

# ECONOMIC HARDSHIPS: AN AFTERMATH OF DIVORCE

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*“An interest on Rs. 5000 would not be enough for a woman to keep her body and soul together for a day, unless she was ready to sell her body and give up her soul”*

*- Justice V.R. Krishna Iyer*

## **Introduction**

Marriage is the basis of a family, families are basis of a society and a society is the basis of a State. In the lights of the Fundamental Rights envisaged in the Part III of the Constitution of India and with the advent of Human Rights<sup>1</sup>, came the concept of Maintenance. Maintenance which is often referred to as spousal maintenance is a periodic monetary sum paid by one spouse for the benefit of the other upon separation or the dissolution of marriage.<sup>2</sup> The relief of maintenance is considered to be an ancillary relief and is available only upon filing for the main relief like divorce, restitution of conjugal rights or judicial separation etc. The provision of maintenance assures an adequate standard of living thus, also forming a part of basic human right. The most overlooked aspect of this problem is whether the quantum of maintenance thus granted actually serves the purpose?

## **Divorce under Hindu Law**

The legal dissolution of a marriage by the Court or any other competent body is termed as Divorce. *The Hindu Marriage Act, 1955* in its *Section 13(1)* lays down provision for dissolution of a valid Hindu marriage, on a petition by either the husband or the wife, on the following grounds of

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<sup>1</sup> Universal Declaration of Human Rights, 1948

<sup>2</sup> <http://legal-dictionary.thefreedictionary.com/maintenance>

Adultery, Cruelty, Desertion, Conversion or Apostasy, Insanity, Leprosy, Venereal Disease, Renunciation of the world, Presumption of Death and Seven years' Imprisonment.

*Section 13(2)* enumerates the wife's fault grounds of divorce which are Pre-Act Polygamous Marriage, Rape, Sodomy, Bestiality and Non-resumption of cohabitation after a decree of divorce or order of maintenance.

### **Consequences of Divorce**

The big 'D' is often pronounced as 'Die-voice' in India. Marriage as an institution has been bedrock of the society, any disruption at the level of marriage tends to affect the social interests and its development. Living standards plummet, Children losing the plot, Social pariah and loss of self-confidence are few but mammoth issues that a divorce woman has to deal throughout her rest of the life.

### **Maintenance as a personal obligation**

Hindu sages, in most unequivocal and clear terms, lay down that maintenance of certain persons is a personal obligation. Manu declared: "The aged parents, a virtuous wife and an infant child must be maintained even by doing hundred misdeeds."<sup>3</sup> It is considered to be the greatest duty of a Hindu. It is the belief of Hindu that if one faithfully fulfills this duty, the gates of heaven are wide open for one.

### **Legislations and Statutes**

Maintenance is governed by the personal laws which are based on the customs and usages of the religious communities to which they belong to. Therefore in Hindus the law safeguarding the right of maintenance is the *Hindu Adoptions and Maintenance Act, 1956* which was enacted by repealing the prevailing *The Hindu Married Women's Right to Separate Maintenance and*

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<sup>3</sup> *Ibid.* cited

*Residence Act, 1946*. According to the provisions of the Act, following are the persons who are entitled to maintenance:

- Maintenance of wife,
- Maintenance of widowed daughter-in-law,
- Maintenance of children and aged parents, and
- Maintenance of the dependents.<sup>4</sup>

In addition to this apart from maintenance under personal laws, a common legislation that governs maintenance irrespective of the personal laws is *Section 125 of the Code of Criminal Procedure, 1973*.

The women can also seek for additional maintenance apart from the maintenance received by her under any other law as per *Section 20(1)(d) of the Protection of Women from Domestic Violence Act, 2005*.

### **Maintenance under codified Hindu Law**

Maintenance under *Section 3(b) of the Hindu Adoptions and Maintenance Act, 1956* has been defined as following:

- i. In all cases, provision for food, clothing, residence, education and medical attendance and treatment.
- ii. In the case of an unmarried daughter, also the reasonable expenses of an incident to her marriage.

### **Types of Maintenance**

There are three types of maintenance:

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<sup>4</sup> As enumerated in section 21 of the Act

1. Interim Maintenance – The interim maintenance is payable from the date of presentation of the petition till the final dismissal of the suit or passing of the decree. It is to fulfill the immediate needs of the petitioner.
2. Maintenance Pendente lite – Maintenance Pendente lite is for providing the litigation expenses to the claimant.
3. Permanent Maintenance – Permanent maintenance is paid by one spouse to the other after the judicial proceedings have resulted in either termination of marriage i.e. divorce or a judicial separation.

