

The Clash between Section 20 Hindu Adoptions and Maintenance Act, 1956 and Section 125 Code of Criminal Procedure, 1973 for Maintenance of Unmarried Daughters

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Abstract

In 1978, when the age of marriage was raised to 21 for boys and 18 for girls, the rationale was to curb the population. This has been a long-standing agenda and has not gone away. However, there are other implications, which might arise if the age for marriage increases for girls. If the bar on the age rises, the number of years a father is entitled to maintain his daughter before her marriage would increase. While this could be a move in the interest or welfare of a girl child, this may also simultaneously throw the father in a state of intolerable mess or financial duress. Under Section 20(3) of the Hindu Marriage and Adoptions Act, 1956, the right given to a daughter is absolute and can be very well exercised by her against her father. The obligation arising out of this section can be cast on any Hindu man whose daughter is unmarried and is unable to maintain herself out of her earnings or other property. Though as per Section 125 Code of Civil Procedure, 1973, the claim for maintenance by a daughter, who has attained majority, is confined only to those cases wherein by reason of mental or physical abnormality or injury, she is unable to maintain herself. The different treatment supplied by the two sections can be controversial and has been in discussion recently (Abhilasha v. Prakash). Is there a clash that has to be resolved? Which statute will prevail over the other and more such pertinent clarifications concerning Section 20 Hindu Adoptions and Maintenance Act, 1956 and Section 125 Code of Criminal Procedure, 1973 are sought in this article through this article, I have attempted to locate what actually is the position of law for unmarried daughters in grants for maintenance.

Keywords: Daughters, father, maintenance, majority, unmarried

INTRODUCTION

Dissimilar treatment is offered to the same class of persons (i.e., unmarried daughters) in cases of maintenance through two different legislations— Hindu Adoptions and Maintenance Act, 1956 and The Code of Criminal Procedure, 1973. While under the Hindu Adoptions and Maintenance Act (HAMA) unmarried daughters irrespective of their age can claim maintenance, it isn't the case under Section 125 of the Code of Criminal Procedure (CrPC).

Many arguments can be framed for supporting the rule of law as under S.125 CrPC; one of them being fair and equal treatment to both genders (sons or daughters) in grants for maintenance

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under the Code of Criminal Procedure as opposed to Section 20 HAMA which treats sons and daughters differently for grants of maintenance. Also, there is no difference in the treatment of boys/sons who have attained majority under both of these sections i.e., S.20 HAMA and S.125 CrPC (under both of them, boys having attained majority don't receive maintenance).

It is also possible that sometimes the right under S. 20 HAMA is being misused. To derive benefit out of the legislation, unmarried daughters who have attained majority and are hale and healthy enough to work may claim maintenance in order to escape the hard work of earning a living for themselves, thereby causing hardship for their fathers (mothers in some cases).

But in a nation like India where the rate of education of girls is low, the number of women in work field is still less, and the treatment of girlchild is horrendous at some households; is it even morally correct to take away this right from the major unmarried daughters and leave them in a state of intolerable sufferings and pain.

METHODOLOGY

The research design adopted for this paper is Descriptive and Analytical Research design as it is a theory-based research which gathers, analyzes, and presents theories. It is necessary to address issues and to provide solutions to the problems. This paper is based on reports, commentary, and judgements.

PIVOTAL ROLE IN SETTLING THE DISPUTE-ABHILASHA V. PARKARSH

In the recent case of *Prakash v. Abhilasha*, [1] a woman filed an application against her husband (respondent) under Section 125 CrPC. She claimed maintenance for herself and her three children. The Judicial Magistrate dismissed the application of the woman and two of her children. The daughter's application was, nevertheless, allowed for grant of maintenance till she attained majority. The daughter appealed in the High Court under S. 482 CrPC that even though she had attained majority in 2005 but because she is unmarried, she is entitled to claim maintenance from her father.

The High Court dismissed the application. It stated that since the appellant has attained majority and is not suffering from any mental or physical abnormality, she is not entitled to any maintenance under S. 125 CrPC.

In the proceedings at the Apex Court, it was contended by the counsel on behalf of the appellant that though she had attained majority since she is unmarried, and she has the right to claim maintenance from her father. There was an error committed by the High Court in excusing the application filed by the appellant under Section 482 CrPC [2]. It made a judgement on the wrong premise that she is not entitled to any maintenance after attaining majority and not suffering from any mental or physical abnormality.

It was submitted by the appellant's counsel that as per Section 20 of the *Hindu Adoptions and Maintenance Act, 1956*, there is an obligation on a Hindu male to maintain his daughter if she is unmarried. Additionally, the appellant was unemployed, which made her vulnerable for claiming maintenance.

