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An Overview of Maintenance in Ancient and Modern India with Reference to Women's Rights under Hindu Law

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The relationship between women and the law is strangely unsettling. If we cease emphasizing one another, we risk falling into the caustic, unjust abyss of tyranny. Both of them bear the force; one bears it from nature, and the other bears it from statutory laws. The patriarch of our Indian society, however, is abandoning this decisive component of women that has been upheld since the glorious Vedic age. The patriarch was breeding an endless whirling dream, at which point women were nothing but delicate subjugating material to slake their reclusiveness and mean to recite their values into the driven belief that they needed men to sustain themselves, and thus ipso facto, the concept of maintenance was coined. A measure of social fairness is the simple giving of support or maintenance. The fundamental obligation of a man is to brace his wife, children, parents, close relatives, etc. when they are not capable enough to do so for themselves. Maintenance aims to improve the economic situation of women and children while preventing immorality and poverty. Hindu women's maintenance laws in India fall into two groups. After the termination of a marriage or other marital remedy, such as the annulment of a marriage, support payments are expected in the first type. The second category considers assistance during the course of the marriage. The first category of maintenance claims is allowed under Section 25 of the HMA of 1955¹, and the second one is allowed under Section 125 of the CrPC² and Section 21 of the HAMA of 1956³. The purpose of this paper is to look at the meaning and implementation of Section 125 of the CrPC⁴ and the provisions

¹ Hindu Marriage Act 1955, s 25

² Code of Criminal Procedure 1973, s 125

³ Hindu Adoption and Maintenance Act 1956, s 21

⁴ Code of Criminal Procedure 1973, s 125

for alimony and maintenance payments to widows, wives, and dependents in the 1956 HAMA⁵. The basic maintenance laws that apply to the head of a Hindu household have also been reviewed for any inadequacies, and the necessary modifications have been made.

Keywords: *maintenance, alimony, ancient era, modern era.*

INTRODUCTION

According to the dictionary, maintenance signifies “brace or sustenance. The phrase maintenance has not been defined in any of the religious organizations’ marriage statutes. However, it is undeniably based on the idea that the claimant lacks the means to brace herself and has the right to ask for maintenance. Maintenance often pays for the costs of the substance of life. It extends beyond the plaintiff’s fundamental right to survival, nevertheless. This is intelligible from the provisions under the aforementioned laws, which give the court of law a path by identifying the element to be considered while settling the amount of maintenance.

The husband’s earning capacity, the behavior of the parties, and other variables will all be taken into account by the court when calculating the amount of maintenance. Before calculating the amount of maintenance, consideration must be given to the party’s status and the way of life they experienced during the marriage. The provisions of the Maintenance Act are designed with societal purposes in mind. These clauses are found in Sections 125 of the CrPC of 1973⁶, the HMA of 1955, and the HAMA of 1956. The Protection of Women from Domestic Violence Act of 2005 and the Maintenance and Welfare of Parents and Senior Citizens Act of 2007⁷.

All of these laws are framed to impel a man to uphold the moral duties he has to his wife, children, and parents. These laws are intended to prevent the abandoned wife and kids from being discarded on society’s trash heap and forced to live a life of begging immorality, and crime. They are quick, easy, and have a modest scope. If the wife, child, father, or mother are

⁵ Hindu Adoption and Maintenance Act, 1956, s 21

⁶ Code of Criminal Procedure 1973, s 125

⁷ Maintenance and Welfare of Parents and Senior Citizens Act 2007

not able to brace themselves, widespread homelessness may follow, which could lead to social issues. The wife, widowed daughter-in-law, children, parents, and any other dependents are all entitled to maintenance⁸. By Muslim law, only the wife, young children, parents, and other blood relations within the prohibited degrees are entitled to maintenance. Muslim personal law as well as statutory provisions like the Muslim Women (Protection of Rights on Divorce) Act, 1986⁹, the Criminal Procedure Code, 1973, and the Indian Majority Act, 1875¹⁰, serve as the foundation for the Muslim Law of Maintenance.

