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Is Wife entitled to Maintenance under different Statutes - A Critical Analysis

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Destiny is thought to predetermine marriages, which are believed to be predetermined in heaven. With time, however, man has assured that this union is governed by a thread of laws. These laws control all aspects of the institution of marriage, from its formation to its dissolution. The whole idea of maintenance was created so that if one spouse is not financially independent, the other spouse would offer financial assistance so that the dependent spouse can survive. The purpose of this article is to establish the nature and extent of alimony and maintenance of wife, widow, and dependent under the Hindu Adoption and Maintenance Act 1956 and Section 125 of the CrPC. In addition, a trial has been conducted to identify gaps in the basic maintenance rules controlling the apex of the Hindu family, and adequate remedies have been supplied. The issue of overlapping jurisdiction has been discussed as also how the Rajnesh v Neha case became a revolutionary shift in the legal process of determining maintenance.

Keywords: *maintenance, marriage, hindu adoption and maintenance act, section 125.*

OVERVIEW OF MAINTENANCE IN HINDU LAW

The legal right of a husband to support his wife financially if she cannot do so either during the course of their marriage or after it has terminated in divorce is referred to as "maintenance." The maintenance of the children, wife, and anybody who depends on him may be governed by various regulations. The Family Courts, which were established by the regulations specified in

the Family Courts Act, which was approved in 1984, have jurisdiction over these laws. The Acts are listed as follows:

CODE OF CRIMINAL PROCEDURE 1973

Section 125¹-128² of the Code of Criminal Procedure governs the provision relating to maintenance under this act. According to these sections of Cr PC, if a husband neglects or refuses to provide for his wife, children, and any other person dependent on him can claim maintenance. For wives, children, and dependent parents, these sections provide a speedy and affordable remedy. Under these sections, the separated wives are also eligible for maintenance within this clause in addition to legally married women. A woman cannot make a maintenance claim when she is cohabiting with another man, is under adultery, declines to live with her spouse for whatever reason, or marry again. Any maintenance request may be rejected by the husband for any of the reasons listed above.

Under this rule, maintenance is available exclusively to the woman instead of the man. The Supreme Court held in *Savitaben Somabhai Bhatiya v State of Gujarat*³ that the word "wife" in Section 125(1)⁴ only refers to a lawfully married wife. Women who are not married by the law are not permitted to be referred to as "wives," nor are they permitted to utilize the provisions of Section 125 to receive maintenance. The Supreme Court, therefore, held in the cases of *D. Velusamy v D. Patchaiammal* and *Chanmuniya v Virendra Kumar Singh*⁵ that a "wife" includes a woman who has been divorced or sought a divorce from her husband and has not remarried. In such instances, the woman may seek maintenance from her husband. In ***Badshah v Urmila Badshah Godse and Another***⁶, The Supreme Court of India ruled that a second wife is entitled to maintenance under section 125 CrPC if the husband concealed his prior marriage from her.

¹ Code of Criminal Procedure 1970, s 125

² Code of Criminal Procedure 1970, s 128

³ *Savitaben Somabhai Bhatiya v State of Gujarat* Appeal (Crl) 399/2005

⁴ Code of Criminal Procedure 1970, s 125(1)

⁵ *D. Velusamy v D. Patchaiammal and Chanmuniya v Virendra Kumar Singh* (2010) 10 SCC 469

⁶ *Badshah v Urmila Badshah Godse and Another* (2014) 1 SCC 188

HINDU ADOPTION AND MAINTENANCE ACT, 1956

Maintenance, according to Section 3(b)⁷ includes: Provision for food, clothes, housing, education, and medical attention and treatment made in all cases. In the event of an unmarried daughter, the reasonable expenditures of a marriage-related event. Interim maintenance: Under Section 24⁸ a husband and a wife with no independent income to support themselves can apply to the Court.

Permanent Maintenance: Maintenance under Section 25⁹ - the applicant who may be either the husband or the wife, is eligible to receive maintenance from their spouse in the form of either a single payment amount or even a monthly payment for a duration that does not extend beyond the claimant's lifespan or up until the claimant remarries. This eligibility is in effect until the claimant remarries.

