

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS



Megha Middha

Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS

ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

MEN'S RIGHT TO ALIMONY: AN ANALYSIS UNDER INDIAN LEGAL SYSTEM AND PATRIARCHAL STRUCTURE OF SOCIETY

AUTHORED BY - PAYEL GHOSH,

Research Scholar,

Department of Legal Science, Techno India University, West Bengal

CO-AUTHOR - DR. DEBASHREE CHAKRABORTY,

Faculty of Law, Department of Legal Science, Techno India University, West Bengal.

ABSTRACT

Alimony is a right to get the necessities which are justified and reasonable. It can also be said as spousal support. It would include means of subsistence, supply of necessities and conveniences, aid, support, assistance, the support which one person who is bound to extend, gives to another for his/her living. It would also include medical and other expenses related to normal pursuit of life, so that a person can live in the manner, more or less, to which he/she is accustomed. It may be considered as a legal marital obligation of a partner in a marriage to provide financial support to the other partner following a separation or divorce. India and its people came a long way to attain gender equality. To erase discrimination on the ground of sex, major steps have been taken. Constitutional amendments, adoption of new policies, enactment of new laws, overruling of old judgments etc. are few examples of those steps. But it is surprising and shocking at the same time to know that inequality still remains in almost every home in India. Inequality in marriage is the biggest example of it. Indian patriarchal society, since the very beginning, has imposed attitudes and behaviours on human beings on the basis of gender which always affected the institution of marriage, laws relating to marriage, divorce and alimony. It has always been believed that if women start to earn, it would be impossible to limit their liberty and freedom anymore. Considering all the factors since early ages, this paper seeks the intention of the legislatures of the laws relating to alimony. This paper argues that most of the alimony provisions in Indian laws create unequal status of the parties to a marriage. This inequality is helping women to remain in inferior position in a wedlock and somehow keeping them in an apprehended vulnerable position.

Keywords: Marriage, Alimony, Personal Laws, Criminal Laws, Gender Inequality, Patriarchy

INTRODUCTION

Marriage is demonstrated to be a universal social institution. It is established with the objective to control and regulate the life and behaviour of human beings. Right to marriage under Indian Constitution is guaranteed under Article 21 which states about the right to life as a fundamental right to every person in the country. Rituals, ceremonies and registration mandate of a marriage in India differs from religion to religion, region to region and each such religion has an individual set of personal laws governing the sacrosanctness of marriage.

India and its people came a long way to attain gender equality. To erase discrimination on the ground of sex, major steps have been taken. Constitutional amendments, adoption of new policies, enactment of new laws, overruling of old judgments etc. are few examples of those steps. But it is surprising and shocking at the same time to know that inequality still remains in almost every home in India. Inequality in marriage is the biggest example of it. Indian patriarchal society, since the very beginning, has imposed attitudes and behaviours on human beings on the basis of sex which always affected the institution of marriage, laws relating to marriage, divorce and alimony. Despite the Constitution of India, considering all men and women as equal entities, there still exist some laws and legislations in the country that remain partial to a particular gender. The branch of alimony laws in India is one of those.

In most systems of law the wife's special provision in her husband's household is recognised. In the patrilineal family structure, management of the husband's household has been the main task of the wife. The patriarchal society did not contemplate and consider it to be her role or duty to be engaged in the earning of wealth. In the modern society also, most wives are still financially dependent on their husbands. This is reflected in law by the rule that wife can pledge the credit of her husband for necessities. Most systems of law recognise the direct obligation of the husband to maintain his wife so long as marriage subsists and his wife remains faithful. In the modern legal system, the responsibility exists even after the dissolution of marriage.¹

CONCEPT OF ALIMONY

In simple words, alimony is a right to get the necessities which are justified and reasonable. The Latin term 'alimonia' from which the English term 'alimony' has been derived actually means

