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The Conjunction of Maintenance under Indian Laws and the Role of Indian Society

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ABSTRACT: In Indian society men are often victimised by their wives into paying maintenance in case of a dispute. Where it appears to the Court in any proceedings under the Maintenance Act that the spouse, by and large, has no sufficient free income for his relief and the considerable costs of the proceedings, it can, on the use of the husband, arrange for the wife to pay the husband the costs of the proceedings as a whole, as regards the individual's own definite salary and the aggrieved person's salary. This paper focuses on maintenance received by the husband and wife in cases like divorce and other such situations. The paper also gives a concept of whether the personal law is amenable to reform and if yes, how such reform is supported in India. It also setup different suggestions for the law to improve as a whole and be fair and just for men as well as women.

KEYWORDS: Adultery, Cruelty, Decree, Legitimate, Right to maintenance

I. INTRODUCTION

Marriage is the foundation stone of life. Granting of maintenance is a measure of social justice, by itself. It is the duty of every male member to maintain his family members (wife, children's and parents). In family law, maintenance is often used as a synonym for spousal support or alimony, and the term is in fact replacing the concept of alimony. Traditionally, alimony was solely the right of the wife to be supported by the husband.

As per section 3 sub clause c of the Hindu Adoption and Maintenance Act, 1956 the term maintenance can be defined as "in all cases, provisions for food, clothing, shelter; in the case of an unmarried daughter, also the reasonable expenses of an incident to her marriage.

Under this act alimony may be awarded as a lump sum, for a limited period of for an indefinite period of time.

According to Mitakshara, where there may be no property but what has been self-acquired, the only persons whose maintenance out of such property is imperative are old aged parents, wife and children.

In Indian laws, maintenance can be split into two parts i.e. spousal and child. Maintenance refers to what amount of money shall be paid by one partner to other either for that spouse or for dependent children or for both. Maintenance can be a sole issue of a legal application and the same application can be applied in District Court or High Court.

The concept of maintenance is primarily based on section 24 of act which defines to grant maintenance to the wife so that she can have financial assistance and she is able to maintain herself during the pendency of proceedings. The proceedings done under section 24 are interlocutory proceedings.

The main objective of this act is to provide financial assistance, under this the application must be disposed of as expeditiously as possible. In term of dictionary maintenance and support both are synonymous. The purpose of maintenance is to drive out vagrancy and destitution. Laws pertain to maintenance and serve social justice. This law also make with a purpose to help the persons relating to weaker section of society i.e. women, children's, old age parents.

Scope and Objective

- To study the concept of maintenance in India
- To discuss the various conditions to grant maintenance
- How maintenance can be defined under other laws
- To discuss the grounds of divorce and step by step process under mutual divorce



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- To discuss status of maintenance prior to amendment
- To analysis the disadvantages meted out to Indian man as compared to women in the society in reference to cases like divorce, bigamy etc.

The present research paper is based on different facts, grounds and provisions. The material is collected from primary as well as secondary sources. The major parts have been taken from the collection of newspaper articles, journal articles. And case study cited in this research paper are collected from online legal tools i.e. Manupatra, SCC.

II. DISCUSSION

Who can claim for maintenance?¹

As per Section 125 of the code of criminal procedure “a person can claim for maintenance. This section defines order for maintenance of wives, children and parents”. As per clause 1 of section 125, few persons can get and claim for maintenance which is described below as:

- Wife from his husband
- Legitimate or illegitimate minor child from his father
- Legitimate or illegitimate minor child from his father
- Father or mother from his son or daughter

Under this provision a wife can claim and get the maintenance from her husband in certain conditions:

- She is not able to maintain herself
- She has obtained divorce from her husband
- She has not remarried

A wife cannot claim and get maintenance from her husband in the following circumstances:

- Wife living separately by mutual consent
- Refuses to live with husband without any valid reasons
- Wife living in adultery

Essential conditions to grant maintenance: under section 125 of the code of criminal procedure there are many conditions which describe maintenance which are describe as:

- *Sufficient means for maintenance are available*: if any person has sufficient means for maintenance, then it is his duty to maintain his wives, children and parents. If sufficient means are not available, then it will be a perfect and valid defence for people who are legally bound for maintenance of wife, children’s and parents.
- *Refusal or neglect to maintain after the demand for maintenance*: this can be defined as if any person neglects or refuses to maintain his wives, children and parents in malafide intention or in any type of egoistic behavior on the demand for maintenance by them.
- Quantum of maintenance depends on the living standard of persons
- The person who claims for maintenance must be unable to maintain himself/herself.

