

MAINTENANCE

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In Family Law maintenance is often used as a synonym for spousal support or alimony, and the term is in fact replacing alimony. Traditionally, alimony was solely the right of the wife to be supported by the husband. The award of spousal maintenance is generally determined based on all or some of the following guidelines: the recipient's financial needs; the payer's ability to pay; the age and health of the parties; the standard of living the recipient became accustomed to during the marriage; the length of the marriage; each party's ability to earn and be self-supporting; and the recipient's nonmonetary contributions to the marriage.

Spousal maintenance may be temporary or permanent. The parties generally may adjust its amount at a future date by returning to court and reassessing the relevant criteria at that time. In some states the parties may forever waive their right to spousal maintenance by written agreement.

Hindu sages in most unequivocal and clear terms laid down that maintenance of certain persons is a personal obligation. Manu declared: "the aged parents, a virtuous wife and an infant child must be maintained even by doing hundred misdeeds." Brihaspati said, "A man may give what remains after the food and clothing of family: the giver or more (who leaves his family naked and unfed) may taste honey at first but afterwards finds it poison." According to the Mitakshara, "where there may be no property but what has been self-acquired, the only persons whose maintenance out of such property is imperative, are aged parents, wife and minor children." A person who involves in charity or dan at the cost of maintenance of his aged parents, infant children and wife is condemned by the sages; it is like tasting honey which turns out to be poison later. During the British period, it was a well established rule that the maintenance of the aforesaid three sets of persons was a personal obligation of every male Hindu.

Maintenance can be split into two, spousal and child. Maintenance refers to what amount of money one spouse pays to the other either for that spouse or for dependent children or both. Children

are now potentially dependent until they are 23. However, legal advice should be taken on this matter as not all children between 18 and 23 are categorized as dependents and equally some children will always be dependent and there is no cut off point.

As it becomes more commonplace for women to continue to work after marriage and children, spousal support per se becomes less common, notwithstanding disparity in income. Of course, if the disparity is large then that is a matter for argument before the court or for agreement as needs be.

Maintenance can be the sole issue of a legal application and application can be made in the District, Circuit or High Court. Interim Maintenance can be sought in the context of matrimonial proceedings prior to the hearing by making application to the court by way of Notice of Motion.

CHAPTER 1

LAWS OF MAINTENANCE UNDER DIFFERENT PERSONAL LAWS IN INDIA CAN BE CLASSIFIED INTO FOUR HEADS:

- a. Maintenance under Hindu Law.
- b. Maintenance under Muslim Law.
- c. Maintenance under Christian Law.
- d. Maintenance under Parsi Law.
- e. Maintenance under Code of Criminal Procedure 1973.

CHAPTER 2

MAINTENANCE UNDER HINDU LAW

The relief of maintenance is considered an ancillary relief and is available only upon filing for the main relief like divorce, restitution of conjugal rights or judicial separation etc. Further, under matrimonial laws if the husband is ready to cohabit with the wife, generally, the claim of wife is defeated. However, the right of a married woman to reside separately and claim maintenance, even

if she is not seeking divorce or any other major matrimonial relief has been recognized in Hindu law alone. A Hindu wife is entitled to reside separately from her husband without forfeiting her right of maintenance under the Hindu Adoptions and Maintenance Act, 1956. The Act envisages certain situations in which it may become impossible for a wife to continue to reside and cohabit with the husband but she may not want to break the matrimonial tie for various reasons ranging from growing children to social stigma.

I) MAINTENANCE OF WIFE:

Under S.24 of Hindu Marriage Act, 1955 (herein after mentioned as HM Act), either the wife or husband can apply for interim maintenance. The basis of the claim for interim maintenance is that the claimant has no independent income of his/her own to support himself/herself. The provision is silent on the quantum of maintenance and it is upon the discretion of the court to determine the quantum. Similarly, maintenance pendente lite is to be provided to the claimant who does not have an independent income and the financial need of litigation expenses has to be provided by the other spouse.

