



HARYANA STATE LAW COMMISSION

**Ist Floor, DHL Square, Plot No. 9, HSIIDC IT Park, Sector 22,
Panchkula (HR)-134109, Telephone No.0172-4004268**

NINETEENTH REPORT

Recommendation to amend The Hindu Adoptions and Maintenance Act, 1956.

Government of Haryana

HARYANA STATE LAW COMMISSION

**Justice H.S. Bhalla,
Chairperson**

**Ms. Sangita Vardhan,
Part-time Member**

**Mr. Sandeep Kumar,
Member Secretary**

**Mr. Bhupinder Singh,
Registrar**

Government of Haryana

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20TH August, 2024

Recommendation to amend The **Hindu Adoptions and Maintenance Act,** **1956.**

Under the Hindu Adoptions and Maintenance Act, 1956 wife of a person who is incapacitated and is unable to provide maintenance for his wife, on account of physical disability, mental disorder, disappearance, renunciation of the world or other similar reasons, cannot claim maintenance for herself. Even though in some case, she has to maintain her mentally ill husband, and in that situation her condition is worse than being a widowed daughter-in-law.

2. 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.

3. The only remedies available to such women whose husband is incapacitated to maintain his wife, to get any form of maintenance is to either file a suit for partition in respect of the estate of her husband or file petition 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 and also for her children. In order to address this issue, the Haryana State Law Commission is of the view that some provision should be added in the Hindu Adoptions and Maintenance Act, 1956 to provide maintenance to such category of Hindu wife.

4. Similar matter came up before the Hon'ble High Court of Punjab and Haryana in case *Avtar Singh Vs. Jasbir Singh, RSA No.29/1988 (O&M), decided on 11.02.2014*. In the said case, the plaintiff was the wife of a man 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, 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 the 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.”

5. The Hon'ble Judge recommended to take appropriate measures for amendment in the Hindu Adoptions and Maintenance Act, 1956.

6. Every member of the joint family has a right to maintenance against the joint family property. It is the duty of the Karta to see that all reasonable wants of the family members are satisfied. If the Karta failed to fulfil his duty, the members could enforce it by legal action. Paying maintenance to the wife is a "personal obligation" of the husband which arises from the fact of the marriage, from the moment the marriage takes place. 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. Madhu Shastri in his book "Status of Hindu Women (1990)" has exposed that 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 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.

7. The Hon'ble Bombay High Court in case *Ramabai Vs. Trimbak Ganesh Desai*, (1872) 9 Bom HC 283 has held that 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.

Similar view has been taken by the Hon'ble Madras High Court in case *Gopala Pattar Vs. Parvathi Ammal*, AIR 1929 Mad 47. The Hon'ble Madras High Court has ordered maintenance to be paid to the abandoned wife, out of the husband's share in the joint family property.

Even Mulla's Principles of Hindu Law, Vol-I, has propounded that even where 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 children are entitled to have a provision made for their maintenance out of the joint family property. Therefore, even in classical Hindu Law, there is sufficient basis to cast a legal obligation on the father-in-law or the head of the joint family to maintain the daughter-in-law, when the husband of the latter is unable to do so which supports that there shall be a legislative amendment to spell out in the law, the father-in-law's obligation to pay maintenance to the daughter-in-law.

8. In view of the above discussion, the Haryana State Law Commission finds it necessary that the right of a Hindu woman, whose husband is unable to provide maintenance to her, must be protected, therefore, it suggests addition of sub-section (4) under Section 18 of the Hindu Adoptions and Maintenance Act, 1956 as follows: -

“Section 18(4) – Where the husband is unable to provide maintenance 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 life time, from the head of the joint Hindu family of the husband, except where the husband has received his share in the joint family property:

Provided that she is unable to maintain herself out of her own earnings or other 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, 1955.”

RECOMMENDATIONS

In the light of the above discussion, the Haryana State Law Commission recommends the amendment in the Hindu Adoptions and Maintenance Act, 1956 by adding following sub-section (4) under Section 18 of the said Act: -

“Section 18(4) – Where the husband is unable to provide maintenance 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 life time, from the head of the joint Hindu family of the husband, except where the husband has received his share in the joint family property:

Provided that she is unable to maintain herself out of her own earnings or other 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, 1955.”
