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'Right to Maintenance' in India: A Saga or A Gospel

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The article points up the status and application of the concept of 'alimony' to the wife in India. It emphasizes that merely being a law, maintenance is the right of every woman irrespective of the fact that her marriage has been dissolved. India has various laws relating to 'maintenance', each being governed by several personal laws. The write-up briefly explains the provisions from the Code of Criminal Procedure, Hindu Law, and from Muslim Law. It further discusses the conditions under which a woman can avail her 'right to maintenance'. By enunciating the judgments of the Apex court and some High Courts, the aim is to throw light on how the legislations have been interpreted by the judiciary to protect the interests of women in India. The rulings and the remarks by the Judges depict that there is a requirement for a better application of the statutes than what has been written. The article also emphasizes the status of minor wives in relation to maintenance. At last, the write-up comes with ideas for widening the scope and application of the statutes. The objective is to bring the attention of the readers that the era demands more toil on the 'right to maintenance'.

Keywords: *marriage, termination of marriage, alimony, wife, minor, sexual intercourse, adultery, remarriage.*

INTRODUCTION

Marriage forms an integral part of the social institutions in Indian society. It is that social institution that binds two people and their families together through several elements. 'Rights and Duties' is one of the elements which binds the parties to the marriage together. One such

'Rights and Duties' is the 'Maintenance'. 'Maintenance' is the right of the wife and the duty of the husband. The term 'maintenance' itself embodies its meaning i.e., keeping something in a good condition. *Corpus Juris* defines alimony as "*the allowance required by law to be made to a wife, out of her husband's estate for her support either during the matrimonial suit or on its termination, where the fact of the marriage is established and she proves herself entitled to separate maintenance.*"¹In layman's terms, it is the money that one is obliged to pay to his spouse who is unable to maintain herself during the marriage and after the marriage has been dissolved. It is not only limited to money, but rather extends to all kinds of financial assistance that are required for one's day-to-day maintenance, including clothing, shelter, and food. The financial assistance can be made out of the property, estates, or income of the husband. It is irrespective of the fact whether he has or has no property.² 'Maintenance' is a connubial matter that was never interfered with by the States. However, each religion and sect in India had its customs and rules which govern matrimonial issues. Nonadherence to these rules and customs was not acceptable and the person was often outcasted for such disobedience. Although maintenance has been an onus upon the husband for a long time by the reinforcement of the customs and laws of the society, it has now been made an obligation by several statutes in India to make it binding upon the people. This is because men having all the financial control dictate the household as per their needs without considering the wants and requirements of the members dependent upon him. The patriarchal society did not accept women to be financially independent. Women have always been treated as a machine to perform and manage the day-to-day house chores, and the same has been paid with ill-treatment. "*Women have always been discriminated against and have suffered and are suffering discrimination in silence. Self-sacrifice and self-denial are their nobility and fortitude and yet they have been subjected to all inequalities, indignities, and discrimination.*" **Justice K. Rama Swamy.**³For this reason, to safeguard the interests and the grip of women in society, maintenance has been made her right, which is now backed by several codified and uncodified laws. The obligation of the husband to

¹ Dr. Sanjay I Solanki, 'Study on Law Relating to Maintenance in India with Special Reference to Personal Laws and Criminal Procedure' (2017) 5 (9) IJAR, 208 <<https://www.journalijar.com/article/19867/study-on-law-relating-to-maintenance-in-india-with-special-reference-to-personal-laws-and-criminal-procedure-code./>> accessed 05 June 2022

² Paras Diwan, *Modern Hindu Law* (26th edn., Allahabad Law Agency 2021)

³ *Madhu Kishwar v State of Bihar* (1996), AIR 1864

maintain his wife does not arise out of any contract, express or implied, but out of the statute of marriage, out of the jural relationship of husband and wife created by the performance of the marriage.⁴ The objective of the concept of 'Maintenance' is not only to protect the interests of the wife during the marriage, rather this right of women extends even after the termination of the marriage. A woman continues to be a 'wife' even after the marriage has been dissolved until she remarries another person. "Wife" includes a woman who has been divorced by, or has obtained a divorce from her husband and has not remarried.⁵ The obligation does not end with the dissolution of the marriage. This rule provides for an equitable distribution of available money and property on family breakdown.⁶ The purpose behind the concept of maintenance is to make sure that the financial status of the spouse is not affected by the dissolution of marriage. It is to perpetuate the standard of living of the spouse equivalent to that of the other spouse who has been affected by the dissolution of marriage. However, the duty of maintenance is not gendered specific i.e., it is not only the duty of the husband to maintain but it can also shift to the wife if she is in the financial state to maintain. The rule of 'maintenance' has a basic principle that a person must maintain his/her spouse only if the person can afford to provide financial assistance. The focal point of this write-up is the scope and the application of the obligation of the husband to provide the maintenance to his wife during the marriage and after the split-up of the marriage and if this obligation remains as a fictional story or has been put into practice with full rigidity. The 'Right of Maintenance' in India is governed and regulated by several personal laws and common law in India.