Under section 24 of Hindu Marriage Act a wife can grant maintenance so that she can have financial assistance and she is able to maintain herself during the pendency of proceedings. The main objective of section 24 of Hindu Marriage Act is to provide financial assistance; there is no arrangement under which court can give help in an application made under section 24.

This provision also refers to only husband and wife; this does not mean that maintenance cannot be increased because children are in custody of wife.

Legitimate or illegitimate minor child:

Son: minor means a person who does not attains the age of majority i.e. above the age of 18 years. A minor son is entitled to get maintenance under section 125 of code of criminal procedure.

Minor daughter: if a minor daughter which is legitimate or illegitimate is unmarried, that she is entitled to get maintenance under section 125 of CrPC. And she is entitled to get maintenance from her father and if she is marries, then she is also entitled from his father but the magistrate has to be satisfied that her husband has not essential and sufficient means for the maintenance of his minor wife. This provision can be defined in the case of Shahbuddin vs.

¹ Slideshare.net various provisions to claim for maintenance



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State of UP, where a minor daughter attaining the age of majority during the pendency of the application for maintenance was held entitled to claim maintenance up to the date of majority.

Legitimate or illegitimate abnormal child who has attained majority:

If any child who is major and is abnormal mentally or physically unfit, then the father of that child has to maintain him and he can claim maintenance on the ground of abnormality.

In the case of Alok Banerjee V. Atoshi Banerjee², there is a concept of special provision for maintenance of minor married girl i.e. if the husband of a minor daughter does not have sufficient means to maintain her, then it is the duty of her father to give maintenance. In these situations, married daughter is entitled to get maintenance from her father.

In the modern time the concept to claim maintenance is changed. India is a country of Patriarchal society where judgments cannot ignore and passed against men. The rights of men's activist in India claim that the divorce and child custody laws are biased against men. In India, the child custody is with father, if the mother is mentally unstable or has left home leaving behind the child. At present, the matter custody in case of divorce is governed by two laws i.e. Hindu Minority and Guardianship Act, 1956 and Guardians and Wards Act, 1890. But, both laws do not have any provisions for shared parenting or joint custody.

When maintenance can be claimed?

- At the time of existence of marriage
- During the time of any pendency in matrimonial relief
- After obtaining the decree of divorce

Procedure for maintenance:

Under section 126 of the code of Criminal Procedure there is a procedure for maintenance which can be illustrated as: the proceedings of this matter can only be taken in that district where he is or he or his wife resides or where he last resided with his wife or mother of an illegitimate child. In this case evidence must be recorded in the presence of a person against whom maintenance is to be ordered. And if a person is willfully avoiding summons, then ex-parte evidence is taken in that case.

Types of maintenance under Indian laws:

- Temporary maintenance: as per section 24 of Hindu Marriage Act if either of the spouses, husband or wife can be granted relief if the court is satisfied that the applicant has no independent income sufficient for his or her support and necessary expenses of the proceedings under the act.
- Permanent maintenance: permanent maintenance means the granting of a sum on a periodical basis or on a continued basis once the proceedings have been disposed of.

Object of section 24:

- Maintenance under this section is granted during the time of proceedings if the party is not able to maintain himself or herself.
- The rationale of the section 24 is to provide financial assistance to the spouse who is unable to maintain himself/ herself.³

Scope of section 24:

- The scope of this section is very rigid and it facilitates the matrimonial proceeding for the party who does not have a separate source of income.
- It has to be claimed only when a proceeding is pending before the court and not otherwise.

Scope and objective of section 25:

Scope:

- The rights under this section are special, independent and conditional to the spouse
- These rights can only be exercised only when there is a decree existing under the act which affects the matrimonial relations between the parties.

Objective:

- The main objective was to provide maintenance to the needy woman or the deserving spouse after a decree has been passed by the court.

