

Before this right
exists for the whole
span



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Before the present legislation, an Act known as Right to Separate Residence and Maintenance Act, 1946 was in force, which has been repealed by Section 29 of the Act of 1956. Before the Act of 1956 came into force it was treated as a binding duty of every husband to maintain his wife, irrespective of any property with him. Since it was regarded as a personal liability, it hardly required the possession of any ancestral or separate property with the husband as a condition precedent for entitling the wife to claim maintenance from him. This right exists for the whole span of her marital life as it is one of the necessary concomitant of marriage between them.

The liability of the husband is not affected by the fact that she is quite rich. The moral obligation of the husband has been rendered into a legal obligation, as the obligation is derived from the relationship between a Hindu male and his dependants. Hindu law restricts the right of alienation of a husband so that he or the Karta of joint Hindu family does not alienate the property in a manner that the wife and other dependants are not virtually deprived of their right of maintenance.

The wife is entitled to claim maintenance either out of the share of her husband in the joint Hindu family or of his own separate property. The wife living separately from her husband without a reasonable justification cannot claim maintenance because in that case she herself is guilty of the breach of marital obligations. The Hindu Adoption and Maintenance Act, 1956 keeps alive the old textual law in this respect under Section 18. According to the provisions of the section all such wives whose marriages were solemnised before or after the enforcement of this Act are entitled to get maintenance from their husband during whole of their life. Although the right of

maintenance is created under personal law yet it has been covered under a statutory umbrella in order to strengthen the right.

But where the husband is an indigent and pauper he cannot be compelled to provide the maintenance allowance. A Hindu wife would be entitled to separate residence without forfeiting her right to maintenance if— (a) The husband is guilty of desertion, i. e., the husband, without any reasonable justification or without her consent or against her wishes, abandons her or wilfully neglects her; (b) The husband 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) He is suffering from a virulent form of leprosy; (d) He has any other wife living; (e) He keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere; (f) He has ceased to be a Hindu by conversion to another religion; (g) There is any other cause justifying her living separately. Maintenance in the present context includes provisions for food, clothing, residence, education and medical aid and treatment.

There is no inconsistency between this section and Section 25 (1) of the Hindu Marriage Act. The present provision intends to provide for maintenance to a wife whereas Section 25 (1) of the Marriage Act provides for the maintenance to the divorced spouse. The forum for application under this section would be the civil court and not the matrimonial court as under the Hindu Marriage Act. The expressions 'desertion' and 'cruelty' are justifications for separate residence of the wife without prejudicing her right to maintenance have been interpreted in the same sense with their cognate meanings as explained in the context of Sections 10 and 13 of the Hindu

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Marriage Act, 1955. It is now well settled that factum of separation and animus deserendi are essential for desertion and cruelty may be physical as well as mental. A full bench judgment of the Kerala High Court, adopting a sociological approach towards the dimensions of desertion held that where the husband is guilty of desertion, it is sufficient to prove that he is living separately and not that there was animus deserendi. This provision is especially designed to help a Hindu wife.

Social justice warrants that a wife living separately, in order to claim maintenance under this section has to prove only desertion by her husband. It is not necessary for her to prove animus deserendi? When a wife converts to other religion or leads an immoral life, she forfeits her right to separate residence and maintenance. The right of maintenance, being personal, cannot be extended against any relations of the husband, during his lifetime irrespective of the fact that she has been abandoned by her husband. But if such relative is in possession of the husband's property, she could claim maintenance from him. If the property is transferred to any person or is attached under Sections 87 and 88 of the Criminal Procedure Code on account of some offence having been committed by the husband, then the wife's right to maintenance is forgone. In *Obula Konda Reddi v. C. Pedda Venkat laxmi*, the Andhra Pradesh High Court interpreted the term " wife" used in Section 18 in a wider connotation.

The court said that the term ' wife' does not signify wife whose marriage took place only under the Hindu Marriage Act, 1955 as this interpretation would strictly narrow down its meaning. The term would also include such wife whose marriage would be void within the meaning of that Act, so as to

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enable her to claim maintenance under the present Act. The above view of the Court is not undisputed because the void marriages do not confer any status upon the wife or husband as it is not treated to be a marriage at all and if she is not a wife in legal sense it would not be justified to hold her entitled to claim maintenance under Section 18 (1).

Section 18 of the Hindu Adoption and Maintenance Act confers a right on a wife to be maintained by her husband during her life-time. According to Mulla, the right of a wife for maintenance is an incident of the status or estate of matrimony and a Hindu is under a legal obligation to maintain his wife. Recently court further observed that husband cannot deny for the maintenance if wife is highly qualified who sacrifices her lucrative career for sake of her family and if her husband neglects or refuses to maintain her on the ground that, she is highly educated and is capable of earning it is not a sufficient ground to refuse maintenance. Recently, the court also observed that, strict proof of marriage is not necessary. Even the opinion expressed by local people having special means of knowledge is sufficient to prove factum of marriage. According to this section, ever)' female Hindu without having filed a petition for divorce, judicial separation and or nullity could claim maintenance; such a right is not available under Section 25 of the Hindu Marriage Act, 1955.