¹ Dr Paras Diwan, Modern Hindu Law (21st edn. 2012)

sustenance. It can also be said as spousal support. It would include means of subsistence, supply of necessities and conveniences, aid, support, assistance, the support which one person who is bound to extend, gives to another for his/her living. It would also include medical and other expenses related to normal pursuit of life, so that a person can live in the manner, more or less, to which he/she is accustomed. It may be considered as a legal marital obligation of a partner in a marriage to provide financial support to the other partner following a separation or divorce. The object of alimony is to provide financial support by one partner to other who has a lower income or no income at all to meet his or her basic necessities. According to the definition given by Corpus Juris, alimony is the allowance required by law to be made to a wife, out of her husband's estate for her support either during the pendency of the matrimonial suit or on its termination, where the fact of the marriage is established and she proves that she is entitled to a separate maintenance. Like maintenance, alimony denotes the existence of an obligation on the part of a person to provide for the need of another person or persons who is or are in one way or the other related to, or dependant upon him.² Though the term 'alimony' doesn't have any statutory definition, but the term 'maintenance' has been defined under Section 3(b) of Hindu Adoption and Maintenance Act, 1956. According to it, maintenance includes provision for food, clothing, residence, education and medical attendance and treatment. In the case of an unmarried daughter, it also includes the reasonable expenses of and incident to her marriage.

HISTORICAL BACKGROUND

In most areas of the Indian socio-legal structure, it has been the general practice to grant alimony to a wife obtaining a divorce or separation. The exercise of granting alimony to the wife and not to the husband arose out of the common law obligation of the husband to support his wife and family.³ Gender polarisation is a concept in sociology by American psychologist Sandra Ben which states that societies tend to define feminity and masculinity as polar opposite genders, such that male - acceptable behaviours and attitudes are not seen appropriate for women and vice-versa. The theory is an expansion of the sex and gender differentiation in sociology in which sex refers to the biological distinction between men and women, while gender refers to the cultural differences between them, such that gender describes the "socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for men and women." From the ancient period of time, society has been fixing what a man should do and what a woman should

² Dr. Paras Diwan, Modern Hindu Law (21st edn. 2012)

³ Pamela Joy Smith, Alimony for men - The changing law September 09, 2023 4:00 PM core.ac.uk

do. Husbands are playing the role to earn for the family, to meet the expenses, to pay maintenance i.e. to take all the financial liabilities which has been superimposed by society and wife has the role to take care of the house, the children and in case of separation or divorce, to claim maintenance. The cruel truth is that our culture expects men to be the primary bread earner in the family and there are simply more options for women to do part-time work or to take care of children, husband and in-laws.

INDIAN LEGAL SYSTEM

Part III of the Indian Constitution has given its citizen certain exclusive fundamental rights which are to be enjoyed against the State. This part provides with, inter alia, the right to equality and right to life which are extraordinary rights and can never be denied by the State. The concept of equality has been held rudiment to the rule of law and is regarded as the most fundamental hypothesis of republicanism.⁴ The majority of the Supreme Court has held in the case of *Indira Nehru Gandhi v. Raj Narain*,⁵ that the right to equality conferred by Article 14 is a basic structure of the Constitution and an essential feature of democracy or rule of law. It has been held to be a right which more than any other is a basic principle of our Constitution.⁶ It was interpreted by the Supreme Court in the case of *Marri Chandra Shekhar Rao v. Dean, Seth G. S. Medical College*,⁷ that the rule of equality is not an absolute one and there are a number of exceptions to it. Right to equality and equal protection of law must become a living reality for the large masses of the people. Those who are unequal, cannot be treated by identical standards. It may be equality in law but it would certainly not be real equality. But gender based reservation system did not succeed in achieving gender equality in India.

