



A STUDY ON LEGAL PROVISIONS REGARDING MAINTENANCE

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ABSTRACT

This Research work is intended to study the institution of maintenance, paper deals with the concept of Maintenance under the Hindu Law. It aims at providing support and care to wife, children and aged parents. There is no fixed amount of maintenance; it is solely upon the discretion of the Court. Maintenance is part and parcel of basic human right and not merely a legal right. Section 125 of Cr.P.C. intends to protect indirectly the basic human right of individual. The provision also reflects the constitutional obligation and insures a standard of loving to its citizens. These also uphold the spirit of Article 21 of the Constitution.

OBJECTIVE:-

- To evaluate the procedure of maintenance under Code of Criminal Procedure (CrPC), 1973 for Women, Parents and children's.

RESEARCH METHODOLOGY:-

The methodology used in this research paper is a traditional method of research that is Doctrinal research. For this research paper the researcher has turned into various types of journals, existing online articles, research papers, websites and even some documentaries.

RESEARCH QUESTIONS:-



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- What is the need of the maintenance?
 - Who are all eligible for maintenance?
 - How should be decided that what the amount should be paid for maintenance and what are the factors to be considered?
 - What are consequences of non-payment for maintenance?

LEGAL PROVISIONS:-

1. MAINTENANCE UNDER HINDU LAW

The relief of maintenance is considered an ancillary relief and is available only upon filing for the main relief like divorce, restitution of conjugal rights or judicial separation etc.

1.1. MAINTENANCE OF WIFE:

Under Section 24 of Hindu Marriage Act, either the wife or husband can apply for interim maintenance. The basis of the claim for interim maintenance is that the claimant has no independent income of his/her own to support himself/ herself. The provision is silent on the quantum of maintenance and it is upon the discretion of the court to determine the quantum. Similarly, maintenance pendente lite is to be provided to the claimant who does not have an independent income and the financial need of litigation expenses has to be provided by the other spouse.

1.2 MAINTENANCE OF CHILDREN:

Section 20 of Hindu Adoptions and Maintenance Act imposes an obligation upon the parents – mother and father, both equally to maintain the children – both legitimate and illegitimate. This is a unique feature of the Hindu law where both the parents are equally responsible to maintain the children. Section 20(2) of Hindu marriage act lays down that the children are entitled to maintenance during their minority. This right of maintenance for the daughter is extended till she gets married.



1.3 MAINTENANCE OF PARENTS:

Section 20 of HAM Act also lays down an obligation of maintenance of old and infirm parents who are not able to maintain themselves out of their own personal earnings and property. The HAM Act is the first statute in India, which imposes an obligation on the children to maintain their parents. The obligation to maintain is not only limited to the sons but it also extends to the daughters. Under HAM Act, both the mother and the father have an equal right to claim maintenance.

2. MAINTENANCE UNDER CRPC:-

The provisions of the Code of Criminal Procedure, 1973, bind a person to fulfill the moral obligation to society that he owes to his wife, children, and parents. The duty is unquestionably lawful and binding on the individual. Proceedings initiated under Section 125 of the CRPC are of a summary nature, and apply to everyone regardless of caste, creed, or religion. The provision included in Chapter IX of the CRPC tries to prevent the neglected wife, parent, and children from being abandoned.

The CRPC's Section 125 offers a quick remedy for civil damage. It substitutes for a straightforward technique with few complexities. It gives effect to a man's fundamental duty to support his wife, children, and elderly parents who are unable to maintain themselves. The underlying principle behind the maintenance stand under Section 125 of the CRPC is that no wife, young children, or elderly parents should be left without and subjected to utter strain of wants, causing them to be persuaded to commit crimes, etc. Provision under Section 125 of the CRPC authorizes a Magistrate of the First Class to take summary action for prevention of poverty

- **What is the need for the maintenance?**

The wife can avail the basic amenities of life such as food, clothing, shelter, etc. 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.

- **Who all are eligible for maintenance?**



Under Section 125 of the Code of Criminal Procedure, 1973, the right of maintenance, under the family law in India, extends not only to the wife and dependent children but also to indigent parents and divorced wives. The maintenance claim depends upon the husband's capability to provide sufficient means.

- **How should be decided that what the amount should be paid for maintenance and what are the factors to be considered?**

There is never a fix amount for maintenance that shall be paid. The decision is to the court that how much maintenance is to be given but Section 23(3) simplifies the process of deciding the amount of maintenance payable to other dependent.

