

MAINTENANCE LAW: LEGAL COMPLEXITIES AND SOLUTIONS

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ABSTRACT

The research paper 'maintenance law: legal complexities and solutions' begins by providing the concept of maintenance and delves into various forms of maintenance including alimony and child maintenance which examines the role and purposes in providing financial assistance to dependant spouse after the dissolution of marriage or separation. Additionally, research delves into the challenges faced in enforcing maintenance orders or law and explore the need of adapting maintenance. This paper also sheds the light on critical aspect of maintenance in law which helps in facilitating better decisions, promoting fairness and maintain decorum within legal system.

KEY WORDS Maintenance, Amount of maintenance, Spouse, Interim, Hindu Adoption and Maintenance Act 1956, Lacunae

INTRODUCTION

This research paper examines the legal perspective of the issue of maintenance in India which is specially focusing towards wives, children and parents. Maintenance refers to the financial support provided to precise person who are entitled to claim maintenance either from husband, father, parents etc. Maintenance is not only a constitutional right but also an element of universal human rights.¹ Which is governed by many acts such as Hindu adoption and maintenance act 1956, Hindu marriage act, 1955, protection of women from domestic violence act, 2005 and the maintenance and welfare of parents and senior citizen act, 2007.

MAINTAINENCE UNDER VARIOUS LAWS

- Maintenance under Christian law
- Maintenance and welfare of parents and senior citizen act 2007
- Maintenance under Hindu law
- Maintenance under Muslim law
- Maintenance under code of criminal procedure, 1973

In case *Mohd. Ahmed Khan v. Shah Bano Begum* five-judge bench of supreme court held that in case of conflict between the terms of code and rights and obligation of individual under personal law, the code would prevail.²

PURPOUSE OF MAINTENANCE

In legal basis, maintenance also known as spousal support, which means financial support provided by one spouse to other after a divorce or separation. In the case *Srinivasa v. Lakshmi*³ Madras High Court held that Maintenance includes the things necessary for the comfort and status in which the person entitled is reasonably expected to live. The objective and purposes of this in law generally includes:

¹ *Kusum sharma v. Mahinder kumar sharma* (2020)

² AIR 1985 SC 945

³ AIR 1928 Mad 216

- Economic support or financial support given to make sure that financially dependent spouse can maintain similar standard of living after divorce or separation as they did during marriage.
- Fairness and Equity aims to handle or manage any economic disparities that may exist.
- Child welfare which expected to benefit the well-being of the children.
- Avoiding financial hardships to prevent the disadvantaged spouse even after separation.
- Encouraging fair division of assets between the spouses during the proceeding in the court of law.

In the case *Rishi Kumar v. Suman*⁴ it is held that socio-economic background of the parties is a relevant consideration while determining the income of a respective spouse and wife is entitled to same standard of living as she was used to when living with her husband.

GROUNDS OF MAINTENANCE

If the husband has neglected or refused to maintain his wife, her case is covered under section 18 of HAMA. She is entitled to live separately without relinquish her claim to maintenance if her husband is guilty of desertion which means total abandonment or abandonment of one spouse without consent or without any reasonable ground, if the husband has treated her with cruelty which means that behaviour which cause and physical or mental harm to another especially a spouse, if the husband has married to another women or he has any other women living, if he has ceased to be Hindu or if there is any other justifying cause which means any other reason not covered under (a) to (f) clause of section 18(2) of Hindu Adoption And Maintenance Act, 1956. However, section 18 (3) lays down two conditions under which wife is not entitled to separate living or maintenance and those two conditions are

- Unchastity which generally means sexual immorality or;
- Apostasy which is an act of abandonment of religious or political belief

In *Amarjit kaur v. Harbhajan Singh*⁵ the Supreme Court has laid down grounds to grant maintenance during proceeding they are:

- Spouse who demands or claim maintenance should have no such income to maintain herself.
- Court has the right to decide what amount should be granted as maintenance.
- Matter remains within the discretion of court
- If husband brings a condition that the wife should submit DNA report before court and if that report is against the wife, she would not get maintenance. Such ground is unreasonable as well as extra-judicial.

