maintain her chastity as much after as earlier than her husband's death." According to the Mahabharata, Wife isn't only restricted to be the most effective a source of Dharma, Artha and Kama" however additionally a great source of Moksha". In Ramayana, Wife is stated to be the very soul of her husband. She is grehni - the lady of the House sacheeva - wise Counselor and Sakhii- friend of her husband, She is Laxmi, Ardhaangini (1/2 of of him) and samrajyini". Hindu marriage protects a female through ensuring her legal rights for restitution of conjugal rights in case of desertion, legitimacy of the children, remedy in case of cruelty, adultery, impotency, claim of maintenance and alimony etc. and order for maintenance to wife who's not able to keep herself. Husband and wife are wheels of a family chariot and it is how ever natural that within the path of time they unknowingly enter into a situation of discord. Notwithstanding enactment of a plethora of legal guidelines, the male ruled society of India doesn't permit even a modicum of improvement in the reputation of a married female. With the results, the Indian household has turned out to be the most secure area for males to indulge in violence towards females who're defenceless. To conquer this age-antique disability, The Hindu Marriage Act (HMA), 1955, The Hindu Succession Act (HAS), 1956, The Hindu Adoption and Maintenance Act (HAMA), 1956 and The Hindu Guardian and Wards Act (HGWA), 1956 had been enacted. The ¹ State attempts to empower married female via its guidelines and laws stated above. But because of their inappropriate implementation, the Constitutionally-mandated idea of equality" remains an insignificant paper blessing, a long way divorced from the actual essence of truth. So plenty of Hindu wife isn't always entitled to maintenance through spouse's family as per Hindu Adoptions and Maintenance Act, 1956. This paradox is the result of patriarchal norms and values institutionalized through the State. This results in creation of inferior picture of a female that is an age-antique tragic truth of Indian society. The Researcher right here attempts

¹https://highcourtchd.gov.in/hclsc/subpages/pdf_files/4.pdf

<https://indiankanoon.org/doc/685111/https://tcw.nic.in/Acts/Hindu%20adoption%20and%20Maintenance%20Act.pdf>

<https://indiankanoon.org/doc/1874830/>

to adúbrate and jústify rights of maintenance of a Hindú married female, whose húsband is not able to offer maintenance to her as per Hindú Adoption and Maintenance Act 1956.

What is maintenance ?

Maintenance as a idea while taken into consideration from the factor of view of regulation refers to the sort of economic help given in to both of the litigating events on an application made through them and best via an order passed through the court having jurisdiction to achieve this and upon execution of decree on this regard. It is frequently cited as "alimony" or a sort of economic guide from the partner i.e. spousal help. Maintenance on the alternative hand, is an act of bearing the economic costs or lowering the weight of the partner whose burden will increase and reasonably-priced role receives materially modified at the decree of divorce.

In other words maintenance can be defined as the monetary aid that a husband needs to pay to his wife while she is not able to preserve financially on her own in the course of the divorce proceedings and also post-divorce. Maintenance is paid through the husband both on a month-to-month basis or in a lump sum in order that the spouse can avail the primary services of lifestyles along with food, clothing, shelter, etc.

The idea of maintenance targets at setting the spouse again to the same status and way of life-style before separation or while her marriage existed.

There is no particular amount fixed for the maintenance. .

Further, the primary motive of granting maintenance is to preserve the same old of dwelling of the partner equal to that of the other partner and according to the status before the separation. It is granted at some stage in the proceeding of decree or after the decree of divorce and ceases to exist at the demise or remarriage of the person claiming such maintenance.

Types of maintenance

1. Interim Maintenance:

Once the partner files a maintenance petition, the court might award her interim maintenance that the husband should pay from the date on that the application was filed by the wife until the date of dismissal through her divorce law advocate. It's additionally called Maintenance Pendente lite and is paid in order that the wife pays for the legal expenses incurred by her.

