

## Research Paper on Law relating to maintenance in India with special reference to Uniform Civil Code

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### *Abstract*

*This paper has endeavoured to look down on the provisions relating to maintenance of the wife, children, dependents and parents and the underlying loopholes in the present law relating to it. The status of wife, children and parents is clearly visible in the present provisions relating to maintenance. Maintenance isn't just a worry of the individual yet in addition a worry for the society at large. It has a tendency to anticipate starvation protecting indirectly the fundamental human right. Though the law provides for interim as well as permanent maintenance for the above mentioned parties but still there is a lot to be done in this field and this paper is an attempt to highlight those loopholes and has also tried to provide certain suggestions for the same.*

### *Keywords:*

*Adoption*

*Dependents*

*Divorce*

*Iddat*

*Illegitimate*

*Legitimate*

*Maintenance*

*Mahr*

*Matrimony*

*Starvation*

*Secular*

*Uniform Civil Code*

*Vagrancy*

### Introduction

The benevolent jurisprudence of maintenance is rooted in the humanistic approach towards social and individual morality. The word 'maintain' is derived from the French term 'maintenir' and in Latin, the French word 'main' is identical to 'manus' which means 'hand' and 'tenir' is identical to 'tenere' means 'to hold'<sup>1</sup> i.e. to provide hand to the one in need. The term maintenance comprehends food, clothing, shelter, and medical care. It means the supply of the necessities of life; livelihood.

Maintenance in matrimonial law denotes the provisions for food, clothing, lodging, education, medical care, etc., thus, the arrangement of the necessities and comforts of life. It is the name given to the weekly or monthly payments which may be ordered on a decree of divorce or nullity to be made for the maintenance and support of the spouse during the joint lives of the spouses. Maintenance of the children is a similar provision for their benefit, which may be made in proceedings for divorce, nullity, judicial separation, or restitution of conjugal rights.<sup>2</sup>

The term 'maintenance' has been defined in Section 3 (b) of the Hindu Adoption and Maintenance Act, 1956, as follow;

"Maintenance" includes-

- (i) in all cases, provisions for food, clothing residence, education and medical attendance and treatment;
- (ii) in the case unmarried daughter also the reasonable expenses of, and incident to her marriage.

Our Indian laws provides for maintenance of several parties. Such obligation to provide maintenance is personal and arises out of relation between parties. Such parties who are entitled to maintenance includes wife, children, aged parents.

The right of wife to maintenance is an incidental to her status of matrimony. The obligation is personal and arises out of the institution of marriage and the wife shall be entitled to be maintained by her husband during her life-time.

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<sup>1</sup> New Webster's Dictionary, College Ed. P. 902

<sup>2</sup> Halsbury's Law, Ed. 3<sup>rd</sup> P. 290

In this manner a mandatory obligation is forced on the husband to give maintenance to his wife for the duration of her life. The right is enforceable under the steady gaze of the civil court and takes retrospective operation in the sense that women who are married prior to 1956 are also made eligible to avail maintenance.<sup>3</sup> The prior condition which is required to be fulfilled in reference for the utilization of the arrangement for maintenance is that she should be a legally married wife.

The commitment to keep up one's children is a personal obligation and emerges out of the personal relationship. Prior, a father had such an obligation just in regard of legitimate children. The Hindu Adoptions and Maintenance Act, 1956 imposes an obligation on either of the sex to maintain his or her legitimate or illegitimate children.<sup>4</sup> The liability extends only until the age of minority.<sup>5</sup> Unmarried daughters however, are entitled to avail maintenance until the time they are unable to maintain themselves.<sup>6</sup> Maintenance in the case of an unmarried daughter includes also the reasonable expenses of and incidence to her marriage.<sup>7</sup>

Maintenance of aged and decrepit/infirm parents is a personal obligation emerging out of the presence of the parent-child relationship and is very autonomous of the ownership of any property, hereditary/ancestral or self-gained/acquired. . Under the old Hindu law, the commitment to keep up one's aged father and mother was forced on the son alone and daughter had no such obligation. The modern Hindu law imposes such an obligation both on sons and daughters. The term 'parent' in normal utilization implies just common parents, i.e., father and mother related by blood. The old Hindu law did exclude step-parents' inside the definition. Be that as it may, the Hindu Adoptions and Maintenance Act, 1956 adds an explanatory provision to incorporate 'child-less step mother' inside the definition of parent.

The Hindu Adoption and Maintenance Act, 1956 provides for the Maintenance of other members also. Other than wife, children and parents, Hindu Adoptions and Maintenance Act, 1956 stretches out maintenance to other class of individuals too. The widowed daughter-in-law and a class of dependents are provided with the option of maintenance if unable to maintain themselves. For the situation of widowed daughter-in-law, the right is enforceable against her father-in-law. This could be conceivable just when she has no way to maintain

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<sup>3</sup> The Hindu Adoptions and Maintenance Act, 1956, Section 18.

