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**“ROLE OF THE FATHER UNDER HINDU LAW: INJUSTICE WITH THE RIGHTS OF THE FATHER COMPARED TO HIS RESPONSIBILITIES”**

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**MRS. JAYSHREE GAUTAM KANCHANPURKAR<sup>1</sup>**

**Abstract**

The ancient and modern Hindu law describe the obligations and duties of the men as a son, father, and as a husband. These laws framed the primary obligations on the men to maintain their families. The author in the current research paper focuses on the role of the father under Hindu laws comparing the insufficient and inappropriate Hindu laws against the rights of the father. The role of father described under different Hindu laws: (i) under the Hindu Adoption and Maintenance Act, the father has an obligation to maintain his minor son and unmarried daughter; (ii) the Hindu Minority and Guardianship Act, the father is the first guardian and is responsible to take care of child in person and of his property; (iii) under the Hindu Succession Law, the father's property is claimed by son and daughter. Further, the author is adopting the comparative study of Hindu laws towards the property rights of the father in comparison with his role towards his duties and responsibilities of his children and wife. The current laws are insufficient and inappropriate which do not give priority rights to the father over the properties of the children and his wife in comparison with his duties and responsibilities towards the children and wife. Many times these laws are being misused by his children and the wife against him. The author therefore suggests to enact or to amend the existing laws regarding the rights of father over the properties of children and wife who dies intestate.

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<sup>1</sup> ASSISTANT PROFESSOR, VIVEKANAND EDUCATION SOCIETY'S COLLEGE OF LAW, MUMBAI

### ***Introduction:***

The Indian society is formed anciently and developed as the time passes and which also describes the relationship in the family. In ancient Hindu, a father a male parent played a very significant role. Being a father, he has to perform parental, legal, and social relationships towards his wards. The society framed certain rights and obligations on the male parents, whether such male parent is by biological, adoptive, putative and by step relationship. Mitakshara law and Dayabhaga laws described as father is the sole of the family. Father being a karta has to take care of his family socially and legally. The primary responsibility and obligation of the father as per both ancient and modern laws is child's education, development, medical, emotional, and physical well-being. The relationship of children with their father compared to their mother is different. Mother's relationship with the children is emotionally connected whereas father's relation is not as such. The author in the current research paper focuses on the role of the father under Hindu laws comparing the insufficient and inappropriate Hindu laws against the rights of the father.

### ***Literature Review:***

**Dr. Hari Dev Kohli, (2010)<sup>2</sup>**, in his book has attempted to explain the Hindu Law with the help of different case laws. The author in this book, analysis the role of father to maintain and guard his children as per the Hindu Minority and Guardianship Act, 1956 and Hindu Adoption and Maintenance Act, 1956. Further it also highlights through different cases the violation of rights of the father for claiming the property of son and daughter dies intestate.

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<sup>2</sup> Supreme Court on Hindu Law, (2010), Universal Law Publishing Co. Pvt. Ltd., ISBN:978-81-7534-822-6

**Dr. Paras Diwan**,(2019)<sup>3</sup>, in his book the author attempted to explain the ancient Hindu Law, Anglo-Hindu Law and the Modern Hindu Law. The book highlights the basic concepts of Hindu law such as Dharmasastra and Dharmasutras. Further the author attempted to explain the role of father and son, including the rights and obligation towards each other in the Joint Hindu Family. The book also explains the obligation on father as the modern Hindu Law.

**Sir Dinshaw Fardunji Mulla**, (2018)<sup>4</sup>, in this book the author explained the ancient and modern Hindu law with the help of important case law. The book explained the Vedic law as per Manu, Brihaspati, Agastya and other scholars. The author highlights the obligation created by the Hindu Minority and Guardianship Act and Hindu Adoption and Maintenance Act and further explains the father's position as per the Hindu Succession Law.

**Patrik Olivelle and Donald R. Davis, Jr.** (2018)<sup>5</sup>, edited the book the Hindu Law. This book attempted to explain the ancient Hindu law. It analysis the relationship between pita and putra in the vedic period explained by Manu and other scholars.

### ***Methodology:***

The author in the current study used the secondary source. The secondary source of data includes the Books, Journals, Bare Act, Government reports, Case laws, website, etc.