ISSUE OF OVERLAPPING JUDGEMENT: SUDEEP CHAUDHARY V RADHA CHAUDHARY

The Supreme Court expressed concern about the fact that multiple High Courts around the country have rendered decisions that conflict with one another on the issue of overlapping jurisdiction. It has been held by some high courts, including the Madhya Pradesh High Court and the Calcutta High Court, that because each process filed by the parties was distinct and independent of the other, any maintenance that was awarded in one proceeding cannot be adjusted or set-off in the other proceeding.

On the other hand, the Bombay High Court and the Delhi High Court determined that adjustment or set-off must take place in the context of simultaneous maintenance proceedings. As a consequence of this, the Supreme Court has given the following directions to address the law on overlapping jurisdiction and avoid contradicting judgements in different procedures. The appropriate court may take into account an alteration or set-off of the amount granted in

⁷ Hindu Adoption and Maintenance Act 1956, s 3(b)

⁸ Hindu Marriage Act 1955, s 24

⁹ Hindu Marriage Act 1955, s 25

the prior proceeding/s in determining whether any further amount is to be awarded in the subsequent proceeding; applicants are required to disclose all previous proceedings and the orders passed therein in any subsequent proceeding; if the order passed in the previous proceedings.

The Supreme Court recommended adjustment in *Sudeep Chaudhary v Radha Chaudhary*¹⁰, a case in which the wife applied Section 125¹¹ of the Cr.P.C. and HMA Act. She had secured a maintenance order in the S. 125 proceedings. Following that, the wife claimed alimony in court under the HMA Act. The woman began recovery proceedings after the husband failed to pay the granted maintenance. The Supreme Court ruled that maintenance provided under Section 125 of the Cr.P.C. must be balanced against the amount ordered in the divorce proceedings under the HMA Act and cannot be paid more than that amount.

RAJNESH v NEHA: A REVOLUTIONARY SHIFT IN THE LEGAL PROCESS OF DETERMINING MAINTENANCE

In *Rajnish v Neha*¹², a division bench of Justice Indu Malhotra and Justice R. Subhash Reddy issued instructions on some areas of marital maintenance payment. These guidelines were created to handle numerous concerns that emerged in connection with applications for maintenance grants. The Hon'ble Court believed it was important to establish rules to maintain consistency in resolving maintenance issues.

Facts of the case:

The wife petitioned for Interim Maintenance under Section 125¹³ of the Code of Criminal Procedure. The wife and son were given interim support by the Family Court. The spouse filed a Writ Petition in the Bombay High Court, challenging the Family Court's decision. The current Criminal Appeal was filed in the Supreme Court to challenge the ruling of the Bombay High

¹⁰ *Sudeep Chaudhary v Radha Chaudhary* AIR (1999) SC 536

¹¹ Code of Criminal Procedure 1970, s 125

¹² *Rajnish v Neha* Criminal Appeal No 730/2020

¹³ Code of Criminal Procedure 1970, s 125

Court. The Supreme Court upheld the Family Court's decision and ordered the husband to pay the whole arrears of support within 12 weeks of the date of this judgment.

DIRECTIONS/GUIDELINES ON MAINTENANCE

The Supreme Court decided to issue maintenance guidelines after considering the case's background, which included the application for interim maintenance being pending before multiple courts for seven years. These guidelines would cover overlapping jurisdiction under various enactments for payment of maintenance, payment of Interim Maintenance, the criteria for determining the quantum of maintenance, and the date from which maintenance is to be awarded.

The Issue of Competing Jurisdiction

In terms of overlapping jurisdiction, the Court established three guidelines:

- In a maintenance case, when a party makes repeated claims for maintenance under distinct laws, the Court may consider adjustments or set off the amount granted in the prior proceedings.
- The applicant must reveal the prior proceedings as well as the orders issued in that proceeding.
- If the order issued in the previous procedure(s) needs revision or modification, it must be done in the same action.

INTERIM MAINTENANCE PAYMENT

The court noted that in the majority of instances, interim maintenance petitions had been pending for many years. The fundamental purpose of the statutes is defeated if petitions for maintenance remain in uncertainty for several years. Therefore, the Court concluded - The Family Court is obligated to attempt to resolve the conflicts. The Family Courts should arrange for the appointment of marital counsellors in every Family Court, given the high proportion of matrimonial cases. This appointment would facilitate the resolution of marital disagreements. The party claiming maintenance as a married couple, or as a companion in a civil union, live-in

relationship, or common law wedding, should be required to submit a clear and precise application for the interim maintenance with limited pleadings, as well as an Official document of Disclosure of Assets and Liabilities, with the court. This Testimony would then be utilized by the relevant Court to make an unbiased assessment of the estimated total to be granted for interim maintenance.

