

WORKSHOP-IV

Paper Presentation on

MAINTENANCE UNDER VARIOUS LAWS

By

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CONCEPT OF MAINTENANCE

Meaning:

The dictionary meaning of the term maintenance is **support or sustenance**. The term maintenance is not defined in the marriage laws of any of the religious communities. But the entitlement of claiming maintenance is certainly based on the assumption that the claimant doesn't have the sufficient means to support herself. **The maintenance generally covers the expenses for necessities or essentials for the substance of life.** However, it is not merely a right for survival of the claimant. This is clear from the provisions under the acts mentioned above, which give guidelines to **the court by stating the factors to be taken into consideration for fixing the amount of maintenance.** The court is to look into the possession of the property of both, the husband and the wife, ability of the husband to earn, conduct of the parties and other circumstances to decide the amount of maintenance. Before fixing the amount of maintenance the status of the parties and the standard of their life enjoyed by them, during the subsistence of marriage will have to be taken into consideration.

Object:-

The provisions of Maintenance act are intended to fulfill a social purpose. These provision are contained in **Criminal procedure code,1973** under **section 125 to 128, under the Hindu marriage act 1955,** under the **Hindu Adoption and Maintenance act,1956.** Under **the protection of women from Domestic Violence Act 2005,The Maintenance and Welfare of Parents and Senior citizens Act,2007.** The object of all these **provision is to compel a man to perform the moral obligations, which he owes to the society in respect of his wife, children and parents.** By provisions a **simple and speedy but limited relief,** These **provision seek to ensure that the neglected wife and children are not left beggared and destitute on the scrapheap of society and there by driven to a life of vagrancy, immorality and crime for their subsistence.** The inability of the wife, child and father or mother to maintain themselves could lead to Social problems and therefore, it became the concern of the state not to allow such inability to grow in to social problems of great magnitude unless the consequences of such inability were checked by providing appropriate measure, large scale vagrancy could be the probable off-shoot there from.

Therefore, the parliament in its desire to find a solution to this problem evolved a procedure which has found expression in **chapter IX of**

Criminal Procedure Code.1973.This enactment is fully consistent with **ARTICLE 15{3} of the constitution of India** which state that the prohibition contained in the constitution of India which states that the prohibition contained in the article shall not prevent the state from making any special provision for women and children. **ARTICLE 39 of the constitution** also state, inter-alia that the state shall, in particular, direct its policies towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood, that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

The right to maintenance is circumscribed by certain factors {e.g.}

- {a} the relationship of husband is and wife should be proved,
- {b} she must be unable to maintain herself,
- {c} the husband must be having sufficient means and
- {d} it should be proved that the husband has neglected or has refused to maintain wife.

Even a wife who has been divorced is entitled to claim maintenance from her husband provided that she has not re-married. Whether such a wife has been divorced by her husband or she has obtained divorced or the marriage was divorced by mutual consent, she would still be entitled to claim maintenance under the maintenance act. However by the enactment of the **Muslim women act, 1986** these provisions have been made inapplicable to the Muslim woman and her former husband can choose to be governed by the provision of this chapter of the code. A child up till the age of eighteen years, legitimate or illegitimate whether married or not, would be entitled to claim maintenance from his or her father. The father of a minor female child can be ordered to pay maintenance to such a child until she attains her majority, if the magistrate is satisfied that the husband of such a minor female child is not possessed of sufficient means. Even a child who has attained the age of majority has been enabled to claim maintenance if by reason of any physical or mental abnormality or injury is unable to maintain itself. Such a child may be legitimate or illegitimate.

A son may be married, but a daughter who's has attained the age of majority but is married is not covered by this act .A father or a mother have been conferred the statutory right to claim maintenance from his or her son or daughter. The provisions of this act are not in the nature of penal provision but are only intended for the enforcement of a duty, default, which may lead to

vagrancy. This act is really intended for ensuring some supply of food, clothing & shelter to the deserted wives, neglected children & parents.

