

MAINTENANCE RIGHTS OF DESERTED HINDU WIFE

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ABSTRACT

Maintenance refers to payments which a husband is under an obligation to make to a wife either during the subsistence of the marriage or upon separation or divorce. This liability of the husband flows from the bond of marriage. A wife is entitled to claim maintenance under the Hindu personal laws as well as Code of Criminal Procedure, 1973. While under the personal laws an application for maintenance can be made only if there are, or have been, matrimonial proceedings under the Act, in case of Code of Criminal Procedure, 1973 there need not be any matrimonial litigation and yet the wife may seek maintenance.

This maintenance rights has also been provided to the deserted wives. In explanation to sub-section (1) of Section 13, Hindu Marriage Act, Parliament has thus explained desertion: "The expression 'desertion' means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to marriage, and its grammatical variations and cognate expressions shall be construed accordingly." In its essence desertion means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and reasonable cause. It is a total repudiation on the obligations of the marriage.

This research report will be doctrinal in nature which will include all the three major sources of various legislations and also an in-depth analysis of various case laws.

The research paper has been divided into chapters which talk about maintenance under Hindu Marriage Act, Hindu Adoption and Maintenance Act and Code of Criminal Procedure.

Keywords: - Maintenance, Personal Laws, section 13 Hindu Marriage Act, Desertion, abandonment, case Laws.

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Introduction

The topic of the research paper, i.e. Maintenance Rights of a Deserted Hindu wife is one of the most important rights provided to a Hindu wife. In a Hindu family, the husband is the person who has to provide for his wife. According to Hindu Adoption and Maintenance Act, a deserted wife is a lady whose husband has abandoned her without reasonable cause and without her consent or against her wish, or of willfully neglecting her.

Maintenance is to be given to a deserted Hindu wife because according to Hindu Adoption and Maintenance Act Section 18(2)(b), it is the husband who is leaving his wife without any justifiable reason or grounds. It is the absolute right of a Hindu married woman to claim maintenance from her husband as long as she doesn't deviate from the path of chastity.

The preference for favoring the wife in awarding maintenance was due to the fact that women had no property rights during the marriage. In addition to this, Indian women generally don't have the access to outside employment, thereby offering further support for awarding it to the wife. It is a right to get necessities which are reasonable from another. The conduct of the husband taken as a whole may amount to total disregard of the fundamental obligations of matrimony and would constitute an intention to desert.²

Here, maintenance means to provide for the needs of the deserted wife by her husband. He is supposed to provide her not only with the amount of money prescribed by the court but also with clothing, food and shelter as the wife is entitled to a separate residence too if the husband deserts her.

MEANING OF “MAINTENANCE”

A. In Classical Hindu Law.

The classical Hindu law on maintenance was devised in such a way that no member of the joint family, especially the female members, should be left unprovided for. Maintenance was a duty that a Hindu owed to his wife, whether she lives with him or he has deserted her. Under the classical Hindu Law, the liability to pay maintenance by husband was a moral as well as legal right of a deserted

² *Kantimati v. Paramaniara Iyer* AIR 1974 Ker 124; *Pankajam Das v. Hrishikesh* AIR 1986 Ori 184.

wife.³ If a male Hindu did not perform his moral obligation to pay maintenance during his lifetime, then upon his death, the obligation would transform into legal obligation.⁴

Every member of the joint family has a right to maintenance against the joint family property. It was the duty of the karta to see that all reasonable wants of the family members, which included the deserted wife, were satisfied. If the karta failed to fulfill his duty, the members and even the deserted wife could enforce it by legal action.

Even with the emergence of the concept of self-acquired property and the coparcenor's right of partition, maintenance did not lose its importance. Rather the concept of maintenance further grew and developed. So far the right was available against certain properties, now it became available against certain persons also.⁵

B. In modern Hindu Law.

Maintenance refers to payment which a husband is under an obligation to make to a wife either during the subsistence of the marriage or upon separation or divorce, under certain circumstances. This liability of the husband flows from the bond of matrimony. A wife is entitled to claim maintenance under the personal laws as well as under the provision of the Code of Criminal Procedure, 1973. While under the personal laws application for maintenance can be made only if there are, or have been, Matrimonial proceedings under the Act, in case of Code of Criminal Procedure, 1973 there need not be any Matrimonial litigation and yet the wife may seek maintenance.⁶