² 2008 (2)ALJ 560

³ Object and scope under section 24 of HMA



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- The right to claim maintenance is a right recognized under different laws in India, each one is different from other in main and another particulars. In mostly cases maintenance is due to the fact of marriage. Litigations to obtain maintenance take the shape of legal battles in various countries, so also in India. Government always tries to maintain themselves, obviously for the reason that they have no income of their own.

Prior status of right of maintenance:

In 1955, the Hindu Marriage Act was formed and applies on individuals who are Hindu including Sikh, Jains, and Buddhists and persons who come under the ambit of section 2 of Hindu Marriage Act, 1955. Also children's whose either of a parent is Hindu, Sikh, or Buddhist and are brought up under the same religion will also be considered as a Hindu and will be entitled to maintenance. Under old act, a Hindu male was under an obligation to maintain the following persons i.e. his wife, unmarried daughter, legitimate sons, illegitimate sons and aged parents.

Statutes to claim and get maintenance describe as:

In Section 26⁴ of the Hindu Marriage Act under this act the court may pass orders with respect to the custody, maintenance and education of minor children. Under this act, both parents i.e. father and mother is liable to maintain the children as ordered passes by the said bench. While making such orders, the court takes into account wishes of the children, as far as possible. Such orders and provisions may be altered from time to time. Under this act all the proceedings are decided within sixty days from the date of service of notice on the respondent, as far as possible.

Under section 20 of Hindu Adoption and Maintenance Act: this act define if a Hindu male or female is bound to maintain his or her legitimate/illegitimate minor children and aged parents include childless stepmother have to maintained if they are unable to maintain themselves.

Under section 24 if a person ceases to be a Hindu and change his religion he or she cannot claim maintenance under this act

Criminal Procedure Code (Section 125): magistrate may order a person to make monthly allowance for maintenance in a case where any person who despite having sufficient means neglects or refuses to maintain his legitimate or illegitimate minor child who is unable to maintain itself. These sections also cover a provision for maintenance during the pendency of proceedings regarding monthly allowances to claim for maintenance. Also application made for interim maintenance during pending proceedings is to be decided by the Magistrate, as far as possible, within a period of sixty days of the date of service of notice of application to such person. If people fail to comply the order of magistrate without showing sufficient cause may also be sent to prison.⁵

Maintenance under other laws:

Maintenance under Hindu Law:

Under Hindu law the concept is old since the evolution of joint Hindu family. In this, karta is a care taker who cares of the women of the family i.e. their wives and daughters until they got married and the elder women of the house. The amount of maintenance shall be decided on the status of the family.

Maintenance without divorce:

Under the Hindu adoption and maintenance act, 1956 a wife is entitled to get maintenance from her husband for her lifetime which means that she will get maintenance until she is alive or her husband is alive, there are few grounds on which she resides separately i.e. husband deserted her, husband treats her with cruelty, suffering from any sort of leprosy, husband have any other living wife, husband has converted into any other religion and so on. A Hindu wife is entitled to live separately from her husband without forfeiting her rights to maintenance under Hindu adoption and maintenance act, 1956.

If a wife and husband are living separately by mutual consent then the wife is not entitled to receive maintenance allowance from the husband. A mutual consent in this context means an outcome which is derived from both the parties. The following consent shall be voluntary and should not be obtained under undue influence, fraud or misrepresentation.

Maintenance of children:

Under clause 1 of section 125 of CrPC, define the concept of maintenance of children. Maintenance of child is providing help with a child's everyday living standard. This includes things like food, shelters and clothes and helping

⁴ Status to claim and get maintenance under section 26

⁵ Statutes under CrPC



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to provide a home for your child or children. Under this the definition of minor also clarify that minor means a person who does not attained the age of majority.

A father is also liable to maintain his child, (legitimate or illegitimate). This concept was clear in the case of Shahbuddin vs. The State of Uttar Pradesh⁶ which are discussed below.

Maintenance of aged parents:

Generally we know the concept of maintenance for wife or children. We only think that husband giving maintenance to his wife after their divorce or judicial separation by which wife can take care of herself and live her regular life as she was living before divorce with all enjoyment. Today children face burdened to keep their parents with them. Even some of the children's leave their parents in old age home that is not ethical. The aged people face numerous problems which are discussed as: economic insecurity, physical illness and psycho-social problems.