The interim maintenance is payable from the date of presentation of the petition till the date of dismissal of the suit or passing of the decree. Interim maintenance is supposed to meet the immediate needs of the petitioner. And maintenance pendente lite is for providing the litigation expenses to the claimant.

S. 3(b) (i) of Hindu Adoption and Maintenance Act, 1956(herein after mentioned as HAM ACT) defines maintenance as "provision for food, clothing, residence, education, and medical attendance and treatment." In the case of unmarried daughter, it also includes her marriage expenses. The provisions for permanent maintenance are present in all the personal laws and are substantively similar. However there are some differences between the personal laws.

II) GROUNDS FOR AWARD OF MAINTENANCE:

Only upon proving that at least one of the grounds mentioned under the Act, exists in the favour of the wife, maintenance is granted. These grounds are as follows:-

- a. The husband has deserted her or has willfully neglected her;
- b. The husband has treated her with cruelty;
- c. The husband is suffering from virulent form of leprosy/venereal diseases or any other infectious disease;
- d. The husband has any other wife living;
- e. The husband keeps the concubine in the same house as the wife resides or he habitually resides with the concubine elsewhere;
- f. The husband has ceased to a Hindu by conversion to any other religion;
- g. Any other cause justifying her separate living;

III) QUANTUM OF MAINTENANCE

The means and capacity of a person against whom the award has to be made should be taken into consideration for determining the quantum of maintenance. In fact, in case of the husband, it is not only the actual earning, but also his potential earning capacity, which must be considered i.e. there is a presumption that every able-bodied person has a capacity to earn and maintain his wife. The income of the husband is a significant factor to be considered by the court in fixing the quantum of maintenance. It is disposable income and not the gross income, which is to be considered. Section 23(2) of HAM ACT states the factors to be considered in determining the amount of maintenance payable to the wife, children and aged parents, and they are as follows – the position of and status of the parties, the reasonable wants of the claimant, the claimant if living separately is justified or not, the income of the claimant and the value of the claimant's property and the number of persons entitled to maintenance under the Act.

Even if one of these grounds exists in favour of the wife, she will not be entitled to relief if she has indulged in adulterous

relationship or has converted herself into any other religion thereby ceasing to be a Hindu. It is also important to note here that in order to be entitled for the relief, the marriage must be a valid marriage. In other words, if the marriage is illegal then the matrimonial relationship between the husband and wife is non-existent and therefore no right of maintenance accrues to wife. However, thanks to judicial activism, in particular cases the presumption of marriage is given more weight and the bars to maintenance are removed.

IV) MAINTENANCE OF CHILDREN:

Section 20 of HAM ACT imposes an obligation upon the parents – mother and father, both equally to maintain the children – both legitimate and illegitimate. This is a unique feature of the Hindu law where both the parents are equally responsible to maintain the children. S.20 (2) of HAM ACT lays down that the children are entitled to maintenance during their minority. This right of maintenance for the daughter is extended till she gets married. The parents are obliged to bear her marriage expenses. However even after marriage a minor married daughter, if she is unable to maintain herself then she can claim for maintenance under S.125 CrPC. When an application has been filed under section 24 and 25 of HM ACT, the children are also entitled to get maintenance if the claimant has the responsibility of maintaining them i.e. the claimant's right to maintenance also includes the right of maintenance of the children. Section 26 of HM ACT also provides that in any proceeding under the Act the court can from time to time pass interim orders and make provisions in respect of the custody, maintenance and education of the minor children.

V) MAINTENANCE OF PARENTS

S. 20 of HAM ACT also lays down an obligation of maintenance of old and infirm parents who are not able to maintain themselves out of their own personal earnings and property. The HAM ACT is the first statute in India, which imposes an obligation on the children to maintain their parents. The obligation to maintain is not only limited to the sons but it also extends to the daughters.

Under HAM ACT, both the mother and the father have an equal right to claim maintenance. The explanation to this section also includes stepmother in the term parent. However it is important to note that the section imposes an obligation to maintain only those parents, who are unable to maintain themselves and therefore the obligation to maintain the parents other than those infirm and unable, is only moral.