Under Hindu Law, the wife has an absolute right to claim maintenance from her husband. But she loses her right if she deviates from the path of chastity. Her right to maintenance is codified in the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956). In assessing the amount of maintenance, the court takes into account various factors like position and liabilities of the husband. It also judges whether the wife is justified in living apart from husband. Justifiable reasons are spelt out in the Act. Maintenance *pendente lite* (pending the suit) and even expenses of a matrimonial suit will be borne

³ Paras Diwan and Peeyushi diwan (1990), Law of Maintenance in India. New Delhi: Deep & Deep, P. 17; Agarwal S.N. (1998), Commentary on the Law of Maintenance, p. 3, Allahabad: Orient Publishing (3rd rev. ed.).

⁴ Law Commission of India, Report No. 252, "Right to Hindu wife to Maintenance" January 2015.

⁵DIWAN, PARAS AND PEEYUSHI DIWAN (1990). *Law of Maintenance in India*. New Delhi: Deep & Deep, Pp. vii-viii

⁶ PROF. KUSUM, *Family Law Lectures, Family Law I*, 239 (4th ed. 2015).

by either, husband or wife, if the either spouse has no independent income for his or her support. The same principle will govern payment of permanent maintenance.

When the researcher talks about the maintenance rights in the case of deserted Hindu wife, it is to be understood that the women in this case is not divorced but only deserted by her husband subject to some essentials of desertion. In Hindu there are two statues which provide for maintenance, viz., the Hindu Marriage Act, 1955 and the Hindu Adoptions and Maintenance Act, 1956. Along with the two personal laws, the code of Criminal Procedure, 1973 also provides for maintenance of wives.⁷

The concept of ‘maintenance’ in India is covered both under Section 125 of the Code of Criminal Procedure, 1973 (Section 125) and the personal laws. This concept further stems from Article 15(3)⁸ reinforced by Article 39⁹ of the Constitution of India, 1950. Under Hindu Adoption and Maintenance Act,¹⁰ the term ‘maintenance’ includes an entitlement to food, clothing and shelter, being typically available to the wife, children and parents. It is a measure of social justice and an outcome of the natural duty of a man to maintain his wife, children and parents, when they are unable to maintain themselves.¹¹

MEANING OF “DESERTION”

‘Hindus get a joint family status by birth, and the joint family property is only an adjunct of the joint family.’¹²

According to the Department of Social Protection, “a deserted wife is the woman who has been deserted by her husband where:-

- Her husband left her of his own volition or his conduct resulted in her leaving him i.e. constructive desertion.

⁷ Code of Criminal Procedure 1973, Ch IX, ss. 125-128.

⁸ Article 15(3) of The Constitution of India states that, “Nothing in this Article shall prevent the state from making any special provisions for women and children.”

⁹ Article 39 of The Constitution of India talks about certain principles of policy to be followed by the State.

¹⁰ Section 3(b) of Hindu Adoption and Maintenance Act, 1956.

¹¹ *Savitaben Somabhai Bhatiya v. State of Gujarat and Others*, 2005 SCC (Cri) 787.

¹² *Janakiram v. Nagamony*, (1926) 49 Mad 98.

- she is not being financially supported by her husband or if she is being supported, the amount is less than the rate of Deserted Wife's Benefit appropriate to her family size
- she and her husband have lived apart for at least three months.”¹³

According to Hindu Adoption and Maintenance Act, 1956, a deserted wife is a lady whose husband is guilty of desertion that is to say “of abandoning her without reasonable cause and without her consent or against her wish, or of willfully neglecting her.”¹⁴

Living together is the essence of marriage; living apart is its negation. This negation of the very essence of marriage is what the law terms as desertion. When one spouse leaves the other in a manner which is not justifiable, the deserted spouse has a remedy by a way of matrimonial reliefs. As pointed out by apex court in *Savitri Pandey v. Prem Chandra Pandey*¹⁵ :

“Desertion for the purpose of seeking divorce under the Act means the intentional permanent forsaking and abandonment of one spouse by another without that others, consent and without reasonable cause. In another words, it is total repudiation of those obligations of marriage. Desertion is not withdrawn from a place, but form state of things. Desertion is not a single act complete itself, it is a continuous course of conduct to be determined under the facts and circumstances of each case.”