Procedure of matrimonial remedies as illustrated below through Figure 1

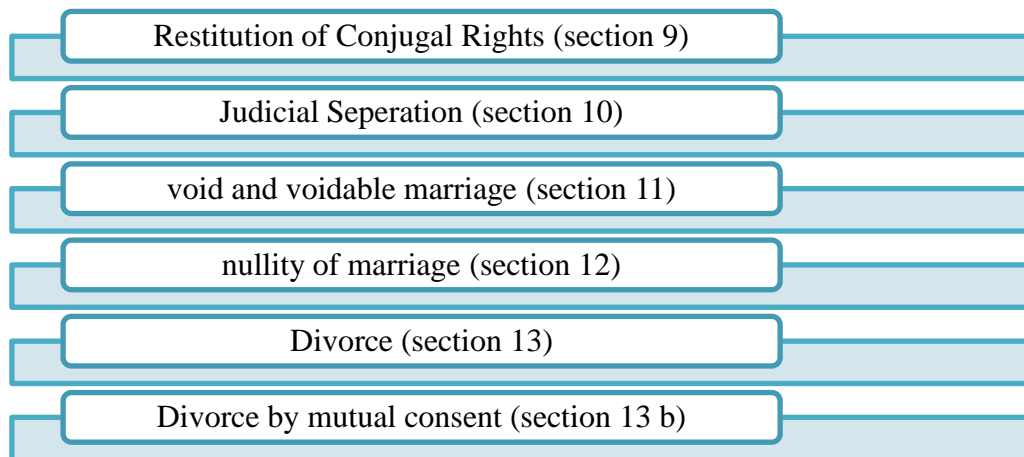


Figure 1 procedure of matrimonial remedies

Restitution of conjugal rights: Under section 9 of Hindu Marriage Act it is a well-established principle of law that both husband and wife are equally entitled to matrimonial society and comfort of the other. If one partner leaves another partner without any reasonable cause the other partner can file a petition under restitution of conjugal rights.

Judicial separation: Judicial separation can be defined under section 10 Hindu Marriage Act which means suspension of conjugal rights for some time i.e. one year. Section 10 also provides that either party to marriage may present a petition praying for a decree of judicial separation on any of the grounds discussed under clause 1 of section 13 and clause 2 grounds on which a petition for divorce might have been presented. Before the amendment the judicial grounds have certain grounds i.e. cruelty, leprosy, adultery, insanity or unsound mind and so on.

Under section 11 of Hindu Marriage Act Void marriage may be defined as any marriage solemnized at the commencement of this act shall be null and void and may, on a petition filed by any party against another party which declared nullity.

Under section 11 of the Hindu marriage act there are certain grounds of void marriage.

- That at the time of marriage, either party has a spouse living. Such a marriage will be void only if the first marriage is valid. If the first marriage is void, the second marriage will be valid.
- At the time of marriage, either party has a spouse living such a marriage will be void only if the first marriage is valid.
- The parties are sapindas to each other
- The parties are within the prohibited degree of relationship

Voidable marriage Section 12: Any marriage solemnized before or after the commencement of act shall be voidable and may be annulled by a decree of nullity on any of the following grounds i.e. that the marriage has not been

⁶ 2006 (1)ALJ372ALL

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consummated owing to the impotency of the respondent and that the marriage is in contravention of section 5 sub clause ii of hindu marriage act.

Divorce (Section 13): The concept of divorce is not clearly define under hindu marriage act but, as per section 13 of hindu marriage act there are some grounds which clearly define divorce i.e. adultery, cruelty, desertion, conversion, and so on these grounds any person can take divorce which can be illustrated through below as Figure 2



Figure 2: Grounds for divorce

Section 13 clause B also define divorce can be done through mutual consent, where both the parties don't want to continue live separately.

