



Analysis of Maintenance of wives children and parents

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Abstract: In India, there are secular provision as well as personal law provisions to regulate the maintenance of the child. Judicial precedents show that in matters of conflict the prime focus of the judiciary is in favour of welfare of the child. There are many loopholes in the personal laws of the people. Uniform civil code may be seen as a remedy to solve the conflicts that arise due to the different personal laws.

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Introduction:

In today's modern era, everyone has the right to enjoy their life which is provided them by law. At the very outset the right of human being is based on mankind's increasing demand for a civilized and well maintained society. Despite the presence of many rights and laws to protect them, the really is very far from the truth, there are many provisions present but to avail them the same one has to go through many hardships too. Women, children and aged Parents are most effected by them.

Women, children and old Parents to be considered as most delicate and the one who needs more protection and attention. In fact they are the one whose rights has been In fact they are the one whose rights are being encroached everyday and everywhere in the world and protection to them must be given to them. It is our duty to provide wellness and safety to them. The provision of Maintenance in India is covered and defined under Section 3(b), Section 18, Section 19 and Section 20 of The Hindu Adoptions And Maintenance Act, 1956, Muslim Personal Laws and as well as under Section 125 of Code of Criminal Procedure, 1973. The idea further gets its root from Article 15(3) reinforced by Article 39 of The Constitution Of India, 1950. In India, Government is trying to solve the issue by way of considering and implementing certain acts and provisions padded by the legislature. In India, the term 'maintenance' includes right to food, clothing and shelter being available to the wife, children and parents. Section 3 clause (b) defines "Maintenance" as it including- In all cases, provisions for food, clothing, residence, education and medical attendance and treatment; "minor" means a person who has not completed his or her age of eighteen years.

It is the part of social justice and natural duty of a man to maintain his wife, children and parents, when they are having no ways and income to maintain. The phenomenon of maintenance is to prevent immorality and destitution and ameliorate the weak economic condition of women, children and elders.

Provisions For Maintenance Under Hindu Law

Right to claim maintenance is recognize under different laws in India. Wife, children and parents must obtain some subsistence to survive.

Joint family has been a significant feature of the Hindu society since Vedic ages and in a joint family it is the duty of a male members to earn the money and fulfill the needs of the other members of family such as wife, children and parents. Male Hindu member is personally liable irrespective of the fact that what property he has inherited or what he is earning, to provide certain close relations who are dependent on him. These close relationships has been defined under the following sections of The Hindu Adoptions And Maintenance Act, 1956.

Section 18. Maintenance Of Wife.-

Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her life-time. A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance –

If he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish or of wilfully neglecting her;

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;

Omitted

If he has any other wife living;

If he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere;

If he is ceased to be a Hindu by conversion to another religion;

If there is any other cause justifying her living separately.

A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be conversion to another religion.

In the case of *Jasveer Kaur v. District Judge, Dehradun*, (1997), court held that it is the liability of husband, under the Hindu Adoptions and Maintenance Act, that he gives maintenance to his wife.

According to Section 20. Maintenance of children and aged parents.- (1) Subject to the provisions of this section, a Hindu is bound, during his or her Life- time, to maintenance his or her legitimate or illegitimate children and his or her aged or infirm parents.

A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor. The obligation of a person to maintain his or her aged or infirm parents or a daughter who is unmarried extends in so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself out of his or her own earnings or other property.

In the case of *Smt. Vijaya Manohar v. Kashirao Rajaram*, court held that A married daughter is liable to maintain her old and incapable father.

Dependents Defined Under Maintenance

A person is required to support certain close relations to another another person whose property is passed on him. According to Section 21 of The Hindu Adoptions and Maintenance Act, 1956 close relations of the deceased who must be supported by the person who receives the deceased property.

Section 22 (1) declares that heirs of a Hindu family are liable to maintain the dependents of the deceased out of the property inherited by them from the deceased. Thus, this requirement is to be fulfilled only from the inherited property and so it is not a personal obligation. Section 22(2) says that where a person who is dependent has not received any share, he shall be entitled to receive maintenance from those who have the estate. 22(3) declares that the liability of each recipient is in proportion to the estate obtained by him. 22(4) prohibits a person to pay any amount of maintenance if he himself is a dependent & cannot be forced to pay if the amount causes his share to reduce below what is required to maintain himself.