While discussing about grounds to claim maintenance it is require to be clarify that when a suit for recovery of maintenance is filed or the person filing such suit dies, the same cannot be prosecuted further by any of the legal representatives thus the right is not heritable also.⁶

PROBLEMS OR CHALLENGES

During maintenance proceeding several common problems and challenges can arise while granting maintenance such as dispute over financial disclosure while determining fair amount when one spouse attempts to hide or misrepresent their true financial situation, making it burdensome to determine appropriate amount. And the duration of maintenance deciding how long maintenance should be paid can be challenging for the judges and the court. There might be differences in opinion regarding duration and changes in circumstances can also be a big challenge or a problem during maintenance proceeding. It may give rise to requests for modification, which can be a complex process.

other facing challenge is interpretation of law in which the interpretation and application may vary, leading to different outcomes in similar cases therefore there is no specific law and regulations regarding maintenance vary by jurisdiction and court considers various factors such as length of marriage, financial resource of each spouse, earning capacity while determining the amount and duration of maintenance.

⁴ (2008) 2 Del 279

⁵ (2003) 10 SCC 228

⁶ *Sheela rani v. Jagdish Chander Sharma*, AIR 2004 Del 158

TYPES OF MAINTENANCE

Concept of maintenance is governed by Hindu personal laws, including Hindu marriage act, Hindu adoption and maintenance act, CrPC (code of criminal procedure 1973) and other regional customary laws. In Hindu law there are two types of maintenance discussed such as interim maintenance or permanent maintenance

- Interim maintenance generally given or provided to a party during unsettled legal proceeding, before final determination of a case or until a final judgement. It is not the final determination of maintenance amount it will be further decided after considering all the relevant factors during final hearing. The motive of this is to fulfil basic needs while court case is going on.
- Section 24 Hindu marriage Act, 1955 provides the other type of maintenance i.e. permanent maintenance into various forms, including lump-sum payment, periodic payment or through transfer of asset. Amount and duration of permanent maintenance vary depending upon various relevant factors including length of marriage, earning capacity, age, medical condition and their contribution etc.

Section 25 of Hindu marriage act allows court to pass decree or order for permanent maintenance which allows husband to pay maintenance in alimony, monthly, annually also court can fix instalment-payment plan for it.

KINDS OF LIABILITIES FOR MAINTENANCE

The liability of a Hindu person to maintain others of two kinds:

- Personal liability⁷, and
- Liability dependent on possession of property⁸.

MAINTAINENCE UNDER MUSLIM LAW

Under Muslim law, maintenance is referred as '*Nafaqah or Nafkah*' which generally means financial support or support which includes housing, clothing, medical costs and other necessities of life provides to a wife. It is also considered as crucial obligation in which the responsibility or duty of providing maintenance falls on the husband.

In Muslim law, also the amount of maintenance provided is not fixed and can vary depending on husband's income or his financial capacity. This is provided to make sure that women or wife receiving the amount of maintenance can maintain a lifestyle even after separation or divorce and if husband fails to do so wife has right to seek redress in an Islamic court or other suitable legal forums.

Not only in Muslim law but also according to section 125 CrPC, even a Muslim divorced women would be entitled to claim maintenance from a Muslim husband.

In Muslim law there is a waiting period called '*iddah*' period during which a woman cannot remarry. During this period, the husband is responsible for providing maintenance. And there is a procedure involved under Muslim law where a Muslim wife can initiate a divorce by returning the mahr i.e. the amount to be paid by the groom to the bride at the time of marriage and popularly known as dowry or other considerations to her husband due to which maintenance right might be affected by khula.

PERSON ENTITLED TO RECEIVE MAINTENANCE

Not only wife but also the husband can claim maintenance by showing that he has no source of income also satisfy court by showing physical or mental disability but if he is physically or mentally fit and has sufficient income so, he is not eligible to claim maintenance from his wife⁹. The burden of proof lies upon the husband that he is unable to maintain himself and has right to receive maintenance from wife, if his wife can afford it. In a case it was determined that the husband was neither mentally ill nor disabled, and the only reason he could not

⁷ *H.C. Mohan v. Sulochana*, (2001) 1 HLR 252 (Kant)

⁸ *Vaijayanta Bai v. K.A. Gangaarde*, (1993) 1 HLR 45 (Bom)

⁹ Section 24 of Hindu Marriage Act, 1955

provide maintenance was because of the business started by him, failed¹⁰ Section 26 of Hindu marriage act 1955 allows court to modify, suspend any decree or order regarding maintenance passed under this act.