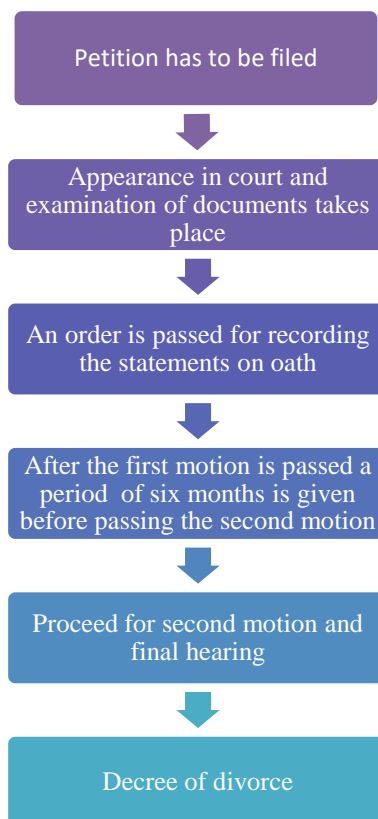


Figure 3: Process under mutual divorce

Difference between void marriage and voidable marriage⁷

- Marriage does not exist in the eyes of law.
- Since the marriage has no existence, the court simply passes the decree of nullity since the marriage has no existence.
- Parties can remarry without decree of nullity of marriage from the court
- Wife cannot claim maintenance under section 125 of CrPC

⁷ Ipleadersblogs.in difference between void and voidable marriage



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- Void marriage is ab-initio
- Parties to a void marriage are criminally liable
- Under voidable marriage, marriage exists and continues to be valid unless it is challenged under section 12
- The court passes the decree after taking into account necessary conditions
- Parties cannot do so
- Wife can claim maintenance under section 125 of CrPC
- A voidable marriage is regarded as valid until the component court annuls it
- Parties to voidable marriage are not laid down with penalty

As per recent amendment in maintenance and welfare of parents and senior citizens, 2019 which provides that maintenance and welfare of parents and senior citizens for ensuring their basic needs, safety and security. This bill also made some amendments in maintenance and welfare of parents and senior citizen act, 2007, removes the ceiling of Rs 10000 as maintenance money. Under this bill it is also included that the appointment of nodal officers at every police station for every senior citizen and also provides helpline number for their help, and various non-government organisation also move forward for the necessity of senior citizens.⁸

III. CONCLUSION

It is define from the recent judicial decisions that the Indian courts have been progressively broad-based in deciding cases pertaining to maintenance. The contention however is “whether a paramour can become entitled to receive maintenance merely from the factum of living with a married man, coupled with the dispute as to whether the bigamy is legally permissible.” While it appears from the judgments passed under the personal laws that the same may be possible, pronouncements pertaining to Section 125 continue to uphold the view that maintenance can be claimed only by a legally wedded wife. It is clear from the aforementioned that though, over a period of time improved rights are granted upon Hindu women, the rights available to them do not match with the rights required. Maintenance has been a concern of not only weaker sections but of the whole society as well.

REFERENCES

1. Balamurugan Shanmugam, Visalakshi Palaniswami, “Modified Partitioning Algorithm for Privacy Preservation in Microdata Publishing with Full Functional Dependencies”, Australian Journal of Basic and Applied Sciences, 7(8): pp.316-323, July 2013
2. Jaganraj L, Balamurugan S. Empirical Investigation on Certain Anonymization Strategies for Preserving Privacy of Social Network Data, International Journal of Emerging Technology and Advanced Engineering. 2013 Oct; 3(10):55–63
3. Kamlesh Kumar Rana, Vishnu Sharma, Vishal Jain, Sanjoy Das, Gagan Tiwari and Vikram Bali, “Directional Location Verification and Routing in Vehicular Ad-Hoc Network”, IoT and Cloud Computing Advancements in Vehicular Ad-Hoc Networks, IGI-Global, March, 2020, ISBN13: 9781799825708, DOI: 10.4018/978-1-7998-2570-8.ch001.
4. Ashutosh Gupta, Bhoopesh Bhati and Vishal Jain, "Artificial Intrusion Detection Techniques: A Survey", International Journal of Computer Network and Information Security (IJCNIS), Hongkong, Vol. 6, No. 9, September 2014, having ISSN No. 2074-9104.
5. Khaleel Ahmad, Muncera Fathima, Vishal Jain, Afrah Fathima, “FUZZY-Prophet: A Novel Routing Protocol for Opportunistic Network”, International Journal of Information Technology (BJIT), Vol. 9 No. 2, Issue 18, June, 2017, page no. 121-127 having ISSN No. 2511-2104.

⁸ Livemint.com article on maintenance and welfare of parents and senior citizens, 2019