

Socio-legal study of maintenance in India

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Abstract

This paper deals with Maintenance of wife under Hindu Marriage Act. The concept of maintenance aims at putting the wife back to the same position of comfort and lifestyle as she was at the time when her marriage existed. There is no fixed amount of maintenance that the husband is liable to pay to his wife, and it is upon the discretion of a family court to fix the amount of maintenance that the husband needs to pay either on a monthly basis or in form of a lump sum. Maintenance to wife is a very complicated issue under Hindu Marriage Act. It is often stated as a mean to exploit the husband by asking alimony for life. Section 24 of Hindu Marriage Act, 1955 (The Act) states that either husband or wife may claim maintenance pendent lite i.e. maintenance till the proceedings are in process. Further, section 25 of the Act states the grounds for permanent alimony. Maintenance to wife refers to the payments, which a husband, under certain circumstances is under an obligation to pay. Obligation of payment of maintenance can either during the subsistence of the marriage or after the dissolution of the marriage. The most important aspect of maintenance is that the party which relies on maintenance has no independent source of income to support himself/herself. The quantum of maintenance and the expenses of the proceedings have not been specified in any of the Indian Matrimonial statutes except the Divorce Act.

Keywords: Maintenance, alimony, spouse, grounds, discretion, permanent

Introduction

The right to support and care is known as maintenance. Hindu law gives special consideration to the topic of maintenance. In India, there are various laws that recognise the right to maintenance claims. One could argue that providing maintenance is a man's personal duty in raising a family, providing for and supporting their members. These would be the spouse, the kids, and the elderly parents. It also includes those members who are not eligible to inherit due to their disabilities.

The right to maintenance encompasses the provision of all basic needs, including clothing, food, and housing. Dharmashastra states that those who are entitled to maintenance fall into two categories: those for whom the text lays down a general duty and those for whom it lays down a binding duty.

In addition, even though there are specific provisions pertaining to maintenance, there are some circumstances in which there are none at all. These situations represent gaps in the current maintenance legislation, and the party who is wronged suffers as a result.

Meaning of Maintenance

The French word "maintenir," which means "a hand to hold on," is where the English word "maintenance" originates. The French words "main" and "tenir" are equivalent to "manus" and "tenere," respectively, in Latin, and both also mean "a support or a help."

It is evident that different countries throughout the world refer to different legal terms in different contexts. For example, "alimony" refers to allowances made between spouses, "child support" to payments made to a child by their parents, and "filial support law" to payments made to an adult child's indigent parents. In a similar vein, some countries define "maintenance" as including all of these

provisions that result from family relationships or, alternatively, fall under a state's matrimonial law.

There are situations in Indian matrimonial law where "maintenance" and "alimony" are used interchangeably. As a result, maintenance and alimony are synonymous in India. Therefore, maintenance refers to any family-based agreements, such as child support, spousal allowance, and filial or old age support, which are meant to support an individual who is dependent on another for their daily needs. Giving maintenance to these individuals is morally righteous and stems from a desire to protect social security and make equitable provisions against destitution for everyone.

Concept of Maintenance

The concept of maintenance was introduced to ensure that, in the event that one spouse is not financially independent, the other spouse should assist her in order to enable the other spouse to live a feasible and independent life. Giving maintenance entails allowing the recipient to live as they did prior to marriage in the event of a divorce, and allowing the recipient spouse to live as they did prior to their separation in the event that maintenance is requested by one of the partners while they are not living together. The amount that a husband is required to pay his wife either during the duration of their marriage or, in certain cases, after they separate or get divorced, is known as maintenance.

In India, the personal laws as well as Section 125 of the Code of Criminal Procedure, 1973, address the concept of "maintenance." This concept also derives from Article 15(3) of the Indian Constitution, which is reaffirmed in Article 39. They guarantee gender equality in protection and protective discrimination in favour of weak, abandoned, or divorced wives, among other groups of women. They sort of try to stop hunger and begging as it relates to committing crimes [1].