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<sup>3</sup> Modern Hindu Law – (2019), Allahabad Law Agency, ISBN: 978-93-80231-15-0

<sup>4</sup> Hindu Law – (2018) by Mulla, LexisNexis

<sup>5</sup> Hindu Law – A New Dimension of Dharmasastra, (2018), Oxford University Press, ISBN 978-0-19-870260-3

### ***Objectives:***

The object of the current paper is:

- 1) To observe the role of the father as per the modern Hindu Law.
- 2) To evaluate the comparative rights of Hindu father against the responsibilities framed by the modern Hindu law.

### ***Ancient Hindu Law:***

Under Ancient Hindu law and Anglo-Hindu law, a father has a moral as well as legal obligation to maintain his minor son and unmarried daughter. Under Mitakshara law, the father plays a very important role and has an obligation to maintain his family whereas the wife is not under any obligation. Further, under Mitakshara Hindu joint family, father being a karta has the obligation and responsibility not only to care about the children but also the whole family<sup>6</sup>. The son as coparceners has the right to be maintained, right to challenge the alienation if made by father and also has a right to claim partition. But at the same time the major son does not have any legal obligation to act as a guardian his father's person.

### ***Modern Hindu Law:***

The modern Hindu law has described very significantly the role of the father towards his son or daughter. The role of father framed under Modern Hindu Law as:

**The Hindu Minority and Guardianship Act, 1956:** Under Hindu Minority and Guardianship Act 1956, the Hindu father has been made primarily responsible to act as the guardian of children

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<sup>6</sup> Modern Hindu Law – (2019), by Paras Diwan, Allahabad Law Agency

than that of the natural mother. As per section 6 of the Act, "the minor's person as well as his or her property (excluding his or her undivided interest in joint family property), the natural guardians of a Hindu minor are— in the case of a boy or an unmarried girl—the father, and after him, the mother: provided that custody of a minor who has not completed the age of five years shall ordinarily be with the mother; in the case of an illegitimate boy or an illegitimate unmarried girl." This means that the father is the natural guardian of a minor's person (Hindu minor son until he attains the age of majority and of unmarried daughter). In case of property, father is a guardian of minor son and unmarried daughter property, excluding son or daughter's undivided interest in joint family property<sup>7</sup>. Furthermore, the law specifies that custody of a child under the age of five years should generally be with the mother; nevertheless, because the father is the first guardian, he has an obligation to maintain the child.

**The Hindu Adoption and Maintenance Act, 1956:** The Hindu Adoption and Maintenance Act, provide that "Maintenance of children - A Hindu is obligated to support his or her legitimate or illegitimate offspring, as well as his or her elderly or infirm parents, for his or her lifetime, subject to the restrictions of this section. As long as the kid is a juvenile, a legitimate or illegitimate child may seek support from his or her father or mother. A person's obligation to support his or her elderly or infirm parent or unmarried daughter extends to the extent that the parent or unmarried daughter, as the case may be, is unable to support himself or herself from his or her own earnings or other property".<sup>8</sup> This means the father has an obligation to maintain his minor son and unmarried daughter and further the law mentioned the obligation on the son and daughter to maintain his or her infirm parents. The Hindu Adoption and Maintenance Act, has only mentions the financial obligation on the children to maintain the parents i.e. the infirm parents. The Indian

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<sup>7</sup> The Hindu Minority and Guardianship Act, 1956, Section 6 (a); Ibid

<sup>8</sup> The Hindu Adoption and Maintenance, Act 1956, Section 20

society has framed the moral as well as the legal obligation on father to maintain his son and daughter and take good care of his children. But there is no legal obligation created on the son and daughter to maintain the father's person and take good care at his old age.

