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Statutory Provisions related to Maintenance and its transformation in India

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Abstract

The Maintenance to be provided by the person having sufficient means generally lies on the earning member of the family in respect of Marriage, Parents and Children relation to maintenance of the other who is not able to sustain the respectable life. The maintenance claim is limited to Rs 500 per month for all dependents. The inclusion in the Code of Criminal Procedure of the right to maintenance has the great advantage of making the cures speedy and affordable. The Hindu law allows the wife to claim her husband's maintenance. But if she deviates from the way of chastity, she loses her right. The Court considers various factors such as the position and liabilities of the husband in assessing the amount of maintenance. It also judges whether the woman is legitimate to live without the husband. The Act sets out justifiable reasons. A wife or husband (who does not have an independent wage) shall bear the maintenance pendente lite (depending on the cost), even the cost of a matrimonial suit if the wife does not have an independent wage. The same principle applies to continuous maintenance payments. The Muslim Law, 1986, protects the rights of women divorced from their husbands. The law also provides for the judge to ordain the person of her relatives to inherit their properties after their death under Muslim Law and to pay such reasonable and fair maintenance for the divine as it determines fit and proper, having regard to the needs of the divine person, in the event that a divorced Muslim female cannot maintain itself after iddat has been given the term. The maintenance relief is regarded as an auxiliary relief and can only be provided when the main relief such as divorce, restitution of marital rights or judicial separation is submitted. In addition, the claim of the woman is generally defeated under matrimonial laws, when the husband is prepared to coexist.

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Introduction

The husband's obligation to maintain his wife stems from the marriage status. The right to maintenance is a personal right. Under the 1973 (2 of 1974) Code of Criminal Procedure, the right of maintenance extends not only to wife and dependent children, but also, to indigent parents and divorced women. However, the husband has sufficient means to claim the wife, etc. The maintenance claim is limited to Rs 500 per month for all dependents. The inclusion in the Code of Criminal Procedure of the right to maintenance has the great advantage of making the cures speedy and affordable. However, the divorced female has no right to maintenance claims pursuant to the Code of Criminal Procedure when she has received funds payable under customary personal law. The Hindu law allows the wife to claim her husband's maintenance. But if she deviates from the way of chastity, she loses her right. The Hindu Adoption and The Maintenance Act of 1956 codifies their right to maintenance (78 of 1956). The Court considers various factors such as the position and liabilities of the husband in assessing the amount of maintenance. It also judges whether the woman is legitimate to live without the husband. The Act sets out justifiable reasons.² A wife or husband (who does not have an independent wage) shall bear the maintenance pendente lite (depending on the cost), even the cost of a matrimonial suit if the wife does not have an independent wage. The same principle applies to continuous maintenance payments. The Muslim Women Act, 1986 protects the rights of Muslim women divorced by their husbands and provides for matters relating to them or incidental to them. The Muslim Law, 1986, protects the rights of women divorced by divorce or divorced from their husbands. The right of a divorced Muslim woman are reasonable, fair provision and maintenance to be provided and paid to her by her former husband within a period of iddat, if she herself has the proper and fair provision and maintenance for two years following the respective dates of birth of those children for the child born before or following her divorce, which are payable and payable by her former Husband, an amount equal to the more or door amount agreed to be paid to it by her family or friends or husband or any relatives of her husband or friends at the date of their marriage or at any later date in conformity with Muslim law and all the property given to her before or at the time of her marriage or after marriage; The law also provides for the judge to ordain the person of her relatives to inherit their properties after their death under Muslim Law and to pay such reasonable and fair maintenance for the divine as it determines fit and proper, having regard to

² Agarwala, R.K., Hindu Law (Codified and Un Codified), (Central Law Agency, Allahabad, 21 st Edition, 2006).

the needs of the divine person, in the event that a divorced Muslim female cannot maintain herself after iddat has been given the term.

