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**A CONSPECTUS OF MAINTENANCE UNDER VARIOUS LAWS**

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**INTRODUCTION**

The term maintenance means sustenance or support, though the term is nowhere defined in the marriage laws of any religious community, the entitlement to claim it is based upon the prudent assumption that the claimant does not have any sufficient means to support themselves. It usually entails expenses essential for substance of life yet it is not for the mere survival which is evident from the provisions of the acts mentioned further below; which frame for the courts the guidelines as to what factors should be considered before fixing the amount of maintenance: the court shall look upon the possessions and property of both, their ability to earn, their conduct and standard of life enjoyed during tenure of cohabitation. The objective of provisions of maintenance acts are fulfilment of social obligations, these provisions are contained in the **Criminal procedure code,1973 under section 125 to 128, The protection of women from Domestic Violence Act 2005, The Hindu marriage act 1955, the Hindu Adoption and Maintenance act,1956, Maintenance and Welfare of Parents and Senior citizens Act, 2007.** All of these provisions are enacted for compelling a man perform his obligations, owed to the society in respect to his parents, wife and children's. These provisions try to provide a speedy but limited relief by ensuring that those neglected are not left beggared and destituted upon the scrap heap of the society to a life of vagrancy, crime and immorality for their substance. One's inability to maintain themselves may lead to social problems becoming a concern for the state, not allowing such inability to grow into societal problems of huge magnitudes. For that the parliament desired to find a solution to this problem evolved the code of criminal procedure,1973, in chapter IX (CrPC, 1973) which in its fullness was consistent with article 15 (3) of constitution. As well the article 39 directs the states policies in securing of the right to adequate means of livelihood for men and women for the children's, opportunities and facilities for developing in a healthy manner without exploitation of material or immoral abandonment. A divorced wife has not yet re-married is entitled to claim maintenance under CrPC, whether such wife was divorced by her husband or obtained the divorce herself or the divorce was mutually consented to, would be immaterial: However, The Muslim Women (Protection of Rights on Divorce) Act, 1986 these

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provisions of the CrPC have been annulled for the Muslim women. Though being prescribed in the Criminal Procedure the provisions of this act are not penal in nature and are only intended towards the fulfilment of the duty whose default may lead to vagrancy: aimed towards comfort of those neglected.

## **MAINTAINENCE UNDER VARIOUS LAWS**

### **1. The Code of Criminal Procedure, 1973 (BNSS, 2024)**

**S. 125.** Order for maintenance of wives, children and parents. –

(1) If any person having sufficient means neglects or refuses to maintain- (a) His wife, unable to maintain herself, or

(b) His legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) His legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) His father or mother, unable to maintain himself or herself

The term maintenance has been commonly understood to include , clothing and lodging and food, but in recent times its been held that any other requirements, i.e., required for a person to remain fit healthy and alive is also to be included within periphery of the term maintenance.

Section 125 of the CrPC (S.144 OF BNSS) it is to be kept in mind that provisions relating to maintenance under personal law are different and the two do not conflict with each other; if one already obtains for maintenance under personal law the judicial magistrate may taking into such consideration fix the amount of maintenance under the code. At the time of its enactment was intended to be applicable to all irrespective of the personal laws, though maintenance being a civil remedy, it has been made part of this code to provide for a speedy remedy and s.125 isn't any trail of hearings as the non-payment of maintenance isn't a criminal offence. The fundamental for getting relief under this section is refusal to maintain or neglect in maintenance of ones wife, parents or children's by a person of sufficient means; burden of proof lying upon the man to prove (Website-lexscriptamagazine.com) 4 (lexscriptamagazine@gmail.com)

that he has not the sufficient means to maintain his dependents. S. 125 gives statutory recognition to moral duty to maintain ones dependents, though the provision also aids the parents the main objective is to provide sustenance to the children's and wife of a person who are unable to maintain themselves.

**Shailaja & another Vs Kohbbanna** : It was held by Hon'ble Supreme Court that reducing the maintenance to the wife of Rs.6,000/- from Rs.15,000/- that she is capable of earning a sustenance is not merely sufficient a reason to reduce the maintenance. Whether the Appellant No.1 (Wife) is capable of earning or whether she is actually earning are two different requirements.