<sup>4</sup> Id. Section 20(1)

<sup>5</sup> Id. Section 20(2)

<sup>6</sup> Id. Section 20(3)

<sup>7</sup> Chandra v. Nanag, AIR 1975 Del. 175

herself and that her father-in-law had is possessed with adequate means over which a right vests with the daughter-in-law. This restricted right will stop to exist on the remarriage of the daughter-in-law.

A much similar duty is imposed on the successor over the property of a deceased to maintain a volley of relatives described precisely by the code as 'dependants'.<sup>8</sup> They could be classified to fall under the following five heads:

- (i) parents
- (ii) spouse
- (iii) children
- (iv) lower descendants, and
- (v) descendant's widows.

The right enforced herein is neither moral nor personal but purely out of the enjoyment of property over which the claimants, described as dependents, have a claim.

Apart from Hindu Law, Muslim law, section 125 of Cr P C , and various other personal laws provide for maintenance.

The Muslim law imposes a duty on every Muslim to maintain his wife, aged parents and children<sup>9</sup>. This obligation is more moral than legal. The commitment and obligation to maintain one's wife is personal and relatively absolute. Additionally, a man is also under duty to maintain his child till he attains majority.

Under the Muslim law, maintenance is known as 'nafqah'<sup>10</sup>. This includes food, raiment, and lodging. Muslim Woman (Protection of Rights on Divorce) Act, 1986: This Act has its application only to divorced women. Section 3 of the Act provides for maintenance, payment of mahr and return of properties belonging to the divorced woman. The Act stipulates that a separated/divorced women shall be qualified for, where she herself maintains the children destined to her previously or after her separation, a reasonable and fair arrangement and provision and maintenance to be made and paid by her previous husband for a time of two years from the particular dates of birth of such children. Section 5 of the same Act gives the

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<sup>8</sup> Hindu Adoptions and Maintenance Act, 1956 Section 21.

<sup>9</sup> Qureshi. M.A., Muslim Law of Marriage, Divorce and Maintenance, Deep & Deep Publications. 1995 p.296.

<sup>10</sup> Id. P 297

option to divorced Muslim wife to be governed by the provisions of Section 125 to Section 128 of Criminal Procedure Code, 1973, but the condition is that there must be an agreement between the husband and wife by an affidavit, that they would prefer to be governed by the provisions of Section 125 to Section-128 of Criminal Procedure Code, 1973.

The obligation to maintain the children is there on the parent until the point that the time they attain majority. On attaining majority the father will undoubtedly not maintain his issues unless they are incapacitated due to disease or physical infirmity. Where the father can't maintain his children the duty to maintain the children shall pass on to the mother. Where the father and the mother, too, not ready to maintain their children, the grandfather will take the obligation to maintain them and he can very well recover the sum he had spent maintaining the children from the father later on.

Regarding aged parents, the children will undoubtedly maintain their parents when they have means and sources to maintain them.

The Law of Maintenance as regards Christians in India is found in the provisions found in The Indian Divorce Act, 1869. It provides for interim as well as permanent maintenance. The law providing for maintenance among Parsis is dealt under the provision of the Parsi Marriage and Divorce Act, 1936. The law corresponds much to the provisions of the Hindu Marriage Act, 1955 and Special Marriage Act, 1954.

The right of maintenance provided in form of Section 125 of the Code of Criminal Procedure is something novel and unparalleled in Indian legislation. It shows a blending of the secular characteristics of criminal law, civil law and those of family law, but do not fall absolutely under any of these branches. Section 125 in this manner forces an individual commitment and obligation towards the society to maintain a portion of his nearby relatives<sup>11</sup> The remedy as a statutory right is made available to all neglected wives, discarded divorcees, abandoned children and helpless parents regardless of their religion, community and nationality.

Subject to satisfaction of certain conditions, a class of individuals in the family connection related either by blood or marriage are qualified for profit themselves of maintenance under

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<sup>11</sup> Mohd. Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 945.

Section 125 of the Criminal Procedure Code. The class of individuals to whom the right is broadened are :

- a) Wife
- b) Children, legitimate or illegitimate and
- c) Parents.

**Grey Areas in the Law relating to maintenance and its remedy in Uniform Civil Code:**

The term “Uniform Civil Code” consists of three terms. They are “Uniform”, “Civil” and “Code” wherein all these three terms have very wide meaning in different senses.

“Uniform” means one and the same in all circumstances, whereas “Common” refers to same in similar conditions. However, when these two words are taken into consideration in context to Art. 44 of the Constitution, they are generally used as synonym of each other.

The word "civil" according to the dictionary meaning means "relating to the citizens as an individual; civil rights".

Article 44, of the Indian Constitution:

"The state shall endeavor to secure for citizens a Uniform Civil Code throughout the territory of India".

In many cases our judiciary has put emphasis on the need of introduction of Uniform civil code.

**In Ms. Jorden Diengdeh v. S. S. Chopra**<sup>12</sup> the court held that surely the time has now come for making a uniform law applicable to all people irrespective of religion or caste and reform the law of marriage.