MAINTENANCE UNDER VARIOUS LAWS

- a. Maintenance under Hindu Law.
- b. Maintenance under Muslim Law.
- c. Maintenance under Christian Law.
- d. Maintenance under Parsi Law.
- e. Maintenance under Code of Criminal Procedure 1973.
- f. Maintenance under Protection of women from Domestic violence Act, 2005.
- g. The Maintenance and Welfare of Parents and Senior citizens Act, 2007

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. Further, under matrimonial laws if the husband is ready to cohabit with the wife, generally, the claim of wife is defeated. However, the right of a married woman to reside separately and claim maintenance, even if she is not seeking divorce or any other major matrimonial relief has been recognized in Hindu law alone. A Hindu wife is entitled to reside separately from her husband without forfeiting her right of maintenance under the Hindu Adoptions and Maintenance Act, 1956. The Act envisages certain situations in which it may become impossible for a wife to continue to reside and cohabit with the husband but she may not want to break the matrimonial tie for various reasons ranging from growing children to social stigma.

I) MAINTENANCE OF WIFE:

Under S.24 of Hindu Marriage Act, 1955 (herein after mentioned as HM 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.

The interim maintenance is payable from the date of presentation of the petition till the date of dismissal of the suit or passing of the decree. Interim maintenance is supposed to meet the immediate needs of the petitioner. And

maintenance pendente lite is for providing the litigation expenses to the claimant.

S. 3(b) (i) of Hindu Adoption and Maintenance Act, 1956(herein after mentioned as HAM ACT) defines maintenance as "provision for food, clothing, residence, education, and medical attendance and treatment." In the case of unmarried daughter, it also includes her marriage expenses. The provisions for permanent maintenance are present in all the personal laws and are substantively similar. However there are some differences between the personal laws.

II) GROUNDS FOR AWARD OF MAINTENANCE:

Only upon proving that at least one of the grounds mentioned under the Act, exists in the favour of the wife, maintenance is granted. These grounds are as follows: -

- a. The husband has deserted her or has willfully neglected her;
- b. The husband has treated her with cruelty;
- c. The husband is suffering from virulent form of leprosy/venereal diseases or any other infectious disease;
- d. The husband has any other wife living;
- e. The husband keeps the concubine in the same house as the wife resides or he habitually resides with the concubine elsewhere;
- f. The husband has ceased to a Hindu by conversion to any other religion;
- g. Any other cause justifying her separate living;

III) QUANTUM OF MAINTENANCE

The means and capacity of a person against whom the award has to be made should be taken into consideration for determining the quantum of maintenance. In fact, in case of the husband, it is not only the actual earning, but also his potential earning capacity, which must be considered i.e. there is a presumption that every able-bodied person has a capacity to earn and maintain his wife. The income of the husband is a significant factor to be considered by the court in fixing the quantum of maintenance. It is disposable income and not the gross income, which is to be considered. Section 23(2) of HAM ACT states the factors to be considered in determining the amount of maintenance payable to the wife, children and aged parents, and they are as follows – the position of and status of the parties, the reasonable wants of the claimant, the claimant if living separately is justified or not, the income of the claimant and the value of the claimant's property and the number of persons entitled to maintenance under the Act.

Even if one of these grounds exists in favour of the wife, she will not be entitled to relief if she has indulged in adulterous relationship or has converted herself into any other religion thereby ceasing to be a Hindu. It is also important to note here that in order to be entitled for the relief, the marriage must be a valid marriage. In other words, if the marriage is illegal then the matrimonial relationship between the husband and wife is non-existent and therefore no right of maintenance accrues to wife. However, thanks to judicial activism, in particular cases the presumption of marriage is given more weight and the bars to maintenance are removed.

IV) MAINTENANCE OF CHILDREN:

Section 20 of HAM 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. S.20 (2) of HAM 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. The parents are obliged to bear her marriage expenses. However even after marriage a minor married daughter, if she is unable to maintain herself then she can claim for maintenance under S.125 CrPC. When an application has been filed under section 24 and 25 of HM ACT, the children are also entitled to get maintenance if the claimant has the responsibility of maintaining them i.e. the claimant's right to maintenance also includes the right of maintenance of the children. Section 26 of HM ACT also provides that in any proceeding under the Act the court can from time to time pass interim orders and make provisions in respect of the custody, maintenance and education of the minor children.

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 physique 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.

V) MAINTENANCE OF PARENTS

S. 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. 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.

In the case of **K.Sivarama vs K.Bharathi** that any marriage in contravention of Section 5 & 11 of the Hindu Marriage Act, cannot be considered to be the valid marriage. Such a woman cannot recourse maintenance U/S. 25 of the Hindu Marriage Act for claiming maintenance.

In the case of **Ambaram v. Reshambai** 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 U/S. 25 & if any appeal is to be made, it should be made to the legislature.

