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NEED FOR A REVIEW ON THE PROVISION CONCERNING MAINTENANCE UNDER HINDU PERSONAL LAW

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ABSTRACT

This research paper mainly focuses on the question "Do the laws related to the Maintenance is in need of any sort of amendment?" Maintenance is a basic right which provides necessities to which the women are entitled. In numerous cases, maintenance not only includes food, clothing and housing, but also the requisite comforts and conditions in which the entitled person is reasonably expected to live. The section 24 of the Hindu marriage act prescribes the duty of the husband to provide maintenance which is sufficient to his wife so that she is able to maintain herself financially. Further, section 25 of the Act deals with the grounds that are present for women to have permanent alimony. Thus, This paper study all the provisions regarding the act which need to be reconsidered.

KEYWORDS : Maintenance, Hindu Marriage Act., Permanent Alimony.

1. INTRODUCTION

Maintenance, as a concept, from a legal standpoint, refers to the type of financial assistance that is provided to one of the parties to the dispute at their request, and is only issued by order of the competent court and one on enforcement. Issues the decree. In simple language maintenance refers to the financial support which the husband pay to his wife

during the proceedings of their divorce, or after getting divorce.

The right to maintenance includes all basic necessities of life such as clothing, food and shelter. According to dharmashastra, individuals receiving alimony may be classified into categories, on the one hand, to whom dharmashastra places a binding obligation and on the other, those to which they impose a general obligation.

A. Research Objective

The aim of my research is to study the provision of maintenance under Hindu personal law.

B. Research Hypothesis

H₀ : There is no effect in maintenance under Hindu Law.

H₁ : There is an effect in maintenance under Hindu Law.

2. PROVISIONS REGARDING MAINTENANCE

A. Provisions under the Hindu Law

1. According to the Hindu Adoptions and Maintenance Act, 1956 - It contains 30 sections in which sections 18 to 28 concern to maintenance.

i) Section 18 - Section 18(1) of Hindu Adoption and Maintenance Act, 1956 provides that the wife is entitled to get maintenance from her husband during Lifetime.

• Subsection 18(2) lays down the provision to grant maintenance to the wife who lives separate from her husband on the basis of grounds:

1. if the husband is liable for desertion, Cruelty, bigamy,
 2. If husband is suffering from Leprosy, and
 3. if the husband has converted his religion without the consent of his wife.
- The subsection (3) of section 18 lays down that A Hindu wife can not claim maintenance from her husband if she is
1. ceased to be a Hindu by conversion,
 2. If the wife is living separately without any reason or by mutual consent or,
 3. she is living in adultery

In the case **Surjit Singh v. Gurdev Singh**⁷ Court observed that if a wife is living in adultery and she was not able to support herself there was no ground to refuse her interim maintenance.

- i) **Section 19 - Maintenance of widowed daughter-in-law**- They are only entitled to get Maintenance from her father-in-law, if she is not able to maintain herself from her own earnings, or other property, or if she is unable to obtain estate of her father or mother, or from her husband, son or daughter.

In **Rani Bai v. Yadunandan Ram**⁸, it was held by the court that woman is entitled to be maintained by her husband, a mother she is entitled to be maintained by her son or daughter, a daughter she is entitled to be maintained by her father or another and a widow she is entitled to be maintained from the estate of her husband or by her father-in-law.

- The section 19(2) fulfils the conditions in which the responsibility to support the daughter-in-law ceases. They are-
- a) When the father-in-law has no means of subsistence on the sepoy property belonging to her deceased husband;
- b) When the father-in-law has no means of subsistence on the Coparcenary property belonging to her deceased husband
- c) when the widowed daughter-in-law has received a share of the coparcenary property;
- d) If she has remarried; If she has converted to another religion.

A widow daughter-in-law can claim support for the property, even if she doesn't live in her father-in-law's house. In **Raj Kishore Mishra v. Smt. Meena Mishra**,⁹ Court said that the duty of Father-in-law shall not be enforceable if he has no means that to keep up his Daughter-in-law

from any coparcenary property in his possession out of that the Father-in-law has not obtained any share.

- ii) **Section 20 : Maintenance Of Children And Aged Parents**- This Section lays down the provision to maintain illegitimate or legitimate children, and old parents. As per section 20(1) Hindu is bound to maintain his or her legitimate or illegitimate child and his or her infirm parents. In Section 20(2) illegitimate or legitimate child can claim Maintenance from his/her Father or Mother as long as the child is a minor. And section 20(3) is regarding obligation of person to maintain his/her old or debilitated parents or unmarried daughter but this obligation extends as long as they are not able to maintain themselves from their own earnings¹⁰.

1. Provision Under The Hindu Marriage Act, 1955

- iii) **Under Section 24 of the act**, if the court deems it appropriate and is satisfied that the wife or husband has no independent income, it can order the defendant to pay alimony to the applicant in accordance with the provisions of this section. Therefore, the applicant can also be a husband. Furthermore, in accordance with the provisions of Article 25 of the Act, which deals indefinitely with the granting of alimony, the court can, at the request of the respondent, order that maintenance be paid either in the form of periodic payments or in the form of a total amount to be given. But the respondent may either be a wife or a husband. The object of implementing the clause in this way is to prevent discrimination. Since, by law, both husband or wife are equal.

