

## Maintenance of widowed daughter-in-law: A duty or a liability

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### Abstract

Relevance of wife/daughter in an Indian Society — Wife is the *aradhangini* (half of man) — These laws were made to remove inequality between class and class, between sex and sex — Hindu Adoption and Maintenance Act, 1956 — Right of a widowed Daughter-in-law is a pre-existing right — Section 19 — Can approach in-laws for maintenance after the death of husband — Section 18 — Certain Conditions shall be fulfilled to attain the maintenance — ‘Dependant’ under Section 21 — Coparcenary Property — Moral rights transformed into legal rights of widowed daughter-in-law — Maintenance from self-acquired property of in-laws — This right is still available to the widowed daughter-in-law of the pre-deceased son against the self-acquired property of her father-in-law — A daughter becomes a daughter-in-law, If the daughter gets a share, similarly the daughter in the other house gets a share.

**Keywords:** daughter, Maintenance, daughter, widowed

### Introduction

Women has always played a fundamental role from being a daughter to being mother. We’ve always read, heard and talked about feminism, the very root of the Women Empowerment not just in working field but also to the extent of mured in four walls (*char diwari*). Women has sacrificed everything for their families, from their career to their own wishes. From father to husband, they always respected the male in their life and their wishes. As per National Commission for Protection of Child Rights report, most of the women are still occupied in household work rather than attaining knowledge<sup>[1]</sup>.

Many are still there who are making a step forward to create a leg to stand on not only just for them but for their families too. But there are a lot of women, who are totally dependant on their husband, for their livelihood. If we talk about Women Empowerment, is this kind of Empowerment, we were talking about where a woman is not even allowed to work and also totally dependant on her husband for everything. But as far as I read, “The wife is verily the half of the husband. Man is only half, not complete until he marries”<sup>[2]</sup>.

Keeping in mind, the importance and rights of Hindu women in society, the *Hindu Code Bill* was drafted by Dr. B.R. Ambedkar<sup>[3]</sup>. While drafting *Hindu Code Bill*, special significance was given by Dr. B.R. Ambedkar with the sole intentions i.e. “No law passed by the Indian Legislature in the past or likely to be passed in the future can be compared to it (*Hindu Code*) in point of its significance, To leave inequality between class and class, between sex and sex which is the soul of Hindu society, untouched and to go on passing legislation relating to economic problems is to make a farce of our Constitution and to build a palace on a dung heap”<sup>[4]</sup>.

### Hindu Adoption and Maintenance Act, 1956.

The Hindu Code Bill contained a collection of several Hindu laws, after a huge level of efforts by Dr. B.R. Ambedkar, four of them were finally passed in 1955-56<sup>[5]</sup>.

Among all of them, one law is there which is still in conflict, between the courts – *Hindu Adoption and Maintenance Act, 1956*<sup>[6]</sup>.

As we discussed earlier, most of the women are still engaged in household work rather than in academic or earning livelihood and are dependant on their husband for their livelihood even. Unfortunately, what if there husband is no more in this world for them to maintain. Who will be liable to maintain them? That’s the main question arises here. This issue was recognized in *Hindu Code Bill*, where the right of daughter-in-law was explained and remedies were also provided in the form of law, after plenty support by Seth Govind Dast<sup>[7]</sup> and Hon’ble Shri. K. Santhanam<sup>[8]</sup>. Several sections were mentioned in *Hindu Code Bill*, from rights of widowed daughter-in-law for maintenance to the extent of paying their rights even in their deceased husband’s property<sup>[9]</sup>. Let’s move forward, to what court’s opinion is regarding the rights of widowed daughter-in-law.

### Right of Widowed Daughter-In-Law is A Pre-Existing Right.

Hindu Code Bill first ensured that every widowed daughter-in-law is liable to be maintained by her in-laws after the death of the husband. As we all know, Hon’ble Courts have never sat back while they perceive that somebody has not been given their rights which they deserve in the biggest democratic country of the world<sup>[10]</sup>. A while later courts started recognizing it, In *Jupudy v. Pentapati*<sup>[11]</sup>, M. Yusuf Eqbal, J., suggested that Right of a widowed daughter-in-law is not only pre-existing but also “that the claim of Hindu widow to be maintained is not a mere formality which is to be exercised as a matter of concession, grace or gratis but is a valuable, spiritual and moral right”<sup>[12]</sup>.

In *Balbir v. Harinder*<sup>[13]</sup>, Mittal, J., suggested that “The right in case of a widow is a pre-existing right, which existed under the Shastric Hindu law long before the passing of the Hindu Women’s Rights to Property Act, 1937 or the Hindu Married Women’s Rights to Separate Residence and Maintenance Act, 1946 or the Hindu Adoptions

and Maintenance Act, 1956”<sup>[14]</sup>.

