
UNRAVELLING THE MAINTENANCE OF A HINDU WIDOW: A COMPREHENSIVE ANALYSIS

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ABSTRACT:

Hindu marriage law in India emphasizes the sanctity of marriage and the responsibilities of both husband and wife. Maintenance is a fundamental duty in accordance with Hindu morality and is considered a tool for social justice. The Hindu Women Remarriage Act of 1856, Civil Indian Marriage Act of 1872, and the Hindu Women's Right of Separate Residence and Maintenance Act of 1946 improved women's social standing during the British era. Section 125 of The Code of Criminal Procedure, 1973 was introduced to help women who were left defenceless and unable to support themselves after divorce. The Hindu Adoptions and Maintenance Act of 1956 allow widowed women to receive maintenance from their father-in-law, but they must file a lawsuit for divorce or partition. Hindu law emphasizes the financial stability of Hindu wives, with important case laws such as Punni Devi v. Mangat Mal, Kanailal vs Pushparani Pramanik, Balwant Kaur & Anr vs Chanan Singh, and Dadubhai Manubhai & others vs Natvarlal Punjabhai & others.

Keywords: Property, Authority, Relationship, Right, Remarriage etc.

Historical Background

The law of maintenance, which made sure that no one would go without, especially women, was created by the Great Sages and Rishis. Hindus believed that maintenance was a duty obligated by person and property to one's dependent relations. Many people, including concubines and sons who were not biologically their own, were granted the right to maintenance. The law makes a distinction between moral and legal maintenance obligations, with the former being enforceable even in the absence of property [1]. The widow was entitled to maintenance at least as opulent and comfortable as her husband had enjoyed during his lifetime.

Hindu marriage law is based on the tenets of the sanctity of marriage and the responsibilities of both husband and wife. Man and wife are united in marriage, which is a sacred and holy bond that represents their spiritual union. To encourage procreation and protection, the institution of marriage requires husband and wife to reside under one roof.

Introduction

Hindu personal laws in India define maintenance as covering provisions for housing, food, clothes, education, and medical care. Due to its unique nature, this provision was made after the period of independence and coinciding with the acknowledgement of Hindu women's inheritance rights. Maintenance is provided, along with food and clothing, to enable a woman to live as she normally does. As a fundamental duty in accordance with Hindu morality, it is regarded as a tool for social justice. In India, where joint families were the norm, upkeep took on particular significance [2].

The first piece of legislation in India to provide maintenance to widows from sources other than their husbands was the Hindu Adoption and Maintenance Act, 1956 (HAMA), which marked a dramatic departure from patriarchal traditions. Hindu law had traditionally prohibited widow remarriage; however, this was changed by the Hindu Women Remarriage Act of

¹ Basu, A. (2003, January). The Hindu Widow in Indian Literature. *Indian Historical Review*, 30(1–2), 228–230. <https://doi.org/10.1177/037698360303000221>

² Sarkar, D. B. (2012, June 15). The First Law Minister's Hindu Code Bill and Empowerment of Indian Women. *Global Journal for Research Analysis*, 3(2), 1–2. <https://doi.org/10.15373/22778160/february2014/72>

1856^[3]. In order to address the mistreatment of widows by in-laws, HAMA needs to be made more widely known in the decade dedicated to empowering women.

Past Experiences

With the Vedic era seeing a patriarchal and male-dominated society, Indian women's position has changed over time. Sahadharmini, also known as Patni, the chaste wife, was entitled to make sacrifices on her own and take part in religious rituals. Her ability to break free from the family she was born into or married into was limited, both legally and socially. Under the Mitakshara law, women could inherit property shares with their own sons, marking a gradual shift in the post-Vedic era for women's status. Despite the recognition of widows' rights to inherit a portion of their husbands' property by 1200 A.D., their social standing remained largely static ^[4].

In India, the status of a Hindu wife was determined by her husband's good intentions; the right to maintenance was considered a latent right. But because of the stridhana doctrine, women's legal standing deteriorated during the Muslim era, making them more dependent on men. But Islam changed maintenance laws, acknowledging gender equality and granting women the ability to demand maintenance from their husbands. Thanks to the Civil Indian Marriage Act 111 of 1872 and the Hindu Women's Right of Separate Residence and Maintenance Act of 1946, women's social standing improved during the British era.