Maintenance in Socialistic Point of View

The effects of socialism are crucial to society because they expand the concept of social justice, which guarantees everyone's equality, liberty, and dignity. Justice stifles the destructive force of modernity, which is motivated by egotism and solitary self-gratification. Although it is legally a right in personam, the maintenance of human beings is a right from a humanitarian perspective. When the maintenance obligation is not fulfilled, the victim is always completely torn apart, which incites intense animosity towards the careless incumbent. The ferocious outburst of the hungry and abandoned against the uncooperative demon is described as a victimising servile mentality that intensifies legal retaliation against living fossils. Law always creates harmony by putting an end to conflicts. The removal of a negative environment that makes the situation of someone who needs maintenance worsens and increases sympathy against administrative incompetence and indifference. Strategic road maps can strengthen the positive assessment against the unrealistic emergence of continuum inequality.

The Hindu Adoptions and Maintenance Act, 1956

As a component of the Hindu Code Bills, the Hindu Adoptions and Maintenance Act (HAMA) was passed into law in India in 1956. The Hindu Marriage Act of 1955, the Hindu Succession Act of 1956, and the Hindu Minority and Guardianship Act of 1956 are among the other laws passed during this period. Jawaharlal Nehru led the push for all of these laws, which were intended to codify and standardise the existing Hindu legal system. The Adoptions and Maintenance Act of 1956 specifically addressed the legal requirements for Hindu adults to give "maintenance" to their spouse, parents, and in-laws, as well as the legal process of adopting children.

Adoptions that occurred before the act's enactment date are likewise exempt from its provisions. It does, however, apply to all marriages, whether they were consummated before or after the Act's enactment. Additionally, under contemporary Hindu law, if the wife is not a Hindu, the husband is not required to support her under this Act ^[2].

1. Maintenance of a wife

According to Section 18 of HAMA '56, a Hindu wife has the right to be supported by her husband for the entirety of her life. The Act is still in effect whether the marriage was established before or after it was enacted. The wife can only terminate her maintenance obligations if she becomes an adulterous woman or renounces her Hindu religion.

The wife can live apart from her husband and still receive support from him. There are several reasons why this separation may be justified: he may have another wife who is still alive; he may have converted from Hinduism to another religion; he may have mistreated her; or he may even have a severe case of leprosy.

The father-in-law has an obligation to support the wife if her late husband leaves her widowed. This legal requirement only takes effect in the event that the widowed wife has no other way to support herself. The father-in-law has no duty to her if she owns property, has a source of income, and is able to support herself. Furthermore, in the event that the widow remarries, this Act no longer binds her late husband's father-in-law ^[3].

2. Maintenance of a child or of aged parents

A child is entitled to maintenance from their parents under this Act until they are no longer considered minors. This holds true for children claimed by the parent or parents, whether they are illegitimate or legitimate. In contrast, daughters with disabilities or parents need to be cared for as long as they are unable to care for themselves ^[4]. The same is covered by Sections 20–22 of the Act, which also addresses maintenance for an individual's dependents.

The Hindu Marriage Act, 1955

Matrimony is the most important institution in human society. It happens frequently. Marriage has introduced the cornerstone of human civilization into the picture. Marriage establishes reciprocal rights and new social ties between partners. Children's status and rights are determined at birth. Every community acknowledges a set of procedures for establishing these rights and relationships. A genuine marriage entails embracing a new status and responsibilities that are recognised by others. Marriage is acknowledged as a universally accepted institution in every society. Matrimony is one of the most complex and profound human relationships. The laws pertaining to Hindu marriage were codified and implemented in 1955. The legislature passed the Hindu Marriage Act, 1955 ^[5], which contains the laws pertaining to Hindu marriage, restitution of conjugal rights, judicial separation, divorce, annulment of marriage, maintenance, and guardianship. The conditions for a legally binding Hindu marriage are covered in Sections 5 and 7 of the Hindu Marriage Act of 1955. In addition to outlining recent changes to the Hindu Marriage Act of 1955, this article provides an overview of the legislation.

1. Maintenance under Hindu Marriage Act, 1955

On May 18, 1955, the Indian Parliament passed the Hindu Marriage Act (HMA), which became a law. The Hindu Succession Act (1956), the Hindu Minority and Guardianship Act (1956), and the Hindu Adoptions and Maintenance Act (1956) were three more significant acts that were also passed during this period as part of the Hindu Code Bills.