CHAPTER 3

MAINTENANCE UNDER MUSLIM PERSONAL LAW

“All those things which are necessary to support of life, such as food, clothes and lodging; many confine too solely to food.”[12] “Nafaqa literally means which a man spends over his children; in law it means feeding, clothing and lodging; in common use it signifies food.”[13] “Maintenance comprehends food, raiment, lodging, though in common parlance it is limited to first.”[14]

The main principles of maintenance may be recounted thus: (i) A person is entitled to maintenance if he has no property, (ii) is related to obligor in prohibited degrees, or is the wife or child, and (iii) the obligor is in position to support him. The obligation of maintenance is also hedged by the factor of their economic condition.

PERSONS ENTITLED TO MAINTENANCE

- I) Maintenance of Wife
- II) Maintenance of Children
- III) Maintenance of Parents, and
- IV) Other relations

I) MAINTENANCE OF WIFE

It is incumbent on a husband to maintain his wife, whether she is Muslim or Kitabiyyah, poor or rich, enjoyed or unenjoyed, young or old. However the wife is too young for matrimonial intercourse she

has no right to maintenance from her husband, whether she is living in his house or with her parents.

The husband is bound to maintain his wife so long as she is faithful to him and obeys his reasonable orders. It is decided in an interesting case by Strachy and Badruddin Tyabji, JJ. that disobedient wife need not to be maintained. Strachy, J., observed:

“...the husband’s duty to maintain his wife is conditional on her obedience and he is not bound to maintain her if she is disobeys him by refusing to live with him or otherwise.[18] Only paid occasional visits to husband house, staying for a night or so returning on occasion to mother’s house... I am clearly of the opinion that in such circumstances the Muhammadan husband is not bound to give his wife separate maintenance...”

To some effect the observations of Tyabji, J., :

“...it is impossible to hold that a Mussulman wife defying her husband, refusing to live with him, and bringing scandalous charges against him, can yet claim to be maintained separately at the expenses of her husband.” [19]

Where the marriage is valid and the wife is capable to render marital intercourse it’s the husband’s duty to maintain his wife even though she may have means to maintain herself. But if she unjustifiably refuses to cohabit with her husband then she loses her right for maintenance. The right of maintenance would also be lost if the wife refuses to obey the reasonable commands of the Husband but not so if disobedience is justified by circumstances or if she is forced to leave husband’s house on account of cruelty, so that of the husband refuses to maintain his wife without any lawful reasons/causes the wife may sue him for maintenance. She is not however entitled to past maintenance. Maintenance is payable from the date of the decree unless the claim is based on specific agreement.

Where a wife is turned out or ill treated so as to make her impossible to stay or live together with her husband, or where the breach between the wife and husband is irremediable she is entitled to maintenance by living separate from him whether the question arises u/s. 125 of the Code of Criminal Procedure 1973 (corresponding section. 488 of the Code of Criminal Procedure 1998)[26] or in a suit for restitution of conjugal life.[27]To summaries, the wife loose the right to maintenance in the following circumstances:-

- a) She is minor, incapable of consummation.
- b) Refuse free access to the husband at all reasonable times.
- c) Is disobedient.
- d) Never visited his house.
- e) Refuses to cohabit with him without reasonable excuse.
- f) Abandon conjugal home without reasonable reasons.
- g) Deserts him.
- h) Elopes with another person.

The husband and wife or their guardian may enter into agreement whereby the wife is entitled to recover maintenance from her husband, on the happening of some special event such as ill-treatment, disagreement, husband's second marriage etc. but the agreement in the marriage contract that the wife would not be entitled to maintenance is void.[28]The key consideration is that the agreement should not be opposed to the public policy and Muslim Law.

An agreement between a Muslim and his first wife, made after his marriage with a second wife, providing for certain maintenance for her if she could not in future get on with the second wife, was held not void on the ground of the public policy.