Present Scenario

To help women who were left defenceless and unable to support themselves after their divorce, Section 125 of The Code of Criminal Procedure, 1973 was brought into law. When it came to education and privileges, women were viewed as inferior to men and had a lower social status. Under this section, a man's immediate family members—his spouse, minor children, children with physical or mental disabilities, and parents—are covered for maintenance ^[5]. A Magistrate of the first class may impose a monthly maintenance allowance on a husband who is unfaithful

³ Singh, S., Mishra, S., Pathak, D. N., Ashutosh, K., & Tripathi, R. (2022, June 18). Adoption under Hindu law: Outbursting the myths about adoption in context of Hindu adoptions & maintenance act, 1956. *International Journal of Health Sciences*, 2772–2782. <https://doi.org/10.53730/ijhs.v6ns5.9243>

⁴ Banerjee, M. S. S. (2020). Maintenance of Widow under Personal Law in India. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.3628510>

⁵ Johnson, E. (2010, September 22). Gender and Mysticism in Hindu Studies: Hindu and Christian Religious Women Recovered - Agency and Power as Resistance? *The Journal of Hindu Studies*, 3(3), 273–278. <https://doi.org/10.1093/jhs/hiq030>

or neglectful to his wife. Any woman who has ended her marriage to her husband or who has divorced him without getting married again is referred to as a "wife".

The respondent's income will be the basis for the court's decision, and the application for payment must be resolved within sixty days of the notice being served. The Act offers "monetary reliefs," such as compensation to the party who has been wronged as well as to any of their children [6]. It has its origins in Hindu customs and mandates that kids take care of their elderly parents and grandparents. The act also provides these people with a quick, easy, and reasonably priced way to be protected. This is the first instance in which an adjudicatory authority established by law is administrative in nature. Even solicitors are prohibited by law from appearing before authorities.

Sections 18 and 19 of the HAMA offer protection to witnesses and maintenance for the duration of their lives. However, if they have converted to another religion or are not chaste, they are not eligible to receive maintenance. If widows are unable to support themselves through their own income or are unable to access their husband's estate, they may be eligible to receive maintenance from their father-in-law following the death of their spouse [7].

The Hindu Adoptions and Maintenance Act of 1956's Current Provisions

The laws pertaining to Hindu adoptions and maintenance in India are updated and codified by the Hindu Adoptions and Maintenance Act, 1956. Anybody who identifies as Hindu—including Virashaiva, Lingayat, Brahmo, Prarthana, or Arya Samaj—as well as Buddhists, Jainas, Sikhs, and anybody else who isn't a Jew, Muslim, Christian, Parsi, or Parsi—is covered by the Act. It includes children of Hindu, Buddhist, Jaina, or Sikh parents, whether biological or adopted, as well as those who have been abandoned or converted to one of the religions [8]. The U.P. Act 57 of 1976 amended the Act and expanded its application to Dadra and Nagar Haveli.

A widow's husband is entitled to provide for her during her lifetime, but her father-in-law can

⁶ Jain, T. (2008). General Principles of Intestate Succession under Hindu Law. SSRN Electronic Journal. <https://doi.org/10.2139/ssrn.1087611>

⁷ Basu, A. (2003, January). The Hindu Widow in Indian Literature. Indian Historical Review, 30(1–2), 228–230. <https://doi.org/10.1177/037698360303000221>

⁸ Kumar, P. (2023), Women's Property Rights under Traditional Hindu Law and the Hindu Succession Act, 1956: A Few Observations. SSRN Electronic Journal. <https://doi.org/10.2139/ssrn.4407565>

also provide for a widowed daughter-in-law [9]. This implies that, even in cases where the spouse is a joint family member, the widowed woman's husband's family cannot collect maintenance from their relatives. Women who wish to seek maintenance must file a lawsuit for divorce or partition, which can take a long time and leave them without any useful legal recourse.

Section 19: Provision for the widowed daughter-in-law

(1) Following her husband's death, a Hindu wife, regardless of when she got married or not, is entitled to maintenance from her father-in-law:

As long as and to the extent that she cannot support herself from her own income or other assets, or, in the event that she is without property, that she cannot get maintenance from her parents' or husbands' estates, or, if applicable, from her son or daughter or their estate.

(2) If the father-in-law does not have the means to enforce any obligation under sub-section (1), it will not be enforced from any coparcenary's property in his possession of which the daughter-in-law has not received any share. Additionally, any obligation under sub-section (1) will end upon the daughter-in-law's remarriage [10].

Vimalben Ajitbhai Patel vs Vatslabeen Ashokbhai Patel:

A married woman's maintenance during subsistence is the husband's responsibility; this personal duty only becomes apparent upon the husband's passing. The mother-in-law's property cannot be attached, but it can be satisfied from jointly owned assets.

Classical Hindu Law's Right to Maintenance

No member of the joint family, particularly the women, is left without support thanks to the traditional Hindu law on maintenance. For a Hindu, providing for their dependents—including those who purchase property—is their highest duty. Because of their relationship or because they own property together, the parties are obligated to pay maintenance. Husbands are deemed to have a personal duty to maintain their wives, and they face harsher consequences if they fail

⁹ Ram, J. (2023). Women as a Karta under Hindu Undivided Family. SSRN Electronic Journal. <https://doi.org/10.2139/ssrn.4317909>

¹⁰ Brick, D. (2014). The Widow-Ascetic under Hindu Law. *Indo-Iranian Journal*, 57(4), 353–383. <https://doi.org/10.1163/15728536-20140035>

to do so. She must remain chaste in order to maintain her maintenance rights, and any "disease or defect of deformity" will no longer prevent her from inheriting.