The maintenance relief is regarded as an auxiliary relief and can only be provided when the main relief such as divorce, restitution of marital rights or judicial separation is submitted. In addition, the claim of the woman is generally defeated under matrimonial laws, when the husband is prepared to coexist. However, even if a woman is not seeking divorce or any other major matrimonial relief, she has the right of separate residency and maintenance claim only under Hindu law.³ A Hindu wife has the right, without forfeiting her maintenance right under the Hindu Adoptions and maintenance law of 1956, to reside independently with her husband. The Act sets out certain cases in which a wife cannot continue to reside and coexist with the husband, but for different reasons, ranging from growing children to social stigma, she cannot break the matrimonial bond. In accordance with Hindu maintenance laws, the wife can claim two kinds of maintenance. The burden of declaring his revenue shifts when the wife files a maintenance petition with her divorce lawyer to the husband who has the right to advocate for the maintenance request. The following are the types of maintenance according to Hindu law:

- When the wife submits a request for maintenance, the Court may grant her interim maintenance to be paid by her husband from the date the request was submitted by the wife until the day of her divorce lawyer's disbursement. It is also called Maintenance Pendente Lite and is paid in order to enable the wife to pay the legal cost. The court shall grant interim maintenance where the wife has no source of income to maintain herself at all. There are no laws which specify the amount of this maintenance and the Court decides completely how much maintenance the wife can support during the proceedings. Section 24 of the Hindu marriage law of 1955 stipulates that by means of their divorce advocate, husbands and women can apply for provisional maintenance, the husband pays the husband permanent maintenance to his wife for divorce and the amount is determined in the case of a maintenance petition lodged in India by a divorce lawyer. Section 25 of the Act states that the Court may order the husband to pay a lump sum, or a monthly maintenance, to support his wife. However, if there are any changes in her circumstances, the wife may not be eligible for maintenance.

³ Ahmad, Aquil, Mohammedan Law, (Central Law Agency, Allahabad, 21 st Edition, 2004).

Wife entitled to Maintenance: -

The Wife or the Husband are entitled to apply for interim care under section 24 of the Hindu Marriage Act of 1955 (hereinafter referred to as the HM Act). The interim maintenance claim is based on the fact that the claimant doesn't have independent income to support him/her. The provision is silent about the maintenance quantity and the quantum is determined at the discretion of the court. The pendente lite shall also be given to the claimant with no independent income and the other spouse shall provide the financial need of litigation expenses. The interim maintenance shall be payable from the date the petition has been presented to the date the suit was dismissed or the decree passed. The immediate requirements of the petitioner shall be met through interim maintenance. And pendente lite for maintenance is to provide the claimant with the litigation costs. S. 3(b)(i) of the 1956 Hindu Adoption and Maintenance Act defines maintenance as "provision for food, clothing, residence, education, and medical attendance and treatment." as after referred to in HAM ACT. It also covers their marriage expenses in the case of an unmarried daughter. The continuous maintenance provisions are contained in all personal laws and are essentially similar. But the personal laws are somewhat different.⁴

Ground must be considered by Court while awarding 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: -

1. The husband has deserted her or has wilfully neglected her;
2. The husband has treated her with cruelty;
3. The husband is suffering from a virulent form of leprosy/venereal diseases or any other infectious disease;
4. The husband has any other wife living;
5. The husband keeps the concubine in the same house as the wife resides or he habitually resides with the concubine elsewhere;
6. The husband has ceased to a Hindu by conversion to any other religion;
7. Any other cause justifying her separate living.

Quantum of Maintenance: -

In determining the quantity of maintenance, the means and capacity of a person against whom the award has to be granted should be considered. In fact, it is not only the real income for a husband, but also the potential income of the husband that should be taken into account, either

⁴ Baillie, Neil B.E., Digest of Muhammadan Law, Vols. I & II, (Smith Elder & Co., London, 1875).

is a presumption that each person is able to earn and sustain his wife. The husband's income is an important factor that the court must consider when fixing the maintenance quantity. The disposable revenue is to be taken into account and not the brutal income. Section 23(2) of the HAM ACT sets out the factors to be taken into account when determining whether the support payable to the wife and the children of the parents, and the old parents is: the party's position and status, the applicant's reasonable desire, the applicant's income and value of their property and the number of individuals, if a separate living is justified or not; Even if one of those reasons exists to favour the wife, she is not entitled to relief if she has committed herself to adultery or has thus ceased to be a Hindu religion. Here it should be noted, too, that marriage must be a valid marriage to be entitled to relief. In other words, if marriage is illegal, the marriage between the husband and the wife is not existing and, consequently, the wife has no right to maintenance. However, the presumption of marriage is given more weight thanks to judicial activism in particular, and the barriers to support are removed.⁵