PROVISIONS LAID BY SEVERAL LAWS RELATING TO MAINTENANCE IN INDIA

Section 125 of the Code empowers the Magistrate of the first class to order a man, who neglects or refuses to maintain his wife, who is unable to maintain herself, to make a monthly allowance for the maintenance of his wife.⁷ Section 18⁸ of The Hindu Adoptions and

⁴ *Sri Raja Bommadevara Raja Lakshmi v Sri Raja B. Naganna Naidu Bahadur* AIR 1925 Mad 757

⁵ Code of Criminal Procedure, 1973, s 125

⁶ A. Bissett-Johnson & D. W. Pollard, 'Maintenance, Divorce, and Social Security' (1975) 38 (4) *The Modern Law Review* <<http://www.jstor.org/stable/1094003>> accessed 05 June 2022

⁷ Code of Criminal Procedure, 1973, s 125(1)

⁸ Hindu Adoptions and Maintenance Act, 1953, s 18

Maintenance Act, 1956 set down the provision that the husband has the duty to maintain his wife during her lifetime. Moreover, the section protects the cachet of women in society by entitling them to maintenance after she has ceased to live with their husband under certain circumstances.⁹ The Hindu Marriage Act, 1955 lays down the provisions regarding the 'right to maintenance' of the wife. The Act provides for two types of maintenance-

- *Pendente Lite*- It is also known as temporary maintenance. Section 24¹⁰ of the Act sets down that if the court is satisfied that the wife has no sufficient income to support herself and afford the expenses of any proceedings under this particular Act, the court may on the application of the wife, order the husband to pay the expenses of the proceedings and a monthly allowance to her during the proceedings.
- *Permanent Alimony*- This type of maintenance is secured to the wife by the application of Section 25¹¹ of the Act. The Act stipulates that if the court is satisfied that the wife has no income and property to support herself, on an application of the wife the court may order the husband to provide her with a monthly or periodic allowance.

Under the Muslims Laws, maintenance is known as '*Nafaqa*' or '*Khracha-e-pandan*'. Since the Muslim Law is not codified, the concept of maintenance is steered by the customs and rules which are deemed to be accepted by the Prophet and different Islamic schools. In Islamic laws 'maintenance' means food, lodging, and clothing. There are three causes for which a person has to maintain another- marriage, relationship, and property.¹²It is an obligation for the husband to maintain his wife irrespective of his economic status and age. The Islamic personal laws lay some conditions over the wife before she can claim maintenance-

- The wife is required to reside with her husband for her lifetime irrespective of cruelty on the part of the husband.
- The wife must not be minor or incapable of sexual intercourse.
- She shall abide by the commands of the husband.

⁹ Hindu Adoptions and Maintenance Act, 1953, s 18(2)

¹⁰ Hindu Marriage Act, 1955, s 24

¹¹ Hindu Marriage Act, 1955, s 25

¹² Gangotri Chakravorty, *Law of Maintenance* (2nd edn., Sodhi Publications 2007)

- The wife shall not refrain from sexual intercourse and shall completely surrender herself to her husband.

Divorced wives are entitled to maintenance only till the period of ‘*iddat*’ which lasts for four months and ten days. After the completion of the period, women are not entitled to ‘*nafaqa*’. However, these uncodified laws have the least relevance in contemporary society. These have been replaced by the provisions of The Muslim Women (Protection of Rights on Divorce) Act, 1986, and The Muslim Women (Protection of Rights on Marriage) Act, 2019. Section 3(1)¹³ of The Muslim Women (Protection of Rights on Divorce) Act, 1986 sets down that the divorced wife shall be entitled to maintenance within the *iddat* period. Moreover, Section 5¹⁴ of The Muslim Women (Protection of Rights on Marriage) Act, 2019 makes it an obligation for the husband to maintain his divorced wife and the dependent child.