Some of the important case laws are:

1. Punni Devi v. Mangat Mal

Upkeep invariably involves a dwelling space. Maintenance is provided so the woman can live her life as she was accustomed to, essentially. As a result, the idea of maintenance must consider the fundamental need for a roof over one's head as well as provisions for food, clothing, and other necessities.

2. In the Calcutta High Court case Kanailal vs Pushparani Pramanik

The court determined that only parties subject to Mitakshara law are covered by subsection (2) of Section 19. Under the Dayabhaga school of Hindu law, a widow is not entitled to inherit her husband's share of any coparcenary property. Due to this, the Dayabhaga school of Hindu law does not apply when parties fall under the purview of subsection (2) of Section 19.

3. Balwant Kaur & Anr vs Chanan Singh

With the exception of the right against her husband's estate, the proviso to Section 19(1) gives a widowed daughter a personal right against her mother or father during their respective lives. If she is unable to support herself, the proviso establishes an independent right against her father while he is alive as well as a right against her husband's estate ^[11]. The father's belongings may be used to enforce this right. In order to avoid making the proviso otiose, the legislature purposefully avoided using the words "her father's estate" before "her father." Thus, the proviso gives the widowed daughter a personal right against her father while he is still alive.

4. Dadubhai Manubhai & others vs Natvarlal Punjabhai & others

Under Hindu law, the widow fully represents her husband's estate, whereas under English law, the reversioner or remainderman has a vested interest in the property. During the widow's lifetime, the presumptive reversioner has no interest in the property and can only be successful

¹¹ Balzani, M. (2003, May). Hindu women and marriage law: from sacrament to contract. *Women's Studies International Forum*, 26(3), 280–281. [https://doi.org/10.1016/s0277-5395\(03\)00057-8](https://doi.org/10.1016/s0277-5395(03)00057-8)

if the widow passes away at that point. The doctrine of surrender draws an analogy from the death of a widow, in which the widow's estate acts as an impediment to succession, preventing her husband's heirs from succeeding. By voluntary acts, the widow can remove this impediment and eliminate herself from the husband's estate.

Maintenance of dependents (Section 22)

When a Hindu dies, it is their duty to use the estate they inherited from the deceased to support their surviving dependents [12]. The right to maintenance will belong to the concubine of a person who dies after the Act goes into effect. If their father leaves them without any property, the brothers cannot be made to pay for their sister's wedding.

Section 23: Maintenance Amount

The Act's Section 23 specifies the amount of maintenance to which an individual is entitled; the Court retains the authority to decide on the precise amount and timing of maintenance [13]. In the event that circumstances materially change, maintenance can be adjusted. Until established by the will, court order, or agreement, a dependent's claim for maintenance is not a charge on the deceased's estate [14]. If the transferee has notice or the transfer is made voluntarily, they may be held liable for the maintenance obligation.

Conclusion

The law of maintenance was developed during the British Period, the National struggle, and the years that followed. The Hindu Adoptions and Maintenance Act of 1956 were passed after independence. During the British era, the legal viewpoint shifted as it became clear that husbands had a moral obligation to support their wives. Even after marriage, Indian Hindu law has developed to place a strong emphasis on the financial stability of Hindu wives. In 1898, the first set of rules governing general criminal law was created, mandating that men fulfil their duties of providing maintenance and support for their families, particularly for their wives and children. For non-agricultural property, a right of succession was established by the Hindu

¹² Sardella, F. (2013, August 1). Hindu Widow Marriage. By Ishvarchandra Vidyasagar and Brian A. Hatcher (translator). *The Journal of Hindu Studies*, 6(2), 239–240. <https://doi.org/10.1093/jhs/hit022>

¹³ Banerjee, M. S. S. (2021). Maintenance of Hindu Widow under Personal Law in India. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.3897336>

¹⁴ Hatcher, B. A. (2013, September 14). The Shakuntala Paradigm: Vidyasagar, Widow Marriage, and the Morality of Recognition. *The Journal of Hindu Studies*, 6(3), 363–383. <https://doi.org/10.1093/jhs/hit025>

Women's Right to Property Act, 1937. Expanding the laws concerning women's maintenance rights were the Hindu Marriage Act of 1955 and the Hindu Succession Act of 1956. The Criminal Procedure Code, the Parsee Marriage and Divorce Act, Muslim personal law, and the Muslim Woman (Protection Rights on Divorce) Act of 1986 are among the laws that allow wives to receive maintenance, irrespective of their community. However, without their husbands' written consent, divorced Muslim women may file a claim for relief under the Criminal Procedure Code.