Section 18 of the Hindu Acceptance and Maintenance Act and Section 25 of the Hindu Marriage Act and Section 125 of the Code of Criminal Procedure are separated: -

- a) Only women can claim maintenance under section 18 of the Hindu Adoption and Maintenance Act and section 125 of the Criminal Code of Procedure, while both spouses can do so pursuant to section 25 of the Hindu Marriage Act.
- b) The wife can claim maintenance and live separately from her husband while she remains married, under section 18 of the Hindu Adoption & Maintenance Act and Section 125 of the Criminal Procedure Code. In accordance with Section 25 of the Hindu Marriage Act, a spouse may claim maintenance and continuous alimony, but only after a judicial or divorce separation. There is no question of the usefulness of Section 25, Hindu Marriage Act but Section 18, Hindu Adoption and Maintenance Act when marriage remains. In both acts the word "wife" has no identical meaning. In proceedings under one enactment, the Court cannot grant maintenance relief in proceedings under the other.
- c) The Hindu woman envisages only the spouse of a valid marriage, pursuant to Section 18 of the Hindu Adoption and Maintenance Act and Section 125 of the Code of Criminal procedure. Even a wife of void marriage may claim maintenance pursuant to Section 25 of the Hindu Marriage Act.

⁵ Diwan, Paras & Diwan, Piyushi, Family Law, (Allahabad Law Agency, Allahabad, 2 nd Edition, 1994).

d) Section 18 of the Hindu Adoption and Maintenance Act seems, apparently, to have overridden Section 25 of the Hindu Marriage Act because both sections of the Act have the same provisions and the 1956 Act (i.e., HMA) and the 1955 Act (i.e., HMA) in relation to the maintenance of a woman cease to have any effect vis maintenance of a wife.⁶

Maintenance of Children: -

Parents – mother and dad, both legit and illegitimate, must be protected in the same way by section 20 of HAM ACT. This is a unique feature of the Hindu law in which both parents maintain children equally. S.20 (2) of the HAM ACT states that the minority children have the right to care. This daughter's right to maintenance is extended until she is married. The parents must bear their marriage costs. However, even if she cannot maintain herself after marriage, a married minor daughter can claim maintenance under Section 125 of the CrPC. When a request under sections 24 and 25 of HM ACT is filed, children also have the right to be maintained if the requester is responsible for the maintenance of the requester i.e., the recipient's right to maintenance also includes the recipient's right to child support. Section 26 of the HM ACT also requires the court to make interim orders and provisions in any proceeding under the Act from time to time with regard to custody, maintaining and education of minor children.

Maintenance of Parents: -

S. 20 of HAM ACT also sets a requirement of support for old and sick families who are unable to keep their personal income and property from themselves. The HAM ACT is India's first statute that obliges children to keep their parents. The obligation to maintain is not just for the children, but also for the children.

The mother as well as the dad have an equal right to claim maintenance under HAM ACT. Steps in the term parent also belong to the explanation for this section. It should be noted, though, that the section imposes a duty to keep only those parents who are unable to remain and thus the obligation to keep the parents who are not sick and unable to live, is only moral.

In *Shobha Suresh Jumani v. Appellate Tribunal and forfeited and others*, Wife living separately entitled to claim support only provides that the wife of the Hindu husband is allowed to remain separately on her husband's ad during her life, as provided for by subparagraph (2), is entitled to claim maintenance of husband's husband.

⁶ Kader, S.A., *Muslim Law of Marriage and Succession in India*, (Eastern Law House, Kolkata, 1998).

Deserted wife is entitled to maintenance for P. Srinivasa Rao v. P. Indira: The provisions set out in sections 18 and 20 cannot be interpreted in this case to defeat justice of the deserted wife and of her dependent child. Food, clothing residence, are also otherwise conditions that are essential to human survival. The wife and children cannot be denied or postponed if such essential requirements are the statutory and moral duty of the husband.