The right of widow daughter-in-laws has not only just been considered as a right, but is a means to stand their selves, and to move forward with their family and in-laws. We all know, widowed women in earlier times were considered no more than curse. But one thing we forget is whether she is a widow, she has got every right to live their life under a roof, with a proper clothing and atleast some proper food, which has been ensured by *Hindu Adoption and Maintenance Act, 1956*<sup>[15]</sup>.

Section 19 ensures that a Hindu widowed-daughter-in-law to be maintained, after the death of her husband from her father-in-law or from the estate of her husband, son or daughter (if any)<sup>[16]</sup>.

### **Fulfilment of Conditions for Availing Right to Maintenance.**

Certain condition has been imposed by Section 21, to avail the right of maintenance by her-in-laws. In *Radhika v. Karun*<sup>[17]</sup>, Malhotra, J., suggested that provisions of Section 19 of the Act are so plain, clear and unambiguous that literal meaning as provided in these two provisions are to be given as described plainly in the two provisions. He also suggested:

“That the underlying idea of enacting of Section 18 and 19 of Hindu Adoption Act was that during the lifetime of the husband, he shall be under legal obligation to discharge his duties towards his wife for the purpose of maintenance and only after his death his father shall maintain his daughter-in-law”. First Condition is that she has to a widow (*vidhava*) in the first place. “One of the most important condition is that if she was unable to maintain herself out of her own earning only then her father-in-law would be under legal obligation to maintain her.” “Second condition is that “she’ll be liable for maintenance only if she has no other property from the estate of her husband or her father or mother or from her son or daughter<sup>[18]</sup>.”

(Emphasis in original)

A bare reading of Section 18 and 19<sup>[19]</sup> indicates that at first instance, it is the husband who is under legal obligation to maintain his wife of course subject to exceptions as provided in Section 18(2) and after the death of her husband her father-in-law shall maintain her not in absolute terms but subject to the condition that she is unable to maintain herself out of her own earnings or other properties. That goes to show that even after the death of her husband firstly she has to maintain herself out of her own earnings from the property and not otherwise and if she is not able to do that only then her father-in-law's obligation starts. Father-in-law cant approached for maintenance of her widowed daughter-in-law if she can't fulfill either one of the conditions.

Section 22 clearly mandates that if there is any property, inherited from the deceased by his family members, than they shall maintain the dependants of the deceased out of the inherited property, if such dependant is prescribed under Section 21.

In *Madhukar v. Shalu*<sup>[20]</sup>, it was held that, first of all the widowed shall not remarry, and even still she is unable to obtain maintenance from her father-in-law, this situation is taken care of by provisions of Section 21(vi) (c) of the said Act which in these circumstances defines her as a 'dependant' and the heirs of the deceased are bound to maintain such dependant under Section 22 of the said Act. Similarly, under Section 21(vii) of the said Act, the right of

the deceased's sons widow has been recognised so long as she does not remarry and is also unable to obtain maintenance from the sources mentioned therein including the estate of her father-in-law<sup>[21]</sup>.

### **Daughter-in-law and her rights in the self-acquired property of her father-in-law?**

As discussed earlier, a widowed daughter-in-law is liable to obtain maintenance from her *In-Laws*. A bare reading of *Section 19(2)*<sup>[22]</sup>, clearly throws a light on the medium by which the maintenance shall be paid to the daughter-in-law. *First* question arises, what is ‘*Coparcenary Property*’ within the meaning of *Section 19*?

In *Gurdip v. Ghamand Singh*<sup>[23]</sup>, Division Bench answered: “the term [*co-parcenary property*] occurring in *Hindu Adoption and Maintenance Act* means the property which consists of ancestral property or joint acquisitions, or property thrown into the common stock and accretion to such property<sup>[24]</sup>.” They also suggested that the right of widowed daughter-in-law U/s. 19 of the Act whittled down the unhumpered rights of a widowed daughter-in-law for maintenance against her father-in-law.

*Second* question that arises here is except clothing, shelter, food is widowed daughter-in-law liable to take maintenance from the deceased inherited property or coparcenary property? In *Gurdip Kaur's case*<sup>[25]</sup>, it was suggested that: Mitakshara school has just provided the moral rights to widowed daughter-in-law for maintenance against her father-in-law but after the enactment of this *HAMA*, moral rights has been converted into legal rights of widowed daughter-in-law maintenance against her father-in-law. In *Dayabhaga School Hindu* governed is under only a moral liability to maintain the widow of his deceased son, the liability when transmitted on his death to his surviving sons becomes in their persons a legal liability, the measure of which, however, is restricted to the amount of the estate to which they have succeeded from their father.

