

DELAYED JUSTICE IN MAINTENANCE CASES IN INDIA

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1. Introduction

Maintenance in relationship disputes has been a very controversial topic not just in India but around the world. While on the one side you will find people advocating about the benefits of maintenance and the need for it, on the other hand you will find people who consider it a bane and believe that it puts one of the partners in a relationship under huge economic duress. There is no doubt that both the parties provide strong arguments regarding maintenance, however, most people overlook one very important factor while analyzing cases of maintenance in India, people refuse to acknowledge the fact that our judiciary has been reluctant in granting maintenance on various occasions. Through this paper I would like to argue that the judiciary by not providing or delaying in providing maintenance has caused not only gross injustice but also distress to the wronged party, as in most cases women are the one seeking maintenance and the refusal or delay in granting of the same puts immense economic and social pressure on them, aspects of which will be discussed and analyzed in the paper, lastly, I will also try to provide certain solutions which might help ease the process of providing maintenance and make the entire process more streamlined and better equipped to serve its purpose of granting economic support to the party who is economically disadvantaged when compared to the other party.

2. The role of politics in cases of maintenance

One would think that in a country with multiple legislations granting the right to maintenance to women, it would be easier for women to be able to take advantage of this right, however, the reality is completely opposite. In India, maintenance is covered under section 24 and 25 of the Hindu Marriage Act, 1955; Section 125 of the Criminal Procedure Code, 1973; section 3(b) and 18 of the Hindu Adoptions and Maintenance Act, 1955 and section 20 of the Protection of Women from Domestic Violence Act, 2005. Throughout the history of the Indian legal system, women have found it hard to get the courts to grant maintenance to them and even in the cases where maintenance is granted, there is a lack of proper checks and balances as well as judicial delays that refrain women from getting the maintenance they were promised. One of the most controversial cases of maintenance in India is the Saha Bano case, also known as

Mohd. Ahmed Khan v Shah Bano Begum, 1985.²⁶⁴ In this case, the Supreme Court of India upheld the right of Muslim women to seek maintenance from their husbands; however, it is what happened after the case that caused a huge public uproar. During the 1984 General Election, the Indian National Congress had an absolute majority, and the then Prime Minister Rajiv Gandhi was informed that if Congress did not overturn the decision of the SC, they would suffer a huge blow in the polls ahead. Hence, the parliament in 1986 passed the Muslim Women (Protection of Rights on Divorce) Act, 1986 (MWA). Under this act, maintenance to divorced Muslim women was limited only to the period of iddat. Later, the constitutional validity of the act was challenged under Article 14 of the Indian Constitution in the Supreme Court in the case of *Daniyal Latifi v Union of India, 2001*.²⁶⁵ The

²⁶⁴ Mohd. Ahmed Khan v Shah Bano Begum, 1985 (1) SCALE 767.

²⁶⁵ Daniyal Latifi v Union of India AIR 2001 SC 3958.

court in this case upheld the judgment of the Shah Bano case, however, it tried to maintain a very neutral stance and did not declare the act invalid. It is important to note that the very reason that judiciary is separate from legislature is to ensure that the legislature or judiciary can not influence each other's working however, in this case the political pressure restrained the apex court of India which criticized the act from declaring it unconstitutional. This case shows just how much politics on the basis of religion and gender has affected the legal system when it comes to cases of maintenance.

3. Misrepresentation of wealth in maintenance cases

It has been noticed in a lot of cases that men have misrepresented their wealth or used unemployment as an excuse to delay or reduce the amount of maintenance they are ordered to give to their wives. In another case in 2015 a family court had ordered the husband to pay an interim maintenance of Rs 15,000 per month from 1 September 2013 and Rs 5000 per month for their child for two years and Rs 10,000 per month till further order, However, the husband went on to challenge this judgement of the family court first in the Bombay High Court where he stated that he was unemployed and not in a position to pay maintenance to his wife, The High court sided with the order of the family court, He then went to the Supreme court which too sided with the order of the family court.²⁶⁶ However, what is important to note is that during the hearing of the plea the application was already pending for 7 years, a fact that was also noted by the supreme court, it was also noted that the wife had to move the application multiple times. we can see in this case how the husband has used the right to appeal and his unemployment as an excuse to delay providing maintenance to his wife. Nonpayment or delaying the payment of maintenance to wife is a violation of a wife's basic human rights, the reason I say this is because in a country like

ours women, as it is face a lot of trouble while trying to secure jobs, most families in our country do not want their women to work. Even today the role of a woman in an Indian family is by and large limited to taking care of the household and children. This is the case not just in rural areas but also in urban areas. Moreover, many women are not even educated enough to be able to find jobs for themselves. Hence, it is up to the men to provide sufficient monetary support to their former wives. Even the Supreme court in the case of *Bhuwan Mohan Singh V Meena, 2014* stated that any delay in the family court's adjudication to maintenance cases is not only against human rights but also against the fundamental representation of an individual's dignity.²⁶⁷ one might argue that since the husband is unemployed it is unjust to expect that he would be able to pay maintenance to his wife on a periodical basis, what needs to be understood here is that firstly, even during marriage this same unemployed husband was able to take care of the needs of his wife hence to think that he can not do the same after the marriage is unreasonable, secondly, divorce is something that is still looked down upon in our society and it is more likely than not that the woman is the one who is usually outcasted by her family and has to face the criticism of the society, while men are usually supported by their families and lastly many families in India do not allow their women to work hence many housewives who were dependent on their husbands would be left helpless if they are not provided monetary support either by the husband or his family. Additionally in the case of *Manju Sharma V Vipin, 2019* the husband faked his financials so that he could deceive the court in reducing the maintenance amount, while in this case the trial court caught on to the deception and ordered the husband to pay a maintenance of Rs 10,000 the appellate court set aside the order given by trial court, then in 2019 the case went to the Supreme court where it was revealed that the

²⁶⁶ Rajnesh V Neha & Anr, 2020 Criminal Appeal No. 730 of 2020.