Interim maintenance is awarded by the court if the partner has completely no source of financial gain to take care of herself.

There aren't any laws that lay down the number of this kind of maintenance and it's completely upon the discretion of the court to determine the amount of payment for the maintenance is adequate for the wife to sustain throughout the proceedings.

2. Permanent Maintenance:

Permanent maintenance is paid by the husband to his wife just in case of divorce, and therefore the amount is decided through a maintenance petition.

²Section 25 of the Act states that the court will order the husband to pay maintenance to his wife in kind of a payment or monthly quantity for her lifetime.

However, the wife might not be eligible for maintenance if there are any changes in her circumstances.

Objectives

- To study the maintenance under Hindu Marriage Act
- To analyse whether women get satisfying maintenance
- To examine whether women really need maintenance
- To analyse the circumstances where the maintenance to the wife can be denied
- To study whether the husband can claim Maintenance or not

https://highcourtchd.gov.in/hclsc/subpages/pdf_files/4.pdf

METHODOLOGY

The examination is an activity including estimation of parameters as respect to hierarchical prerequisites Research was planned in order to get the pertinent data that can be utilized for different authoritative purposes.

DATA SOURCE

Research included gathering both primary and secondary data.

PRIMARY DATA: It is the direct data, new data accumulated to help take care of the current issue. Data is gathered actually for the particular venture through research. Poll was set up to assemble data on the organization advertising and administrations.

SECONDARY DATA : It is the will be the recycled data gathered by another person with is accumulated through web, productions, articles, organization books, and so on. The data assortment technique utilized was none other than study strategy which is generally consolidated for assortment of crude data. The study strategy is profitable on the grounds that it assists with gathering a lot of data about an individual respondent.

Survey: The kind of study attempted was that of test type keeping in thought the time imperative and paraphernalia, other than the reasonability of evaluation overview. The example review in this way being taken to the correct way to arrive at the ideal goal was painstakingly planned to change over of the activity by utilizing chosen tests.

Statistical Tool: The instrument for acquiring the data was poll. An organized survey was managed. The survey was structured in the view both major and minor goal of study.

Sampling: With the client being obscure and since time is running short and resource limitations arbitrary example was acquired from various individuals.

Data finish and examination: After the data was gathered, it was arranged and discoveries of the task were introduced trailed by examination and understanding to arrive at certain resolution.

LAWS DEALING WITH THE CONCEPT OF MAINTENANCE

Due to the presence of various religions in India, marriage, divorce and maintenance are ruled by their own personal laws.

HINDU MARRIAGE ACT, 1955

Sections 24 and 25 create provision for maintenance to a party who has no independent income adequate for his or her support, and necessary expenses. This can be a gender-neutral provision, wherever either the wife or the husband might claim maintenance. The requirement is that the Petitioner doesn't have independent income that is sufficient for her or his support, throughout the pendency of the case.

Section 24 of the HMA provides for maintenance pendente lite, wherever the Court might direct the respondent to pay the expenses of the proceeding, and pay such justified monthly amount, that is taken into account to be reasonable, having respect to the income of each the parties. The precondition to Section 24 providing a time line of 60 days for disposal of the application was³ inserted vide Act 49 of 2001 w.e.f. 24.09.2001.

The aim of interpreting the provision during this manner is to avoid the discrimination because both husband and wife are equal within the eyes of law. Delhi High Court recently in the case of Rani Sethi v/s Sunil Sethi, ordered wife (respondent) to pay maintenance to her husband (petitioner) of Rs 20,000 and Rs.10,000 as legal proceeding expenses. Additionally a Zen automobile was ordered to lean for the utilization of the petitioner.