**In Danial Latifi vs. Union of India**<sup>13</sup> although no direct reference was made regarding Art. 44 of the Constitution but by discussing the provisions of maintenance under different personal laws, the bench definitely arose a question against the personal law system of India.

**In John Vallamattom v. Union of India**<sup>14</sup> the court said a common civil code will help the cause of national integration by removing the contradictions based on ideologies and various religions and their existing personal laws.

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<sup>12</sup> AIR 1985 SC 935

<sup>13</sup> 2001(3) GLH 465

<sup>14</sup> AIR 2003 SC 2902

Uniform Civil Code, as held by the courts in various cases is the ultimate remedy to cure the grey areas and the loopholes in the various personal laws. These laws should be brought at par and a common system of maintenance laws should be created to fill up these lacunae. The reasons why Uniform Civil Code should be introduced for personal laws is enumerated in the following points:

- 1) *Inter-Religion Differences*: Different Personal Laws are not only different and diverse from one religion to another religion only, but also they have many inter-religion differences and that depends upon several factors, like the part of the country, usages and customs practiced in that particular part or area, sub-caste, sect or sub-sect, group and many more. Due to this, no any straight jacket formula can be opted even for one religion people.
- 2) *Inequality before Law*: Inequality between people in matter of marriage and separation and progression exists in numerous personal laws which gives a greater offer to the man. The difference among laws make wife, children and other groups more vulnerable. From Kashmir to Kanyakumari, India is one, but personal law system of India differs for each which has caused grave injustice to all, however it is the women and children who are the main victims of this unjust, illogical and unequal legal system. Injustice to women and children can be observed in all the areas of civil issues i.e., marriage, divorce, maintenance, adoption, inheritance, succession, etc.
- 3) *Place of filing petition*- The other loophole in the Act is that there is no legislative provision regarding maintenance as to the place of filing of petition or jurisdiction of court. Though in the absence of the specific provision regarding this matter the provisions of CPC is applied but still a provision regarding this is required to remedy this confusion.
- 4) *Loopholes in the Muslim personal law*- The tendency of the Judiciary to the implementation of the Section 125 of Cr. P.C. regarding the maintenance for the divorced muslim wife is frustrating the people of Islamic community. The Muslim Women (Protection of Rights on Divorce) Act, 1986 brings within its purview and ambit only 'divorced woman'. The act does not have any significant bearing to the forsook and isolated Muslim spouses. Section 4 of the act makes the relatives of the Divorced women

or the State waqf board in charge of the maintenance of the Divorced lady. Be that as it may, the truth is that it is very implausible that she will get sustenance from the parties who were not just outsider to the conjugal relationship which prompted the separation. Likewise, waqf boards would usually not have the way to help such desperate women since they are themselves perennially kept from stores and the potential legatees of a dejected women would either be too youthful or too old in order to have the capacity to broaden imperative help.

- 5) *Various personal laws does not regard husband as a claimant if maintenance-* It is only under section 24 and section 25 of The Hindu Marriage Act, 1955, a husband having no sufficient independent income of his own to support himself can claim maintenance. A Muslim husband having no sufficient independent income of his own to support himself cannot claim maintenance from his wife. Under section 125 of Cr. P.C, the duty is imposed upon the husband to maintain his wife or children and parents unable to maintain themselves. No other law except the Hindu Marriage Act, 1955 talks about maintenance of a husband unable to maintain himself.
- 6) *Wife property of husband under the Indian Divorce Act-* Under The Indian Divorce Act, 1869, under Section 10, the husband has simply to prove adultery whereas the wife has to prove another matrimonial offence along with adultery, for granting relief. The Indian Divorce Act, 1869 considers the wife as a property of the husband.

Thus taking into consideration the above loopholes a strong need is felt to bring uniformity in personal law aspects relating to maintenance. All the positive aspects of the personal laws relating to maintenance should be incorporated uniformly without taking into consideration the gender and religious discrimination. It is possible to remove the shortcomings in the personal laws relating to maintenance only through Article 44 of the constitution i.e. Uniform civil code. Therefore, UCC must be given a legislative form by harmonizing all personal laws in such areas so as to be effective for the benefit of all general public living in one territory.

A uniform civil code relating to personal laws does not mean the expansion of Hindu personal laws to other groups. It involves the development of a balanced framework



removing the inequality, injustice, particularly to women and children, inherent in those old framework and the substitution of all existing personal laws by such an objective framework UCC is required for bringing clearness, effortlessness and intelligibility in personal laws, in light of the fact that till yet the situation in such manner is extremely uncertain.

UCC is additionally required to secure the solidarity and integrity of this nation which is partitioned on the grounds of various personal laws. UCC would replace old, obsolete and outdated personal law system of India.

UCC has become the need to fulfill the present social demand. The best provisions of existing personal laws related to maintenance should be the base for forming and drafting the UCC.