

Maintenance of Dependents under Adoption and Maintenance act



Neelu Goyal

Lecturer

Dept. of Law

Government Law College,
Dholpur, Rajasthan, India

Abstract

The Adoption and Maintenance Act is one of the major acts that ensures the maintenance of the dependents that may include dependent parents, dependent wife, dependent sons and daughters and even dependent kinsmen.

As we know, the life of the dependents in a family is too miserable due to scarcity of monetary income of the concerning persons. It makes their life worse and forces them to live on the mercy of others who are often found mis-treating and ill-treating them. There are cases that reveal the bitter truth of the life of the dependents.

It is the moral obligation of a person to satisfy the basic needs, such as, food, clothing and accommodation, of all those who fall in the category of his dependents whether they are parents, unmarried or married children, grandparents, wife, widowed daughter-in-law etc. But general observation is that the people fail to fulfill such obligations and force their dependents to live the life of beggars.

The increasing graph of the people in the Old Age Homes, violence against the women, violence against the aged reveals that the dependents in general face much problem while surviving, and that they need moral legal support so that it becomes binding on the concerning persons to provide a healthy environment to the dependents and to take care of them in a proper way.

The paper serves as a review study on the theme of maintenance of the dependents under the Hindu Adoption and Maintenance Act, 1956 and, especially, the Hindu Adoption and Maintenance Act, 2015 which ensures the maintenance of one's dependents as a legal duty and obligation. The findings reveal that there is an utmost need of making the Hindu Adoption and Maintenance Act more effective by making desired amendments in it.

Keywords: Maintenance, Dependent, Adoption, Legal Provisions, Human Right, Amendments.

Introduction

The Hindu law, is personal law which refers to the code of laws applied to Hindus, Buddhists, Jains and Sikhs in India. The Hindu law ensures the rights of the Hindus in India. It also ensures the safety and security of the dependents. Before arriving at the main issue, let us be clear about the terms that are going to be used in the study frequently. Some of them include, Hindu, maintenance, dependent etc.

According to the Hindu Adoption and Maintenance Act, 1956, a dependent is one who relies on parents, brother or some other relative for sustaining himself. Section 21 of the Hindu Adoption and Maintenance Act, 1956 the dependents of the deceased include-father, mother, widow who has not remarried, minor son, grandson, or great-grandson, provided he has not been able to obtain maintenance from any other source, unmarried daughter, granddaughter, or great-granddaughter, provided she has not been able to obtain maintenance from any other source, widowed daughter who has not been able to obtain maintenance from the estate of her husband, children, or from her in-laws, widowed daughter-in-law, or widowed granddaughter-in-law, who has not been able to obtain maintenance from any other sources and illegitimate minor son or illegitimate unmarried daughter.

Section 3(b) of the Hindu Adoption and Maintenance Act, 1956 says that maintenance is something relating to providing for food, clothing, shelter, education and medical expenses through financial support by husband or father. The maintenance of an unmarried daughter covers all her genuine expenses till the day she gets married. Wife, widowed

daughter-in-law, children, aged parents, specified dependents of the deceased if they have no source of income are some of the major dependents who deserve and who are entitled for getting the maintenance for their survival.

Section 23 of the Act lays down the things that need to be considered by the court while deciding the amount of maintenance to the dependents. They include-status of parties and their current position, claims of the parties within reasonable limits, justified grounds for living separately in case of separate living, all the sources of income of the claimant and the value of their property, and the number of people entitled to get maintenance.

Section 23(3) prescribes provisions relating to the amount that is to be paid to the dependents as maintenance. The considerations include- net value of the property of the deceased after the clearance of all his debts, written will by the deceased, the relationship between the claimant and the deceased, expected amount demanded by the dependent, sources of income of the dependent, total value of the property owned and possessed by the dependent.

