



## General Rules Relating to the Maintenance of Dependents

Anju, Ph.d Student, M.D.University

### Introduction

The term "dependent" was not used in Hindu law. Under the old law, certain persons could claim maintenance by virtue of their membership of the joint family. This aspect of old law is not affected by the Hindu Adoptions and Maintenance Act, 1956. The law is a part of the law of the 'Hindu joint family. Sections 21 and 22 of the Act create new rights of certain persons, called dependants. Dependants are relatives of deceased Hindu and they claim maintenance against the property of the deceased in

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the hands of heirs. The term "heir" includes all those persons on whom the estate of the deceased devolves<sup>1</sup> The right of dependants exists against the property and not against the heirs personally. The right of dependants as dependants, does not arise during the life time of the person on whom they are dependant: they are termed dependants only after his or her death. This is clearly implied from the opening words of S. 21, "dependents mean the following relations of the deceased."

### General rules:

The following general rules relating to the right of maintenance of dependants may be noted:

- (i) The obligation is tagged to the estate and not to the person. Therefore, the maintenance of dependants is not a personal obligation. The obligation is also limited to the extent to which the heir has the estate of the deceased in his or her hands.
- (ii) Apparently, it is possible that the same person may be a dependant as well as an heir. For instance, a widow is an heir as well as a dependant. But in reality this cannot be. The key is provided by S. 22 (2) which lays down that a dependant will be entitled to claim maintenance only if he has not obtained "any share in the estate of a Hindu dying after the commencement of this Act by testamentary or intestate succession." For instance, a Hindu dies intestate leaving behind a mother, a widow and a son. All the three will take a share in the estate of the deceased. All the three are technically dependants, but since each gets a share, none of them can claim maintenance as dependant against the others. Take another example, A dies leaving behind a will under which he bequeaths all his property to his son. He leaves behind a son,

<sup>1</sup> 1970 Punj. 270.



- widow and mother. In this case widow and mother as dependants can claim maintenance against the estate of the deceased in the hands of the son.
- (iii) The liability of the heirs who take the property of the deceased is not a joint liability. The liability of each heir is an individual liability in proportion of the value of the share of the estate, inherited by him or her. This is made clear by sub-section (3) of S. 22. The sub-section lays down that "the liability of each of the persons who take the estate shall be in proportion to the value of the share of the estate taken by him."
  - (iv) Sub-section (4) of S. 22 imposes another limitation on the liability to maintain. It runs: "Notwithstanding anything contained in sub-section (2) or sub-section (3), no person who is himself or herself a dependant, shall be liable to contribute to the maintenance of others, if he or she has obtained a share or part, the value of which is, or would, if the liability to contribute were enforced, become less than what would be awarded to him or her by way of maintenance J under this Act."

This provision may be explained by an illustration. Under the will of a Hindu, his widow takes a share in the estate, yielding an annual income of Rs-500. This amount is just sufficient to maintain her. Now suppose, there is a mother of the deceased Hindu who has got no share in the estate. Both are dependants under S. 21 of the Act. The widow has no obligation to provide maintenance to the mother.

The principle underlying the provision of maintenance of dependants is that all those persons on whom the estate of, the deceased devolves by testamentary or intestate succession are liable in proportion to the share they get to maintain the dependants. 'The liability is subject to other rules discussed above.

#### **Who are Dependants:**

S. 21, Hindu Adoptions and Maintenance Act.--According to S. 21, Adoptions and Maintenance Act, 1956, the following persons are dependants of a Hindu, male or female:

- (1) the father,
- (2) the mother,
- (3) the widow,
- (4) the minor legitimate son,
- (5) the minor illegitimate son,
- (6) the minor legitimate unmarried daughter,
- (7) the minor illegitimate unmarried daughter,
- (8) the widowed daughter,
- (9) the son's widow,



- (10) the grandson's widow,
- (11) the son's unmarried daughter,
- (12) the grandson's unmarried daughter,
- (13) son's son's minor son.

Parents-The parents of a Hindu have a right to maintenance against the property of their daughter or son inherited by any person. The mother is a Class I heir and the father is in category I of Class II heirs of a Hindu male. The father being in Class II of the heirs of a Hindu male, he will not take property in the presence of the mother or any other Class I heir. And it may happen that the mother may be excluded by the will of the deceased. As to the heirs of a Hindu female, parents come in entry III and even on intestate succession their turn will come much later. Even when they are heirs, they may be excluded by the will of the deceased Hindu female. When parents do not get a share in the property of their son or daughter, whosoever gets it takes it subject to their right of maintenance.

Section 21 nowhere says that if the parents have independent means of maintenance, the heir has no obligation to maintain them. Thus, lack of means on the part of parents to maintain themselves is not a condition precedent for their claim of maintenance though the court, while fixing the amount of maintenance, will take into account the income or other property of the claimant. Thus, the existence of independent means of maintenance on part of the mother or father will affect the quantum of maintenance and not their right to claim maintenance.

The mother's claim cannot be defeated even if she is unchaste or has remarried.

