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Laws Relating to Maintenance in India: An Analysis

DR. S. MANJULA¹

ABSTRACT

The provisions for maintenance under various laws are intended to fulfil a social purpose. These provisions are contained in various personal as well as secular laws. The personal laws relating to maintenance is different from one religion to other religion. Whereas, the secular laws like, Criminal Procedure Code, 1973 and the Protection of Women from Domestic Violence Act 2005 have provided relief to the aggrieved irrespective of religion. The object of all these provisions is to compel a man to perform the moral obligations, which he owes to the society in respect of his wife, children and parents. Hence, this article is an attempt to highlight the laws available to the aggrieved parties to claim maintenance under various circumstances.

Keywords: Maintenance, Personal Laws, Secular Laws, Wife, Husband.

I. INTRODUCTION

Maintenance refers to payments which a husband is under an obligation to make to a wife either during the subsistence of the marriage or upon separation or divorce, under certain circumstances. The liability of the husband flows from the bond of matrimony. A wife is entitled to claim maintenance under the personal laws as well as secular laws like the Code of Criminal Procedure, 1973 and the Protection of Women from Domestic Violence Act, 2005. While under the personal laws an application for maintenance can be made only if there are, or have been, matrimonial proceedings under the Act, in case of Code of Criminal Procedure, 1973 there need not be any matrimonial litigation and yet the wife may seek maintenance. This paper is an attempt to analyse the statutory position of maintenance under various laws of India.

II. MAINTENANCE UNDER THE PERSONAL LAWS OF INDIA

(A) Hindu Law:

In Hindu law, there are two statutes which provide for maintenance, viz., the Hindu Marriage Act, 1955 and the Hindu Adoptions and Maintenance Act, 1956.

¹ Author is an Assistant Professor (SG) at The Tamil Nadu Dr. Ambedkar Law University, Chennai, India.

a. Maintenance under the Hindu Marriage Act, 1955:

The Hindu Marriage Act has provided two provisions for maintenance in which either the wife or the husband, as the case may be, who has no sufficient income for her or his support may apply for maintenance. The provisions for maintenance under the Hindu Marriage Act are as follows:

- Maintenance Pendente Lite and Expenses of Proceedings (Section 24)
- Permanent Alimony and Maintenance (Section 25)

b. Maintenance Pendente Lite and Expenses of Proceedings:

Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioners own income and the income of the respondent, it may seem to the court to be reasonable². Quick disposal is required if any petition is filed under this section³.

i. Case Laws relating to Maintenance Pendente Lite:

In *Chitra Lekha v. Ranjit Rai*⁴, it was emphasised that the purpose of Section 24 is to provide financial aid to the indigent party so that they can maintain themselves during the pendency of the litigation and not suffer due to financial crises. In *Gulab Chand v. Sampati Devi (1986)*, the wife applied to the Court for maintenance and was granted maintenance for herself and her minor children, who were living with her and dependent upon her. In such cases, the Court held that maintenance could be awarded to both the spouse and the children.

In *Smt. Kanchan W/O Kamalendra Sawarkar v. Kamalendra Alias Kamalakar*⁵, the husband sought maintenance from his wife, claiming he was unemployed and idle. On the other hand, the wife was employed and had to support their child. The Court held that maintenance pendente lite would not be granted to the husband as he did not meet the criteria of being mentally or physically disabled and unable to support himself. Granting maintenance to a person capable of earning would promote idleness.

² Sec.24 of the Hindu Marriage Act, 1955.

³ The application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be. Inserted by the Marriage Laws (Amendment) Act, 2001.

⁴ AIR 1977 DELHI 176.

⁵ AIR 1992 BOM 493.

It is significant to note that the words used in sec.24 are "where in any proceedings under the Act". Thus it could be proceedings for any relief. Proceedings for maintenance pendente lite are not dependent on the merits of the main case. Thus, in *Sandeep Kumar v. State of Jharkhand*⁶, where a husband had filed a petition under sec. 12 of the Act for declaration that the marriage was null and void, his plea that no maintenance under sec. 24 could be ordered was rejected. The court held that so far as sec. 24 is concerned the wife's right to seek maintenance is not affected and it is immaterial whether the main petition is under sec. 12 or it is under sec. 13.

c. Permanent Alimony and Maintenance⁷:

Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on the application made to it for the purpose by either the wife or the husband as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a sum not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and property of the applicant, the conduct of the parties and other circumstances of the case, it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

i. Case Laws relating to Permanent Maintenance:

In *Savitaben Somabhai Bhatiya v. the State of Gujarat and Ors*⁸, the Supreme Court held that if a marriage is void of bigamy, the wife is not entitled to maintenance under the Hindu Marriage Act. It is important to note that the Court exercises its discretion in determining the amount of maintenance or alimony based on the facts and circumstances of each case, ensuring that justice is served and the needs of the parties involved are considered.