MAINTENANCE OF WIFE

Concept of maintenance for a wife is governed by Hindu marriage act, 1955 and also by Hindu adoption and maintenance act, 1956 to ensure that a wife is entitled to claim maintenance from her husband after separation or divorce.

It is not absolute right and court considers every circumstance before making a decision section 18 of Hindu marriage act, provides that if husband neglects or refuses to maintain wife, she has right to seek maintenance through legal means Which imposes a legal duty on husband to maintain his wife and provide her necessary support.

Section 125 of code of criminal procedure provides that wife is entitled to receive maintenance and also specify that “wife includes women who has been divorced by, or has obtained a divorce from, her husband and has not remarried” and no wife shall be entitled to receive allowance if she is living in adultery or if without any reason refuses to live with her, or if living separately by mutual consent. The definition of wife includes a divorced wife irrespective of fact whether the divorce took place before or after the commencement of the code of 1973.

In case *Bajirao Raghoba Tambre v. Tolanbai*¹¹ it is held that women whose marriage is void cannot get the legal status of a wife and is not competent to claim maintenance under section 125 of code of criminal procedure.

MAINTENANCE OF CHILDREN

Both legitimate and illegitimate children have right to claim maintenance from Parents section 18 of Hindu marriage act places an obligation on Hindu parents to maintain their unmarried and dependent children, including both legitimate and illegitimate also obligation to provide maintenance is not limited only to biological children but also extends to adopted children as well. It is not important that the child claiming maintenance or his/her parents under sub-section 20 of Hindu Adoption and Maintenance Act, 1956 should be a Hindu, non-Hindu parent or non-Hindu son is entitled to claim maintenance.¹²

To understand more about it, Section 125 of CrPC, clarifies the meaning of minor by stating that the minor is a person who, under the provisions of Indian majority act, 1875 is deemed not to have attained, his majority. obligation to provide maintenance is not limited only to the biological children but also extend to the adopted children as well.

MAINTENANCE OF WIDOWED DAUGHTER IN LAW

Hindu wife, whether married before or after the commencement, shall be entitled to maintain by her Father-in-law as provided by the section 19 of Hindu adoption and maintenance act, 1956. Widowed Daughter in law can claim maintenance if she is unable to take care of her basic necessities or if she has no property of her own.

The widowed daughter-in-law cannot file a petition in court for maintenance under section 125 CrPC. They should file suit for it under Hindu Adoption and Maintenance Act, 1956.¹³

MAINTENANCE OF ELDERLY PARENTS

Section 21 of Hindu adoption and maintenance act, 1956 as well as section 125 of code of criminal procedure pertains to the maintenance of parents by their children. It imposes a duty on children to maintain their elderly parents who are unable to maintain themselves financially and if neglect to do so, order such person to make monthly allowance.

¹⁰ *Kanchan v. Kamalendra* AIR 1993 Bom 493

¹¹ 1980 Cri LJ 473

¹² *K.M. Adam v. Gopalkrishnan*, AIR 1974 Mad 232 (1974) 87 LW 79 (Mad)

¹³ *Omana Chetan v. S.S. Rangegowda* ,2008 SCC Online Kar 48: ILR 2008 KAR 2240: (2008) 4 Kant LJ 124

What if person ordered fails without sufficient cause to provide maintenance, in such case magistrate may issue a warrant and may sentence such person if remains unpaid after execution of warrant for a term which may extend to one month or until payment made.

MAINTENANCE OF DEPENDENTS

Section 21 of Hindu Adoption and Maintenance Act, 1956 outline the list of persons who are regarded as dependents of a deceased Hindu. Whereas section 22 of the act lays down certain rules regarding to those dependants. List of dependent includes illegitimate unmarried daughter, son of a predeceased son, unmarried daughter etc. and some of these dependents are those mentioned in section 18, 19 and 20.

The main principle underlying is that a dependant who has not obtain any share in the estate of the deceased (dying after the commencement of the act) is entitled to claim maintenance from those persons who inherit his estate¹⁴ and the amount of it will be divided among them depending on the value of shares they hold in that property.

