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MAINTENANCE; LEGAL EVOLUTION OF ITS SCOPE AND ITS FUTURE

Sub-Theme: Maintenance of Children, Parents & Wife

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Introduction

Maintenance is derived from the original 12th century Old French verb 'maintenir' which means 'shelter, protection' and also 'upkeep'. Maintenance in literal sense means "Financial support provided for a person's living expenses". In the context of Family Law, maintenance is the financial support that a person is ordered by a court to give to their spouse during separation or following divorce. In India maintenance is not limited to spouses but also parents and children. The concept of maintenance is governed by personal laws as well as general laws such as the Code of Criminal Procedure.

The maintenance provisions are intended to serve the social purpose of protecting the weaker

sections of society, mainly women.¹ The background of providing such benefits is to give economic support to the woman who had to solely depend on her husband. It is a practice in India for the woman to leave her paternal home and move into the matrimonial home after her marriage. The husband and his family members are legally obligated to give shelter and maintenance to the wife in marriage. The woman became obligated to be the homemaker and caretaker of the children, leaving them with fewer opportunities to make an earning to support themselves. As a result, the women had to rely entirely on their husbands for economic security, and when that was disrupted due to marital troubles, they were left destitute. The legal provisions are intended to safeguard women from such exploitation and to provide them with the financial security they need to support themselves and their children in the situation of their husband's desertion. However, certain personal laws allow husbands who are unable to support themselves to seek maintenance.

The concept of maintenance was adopted by the legislature as a measure of social and economic justice from the duties cast upon the legislature by the Directive Principles of State Policy. The maintenance laws are protected by Article 15 of the Constitution which states that the prohibition contained in Article 14 shall not prevent the state from making any special provision for women and children. Article 39 also mandates the State to direct its policies towards ensuring that the citizens, men, and women equally, have the right to an adequate means of livelihood that children are given opportunities and facilities to develop healthy conditions of freedom and dignity, and that childhood and youth are protected against exploitation and moral and material abandonment.

Maintenance under various personal laws:

Hindu Law:

Hindu Adoption and Maintenance Act, 1956, and Hindu Marriage Act, 1955 provide the right to claim maintenance. Maintenance is defined as "anything that can provide for food, clothes, shelter, education, and medical expenses" under the Hindu Adoption and Maintenance Act, 1956 definition clause, Section 3(b). In short, it is financial support provided by a husband or father that covers all of a family's fundamental needs.

Sections 24 and 25 of the Hindu Marriage Act, of 1955 deal with maintenance; pendente lite, and

¹ *Badshah v. Urmila Badshah Godse* (2014) 1 SCC 188

permanent respectively. The provision enables both husband and wife to have no independent income to support themselves to claim maintenance. This is one of the legislation that enables both spouses to claim maintenance.

Furthermore, the right of a married woman to reside separately and claim maintenance, even if she is not seeking divorce or any other major matrimonial relief, has been recognized in Hindu law alone. Section 18 of the Hindu Adoptions and Maintenance Act, 1956 provides for maintenance of the wife from her husband during her lifetime whilst living separately from her husband. The Act envisions situations in which it may become impossible for a wife to continue residing and cohabiting with her husband, but she may not want to cease the matrimonial tie for a variety of reasons ranging from growing children to social stigma.

Muslim Law:

Previously, a Muslim woman could only claim maintenance under Quranic Muslim personal law, which stated that a husband was only obligated to pay maintenance to his wife during the period of 'iddat'. However, in the landmark *Shah Bano*² case, the Supreme Court held that a Muslim woman can claim maintenance under Section 125 of the Criminal Procedure Code, 1973, regardless of Muslim personal law. Furthermore, the "Women (Protection of Rights on Divorce) Act, 1986" was enacted, with the Act's stated goal being "the protection of the rights of Muslim women who have been divorced by, or have obtained divorce from, their husbands."

Section 3 of the Act requires a Muslim husband to pay maintenance to his divorced wife during the iddat period. This provision has been misinterpreted in the past to mean that the husband is only legally required to support his wife during the iddat period. However, the Supreme Court interpreted in the landmark case of *Daniel Latiffi v. Union of India*³ that the husband must make a reasonable and fair provision for maintenance during the iddat period for the future of the divorced wife and it can extend beyond the iddat period as well. If the divorced wife is unable to support herself after the iddat period, she must rely on her consanguine relatives – children, parents, and other relatives who are entitled to a share of her property.