### **Maintenance of wife**

Marriage in Hindu is considered to be a religious sacrament and out of this arises obligation of the husband to maintain his wife. The obligation of a husband to maintain his wife does not arise out of any contract, express or implied, but out of the status of marriage, out of the jural relationship of husband and wife.<sup>5</sup> This obligation even exists after the dissolution of marriage.

The maintenance laws are not gender biased, it gives adherence to both male and female whosoever is in need of but it has been observed that the fairer sex of the society is more prone to financial instabilities as compared to that of the darker sex. There has been a rapid increase in Separation and Divorces in India, but not much attention has been paid as to how these separated and divorced women live, often with their children. The years of unpaid labor in the house and failed marriages have only contributed to financial hardships among the women. The divorced women are still a taboo in the society and what adds to the cause is the low standard of living which makes the situation even worse.

### **Quantum of Maintenance**

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<sup>5</sup> Dr. Diwan Paras, FAMILY LAW, Allahabad Law Agency, 10<sup>th</sup> Edn, 2013

The provisions being mentioned in *Section 23(1)* of the *Hindu Adoptions and Maintenance Act, 1956*, leaves it at the discretion of the Court to ascertain the amount of maintenance by merely outlining the parameters to be considered while awarding maintenance which is laid down in sub-section (2) of *Section 23*:

1. The position and status of parties.
2. The reasonable wants of the claimant.
3. If the claimant is living separately, whether the claimant is justified in doing so;
4. The value of the claimant's property and any income derived from such property or from claimant's own earning or from any other source; and
5. The number of persons entitled to be maintained under the Act.

Whereas *Section 125* of the *Code of Criminal Procedure, 1973* provides maintenance as a summary remedy and hence the amount payable is limited. The amount is so fixed by this provision that it fulfills modestly the needs and requirements of the wife. The Magistrate is required to award maintenance at a monthly rate not exceeding Rs.500. Despite the recommendations of the 132<sup>nd</sup> Law Commission to remove the ceiling, it is still remains the same.

### **Maintenance as a charge on property**

Under old and modern Hindu law, the claim of maintenance of any person, even the wife of children, is not a charge upon the estate of the non-claimant unless it was specifically made so by the decree of the court or by an agreement between the parties.

### **Circumstances Disentitling the Right of Maintenance to Wife**

According to *Section 18(3)* of the *Hindu Adoptions and Maintenance Act, 1956*

1. An unchaste wife has no right to claim separate residence and maintenance.

2. A wife who has ceased to be a Hindu by conversion to another religion has lost her right to claim maintenance.

*Section 125(4)* of the *Code of Criminal Procedure, 1973* enumerates three different circumstances which forfeit the wife to receive maintenance under *Section 125(1)*, which are as follows:

1. If the wife is living in adultery.
2. If without sufficient reason<sup>6</sup> she refuses to live with her husband.
3. If the parties are living separately by mutual consent.
4. The wife must not relinquish her right to maintenance.

### **Research Methodology**

The methodology adopted is both Doctrinaire and Empirical. The problem is analyzed in the light of the social issues, Constitutional provisions and other relevant statutory materials along with relevant case laws touching on the topic. The method of research is Inverse Deductive with an Exploratory or Formulative design. The data is collected on Non Probability Sampling (Judgment Sampling) from a Primary Authoritative Source.

### **Short Study**

There is a dearth of both primary as well as secondary data on the condition of separated and divorced women and their interaction with the law. The study in the lights of various judgments highlights the inadequate maintenance that the courts have ordered. A short study was conducted in the Raipur district of Chhattisgarh, list of cases from the year 2015 were taken up with a view to analyze the quiescent of the right to maintenance.

*Fat Dowry does not bring wedded bliss*

Sangeeta (*name changed for privacy reason*) aged about 22 years from Raipur got married when she was just 19. After few days of her marriage, her belongings which she received from her

