

CHAPTER 6

CONCLUSION AND SUGGESTIONS

Woman who has shown her emotional side by playing various roles in form of Mother, Daughter, Sister and Wife efficiently is considered to be weaker sex when it comes to her own financial and economic independence, since she has never thought of her own needs and has devoted her life for the upliftment of the family itself. In the Ancient times also, it was considered to be obligation of males to maintain the various females related to him. The females as the embodiment of sacrifice and the strongest emotional support system of family need some kind of support to fulfil their financial needs. In order to keep the sanctity of obligations imposed on males to provide the financial assistance to the females, several legal provisions have been framed.

Various provisions have been incorporated in the Personal Laws and the Criminal Law in India for the upliftment of the females and to provide them a financial support system in form of institution of 'maintenance'. Maintenance Jurisprudence regulates the most vital, social and moral functions of our lives. It is not only a social concept but a moral obligation too that a wife is to be supported by Husband; Children are to be supported by Parents; And when the Parents become old and infirm it sees a role reversal and then the Children becomes responsible to support their Parents. The law aims to support and protect the neglected wives and divorcees, abandoned and neglected children and helpless parents.

We can see that in certain cases, the women are forced to maintain their families by working at quite low salaries even in the unorganized sectors. Since women are not recognized as head of

households their earnings remains at times below the subsistence level. They have to carry the meager amount as salary because they don't have any other alternative to maintain themselves. She remains to lead a life of destitute because of inadequacy of means available to them which further leads to economic exploitation.¹

Since family is the foundation of the society, it is one of the matters of important societal concern that foundation of the family especially the Women, Children and Old and Infirm are to be maintained and it would be not right if they are left destitute and let them fend for themselves. If a woman leaves out of matrimonial relation and her home, it is only after the stage when after all the possible attempts it had become difficult for her to survive under the same roof by any means. The law allows such person to come out the relationship either by decree of Divorce or by Judicial Separation Under the Personal Law applicable to the party, but law by any means does not let a person forgoes his obligation which were part and parcel of the marital bliss and were bestowed on him while tying the holy nuptial knot. Children are the great sufferer in such a situation and the woman of old age, who are just expecting the evening of their lives to be spent peacefully are often left by the children in a vagrant situation which we can term as a result of shattering societal norms, in which the children now have attained the individualistic and materialistic approach to such an extent that they don't shy to part from their parents leaving them in pity state of affairs in either old age homes or simply kicking them out of their houses to have a comfortable life themselves. Our parents who often themselves live a life without sufficient means considering "*poot sapoot toh kyon dhan sanchaypoot kapoot toh kyun dhan sanchay*" are often proven wrong by their own kids. The law takes the notice of this situation and comes to the rescue

¹ Flavia Agnes, "Maintenance to Women Rhetoric of Equality", *Economic and Political Weekly*, Vol- 27, 2233 (October, 1992).

of the needy females, children and old and infirm parents by formulation various laws under the personal laws applicable to the parties along with setting the criminal machinery in to the motion by incorporating the provisions in the Code of Criminal Procedure, 1973 and the Protection of Women from Domestic Violence Act, 2005. Going a step ahead and fulfilling the responsibility of providing the social security to the aged and infirmed in furtherance of Directives Principles of State Policy under Part IV of Indian Constitution, the Parliament has enacted the maintenance and Welfare of Parents and Senior Citizens Act, 2007 which specifically aims at providing maintenance and assistance not only for the parents but also to the childless senior citizens as well. In the previous chapters an attempt has been made to discuss all the provisions incorporated therein and elaborate them. It is always necessary that all the laws should be interpreted and implemented in the true spirit of moral and social ideals and the aims which have actually been the guiding force behind the enactment of the legislation.

As stated earlier also, it can be clearly laid down that maintenance is the sine qua non for the proper growth, which aims at preventing destitution to the weaker sections and especially to the females. The concept of fulfilling the economic needs and to provide the social security has not been recognized only by the framers of the new legislations but that also by the ancient law givers as well. The Historical prospective of maintenance establishes that the law of maintenance has been very Ancient, Social, Moral and Religious obligations. All the holy books which dealt with social human life have played a pivotal role in determining, scrutinizing and accessing the social obligation to maintain the one related with you.

The law of maintenance still suffers from many lacunas and infirmities, which need an urgent review and reform in order to achieve the purpose of these benevolent provisions and to provide an

expeditious and effective relief. In the present work, an attempt has been made to critically appraise the present legal provisions aiming at the betterment of females, incorporated under the Hindu Adoption and maintenance Act, 1956, the Hindu Marriage Act, 1955, the Muslim Women (Protection of Rights on Divorce) Act, 1986, the Special Marriage Act, 1954, the Parsi Marriage and Divorce Act, the Indian Divorce Act, the maintenance and Welfare of Parents and Senior Citizens Act, 2007, the Code of Criminal Procedure, 1872 and last but not the least the provisions for maintenance incorporated in the Protection of Women from Domestic Violence Act, 2005. While studying the provisions, though beautiful attempt made by the framers of legislations could be easily located, yet there are many places in the provisions which need to be cured. Some of the problems have been discussed in the starting of the chapter and the suggestions or the alternative provisions have been incorporated thereof.

Under the Hindu Marriage Act, 1955 the provisions related to maintenance are incorporated as an Ancillary Relief or Matrimonial Relief, aiming at providing maintenance Pendente Lite i.e. During the Pendency of the proceedings or Permanent Alimony which is paid at the termination of relationship. Though the provisions incorporated are meant for the betterment of the spouses, it is always to be remembered that every phrase is to be read in context of sub-section and every sub-section is to be read in the context of sections and to bring out the true spirit of the Act, every section is to be read in the context of Act. Similarly while interpreting the provisions under the Hindu Marriage Act, 1955; we need to give the due consideration to the same. Though the legislative measure is a better provision to support the needy spouse by compensating the expenses of the litigation, it also provides to support in view of coming life henceforth. But since every coin has two aspects, this benevolent law

also suffers from some lacunas, which need to be rectified with the immediate legislative interference.