² *Mohd. Ahmad Khan v. Shah Bano Begum* AIR 1985 SC 945

³ *Daniel Latiffi v. Union of India* 2001 (7) SCC

Christian Law:

Sections 36 to 38 of the Divorce Act, 1869 govern the issue of maintenance under Christian Law. Under Section 36, a Christian wife can claim interim maintenance and under Section 37 a wife can claim permanent maintenance from her husband. The wife, on the other hand, would be eligible for this maintenance amount only if she does not remarry and "remains chaste." The provision of maintenance is only available to a Christian wife. The wife can also claim maintenance under Section 125 of Cr.P.C.

Parsi Law:

Sections 39 to 41 of the Parsi Marriage and Divorce Act, 1936 address the wife's right to maintenance, including both alimony pendente lite and permanent alimony. The concept of maintenance in Parsi Law is largely similar to that in Christian law, with one significant difference. Maintenance can be claimed by both spouses like Hindu law. The conditions of remarriage and chastity are similar to the Christian law. The personal law does not prevent the wife from claiming maintenance under Section 125 Cr.P.C.

Provision under the Criminal Procedure Code

Section 125 of Cr.P.C. makes it obligatory for a person who has sufficient means to provide maintenance to his wife, legitimate or illegitimate minor children, legitimate or illegitimate minor children suffering from any physical or mental abnormality, or his father or mother, unable to maintain themselves. On proof of his neglect or refusal to do so, a Magistrate of the First Class may order such person to make a monthly allowance for maintenance at such rates as may be specified.

This provision has become the strongest weapon of the judiciary in preventing the destitution of the vulnerable sections of society, especially women. Through judicial interpretation, the scope of the provision has been expanded, preventing mere technicalities from stalling women's access to economic and social justice and further ensuring that maintenance provides for much more than mere animal existence.

The object of this provision is to achieve social justice which is a Constitutional vision. The Supreme Court has rightly pointed out that while dealing with maintenance provisions, the Courts have to adopt a social justice adjudication also known as social context adjudication as a mere

adversarial approach may not be very appropriate⁴. Apart from the socio-economic inequalities resulting in an unequal fight, the adversarial process itself operates to the disadvantage of the weaker party. In such a situation, the Judge has to not only be sensitive to the inequalities of the parties involved but also positively inclined to the weaker party so that the imbalance does not result in the miscarriage of justice.

When a petition for maintenance is presented under Section 125, Cr. P.C., the husbands try to wriggle out of their responsibility to pay maintenance by questioning the validity of the marriage. To thwart such attempts, the Supreme Court, in *Dwarika Prasad Sathpathy v. Bidyut Prava Dixit & Anr*⁵ have held that the statutes aimed at social justice should be interpreted so as to favor the derelicts. Section 125 falls within the ambit of Article 15 (3) of the Indian Constitution, which provides for special beneficial provisions for women and children, as well as Article 39 which casts a duty on the state to direct its policies towards ensuring that all its citizens have adequate means of livelihood. The Court held that in proceedings under Section 125, Cr.P.C if the Magistrate is prima facie satisfied with regard to the performance of marriage, strict proof of performance of essential rites is not required. The standard of proof of marriage in a proceeding under Section 125 is not as strict as required in the trial of an offense under Section 494, IPC. The non-performance of certain essential religious or customary rites in a marriage does not disentitle a woman from claiming maintenance.

To prevent wrongful denial of maintenance to women by invoking Section 11 of the Hindu Marriage Act to claim the marriage is void on the ground of it being bigamous, the Supreme Court via its decision in *K. Vimal V. K. Veeraswamy*⁶ has attached a burden on the husband to tender strict proof of the allegedly subsisting first marriage when the second marriage was solemnized. The advantage of a beneficial provision aimed at preventing vagrancy and destitution cannot be denied unless the husband satisfactorily proves the existence of a legal and valid marriage at the time of solemnizing the second marriage.

Further, to ensure economic and social justice for women who were victims of bigamy, the Supreme Court in *Badshah V Sou. Urmila Badshah*⁷ held that when a man marries for a second

⁴ *Badshah v. Urmila Badshah Godse* (2014) 1 SCC 188

⁵ *Dwarika Prasad Sathpathy v. Bidyut Prava Dixit & Anr* AIR 1999 SC 3348

⁶ *K. Vimal v. K. Veeraswamy* 1991 SCR (1) 904

⁷ *Badshah v. Urmila Badshah Godse* (2014) 1 SCC 188

time, keeping the woman in the dark about the fact of the first surviving marriage, she cannot be denied maintenance on the ground that her marriage is void. The Court observed that a person cannot take advantage of his own wrong and turn around to say that the woman is not entitled to maintenance.