As per Article 21, the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as clothing, sufficient nutrition and shelter over the head and facilities for writing, reading and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow people.⁸ It was also held by the Supreme Court that right to livelihood is also an important facet of right to life. If the right to livelihood is

⁴ Narender Kumar, Constitutional Law of India 115 (10th edn. 2018)

⁵ AIR 1975 SC 2299

⁶ Narender Kumar, Constitutional Law of India 115 (10th edn. 2018)

⁷ 1990(3) SCC 130

⁸ Francis Coralie v. Union Territory of Delhi AIR 1981 SC 746

not treated as a part of the constitutional right, the right to life, the easiest way of depriving person of his right to life would be to deprive him of his means of livelihood to the point of repudiation.⁹

Article 39A of the Indian Constitution, which was inserted by the Constitution (42nd Amendment) Act, 1976, states that the State is under obligation to ensure and secure the operation of legal system which is to promote justice on a basis of equal opportunity, o provide free legal aid by appropriate legislation or schemes and to ensure that opportunities for securing justice are not denied to any citizen by reason of economic difficulties or other disabilities.¹⁰ It falls within the broad header of the Directive Principles of State Policy which states that the State shall direct its policies toward ensuring that all citizens, men and women alike, have access to a sufficient means of subsistence, that children are provided with opportunities and facilities to develop in a dignified and healthy manner and that childhood and youth are protected from exploitation and moral and material desertion.

ALIMONY UNDER PARSI LAW

The Parsi Marriage is regarded as a contract through a religious ceremony of Ashirvad which is necessary for its validity. The Parsi Marriage and Divorce Act at present was passed in 1865. Since then the circumstances have greatly changed and there has also been a change in the sentiments and thoughts of the Parsi community. Now, Parsi law for marriage and divorce is regulated and monitored by the Parsi Marriage & Divorce (Amendment) Act, 1988.

Section 39 of the Act deals with alimony pendente lite. According to this section, if an application made before the court for alimony by either the husband or the wife who has no independent income sufficient for his or her support and the necessary expenses of the suit, the court may order the defendant to pay to the plaintiff, the expenses of the suit and such weekly or monthly sum, during the suit, as having regard to the plaintiff's own income and the income of the defendant.

Section 40 states that any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on an application made to it either by the wife or the husband, order that the defendant shall pay to the plaintiff for her or his maintenance and

⁹ Olga Tellis v. Bombay Municipal Corporation AIR 1986 SC 180

¹⁰ Narender Kumar, Constitutional Law of India 559 (10th edn. 2018)

support, such gross sum or such monthly or periodical sum, for a term not exceeding the life of the plaintiff as taking into consideration the income and owned property of both the parties, their conduct and other facts and 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 movable or immovable property of the defendant.

The court, on application by either party and after getting satisfied, may verify, modify or rescind any previous order as it thinks fit. The order in favour of wife can be cancelled if it is found that she is remarried or has not remained chaste and in favour of husband, if it is found that he had sexual intercourse with any woman outside wedlock.

According to section 41, in all cases where the court shall make any decree or order for alimony, it may direct the same to be paid either to the wife herself, or to any trustee on her behalf to be approved by the Court or to a guardian appointed by the court and may impose any terms or restrictions which to court may seem expedient and may from time to time appoint a new trustee or guardian, if for any reason it shall appear to the court expedient to do so.

ALIMONY UNDER HINDU LAW

Under Hindu Law, in certain cases the duty and obligation of a Hindu to maintain others arises from the mere relationship between the parties, independently of the possession of any property. In other cases, it depends altogether on the possession of property.¹¹ The former liability may be called as personal liability or absolute liability or liability on account of relationship and the later is the liability restricted by the possession of ancestral or other property.¹²

According to Hindu Law, a member of the family is entitled either to a share in the ancestral property or maintenance out of the income of that property. Wife, widowed daughter-in-law, children and aged parents and dependants of the deceased are the persons who are entitled to maintenance under Hindu Adoptions & Maintenance Act, 1956.