A petition was filed under section 125 of the CrPC in Ram Chandra Giri v. Ram Suraj Giri, when a minor son's father had neglected to maintain his family. The father argued that the son had a good physicality and was healthy, and that he was therefore able to fight for himself. The Court denied the arguments and declared that it would not be minor to apply the concept of potential earning capacity to young children, as that would defeat the legislation itself.⁷

Maintenance Under Muslim Personal Law: -

"To support life, like food, clothing and lodging, many are confined to food too exclusively. In law, it means feeding, clothing and housing. In common practice, it means food. Nafaqa means what a man spends on his children. Maintenance includes food, clothing and lodging, although it is restricted to the first time in common." The main maintenance principles may be recounted as follows: if (i) a person has odd property, (ii) has a relationship to a debtor or to a wife or child, and (iii) the borrower is able to support that bond. This applies in all cases to the person concerned. The maintenance obligation is also covered by the economic factor.

Maintenance to Wife: -

He or she is Muslim or kitabyya, poor and rich, happy or unfriendly, young or elderly, is the responsibility of a husband to maintain their wife. However, for married sex, the wife is too young and has no right to her husband's maintenance, whether she lives in his house or with her parents.

To some degree, the observation of Tyabji, J.: a Mussulman's wife who defies her husband and refuses to live with him and charges him with scandalousness can still claim to be held separately at the husband's expense.

Where the marriage is true and the wife is capable of having a matrimonial relationship, the husband's duty is to maintain his wife even if she can maintain herself. However, if she unjustifiably refuses to live with her husband, she loses her maintenance right. The right of

⁷ Raghvachariar, N.R., Hindu Law, Vol. 1, (Madras Law Journal, Bombay, 7 th Edition. 1980).

support would also be lost when women reject the Husband's reasonable orders, but not when circumstances justify disobedience, or when they are forced to leave the husk for cruelty, so that they reject the maintenance of their wife, without any legitimate reasons or reasons, for which their wife may sue him for maintenance. However, it is not eligible for past maintenance. In the event that a claim is based on specific agreement, Maintenance is payable from the date of the decree.⁸

If a wife is found to be or is not treated to prevent her from staying or living together or if a breach between a wife and a husband is inappropriate or if the breach is not correctable, she shall have a right of maintenance if she lives apart from him whether the issue arises from the Code of Criminal Procedure (Code of Criminal procedure 1973, respectively. (488)) or in proceedings for her or her husband in short, in the following circumstances, the wife loses the right to maintenance i.e. She is minor, unable to consume, Refusal at reasonable times to free access to the husband, she's unhappy, His house has never visited, declined without a reasonable excuse to co-exist with him, abandoned the marriage home for no reason, Deserts him and another person elopes.

The husband and wife or their guardian may conclude a contract that allows the wife to recover maintenance from her husband, for certain special events such as abuse, dissensions, second marriage of the husband etc. but the agreement in the marriage contract that the wife does not have a right to maintenance is void. The main consideration is that it is not against public policy and Muslim law to oppose the agreement. The Muhammedan wife, after divorce, has the right to maintenance during the Iddat period and also, if applicable, the period after the end of the Iddat period and her receipt by Talak. The enforceability of the maintenance order ceases following the expiry of the Iddat period. The wife is entitled to sue at the time of divorce and where she is notified for maintenance in her normal place of residence. For Hiba jewels, the suit by divorced lies where the wife lives. A widow does not, in addition to her inheritance or his will, have the right to maintenance outside the estate of her late husband.

Maintenance of Child: -

For legitimate children, the father is responsible for the maintenance of the children. In Hedaya the following verse of the Koran: The maintenance of a woman who suckles a baby is the one the baby is born to, it is mentioned and concluded that: the maintenance of a baby is a matter

⁸ Rayden, Law and Practice in Divorce and Family Matters in All Courts, (Butterworth, London, 13 th Edition. 1979).

