

LEGAL PROVISIONS RELATED TO MAINTENANCE OF WOMEN

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“It is a man's duty to maintain his virtuous wife, aging parents and children even if he has to partake in a hundred misdeeds.”¹

ABSTRACT

India is a country where marriage has both the sacramental and contractual act. In law, maintenance is often used a synonym for spousal support or alimony. This article works an attempt to sort out and find out why maintenance provisions lack in a country like India, and to clear the idea about various legal provisions regarding maintenance of a wife and how it is the legal right of a wife to claim maintenance from her husband. The article is divided into six major parts commencing with Introduction which gives an overview of the problem in the society and object of research. Further, the article divides itself into three major heads- Maintenance under criminal Law, Maintenance under Hindu Law and Maintenance under Mohammedan Law. The judicial pronouncements are an attempt to make and throw light upon the role of judiciary in establishing the wife's right of maintenance. Conclusion of the article gives the author's opinion towards the research.

KEYWORDS

Maintenance, Wife, Husband, Marriage.

¹ Manusmriti Chapter 3 Shloka 114

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INTRODUCTION

The scope for pleasure and pleasure gets doubled when human care for each other. The basic social unit wherein we could observe the pre requisites of a welfare society in family. “Natural ethical community” is another word of family this is because the family is natural bond which is based on feelings that are intuitive and immediate.² Family has an ethical quality because the love that it imparts has a universal and spiritual quality. A proper development of family takes place when men and woman place their role beneficially for it. The maintenance is very important for it for the purpose to uplift the standard of living of particular family. The term “Maintenance” means an amount payable by the husband to his wife who is unable to maintain herself either during the subsistence of marriage or upon separation or divorce.

Marriage as such gives the married partners, a status and imposes mutual obligations and rights. The prime obligation arising out of marriage is maintenance. The whole concept of maintenance was instituted in order to see if there is a partner in a matrimonial relationship who is not independent economically than the other should help him or her in order to support the living of the other. The right to maintenance includes basic necessities of human life. Granting of maintenance is a measure of social justice. Although it is the fundamental duty of husband to maintain her wife. Maintenance is recognized under different laws.

MAINTENANCE UNDER CRIMINAL LAW

The code is mainly an adjectival law. The object of the code is to provide machinery for the punishment of offenders violated of the substantive law. Unlike the personal laws which are applicable only to persons belonging to particular religions the provisions of the Code of Criminal Procedure, 1973 are applicable to all irrespective of religion. Relief under this code is speedy and is available irrespective of whether or not any matrimonial proceedings are pending. Public concerns on wife battering gave the magistrate court jurisdiction over matrimonial matters in England. The experience and success of magistrate jurisdiction over domestic matters trusted interest on English rulers in India to practice the same in India. Though the moral obligation to maintain wife stood recognized in the ancient Hindu system.

² Dr. Paras Diwan, Family Law, 337 (Allahabad Law Agency, Faridabad, 10th Edition, 2013)

Code of 1973- Inception

English criminal law was first established in British India in the year 1860. Also when the penal code was passed into law was felt that a code of criminal procedure would be natural, not to say necessary addition to it, such a code was accordingly prepared and the same was passed into law as the act XXV of 1861. With the code of criminal procedure a large part of the law and regulations then in force more or less in the manner of an English consolidation act. But the code was incomplete and was also obscure and confused in its arrangements. And after various amendments, the code of criminal procedure was done and in the year 1973, a bill No XLI of 1973 was introduced and this came to be passed as the code of criminal procedure 1973.³ The code was effectively put to use in British India for nearly a century that as on now the code exists in its present form passed as act of 1973.

Right to seek maintenance under section 125 of the code of criminal procedure is a measure in the alternative to provide for destitute wives. It is independent right and the pendency of the proceeding under the Hindu Marriage Act in the family court is no bar for its maintainability outside the jurisdiction of family courts.

Section 125⁴ provides maintenance to wife, children and parents.

A magistrate of the first class may, upon proof of such neglect or refusal order such a person to make monthly allowances for the maintenance of his wife.

‘Wife’ includes a woman who has been divorced by, or has obtained a divorce from her husband and has not remarried.