**Abdul Salim v. Nagima Begam** the Court held that the phrase unable to maintain herself should not be interpreted to mean that a wife in order to claim maintenance should be in an absolute destitute of a condition or be in fully tattered clothes, or be begging upon the streets. The very thing that she has not any other means of her own than that of her husband to maintain her adequately to entitle her to the right of maintenance.

**Gulam Rashid Ali Vs Kanshar Praveen and another (2010) DMC 371 Delhi HC** :That even a Muslim divorced woman would be entitled to claim maintenance from a Muslim husband till she has no married. Sec.125 being a beneficia piece of legislation, the benefit must accrue to the divorced Muslim wife. Kalyan Dev Chowdary

**Vijaya Manohar Arbat v. Kashiram Rajara Sawai** : honourable the apex court in the landmark judgement held, that the married daughter is liable for providing maintenance to their aged mother or father, if they are unable to maintain themselves. It was held that married daughter does not ceases to be daughter upon her getting married. Furthermore it was held that if it is to be decided, that daughter has no liability to maintain their aged parents, those who have no son but only daughter, would become destitute and beggar because of no maintenance.

## **2. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007**

The act regulates maintenance of parents and senior citizens, it was a landmark legislation by the ministry social justice and empowerment, it was aimed at providing a speedy and inexpensive remedy to get maintenance for the senior citizens being ignored by their children's, by putting an obligation upon them to maintain their parents/grandparents as well as their relatives who are senior citizens. The application of maintenance can be filed directly by the aggrieved or by any other person or any organisation authorised by them on their behalf as well as the tribunal can take suo-moto cognizance. The application is to be disposed within 90 days providing for a speedy redressal of the issues.

## **3. The Hindu Law**

In Hindu law, maintenance is presumed to be an secondary relief which is available only after filing for the primary relief as that of divorce, judicial separation or restitution of conjugal rights. Under Hindu matrimonial laws the wife's maintenance claim would be defeated if the husband is ready to cohabit, usually. yet the Hindu law recognizes a woman's right to reside separately and claim maintenance even when she's not seeking divorce or any other matrimonial relief recognized in Hindu law meaning a Hindu woman is entitled to reside separately of her husband without forfeiting her right to maintenance under Hindu Adoptions and Maintenance Act, 1956 (HAM Act) : This Act visualises certain situations in which it may become but impossible for the wife to continue residing with her husband but she may not want to break the matrimonial tie for various reasons such as growing children to social stigma. Persons entitled to claim maintenance under Hindu law are :

- I) MAINTENANCE OF WIFE: Section 24 of Hindu Marriage Act, either the wife or husband can apply for interim maintenance on the basis that the claimant has no independent income of their own to support themselves. The act does not prescribe quantum of maintenance leaving it upon the discretion of the court to determine it. maintenance 'pendente lite' is to be provided to the claimant not having any independent income and the litigation expenses has to be provided by the other spouse. The

interim maintenance is to be paid from the date of filing the petition till the date of dismissal of suit or passing of decree. Interim maintenance is provided to fulfil the immediate needs.

- II)            MAINTENANCE OF CHILDREN: Section 20 of the HAM Act puts an obligation on the parents – mother and father both equally to maintain the children –legitimate or illegitimate. This unique feature of the Hindu maintenance law makes both the parents equally responsible to maintain the children. section 20(2) of Hindu Adoption and Maintenance Act implies that the children are entitled to maintenance until they attain the age of majority, this for the daughter is extended till she gets married. The parents are obliged to bear her marriage expenses even after marriage for a minor married daughter, if unable to maintain herself.

**In Ram Chandra Giri V. Ram Suraj Giri** - where the father of a minor son neglected to provide maintenance, a petition was filed under section 125 of CrPC. Thereupon the father contended that the son has a good physic and was healthy and hence he had the ability to fend for himself. The Court rejected the contention and stated that the concept of potential earning capacity cannot be applied to, minor children as that would defeat the very purpose legislation.

- III)            The Section 20 of Hindu Adoption and Maintenance 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 Hindu Adoption and Maintenance 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 Hindu Adoption and Maintenance Act, both the mother and the father have an equal right to claim maintenance. The explanation to this section also includes stepmother in the term parent. However, it is important to note that the section imposes an obligation to maintain only those parents, who are unable to maintain themselves and therefore the obligation to maintain the parents other than those infirm and unable, is only moral.