Maintenance Of Wife And Children Under Hindu Law And Muslim Law Under Hindu law

For wife -

S. 3(b) (i) of HAMA, 1956 describes maintenance as “provision for food, clothing, residence, education, and medical attendance and treatment.” In the case of daughter who is unmarried, it also includes her marriage expenses. The provision for permanent maintenance is also present in all the personal laws and are almost similar.

According to Section 24 of Hindu Marriage Act, 1955, either the wife or husband can apply for interim maintenance. The basis of the claim for acquiring interim maintenance is that the claimant is not independent & has no source of income of his/her own to support himself/herself. The act is silent on the amount of maintenance and it is upon the discretion of the court to determine the sum. However, Section 23(2) of HAMA, 1956 states the conditions which are to be considered in determining the amount of maintenance payable to the wife, children and aged parents. They are as follows – the position & status of the parties, the reasonable needs of the claimant, the claimant, if living separately, is justified or not, the income & total value of the claimant’s property.

The interim maintenance is also payable from the date of filing of the petition till the date of dismissal of the case or passing of the decree. The aim of interim maintenance is to meet the immediate needs of the petitioner. Dependent lifeform providing the litigation expenses to the claimant.

For children

Section 20 of Hindu Marriage Act, 1956 declares that both mother and father are equally liable to maintain their children. This is an uncommon feature of the Hindu law where both the parents, be it mother or father, are equally responsible to maintain their children. Section 20 (2) of HAMA, lays down that the children have right to claim maintenance till the time they are minor. However, this right to claim maintenance for the daughter is extended till she gets married. It is the duty of the parents to bear her marriage expenses. However, even after marriage if a minor daughter gets married and if she is unable to maintain herself then she can claim her right of maintenance under Section 125 of CrPC. If an application is filed under section Sec. 24 and 25 of Hindu Marriage Act, the child is also entitled to get maintenance if the claimant has the responsibility of maintaining him/her i.e., the claimant’s right to maintenance also includes the right of maintenance of his children.

Under Muslim Law

For Wife

Under Muslim Laws, it is necessary for a husband to maintain his wife, whether she is Muslim or Kitabiyyah, rich or poor, young or old. However, if the wife is too young for matrimonial intercourse, she has

no right to claim maintenance from her husband, whether she is living in his house or with her parents. The husband is obligated to maintain his wife so long as she is faithful to him and obeys his orders which are reasonable. It is decided in a case by Badruddin Tyabji &

Strachy, that unfaithful & disobedient wife need not to be maintained. If the marriage is valid and wife is capable to render marital intercourse, it is the duty of husband to maintain his wife even though she's economically capable to maintain herself. But if the wife unjustifiably refuses to live with her husband then she loses her right to claim maintenance. The right of maintenance would also be unavailable if wife refuses to obey the reasonable commands of Husband. However, if disobedience is justified by certain circumstances or if she is intentionally forced to leave husband's house because of cruelty, or if the husband refuses to maintain his wife without any lawful or justified reasons, the wife may sue him for maintenance. She is not however entitled to claim maintenance from the past as maintenance is payable from the date of the suit unless the claim is based on special agreement.

In a situation where a wife is turned out or maltreated so as to make it impossible for her to live together with her husband, or when the breach between the couple is incurable, she is entitled to maintenance by living separate from him under sec. 125 of the Code of Criminal Procedure 1973 or in a suit for restitution of conjugal life.

After divorce the wife under Muslim Personal Law, is entitled to maintenance during the time period of Iddat and also for the time, if any, which lapsed after the expiry of Iddat period and her receiving notice of Talak. After expiry of the period of Iddat the application of the order of maintenance ceases.

A Muslim widow is not allowed to claim maintenance out of the property of her late husband except for what she is entitled to by inheritance or under his will.

For Children

Under Muslim Laws, it is the responsibility of the father to maintain his sons until they attain puberty and his daughter, till they are married. He is also responsible for the upkeep of his widowed or divorced daughter, or a child who is in the custody of the mother. It is not the duty of the father to provide separate maintenance for a minor child or an unmarried daughter who refuses to live with him on unjustifiable grounds. The father is not responsible to maintain a child who is capable of being maintained out of his or her own property or have economic means to live fulfil their wants. If the father is poor or is not capable to maintain his children then the mother is bound to maintain the child. And failing her, it is the

duty of the parental grandfather to provide them with maintenance.

