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Granting of Maintenance for Women under Hindu and Muslim Laws and Property Rights in Christian Laws

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ABSTRACT

This paper deals with the commission of maintenance for women in the Hindu, Muslim Religion and Right to property in Christian religion.

Also, the paper is about how each and every personal law treats women respective of their religion as to the shares of them in their respective household and how the law commands the people of a particular religion to divide the properties for the women or the widow if the husband has passed as away or how much proportion of the property needs to be granted to the woman children of a household if the father is dead or if there are any sons in the household.

This research is done using the prevailing family laws of the Hindu, Muslim and Christian laws like the Hindu adoption and Maintenance Act, 1956 for the Hindus, for the Muslim the Nafqah also known as maintenance in the Islam.

This paper discussed the property rights vested with the women in a Christian household and which laws are they governed under to be given equal right in property of the family

Also various recent judgments have been referred throughout the paper to substantiate the claims made in this research paper and many have been suggested to make the laws more rigid.

Keywords: *Hindu marriage Act, 1955, Hindu adoption and Maintenance Act, 1956, Protection of Women from Domestic Violence Act, 2005, Criminal Procedure Code (CrPC), 1973, Muslim woman (protection of rights on divorce) Act, 1986.*

I. INTRODUCTION

Maintenance as described in the Hindu adoptions and maintenance Act, 1955 is the act of providing for food, clothing, shelter, education or medical expenses. Basically it is the financial support that is offered by the father or the husband of a daughter and wife respectively.

When does the liability to maintain a woman occurs generally?

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The liability to maintain a person generally arises under certain relationship or certain category of persons or under certain circumstances. The concept of maintenance has nothing to do with the acclamation of property, the subject matter of property is very different from granting of maintenance.

II. GRANTING OF MAINTENANCE UNDER SPECIAL LAWS

The sections you are referring to seem to be part of the legal provisions related to matrimonial laws in India. Section 36 appears to deal with interim maintenance, while Section 37 pertains to the provision of permanent alimony.

Section 36 of this secular legislation in India outlines the provision for pendente lite maintenance, which is temporary financial support that a wife can claim during the ongoing legal proceedings of a matrimonial dispute if she lacks adequate independent income to sustain herself and cover legal expenses. This maintenance can be provided on a weekly or monthly basis and is determined by the court based on the husband's income and other relevant factors. It is meant to support the wife during the duration of the matrimonial proceedings.

On the other hand, Section 37 deals with the concept of permanent alimony, which is a more long-term provision. It refers to a consolidated payment that the husband is directed to provide to the wife as part of the final settlement or decree in a divorce or matrimonial case. This payment is meant to assist the wife with her maintenance for life or for an extended period after the divorce is finalized.

Both provisions aim to address the financial needs of the wife during different stages of matrimonial proceedings - Section 36 for temporary support during the legal process, and Section 37 for a more permanent arrangement after the divorce or finalization of matrimonial proceedings.

These legal provisions aim to ensure that spouses, especially wives who may have been financially dependent during the marriage, are provided with adequate financial support and maintenance as per the circumstances of the case and the financial capacity of the husband.

(A) Protection of Women from Domestic Violence Act, 2005

The Domestic Violence Act extends assistance to women facing domestic abuse. Sections 17 and 19 specifically offer an aggrieved woman the right to reside in a "shared household," regardless of her legal ownership of the property. The law clarifies that the ownership of the household need not solely belong to the aggrieved person or the respondent, and it can be a joint family property wherein the respondent is a member.

However, the right to reside under Section 19 is not absolute, particularly when a daughter-in-law claims this right against elderly parents-in-law. Courts are mandated to strike a balance between the rights of the aggrieved woman and the rights of the parents-in-law while granting relief under the DV Act or any civil proceeding.

Section 20(1)(d) allows for maintenance granted under the Act to be additional to any maintenance awarded under Section 125 of the Cr.P.C. or other prevailing laws. Furthermore, Section 20(6) empowers the Magistrate to direct the employer or debtor of the respondent to pay the aggrieved person, or deposit a portion of the respondent's wages or debt with the court to offset the monetary relief owed.

Additionally, Section 22 enables the Magistrate to order the respondent to compensate for injuries, encompassing mental distress caused by domestic violence. Section 26 extends the relief available under various sections of the Act to be sought in legal proceedings before Civil, Family, or Criminal Courts.

Lastly, Section 36 clarifies that the Domestic Violence Act is supplementary to other prevailing laws and does not override them.

III. MAINTENANCE UNDER HINDU MARRIAGE ACT, 1955

Sections 24 and 25 of this secular legislation establish provisions for providing maintenance to a party who lacks sufficient independent income to support themselves and cover necessary expenses. Notably, this provision is impartial to gender, allowing either the wife or the husband to claim maintenance. A key condition is that the applicant must lack adequate independent income to sustain themselves during the ongoing legal proceedings.