Section 18 of the Hindu Adoption & Maintenance Act, 1956 deals with the maintenance of wife only. There is no mention regarding the right of a husband to claim maintenance or alimony from

¹¹ Savitri Bai v. Laxmi Bai (1978) 2 Bom 573

¹² R. K. Agarwal, Hindu Law 130 (23rd edn, 2013)

his wife. Prior to this Act the Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946, was in force but this Act has now been replaced by Section 29 of the Hindu Adoption and Maintenance Act, 1956.¹³ According to section 18(1), a Hindu married woman, irrespective of the date of marriage, shall be entitled to be maintained by her husband and this obligation on her husband will continue throughout the life of the wife. The right of the wife to claim maintenance from her husband in her personal right against her husband and it arises irrespective of the fact whether the husband has got any property either ancestral or self acquired.¹⁴ A wife entitled to be maintained out of the profits of her husband's property and under the express terms of Section 39 of the Transfer of Property Act,¹⁵ can enforce her right against the properties in the hands of the alienee with notice of her claim.¹⁶ Thus, the right of a wife for maintenance is an incidence of the status or state of matrimony and a Hindu under a legal obligation to maintain his wife. The liability to maintain the wife is completely personal liability and arises from the very existence of the relation between the parties. Section 18 of the Act, substantially reiterates that right and lays down the general rule that a Hindu wife, whether married before or after commencement of this Act, is entitled to be maintained by her husband during her lifetime. According to section 18(2), a Hindu wife shall be entitled to live separately from her husband without forfeiting her claims to maintenance if he is guilty of desertion i.e. absconding her without reasonable cause and without her consent or against her wish or wilfully neglecting her or if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband or if he is suffering from a virulent form of leprosy or if he has any other wife living or habitually resides with a concubine elsewhere or if he has ceased to be a Hindu by conversion to another religion or if there is any other cause justifying her living separately. But the wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or cease to be a Hindu by conversion to another religion. Where the wife claims separate residence, the burden lies upon her to show the special circumstance which entitles her to a separate residence.

¹³ *ibid*

¹⁴ *Jayant v. Almala (1924) 27 Mad 34*

¹⁵ S. 39 of Transfer of Property Act, 1882 - Where a third person has a right to receive maintenance, or a provision for advancement or marriage, from profits of immovable property, and such property is transferred, the right may be enforced against the transferee, if he has notice thereof or if the transfer is gratuitous, but not against a transferee for consideration and without notice of the right, nor against such property in his hands.

¹⁶ *Chandramma v. Maniam Venkatareddi (1959)*

Sections 24 & 25 of Hindu Marriage Act, 1955 deals with maintenance and surprisingly, it gives the right to claim maintenance both to the husband and the wife. Section 24 of the Hindu Marriage Act deals with maintenance pendent lite during the proceedings between a husband and a wife, while Section 25 of this Act deals with permanent alimony and maintenance to be fixed at the time of passing any decree or subsequent thereto. According to Section 24, if it appears before the Court at any time during the pendency of a proceeding under this Act that either the wife or the husband has no independent income sufficient for his or her support and the necessary expenses of the proceeding, the court may order to the respondent to pay to the petitioner the expenses of the proceeding and a reasonable monthly expense during the proceeding after considering the petitioner's own income and the income of the respondent.

Maintenance pendente lite means any of the spouses is financially weak and filed any matrimonial relief against the other spouse and the proceedings are still pending, the spouse weak in financial position can claim maintenance during the pending of the litigation.¹⁷ Section 24 of the Act not only recognises the principle of the right of a wife for maintenance but goes a step further to lay down that such an order can be made by the court even in favour of the husband. If the husband is himself dependent, he need not pay for maintenance. In *Smt. Pramila Bhatia vs. Vijaya Kumar Bhatia*,¹⁸ the Court held that when husband is unemployed and dependent on his mother, wife is not entitled to maintenance. The object behind section 24 of the Act is to provide financial assistance to the indigent spouse to maintain himself or herself during the pendency of the proceedings and also to have sufficient fund to defend or carry on the litigation so that spouse does not unduly suffer in the conduct of the case for want of fund¹⁹ and to ensure that any party to marriage against whom a matrimonial litigation has started does not suffer injustice on account of his or her poverty.²⁰ It has been ruled by the Court that in absence of any special circumstance, one fifth of the entire income of the husband's income must be parted by him towards maintenance of his wife.²¹ But it has been overruled that it is not mandatory on the court that one fifth of the net income of the husband (or wife) should be awarded by way of interim maintenance to the applicant.²²

