



MAINTENANCE FOR WOMEN UNDER PERSONAL AND SECULAR LAW

HARJEET KAUR SONY*

ABSTRACT

The idea of maintenance for women under personal and secular legal systems is examined in this article. The financial support given to a woman by her husband or ex-husband during a separation or divorce is referred to as maintenance, sometimes known as alimony or spousal support. The legal systems regulating maintenance in various countries are analysed in this article, with an emphasis on how personal and secular laws interact and what it means for women's rights. The article examines the different maintenance strategies used in various cultural and religious settings, including civil or secular laws as well as Islamic, Hindu, and Christian personal laws. It draws attention to the difficulties experienced by women seeking maintenance as well as the discrepancies in the rights and available remedies under various legal systems. The maintenance requirements and their implementation are significantly shaped by factors including socio-cultural norms, religious interpretations, and gender prejudices.

This article clarifies the necessity for maintenance law reform to guarantee gender equality and the preservation of women's rights via a comparative examination of case studies and legislative measures. In order to provide a complete legal framework that protects women's economic security and assures fair and just maintenance results, it emphasises the need of harmonising personal and secular laws.

Keywords: Maintenance, Women's Rights, Personal law, Secular law, Gender equality.

INTRODUCTION

Maintenance is a crucial aspect of gender equality and social justice, ensuring that individuals, especially women, are provided with financial support and resources to meet their basic needs.

* LLM Student at Amity Institute of Advanced Legal Studies, Noida.

Across the world, different legal systems, be it personal or secular, recognize the significance of maintenance and have established mechanisms to address this issue. In this article, we will explore the concept of maintenance for women under personal and secular laws, focusing on how these legal frameworks operate, the rights they provide, and the challenges faced in their implementation.

TYPES OF MAINTENANCE UNDER HINDU MARRIAGE ACT,1955

Section 24¹ pertains to the provision of temporary maintenance, which is the responsibility of a spouse to provide for their partner during the pendency of a legal proceeding. The term "maintenance" pertains to the financial support granted to the affected party throughout the duration of the legal proceedings. Therefore, this form of maintenance is commonly referred to as Maintenance Pendente lite in legal terminology. The objective is to fulfil the essential and pressing financial obligations of the spouse involved in the legal proceedings. Section 24 of the Hindu Marriage Act, 1955 provides for the possibility of the court granting satisfaction.

Section 25 pertains to the obligation of providing permanent maintenance to one's spouse. The term denotes the act of providing a fixed and ongoing amount to the affected individual at regular intervals, for a duration that does not surpass the lifespan of the claimant. The provision of maintenance outlined in Section 25 of the Hindu Marriage Act of 1955 is being offered. According to Section 25 (3), the revocation of maintenance is stipulated under certain conditions. In the event that the individual for whom the order has been granted enters into a subsequent marriage. In cases where the beneficiary of the order is the wife and she fails to maintain her chastity. In cases where the beneficiary of a court order is a male spouse and it is revealed that he engaged in extramarital sexual activity with a woman.

MAINTENANCE UNDER S. 125 CrPC

Maintenance, as stipulated in the criminal procedure code, pertains to the legal mandate to provide financial support to a spouse, offspring, or parents who are incapable of self-sustenance. The group in question comprises of both lawful and unlawful offspring, as well as an unwed daughter who lacks the means to sustain herself. In cases where the wife is residing separately without adequate justification or engaging in extramarital affairs, or if the couple has mutually separated, the wife is not eligible for maintenance but is entitled to a settlement.²

¹ The Hindu Marriage Act, 1955, § 24.

² The Criminal Procedure Code 1973, § 125.

MAINTENANCE UNDER SECTION 18 OF HINDU ADOPTION AND MAINTENANCE ACT

It is expected in Hindu culture that the husband has the responsibility to provide lifelong support to his wife. Maintenance is a mandatory obligation that is both personal and legal in nature. This pertains to an occurrence that involves one's social standing, property ownership, or nuptial union. The definition of "maintenance" as per Section 3 (b) of the Act encompasses the provision of essential necessities such as food, clothing, housing, education, and medical care. Additionally, it also includes reasonable expenses that are incidental to the marriage of a daughter who is unmarried.