Although the above discussed aforesaid Act provides decent right to each husband and wife to move an application before the court for seeking maintenance, if they don't have an independent source of income of financial gain and are entirely dependant upon his/her spouse. However this Section can not be invoked in such a way on wherever husband though capable of earning does not continue to do this deliberately for the only purpose of counting

<https://indiankanoon.org/doc/1449825/>

<https://indiankanoon.org/doc/95286/>

<https://indiankanoon.org/doc/95286/>

on or being dependent upon his wife. In such a case husband cannot move any application for seeking maintenance. This was held by the Madhya Pradesh high court within the case of Yashpal Singh Thakur vs Smt. Anjana Rajput Where the husband incapacitated himself by stopping to run a motor vehicle rickshaw. Hence, where an individual intentionally incapacitates himself he loses the chance to file an application for seeking maintenance.

Hindu Adoptions & Maintenance Act, 1956 HAMA is a special legislation that was enacted to amend and systematise the laws regarding adoption and ⁴maintenance amongst Hindus, throughout the subsistence of the marriage.

Section 18 provides that a Hindu wife shall be entitled to be maintained by her husband during her lifetime. She is entitled to create a claim for a separate residence, while not forfeiting her right to maintenance. Section 18 reads in conjunction with Section 23 states the factors needed to be thought-about for deciding the quantum of maintenance to be paid.

As per sub-section (2) of Section 18, the husband has the responsibility to take due care of his partner, although she could also be living separately. The right of separate residence and maintenance would but not be obtainable if the wife has been unchaste, or has accepted and converted herself to a different religion.

Muslims: As per the Muslim Women (Protection of Rights on Divorce) Act, 1986, the wife needs to be paid maintenance within the iddat duration and mehr has to be returned.

Christians: As per Section 37 of the Indian Divorce Act, 1869, the divorced wife will get maintenance lifelong duration by applying in a civil or a high court.

⁴<https://tcw.nic.in/Acts/Hindu%20adoption%20and%20Maintenance%20Act.pdf>
<https://indiankanoon.org/doc/1727980/>
<https://indiankanoon.org/doc/1778205/>
https://legislative.gov.in/sites/default/files/A1986-25_1.pdf
<https://indiankanoon.org/doc/1799408/>

Parsi: The Parsi marriage and Divorce Act, 1936, makes the husband liable to pay maintenance to wife for all times if she remains unmarried Post divorce, and might get a most of 20 % of his Whole income.

SECTION 125 OF THE Cr.P.C

The aim and object of Section 125 Cr.P.C. is to give immediate relief to an applicant.

AN application under Section 125 Cr.P.C. relies on 2 conditions :

The husband has adequate means; and “neglects” to give maintenance to his wife, who is unable to maintain herself. In such a case, the husband could also be directed by the judge to pay such monthly amount to the wife, as deemed fit.

⁵Maintenance is awarded on the basis of the monetary capability of the husband and different relevant factors.

As per sub-section (2) of Section 125, the Court is given with the discretion to award payment of maintenance either from the date of the order, or from the date of the application.

As per the third proviso to the amended Section 125, the application for grant of interim maintenance should be disposed of as way as attainable with-in sixty days’ from the date of service of notice on the respondent.

BRILLOPEDIA

LANDMARK JUDGEMENT OF SECTION 125 Cr.P.C

Mohd Ahmed Khan V. Shah Bano Begum :This has been a landmark case within the history that clearly addressed the informative the scope of Section 125 and which established to be a milestone specifically in the struggle for the rights of muslim women.

Facts of the case are as follows: Within the year 1975 , at the age of 62 years , with 5 children, Shah Bano was disowned by her husband. Her husband Mohd Ahmed refused to grant her maintenance on the ground that there was no specific provision within the muslim law for providing maintenance to muslim divorced ladies. She had no separate source of financial gain and at this age wasn't possible for her to maintain herself and to take care of the welfare of her kids at the same time. therefore she filed a suit claiming maintenance.

⁵<https://indiankanoon.org/doc/1056396/>
<https://indiankanoon.org/doc/823221/>

Main issue that raised before the court was whether or not Section 125 applies to Muslim women or not and whether uniform civil code applies to people of all religions or not.