Analysis Of Maintenance Under Section 125 CRPC

The purpose of enacting section 125 of the code is not recognized or created as a right as such in favour of a wife. It is intended to ameliorate social problem which concerns destitution or vagrancy. "The primary object of the section is to prevent starvation and vagrancy of person and enable a discarded wife and a helpless child to get the much needed and urgent relief in one or the other form that is convenient to them".

Who can claim maintenance under section 125 CrPc

Section 125 of Cr.P.C deals with order of maintenance of wives, children and parents. Under The Cr.P.C., the following can claim and get maintenance.

1. Wife from her husband.
2. Legitimate or illegitimate minor child from his father.
3. His legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is by reason of any physical or mental abnormality or injury unable to maintain itself.
4. His father or mother from his son or daughter.

Essential conditions for applying Section 125 CRPC

The right of a wife for maintenance is not an absolute right under the section 125 Cr.P.C, the very same is circumscribed by the fact that she is unable to keep up herself and further the spouse having adequate methods ignored or wouldn't look after her.

No doubt, there is a clear distinction between the locus standing or competence to file a petition for maintenance under section 125 of the code by any of the person illustrated in the section and there being entitled on merits to particular amounts of maintenance there under.

However the premise for both is essentially the existence or otherwise of their separate income or means of support besides other factors stipulated under this section. Legitimacy of the marriage with the end goal of outline continuing under segment 125 Cr.P.C is to be resolved based on the proof welcomed on record by the parties. The standard of proof in the marriage in such proceedings is not as strict as is required in the trial of offence under section 494 IPC. If the claimant in the proceeding under section 125 of the code succeed in showing that she and the respondent have lived together as husband and wife, the court can presume that they are legally wedded spouses, and in such a situation, the party who denies the marital status can revert the presumption.

That the contention is not proved by leading necessary evidence. Once it is admitted that the marriage procedure was followed then it is not necessary to

further probe into whether the set procedure was complete as per the Hindu rights in. the proceeding under section 125Crpc.

Analysis Of Maintenance Under Live – In Relationship

Domestic relationship in the nature of marriage. In the case of D. VELUSWAMY V. D.PATCHAIAMMAL, the Supreme Court observed that for a relationship in the nature of marriage-

The couple must hold themselves out to society as being akin to spouses.They should be of legal age to marry.

They must be otherwise qualified to enter into legal marriage including being unmarried.

They must have lived together as per their will and held themselves out to the world as being a kin to spouses for a significant period of time. Further Supreme Court ruled that not all Live-In- Relationship will amount to a relationship in the nature of marriage to get the benefit the conditions mentioned by the court must be satisfied and this has to be proved by evidences.

Analysis On Procedure For How To Obtain Maintenance

The petition is filed before the Family Court, containing all the required facts of the cases, stating the circumstances as to why wife seeks to claim maintenance, all personal relevant details.

The Family Court then scrutinizes the application and issues notice to the husband against whom the application has been filed by the wife.

Both the parties are asked to appear before the court for reconciliation of the instant case.

If the process of reconciliation end successful by the Family Court then the matter stands settled and if the process of reconciliation is a failure, then the Family Court proceeds with the petition on merits. The Family Court seeks reply to the petition from the opposite party stating the facts which he/she agree to or stand in denial. The courts may also ask both the parties to present their income statements so that it can infer the capabilities and liabilities of the parties.

The court then seeks the rebuttal from petitioner side of the reply filed by the opposite side. This is the stage where application of interim maintenance is decided.

The court then frames the issue for judgement and the case is posted for evidence of the parties.

Both the petitioner and respondents are asked to submit their evidence by way of filing the relevant documents, papers and by summoning all the witnesses.

The final argument is held and the case is decided by the court.

The court finally passes the order where it may either

dismiss the petition or allow the petition and direct the other party to pay the amount as per the direction of the court.

Conclusion

It is apparent from the ongoing Judicial decisions that the Indian courts have been dynamically liberal in choosing cases relating to support. The bone of conflict any- way is whether a mistress can get qualified for get up- keep just from the factum of living with a wedded man, combined with the contest concerning whether the bigamy is lawfully allowable. While it shows up from the choices went under the individual laws that the equivalent might be conceivable, legal choices relating to Section 125 keep on maintaining the view that upkeep can be asserted uniquely by a legitimately married spouse. It can be concluded that the need for protection for the rights of women and children and elderly people must undergo a revolutionary transition if we desire to live in a safe and secure world and seeking it should become one of our chief pursuits.

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