

RIGHT TO MAINTENANCE

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ABSTRACT

“Maintenance” means a fixed amount of money to be paid at the time of divorce by one spouse to the other, in total or in installments. Separate maintenance is an allowance made by the husband to his wife for her separate support and maintenance.

The law of maintenance is an offshoot of the institution of marriage .Maintenance can be claimed by the wife under all matrimonial statues except one and that is Dissolution of Muslim Marriage Act .The right of maintenance can be claimed as a subsidiary relief not to speak for divorce or judicial separation and restitution of conjugal right.

For most women, the right of maintenance forms the central core of their matrimonial dispute. It is far more easier to come to an amicable settlement regarding divorce and custody while maintenance remains a contested question.

Man and woman are considered as two halves of the humanity in our society. Neither can reach its highest creative excellence without the co- operation of others. Contemporaneous legislations,laws, treaties and conventions have unequivocally established equal rights for man and woman as a global norm. In spite of all these discrimination continues.

Keeping in mind the above discussion, my Paper would focus on the following objectives.

- 1. To examine the perspective and experiences of women seeking justice within the legal domain. This is in order to arrive at an understanding of whether or how such mechanisms have been able to mitigate the sufferings of women in cases pertaining to right to maintenance.*

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2. *To analyze the role of the justice delivery mechanism in fulfilling its objectives toward empowering women victims within the patriarchal social structure.*
3. *To understand the problems women face within larger socio-legal matrix once they approach the legal system with the object to seek maintenance.*

Introduction

“Maintenance” means a fixed amount of money to be paid at the time of divorce by one spouse to the other, in total or in installments. Separate maintenance is an allowance made by the husband to his wife for her separate support and maintenance.²

The term also means money payable to a spouse or child for that person’s living expenses by the other spouse or a parent under an order of court.

In patriarchal society, under family system, the head of the family has to maintain the whole family. The position of Women, whether she is a daughter, wife or mother in Hindu Law, Muslim Law and Christian Law is under the maintenance of the men. The rights of women regarding the personal laws of marriage, divorce and maintenance differ on the basis of religious laws. The aspects of the maintenance of Hindu, Muslim, Christian and Parsi women are presented on the basis of enactments, made by the Central Government.³

The law of maintenance is an offshoot of the institution of marriage and the institution of family. All dependents are entitled to be maintained in a family by the father, husband, son or the male member of the family. Maintenance can be claimed by the wife under all matrimonial statutes except one and that is Dissolution of Muslim Marriage Act. However, the right of the elderly parents to claim maintenance is recognized by all the family laws of the world. The right of maintenance can be claimed as a subsidiary relief not to speak for divorce or judicial separation and restitution of conjugal right. There are other statutes which grant women, children, parents and other dependents female relatives an independent right to maintenance like Hindu Adoptions and Maintenance Act 1956, the uncodified Muslim law, section 125 of the Code of Criminal Procedure, etc. The legal provision of maintenance is

² M.R. Mallick, Maintenance Law And Practice (Edition, 2015)

³ Flavia Agnes, Family Law And Constitutional Law (Vol-1 Oxford Press, New Delhi, 2011)

reflection of a social obligation which casts upon the economically stronger member of the family to provide shelter and subsistence to weaker members, i.e. women, children, the elderly and the disabled.⁴

In India the concept of maintenance had its origin both in the personal law of the parties as well as under the Constitution of the country. The Supreme Court commented that section 125 of Cr.P.C is a means of social justice which is specially enacted to protect women and children which falls within the Constitutional sweep of Art. 15(3) reinforced by Art 39. The Supreme Court has also held that maintenance under the Hindu Adoptions and Maintenance Act 1956 includes provision for food, clothing, education and medical treatment and emphasized that it must include a provision for residence as well. The maintenance provided should enable the wife to live in a manner that she is accustomed to in her matrimonial home

Concept and Provisions Related to Law of Maintenance

Concept of maintenance has its origin in the writings and in the teachings of the great sages and Rishis of the ancient India. It was considered that a male Hindu is under moral obligation to maintain his aged parents, unmarried daughters, legitimate or illegitimate child and chaste wife, irrespective of the fact that whether he possesses any property or not.

The Oxford Companion to Law defines 'maintenance' as money payable to a spouse or child for that person's living expenses by the other spouse or a parent under an order of court. The Constitution of India by virtue of Art. 39(f) directs the State to secure opportunities and facilities to the children to develop in healthy manner under free and dignified environment.

