



Right of Maintenance

Mukesh Jakhar

Deptt. Of Law, Research Scholar, M.D. University, Rohtak.

ABSTRACT:

This paper deals with the concept of Maintenance of Women after dissolution of marriage under Hindu and Muslim law. This subject matter has been one of the most controversial ones, and has undergone many changes over the years. This paper is an attempt to look at the series of changes which this law has undergone by virtue of enactments and case laws, and took at what the present position of law.

Maintenance refers to payments which a husband is under an obligation to make to a wife either during the subsistence of the marriage or upon separation or divorce. A wife claim maintenance under the Hindu Marriage Act,1955, Hindu Adoption and Maintenance Act,1956, CrPC,1973 and The Muslim Women (Protection of Rights on Divorce) Act, 1986.

This paper commences with introducing the concept of maintenance in common parlance. In the context, the famous Shah Bano case was decided, which become one of the most landmark judgment. In an attempt to resolve the conflict and clarify the position of law, the Supreme court in this case gave precedence to CrPC over Personal Laws. The Muslim Women (Protection Of Rights On Divorce) Act,1986 was passed in order to nullify the effects of the judgment.

The research paper has been divided into parts which talks about maintenance under Hindu Marriage Act, Hindu Adoption and Maintenance Act and Code of Criminal Procedure.

INTRODUCTION:

'The greatest happiness of the greatest number is the basic of judging the social economic and political policies of a nation', asserts the principle of benthemite. For centuries past, women all over the world have not only been denied justice ,social, economic and political but as `weaker



section' they have been used abused, exploited and then discarded to lead immoral street vagrant and destitute life till their death. the basic social unit wherein we could observe the pre requisites of a welfare society is family. Family is described as a `natural ethical community.'

In the post 1947 period due to modernization, education, human rights, the rising position of women in society, the very concept of women and her rights changed within the society. The concept of women empowerment came into being. Various international documents lead to the protections of women in the world. For e.g. United Nations Charter, Universal Declaration of Human Rights, 1948, Convention on the Political Rights of Women,1952, declaration on the Elimination of All Forms of Discrimination against Women ,1967, Convention on the Elimination of Violence against Women , 1993. With the coming of these International Conventions, India also acknowledged that there is a need to amend laws in order to give equal rights and protection to women. Hence, Hindu Marriage Act, 1955 and Hindu Adoption and Maintenance Act, 1956 received the assent of President on 18 May, 1955 and 21 December, 1956,respectively. Both these enactments were very much in conformity with the International Conventions. In fact, in both these statutes women have been given the right to maintenance so as to prevent her form vagrancy and destitution. Maintenance refers to payments which a husband is under an obligation to make to as wife either during the subsistence of the marriage or upon the separation or divorce, under certain circumstances. This liability of the husbands flows from the bond of matrimony.

The concept of Maintenance in India is covered both section 125 of the code of Criminal Procedure , 1973 (section 125) and the personal laws. The concept further stems from Article 15(3) reinforced by article 39 of the constitution of India,1950(the Constitution).Under Indian law, the term maintenance includes an entitlement to food, clothing and shelter, being typically available to the wife, children and parents. It a measure of social justice and an outcome of the natural duty of a man to maintenance is to prevent immorality and destitution ameliorate the economic condition of women and children.

The Quantum of maintenance and the expenses of the proceedings have note been specified in any off the Indian Matrimonial Statutes except the Divorce Act, The court can fix the



maintenance at any amount, depending on its discretion. When deciding the quantum of maintenance to be awarded, the court takes into account the income of the both parties, their status circumstances. When the wife applies for maintenance, the onus is on the husband to declare his income.

Meaning of " Maintenance" ;

The classical Hindu law on maintenance was devised in such a way that no member of the joint family, especially the female members, should be left unprovoked for. Maintenance was a duty that a Hindu owed to his wife , whether she lives with him or he has deserted her. Every member of the joint family has a right to maintenance against the joint family property.

Under Hindu Law, the wife has an absolute right to claim maintenance from her husband. But she loses her right if she deviates from the path of chastity. Her right to maintenance is codified in the Hindu Adoptions and maintenance Act,1956. When the researcher talks about the maintenance rights in the case of deserted Hindu wife, it so to be understood that the woman in this case is not divorced but only deserted by her husband subject to some essentials of desertion. In Hindu there are two statutes which provides for maintenance, viz, the Hindu Marriage Act,1955 and the Hindu Adoptions and maintenance Act, 1956. Along with the two personal laws, the code of criminal Procedure, 1973 also provides for maintenance of wives.

In India, a Hindu always enjoyed her to maintenance not only under Hindu Shastric Laws but also in the present legal system which expressly recognize this right in favor of Hindu wife. With the changes in the society due to modernization, industrialization, a radical change has been witnessed by all of us in the position of a woman in the society, the relationship that a woman shares with a man, the role of a wife, the concept of a "wife". With these changes, many complexities has arisen which poses a serious challenges to the present legal system to handle these complex issues and hence there is an imminent need to revisit the adequacy of present provisions to tackle such situations.



under Muslim law, the wife`s right to the maintained by her husband is absolute. A Muslim husband is bound to maintain his wife of a valid marriage, and not the wife of void or irregular marriage. It is immaterial that the wife is rich and poor, Muslim or non -Muslim, or that the husband is without any means. The wife has also right to pledge the credit of her husband for providing herself with maintenance is a debt against the husband.