In *Bipinchandra jai Singhbai v. Prabhavati*,¹⁶ which was a case under the Bombay Hindu Divorce Act, 1947, the court lucidly defined and explained the concept of desertion. It held that if a spouse abandons the other in a state of temporary passion, for example, anger or disgust without intending permanently to cease cohabitation, it will not amount to desertion. It further held that:¹⁷

For the offence of desertion, so far as the desertion spouse is concerned, two essential conditions must be there, namely:

1. The factum of desertion and
2. The intention to bring cohabitation permanently to an end (*animus deserendi*).

Similarly two elements are essential so far as the deserted spouse is concerned:-

1. The absence of consent; and

¹³ <http://www.welfare.ie/en/Pages/Deserted-Wives-Benefit-DWB.aspx> (Accessed on 1st September, 2016).

¹⁴ Section 18 (2) (a), Hindu Adoption and Maintenance Act, 1956.

¹⁵ *Savitri Pandey v. Prem Chandra Pandey* (2002)2 SCC 73.

¹⁶ *Bipinchandra jai Singhbai v. Prabhavati* AIR 1957 SC 176.

¹⁷ *Ibid*, pp. 183-184.

2. Absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid.

Desertion is a matter of inference to be drawn from certain facts and circumstances of each case. The inference may be drawn from certain facts which may not in another case be capable of leading to same inference;

The offence of desertion commences when the fact of separation and the *animus deserendi* coexist. But it is not necessary they should commence at the same time. The de-facto separation may have commenced without the necessary animus or it may be that the separation and the *animus deserendi* coincide in point of time; for example, when the separating spouse abandons the marital home with the intention, express or implied, of bringing cohabitation permanently to a close. If a deserting spouse takes the advantage of the *locus poenitentiae* and decided to come back to the deserted spouse by a bonafide offer of resuming the matrimonial home with all implications of marital life, before the statutory period is out or even after the lapse of that period, unless proceedings for a divorce have been commenced, desertion comes to an end and if the deserted spouse unreasonably refuses the offer, the latter may be in desertion not the former. Hence it is necessary that during all the period that there has been a desertion, the deserted spouse must affirm the marriage and be ready and willing to resume married life on such conditions as may be reasonable. It is also well settled that in proceedings for divorce the plaintiff must prove the offence of desertion like any other matrimonial offence, beyond all reasonable doubt. Hence corroboration is not required as an absolute rule of law courts insist upon corroborative evidence, unless its absence accounted for to the satisfaction of the court.

The concept of Constructive Desertion also played a major role.

In *Bipinchandra Jaisinghbhai Shah v. Prabhavati*¹⁸ it has made it clear that it is not necessary for the deserting spouse to leave the home in order to constitute desertion. If one spouse by his or her words compels the other side to leave the matrimonial home or stay away wherefrom, without reasonable cause, the former would be guilty of desertion, though it is the latter who is seemingly separated from the other. The ejection of the other spouse from the home with the intention not to cohabit equally constitutes desertion. This is the principle of '**Constructive Desertion**.'¹⁹

¹⁸ *Bipinchandra Jaisinghbhai Shah v. Prabhavati* AIR 1957 SC 176.

¹⁹ *Lachman Utamchand Kirpalani v. Meena*, (1964) 4 SCR 331.

Desertion is a ground for judicial separation and also for divorce under the various matrimonial laws including Hindu Marriage Act, 1955, Special Marriage Act, 1954, Parsi Marriage and Divorce Act, 1936, Dissolution of Muslim Marriage Act, 1936, etc.

In the case of *Narayan Moreshvar Pendse v. Yamunabai*,²⁰ The court held that a wife can claim maintenance if she has deserted him, “*unless the husband has, by his cruelty or misconduct, forfeited his marital rights, or has turned his wife out of doors, or has, by some insult or ill-treatment, compelled her to leave him.*”

I. MAINTENANCE RIGHTS UNDER “HINDU MARRIAGE ACT, 1955”.

A. SECTION 24 OF HINDU MARRIAGE ACT, 1955

According to section 24 of this act talks of Maintenance *pendente lite* and expenses of proceedings.-

“Where in any proceeding under this Act it appears to the Court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay the petitioner the expenses of the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the Court to be reasonable.”

