

MORALITY, DEPENDENCY AND MAINTENANCE: PLIGHT OF WOMEN UNDER HINDU LAW

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Right to Maintenance is the only provision for economic claims within marriage available to women. Within the historical origins of the institution of marriage based on a patriarchal social order, for a vast majority of women, marriage results in economic dependency.¹ Flavia Agnes aptly explains maintenance as ‘a need-based approach, which reduces the wife to a subordinate position and does not recognize her as an equal partner in marriage.’ However, marriage and the way it has been conceived in India is an inherently patriarchal and unequal institution; against this background, maintenance is a necessary right. It is also one of the very few positive rights available for women.

Maintenance is also a right, which necessarily tags along a stigma -- of being a favor bestowed upon a woman rather than an entitlement.² In this context, this paper is to elucidate the flaws within the system with respect to the Right to Maintenance. In doing so, the aim, firstly, is to display the perpetuation of economic subordination of women and secondly, the imposition of sexual morality as a standard. The holistic aim is to bring to light the inherent sexism present in Hindu Personal Law.

The Right to Maintenance can be claimed only as a subsidiary relief while claiming a primary matrimonial relief such as divorce, judicial separation, annulment of marriage, or restitution of conjugal rights. An additional statute, which grants women an independent Right to Maintenance under Hindu Personal Law, is the Hindu Adoption and Maintenance Act, 1956. The Protection of Women from Domestic Violence Act, 2005 provides an additional avenue for women

¹ Flavia Agnes, *Family Law Volume 2: Marriage, Divorce and Matrimonial Litigation*. Page no: 120.

² Pooja Badarinath, *Maintenance as an Entitlement*. <http://infochangeindia.org/agenda/access-to-justice/maintenance-as-an-entitlement.html>

to claim maintenance and compensation from their husbands and live in partners. Under these provisions, maintenance can be obtained without the necessity of initiating proceedings for a primary matrimonial relief.³

The roles and responsibilities assigned to women within marriage compel many to give up their jobs or sacrifice their careers to meet the demands of their marital obligations. This creates what one would call 'economic dependency'. Consequentially, during matrimonial conflict, a trump card often used by the husband is to withdraw financial support to the wife. Further, when either party opts for a divorce to bring an end to a conflict marriage, it is the woman who faces economic hardship and has to engage in a long litigation to enforce her crucial right to economic subsistence.⁴

The need to keep women economically dependent is closely linked to the conservative fear of women's sexuality and a corresponding hostile notion that an independent woman may go 'astray'. Whether before, during or after marriage this fear of women's sexuality continues to govern social norms. Social conditions are created and enforced to keep women perpetually in economic bondage so that the male control over their sexuality can be maintained. It is within this patriarchal framework of economic dependency that a need to pay maintenance to women arises.⁵

To perpetuate the economic subordination of women within marriage, women's role as a housewife is glorified which gives a false sense of security to a married woman. Neither the law not the society recognizes the role of women as homemakers in concrete monetary terms.⁶ As Andrea Smith writes, "Patriarchy is the logic that naturalizes social hierarchy." It also defines what can even be characterized as labour and ties human worth to wage-labour productivity. Women become marginalized as "unemployed" and "uncontributing" when they are in fact, as scholar

³ *Ibid.* Page no: 118-119

⁴ *Ibid.* Page no: 120

⁵ Flavia Agnes, *Maintenance for Women: Rhetoric of Equality.*

⁶ *Ibid*

Silvia Frederici observes, reproducing labour power as a key source of capitalist accumulation. Reproductive labour has been naturalized as women's unpaid work.⁷

It is based on this ideology that irrespective of the fact that a woman has in an invisible manner contributed to the family savings, when the marriage breaks down, the law recognizes only the husband's title to the family assets.⁸ This non-recognition of women's contribution to the marriage and home reduces women to a state of destitution when the marriage breaks down⁹ and further perpetuates economic subordination.

