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Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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With this thought, we hereby present to you

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# **MAINTENANCE AND ALIMONY PROVISIONS IN HINDU MARRIAGE ACT: A COMPARATIVE ANALYSIS**

AUTHORED BY - TANUJ KUMAR I S, 127118029

B.B.A., LL. B(HONS.)

## **Abstract:**

Hindus' personal life and marriages are governed by the Hindu Marriage Act of 1955, a significant piece of Indian law. The provisions for maintenance and alimony are an important part of this law since they help to ensure the spouses' financial security, especially in divorce circumstances. This abstract compares and contrasts the Hindu Marriage Act's provisions for maintenance and alimony with those found in other legal systems, highlighting their significant characteristics.

Both spouses are eligible for maintenance under the Hindu Marriage Act, however there are different requirements and bases for making a claim. The Act provides for maintenance both throughout the marriage and after a divorce, with the amount depending on things including income, assets, and way of living. This reflects the concepts of equity and fairness.

Different methods of maintenance are offered by other legal systems, such as Islamic law and the secular Indian legal system. In contrast to secular Indian laws, which take a gender-neutral approach and hold either spouse accountable for maintenance based on need and capacity, Islamic law places the burden of providing maintenance on the husband, mostly based on his financial capacity.

The comparative research also highlights how these rules are constantly changing due to continuous discussions and legislation changes intended to make them more equitable and inclusive. The examination explores the difficulties in putting maintenance and alimony rules into practice as well as the various societal attitudes about them.



To sum up, the Hindu Marriage Act's rules on maintenance and alimony are subject to constant revision and adaptation in light of shifting society dynamics, although having its roots in traditional beliefs. This comparative analysis provides an invaluable resource for comprehending the complexity and subtleties of these provisions, opening the door for additional discussions on their efficacy and applicability in the present era.

## **Introduction:**

The granting of maintenance is in itself a form of social justice. It is a fundamental obligation of a man to look after his wife, his children, his parents, those close to him, etc., so long as he is unable to look after himself. The purpose of maintenance is the prevention of poverty and destitution among women and to improve the economic situation of children.

Hindu female maintenance law in India can be divided into two categories. The first category provides for maintenance to be paid after a divorce or matrimonial annulment, such as marriage nullity. The second category provides for maintenance during the period of subsistence of marriage.

In the first category, maintenance can be claimed on the basis of the provisions of section 25 of Hindu marriage law 1955, and in the second category, on the basis of section 125 of the common law and the provisions of the Hindu adoption and maintenance law 1956.

In this paper, we have tried to understand what is alimony and what is the scope of alimony and maintenance for the wife, widow and the dependent under the Hindu Adoption and maintenance Act 1956 and Section 25 of the CrPC. We have also tried to understand the loopholes in the main maintenance laws that apply to the head of Hindu family and have provided adequate remedies for the same.

## **Concept of maintenance:**

The idea of an undivided family is the basis for the right to maintenance, wherein the head of the family is obligated to provide for the needs of any member of the family who is unable to support themselves financially or who is unable to enjoy the basic comforts of life as they would reasonably



be expected to. To enable such a person to live independently, the concept of maintenance as a whole was introduced. The obligation that a person has to his dependent relatives is known as maintenance, and it binds both the individual and the property.

According to Indian law, "maintenance" refers to the right to food, clothing, and housing, which is normally granted to the spouse, kids, and parents. It is a measure of social fairness and the result of a man's inherent obligation to support his spouse, kids, and parents in the event that they are unable to support themselves.

The Hindu Adoptions and Maintenance Act (HAMA), 1956 lists the following individuals as eligible for maintenance: spouse, widowed daughter-in-law, children, elderly parents, and dependents (Section 21). In contrast, the wife, small children, needy parents, and other needy kin within the forbidden degrees are entitled to maintenance under Muslim law. The Criminal Procedure Code of 1973, the Muslim Women (Protection of Rights on Divorce) Act of 1986, and other Muslim personal laws and enactments serve as the foundation for the Muslim law of maintenance.

