
ALIMONY: WEAPON FOR MALE DESTRUCTION - A CASE STUDY ON INDIAN PERSPECTIVE

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ABSTRACT

The Indian society and judicial system have always aimed toward the creation of a healthy environment for the citizens. The Indian Constitution enshrines that the citizens are provided with freedom and equality, and further ensures recognition of their rights. Maintenance or Alimony is the sum of money that the wives receive after their divorces by way of which they support the people who need children or sometimes even the parents to ensure that they receive minimum and basic needs in life. But with time the idea of maintenance or alimony changed drastically and brewed multiple unprecedented problems as well as opportunities. There are several instances when the spouses take undesirable advantage of the provision, to fulfil their greed. It has also been observed that the laws in India are still women-centric and tend to aim at the men in society when there are more instances of women harassing spouses for alimony and maintenance.

OBJECTIVE OF THE PAPER

The object of this paper is to analyse and review the concepts of maintenance and alimony while determining whether the concept of alimony has developed into a weapon for the destruction of men in Indian society. This paper while clarifying the laws also pinpoints the possible recommendation and solutions for the same.

RESEARCH QUESTIONS

There are primarily three research questions that are addressed in this paper which are as follows:

- How has the concept of alimony developed into a weapon against men in Indian Society?
- Are the laws in India women-centric?
- What preventive measures can be taken to prevent the misuse of such laws?

RESEARCH METHODOLOGY

The research conducted for this paper is secondary. This research paper aims to explore the legal and social aspects of the notion of Alimony and Maintenance in India. A qualitative approach was used for all the data collection. All the data was collected through various online sources like websites, scholarly articles, research papers, etc. The case laws are investigated from different sources such as Manupatra and SCC Online.

INTRODUCTION

The judiciary of India is such that it aims towards ensuring justice to every citizen and further our constitution provides citizens with freedom, equality, and recognition of every right. In the beginning, there was a time when women were not considered equal to men in society and they were suppressed by men. Therefore, accordingly, all the laws were focusing on saving and protecting the status of women in society irrespective of their religion, caste, or race. With the passage of time and changing traditions and beliefs, women started to near men when it comes to success, freedom, and equality and even in some aspects they are above men. But looking at the other side of the coin, it has been observed that for men the laws have become discriminatory which somewhere gives an upper hand to women in society. The same applies to that alimony and maintenance.

Alimony or maintenance is monetary compensation that is granted to the spouse who is generally unable to support himself/herself by the other spouse during or after the divorce proceedings. Even when the universal definition includes that both parties are entitled to pay the monetary compensation but when it comes to the practicality of the same, things are completely different than what they are in the paper as these compensations are generally expected to be paid by the husbands. This paper aims to analyse and review the concepts of maintenance and alimony while determining whether the concept of alimony has developed into a weapon for the destruction of men in Indian society and determine whether such laws discriminate in the name of creating an equal environment for all in the Hindu and Muslim laws, through all the secondary sources such as study materials, and books as well as the bare acts.

CHAPTER I – Alimony in India

In the situation of marriages and divorces, alimony is one of the most important matters that need to be dealt with. However, a few decades back this perception of the right to claim financial support or maintenance post-divorce was not so familiar among women as women were not considered equals and they were not aware of their rights. But as the rate of divorce is continuously on the rise in our country, people are becoming conscious of various details regarding divorce laws. In the era of feminist campaigns, the significant increase in women's education has contributed greatly to the growing applicability of alimony in divorce cases.

Alimony or maintenance can be defined as spousal support that is considered an obligation provided by the law in almost every country. According to the marriage conventions and beliefs of Indian society, a marriage is a sacred union and once the knot is tied, the duties and obligations of marriage are carried out for the rest of the life even if there is a mental disparity or a physical separation between the spouses.

The husband is ought to take the responsibility for the maintenance of his wife, despite all their issues and complications in marriage. Maintenance, when considered from the point of view of law is defined as the financial assistance given to either of the litigating parties on the application made by them only through an order passed by the court having jurisdiction to do so, it is the act of bearing the financial expenses or reducing the burden of the spouse whose burden increases and economical position gets materially changed due to the decree of divorce.