Mangala Bhivaji Lad

Vs

Dhondiba Rambhau Aher

AIR 2010 Bom.122

Second wife not entitled for maintenance : Inherent powers are to be exercised by Court only in absence of statutory provisions. And not to circumvent a statutory provision. Grant of maintenance to second wife in exercise of inherent powers though she was not entitled to maintenance under provisions of Hindu Marriage Act (1955) and Hindu Adoptions and Maintenance Act (1956) not promissible.

Chandaram Bunkar

Vs

Smt. Ramadevi

AIR 2010 Raj 176

Quantum of maintenance : Maintenance may be awarded up to extent of Rs.1/5th of income of spouse. Husband was drawing salary of about Rs.35,000/- per month and an amount of Rs.3,000/- per month had been awarded by way of maintenance to life. After retirement husband was drawing provisional pension of Rs.15,115/- per month. Order of Family Court maintaining amount of Rs.3,000/- as maintenance to wife even after retirement of husband, not improper.

Shobha Suresh Jumani

Vs

Appellate Tribunal, Forfeited property and another

AIR 2001 SC 2288

Wife living separately entitled to claim maintenance : Section 18 of Hindu Adoption and Maintenance Act only provides that Hindu wife shall be entitled to be maintained by her husband during her life time and if she is staying separately as provided under sub-section (2), she is entitled to claim maintenance from her husband.

P. Srinivasa Rao

Vs

P. Indira

AIR 2002 AP 130 (FB)

Deserted wife would be entitled for maintenance : The provisions of sections 18 and 20 cannot be interpreted in such a manner so as to defeat justice to the deserted wife and her Dependant child. Even other wise also, food, clothing residence are essential requirements for human survival. Providing such essential requirements to the wife and children being the statutory and moral duty of a husband, the same cannot be denied or postponed.

Dayali Sukhlal Sahu

Vs

Smt. Anju Bai Santosh Sahu

AIR 2010 Chhat 80

Obligation of father-in-law to maintain daughter-in-law : Under Section 19 one of the conditions for the father-in-law to maintain the daughter-in-law is that the daughter-in-law is not able to maintain herself from the estate of her parents. A clear finding is necessary whether her parents have estate sufficient to maintain her and on what circumstances, she is unable to maintain herself or by her parents. For this purpose parents of daughter-in-law are required to be heard. This is possible if they are made parties to the suit. In their absence any finding will not bind them. Where, from the estate of the parents, the daughter-in-law can maintain herself, question of obligation of father-in-law, does not arise. It is also to be found out whether there is nay coparcenary property in the hands of the father-in-law from which daughter-in-law is deprived of her share.

D. Krishna Prasada Rao

Vs

K. Jayashri

AIR 1986 AP 126

Father's obligation to maintain Children : The section casts an absolute obligation on the part of the parent regards maintenance. The language employed in 20 imposes a duty on the part of the parent though it purports to preserve a right to the child . Hence the burden is on the parent or establish in an action for maintenance that there is no default on his or her part. Where the father had initially set up family at a Town, even assuming that his wife and children were unwilling to come back, il to native village where the father and shifted, omission of the father to take steps to bring the children to the native village or send money for their maintenance clearly established the default on the part of the father to attract the liability under Section 20 towards the children.

MAINTENANCE UNDER MUSLIM PERSONAL LAW

—All those things which are necessary to support of life, such as food, clothes and lodging; mainly confine too solely to food. Nafaqa literally means which a man spends over his children, in law it means feeding, clothing and lodging; in common use it signifies food. [Maintenance](#) comprehends food, raiment, lodging, though in common parlance it is limited to first.

The main principles of maintenance may be recounted thus: (i) A person is entitled to maintenance if he has n o property, (ii) is related to obligor in prohibited degrees, or is the wife or child, and (iii) the obligor is in position to support him. The obligation of maintenance is also hedged by the factor of their economic condition.

PERSONS ENTITLED TO MAINTENANCE I) Maintenance of Wife

II) Maintenance of Children

III) Maintenance of Parents, and

IV) Other relations

I) MAINTENANCE OF WIFE

It is incumbent on a husband to maintain his wife, whether she is Muslim or Kitabiyah, poor or rich, enjoyed or unenjoyed, young or old. However the wife is too young for matrimonial intercourse 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's the husband's duty to maintain his wife even though she may have means to maintain herself. But if she unjustifiably refuses to cohabit with her husband then she loses her right for maintenance. The right of maintenance would also be lost if the wife refuses to obey the reasonable commands of the Husband but not so if disobedience is justified by circumstances or if she is forced to leave husband's house on account of cruelty, so that of the husband refuses to maintain his wife without any lawful reasons/causes the wife may sue him for maintenance. She is not however entitled to past maintenance. Maintenance is payable from the date of the decree unless the claim is based on specific agreement.

