

PLURALITY OF MAINTENANCE LAWS IN INDIA: ISSUES AND PERSPECTIVES

Written by *Garima Bhaisare*

2nd Year BA LLB Student, Maharashtra National Law University, Nagpur, India

ABSTRACT

Maintaining good relations with the family members is the first priority of every member in the family. It is the primary duty of parents to fulfil all the necessary wants of the children, of husbands to take care of his legally wedded wives, of children to be support of their aged dependent parents. This research paper deals with all such kind of laws which we have in our constitution i.e. maintenance laws in India. Maintenance refers to the payments, which is given to the aggrieved party, under certain circumstances as an obligation to pay for example, alimony is an amount that a husband's or wife's pays to spouse after separation or divorce to support them financially. The most important aspect of maintenance is that the party which relies on maintenance has no independent source of income to support themselves. Maintenance is provided to legally wedded wives after separation, to children, to dependent parents and to relatives sometimes. In this research, the researcher is going to explain the plurality of the maintenance laws, the issues regarding it, and the perspective from different view of consideration, and have also provided some of the supreme court judgements on maintenance to wives. In India, maintenance laws are in variety, for Hindus, Muslims, Parsi, etc. such as Hindu law, Muslim law, Parsi law, Christian law, however the researcher has confiscated in the vision of Hindus from the following religion. Note that this isn't about the religion, this is all about the maintenance and the provisions regarding it.

Keywords: - Legally Wedded Wives, Dependency, Maintenance, Obligation to Pay, Permanent Alimony, Financial Support, Maintenance Laws, Hindu Laws, Muslim Laws, Parsi Laws, Christian Law, Perspective, Provision, Plurality.

INTRODUCTION

Maintenance laws in India has its own importance. According to the social and general concepts of maintenance, it is said that to maintain and take care of entire family is the prior duty of man i.e. his parents, wives and children. The general definition of maintenance is to support a person's living expenses financially. The evolution of concept of maintenance arose when a person is not independent to maintain themselves. In legal terms, maintenance is defined as the order of the court for the support of one spouse by the another i.e. the spousal support. Law provides two method of paying this amount, first it can be either paid on a lump-sum basis that is complete once in a lifetime or on a monthly or quarterly basis. India is a country, which possess many laws in the support of women and children, this comprises in the personal laws of India. This notion of maintenance is not only in the personal laws but also in the Criminal Procedure Code of 1973. However, this point should be record that the pertinency of maintenance under the personal laws is refers only to the belonging to that particular religion and the provisions we have in the CrPC are available for everyone irrespective of the caste, creed, and religion. There are some provisions in the Domestic Violence Act and in the property rights of women also comes under the statutes of maintenance. The proper definition of maintenance under section 125 of the Criminal Procedure Code is – “maintenance is an amount payable by the husband to his wife who is unable to maintain herself either during the subsistence of marriage or upon the separation or divorce”.ⁱ Further laws and statutes regarding maintenance are laid down throughout the research.ⁱⁱ

AIM AND OBJECTIVES

The aim of this article is to study the various aspects of maintenance laws in India, along with the issues regarding it, this paper will also let the readers to know about the perspectives over such issues through the plurality in the provisions we have in the Constitution of India.

The objectives of this research are as follows: -

1. To study the plurality of the maintenance laws in India,
2. To examine which provision should prevail i.e. which provision provide maximum maintenance,

3. On what circumstances wives are not entitled to claim maintenance,
4. To study on what basis the amount of maintenance depends.ⁱⁱⁱ

EXPLANATION TO PLURALITY

In this paper, plurality tends to the different provisions in Acts for maintenance. There are various acts under which the provisions for maintenance have explained and hence provided. Constitution have laws and statutes in the personal laws, Criminal Procedure Code (CrPC), Domestic Violence Act (DV Act), Property Rights for Women, etc., over maintenance. This different arena in regard to maintenance can be called as the plurality in the laws of maintenance.

a. Types of maintenance laws in India

Types of maintenance laws is related to different laws for religions in personal laws. Personal laws are defined as the law which is only applicable to a certain group or community of the people or to a particular person of a particular religion, faith, caste, and culture. These laws are over different customs of that religion.