Though the provisions related to maintenance Pendente Lite, aims to under Section 24 of the Hindu Marriage Act, 1955 provide an immediate, relief but still it suffers from many infirmities and lacunas. The use of word 'Petitioner' and 'Respondent' should be replaced by 'Applicant'. Therefore when the delay is not on the part of Respondent/Applicant, the same must be granted from the date of application. To give the true spirit to the nature of the provision and fulfill the aim, it is required that the Maintenance Pendente Lite must be awarded at the very initial stage and must be decided expeditiously. By the Amendment of 2001, a proviso in Section 24 of the Hindu Marriage Act, 1955 has been added, which states that application for the payment of the expenses of the proceedings and such monthly sum during the proceedings, shall, as far as possible, be disposed of within sixty days from the date of service of notice is a welcome steps, which sum how will accelerate the process to grant the Interim maintenance.

Moreover it has been seen that when a husband approaches the Court of law for the grant of divorce and the wife moves an application for the grant of interim maintenance, the husband starts adopting the delaying tactics in order to avoid his liability by either absenting himself from the Court or by delayed payments, which makes the procedure as quite frustrating moreover there is no provision in the law, which empowers the Court to direct the payment of future maintenance on time, if the husband stop appearing in the Court. The only remedy available to the wife is to go and file execution proceedings to recover the amount which has already become due.

Similarly while going through Section 25 of the Hindu Marriage Act, 1955, it is apparently clear that phraseology incorporated in

Section 25 of the Hindu Marriage Act, 1955, granting Permanent Alimony is at point imprecise and need to be amended. As per law, the application for the Permanent Alimony can be filed only when the decree for the substantive relief has been passed and not in case of dismissal. The grant of Permanent Alimony to the wife in case of 'annulled' marriage is also in consonance with the spirit of law. Furthermost the law provides for the creation of charge over the immovable property of the non- applicant for the payment of recovery of the permanent alimony and maintenance is actually a beneficial and positive move to ensure that the support system is not evaded by any means.

The provisions incorporated for maintenance under the Hindu Marriage Act, 1955 are based on the Matrimonial Statutes and are in the nature of Ancillary Reliefs which is confined and available only to either husband or wife excluding other categories of Hindu women who are in want of maintenance. An independent Civil Remedy to claim maintenance has been provided under the Hindu Adoption and maintenance Act, 1956, which provide the maintenance not only to wife but Right of Widowed Daughter in Law to seek maintenance from her Father in Law, Right of Mother (which includes Step Mother) and being dependants as Widow, Unmarried Daughter, Widowed Daughter, and Unmarried Illegitimate Daughter. But in the case of dependants, the liability of the heir liable to pay maintenance is based on the estate inherited from the deceased.

Section 18 of the Hindu Adoption and maintenance Act, 1956 is an auspicious remedies which not only gives the wife Right to claim maintenance but right to separate residence on certain grounds ,without forfeiting her right to claim maintenance from her husband. It is welcome step since the female is in such condition where she cannot seek divorce due to various societal or other factors, but still she may reside separately and can seek maintenance from her husband. The

section further incorporates the principle that one who seeks equity must do equity, debarring an unchaste or apostate wife from claiming separate maintenance.

Muslim Law of maintenance can be termed as most different from the other Personal Laws prevalent in India and the liability to maintain all others except wife only in cases when the person claiming Maintenance can get maintenance only when he is “Person of No Means”. The liability to maintain ones wife is absolute. But the challenging issue and most vital area of concern under the Muslim Law is maintenance of Divorced Wives. The payment of maintenance has always been confused with ‘Mahr’ or ‘Dower’. There is constant debate regarding extending the protection cover of secular provision incorporated under Section 125 The Code of Criminal Procedure, 1973 over the Muslim Females as well and whether a Muslim female is entitled to claim maintenance under Section 125 The Code of Criminal Procedure, 1973 or not? But by passing of the Muslim Women (Protection of Rights on Divorce) Act, 1986, this right has been taken away from Muslim Women and the issues whether the Divorced Muslim Women is entitled to maintenance or not, has always remain of great controversy. Even the Supreme Court on various occasions has urged to remove this disparity and bring the Muslim Females also under the Umbrella of claiming maintenance as matter of right but not at the whim of husband. Though the Supreme Court has upheld the Constitutional validity of Act of 1986 in *Danial Latifi’s*² case, but the actual truth is that framing of the Act was just a political initiative to provide the protective cover to overcome and undo the decision given in *Shah Bano Begum*³ case which advocated for providing Uniform Civil Code, which was a great outrage at that time. It has often been contended that the Act is unconstitutional being violative of Article 14

² *Danial Latifi v. UOI*, AIR 2001 SC 3958.

³ *Shah Bano Begum v. Mohd. Ahmad Khan*, (1985) 2 SCC 356.

of Indian Constitution by excluding the Divorced Muslim women to avail the benefit, which has been conferred upon divorced women of other various communities. It is also contended that the Act actually do not fully and correctly codify the true legal principles regarding the various rights prevailing under the Quranic Law. This Act is also a setback to the secular polity of Country by not only segregating the Muslim Women from the ambit of mainstream, but has also set in motion of vicious cycles of demands related to having separate laws for separate communities, which is detrimental to national unity and growth. But a welcome provision in the Islamic law is that the unmarried girls are entitled to claim maintenance from their father even if they have attained majority or not.

It is seen that in the Muslim Women (Protection of Rights on Divorce) Act, 1986 which claims to provide maintenance and financial assistance to the Divorced Muslim Women is an illusion. An indigent Muslim Women will die in destitute and starvation, but would not drag her own relatives in Court to seek maintenance from them which is actually her husband's responsibility.