The ambit of this above section is stated by the Honourable High Court in the case of ‘*K.R. Sagayaraj v. Mrs.C. Rajammal*’ in which the Court held that:

“*The purpose behind Section 24 of the Hindu Marriage Act is that parties to a matrimonial cause should not take undue and unfair advantage of a superior financial capacity to defeat the rightful claims of a weaker party and the proceedings under Section 24 of that Act serve a limited purpose, i.e., during the pendency of proceedings under that Act, to enable the weaker party to establish rights without being in any manner hindered by lack of financial support. If the special nature of the statutory right under Section 24 of that Act and its purpose, are borne in mind, it is at once clear that*

²⁰ *Narayan Moreshvar Pendse v. Yamunabai* (1876) 1 Bom. 164.

the enforcement of that right, cannot in any manner be hedged in by a consideration of proceedings otherwise initiated, either under Section 125, Cr.P.C or under the ordinary law."²¹....

It is significant to note that the words used in section. 24 are "where in any proceedings under the Act". Thus it could be proceedings for any relief. Proceedings for maintenance *pendente lite* are not dependent on the merits of the main case. Thus, in *Sandeep Kumar v. State of Jharkhand*,²² where a husband had filed a petition under section. 12 of the Act for declaration that the marriage was null and void, his plea that no maintenance under section. 24 could be ordered was rejected. The court held that "so far as section. 24 is concerned the wife's right to seek maintenance is not affected and it is immaterial whether the main petition is under section. 12 or it is under section. 13."

There is one more case of *T.P. Sudheesh Babu v. Sherly*²³ in which a husband had filed a petition under section. 12 of the Act for declaration that the marriage was a nullity; thereupon the wife filed an application under section. 24. The issue was, whether section. 24 are applicable when the proceedings before the court are under section. 12 for declaration of nullity of the marriage. The court held that section. 24 apply to "any proceeding" under the Act and no exception can be carved out for proceedings under section 12 of the Hindu Marriage Act, 1955. However since maintenance pending litigation can be granted only during pendency of proceedings.

Once these are disposed of arrangement as to payment of maintenance also comes to an end and the party cannot insist on payment beyond date of disposal of the main proceedings.²⁴ However Since maintenance pending litigation can be granted only during pendency of proceedings. Once these are disposed of arrangement as to payment of maintenance also comes to an end and the party cannot insist on payment beyond date of disposal of the main proceedings. Maintenance *pendente lite* can be granted even before first making effort for reconciliation.²⁵

Therefore in the case of deserted women if she files a case in the court then she is therefore entitled for the expenses that she will be bearing during the court procedure under the ambit of section 24 of this Act.

²¹*K.R. Sagayaraj v. Mrs.C. Rajammal*, 2010 SCC Online Mad 5729.

²²*Sandeep Kumar v. State of Jharkhand* AIR 2004 Jhar 23.

²³*Sudheesh Babu v. Sherly* AIR 2010 Ker 37.

²⁴*Arvind Chenji v. Krishna Veni*, (2010) I DMC 545 (AP).

²⁵*Sidhertha v. Kanta Bai*, AIR 2007MP 59.

B. SECTION 25 OF HINDU MARRIAGE ACT, 1955

It says that –

PERMANENT ALIMONY AND MAINTENANCE

(1) Any court exercising jurisdiction under this Act may, at the time of passing- any decree or at any time subsequent thereto, on application made to it for purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such cross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant, [the conduct of the parties and other circumstances of the case], it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

(2) If the court is satisfied that there is, a change in the circumstances of either party at any time after it has made an order under sub- section (1), it may at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has remarried or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, [it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just]

The expression used in the opening part of Section 25 of the Act enabling the '*Court exercising jurisdiction under the Act*' at the time of passing any decree or at any time subsequent thereto' to grant alimony or maintenance cannot be restricted only to a decree of judicial separation under Section 10 or divorce under Section 13²⁶. When the legislature has used such a wide expression as '*at the time of passing any decree*', it encompasses within the expression all kinds of decrees such as restitution of conjugal rights under Section 9, judicial separation under Section 10, declaring marriage as null and void under Section 11, annulment of marriage as voidable under Section 12 and Divorce under Section 13.²⁷

²⁶*Mohd. Ikram Hussain v. State of U.P.*, AIR (1964) SC 1625.

²⁷*Chand Dhawan v. Jawaharlal Dhawan*, [1993] 3 SCC 406.