Maintenance under Criminal Procedure Code

Individuals with ample resources disregard their ethical and communal obligations to provide for and support their spouse, parents, and kids. CrPC thus makes sure they are never left on their own without financial support. Regardless of personal laws, maintenance is provided by Section 125 of the CrPC. In the event that maintenance is in dispute between personal law and CrPC, CrPC takes precedence. This section's definition is broad; for example, a wife or daughter may maintain her parents or husband.

The Maintenance and Welfare of Parents and Senior Citizens Act, 2007

The Government of India's Ministry of Social Justice and Empowerment introduced the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 ^[6] in an effort to make provisions for senior citizens' and parents' maintenance and welfare more effectively. It imposes a legal duty on children and heirs to maintain elderly parents and grandparents with a monthly stipend. It also offers an easy, quick, and affordable way to safeguard senior citizens' lives and belongings. On December 29, 2007, the President

of India gave his assent to the bill after it was passed by the Indian Parliament ^[7].

The first case under the act was brought in November 2011 by Tuticorin residents Siluvai (84 years old) and his wife Arulammal (80 years old) against their son and daughter-in-law, accusing them of neglect in addition to seizing their two houses and gold jewellery ^[8].

Illegitimate Children and Their Maintenance Rights in India

The word "illegitimacy" comes from a Latin expression that means "not in accordance with law." Therefore, an illegitimate child is a person born outside of a lawful marriage. Although the law does discriminate against illegitimate children outside of society, changes have been made in response to the rise of liberal thinkers who do not view illegitimate children as a shame. An illegitimate child is defined as one who has no legal relationship with their parents, or nullius filius, based on the relationship between their parents during their marriage.

Obligation of Father-In-Law to Maintain Daughter-in-Law

Under Section 19 one of the conditions for the father-in-law to support the daughter-in-law is that she must be unable to support herself out of her parents' estate. It is imperative to ascertain whether her parents possess an adequate amount of wealth to support her, as well as the specific circumstances surrounding her incapacity to support herself or her parents. The daughter-in-law's parents must be heard for this reason. If they are added as parties to the lawsuit, then this is feasible. Any conclusion made in their absence won't bind them. When the daughter-in-law is able to support herself through her parents' estate, the question of the father-in-law's obligation does not come up. Investigating whether the father-in-law owns any coparcenary property from which the daughter-in-law is denied her share is also necessary.

Maintenance of Widowed Daughters-in-Law

The husband is required to give his wife alimony following the divorce. In the event that the bride's spouse passes away, the father is obligated to provide alimony to her. The act's Section 20 says as follows:

It is mandatory for a Hindu to uphold both his biological and adopted sons. A son's right to maintenance is not negated by his simple refusal to live with his father, though the amount of maintenance may be reduced ^[9]. Whether their children are legal or not, Hindu men and women should provide for their families. In the case of *Raj Kishore Mishra v. Smt. Meena Mishra* ^[10], it was decided that the father-in-law's obligation would not be upheld if he lacked the resources to support his daughter-in-law from any coparcenary property he owned and from which she had not received any share.

Maintenance of Second Wife as Per Hindu Law

Any marriage between two Hindus is deemed null and void under section 11 of the Hindu Marriage Act of 1955 if any of the requirements listed in clauses (i), (iv), and (v) of section 5 are not met.

At the time of the second marriage, the defendant in *Bai Jivatbai Jethmal vs Milkiram Deepchand and Anr* ^[11] had a spouse living. Because the first marriage was not dissolved at the time of the second marriage, the court in this case held

that the second marriage is deemed null and void in accordance with section 11 of the Hindu Marriage Act of 1955.

Any marriage, whether it was performed before or after the Hindu Marriage Act of 1955 went into effect, may be dissolved by a divorce decree, according to Section 13. Additionally, the grounds for granting a divorce decree are included in this section.

But, in the event of a void marriage, the marriage is void by definition, so the divorce decree is not required because the marriage is already regarded as legally null and void.

The defendant, who was the wife in this case, had a spouse who was still alive at the time of her second marriage in *R. v. Dolman* ^[12]. Upon learning of this, the husband filed for divorce on the grounds of cruelty in accordance with section 13 of the Hindu Marriage Act of 1955. In this instance, the court determined that the marriage is void on its own and that a divorce decree is not necessary.