Where a wife is turned out or ill treated so as to make her impossible to stay or live together with her husband, or where the breach between the wife and husband is irremediable she is entitled to maintenance by living separate from him whether the question arises u/s. 125 of the Code of Criminal Procedure 1973. To summaries, the wife loose the right to maintenance in the following circumstances: -

- a) She is minor, incapable of consummation.
- b) Refuse free access to the husband at all reasonable times.
- c) Is disobedient.
- d) Never visited his house.
- e) Refuses to cohabit with him without reasonable excuse.
- f) Abandon conjugal home without reasonable reasons.
- g) Deserts him.
- h) Elopes with another person.

The husband and wife or their guardian may enter into agreement whereby the wife is entitled to recover maintenance from her husband, on the happening of some special event such as ill- treatment, disagreement, husband's second marriage etc. but the agreement in the marriage contract that the wife would not be entitled to maintenance is void. The key consideration is that the agreement should not be opposed to the public policy and Muslim Law.

An agreement between a Muslim and his first wife, made after his marriage with a second wife, providing for certain maintenance for her if she could not in future get on with the second wife, was held not void on the ground of the public policy.

Followings are the valid conditions for an agreement:

- a. If the husband treats the wife with cruelty then the wife has a right to separate residence and maintained to meet it.
- b. If he brings subsequent wife and the previous wife is unable to with her, she will get maintenance allowance to live separately or even at her father's house.
- c. If he brings his other wife to the matrimonial home, she will reside at her father's home and he will give her maintenance. This view was reiterated by the Karnataka High Court.
- d. In case of disagreement with each other, he will give her maintenance for her separate residence.

After divorce the Mahomedan wife is entitled to maintenance during the time period of Iddat and also for the time, if any, that elapsed after the expiry of the period of Iddat and her receiving notice of Talak. After expiry of the period Iddat the enforceability of the order of maintenance ceases.

The wife is entitled to sue for maintenance at her normal place of residence at the time of divorce and the place where she receives the notice thereof. Suit by divorced for Hiba-jewels lies where the wife resides. A widow is not entitled to maintenance out of the estate of her late husband in addition to what she is entitled to by inheritance or under his will.

II) MAINTENANCE OF CHILDREN

In case of Legitimate Children the maintenance of the children is rest upon the father. In Hedaya, the following verse of the Koran, namely --

The maintenance of woman who suckles an infant rests on him to whom the infant is born. The maintenance an infant child is rest upon the father, because, as maintenance is decreed to the nurse on account of her sustaining the child with her milk, it follows that the same is due to the child himself a fortiori. —

Thus a father is bound to maintain his sons until they attain puberty and his daughter until they are married. He is also responsible for the upkeep of his widowed or divorced daughter, or a child in the custody of the mother. The father is not bound to provide separate maintenance for a minor or an unmarried daughter who refuses to live with him without reasonable cause. An adult son need not to be maintained unless he his infirm. The father is not bound to maintain a child who is capable of being maintained out of his or her own property.

If the father is poor or infirm then the mother is bound to maintain the children. And failing her it is the duty of the parental grandfather.

Gulam Rashid Ali

Vs

Kaushar Praveen & another

II (2010) DMC 371 Delhi HC

Muslim Women (Protection of Rights on Divorce) Act, 1986

Sec.3(1)(b)

Criminal Procedure Code, 1973-Section 125 :

That even a Muslim divorced woman would be entitled to claim maintenance from a Muslim husband till she has not married. This being a beneficial piece of legislation, the benefit must accrue to the divorced Muslim women.

S. Abdul Salam

Vs

S. Ghousiya Bi & others.

I (2008) DMC 116 AP HC : 2007(3) ALT (Cri) 61 (AP)

Muslim Women (Protection of Rights on Divorce) Act, 1986 –

Sec.3(1)(a)

Criminal Procedure Code, 1973-Section 125 – Distinction between two provisions, discussed :-

When two Acts cover two different situations, the special enactment prevail over the general enactment. Furthermore, Section 3 of the Act will override the provisions of any other law for the time being in force Section 3(1) of the Act begins with a non-obstante clause 'notwithstanding anything contained in any other law for the time being in force' makes it clear that the provisions of the 1986 Act would apply to the divorced woman with regard to a reasonable and fair provision for maintenance of the amount of mehar or nay of the other conditions in respect of a divorced woman and is entitled for maintenance under section 3 of the Act. Therefore, it is not in dispute before this Court that the first respondent herein is divorced wife of the petitioner herein. Therefore her remedy is to file an application under section 3(1)(a) of the Act, but not under section 125, Cr.P.C. In view of the law laid down by the Apex Court.

