



**GOVERNMENT OF INDIA**

**LAW COMMISSION  
OF  
INDIA**

**Report No. 252**

**Right of the Hindu Wife to Maintenance:**

**A relook at Section 18 of the Hindu Adoptions and  
Maintenance Act, 1956**

**January 2015**

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6 January, 2015

**Dear Mr. Sadananda Gowda ji,**

The 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*, desired that a copy of its Judgment may be sent to the Law Commission of India 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. The Committee undertook an extensive study of the subject and analyzed all the pertinent laws in this regard, including the provisions of the Hindu Adoptions and Maintenance Act and also the classic Hindu Law. After the detailed analyses, the Commission has put its recommendations in the form of a Report, i.e., Report No.252 titled "**Right of the Hindu Wife to Maintenance: A relook at Section 18 of the Hindu Adoptions and Maintenance Act, 1956**" and is submitted for consideration of the Government.

With warm regards,

Yours sincerely,

*Ajit Prakash*

**[Ajit Prakash Shah]**

**Mr. D.V. Sadananda Gowda**  
Hon'ble Minister for Law and Justice  
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## **Right of the Hindu Wife to Maintenance:**

### **A relook at Section 18 of the Hindu Adoptions and Maintenance Act, 1956**

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## **CHAPTER 1**

### **INTRODUCTION**

In a decision given by the Hon'ble High Court of Punjab and Haryana in *Avtar Singh vs. Jasbir Singh*, RSA No. 29/1988 (O&M), decision dated 11.02.2014, a lacuna in the position of Hindu Women qua their property and maintenance rights under the existing law was identified.

1.2 In the said case, the Plaintiff was the wife of a man of unsound mind, who had sought 1/4<sup>th</sup> 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, but the wife was later forcibly dispossessed of the land by her father in law and brother in law. Since the said 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 regarding the legal obligations of the father in law in such situations was not raised and the case was decided on the basis of whether the said family settlement before

the Gram Panchayat was required to be registered in order to effect the validity. However, before parting with the case, the Ld. Judge made the following observations with regard to legal position of Hindu wives:

*“Before parting with judgment, it would be appropriate to mention 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 is not having any source of maintenance can 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 should be deemed to be dependent upon the father in law and entitled to maintenance as provided under Section 19 of the Hindu Adoptions and Maintenance Act.*

*Copy of this Order be sent to the Union Ministry of Law and Justice and Law Commission of India for taking appropriate measures for amendment in the Act.”*

1.3 Based on the above recommendation, the Law Commission of India decided to look into the question.

1.4 Accordingly, the Commission formed a Committee for this purpose comprising of the Mr.

Justice (Retd.) Ajit Prakash Shah, Chairman, Law Commission of India,; Justice (Retd.) Ms. Usha Mehra, Member, Law Commission of India, Ms. Dipika Jain, Associate Professor, Jindal Global University, Sonapat; and Mr. Saptarishi Mandal, Assistant Professor, Jindal Global University, Sonapat.

1.5. The Committee undertook an extensive study of the subject and analyzed all the pertinent laws in this regard, including the provisions of the Hindu Adoptions and Maintenance Act, 1956 and also the classic Hindu Law.

**CHAPTER 2**  
**Existing Provisions of Hindu Adoptions and**  
**Maintenance Act, 1956**

2.1 Section 18 of the Hindu Adoptions and Maintenance Act provides for the wife to be maintained by her husband during her lifetime. Section 19 on the other hand speaks of the right of maintenance of a widowed daughter in law by her father in law.

2.2 Therefore, under the Hindu Adoptions and Maintenance Act, the wife of a person who is incapacitated does not enjoy such right to maintenance against the relatives of the husband even if the husband is a member of a joint family. The only remedies available to such women to get any form of maintenance is to either file a suit for partition in respect of the estate of her husband or file for divorce in order to claim maintenance. However, both such courses take considerable time in our country leaving the women in such situations with no effective remedy whatsoever for herself as also for her children.

2.3 In order to address this issue, it is imperative to undertake a brief background analysis of the prevailing position of law in this regard.

## CHAPTER 3

### Joint Hindu Family and Hindu Coparcenary

3.1 A joint Hindu family comprises of all persons lineally descended from a common ancestor, and includes their wives and unmarried daughters as well. In classical Hindu law, the joint Hindu family was treated to be the normal condition of a Hindu family. It must be noted that this idea of joint-ness of the Hindu family is separate from any notion of joint-ness of property ownership. Mulla's Principles of Hindu Law clarifies that "the existence of joint estate is not an essential requisite to constitute a joint family, and a family which does not own any property may nevertheless be joint."<sup>1</sup> Authoritative judgments have explained this point as follows: "Hindus get a joint family status by birth, and the joint family property is only an adjunct of the joint family."<sup>2</sup> However, where there is joint estate and subsequently the members become separate in estate, the family ceases to be a joint Hindu family.

