

## Right of Hindu Wife to Maintenance under Section 18 of Hindu Adoptions and Maintenance Act, 1956- Suggested Reform

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**Abstract:** The High Court of Punjab and Haryana in *Avtar Singh vs. Jasbir Singh* (RSA No. 29/1988 (O&M) in its decision dated 11.02.2014) held that a lacuna in the position of Hindu wife qua their property and maintenance rights, whose husband is unable to provide maintenance to her under Section 18 of Hindu Adoptions and Maintenance Act, 1956 was identified. This Article is divided into six parts: I) Introduction, II) Aims and Objectives of the Research Paper, III) Provisions of 'Maintenance' of the Hindu wife under Hindu Adoptions and Maintenance Act 1956, IV) Status of wife of a Joint Hindu Family and Hindu Coparcener- a) Status of wife of a Joint Hindu Family, b) Status of wife of a coparcener, V) Response of the Indian Judiciary and legal luminaries to 'Right to Maintenance of Hindu wife' in Classical Hindu Law, VI) Conclusion, Suggestions and Recommendations.

**Keywords:** Classical Hindu Law, father-in-law's liability, Hindu Adoptions and Maintenance Act, 1956, Hindu wife, Husband's disability, Maintenance

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### I. Introduction

"Half of the Indian populations too are women. Women have always been discriminated against and have suffered and are suffering discrimination in silence. Self-sacrifice and self-denial are their nobility and fortitude and yet they have been subjected to all inequalities, indignities, and discrimination".

----Justice K.Rama Swamy in *Madhu Kishwar vs.State of Bihar*<sup>2</sup>

Marriage is the very foundation of any society. It is sine qua non for family peace and stability. Being so, legislatures all around the world have given certain rights and imposed certain obligations on husband and wife which are important constituents of any family. In ancient times, marriage was considered to be decided by the God and divinity was associated with it.<sup>3</sup> It is considered to be a sacred social institution.<sup>4</sup> Marriage, according to the Hindu Law, is a holy union for the performance of religious duties. Marriage is not a contract but it is a 'Sanskar' or 'Sacrament'.<sup>5</sup> The Sanskar ordained that once a maiden is given in marriage, she must preserve her chastity as much after as before her husband's death.<sup>6</sup> According to the Mahabharata, Wife is not only a source of 'Dharma, Artha and Kama' but also a source of 'Moksha'.<sup>7</sup> In Ramayana, Wife is said to be the very soul of her husband. She is 'Grihini' [the lady of the House], 'Sachiva' [wise Counselor] and Sakhi [friend of her husband]. She is 'Griha Laxmi, Ardhangini (half of him) and Samarajyi'.<sup>8</sup>

Hindu marriage protects a woman by guaranteeing her legal rights for restitution of conjugal rights in case of desertion,<sup>9</sup> legitimacy of the children, relief in case of cruelty,<sup>10</sup> adultery,<sup>11</sup> impotency,<sup>12</sup> claim of

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<sup>2</sup> (1996) 5 SCC 148

<sup>3</sup> Desai Satyajeet Atul, Sir Dinshah Fardunji Mulla, *Principles of Hindu Law, Volume 1* (20<sup>th</sup> ed.), New Delhi, LexisNexis Butterworths, 2007 at pg.9

<sup>4</sup> Prof. Vijender Kumar, "Live-In Relationship: Impact on Marriage and Family Institutions", (2012) 4 SCC J-19 at J-19

<sup>5</sup> *Ibid*, note.3, at pg.9

<sup>6</sup> *Manusmriti v.151, Yajnavalkya Smriti I, p-76; Vishnu Smriti XXV,13-14*

<sup>7</sup> *Taittiriya samhita III 1,2,57*

<sup>8</sup> *Sathpath Brahamana V, 1.6.10.*

<sup>9</sup> Section 9 of the Hindu Marriage Act, 1955

<sup>10</sup> Hindu Marriage Act, 1955, Sec.13 (1) (i) a) deals with the cruelty as a ground for divorce and Section 498A of I.P.C.1860

<sup>11</sup> Hindu Marriage Act, 1955, Section 13(1) (i) describe Adultery as a ground of divorce

maintenance and alimony etc.<sup>13</sup> and order for maintenance to wife who is unable to maintain herself.<sup>14</sup> Husband and wife are two wheels of a family chariot and it is but natural that in the course of time they unknowingly enter into a state of discord. Notwithstanding enactment of a plethora of laws, the male-dominated society of India doesn't allow even a modicum of improvement in the status of a married woman.<sup>15</sup> With the result, the Indian home has become the safest place for men to commit violence against women who are defenseless.<sup>16</sup> To overcome this age-old 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 have been enacted.

