

## CHAPTER- 4

# MAINTENANCE

### **Ch.4.1. Meaning :**

Sn. 3. (b) of the Hindu Adoptions and Maintenance Act defines maintenance.

Maintenance is defined as including (i) in all cases, provisions for food, clothing, residence, education, medical attendance and treatment, (ii) Maintenance in case of an unmarried daughter includes also the reasonable expenses of her marriage.

This definition is merely declaratory and explanatory and not exhaustive. Maintenance may stem as a liability under two circumstances (i) as dependent on the possession of the property and (ii) independent of the possession of the property, that is a personal liability.

Manu has specified the persons who are entitled to maintenance : i.e., aged parents, virtuous wife and minor children. According to Manu, 'these persons must be maintained irrespective of the income ; Even by doing misdeeds, they must be maintained.

There are provisions for

- 1) Maintenance of wife Sn. 18.
- 2) Maintenance of widowed daughter in law Sn. 19.
- 3) Maintenance of children and aged parents Sn. 20.
- 4) Maintenance of dependents Sn. 22.

### **Ch. 4.2. Maintenance of wife :**

Sn. 18 provides that a Hindu wife is entitled to be maintained by her husband during her life-time, when she lives with him. However, when she lives separately she may claim maintenance as a matter of right, from her husband during her lifetime, only under special circumstances as stated in the Act.

#### **i) Husband is guilty of desertion :**

This means abandoning her without any reasonable cause, and without her consent or against her will. He may have even wilfully neglected her (Desertion : Same as understood in the ground for divorce. Refer Ch. 2.7).

#### **ii) Cruelty:**

When the husband treats her with cruelty, she may claim maintenance. Cruelty must be of such a nature as to cause a reasonable fear that it will be injurious to live with him. (Cruelty : same as understood in the ground for divorce. Refer Ch. 2.7).

**iii) Leprosy :**

If the husband is suffering from a virulent form of leprosy, the wife may live separately and claim maintenance.

**vi) Another wife :**

If the husband is having another wife living, the wife may refrain from the company of her husband and claim maintenance.

**v) Concubine:**

If the husband has kept a concubine in the same house or has been habitually residing with her or living with her, the wife may claim maintenance by living separately.

**vi) Conversion:**

If the husband becomes a convert to any other religion the wife may live separately and claim maintenance.

**vii) Any other cause :**

The Act after enumerating the above reasons leaves a discretion to the court to consider any other reason that may be substantiated by the wife. Her living separately from her husband must have a justifiable cause. The leading case is Russell V. Russell.

**Exceptions :** The Act has provided certain exceptions also. If the wife is unchaste, or ceases to be a Hindu by conversion to some other religion, she is not entitled to claim maintenance. **Ch.**

**4.3. Maintenance of widow by father-in-law.**

If the husband is dead, the widow may claim maintenance from her father-in-law subject to certain conditions :

a) She must be unable to maintain herself out of her own earning or other property.

b) She is unable to obtain maintenance from the estate of her husband or her father or mother.

c) She is unable to obtain maintenance from her son or daughter, if any, or his or her estate.

**Exception :**

If the father-in-law has no means or

If she has obtained already her share in her husband's property or

If she ceases to be a widow as on her remarriage, she is not entitled to claim maintenance.

**Ch. 4.4. Maintenance of children and aged parents**

A Hindu is bound during his or her lifetime, to maintain the children and the aged or infirm parents. A minor child (legitimate or illegitimate) may claim maintenance from the father or mother.

This obligation to maintain extends only as long as the person to be maintained is unable to maintain himself or herself.

In case of an unmarried daughter the obligation extends even after minority if she is unable to maintain herself.

**Special feature:** A Hindu female is also under an obligation to maintain her children and aged parents, if they are unable to maintain themselves. There was no such law in Old Hindu law.

#### **Ch. 4.5. Maintenance of dependants :**

Sn. 21 defines who are dependants of a 'Hindu'. Sn. 22 deals

with the right of a dependant against the estate of a deceased Hindu.

a) The heirs of the deceased Hindu are bound to maintain the dependants out of the estate of the deceased Hindu. This is subject to certain conditions.

i) The dependant has not received any share in the estate of the deceased then, he can claim the maintenance.

ii) The liability to pay maintenance is on all those who get the estate. They must pay proportionately.

iii) One dependant heir need not contribute to the other dependant if what he gets is itself less.

#### **b) Dependants :**

The following "'relatives' are entitled to maintenance from the estate of the deceased male or female Hindu (Propositus).

i) Father

ii) Mother

iii) Widow, so long as she remains unmarried

iv) Son, son of a predeceased son provided he is a minor and unable to maintain himself.

v) Unmarried daughter or the unmarried daughter of a predeceased son provided she is unable to maintain herself.

vi) Widowed daughter if she is unable to maintain herself from the estate of her husband or from son/daughter or from father in law.

vii) Any widow of the son, or a widow of predeceased son as long as she remains unmarried.

viii) Minor illegitimate children (son or daughter)

#### **Ch. 4.6. Amount of maintenance : Sn. 23.**

The quantum (amount) of maintenance is determined by the court at

its discretion. Its discretion is judicial. The Act has given certain factors which must weigh with the Court

to award maintenance. There cannot be any mathematical certainty, but the court must take all factors into consideration.

i) In respect of wife, children and parents the following factors are important.

- a) The position and status of the parties
- b) Reasonable wants
- c) Claimants separate living -justified or not ?
- d) Claimants income, property and other sources
- e) The number of persons entitled to maintenance under the

Act

ii) In respect of maintenance of dependants : the factors are

- a) Net value of the assets of the deceased after paying all debts.
- b) Provisions for dependants in the will if any
- c) The degree of relationship
- d) Reasonable wants
- e) Past relations if any
- f) Assets of the dependant
- g) The number of dependents

Further, the claimant should be a "Hindu" The amount fixed by the court (or by agreement) may be altered, if there is material change in circumstances.