Section 24 of the Hindu Marriage Act (HMA) specifically addresses maintenance pendente lite, where the court can instruct the respondent to cover the expenses related to the legal proceedings and pay a reasonable monthly amount deemed appropriate based on the income of both parties. An amendment via Act 49 of 2001, effective from September 24, 2001, introduced a proviso to Section 24, stipulating a timeline of 60 days for the disposal of such applications.

Additionally, Section 26 of the HMA empowers the court to issue interim orders regarding the custody, maintenance, and education of minor children at various intervals.

(A) Status of second wife in maintenance

Interim maintenance under Section 24 of the Hindu Marriage Act (HMA) does not explicitly address maintenance for second wives. However, through extensive judicial interpretation, courts have recognized the right of second wives to seek maintenance under this section. The

case of **Laxmibai v. Ayodhya Prasad** highlighted that the terms "wife" and "husband" in Section 24 of the HMA should not be narrowly construed to refer only to legally married spouses. This interpretation includes couples who consider each other as spouses.

Section 25 of the Hindu Marriage Act, 1955 deals with permanent alimony. Courts have extensively interpreted this provision to safeguard the rights of second wives. Even if a marriage is declared null by the court due to the existence of another wife (prior or subsequent), the second wife can still claim maintenance under this section.

Rajesh Bai v. Shantabai established that a woman whose marriage is declared void due to the presence of another wife is entitled to seek maintenance from her husband under Section 25.

Section 20 of the Hindu Adoption and Maintenance Act, 1956 (HAMA) provides recourse for second wives to seek interim protection from the court. **Kulwant Kaur alias Preeti v. Prem Nath** clarified that based on the case's circumstances, a woman could seek interim maintenance under Section 20 of HAMA.

Under the Hindu Women's Rights to Separate Residence and Maintenance Act, 1946, a married Hindu woman can claim maintenance if her husband had entered into another marriage before the introduction of this act. Section 18 of HAMA outlines various grounds upon which a Hindu woman can seek maintenance from her husband, both before and after the Act of 1956.

The phrase "any other wife living" in legal contexts has been extensively interpreted by different High Courts. In **Satyanarayana v. Seetheramama**, the A.P. High Court clarified that "wife living" simply denotes the existence of the wife and does not necessarily require her to live with the husband. However, the Madras High Court, in **Annamalai Mudaliar v. Perunayee Ammal**, asserted that "wife living" implies cohabitation with the husband. The Bombay High Court, in **Mani Bai v. Mukundrao**, distinguished from the Madras High Court's ruling and held that under Section 18 of HAMA, the second wife has the right to claim separate residence and maintenance from her husband.

IV. MAINTENANCE UNDER MUSLIM LAW

Under Muslim law, a husband holds the responsibility to provide maintenance, termed as Nafaqa, for his wife and family, encompassing provisions for food, clothing, and shelter. This obligation remains intact regardless of whether the wife possesses her own means of sustenance. Moreover, the marriage contract may specify additional payments, such as Kharch-e-pandan, Guzara, Mewa Khore, etc., which the husband is obligated to provide to the wife. These allowances are considered a right and can be claimed by the wife as per the terms agreed upon

in the marriage contract.

There are totally three sources from which these rights comes from:

- 1) Muslim personal law
- 2) The Muslim Women (protection of rights on divorce), 1986
- 3) Section 125, Criminal procedure code, 1974

(A) Muslim Personal Law:

Under Muslim Personal Law, a woman's entitlement to maintenance lasts only until the completion of the Iddat period. Iddat signifies the period following the termination of cohabitation between spouses, and upon its expiration, the spouses are considered divorced. This duration typically spans three menstrual cycles or three lunar months. For pregnant women, the Iddat period extends until delivery. This presents a conflict since the Criminal Procedure Code (CrPC) does not acknowledge the Iddat period, and maintenance is extended beyond this period.

In the case of **Mohammed Haneefa v. Mariam Bi**, the Court established that in case of a conflict between personal law and CrPC, the former takes precedence. The Supreme Court further upheld this position in *Saira Bano v A.M Abdul Gafoor*.

To address this legislative dilemma, Section 127(3)(b) was introduced. According to this section, if a divorced woman receives an amount in accordance with customary or personal laws of the community, the magistrate has the authority to cancel any maintenance order in her favor.

(B) The Muslim Women (Protection Of Rights On Divorce), 1986:

Section 125 of the Criminal Procedure Code (CPC) of 1973 authorizes Magistrates to grant maintenance to women. The term "wife" under this section includes a divorced wife. Therefore, any woman who has been divorced or has obtained a divorce from her husband and has not remarried can seek maintenance from her former husband if she is unable to support herself and her husband has the means to provide maintenance but has failed to do so. Upon the wife's application, the Magistrate can order the husband to pay a monthly allowance, which is capped at a maximum of Rs. 5000. If the husband fails to comply with this order, the Magistrate can issue a warrant for the unpaid amount. Continued evasion may result in the husband's imprisonment for up to one month or until payment is made, whichever comes first.