### **Maintenance under Hindu law:**

The Shastric Hindu personal rules, which have their fundamental roots in the Dharmashastra, are the source of the maintenance provisions found in Hindu law. The Hindu Marriage Act and the Hindu Adoptions and Maintenance Act, 1956, were the two main acts that were enacted as a result of the growing necessity to codify Hindu law with regard to marriage, adoption, succession, and maintenance. However, there are three primary sources of Hindu law that are considered modern: (i) equity, justice, and moral conscience; (ii) precedents; and (iii) legislation.

Section 3(b) of the Hindu Adoptions and Maintenance Act, 1956 defines maintenance. This section says "Maintenance include- (i) in all cases, provision for food, clothing, residence, education and medical attendance and treatment, (ii) in the case of an unmarried daughter, also the reasonable expenses of an incident to her marriage, (c) "minor" means a person who has not completed his or her age of eighteen years." In **State of Haryana v. Smt. Santra**<sup>1</sup>, it was held that it is a liability

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<sup>1</sup> (2005) 5 S.C.C. 182.

created by Hindu Law and arises out of jural relation of the parties.

### **Maintenance to widow:**

On the husband's separate property, the widow has no claim. There is no provision for charging maintenance on the husband's separate property under either section 18 (wife maintenance) or section 21 (widow). It was held in **Sadhu Singh v. Gurdwara Sahib Narike**<sup>2</sup>

### **Interim Maintenance:**

The interim maintenance is payable from the date of presentation of the petition till the date of dismissal of the suit or passing of the decree to meet the immediate needs of the petitioners. In **Purusottam Mahakud v. Smt. Annapurna Mahakud**<sup>3</sup>, Supreme Court held that the right to claim interim maintenance in a suit is a substantive right under section 18 of the Act. Since no form is prescribed to enforce the said right civil court in exercise of its inherent power can grant interim maintenance

### **Maintenance of widowed daughter in law:**

Section 19 of the HAMA, provides that a widowed daughter-in-law is entitled to be maintained by her father-in-law. In **Raj Kishore Mishra v. Meena Mishra**<sup>4</sup>, it was held that where from the estate of the parents, the daughter-in-law can maintain herself; question of father-in-law does not arise. Section 20 of HAMA obligates the head of the Hindu Family to maintain the children and the aged and the infirm parents. Here not only the father but the mother is also obligated to maintain them. Section 22 of Hama obligates the head of the Hindu Family to maintain his dependants which is defined under section 21.

### **Maintenance under CRPC:**

The provision included in Chapter IX of The CRPC attempts to save the neglected wife, parent, and children (minor) from complete destitution and ruin by providing a straightforward, quick, and

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<sup>2</sup> A.I.R. 2006 SC 3282.

<sup>3</sup> A.I.R. 1997 Ori 73.

<sup>4</sup> A.I.R. 1995 All 70.

efficient restricted remedy. The CRPC's Section 125 offers a prompt solution to prevent famine and social unrest. It is not comparable to a husband's civil liability. It provides a simple, summarized process with little complexity. It puts into practice a man's core, fundamental obligation to support his wife, kids, and elderly parents who are self-sufficient. The fundamental concept behind the maintenance position under Section

125, of the CRPC is that no wife, minor children, old parents should not devoid of and succumb to utter pressure of wants so that they may have to be tempted to take recourse to crimes etc. Provision under Section 125 of the CRPC authorises a Magistrate of the First Class to take summary action for prevention of poverty.<sup>5</sup>

Maintenance can be claimed under the respective personal laws of people following different faiths and proceedings under such personal laws are civil in nature, but proceedings initiated under Section 125 of The CRPC however, are of a summary nature and apply to everyone regardless of caste, creed or religion.<sup>6</sup>

## **DIFFERENCES BETWEEN MAINTENANCE LAWS UNDER HAMA AND CRPC**

The provisions of Sections 18 and 20 of the Hindu Adoptions and Maintenance Act, 1956 are only applicable to Hindus. The right to maintenance under Section 125 of the CRPC is a statutory right that the Indian Legislature has provided, accepted, and recognized regardless of the religion of the parties concerned, whether a Hindu or a Muslim, etc.