1. Hindu law for maintenance

The provisions for maintenance available in the Hindu Adoption and Maintenance Act of 1956.^{iv} This provision says that – if a wife is lacking the ability to take care of herself or unable to maintain the expenses then she has a right to claim maintenance from her husband by filing the case. Further proceedings as to follow are, the court after the observation on husband's financial situation shall award maintenance to the wife with the due consideration on the reason for separation. This must be noted the that the laws in the matrimonial relation do not allow maintenance to the wife if her husband show concerns to cohabit with her.^v

2. Muslim law for maintenance

The provisions for maintenance under Muslim law are provided in the section 3 of The Muslim Women (Protection of Rights on Divorce) Act of 1986. This Act specifically talks about the maintenance and the certain situation in which a wife is entitled to claim maintenance from her husband. Some of the situations are – after the divorce, a wife is

entitled to claim reasonable maintenance during the iddat (the mandate ritual every Muslim woman follows) period; also the amount of Mehr and Dower that was paid or agreed to be paid by the parents during the time of marriage has to be given back to his wife along with the other property and expensive presents by her relatives, friends and even by her husband.^{vi}

3. *Parsi law for maintenance*

The provisions for maintenance under the Parsi law is provided in section 40 of The Parsi Marriage and Divorce Act of 1936. The law says it is the right of Parsi woman to claim maintenance after the due consideration on the husbands' capability and financial condition after divorce. However, the extra benefit shall be awarded if the wife remains unmarried and maiden for the rest of her entire life after the divorce, this right comes with a condition in the Parsi law and 1/5th of the husband's net income can be awarded as maintenance.^{vii}

4. *Christian law for maintenance*

In the Christian law, there is not any specific provision for the right of maintenance to wife, so they preside over by the section 37 of Indian Divorce Act of 1869. This section allows a Christian to file case for the same in a Court and the Christian husband is bound to pay the amount for the entire life.^{viii}

b. Various provisions in different Acts

There are several statutes and provisions for maintenance other than the personal laws. The Constitution also provides additional rights for maintenance.

1. Section 125 of Criminal Procedure Code

CrPC have different approach towards the laws of maintenance. Section 125 states order for maintenance of wives, children and parents and offers women the right to claim maintenance from the husband irrespective of the caste, creed and religion likewise the personal laws. This section says that if any person having sufficient financial status refuses to take care of his legal wife, who is unable to maintain herself, or her legitimate or illegitimate children, or his father or mother, who are dependent then the person has to make a monthly allowance for the maintenance of his wife, child, father or mother as directed by the court.^{ix}

2. *Section 20 of Domestic Violence Act*

The section 20 of Domestic Violence Act of 2005 states that - wife can claim monetary relief and section 23 provides the right to file an application. In this, wife can claim losses suffered to meet the expenses incurred as a result of domestic violence that is the losses caused due to destruction, damage or removal of any property from the control of the aggrieved party. ^x

ISSUES REGARDING MAINTENANCE LAWS

There are several issues regarding the maintenance laws in India through which certain problems are faced by the children, who witnessed divorce of their parents, to the dependant parents, who are unable to managed their expenses, to the wives, who are supposed to be the responsibility of his legally married husband. However, we have laws regarding maintenance, yet there are some issues arises such as the amount, status of the parties, wants of the claimants, etc., which the researcher is going to deal with.

a. Which provision/Acts should prevail?