**The Hindu Succession Act, 1956:** The Hindu Succession Act, 1956 basically framed for the devolution of property of Hindu male and Hindu female who dies intestate. The Act states that the property of a male Hindu who dies intestate devolves to the following: (a) first, the heirs, who are the relatives specified in class I of the Schedule; (b) second, if there is no heir of class I, then upon the heirs, who are the relatives specified in class II of the Schedule; (c) third, if there is no heir of either class, then upon the agnates of the deceased; and (d) lastly if there is no agnate, the deceased's cognates are considered.”<sup>9</sup> This means that if a Hindu male dies intestate his property will devolve as per schedule given in the Hindu succession law<sup>10</sup>. The schedule of the Act states that if a Hindu male dies intestate than his property will be claimed firstly by his relatives given in the Class-I and if no one from Class-I heir is alive than the Class-II heir can claim and if there is no Class –I and Class –II heir than the Agnate can claim first and if no agnate than the Cognate can claim the property<sup>11</sup>. It is found that in the present modern Hindu law, the father is not given position in the Class-I heir. Father is placed in the Class-II entry first. This means that the father cannot claim the property of his son as other relatives of Class-I.

Further, the Hindu Succession Act, 1956 states that if the Hindu female dies intestate her property will be devolved as per section 15 of the Act. “The property of a female Hindu who dies intestate is divided as follows: (a) first, among the sons and daughters (including the children of any pre-

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<sup>9</sup> The Hindu Succession Act, 1956, Section 8

<sup>10</sup> The Hindu Succession Act, 1956, Section 8 & Schedule

<sup>11</sup> Ibid

deceased son or daughter) and the husband; (b) second, among the husband's heirs; (c) third, among the mother and father; (d) fourth, among the father's heirs; and (c) last, among the mother's heirs.”<sup>12</sup>. Here the law covers both the married and unmarried Hindu daughter. Firstly, in case of unmarried daughter, her property will be distributed as per the sub-section (1) clause (c) of Section 15 of the Hindu Succession Act i.e. between father and mother equally and secondly if the daughter is married than the father is kept on the third entry (Section 15 (1) (c)) i.e after son, daughter (including the children of predeceased son/daughter) and husband (Section 15 (1) (a)); and heirs of the husband (Section 15 (1) (b))<sup>13</sup>. This means that the Hindu father under the modern Hindu law has an obligation to maintain his daughter and support her to develop her career. But in case if the married daughter dies intestate her self-acquired property if any will be devolved by the section 15 of the Hindu Succession Act. These further show that Hindu father does not have preferential right to claim the property of his daughter and has to share the property with his wife (second guardian of minor son and unmarried daughter).

***Issues relating to Rights of Hindu father against the responsibilities framed by the modern Hindu law:***

The Hindu law (ancient as well as the modern Hindu Law) has placed the primary obligation on the father to take care of his minor son and unmarried daughter. Here the author highlights the issues relating to rights of father comparing the obligation placed on him by the modern Hindu law:

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<sup>12</sup> The Hindu Succession Act, 1956, Section 15

<sup>13</sup> The Hindu Succession Act, 1956, Section 15

**The Constitution of India, 1950:** Under Constitution of India, the Part IVA covers the Fundamental Duties. In the year 2002, the amendment was made in the Constitution of India; “Clause (k) of Article 51A states that a parent or guardian is responsible for providing educational opportunities to his or her child or ward between the ages of six and fourteen years.”<sup>14</sup> This means that the Hindu father is under constitutional obligation to provide the educational opportunities to his children. It is found that the Constitution of India has recognized the duty of the parents (father) to maintain children and provide then the educational opportunities. But the parliament has failed to frame the Constitutional duties on the children to be a guardian of parents when they become old and unable to take a better care of themselves. Now the question is that if father is under preferential obligation than mother to maintain his children, then does he have the right to be maintained (father’s person & emotionally) and does he have preferential right over the property of his children.

**The Hindu Minority and Guardianship Act, 1956:** As discussed above the obligation of the Hindu father, the Hindu Minority and Guardianship, Act place the responsibilities on him to act as guardian of his son and daughter (adopted minor son and unmarried daughter)<sup>15</sup>. It is found that the Hindu Minority and Guardianship Act is salient on the guardianship of parents on the children. Therefore the author states that the present Hindu law has failed to frame the responsibility on the son or daughter to take care of his/her father’s person.