for the father, because as the nurse is supported by his baby with its milk, this is because he himself is a fortiori. A father is therefore bound to maintain his sons until they are married to puberty and his daughter. The care of his widowed, divorced daughter or a child in the custody of his mom also falls within his responsibility. The father is not obliged to support a young person or unmarried daughter without a reasonable reason, separately. Unless he is his infirm, a grown-up son must be kept. The father is not obliged to maintain a child that is able to keep it from his property. The mother must maintain the children if the father is poor or infirm. It's the parental grandfather's duty if she fails. Muslim law does not require the father to retain illegitimate children in the cases of illegitimate children. However, the 1908 (amended until 1955) U/S 588 of the Criminal Procedure Code bound the father, even to him the mother refuses to surrender the illegal child. In the case of the Muslim Women's Divorce Right Act, 1986 Sec. 3, paragraph 1(b) Code of Criminal Procedure, 1973-Section 125, even a Muslim divorced woman would have the right to claim maintenance from a Muslim man until she has not married. As this is an advantageous piece of law, the divorced Muslim women must benefit. Muslim Women's Protection Act (1986), Sec.3(1)(a) Criminal proceedings, 1975– 125, Division between two clauses, discussed in the case of S. Abdul Salam v. S. Ghousiya Bi & others: -⁹

If two acts cover two distinct situations, the special act takes precedence over the general act. In addition, Section 3 of the Act will, for the moment in force, override any other law Article 3(1) of the Act begins with a 'non obstante clause,' which states that the provisions of the 1986 Act apply to the divorced woman in relation to the reasonable and fair provision for maintaining the mehar or nay amounts, in respect of a divorced woman, of any other Act, and is entitled to the retention in respect of a divorced woman Therefore, the first intimate respondent is the divorced wife of the petitioner herein. This Court is not in dispute. The remedy shall therefore be to apply under Article 3(1)(a) of the Act and in view of the law established by the Apex Court, but not under Article 125, Cr.P.C.

With case to Danial Latifi & another v. India Union, A divorced Muslim woman who has not remarried and cannot remain after the period of Iddath may proceed against her family as provided for pursuant to section 4 of the Act, in a manner that is proportionate to the possessions that she is inherited by her divorced woman, including her children and parents after her death, in accordance with Muslim law. If a relative cannot pay maintenance, the

⁹ Mallick, M.R., Maintenance Law & Practice, (Eastern Law House, Kolkata, 2012).

Magistrate may appoint a State Wakf Board established in accordance with the Act to pay for the maintenance. Articles 14, 15 and 21 of the Constitution of India are not violated by the provisions of the Act.

Maintenance under Criminal Procedure Code: -

The Criminal Procedure Code, 1973 contemplates the provisions relating to maintenance of Wives, Children and the Parents under Chapter IX comprising Sections 125 to 128 of the Code. The Code of Criminal Procedure, 1973 is the present statute which contains the provisions for the maintenance not only for Wife and Children but also for the Parents who are unable to maintain themselves and for whom the obligation has been imposed upon the children to provide sufficient and reasonable amount so that they can maintain themselves. The Code of Criminal Procedure 1973 as originally enacted extended the benefits not only to the parents but also secured such right of maintenance for the divorced wife who is not able to maintain herself and also to the minor unmarried daughters. An attempt to elaborate the in-depth study of these provisions has been made in the present chapter.

Section 125. Order for maintenance of Wives, Children and Parents If any person leaving sufficient means neglects or refuses to maintain: (1) His wife, unable to maintain herself, or (2) His legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or (3) 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 (4) His father or mother, unable to maintain himself or herself, A Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate as such magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct: Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means. Provided further that the Magistrate may, during the pendency of the Proceeding regarding monthly allowance for the maintenance under this subsection, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct: Provided also that an application for the monthly allowance for the interim maintenance and expenses for proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such

person. Explanation for the Purpose of This Chapter: Minor means a person who, under the provisions of the Indian Majority Act, 1975 (9 of 1875) is deemed not to have attained his majority; 'Wife' includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried. Any Such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be, If any Person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issued a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made: Provided that no warrant shall be issued for the recovery of any amount due under this Section unless application is made to the court to levy such amount within a period of one year from the date on which it became due: Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this Section notwithstanding such offer, if he is satisfied that there is just ground for so doing. Explanation: If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him. No wife shall be entitled to receive an allowance from her husband under this Section she is living in adultery, or if, without any sufficient reason, if she refuses to live with her husband, or if they are living separately by mutual consent. On proof that any wife in whose favour an order has been made under this Section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order".¹⁰

Wife entitled to claim Maintenance under the code: -

The term 'Wife' mentioned under Section 125(1) means only a legally wedded wife. In the absence of legal and valid marriage, the mere fact that the parties lived together as husband and wife to the knowledge of the public or otherwise could not confer on the woman the status of

¹⁰ Agnes, Flavia, "Maintenance to Women Rhetoric of Equality", Economic and Political Weekly, Vol. 27 (October, 1992).