BACKCLOTH OF THE LEGISLATIONS

Prior to codification, a Hindu male was held legally and morally liable to maintain his infant child, a virtuous wife, and aged parents in the Classical Hindu Law. In most unequivocal and clear terms, Hindu sages laid down that maintenance of certain persons is a personal obligation. According to Mitakshara, "Where there may be no property other than what has been self-acquired, the only persons whose maintenance out of such property is crucial are aged parents, wife and minor children" [3]. The Hindu religion believes that if one fulfills these duties, heaven's gates are wide open for him.

The Act of 1956 was enacted to amend and codify the laws relating to adoption and maintenance among Hindus. The Act applies to:

1. Any person who is a Hindu by religion in any of its forms or developments, including a Lingayat, a Virashaiva or a follower of the Brahmo, Prathana or Arya Samaj, or
2. Any person who is a Sikh, Jain, or Buddhist, by religion, and
3. Any person who is domiciled in the territories to which this Act extends who is not a Muslim, Christian, Jew or Parsi by religion unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of the law in respect of any matters dealt with herein if this Act hasn't been passed [4].

Maintenance here means provisions for food, clothing, residence, education, medical attendance, and treatment [5]. Under this Act, a man is duty-bound to maintain his wife, children, aged parents, and other dependants [6]. In India, the quantum of maintenance is at the discretion of the courts. They must however keep certain points in mind like the status of both the parties, the reasonability of the want of the claimant [7], and separate earning of the claimant.

Section 20(2) lays down that a Hindu is obliged to maintain his children legitimate or illegitimate during their minority. Further, in respect of unmarried daughters, this duty continues. However, the father or mother are required to maintain her only as far as she is "unable to maintain herself out of her own earnings or other property" [8]. Whether a daughter has the capability to maintain herself or not is an irrelevant matter. Section 20(3) is concerned only with the existence of a source of income and the sustenance of the daughter with such income [9].

SPRINGING UP OF CLASH—S. 20 HAMA V. S.125 CRPC

The problem crops up while interpreting the two sections—S.20 HAMA and S.125 CrPC. A bare perusal indicates that the scope of The Hindu Adoptions and Maintenance Act, 1956 is broad enough. It accommodates all unmarried daughters irrespective of their age or minority/majority status. On the other hand, Section 125 of the Criminal Procedure Code is applicable to all persons belonging to all religions and has no relation to the parties' personal laws [10]. Judicial Magistrates of First Class have been prescribed to deal with matters maintenance under this section.

With reference to unmarried daughters, this section in its sub-section (1) clause (c) states that a daughter (legitimate/illegitimate), who has attained majority, is entitled to claim maintenance only if by reason of *physical or mental abnormality or injury* she is unable to maintain herself. Here arises a stark line of difference between the two provisions. A similar question arose in the *Abhilasha v. Prakash* case, where the appellant was denied her rights by the High Courts on the ground that she was a major and not suffering from any abnormality or injury.

DISCUSSION

Can Personal Laws be Segregated from the Proceedings of Criminal Laws?

For examining the question above, comparisons drawn by the courts in between S.488 of the Code of Criminal Procedure of 1898 and other personal laws can be useful. Section 488 provided for maintenance to the wife and the child of any person.

The Supreme Court had the occasion to think about S.488 in the case of *Nanak Chandra v. Chandra Kishore Aggarwal*. Here, S.4 of the HAMA was in debate which provided an overriding effect to the act. S.4 expressly provided that any other law immediately before the commencement of the section would cease to be in effect if it is in conflict with any other provisions of this act. Thus, the question that arose in Nanak's case was-whether S.4 HAMA can override S. 488 CrPC as it conflicts with S.20 HAMA. The Court held that there is no inconsistency between Section 488 CrPC and the Hindu Adoptions and Maintenance Act, 1956 and both can stand together. This Court further clarified that Section 488 CrPC provides a summary remedy which is applicable to all persons belonging to all

religions and has no relationship with the personal law of the parties. Section 488 CrPC is a separate remedy for people irrespective of their caste and creed, and thus S.20 HAMA, which is much narrower in scope, cannot substitute it [11]. The sections can be considered an alternative to each other but not inconsistent [12]. Personal laws cannot altogether be excluded from the domain of consideration in proceeding under S.125 CrPC [13].

Jagdish Jugtawat's case [14] had quite similar facts to the case of *Abhilasha v. Parkash*. The petitioner was the father of Kumari Rakhi, respondent No.3, who was a minor unmarried girl. The application was filed under Section 125 of the Criminal Procedure Code by the wife (respondent 1) of the petitioner and mother of the respondent, claiming maintenance for her two children and herself. The Family Court by an order dated 22.7.2000 granted maintenance @ Rs.500 per month to each of the applicants. The petitioner then filed a revision petition before the High Court assailing the Family Court's order on the ground that respondent No. 3, till she attained majority, was entitled to maintenance and not afterward. Considering this point, the learned Single Judge of the High Court affirmed to the legal position that under Section-125, CrPC, 1973 a minor daughter is entitled to claim maintenance from her parents only till she attains majority, but refused to indulge with the orders passed by the Family Court taking the cue from Section 20(3) of the Hindu Adoptions and Maintenance Act, 1956 under which the right of maintenance is given to a minor daughter till her marriage. The learned Single Judge was convinced to maintain the order of the Family Court with a view to avoid multiplicity of proceedings.

