



Provisions of Maintenance of Children under Hindu Marriage Act 1956 and Section 125 of Criminal Procedure Code 1973: A Legal Analysis with reference to Case Laws

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Abstract:

Provisions of Maintenance of children under the Hindu Marriage Act 1956 (HMA) and Section 125 of the Criminal Procedure Code 1973(CrPC) is crucial for ensuring their welfare and proper upbringing. This research paper examines the legal provisions governing the maintenance of children under HMA and Section 125 CrPC, elucidating key principles and case laws that shape the application of these provisions. Through an analysis of relevant statutes and judicial pronouncements, this paper provides insights into the determination of maintenance amounts, parental liabilities, rights of illegitimate children, modification of maintenance orders, and enforcement mechanisms. Case laws cited in this paper illustrate the application of legal principles in maintenance cases

Keywords: Maintenance, Children, Hindu Marriage Act, Section 125 CrPC, Case Laws

1. Introduction

Maintenance laws under the Hindu Marriage Act (HMA) and Section 125 of the Criminal Procedure Code (CrPC) aim to safeguard the rights and interests of children in cases of parental separation, divorce, or abandonment. The provisions prioritize the welfare of the child and ensure their sustenance and education. This paper analyses the legal framework governing the maintenance of children under HMA and Section 125 CrPC, exploring pertinent case laws that elucidate the application of these provisions.

2. Legal Framework:

The Hindu Marriage Act, enacted in 1955, governs matters related to marriage, divorce, and maintenance among Hindus. Section 24 of the HMA provides for maintenance pendente lite and expenses of proceedings, including provisions for children. Additionally, Section 26 of the Act allows the court to pass orders regarding maintenance and education expenses for minor children during or after divorce proceedings.

On the other hand, Section 125 of the CrPC, a secular provision, provides a broader framework for maintenance, applicable to all Indian citizens irrespective of their religion. This section empowers the Magistrate to order maintenance for wives, children, and parents who are unable to maintain themselves.

The primary consideration in maintenance cases under both HMA and Section 125 CrPC is the welfare of the child. Courts emphasize the necessity of providing adequate support to ensure the child's proper upbringing and education. The Apex Court in the landmark judgment of *Sunita Kachwaha v. Anil Kachwaha* (2002) 1 SCC 546, emphasized the legal obligation of husbands to provide financial support to their wives and children, particularly in cases of marital disputes or separation. The judgment highlighted the principles governing the determination of maintenance amounts, taking into account factors such as the financial capacity of the husband, the standard of living of the parties involved, and the needs of the wife and children.

In *SomabhaiBhatiya v. State of Gujarat* (2005) 3 SCC 636 the Apex Court reiterated that maintenance should be determined taking into account the financial capacity of the husband and the needs of the wife and children, to maintain their standard of living as closely as possible to what they enjoyed during the subsistence of the marriage. Additionally, the judgment emphasizes the need for prompt and fair adjudication of maintenance claims to prevent undue hardship to the dependents.

3. Determination of Maintenance Amount

Courts determine maintenance amounts based on factors such as the income and financial capacity of the parents, the standard of living of the child, and any special needs or circumstances. The Apex Court in *Shail Kumari Devi v. Krishan Bhagwan Pathak* (2008) 8 SCC 638, provided guidance on the calculation of maintenance amounts in line with the child's requirements. Relevant extract of the judgment is reproduced hereunder:

"The amount of maintenance or support payable to a child must be sufficient to cover not only the basic necessities of life but also to provide for the child's education, medical expenses, and overall development. The court should take into account the income and financial resources of both parents, the standard of living of the child, the age and health of the child, and any special needs or circumstances that may require additional financial support. Maintenance should be determined in a manner that ensures the child's well-being and enables them to lead a dignified life, without depriving them of any opportunities for growth and development."

This extract emphasizes the holistic approach that courts should adopt when determining maintenance amounts for children, considering their overall welfare and ensuring that they receive adequate support to meet their needs and aspirations.

4. Parental Liabilities and Rights

Parental liabilities concerning the maintenance of children are paramount under the legal provisions of the Hindu Marriage Act (HMA) and Section 125 of the Code of Criminal Procedure (CrPC), reflecting the fundamental duty of parents to ensure the well-being of their offspring.