Danial Latifi & another

Vs

Union of India

II (2001) DMC 714 (SC) : 2001(6) ALD 63 (SC):2001 (2) ALD (Cri) 787 (SC) : 2001 Supreme 297.

A divorced Muslim woman who has not remarried and who is not able to maintain herself after Iddat period can proceed as provided under section 4 of the Act against her relatives who are liable to maintain her in proportion to the properties which they inherit on her death according to Muslim Law from such divorced woman including her children and parents. If any of the relatives being 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.

Mumtazben Jushabbhai Sipahi

Vs

Maheubkhan Usmankhan Pathan & another.

II (1999) DMC 71 Guj. HC. Criminal P.C. 1973 – Section 125 – Muslim Women (Protection of Rights on Divorce) Act, 1986 – Section 3(2) – Maintenance (Protection of Rights on Divorce) Act, 1986 – Section 3(2) – Maintenance during Iddat Period :

Under Section 4 of the Muslim Women Act a divorced woman is entitled to get maintenance from her relatives such as her children or parents or from Wakf Board if she is not able to maintain herself after the iddat period from the provision and maintenance made and paid by her former husband.

There is no provision in the Muslim Women Act which nullifies the orders passed by the Magistrate under Section 125 or 127 of the Cr.P.C. ordering the husband to pay maintenance to the divorced woman or takes away the vested rights which are crystallized by the orders passed under section 125 or 127 of the Cr.P.C.

MAINTENANCE UNDER CHRISTIAN LAW

A Christian woman can claim maintenance from her spouse through criminal proceeding or/and civil proceeding. Interested parties may pursue both criminal and civil proceedings, simultaneously, as there is no legal bar to it. In criminal proceedings, the religion of the parties does not matter at all, unlike in civil proceedings.

Section 36 of the Indian Divorce Act, 1869 (IDA) are similar to S.24 of HM ACT. However S. 36 of IDA differs in the respect that the maintenance pendente lite and interim maintenance can only be claimed by the wife and not by the husband.

If a divorced Christian wife cannot support her in the post divorce period she need not worry as a remedy is in store for her in law. Under S.37 of the Indian Divorce Act, 1869, she can apply for alimony/ maintenance in a civil court or High Court and, husband will be liable to pay her alimony such sum, as the court may order, till her lifetime. The Indian Divorce Act, 1869 which is only applicable to those persons who practice the Christianity religion inter alia governs maintenance rights of a Christian wife. The provisions are the same as those under the Parsi law and the same considerations are applied in granting maintenance, both alimony pendente lite and permanent maintenance. The provisions of the Indian Divorce Act, 1869, are produced herein covered under part IX -S.36 - S.38. The power of order monthly or weekly payments:

In every such case, the Court may make an order on the husband for payment to the wife of such monthly or weekly sums for her maintenance and support as the Court may think reasonable:

Provided that if the husband afterwards from any cause becomes unable to make such payments, it shall be lawful for the Court to discharge or modify the order, or temporarily to suspend the same as to the whole or any part of the money so ordered to be paid, and again to revive the same order wholly or in part as to the Court seems fit.

Under section 38 of the Indian Divorce Act, 1869, in all cases in which the Court makes any decree or order for alimony, it may direct the same to be paid either to the wife herself, or to any trustee on her behalf to be approved by the Court, and may impose any terms or restrictions which to the Court seem expedient, and may from time to time appoint a new trustee, if it appears to the Court expedient so to do.

In **Divyananda v. Jayarai** two Roman Catholic entered into Suyamaryadhai form of marriage and lived together as husband and wife for period of 5 months in the course of which the wife conceived a child. The Court rejected the petition of the woman as she was not a legally wedded wife. The Court held that being Christian, their marriage in accordance to Hindu customs without any conversion was void ab-initio and hence the woman was not a wife in the eye of law. As such the woman could not claim maintenance U/S.

125 of, although her children illegitimate would be entitled to maintenance U/S. 125.