¹⁷ Dr. S. R. Myneni, Hindu Law (1st edn, 2009)

¹⁸ AIR 2000 Raj 362

¹⁹ Chitralekha v. Ranjit Rai AIR 1977 Del 176

²⁰ Sohan v. Smt. Kamlesh (AIR 1984 P&H 332)

²¹ Prasanna Kumar v. Sureshwari (AIR 1969 Orissa 12)

²² L.R. Rajendran v. Gajalanshi 1985

Thus, the application for maintenance can be made either by the 'wife' or 'husband'. Granting of maintenance to a husband was entirely new and exceptional concept accepted in the Indian Jurisprudence by sections 24 & 25 of the Hindu Marriage Act. Once it is established that the applicant has no sufficient means for her or his maintenance and support, the court should pass an order of maintenance. These sections are considered as welfare legislation. Right to maintenance under section 25 would include right to residence too.²³

High Court opined that a reading of sections 24 and 25 of the Hindu Marriage Act, 1955 together would reveal that both the sections are angling provisions and confer a right on the indigent spouse to claim maintenance either pendente lite or in the nature of permanent alimony and maintenance.

ALIMONY UNDER MUSLIM LAW

It has been contended that the Mohammedan Law as to maintenance is a law of imperfect obligation imposing a moral and not a legal obligation.²⁴ It is incumbent on a husband to maintain his wife, whether she be Muslim or Kitabiya, poor or rich, enjoyed or unenjoyed, young or old. In case where the wife is too young for matrimonial intercourse, she has no right to get maintenance from her husband, whether she is living in his house or with her parents.²⁵ This broad and wide obligation is restricted only in cases where he is not obedient and does not allow the husband free access at all lawful times. If the husband has not paid the prompt part of dower or she refuses to live with her husband because of cruelty, the husband is bound to maintain her.²⁶ Where husband has married a second wife or keeps mistress, the wife may refuse to live with the husband and still claims maintenance from him. Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 entitles a divorced woman to (i) reasonable and fair provision, (ii) maintenance to her, (iii) provision and maintenance to her children for two years, (iv) mar amount and (v) all properties given to her before, at the time of and after her marriage. This Act was enacted to protect the rights of Muslim women who have been divorced by, or have obtained divorce from their husbands and to provide for matters connected therewith or incidental thereto. Section 5 of the Act mentions that the parties are having an option to declare jointly, if both give consent, to be governed by either the CrPC or the new Act. Section 7 of the Act provides that

²³ B.P. Achala Anand v. S. Appi 2005 SC 986

²⁴ Mohd. Jusab v. Haji Adam ILR (1911) 37 Bom 71

²⁵ V.P. Bhartiya, Syed Khalid Rashid's Muslim Law (5th edn., 2009)

²⁶ Amir Mohd. v. Bushra AIR 1956 Raj 102

every application made by the wife under section 125 or 127 CrPC pending before the magistrate on the commencement of the Act shall be disposed of in accordance with the provisions of this Act. The Court also held that the Act nowhere nullifies the orders passed under section 125. Once that order is passed, her rights are established and she gets vested right to recover maintenance allowance from her former husband. That vested right has not been taken away by Parliament.²⁷