Supreme court on the subsequent reasons rejected Mohd Ahmed's plea of not granting alimony: The court held that without any discrimination, Section 125(3) applies to Muslim women too.

The idea of Muslim husband's responsibility towards his partner only until the iddat duration cannot fulfill to ponder the rule laid down in Section 125 CrPC.

Merely a triple talaq cannot deduct the right of divorced Muslim women from seeking maintenance if she isn't in an exceedingly condition to maintain herself and her children due to no independent source of income.

CIRCUMSTANCES WHERE THE MAINTENANCE CAN BE CLAIMED:

As per the various maintenance laws in India, it is often seen that maintenance when divorce is granted to the wife solely on the subsequent grounds:

- If the husband in any way abandoned her or neglected her on his own
- If the husband has tortured her or subjected her to cruel treatment
- If the husband is affected by a virulent or sexually transmitted disease.
- ⁶If the husband lives with another wife
- If the husband has kept another woman that he keeps within the same residence where his wife lives, or he lives with the another woman apart from his own wife at another place
- If the husband has changed his faith to the other religion
- The other reason that's excusable for living in separation with her husband.

⁶<https://www.myadvo.in/blog/maintenance-rights-for-divorced-women-under-different-religions/amp/>

<https://www.myadvo.in/blog/maintenance-rights-for-divorced-women-under-different-religions/amp/>

ESSENTIAL CONDITIONS FOR GRATING MAINTENANCE:

- The reasonable needs of the partner who seeking maintenance
- The status of each the party.
- The independent income and property that's owned and possessed by the spouse who is claiming the maintenance .
- The number of persons, the spouse who is providing maintenance, has got to maintain except for the claimant.
- The life-style that the spouse claiming maintenance accustomed have in his/her Spousal home.
- The liabilities of the spouse who is providing maintenance.
- The provisions of the essential requirements of the partner who seeking maintenance similar to food, shelter, clothing, medical needs, etc.
- The Court might use its discretion when all specific sources of income of the spouse providing maintenance are unrevealed
- The spouse paying maintenance should discharge the value of legal proceeding of the divorce proceedings.

PROCEDURE TO CLAIM MAINTENANCE

A spouse is required to file a maintenance petition in a family court that has appropriate jurisdiction to handle the matter.

The maintenance petition should be filed with the help of a decent divorce advocate in india and must contain all the requisite facts and remedy sought from the court.

The maintenance petition is filed with some necessary documents like an affidavit, documents regarding the income of both, the husband and wife, and so on.

FILING OF THE MAINTENANCE APPLICATION

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How an application for maintenance can be filed ?

This will be done by submitting your marriage certificate along side the photos of your marriage as evidence. By following these essential necessities you'll be able to file a case under Section 125 CRPC before the family court or judicial magistrate nearest to your residence.

WHERE AN APPLICATION OF MAINTENANCE SHOULD BE FILED?

An application for maintenance under Section 125 CRPC is filed before a Judicial magistrate of firstclass within the district where the husband or the wife resides or where they used to reside.

WHEN CAN AN APPLICATION FOR MAINTENANCE CAN BE FILED?

When obtaining a divorce or during the divorce process, an application for maintenance or file for divorce is filed.

CRITERIA FOR DETERMINING QUANTUM OF MAINTENANCE

The objective of granting interim / permanent maintenance is to make sure that the dependant partner is not reduced to impoverishment or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. there's no straitjacket formula for fixing the quantum of maintenance to be awarded.

For determining the quantum of maintenance payable to an applicant, the factors which might weigh with the Court inter alia are

⁷<http://www.legalservicesindia.com/divorce/procedure-of-matrimonial-petitions.htm>

The status of the parties; reasonable needs of the wife and dependant children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is adequate to enable her to maintain a similar standard of living as she was conversant in in her marital home; whether the applicant was used before her marriage; whether she was working during the subsistence of the marriage; etc.