MAINTENANCE UNDER PARSI LAW

Parsi can claim maintenance from the spouse through criminal proceedings or/ and civil proceedings. Interested parties may pursue both criminal and civil proceedings, simultaneously as there is no legal bar to it. In the criminal proceedings the religion of the parties doesn't matter at all unlike the civil proceedings.

If the Husband refuses to pay maintenance, wife can inform the court that the Husband is refusing to pay maintenance even after the order of the court. The court can then sentence the Husband to imprisonment unless he agrees to pay. The Husband can be detained in the jail so long as he does not pay. The Parsi Marriage and Divorce Act, 1936 speaks about the right of wife to maintenance-both alimony pendente lite and permanent alimony. The maximum amount can be decreed by court as alimony during the time a matrimonial suit is pending in court is one-fifth of the husband's net income. In fixing the permanent maintenance, the court will determine what is just, bearing in mind the ability of husband, wife's own assets and conduct of the parties and this order will remain in force as long as wife remains chaste and unmarried. In case of pendent lite and interim maintenance sections 39 of the Parsi Marriage and Divorce Act, 1936 (PMDA) is similar to S.24 of HM ACT.

S.40. of Parsi Marriage and Divorce Act says that the defendant shall pay to the plaintiff for her or his maintenance and support, such gross sum or such monthly or periodical sum, for a term not exceeding the life of the plaintiff as having regard to the defendants own income and other property, if any, the income and other property of the plaintiff, the conduct of the parties and other circumstances of the case, it may seem to the Court to be just, and any such payment may be secured, if necessary, by a charge on the movable or immovable property of the defendant.

The Court if it is satisfied it may, at the instance of either party, vary, modify or rescind any such order in such manner as the Court may deem just and if the Court is satisfied that the party in whose favour, an order has been made under this section has remarried or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he had sexual intercourse with any woman outside wedlock, it may, at the instance of the other party, vary, modify or rescind any such order in such manner as the Court may deem just.

MAINTENANCE UNDER CODE OF CRIMINAL PROCEDURE 1973

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

It should be kept in view that the provision relating to maintenance under any personal law is distinct and separate. There is no conflict between the two provisions. A person may sue for maintenance under s.125 of CrPC. If a person has already obtained maintenance order under his or her personal law, the magistrate while fixing the amount of maintenance may take that into consideration while fixing the quantum of maintenance under the Code. But he cannot be ousted of his jurisdiction. The basis of the relief, under the concerned section is the refusal or neglect to maintain his wife, children, father or mother by a person who has sufficient means to maintain them. The burden of proof is on him to show that he has no sufficient means to maintain and to provide maintenance.

Section 125 gives a statutory recognition to the moral, legal and fundamental duty of a man to maintain his wife, children and aged parents. Although this section also benefits a distressed father, the main thrust of this section to assist women and children. Article 15(3) of the Indian constitution envisaged that the state can make special provision for woman and children. Section 125 is also along the lines of Art.39 of the Indian Constitution that states that the State shall direct its policy towards ensuring that all citizens both men and women have equal access to means of livelihood and children and youths are given facilities opportunities in conditions of freedom and dignity.

At the time of enactment of this code section 125 is intended to be applicable to all irrespective of their personal Laws although maintenance is a Civil remedy yet it has been made a part of this Code to have a quick remedy and proceedings and S.125 is not a trail as non-payment of maintenance is not a criminal offence.

The word any person u/s. 125 includes a person belongs to the undivided family although the proceedings strictly against the individual

concern and not the undivided family. However, the Magistrate may take into consideration the joint family property is determining the amount of maintenance that should be payable by such person..; it also includes a person, a father, an adult son and a married daughter. But not include a mother or a wife or an unmarried daughter.

REFUSAL ON NEGLECT TO MAINTAIN:

It has been held that the refusal or neglect to maintain may be expressed or implied, it may be by words or by conduct and action. Sometimes refusal or neglect may be constituted by something more, than mere failure and omission. However, in relation to a person who has no volition of his or her own, like in case of a child mere failure or omission shall constitute refusal or neglect to maintain.

The term 'maintenance' has been generally interpreted to include food, clothing and lodging. However in recent time it has been held that any other requirements, i.e., necessary for a person to remain fit healthy and alive is also to be included within periphery of the term 'maintenance'.