As in the post-Vedic times, the situation of women started degenerating which further led to

the weakening of their stake in society as well as unequal treatment with them. Thus, this further led to the implementation of several laws in favour of women's rights which included the provisions of alimony and maintenance. In India, the Code of Criminal Procedure came into force in which Section 125 deals with the provisions of maintenance and grants maintenance to wives, children, and parents irrespective of any religion or personal law and it has provided for a better status of women by granting rights in a dignified manner, and it makes mandatory to maintain the dependent spouse, children, and parents in India.

CHAPTER II – Alimony Under Personal Laws in India

In India, under Hindu Law, The Hindu Marriage Act, of 1955 and the Hindu Adoption and Maintenance Act, of 1956 deal with the provisions of granting maintenance while under Muslim Law, the provision of maintenance is regarded as obligatory for a husband to maintain his wife irrespective of his financial situation. Hence it can be said that in Indian personal law, the term maintenance has been used in a wider sense.

2.1 Alimony under Hindu Personal Law

The Hindu Adoptions and Maintenance Act, of 1956 defines maintenance as a provision for clothing, residence, food, education, medical attendance, and treatment, and in cases of an unmarried daughter, it includes reasonable expenses on her marriage.

The social structure of Hindu society dictates that the law of maintenance has a special significance when it comes to Hindu law and all the members of the joint family irrespective of social and economic status and age, either spouse are entitled to maintenance. The Hindu Law has clearly explained that a man is under a duty to maintain certain close relations such as wife, children, and their aged parents. It is also mentioned that a person who inherits or takes a certain asset from someone has the obligation to maintain the latter dependent.

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 also envisages certain situations where it may become impossible for a wife to continue to reside and cohabit with the husband, yet she may not be able to break the matrimonial tie for various reasons ranging from growing children to social stigma.

Under Section 24 of the Hindu Marriage Act, 1955, 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 at 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 for litigation expenses must 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.

Further, as defined under Section. 3(b)(i) of Hindu Adoption and Maintenance Act, 1956 maintenance is a "provision for food, clothing, residence, education, and medical attendance and treatment." In the case of an unmarried daughter, it also includes her marriage expenses.

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 wilfully neglected her.
- b. The husband has treated her with cruelty.
- c. The husband is suffering from virulent forms 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 be a Hindu by conversion to any other religion.
- g. Any other cause justifying her separate living.

As the norms of society dictate, the wife's main task has been the management of her husband's household.¹ According to societal norms, the wife's function to engage in earning wealth is not considered and most wives are still economically dependent on their husband, and it is reflected in the law by the rule that a wife can pledge the credit of her husband for necessities.

The obligation of the husband of maintaining his wife begins after marriage and it is irrespective of the fact whether he has or does not have any property or source of income.² Hindu law also gives maintenance to an unchaste wife if she continues to live with her husband.

¹ Internet Public Library. n.d. *Maintenance of Life Essay*. [online] Available at: <<https://www.ipl.org/essay/Importance-Of-Patrilineal-Family-PC2JDW9E2SU>> [Accessed 16 October 2021].

² Laxmi Devi v. Nagana, 1925 Mad. 757

According to recent Hindu laws, a wife is entitled to maintenance even after the dissolution of the marriage.

Thus, a wife's right to maintenance rises in the following situations:

1. According to Section 18(1) Hindu Adoptions and Maintenance Act, in all patriarchal societies, it has been considered a duty of the wife to live with her husband and perform all the conjugal duties alongside this obligation of the wife, the husband is under an obligation to maintain his wife, and this begins with marriage. And this husband's obligation to maintain her wife comes to an end only when she leaves him without any good cause or his consent.
2. According to Section 18(2) Hindu Adoptions and Maintenance Act, the wife who lives apart with the consent of the husband is entitled to maintenance and she is also entitled to maintenance if she lives separately from her husband for a justifiable cause. This section also deals with and lays down the grounds on which a wife may live separately and claim maintenance from her husband, such as cruelty, leprosy, another wife's living, conversion, etc.

According to Section 24 and Section 25 of the Hindu Marriage Act, in ***Dr. Kul Bhushan v. Raj Kumari and Anr***³, the court decided the amount of maintenance and observed that it is determined based on the facts of each case and declared that if the court enhances or molds the amount of maintenance and such a decision should be justified and it further held in the case that it would be fair to provide the wife with 25% of husbands net salary as maintenance.