Regardless of the personal law that governs the Indian people, the provisions of Section 125 of the CrPC of 1973¹¹, remain pertinent and must be upheld. ¹²Additionally, it should be highlighted that the personal laws of the parties concerned –Hindus, Muslims, and Christians–shall be carefully obeyed, as these are vital in assessing the legitimacy of the marriage relatedness, if any, and can't be completely overlooked.¹³

A PERSON ENTITLED TO RECEIVE MAINTENANCE

Dependent children, parents, and a lawfully wedded wife are entitled to get maintenance, but it is quite limited in the case of a divorced spouse, a mistress, unmarried children, etc. The Indian courts have taken a tolerant stance in many personal law matters and given the husband the right to claim maintenance. However, this right to claim maintenance is conditional and normally granted to the husband only if he becomes disabled as a result of an illness or accident and is unable to support himself. Someone with intellect who makes no money or is a 'wastrel' is not eligible for such a privilege.

Compared to personal laws, Section 125's remedy is efficient and modest. However, Section 125 is distinct from any provision relating to maintenance under personal law. Both legal provisions complement one another and do not clash. Except in the case where the court gives certain

⁸ Hindu Adoption and Maintenance Act 1956, s 21

⁹ Muslim Women (Protection of Rights on Divorce) Act 1986

¹⁰ Indian Majority Act 1875

¹¹ Code of Criminal Procedure 1973, s 125

¹² *Nanak Chand v Chandra Kishore* (1970) SC 446

¹³ *Yamunabai v Anant Rao* (1988) SC 644

orders under the relevant personal law, a person is nonetheless eligible to claim aid under Section 125. The Act foresees situations in which a wife may find it quite intolerable to live with and cohabit with her spouse, but she may decide to remain married for different reasons, such as the welfare of her children or social prejudice.

There is a myth that solely because a working woman is earning money and can brace herself, she is not entitled to claim maintenance. The courts have recognized the working woman's right to claim maintenance and held that an estranged wife is eligible to claim maintenance from her husband if her monthly salary is not sufficient to brace herself. As per India's maintenance law for wives, a wife who works is eligible enough to claim maintenance. High Court and the Supreme Court both dealt with the matter of the second wife's right to claim maintenance, and the courts have reached various conclusions based on the particular facts and circumstances of every case, giving the term "wife" under Section 125 of the Code of Criminal Procedure different interpretations.

In the case of *Atmaram Tukaram Suradkar v Trivenibai Atmaram Suradkar*¹⁴, the court held that even if the wife is not aware of her husband's prior marriage, she does not acquire the legal status of a wife and is not eligible to claim maintenance. A wife whose marriage is null and void is not governed by this provision, and such a wife is not eligible to claim maintenance.

The Hon'ble Supreme Court ruled in *Shah Bano Begam v Mohammad Ahamad Khan*¹⁵, that Section 125 applied to everyone, regardless of faith. The term "wife" refers to women of all religions, hence; Muslim women were also included within the ambit of Section 125. Its main goal is to end homelessness and suffering, and it complies with the provision of the Constitution of India of 1975, which assures everyone of the right to a life of dignity.¹⁶

¹⁴ *Atmaram Tukaram Suradkar v Trivenibai Atmaram Suradkar* (2005) CriLJ 2057

¹⁵ *Shah Bano Begam v Mohammad Ahamad Khan* (1985) SC 945

¹⁶ Constitution of India 1950, art 21

MAINTENANCE IN INDIA IN THE ANCIENT AND MODERN ERAS

In Indian culture, the idea of maintenance has always existed. The Manusmriti states that “a man must maintain his virtuous wife, aging parents, and children even if he must participate in a hundred wrongdoings.” The regulations governing maintenance have been created with the sole purpose of shielding dependent people from squalor and vagrancy.

The traditional understanding of spousal maintenance in the ancient world was that the husband had a religious duty to provide for his wife’s fundamental needs. At that time, women were regarded as divine beings. However, during the medieval era, women were abused and abandoned to the whims of their patriarch, which led to the recognition that Hindu women were unable to maintain themselves. The riotous nature of a woman was thus lost at the pity of their patriarch, and as a result, they were not awarded any property or joint family rights, instead, they were nothing more than a liability to their family members. Additionally, because of their excessive dependency on their parents and their status as a liability, they were denied the right to receive education, which was little more than a ruse to keep them subservient to the family’s male members.

In light of the ancient and medieval eras for women, the notion of claiming maintenance was developed to prevent women from becoming independent and to make them subordinate to the patriarch. Being supported by a customary sanction makes it more severe than natural slavery. The patriarch was very desperate to try any tactics to maintain the status quo as a result of the gale that the customs had given men because of their authority.