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 any type of decree resulting in breach in marriage relationship. Section 25 is an enabling provision. It empowers the Court in a matrimonial case to consider facts and circumstances of the spouse applying and decide whether or not to grant permanent alimony or maintenance.²⁸

Therefore the deserted wife can easily claim for permanent maintenance under section 25 of the Hindu Marriage Act, 1955.

II. MAINTENANCE RIGHTS UNDER “HINDU ADOPTIONS AND MAINTENANCE ACT, 1955”.

A Hindu wife has the advantage of an additional statute that is the Hindu Adoptions and Maintenance Act, 1956. Under section 18 of this Act a Hindu wife is entitled to live separately from her husband without forfeiting her claim to maintenance, provided her separate living is justified which means that the husband:

1. Is guilty of desertion;
2. Has treated her with cruelty;
3. Is suffering from virulent form of leprosy;
4. Has any other wife living;
5. Keep a concubine in the same house, or is living or habitually resides with a concubine elsewhere;
6. Has ceased to be a Hindu by conversion to another religion; or
7. If there is any other cause justifying living separately.

It is pertinent to note that a claim for separate maintenance under this provision can be made only when there is a subsisting marriage. A divorced wife is not entitled to maintenance under the provision of section 18 of this Act.²⁹

Now relating to the situation in the case of deserted wife we can refer to the case of *Bauramma v. Siddappa*,³⁰ where there was wife claiming for maintenance under section 18 of this Act on the

²⁸*Ramesh Chandra Rampratapji Daga v. Rameshwari Ramesh Chandra Daga* (2005) 2 SCC 33.

²⁹*Vikas Pandey v. Vandita Gautam*, AIR 2013 All 28.

³⁰*Bauramma v. Siddappa* AIR 2003Kant 342.

ground of Desertion, the defence taken by the husband who had another wife was that their marriage had been dissolved as per “an arrangement to live separately”. The trial court held that there was no Desertion and further that she being divorced was not entitled to maintenance under the provision of the Hindu Adoption and Maintenance Act.

Hence the wife’s appeal. The High Court held that the second marriage of the husband having been established, no further proof of desertion was required, and further, “an arrangement to live separately” even assuming that it is proved, cannot bring the marriage into an end, the wife claim thus justifiable cause and who, in the opinion of the court had no respect for the martial bond washeld not to be entitled to claim maintenance order the provisions of section 18 of Hindu Marriage and Maintenance Act.³¹

In the case of *Atul Sashikant Mude v. Niranjana Atul Mude*³² the High Court finds that:

“It is relevant to notice that under sub-section (2) of section 18, the Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance inter alia if he is guilty of desertion or of wilfully neglecting her and if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband or if there is any other cause justifying her living separately”.

Section 18(1) of this act is applicable for the situation when the wife lives with husband, whereas section 18(3) is applicable in the case where there is a forfeiture of the claim of maintenance. Therefore in the case of deserted wife only section 18(2) will be applicable.

III. MAINTENANCE RIGHTS UNDER “CODE OF CRIMINAL PROCEDURE, 1973”.

CHAPTER IX - ORDER FOR MAINTENANCE OF WIVES, CHILDREN AND PARENTS:SECTION 125,

³¹ *G.N.V.K. Durga v. G.E. Sudhakar*, AIR 2013 AP 58.

³² *Atul Sashikant Mude v. Niranjana Atul Mude*, AIR 1998 Bom 234.

“Says that-(1) if any person having sufficient means neglects or refuses to maintain—

(a) His wife, **unable** to maintain herself, or

(b) His legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) 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

(d) 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 not exceeding five hundred rupees in the whole, 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

Explanation—for the purposes of this Chapter—

(a) "Minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;

(b) "Wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried;

(2) Such allowance shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance;

(3) 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 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 be 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

(4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her, husband, or if they are living separately by mutual consent.

(5) 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.”

Further this Section also contains various State Amendments of various states like Madhya Pradesh, Maharashtra, Rajasthan, Tripura, Uttar Pradesh and West Bengal.

Maintenance can be easily claimed through various respective laws of people following their various faiths and proceedings under such personal laws are civil in nature. Whereas the proceedings generated under Section 125 however, are criminal in nature and unlike personal laws, are of summary nature and are applied to everyone irrespective of caste, creed or religion.³³

However the very objective of such proceedings is different it is not to punish a person for his past neglect. The said provision has been enacted to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and have a moral claim support.³⁴

Under the provisions of Section 125, the burden lies upon the wife, i.e., the claimant, to prove that the husband, i.e., the other party, has ‘sufficient means’ and has ‘neglected or refused to maintain’ her and that she is ‘unable to maintain’ herself.