There are different provisions in the acts that are provided in the Indian Constitution in relation with the laws of maintenance. There is no fixed amount provided as such in the acts regarding the amount of maintenance, it is upon the circumspection of a family court to decide the amount of maintenance which is to be paid by husband to his wife either on a monthly basis or in a lump sum form. There are different types of maintenance like interim maintenance, it is a amount paid by the husband so that the wife can pay for the legal expenses incurred by her during the proceedings, this amount can be provided by the court if the wife has absolutely no source of income and the permanent maintenance is paid by the husband to his wife in case of divorce and separation, this amount is decided through the petitions of divorce lawyer in India. However, Supreme Court has offered that a wife can claim 25% of the husband's net monthly income. Yet usually, the amount ranges between 1/5th to 1/3rd of the husband's net worth. Nevertheless, Section 125 of CrPC offers different criteria for the amount of maintenance, section 25 of Hindu Marriage Act talks about the permanent alimony, section 23(1) of the Protection of Women from Domestic Violence Act – power to grant interim and ex parte orders provides the amount from the

date of filing of the petition. Therefore, the aggrieved party must go with the provision which provides maximum amount of maintenance.^{xi}

Section 25 of the Hindu Marriage Act, 1955 talks about permanent alimony and maintenance and is divided into 3 sub-section. Sub-section (1) states that “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 for a term not exceeding the life of the applicant as, having regard to the respondent’s own income and other property, if any, the income and other 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.”^{xii}

Further part of the section i.e. sub-section (2) says that “if the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.”^{xiii}

Lastly sub-section (3) says that “if the court is satisfied that the party in whose favour an order has been made under this section has re-married or, if such party is the wife, that she not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, [it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just].”^{xiv} This is what actually explained about permanent alimony and maintenance in the Hindu Marriage Act, 1955.

b. Dependency of amount of maintenance

The amount of maintenance depends upon certain factors. The amount must include the relevant expenses of the aggrieved party/person. The amount of maintenance consists all the relevant expenditure that would be necessarily used by the aggrieved party such as groceries, medical expenses etc., and these expenses add on the amount which contains certain factors. Some of them are as follows: -

1. Position and Status of the parties

This is one of the important factors amongst all as the position and the status of the parties needs consideration while fixing the amount of maintenance. Both the parties have the right to express their concerns before the court, they can communicate with their respective lawyers to mention their financial situation before the court.

2. Reasonable wants of the claimants

It is important to provide the maintenance with the consideration of all the reasonable expenses of the claimants. One cannot obtain the maintenance without considering the expenses of the aggrieved party, for instance at the time of divorce, the amount of maintenance is decided with the due consideration of the financial condition of the husband and the wife's reasonable wants. However, amount fixed is specially in the view of wife's expenses, which in a moderate sense must be 15,000/- to 20,000/- if she is residing alone.

3. Claimants income by any other source

The amount of Maintenance is also depending upon the claimant's income by any other source. However, this is in the provision that a wife cannot deny the maintenance whether she have another source of income or not, but the amount may fluctuate as per the income from another source. If she is getting sufficient amount from another source, then the maintenance amount shall be less from the original one.

c. Related to Divorce or Separation

The issues in relation with the divorce and separation are increasing nowadays. There are several reasons for the divorce, for example, husband's or wife's behaviour, adultery, domestic violence, lack of communication, beyond these some separation is by mutual consent also, and while dealing with these there arises certain issues in the maintenance as well. Following are some issues regarding the same: -

1. Wives/ex-wives are entitled to claim maintenance while having another source of income

Among all the issues this would be consider as the most important one, as we all know, in the generation of self – dependent – ness, everyone possess the ability to maintain themselves with due responsibility. So, considering this point, if a wife has a source

of income is quiet fair. But then the question arises – whether she is entitled to claim maintenance while having such another source of income?