The State tries to empower married women through its policies and laws mentioned above. But due to their ineffective implementation, the Constitutionally-mandated concept of 'equality' continues to be a mere paper blessing, far divorced from the touch of reality. So much so Hindu wife is not entitled to maintenance by spouse's family under Hindu Adoptions and Maintenance Act, 1956. This paradox is the result of patriarchal norms and values institutionalized by the State.<sup>17</sup> This leads to creation of inferior image of a woman which is an age-old tragic reality of Indian society.<sup>18</sup>

The Researcher here tries to adumbrate and justify rights of maintenance of a Hindu married woman, whose husband is unable to provide maintenance to her under Hindu Adoptions and Maintenance Act, 1956.

## **II. Aims and Objectives of the Research Paper:**

- a. To analyze response of Indian judiciary and legal luminaries to 'Right of the Hindu wife to Maintenance' under Hindu Adoptions and Maintenance Act, 1956
- b. To compare the status of :
  - i. 'Right to Maintenance of the Hindu wife u/S.18 of Hindu Adoptions and Maintenance Act, 1956
  - ii. Right to Maintenance of widowed daughter-in-law u/S.19 of Hindu Adoptions and Maintenance Act, 1956
  - iii. Right to Maintenance of a Hindu wife, whose husband is unable to provide maintenance to her under Hindu Adoptions and Maintenance Act, 1956
- c. To study 'Right to maintenance in classical Hindu law'
- d. To suggest remedial measures to alleviate sufferings of a woman whose husband is unable to provide maintenance to her under Hindu Adoptions and Maintenance Act, 1956 in India.

## **III. Provisions of 'Maintenance' of the Hindu wife under Hindu Adoptions and Maintenance Act (HAMA), 1956**

Under matrimonial laws, a woman can obtain maintenance from her husband only as an adjunct to proceedings for divorce or judicial separation. But if woman is a Hindu, then she can claim maintenance and the right to live apart from her husband without having to file a petition for judicial separation or divorce.<sup>19</sup>

Under Section 18 of HAMA, 1956 a woman can claim maintenance from her husband on any of the following grounds:

**'Chapter- III- Maintenance- Section 18 - Maintenance of wife.-** (1) *Subject to the provisions of this Section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her life time.*

(2) *A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance- (a) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish or willfully neglecting her; (b) if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband; (c) if he is suffering from a virulent form of leprosy; (d) if he has any other wife living; (e) if he keeps a concubine*

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<sup>12</sup> Hindu Marriage Act, 1955, Sec.12(1)(a) deals with Voidable marriages

<sup>13</sup> Hindu Marriage Act, 1955, Sec.25 deals with permanent maintenance or alimony

<sup>14</sup> The Code of Criminal Procedure, 1973, Section 125 order for maintenance of wives, children and parents.

<sup>15</sup> Archana Parashar, *Women and Family Reform in India*, New Delhi Sage Publications, (1992) P.103

<sup>16</sup> R. Revthathi, *Law Relating to Domestic Violence*, (1<sup>st</sup> ed.), Hyderabad: Haritha Graphics, (2004), p.4

<sup>17</sup> Sarkar Lotika (1995) Women's Movement and the Legal Process Occasional Paper No. 24 Committee on the Status of Women in India's (CSWI) report, New Delhi, p. 1-2, As available on, [www.cwds.ac.in/OCPaper/WomensMovementLS.pdf](http://www.cwds.ac.in/OCPaper/WomensMovementLS.pdf), as visited on 24 august, 2012, 2pm

<sup>18</sup> Sarkar L. and B. Sivaramayya (eds.), *Women and Law: Contemporary Issues*, Vikas, New Delhi, (1994); Brenda Cossman and Ratna Kapur, *Subversive Sites- Feminist Engagements with law in India*, Sage, New Delhi, (1996).