Followings are the valid conditions for an agreement:

- a. If the husband treats the wife with cruelty then the wife has a right to separate residence and maintained to meet it.
- b. If he brings subsequent wife and the previous wife is unable to with her, she will get maintenance allowance to live separately or even at her father's house.
- c. If he brings his other wife to the matrimonial home, she will reside at her father's home and he will give her maintenance. This view was reiterated by the Karnataka High Court.
- d. In case of disagreement with each other, he will give her maintenance for her separate residence.

After divorce the Mahomedan wife is entitled to maintenance during the time period of Iddat [33] and also for the time, if any, that elapsed after the expiry of the period of Iddat and her receiving notice of Talak. After expiry of the period Iddat the enforceability of the order of maintenance ceases.

The wife is entitled to sue for maintenance at her normal place of residence at the time of divorce and the place where she receives the notice thereof. Suit by divorced for Hiba-jewels lies where the wife resides.

A widow is not entitled to maintenance out of the estate of her late husband in addition to what she is entitled to by inheritance or under his will.

II) MAINTENANCE OF CHILDREN

In case of Legitimate Children the maintenance of the children is rest upon the father. In Hedaya, the following verse of the Koran, namely ----

“The maintenance of woman who suckles an infant rests on him to whom the infant is born,”

Is mentioned and from which it has been inferred that “ the maintenance an infant child is rest upon the father, because, as maintenance is decreed to the nurse on account of her sustaining the child with her milk, it follows that the same is due to the child himself a fortiori. “

Thus a father is bound to maintain his sons until they attain puberty and his daughter until they are married. He is also responsible for the upkeep of his widowed or divorced daughter, or a child in the custody of the mother. The father is not bound to provide separate maintenance for a minor or an unmarried daughter who refuses to live with him without reasonable cause. An adult son need not to be maintained unless he his infirm. The father is not bound to maintain a child who is capable of being maintained out of his or her own property.

If the father is poor or infirm then the mother is bound to maintain the children. And failing her it is the duty of the parental grandfather.

In case of Illegitimate Children, Muslim Law the father is not bound to maintain illegitimate children. U/S 488 of the Criminal Procedure Code, 1908 (as amended up to 1955), however did bound the father to pay a reasonable amount even him the mother refuses to surrender the illegitimate child to him.

In a case it was held, “An agreement to maintain an illegitimate child, for which the Muhammadan Law makes no provision, will in my opinion not have the effect of defeating the provisions of any

law. As a matter of fact the maintenance of the illegitimate children has been statutorily recognized u/s 488 of the CrPC in our country and it is in consonance with this wholesome policy that the offspring born under such circumstances are to be provided for and should not be left to the misfortunes of the vagrancy and its attended social consequences.”

It is, however not open to a Court to award maintenance u/s. 488 of the CrPC unless expressly asked for.

CHAPTER 4

MAINTENANCE UNDER CHRISTIAN LAW

A Christian woman can claim maintenance from her spouse through criminal proceeding or/and civil proceeding. Interested parties may pursue both criminal and civil proceedings, simultaneously, as there is no legal bar to it. In criminal proceedings, the religion of the parties does not matter at all, unlike in civil proceedings.

Section 36 of the Indian Divorce Act, 1869 (IDA) are similar to S.24 of HM ACT However S. 36 of IDA differs in the respect that the maintenance pendente lite and interim maintenance can only be claimed by the wife and not by the husband.

If a divorced Christian wife cannot support her in the post divorce period she need not worry as a remedy is in store for her in law. Under S.37 of the Indian Divorce Act, 1869, she can apply for alimony/ maintenance in a civil court or High Court and, husband will be liable to pay her alimony such sum, as the court may order, till her lifetime. The Indian Divorce Act, 1869 which is only applicable to those persons who practice the Christianity religion inter alia governs maintenance rights of a Christian wife. The provisions are the same as those under the Parsi law and the same considerations are applied in granting maintenance, both alimony pendente lite and permanent maintenance. The provisions of the Indian Divorce Act, 1869, are produced herein covered under part IX -S.36 - S.38

The power of order monthly or weekly payments:

In every such case, the Court may make an order on the husband for payment to the wife of such monthly or weekly sums for her maintenance and support as the Court may think reasonable:

Provided that if the husband afterwards from any cause becomes unable to make such payments, it shall be lawful for the Court to discharge or modify the order, or temporarily to suspend the same as to the whole or any part of the money so ordered to be paid, and again to revive the same order wholly or in part as to the Court seems fit.