Even though the first marriage was not dissolved, the husband in *Lily Thomas vs. Union of India* ^[13] converted to a different religion in order to have a second wife. In this case, the court determined that bigamous marriages are forbidden by the Hindu Marriage Act and are considered offences under Section 17. Consequently, any marriage performed by the husband during the duration of the first marriage would be considered an offence that could be prosecuted under Section 17 of the Hindu Marriage Act in conjunction with Section 494 IPC.

Maintenance in Live-in Relationships

A live-in relationship is a living arrangement in which unmarried couples choose to cohabitate and maintain a committed relationship without legally getting married ^[14]. There is no legal framework in India that acknowledges cohabitation. There is no specific law in India that defines the rights and obligations of the parties involved in such a relationship, nor does it specify the status of any children born out of it. Nonetheless, the courts now believe that if a man and a woman cohabitate as husband and wife for an extended period of time, the law will presume that they are married.

The Protection of Women from Domestic Violence Act of 2005 grants the female partner in a live-in relationship protection, maintenance, and the right to palimony a type of alimony paid to a former partner in a non-marital relationship upon her complaint ^[15]. The judicial system has thus provided sufficient protection for female live-in partners and their children. Although live-in partnerships are unethical in Indian society, they are not prohibited by law.

Basically, no statute defines the term "relationship" in the sense of marriage; however, Section 2(f) of The Protection of Women from Domestic Violence Act, 2005 (henceforth PWDV Act, 2005) uses this word. A domestic relationship is defined as a relationship between two people who currently live together or have lived together in the past as long as they are related by consanguinity, marriage, or another relationship in the nature of adoption, or as family members living together as a joint family under Section 2(f) of the Act 2005 ^[16].

However, Indian law only permits progressive judicial interpretation; legislation governing this kind of progressive relationship is nonexistent. The researcher believes that although the law grants married women rights and grounds them to demand maintenance from their husbands, women's

rights in live-in relationships remain unclear because there is no concrete statute protecting them. Judicial interpretation is reliant on the discretion the parliament grants the judiciary through the enactment of laws, and the current acts of parliament are insufficient to enable the judiciary to provide appropriate maintenance to the woman and the child born out of a live-in relationship ^[17].

Right of Maintenance in Same Sex Relationships

In the case of *Navtej Singh Johar v. Union of India* ^[18], the Honourable Supreme Court of India rendered a significant ruling. The colonial law was read down by a bench led by the former Chief Justice, Honourable Justice Dipak Misra, to the extent that it restricted the rights and individual freedoms of the LGBTQ community in this nation.

Individual differences exist in sexual orientation. There is never a perfect general rule. It's not always the case that a woman is drawn to a man or vice versa. 'Sexual Orientation and Gender Identity 'a new province of law for India' was the theme Michael Kirby, a former president of the International Commission of Jurists and judge of the High Court of Australia, covered in his 2013 Tagore Law Lectures. Justice Kirby had disclosed his sexual orientation to the public in 1999.

While it does draw a distinct sexual orientation, being homosexual is by no means a crime. Although the majority of religions oppose it, secular nations shouldn't be influenced by religious principles when enacting secular laws. Consequently, in September 2018, the Honourable Supreme Court of India invalidated a portion of Section 377, which prohibited consensual sexual relations between same-sex couples, in its ruling in *Navtej Singh Johar v. Union of India*.

In delivering its ruling, the Supreme Court noted that procreation was viewed as the exclusive goal of sexual relations at the time Section 377 was drafted, and any departure from this notion was deemed to be abnormal. However, the court clarified that since "homosexuality" is no longer "unnatural," it makes no sense to include it under the category of "unnatural offences."

Therefore, creating consensual homosexual relationships is not punishable under Section 377 of the current legislation.

The main piece of legislation in India pertaining to substantive criminal law is the Indian Penal Code, also known as "the IPC." The IPC contains a number of provisions that penalise different offences. Section 377 was one such law ^[19]. People who engaged in sexual activity "against the order of nature" were penalised by the law. The lack of a consent clause in that provision was the issue. Section 377 penalised anyone for engaging in sexual activity against the natural order, whether with or without consent, in contrast to Section 375, "Rape," which punishes anyone for coercing a woman into having sex against her will and without her consent. But before we continue this conversation, let's clarify two concepts: "against the order of nature" and "consent."