⁸The monetary capability of the husband, his actual income, reasonable expenses for his own maintenance, and dependant family members whom he's obligated to maintain under the law, liabilities if any, would be needed to be taken into consideration, to reach the suitable quantum of maintenance to be paid. The Court should have due reference to the standard of living of the husband, in addition because the spiralling inflation rates and high costs of living.

On termination of the relationship, if the wife is educated and professionally qualified, however had to give up her employment opportunities to look after the requirements of the family being the first caregiver to the minor children, and also the elder members of the family, this issue would be needed to be given due importance. With advancement of age, it might be tough for a dependant wife to get an easy entry into the work-force once a break of many years as she would be required to undergo contemporary training to accumulate marketable skills and re-train herself to secure a job.

In case where the wife is working, it cannot operate as a bar from being awarded maintenance by the husband. The burden is on the husband to determine with necessary material that there are adequate grounds to indicate that he's unable to maintain the family, and discharge his legal obligations for reasons beyond his control. If the husband doesn't disclose the precise amount of his income, an adverse inference may be drawn by the Court.

⁸<https://www.scconline.com/post/2020/11/05/maintenance-of-wifehusband-doesnt-have-to-pay-maintenance-in-each-of-the-proceedings-under-different-maintenance-laws-explainer-on-supreme-court-guidelines/?amp>
<https://www.mondaq.com/india/family-law/1034570/supreme-court-clarifies-the-law-on-maintenance>
<https://lawayz.com/will-the-husband-have-to-pay-for-maintenance-of-wife-and-son-until-the-final-order-of-the-judge-has-been-recieved-for-a-divorce-petition/?amp>
<https://www.theleaflet.in/sc-lays-down-criteria-for-determining-quantum-of-maintenance-in-matrimonial-cases/>

The living expenses of the child would include expenses for food, clothing, residence, medical expenses, education of children. additional coaching classes or the other education courses to enhance the fundamental education should be factored in, whereas award child support. Albeit, it ought to be a reasonable amount to be awarded for extra-curricular/coaching classes, and not an excessively extravagant amount which can be claimed.

CIRCUMSTANCES WHERE THE MAINTENANCE TO WIFE CAN BE DENIED

Adultery: The wife should be living in adultery - If the wife is committing adultery i.e. lives in a quasi-permanent union with the other man with whom she is committing adultery, then she isn't entitled to receive any interim allowance or maintenance. She can't even file an application for the expenses of proceedings.

Refusal to reside- If wife refuses to reside with husband without sufficient reasons to live with her husband- A wife is not permissible to receive any allowance for the maintenance from her husband, if she refuses to live along with her husband for no reason. She should give the court some enough reason for her refusal. the explanation will vary from case to case considering the circumstances. Also, if the husband has tapered marriage with another lady or keeps a mistress, this may be thought of as a just ground for her refusal to live with him.

Separate residences : If The wife and also the husband lives separately by mutual consent- then during this situation wife isn't permissible to receive an allowance for maintenance from her husband if they each are living on an individual basis by mutual consent.

While a divorced wife can not be counted as a wife living separately by mutual consent as her current position is by virtue of amendment in status resulting upon the disbanding of the marriage. within the case of divorce by mutual consent if the wife has abdicated her right to maintenance, then she cannot later claim for maintenance.

⁹<https://indiankanoon.org/doc/1394998/>

<https://www.indialawoffices.com/legal-articles/right-divorced-wife-grant-maintenance>

<https://www.livelaw.in/amp/news-updates/calcutta-high-court-maintenance-final-settlement-section-125-crpc-180999>

<https://blog.ipleaders.in/husbands-right-claim-maintenance/?amp=1>

For a divorce, wherever the matrimonial relations are terminated by an agreement, the wife would be entitled to assert maintenance from her exhusband as long as she remains unmarried or is unable to maintain herself.

CAN HUSBAND CLAIM MAINTENANCE?

