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MAINTENANCE UNDER INDIAN LAWS

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ABSTRACT

Maintenance, as a legal definition, is the sustenance or financial support that is provided by one ex-partner to another after the procedure of divorce or legal separation. This financial assistance is also provided to the elder parents and children who are unable to maintain themselves. Different religious communities have different laws which are known as personal laws-

- Maintenance under Hindu Law which includes Hindu Marriage Act 1955, Hindu Adoptions and Maintenance Act 1956, Hindu Succession Act 1956 and Hindu Minority and Guardianship Act 1956.
- Maintenance under Muslim Law. This includes the Muslim Women (Protection of rights on Divorce) Act, 1986 and the Wakf Act, 1955.
- Maintenance under Christian Law includes Indian Divorce Act, 1869.
- Maintenance under Parsi Law which includes Parsi Marriage and Divorce Act,

Each one of the personal laws as well as the sections under the Code of Criminal Procedure, 1973 with reference to the provisions of maintenance will be discussed in the below paper.

Keywords - Maintenance, Marriage, Divorce, Couples, CrPC

MAINTENANCE UNDER HINDU LAW

Hindu Law is considered to be one of the oldest laws in the world which were instituted for the welfare and betterment of the people. The husband is required to support his wife till the end of her life. A Hindu male partner, under old Hindu Scriptures and Law, is obliged to maintain the following family members-

- Wife
- Elder parents
- Legitimate and illegitimate sons
- Unmarried daughter

There are various provisions under Hindu Personal laws which deals with the concept of Maintenance. One such law is the HINDU MARRIAGE ACT, 1955.

As per the definition in Section 2 of the Hindu Marriage Act, 1955, all the provisions under this Act shall not only apply to the Hindus but also to the Sikhs, Jains and Buddhists.

There are two kinds of maintenance under this Act depending on the duration of allowance-

- **Temporary Maintenance-** This is also known as maintenance pendente lite, granted by the court when the divorce proceedings are subsidized so as to enable the dependent partner to meet his or her financial needs. Section 24 of the Act deals with this type of maintenance and either of the spouses can claim it.
- **Permanent Maintenance-** Section 25 of the Act deals with this type of maintenance. It is granted after the complete disposal of proceedings of divorce. It is also known as alimony and it is granted in the form of either periodical or monthly sums.

Under this Act, both the husband as well as the wife are legally entitled to claim alimony and maintenance.

In the Judgement of the case **Rani Sethi v/s Sunil Sethi**, the Court ordered the female partner to give alimony to the husband per month along with the litigation expenses. In the Judgement, it was also stated that the aim of Section 24 of the Hindu Marriage Act is to provide support to a spouse who is financially incompetent to sustain themselves. The spouse has to provide maintenance to the other irrespective of gender.

Estimation of the amount of permanent alimony is entirely the Court's responsibility and the elements that the Court takes into consideration for the wife could be as follows-

- Status and position of the husband
- Reasonable wants of the wife
- Wives' own income or earnings
- The Court will not only take into consideration of the financial status of the husband but also the financial position of the female partner.

In **Kulbhushan Kumar v/s Raj Kumari & Anr**, it was held that 25% of the husband's net salary is compulsory to be awarded as maintenance to the wife.

The Hindu Marriage Act, 1955 also deals with the sustenance, education and custody of a minor child under Section 26. The duty to support lies equally on each partner i.e., the father and mother of the child as directed by the court and the court may, as it sees mandatory and deems fit, regularly approve orders in this matter and at the same time has the power to quash, suspend or modify that order.

In the case of **Ram Chandra Giri v/s Ram Suraj Giri**, the Court directed that the concept of potential earning capacity cannot be applied to a minor as that would rule out the purpose of the legislation. This was said so because the father in this case deprived the son of maintenance stating that his son is healthy and has enough ability to maintain himself.

Another provision which deals with this topic is the HINDU ADOPTION AND MAINTENANCE ACT, 1956. Section 20 in the Hindu Adoption and Maintenance Act, 1956 states that-

- A Hindu person is obligated to provide maintenance to their minor child, whether legitimate or illegitimate and their elder parents during their lifetime.
- The child may claim maintenance from his parents so long as the child is a minor.

In **Sukhjinder Singh Saini v/s Harvinder Kaur**, it was held that the responsibility of the father towards his child does not end after the separation if the child is living with the mother. He must provide his child with an adequate amount for his maintenance.

MAINTENANCE UNDER MUSLIM LAW

The objective of the Muslim Women (Protection of Rights on Divorce) Act, 1986 is the protection of the rights of Muslim women who have been divorced by or have obtained a divorce from their husbands.

A Muslim wife who is living separately from the husband may claim maintenance against him under these situations-

- If the husband is cruel and does not treat her properly
- If he marries the second wife without the consent of the first wife
- If he has not paid prompt dowery to the Muslim wife
- If he lives with a mistress

In **Itwari v/s Ashgari AIR 1960**: It was held by the Allahabad High Court that if the husband has married another woman, the first wife would be entitled to live separately from her husband and claim maintenance against him.

Under pure Muslim law, a divorced wife was entitled to claim maintenance from her husband only up to the period of her iddat.

In **Mohammad Ahmed v/s Shah Baano Begum**, the Supreme Court held that although the Muslim personal law limits the husband's liability to provide maintenance for his divorced wife till the iddat, it would not be wrong to extend the religious principles of Muslim Law. Finally, the Court concluded that if the divorced wife is unable to maintain herself after the iddat period, she is entitled to recourse to Section 125 of Cr.P.C and can get maintenance even after the divorce.