²⁶⁷ Bhuwan Mohan Singh V Meena & Others, 2014 Criminal Appeal No. 1331 of 2014.

actual income of the husband was Rs one crore, the court then ordered the husband to pay Rs 30,000 as maintenance as compared to the earlier amount of Rs 10,000.²⁶⁸ In this case as well it took several years for the legal system to properly evaluate the husband's income and provide the wife with maintenance, however, we can not say that this was an act of justice on the part of Supreme court as they did not realise that merely Rs 30,000 is not enough in today's time and age to sustain a livelihood now if you add the fact that the wife had to use this amount to take care of the daughter as well, then one can imagine just how tough it is for someone to fulfill the needs of two people in an amount this small. In the case of *Atar Singh V Smt. Jasoda, 2000* the court stated that even if the husband was not earning at the time when he was given in marriage, it will be presumed that the family was earning enough income to support the husband and the wife.²⁶⁹ Hence, I believe that it is only logical that even if the husband is not employed the mere fact that his family was already maintaining him and his wife should be enough to shift the onus on the husband's family to provide for the wife after divorce

4. Rights of an unmarried woman living with a man she knows is married

It has been established by case laws that if a man and woman are in a live in relationship and the woman knows that the man is married she will not be entitled to maintenance, even if she has suffered mental, emotional and economic pressure at the hands of the man. In another case of maintenance, *Indra Sarma v V.K.V. Sarma, 2013* in this case the appellant started living in a live in relationship with the respondent, who she knew was married, during their period together the respondent constantly harassed her forced her to take contraceptive pills, forced her into abortion and also took over the business the two had started together. The court however did not grant maintenance to the

appellant as they stated that the live in relation between the two could not be considered a relation in the nature of marriage and hence would not come under the purview of domestic relationship under section 2(f) of the Protection of women from Domestic Violence Act, 2005. They further went on to state that if it is held that the relationship between the two is a relation in nature of marriage it would be great injustice towards the wife and children, hence any act of omission or commission or conduct of respondent would not amount to domestic violence under section 3 of the act.²⁷⁰ I believe that this is a flawed judgement as even though I agree that the children and wife should be protected and should be given the legal standing that they deserve, At the same time I also believe that the court can not lose sight of the fact that the appellant must have gone through grave mental and emotional stress due to the acts of the respondent also the fact that the respondent took over the business that was in her name puts her under great economic duress as she has lost her source of income. I believe that in this case the court should find means to compensate both the wife as well as the appellant justly, as letting the respondent go free just because of a loophole in the system is disgraceful for the entire system.

5. Remedies

The delay or non granting of maintenance is a serious problem as it deprives women of their right to live a healthy life. It is important that courts ensure that women get the maintenance that they deserve and are legally granted from their husbands in a timely manner. The courts can ensure this by appointing auditors, accountants and valuers who can devise the true net worth of the husband as it has been seen in many cases that husbands hide their wealth in order to reduce the amount of maintenance they have to pay. Secondly, court can appoint case officers who can ensure that the whole process works out smoothly and can also provide periodical reports to the court

²⁶⁸ Manju Sharma V Vipin, 2019 SCC Online Del 8960.

²⁶⁹ Atar Singh V Smt. Jasoda and Another, 2000 (3) AWC 1933.

²⁷⁰ Indra Sarma V V.K.V Sarma, 2013 15 SCC 755

regarding the progress of the case. The appointment of a case officer will also ensure that the husband does not harass the wife or prevent her from reporting him in case of any dispute. Thirdly a change in laws revolving around maintenance is needed, which allows mistresses to be able to apply for maintenance as well, we have already seen in the case of *Indra Sarma v V.K.V. Sarma, 2013* how the appellant, who even though had suffered immensely at the hands of the respondent did not get maintenance she deserved just because her relation did not come under the purview of relation in the nature of marriage under the Protection of Women from domestic violence Act, 2005.

6. Conclusion

In this paper we started of by talking about the Shah Bano case and how even though the judiciary took the right decision while deciding the case, the political pressure and religious politics rendered that decision useless, we also looked at some of the recent cases which showed how the right to maintenance was delayed due to the procedure established by the court. Further, we analyzed various cases to prove that husbands use unemployment and in some cases hide their wealth to avoid paying maintenance which is detrimental for the aggrieved woman as the Indian society does not really allow women to work or get proper education hence, once they are divorced they are left alone to fend for themselves without any knowledge as to how they can get employment and make a living after suddenly getting out of a relationship where they were cared for. It is important that we as a nation normalize the culture of working women as, if we do not do that, divorced women and single women will face a lot of problem in taking care of themselves and India will never really succeed in achieving gender equality. It is also important that we change our laws and establish faster procedures that allow women to apply for maintenance and get the grant for it faster. This is because in most cases the delays in cases of

maintenance are so long, it takes years before a woman can get a grant for maintenance. I believe that if the legislature and judiciary work together to bring a change and make laws surrounding maintenance more progressive, an actual change can truly be expected in the plight of divorced women.