Yes, a husband can claim maintenance, however, the Courts have time and again remarked that maintenance is to be paid to husband on condition that he's incapable or handicap. during a recent case of Nivya V.M. v. Shivaprasad N.K., the Kerala high court discharged husband's claim for maintenance from his wife holding that maintenance As per Section 24 of Hindu wedding Act, 1955 is to be paid to the husband only if he is able to prove any incapability or handicap.

The Court additionally determined that in absence of such circumstances as enumerated above, endowing maintenance on the husband would solely promote idleness. The Court additionally remarked that a husband seeking maintenance from the wife may be treated only as exceptional case as ordinarily he has the liability or obligation to maintain the wife and vice versa is only exceptional.

In the Judgment of Smt Teja bai Vs. Chiddu Armo jabalpur high court it had been observed high court observed "It is clear that petitioner applicant No.1 is wife of respondent. Petitioner-applicant No.1 admitted in her interrogation that respondent doesn't do any work because of illness, so she left his house and she lives in her paternal home with her child. She isn't ready to live with respondent. So, it's evident that petitioner No.1 is living individually from her husband-respondent, with none adequate reason. Therefore, learned court appreciate each and every truth during this regard so petitioner-application No.1 is not entitled to get any maintenance from her husband

In Dr. E. Shanthi vs Dr. H.K. Vasudev on 22 August, 2005 it was held Admittedly, petitioner is residing along with her parents at Chennai and whose brother is also a doctor. when the petitioner was practicing before marriage, when her name continuous on the board of the clinic, the court is justified in rejecting the appliance of the petitioner. there's no problem for the petitioner to work as a Doctor. although the petitioner isn't operating as a doctor within

the clinic of her brother, since there aren't any impediments for her to work along with her brother as a doctor and when she is capable of earning, this Court is of the opinion that the court is justified in rejecting the appliance of the petitioner. once the petitioner is capable of earning and having required qualification and that when she was operating as a doctor before marriage, there can't be any problem for her to continue a similar profession. Therefore, Section 24 of the Hindu marriage Act cannot aim at the help of such persons. Accordingly, this ¹⁰petition should be rejected.

Here is the judgement of Hon'ble supreme court which says.

In Rohtash Singh Vs, Ramendri case below this provision, a wife is not entitled to any Maintenance Allowance from her husband if she lives in adultery or if she has refused to live together with her husband with no adequate reason or if they're living on an individual basis by mutual consent. Thus, all the circumstances contemplated by Sub-section (4) of Section 125 Cr. P.C. presuppose the existence of matrimonial relations. the provision would be applicable wherever the marriage between the parties subsists and not where it's come to an end. Taking the three circumstances individually, it'll be noticed that the primary circumstance on account of that a wife isn't entitled to say Maintenance Allowance from her husband is that she lives in adultery. Now, adultery is that the sexual intercourse of 2 persons, either of whom is married to a 3rd person. This clearly supposes the subsistence of marriage between the husband and wife and if throughout the subsistence of marriage, the wife lives in adultery, she cannot claim Maintenance Allowance under Section 125 of the Code of Criminal Procedure.

¹⁰<https://www.vakilno1.com/legal-news/important-judgments-on-maintenance.html>
<https://lexspeak.in/page/4/>
<https://blog.ipleaders.in/analysis-scope-revision-section-125-crpc/?amp=1>

<https://www.advocateaditya.com/2021/07/nomaintenancetowife.html?m=1>
<https://indiankanoon.org/doc/380198/>
<https://www.legitquest.com/case/vm-nivya-v-nk-shivaprasad/d3f76>