When we examine the economic entitlements, which arise out of a matrimonial relationship, we are confronted with a glaring void in the Indian matrimonial statutes, which do not provide for division of property upon divorce. Hence, fear of poverty, destitution or lowering of economic standards haunt most women during divorce proceedings.¹⁰ Since the state was forced to recognize the poverty, which is a consequence of desertion and divorce, a meager dole, is statutorily provided literally in order to keep a woman's body and soul together.¹¹

While enacting this provision, the concern of the state has been more towards prevention of social evils such as vagrancy and prostitution rather than any real concern for the dignity of women. The maintenance dole is kept at a minimum so that divorce does not become a more attractive proposition.¹² Several judgments on maintenance actually state this ideology without mincing words as the following judgment indicates:

“In regard to determining what is required by the wife to maintain herself, court has to steer clear of two extremities, viz, it must not give maintenance which would keep her in luxury and would make judicial separation profitable and also impede any future reconciliation. It must also steer clear of the other extreme, viz,- penuriousness. It would be held that Rs. 25 out of the Rs. 90

⁷ Harsha Walia, *Reimagining Feminism on International Women's Day*.

<http://www.filmsforaction.org/articles/reimagining-feminism-on-international-womens-day/>

⁸ *Ibid.* Page no: 120.

⁹ *Ibid*

¹⁰ Flavia Agnes, *Conjugal Property, Morality and Maintenance*. Page no: 58

¹¹ *Ibid*

¹² *Ibid*

was just the amount as would support the wife not in any comfort but as would enable to keep her body and soul together.”¹³

The prevailing concept upon which maintenance is based, clubs women with aged, the minors and the handicapped persons all of whom are incapable of maintaining themselves. This is degrading to say the least. And in reality this is not correct. The meager dole promised by the statute, even if received regularly, is far too inadequate to help women to live a life of dignity. In any case, since most husbands, do not pay, the women not only maintain themselves but are also forced to maintain their children.¹⁴

Women carry on the task of maintaining their families by working at low paid jobs in the unorganized sector. Since women are not recognised as heads of households their earnings continue to be below the subsistence level. They have to choose between a below subsistence level wage and the meager maintenance dole, because the law will not let them have both.¹⁵ To further accentuate this problem, there are instances where the courts have penalized a woman for pursuing her career at the cost of her primary role as the caretaker of the family, as this act in itself can be constructed as cruelty, which is a ground for divorce.¹⁶

India follows the common law regime of “separation of property”. Under this notion, property acquired by the husband is treated as his exclusive property. A wife does not acquire any right, title or interest in the assets acquired by the husband during the subsistence of the marriage. Since marriage is not viewed as an ‘economic partnership’ a woman is not entitled to claim division of property at the time of divorce.¹⁷ This notion completely ignores the contribution made by the women to the acquirement of the said assets. Contribution in terms of performing domestic chores, providing emotional and metal support is not considered as a relevant factor.

¹³ *M. Ponnambalam v Saraswathi*, AIR 1957, Mad, 693.

¹⁴ *Ibid*

¹⁵ *Ibid*

¹⁶ *Ibid*. Page no: 59

¹⁷ *Ibid*. Page no: 59

Further, if the husband dies intestate, the widow is awarded a status no higher than that of the children, thus completely ignoring her contribution to the household and family in form of unpaid work.¹⁸ She is treated as a beneficiary and this completely erodes the fabric of the very concept of being a partner.