As far as the provisions of maintenance in the Special Marriage Act, 1954 are concerned, they relate to the post-divorce relief to the couples, whose marriages were solemnized under the Special Marriage Act, 1954 despite of any religious barrier. Like the Hindu Marriage Act, 1955, it provides for the Alimony Pendente Lite and Permanent Alimony, but here the provision is limited to entitlement for wife only. The time limit prescribed for the disposal of the Application is a welcome step which may help in providing quick relief to the vulnerable wife. Further section 37 the Special Marriage Act, 1954, which deals with the Permanent Alimony alike the Hindu Marriage Act, 1955 makes the provision for the amount required by her to live a smooth happy life after the dissolution of marriage. It has also incorporated the principle of *Commodum Ex Injuria Sua Nemo Habere*

Debet, meaning no one shall be allowed to take benefit of his own wrong similarly as the Hindu Marriage Act, 1955 and The Indian Divorce Act, 1869. But it has been held on the various occasions that even if the wife is not complying with the decree of Restitution of Conjugal Rights, and the Decree of Divorce has been passed in the consequences thereof, the wife will be entitled to get the Permanent Alimony.

The Indian Divorce Act, 1869, incorporates the provisions related to Divorce and maintenance of Christians in India. Since in operation for more than 100 years, it had become inadequate and outdated, which were quite inconsistent with the present conditions. The Christian Women could claim Alimony/maintenance only after the decree of Divorce or Judicial Separation has been passed and not otherwise, whereas the women of other communities can claim at time of passing of any decree in relation to Matrimonial Relief. There was a great demand from in and around to bring the Act in par with the Hindu Marriage Act, 1955 and the Parsi Marriage and Divorce Act, 1936. Later the Amendments made in year 2001 which are actually a welcomed step, which can be considered as a step towards bringing it at an par with other matrimonial laws.

The further maintenance provisions, which have been made part of the present work are those incorporated under the Parsi Marriage and Divorce Act, 1936 which was passed earlier in 20th century and can be termed as important piece of legislation incorporating the various provisions related to Parsi Marriage Laws and post separation conflict resolution. As discussed in the previous chapters, it is more or less similar to that provisions incorporated under the Hindu Marriage Act 1955 and provides for Alimony Pendente Lite and Permanent Alimony.

Though it is seen that maintenance could be claimed in the matrimonial proceedings which can be initiated by the Husband or Wife both under the Parsi as well as Christian Law, it still incorporates an outdated character and discriminatory in nature. It may happen that wife is not independent or bold enough to snap all the ties with her husband, but still the situation may arise when it becomes impossible for her to live under the same roof. She has got all the reasons to move away but she cannot claim maintenance till the time she doesn't want to end up her relationship and the matrimonial proceedings have been initiated under the Act, against the husband.

Further, breaking the religion barrier in the sphere of Law related to maintenance, legislators made an attempt to frame a law which is secular in character and provides for the maintenance and welfare of parents and childless senior citizens and in the present work, another attempt has been made to incorporate and analysis the provisions related to the maintenance and Welfare of Parents and senior Citizens Act, 2007, which throw the lights on saga of old parents and the senior citizens, who have to suffer in the twilight years for the sake of seeking maintenance. But the major setback from which this civil benevolent legislation suffers is that the implementation and enforcement has been laid down entirely on the will of the respective states, which clearly reflects that the elderly have been left at the lurch of states. This Act has removed the discrimination between Natural, Adoptive and Step parents which is unlikely the provisions contained in the other Acts providing similar provisions and is indeed a welcome step. Further the act empowers the states to establish the tribunals, which may act expeditiously, to dispose of the application. But the Act lays down the ceiling of ₹10000/- p.m. which in no means can be termed as sufficient in the era when the prices are raising sky high. Moreover no straight jacket formula can be laid down others. Further the Act provides that the order passed by the tribunal is

appealable within 90 days, but the right to appeal has been only conferred on the one party i.e. parents, leaving the other party in the state of flux.

It is further provided in the Act that, on the failure to comply with the maintenance order, the Tribunal may issue warrant within 3 months of due date and if it remains unpaid the accused may be imprisoned up to one month or till the recovery of arrears whichever is earlier. Further the Act provide that if Children abandon their Parents or refuse to maintain them, they may be imprisoned up to 3 months and fine up to ₹5000/- may be imposed on them. But the question arises that whether enforcement of the moral duty by imprisonment is going to sweeten or bitter the relationships? And the answer to it most likely the latter one!

Though the Act can be termed as a ray of the hope for the suffering elderly, yet there are many gray areas. The Act put the liability of the maintenance on the Children or the Relatives who are likely to inherit the property, but the Act is silent on the position or maintenance of the Senior Citizens who have neither children nor any property in hand. And in case they have got the children, is there any surety that the children are themselves not indigent and have got sufficient property in hand or themselves not a person with sufficient means? The option in such a case is laid down to be sending them behind the bars, which is not going to do anything but bitter the relations and create the friction. Further in the case of childless Senior Citizens, it is laid down that the liability will be imposed on the basis of likelihood of inheriting the property, but this likelihood can never be ascertained and nothing can be said about it. The property may be devolved through will as well, which can be changed anytime during the life of testator. Further nobody can be forced to disclosed to disclose the contents of the will.

This Act further provides for the complete exclusion of the professional lawyers, which may be considered as a cost effective step, but altogether it may also cause a suffering to the parents or the senior citizens who are illiterate or not that much educated, which can be tagged as a bar to claim the effective relief to the needy persons.

One of the most important and vital issue in the present Act and in the present state is that in the cultural based Country like India, is that whether the Parents will be readily dragging their Children in order to claim/seek maintenance from them under various societal pressures. The irony of Parents or Senior Citizens can be removed by state by designing a Social Security benefit charter and providing better pension schemes for providing better economic assistance.