*Last* and the main question that arises is that whether a widowed daughter-in-law is liable to have a share in self-acquired property? In *Balbir Kaur's case*<sup>[26]</sup>, it was held:

“Though under the Act, the right to claim maintenance by widowed daughter-in-law against her father-in-law is limited to the extent of coparcenary property in the hand of father-in-law, out of which widowed daughter-in-law has not taken any share, but under the old Hindu Law, prevailing before the enactment of the Act, this right of maintenance to the widowed daughter-in-law against the self-acquired property of her father-in-law, was available. This right is still available to the widowed daughter-in-law of the pre-deceased son against the self-acquired property of her father-in-law, as this right shall not cease to be in force because the same is not inconsistent with any provision contained in the Act. Thus, the widowed daughter-in-law of a pre-deceased son is entitled to claim right of maintenance against the self-acquired property of her father-in-law, whether it is in his hand or in the hand of his heir or donee.”

(Emphasis in original)

In India, we consider Daughter-in-law just as our daughters (*beti*), but when it comes to give them their share, we usually consider giving it to our blood relatives. Hon'ble K. Santhanam expressed a view during the enactment of *Hindu Code Bill*<sup>[27]</sup>: “After all, the daughter becomes a daughter-in-law. If the daughter gets a share, similarly the daughter in the other house gets a share and therefore in the long run,

except for an adjustment of legal rights through the establishment of self-respect and social equality between man and woman.” In *Vineeta v. Rakesh* <sup>[28]</sup>, Arun Mishra, J., suggested a very common saying, “A son is a son until he gets a wife. A daughter is a daughter throughout her life.”

### References

1. In India, 39.4 percent of the adolescent girls in the age group of 15-18 years are not attending any educational institution. The percentage of boys not attending any educational institution in the same age group is 35%. Out of the total population of 15-18 year old OoS girls, 64.8 % are non-workers i.e. persons who did not ‘work’ at all including students, persons engaged in household duties, dependents, pensioners, beggars, etc. In other words, around 65 percent girls who do not attend any educational institution are either engaged in household activities, are dependents or are engaged in begging etc. On the other hand 33.4% of OoS boys are non-workers.
2. According to Satpatha Brahmana, Wife is the ardhangini (half of man).
3. The Hindu Code Bills were several laws passed that aimed to codify and reform Hindu personal law in India. The draft Hindu code bill was drafted in 1948 and was enacted in, 1956.
4. See Dr. Babasaheb Ambedkar Writings and Speeches, Section III, Discussion on The Hindu Code after return from Select Committee, 2013, 14:3.
5. Among several hindu laws, four of them were passed in Hindu Marriage Act, Hindu Succession Act, Hindu Minority and Guardianship Act, and Hindu Adoptions and Maintenance Act, 1955-56.
6. The Adoptions and Maintenance Act of 1956 dealt specifically with the legal process of adopting children by a Hindu adult, and with the legal obligations of a Hindu to provide "maintenance" to various family members including their wife or parents, and in-laws.
7. See Dr. Babasaheb Ambedkar Writings and Speeches, Section III, Discussion on The Hindu Code after return from Select Committee, 2013, Vol. 14 at 319-20.
8. See Dr. Babasaheb Ambedkar Writings and Speeches, Section III, Discussion on The Hindu Code after return from Select Committee, 2013, Vol. 14 at 595.
9. See Dr. Babasaheb Ambedkar Writings and Speeches, Part IIIA at 189:192-93.
10. India (Bharat) was considered as the World’s Biggest Democratic Country in the world by European Parliament, At a Glance, 2014.
11. See, *Jupudy Pardha Sarathy v. Pentapati Rama Krishna*, (2) SCC 56, para 15-16, 2016.
12. *Id*, para 15-16.
13. *Balbir Kaur v. Harinder Kaur*, SCC OnLine 824.
14. *Id*, para 12, 2002.
15. See, Section 3, Hindu Adoption and Maintenance Act, "maintenance" includes in all cases - provision for food, clothing, residence, education and medical attendance and treatment”, 1956.
16. See, Section 19(2), Hindu Adoption and Maintenance Act, 1956.
17. See, *Radhika Narang v. Karun Raj Narang*, 115 DLT 440, 2004.
18. *Id*, para 8.
19. See, Section 18 and 19, Hindu Adoption and Maintenance Act, 1956.
20. See, *Madhukar v. Shalu*, (6) Mh. L.J. 391, 2013.
21. *Id*, para 18.
22. See, Section 19(2), Hindu Adoption and Maintenance Act. “Any obligation under sub-section (1) shall not be enforceable if the father in law has not the means to do so from any coparcenary property in his possession out of which the daughter-in-law has not obtained any share, and any such obligation shall cease on the remarriage of the daughter-in-law”, 1956.
23. See, *Gurdip Kaur vs Ghamand Singh*, AIR P&H 238, 1965.
24. *Ibid*, para 35.
25. *Ibid*, para 35
26. *Supra*, para 19.
27. *Supra*, at 595.
28. See, *Vineeta Sharma v. Rakesh Sharma*, decided on 11.08, 2020.