<sup>19</sup> Jaising Indira and Monica Sakhrani (ed.), *Law of Domestic Violence*, (2<sup>nd</sup> ed.), New Delhi: Universal law publishing Co.Pvt.Ltd., (2007), pp.94

in the same house in which his wife is living or habitually resides with a concubine elsewhere; (f) if he has ceased to be a Hindu by conversion to another religion; (g) if there is any other cause justifying her living separately.

(3) A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.<sup>20</sup>

Under the Hindu Adoptions and Maintenance Act, 1956 as it stands today, even if the husband is a member of a joint family, his wife has no right to maintenance against the relatives of her husband who is incapacitated and therefore unable to maintain her. Under such circumstances, the aggrieved woman has only two alternative remedies available to her: i) a suit for partition in respect of her husband's estate, or ii) a divorce petition for claim of maintenance. But, alas, neither of these two alternatives brings any meaningful solace to the aggrieved woman and her children, in the face of a ruthlessly endless list of cases pending judicial adjudication in Indian Courts. It is, therefore, necessary to deeply delve into and critically analyze the prevailing background of law in this regard.<sup>21</sup>

**Section 19 - Maintenance of widowed daughter-in-law.**- (1) A Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained, after the death of her husband, by her father-in-law:

Provided and to the extent that she is unable to maintain herself out of her own earnings or other property or, where she has no property of her own, is unable to obtain maintenance-

(a) from the estate of her husband or her father or mother, or

(b) from her son or daughter, if any, or his or her estate.

(2) Any obligation under sub-section (1) shall not be enforceable if the father-in law has not the means to do so from any coparcener property in his possession out of which the daughter-in-law has not obtained any share, and any such obligation shall cease on the re-marriage of the daughter-in-law.<sup>22</sup>

In *Raj Kishore Mishra v. Smt. Meena Mishra*,<sup>23</sup> Court held that the obligation of father-in-law shall not be enforceable if he has no means to maintain his daughter-in-law from any coparcenary property in his possession out of which the daughter-in-law has not obtained any share.

The object of this Section is to make it clear that the widowed daughter-in-law can claim maintenance from her father-in-law only where she is unable to maintain herself out of her own property or from the estate of her husband, father, mother, son or daughter. It is also provided that the father-in-law shall be under no obligation to maintain his daughter-in-law except in cases where there is some ancestral property in his possession from which the daughter-in-law has not obtained any share.

#### **IV. Status of wife of a Joint Hindu family and Hindu Coparcener**

##### **a. Status of wife of a Joint Hindu Family**

'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, joint Hindu family was treated to be a normal condition of a Hindu family, it must be, noted that this idea of 'joint-ness' of a 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>24</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>25</sup> However, where there is joint estate and subsequently the members become separate in estate, the family ceases to be a joint Hindu family.<sup>26</sup>

##### **b. Status of wife of a coparcener**

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<sup>20</sup> Hindu Adoptions and Maintenance Act, 1956, Section 18 - Maintenance of wife

<sup>21</sup> [http://lawcommissionofindia.nic.in/reports/on Right of the Hindu Wife to Maintenance: A relook at Section 18 of the Hindu Adoptions and Maintenance Act, 1956.pdf](http://lawcommissionofindia.nic.in/reports/on%20Right%20of%20the%20Hindu%20Wife%20to%20Maintenance%20A%20relook%20at%20Section%2018%20of%20the%20Hindu%20Adoptions%20and%20Maintenance%20Act,%201956.pdf), Para.2.2

<sup>22</sup> Hindu Adoptions and Maintenance Act, 1956, Section 19 - Maintenance of widowed daughter-in-law

<sup>23</sup> AIR 1995 All. 70.

<sup>24</sup> Mulla, *Principles of Hindu Law*, Vol I, twentieth edition, (ed SA Desai), *Third Reprint*, New Delhi: LexisNexis Butterworths., (2009), p. 358

<sup>25</sup> *Janakiram v Nagamony*, (1926) 49 Mad 98

<sup>26</sup> [http://lawcommissionofindia.nic.in/reports/on Right of the Hindu Wife to Maintenance: A relook at Section 18 of the Hindu Adoptions and Maintenance Act, 1956.pdf](http://lawcommissionofindia.nic.in/reports/on%20Right%20of%20the%20Hindu%20Wife%20to%20Maintenance%20A%20relook%20at%20Section%2018%20of%20the%20Hindu%20Adoptions%20and%20Maintenance%20Act,%201956.pdf), Para.3.1