**The Hindu Adoption and Maintenance Act, 1956:** Under the Hindu Adoption and Maintenance, Act, 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

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<sup>14</sup> The Constitution of India, 1950, Clause (k) of Article 51(A); inserted by the Constitution (Eighty-sixth Amendment) Act, 2002

<sup>15</sup> The Hindu Minority and Guardianship Act, 1956, Section 6



expenses of and incident to her marriage; (c) "minor" means a person who has not completed his or her age of eighteen years<sup>16</sup>. Further the law provides that the father is under obligation to maintain his legitimate or illegitimate minor son and unmarried daughter. This means that the children can claim the maintenance from their father but on the other hand the present law failed to frame any obligation on the children to take better care of his/her father at his old age. Initiative was taken by the parliament and has framed the law for the welfare of the parents and senior citizens. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007<sup>17</sup> is enacted with the object to provide the in-expensive and speedy procedure to claim the monthly maintenance. But the question is that can financial assistance from a son or daughter be considered as physical and emotional care for the father.

**The Hindu Succession Act, 1956:** Father who is the first natural guardian as per Hindu Minority and Guardianship Act, 1956 and who is having an obligation to maintain his minor son and unmarried daughter as per Hindu Adoption and Maintenance Act, has not given preference rights to claim the property of his own son and daughter if his son and daughter dies intestate. The Hindu Succession Act does not give fathers the right to claim the property of his son if the son dies intestate. Father is kept on the Class-II entry first to claim the property whereas mother has given the right to claim the property along with son's wife and children (grandchildren)<sup>18</sup>. Father who is under legal obligation to maintain his minor son and if the father dies intestate his son along with wife and daughter has a preferential right to claim one share of his father's property. But under said Act, the father has not given place in Class-I heir.

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<sup>16</sup> The Hindu Adoption and Maintenance, Act, 1956, sub-clause (b) of Section 3

<sup>17</sup> Act 56 of 2007

<sup>18</sup> The Hindu Succession Act, 1956 Section 8 and Section 15

The Hindu Succession Act, 1956 further provides that the property of the daughter cannot be claimed by the father alone. In case if the unmarried daughter dies intestate than as per Hindu succession Act, section 15 (1) (c) the property will be shared between father and mother equally whereas if the married daughter dies intestate, than the father cannot share the property of his daughter but the property of his daughter will be claimed firstly by her son, daughter (and grandchildren) and husband and secondly by the heirs of the husband and thereafter the father and mother can claim property of his daughter<sup>19</sup>. This means that the father who has maintained his daughter and given education has no preferential rights over the property of his own daughter.

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<sup>19</sup> The Hindu Succession Act, 1956 Section 8 and Section 15

### ***Conclusion and Recommendations:***

The Modern Hindu Law has placed the father under the obligation to maintain his children whereas there is no obligation on the children to maintain their father. Further, the Hindu son and daughter to whom the father has supported financially and also have taken the obligation to maintain him and her. Furthermore, the father also supported his son and daughter to develop his and her career even after attaining the age of majority. The author concludes that the framer of the modern Hindu law has framed the inadequate laws which do not recognize the rights of the father.

The author states that the present the Hindu Minority and Guardianship Act, 1956 is incomplete; it failed in framing the rights of the father. The said Act does not frame the obligation on the children to act as a guardian of the aged and infirm parents. Therefore, the author recommends making amendment in the Hindu Minority and Guardianship Act, 1956.

The Hindu Adoption and Maintenance Act, 1956, has provide the obligation on the children to maintain the parents but the present law failed to frame the obligation on the children to take care of the father's person and emotionally. Therefore the author recommends making amendment in the Hindu Adoption and Maintenance Act to frame the law for the welfare of the parents and liability of the children to take care their old age parent's person.

Further conclude that the Hindu Succession Act, 1956 is inappropriate and incomplete regarding the devolving the separate property of female dies intestate and regarding the position of the father to claim the property of his son. The author recommend to amend the Hindu Succession Act, 1956 and include the father in Class-I heir instead of Class-II. And further recommend framing the separate section for the devolution of separate or self-acquired property of female dies intestate. The author recommends including father in first entry to claim the separate property of his daughter

along with daughter's son, daughter and husband. Father who help morally and financially to develop the career of the daughter must have the right to claim the separate property of his married or unmarried daughter.