Determination of Quantum of Maintenance

The wife may be entitled to maintenance from her husband, her son, or her daughter, depending on the various socioeconomic benefit acts; however, it is challenging to acknowledge that she is entitled to maintenance under all of the Acts concurrently and from all parties. The husband's source of income must be taken into consideration by the

court when determining the amount of maintenance to be paid to her, and a proportionate amount can be awarded so that he can pay his own expenses and settle his other debts ^[20].

When determining a reasonable amount of interim maintenance, the court must take into account the wife's current maintenance under Section 125 of the Criminal Procedure Code. This amount must also be set off. These are the factors that the court must consider when granting maintenance under the Hindu Adoptions and Maintenance Act, 1956. The next issue that needs to be taken into account is how much interim maintenance the husband should have paid the wife. As a general rule, the wife may receive one-third of her net income as interim maintenance ^[21]. Furthermore, it has been established that the remedy provided by Section 125 of the Code of Criminal Procedure is provisional and does not supersede the remedy provided by the Act. The wife may still file a claim under Section 18 of the Hindu Adoption and Maintenance Act, 1956, even if she has agreed to give up her right to maintenance claims made in proceedings under Section 125 of the Code of Criminal Procedure in exchange for permanent alimony ^[22]. A fair interpretation of Sections 18, 20, and 23 of the Act demonstrates that the Court has broad discretionary powers, which must undoubtedly be used carefully to accomplish the goal of the legislation—namely, providing maintenance for the wife, children, and parents during their lifetimes. The duration of the lawsuit is included in "the life period." Therefore, the Act's Sections 18, 20, and 23 must be read to include the authority to award interim maintenance. If not, it would negate the legislation's main goal ^[23].

The primary goal of the maintenance concept is to ensure that the woman lives with dignity after her divorce and is not abandoned by her husband, rather than to burden or trouble him. As a result, the court believed that the following criteria should be used to decide whether to award interim or final maintenance in the current case:

In order to ascertain whether the wife could sustain the level of living she is used to from her husband's household on her own, the court will investigate the wife's past. For instance, the wife's level of education and professional qualifications, her employment history prior to marriage and her departure from it, and her availability of income are all factors that the court will consider ^[24].

Conclusion

The Indian Criminal Law and Personal Law both contain a number of provisions aimed at uplifting women and giving them access to a system of financial support in the form of an institution called "maintenance." Upkeep The most important social and moral aspects of our lives are governed by law. The idea that a husband should support his wife and that parents should support their children is not only socially and morally required, but it also represents a role reversal when parents age and become ill, with the children then taking on the responsibility of providing for their parents. The goal of the law is to assist and shield defenceless parents, abandoned and neglected children, and neglected wives and divorcees.

The children have become so accustomed to their individualistic and materialistic mindset that they don't hesitate to leave their parents behind, either to live penniless in assisted living facilities or by evicting them so they can live comfortably. Our parents, who frequently consider that

"poot sapoot toh kyon dhan sanchaypoot kapoot toh kyon dhan sanchay" because they themselves lead impoverished lives, are frequently shown incorrectly by their own children. Taking notice of the situation, the law formulates laws under personal laws that apply to the parties involved and sets the criminal machinery in motion by incorporating provisions from the Protection of Women from Domestic Violence Act, 2005 and the Code of Criminal Procedure, 1973. This helps the needy females, children, and elderly and infirm parents.

Finally, provisions incorporated under the Protection of Women from Domestic Violence Act, 2005 have been included towards the end of the work. This can be considered a great step towards breaking down the violence and bullying that women have faced within their homes for as long as they can remember. This Act is a welcome step in the rapidly changing culture where live-in relationships are becoming more and more common. It is true that Indian women have a number of legal rights to maintenance under Indian law, but it appears that exercising these rights is more of a myth than a reality. The Legislature must act decisively to take concrete steps in order to bring about the justice system and make the vision a reality, ensuring that justice is more than just a title. The nature of rights under the previously discussed provisions varies depending on the law and the community, but the real question is whether these provisions are adequate or if they require further consideration.

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