

Women's Right Of Maintenance: Role Of Judiciary

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Abstract

The right to maintenance is a crucial safeguard for women, ensuring economic support and dignity, especially in cases of separation, divorce, or neglect. Under the new criminal law framework—Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, which replaces the Code of Criminal Procedure, 1973—this right is preserved and continues to provide a secular, accessible remedy for women irrespective of religion or personal law. Section 144 of the BNSS, corresponding to the old Section 125 CrPC, retains the provision for maintenance to wives (including divorced wives), children, and parents. This reflects the continuity of the state's commitment to social justice and gender equality. The judiciary continues to play a pivotal role in interpreting and enforcing maintenance rights, ensuring that procedural changes under the new law do not dilute substantive entitlements. Courts have consistently upheld that maintenance is not a matter of charity but a fundamental right linked to Article 21 of the Constitution—right to life with dignity.

Keywords Maintenance, Roll of Judiciary, Live in relationship, Unmarried Daughter, wife.

INTRODUCTION

The institution of maintenance, which is prevalent in Indian since the dawn of ages aiming to provide the support network to the support to destitute females comes as a measure of social justice to women. Though this can be considered as an institution with the pious object, there lays much anonymity, which the Judiciary has attempted to remove at many occasions by incorporating new principles or by interpreting the existing provisions to give them best possible extended benefit to the different classes". Judges are authorized to do so because the legislation often fails to keep a pace with the changing time and the needs of society. The Hon'ble Judiciary has developed the law related to 'Institution of maintenance' to the extent as a measure of social justice and fall within constitutional sweep of Article 15(3) reinforced by Article 39. The provisions are intended to provide relief to the destitute".¹ For the development of the Law and the social change, it is required that Judiciary plays an active role by evolving the new principles.

It is unrealistic to accept that law as given by the legislatures will have provided for all exigencies and eventualities. It is therefore, not only necessary but obligatory on the parts of the Courts to step into to fill the lacunas. When the Courts perform these functions they legislate judicially. But this kind of legislation, that stands explicating delegated to them, to further the object of legislation and for promoting the goals of the society. As long as the Courts keep adhered to the ethos of the society and don't travels off its course, so

¹ Monica Chawla, *Gender Justice: Women and Law in India*, 99 (Deep and Deep Publishers, 2006).

long as they attempt to furnish the necessity of time and don't refurnish them, their role in this respect has to be welcomed.²

Maintenance to the Major Unmarried Daughter

The law provide for the maintenance of children but the girl child can be considered to most vulnerable one. The laws prevalent in the Country basically the Code of Criminal Procedure, 1973 and other Personal Laws incorporate the provisions about the maintenance of Children till they have attained majority, but as far as the position of unmarried daughter who is not able to maintain herself is concerned, the provisions incorporated vary. It seems that while incorporating the provisions and making the minority a condition precedent for claim of maintenance, it was presumed by the framers that majority itself is sufficient for one to maintain themselves. Whereas in the Hindu Law the Major Unmarried daughter is liable to get maintenance, the position in the Code of Criminal Procedure, 1973 stands contrary to concept disentitling her to claim maintenance under the Code.

In the case titled ³Maung Shwe Ba v. Ma Thein Nya,¹⁰ aiming on the needs of proper growth and development, it was laid down by the Court that in a civilized State a human child cannot be maintained simply by providing it with clothing and food. In the present State of society the mere maintenance of the body is not sufficient; provision has to be made for the child's developing mind and conscience

In the case titled Nanak Chandra v. Kishore Aggarwal,⁴ which was filed under Section 488 of the old code, disgusting the discrimination on the basis of Age while awarding the maintenance to the children it was laid down by Hon'ble Apex laid down that there should be no limitation of the age in the provisions contained under Code, while defining the term 'child' and a child of any age should be entitled to maintenance, as the only limitation contained in the section is use of expression "Unable to Maintain itself". It was further stated that, where the word 'child' is used in conjunction with age, it is not related to parentage. It was further laid down that there is no justification for restricting or confining the application of the section to the children who have not attained majority yet.