#### 4. The Muslim Law

NAFAQA, All the things that are necessary to support of life, like as food, clothes: primarily limited to food, literally meaning, that which a man spends over his children, to be particular in law it means feeding, clothing and lodging; commonly it signifies food. The main principles of maintenance may be recounted thus:

- (i) A person is entitled to maintenance if they have no property,
- (ii) is related to in prohibited degrees, or is the wife or child
- (iii) the person from whom it is claimed is in position to support.

The obligations of maintenance are as well affected by the factor of one's economic condition

**D) MAINTENANCE OF WIFE:** It is necessary for a husband to maintain his wife, it is immaterial she is Muslim or Kitabiyyah, poor or rich, young or old but if she is too young for consummation she has no right to maintenance from her husband, whether she is living in his house or with her parents. Where the marriage is valid and the wife is capable to render marital intercourse, it is the husband 's duty to maintain his wife even when she has means to maintain herself but if the wife unjustifiably refuses to cohabit with her husband, in this case she loses her right for maintenance. It would also be lost if the wife refuses to obey reasonable commands of her Husband but if disobedience is justified by circumstances or if she is forced to leave husband 's house on account of cruelty it would be acceptable. Thereby if the husband refuses to maintain his wife without any lawful causes the wife may sue him for maintenance. Maintenance is payable from the date of the decree unless the claim is based on specific agreement.

**II) MAINTENANCE OF CHILDREN :** For Legitimate Children the maintenance of the children rests upon the father. In following verse of the Koran, namely -- The maintenance of woman who suckles an infant rest on him of whom the infant is born. The maintenance of an infant is upon the father, because, maintenance is decreed to the nurse on account of her sustaining the child with her milk, following the same is due to the child himself a fortiori. — the father is therefore bound to provide maintenance to his sons until attainment of puberty and of daughter until they are married. He is responsible as well for the upkeep of his widowed or divorced daughter, or child in the custody of the mother.

Danial Latifi & another Vs Union of India : it was held that if a divorced muslim women who has not remarried and is unable in maintaining herself after the iddat period can claim maintainence under muslim personal law as per section 4 of the act from her relatives liable for maintaining her in proportion of the property to be inherited by them upon her death as per the muslim law, If the relatives are unable to pay maintenance, the Magistrate may direct the State Wakf Board established under the Act to pay such maintenance. The provisions of the Act do not offend Articles 14, 15 and 21 of the Constitution of India.

## CONCLUSION

The term maintenance refers to sustenance or support, with entitlement based on the assumption that the claimant lacks sufficient means to support themselves. Various acts outline guidelines for courts to consider when determining maintenance amounts. The objective is to fulfil social obligations and provide relief to those in need. The provisions are found in laws such as the Criminal Procedure Code, Hindu Marriage Act, Hindu Adoption and Maintenance Act, Protection of Women from Domestic Violence Act, and Maintenance and Welfare of Parents and Senior Citizens Act. Under the Code of Criminal Procedure, Section 125 provides for maintenance of wives, children, and parents by individuals with sufficient means. The provision aims to ensure sustenance for dependents and places the burden of proof on the person claiming inability to provide maintenance. Court cases have clarified the application of this provision, emphasizing the moral duty to support dependents.

The Maintenance and Welfare of Parents and Senior Citizens Act of 2007 mandates that children provide maintenance to neglected parents and senior citizens. The act allows for speedy resolution of maintenance disputes and encourages timely support for elders. In Hindu law maintenance is presumed to be a secondary relief which is available only after filing for the primary relief as that of divorce. The Hindu Adoptions and Maintenance Act recognizes a woman's right to claim maintenance even when not seeking divorce. Maintenance can be claimed by wives, children, and parents under Hindu law, with the obligation equally shared between mother and father.

Muslim law also mandates maintenance for wives, children, and parents based on certain conditions. A husband is obligated to maintain his wife, while the father is responsible for the maintenance of legitimate children until they reach adulthood. Maintenance obligations under Muslim law are influenced by economic conditions and family relationships. Overall, maintenance laws aim to provide sustenance and support to those in need, ensuring that individuals are not left destitute or neglected. Legal provisions outline the responsibilities of individuals towards their dependents, promoting social welfare and family support.

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