In *Dr. Kulbhushan Kumar v Raj Kumari & Anr*⁹, it was held by the Court that 25% of the current salary of the husband should be kept for maintenance.

In *Umarani v D. Vivekanandan, (2000)*, the parties filed for divorce under Section 13 of the Hindu Marriage Act. The petitioner applied for interim alimony and other expenses under Section 24 of the Act. She argued that her husband(respondent) deserted her and her child, and was capable enough to pay for her maintenance. A question arose, whether a written application is needed under Section 25 to claim alimony and maintenance. Hence, the Court granted monthly maintenance to the petitioner and her child and held that a written application is not

⁶ AIR 2004 JHAR 23.

⁷ Sec 25 of the Hindu Marriage Act, 1955.

⁸ AIR 2005 SC 1809.

⁹ 1971 AIR 234.

necessary under Section 25.

In *Patel Dharamshi Premji v Bhai Sakar Kanji (1950)*, both parties were married to each other and had a son. Soon, they separated, and the respondent (Bhai Sakar Kanji) went away to stay with her father. The issue was whether either of the parties can apply for maintenance after passing the order for divorce. The Court allowed the appeal and held that either the husband or wife can file for permanent alimony after passing the order for divorce under Section 25 of the Act. The Court also changed the order of the Lower Appellate Court and increased the amount of maintenance to be given to the son by the appellant.

Supreme Court's recent guidelines regarding Maintenance:

In the case of *Rajnesh v Neha*¹⁰, a Family Court had ordered Rajnesh (appellant) to pay interim maintenance to Neha (respondent). The appellant then approached the Supreme Court and contended that he was not in the position to pay for maintenance. The SC while delivering the judgment, laid down certain guidelines to regulate maintenance payments in matrimonial cases.

Let us summarize them:

- In India, there are various laws governing the right of maintenance. Hence, the Supreme Court observed that every maintenance proceeding shall be separately read, resulting in the multiplicity of proceedings. The person requesting maintenance shall mention whether he/she has been granted maintenance before in another proceeding.
- Further, the maintenance shall be granted from the date the application has been filed.
- Next, the court gave its observations regarding the quantum of payment. It stated that the details of the parties like, status, income, needs and wants, liabilities, job, age, etc. should be considered.
- The Apex Court mapped out three strategies for enforcing maintenance orders.

d. Maintenance under the Hindu Adoptions and Maintenance Act, 1956:

A Hindu wife has the advantage of an additional statute viz., the Hindu Adoptions and Maintenance Act, 1956. Under Sec.18 of this Act a Hindu wife is entitled to live separately from her husband without forfeiting her claim to maintenance, provided her separate living is justified which means that the husband: i) Is guilty of desertion; ii) Has treated her with cruelty; iii) Has any other wife living; iv) Keeps a concubine in the same house, or is living or habitually resides with a concubine elsewhere; v) Has ceased to be Hindu by conversion to another

¹⁰ AIR 2021 SC 569.

religion; or vi) If there is any other cause justifying living separately.

The section provides two specific bars which would disentitle a wife from claiming maintenance under this Act, viz., if she is unchaste or if she ceases to be a Hindu by conversion to another religion.

In a decision given by the Hon'ble High Court of Punjab and Haryana in *Avtar Singh vs. Jasbir Singh*¹¹, a lacuna in the position of Hindu Women qua their property and maintenance rights under the existing law was identified. In the said case, the Plaintiff was the wife of a man of unsound mind, who had sought 1/4th share in the land belonging to the family, from her father-in-law as maintenance for herself, her husband and her minor sons. The said share had been provided to her by her father-in-law through a family settlement before the Gram Panchayat, but the wife was later forcibly dispossessed of the land by her father-in-law and brother-in-law. Since the said property had been voluntarily given by the father-in-law to his son of unsound mind and his family through a family settlement, the substantial question of law regarding the legal obligations of the father-in-law in such situations was not raised and the case was decided on the basis of whether the said family settlement before the Gram Panchayat was required to be registered in order to effect the validity.