In the case titled Noora Saba Khatoon v. Mohd. Quasim,⁵ it was laid down that the Muslim daughter is entitled to claim maintenance under Section 125 the Code of Criminal Procedure, 1973 till the time she get married. This right is absolute and Section 3(1)(b) of the Muslim Women (Protection of Rights on Divorce) Act, 1986 does not in any way affect the rights of the minor children of divorced Muslim Parents to claim maintenance from the father and specially in case of major unmarried daughter married till the time she get married.

In the case titled Smt. Sushila Bai v. Bisauharam,⁶ it was laid down that that the unmarried daughters who is unable to maintain her and on attaining the age of majority does not Ipso-Facto become an earning member. The lower Court has not considered the material fact and thereby committed illegality by denying maintenance to the unmarried daughter only on the ground that she had attained majority. It was further held that unmarried daughter is entitled for maintenance even after attainment of the age of majority, till her marriage, but she is required to prove her inability to maintain herself and that in spite of having sufficient means, her parents are not maintaining her.

² *Ratan Chand Hira Chand v. Askar Nawaz Jang*, (1991) 3 SCC 67.

³ RLR 673.

⁴ AIR 1970 SC 446.

⁵ AIR 1997 SC 3280.

⁶ 2009 (NOC) Chh 812.

In the case of *Naduthodi Yousaf v. Naduthodi Rubeena & Anr.*,⁷ laying emphasis on the clause 370 of Chapter XIX of Mulla's

Principles of Mahomedan Law, it was laid down by the Hon'ble Kerala High Court that, "it is beyond controversy that Muslim daughters are entitled for maintenance from the father till they are unmarried. In the present case, the claimants were Major Unmarried daughters. Moreover there was no specific contention or evidence that they were not students. Neither there was tangible in the pleadings or evidence which can show that they were employed, had any assets or are earning any income to maintain and support them. The Court stated that, "In these circumstances, it appears to us to be inescapable that major unmarried daughters unable to maintain themselves, like the respondents herein are entitled to claim maintenance from their father who is capable of providing maintenance to them".

In *Jagdish v. Manjulata*,⁸ a very interesting question, was decided by the Hon'ble Supreme Court whether the girl child can get maintenance from her father even after attaining majority till her 'Marriage or not' under Section 125, The Code of Criminal Procedure, 1973? As per the Law contemplated in section 125 The Code of Criminal Procedure, 1973, the girl child if not married is entitled to get maintenance from her father till she attains majority. Whereas, under Sub Section (3) of Section 20 of the Hindu Adoptions and maintenance Act, 1956, a daughter has the right to get maintenance from her parents even after attaining the majority till her marriage. In this particular case, under Section 125, Code of Criminal Procedure, 1973, the Family Court has held that the girl shall get maintenance from the father under Section 125, Code of Criminal Procedure, 1973 even after attaining majority till her marriage. The High Court affirmed the order of the Family Court. The father filed appeal by special leave to Supreme Court on the ground that under Section 125, The Code of Criminal Procedure, 1973 the father has the obligation to maintain the girl, if not married till she attains majority. Hon'ble Supreme Court, while upholding the order of Family Court and establishing a co-relation between the provisions of the Hindu Adoption and maintenance Act, 1956 and The Code of Criminal Procedure, 1973, stated that", it would avoid multiplicity of the proceedings as otherwise the daughter would be forced to file another application under Section 20(3) of the Hindu Adoptions and maintenance Act 1956 for obtaining the maintenance till her marriage even after she has attained the majority".⁹

Maintenance in Live-In-Relationship

"Live-in Relationship" is a walk-in and walk-out relationship. There are no strings attached to this relationship, neither this relationship creates any legal bond between the parties. It is a contract of living together which is renewed every day by the parties and can be terminated by either of the parties without consent of the other party and one party can walk out at will at any time".²⁷

No specific law recognizes a live in relationships in India. No legislation is there to define the rights and obligations of the parties and the status of children born to such couples. A "Live-in Relationship" is not recognized by the Code of Criminal Procedure, 1973 or any other Personal Law statute. In the absence of any law to define the status of live in relationships the Courts have taken the view that where a man and a woman live together as husband and wife for a long term, the law will presume that they were legally married unless proved contrary. Though breaking down the convention and the moving one step ahead, the Protection of Women from the domestic Violence Act, 2005 has introduced the concept of providing the maintenance to Live in Partner.

