

Implementation of the Provision of Maintenance of Women: A Comparative Study of Various Existing Laws

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INTRODUCTION

The right to seek maintenance is recognized under various laws. Each one is different from one another. Maintenance in most cases is due to the fact of marriage. Family ties and obligations, whether more or less, call for maintenance. To obtain maintenance litigation takes the shape of legal battle in various countries and it is also in India. The government tries to solve the problem by passing certain legislative acts. Statutory Acts try to solve the problem of wives, children, and old parents who cannot maintain themselves as they have no income sources of their own. Maintenance provisions among various communities in India and Bangladesh are enshrined in the personal laws and statutory laws for Hindus and Muslims. Concerning Parsis, Jews and Christians followed the common law of England along with equitable relief of equity, justice and good conscience. This article examines the implementation of maintenance laws for women in Bangladesh, India, Pakistan and the United Kingdom, highlighting key legislative frameworks and judicial interpretation.

The Concept of maintenance

The root word of maintenance is maintained which has been derived from the French term ' *Maintenir*, and the Latin word. The French word Main is identical to Manus, which means Hand and *tenir* is identical to term, *Teneo* ' which means to hold.¹

The literal meaning of maintenance is to hold hands. It supports and holds a dependent person during vagrancy and destituteness. It has been elaborately described as the supply of necessities of life and livelihood, the furnishing by one person to another for his support, which one person is bound by the law to give another.

The terms maintenance and alimony come from English Matrimonial law and have a technical meaning. From Corpus juris, alimony is the allowance required by the law to be made to the wife out of her husband's estate for her support either by the matrimonial suit or its termination where the marriage is valid and established in society if she proves herself the validity of marriage entitled to separate maintenance.

In modern English law, alimony and maintenance have developed into what are called financial provisions or property adjustments, and any party can claim maintenance against the other party.

Significance of the study

Maintenance refers to the payment by which a man is obliged to give his family. Maintenance relief is considered a supplementary relief. Although maintenance should be gender-neutral and applicable to both men and women, from the greater perspective of society, many women are still being denied the right to maintenance. Women's rights have been restored, but they will become fruitful only when the mindset of society is changed. Women should develop themselves educationally, economically and socially for their well-being, and then they can understand their rights.

¹ New Webster Dictionary, 902 (College Edition)

Hindu Law Relating to Maintenance

With the passage of time, Hindu law will be codified regarding marriage, succession, adoption, and maintenance.

- The Hindu Marriage Act of 1955,
- The Hindu Adoption and Maintenance Act of 1956,
- Hindu Succession Act of 1956,
- Mahomedan Law,
- The Muslim Women (Protection of Rights on Divorce Act) of 1986,
- The Code of Criminal Procedure of 1973,
- The Special Marriage Act of 1954,
- The Dissolution of Muslim Marriage Act of 1939,
- The Convert's Marriage Dissolution Act of 1866,
- The Family Courts Act of 1984,
- The Muslim Personal Law (Shariat) Application Act of 1937,
- The Divorce Act 1869,
- The Parsi Marriage and Divorce Act of 1936,
- Jewish Marriage and Divorce Act of 1936,
- Jewish Marriage and Maintenance provision,
- The Jammu and Kashmir Hindu Marriage Act of 1980,
- The Indian Christian Marriage Act of 1872,
- The Transfer of Property Act of 1882 and
- The Code of Civil Procedure 1976.

Also, modern sources of Hindi law consist of equity, justice, good conscience, precedent and legislation.

Law of Maintenance in India

In India, major provisions and corresponding laws are Hindu law, Muslim law, and The Code of Criminal Procedure, 1973. The Chapter has been divided into the following parts:

- The Hindu Adoption and Maintenance Act, 1956
- The Hindu Marriage Act, 1955
- The Muslim Women (Protection of Rights on Divorce) Act, 1986
- Maintenance under the Special Marriage Act, 1954
- Maintenance under the Indian Divorce Act, 1869
- Maintenance under the Parsi Marriage and Divorce Act, 1936
- Maintenance of Parents and Senior Citizens Welfare Act, 2007.