Chapter IX of The Code of Criminal Procedure, 1973 can be stated as a secular chapter and complete Code in itself as far as the provisions related to maintenance are concerned. The salutary provisions not only contain the maintenance provisions for the Discarded Wives, Abandoned Children but Parents as well. Within the sphere of present study, it can be stated as these provisions are meant to protect wife, mother or Minor Unmarried daughter. It has to be seen here that though Daughters have been providing maintenance but restricting their claim till minority unless they have been suffering from mental or physical injury is a great set back, since we have often seen that in our Indian society, the girls are brought up in such environment that attaining majority does not ipso facto make her able to maintain herself. Moreover it may happen that a girl has made many sacrifices in the life and has made every possible attempt to provide means of subsistence to the family. Similarly what if girl is minor but her parents have left for heavenly abode? The code is silent about such cases as well and no provision has been incorporated in the code to extend the protective umbrella in such matters! Further in this section mother includes adoptive mother but not step mother. It may happen

that after the death of his first wife, the person married again second time for the sake of his kids only and even the lady attributed her whole life selflessly raising the kids from the first marriage of her husband. She fulfilled all her duties being a mother towards her kids, but a simple reason that she did not carry the child in her womb shall be no reason to disentitle her to claim maintenance from the children whom she has raised as her own. Even in Ancient Indian Law and the Pre-Codification Period, Childless Step Mother was entitled to claim the maintenance from Step Son.

As stated earlier as well, these provisions being Secular in nature are equally applicable on any person from any faith or community. The concept somehow gives the provisions Incorporated a Constitutional sanctity. These provisions also aims at providing the vision to the dream incorporated under the Article 44 of Indian Constitution aiming at providing Uniform Civil Code in India. But the aim to have UCC is effected by the non-inclusion of Muslim Women under the ambit of the secular provisions incorporated under these sections. The maintenance provisions which are Civil in nature have got more teeth by incorporation in the present chapter of the Criminal Laws. Prior to 2001 the section provided for a meager amount of ₹ 500 Per Month as maintenance, which was later removed by Criminal Law Amendment Act, 2001 is a welcome step as in today's world when the prices are sky shooting and no one is expected to live with dignity with such amount. Though the provision incorporated under this chapter are summary in nature, it has been often seen that it takes very long timing and tiring process to get the proper relief and during the pendency of proceedings either she has to live either the life or destitute or may have to live upon the mercy of other people. Every possible way to delay the proceedings is oftenly adopted by the respondent. Though the provision to award interim maintenance and the disposal of the application for interim maintenance within 60 days

has been incorporated, the virtual reality seems far off than what has been actually in the books of laws. But on the analysis of the various sections, it has been seen that the present chapter lacks in proper enforcement. The arrears of maintenance are treated as debt and oftenly, the mode of recovery is quite expensive, ending on putting extra financial burden, which may further become a bar to claim the legitimate dues. Even the Committee on the status of Women in India, 1974⁴ has suggested that hardship which a women faces by non-payment of maintenance shall be minimized. The Secular character of the chapter has been affected by enforcement of the Muslim Women (Protection of Rights on Divorce) Act 1986, which has taken away the Muslim Women from the protective Umbrella of The Code of Criminal Procedure, 1973, proving a setback to the Secular nature.

And towards the end of the work, the provisions incorporated under the Protection of Women from the Domestic Violence Act, 2005 have been included, which can be termed as a great step to break down the bulliness and violence which the women had to face since the time immemorial in the four wall of her house. This Act has actually made a great move ahead by not only incorporating only husband or his relative but that of male partner in case of ‘Relationship in Nature of Marriage’ as well which can be stated as a welcome step in the rapidly changing culture where the Live -in-Relationship is becoming quite prominent. The only condition required is that they have shared a Domestic Relationship. This Act with the changing time has not only provided a summary remedy but has also moved a step ahead against its parallel laws by incorporating the provisions for the betterment and safeguarding the rights of those females who are living together with their male partners without tying the knot i.e. in the Live in Relationship or that in case of bigamous marriages, where at times the

⁴ Available at: <http://pldindia.org/wp-content/uploads/2013/04/Towards-Equality-1974-Part-1.pdf>, (accessed on 16 May 2015).

females have to suffer despite having no fault of them. It would be pertinent to quote Justice M. Katju in the case of *LataSingh*⁵ acknowledging the Live- in- Relationships for the first time stated that“...Notions of the social morality are inherently subjective and the Criminal Laws cannot be used as a means to unduly interfere with the domain of personal autonomy. Morality and Criminal justice are not co-extensive.”⁶

The Apex Court Judgment was followed by the similar suggestions from the National Commission for Women (NCW). In the response to recommendations made by Ministry of Women and Child Development, has sought a change in the definition of ‘Wife’ in Section 125 of the Code of Criminal Procedure, 1973 which deals with the provision related to the maintenance. The chairperson of the Commission Girija Vyas (as she then was) suggested that even if marriage wasn’t registered, a woman’s claim would stand if she provide enough proof of long term relationship.⁷ This undercover the Supreme Court’s stand that a man and woman, having lived together for long, would be presumed to have been married, unless it was rebutted by evidence.

Even many other bodies have made an attempt to initiate that the Statutory Provisions may be incorporated so as to give the long term cohabitation as presumption of marriage. Even the Justice Mallimath Committee in year 2003⁸ stated that if a woman has been in a Live-in-Relationship for a reasonable time, she should enjoy the legal rights of the wife. Giving such a recommendation as statutory clothing to prosecute the persons who are in Live-in-Relationship but

⁵ Lata Singh v. State of UP & Anr, AIR 2006 SC 2522.

⁶ Ibid.

⁷ “NCW seeks change in definition of live-in relationship”, Available at: <http://indiatoday.intoday.in/story/NCW+seeks+change+in+definition+of+live-in+relationships/1/23110.html>, (accessed on 18 January 2015).

⁸ The Mallimath Committee on Criminal Justice Reform System, (2003).

no criminal action could be brought against them because of non-performance of ceremonies necessary to constitute a lawful marriage. But even by implementing this suggestion, only those cases can be tackled where the couple has resided together for a long time. It will be proved innocuous for the cases where the second marriage has been performed not too long back and the couple has not resided together for a long time. Present law provides for a clear escape way to the perpetrators which is not only making the mockery of the justice but also is blurring the society. After considering all the pros and cons, the urgency of the amendment becomes apparent, the reason is crystal clear. Still after much vociferation over the women emancipation when it comes to the marriage, the position has not much changed and women still being at the suffering end.