**THE RESPONSE OF THE INDIAN JUDICIARY AND LEGAL LUMINARIES TO
'RIGHT TO MAINTENANCE OF OUR WIFE' INDIAN LAW**

It's clear from the preceding that though, over a amount of your time improved rights are conferred upon Indian Hindu women, the rights accessible to them don't match with the rights required. during this context Indian Judiciary is found to be ambivalent. This conclusion is fortified in **Masilamani Mudliar vs. idol of sri swaminathswami thirukoli** wherever the Supreme Court came to the conclusion that the personal laws, to the extent they're in violation of the fundamental Rights, are nothing however void. On eleventh February 2014 a Bench of the high court of Punjab and Haryana consisting of Hon'ble Justice Paramjeet Singh in Avtar Singh vs. Jasbir Singh, identified the lacuna in HAMA, 1956 with reference to property and maintenance rights accessible to Hindu wives. within the said case, the plaintiff was the wife of a person of unsound mind, who had sought 1/4th share in the land belonging to the family, from her father in law as maintenance for herself, her husband and her minor sons. The said share had been provided to her by her father in law through a family settlement before the Gram panchayat; however the wife was later forcibly roofless of the land by her father in law and brother in law. Since the aforementioned property had been voluntarily given by the father in law to his son of unsound mind and his family through a family settlement, the substantial question of law concerning the legal obligations of the father in law in such situations wasn't raised and therefore the case was decided on the basis of whether or not the said family settlement before the Gram Panchayat was needed to be registered so as to result the validity. However, before parting with the case, the Learned judge made the subsequent observations with respect to legal position of Hindu wives: "Before parting with judgment, it might be appropriate to say that no provision has been brought to my notice by learned counsel for the parties that if husband is insane or of unsound mind, the daughter in law who isn't having any source of maintenance will claim maintenance for herself. when she has to maintain her mentally-ill husband, her condition is worse than being a widowed daughter in law. In such a situation, the wife ought to be deemed to be dependent upon the father in law and entitled to maintenance as provided as per Section 19 of the Hindu Adoptions and Maintenance Act. Copy of this Order is sent to the Union Ministry of Law and Justice and therefore the Law Commission of india for taking appropriate measures for amendment in the Act."

It is needless to stress that the principle of maintenance is an integral part of Hindú joint family system. Maintenance was a supreme duty cast upon a Hindú Karta on whose shoulders his dependants depend. The classical Hindú law is framed in such the way that no member of a Hindú joint family, particularly the female members, should be left unprovided for. Family Law scholars, Paras Diwan and Peeyushi Diwan note the relevancy of the notion of the jointness of family life, to grasp the concept of maintenance as follows: "Every member of the joint family incorporates a right to maintenance against the joint family property. It had been the duty of the karta" to examine that every one reasonable needs of the members of the family were satisfied. If the karta" didn't fulfill his duty, the members of the joint family might enforce it by legal action. Even with the emergence of the idea of self-acquired property and therefore the coparcener's right of partition, maintenance did not lose its importance.

Rather the concept of maintenance further grew and developed. Up to now the right was available against certain properties; now it became available against certain persons additionally." As per classical Hindú law, the liability to pay maintenance arises under 2 conditions. It's either an occurrence of the connection between the parties, that results in a personal obligation to pay maintenance. In other cases, the liability to maintain certain members of the family relies on possession of property, for example, by method of inheritance. Many law scholars also note that classical Hindú law created a distinction between the ethical and legal rights of maintenance. If a male Hindú failed to perform his obligation to pay maintenance during his lifetime, then upon his death, the obligation would transform into a legal obligation that might be accomplished against the property of the deceased male. This illustrates that the obligation to maintain attached to a person even after his death, however at a similar time also underscores the importance attached to maintenance in classical Hindú law.