Law of Maintenance existing in Bangladesh

In Bangladesh, the maintenance rights of Muslim women are primarily governed by Islamic sharia law and the Muslim Personal Law. A husband owes a responsibility to support his wife throughout the term of the marriage and, after divorce, during the iddat period. The iddat duration typically extends to three months, during which the husband is obligated to keep his estranged wife. Maintenance subsequent to iddat is not obligatory and typically puts divorced women in distress. Efforts have been made to rectify this, but it is still challenging to support divorced women with long-term maintenance. For Hindus, The Hindu Married Women's Rights to Separate Residence and Maintenance Act 1946, The Family Court Ordinance, 1985 and The Hindu Women's Rights to Property Act 1937 are applicable for determining the right of maintenance. The following are the Acts:

- The Hindu Married Women's Rights to Separate Residence and Maintenance Act 1946
- The Family Court Ordinance, 1985
- The Hindu Women's Rights to Property Act of 1937

- Parsi Marriage and Divorce Act 1865
- Parsi Marriage and Divorce Act, 1936
- Parsi Marriage and Divorce (Amendment) Act, 1940
- Parsi Marriage and Divorce (Amendment) Act, 1988
- The Divorce Act, 1869
- The Family Court Rules, 1985
- The Muslim Family Court Ordinance, 1961
- The Muslim Family Court Rules, 1961
- Muslim Marriage and Divorce(Registration) Act, 1974
- Muslim Marriage and Divorce(Registration) Rules, 1975
- Muslim Divorce Act, 1939
- The Parents Maintenance Act, 2013

The Hindu Married Women Rights to Separate Residence and Maintenance Act of 1946²

A Hindu married woman is entitled to live separately and receive maintenance from her husband on one or more of the following grounds:

- If he suffers from any loathsome disease that was not contracted from her.
- If he is guilty of cruelty towards her, making it unsafe or undesirable for her to live with him.
- If he deserts her, he abandons her without her consent or against her wishes.
- If he remarries.
- If he ceases to be a Hindu by converting to another religion.
- If he keeps a mistress in the house or habitually resides with a concubine.
- For any other justifiable cause.

Provided that a Hindu married woman is not entitled to separate maintenance and residence from her husband under the following conditions: if she is unchaste, if she ceases to be a Hindu by converting to another religion, or if she unjustifiably fails to comply with a court decree for the restoration of marital rights.. The Court will determine the amount the husband should pay to the wife, taking into account the social standing of both parties and the husband's financial means.

The Hindu Adoption and Maintenance Act, 1956³

A Hindu wife is entitled to maintenance from her husband during her lifetime. She may live separately from him without losing her right to maintenance under the following circumstances:

- If the husband abandons her without reasonable cause or her consent.
- If he neglects her willfully.
- If he treats her with such cruelty she has a reasonable fear for her safety.
- If she continues to live with him.
- If he has another wife living.
- If he keeps a concubine in the same house or frequently resides with a concubine elsewhere.
- If he converts to another religion and ceases to be a Hindu.
- If there are other valid reasons justifying her decision to live separately.

However, a Hindu wife is not entitled to separate residence and maintenance if she is unchaste or if she herself converts to another religion.

² Section 2The Hindu married Women Rights to Separate Residence and Maintenance Act 1946

³ Secction18The Hindu Adoption and Maintenance Act, 1956

Maintenance of widowed daughter-in-law⁴

A Hindu wife, whether married before or after the commencement of this Act, is entitled to maintenance from her father-in-law after her husband's death, provided she cannot support herself through her own earnings or property. If she has no property, she must also be unable to receive maintenance from the estate of her husband, her father, her mother, or her children and their estates. The obligation for maintenance will not be enforceable if the father-in-law lacks the means to provide support from any ancestral property in his possession, particularly if the daughter-in-law has not received any share. This obligation will end upon the remarriage of the daughter-in-law.

Amount of Maintenance

It shall be at the discretion of the Court to determine whether maintenance shall be awarded under the provisions. In determining the amount of maintenance to a wife, children or aged infirm parents under this Act, regard shall be had to— The following factors should be considered: the positions and status of the parties involved; the reasonable desires of the claimant; whether the claimant is justified in living separately; the value of the claimant's property and any income generated from it, including earnings from their own work or other sources; and the number of individuals entitled to maintenance under this Act.