Nevertheless, the provisions of the Code of Criminal Procedure Code override the provisions of the personal laws of the Muslim. In the case of *Mohd. Ahmed Khan v Shah Bano Begum and Ors.*¹⁵ the issue that arose before the court was whether Section 125 applies to Muslims. It was held by the Chandrachud, C.J. “‘Wife’ means a wife as defined, irrespective of the religion professed by her or by her husband. Therefore, a divorced Muslim woman, so long as she has not remarried, is a ‘wife’ for Section 125. The statutory right available to her under that section is unaffected by the provisions of the personal law applicable to her. The conclusion that the right conferred by Section 125 can be exercised irrespective of the personal law of the parties is fortified, especially regarding Muslims, by the provision contained in the Explanation to the second proviso to Section 125(3)¹⁶ of the Code.” In a recent judgment the Kerala High Court reiterated “*There is nothing in the Muslim Women Protection Act which indicates that the right of the Muslim divorced wife which they had under Section 125 of CrPC before the enactment of the Muslim Women Protection Act will stand superseded or extinguished by the enactment of the Muslim Women Protection Act.*” The Allahabad High Court in the case of *Arshiya Rizvi And Anr. v State of U.P.*

¹³ Muslim Women (Protection of Rights on Divorce) Act, 1986, s 3(1)

¹⁴ Muslim Women (Protection of Rights on Divorce) Act, 1986, s 5

¹⁵ *Mohd. Ahmed Khan v Shah Bano Begum and Ors.*, (1985), AIR 945

¹⁶ Code of Criminal Procedure, 1973, s 125(3)

*And Anr.*¹⁷, observed that a divorced Muslim woman is entitled to maintenance under Section 125 CrPC to succour her needs.

CONDITIONS FOR AVAILING THE 'RIGHT OF MAINTENANCE'

The right provided by the Indian Legislature is not absolute and hence is subject to some conditions which are in consonance with the customs of the Indian society.

- Firstly, to claim the right of maintenance, it is a pre-condition that the “wife” shall be the legally wedded wife of the husband. The laws do not merely pertain to all women who are married. The term ‘wife’ includes a woman accepted and recognized as a wife.¹⁸ The expression ‘wife’ means legally wedded wife.¹⁹ The marriage between the wife and the husband against whom the maintenance has been ordered shall not be void i.e., shall not violate Section 5(i), (iv), and (v)²⁰ of the Hindu Marriage Act, 1955. A wife whose marriage has been annulled under Section 11 and Section 12²¹ of the Hindu Marriage Act, 1955, is not entitled to maintenance.²²
- The purpose behind granting the right of maintenance is to maintain the stand of a woman in society by securing her financially and with the basic need of life. Thus, women who are able to maintain themselves on their own are precluded from availing the right of maintenance.²³ If the court is satisfied that the wife is unable to maintain herself only then she can be made entitled to the maintenance from her husband.²⁴ The mere possession of educational qualification by a wife cannot itself be a factor to conclude that she can maintain herself, the Karnataka High Court held in the case of *RD Rajeev v Roopa*²⁵. Further, the court remarked, “Giving maintenance to the wife is not merely a pleasure for the husband but it is the duty of the husband to maintain his wife, who herself is

¹⁷ *Arshiya Rizvi And Anr. v State of U.P. And Anr.*, (2022) Criminal Revision No. 763/2018

¹⁸ *Boli Narayan Pawye v Smt. Shiddheswari Morang* (1981) CriLJ 674

¹⁹ *Gangotri Chakravorty* (n 12)

²⁰ Hindu Marriage Act, 1955, s 5(i), (iv), and (v)

²¹ Hindu Marriage Act, 1955, ss 11 and 12

²² *Krishan Gopal v Usha* (1982) Cr LJ 901

²³ Code of Criminal Procedure, 1973, s 125(1)

²⁴ Hindu Marriage Act, 1955, s 25(1)

²⁵ *RD Rajeev v Roopa* (2014) R.P.F.C No. 133/2014

unable to maintain herself." A person being unable to maintain herself cannot be equated with her capacity to earn her livelihood. Though the person may be educationally well qualified for any job or may be eligible to perform a particular job, or may be capable to apply for any post or job, still, she may be unable to maintain herself.

- A wife is not entitled to any maintenance if she resides separately from the husband or refuses to do so without any sufficient reason.²⁶ She can avail the right of maintenance while living separately only in the circumstances of desertion, cruelty, conversion, adultery, and second marriage committed by the husband, or under any ground which is justified in the eyes of the law.²⁷ Moreover, the law has put the husband at the liberty that he can put an offer to maintain his wife on the condition of her living together with him.²⁸ The Gauhati High Court observed "Although the wife left the house tangibly on her own yet the circumstances, as appears from the evidence, are such that the wife had to leave the house of the husband under compelling reasons due to the torture meted out to her although such fact was not disclosed in so many words in her petition. No attempt by the husband to take her back and also not providing maintenance during her separate stay for a long time is indicative of lack of persuasion on his part although an effort to persuade would have been the course usually adopted by any husband."²⁹ In the case of *Partha Pratim Basak vs Arundhuti Basak*,³⁰ the wife left her matrimonial home and went to live at her father's place. It was held that the wife is not entitled to claim any maintenance in view of the provisions of Section 125(4)³¹ of the Cr. PC.
- This wife is entitled to alimony during her lifetime.³² However, the wife shall cease to claim any maintenance after she re-marries or has not remained chaste.³³ The Bombay High Court in *Pandurang Bakru Nathe vs Leela Pandurang Nathe & Anr*³⁴, observed with regard to the provision under Section 125 (4) of the Cr.P.C. "living in adultery in the