No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery or if, without any sufficient reason, she refuses to live with her husband or if they are living separately by mutual consent on proof of this, magistrate can cancel the order

In **Inderjit Kaur v. Union of India**,⁵ it was held that section 125 provides a speedy remedy against starvation of the civil liabilities of the parties; the order made therein is tentative and is

³ Gaurav Mehta, Guide to L.L.M. Entrance Examination, 269 (Universal Law Publishing Co., Lexis Nexis, Gurgaon, Sixth Edition 2018)

⁴ Section 125, The Code of Criminal Procedure, 1973

subject to final determination of the rights in courts. In **Sandhya Kumari v. State of Bihar**,⁶ It was held that the scope of section 125 of CrPC as well as section 124 of the Hindu Marriage Act stand on different footing. It is true that the maintenance act can be adjusted out of the amount granted under section 125 of the code of criminal procedure. In the case of **Sudeep Chaudhary v. Radha Chaudhary**,⁷ wherein it has been held that when the wife is granted interim alimony both section 24 of the Hindu Marriage Act and under section 125 of CrPC. In that event the maintenance amount granted under a section 125 of CrPC is to be adjusted against the amount awarded in matrimonial proceedings.

The word 'wife' has been defined in the law lexicon as a married woman. But the phrase 'wife' under section 125 of the code includes two class of married woman, viz a woman of valid subsisting marriage and a divorced woman.

Criteria to claim for Maintenance

The formal petition to be claimed by women is to make petition under section 125 before the family courts.

Before the criminal court both the parties are normally assisted by advocates, whereas before the family court their representation is specifically excluded. The parties are heard. When the respondent admits relationship and is primarily to pay maintenance, an order to that effect is passed. If the husband denies the relationship or denies payment on certain grounds justifiable or pleads inability for sufficient means, the matter is posted for trial. During trial, which is by summary procedure, parties and their witnesses are examined to adjudicate the dispute in their pleadings and mainly to establish their relationship, inability to maintain oneself and passes an order either granting or dismissing claim for maintenance.

This monthly payment is favoured by the legislature as maintenance and convenient mode of payment under section 125 of the code of criminal procedure.

“The amount must be sufficient to keep her body and soul together.”

⁵ 1979 119 ITR 254 P H

⁶ 2001 DM 06

⁷ AIR 1999 SC 536

Section 125 of CrPC provides maintenance only as a summary remedy and hence the amount payable is so fixed by this provision that it fulfills modestly the needs and requirements of the wife. The objective of this remedy is not to enable the wife to live in luxury and make her feel that her living separate is profitable and thus impede any future possibility of reconciliation. The amount of maintenance is fixed till not exceeding Rs 500/.

Maintenance orders under section 125 of CrPC are to take effect either from the date of order or from the date of application. Normally, the order is to take effect from the date of order but if the circumstance permits, the magistrate can make the order to take effect even from the date of application. If the date is not mentioned in the order, the implied meaning is that it is to take effect from the date of order.

“Pendency of the application for long years is a reasonable circumstance to pass an order from the date of application.”

The proceedings for maintenance may be taken by the wife against husband in any district.

1. Where he is, or
2. Where he or his wife resides, or
3. Where he last resides with his wife

Proceedings under section 125 of CrPC can be instituted in any competent court within the district court in which the persons provided against is or where he and his wife resides or where he last resided with his wife. Section 126(1) does not contemplate permanent place of residence. Even a place where the wife is for the time being residing would confer jurisdiction on such a court, where she is residing. However residence temporarily acquired solely for conferring jurisdiction would not satisfy the requirements of section 126(1).

Reasons for Disentitles of Maintenance

On marriage the wife gets a right to be maintained by her husband. Through a moral obligation it is not an absolute right, in deserving circumstances the husband can refuse payment of maintenance and raise them as defences.

Section 125(4)⁸ enumerates three different conditions which disentitle wife to receive maintenance.

1. Living in Adultery.
2. Refusal to live with her husband without any reasonable grounds.
3. Living separately by mutual consent.

The magistrate is empowered to cancel the order made in favour of wife on proof of any of the grounds enumerated above.

MAINTENANCE UNDER HINDU LAW

The right to maintenance, that is to say that, the right to be supported and cared for by another, has primarily been a matter of personal obligation arising with the duty to rear up a family and along with it to support his wife by giving her amount of maintenance to maintain her life. The right of maintenance includes all the reasonable necessities of life such as food, clothes and shelter. This right might create an obligation which is the outcome of legal relationship.⁹

The Hindu Adoption and Maintenance Act came into force on 21st December, 1956. It has 30 sections in which sections 18 to 28 relates to maintenance. It amended and codified the legislature. According to my understanding the maintenance of the woman in the joint family system was an important system and this was followed as a tradition which governed the families.