The question of whether long-term live-in relationships can be presumed as marriage for the purposes of proceedings under Section 125 came up for the consideration of the Supreme Court in *Chanmuniya v. Virendra Kumar Singh Kushwaha & Anr*⁸. The Court held that the term “wife” must be liberally interpreted so as to enable even a woman who has cohabited with a man for a long period of time without the performance of essential ceremonies of marriage to claim maintenance. The Court also observed that a man must not be allowed to take advantage of the loopholes in the law to enjoy the benefits of a de facto marriage while avoiding the responsibilities and obligations that ought to be undertaken. The judgment was referred to a larger bench. This decision was rendered relying on the Malimath Committee Report on Reforms of the Criminal Justice System, published in 2013, which recommended that where there is evidence of a long-term cohabitation between parties, marriage can be presumed.

In its recent decision in *Rajnish v. Neha*⁹, the Supreme Court reiterated the factors to be considered while awarding maintenance so that the sum granted to the woman is adequate and sufficient for her to maintain the same standard of living as she had in her matrimonial home.

The factors which should weigh with the Court are:

- i. The status of the parties
- ii. The reasonable needs of the wife and the dependent children
- iii. Whether she is educated and professionally qualified
- iv. Whether she has any independent source of income
- v. Whether the income is sufficient to enable her to maintain the same standard of living as she had in her matrimonial home
- vi. Whether she was employed prior to her marriage
- vii. Whether she was working during the subsistence of the marriage
- viii. Whether she was required to sacrifice her employment opportunities for nurturing the

⁸ *Chanmuniya v. Virendra Kumar Singh Kushwaha & Anr* 2011 (1) SCC 141

⁹ *Rajnish v. Neha* AIR 2021 SC 569

- family and looking after the members of the family
- ix. Reasonable costs of litigation for a non-working wife.

Concluding Remarks

Thus, with time, the judicial interpretations have widened the scope of Section 125, Cr.P.C, thereby securing justice to a wide section of women who otherwise would have been left out of its purview. Further, the judiciary, through its various sets of guidelines has ensured that the maintenance granted to a woman is sufficient for her to maintain herself and is not mere namesake.

The maintenance laws are social benefit legislations aimed at protecting the vulnerable classes including women. It is, however, also true that in the light of the evolving social background, the maintenance laws need a reconsideration.

Many personal laws as well as the Cr.P.C have confined the benefit of these provisions to women. An exception to this is the Hindu and Parsi laws, under which both the spouses are entitled to claim maintenance. The Hindu and Parsi laws may seem prima facie to be gender neutral by including both husband and wife to claim maintenance, but the parameters that decide the eligibility are different. For a husband to get maintenance, he has to prove he is physically or mentally incapable of earning while the wife to be eligible only needs to prove the fact that she does not have a separate income to maintain herself. Hence the parameter for the husband is in capacity to earn while for the wife it is the mere fact of earning. This can be a problematic approach in a situation where a wife is qualified and capacitated enough to earn but doesn't earn. Such a situation was discussed in *Chanchal Mehta v. Supriya Mehta*¹⁰, where the court interpreted Section 125 and observed the expression 'unable to maintain herself' clearly shows that it does not mean 'capable of earning'. Hence, a wife who is unable to maintain herself, whether capable or not, is entitled to maintenance while it's not the case for the husband to be entitled.

The personal laws and general laws were drafted in a patriarchal society where women were in a disadvantaged position. The law was made in a society where women were discouraged from

¹⁰ *Chanchal Mehta v. Supriya Mehta* CrI. Revn. No. 365 of 2016

having financial independence. However, in the present women have come a long way and are trying to maintain an equal financial position with their male counterparts. In such an evolving society, a general law unconditionally favoring women is discriminatory and violative of Articles 14 and 15. The law must be equally available to any spouse who is not able and incapable of maintaining themselves to claim from their earning partner.

Further, these provisions are incompatible with the present social reality. With the recognition of consensual homosexual relationships, the traditional concept of marriage being heterogeneous has undergone a drastic change. There is a growing demand for the recognition of the right to maintenance in same-sex relationships as well.

It is emphasized that laws must keep pace with the advancements in the society and evolve itself to be relevant in the existing social context.

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