MAINTENANCE IN INDIA AFTER INDEPENDENCE

Several pieces of legislation were passed for personal law reform in India after it gained independence, but the adoption of the Uniform Civil Code was necessary. However, the creators of the Constitution of India strongly believed that it was preferable to function on a personal level because the balance of societal peace was hitherto a chaotic mess. Furthermore, as a member of several international agreements, India is required to implement gender-equitable

laws and uphold the ideal of perfect parity, admitting neither privilege nor disadvantage among those who participate in them.

As a result, the Parliament concentrated primarily on creating codified Hindu law, while the Muslim minority fought against the change since they believed it would strengthen their faith. Thus, the Hindu Marriage Act, Hindu Succession Act, Hindu Minority and Guardianship Act, Hindu Adoptions and Maintenance Act, and Section 125 of the CrPC of 1973¹⁷, were all passed by Parliament in 1955–1956. When a woman seeks a divorce, the Hindu Marriage Act of 1956¹⁸, provides the right to claim maintenance for her under two headings: temporary maintenance while the divorce is pending in court and permanent maintenance when the divorce is granted.

In accordance with this Act, if the husband fails to provide for her, the woman may receive maintenance even without obtaining a divorce decision. Even though she is living apart from her husband, he is still required to provide for her during her lifetime. This Act broadens the definition of a wife who is eligible for maintenance to include divorced wives as well. The aforementioned provision has a retroactive effect.

MAINTENANCE IN INDIA IN THE MODERN ERA

The piousness or ritual aspect of marriage has been dismantled as a result of the digital age. Since it is now only a contract, the concept of marriage, divorce, etc. has changed. As a result, ipso-facto maintenance is also a result of this change. Furthermore, the zest for maintenance has changed as a result of the supportive movements for women's emancipation and financial independence.

In scenarios like Quantum-Meruit, where the husband rewards the wife with money for the services provided by the wife, maintenance has come to be understood as the contractual payment of damages for breach of the agreed contract. The concept of maintenance has evolved from meeting the most basic needs to eliminating obligations or using it as a tool to exact revenge

¹⁷ Code of Criminal Procedure 1973, s 125

¹⁸ Hindu Marriage Act 1956

on the spouse. The following are the different areas where the maintenance concept is without its conduit, and if this persists, the goal of the law will be completely defeated.

All of these judicial reforms will be lost in vanity and fail to achieve their intended goals, which will result in the denial of justice to those who are the true victims. These principles are not only demeaning to the morals and values of our society but also, in the long run, have nothing but a menacing outcome that could worsen the condition of women.

MAINTENANCE UNDER VARIOUS LAWS IN INDIA

- Maintenance under Hindu Law;
- Maintenance under Muslim Law;
- Maintenance under the Protection of Women from Domestic Violence Act 2005;
- Maintenance under Christian Law;
- Maintenance under Parsi Law;
- Maintenance under the Code of Criminal Procedure 1973;
- The Maintenance and Welfare of Parents and Senior Citizens Act 2007.

MAINTENANCE UNDER HINDU LAW

It is my duty to keep these individuals alive, according to various Hindu maharishis of ancient India, including Manu and Brihaspati. After paying for the family's food and clothing, a man could donate what was left over. The person who refuses to feed his family may initially taste honey, but they will later learn that it is poison. As per the oldest school of Hindu law, "Where there may be no property other than that which has been self-obtained, the only persons for whom sustenance out of such property is vital are aged parents, wives, and small children."

The Shastri Hindu personal rules, which have their various fundamental origins in the Dharma Shastra, are where Hindu law gets its provisions for maintenance. The Hindu Marriage Act (HMA) and the Hindu Adoptions and Maintenance Act (HAMA), both of which were promulgated in 1956, were the two key pieces of legislation that codified Hindu law to the extent of marriage, adoption, succession, and maintenance with time. However, the three primary

sources of modern Hindu law are equity, moral conscience, justice, precedents, and legislation. Maintenance deals with provisions for housing, food, clothing, education, medical well-being, and any treatment.¹⁹ In the case of an unmarried daughter, maintenance also includes the rational costs or expenses associated with her marriage.