Maintenance Rights under "Hindu Marriage Act", 1955:

1). Section 24 of Hindu Marriage Act, 1955 :

According to section 24 of this act talks of maintenance pendent lite and expenses of proceedings :

"Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be , has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or husband, order the respondent to pay the petitioner the expenses of the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent , it may seem to the court to be reasonable".

2).Section 25 of Hindu Marriage Act,1955:

Permanent alimony and maintenance: Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or husband as the case may be , order that the 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, if any , the income and other property of the applicant.

3).Section 26 of Hindu Marriage Act:

Custody of children, maintenance and education: In any proceeding under this Act, the court may ,from time to time , pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody , maintenance and education of minor children , consistently with their wishes, wherever possible and may, after the decree upon application by petition for the purpose, make from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending, and

the court may also from time to time revoke, suspend or vary any such orders and provisions previously made.

Maintenance Rights under " Hindu Adoption And Maintenance Act" :

4).Maintenance of Wife, Section.:18:

The Hindu husband is under a duty to maintain his wife. Maintenance is a personal obligation. Thus, sec.18(1) of the Act provides that a Hindu wife shall be entitled to be maintained by her husband during her lifetime. Section 18(1) is applicable when the wife lives with her husband . A wife who has ceased to be a Hindu cannot claim maintenance. However, an unchaste woman living with her husband can claim maintenance.

5).Maintenance of widowed daughter-in-law , section 19:

A Hindu wife, whether married before or after the commencement of this Act , shall be entitled to be maintained after the death of her husband by her father-in-law: Provided and to the extent that she is unable to maintain herself out of her own earnings or other property.

Maintenance under secular Provisions :

(6). Criminal Procedure Code,1973: section 125.:

the power conferred on the courts, the nature of the proceedings, duties of the courts in this regard, the concept of "having sufficient means", the concept of "refusal and neglect" under this section, right of a divorced woman to claim compensation under this section, rights of a wife out of void marriage ,quantum of maintenance etc.

(7).Domestic violence Act, 2006 :

Domestic Violence Act,2005 is broader in its purview, it is appreciable to mention that those women who are not legally wedded wife and share a live-in-relationship can also claim maintenance under this Act, Recommendations made by Justice Malinath Committee to the Law Commission of India (2003) will also be analyzed.



(8).Muslim Women (Protection of Rights on Divorce) Act, 1986:

Supreme Court decision in Md.Ahmed khan v. shah Bano Begum(AIR 1985 SC 945), there was a view that divorced Muslim was not entitled to any maintenance from her husband after of the expiry of Iddat period. In Shah Bano case , Chandrachud, C.J. expressed the opinion that under Muslim personal Law, a divorced wife unable to maintain herself is entitled to maintenance. If she is able to maintain herself the husband's liability to provide maintenance ceased with the expiration of the Iddat period.

With the enactment of the Muslim Women (Protection of Rights on Divorce) Act,1986 , a divorced Muslim wife has been accorded necessary protection. Under the Act , a divorced women is entitled to have a "reasonable and fair provision , and maintenance " from the husband , and the husband must do so within the period of Iddat . If she fails to get maintenance from her husband, she can claim it from relatives failing which, from the waqf board. The parties have an option to proceed under the secs. 125-128, CrPC., or under this Act. There is no provision in the Act, which nullifies orders passed under Sec.125, CrPC. It may be noted that sec.125, CrPC. defines "wife" as to include a divorced women.

Role of Judiciary in Development of Maintenance Laws:

Through a lot of statutes are there for the protect the right of maintenance of women but judiciary have to come forward from time to time and protect the rights. Indain judiciary have categorically discussed the law of maintenance of women in its various decisions like in Ahmed Khan Vs Shah Bano Begum and Danial Latifi and others Vs Union of India cases.

Conclusion:

The judgments delivered by the Supreme Court and various High Courts of the country from a very long time cast an unavoidable legal obligation on the husband to provide maintenance to his wife. The fact that the husband is responsible for the absolute right to the wife claim maintenance and the husband cannot avoid it any cost. Even if the wife separates from the husband due to his conduct ,then also he is supposed to give for her maintenance. This thinking



finds support from all the jurists as well as the Hon'ble judges and all the other legal luminaries. The above thinking lends full support to the 252 Law commission Report and the researcher also fully agrees to this concept.

In the light of the discussion going on about the subject matter of research paper, after dealing with all the intricacies of the issue ,the researcher is in full support to the recommendations of the Law commission of India.

There was conflict between the two since, under CrPC, the right of women to claim maintenance was beyond iddat period and under Muslim Personal Law, the husband was obliged to pay maintenance only during iddat period. In the context, the famous Shah Bano case was decided , which settled the position of law. The case gave precedence to CrPC over Muslim Personal Law. Therefore, the case is credited for serving dual purpose of maintaining the constitutional validity of the Act and reiterating the position which was settled in the Shah Bano Case.The position has been seconded by court in various instances and stands unchanged.

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