- The net value of deceased's property after clearing all his debts. Will of the deceased (if any).
- All sources of income of the dependent and the total value of all their properties.
- The number of dependents that can be entitled to maintenance.

- **What are the consequences of non-payment for maintenance?**

Default of Section 125 CRPC order is viewed seriously by the courts and the amount of coercive action in case of default varies from case to case. Under section 125(4) the court can take coercive action for enforcing execution of the maintenance order. The maintenance order can be enforced in two ways by warrant of attachment wherein the assets of the petitioner are attached, and amount of arrears are recovered, and another way is by warrant of arrest where real jail time the husband has to suffer in case of default

LACUNA'S IN THE PRESENT LAW OF MAINTENANCE

- 1 No provision for right to maintenance in case of second wife

The Hindu marriage act does not provide maintenance to the second wife. Though judicial precedent is available for the maintenance of second wife, but due to absence of the clear provisions regarding the maintenance it depends upon the discretion of the judges. Such absence



provides loophole in the Indian laws. These are exploited by the husbands to defend themselves. Therefore, there is a need to make clear and strict laws for the second wife.

2 Interim maintenance to be given till determination of Paternity of Child

The Court sometimes takes a lot of time in deciding the case of paternity of child in certain cases. So the question arises that how would a child survive in such situation. The court in certain cases grants interim maintenance to the child but still number of children suffer during paternity proceedings. Therefore the courts need to take special care in such cases so that the purpose of maintenance law which is to prevent vagrancy and destitution would be served.

3 No right to maintenance for Hindu Child who ceases to be a Hindu

A Hindu child who ceases to be a Hindu due to conversion to another religion loses all the rights to claim maintenance under the Act of 1956. Section 24 of the Hindu Adoption and Maintenance Act, 1956 needs to be amended for the welfare of the children and their religious freedom.

4 Provision for maintenance for widowed daughter in law

A widowed daughter in law is entitled to claim maintenance from her father in law but neither in the act of 1956 nor in Cr.P.C any provision entitle the daughter in law to seek maintenance whose husband is alive if he is missing or absconding or has deserted her. In such situation she can get divorced but cannot claim maintenance order against her in-laws. Secondly a widowed daughter in law is not entitled to claim maintenance from her mother in law even if she has sufficient means to maintain her and her father in law is not alive.

5 Grant of maintenance in case of mutual consent

Generally maintenance is denied in case of divorce by mutual consent. In my view this is injustice on the part of aggrieved party as it can be misused by the other party. The Rajasthan High Court in a recent case held that wife cannot claim maintenance and expenses of the proceeding from the husband. Such decisions puts wife in a helpless situation and does a great



injustice to her.

JUDICIAL PRECEDENTS

➤ **Kusum Sharma v. Mahinder Kumar Sharma (2020)**

The Delhi High Court held maintenance is not only a constitutional right but also an element of universal human rights. The purpose of paying maintenance is twofold,

1. First, to prevent vagrancy as a result of strained husband-wife relationships, and
2. To guarantee that the poor litigating spouse is not crippled as a result of a lack of funds to defend or prosecute the case.

There is a spate of judicial precedents on the concern of maintenance. Until recently, the term wife was interpreted in a narrow manner, since the intention of the judiciary was to protect destitute and harassed women. The Indian courts held that only a lawfully wedded woman was entitled to claim maintenance.

CONCLUSION

Granting of maintenance is a measure of social justice. It is a fundamental duty of a man to maintain his wife, aged parents, and children and near relatives so long as they are unable to maintain themselves. It can be concluded from the recent judicial decisions that the Courts have been progressively liberal in deciding cases regarding maintenance. Section 125 of Cr.P.C. intends to protect indirectly the basic human right of individual. Effective measures are needed to be taken to find out ways and means to eradicate lacunae, gaps, anomalies in maintenance laws. Parliament of India can bring necessary legislations. The maintenance cases must be considered as a secured obligation and the suggestions contained in the Law Commission's 73rd Report with requirement of upkeep claims must be actualized. Right to seek maintenance under section 125 of the Code of Criminal Procedure is alternate method.

Women are the foundation of the society and they need to be protected. Children are the future of the society and therefore they also need to be supported and protected. Thus, the legal and moral obligation of the husband to maintain his wife and children must be recognized by the law. It is suggested that there is room for changes and improvement in the present law of maintenance according to the present needs