Under section 38 of the Indian Divorce Act, 1869, in all cases in which the Court makes any decree or order for alimony, it may direct the same to be paid either to the wife herself, or to any trustee on her behalf to be approved by the Court, and may impose any terms or restrictions which to the Court seem expedient, and may from time to time appoint a new trustee, if it appears to the Court expedient so to do.

CHAPTER 5

MAINTENANCE UNDER PARSI LAW

Parsi can claim maintenance from the spouse through criminal proceedings or/ and civil proceedings. Interested parties may pursue both criminal and civil proceedings, simultaneously as there is no legal bar to it. In the criminal proceedings the religion of the parties doesn't matter at all unlike the civil proceedings.

If the Husband refuses to pay maintenance, wife can inform the court that the Husband is refusing to pay maintenance even after the order of the court. The court can then sentence the Husband to imprisonment unless he agrees to pay. The Husband can be detained in the jail so long as he does not pay. The Parsi Marriage and Divorce Act, 1936 speaks about the right of wife to maintenance-both alimony pendente lite and permanent alimony. The maximum amount can be decreed by court as alimony during

the time a matrimonial suit is pending in court is one-fifth of the husband's net income. In fixing the permanent maintenance, the court will determine what is just, bearing in mind the ability of husband, wife's own assets and conduct of the parties and this order will remain in force as long as wife remains chaste and unmarried. In case of pendent lite and interim maintenance sections 39 of the Parsi Marriage and Divorce Act, 1936 (PMDA) is similar to S.24 of HM ACT.

S.40. of Parsi Marriage and Divorce Act says that the defendant shall pay to the plaintiff for her or his maintenance and support, such gross sum or such monthly or periodical sum, for a term not exceeding the life of the plaintiff as having regard to the defendants own income and other property, if any, the income and other property of the plaintiff, 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 movable or immovable property of the defendant.

The Court if it is satisfied it may, at the instance of either party, vary, modify or rescind any such order in such manner as the Court may deem just and 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 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.

CHAPTER 6

MAINTENANCE UNDER CODE OF CRIMINAL PROCEDURE 1973.

S.125.Order for maintenance of wives, children and parents.-

- (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,

It should be kept in view that the provision relating to maintenance under any personal law is distinct and separate. There is no conflict between the two provisions. A person may sue for maintenance under s.125 of CrPC. If a person has already obtained maintenance order under his or her personal law, the magistrate while fixing the amount of maintenance may take that into consideration while fixing the quantum of maintenance under the Code. But he cannot be ousted of his jurisdiction. The basis of the relief, under the concerned section is the refusal or neglect to maintain his wife, children, father or mother by a person who has sufficient means to maintain them. The burden of proof is on him to show that he has no sufficient means to maintain and to provide maintenance.

Section 125 gives a statutory recognition to the moral, legal and fundamental duty of a man to maintain his wife, children and aged parents. Although this section also benefits a distressed father, the main thrust of this section to assist women and children. Article 15(3) of the Indian constitution envisaged that the state can make special provision for woman and children. Section 125 is also along the lines of Art.39 of the Indian Constitution that states that the State shall direct its policy towards ensuring that all citizens both men and women have equal access to means of livelihood and

children and youths are given facilities opportunities in conditions of freedom and dignity.

At the time of enactment of this code section 125 is intended to be applicable to all irrespective of their personal Laws although maintenance is a Civil remedy yet it has been made a part of this Code to have a quick remedy and proceedings and S.125 is not a trail as non-payment of maintenance is not a criminal offence.