CASE LAWS:

Mohd. Ahmed Khan v. Shah bano Begum & other

The appellant, a Muslim, was married in 1932 and in 1975 he drove her out of the matrimonial home. The respondent filed a petition under section 125 cr pc in April 1978 against the appellant claiming maintenance at the rate of Rs. 500 per month. The appellant divorced the respondent by an irrevocable talaq in November 1978. His defence to the respondent's petition was that she had ceased to be his wife by reason of the divorce granted by him, that he was therefore under no obligation to provide maintenance for her, that he had already paid maintenance to her at the rate of Rs. 200 per month for about two years and that, he had deposited a sum of Rs. 3000 in the court by way of dower during the period of idiot. The question was whether the respondent was entitled to maintenance. In application for revision filed by the respondent High Court enhanced the amount of Rs. 25 as maintenance fixed by the magistrate to Rs. 179.20 per month. In appeal a two judge Bench of the Supreme Court referred the matter to the present Bench. Dismissing the husband's appeal with costs and adding that it would be open to the respondent to make an application under section 127{1} of the code for increasing the allowance of maintenance granted to her on proof of a change in the circumstances as envisaged by that section, supreme court held that section 125 was applicable to all irrespective of their religion clause {B} of section 125{1} contains no words of limitation so as to justify exclusion of

Muslim women. There had been a lot of hue and cry by Muslim fundamentalists after this revolutionary judgment of the apex Court which was truly intended to protect the interest of Muslim women from oppression. Consequently the central government was compelled to bring a legislation nullifying the judgment of the Supreme Court. Therefore Parliament passed a Muslim women's {protection of rights on divorce} act, 1986 providing for other remedies to Muslim women. This new Act allows a Muslims woman to avail remedy available under section 125 only if the husband consents to it.

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

Vs

Rita Dev Chowdary **(Civil Appeal No.5369 of 2017 dated 19.04.2017)**
(Sec. 25 of Hindu marriage Act)

The Honb'ble Supreme Court held that 25 percent of the husband's net salary would be just and proper to be awarded as maintenance to his wife.

Badshah

Vs

Sou. Urmila Badsha Godse and another
(Cr.A.No.19530/2013)

The Hon'ble Supreme Court held that Victims of bigamous marriage entitled to maintenance.

If a man deceitfully married a woman hiding the substitution of earlier marriage he is obliged to pay maintenance to her U/s.125 of Cr.P.C.

Manoj Kumar

Vs

Champa Devi
(SPL to Appeal No.10137/2015 dated 06.04.2017)

The Hon'ble Supreme Court held that directing a husband to grant maintenance to his deserter wife, whom he had divorced , from the date when the divorce was decreed.

Shailaja & another

Vs

Kohbbanna (**CrI. Appeal No.125-126 of 2017 dated 18.1.2017**)

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 is not sufficient 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.

In the case of **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 an absolute destitute or should be in tattered clothes, or should be the first one out of the street to beg. The very fact is that she has no other means of her own other than that of her husband to maintain her adequately to entitle her to the right of maintenance.

MAINTENANCE FOR LIVING TOGETHER

In **S.P.S. Balasubramanyam v Suruttayan Andalli Padayachi & Ors.** the Supreme Court allowed presumption of marriage u/s 114 of Evidence Act out of live-in relations and presumed that their children were legitimate. Hence, they are rightfully entitled to receive a share in ancestral property. In the instance case, Matrimonial claim her brother Muthu Reddiars property who died unmarried and intestate.

In **Abhijit Bhikaseh Auti v. State Of Maharashtra and Others**, the positive opinion in favour of live in relationship was also seconded by Maharashtra Government in October, 2008 when it accepted the proposal made by Malimath Committee and Law Commission of India which suggested that if a woman has been in a live-in relationship for considerably long time, she ought to enjoy the legal status as given to wife.

MARRIED DAUGHTER'S LIABILITY:

Vijaya Manohar Arbat v. Kashiram Rajara Sawai, the Supreme Court in a landmark judgement held that the married daughter is liable to provide maintenance to their aged parents if they are unable to maintain themselves. In this case Mr. Dutta & Mr. Ojha, JJ, held that married daughter does not cease to be daughter on her getting married. Farther more the Court held that if it is to be decided, that daughter has no liability to maintain their aged parents, those who have no son only daughter, would become destitute and beggar if their daughter provides for maintenance.

ALTERATION IN ALLOWANCE (S.127 OF THE CRPC):

On the case of, Bai Tahira v. Ali Hussain Fissali, it was held by the SC that if the amount of deferred 'Mehtar' paid at the time of divorce is adequately to sustain the wife through her life time then an order of maintenance U/S.125 shall be liable to be cancelled in accordance to S.127(3). The same view point was reiterated in Fuzlumbi v. K. Khader Ali.