In the case of Sanjay Damodar Kale v. Kalyani Sanjay Kale, Kalyani filed a petition against his husband for the maintenance on 17th June 2016, the decree of divorced was passed in the year 2007, within this time lag, she has been running a business name – “Kalyani Beauty Parlour and Training Institute”. Soon after Bombay High Court held that husband is liable to pay maintenance to the applicant at the rate of 12,000/- per month from the date of petition in the reference of the case Sunita Kachwa v. Anil Kachwa, in which court held that – in any event, merely because the wife was earning something, it would not be a ground to reject her claim for maintenance.^{xvxi}

2. After the death of husband, his (divorced) wife be still entitled for maintenance against husband’s family

This can also be considered as a significant issue regarding maintenance. There must be some provisions if during or after the divorce, husband gets died, whether his divorced wife be still entitled for maintenance against his husband’s family? Well, in the case of Sabita Behera v. Prafulla Kumar Das and Ors. An application was filed seeking divorce by Kishore, the husband under section 14 of the Hindu Marriage Act 1956, during the proceeding he died, and his parents refuses to pay even a penny to his wife, therefore, his wife filed an application for the monetary amount for herself against her father – in – law. However, it was held that Sabita will be awarded 40,000/- by two instalments as life maintenance.^{xvii}

3. If a woman is guilty of adultery i.e., she is unchaste and indulged in physical relation with another man (reason for divorce), shall be granted maintenance?

There are many separations occurred for the reason of adultery, however the question arises is what will be the measures if a woman is guilty of adultery that is she is unchaste and indulged in a physical relation with another man and this is the reason for divorce with her husband, whether she is entitled to claim maintenance. Covering a case of Bombay High Court, Pandurang Barku Nathe v. Leela Pandurang Nathe and Another, 1998 (1) BomCR 165, in this case, she found guilty of crime of adultery and

it is held, she will not be entitled to claim maintenance as provided in the section 125 to 128 of the CrPC. ^{xviii}

SOME SUPREME COURT JUDGEMENTS

It is a general talk and somewhere found to be true that in the judgements regarding maintenance to wives proved biased in nature, i.e. towards weaker gender, whosoever it may be. Here are some supreme court judgements, which are different from the regular pattern. In the case of *Kusum Bhatia v. Sagar Sethi*, a bench of two judges, Justice Shantanagoudar and Justice Khanna have passed a judgment in Supreme court of declination to award any maintenance to wife, who is working or have any other source of source, however court decided to award maintenance to the daughter. ^{xix} but in the case of *Sunita Kachwa v. Anil Kachwa*, as mentioned above, supreme court held that “In any event, merely because the wife was earning something, it would not be a ground to reject her claim for maintenance.”^{xx} There has been another issue arisen in the light of *Kamala and others v. M.R. Mohan Kumar* for the requirement of proof of marriage for claiming maintenance, over this Supreme court held that “A strict proof of marriage is not essential in claim of maintenance under section 125 of CrPC and that when the parties live together as husband and wife, there is a presumption that they are legally married couple for claim of maintenance.” ^{xxi}

If husband files case against his wife for a decree of divorce which has been passed on account of her deserting the husband, is she entitled to claim maintenance under section 125 of CrPC? Over this question, in case of *Rohtash Singh v. Ramendri*, Supreme Court held that “Woman after divorce becomes destitute. If she cannot maintain herself and remains unmarried, the man who was once her husband continues to be under a duty and obligation to provide maintenance to her.”^{xxii} Also, in the case of *Sanju Devi v. State of Bihar* on maintenance to wife, supreme court held that “A judicially separated wife is as much entitled to maintenance as a divorced wife is entitled to maintenance. There is no reason why a judicially separated wife can’t get maintenance.”^{xxiii}

PERSPECTIVE

Researcher's perspective in relation with the maintenance laws in India must add several provisions for the betterment of the wives. Considering the current scenario of the country, limited maintenance is not enough to live a moderate life. Nowadays, the extra marital affairs are increasing frequently, and hence causes the reason for divorce and separation. It is important to make liberal decisions over such cases pertaining to maintenance as the judicial decisions however matters the most and its relevancy in relation with the same.

Considering the applicants incapability to maintain themselves seems to be essential for the claim for the maintenance under every statutory provision of the Judicial decisions, of course taking into consideration of the husband's ability not only of earning but his physical belongings as well.