However, before parting with the case, the Ld. Judge made the following observations with regard to legal position of Hindu wives: "Before parting with judgment, it would be appropriate to mention that no provision has been brought to my notice by learned counsel for the parties that if husband is insane or of unsound mind, the daughter in law who is not having any source of maintenance can claim maintenance for herself. When she has to maintain her mentally ill husband, her condition is worse than being a widowed daughter in law. In such a situation, the wife should be deemed to be dependent upon the father-in-law and entitled to maintenance as provided under Section 19 of the Hindu Adoptions and Maintenance Act. Copy of this Order be sent to the Union Ministry of Law and Justice and Law Commission of India for taking appropriate measures for amendment in the Act."

(B) Maintenance under Muslim Law:

The personal law statutes governing a Muslim woman's right to maintenance are the Dissolution of Muslim Marriage Act, 1939 and the Muslim Women (Protection of Rights on Divorce) Act, 1986. The former Act provides for grounds under which a woman married under the Muslim law can seek dissolution of the marriage. One of the grounds provided is that the husband has neglected or has failed to provide for her maintenance for a period of two years. The latter Act,

¹¹ RSA No. 29/1988 (O&M), decision dated 11.02.2014.

as its very title indicates, makes provision for protection of rights of Muslim women who have been divorced by, or have obtained divorce from, their husbands, which includes right of maintenance as well.

As is evident from the above statutory provisions, maintenance could be interim or permanent. Interim or pendent lite maintenance is payable to meet the applicant's financial needs pending litigation as well as the litigation expenses. Permanent alimony is an amount fixed at the time of the passing of the decree or thereafter. This amount can be varied on the application of the parties if there is a change in the circumstances of the parties.

There is no limit as to the amount which may be awarded by way of maintenance which depends on the circumstances of each case.

(C) Maintenance under Christian Law:

Provisions for maintenance under the Christian law are contained in the Indian Divorce Act, 1869 as amended in 2001. The relevant sections are:

Sec 36. Alimony Pendente Lite in any suit under this Act, whether it be instituted by a husband or a wife, and whether or not she has obtained an order of protection, [the wife may present a petition for expenses of the proceedings and alimony pending the suit].

Such petition shall be served on the husband, and the court, on being satisfied of the truth of the statements therein contained, may make such order on the husband [for payment to the wife of expenses of the proceedings and alimony pending the suit] as it may deem just.

[Provided that the petition for the expenses of the proceedings and alimony pending the suit shall, as far as possible, be disposed of within sixty days of service of such petition on the husband].

Sec.37. Power to order permanent alimony: [where a decree of dissolution of the marriage or a decree of judicial separation is obtained by the wife, the District Court may order that the husband shall], to the satisfaction of the court, secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her own life, as having regard to her fortune (if any), to the ability of the husband, and to the conduct of the parties, it thinks reasonable, and for that purpose may cause a proper instrument to be executed by all necessary parties.

Power to order monthly or weekly payments: In every such case the court may make an order on the husband for payment to the wife of such monthly or weekly sums for her maintenance and support as the court may think reasonable. Provided that if the husband afterwards from

any cause becomes unable to make such payments, it shall be lawful for the court to discharge or modify the order, or temporarily to suspend the same as to the whole or any part of the money so ordered to be paid, and again to revive the same order wholly or in part, as to the court court seems fit.

Section 38: Court may direct payment of alimony to wife or to her trustees: in all cases in which the court makes any decree or order for alimony it may direct the same to be paid either to the wife herself or to any trustee on her behalf to be approved by the Court and may impose any terms or restrictions which to the court seem expedient and may from time to time appoint a new trustee if it appears to the court expedient so to do.

III. MAINTENANCE UNDER THE CRIMINAL PROCEDURE CODE, 1973

Apart from the personal laws, the Code of Criminal Procedure, 1973 also provides for maintenance of wives. Unlike the personal laws 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. The salient features of section 125 are:

- i. A wife includes a divorced wife.
- ii. Only lawful wife is entitled to maintenance under this section.
- iii. A wife may seek maintenance even without any matrimonial litigation.
- iv. She may stay separate if there are sufficient grounds justifying that and yet get maintenance.
- v. There must be neglect or refusal on the part of the husband to maintain her.
- vi. Wife must be unable to maintain herself.
- vii. The court can grant interim maintenance also.

The amount may be varied or cancelled if there is change in circumstances.

- i) In certain situations, a wife may be debarred from claiming maintenance.
- ii) Her right terminates on remarriage.
- iii) The proceedings are summary and on.