'Wife'. The fact of the parties having lived together as husband and wife for a considerably long time would be relevant only to raise the Presumption in Law of their being a husband and a wife. However, this is a rebuttable presumption. The marriage which is held to be illegal does not give any right of maintenance to the female. The provisions contained in Section 125(1) itself makes it clear that the claim of maintenance under the prevailing provisions can be claimed by 'Wife' who means 'a legally wedded wife' under the prevailing customary/personal laws of parties. When the wife applies for the maintenance from the opposite party i.e., husband, the applicant wife has to lead the evidence to establish that her marriage has been solemnised according to the personal laws of the parties, unless the husband does not dispute the claim. When the opposite parties dispute his marriage with the petitioner and the paternity of the child, it is for the magistrate to decide such dispute on the basis of evidence produced, though strict proof is not required, but he cannot refer the parties to the Civil Court. Mode of performance or the mode of execution of the marriage is not a sine qua non for entitlement of the claim for the award of maintenance during the proceedings under this Section. Once the claim is disputed the burden of proof of non-existence of the marriage shifts upon the husband. "Evidence of the prosecution witness that parties were staying as husband and wife was enough to substantiate the relation between them and the further proof of performance of certain ceremonies is not required".¹¹ The legislature in its wisdom, also made this position abundantly clear by providing in sec 50 of the Indian Evidence Act, 1872 that to form an opinion as to relationship of one person to another, the court may entertain the opinion, expressed by the conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of the knowledge on the subject, but that opinion will not be sufficient to prove marriage under the Divorce Act or proceedings under Sections 494-498 of Indian Penal Code. In the proceedings of this nature, a court can conclude that the parties were married, relying upon the evidence of the person referred to under Section 50 of the Indian Evidence Act. The standard of proof that the parties to the proceedings are validly married is not as high as in prosecutions under Sections 494-498 of Indian Penal Code". "This benevolent provision, which provides the maintenance to both legitimate and illegitimate children, restricts the magistrate's power to make an order of maintenance, in favour of 'Wife' only and does not extend it in favour of any other woman not legally and validly married but living 'as wife'. Secondly it also makes the provision for maintenance for a "divorce wife" and nobody could

¹¹ Kumar, Virendra, Alimony and Maintenance (In the Light of the Changing Concept of Marriage and Divorce).

be tagged as 'divorced wife' unless she was initially legally wedded". This Section provides for the provision of the maintenance to the abandoned wife and not to the abandoned mistress".

Quantum of Maintenance: -

In the maintenance proceedings, it is not only necessary that the maintenance should be awarded, but it is also required that the amount should be enough to live a decent standard of living. The Section which nowhere lay down the minimum amount to be awarded by the courts as maintenance, but prior to the Year 2001, the maximum amount which could be awarded by the courts was fixed to be ₹500 Per Month. The rate awarded should be determined and fixed. It is not permissible to make an order for maintenance at a progressively increasing rate. The rate may if necessary be altered from time to time under Section 127. It must refer to money payments only.¹⁵⁸ There can be no straight jacket formula fixed down for the purpose of granting maintenance. But recently few attempts have been made to give relief to females and fix a bar while determining the amount of maintenance; it has to be limited to one fifth of husband's income. In this particular case, the husband was earning ₹20000 Per Month and the wife was granted ₹4000/- as maintenance. In today's era where the prices are shooting up to the sky, the amount of maintenance as ₹3500/- to the wife and ₹1500/- to the minor daughter cannot be said to be unreasonably high. For computing the quantum or maintenance to be paid to the wife, the husband's net salary after deducting the statutory deductions has to be taken into account and even if his salary is deducted for repayment of loan that cannot be taken into consideration, but the payment towards compulsory provident fund is to be deducted.¹² There is no fixed limit for the maintenance to be awarded by the Magistrate or by the Family Court in the areas when the Family Courts have been established under the Family Courts Act, 1984. The Magistrate or the Family Court, as the case may be, may fix the quantum of maintenance without any fixed limit by taking into consideration all the relevant facts namely the need of the claimant and the extent of means of the opposite party. It is thus held by Supreme Court that when the amendment to Section 125, Code of Criminal Procedure has been made by the Amendment Act of 2001 deleting the ceiling of maintenance allowance, State Amendment enhancing maximum maintenance which could be granted from ₹500 to the higher figure are no longer valid being inconsistent with the Code of Criminal Procedure Amendment Act, 2001 by the Parliament. So, it is clear that the discretion has been vested in the Magistrate which is