Section 127(3) outlines conditions for the cancellation of the maintenance order, such as if the wife remarries, receives the full customary or personal law stipulated amount upon divorce, or voluntarily surrenders her right to maintenance after divorce.

The pivotal judgment that transformed the approach to Muslim women's rights in India was **Mohd. Ahmad Khan vs. Shah Bano**. The Supreme Court ruled that a Muslim husband is responsible for providing maintenance to a divorced wife who is unable to support herself. Additionally, the court clarified that deferred dower (mahr) cannot be considered maintenance. The judgment stirred widespread protests among Muslims in the country, seen as interference in their Personal Law. This controversy led to the enactment of the Muslim Women (Protection of Rights on Divorce) Act in 1986.

A suitable maintenance and support should be provided to the Muslim woman (protection of rights on divorce) Act, 1986, specifically section 3(1)(a), which states that the previous spouse must provide her reasonable maintenance and support during the iddah period. The state Waqf board will pay the woman money if she is living alone, has no family or relatives nearby to take care of her needs and necessities, and has no means of supporting herself financially or otherwise. Thus, the primary motivation for and goal of this act was also one of its disadvantages, as it restricted her spouse's ability to settle the subsistence living amount until Iddah.

V. RIGHT TO PROPERTY UNDER CHRISTIAN LAWS

1. Wife and Widow's Property Rights:

Christian law states that a wife may apply for divorce from her husband if she is not receiving maintenance from him. A widow is entitled to inherit one-third of her husband's estate after his death. Kids receive the remaining portions of the land. In the event that she has no children, she will inherit half of her husband's estate. The least amount that a widow can inherit from her deceased spouse is capped by Christian law at ₹ 5,000.

2. Property rights of a daughter:

In a Christian household, a girl receives the same amount of her parents' assets as her siblings do. Until she marries a man, she is allowed to live on her parents' property and get maintenance from them. Her husband is accountable for upholding her needs after marriage.

A daughter's father is her natural guardian while she is a minor. She now has ownership rights over her property as an adult.

3. Property rights of mother:

A woman is independent of her children, according to Christian law's definition of women's property rights. A mother is also not eligible for maintenance. On the other hand, the mother is entitled to one-fourth of his property if her child passes away and doesn't have any offspring.

Hindu law is identical to the inheritance provisions for remarried widows, divorcees, and second wives.

Every woman should be aware of her property rights in order to protect herself during difficult financial circumstances and avoid losing possessions that she is entitled to. Therefore, carefully review the information about women's property rights in India that pertains to each group in order to prevent any future problems during property distribution.

VI. COMPARATIVE ANALYSIS BETWEEN COUNTRIES IN GRANTING OF MAINTENANCE

1) European Union (EU)

Regulation 4/2009, sometimes referred to as "the Maintenance Regulation," governs the acceptance and execution of maintenance orders in EU member states. Its goal is to assist a maintenance creditor (applicant) in establishing an order that may be enforced within the European Union in a simple, fast, and usually cost-free manner. It accomplishes this by establishing uniform guidelines for jurisdiction, relevant legislation, acknowledgment, compliance, enforcement, and standardized paperwork. It addresses maintenance duties resulting from Ties within families, Maternity, Fidelity or affinities.

It implies that someone who has an Irish court order requiring maintenance payments is entitled to pursue recovery of that sum in another EU nation. The same assistance is offered to individuals in Ireland.

2) Islamic Country:

a. Egypt:

However, Egyptian Family Law allows women to sign their own marriage contracts without the help of a guardian. If there are no children born from the marriage, the guardian may petition for the marriage to be dissolved due to the unsuitability of the husband. There is still polygamy. In exchange for a husband's obligation to provide maintenance, a wife must submit to her husband. Husband does not have to make a case before a judge or court in order to unilaterally dissolve the marriage. Modern law nevertheless mandates that a marriage dissolve be officially registered. A woman may also file for divorce or separation under specific legal grounds.

b. Pakistan:

In the case of **Haseen Ullah vs Naheed Begum**, the Supreme court of Pakistan referred to the holy Quran. It laid its emphasis and reliance on the Chapter 4 verse 34 of the book. Further the SC decided that the wife is only determined to claim maintenance only when she is faithful to

her husband if she does the other ay so, she is not entitled to do so.

As the wide world knows that Pakistan is a patriarchal country and it follows a gendered labour. Granting maintenance for the wives or parents has become unequal. Therefore the SC has ordered the husband dot give maintenance in return for the wife's matrimonial obligations.

VII. CONCLUSION

This paper totally sums up how does a maintenance in a family works and how and when it is granted to a women or a child in a household. This paper comparatively analyses the laws prevalent in the special laws as well as in the personal laws prevalent over the country, also it compares the laws for maintenance in different countries around the world which makes it easier for our country to implement any necessary changes in our law by inferring them.

However there are already substantiated laws for the country, but still some are biased on the religion part, if the Union civil code is to be implemented then it would be a humongous achievement in the arena of providing parental, wife and children maintenance.

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