Among several members of a Hindú joint family who rely on the Karta for their rights to maintenance, wife happens to relish a special position within the classical Hindú law on

¹¹<https://lawcommissionofindia.nic.in/reports/on%20Right%20of%20the%20Hindú%20Wife%20to%20Maintenance%20-%20A%20relook%20at%20Section18%20of%20the%20Hindú%20Adoption%20and%20Maintenance%20Act,1956.pdf>

<https://lawyerslaw.org/hindú-wives-right-to-maintenance252nd-report-of-the-law-commission/>
<https://indiankanoon.org/doc/198063645/>

maintenance. All major legal scholars agree that paying maintenance to a wife constitutes a personal obligation of her husband that begins to be operative from the very moment the marriage takes place. Refusal to maintain a wife attracts a stricter censure than the maintenance of other members of joint family. As an instance of the above reality, Shatri's exposition of the principle is especially illuminating and relevant for our purpose here: "The establishment of such a relation, ipso-facto, provides a right to the wife to have maintenance from her husband, right to the daughter-in-law to have maintenance from her father-in-law just in case of inability of the husband to maintain her and a right to the widow to have maintenance from the property of her husband or from those persons who are managing the affairs of the property of her husband." This principle finds its reflection in a crucial judgment too.

SUGGESTIONS AND RECOMMENDATION

Within the light of the foregoing discussion that handled the problem threadbare by delving deep into all its intricacies, the researchers provides her overgenerous support to the recommendations of the Law Commission of India which might create a large section of aggrieved daughter-in-laws in heaven a sigh of relief. The recommended Right of Hindu wife to Maintenance as per Section 18 of Hindu Adoptions and Maintenance recommendations to the prevailing law are insertion of sub-section 4 under Section 18 of Hindu Adoptions and Maintenance Act (HAMA), 1956 as below: a. "Section 18 (4) - wherever the husband is unable to provide for his wife, on account of physical disability, mental disorder, disappearance, renunciation of the globe by getting into any religious order or other similar reasons, the Hindu wife is entitled to claim¹² maintenance during her lifetime, from members of the joint Hindu family of the husband, except wherever the husband has received his share within the joint family property.

CONCLUSION

According to the Hindu Adoption and Maintenance Act, the person who is entitled to get maintenance are wife, widow daughter in law, child, aged parents etc. and According to

¹²<https://indiankanoon.org/doc/1727980/>

Muslim Law, the person who is entitled to get maintenance are, wife, young children, parents, another person within the prohibited degrees.

As per Muslim law, Prior the divorced women do not have the right to claim maintenance after the period of iddat and gets the amount of mehr only. But the judgement was given in the Shah Bano from the family of the husband after his death case enables divorced women to get maintenance from her husband on reasonable ground and after the judgement of the case, The government enacted The Muslim Women (Protection of Rights on Divorce) Act, 1986. In this Act, divorced women do not have the right to claim maintenance after the period of iddat and gets the amount of meher only. Finally, all the case which are pending in court related to Muslim women and their right to Maintenance under Section 125 of Code of Criminal Procedure were disposed of.

From an abundance of judgements it can be concluded that Section 125 of Cr.P.C provides for stringent means to accommodate the provisions of maintenance. It not solely breaks the barrier of one's religion that acts as a hurdle in providing justice to individuals however additionally provides for ¹³equal protection of law and justice for all regardless of religion followed by an individual. Religious aspects cannot deal the principles of "justice" and "equity in this modern era". The idea of maintenance is interpreted in several way as per different statutory provisions however the aim of it's to grant support. Thus, Code of Criminal

¹⁴ Procedure through Section 125 aims at providing people having different religious backgrounds to seek maintenance through uniform code.

The judgments delivered by various High Courts and Supreme Court from time to time cast an unavoidable legal obligation on the father-in-law to maintain his daughter-in-law in an unfortunate event of inability of daughter-in-law's husband to maintain her. This judicial thinking finds full support from legal luminaries. The above thinking lends full support to the amendments proposed by The Law Commission of India in its 252nd Report (6th January, 2015) titled "Right of the Hindu Wife to Maintenance: A relook at Section 18 of the Hindu Adoptions and Maintenance Act, 1956 to make father-in-law obliged to pay maintenance to

¹³<https://indiankanoon.org/doc/1056396/>

his daughter-in-law, whose husband is unable to provide maintenance to her under Hindu Adoptions and Maintenance Act, 1956. The researcher fully agrees with the proposed Amendment.

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