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NEED FOR LAW ON MAINTENANCE FOR ADULT CHILDREN IN INDIA

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Brief Overview

The law on maintenance in India contemplates liability of parents to maintain their children only till the age of majority (18 years). The exceptions to this rule are in case of unmarried daughter and where the child has attained majority but by reason of any physical or mental abnormality or injury, is unable to maintain itself¹. However in reality, in India children beyond 18 years of age continue to remain dependent on their parents for higher education, maintenance and marriage expenses. High population, low availability of jobs, unhealthy competition and a societal mindset that does not recognise dignity of labour, contributes to this trend and often distinguishes the situation in India from the situation in USA and most European countries.

In matrimonial disputes, the present law results in denial of maintenance to the child who reaches 18 years of age, even though the child may still be dependent. The custodial parent, often the mother, is thus compelled to solely bear the cost of education, maintenance and marriage expenses of the now-adult but dependent child, while the non-custodial parent conveniently escapes any liability. This Article examines the law abroad and makes a case for amending the law in India to provide continued maintenance of adult children during their studying years, at least till the age of 21.

Statutory position in other countries on maintenance to adult children

It is interesting to note that in most of the European countries, Australia, Canada as well as in some states of USA, statute permits maintenance to children beyond 18 years of age in case they are undergoing university education.

Europe

Under the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance 2007² the age till which support is extended to children in some of the countries which signed instrument of accession is as under:

| Country | Age till which support is extended to children |
|----------------------|--|
| Albania | 21 (25 for high school or university students) |
| Bosnia & Herzegovina | 21 |
| European Union | 21 |
| Norway | 21 (25 may be recognized) |

| | |
|----------------|--------------------------------|
| Turkey | 21 (25 if education continues) |
| Ukraine | 18 (23 for students) |
| United Kingdom | 21 |

In France, Article 371-2 of French Civil Code expressly provides that the liability to provide financial support continues till the child is in a stable position, even after the child has attained 18 years of age. Parents' financial support includes university education.

In Spain, a child after reaching adulthood is entitled to directly make claim for maintenance against parents. The child can claim maintenance during university or till it obtains financial support for itself.

In Lithuania, Article 3.194 of the Civil Code of the Republic of Lithuania was amended in 2004 to provide that Court can adjudge the maintenance if a child is in need of support, he is a full-time student of institutions of secondary, vocational or higher education and is not older than 24 years of age.

In The Netherlands maintenance is provided till 21 years of age while in Poland it is 18 or 21, if attending school. Romania provides for 18 or until schooling is finished while Luxembourg provides for maintenance till financial independence.

Greece provides till 24 if in full time education while Ireland provides maintenance till 23 if in full time education.

Australia

Obligation to maintain adult children is contained in Section 66L(1) of the Family Law Act (1975) although the obligation is expressed as an exception to the general rule that child is entitled to be maintained till the age of 18. Section 66L(1) states - "A Court must not make a child maintenance order in relation to a child who is 18 or over unless the Court is satisfied that the provision of the maintenance is necessary..."

While determining maintenance to adult children, Courts in Australia generally consider the following factors:

- (i) The parents expected to pay have the financial capacity to do so;
- (ii) It is 'necessary' for the child to complete education. In *Everett v. Everett* [(2014) 52 FAM LR No 1] the Court held that 'necessary' does not mean 'absolutely essential' but rather that the maintenance is needed by the child and it is 'reasonable' to require the parent to contribute, having regard to the parties' financial circumstances and other relevant factors. In *Re AM (Adult Child Maintenance)* [(2006) 198 FLR 221] the Court held 'necessary' means something more than morally or socially 'desirable' but less than 'absolutely necessary';
- (iii) The child's ability to complete the course. Education can include school, TAFE and university courses, apprenticeships and vocational courses, as applicable. Generally parents cannot be made liable to pay for postgraduate studies;
- (iv) The amount of maintenance will cover not only course fees but also boarding and lodging. The amount may be reduced by the child's income or capacity to earn from casual or vacation jobs.

Canada

In Canada, under the Divorce Act, a 'child of the marriage' who is 'unable, by reason of illness, disability or other cause, to withdraw from (the parent's) charge or to obtain the necessities of life' will

be entitled to maintenance after the age of 18 years. Courts have frequently interpreted 'other cause' to include university education.

USA

Some states like Massachusetts confer discretion on judges to order child support for the years 18 to 21. The discretion may be exercised having regard to several factors including why the child continues to live with a parent, financial dependence of the child, financial resources of both parents, the child's continuing education and cost thereof and so on. Some States have a higher age of adulthood beyond 18 and child support continues till the age of adulthood. If a child has not completed school on its 18th birthday, the child support may continue till the 19th birthday.