⁷ Decided on 08 September 2010 available at: <http://indiankanoon.org/doc/1716385/>, (accessed on 16 March 2025).

⁸ (2002) 5 SCC 422.

⁹ *Ibid.*

The Live-In-Concept can be said to be derived from the Western culture and the award of maintenance in Live-in- Relationships is termed as Palimony in England, which means division of personal assets and other financial resources on the breakup of Live-in- Relationship was coined in the popular case of *Marvin v. Marvin*,²⁸ in which it was laid down that unlike Alimony, Palimony, which is to be granted to the couples in the live in relationship is purely based on the agreement, which may be oral or written, to the extent specified in the agreement. Though even subsequently many such decisions were given by the US Courts, still the law in USA over the same is not clear on this point and is in state of evolution.

In *Savitaben Somabhat Bhatiya v. State of Gujrat*,¹⁰ taking the note of plight of unfortunate women, who unwittingly enters in to wedlock with a married man, it was laid down by Hon'ble Apex Court that there is no scope for enlarging the ambit of definition by enlarging and introducing the artificial definition to include the women not lawfully married in the expression 'wife' the legislature was called upon to undo the justice and to remove this inadequacy of the law.

Taking the note of the changed scenario and extending the protection to the females in live in relationships, relationship, the honorable Apex Court, in the case titled, *S. Khushboo v. Kanniammal & Anr.*,¹¹ which can be termed as most celebrated judgment over the matter, has laid down that "it is true that the mainstream view in our society is that the sexual contacts should take place only between the marital partners, there is no statutory offence that takes place when the adults willingly engages in the sexual relationships outside the marital wedlock with an exception to adultery. Referring to the judgment of *Lata Singh*,¹² the Court again retreated that a Live-in- Relationship between the two consenting adults of heterogenic sex does not amount to any offence, even though it may be perceived as immoral. A major girl is free to marry anyone she likes or live with anyone she likes. The Apex Court further laid down that in the societal mainstream, there are significant numbers of people who see nothing wrong in engaging in the pre-marital sex. Notions of the social morality are inherently subjective and the Criminal Laws cannot be used as a means to unduly interfere with the domain of personal autonomy. Morality and Criminal justice are not co-extensive".

In the case titled *D. Velusamy v. D. Patchaiammaal*,¹³ Hon'ble Apex Court stated that "A woman in Live in Relationship is not entitled to maintenance unless she fulfills certain parameters. It was laid down that merely spending weekends together or one night stand would not make a domestic relationship". A bench comprising Markandey Katju J. and T.S. Thakur J. stated that, in order to get maintenance, a woman, if not married, has to fulfill the following conditions:

1. The couple must hold themselves out to society as being akin to spouses
2. They must be of legal age to marry
3. They must be otherwise qualified to enter in to legal marriage, including being unmarried
4. They must have voluntarily cohabited and hold themselves out to world as being akin to spouses for significant period of time".¹⁴

Right of Maintenance to Second Wife in Case of Bigamous Marriages

It is considered that though the females have got ample of rights to claim maintenance from, but basically these are dependent upon the males and along with their willingness to share the resources and the responsibility. Men always try to restrict and deny the genuine case of the maintenance which may be awarded to the female. This kind of issue related to an attempt to escape the liability become more serious

¹⁰ AIR 2005 SC 1809.

¹¹ (2010) 5 SCC 600.

¹² *Lata Singh v. State of UP & Anr.*, AIR 2006 SC 2522.

¹³ (2010) 10 SCC 469.

¹⁴ *Ibid.*

in the case of females whose marriage is defective or void. The most important question i.e. whether such female is entitled to maintenance or not has come before the Courts on the several occasions.