The case of *Chaturbhuj v. Sitabai*,³⁵ played very major role in the terms of concept of Maintenance in the case of deserted wives, as The Honourable Supreme Court of India clearly stated in this case that-:

³³*Mohd Ahmed Khan v. Shah Bano Begum and Others*, (1985) 2 SCC 556.

³⁴*Chaturbhuj v. Sita Bai* (2008) 2 SCC 316.

³⁵*Chaturbhuj v. Sitabai*, 2008(2) MPHT 13 (SC).

“The object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. The phrase “unable to maintain herself” would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after desertion to survive somehow. S.125 Cr.P.C. is a measure of social justice and is specially enacted to protect women and children and falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India, 1950. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves.”

The applicability of Section 125 in the case of deserted wife can be understood through the famous case of *Rewati Bai v. Jageshwar*³⁶, in which the wife lived with her husband for 40 years. She had no means of livelihood while living with him. After being **deserted** she started working as a labourer at the age of 50. The trial court held that she was not able to maintain herself. The High Court, however, ordered maintenance. It observed: The only fact that she was compelled to work as a labourer to survive was by itself not sufficient to establish that applicant was able to maintain herself.'

The fact that a wife is working can be taken into account in fixing the quantum of maintenance but that would not debar her from claiming it. Thus where a wife was driven out of the matrimonial home because she refused to give consent to her husband marrying another woman and the wife was working but her job was not permanent, it was held that the husband could not take the plea that she would be able to maintain herself and so he has no liability to pay.³⁷

The case of *Shravan Kumar v. Usha Devi*³⁸, also played a major role, where the court held that the words '**unable to maintain**' in Section. 125 have nothing to do with the potential earning capacity of a wife.

When we are considering the “Deserted wife” we need to be clear that appellant should not be remarry, as in the case of *Shabana Bano v. Imran Khan*³⁹ the court finds that The appellant’s petition

³⁶*Rewati Bai v. Jageshwar* 143 p. 41 (1991) Cr LJ 40 (MP).

³⁷*R. Shivakumar v. Manimegalai*, (1998) Cr LJ 2689 (Mad).

³⁸*Shravan Kumar v. Usha Devi*, (1984) Cr LJ NOC 184 (All).

³⁹*Shabana Bano v. Imran Khan* (2010)1 SCC 666.

under Section 125 Cr.P.C would be maintainable before the Family Court as long as the appellant does not remarry.

Grant of maintenance to wife has been perceived as a measure of social justice by this Court. In *Captain Ramesh Chander Kaushal v. Veena Kaushal*⁴⁰, it has been ruled that:-

“Section 125 Cr.P.C is a measure of social justice and is specially enacted to protect women and children and it falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in Savitaben Somabhai Bhatiya v. State of Gujarat⁴¹”.

SOME CONDITIONS WHERE DESERTED WIVES ARE NOT ENTITLED FOR MAINTENANCE UNDER SECTION 125:

The section lays down that a wife would be disentitled to maintenance from her husband if she lives in adultery, or if, without any sufficient reason she refused to live with her husband, or if they are living separately by mutual consent.⁴² Post-divorce separate living cannot be construed as separate living by mutual consent within the meaning of section 125(4) of the Cr.P.C.⁴³ Stray act or two of adultery does not amount to 'living in adultery'.⁴⁴ 'Living in adultery' is a present continuous tense. Hence if she is not presently living in adultery, the husband cannot refuse her maintenance.⁴⁵ A wife living separately from the husband because of the husband marrying again cannot be denied maintenance. She cannot be forced to live with another woman, the court held in *Dilip Kumar v. State of U.P.*⁴⁶ A wife against whom a decree of restitution of conjugal rights has been obtained by the husband, cannot be debarred under this clause from claiming maintenance for all times to come.

⁴⁰*Captain Ramesh Chander Kaushal v. Veena Kaushal* (1978) 4 SCC 70.

⁴¹*Savitaben Somabhai Bhatiya v. State of Gujarat*, (2005) 3 SCC 636.

⁴². 125(4).

⁴³*Sanjeev Kumar v. Dhanya*, (2008) II DMC 19 (Ker).