ALIMONY UNDER CRIMINAL LAW

As per the Law Commission, primary reason and justification for placing provisions relating to maintenance to wives, children and parents which are civil in nature in the Code of Criminal Procedure is that a remedy more speedy and economical than that available in Civil Courts is provided to them. Moreover, these provisions are aimed at preventing starvation and vagrancy leading to the commission of crime. Section 125 of Code of Criminal Procedure enacts if any person having sufficient means neglects or refuse to maintain his wife, children or parents, unable to maintain themselves, a judicial magistrate first class may order such person to pay maintenance to them at such rate as he deems fit. This section is a summary remedy which aimed at preventing starvation, destitution and vagrancy of dependents. The principal object of this section is to secure relief to deserted and destitute wives, discarded and neglected children and disabled and helpless parents.²⁸ By providing a simple, speedy and limited relief, cumbersome process of civil law is avoided by compelling those persons whose duty is to maintain their dependents who are unable to maintain themselves. As per Law Commission's 41st Report, no wife, child or parent can be left beggared and destitute on the scrap-heap of society so as to be tempted to commit crime in regard to them.²⁹ In this provision also, it was not even thought that a man in a marriage can also be in helpless and destitute position. Because the society always thinks that a wife is the only party in a marriage who can be financially weak and can be helpless. As the result of gender polarisation, women have always been tagged as vulnerable and weaker section of the society and it is assumed that only they can be in a position in need of support.

²⁷ V.P. Bhartiya, Syed Khalid Rashid's Muslim Law (5th edn., 2009)

²⁸ Law Commission's 41st Report, Para 36.1

²⁹ Jagir Kaur v. Jaswant Singh (2003), Mohd. Ahmed Khan v. Shah Bano Begum AIR 1985 SC 945, Savitri v. Govind AIR 1986 SC 984, Savitaben v. State of Gujarat AIR 2005 SC 108

It has been interpreted in *Avitaben v. State of Gujarat*,³⁰ *Chaturbhuj v. Sita Bai*,³¹ and *Shabana Bano v. Imran Khan*³² that this section has been enacted to achieve goal of social justice and is aimed to protect women, children and old parents by putting emphasis on moral and fundamental duty of a man to maintain his wife, children and parents, if they are unable to maintain themselves. It was held by the courts in various cases that section 125 is a measure of social justice and specially enacted to protect women and children which falls within the constitutional sweep of Article 15(3) reenforced by Article 39 of the Constitution. The section is intended to prevent starvation of wives deserted by their husbands, children neglected by their fathers and parents discarded by their sons. Legislation in favour of such weaker section of the society cannot be said to be arbitrary or unreasonable offending Article 14 of the Constitution.³³ The Bharatiya Nagarik Suraksha Sanhita, 2023 replaces the Code of Criminal Procedure, 1973. But the contents and procedures of these provisions remain same in the sections 144 to 147

JUDGMENTS IN FAVOUR OF HUSBANDS

There have been several cases in which the Courts the decision in favour of the husband and rejected the claim of maintenance to the wife either due to wife's own fault or her sound financial condition.

In the case of *Bhagyashri v. Jagdish*,³⁴ the Bombay High Court has recently asked a wife to pay alimony to her former husband and said either of the spouses can claim alimony under provisions of the Hindu Marriage Act. A local court in Maharashtra's Nanded had earlier directed the woman to pay Rs. 3000/- to her divorced husband who is unable to maintain himself and is in need of money. The Bombay High Court upheld the orders of the local court. The marriage came to an end in 2015 after 23 years and the wife is a university teacher. The Court stated that the provision of maintenance/permanent alimony being a beneficial provision for the indigent or needy spouse can be invoked by either of the spouse where a decree of any kind by Sections 9 to 13 has been passed and marriage tie is broken, disrupted or adversely affected by such decree of the court. In the year 1992, the couple got married and were divorced in 2015 after the wife approached the court alleging cruelty. The husband then filed a petition for alimony of Rs. 15000/- per month