The Hindu Marriage Act 1955

Maintenance *pendente lite* and expenses of proceedings⁵: The Court is empowered, at the request of either the wife or the husband, to order the respondent to pay the petitioner for the cost of the proceedings. The Court can also order the respondent to pay a sum during the proceedings monthly, taking into account the income of the respondent as well as the income of the petitioner. It should be noted that applications for cover of the proceeding fees and the monthly sum should be determined within sixty days from the date of notice made to either the husband or wife. This is in relation to cases relating to Permanent Alimony and Maintenance⁶, the court order that the respondent shall pay the applicant for her maintenance and support, such as a monthly or periodical sum for a term not exceeding the applicant's life to the respondent's income and other property. If the Court is convinced that the party in whose favour an order was issued has not remained faithful, or if this party is the husband has engaged in intimate relations with another woman outside of marriage, the Court may, upon request from the other party, change, modify, or revoke any such order.

The Divorce Act of 1969

Alimony *pendente lite*⁷ A wife may file a petition for alimony while the divorce proceedings are underway. This petition must be served to the husband. If the Court is satisfied with the truthfulness of the information provided in the petition, it may issue an order requiring the husband to pay alimony to the wife for the duration of the proceedings. However, the amount of alimony awarded shall not exceed one-fifth of the husband's average net income for the three years preceding the date of the order. Alimony will continue to be paid in the event of a decree for divorce or annulment until the decree is finalized or confirmed. In the case of the Power to order permanent alimony⁸, The High Court Division may, upon issuing a decree absolute that declares a marriage dissolved or a decree of judicial separation obtained by the wife, order that the husband provide the wife with a certain gross sum of money or an annual sum for a term not exceeding her lifetime, based on the husband's financial capacity and the conduct of both parties. In such cases, the Court may also order the husband to pay the wife a specified monthly or weekly amount for her maintenance.

⁴ Section 19 The Hindu Adoption and Maintenance Act, 1956

⁵ section 24 Hindu marriage Act 1955

⁶ section 25 of Hindu marriage Act 1955

⁷ section 36 the Divorce act 1969

⁸ section 36 of the Divorce Act 1969

The Parsi Marriage and Divorce Act of 1936

*Alimony pendente lite*⁹, if the wife does not have an independent income satisfactory for her support and the necessary expenses of the suit, the Court may order the husband to pay her monthly or weekly during the suit such sum not exceeding one-fifth of her husband's net income considering the circumstances of the parties. In the case of Permanent alimony¹⁰ The Court may order that the husband shall be paid maintenance while the wife remains chaste and unmarried to the satisfaction of the Court, to secure to the wife such gross sum or such monthly or weekly payment of money for a term not exceeding her life or make such monthly payments to the wife for her maintenance and support.

The Special Marriage Act of 1954

*Alimony pendente lite*¹¹, the district court finds that the wife does not have sufficient independent income to support herself and cover necessary expenses. Therefore, the Court orders the husband to pay her the costs of the proceedings and to provide a weekly or monthly amount, considering the husband's income. Provided that the application for payment of the expenses and any weekly or monthly amount during the proceeding should be resolved within sixty days from the date of service of notice on the husband. In the case of Permanent alimony and maintenance¹² any court order that the husband shall secure to the wife for her maintenance and support on the husband's property such gross sum or such monthly or weekly payment of money for a term not exceeding her life.

Convert's Marriage Dissolution Act of 1866

Power to Court to award alimony¹³ The Court finds that the wife does not have enough separate property to support herself appropriately according to her status in life or to pursue or defend the case. Therefore, the Court may order the husband to provide the wife with sufficient funds for her legal expenses and maintenance while the case is ongoing.

If a husband files a suit against his wife, the Court may issue a decree requiring the husband to provide a financial allowance for the wife's maintenance for the rest of her life, as the Court deems fair, taking into account the conditions and social standing of both parties. Any allowance granted will terminate if the wife remarries.

The Hindu Woman Right to Property Act of 1937

When a Hindu governed by the Dayabhag School of Hindu Law dies intestate, leaving behind property, or when a Hindu governed by any other school of Hindu Law or customary law dies intestate, leaving separate property, his widow or, if there is more than one, all his widows together shall be entitled to the same share as a son regarding the property for which he dies intestate.

If there is no surviving son from a predeceased son, then the widow of that predeceased son shall inherit in the same manner as a son. If there is a surviving son or grandson from the predeceased son, she shall inherit as a grandson would. This same provision applies similarly to the widow of a predeceased son of a predeceased son.