⁴⁴*A. Jagdishwari v. A. Bikshapathy*, (1998) Cr LJ 2503 (AP); *Ruchila Rout v. B.K. Rout*, (1987) Cr LJ 655 (Ori).

⁴⁵*Abdul Sattar v. State of Assam*, (2009) I DMC 599 (Gau).

⁴⁶*Dilip Kumar v. State of U.P.* AIR 2010 NOC 987 (All).

In *Pandit Dattatraya Kulkarni v. Laxmi Pandit Kulkarni*,⁴⁷ a husband obtained a decree for restitution of conjugal rights against his wife in 1972 on the ground of her withdrawal from his society without reasonable cause. In 1990 the wife filed an application for maintenance under s. 125 on the ground that the husband had contracted marriage with another woman therefore she could not stay with him in compliance with the decree for restitution of conjugal rights. The trial court after considering the evidence on record awarded maintenance. The husband, in appeal contended that once the civil court had held that the wife had no reasonable cause to stay away from the husband, she is not entitled for grant of maintenance as the finding of the civil court in the restitution decree is binding in the criminal proceedings under s. 125 of the Code of Criminal Procedure, 1973. The court held that while the findings of the civil court in restitution decree would be binding in criminal proceedings but the said finding cannot be binding on the criminal court or on the parties for all times to come. If the court in criminal proceedings finds that subsequently the husband had taken a second wife or was living with another woman, the wife is entitled to claim separate maintenance as she is not obliged to resume cohabitation with the husband if he is living with another woman. The defence under sub-s. (4) of s. 125 of the Code of Criminal Procedure, 1973 would not be available to the husband and the decree of restitution passed against the wife cannot stand as a bar against her for claiming separate maintenance from the husband in this case. The maintenance order was accordingly, upheld. In *Dilip Kumar Barik v. Usha Rani Barik*,⁴⁸ the plea that non-compliance of a restitution decree obtained by the husband should disentitle the wife from claiming maintenance was rejected by the court. It held:

In *Manju Mehra v. Pushkar Mehra*,⁴⁹ however, when husband got a decree of restitution because it was established that the wife had withdrawn without any reasonable cause, the grant of maintenance to the wife despite the restitution decree was held to be not proper. According to the court, it would penalise the husband to pay maintenance to a wife who did not obey the decree and would encourage the wife to stay away from husband despite the decree. The court clarified that if the decree had been passed at the instance of the wife against the husband then the court would be justified in asking the husband to pay maintenance. In *Amarendra Nath Bagui v. Gouri Rani Bagui*,⁵⁰ where the couple was living separately by mutual desire and a free agreement to that effect, the wife's claim for

⁴⁷*Pandit Dattatraya Kulkarni v. Laxmi Pandit Kulkarni* (2001) 1 Femi-Juris CC 47 (Bom).

⁴⁸*Dilip Kumar Barik v. Usha Rani Barik*, AIR 2007 Ori 83.

⁴⁹*Manju Mehra v. Pushkar Mehra* AIR 2010 Bom 34.

⁵⁰*Amarendra Nath Bagui v. Gouri Rani Bagui*, (1990) Cr LJ 2415 (Cal).

maintenance was dismissed. In *Mayaram Nishad v. Jamuna Bai*,⁵¹ the parties were living separately since 1985, and eighteen years thereafter the wife applied for maintenance under s. 125 Cr.P.C. The husband challenged the same on the basis of one *Sahamati Patra* (viz. deed of agreement) between them in 1989 which showed that they were living separate by mutual consent. The wife alleged that the document was executed by force. The court however, declined to believe this in view of the fact that the wife took no action against this forced document nor did she file any application for maintenance all these long years. The wife was consequently held not to be entitled to maintenance.

A wife's right to maintenance under this section comes to an end upon her remarriage. However, in a case where a wife files an application for maintenance and then marries after some time, the court may grant her maintenance from the date of the application to the date of her marriage, provided other requirements of the provision are satisfied.⁵² Under the Army Act, 1950 there are specific and detailed rules and procedure for granting maintenance to wives of the army officers. The powers of the court under the Act are independent of the provisions of s. 125 of the Code of Criminal Procedure, 1973 ands. 24 of the Hindu Marriage Act, 1955. Nothing debars a wife of an army officer to claim maintenance under the provisions of the Army Act, 1950 even though she has a remedy under s. 125 of the Code of Criminal Procedure, 1973 ands. 24 of the Hindu Marriage Act, 1955.⁵³