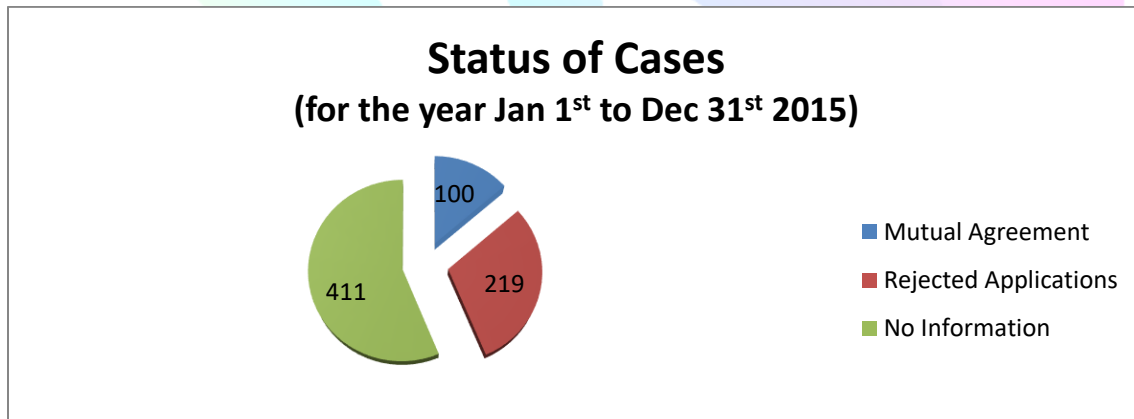
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<sup>6</sup> “Just Grounds” under sub-section (3)



parents at the time of marriage which included Gold necklace, earrings, rings, silver anklets etc. was all taken away by her husband without her consent and was spent and wasted in liquor and gambling. She alleged that on denying getting a sum of Rupees 4 lakhs from her maternal home in order to fulfill some needs of his husband she was beaten up and thrown away from the house. She was also threatened of being divorced; soon her husband married another woman. On being depended on her parents for herself as well her child, she filed a suit of maintenance which took about a year to reach to a decision where she was awarded maintenance of Rs. 800/- per month for herself and Rs. 500/- for her minor son.

On a data collected from the Family Court, Raipur, the total number of cases filed in the year 2015 was 730, out of which 100 cases were disposed off by the way of mutual agreement between the parties and 219 were rejected on some or other grounds. The status of the remaining 411 cases is not clear assuming them to be still pending before the Court or brought to an end by the parties themselves.



**Figure 1.0**

A detailed analysis of about 15 cases gave the following observations:

Total Husband's Income	Rs. 2,15,764
Total monthly maintenance paid to wife (10.47%)	Rs. 22,600
Average time period involved in disposing off a matter	12.84 months

It was found that despite the provisions being made in Hindu personal laws regarding maintenance, it is mostly administered through *Section 125* of the *Cr.P.C* which shows that the personal laws are not substantial enough and fails to serve the purpose when it comes to administration of justice. The study showed that even cases under this section, which is supposed to provide a summary procedure for grant of maintenance, take a long time.<sup>7</sup> The average maintenance amounted to Rs. 1,650/- per month which differed from Rs. 3000 to Rs. 1500 to even Rs. 500 per month in some cases.<sup>8</sup> The average when calculated in terms of per day amounted to Rs. 55/- (approx) which is a meager amount to sustain one's life. One of the main reasons given for dismal quantum of maintenance was that the wife had no proof of the husband's income.

*No reason to leave: No maintenance*

Sushma (*name changed*), from Raipur, is 25 and lives with her parents. She is unemployed while her husband is carpenter. Her husband's income is Rs. 9,000/- per month approximately. She married at the age of 18 in the year 2008. Sushma alleges that ever since her marriage was solemnized, her husband demanded of a motorcycle and constantly pressurized her to get the same from her father. On letting him acquainted with her father's unsound financial position to fulfill the demand, her family started to torture her and her intoxicated husband used to beat her recklessly. She ran to her maternal home and filed a suit for maintenance in the year 2011. After two and a half year of court battle, her application was dismissed as the reason to abandon her husband was not adequate because the alleged facts could not be proved.

### **Suggestion and Conclusion**

The Sanctity of marriage in the modern age is not the same as it existed couple of decades ago. The incompatibility between the couples forces the females to lay a battle seeking assistance for their survival. In a clogged and dysfunctional legal system, a paltry amount followed by the hefty fees of lawyers leaves the woman with something almost equivalent to nothing. Putting food on

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<sup>7</sup> 12.84 months on an average, as calculated in the study.

<sup>8</sup> Primary data collected from the Family Court, Raipur.



the table is not the only concern that women have to face but the real deal is to overcome the turmoil position of divorce. The erroneous and varied judgments of the Courts does not provides a clear picture as to how and in what manner the right to maintenance is to be exercised which leaves the women in complete dilemma. The situation becomes worse rather worst when one has not terminated the marriage by obtaining a divorce decree. The personal laws in this regard fail to promote gender justice.

The right to maintenance itself is not enough; there must be an opportunity to exercise this right. While the law on its own cannot bring reforms, it is indeed a necessary step to enable women to fight for their rights. The remedy lies in incorporating suitable changes both in the law and procedure. Change is the law of the nature. Law, no less than life, must change in order to be vital and obey the principles of change to adopt itself to altered social condition.

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