The provisions to grant the relief to the Aggrieved Person have been incorporated under Sections 18 to 20 of the Protection of Women from the Domestic Violence Act, 2005, which provides for the various remedies, pertinent for the present work is grant of maintenance under Section 20(d) not only for the Aggrieved Person but for the Children as well, which may be either in addition or including the order passed under Section 125 of the Code of Criminal Procedure, 1973 or any other law for time being in force, which clearly indicates that an order passed previously providing maintenance to the Aggrieved person is not a bar to claim or grant remedy under the Provisions of the Act. The provision incorporated under the Act, which enables the Court that if the respondent fails to pay the awarded sum, the Magistrate may directly order the Employer or the Debtor of the respondent to pay the Aggrieved Person or deposit directly in the Court the sum due is really a welcome step which may deter the Respondent to avoid the genuine claim of the claimant. Not only this the provision incorporated under Section 23 of the Act, the provision to grant the interim relief has not been confined on the event of actual happening

but also on the reasonable apprehension that the respondent may indulge in to act of Domestic violence, also aims to save the claimant from the harsh reality.

One thing which has been observed while interpreting and analyzing various statutes is that the manner in which the Quantum of maintenance is assessed is quite different in various statutes and there is difference in opinion as well regarding same. Even the Judicial pronouncements have shown the divergent views regarding same, not leaving a concurrent precedent to be followed.

In the preceding chapters, it has been seen that for claiming the relief one has to approach the Court and all the matter is bound to be debated and discussed elaborately in the Judicial Proceedings in order to ensure timely and fair decisions and to provide the relief to the victims, but it has been often seen that the Judicial Process and the Provisions incorporated there in is nevertheless ‘Summitting the Everest.’ Apart from the lengthy procedures, the working state of affairs in the Courts in India is not at all good. There are multi-tier provisions for a single person to claim Maintenance and there are several ambiguities in drafting of the Provisions as well, which make different High Courts to take divergent and conflicting views, which lead to creating more chaos and confusion. It is required that the Courts need to sensitize the entire system towards the need to achieve the social to the women and treat them with the dignity. The need of the hour is to bring in the reforms in the Maintenance Jurisprudence to make the vision enshrined in the provisions a reality and to provide a speedy and effective remedy to a woman at a minimal cost who is actually not in position to bear the economic burden. The journey to claim maintenance should not accelerate her problems; in fact it should be means to meet the ends. The right to live a life with dignity is not based on the discretion of some jerks associated with her but a

Fundamental Right ensured to her by the Constitution of India and every possible attempt shall be made to protect and honour this right.

It can be stated that though the Indian Women have been provided the various rights to claim maintenance in the Indian Law, but claiming these rights seems to be more of a myth than the reality. For turning the vision in to reality and providing the justice it is highly required that the concrete measures are to be taken by the Legislature so that the justice should not remain namesake only. The nature of right under the provisions discussed in the preceding vary from each other depending on law to law or community to community, but the actual question which arises is that are these provisions sufficient or do they need a fresh look.

Suggestions

On the detailed analysis of the various provisions incorporated under the present work considering the various legal and societal aspects, there is no doubt that these are indispensable part of our legal system, but it is also well established principle that law never stands stagnant, on the basis of the critical appraisal of the benevolent provisions, few changes are highly suggested by the researcher, in the following Acts/ Code:

Suggestions under the Hindu Adoption and maintenance Act, 1956

- The specific provision to grant interim maintenance shall be incorporated in the Hindu and adoption and maintenance Act, 1956 on the tune of the Special Marriage Act, 1954, The Hindu Marriage Act, 1955 and the Indian Divorce Act, 1869. Though the interim maintenance can be granted by the Court by enforcing the Inherent powers under Section 151 Code of Civil

Procedure. but including the specific provision gives more teeth for smooth functioning.

- The aim of the Hindu Adoption and maintenance Act, 1956 to provide financial assistance to the destitute females who cannot afford to live at their own by the present means. But the Remedy being civil in nature, when one approaches the Court of Law, the hefty amount of the Court fees has to be paid, which is one of the procedural technicalities to be complied with.⁹ In such a case the remedy under the Act becomes very onerous. The payment of Court fee renders the remedy ineffective and the need of the hour is to take the legislative initiatives for the removals of this add on infirmity to the legislative procedure.

Suggestions under the Hindu Marriage Act, 1955

- The word ‘respondent’ and ‘petitioner’ used in Section 24 of the Hindu Marriage Act, 1955 shall be replaced by ‘Applicant’ in order to bring true spirit to the nature of provisions.
- The order under Section 24 of Hindu Marriage Act, 1955 against the maintenance Pendente lite order, yet the provisions of revision shall be incorporated.
- The Court should have inherent powers to modify, vary or rescind the order of maintenance Pendente Lite under Section 24 of Hindu Marriage Act, 1955 in case of Change of Circumstances.

⁹ Section 7 (ii) of the Court Fees Act, 1870.

- While seeking divorce on the ground of cruelty, cruelty simpliciter is enough to be one of the grounds of divorce under Section 13 of Hindu Marriage Act, 1955. But in order to claim maintenance and separate residence, an additional apprehension that it is harmful and injurious to live with the husband has to be proved. Therefore on the tune of Hindu Marriage Act, 1956, an amendment is required to be made in the Hindu Adoption and maintenance Act, 1956, to make cruelty simpliciter ground to seek maintenance and Separate residence.

Suggestion under Parsi ,Christian Act& the Special Marriage Act

- The Parsi Marriage and Divorce Act, 1936, the Special Marriage Act, 1954 and the Indian Divorce Act, 1869 shall be suitably amended conferring the right upon the wife to reside separately and claim maintenance without ending the matrimonial ties upon the presence of certain grounds similarly as incorporated under the Hindu Adoption and maintenance Act, 1956.

Suggestions under the Muslim Law

- The enactment of The Muslim Women (Protection of Rights on Divorce) Act, 1986 has in some manner played with the plight of Divorced Muslim Women by taking her away from the benefit conferred under Section 125 The Code of Criminal Procedure, 1973. It is therefore recommended that the position of Muslim Women be restored back to position as prevalent prior to 1986, entitling Muslim women to claim maintenance under The Code of Criminal Procedure, 1973.