A maintenance allowance fixed under s. 125 can be enhanced, varied or cancelled if there is a change in the circumstances of the parties and an application to that effect is made. Thus, husband's retirement subsequent to the award of maintenance would amount to change of circumstances affecting his paying capacity.⁵⁴ So also fact of inflation resulting in fall in purchasing power of money and consequent rising prices is a factor which court would take note of, in application for alteration or enhancement of maintenance allowance.⁵⁵ Until the Code of Criminal Procedure, (Amendment) Act, 2001 there was no provision in the Code of Criminal Procedure, 1973 for the granting of interim maintenance in application under s. 125 of the Code of Criminal Procedure, 1973. However, since disposal of these applications takes quite some time, many applicants without means of subsistence suffered grave hardship. In view of this, the Supreme Court, in *Savitri v. Govind*

⁵¹*Mayaram Nishad v. Jamuna Bai* AIR 2010 (NOC) 633 (Chh).

⁵²*Ramesh Chandra v. Veena Saxena*, (1982) Cr LJ 1426 (All).

⁵³*Suneel v. Union of India*, AIR 2004 Del 95.

⁵⁴*T. Kaushalya v. T. Narayana Reddy*, (1998) Cr LJ 1795 (AP).

⁵⁵*Dhan Raj v. Krishni*, (1998) Cr LJ 1312 (Raj).

Singh,⁵⁶ in a special leave petition filed by the wife under 136 of the Constitution of India held that in the absence of any express prohibition preventing a magistrate to pass an interim order of maintenance, it is appropriate to construe the provisions in Ch. IX (*viz.* maintenance provisions in the Code of Criminal Procedure, 1973) as conferring an implied power on the magistrate to direct the non applicant to pay a reasonable amount pending final disposal of an application under s. 125. After this case, in cases of claims under s. 125, invariably applications for interim maintenance were also being filed. The Amendment of 2001 has however, now statutorily empowered the magistrate to order interim maintenance.

The Himachal Pradesh Panchayati Raj Act , 1994 gives general powers to the Gram Panchayat to entertain civil, criminal, and other revenue matters. Maintenance being one of such matters, an order of maintenance under s. 125 of Code of Criminal Procedure, 1973, passed by the Gram Panchayat can be executed by the Chief Judicial Magistrate.⁵⁷

CONCLUSION AND SUGGESTIONS

The judgments delivered by the Supreme Court and various High Courts of the country from a very long time cast an unavoidable legal obligation on the husband to provide maintenance to his deserted wife. The fact that the husband is responsible for the desertion gives an absolute right to the wife to claim maintenance and the husband cannot avoid it at any cost. Even if the wife separates from the husband due to his conduct, then also he is supposed to give for her maintenance. This thinking finds support from all the jurists as well as the Hon'ble judges and all the other legal luminaries. The above thinking lends full support to the 252nd Law Commission Report and the researcher also fully agrees to this concept.

In the light of the discussion going on about the subject matter of research, after dealing with all the intricacies of the issue, the researcher is in full support to the recommendations of the Law Commission of India. However, the researcher would suggest that if the desertion is done by wife due to some mental disorder of the husband, then the maintenance should be provided by the husband's family.

Second suggestion would be the removal of the term "unchaste" in relation to a woman. The court can determine a woman to be chaste or not by her conduct and not if the husbands falsely pleads so.

⁵⁶*Savitri v. Govind Singh* AIR 1986 SC 984.

⁵⁷*Padmo v. Surat Ram*, (2003) Cr LJ 237 (HP).

The chastity of a woman cannot be put to test. In the famous epic of Ramayana, Lord Rama tested the chastity of his wife Sita when public started talking that she had lived so many days with Ravan then she has become impure. There are no tests which can lay down if a woman is chaste or not. It can be proven only by the woman herself. Therefore, living in the 21st century, the researcher believes that the term 'unchaste' should be removed.

The last suggestion by the researcher would be to provide maintenance to the deserted wife even if the couple is living separately by consent. For example, a married Hindu couple does not have a good relation and fight constantly and they separate by mutual consent and the wife is not qualified enough to earn a living for herself, she should still get maintenance for survival. The law says that if separation is mutually consented, no maintenance will be provided. But the researcher would suggest that in such case as above mentioned, the maintenance should be provided.

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