Objectives of the study

1. To study and produce glimpses of the Hindu Law
2. To concentrate on the Hindu Adoption and Maintenance Act, 1956
3. To explore the main features of the Hindu Adoption and Maintenance Act, 1956
4. To discuss at length the obsolete provisions of the Hindu Adoption and Maintenance Act, 1956
5. To produce the summary of the Hindu Adoption and Maintenance (Amendment) Act, 2015
6. To produce the legal perspective of the term 'dependent'
7. To observe and interpret the contemporary social scenario of the dependents in the Indian society at large
8. To discuss the legal obligation of the individual to his dependents
9. To focus the deviation of the individual from his legal obligations to his dependents
10. To interpret the cause and effect relationship of the issue in consideration

Review of literature

1. Niraj Meena (2005), in Adoption Laws in India: Challenging Existing law, informs that till now in India there is only one personal law governing adoption that is Hindu Adoption and Maintenance Act, 1956. In India the religions like Muslims, Christians, Jews and Parsis do not have their own Personal law governing adoption because of which they cannot adopt a child and give him/her his family name. They can only become the guardian of the child under Guardians and Wards Act, 1890. Hindus, Sikhs, Buddhists and Jains follow Hindu Adoption and Maintenance Act, 1956. The Government of India have taken steps to make a uniform law for adoption but there was a failure.
2. Priya Narayan Parker (2007), in Parents and Senior Citizens Bill, 2007, presents a legislative brief as under-

- I. The Maintenance and Welfare of Parents and Senior Citizens Bill, 2007 seeks to make it a legal obligation for children and heirs to provide maintenance to senior citizens. It also permits state governments to establish old age homes in every district.
 - II. Senior citizens who are unable to maintain themselves shall have the right to apply to a maintenance tribunal seeking a monthly allowance from their children or heirs.
 - III. State governments may set up maintenance tribunals in every sub-division to decide the level of maintenance. Appellate tribunals may be established at the district level.
 - IV. State governments shall set the maximum monthly maintenance allowance. The Bill caps the maximum monthly allowance at Rs 10,000 per month.
 - V. Punishment for not paying the required monthly allowance shall be Rs 5,000 or up to three months imprisonment or both.
3. Lim, Puay Ling (2009), in Maintenance of Parents Act, observes that the Maintenance of Parents Act provides for Singapore residents aged 60 years old and above who are unable to subsist on their own, to claim maintenance from their children who are capable of supporting him but are not doing so. Parents can sue their children for lack of maintenance, in the form of monthly allowances or a lump-sum payment. The Act also constituted the Tribunal for the Maintenance of Parents to review applications brought by parents.
 4. PK Kuruvilla (2010), in Old-age insecurity: How far does the "Parents and Senior Citizen's Act of 2007" address the problem?, finds that as is well known, old age is seen to be a time of losses - declining health, failing sensory inputs and shrinking networks. In India, as opposed to the wealthy nations, there is a paucity of salaried jobs and social security. Although India gained her independence six decades ago, there have not been any tangible measures to address the financial insecurities of the aged save for well-meaning directives in the constitution and announcements of utopian schemes in the parliament from time-to-time. The Act of 2007 is a measure which addresses directly the issue of ownership of property by the aged and the financial upkeep by their relatives; it is worthwhile, in fact edifying, to go through the laws in this regard, both before the 2007 Act and in which way the Act differs.
 5. National Survey of Adoptive Parents (NSAP) & National Survey of Children's Health (NSCH) (2011), in Children Adopted from Foster Care: Adoption Agreements, Adoption Subsidies, and Other Post-Adoption Supports, report that the children adopted from foster care have had varied experiences prior to their adoption, and some children who had very negative experiences still manage to thrive. Yet, as a group, the pre-adoptive experiences of children adopted from foster care many of whom are

adopted at older ages than children adopted from other domestic sources or internationally are likely to be make them more vulnerable than other adopted children. Most children who enter foster care do so because of abuse or neglect by their caregivers. Once in foster care, lack of continued connections to birth parents and siblings, adjustments to cultural changes, and multiple placement moves prior to adoption may exacerbate these children's existing problems or become the cause of new ones.

6. R Kumar GR (2012), in Family Law I, surveys that any male Hindu who is of sound mind and is not a minor has the capacity to take a son or a daughter in adoption: Provided that, if he has a wife living, he shall not adopt except with the consent of his wife unless the wife has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind. If a person has more than one wife living at the time of adoption, the consent of all the wives is necessary unless the consent of any one of them is unnecessary for any of the reasons specified in the preceding proviso.
7. Silvia Minozzi, Laura Amato, Cristina Bellisario & Marina Davoli (2014), in Maintenance treatments for opiate -dependent adolescents, conclude that there is an urgent need for further randomised controlled trials comparing maintenance treatment with detoxification treatment or psychosocial treatment alone before carrying out studies that compare different pharmacological maintenance treatments. These studies should have long follow-up and measure relapse rates after the end of treatment and social functioning (integration at school or at work, family relationships).