- It is suggested that fair and reasonable provision, based on the means and status of husband shall be devised in suitable cases, where the husband exercises his power of unilateral divorce arbitrarily. The Court shall by any means be entitled to indemnify, which shall be based upon the financial status of the husband, further prescribing a minimum amount below which Court shall not pass any order, without putting a ceiling cap over the maximum amount.

Suggestions under the maintenance and Welfare of Parents and Senior Citizen Act, 2007

- The upper limit of ₹10000/- as maintenance in the maintenance and Welfare of Parents and Senior Citizen Act, 2007 is required to be removed without providing any such ceiling, since in the era of sky shooting prices and high rate of inflation along with the other services being so expensive, one cannot be termed to live a “normal life” which is provided in the section itself. Moreover the term “Normal Life” is itself very vague as what constitutes a normal life may vary from case to case depending on the status of the families along with the lifestyle they are accustomed with.
- Right to be heard and equal opportunity for defending themselves is considered to be principle of Natural Justice incorporated under the rule of Audi Aterem Partem. The provisions of preferring an appeal has been incorporated under the Act, but the right has been conferred on one aggrieved party i.e. parents or senior citizens, where are the children or relatives have not been given any right to appeal. The Act need to be amended to

the effect providing equal opportunity to prefer an appeal by the aggrieved party within the stipulated time frame.

- Right to Legal aid has also been enshrined as one of the Fundamental rights incorporated in Part- II of Indian Constitution, under Article 21¹⁰ which has been enumerated by several judicial decisions as well. But the Senior Citizen Act, 2007 provides for the exclusion of Lawyers, which though may be incorporated for the sake of saving the legal cost and expediting the whole process, but it may act as a hurdle in the case where the persons seeking the claim are illiterate or less educated, not enough capable to understand the legal technicalities. Even in one of the most recent judgments by Punjab and Haryana High Court, the Court has laid emphasis on the relooking of Section 17 of Act and inclusion of legal assistance, which is a step to be welcomed.¹¹
- Though with the “The Maintenance and Welfare of Parents and Senior Citizens Act, 2007” Government has come to the rescue of the elderly, with an aim to provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognized under the Constitution, the further provision that the Act shall come into force in a State from the date fixed and notified by the concerned State Government in the Official Gazette, is not a welcome one and the same need to be implemented and extended throughout the Indian Territory uniformly with an immediate effect to extend the protective umbrella to all in need without any territorial discrimination.

¹⁰ Article 21 of Indian Constitution, Right to Life and Personal Liberty.

¹¹ Paramjit Kaur Saroya v. Union of India, AIR 2014 P&H 121.

Suggestions under the Code of Criminal Procedure, 1973

- On the tune of recommendations given by the National Commission of Women and the Justice Mallimath Committee on the Criminal Justice reform system, it is indispensable need of the hour to amend the Definition of 'Wife' under Section 125 of the Code of Criminal Procedure, 1973 to include a woman who has lived together for a considerable long period with the Respondent as his wife. With this an attempt may be initiated to bring the definition at par with that incorporated under the Protection of Women from Domestic Violence Act, 2005, which extend its cover to 'relationship in Nature of Marriage' in which the Courts have granted the maintenance to the females who have been staying together under the same roof as wife for the considerably long period.
- On the tune of the Hindu Adoption and maintenance Act, 1956 which entitles a widowed daughter in law to claim maintenance from her father in law, similar provisions should be incorporated in the Code of Criminal Procedure, 1973 and other personal laws respectively with an aim of making the provision secular in character and not confining the right to claim the maintenance from the husband only.
- Though the provisions incorporated in the Code of Criminal Procedure, 1973 are more or less civil in nature, but to give a true spirit to the provisions incorporated in the chapter, it is recommended to amend the provisions so as to incorporate sentencing provisions to person who

deliberately avoid the payments as to harass the other party.

- Section 125 of the Code of Criminal Procedure, 1973 provides for the maintenance of wives which includes divorced wives, but it excludes the wife whose marriage has been annulled by the Court or wife whose husband entered in to wedlock by deceiving her about his previous marital status. The provision to maintain such destitute female shall be incorporated who had to suffer without having any fault of her own.
- The earning capacity of Women shall be an immaterial fact while passing an award of maintenance, since it happens that she herself earns a meager amount and husband is a millionaire and just because of the meager earnings of the wife, his liability towards maintaining the relationships cannot be restricted.
- While fixing the Quantum of maintenance not only the monthly income of respondent shall be taken in to consideration but his various assets, whether movable or immovable shall also be taken in to consideration.
- Similarly as the maintenance and Welfare of Parents and Senior Citizens Act, 2007, discrimination between natural, adoptive and step mother shall be removed and Code of Criminal Procedure and the Hindu Adoption and maintenance Act, 1956 shall be amended to step children shall be directed to provide maintenance for step mother who doesn't own children, in case if she has children, till the time they attain majority.

- The Code of Criminal Procedure, 1973 may suitably be amended to remove the conditions for claiming maintenance by a daughter and the major unmarried daughter shall also be made entitled to claim maintenance from her parents same as in case of the Hindu Adoption and maintenance Act, 1956, so that the unmarried major daughters from the other communities may take the benefit of this benevolent provision.
- In case of Minor Married daughter, who is unable to maintain herself or even her husband is not able to maintain her, Section 125 of the Code of Criminal Procedure, 1973 confers a right upon her to claim maintenance from her father. Like Major unmarried daughter, Major married daughter has also been excluded specifically, even if she is suffering from some physical and mental disability and her husband does not or cannot support her. It amounts to discrimination not only amongst brother and sisters, but amongst sisters as well and the provision need to be amended the right of major married daughter shall also be made absolute. Law cannot be insensitive merely because the female has attained majority. The criteria for maintaining one should be financial needs and not the age.
- In the present social scenario, parents are often taken as for granted. Though the Code of Criminal Procedure, 1973 provides for granting maintenance to them, the forum for awarding them the relief is very limited. In order for making the claim more accessible to them, necessary amendments shall be made so that seeking maintenance by old and elderly does not become a discomfort.