³⁰ AIR 2005 SC 1809

³¹ AIR 2008 2 SCC 316

³² AIR 2010 SC 305

³³ *Thamsi Goundan v. Kanni Ammal* AIR 1952 Mad 529, *Shammi Khan v. Sarojini* 1981 CrLJ 830

³⁴ Writ Petition No 2527 of 2021

and claimed he did not have any source of income. He also mentioned that he encouraged his wife to complete her higher studies while he managed the household. The wife claimed the husband had his way of income and earned sufficiently. She stated that the husband had a grocery shop and also earns from leasing out his auto-rickshaw, while she has to take care of their daughter too. The wife's counsel had opposed the alimony claim on the point that the divorce was granted in 2015, the ex-husband moved for alimony in 2017. The High Court explained that the argument is not maintainable as alimony can be sought at any time. Until the plea of permanent alimony of Rs. 15000/- per month is decided, the woman was asked by the Nanded Civil Court to pay maintenance of Rs. 3000/-. The order has been upheld by the Bombay High Court.³⁵

*Lalit Mohan v. Tripta Devi*³⁶ was one of the few early landmark cases that dealt with the maintenance of the husband by his wife. The Jammu and Kashmir High Court observed that the wording 'wife or husband' in sections 24 & 25 of Hindu Marriage Act, 1955 indicated that either of the parties to the marriage can seek relief under the Act including maintenance pendente lite and permanent alimony. It was stated by the Court that this Act's provision on maintenance was clearly separate from section 125 of the Code of Criminal Procedure, 1973. Under the Hindu Marriage Act, 1955, either party to the marriage might be given support and expenses of the proceedings if the circumstances are sufficient. The provisions were introduced on social and moral grounds with the goal of ensuring that the party could support himself or herself during the course of the proceedings because there was no freedom to form another marriage. The legislature had the intention to offer financial proceedings and after the passing of the decree. The other spouse owes it to the aggrieved spouse to offer financial help so that the processes can be carried out and that he or she is not subjected to famine or moral degradation while the proceedings are pending. The facts and circumstances of this case revealed that the husband had no independent income and that the respondent wife was able to give the husband support under the Act. The Court was convinced that the petitioner was entitled to alimony pendente lite, expenses of the proceedings and permanent alimony based on the respondent's own income and income from other properties, the petitioner's earning ability and the parties' conduct. Considering the facts and circumstances and all the parameters of the case, it was ordered that the respondent wife must pay Rs. 500/- as court expenses and Rs. 100/- per month as maintenance pendente lite and

³⁵ Hindustan Times April 02, 2022 <https://www.hindustantimes.com/india-news/woman-asked-to-pay-alimony-to-ex-husband-bombay-hc-says-either-spouse-can-claim-101648866948982.html>

³⁶ AIR 1990 J&K 7

permanent alimony to the petitioner, husband from the date of application until his death or remarriage, whichever comes first.

In the case of *Gurbinder Singh*,³⁷ while divorce and various other proceedings were going on, both the parties were made to sign a mutual settlement according to which they had to sign undertaking. The undertaking kept both husband and wife under obligation and condition of not to interfere in their personal affairs of each other and also not to disturb their parents or relatives. It explicitly put restrictions upon both parties to do anything which could affect the character or reputation of the other. The respondent also made it clear that she will not take any action against their children, provided that they were living with the petitioner at that time. In August 2004, the wife again filed an application under section 125 of the Code of Criminal procedure in Jalandhar Court. Following the application, the respondent was made to give the perusal of an ex parte order. It clearly showed that she suppressed the material facts from the court. While applying for maintenance, she did not disclose that she was a teacher in a school in Jalandhar and that she filed affidavit in the High Court that she will not harass her husband. It was found by the Court that she was filing the application for maintenance only to harass her husband and this clearly violates the undertaking signed between them. Her conduct of suppressing material facts from the Court and obtaining an ex parte order made her guilty of contempt of court and was liable to pay a fine of 10,000/- rupees. The husband was not under any obligation to maintenance to her.