Section 18 of the Hindu Adoption and Maintenance Act pertains to a specific provision within the aforementioned legislation. According to the Hindu Adoption and Maintenance Act, a wife is entitled to claim maintenance from her husband based on the same grounds outlined in Section 13 of the Hindu Marriage Act. This entitlement remains valid even if divorce proceedings are currently underway between the parties. Maintenance can be claimed by a wife under this section in the event that the parties have adopted a child and divorce proceedings are either imminent or already in progress. It is noteworthy, however, that a wife may seek maintenance if she has adopted a child with her husband, not exclusively under this section. In addition to other potential avenues for claiming maintenance, the individual in question may also rely on section 18 of the Hindu Adoptions and Maintenance Act (HAMA) as a corroborating provision.³

In instances where a wife seeks a separate residence due to reasonable cause, such as following a judicial separation decree and her inability to financially support herself, or on the basis of any of the grounds outlined in section 18, she may also pursue maintenance from her husband. It is important to note that in cases where a wife is deemed unchaste or has renounced her Hindu faith, she is not entitled to request a separate residence as a form of maintenance.

MAINTENANCE UNDER SECTION 20 OF THE PROTECTION OF WOMEN AGAINST DOMESTIC VIOLENCE ACT, 2005

The aforementioned legislation offers a precise and efficacious recourse to an individual who has suffered from domestic violence while cohabiting with the accused, even if the latter is the spouse. The legislation's scope is extensive as it pertains to all women who have been residing in a relationship that resembles marriage. Maintenance is stipulated under Section 20 of the

³ The Hindu Adoptions and Maintenance Act 1956, § 18.

aforementioned Act. During the proceedings of a case under Section 12, the Magistrate has the authority to direct the respondent to provide financial compensation to redress the expenses and damages incurred by the victim due to the occurrence of domestic violence. The fundamental prerequisite for asserting entitlements under the aforementioned legislation is to instigate physical harm.⁴

KEY FEATURES OF SECULAR LAWS ON MAINTENANCE

- **Equality:** Secular laws on maintenance uphold the principle of equality by ensuring that both men and women have the right to claim maintenance. It acknowledges that financial responsibilities should be based on individual circumstances and not on gender stereotypes.
- **Legal Recourse:** These laws provide women with a legal recourse to claim maintenance from their former spouses or partners. They establish a process for determining the amount of maintenance based on factors such as income, assets, and living expenses.
- **Child Support:** Secular laws on maintenance often encompass provisions for child support, ensuring that children receive adequate financial support from both parents. This is crucial in safeguarding the well-being and development of children, regardless of the marital status of their parents.
- **Enforcement Mechanisms:** To ensure the effectiveness of maintenance orders, secular laws establish mechanisms for enforcement. Failure to comply with maintenance obligations can result in legal consequences, such as wage garnishment, property liens, or even imprisonment in extreme cases.

BENEFITS AND IMPLICATIONS

Secular laws on the maintenance of women have numerous benefits and implications for women's rights and societal progress:

- **Financial Security:** These laws help alleviate economic disparities between men and women by providing financial security to women who may have been financially dependent on their partners. This enables women to rebuild their lives, pursue education, seek employment, and achieve financial independence.

⁴ The Protection Of Women Against Domestic Violence Act, 2005, § 20.

- **Gender Equality:** By recognizing the right to maintenance for both men and women, these laws challenge traditional gender roles and promote equality within the household and society at large. They encourage a shift towards more egalitarian relationships and contribute to dismantling discriminatory practices.
- **Protection against Poverty:** Secular maintenance laws serve as a safety net, protecting women and their children from falling into poverty following a relationship breakdown. They help mitigate the negative socio-economic consequences that women may face, particularly when they have caregiving responsibilities or limited employment opportunities.
- **Empowerment:** Maintenance laws empower women by giving them legal recourse and control over their financial futures. They foster a sense of agency and provide women with the confidence to assert their rights and make decisions that best serve their interests and those of their children.

CHALLENGES AND THE WAY FORWARD

One of the primary challenges faced in ensuring effective maintenance for women is the lack of legal awareness. Many women are unaware of their rights and the legal mechanisms available to claim maintenance. Governments and civil society organizations should undertake awareness campaigns to educate women about their entitlements and the procedures to access justice.

Socio-economic factors, such as poverty and unequal distribution of resources, can pose significant obstacles in enforcing maintenance orders. Many women struggle to receive the awarded maintenance due to the financial limitations or evasive tactics employed by the liable parties. It is crucial for governments to establish mechanisms that facilitate the effective enforcement of maintenance orders and create support systems for women in need. While personal laws recognize the maintenance rights of women, there is often a need for progressive reforms to address inherent biases and discriminatory provisions. Advocacy for reforming personal laws should focus on ensuring gender equality and safeguarding women's rights, while respecting cultural and religious sensitivities.

CONCLUSION

Secular laws on the maintenance of women play a crucial role in promoting gender equality and financial security. By recognizing the rights of women to claim maintenance and child support, these laws contribute to the empowerment of women and the well-being of their children. However, continued efforts are necessary to address implementation gaps.