Hypothesis

1. The Hindu law is meant for the protection of the rights of all the Hindus irrespective of castes and creeds
2. The Hindu Adoption and Maintenance Act, 1956 ensures the protection of rights relating to adoption and maintenance
3. The Hindu Adoption and Maintenance Act, 1956 is known for its several specific features that have long protected the adoption rights and maintenance rights of the individuals
4. Some of the provisions of the Hindu Adoption and Maintenance Act, 1956 are obsolete and need revision, omission and amendment
5. The Hindu Adoption and Maintenance (Amendment) Act, 2015 is an improvement over the original Hindu Adoption and Maintenance Act, 1956
6. The dependent is one who, due to absence of any source of income, depends on his parents, guardians and other kinsmen who are capable of satisfying the basic needs of the person
7. Most of the dependents lead a miserable life characterized by poverty, penury, ill-treatment and malnutrition etc.

8. It is the legal obligation of the individual to take care of all his dependents without any fail in his legal duties
9. Sense of individualism, self-liberty, self-centeredness are some of the causes of the deviation of individual from his legal obligations to his dependents
10. Failure of maintenance to one's dependents cause several unknown problems to the dependents who are finally forced to live on the crusts thrown to them by others

Research methodology

Based on the review making of the selected studies compiled from the different internet sites, the research paper is a comprehensive study that falls in the category of the explanatory and interpretative research. For giving it a shape of scientific study, all the steps prescribed for the interpretative research, were rigidly followed, and objectivity was throughout observed. The steps undertaken are enlisted as below-

1. Selection of the title or problem
2. Net surfing for the sake of finding relevant studies to the selected theme
3. Compilation of the selected studies
4. Study of the relevant found related literature
5. Content analysis
6. Classification, explanation and interpretation of the compiled secondary data
7. Legal interpretation of the data
8. Conclusion to be reflected through findings

Findings

1. The provisions of Hindu Adoption and Maintenance Act, 1956 are applicable to all those who follow Hinduism, Buddhists, Jains, Sikhs, Virashaiva, Lingayat, members Arya Samaj, followers of Brahma and Prarthana
2. The Hindu Adoption and Maintenance Act makes it binding on the part of a father, husband or other nearest kinsmen to ensure the healthy survival of his dependents provided they do not have any source of income
3. The Act allows a wife, unmarried daughter, minor son, widowed daughter-in-law, unsupported widowed daughter, children of the deceased and old parents to receive maintenance
4. The graph of the maintenance cases is increasing in India day-by-day
5. The persons who are accountable for providing maintenance are found withdrawing from performing the legal obligation
6. As a result of the irresponsible attitude of the children, several aged are forced to live in the Old Age Homes
7. As a result of the irresponsible attitude of the husband, the wives are forced to file suits for maintenance
8. As a result of the irresponsible attitude of the parents, several innocent children are forced to live on beggary and to stay at the orphanage and shelter homes.

Indeed, the cases of violation of the provisions of maintenance made under various sections and sub-sections of the Hindu Adoption

and Maintenance Act, are increasing day-by-day, and the persons responsible to provide maintenance in the eyes of law, are withdrawing from their moral obligations, The result is that the at home, the dependents fail to get proper support, and so finally go to court making claims of maintenance on the grounds that are relevant in their cases. Much amendment is needed in the Hindu Adoption and Maintenance Act in order to ensure maintenance to all those who deserve it.

References

1. *National Survey of Adoptive Parents (NSAP) & National Survey of Children's Health (NSCH) Children Adopted from Foster Care: Adoption Agreements, Adoption Subsidies, and Other Post-Adoption Supports, ASPE RESEARCH BRIEF, 2011*
2. *Lim, Puay Ling-Maintenance of Parents Act, Singapore Infopedia, 2009*
3. *R Kumar GR-Family Law I, Law Journal, August 21, 2012*
4. *Priya Narayan Parker- Parents and Senior Citizens Bill, 2007, India Together, July 6, 2007*
5. *Silvia Minozzi, Laura Amato, Cristina Bellisario & Marina Davoli- Maintenance treatments for opiate -dependent adolescents, Cochrane Systematic Review - Intervention Version, 24 June 2014*
6. *Niraj Meena-Adoption Laws in India: Challenging Existing law, Manupatra, (2005) I.L.I Journal, Page No: 110-114*
7. *PK Kuruvilla- Old-age insecurity: How far does the "Parents and Senior Citizen's Act of 2007" address the problem?, Volume : 52, Issue : 4, Page : 298-300, 2010*