In contrast, the continental law or the civil law of Europe introduced in the 19th century is based on the premise of “community of property”. Under this, upon marriage, the property of the spouses acquired after marriage is deemed as their joint property, with equal powers of maintenance, management, improvement and disposal. Upon divorce, the property is divided equally between them. Even non-western countries such as Singapore, Malaysia, Iran, Fiji and Tanzania have adopted the system of division of property or at least recognised the woman’s unpaid domestic labour. India lags far behind.¹⁹

Maintenance in India is also linked with morality in the form of ‘sexual purity’ of the woman. Therefore, securing an order of adequate maintenance can be an extremely humiliating experience as a high degree of sexual morality surrounds the question of maintenance.²⁰ Historically under the English law, only a virtuous or good woman is entitled to maintenance. If a husband obtained divorce on the grounds of the wife’s adultery, cruelty or desertion, she was denied maintenance and at times even the custody of her children.²¹ As a consequence of what is called ‘colonial hangover’, these notions still tend to haunt legal proceedings in India today.

For example, the Calcutta High Court in *Sachindra v. Bammala*,²² had commented: “Unchastity on the part of a woman is a sin against the ethics of matrimonial morality in this country.” The judge, while conceding that moral law is not the civil law of the country, made the sweeping assumption that the meeting place of law and morality was Section 25 of the Hindu Marriage Act and Section 18 of the Hindu Adoption and Maintenance Act. This apparently

¹⁸ *Ibid.* Page no: 59

¹⁹ *Ibid.* Page no: 59-60

²⁰ *Ibid.* Page no: 60

²¹ *Ibid.* Page no: 124-125

²² AIR 1960 Cal 575

justified the denial of maintenance to the wife, letting her survive on the resources of her immortality.²³

In another case in the Madras High Court, Justice S Nagamuthu said a divorcee would not have any right to claim maintenance if she "committed breach of the sexual obligation she had before dissolution of her marriage".²⁴ The language used in the case, which, uses terms like 'sexual obligation', is highly problematic and exhibits patriarchy and sexism.

Additionally, under sub-section 3 of Section 25 of HMA, the standard applied to women is unchastity while for men it is sexual intercourse outside wedlock. This shows apparent the double standard present within the law itself. The words 'chaste' and 'chastity' imply the sexual purity that is automatically expected from women. This furthers the societal restrictions placed on a woman's sexual expression. A mere allegation of sexual promiscuity becomes a solid ground for divorce proceedings and avoiding maintenance.

Therefore, allegations of adultery and immorality can constantly be hurled against women. This can extend further to a denial of the marriage itself and consequently to the legitimacy and even paternity of the children. For example, the Divorce and Matrimonial cases (DMC) in Volume I of 2001 reported around 45 cases under the title "Maintenance". In almost half of these cases, sexuality and morality were the core issues of contest. The layered and multiple contexts through which sexual morality surfaces, as per the norms of patriarchy, serve only one end: to challenge the legitimacy of women's claims.²⁵

Maintenance essentially signifies dependency. Despite its negative connotation, within Indian Family Law, it remains the only avenue for women to stake their financial entitlement upon divorce. For most women, the right of maintenance forms a central core of their matrimonial

²³ *Ibid.* Page no: 124-125

²⁴ PTI, *Woman divorced on ground of adultery cannot claim maintenance: Madras HC.*
<http://indianexpress.com/article/india/india-others/woman-divorced-on-ground-of-adultery-cannot-claim-maintenance-madras-hc/>

²⁵ *Ibid.* Page no: 61

dispute. However, it is unfortunate that it is far easier to come to an amicable settlement regarding divorce and custody while maintenance remains a contested question.²⁶

The roles, responsibilities and obligations within marriage are gendered. Thus, for a vast majority of women, marriage results in economic dependency. In addition to this, the morality dictates of patriarchal marriage get entangled in economic claims and situated within this discourse maintenance is pitted against a woman's sexuality and sexual purity.²⁷ A popular myth prevailing in society is that liberalized divorce laws will lead women to a life of 'freedom', which will corrode the moral fiber of society. Consequently divorce laws have been so structured as to make the marital state a more attractive proposition in terms of economic security. This assumption constrains all efforts to seek maintenance provisions, which are just to women.²⁸

²⁶ *Ibid.* Page no: 59-60

²⁷ *Ibid.* Page no: 59-60

²⁸ *Ibid.*