The word 'any person' u/s. 125 includes a person belongs to the undivided family although the proceedings strictly against the individual concern and not the undivided family. However, the Magistrate may take into consideration the joint family property is determining the amount of maintenance that should be payable by such person.; it also includes a person, a father, an adult son and a married daughter. But not include a mother or a wife or an unmarried daughter.

REFUSAL ON NEGLECT TO MAINTAIN:

It has been held that the refusal or neglect to maintain may be expressed or implied, it may be by words or by conduct and action. Sometimes refusal or neglect may be constituted by something more, than mere failure and omission. However, in relation to a person who has no volition of his or her own, like in case of a child mere failure or omission shall constitute refusal or neglect to maintain.

The term 'maintenance' has been generally interpreted to include food, clothing and lodging. However in recent time it has been held that any other requirements, i.e., necessary for a person to remain fit healthy and alive is also to be included within periphery of the term 'maintenance'.

CHAPTER 7

JUDICIAL PRONOUNCEMENT

MAINTENANCE TO WIFE

In Divyananda v. Jayarai two Roman Catholic entered into Suyamaryadhai form of marriage and lived together as husband and wife for period of 5 months in the course of which the wife conceived a child. The Court rejected the petition of the woman as she was not a legally wedded wife. The Court held that being Christian, their marriage in accordance to Hindu customs without any conversion was void ab-initio and hence the woman was not a wife in the eye of law. As such the woman could not claim maintenance U/S. 125 of, although her children illegitimate would be entitled to maintenance U/S. 125.

In the case of K. Sivarama v. K. Bharathi that any marriage in contravention of Section 5 & 11 of the Hindu Marriage Act, cannot be considered to be the valid marriage. Such a woman cannot recourse maintenance U/S. 25 of the Hindu Marriage Act for claiming maintenance.

In the case of Ambaram v. Reshambai the court held that although the lot of women who entered into marriage without knowing about the subsistence of another marriage of her husband, although deserve a sympathetic treatment yet awarding of maintenance U/S. 25 & if any appeal is to be made, it should be made to the legislature.

In the case of Abdul Salim v. Nagima Begam the Court held that the phrase 'unable to maintain herself' should not be interpreted to mean that a wife in order to claim maintenance should be an absolute destitute or should be in tattered clothes, or should be the first one out of the street to beg. The very fact is that she has no other means of her own other than that of her husband to maintain her adequately to entitle her to the right of maintenance.

MAINTENANCE FOR LIVING TOGETHER

In *S.P.S. Balasubramanyam v Suruttayan Andalli Padayachi & Ors.* The Supreme Court allowed presumption of marriage u/s 114 of Evidence Act out of live-in relations and presumed that their children were legitimate. Hence, they are rightfully entitled to receive a share in ancestral property. In the instance case, Matrimonial claim her brother Muthu Reddiars property who died unmarried and intestate.

In *Abhijit Bhikaseh Auti v. State Of Maharashtra and Others*, the positive opinion in favour of live in relationship was also seconded by Maharashtra Government in October, 2008 when it accepted the proposal made by Malimath Committee and Law Commission of India which suggested that if a woman has been in a live-in relationship for considerably long time, she ought to enjoy the legal status as given to wife.

MAINTENANCE TO CHILDREN:

In *Ram Chandra Giri v. Ram Suraj Giri* where the father of a minor son neglected to provide maintenance, a petition was filed under section 125 of CrPC. Thereupon the father contended that the son has a good physic and was healthy and hence he had the ability to fend for himself. The Court rejected the contention and stated that the concept of potential earning capacity cannot be applied to, minor children as that would defeat the very purpose legislation.

TO STEP-MOTHER:

According to the Orissa High Court held in *Pitei Bewa v. Larimidhi Jena* she would be included within the word "mother". The Allahabad High Court has supported this view. But in *Rewal v. Kamalabai*[54] has held the contrary view and the High Court of Andhra has supported the interpretation that "mother" includes adoptive mother and he has the right to claim maintenance against the adoptive son.