MAINTENANCE UNDER CHRISTIAN LAW

The provision of maintenance for the Christian community is contained only in the Indian Divorce Act, 1869 covered under part IX- Section 36 to Section 38.

- Section 36 of this Act, which deals with alimony pendente lite explains that in any suit instituted by a husband or a wife, the wife may present a petition for the cost of the proceedings and the maintenance amount.

The Court may make an order on the husband for payment to the wife, on being satisfied with the statements given by the wife.

- A Christian woman can apply for maintenance in a Civil Court or High Court and the ex-husband will be responsible to pay her alimony as the Court may order. This is explained under Section 37 of the Indian Divorce Act.

- Section 38 of the Act states that the Court, in all cases in which it makes any order for alimony, may direct the same to be paid either to the wife or to any trustee on her behalf and may impose any terms or restriction and appoint a new trustee from time to time.

In the case of **Divyananda v/s Jayarai**, two Roman Catholics married in a Hindu way and lived together for five months. They got separated after the wife conceived a child and she went on to demand maintenance for herself. Their marriage was declared to be void ab initio. The reason being that even though being Christian, they did not marry as per Christian tradition neither did they convert to Hinduism. Hence the Court said that the woman cannot claim maintenance under Section 125 of the Code of Criminal Procedure, but her son, who is illegitimate can claim maintenance through this provision.

MAINTENANCE UNDER PARSI LAW

For a Parsi couple applying for divorce and maintenance, there is no legal limit as to approach the Court. They may approach both the Civil or Criminal Proceedings, as under the criminal proceedings the religion of the parties does not matter whereas it matters under Civil proceedings.

The Parsi Marriage and Divorce Act, 1936 deals with the provisions of maintenance and alimony under Section 39 to Section 41, Chapter IV.

Section 39 of the said Act deals with the concept of alimony pendente lite where, if it appears to the Court, that either the spouse has no independent sufficient income or necessary expenses of the suit for their support, the Court may order the defendant to pay the plaintiff the required amount, weekly or monthly.

Section 40 deals with the permanent alimony and maintenance and states that any Court, by exercising its jurisdiction under this Act, may order the defendant to pay the plaintiff for her maintenance and support, such gross, monthly or periodic sum for a lifetime of the plaintiff party.

But the Court may also modify or rescind any such order if-

- The plaintiff party, i.e., the wife has not remained chaste.

- If the party is the husband, then if he had sexual intercourse with any woman outside wedlock

Section 41 of the Act states that the Court, in all cases in which it makes any order for alimony, it may direct the same to be paid either to the wife or to any trustee on her behalf and may impose any terms or restriction and appoint a new trustee from time to time.

MAINTENANCE UNDER CODE OF CRIMINAL PROCEDURE, 1973

The Code of Criminal Procedure, 1973 which is a secular Indian law also deals with the provision of maintenance and sustenance. Any woman, irrespective of her caste or religion can approach the Court for legal assistance on the matters of alimony and maintenance.

Basically, the concept of maintenance attempts to ensure that a wife and children are not neglected after separation and are not left crippling alone in the society leading to the path of crime and beggary for their survival.

The Code of Criminal Procedure, 1973, provides for the order of support for spouses, children and parents.

As per clause (1) of Section 125, the following family members are eligible to claim maintenance from a person:

- His wife who cannot maintain herself
- His legal or illegal child
- His adult son or daughter, whether legitimate or illegitimate who cannot maintain itself due to any physical or mental abnormality.
- His old parents who are not able to maintain themselves. A Magistrate of first-class may ask for proof of neglect or refusal by the son and order him to make a monthly allowance not exceeding five hundred rupees from time to time.

According to Section 125 (3), if any person who is so ordered fails to comply with the order without sufficient cause, the Magistrate may issue a warrant for levying the amount due and may

sentence such person fine or imprisonment for a term which may extend to one month or until payment as soon as it is made.

Clause (4) of Section 125 describes the conditions under which the wife cannot claim for maintenance from her ex-husband-

- When the wife is indulged in adultery.
- When she refuses to live with the husband without any justifiable explanation.
- When she is separated from her spouse with consent.

Section 126 in the Code deals with the proceedings which may be taken against any person in any person-

- Where he is,
- Where he or his wife, resides
- Where he last lived with his spouse or with the mother of the child who is illegitimate.

All evidence in proceedings is to be taken in the presence of a person against whom maintenance is to be ordered and if a person is wilfully avoiding summons, then ex-parte evidence is taken in that case.

Section 127 of the Code deals with adjustment in allowance which means an order to modify the amount of the allowance which was directed by the Magistrate under Section 125. This section explains that if there is a change in situations and the male spouse is unable to maintain the female partner due to economic crisis and the wife is financially sound and is earning a decent salary then the male partner may petition the court to stop the maintenance.

Enforcement of order of maintenance is contained in Section 128 of the Code which states that-

- A copy of the order of maintenance shall be given to the person in whose favour the order is made, free of cost.
- And if the person is a minor, then the copy of the order should be given to the guardian of that minor.

CONCLUSION

We all can say that our Constitution is the holiest book of our country and we must not tolerate its violation at any cost. Providing someone with enough amount of money or maintenance is the bare minimum a husband or a father or any decent human can do. It might seem that the laws regarding maintenance gives an upper hand to women or is biased towards them, but we can't deny the fact that there are so many places in this country where women are denied their rights, harass them or ignore their basic human necessity. Our Judiciary and lawmakers, by providing the provision of maintenance, has given a ray of hope to the women so that they can stand on their feet and live, not just survive.

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