About Permanent Maintenance, the court ruled that the parties may provide oral and written information regarding their income, expenditures, style of living, etc. to the appropriate court to determine the permanent alimony owed to the spouse. The length of the union should be considered when establishing the amount of permanent maintenance to be paid. If there are trust funds or investments formed by a spouse or grandparent for the benefit of their children, this must also be included when determining the ultimate amount of child support.

STANDARDS FOR CALCULATING THE AMOUNT OF MAINTENANCE

The Court determined that there is no hard and fast rule for determining the amount of maintenance that must be paid. The granted amount of maintenance must be fair and adequate. Determining an amount that will allow the wife to live in decent comfort is the first concern. The amount of maintenance that must be paid was also determined based on the criteria set out by the Court. The parties' age range and current employment statuses will be taken into account when determining alimony. For example, if the wife is the primary caregiver for the couple's minor children and/or elderly relatives, she will be considered to have sacrificed her career opportunities to meet the family's needs during the marriage's final stages.

Right to reside: 'Shared Household' is defined in Section 2(s).¹⁴ The court ruled that the harmed lady must be allowed to remain in the joint residence with some regularity. Sharing a residence requires more than just passing through the same door at different times. To evaluate whether the premises are a shared home, one must look at the parties' aim, way of life, and household composition. When the woman has a job, the court will not deny her maintenance payments because she is financially independent. This ruling is based on the precedents set by numerous

¹⁴ Protection of Women from Domestic Violence Act 2005, 2(s)

different High Courts. The Court must decide whether the wife's earnings are enough to support her in the marital home at the same standard of living as her husband.

Supporting a minor is paying for the child's basic needs such as food, clothes, shelter, healthcare, and education. The cost of supplementary education, such as tutoring or vocational programs, must be taken into account when determining the amount of child support to be paid. The father is traditionally expected to foot the bill for his children's educational costs. The couple could split the costs evenly if the woman had a stable job and adequate income.

Severe disability or illness: If one spouse or any of the couple's children or other dependent relatives has a severe disability or illness and needs ongoing care and financial support, this should be taken into account when determining the amount of maintenance to be paid. The Court emphasized, however, that the above considerations are not complete and that the relevant Court may, at its discretion, take into account any additional considerations that may be required or relevant under particular circumstances.

Commencing date for Maintenance: The court determined that maintenance must be given as of the day the application was filed with the relevant court. The entitlement to claim maintenance must trace back to the day the application was filed since the applicant has no control over the time during which the maintenance proceedings were pending.

Enforcement of maintenance orders: The Court emphasized that execution petitions often lay pending for months, therefore negating the purpose of the provision. As a result, the Court ruled that an application for implementation of a Maintenance Order/Decree might be submitted under the following clauses –

- Hindu Marriage Act Section 28A¹⁵
- Section 20(6) of the 2005 Act to Protect Women from Domestic Violence.¹⁶
- Code of Criminal Procedure Section 128.¹⁷

¹⁵ Hindu Marriage Act 1955, s 28A

¹⁶ Protection of Women from Domestic Violence Act 2005, 20(6)

¹⁷ Code of Criminal Procedure 1970, s 125

The judgment or decree of maintenance may be executed similarly to a civil court decree, using the measures available for implementing a money decree, such as civil detention, attachments of property, and so on. Striking off the respondent's defence is a last resort order that should be issued if the Courts judge the failure to pay maintenance to be willful. Contempt proceedings for willful disobedience may also be filed in front of the proper Court.

CONCLUSION

Therefore, the fact that a woman may claim maintenance under several statutes is well-established. As an instance, it is not prohibited to request maintenance under the D.V. Act, Section 125 of the Cr.P.C., or the H.M.A Act. To order the spouse to pay maintenance in each petition, regardless of the relief awarded in a prior proceeding, would be unfair. If the woman receives maintenance in a prior case that was started, she has a legal duty to reveal that fact in a later proceeding for maintenance that may be brought under a different law. The civil court or family court will consider the maintenance granted in any previously initiated process when determining the amount of maintenance to be paid to the claimant in the succeeding procedure.