RESULT

Observations Made in *Abhilasha V. Parkash*

In this case, the court took precedence from Jagdish Jugtawat's case and dismissed the appeal, though Classical Hindu Law and Mohammedan Law [15] would have supported the claim of the petitioner in this case.

According to the Court, after the enactment of the Family Courts Act, 1984, a Family Court will also have the jurisdiction exercisable by a First-Class Magistrate under Chapter IX of CrPC relating to cases for maintenance of wife, children, and parents.

There can be a case where the Family Court has the jurisdiction to decide a case under both Section 125 CrPC and under Section 20 of Hindu Adoptions and Maintenance Act, 1956. In such an eventuality, the Family Court can exercise jurisdiction under both the Acts. It can, in appropriate cases, grant maintenance to unmarried daughters even though they have become major enforcing their right under Section 20 of Act, 1956 so as to avoid multiplicity of proceedings. However, the Magistrate in the exercise of his powers under Section 125 CrPC cannot pass such an order. The scope of S. 20 HAMA is broader than S. 125 CrPC Section 20 read with Section 3(b) of Act, 1956, (an elaborative definition is given to maintenance) [16] contains a larger right, which needs to be determined by a Civil Court, hence for the larger claims as enshrined under Section 20, the proceedings need to be initiated under Section 20 of the Act, and the legislature can never be said to have contemplated to burden the Magistrate while exercising jurisdiction under. Section 125 CrPC to determine the claims contemplated by Act, 1956.

Since, in this case, the application was filed under Section 125 CrPC before the Judicial Magistrate First Class, Rewari, the Magistrate while deciding proceedings under Section 125 CrPC could not have exercised the jurisdiction under Section 20(3) of the Hindu Adoptions and Maintenance Act, 1956 and the submission of the appellant wasn't accepted that the Court below should have allowed the application for maintenance even though she had become major.

CONCLUSION

The source may be different, the substance is different, the strength is different, although the stream flowing maybe along the same [17].

Laws are nothing but rules evolved out of the collective consciousness of the community. It is in the interest of the community and social order that children and woman who are neglected must be maintained and should be provided a forum to obtain urgent relief to enable them to sustain. S.20 HAMA and S.125 CrPC may offer different treatment to the same class of persons (i.e., unmarried daughters) but they can't be said to be inconsistent with each other. The domain of both of the sections is different. The ambit of the right offered under S.20 is very large and can't be brought into picture if one files a suit under S.125 CrPC. Both of them are beneficial legislations and are in need to be preserved. One of these provisions can't be allowed to abrogate or override the other until and unless a clear and specific law is laid down in this regard.

It is also evident from the above discussions that an unmarried daughter is entitled to claim maintenance from her father until she marries, relying on Section 20(3) of the Act, 1956, provided that she pleads and proves that she is unable to maintain herself, for the enforcement of which the daughter should make an application or file under Section 20 of Act, 1956 and not otherwise.

REFERENCES

1. 2020 SCC OnLine SC 736.
2. The Code of Criminal Procedure, 1973 (34 of 1919), Lexis Nexis, s. 482 (2020).
3. Mitakshara, II, 175.
4. The Hindu Adoptions & Maintenance Act, 1956 (78 of 1956), Lexis Nexis, s. 2 (2020).
5. The Hindu Adoptions & Maintenance Act, 1956 (78 of 1956), Lexis Nexis, s. 3 (2020).
6. The Hindu Adoptions & Maintenance Act, 1956 (78 of 1956), Lexis Nexis, s. 21 (2020).
7. Krishna v. Daimati, AIR 1966 Ori 239.
8. The Hindu Adoptions & Maintenance Act, 1956 (78 of 1956), Lexis Nexis, s. 23(2) (2020).
9. Lakshmi v. Krishna, AIR 1968 Mys 288; Walram v. Mukhtar, AIR 1969 Punj 285.
10. Nanak Chandra v. Chandra Kishore Aggarwal, (1969) 3 SCC 802.
11. Mst. Zohara Khatoon v. Mohd. Ibrahim, 1981 SCR (2) 910.
12. Mahabir Agarwalla v. Gita Roy. [1962] 2 Cr. L.J.
13. Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav and Another, (1988) 1 SCC 530.
14. Dr. Jagdish Jugtawat v. Smt. Manjulata, 2001 (1) WLN 499.
15. State of Haryana and Others v. Santra (Smt.), (2000) 5 SCC 182.
16. 3(b) "Maintenance" includes
 - (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 and incident to her marriage.
17. Pyarelal v. State of Haryana, CWP No. 8984-2017.