¹² Singh, Rakesh Kumar, Textbook on Muslim Law, (Universal Law Publishing Company Private Limited, 2011).

to be exercised depending upon the circumstances of the case.¹³ It is nowhere laid down as to what those circumstances would be as the circumstances vary from case to case.

Interim Maintenance: -

Prior to the Amendment of 2001, there was no provision for the payment of interim maintenance which is awarded by the Court during the continuation of the proceedings and which will continue only till the final hearing of the matter, but later realising the need of the hour, the provisions to provide interim maintenance till the disposal of the petition were added by the Criminal Laws (Amendment Act) 2001. It has been observed that the applicant filing the application in the Court under Section 125 of the Code of Criminal Procedure, 1973 has to wait several years for getting relief from the Court. It's therefore felt that the express provision should be made in the Code for interim maintenance allowance to the aggrieved person in the said Section 125 of the Code. Accordingly, it is proposed that during the pendency of the proceeding the Magistrate may order payment of interim allowance and such expense of the proceeding as the Magistrate considers reasonable to the aggrieved person. It is also proposed that the order be made ordinarily within sixty days from the date of service of the notice. It is, therefore, clear that the Parliament has also felt that as the maintenance proceeding even before the Criminal Court which is to be decided in a summary manner takes long time for disposal and, that is why, the Supreme Court In *Shail Kumari Debt v. Krishan Bhagwan Pathan*, has observed that when there is no such prohibition for awarding interim maintenance to the applicant on proof of his prima facie case, the interim maintenance should be granted to the applicant till the disposal of the main petition for maintenance.

Quantum of Interim Maintenance: -

The quantum of interim maintenance is fixed by the Court on the basis of the affidavit of the claimant and such quantum is only provisional and can be modified subsequently on the prayer of the Respondent if the same is awarded ex parte. The Magistrate awarded maintenance to the wife at the rate of ₹ 3000 Per Month but the husband in the revision petition in the High Court explained that he was not given opportunity of being heard before the said order was passed. The High Court accepting the plea of the husband set aside the final order of maintenance and directed the Magistrate to pass the final order on giving the opportunity of both the parties to

¹³ Mookerjee, Ashutosh, Marriage Separation and Divorce, (Kamal Law House, Kolkata, 3rd Edition, 2002).

lead evidence relating to their respective contentions. But the High Court treated ₹3000 Per Month as Interim maintenance to be payable by the husband till application for maintenance is disposed of on hearing both the parties. When the Principal Judge of the Family Court on hearing both the parties awarded interim maintenance of ₹5,000 Per Month and ₹10,000 as litigation costs, the husband in a revision complained that the same was exorbitant and it is not possible for him to pay the wife such a huge amount per month. The High Court is of the view that the order was provisional and subject to the final adjudication. However, as the wife received more than two lakh rupees, reduced the maintenance to ₹3000 Per Month and litigation expenses to ₹5000. With effect from the date when the Amendment Act of 2001 has come into force with effect from 24th September, 2001 all these State Amendments have been superseded and in all the States in which the Code of Criminal Procedure applies.¹⁴

Conclusion: -

The Maintenance provisions need to be transformed in the light of Supreme Court Judgement i.e., Rajnesh v/s Neha in which it is necessary for both parties claiming maintenance must have to give the affidavit in the form mentioned in the judgement to disclose about the pending cases, reasonable wants, Income Tax Returns, and the details of all the movable or immovable properties. The false affidavit must be used against the person to be liable under the provisions of Indian Penal Code.

¹⁴ Rayden, Law and Practice in Divorce and Family Matters in All Courts, (Butterworth, London, 13 th Edition. 1979).