Section 125 of the Cr. P.C., 1973 serves a social goal by giving men a summary machine to fulfill their moral obligations to their spouse, children, and elderly parents, preventing them from dying in extreme poverty as a result of their inability to support themselves. Protecting the interests of a well-ordered society is the goal of this section. The Hindu Adoptions and Maintenance Act, 1956's provisions provide Hindu spouses', kids', elderly and disabled parents', or even dependents',

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<sup>5</sup> Badri Narain v. Laxmi Gehlot, 2002 S.C.C. Online Raj 2009.

<sup>6</sup> Md. Ahmed Khan v. Shah Bano Begum, A.I.R. 1985 SC 945

maintenance rights under Hindu personal law.

## **PROBLEMS RELATED TO MAINTENANCE LAWS IN INDIA:**

India has a wide variety of maintenance rules that apply to distinct populations. The true issue is how consistent maintenance rules may be recommended and suggested for the whole of India under one roof, and which state or states can serve as the example. Muslims and Hindus make up the majority of India's population. Both of them have both traditional and contemporary maintenance laws.

In India, there are several maintenance regulations pertaining to various ethnicities. Upkeep serves as a gauge for social fairness. India does not have comprehensive, significant, or thorough maintenance legislation. A cursory examination of the various Indian communities' maintenance rules reveals many irregularities, gaps, and weaknesses. Hindu law contains extensive rules for both ancient (Shastric and Koranic) and modern maintenance requirements, such as those found in Mahomed. Chapter IX (Sections 125–128) of the CRPC, which aims to be a standalone piece of legislation, has similar maintenance requirements. An effort should be made to locate a shared role model under a single roof. It's possible that CRPC Chapter IX will serve as an example.

Some anomalies, lacunae in chapter IX of Cr. P.C., 1973 are stated below as:

1. Under the CRPC, a Magistrate has no inherent power like section 151 of Civil Procedure Code or like 482 of the CRPC by which a High Court has got inherent power. Under Sec. 362 of the CRPC, Magistrate cannot alter or review his own order  
Some distinctive features between Hindu Marriage Act, 1955 and Hindu Adoptions and Maintenance Act are stated below to show some anomalies.
2. Under Section 24 of Hindu Marriage Act, 1955 maintenance may be obtained by both male and female spouse from the other spouse. Under Section 18 of 1956 Act, only the wife can get maintenance.
3. Section 24 of the Hindu Marriage Act, 1955 provides even the expenses of proceeding, but section 18 of 1956 Act does not provide such scope at all.
4. The order passed under section 24 of the Hindu Marriage Act, 1955 is not appealable though revision lies. But, the decree passed under section 18 of the Hindu Adoptions and Maintenance



Act, 1956 is appealable<sup>7</sup>

### **Conclusion:**

In order to develop efficient strategies to eliminate the gaps, anomalies, and lacunae in the maintenance laws, a thorough analysis of the Hindu community's maintenance laws and a fair comparison were necessary in the creation of this thesis. In order to introduce consistency and fixity to maintenance laws, it will need to ascertain how ideas for uniformity of maintenance laws in India may be discovered and, if at all possible, in what positive way.

The Indian Parliament can certainly introduce the required laws, but there need also be administrative kindness. In this instance, more judicial activism could be desirable. In this regard, Parliament may receive assistance from a committee of distinguished Indian jurists to recommend uniformity and remove any gaps, anomalies, laches, or lacunae.

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