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<sup>1</sup>Pg 358

<sup>2</sup>Janakiram v Nagamony, (1926) 49 Mad 98

3.2 A coparcenary on the other hand is a much narrow concept than the Hindu family. It includes only those persons who acquire a birth interest in the joint family property or coparcenary property. In classical Hindu law, these members were the sons, grandsons and great grandsons of the last holder of the joint property. After the 2005 amendment to the Hindu Succession Act, 1956, the members also include the daughters of the coparceners. Although the daughters are now included in the coparcenary, other female members in the family, such as the mother, wife and daughter-in-law are not coparceners, though they are joint family members. The latter members do not have the rights of the coparceners with respect to joint family property, but enjoy all the general rights of residence and maintenance, that members of the joint family have.

## CHAPTER 4

### Right to Maintenance in Classical Hindu Law

4.1 The classical Hindu law on maintenance was devised in such a way that no member of the joint family, especially the female members, should be left unprovided for. Maintenance was a supreme duty that a Hindu owed to all those who were dependent on him, and which bound both the person and the property, including even the purchaser of joint family property.

4.2 The above idea was based on the principle that maintenance is an integral part of the concept of joint family. Family law scholars, Paras Diwan and Peeyushi Diwan note the relevance of the notion of the joint-ness of family life, to understand the basis of maintenance:

*Every member of the joint family has a right to maintenance against the joint family property ... It was the duty of the karta to see that all reasonable wants of the family members were*

*satisfied. If the karta failed to fulfil his duty, the members could enforce it by legal action.*

*Even with the emergence of the concept of self-acquired property and the coparcenor's right of partition, maintenance did not lose its importance. Rather the concept of maintenance further grew and developed. So far the right was available against certain properties, now it became available against certain persons also.<sup>3</sup>*

4.3 Under classical Hindu law, the liability to pay maintenance arises under two conditions. It is either an incident of the relationship between the parties, which leads to a personal obligation to pay maintenance. In other cases, the liability to maintain certain members of the family is based on possession of property, for example, by way of inheritance. Several scholars also note that classical Hindu law made a distinction between the moral and legal rights of maintenance.<sup>4</sup> If a male Hindu, did not perform his moral obligation to pay maintenance during his

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<sup>3</sup>Diwan, Paras and Peeyushi Diwan (1990). *Law of Maintenance in India*. New Delhi: Deep & Deep, Pp. vii-viii

<sup>4</sup>Diwan, Paras and Peeyushi Diwan (1990). *Law of Maintenance in India*. New Delhi: Deep & Deep, p. 17; Aggarwal, S.N. (1988). *Commentary on the Law of Maintenance*. 3<sup>rd</sup> review edition. Allahabad: Orient Publishing. p. 3

lifetime, then upon his death, the obligation would transform into a legal obligation which could be realized against the property of the deceased male. This illustrates that the obligation to maintain attached to a person even after his death, but at the same time also underscores the significance attached to maintenance in classical Hindu law.

4.4 On the specific question of the wife's right to maintenance, all major scholars and commentators agree that paying maintenance to the wife is a "personal obligation" of the husband, which arises from the fact of marriage, from the moment the marriage takes place.<sup>5</sup> Wife has a special position in the classical law on maintenance, such that refusal to maintain a wife attracts stricter censure than in case of other members of the family. Shastri's exposition of the principle is particularly illuminating and relevant for our purpose here:

*The establishment of such a relation, ipso-facto, provides a right to the wife to have maintenance*

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<sup>5</sup>Diwan, Paras and Peeyushi Diwan (1990). *Law of Maintenance in India*. New Delhi: Deep & Deep, p. 39; Aggarwal, S.N. (1988). *Commentary on the Law of Maintenance*. 3<sup>rd</sup> review edition. Allahabad: Orient Publishing. p. 8; Sharma, Preeti (1990). *Hindu Women's Right to Maintenance*. New Delhi: Deep & Deep. P. 77; Gupte, N.Y.(2001). *Law Relating to Family Courts Act, 1984*. 3<sup>rd</sup> Edition. Mumbai: Ravindra. p. 153