2.2 Alimony under Muslim Personal Law

According to the Muslim law of maintenance, “*Nafqah or Nafaqa*” is the obligation of a man that arises only if his wife has no means or property to maintain herself. According to these laws, the right of a wife to be maintained by her husband is absolute and the husband is bound to maintain his wife in a valid marriage even if there is no agreement in this regard. However, the husband is not bound to maintain the wife of a void or irregular marriage.

In a case where the consummation of marriage is not possible due to his wife's ill health or old age, it will not make her not guilty of transgressing her matrimonial obligations towards her husband and still will be liable to claim maintenance from her husband. The wife can also claim

³ 1971 AIR 234

future maintenance on account of an agreement, as sustainable maintenance in cases of ill-treatment.

Under the Muslim Women (Protection of Rights on Divorce) Act, 1986, A divorced woman is entitled to get a reasonable and fair amount of maintenance during the Iddat, a period in which a woman must observe the death of her husband or after divorce during which she cannot marry another man, from her former husband's family.

Under Muslim law a divorced woman who chooses to remain unmarried after the Iddat period, if she is unable to maintain herself, would be entitled to get maintenance from her relatives who would inherit her properties upon her death.

CHAPTER II – The Concept of Alimony under the Code of Criminal Procedure

Section 125 of the Code of criminal procedure provides that, maintenance can be claimed by the wife, children, and parents, and this provides for a speedy, effective, and rather inexpensive remedy against persons who neglect or refuse to maintain their dependent wife. The only statutory provision that allows the magistrate to award maintenance either from the date of the order or from the date of application is Section 125(2) CrPC. According to (b) part of the explanation under Section 125, the term wife includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.⁴ Therefore, the provision for maintenance under this section extends to divorced wife also and not only married wives. Maintenance under this law can only be claimed by the wife but not by the husband.

In the case of *Savitaben Somabhai Bhatiya v. State of Gujarat*⁵, the Supreme Court mentioned that turn wife appearing in Section 125 means only legally wedded wife but in some recent judgments of *Chanmuniya v. Virendra Kumar Singh Kushwaha*⁶, the Supreme Court ruled that in cases where the woman who was in marriage like relation will not be considered as a legally wedded wife but they are still entitled and can still claim for maintenance under the Protection of Women from Domestic Violence Act, 2005 as per law.

CHAPTER III – Men in the Era of Women-Centric laws

Once upon a time, women-centric laws were made to benefit the women who were considered

⁴ Section 125(b), Criminal Procedure Code, 1973

⁵ (2005) 3 SCC 636

⁶ (2011) 1 SCC 141.

as an oppressed section in society, but since then with a change of time, these women-centric laws have become like a weapon to affect the rights of the males who are being harassed by false charges and claims by the women against them. The idea of women being an oppressed section has somewhat eroded with the passage of time, considering some exceptions, but now the news of young men committing suicide has become regular headlines in the newspapers as there have been incidents when men are being charged with a false domestic violence case and was proven innocent but after returning to his normal routine things were not the same for him and he lost his job and people around him were still treating him like a criminal and making sarcastic simple questions and remarks against him.

Now only if we consider the claiming of maintenance scenario of India, Section 125 of Code of Criminal Procedure, 1973 mentions that a person is supposed to maintain his wife, his children, and his parents who are unable to maintain themselves, so even if the wife owns the income is not enough to support her and the husband must provide her monetary support.

Section 18 of the Hindu Adoption and Maintenance Act states status a Hindu wife has a right to be maintained by the husband throughout her lifetime. Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 mentions that divorced Muslim women are entitled to be maintained by their ex-husband during the period of Iddat and even after Iddat if she does not get remarried. Section 37 of the Divorce Act, of 1869 provides that the husband must provide maintenance to his wife throughout her life when a decree of dissolution or decree of judicial separation is passed.

In the very process of creating a safer environment for every woman in the country, we have forgotten to consider the male section of society, who are some way or another other suffering from all the women-centric laws. Some women still need these laws but there must be some control over the enforceability of the same.

Theoretically, a man and a woman are considered equals in the eyes of law, however, this burden of spousal support generally falls on the man. It is believed that spousal support has no gender bias however the cases and statistics depict a different story. For example, a Muslim husband, who has an insufficient income cannot claim maintenance. No other law apart from the Hindu Marriage Act, of 1955 talks about the maintenance of a husband unable to maintain himself.