MARRIED DAUGHTER'S LIABILITY:

Vijaya Manohar Arbat v. Kashiram Rajara Sawai[56], the Supreme Court in a landmark judgement held that the married daughter is liable to provide maintenance to their aged parents if they are unable to maintain themselves. In this case Mr. Dutta & Mr. Ojha, JJ, held that married daughter does not cease to be daughter on her getting married. Farther more the Court held that if it is to be decided, that daughter has no liability to maintain their aged parents, those who have no son only daughter, would become destitute and beggar if their daughter provides for maintenance.

ALTERATION IN ALLOWANCE (S.127 OF THE CRPC):

On the case of, Bai Tahira v. Ali Hussain Fissali[57], it was held by the SC that if the amount of deferred 'Mehtar' paid at the time of divorce is adequately to sustain the wife through her life time then an order of maintenance U/S. 125 shall be liable to be cancelled in accordance to S.127(3). The same view point was reiterated in Fuzlumbi v. K. Khader Ali.

But in Shah Bano Begum v. Mohd. Ahmed Khan the SC held that 'Mehtar' is an amount paid in consideration of money and not of divorce and hence, it does not fulfill the condition of the S.127(3)(b). Therefore, irrespective of the amount of deferred'Mehtar' at the time of divorce an amount of maintenance cannot be cancelled U/S. 127(3)(b).

CHAPTER 8

SUGGESTIONS

While these are significant rulings capable of a far-reaching impact, unless they are used in trial court litigation and are used to change social norms within communities they will remain merely ornamental snippets in law journals. Unless all those who are committed or are statutorily bound to protect the rights of Muslim women — lawyers, women's groups and social workers — are aware of these gains, the judicial pronouncements will cease to have an impact upon their lives, as was the case with Shah Bano.

· Till now nothing has transpired as such which would show that there exists a misbalance and that any gender has been deprived of their fundamental rights. When we move towards repercussions of divorce, then comes to light - Maintenance OR Alimony. On this aspect the Govt. has taken an orthodox view and considered women as weaker sex and has made special provisions should be changed.

The maintenance should not vary in any of the case where the wife is able to maintain herself. The maintenance amount should be assessed by the courts on case to case basis and it should only be treated and articulated as punishment for the erring spouse and not as a right of woman.

If the husband treats his wife with cruelty and compels her to leave the matrimonial home. Here the wife was forced to leave the matrimonial home without any of her fault and is entitled to maintenance. But if the wife treats the husband with cruelty and then on her own she leaves the matrimonial home or compels the husband to leave the matrimonial home or compels the husband to leave his age old parents, she is not entitled for any maintenance whatsoever. For one's own wrong doing, we cannot punish the other or say victim. Law should be amended.

Unconditionally entitling a wife of 50% of residential property of her husband would make divorce cases to grow exponentially. Times have changed and needless to mention, the position of woman in the society is not as same (low) as it was 35 years ago. The Govt. should re-consider its decision and should not bow down to bunch of Women Activists whose homes run on the name of being feminists and who are responsible in this country for biased and anti-men laws. Laws in any country should be made with an objective to bring harmony amongst the citizens. No law should empower a citizen to misuse it and harass others. Repercussions to this amendment if passed in its present form are deadly.

CHAPTER 9

CONCLUSIONS

By virtue of judicial pronouncements and other steps, rights of women has been restored but it will become fruitful only when under lying thinking are changed, the women should emancipate themselves educationally, economically and socially for their well being only and then they can understand their rights and worth and thereafter the social upliftment of the whole community is possible. We should always remember that mother is the first teacher and mentor of his child. It is a historical fact that no society ever lived in peace until their women folk are at peace.

Although Maintenance should be gender neutral and should be applicable both for husband and wife respectively for the greater perspective of the society but still many women are being denied to claim their rights of maintenance. Proper implementation is necessary to abide by the Law of the Land and ultimately to make it a grand success.