It is important in the judicial system to favour the weaker sex and it is evident enough that a woman is entitled to maintenance even if she remains separate from her husband for any reason. Although there are some women who are found guilty of adultery and the court have reached to this extent for granting maintenance to such women even while the husband has got the restitution decree in his favour. This thing must be amended by the Judiciary.

Despite the right of maintenance to a wife if having children, shall be provided quick judgements, so that the wife and the children would suffer less loss and tremendous hardship during the judicial proceedings and pass quick decision over the order for granting maintenance.

With all these, the increase in the domestic violence against women, the Protection of Women from Domestic Violence Act of 2005, is the immediate provision for the benefit of the women. This might be considered as the best amongst all, because women within this act may approach the court for maintenance or compensation along with the damages.^{xxiv}

In the plurality of maintenance laws in India, future approach according to law makers and parliamentarian must include the method of Fast Track Courts i.e. quick decisions for the aggrieved party specifically for the dependent parents.

CONCLUSION

In this article, it is concluded that the maintenance laws in India has plurality it is own place. This can be explained as the variation in every provision provided in the Acts. These provisions have their individual criteria to regulate and each provision has its significance over the right of a woman to claim maintenance. There are personal laws and right of women for the benefits of such wives who are not independent and not capable to maintain themselves with the household expenses, however the most relevant provision is CrPC, which is available for all Indians irrespective of their religion.

It will be the suggestion that despite all these, there is still the need in the reforms and amendments in the laws of maintenance for wife and children. Women and children are the considered as the important part of a family. Even sociologically, it is important to recognise the value of women and children. Therefore, it must be recognising by the law and the society that it is a moral and primary duty of a man to take all the responsibility of his legally wedded wife and legitimate children.

CRITICAL ANALYSIS

After studying and seeking knowledge of each and every statutory provision in the acts like Hindu Marriage Act, Domestic Violence Act, Criminal Procedure Code and all, the researcher found that there are several issues which includes certain loopholes in the decision and lack of provisions. For example, if after divorce, suppose the custody of children given to mother, and father in liable for maintenance of their children. But if mother get married to another man then the father will still be liable for maintenance? Shan't children be the responsibility of the man (as being step father)? Knowing about the provisions, there is need of amending such Act into some extend, as per the circumstances of upcoming generations or as an approach by the law makers and parliamentarians

BIBLIOGRAPHY

1. Section 125 of criminal procedure code, 1973 – order for maintenance of wives, children and parents
2. Concept of maintenance in Hindu marriage act, 1955, blog published by Diva Rai on IPLEADERS.
3. Article on “A study of maintenance under Hindu marriage act”, published by International Journal of Pure and Applied Mathematics, vol. 120 no. 5, ISSN: 1314-3395
4. Hindu Adoption and Maintenance Act of 1956.
5. The Hindu Marriage Act of 1955.
6. Section 3 of The Muslim Women (Protection of Rights on Divorce) Act, 1986.
7. Section 40 of The Parsi Marriage and Divorce Act of 1936.
8. Section 37 of the Indian Divorce Act of 1869 – Power to order permanent alimony
9. Section 125 of criminal procedure code, 1973 – order for maintenance of wives, children and parents
10. Shome Nikhil Danani v. Tanya Banon Danani, 2019 SCC Online Del 8016, held on 11th April 2019.
11. Article on “A study of maintenance under Hindu marriage act”, published by International Journal of Pure and Applied Mathematics, vol. 120 no. 5, ISSN: 1314-3395
12. Section 25 in the Hindu Marriage Act, 1955, sub-section (1), published at indiankanoon
13. Section 25 in the Hindu Marriage Act, 1955, sub-section (2), published at indiankanoon
14. Section 25 in the Hindu Marriage Act, 1955, sub-section (3), published at indiankanoon
15. Section 125 of CrPC, Bom HC| SSC blog on wife cannot be denied maintenance on ground of having a source of income.
16. Sanjay Damodar Kale v. Kalyani Sanjay Kale, 2020 SSC Online Bom 694 held on 26th may 2020.