Section 18 of the Hindu Adoption and Maintenance Act is not subject to Section of the Hindu Marriage Act. Where a decree concerning maintenance has been passed in favour of a wife living separately from her husband and subsequently they restore normal cohabitation it would -not neutralise the effect of the decree and wife's right to maintenance does not come to an

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end. When a suit for maintenance is filed by the wife against the husband, the court has full discretion to allow for interim maintenance in favour of wife after the marital relationship between the two is established. But before allowing the maintenance allowance, the court must fully satisfy itself with the fact that the wife is living separately on reasonable justifications. This view has been held by the Assam and Kerala High Courts consistently. But in *Ram Chandra Behera v.*

Smt. Snehlata the Orissa High Court held that in a suit for maintenance under Section 18 of the Hindu Adoption and Maintenance Act, 1956, the court does not enjoy the power to allow interim maintenance. This kind of power is not incorporated in Section 18 of the Act. The right to interim maintenance of the wife cannot be joined with her ultimate right to maintenance under the Act. This kind of power cannot be exercised by the court unless expressly provided under the law. Where the wife filed a petition of restitution of conjugal rights against the husband and a compromise decree has been passed in it but the husband did not comply with the decree even after having taken the wife at her residence as a result of which the wife had to live separately, the court held the view that this kind of situation would amount to desertion of wife and her right to maintenance under Section 18 of the Act would accrue.

Recently in *Kusum Krishnaji Rewatkar v. Krishnaji Nathuji Rewatkar*, the Bombay High Court held that under Section 18 of Hindu Maintenance Act that the wife can recover the marriage expenses of daughter from her husband. In this case wife filed a suit against husband for recovery of marriage expenses of their daughter. She lived with his daughters,
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separately since last 25th years and she had spent money for performance of marriages of their daughters. Under Hindu law father is bound to make provision for marriage of daughter.

The Court observed that there is no ground to deny marriage expenses to her. So the wife is entitled to recovery of reasonable expenses from his husband. Where the husband has another living wife, the other wife acquires the right to maintenance irrespective of the fact that wife was formerly wedded or subsequently wedded. Where the wife sues for a separate maintenance on the ground that the second wife is still living, such a right could be claimed only after the enforcement of the present Act. If the wife refuses to live with the husband on the ground that he has kept another wife, that would not amount to desertion by the wife and hence it would not bring her right to maintenance to an end under this Section.

Where the wife is living separately from her husband on the ground that her husband has married another wife, she, in that case, can live separately and would not forfeit her right to maintenance. In *Abbayolla M. Subba Reddy v. Padmamma*, the court held: "the wife whose marriage has been solemnised by a Hindu rite, but her marriage is void, on the ground that the first wife of the husband is living at the time of marriage". The second wife claimed maintenance from husband, but court observed that husband's second marriage is bigamous and void ab initio. The second woman cannot get the status of a wife, as the first wife is living.

Hence she cannot get a right to claim maintenance under Section 18 of the Act. In *Kesarbai v. Hari Bhai*, the court held: "Where the husband keeps a

concubine in the same house or usually resides with her, there the wife acquires a right to claim maintenance by living separately. The very fact that he usually resides with the concubine proves that a married person normally lives with her without changing his normal residential place. His conduct within a determined defined period, his mental attitude by frequent visit to the concubine, his statements, his relation to that lady etc. are the factors which are to be taken into consideration for determining the fact of his usual cohabitation with the concubine.

According to the rendering of this sections if the concubine is residing in the same house, the wife acquires the right of separate residence and maintenance but where the concubine is residing in the same marital home and wife has separated, then wife could not bring a suit for maintenance under Section 18(2) (b). Under this sub-section in order to claim maintenance and the right to separate residence, it is necessary to prove the fact of wife and the concubine living in the same matrimonial home. But in the above circumstances while the concubine is living in the same house and the wife is residing separately, she could claim maintenance under Section 18(2) (g). Where the wife resides separately and claims maintenance on the ground that the husband is used to drinking, the court held that the wife does not acquire the right of separate residence and maintenance simply because the husband drinks.

Where the husband treats her with cruelty along with drinking, that becomes a strong case of her maintenance and living separately. The expression any other wife used in Section 18(2) (d) of the Act, intends to mean legally wedded wife. Where the husband is living with some other lady,

notwithstanding he treats her as his wife, she can't be regarded his wife. In *Mangala Bhivaji Lal v. Dhondiba Rambhau Aher*, the court observed that, a person solemnized second marriage before Hindu Marriage Act came in operation.

After coming into force of Hindu Marriage Act; she claimed maintenance under Section 18(2) of Maintenance Act. In this case the court held that she is not entitled to claim maintenance in Section 18(2) (d) of maintenance Act. Where the wife's right to maintenance is not covered under various grounds mentioned in clauses (a) to (f) of Section 18(2) his right could be covered under clause (g) and the court in its discretion would allow maintenance, for example, in the case of *Subbe Gondu* the wife was living separately from her husband and she claimed for her maintenance. While she was living separately, her husband brought a woman at his residence and started living with her as her husband.

She was thus not a legally married wife within the meaning of Section 18(2) (d). The claim of his legally wedded wife could not be accepted under the above sub-section but it was accepted under Section 18(2) (g). In *Bauramma v. Siddappa leevappa Patarad*, the court held that the wife whose marriage has been solemnised by a Hindu rite, but her marriage was dissolved by an agreement. It appears that the husband contracted a second marriage in the year 1977, Thereafter; the plaintiff has averred that her husband and second wife started ill-treating her, harassing her and threw her out of the house. The plaintiff was forced to seek shelter in her relative's place and as she is unable to support herself in the evening of her life, had approached the court for grant of maintenance. In these circumstances to probablisise that they

had been separated by an agreed arrangement and as such there is no liability on the part of the husband to maintain the wife.

In this case, the court observed that, we take note of this submission only to the extent of denying maintenance in respect of earlier years but the wife is definitely entitled for maintenance from the date of the suit claim.