

## RIGHT OF MAINTENANCE: A LEGAL SCRUTINY

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*"Indian Women don't think like that about equality. But if they don't think like that they should be given a real opportunity to think like that."*

- Amartya Sen

Maintenance rights of women differ according to personal laws governing them.

### **Hindu Women: Hindu Adoptions and Maintenance Act, 1956**

Maintenance includes provision for food, clothing residence, education & medical attendance & treatment in all cases & in the case of unmarried daughter it includes marriage expenses also.<sup>94</sup>

Dependents include mother, widow, unmarried daughter, widowed daughter, son's unmarried daughter, widowed daughter, son's widow, minor illegitimate daughter etc.

### **Maintenance of Wife (Sec. 18)**

Hindu wife has a right to claim maintenance while living with the husband. She can claim maintenance while living separately from the husband:

- If he is guilty of desertion
- If he treats her with cruelty<sup>95</sup>
- If he is suffering from virulent form of leprosy
- If he has another wife living<sup>96</sup>
- If he keeps a concubine in the same house
- If he is converted to other religion
- If there is justification for her living separately

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<sup>94</sup> Section 3(b)(i) of the Hindu Adoptions and Maintenance Act, 1956.

<sup>95</sup> Kamla Rai v. Rathuvelu: Ram Devi v. Raja Ram, AIR 1963 ALL 564.

<sup>96</sup> Narayan Swami v. Aherani Bai Mini Jetha, 2001 Guj 148, Mutyala v. Mutyala, AIR 1958 AP 582.

## Maintenance of Widowed Daughter-in-Law (Sec. 19)

A Hindu widowed daughter in law is entitled to be maintained by her father in-law if

- She is unable to maintain herself
- She has no property of her own; or
- She is not able to obtain maintenance either from the estate of her husband or her parents or her children.

## Maintenance under Hindu Marriage Act, 1955

Both the husband and wife are entitled to claim maintenance under sections 24 and 25 of this Act. Sec. 24 provides for maintenance during the pendency of the any of the matter between husband and wife whereas sec. 25 provides for permanent maintenance. Maintenance amount will depend upon the status of the parties. Similar provisions are also made for Christians and Parsis.

## Maintenance to Muslim Women

Under Mohammedan law, every Muslim man is under an obligation to maintain his wife, children, parents and other relatives including step relations. Generally maintenance includes food, clothing and lodging.

Wife: Under the Muslim matrimonial law, maintenance is a right of the wife. Husband has to maintain his wife so long she is faithful to him and obeys his reasonable orders. Wife is not legally liable to maintain her husband howsoever indigent he may be.

## Maintenance on Divorce

After divorce, wife is entitled to maintenance during the period of *iddat*. It is defined, in the case of divorced woman, as

- three menstrual courses after the date of divorce, if she is subject to menstruation and
- three lunar months after her divorce, if she is not subject to menstruation and
- if she is carrying at the time of her divorce, the period between divorce and the delivery of her child or the termination of pregnancy, whichever is earlier.

## Under the Act of 1986

Now, the Muslim Women (Protection of Rights on Divorce) Act 1986, has been passed which provides that

- According to Section 2 and 3 of the Act, the divorced woman is entitled to a reasonable and fair maintenance during *iddat* period only.
- After *iddat* period, if the muslim women is unable to maintain herself and remains unmarried then she can claim maintenance from her children or parents or relatives who would inherit her property and if not from any of them then from Muslim Wakf Board.
- She can also claim maintenance under section 125 of CrPC if husband agrees to it.
- But S.C. in *Daniel Latifi v. Union of India* (2001) 7 SCC 740 held that a muslim husband is liable to make reasonable and fair provision for the future of the divorced wife which obviously included her maintenance as well. Such a provision extending beyond the *iddat* period must be made by the husband within the *iddat* period.

## Maintenance under Criminal Procedure Code, 1973

Under Section 125, the following conditions must be satisfied before a wife, legitimate or illegitimate minor child whether married or not or parents claim maintenance from a man.

- the person must have sufficient means
- he has neglected or refused to maintain
- Wife, children or parents are not able to maintain themselves.

Wife: Under section 125 wife means only legally wedded wife.<sup>97</sup>

Quantum of maintenance: Rupees Five Hundred per month only.

Disentitlement to maintenance: Wife will be disentitled to her right to receive maintenance if:

- If the husband offers to maintain his wife on condition that she should cohabit with him and if she refuses to do so, without any sufficient reason.
- If she lives in adultery or
- If the spouses are living separately by mutual consent.

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<sup>97</sup> Section 125 of Criminal Procedure Code, 1973.

Thus law tries to adequately protect women from vagrancy and exploitation. It is our duty to see that women get their guaranteed rights and a dignified status.

## Conclusion

After reading and going through various sources of the personal laws, it was felt that the Hindu law is much more clearly defined and gives much more rights to women in comparison to the Muslim law.

If we read the Shah Bano case<sup>98</sup> we could see that the Muslim and the Hindu women were on the same side. But latter when the government passed The Muslim Women (Protection of Rights on Divorce) Act, 1986 the Muslim women were again seen to be more unprivileged than the Hindu women. But latter the court in the *Daniel Latifi* judgment<sup>99</sup> said that the Muslim women can also be awarded the same maintenance as Hindu women for life time. Therefore both the Hindu and the Muslim women are in the same place in case of awarding the maintenance.

Law of maintenance is personal as well as legal in character and arises from the very existence of relationship between the parties.

From the above discussion, it can be concluded that Law of maintenance with no doubts is inclined towards the females in both the structures whether it be Hindu Law or Muslim Law. Women have been bestowed with many more privileges in comparison to men and husbands have been granted a lot more of responsibilities and obligations. Although the given laws may sound unjust to a few but pragmatically they seem to be correct as in our country even till date women do not have the social status equal to that of men. Hence, it won't be incorrect to extrapolate that Law makers while formulating these provisions must have kept in mind the situation of the women in the patriarchal society of India. The women of both the communities are suffering due to being poor, being women and than being a part of the patriarchic society.



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<sup>98</sup> AIR 1985 SC 945.

<sup>99</sup> (2001) SCC 740.