Rights of a wife to claim maintenance from her husband are ancillary to the institution of marriage. Under the common English law, concept of maintenance allowance was based on the theory of unity of members Black in his Commentaries has stated that by marriage, husband and wife are one in law, the legal responsibility of the woman during the marriage or at least is incorporated and contaminated as that of the husband, under whose wings, and she performs everything. The Equity Court in

⁴ Modhumita Basu, Law Of Maintenance In India (Edition 2015)

England has also voted on the husband to settle some property for the benefit of the wife on the dissolution of the marriage. The right to maintenance has a very close relation with the theory of Right to Property of an undivided family, as because the undivided family is under obligation to maintain its members, their wives and children. Right to maintenance is nothing but personal and non-transferable right of the beneficiaries for whose benefit the right exists. The measures of maintenance are basically social in nature. The law relating to maintenance has been enacted to avoid vagrancy and destitution. Under the Islamic law also the Holy Quran preaches that a Muslim man must provide for fair and reasonable maintenance for the future of his wife whom he has given *talak* during the period of *iddat*.⁵

Relevant Provision Relating to Law of Maintenance Under Various Personal Laws

There are several rules of law under which right of maintenance or alimony arises in favor of wife, children, and aged parents depending upon the personal law of the parties.⁶

1) Christian Law

A Christian wife can sue her husband for maintenance Section 16 of Madras Civil Courts Act which enacts that where the question regarding succession, inheritance, marriage arises, the court have to decide the question in case where no specific rule exists according to the principle of justice, equity and good conscience.

Section 37 of the Divorce Act lays down that the High Court and the District Judge may order that the husband shall secure to the wife such any amount for such term not exceeding her own life for her maintenance, having regard to the husband's ability.

2) Hindu Law

In the Hindu law, maintenance has been provided both under the Hindu Adoptions and Maintenance Act and Hindu Marriage Act. However, maintenance under the

⁵ Modhumita Basu, Law Of Maintenance In India (Edition 2015)

⁶ Modhumita Basu Supra Note 3 Pg. 1

Hindu Marriage Act is not restricted only to the wife. According to section 24 of the Act either of the spouses may sue the other spouse for maintenance.

3) Mohammedan Law

Under the Mohammedan personal law, the husband is bound to maintain his wife so long as she faithfully co-habits with him but he is not bound to maintain a wife who refuses herself to him, unless such refusal is for non-payment of prompt dower or her leaving the husband's house on the ground of his cruelty. A divorced wife is entitled to maintenance under the Mohammedan personal law till the end of the period of *iddat* or if divorce has not been communicated to her till she received the information.⁷

Parsi Law: The Parsi Marriage and Divorce Act 1936: Section 40 of the Parsi Marriage and Divorce Act lays down that court may at the time of passing decree or even thereafter order the husband to provide such gross sum or such monthly or periodical payment till the wife remain chest and unmarried for a term not exceeding her life having regard to her own property and the husband's ability to make such payment. Such order is executable as a decree of the civil court and variable under changed circumstances.⁸

Essential Conditions for Maintenance

1) Inability to maintain

Persons having capacity to earn cannot refuse or neglect to maintain his child, wife or parent on the ground of inability. Even insolvency of the husband cannot be a ground to hold that he has no sufficient means or he is unable to maintain his wife. An able-bodied man cannot claim that as he has no means to pay maintenance to his wife, he was unable to maintain her. A wife who is unable to maintain herself can claim maintenance allowances to protect herself from destitution and vagrancy.

2) Onus

⁷ Supra Note 4 Pg. 2

⁸ Modhumita Basu Supra Note 4 Pg. 2

Onus would be upon the husband who pleads inability to provide maintenance to show that by means of accident, disease or condition of labor market or the like he is not capable of earning anything and is unable to provide maintenance to his wife.

Burden lies upon the husband to prove who alleges that he has no sufficient means to maintain his wife.

3) Husband's liability to prove that wife can maintain herself

If the husband alleged that the wife had independent income and was gainfully employed and earning Rs.40/50 per day by working as a weaver, but failed to prove it satisfactorily. The wife is entitled to maintenance.

4) Refusal or neglect to maintain the wife

Husband branding his wife insane and confining her in mental asylum when she is not a mental patient is a case of willful neglect and the wife has right to live separately from the husband and claim maintenance.⁹

Conclusion

Constitutional Claims and Maintenance Rights

One is often confronted with a provocative question – within the gender-neutral language of matrimonial laws which refers to the husband and wife as 'spouses' how do we locate the specific claim of women to maintenance?