The Hindu Succession Act (HSA), 1956 was amended in 2005 [Hindu Succession (Amendment) Act, 2005 (39 of 2005)] conferring coparcener property rights in favour of daughters. The earlier Law (HAS, 1956) had conferred coparcener rights upon male members only. This has altered the fundamental framework of Mitakshara coparcener and a daughter is now *inter alia* capable of acquiring an interest in the coparcener property, demand a partition of the same, and dispose of the same through testamentary disposition.<sup>27</sup> The HAS, 1956 conferred limited rights upon those members of joint family who entered into it through marriage, whereas the 2005 Amendment confers coparcener rights upon those members who are born in the family and, therefore, they enjoy coparcener property rights by birth. Those members who enter into joint family through marriage enjoy rights which are restricted i) to maintenance out of its funds, ii) right of residence in the family house, etc.<sup>28</sup>

In the light of the above, it can be said that the wives married into the joint Hindu family are denied any other coparcener property rights (beyond maintenance and residence) which are available to daughters who are born in the family.<sup>29</sup> On the other hand, the share of a daughter would diminish the share of wife married to a coparcener.<sup>30</sup>

#### **V. The Response of the Indian Judiciary and legal luminaries to ‘Right to Maintenance of Hindu wife’ in Classical Hindu Law:**

It is clear from the foregoing that though, over a period of time improved rights are bestowed upon Indian Hindu women, the rights available to them do not match with the rights required.<sup>31</sup> In this context Indian Judiciary is found to be ambivalent. This conclusion is fortified in *Masilamani Mudliar vs. idol of sri swaminathswami thirukoli* where the Supreme Court came to the conclusion that the personal laws, to the extent they are in violation of the Fundamental Rights, are nothing but void.<sup>32</sup>

On 11<sup>th</sup> 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*,<sup>33</sup> identified the lacuna in HAMA, 1956 with regard to property and maintenance rights available to Hindu wives. 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 Learned 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 is sent to the Union Ministry of Law and Justice and the Law Commission of India for taking appropriate measures for amendment in the Act.”<sup>34</sup>*

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<sup>27</sup> Ms.Indira Jaising “ Mapping Women’s Gains In Inheritance And Property Rights Under The Hindu Succession Act, 1956”, Lawyers Collective Women’s Rights Initiative, PP.35, available at, <http://www.lawyerscollective.org/files/LCWRI%20INHERITANCE%20REPORT.pdf>

<sup>28</sup> [http://lawcommissionofindia.nic.in/reports/on Right of the Hindu Wife to Maintenance: A relook at Section 18 of the Hindu Adoptions and Maintenance Act, 1956.pdf](http://lawcommissionofindia.nic.in/reports/on%20Right%20of%20the%20Hindu%20Wife%20to%20Maintenance%20A%20relook%20at%20Section%2018%20of%20the%20Hindu%20Adoptions%20and%20Maintenance%20Act,%201956.pdf), Para.3.2

<sup>29</sup> Ms.Indira Jaising, “Mapping Women’s Gains In Inheritance And Property Rights Under The Hindu Succession Act, 1956”, Lawyers Collective Women’s Rights Initiative, PP.35, available at, <http://www.lawyerscollective.org/files/LCWRI%20INHERITANCE%20REPORT.pdf>

<sup>30</sup> Madhu Kishwar, “Codified Hindu Law, Myth and Reality” xxix/33, Economic and Political Weekly, 2145(1994)

<sup>31</sup> Archana Parashar, *Women and Family Reform in India*, New Delhi, Sage Publications, (1992) P.103  
<sup>32</sup> (1996)8 SCC 525

<sup>33</sup> RSA No. 29/1988 (O&M), decision dated 11.02.2014

<sup>34</sup> RSA No. 29/1988 (O&M), decision dated 11.02.2014, pg.11&12

It is needless to emphasize that the principle of maintenance is an integral part of Hindu joint family system. Maintenance was a supreme duty cast upon a Hindu Karta on whose shoulders his dependants depend. The classical Hindu law is framed in such a way that no member of a Hindu joint family, especially the female members, should be left unprovided for.<sup>35</sup>