DRAWBACKS

After a deep analysis of the legal provisions regarding alimony in India, it can be clearly noted that the existing laws are not gender neutral. The principle of equality has been reflected only in the provisions of the Parsi Marriage and Divorce Act, 1936 and the Hindu Marriage Act, 1955. These provisions allow both the parties to a marriage to move before the court for filing a maintenance petition and get support. On the other hand, provisions of Hindu Adoption and Maintenance Act, 1956; Muslim Personal Laws, Special Marriage Act, 1954; Section 125 of Code of Criminal Procedure; the Indian Divorce Act allow a wife and only a wife to claim maintenance. Many of these laws were made ages ago. Structure of society, structure of family, opportunities, mentality and thoughts of people were different. Illegitimate hierarchy played a negative role in a family throughout years and decades. Now, everything came forward but certain

³⁷ *Gurbinder Singh v. Manjit Kaur* (2010)

laws. Alimony and maintenance provisions of the above mentioned legislations continued to remain unequal, uneven and slanted. It must be noted that there are number of maintenance orders which have been given in favour of husbands.

CONCLUSION AND SUGGESTIONS

Provisions for alimony in India is absolutely needed and indispensable. But as the institution of marriage is a partnership of life, the inequality in alimony laws is queer and should be erased. This inequality is helping women to remain in inferior position in a wedlock and somehow keeping them in an apprehended vulnerable position. Most of the alimony provisions in Indian laws create unequal status of the parties to a marriage. Even though Constitution is treating them alike, they are equal before law, some provisions are discriminating them in certain issues and being partial, increasing the gap between the status of two genders.

Keeping Article 15 (3) of the Indian Constitution in mind, multiple legislations are there for the protection of women and upliftment of their status. But the alimony laws being gender biased, discriminatory, partisan, prejudiced and partial, are pulling them back. If a girl knows from the very beginning that she and only she in a marriage is entitled to get maintenance no matter what, her desire to be capable of earning will be questioned. It will always remain to be a choice to her to earn. Support system makes human being dependant and without financial independence, women will remain to be in inferior position in a marriage. If granting maintenance to a skilled person promote idleness then it must be for both the parties to a marriage.

BIBLIOGRAPHY

1. BOOKS

- A. Aqil Ahmed, Mohammedan Law (26th edn. 2016)
- B. Dr. Narender Kumar, Constitutional Law of India 115 (10th edn. 2018)
- C. Dr Paras Diwan, Modern Hindu Law (21st edn. 2012)
- D. Dr. Dr. R. K. Agarwal, Hindu Law 130 (23rd edn, 2013)
- E. Dr. S. R. Myneni, Hindu Law (1st edn, 2009)
- F. Dr. Justice C. K. Thakker Takwani (4th edn. 2015)
- G. J. N. Pandey, The Constitutional Law of India (48th edn. 2011)
- H. V.P. Bhartiya, Syed Khalid Rashid's Muslim Law (5th edn., 2009)

2. STATUTES

- A. Bharatiya Nagarik Suraksha Sanhita, 2023
- B. Code of Criminal Procedure, 1973
- C. Hindu Adoption and Maintenance Act, 1956
- D. Hindu Marriage Act, 1955
- E. Muslim Women (Protection of Rights on Divorce) Act, 1986
- F. Parsi Marriage & Divorce Act, 1936
- G. Parsi Marriage & Divorce (Amendment) Act, 1988
- H. Special Marriage Act, 1954
- I. Transfer of Property Act, 1882

3. WEBSITES

- A. http://www.livelaw.in/pdf_upload/pdf_uplaod-386029.pdf
- B. Pamela Joy Smith, Alimony for men - The changing law September 09, 2023 4:00 PM
core.ac.uk

