PROVISIONS OF MAINTENANCE IN INDIA – CRITICAL ANALYSIS

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ABSTRACT

We live in a secular state so we have different personal laws. Provisions for religion, adoption, maintenance, divorce, etc. are different in personal law. India has different maintenance laws. Different individual laws have different provisions for it. Does the Indian Constitution provide for a Uniform Civil Code, does it properly follow in our country? The researcher will try to evaluate the maintenance provisions in different religiously wise laws for man and then the researcher will find and analyze the loopholes in the provision.

For Hindus, marriage is a civilized union. It is also an important social organization. In India, marriage is between two families, instead of two people, there is a custom of arranged marriage and dowry. Society as well as Indian laws try to protect marriage. Indian society is primarily patriarchal. There are strict gender roles, with women having passive roles and husbands having active dominant roles. Marriage and motherhood are the primary status roles for women. While married women suffering from mental illness are discriminated against married men. In the setting of mental illness, many social values take on ugly forms such as domestic violence, dowry harassment, abuse of dowry law, dowry death, divorce and divorce. Social norms are powerful and often override legal provisions in real life situations. And some time live alone without partner is final solution. In current era women and men both are equal and men also file petition in court for demand maintenance from his wife.

Keywords: Maintenance, Personal laws in India

INTRODUCTION

Now days, gender bias is erase in our society day by day. If we have seen in our history generally women are victim by her husband but today man are also became victim in divorce cases. Men are also claim for maintenance from his wife in family courts. After completion of divorce decree or when procedure of divorce is going on, can husband claim maintenance from her wife? Yes, definitely he can. Some special personal law

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provisions give him right in special circumstances. The Hindu Marriage Act, 1955 and The Parsi Marriage and Divorce Act, 1936 gives the provision regarding maintenance to the husband from his wife.

Maintenance laws and regulations are different from religion to religion. The amount of maintenance maintained by the court depends on the husband's monthly income, wife's income, her financial status and other factors. India being a democratic country provides its citizens with various laws that are necessary to earn a living. A woman is considered a man's legal "wife" only if their marriage has not been annulled and annulled. From the right side of the residence in her husband's house, a legally married wife enjoys many rights to obtain an equal share in the property.

According to the law and the right of maintenance, the husband is obliged to pay the wife a solitary sum or monthly payment, known as maintenance, where maintenance has to be paid without divorce or after divorce. The amount of maintenance is determined either by mutual agreement between the spouses, or in accordance with the order received from the court. In India, it is a woman's right after divorce.

Other personal laws have not a specific provision for husband. Muslim Laws, Christian laws and Special marriage Act have not special provisions for maintenance of husband. Section 125 of Criminal Procedure court also gives the provision of maintenance but it is not specifically for husband. Indian Constitution talks about Uniform Civil Code in Art.44 as a directive principle of the state policy, Can it really be obeyed in our Country in future?

**RESEARCH OBJECTIVE**

This paper aim to analyzed the husband’s maintenance rights through legislative provision. When we are living in 21st century Husband and wife both needs equal right in our country. This article is attempted to check the need of equal right in all personal laws for husband.

1. To study Provisions of Maintenance in India.
2. To study the husband’s maintenance rights through legislative provision in India.
3. To study on judiciary on Maintenance in India.
4. National regime regarding maintenance for Man

**HYPOTHESIS**

1. Indian Personal Laws related to maintenance of husband are enough or not in present situation.
2. Is there any amendments are required today in these laws and Uniform laws are require or not?
UTILITY OF THE STUDY

- This can be done by submitting your marriage certificate along with your wedding photos as proof. Following these essential requirements you can file a case under Section 125 CRPC before the Family Court or Judicial Magistrate near your residence.
- An application for maintenance under section 125 of the CRPC can be made before the first class judicial magistrate of the district where the spouse resides or where they reside.
- After a divorce or during the divorce process, an application for maintenance or a divorce can be filed.

RESEARCH METHODOLOGY

- The researcher shall use doctrinal research method for paper writing. All Statutory materials, Judgments, Legal provisions are taken from official website and books.

MAINTENANCE PROVISIONS IN HISTORICAL BAY GROUND

If we are see in history and talking about maintenance, Undermanusmriti which is known as Hindu religious book is also telling us right of maintenance for virtuous Wife, aging parents and children. There were also not equal provisions for man and women. Like that there is no single provision for maintenance of man in historical bay ground under any other laws like muslim law, parsi laws, jews law etc…

Present Legislative provisions of Maintenance

At present we have codified religious wise personal laws in India. In some religious, husbands have right of maintenance in special circumstances.

- Hindu Law
  Hindu wife or husband can claim amount of maintenance from her/his spouse through special proceedings in court. Now day, generally in family court the proceedings are going on for maintenance. Family court plays very important role in matrimonial relief for interested party.
  Section 24 and 25 of The Hindu Marriage Act, 1955 lay down the provisions of maintenance.
  Section 24 – Provision of Maintenance pendent lite and expenses of proceedings
  Where in any proceeding under the Hindu Marriage 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 the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during 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 Provision of permanent alimony and maintenance
25(1) – Any Court exercising jurisdiction under The Hindu Marriage Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose of by spouse, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support.³

Such amount may be monthly or periodical for a term not exceeding the applicant life, Amount has regard to the respondent’s own income and property.