In the case titled *Rampratapji Daga v. Rameshwari Rameshchandra Daga*,¹⁵ was a case where the wife filed for judicial separation under section 10 of the Hindu Marriage Act, 1955 and also for maintenance for her and the minor daughter under Section 25. The husband filed the counter claim for the annulment of the marriage, in which the factum of marriage was itself denied and claimed that marriage was void being in violation of Section 5(1) of the Hindu Marriage Act, 1955 due to subsistence of wife's first marriage. While granting the maintenance to wife, Hon'ble Apex Court laid down that, the expression used in opening part of Section 25 of Hindu Marriage Act, 1955 enabling the "Court exercising Jurisdiction under the Act" at the time of passing any decree or at any time subsequent there to grant alimony or maintenance cannot be restricted only to decree of judicial separation under Section 10 of Hindu Marriage Act, 1955 or Section 13 of Hindu Marriage Act, 1955 while granting divorce under the Act. When the legislature has used such wide expression, as at the time of passing any decree, it encompasses itself, all kind of expressions such as restitution of conjugal rights under Section 9, Judicial Separation under Section 10, proceedings under Sections 11 & 12 of the Hindu Marriage Act, 1955. Keeping in to consideration the present state of statutory Hindu law, a bigamous marriage may be declared illegal being in the contravention of provisions of the Act, but it cannot be said to be immoral so as to deny even the right of Alimony and maintenance to a spouse economically weak and financially dependent. It is with the purpose of not rendering a financially dependent spouse destitute that Section 25 enables the Court to award maintenance at the time of passing of any type of decree resulting to breach in marriage relationship.

In case titled *Arun Kumar Nayak v. Urmila Jena*,¹⁶ the husband contended that he married the claimant during the subsistence of first marriage whereas the claimant produced the cogent evidence in relation to her marriage. No proof of rebuttal was produced by the husband in relation to second marriage or regarding the solemnisation of the first marriage. The claimant was held not to be the 'second wife' but 'lawfully wedded wife' and was held to be entitled for the maintenance.

In the case titled *Smt. Narinder Pal Kaur Chawla v. Manjeet Singh Chawla*,¹⁷ while granting the relief to the second wife under Section 18(2) of the Hindu Adoption and maintenance Act, 1956 it was laid down that under the section; it gives entitlement to the female to claim maintenance from her husband, even if he has other wife living. It was laid down that legislature has carved out distinction between the 'Second Wife' and the 'Concubine'. It was further stated that if the legislature had not to take care of 'Second Wife' and she had to denied maintenance just because her marriage being void, legislature would not have incorporated provisions like clause (d) in sub-Section (2) of Section 18 of the Act of 1956 or would have clarified that this clause was added only to take care of the bigamous marriages performed prior to the Hindu Marriage Act, 1955 came in to force. It was further laid down that the Hindu male cannot take advantage of his own wrong by not disclosing the factum of his wife marriage and maintains a relationship with the second wife for long 14 years.

Conclusion

The right to maintenance is an essential element of social justice, aimed at protecting women from destitution and ensuring their right to live with dignity. Despite personal law differences, statutory provisions like Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (formerly Section 125 CrPC) provide a uniform remedy for women across all religions.

¹⁵ AIR 2005 SC 422.

¹⁶ AIR 2010 NOC 718 (Ori).

¹⁷ AIR 2008 Del 7.

The Indian judiciary has played a proactive and transformative role in interpreting maintenance laws to uphold constitutional values such as equality, dignity, and non-discrimination. Through landmark judgments, the courts have expanded the scope of maintenance, provided clarity on legal ambiguities, and emphasized the timely and fair enforcement of maintenance orders.

In conclusion, while legal reforms have laid a strong foundation for protecting women's rights, judicial interpretation and enforcement remain crucial to translating these rights into real-world protections. Continued judicial vigilance, along with legal awareness and institutional support, is essential to ensure that every woman can access her rightful entitlements and live a life of dignity and security.