⁷ Surjit Singh v. Gurdev Singh, AIR 2007.

⁸ Rani Bai v. Yadunandan Ram, AIR 1969 SCC 604

⁹ Raj Kishore Mishra v. Smt. Meena Mishra, AIR 1995 All 70

¹⁰ Section 20 of Hindu Adoption and Maintenance act, 1956.

In the latest case of *Rani Sethi v/s Sunil Sethi*,¹¹ the Delhi High Court ordered the wife to pay to her husband Rs 20,000 and Rs 10,000 as litigation expenses.

- iv) The custody, Maintenance and education of minor children is included in **Section 26 of HMA,1955**. The court may, if it deems it necessary and appropriate, from time to time issue temporary orders in this regard and at the same time has the power to revoke, suspend or vary such order. The responsibility to maintain lies on father and mother of the child, or on one of the parents, as directed by the court.

In the case of *Sukhjinder singh saini v / s Harvinder kaur*¹², on the issue of the maintenance to be granted to a child certain responsibility were made by HC: Both parents have a civil, social and moral obligation to maintain their children and to provide them with the highest standard of living, depending on the financial position of the parties, They are similarly obliged to provide the resources for the best education, It was also argued that even if the child is residing with the spouse whose income is sufficient to sustain the infant, the other spouse can not consider as a good reason not to preserve the child or to take care of the child's welfare.

A. Provisions under Muslim Law-

In this law, A husband is required to support his wife and family, and the term maintenance refers to the amount he is required to pay. Under Muslim Law, It is called as "nafaqa". A Muslim woman's entitlement to maintenance is not based on a condition that she is able to support herself, whether she is rich or poor. As a result, all Muslim women, whether they're earning or not, are entitled to maintenance. However, if the wife is too young to engage in marital relations then she has no

entitlement to receive maintenance from her husband, whether she lives with her parents or in his home. Also As long as she remains obedient to him and follows his reasonable instructions, the women is entitled to get maintained by his husband.

On the other hand, She cannot demand maintenance from her husband under the following circumstances:

1. She hasn't reached puberty.
2. She has abandoned her spouse and marital responsibilities for any cause.
3. If she gets married with another man.
4. In the event that she disobeys her husband's legitimate orders.

According to The Muslim Women (Protection of Rights on Divorce) Act,1986-

- v) **Maintenance in Iddat period:** The divorced lady is entitled to receive from her former husband a suitable and adequate level of maintenance for herself all across the Period of iddat.
- vi) **Maintenance after the Iddat period:** After the Iddat, a divorced woman who continues to be unmarried and unable to sustain herself is eligible to get maintenance from those relations who would receive her possessions after her death. The Waqf Board of the state in which she belongs will eventually be responsible for providing her maintenance if there aren't any such members present or if they do not have adequate resources.

In *Danial Latifi and others v. Union Of India*¹³, all writ petitioners contesting the legal standing of the The Muslim Women (Protection of Rights on Divorce) Act,1986 were grouped together in this Public Interest Litigation under article 32 of the

¹¹ Rani Sethi v / s Sunil Sethi, 179 (2011) DLT 414

¹² Sukhjinder singh saini v/s Harvinder kaur, 2017 SCC OnLine Del 11621

¹³ Danial Latifi and others v. Union Of India ,(1985) 2 SCC 556

constitution. The Supreme Court rejected the writ petition and maintained the constitutionality of the Muslim Women Act of 1986.

B. Provisions under Code of Criminal Procedure, 1973-

Section 125 deals with the provisions for maintenance of –

- Wife from the husband.
- Illegitimate child from his father.
- Minor Child with any sort of disability from his father.
- And parents from their children.¹⁴

This section is considered as economic support that makes provision for divorced wives to support them during the time of divorced proceedings or after getting divorce, illegitimate or legitimate children until the age of majority and old parents.

The main purpose of this section is to provide sufficient standard of living to the divorced wives who are not able to support themselves, discarded and abandoned children, or his weakened parents. For this, a Certain person is forced to maintain his wife, children, and old parents who are unable to sustain themselves. Thus, this Section is enforceable to all the persons whatever may be the personal law they are concerned to

1. **In the case of wife-** The following situations allow a wife to request and receive maintenance from her husband:
 2. Her spouse has granted her a divorce, or
 3. If she remains single, and
 4. She is unable to do the maintenance by herself.
- The Supreme Court defined "wife", and it encompasses circumstances in which a man and woman who lived together as married couple for a sufficient amount of

time. Strong documentation of marital relationship shouldn't be necessary as a prerequisite of support under Section 125 CrPC.¹⁵

- The Supreme Court in another case held that according to Hindu customs, if a woman is married to a man having a spouse who is alive, then that second woman is not entitled to this benefit.¹⁶
- The Supreme Court also stated that if a divorced Muslim woman, as long as she remains unmarried, is entitled to get support from her former husband under Section 125.¹⁷

2. **In the case of daughter-** It was determined that a juvenile daughter who has not attained majority while the petition for maintenance was pending remained entitled to receive support till the date of majority.¹⁸

3. **In the case of parents –** The Bombay High Court has ruled that parents can seek maintenance under Section 125(1)(d) if they satisfy the following conditions:

1. Are incapable to support themselves.
2. Children have enough resources to support their parents and are refusing to do so.¹⁹

3. Types of Maintenance

A. Interim Maintenance

When the wife files an interim maintenance request, the Court may allow the partner, by her divorce counsel, to pay for the temporary maintenance from the day the request was filed by the wife. It is charged in such a way that the wife will pay for the legal costs incurred by her.