- Ex parte order under Section 126 of the Code of Criminal Procedure, 1973 shall be made only after serious considerations.
- The Proviso incorporated under Section 125(3) may be treated as an interdict on the persons claiming maintenance under Section 125 of the Code of Criminal Procedure, 1973 by disabling them to claim maintenance amount on expiry of one year from the date it has become due. This provision should be deleted as it sub serve the social purpose and need to be deleted.
- While computing the amount of maintenance, not only monthly income, but also the other assets are to be included, since the amount of maintenance cannot be confined only to the basic necessities but for the unforeseen contingencies as well.
- In the Code of Criminal Procedure, 1973, in the case of minor orphan child, the liability should rest upon grandparents and even if they are not alive, the person who inherited the estate shall be made liable.
- The wife should not be denied maintenance only on the grounds that she is working. Her work or working capacity doesn't disentitle her to have same comfort and status which she was enjoying while staying at her husband's home as his wife and law need to be amended up to this effect.
- An order passed for awarding maintenance shall always be operative from the date of Application for providing justice in latter as well as spirit.

Certain Other Suggestions

- As recommended by the Committee on the Status of Women, 1994,¹² it is recommended that in case of non-payment of maintenance by the Husband and to ensure the certainty of payments, the maintenance order shall be directly deducted from the salary similarly as the case of TDS and in the case of businessman or self-employed person, the arrears of maintenance shall be recovered as arrears of land revenue or district.
- Further recommended by Committee on the Status of Women, 1994,¹³ an additional mode of recovery of arrears may be included by adopting the same procedure, which is adopted for the recovery of fines in the Criminal Procedure Code, 1973.
- As further recommended by the Committee,¹⁴ it is suggested to have specialized Courts like the family Courts, to deal with the entire question of maintenance. Apart from the matters like the income of the respective spouses or degree of financial dependence, a Family Court would be able to approach the question taking an overall view. The matters of consideration would be: (a) the husband's obligation to the divorced wife, as well as obligations incurred by him by subsequent marriage; and (b) the divorcee's degree of dependence on the maintenance order and her efforts to become financially independent. A continuous process is necessary for the assessment and only a specialized Court can efficiently exercise its vigilance.

¹² Available at: <http://pldindia.org/wp-content/uploads/2013/04/Towards-Equality-1974-Part-1.pdf>, (Accessed on 25 March 2015).

¹³ *Ibid.*

¹⁴ *Ibid.*

- As far as the non-compliance of order of maintenance Pendente lite in various legislatures is concerned, there is no uniformity. Various High Courts have adopted various methods such as stay of proceedings, dismissal of petition, dismissal of appeal, striking off the defense etc. in order to bring the true meaning to the provisions, it is required that contempt proceedings shall be allowed and initiated, where the non-applicant attempts to harass the applicant by nonpayment of the genuine claim.
- In the cases, where the husband is not having any sufficient property to fulfill the obligation imposed on him by the law, causes a very tricky situation and a serious problem. While dealing with such kind of matters State financial schemes for the discarded wives should be introduced in order to give immediate relief and social security to them.
- The Framers of our Constitution envisaged the idea of Uniform Civil Code under Article 44 of Indian Constitution envisaging same set of rules in same situation to people of different religions. It is highly called for, in a multi religious Country like India, which will further the object of unity in diversity as well. The call for same has been made out by the honorable Apex Court for the implementation of same on the several occasions and it is high time that legislators should think and frame laws overcoming the religious barriers.
- On reading of various sections under the various legislatures and codes, it has become clear that only lawfully her wedded wife can seek maintenance from her husband. But there are many cases where the woman

marry a man who deceitfully and on false representation without any fault on the part of women. It is suggested that in such cases, where she marries her husband without any notice of first marriage, shall not be denied maintenance. In such case she herself is victim and should not be made suffer more by denying maintenance. In fact it shall also act as deterrent on males to adopt such deceitful practices.

- It is required, that, in every legislation dealing with the Alimony Pendente lite and expenses of the proceedings, the same may be awarded from the date of application or the commencement of the proceedings and not from the date of order. It will help in avoiding the delayed tactics adopted by the husband to avoid the payment.
- It shall be made mandatory to furnish the details of earnings and other properties, whether movable or immovable on the affidavit and if later it is found that the person has furnished a wrong information in the Court, the Court shall be empowered to take due action against him which may be fine or imprisonment or both.
- Magistrate shall be empowered to make Provisions for depositing advance maintenance in Court for fix months say 3, 4, 6. Further the provision to award interest in case of failure of payment of arrears of maintenance shall be incorporated, which shall actually act as deterrent.
- Though it is reiterated several times, that while fixing the quantum, the due consideration shall be given to the status of parties, but no such provision has been made down while fixing maintenance Pendente Lite and often the Courts fails to arrive at justice by fixing an

insufficient amount pending the proceedings, since no hard and fast rule can be laid down in this matter, it is suggested that the Judiciary shall act most judiciously while fixing and arriving at any amount.

- It is suggested that the no appeal shall be allowed against the order of interim maintenance and further the order of interim maintenance shall be passed from the date of application of the interim maintenance. Such provision shall act as a coercive tool to appear in Court and contest the proceedings rather than avoiding and delaying the proceedings.
- It is further recommended that on the Model of the National Women Commission, a commission for the old and elderly to be established, which shall look in to regular basis on the implementation and enforcement of the various legislative measures, suggestions for the betterment of the elderly people in furtherance of advancement of social security charters along with the interpretation and developing frameworks for the various provisions incorporated under the Indian Constitution.
- “The maintenance and Welfare of Parents and Senior Citizens Act, 2007” provides for the maintenance provisions for the parents having kids and the senior citizens, who are not having children may claim maintenance from the relatives, who are likely to inherit their property, but there is likelihood of children or senior citizens themselves being without any property or means to maintain their parents. In such a case the liability is upon the State to provide some social security by introducing a social security charter aiming at

providing Group insurance/ Old age pension schemes, through which they may claim a decent life as a matter of right and not merely upon the mercy of some other people. This will be a true step in furtherance of achieving the Directive enshrined in Article 41¹⁵ of Indian Constitution aiming towards the betterment of Old Age people.