Family Law scholars, Paras Diwan and Peeyushi Diwan note the relevance of the notion of the jointness of family life, to understand the basis of maintenance as follows:

*“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 fulfill his duty, the members of the joint family could enforce it by legal action. Even with the emergence of the concept of self-acquired property and the coparcener’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>36</sup>

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>37</sup> If a male Hindu did not perform his moral obligation to pay maintenance during his 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.<sup>38</sup>

Among many members of a Hindu joint family who depend upon the ‘Karta’ for their rights to maintenance, wife happens to enjoy a special position in the classical Hindu law on maintenance. All major legal scholars agree that paying maintenance to a wife constitutes a ‘personal obligation’ of her husband which begins to be operative from the very moment the marriage takes place.<sup>39</sup> Refusal to maintain a wife attracts a stricter censure than the maintenance of other members of joint family.<sup>40</sup> To illustrate the above reality, 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 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>41</sup>

This principle finds its reflection in an important judicial decision too. In *Ramabai wife of Bhikaji Bhaskar v Trimbak Ganesh Desai*,<sup>42</sup> the husband, an undivided member of a Hindu joint family, had deserted his 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.”*

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

<sup>35</sup> [http://lawcommissionofindia.nic.in/reports/on Right of the Hindu Wife to Maintenance: A relook at Section 18 of the Hindu Adoptions and Maintenance Act, 1956.pdf](http://lawcommissionofindia.nic.in/reports/on%20Right%20of%20the%20Hindu%20Wife%20to%20Maintenance%20-%20A%20relook%20at%20Section%2018%20of%20the%20Hindu%20Adoptions%20and%20Maintenance%20Act,%201956.pdf), Para.4.1

<sup>36</sup> Diwan, Paras and Peeyushi Diwan, *Law of Maintenance in India*. New Delhi: Deep & Deep, (1990). Pp.vii-viii

<sup>37</sup> Diwan, Paras and Peeyushi Diwan), *Law of Maintenance in India*. New Delhi: Deep & Deep, (1990). p. 17; Aggarwal, S.N. *Commentary on the Law of Maintenance*. 3rd review edition. Allahabad: Orient Publishing, (1988) p. 3

<sup>38</sup> [http://lawcommissionofindia.nic.in/reports/on Right of the Hindu Wife to Maintenance: A relook at Section 18 of the Hindu Adoptions and Maintenance Act, 1956.pdf](http://lawcommissionofindia.nic.in/reports/on%20Right%20of%20the%20Hindu%20Wife%20to%20Maintenance%20-%20A%20relook%20at%20Section%2018%20of%20the%20Hindu%20Adoptions%20and%20Maintenance%20Act,%201956.pdf), Para.4.3

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

<sup>40</sup> [http://lawcommissionofindia.nic.in/reports/on Right of the Hindu Wife to Maintenance: A relook at Section 18 of the Hindu Adoptions and Maintenance Act, 1956.pdf](http://lawcommissionofindia.nic.in/reports/on%20Right%20of%20the%20Hindu%20Wife%20to%20Maintenance%20-%20A%20relook%20at%20Section%2018%20of%20the%20Hindu%20Adoptions%20and%20Maintenance%20Act,%201956.pdf), Para. 4.4

<sup>41</sup> Shastri, Madhu, *Status of Hindu Women: A Study of Legislative Trends and Judicial Behaviour*, Jaipur: RBSA, (1990), Pp. 171-172

<sup>42</sup> (1872) 9 B.H.C.R. 283

fact that this judgment is cited in the authoritative book, Mayne's *Hindu Law & Usage*,<sup>43</sup> to illustrate the wife's established right to receive maintenance from the husband's family members.<sup>44</sup>

On 13 February, 1928 the Madras High Court in *Gopala Pattar v Parvathi Ammal*<sup>45</sup> also principle the above thinking and 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 husband is alive and available is not really of such a benefit to the wife for, in effect, she is able to enforce 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."*<sup>46</sup>

In the above case, the High Court ordered that the abandoned wife should be paid maintenance out of the her husband's share in the joint family property.<sup>47</sup>

Mulla's *Principles of Hindu Law*, which is an authoritative exposition on both classical and modern Hindu law, Mitakshara, Chapter II, section 10, 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>48</sup>

Continued chastity is a pre-condition for grant of right to maintenance to a Hindu wife as per the statement of Mulla.<sup>49</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.<sup>50</sup>

## VI. Conclusion

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 252<sup>nd</sup> Report (6<sup>th</sup> January, 2015)* titled "Right of the Hindu Wife to Maintenance: A relook at Section 18 of the Hindu Adoptions and Maintenance Act, 1956"<sup>51</sup> to make father-in-law obliged to pay maintenance to 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.