According to Section 18(1)¹⁰, the wife is entitled to be maintained by her husband during lifetime. The right arises from the matrimonial relationship. Therefore, the husband is legally bound to maintain his wife.

“The smrtikaras also do not allow a person to discard his wife if she is guiltless.”¹¹

⁸ Section 125(4), The Code of Criminal Procedure, 1973-No Wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

⁹ U.P.D. Kesari, Modern Hindu Law, 192 (Central Law Publication, Allahabad, 10th Edition, 2015)

¹⁰ Section 18(1), The Hindu Marriage Act, 1955

¹¹ Professor Kusum, Family Law lectures, 247 (Lexis Nexis, Gurgaon, Third Edition, 2014)

Grounds for Award of Maintenance

Given some provisions of maintenance when the wife is entitled to live separately without her husband under the following conditions without forfeiting her claim to maintenance.

- **Desertion**-Which means that if the husband is discarded her without reasonable cause and without her consent or against her wish or of one's own free will disregard her then she shall be entitled to live separately from her husband and also claim to maintenance.
- **Cruelty**-Means cruel behavior or cruel action done by the husband toward his wife which causes a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband then also she is entitled to live separately and to get maintenance.
- **Leprosy**- Declares that if a person is suffering from virulent form of leprosy and if the wife does not live with him then the husband must maintain her.
- **Another wife is living**-States that if a person has any other wife living and if the earlier wife lives separately then also he has to give her maintenance. This clause has come for interpretation in a number of cases. It is noted that any wife can claim for separate residence and maintenance under this condition.
- **Keeps a Concubine**-If he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere. "Keeping a concubine or living with a concubine is extreme form of living in adultery." In this case wife is entitled to claim for separate maintenance as well as for maintenance from her husband.
- **Conversion**-Runs that the wife can claim maintenance and is eligible to separate residence if the husband has cease to be a Hindu by conversion to another religion.

The amount of maintenance depends upon different factors. The courts rely on the provision of section 23 of the act while asserting the total maintenance that the husband needs to pay to his wife. The provision lays down the following factors that must be considered to fix a amount of maintenance.

- The position and status of the husband and wife,
- Whether the wife has an actual claim for maintenance.
- If the wife is living separately, whether the reasons to do so is justified.

- The wife's total property and income.
- The husband's property, income generated from this property.
- The total number of dependents and their expenses borne by the husband.¹²

MAINTENANCE UNDER MOHAMMEDAN LAW

All those things which are necessary to support life such as food, clothes and lodging many confine too solely to food. Nafaqa literally means which a man spends over his children in law it means feeding, clothing and lodging in common use it signifies food. Maintenance comprehends food, raiment, lodging though in common parlance it is limited to first. Hence all the Muslim women earning or not earning are eligible for the right to maintenance which is contrary to most of the other religious acts where only dependent women are eligible for the maintenance.

The main principles of maintenance may be recounted thus:

1. A person is entitled to maintenance it has no property.
2. Is related to obligor in prohibited degrees, or is the wife or child, and
3. The obligor is in position to support him.

The obligation of maintenance is also hedged by the factor of their economic condition.¹³

Where the marriage is valid and the wife is capable to render marital intercourse it's the husband's duty to maintain his wife even though she may have means to maintain herself. But if she unjustifiably refuses to cohabit with her husband then she loses her right for maintenance. The right of maintenance would also be lost if the wife refuses to obey the reasonable commands of the Husband but not so if disobedience is justified by circumstances or if she is forced to leave husband's house on account of cruelty, so that of the husband refuses to maintain his wife without any lawful reasons/causes the wife may sue him for maintenance. She is not however entitled to past maintenance. Maintenance is payable from the date of the decree unless the claim is based on specific agreement.

The wife loses the right to maintenance in the following circumstances:-

¹² Volume 26, Halsbury's Law of India, Family Law I, 352 (Lexis Nexis Butterworths, New Delhi)

¹³ Dr. R.K. Sinha, Muslim Law, 137 (Central Law Agency, Allahabad, Sixth Edition)

- a) She is minor, incapable of consummation.
- b) Refuse free access to the husband at all reasonable times.
- c) Is disobedient.
- d) Never visited his house.
- e) Refuses to cohabit with him without reasonable excuse.
- f) Abandon conjugal home without reasonable reasons.
- g) Deserts him.
- h) Elopes with another person.