Even when a wife earns significantly more than her husband, only a portion of alimony can be waived. However, this rule is subject to the directions of the court. The court may examine the income and assets of both the husband and his wife and determine the variance of the income. And if it is observed that the wife can maintain a similar standard of living even after getting separated from her husband, the portion of the said alimony may be waived.

A bench comprising Justice Indu Malhotra and Justice R. Subhash Reddy noted in a recent ruling that the amount of maintenance should not be so high that it loses the ability of the spouse to care for it and should not be so small driving a penury-dependent group. Therefore, they should not be extremists and consider the rights and responsibilities of both parties. Alimony is often considered as a wrangle that is accompanied by most divorce cases where one partner who is financially in a better standard would provide for the spousal support and care for the other one. However, the amount should be of such a nature that it does not become a burden on the person who is supposed to provide financial support.

CHAPTER IV – Alimony as a weapon for Male Destruction

There have been several instances where it has been seen that alimony has been used as a weapon in society.

In *Somdatta Chatterjee nee Raychaudhari v. Anindya Chatterjee*⁷, the Calcutta High Court dismissed the case of alimony pendente lite and upheld the decision of the trial court and said that it was justified. The court further clarified that Section 36 is for the “wife who has no independent income sufficient to maintain herself”.

In *Swapan Kumar Banerjee vs. State of West Bengal & Anr.*⁸, the Calcutta High Court noted that just because the wife did not file an application for maintenance during the divorce case does not mean she cannot file it later. The court further stated that it is her choice to file an application for maintenance whenever she feels like it. The court further noted that the wife is an architect who passed from Jadavpur University, and therefore can earn on her own but since the husband was not able to put forward any substantial evidence of her income therefore the court held that she is entitled to maintenance.

⁷ 2019 SCC Online Cal 1627

⁸ CRIMINAL APPEAL NO(S).232-233 OF 2015

Further, under Section 125 of the Code of Criminal Procedure, if the husband is unable to provide for the maintenance of his wife a warrant may be issued against him for such recovery. The non-payment of such maintenance might lead to legal consequences. Once the court has passed an order regarding an alimony amount the spouse who is supposed to provide monetary support needs to pay the decided amount within the given timeline. If this amount is not cleared the court may take action against that person and may also impose penalties. There are a lot of instances where the court sentenced imprisonment as well as imposed a fine on those who did not clear all dues regarding maintenance.

There are several examples of the court punishing the husband for not paying maintenance on time in an article published by the Hindustan times the Supreme Court sentenced a man to 3 months of imprisonment for contempt of court for not paying an outstanding amount of ₹2.60 crores of maintenance to his alienated wife.

Hence it can be concluded that even when in papers men and women are considered equals in the eyes of law, it is observed that the practicality of the matter is completely different. If a man wants a divorce, he is expected and bound to maintain his wife and children irrespective of his economic conditions. At the same time even when the woman earns significantly enough to support herself, she still expects alimony and maintenance. Even though the provisions like Section 24 of the Hindu Marriage Act are considered gender-neutral, it used as a weapon to extract money from husbands considering divorce. The laws of the society are such that women are automatically considered a damsel in distress when it comes to domestic cases and therefore awarded with hefty alimony and maintenance during the dissolution of marriage.

CONCLUSION

A marriage is considered a sacred union and it is believed that once the knot is tied, the duties and obligations of marriage are carried out for the rest of the life. The husband is bound to take the responsibility for the maintenance of his wife, despite all their issues and complications in marriage. In India, most of the society recognises it as an obligation for a man/husband to look after his wife.

Several laws recognise the rights of married women and work towards the betterment of their conditions in case of any injustice faced by their husbands but over time, these laws have transformed into a weapon that is used against men. There have been instances where alimony and maintenance have been used as a weapon to extort money from a spouse. Sections 498A

& 376 of the Indian Penal Code and section 125 of CrPC are some examples of sections that are used against men.

The notion of law is multifaceted. The law must be amended to meet the needs of the people. There should be practical usage of law should for both parties. Everything should be considered while deciding on alimony/ maintenance amount and if the husband is the one who is not self-sufficient to fulfil his needs, then he should be awarded alimony/maintenance too. Furthermore, punitive measures should also be introduced if someone asks for alimony even if he/she is pretty much self-sufficient to fulfil his/her needs. Such laws should be amended in such a way that it does not favour a particular gender but the entire community.