When a Hindu governed by any school of Hindu Law other than the Dayabhag School, or by customary law, dies while having an interest in Hindu joint family property, his widow will inherit the same interest in that property as he himself had. Any interest that a Hindu widow gains under this provision will be a limited

⁹ section 39 of the Parsi Marriage and Divorce Act 1936

¹⁰ section 39 of the Parsi Marriage and Divorce Act 1936

¹¹ section 34 of the special marriage Act 1954

¹² section 34 of the special marriage Act 1954

¹³ Convert's Marriage Dissolution Act, 1866

interest known as a Hindu Woman's Estate; however, she will still have the same right to claim a partition as a male owner.

It is important to note that these provisions do not apply to an estate that, by customary or other rules of succession or by the terms of the grant relevant to it, descends to a single heir, nor to any property for which these provisions do not apply.

The Family Court Ordinance of 1985

Establishment of Family Courts¹⁴: There will be as many Family Courts as there are Courts of Assistant Judges. All Courts of Assistant Judges will serve as Family Courts under this Ordinance. All Assistant Judges will assume the role of Judges in the Family Courts.¹⁵, A Family Court has sole authority to hear and resolve matters related to divorce, restitution of conjugal rights, dower, maintenance, and the guardianship and custody of children.¹⁶ Every suit must be initiated by submitting a plaint to the Family Court that has jurisdiction over the area where the cause of action has wholly or partly arisen, or where the parties reside or last resided together. In cases involving the dissolution of marriage, dower, or maintenance, the Court in the jurisdiction where the wife ordinarily resides also has the authority to hear the case.

If a plaint is submitted to a Court that lacks jurisdiction, it will be returned to the plaintiff for filing in the appropriate Court. The Court returning the plaint will endorse it with the date of its presentation and return, the name of the party who submitted it, and a brief statement explaining the reason for the return.

The plaint must include all relevant facts related to the dispute and must contain a schedule listing the names and addresses of witnesses intended to be presented in support of the plaint. However, with the Court's permission, the plaintiff may call additional witnesses at a later stage if the Court deems such evidence necessary for the interest of justice.

Additionally, the plaint must contain the following information:

- The name of the Court where the suit is filed;
- The name, description, and residence of the plaintiff;
- The name, description, and residence of the defendant;
- A statement indicating if the defendant is a minor or a person of unsound mind;
- The facts constituting the cause of action, along with the place and date when it arose;
- Facts demonstrating the Court's jurisdiction;
- The specific relief sought by the plaintiff.

If the plaintiff relies on a document in their possession as evidence to support their claim, they must present it in Court when filing the plaint. At that time, a true or photocopy of the document should be filed with the plaint, and the document must be included in a list attached to the plaint. If the plaintiff relies on a document not in their possession, that document should also be listed and include a statement of who currently holds it.

Mahomedan Law relating to Maintenance

In *mahomedan* law, there are provisions for maintenance of wife, children and grandchildren, parents, grandparents and of other relatives. Father who has sufficient means but neglects or refuses to maintain his legitimate or illegitimate children who are unable to maintain themselves may be compelled.

¹⁴ Section 4 of the Family Court ordinance 1985

¹⁵ Section 5 of the Family Court ordinance 1985

¹⁶ Section 6 of the Family Court ordinance 1985

The Dissolution of Muslim marriage Act of 1939¹⁷

A woman married under Muslim law is entitled to seek a decree for the abolition of her marriage if her husband has ignored or failed to provide for her maintenance for a period of two years.¹⁸ A woman may obtain a decree for the dissolution of her marriage if she was married by her father or guardian before reaching the age of fifteen and chose to repudiate the marriage before turning eighteen, provided that the marriage has not been consummated. Additionally, a decree for dissolution may also be granted on the grounds of cruelty.¹⁹

The Muslim Family Court Ordinance²⁰ 1961

If a husband fails to provide due maintenance to his wife, she can approach the Chairman. The Chairman will constitute an Arbitration Council to examine the case. This council can grant a certificate specifying the amount the husband is required to pay as maintenance.

Moreover, if the wife desires to oppose the amount referred to in the certificate, she can make a request for revision to the concerned Assistant Judge. The order of the Assistant Judge shall be final and shall not be questioned by any court of law.