- The elderly and old aged people are represented by the overburdened Ministry of social welfare and justice, which work in the multi-dimensional schemes. But in actual, this strata of people needs to be look after by the special department, which is actually required to be sensitized about the special needs and the various problems which the elderly have to face while standing at the evening of their lives.
- The fight of claiming maintenance is actually a fight for claiming survival and it should not end up in proving to be extra financial burden upon the claimant. The state should aim towards providing free legal aid to the claimant so that no one is deprived of their right in absence of required legal assistance, which is enshrined under Article 39A of Indian Constitution as part of Directive Principles of State Policy.
- It is often that in the case, if the spouse, against whom the award of maintenance is passed, does not possess the sufficient resources or property to fulfill the obligation imposed on him by the law and it may lead to causing

¹⁵ Article 41 of Indian Constitution Lay down as, “Right to work, to education and to public assistance in certain cases The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want”.

serious problem. It is recommended that in such cases, states may endeavor for implementation of State Financial Schemes for the discarded, abandoned or destitute females in order to provide them an immediate relief.

- While assessing and fixing the quantum of maintenance, Section 5(1) & (2) of Matrimonial Proceedings Act, 1970¹⁶ shall be taken in to consideration, which lays down

¹⁶ Section 5 (1) of the Matrimonial Causes Act, 1970 states that: It shall be the duty of the Court in deciding whether to exercise its powers under Section 2 or 4 of this Act in relation to a party to the marriage and, if so, in what manner, to have regard to all the circumstances of the case including the following matters, that is to say:

- (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;
 - (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
 - (c) the standard of living enjoyed by the family before the breakdown of the marriage;
 - (d) the age of each party to the marriage and the duration of the marriage;
 - (e) any physical or mental disability of either of the parties PART I to the marriage;
 - (f) the contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family;
 - (g) in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring; and so to exercise those powers as to place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other.
- (2) Without prejudice to sub-Section (3) below, it shall be the duty of the Court in deciding whether to exercise its powers under section 3 or 4 of this Act in relation to a child of the family and, if so, in what manner, to have regard to all the circumstances of the case including the following matters, that is to say:
- (a) the financial needs of the child;
 - (b) the income, earning capacity (if any), property and other financial resources of the child;
 - (c) any physical or mental disability of the child;

the concrete considerations in statutory form, which should be basis for the Court while assessing the amount of maintenance to be paid and provide a guide in which their discretion could be executed. The same principle can be incorporated under the various Indian Legislatures dealing with the subject and by the Courts while deciding or fixing the quantum of maintenance.

- It is suggested that the tendency to obtain the adjournments on the frivolous grounds in the cases pending in the Courts should be curbed, which will help in speedy disposal of the ending cases. Another aspect which needs to be taken care of is that the inability of judges to handle the matters with maturity and proper attitude in order to enhance the objects of provisions enshrined in the aforesaid acts. The judiciary should not be indifferent to the problem faced by females in the journey of claiming maintenance. They should endeavor to elevate her social status by providing her adequate relief.
- While passing the award of maintenance, the Courts should take in due consideration, the present cost of living index provided by the Government agencies, so that a decent lifestyle as per the present economic

(d) the standard of living enjoyed by the family before the breakdown of the marriage;

(e) the manner in which he was being and in which the parties to the marriage expected him to be educated or trained;

and so to exercise those powers as to place the child, so far as it is practicable and, having regard to the considerations mentioned in relation to the parties to the marriage in paragraphs (a) and (b) of sub-Section (1) above, just to do so, in the financial position in which the child would have been if the marriage had not broken down and each of those parties had properly discharged his or her financial obligations and responsibilities towards him.

conditions may be awarded with the provision of timely review of the same.

To sum up this small attempt to bring the various aspects for the law maintenance and the status of women claiming maintenance hitherto, whether it may matrimonial remedy or independent civil remedy, which may be granted to wife, daughter, mother, live in partner under the various provisions of separate legislations, is an attempt to ameliorate her economic condition, but despite of all the provisions she remains a suffer because she always being a dependant. It could be seen that though plethora of legislations have been drafted and implemented in order to provide the social justice to the women and improve her status by providing a helping hand, but these legislations have somehow failed to provide the equality of justice to her because various lacunas or loopholes present in them because of one reason or another elaborately discussed already. Legal Rights are guaranteed in papers only but in reality the exercising and availing these rights is very difficult. Today, the privileged position of the women has at time been taken by her as a weapon to fulfill the interest. So right now it is the time that the unification of the various maintenance laws could be done with a “heart and soul” and the provisions could be utilized in best possible way to achieve social, economic and political Justice to women.

It is required that the Courts need to sensitize the entire system towards the need to achieve the social purpose for the women and to treat them with dignity. The need of the hour is to bring in the reforms in the maintenance jurisprudence to make the vision enshrined in the provisions a reality and to provide a speedy and effective remedy to a woman at the minimal cost who is actually not in position to bear economic burden. The journey to claim maintenance should not accelerate her problem; in fact it should be means to meet the ends. The right to live her life with dignity is not based on discretion of

some jerks associated with her, but by the Constitution of India as a fundamental right and every attempt shall be made to honor and protect this right awarded to her.

At the end, it may be added in the end that laws, however forward looking and idealistic, have their limitations in enforcing the induced change in the society. Despite of well incorporated provisions in the Personal and Criminal Laws of the Country, the implementation of the same to provide a social security is lacking. They are simply the one factor and hold mirror for the times. So what is required is the awakening of people, which leads to attitudinal change. Therefore, the society in general and women in particular should be educated to stand up and drive away the ills which she has for long suffered. It is heartening to note that society is becoming conscious and there is shift in value system from the previous times. What is required is its fast pace and the law must boost it.

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