In *State of Haryana v Smt. Santra*, AIR 2000 SC 1888²⁰, it was determined that the liability was established by Hindu law and resulted from the parties' legal relationship. The support and separate home of the wife are covered under Section 18 of the HAMA, 1956²¹.

MAINTENANCE UNDER CRPC

The Code of Criminal Procedure (CrPC) of 1973's rules constrain a person to fulfill the moral obligation to which he owes the community about his wife, children, and parents. The obligation is beyond any question, legal, and binding. The CRPC's provisions are highly respected. Many laws in India are secular, risk-free, and universal in character and apply to all communities regardless of religion, caste, or creed.²² The provisions of Section 125 of the CrPC are enforceable regardless of the personal legislation employed to direct and regulate the respective persons concerned. However, actions taken by Section 125 of the CrPC are swift and applicable to all people, regardless of caste, creed, or religion. Under the many personal laws of people of different faiths, maintenance claims may be made; these legal actions are civil in nature.

By way of an uncomplicated, quick, and efficient limited consolation, the Chapter IX provision of the Code of Criminal Procedure works to keep the wife, parent, and children from descending into complete poverty and suffering. The Code of Criminal Procedure offers a swift solution to avert famine and social unrest. It varies accordingly with the husband's civil liability. It serves as an uncomplicated summary procedure. It puts into practice a man's obligation to brace his wife, kids, and elderly parents who are not capable enough to support themselves.

¹⁹ Hindu Adoption and Maintenance Act 1956, s 3(b)

²⁰ *State of Haryana v Smt. Santra* (2000) SC 1888

²¹ Hindu Adoption and Maintenance Act 1956, s 18

²² *Bhagwan Dutt v Kamal Devi* (1975) 2 SCC 386

COMPARISON BETWEEN THE CONCEPT OF MAINTENANCE AS PROVIDED UNDER HINDU LAW AND THE CRPC

The provisions under the HAMA of 1956, are only applicable to people belonging to the Hindu religion, and the right to claim maintenance under the CrPC is a statutory right that the Indian Legislature has laid down, accepted, and recognized notwithstanding any religion of the parties involved, whether a Hindu or a Muslim, etc.

Section 125 of the CrPC of 1973²³, is designed to serve a social function by providing a summary machine to accomplish a man's moral obligation to his wife, children, and elderly parents so that they won't pass away from extreme suffering because they are not capable enough to take care of themselves. Protecting the interests of a peaceful society is the goal of this section. According to Hindu personal law, the Hindu Adoptions and Maintenance Act (HAMA) 1956 ensures the rights of Hindu wives, children, elderly and disabled parents, and even dependents to claim maintenance.

These rules are made to ensure a societal goal. Their goal is to force a guy to fulfill the moral obligation that he has to society at large with regard to his wife, kids, and parents. These provisions aim to prevent the neglected poor wife and children from becoming beggars and destitute on the scrap heap of society, where they would then be forced to live a life of homelessness, crimes, and immorality to attain a livelihood.

Different communities in India have passed maintenance laws specifically to safeguard the weaker members of society, including women, children, elderly and disabled parents, and some close relatives who lack independent means of support. Additionally, it should be noted that there are constitutional provisions that apply to maintenance legislation. In general, it has been determined that maintenance provisions are by the Constitution and do not violate any of the articles mentioned in the Constitution of India²⁴.

²³ Code of Criminal Procedure 1973, s 125

²⁴ Constitution of India 1950, art 11

CONCLUSION

No matter what community a person came from, personal laws played a fairly passive role. They struggled to understand the idea of maintenance. The perpetrators always find a way to evade the sovereign's orders, and occasionally Parliament opens the door for them by giving them an instrument to play with the legislative reforms and to make fun of the legislative body. Although they provided some ancillary relief, their magnitude was negligible.

On top of that, the entire goal of enacting reform laws has been tainted by politicians' pleasing demeanor, and we then whine about the misuse and exploitation of maintenance, even though we are the ones who have perpetuated the failure of these helpful laws by raising a hue and cry about the energizing social transformation and citing the duplicitous defense of any violation of the religious freedom ensured by the Indian Constitution. The pervasive characteristics of rigid, constant personal laws have done nothing but disrupt the balance of the country, increase the revolutionary movement of gender justice, and give rise to the same remote debate about whether the "Uniform Civil Code" is the solution to stop the escalating disturbance in society.