At the outset it may be pointed out that under this section a woman cannot claim for past maintenance. The court has jurisdiction under sec 125 of the Code of Criminal Procedure only to direct payment of future maintenance i.e., maintenance from the date of application.

Maintenance under this provision may be ordered from the date of the order or from the date of application. It would depend on the facts and circumstances of the case. Thus in *Dilip Kumar v. State of U.P.*¹², where an application for maintenance remained pending for 21 years due to the husband's delayed tactics, it was held that he was liable to pay from the date of wife's application. A wife seeking maintenance under this section has to prove neglect on the part of the husband to maintain her.

In *Daniel Latifi v. Union of India*¹³, according to Section 125 of the CRPC, the Supreme Court determined that Muslim women have the right to maintenance after the Iddat period. The Court ruled that the CRPC's provisions applied to all citizens, regardless of their faith and that the Muslim Personal Law lacked the authority to supersede the CRPC's rules.

IV. PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

Section 20 (1) (d) of the D. V. Act provides for maintenance to aggrieved women and such claim of maintenance under this section is in addition to her maintenance right under Section 125 Cr.P.C or any other law for the time being in force.

Rajesh Kurre v. Safurabai & Ots (2009 Cri.L.J (NOC) 446 Chatti): The words of provisions under Section 20 of the Act are clear, plain and unambiguous. The provisions are independent and are in addition to any other remedy available to the aggrieved under any legal proceeding before the Civil Court, Criminal Court or the Family Court. The provisions are not dependent upon Section 125 of Cr.P.C or any other provisions of the Family Courts Act 1984 or any other Act relating to award of maintenance. In case of award of maintenance to the aggrieved person and child under the provisions of the Act, the court is competent to award maintenance to the aggrieved person and child of the aggrieved person in accordance with the provisions of Section 20 of the Act. Aggrieved person is not required to establish his case in terms of Section 125 of Cr.P.C.

V. MAINTENANCE FOR HUSBANDS

With the change in the socio-economic conditions of society where more and more wives are working and earning, it has come to be realized that the husbands too may, at times, need to be maintained by their wives. Consequently, some laws make provision for maintenance of husbands. Statutory Provisions are,

¹² AIR 2010 (NOC) 897 (All).

¹³ AIR 2001 SC 3958.

(A) Under Hindu Law:

a. The Hindu Marriage Act, 1955:

Sec 25 of the Hindu Marriage Act, 1955 states: Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support, such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant...

The provision is the same under sec 24 of the Act, which provides for maintenance pendente lite or litigation expenses.

b. Hindu Adoptions and Maintenance Act, 1956

The Hindu Adoptions and Maintenance Act, 1956 makes no provision for the maintenance of husbands.

(B) Under Muslim Law:

There is no provision for maintenance of the by the wife under Muslim Law.

(C) Under Christian Law:

Under the Indian Divorce Act, 1869, only a wife may claim alimony from the husband (ss. 36 and 37). Even the Amendment Act of 2001 has not made any change in this regard. Under the Special Marriage Act, 1954:

This Act also does not provide for maintenance for the husband. Sections 36 and 37 refer only to a wife's right to alimony pendent lite and permanent alimony.

(D) Under the Code of Criminal Procedure, 1973:

The Code of Criminal Procedure, also makes no provision for maintenance of a husband. While it specifically refers to wife, children and parents, there is no mention of a husband anywhere in the code which provides for maintenance.

VI. CONCLUSION

Law relating to maintenance is different in different religion. Among all communities the question of maintenance to women has acquired great importance. The women being the partner of man in life, plays a vital role in raising family especially to maintain social order. The basic involvement of women gives her the right of maintenance from her husband. Husband is under a legal, social and moral obligation to maintain his wife. Hardly there is any law including the personal law which do not provide for such maintenance. Almost in every society the obligation

of husband to maintain the wife arises out of the jural relationship of marriage. It is necessary to understand that Section 125 of Cr.P.C or Protection of Women from Domestic Violence Act, 2005 or Maintenance and Welfare of Parents and Senior Citizens Act, 2007 give a statutory recognition to the moral, legal and fundamental duty of a man to maintain his wife, children and aged parent. Although these statutory provisions also benefit a distressed father, the main thrust of these statutes is to assist women and children. From the above discussion, it is very clear that, we have provisions for maintenance under various major legislative enactments. But speedy justice is lacking because of various reasons viz., multiplicity of proceedings, lengthy court procedure, tactics of the parties etc., Uniform Law for Maintenance is the need of the hour to resolve the problems faced by the aggrieved parties in maintenance cases.