## VII. Suggestions and Recommendation

In the light of the foregoing discussion which handled the issue threadbare by delving deep into all its intricacies, the Researcher gives her unstinted support to the recommendations of the Law Commission of India which would make a large section of aggrieved daughter-in-laws in heaven a sigh of relief. The suggested

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<sup>43</sup> Misra, Ranganath and Vijender Kumar (Ed.) Mayne's *Hindu Law & Usage*. 16th Edition. New Delhi: Bharath Law House. p. 1285

<sup>44</sup> [http://lawcommissionofindia.nic.in/reports/on Right of the Hindu Wife to Maintenance: A relook at Section 18 of the Hindu Adoptions and Maintenance Act, 1956.pdf](http://lawcommissionofindia.nic.in/reports/on%20Right%20of%20the%20Hindu%20Wife%20to%20Maintenance%20-%20A%20relook%20at%20Section%2018%20of%20the%20Hindu%20Adoptions%20and%20Maintenance%20Act,%201956.pdf), Para. 4.6

<sup>45</sup> AIR 1929 Mad 47

<sup>46</sup> AIR 1929 Mad 47, Para.5

<sup>47</sup> [http://lawcommissionofindia.nic.in/reports/on Right of the Hindu Wife to Maintenance: A relook at Section 18 of the Hindu Adoptions and Maintenance Act, 1956.pdf](http://lawcommissionofindia.nic.in/reports/on%20Right%20of%20the%20Hindu%20Wife%20to%20Maintenance%20-%20A%20relook%20at%20Section%2018%20of%20the%20Hindu%20Adoptions%20and%20Maintenance%20Act,%201956.pdf) Para.4.8

<sup>48</sup> Mulla, *Principles of Hindu Law*, Vol I, twentieth edition, (ed SA Desai), 3<sup>rd</sup> Reprint, . New Delhi: LexisNexis Butterworths. (2009) p. 223

<sup>49</sup> Ibid, at 888

<sup>50</sup> Hindu Succession Act 1956-Section 28: Disease, defect, etc., not to disqualify.—No person shall be disqualified from succeeding to any property on the ground of any disease, defect or deformity, or save as provided in this Act, on any other ground whatsoever.

<sup>51</sup> [http://lawcommissionofindia.nic.in/reports/on Right of the Hindu Wife to Maintenance: A relook at Section 18 of the Hindu Adoptions and Maintenance Act, 1956.pdf](http://lawcommissionofindia.nic.in/reports/on%20Right%20of%20the%20Hindu%20Wife%20to%20Maintenance%20-%20A%20relook%20at%20Section%2018%20of%20the%20Hindu%20Adoptions%20and%20Maintenance%20Act,%201956.pdf)

recommendations to the existing law are insertion of sub-section 4 under Section 18 of Hindu Adoptions and Maintenance Act (HAMA), 1956 as below:

- a. **“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, 1955.”<sup>52</sup>

- b. **Maintenance of Wife- Section 18(3) of HAMA, 1956** uses the word 'unchaste', which the Researcher recommends to be deleted. Chastity of a woman cannot be put to any test. In our epic Ramayana, the lord Rama tried to test the chastity of his wife 'Sita' by compelling her to undergo Agni-Pariksha, which was crueler than cruelty. In the Mahabharata the similar hard proof for chastity was demanded by Duryodhana from his wife Draupadi. Therefore, the Researcher who belongs to the 21<sup>st</sup> Century is more than convinced that the term 'unchaste' should be deleted from Section 18 (3) of HAMA, 1956.

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<sup>52</sup> The Hindu Marriage Act, 1955- Section 13 Divorce: (1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-[(iii) in has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent. Explanation .—In this clause,— (a) the expression “mental disorder” means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia; (b) the expression “psychopathic disorder” means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment; or] Substituted by Act 68 of 1976, Sec. 7, for Cl.(iii)(w.e.f. 27-5-1976).

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