But in Shah Bano Begum v. Mohd. Ahmed Khan the SC held that 'Mehtar' is an amount paid in consideration of money and not of divorce and hence, it does not fulfill the condition of the S.127(3)(b). Therefore, irrespective of the amount of deferred 'Mehtar' at the time of divorce an amount of maintenance cannot be cancelled U/S. 127(3)(b).

Protection of women from Domestic Violence Act, 2005:

Section 20. Monetary reliefs :- (1) While disposing of an application under sub-sec. (1) of Sec. 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but not limited to, -

- (a) the loss of earnings;
 - (b) the medical expenses;
 - (c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and
 - (d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under Sec. 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.
- (2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.
 - (3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.
 - (4) The Magistrate shall send a copy of the order for monetary relief made under sub-sec. (1) to the parties to the application and to the in charge of the police station within the local limits of whose jurisdiction the respondent resides.
 - (5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-sec.(1).

(6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-sec. (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the Court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

CASE LAWS

Sikakollu Chandra Mohan v Sikakollu Saraswathi Devi and another,
2010 (2) ALD (Cri) 391 (AP) : 2010 (3) ALT (Ori) 108 (AP).

It was held that Section 20 :- Section 20(1) (d) in addition to an order of interim maintenance by Family Court under Section 125 Cr.P.C., justified.

Rajesh Kurre v. Safurabai & Ots (2009 Cri.L.J (NOC) 446 Chatti)

The words of provisions under Section 20 of the Act are clear, plain and unambiguous. The provisions are independent and are in addition to any other remedy available to the aggrieved under any legal proceeding before the Civil Court, Criminal Court or the Family Court. The provisions are not dependent upon Section 125 of Cr.P.C or any other provisions of the Family Courts Act 1984 or any other Act relating to award of maintenance. In case of award of maintenance to the aggrieved person and child under the provisions of the Act, the court is competent to award maintenance to the aggrieved person and child of the aggrieved person in accordance with the provisions of Section 20 of the Act. Aggrieved person is not required to establish his case in terms of Section 125 of Cr.P.C.

Mohd. Maqeenuddin Ahmed and other vs. State of AP.

2007 Cri LJ 3361 (AP) : 2007 (2) ALT (Cri) 504 : 2007 (2) ALD (Cri) 248 (AP).

Since there are allegations in the petition that he neglected to pay medical expenses and also neglected to maintain her and children, the court is not inclined to quash the proceedings against him.

The Maintenance and Welfare of Parents and Senior Citizens Act, 2007

Section 4 Of the Act deals with Maintenance of Parents and Senior Citizens.

Sec.4. Maintenance Of Parents And Senior Citizens :- (1) A senior citizen including parent who is unable to maintain himself from his own earning or out of the property owned by him, shall be entitled to make an application under Section 5 in case of- (i) parent or grand-parent, against one or more of his

children not being a minor; (ii) a childless senior citizen, against such of his relative referred to in clause (g) of Section 2. (2) The obligation of the children or relative, as the case may be, to maintain a senior citizen extends to the needs of such citizen so that senior citizen may lead a normal life. (3) The obligation of the children to maintain his or her parent extends to the needs of such parent either father or mother or both, as the case may be, so that such parent may lead a normal life. (4) Any person being a relative of a senior citizen and having sufficient means shall maintain such senior citizen provided he is in possession of the property of such senior citizen or he would inherit the property of such senior citizen: Provided that where more than one relatives are entitled to inherit the property of a senior citizen, the maintenance shall be payable by such relative in the proportion in which they would inherit his property.

CONCLUSION

By virtue of judicial pronouncements and other steps, rights of women has been restored but it will become fruitful only when under lying thinking are changed, the women should emancipate themselves educationally, economically and socially for their well being only and then they can understand their rights and worth and thereafter the social upliftment of the whole community is possible. We should always remember that mother is the first teacher and mentor of his child. It is a historical fact that no society ever lived in peace until their women folk are at peace.

Although Maintenance should be gender neutral and should be applicable both for husband and wife respectively for the greater perspective of the society but still many women are being denied to claim their rights of maintenance. Proper implementation is necessary to abide by the Law of the Land and ultimately to make it a grand success.

By

Smt.Y.J.Padma Sree,
III Addl. Junior Civil Judge,
Kadapa