17. Sabita Behera v. Prafulla Kumar Das and Ors. Held on 27th Nov, 1996, covered in Casemine
18. Pandurang Barku Nathe v. Leela Pandurang Nathe and Another, 1998 (1) BomCR 165
19. Kusum Bhatia v. Sagar Sethi, SC judgement on indiankanoon
20. Sunita Kachwa v. Anil Kachwa, III 2014 (DMC), 878 SC from scconline
21. Kamala and others v. M.R. Mohan Kumar, 24 Oct 2018, indiankanoon
22. Rohtash Singh v. Ramendri, (2000) 3 SCC 180, scconline
23. Sanju Devi v. State of Bihar, supreme court – Daily Orders on indiankanoon
24. Article of shodhganga on “conclusion and remedial suggestions as to desirable changes in maintenance law”

ENDNOTES

-
- ⁱ Section 125 of criminal procedure code, 1973 – order for maintenance of wives, children and parents
 - ⁱⁱ Concept of maintenance in Hindu marriage act, 1955, blog published by Diva Rai on IPLEADERS.
 - ⁱⁱⁱ Article on “A study of maintenance under Hindu marriage act”, published by International Journal of Pure and Applied Mathematics, vol. 120 no. 5, ISSN: 1314-3395
 - ^{iv} Hindu Adoption and Maintenance Act of 1956.
 - ^v The Hindu Marriage Act of 1955.
 - ^{vi} Section 3 of The Muslim Women (Protection of Rights on Divorce) Act, 1986.
 - ^{vii} Section 40 of The Parsi Marriage and Divorce Act of 1936.
 - ^{viii} Section 37 of the Indian Divorce Act of 1869 – Power to order permanent alimony
 - ^{ix} Section 125 of criminal procedure code, 1973 – order for maintenance of wives, children and parents
 - ^x Shome Nikhil Danani v. Tanya Banon Danani, 2019 SCC Online Del 8016, held on 11th April 2019.
 - ^{xi} Article on “A study of maintenance under Hindu marriage act”, published by International Journal of Pure and Applied Mathematics, vol. 120 no. 5, ISSN: 1314-3395
 - ^{xii} Section 25 in the Hindu Marriage Act, 1955, sub-section (1), published at indiankanoon
 - ^{xiii} Section 25 in the Hindu Marriage Act, 1955, sub-section (2), published at indiankanoon
 - ^{xiv} Section 25 in the Hindu Marriage Act, 1955, sub-section (3), published at indiankanoon
 - ^{xv} Section 125 of CrPC, Bom HC| SSC blog on wife cannot be denied maintenance on ground of having a source of income.
 - ^{xvi} Sanjay Damodar Kale v. Kalyani Sanjay Kale, 2020 SSC Online Bom 694 held on 26th may 2020.
 - ^{xvii} Sabita Behera v. Prafulla Kumar Das and Ors. Held on 27th Nov, 1996, covered in Casemine
 - ^{xviii} Pandurang Barku Nathe v. Leela Pandurang Nathe and Another, 1998 (1) BomCR 165
 - ^{xix} Kusum Bhatia v. Sagar Sethi, SC judgement on indiankanoon
 - ^{xx} Sunita Kachwa v. Anil Kachwa, III 2014 (DMC), 878 SC from scconline
 - ^{xxi} Kamala and others v. M.R. Mohan Kumar, 24 Oct 2018, indiankanoon
 - ^{xxii} Rohtash Singh v. Ramendri, (2000) 3 SCC 180, scconline
 - ^{xxiii} Sanju Devi v. State of Bihar, supreme court – Daily Orders on indiankanoon
 - ^{xxiv} Article of shodhganga on “conclusion and remedial suggestions as to desirable changes in maintenance law”