The husband and wife or their guardian may enter into agreement whereby the wife is entitled to recover maintenance from her husband, on the happening of some special event such as ill-treatment, disagreement, husband's second marriage etc. but the agreement in the marriage contract that the wife would not be entitled to maintenance is void. The key consideration is that the agreement should not be opposed to the public policy and Muslim Law.¹⁴ Followings are the valid conditions for an agreement:

- a. If the husband treats the wife with cruelty then the wife has a right to separate residence and maintained to meet it.
- b. If he brings subsequent wife and the previous wife is unable to with her, she will get maintenance allowance to live separately or even at her father's house.
- c. If he brings his other wife to the matrimonial home, she will reside at her father's home and he will give her maintenance. This view was reiterated by the Karnataka High Court.
- d. In case of disagreement with each other, he will give her maintenance for her separate residence.

After divorce the Mahommedan wife is entitled to maintenance during the time period of Iddat and also for the time, if any, that elapsed after the expiry of the period of Iddat and her receiving

¹⁴ <http://www.legalserviceindia.com/articles/hmcp.htm> (visited on 11 Feb 2020, 11:23 p.m.)

notice of Talaq. After expiry of the period Iddat the enforceability of the order of maintenance ceases. The wife is entitled to sue for maintenance at her normal place of residence at the time of divorce and the place where she receives the notice thereof. Suit by divorced for Hiba-jewels lies where the wife resides. A widow is not entitled to maintenance out of the estate of her late husband in addition to what she is entitled to by inheritance or under his will.

JUDICAL PRONOUNCEMENTS

In case of **Vishnuprasad v. Vishnupriya**¹⁵, Justice M.V. Muralidaran, held that it is the obligation of the husband to maintain her wife if he is healthy and able bodied, as a wife's right to receive maintenance is an absolute right provided to her by virtue of various laws.

In the leading case of **Mohammad Ahmed Khan v. Shah Bano Begum**,¹⁶ the Supreme Court held that Section 125 of The Code of Criminal Procedure, 1973 is the law of land and applies equally to person of every religion unlike the personal laws.

In the case of **Sanjivani Ramchandra Kondalkar v. Ramchandra Bhimrao Kondalkar**,¹⁷ the Bombay High Court through Justice Nitin W. Sambre dismissed the petition questioning order of denial of maintenance. Approaching, Section 125(4), the court said that if any allegation of adultery is proved against women, where her husband is ready to maintain her, and she refuses to cohabit, there is a proscription on a right to claim maintenance. Further in case of **Ajay Mittal v. Sonu Goyal**¹⁸, referring to case of **Sunita Kachwaha v. Anil Kachwaha**¹⁹, the division bench of Rajasthan High Court held that a wife who is capable of earning and is earning would not make her disentitled to her claim of maintenance, even when she is earning three times more than her husband.

In the case of **Ramachandra Laxman Kamble v. Shobha Ramachandra Kamble**²⁰, Justice M.S. Sonak opined that the right of wife to maintenance cannot be hindered or negatived by the

¹⁵ 2018 SCC OnLine Mad. 1306

¹⁶ (1985) 2 SCC 556

¹⁷ 2019 SCC OnLine Bom. 6581

¹⁸ 2019 SCC OnLine Raj. 2403

¹⁹ (2014) 16 SCC 715

²⁰ 2018 SCC OnLine Bom. 7039

husband through any argument, and any attempt to make such an agreement shall be void, against policy and not legal in the eyes of law.

CONCLUSION

Marriage is a phenomenal event of life by which wife is clasped with love and affections by husband. As on today, Various revolutions, social vicissitudes, global formulae have directly changed the equation making it a universally standard norms that after marriage a wife is to be maintained by her husband. The flow of life with sufficient and adequate facilitation moving around the unavoidable needs and their supplement make marital conjugations happy and pleasant and accordingly other ventures of life can be pursued. The right to life is the prominent desiderata to and criteria to establish the due for a human being. Law of maintenance is personal as well as legal in character and arises from the very existence of relationship between the parties. Law of maintenance with no doubts is inclined toward woman in both structures whether it is Hindu or Muslim law. After reading and going through various sources of law, I feel that the Hindu law is much clearly defined and having more right to woman as compared to the other laws but the proceedings of criminal court is more fast and adequate to claim the right of maintenance.