Maintenance Right of Christian Wife

A Christian wife can claim maintenance from her husband through either criminal or civil proceedings. The involved parties may pursue both types of proceedings simultaneously, as there is no legal restriction against this. In criminal proceedings, the religion of the parties is irrelevant, which differs from civil proceedings.

The maintenance rights of a Christian wife are defined by the Indian Divorce Act of 1869. Under Section 37 of this Act, she can apply for alimony or maintenance in a civil court or High Court. The husband is obligated to pay her alimony as ordered by the Court for her lifetime.

The provisions for alimony pendente lite and permanent alimony are Sections 36 and 37 of the Indian Divorce Act of 1869, which is enforceable to the practitioners of the Christian religion. The Court may order the husband to pay the wife a lump sum amount for permanent maintenance, so that she receives a specified amount of money, or a periodic annual sum for a term not longer than her lifetime, based on the husband's ability to pay and the conduct of both parties. Additionally, the Court may decree that the husband pays the wife a reasonable amount for her monthly or weekly maintenance and support.

Maintenance Right of Parsi

The provisions contained in the Hindu Marriage Act of 1955 and Special Marriage Act of 1954 relating to custody, maintenance and education of children were first made under the Parsi Marriage and Divorce Act of 1936. Section 49 of that Act confers the same power on matrimonial Courts as are conferred in this respect on the courts by the law of civil marriages and by Hindu law. The language of the provisions under the three laws is nearly identical. All of them provide adequate safeguards for the interest of children likely to be affected by matrimonial remedies if granted under the relevant law.

In Pakistan

Similar to Bangladesh, Pakistan's Muslim women's maintenance laws are founded upon Islamic law. A husband has a responsibility to maintain his wife throughout marriage and the iddat period of divorce. The law focuses on the responsibility of the husband to provide for his wife's necessities of life, such as food, clothing and housing. While the law mandates maintenance during marriage and the iddat period there is limited provision for post-iddat maintenance which can result in economic hardship for divorced women.

¹⁷Section 2(iii)

¹⁸Section 2(ii)

¹⁹section 2(vii)

²⁰Section 9

In Nepal

In Nepal the maintenance rights of women are shaped by the combination of constitution guarantees, statutory laws and evolving judicial interpretation. These frameworks aim to ensure financial support and uphold the dignity of woman within marital and familial relationship. Nepalese law permits a wife to live separately without seeking a divorce during which the husband must continue to give maintenance. Upon divorce, the husband is obligated to support his ex-wife's livelihood.

In the United Kingdom

In the United Kingdom, maintenance laws try to attain financial fairness following the end of a marriage or civil partnership. The Matrimonial Causes Act of 1973 authorizes courts to provide for the maintenance of spouses on the basis of earnings, capacity to earn, and levels of living prevailing at the time of marriage. The orders would be short or long-term depending on circumstances. The law of the United Kingdom is also focused on just distribution of assets and incomes with regard to contributions made by both parties to the marriage as well as to the future needs of both partners.

Comparative Analysis

The maintenance of women in these countries is a balancing act between religious law, cultural practice, and evolving legal norm. Bangladesh and Pakistan adhere strictly to Islamic teachings to limit post-divorce maintenance to the iddat period. India employs both secular and religious laws to address maintenance with the courts taking an important role in interpreting the provisions to ensure the rights of women are protected. The United Kingdom's approach is secular, focusing on equitable financial arrangements post-divorce without religious consideration. On religious basis, Hindu law prescribes lifetime maintenance on specific grounds mentioned in the Act. Muslim law administers it during the iddat period. Christian and Parsi law may be granted under the Divorce Act and the Parsi Marriage and Divorce Act. Reforms on maintenance laws are still being done in this jurisdiction as it attempts to improve the economic security and status of women upon divorce. However, challenges still exist particularly in balancing religious beliefs with modern perceptions regarding gender equality and social justice.

CONCLUSION

On the detailed analysis of the various provisions incorporated under the present work considering the various legal and religious aspects there is no doubt that these are indispensable part of our legal system. However, it is also a well-established principle that law never stands stagnant on the basis of the critical appraisal of the benevolent provisions. A few changes are highly suggested to ensure maintenance for a woman, whether she belongs to any religion.

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