The court grants temporary compensation if the wife has virtually no means of income to support herself. There are no rules that stipulate

¹⁵ Chanmuniya v. Virendra Singh, (2011) 1 SCC 141.
¹⁶ Smt. Yamunabai Anantrao Adhav A vs Ranantrao Shivram Adhav, 1988 SCR (2) 809
¹⁷ Mohd. Ahmad Khan v. Shah Bano Begum, AIR 1985 SC 945
¹⁸ Shahbuddin v. State of Uttar Pradesh, I (2006) DMC 626
¹⁹ Pandurang Bhaurao Dabhade v Baburao Bhaurao Dabhade, (1980) 82 BOMLR 116

¹⁴ THE CODE OF CRIMINAL PROCEDURE, 1973 (ACT 2 OF 1974),s 125

the duration of this type of maintenance and it is solely up to the court's discretion to decide how much maintenance the wife needs to maintain during the proceedings.

Section 24 of the HMA, 1955 provides that both the husband and the wife may, through their divorce attorney, file a request for interim maintenance.

In *Purusottam Mahakud v. Smt. Annapurna Mahakud*,²⁰ The SC held that the right to claim interim maintenance in a suit was a substantive right under section 18 of the Hindu Adoption and Maintenance Act. Since no form is prescribed for the enforcement of that right by the civil court in the exercise of its inherent power, interim maintenance may be granted.

B. Permanent Maintenance

Any court, at the time of passing any order or at any time thereafter, on application made to it under the Hindu Marriage Act, 1955, for the purposes of either the wife or the husband, as the case may be, orders the non-applicant/Respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property of the applicant, the conduct of the parties and other 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 immoveable property of the respondent.

In short it is the type of Maintenance which is awarded at the time when whole case is finally decided. It could be periodical or monthly depends upon the facts and circumstances of the case.

4. **AMOUNT OF MAINTENANCE**

The amount of the maintenance shall be purely the discretion of the

²⁰ AIR 1997 Ori 73.

Court. In the case *Kampanna v. Chima Nachamma*²¹ determining the amount of the maintenance the court shall have due regard to the following considerations, namely,

1. the position and status of the parties;
2. the reasonable wants of the claimant;
3. if the claimant is living separately, whether the claimant is justified in doing so;
4. the value of the claimant's property and any income derived from such property, or from the claimant's own earnings or from any other source;
5. Any other relevant fact and circumstance

5. **NEEDS IN THE PROVISION OF MAINTENANCE**

- A. Right of Maintenance to The Hindu children who ceases to be a Hindu-

This article needs to be reformed Because a child who ceases to be a Hindu cos of conversion to another religion is deprived of the rights under the Hindu Adoption and Maintenance act 1956, "Law to seek maintenance". In order for the children to education and his well being it needs to be amended.

- B. Right to separate property to widow-

On a separate husband's property, Widow has no charge. Neither section 18 concerning the maintenance of wife nor Section 24 concerning to widow provides for any charge for maintenance on separate property of husband.

- C. Right to maintenance in case of mutual consent

Wife should get maintenance in the case of mutual consent, I consider this to be an unjustness Because the other party may exploit it. Such acts needs to be reformed.

- D. Right to maintenance to Second wife.

²¹ AIR 1974 Mad 329

There is no clear law regarding maintenance of the Second wife. In my point of view there should be a clear and strict law regarding this provision. However some judicial precedents are available but still it needs to be included in the Hindu Marriage act.

6. CONCLUSION AND SUGGESTIONS

It is a core objective of a man to maintain his wife, infirm parents and his legitimate or illegitimate children.

It can be inferred from the abundance of judgements that Section 125 of Cr. P.C offers a extensive means to comply with the maintenance provisions but still there are some loophole present in the provision of maintenance i.g., there is no provision in Hindu personal law regarding maintenance of second wife, wife separated on the ground of mutual consent, separate property to widow, etc. These loopholes are needed to be care of as the provision of Maintenance is of immense value to a Hindu women since this authorises her to seek maintenance from the law. It is also evident from the above that, though Indian Hindu women have been given enhanced rights over a period of time, but the rights available to them do not equal the rights needed. Maintenance was indeed an issue not only for the poorest parts , but also for the whole Society. In the case of poorer sections, there is a issue in the sense that their entire survival rests on the provision of Maintenance.It is suggested that there is a need for a review on the provision concerning Maintenance under Hindu Personal law according to present requirement of the society.

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