²⁶ Code of Criminal Procedure, 1973, s 125(4)

²⁷ Hindu Adoptions and Maintenance Act, 1953, s 18(2)

²⁸ Code of Criminal Procedure, 1973, s 125(3)

²⁹ *Pradip Das (Sarkar) v Uma Sarkar* (2020) 2 Gau LR 471

³⁰ *Partha Pratim Basak v Arundhuti Basak* (2007) 4 CHN 1032

³¹ Code of Criminal Procedure, 1973, s 125(4)

³² Hindu Adoptions and Maintenance Act, 1953, s 18(1)

³³ Hindu Marriage Act, 1955, s 25(3)

³⁴ *Pandurang Bakru Nathe v Leela Pandurang Nathe & Anr.*, (1998) 1 BomCR 165

sense in which it is used in section 125 Cr. P.C. connotes a wife living perpetually or semi perpetually as a wife with a male, other than her husband and having sexual relations with him. Sporadic instances of a sexual relationship between a wife and a person other than her husband, would not fall within the ambit of the expression 'living in adultery.' It is only a wife living in adultery who is not entitled to maintenance under section 125(4) Cr. P.C.; a wife who is occasionally guilty of committing adultery would not forfeit her claim for maintenance under the said section.

In the case of *Ramsaran v Soman Wati*³⁵, Tekchand, J observed "Living in adultery is living together as husband and wife and exercising sexual rights and duties implied by such relation when legally created. Proof of occasional acts of illicit intercourse may fall short of what is intended by the expression „living in adultery“. It suggests a man and the wife of another living continually as husband and wife. Adulterous intercourse is a condition contemplating repetition of extramarital relationship when opportunity offers itself. It is a condition of cohabitation in contradistinction to occasional acts. The wife forfeits her right to be maintained on proof of repeated adulterous meetings."

MAINTENANCE OF MINOR WIFE

A marriage performed in violation of Section 5(iii) of The Hindu Marriage Act, is voidable at the option of the party.³⁶ There is no particular provision in the Hindu Law that regulates the status of the minor wife. The contravention of the provision of Clause (iii) of Section 5 of the Act may only result in the punishment as prescribed in Section 18 thereof, but the marriage between them below the age mentioned in Section(iii) will continue to be valid in law and enforceable in court, and will not become null and void.³⁷ The marriage in violation of Section 5(iii) of The Hindu Marriage Act is neither void nor voidable and as such wife is entitled to maintenance, even though both were minors on the date of marriage.³⁸ *A marriage which contravenes the condition specified in Clause (iii) of Section 5 of the Act is not declared to be void*

³⁵ *Ram Saran Parshotam Dass v Smt. Soman Wati W/O Ram Saran* (1964) 1 Cri.LJ 483 (Punj)

³⁶ Hindu Marriage Act, 1955, s 12 (1)(c)

³⁷ *Durjyodhan Pradhan v Bengabati* AIR 1977, Ori 36

³⁸ *Siya Ram v Munni Devi* (1983) 2 MC 415 (All)

by Section 11 or any other section of the Act. The omission to declare such a marriage to be void by the Legislature does not appear to be merely accidental.”³⁹

NON-COMPLIANCE WITH THE ORDER OF THE COURT

If any person does not comply with the order of the court or of the Magistrate to maintain his spouse, then the Magistrate may issue a warrant for levying the said amount to the wife or may sentence him to imprisonment for a month or until the payment is done.⁴⁰

CONCLUSION

The legislation and judicial pronouncements have tweaked the social status of women in society. The laws have been interpreted by the judiciary in a methodical approach. The recent findings and conclusions of the courts in India depict how strides are being taken for the better protection of the interests of women in society. These judgments have led to the evolution of the laws relating to ‘maintenance’. However, the contemporary era demands more toil on the ‘right to maintenance’. There is a call for statutes to widen their sphere to include not only married women but also cover those women who are not married and are cohabiting. There are no specific edicts that protect the rights of women in live-in-relationship. Moreover, the right to maintenance of widows also is the least broached in the Indian Laws. The provisions for the maintenance of widows are vague and need elucidation. There are many more domains that the Indian Legislature is yet to cover. On the other hand, the ‘right to maintenance’ has kept women on the verge of primacy. This can lead to misuse of the rights and therefore apt checks and balances must be placed in order to elude the chances of misapplication of the rights.

³⁹ *Mst. Premi v Daya Ram* AIR 1965, HP 15

⁴⁰ Code of Criminal Procedure, 1973, s 125(3)