25(2) laid down the provision regarding changing in circumstances of either party after making the order under sub section 1 of sec 25 order may be vary, modify rescind any such order.

25(3) laid down the provision of remarriage of party after giving the order In that situation court may vary the order.

➢ Parsi law

Section 39 and 40 of The Parsi Marriage and Divorce Act, 1936 laid down the legislative provisions for maintenance to the parsi husband or wife

Section – 39 provision of Alimony Pendent lite

Where in any case under The Parsi Marriage and Divorce Act, 1936, appears to the Court that either the wife or husband, as the case may be, has no independent income sufficient for her/his support and the necessary expenses of the suit, it may, on the application of the wife or the husband, order the defendant to pay to the plaintiff, the expenses of the suit, and during the proceedings such amount is declared weekly or monthly by court. Reasonable amount will be declared by court during the proceedings.

Section – 40 laid down provisions of permanent alimony and maintenance
40(1), 40(2) and 40(3) of the act gives the permanent alimony and maintenance provisions for wife or husband who is applicant.

Under the below laws there are not a single provisions for husband’s maintenance.

➢ Muslim law

The Muslim Women (Protection of Rights on Divorce) Act, 1986 gives the provisions for maintenance of Muslim women who have been divorced or obtained divorced from their husband.

Section 125 of Code of Criminal Procedure, 1973 also provide sum of maintenance to the divorced Muslim women.

➢ Christian law

²https://indiankanoon.org/doc/1449825/
Section 36 and 37 of The Indian Divorce Act, 1869 which is amended in 2001 laid down the provisions of Alimony pendent lite and permanent alimony to the Christian divorced women where decree is passed by court.

- **Secular Law**

Section 125 of Criminal procedure code is very important term for maintenance in India. Under this provision any person (wife, children or parent) who are neglects or refuse to maintain they can claim maintenance, they can file application before the court. As per this section below condition is given by criminal procedure code

If wife is unable to maintain herself or her legitimate or illegitimate child (Minor Child). If mother or father is unable to maintain herself or himself. Then they can suit a file for maintenance.

In our Country this legislative provision is a guardian of all religion person who want maintenance by criminal procedure code.

- **CONFLICT OF PROVISIONS OF MAINTENANCE**

Equality before law and equal protection of law words are given under article 14 of Indian Constitution but still our personal laws are raising discrimination between maintenance provisions for different religious. Article 25 to 28 of Indian Constitution is gives the provision related to secularism. Article 44 is related to Uniform Civil Code for India. If we are interpret these all provisions with maintenance provisions conflict will became between both.

- **LANDMARK JUDICIAL PRONOUNCEMENT OF MAINTENANCE**

Ambaram V. Reshmbai – In this judicial pronouncement, the court held that although the lot of women who entered into marriage without knowing about the subsistence of another marriage of her husband, although deserve a sympathetic treatment yet awarding of maintenance under section 25 of The Hindu Marriage Act, 1955.4

Mohd. Ahmed Khan V. Shah Bano Begum case is also very famous case which is connected with Cr PC Section 125 and also with Uniform Civil Code in India. Y.V. Chandrachud, CJI gave order of maintenance to Muslim Women under section 125.

BhagwanDutt v. Kamla Devi, 5

In this case, it was held that the wife’s income has to be taken into account while determining the amount of maintenance payable to her and it is not an absolute right of a neglected wife to get maintenance nor it is an absolute liability of husband to support her in all the circumstances.

Bhuwan Mohan Singh v. Meena, 6

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5 (1975) 2 SCC 386.
In this case, the maintenance of a wife for her ‘sustenance’ does not mean mere animal existence but it signifies leading life in a similar manner as she would have in the house of her husband. Furthermore, the husband is duty-bound to enable his wife to live life with dignity according to their social status and strata,

Vanamala v. H.M. RanganathaBhatta\(^7\),

In this case, the meaning of ‘wife’ under Sections 125(1) and 125(4) CRPC was held to be different. The court held that Section 125(4) contemplates a married woman who is living separately from a husband with mutual consent does not mean a wife who obtains divorce by mutual consent and lives separately and therefore cannot be denied maintenance on this ground.

ShabanaBano v Imran Khan, AIR 2010 SC 305

The Supreme Court, in this case, had held that a Muslim woman, who has no means of sustaining herself, can claim the maintenance even after the iddah periods gets over, according to Section 125 of CrPC.

**SUGGESTIONS AND CONCLUSION**

After gathered the material and completion of the article researcher gives some suggestion for the topic of maintenance of husband in India.

1. This is a real time to amend the personal law’s provisions related to maintenance for man and make equal provisions.
2. Still people are not aware about their right so that make awareness of right of maintenance in Indian Society is also requiring in present time.
3. If we are talking about equal law than uniform laws for maintenance is really need in presently.
4. When husband are victim of matrimonial matters then circumstances wise special laws amendments are also require now days.
5. For awareness of rural area’s population seminar, workshop and legal aid clinic in that area are also necessitating.

**Limitation of the study**

- All relevant legislative challenges are not analyzed in this paper.
- Detailed judicial pronouncements are not covered here.

\(^6\)(2015) 6 SCC 353.

\(^7\)(1995) 5 SCC 299.
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