Widows-Here we would discuss three widows, the widow of the deceased, widow of his or her predeceased son and widow of his or her predeceased son of a predeceased son. All the three widows are Class I heirs of a Hindu male. As heirs to Hindu female, the son's widows or grandson's widows or great grandson's widows are in entry II (as heirs of the husband of the deceased Hindu female). In the former case, a Hindu may dispose of his property by a will to the exclusion of all the three widows. In the latter case, the widows will inherit in the absence of the husband, son, daughter and children and predeceased son and predeceased daughter. This means that even if a Hindu female dies intestate leaving behind any of the aforesaid heirs, the son's widow and grandson's widow will be dependants and can claim maintenance.

As in the case of parents, so in the case of the widow, the section does not say that her claim of maintenance will arise only if she has no other means of maintenance. Her unchastity is no bar to the



claim of maintenance. But if she had remarried, she forfeits her claim. Moral duty of the father-in-law ripens into a legal obligation in the hands of the heirs or devisees.<sup>2</sup>

As to other two widows, son's widow and grandson's widow, they are entitled to claim maintenance only if and to the extent they are unable to get maintenance from the husband's estate or from sons or daughters, if any, or from their estate<sup>3</sup> In the case of grandson's widow, there is a further condition that she has been able to get maintenance from her father-in-law's estate.

Their remarriage will lead to the forfeiture of the claim of maintenance. Under the old Hindu law, there was a controversy whether the widow was entitled to maintenance only if she resided with her husband's family. The controversy was set at rest by the Privy Council in *Prithee Singh v. Raj Rani*.<sup>4</sup> Their Lordships observed: "All that is required of her is that she is not to leave her husband's house for improper or unchaste purposes, and. she is entitled to her maintenance unless she is guilty of unchastity or other disreputable practices after she leaves that residence." Under the Hindu Adoptions and Maintenance Act, there is no duty on the widow-dependant to reside with the relatives of her husband.<sup>5</sup> Under the modern law, even her unchastity is no bar to her claim of maintenance.

Daughters-Under this head the following daughters are included. Unmarried daughter, legitimate or illegitimate daughter, widowed daughter, daughter of a predeceased son and daughter of a predeceased grandson. The legitimate daughter, son's daughter and grandson's daughter are class I heirs of a Hindu male. They are also in Entry I of the heirs of Hindu female. Only in case they do not get any share in the estate of the deceased, they are entitled to claim maintenance. This can happen only when the deceased has disposed of her or his estate by will. A destitute widowed daughter can claim maintenance from her brother after the death of her father if she has not been able to get sufficient maintenance from the property of her deceased husband.<sup>6</sup>

The illegitimate daughter is not an heir of a Hindu male, though she is an heir in Entry I of the heirs to a Hindu female. An illegitimate daughter like a legitimate daughter will be entitled to maintenance only if she has inherited no share in the estate of the deceased. The grand-daughter and the great-grand-daughter are entitled to maintenance only and to the extent that the former is unable to obtain maintenance from her father's or mother's estate and the latter from the estate of her father or mother or father's or mother's estate.

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<sup>2</sup> *Lakshmi v. Sundaramma*, 1981

<sup>3</sup> *Bitola v. Girand*, 1983 All. 425.

<sup>4</sup> (1873) 12 Bom. L.R. 238 (P.C.).

<sup>5</sup> *Govardhan v. Gangu*, 1964 M.P. 168.

<sup>6</sup> *Kata v. Kata*, 1992 A.P. 1.



The claim of maintenance of all these daughters is not limited to their minority. It is limited to their maidenhood. As soon as the daughter is married, she forfeits her claim of maintenance. They will also not be entitled to maintenance, if they cease to be Hindus.

In the case of a widowed daughter, the obligation to maintain exists only and to the extent that she is unable to obtain maintenance : (a) from the estate of her husband, (b) from her son or daughter, if any, or his or her estate, or (c) from the father-in-law or his father or the estate of either of them. In her case it is not stated that she will forfeit the claim 'on remarriage. However, on remarriage she ceases to remain a widowed-daughter, and therefore cannot claim maintenance.

Sons.—Under this head are included: Illegitimate sons, son of a predeceased son and son of a predeceased son of a predeceased son. The legitimate sons of a Hindu male are Class I heirs. The legitimate and illegitimate sons of a female Hindu, are in Entry I. They will be entitled to maintenance only if they have not got any share in the property of their deceased parent. The obligation to maintain them extends to their minority only. The obligation is independent of their having any independent source of income, though in fixing the quantum of maintenance, the court will take into account their income and property.

In the case of the grandson and the great-grandson, obligation exists only during their minority. A grandson will be entitled to claim maintenance as a dependant only and to the extent that he is unable to obtain maintenance from his father's or mother's estate, and in the case of great-grandson only and to the extent that he is unable to obtain it from estate of his father, mother, father's father or father's mother.

None of the above dependants is entitled to maintenance, if he or she has ceased to be a Hindu by conversion to some other religion.

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