*from her husband, **right to the daughter-in-law to have maintenance from her father-in-law 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.*<sup>6</sup>

4.5 The above position is reflected in judicial decisions too. In *Ramabai v Trimbak Ganesh Desai*<sup>7</sup>, the husband, an undivided member of a Hindu joint family had deserted the wife. The wife claimed maintenance for herself and her child from the husband's relatives. The Bombay High Court held:

*No doubt, the authorities do not show that the relations of a deserted wife are under a personal liability to maintain her; but they do show that she is entitled to be maintained out of her husband's property to the extent of one-third of the proceeds of that property.*

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<sup>6</sup>Shastri, Madhu (1990). *Status of Hindu Women: A Study of Legislative Trends and Judicial Behaviour*. Jaipur: RBSA. Pp. 171-172

<sup>7</sup> (1872) 9 Bom HC 283

4.6 The High Court thus upheld the claim of the wife to receive maintenance from her husband's relatives, even though the latter did not have a personal obligation to do so. The validity of this holding is indicated by the fact that this judgment is cited in the authoritative book, Mayne's Hindu Law & Usage<sup>8</sup>, to illustrate the wife's established right to receive maintenance from the husband's family members.

4.7 In *Gopala Pattar v Parvathi Ammal*<sup>9</sup>, following the above and other similar judgments, the Madras High Court observed,

*It is difficult to see any distinction between the position of a widow who has been obliged to enforce her charge for maintenance and that of an abandoned wife who is obliged to do the same.*

...

*If she has this right against her husband personally it can be enforced by the attachment and sale of his property and that property consists of an undivided share in the joint family property. A charge therefore so long as the*

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<sup>8</sup>Misra, Ranganath and Vijender Kumar (Ed.) Mayne's Hindu Law & Usage. 16<sup>th</sup> Edition. New Delhi: Bharath Law House. p. 1285

<sup>9</sup> AIR 1929 Mad 47

*husband is alive and available is not really of such benefit to the wife for in effect she is able to in-force a charge in execution, but if the husband should die or abscond, her right would be very considerably impaired, for she could no longer enforce the personal obligation, and would have to institute' proceedings against the family and against the family property. If there is no legal objection to a charge being given it is.*

4.8 The High Court ordered maintenance to be paid to the abandoned wife, out of the husband's share in the joint family property.

4.9 Mulla's *Principles of Hindu Law*, another authoritative exposition on both classical and modern Hindu law, draws of Mitakshara, Chapter II, section 10, and states the following:

*When a person is excluded from inheritance on account of disability, he, and his wife and children, are entitled to maintenance out of the property which he would have inherited but for the disability and where he is excluded from a share on partition, he and his wife and his*

*children are entitled to have a provision made for their maintenance out of the joint family property.*<sup>10</sup>

4.10 Mulla goes on to state that the right to maintenance of such a wife, is “conditional upon her continued chastity.”<sup>11</sup> One must hasten to add that by virtue of Section 28 of the Hindu Succession Act 1956, there is no longer any disqualification from inheritance on the ground of any “disease, defect of deformity.”

4.11 Thus there is sufficient basis in classical Hindu law to cast a legal obligation on the father-in-law to maintain the daughter-in-law, when the husband of the latter is unable to do so. The above discussion lends support to the legislative amendment proposed by the Commission that seeks to spell out in the law, the father-in-law’s obligation to pay maintenance to the daughter-in-law.

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<sup>10</sup>Mulla, *Principles of Hindu Law*, Vol I, twentieth edition, (ed SA Desai), *Third Reprint*, 2009. New Delhi: LexisNexis Butterworths.p. 223

<sup>11</sup> *Ibid*, at 888.

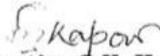
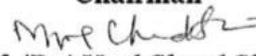
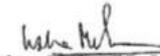
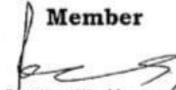
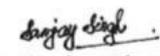
## CHAPTER 5

### **Proposed amendment to the Hindu Adoption and Maintenance Act, 1956**

5.1 In view of the analyses made in the foregoing chapters, 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 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.”

 [Justice S.N. Kapoor] Member	<sup>A.P. Shah</sup> [Justice A.P. Shah] Chairman  [Prof. (Dr.) Mool Chand Sharma] Member	 [Justice Usha Mehra] Member
 [Dr. S.S. Chahar] Member-Secretary	 [P.K. Malhotra] Ex-officio Member	 [Dr. Sanjay Singh] Ex-officio Member