"Maintenance" signifies dependency which has no place in the gender-neutral terminology of modern divorce theories. It is a need-based approach which reduces the wife to a subordinate position and does not recognize her as an equal partner in marriage. The roles, responsibilities and obligations within marriage are gendered. Mere change of terminology does not transform relationships of inequality into egalitarian partnerships.¹⁰

⁹ Modhumita Basu Supra Note 3 Pg. 1

¹⁰ Wwww.Scconline.Com

As per the constitutional mandate equality can only be between equals. Treating those who are not equals as equals only serves to widen the disparity between the two sections. The provision of maintenance is crucial to women who are in conflict marriages and to deserted and destitute women. The right of a woman to maintenance needs to be located within citizenship claims enshrined in our Constitution. It is grounded within the constitutional paradigm of ensuring social justice. It is reflective of a social obligation which the state casts upon economically stronger members of the family to provide shelter and sustenance to the weaker members, i e, women, children, the elderly and the disabled.¹¹

For most women, the right of maintenance forms the central core of their matrimonial dispute. It is far easier to come to an amicable settlement regarding divorce and custody while maintenance remains a contested question.

Maintenance and Morality

Securing an order of adequate maintenance can be an extremely humiliating experience as a high degree of sexual morality surrounds the question of maintenance. Curiously, the core of this economic dispute does not revolve around questions of financial arrangements of the family unit, but hinges upon issues of sexual mores.

In the context of unequal power relations prevailing within marriages, women's economic rights are determined in the context of these codes. The morality dictates of a patriarchal marriage often get entangled in the economic claims. Allegations of adultery and immorality can constantly be hurled against women.¹²

To give an example, the *Divorce and Matrimonial Cases*(DMC) (a popular journal widely relied upon by lawyers practising matrimonial law) in Volume I of 2001 reported around 45 cases under the title "Maintenance". After the first round of litigation in the trial courts, these cases were appealed in the higher courts, and only thereafter merited reporting in the law journal. Most of these cases also contained allegations of dowry harassment. The false and frivolous interventions entangle women in circuitous legal rignaroles which are time-consuming, financially draining and emotionally charged.

¹¹Www.Articlemyriad.Com › Literature › Fiction

¹²Economic And Political Weekly, Article (Vol Xliv)

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Women's issues are a matter of grave concern for a long time but have attracted pointed attention only in recent few decades. Over the years the radical changes have been introduced in the laws pertaining to woman is right which not only recognized their rights but also helps in protection against exploitation. In spite of all this, due to lack of understanding about the harsh realities being faced by the women at home or at workplace or in court, often leads to inequality and injustice to women. This suffering can in a way be traced to deep rooted social values in an essentially male dominating society. It is said Gender equality in most cases boils down to a myth. Education and media exposers have contributed a lot in making Indian women aware of some of their rights and their position in the society. However, because of the attitude of the society this important section has remained deprived of enjoyment of their human life to the full. Often recourse has to be taken by the women in a court of law to enforce their rights, particularly in view of the social significance being attached to such issues. In this process, much needed recognition and support has been provided to women, irrespective of their religion, caste and creed by the judiciary in this country.

The principle of gender equality is enshrined in the Indian Constitution, chapters on Fundamental Rights, Fundamental Duties and Directive Principles of State Policy. India has also ratified various international conventions and human rights instruments in committing to secure equal rights of women in our society.

Fundamental rights ensure equality before the law and equal protection of law that prohibits discrimination against any citizen on the basis religion, race, caste, sex or place of birth and guarantee equal opportunity to all citizens in matters relating to public employment. Articles 14, 15, 16, 39(a), 39(b), 39(0) and 42 of the Constitution are of specific importance in this regard.

The last decade of the last century has seen a growing recognition of women rights as human right and as an inalienable, integral and indivisible part of universal Human

Rights. The equal participation of women in all areas including political, social, civil, economic and cultural life at the national, regional and international level and eradication of all forms of discrimination on the ground of sex and priority objectives of the international community. Crime against women is an outcome of the long history of deprivation of socio-economic rights.

Protection from harassment, oppression and discrimination among women in the Indian society has remained a distant goal to be achieved.

I conclude with the words of former Chief Justice Dr. A.S. Anand

“I am the women who holds up the sky

The rainbow runs through my eye,

The sun makes a path to my womb

My thoughts are in the shape of clouds

But my words are yet to come.”