Judicial intervention in India

Before Section 125 of the Code of Criminal Procedure 1973 was enacted, the law in force was Section 488(1) of the Code of Criminal Procedure 1898. The relevant portion of Section 488(1) ran as follows:

'If any person having sufficient means neglects or refuses to maintain...his legitimate or illegitimate child unable to maintain itself...a Magistrate of the First Class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of such child....'

Since the word used was 'child' instead of 'minor child' as specified in the Code of 1973, some Courts took the view that the word 'child' did not have any reference to the age of the boy or girl and it would suffice if the claimant for maintenance was the offspring of the person from whom maintenance is claimed. In *Parrappath Chinnna v. Sankunni Menon*³, Napier, J., observed - I am therefore strongly inclined to think that the words "unable to maintain itself" cannot be confined as suggested, to the tender age of the child but must also have reference to its financial dependency.'

In *Kent v. Kent*⁴ Devadoss, J. observed - 'even a grown-up child, if unable to maintain itself, is entitled to get maintenance from the father if he has the means'

However, a parallel line of cases including *Krishnaswami Iyer v. Chandravadana*⁵ and *Subbamma v. Venkata Reddi*⁶ and judgments of Calcutta, Lahore and Bombay High Courts held that there must be a limitation on the age and that only a minor child would be entitled to maintenance.

The Madras High Court in *Amirthammal v. K. Marimuthu*⁷ after discussing both the aforesaid views, held that 'child' must mean 'minor child'.

In such circumstances, in order to provide some relief to the children above 18 years of age, some Courts tried to mould the relief by stopping maintenance for the adult child but correspondingly increasing the maintenance payable to the spouse who is maintaining the adult child.

Recent judicial decisions allowing maintenance to adult child

The Supreme Court in *Kirti Malhotra v. M.K. Malhotra*⁸ directed the Respondent father to pay maintenance of Rs. 3000/- p.m. to the son who was 18 years old, till he attained 27 years of age. However this judgment did not discuss any law on the subject.

In *Rita Dutta & Anr. v. Subhendu Dutta*⁹ the Supreme Court again awarded monthly maintenance to the two adult sons of the Petitioner in order to enable them to complete their education. The law was again not discussed.

The aforesaid Supreme Court judgments were followed by Bombay High Court in *Jayvardhan Sinh Chapotkat v. Ajayveer Chapotkat*¹⁰. The Court admitted at para 16 that 'A major son may not be entitled for maintenance under the Hindu Marriage Act.' However, the Court went ahead and held -

'In the given facts of the case, a major son of the well educated and economically sound parents

can claim educational expenses from his father or mother irrespective of the fact that he has attained majority. It is not maintenance in the strict sense as contemplated under Section 125 of the Code of Criminal Procedure or maintenance as contemplated under Section under Hindu Marriage Act.’

The Uttarakhand High Court in the case of *Mohan Singh Mawri v. Smt. Haripriya Mawri*¹¹ considered the situation where adult unemployed son was dependent upon his mother. The Court, while substantially enhancing the maintenance paid by the Revisionist husband to the Respondent wife, observed:

‘Though an adult son cannot claim maintenance from his parents as a matter of right, but in the Indian culture we cannot forget the fact that the parents have to maintain their adult child till he gets suitable employment and it is a social duty cast upon the parents to maintain the adult child. This Indian culture and custom cannot be compared with the European culture and custom.’

The Uttarakhand High Court reasoning of difference in Indian and European culture is an important consideration. It is pertinent to note that in India, while children remain financially dependent on their parents for a longer time as compared to the West, they are also much more likely to care for their aged parents than in the West and are also legally bound so to do.

Conclusion

In the absence of any statutory right, Courts in India are compelled to exercise equitable jurisdiction and mould reliefs to help children above 18 years who are still dependent on parents for education and maintenance. It is time that having regard to the cultural context and continuing needs of 18+ years old children, adequate statutory provisions are enacted in line with worldwide trends, to enable maintenance to children at least till 21 years of age, to enable them to complete their education.

References:

1. Section 125 of the Code of Criminal Procedure, 1973, Section 26 of The Hindu Marriage Act, 1955 and Section 20 of The Hindu Adoptions & Maintenance Act, 1956.
2. India is not a signatory to the Convention.
3. (1919) 37 M.L.J. 361 (DB).
4. A.I.R. 1926 Mad. 59.
5. 25 M.L.J. 349.
6. A.I.R. 1950 Mad. 394.
7. 1966 2 MLJ 506.
8. (1995) Suppl 3 SCC 522.
9. VI (2005) SLT 235=(2005) 6 SCC 619.
10. CWP 2117 of 2012, decided on 08.04.2014.
11. Crl. Rev. No. 34/2011 Judgment dt. 03.07.2018.