AMOUNT OF MAINTENANCE

When it comes to decide the amount of maintenance in law, there is no such fixed or standard amount of maintenance applicable, as it is determined on a case-by-case basis also the amount will be decided by the court of law by examine all the relevant grounds. While deciding the amount of maintenance magistrate has right to alter the amount if there is a change in circumstances as provided under section 25 of the Hindu Adoption And Maintenance Act, 1956. There are some grounds mentioned to provide maintenance in which Court considers or examines not only one but several factors when calculating the amount of maintenance which includes

1. Court examines salary or earning potential of both parties in which higher-earning spouse may be required to pay more.
2. Lifestyle and the position of the person providing or claiming maintenance are also considered.
3. Reasonable expenses or basic needs such as housing, food, clothing, medical expenses are taken into account.
4. Physical and emotional health of both the parties may be considered
5. If any child involved, child custody arrangement and support obligation can impact the maintenance.
6. Assets or liabilities are also considered.
7. The number of persons eligible to claim maintenance.¹⁵

No person is entitled to claim or receive the amount of maintenance if has ceased to be Hindu by conversion to another religion and the amount of maintenance whether fixed by decree or by agreement may be altered if there is any change occurred in circumstances¹⁶.

And it is normal for husband and wife to make allegations and counter allegations in respect of each other income which are to be considered by the court while disposing of the application for maintenance but such allegations and counter allegations cannot be subject-matter of the execution, even if they are mentioned in an order of court.¹⁷

The Supreme Court in one of its landmark judgement has set an amount of maintenance to be paid by husband to his wife by stating 25% of the net salary of the husband might constitute a “just and proper amount of maintenance”¹⁸

LACUNAE IN MAINTENANCE LAW

Lacunae refers to deficiencies and loopholes exist and these loopholes may lead to inconsistent interpretations or hinder the effective enforcement of maintenance orders and laws. Some of the lacunae are

¹⁴ Section 22(2) of Hindu Adoption and Maintenance Act, 1956

¹⁵ Section 23(2) of Hindu Adoption and Maintenance Act, 1956

¹⁶ Section 24 Hindu Marriage Act, 1955

¹⁷ *Sujata Aggarwal v. Ravi Shannkar Aggarwal* (2009) 76 AIC 310 (Del) (HC)

¹⁸ *Kulbhushan Kumar v. Raj Kumari & Anr.* 1971 AIR 234

1. Lack of proper and clear guidelines: There might be lack of clear and standardized guidelines further results in inconsistent outcomes in an order or decree. And this is may be due to different laws present regarding maintenance.
2. Difficulty in modification: It may not always be modified easily, leading to potential hardship.
3. Gender bias: sometimes it might be gender bias by assuming that only women need financial support or maintenance therefore sometimes judgement passed by court may favour a particular gender which results in biasness or inequality.
4. Complexity and delay in proceedings: Lengthy and complicated procedures can delay the resolution of maintenance dispute and for that reason the procedure of maintenance may be a time-consuming procedure which causes delay.
5. Changing circumstances: Change in circumstances could involve loss of employment, remarriage or other circumstances which basically affects the financial capacity of a spouse providing maintenance can be considered as one of the major lacunae in maintenance law.
6. False Claim: False claim made by the husband or wife related to amount of maintenance, assets etc. can cause injustice in a trial.

CONCLUSION AND SUGGESTION

It is the fundamental duty of husband to maintain his wife, children or elder parents if they are not able maintain themselves or they cannot fulfil their basic necessities and need any kind of financial support. It is suggested that executing a regular review mechanism for maintenance orders can be beneficial or profitable for long-term maintenance. It should be ensure that the maintenance amount remain fair and appropriate and court should consider all the relevant factors or circumstances while providing maintenance and encouraging mediation or alternative dispute resolutions methods can help both the parties to reach mutually acceptable maintenance agreement which further reduces the stress and coast associated with litigation.

Although it is concluded that Maintenance laws should not be gender bias to prevent injustice in the proceeding and court should impose heavy cost or penalty if any false case is filled or false claim is made by the wife or husband for grant of maintenance pendente lite.