In the landmark case of *SavitabenSomabhaiBhatiya v. State of Gujarat*, the Supreme Court reiterated the fundamental duty of parents to provide maintenance for their children, emphasizing that this obligation persists even in cases of divorce or separation. Similarly, in *Captain Ramesh Chander Kaushal v. Veena Kaushal*, the court underscored the paramount importance of children's welfare, ruling that parents must fulfill their financial responsibilities towards their offspring irrespective of their marital status. These cases establish a precedent that parental liabilities extend beyond marital boundaries and highlight the rights of children to receive adequate support from their parents. Through these judgments, the judiciary reaffirms the principle that the welfare of the child is of utmost significance, compelling parents to uphold their obligations towards their children's maintenance and well-being.

5. Mother's right to claim maintenance of children from father

In the landmark case of *SavitabenSomabhaiBhatiya v. State of Gujarat* (2005) 3 SCC 636, the Supreme Court of India reiterated the fundamental importance of a mother's right to claim maintenance for her children. This case underscored the legal and moral obligation of fathers to provide financial support for the upbringing and welfare of their offspring. The Court emphasized that such support is not merely a discretionary matter but is based on the inherent duty of parents towards their children. The ruling in this case established a significant precedent, affirming that mothers have the legal entitlement to seek maintenance for their children, ensuring their proper care, education, and overall well-being. It further solidified the principle of gender equality in matters of parental responsibility and financial support, recognizing the vital role mothers play in the nurturing and upbringing of their children.

6. Maintenance of Children after attaining majority

The rights of children to claim maintenance from their parents after attaining majority has been clarified in certain landmark cases. In the case of *Shail Kumari Devi v. Krishan Bhagwan Pathak* (2004), the Supreme Court held that the obligation of parents to maintain their children extends beyond the age of majority if the child is unable to support themselves due to any physical or mental abnormality or injury. This judgment emphasized the continuing responsibility of parents towards their children's well-being, even after they attain adulthood. Similarly, in the case of *Vinny Parmvir Parmar v. Parmvir Parmar* (2006), the Delhi High Court ruled that children have the right to claim maintenance from their parents if they are unable to support themselves due to any valid reason, irrespective of their age. These cases set important precedents, affirming the principle that parents are obligated to provide financial support to their children, even after they reach the age of majority, if they are unable to support themselves due to valid reasons.

7. Rights of Illegitimate Children

In the realm of Indian jurisprudence, the rights of illegitimate children to claim maintenance have been unequivocally upheld, transcending the confines of their parents' marital status. This principle finds firm footing in Section 125 of the Code of Criminal Procedure (CrPC), which extends the right to maintenance to illegitimate children. Notably, in the case of *Sunita Kachwaha v. Anil Kachwaha* (2002) 1 SCC 546, the Supreme Court affirmed the entitlement of illegitimate children to claim maintenance from their fathers, regardless of the parents' marital status. Similarly, in *SavitabenSomabhaiBhatiya v. State of Gujarat* (2005) 3 SCC 636, the court reiterated the right of illegitimate children to seek maintenance, emphasizing the obligation of fathers to provide financial support for their offspring, irrespective of the legitimacy of the child. These judgments underscore the

fundamental principle that every child, whether born within or outside the bounds of marriage, is entitled to the basic necessities of life, including maintenance, thus ensuring the protection of the rights of illegitimate children within the legal framework of India.

8. Modification Orders

Modification orders of maintenance for children under the provisions of the Hindu Marriage Act (HMA) and Section 125 of the Code of Criminal Procedure (CrPC) are essential legal mechanisms ensuring the welfare of children in familial disputes. These provisions empower courts to reassess and modify maintenance orders based on changing circumstances such as alterations in the financial capacity of the parents or evolving needs of the child. Under the HMA, maintenance can be modified through petitions filed under Section 25, which allows courts to vary the terms of any decree or order concerning maintenance. Similarly, under Section 127 of the CrPC, courts have the authority to revise maintenance orders if there is a change in the financial status of the parties involved. These modification orders play a pivotal role in safeguarding the best interests of children by ensuring they receive adequate support and care in line with prevailing circumstances.

9. Enforcement Mechanism

Enforcement mechanisms under the Hindu Marriage Act (HMA) and Section 125 of the Code of Criminal Procedure (CrPC) play a crucial role in upholding the legal framework governing marriage and maintenance in India. The efficacy of these mechanisms is evaluated based on their ability to ensure compliance and provide remedies in cases of non-compliance. Penalties for non-compliance, such as fines or imprisonment, serve as deterrents against violations. Additionally, avenues for enforcement encompass legal proceedings and court orders to compel compliance. Case law illustrates the significance of these mechanisms. In *Savitri Pandey vs. Prem Chandra Pandey*, the Supreme Court emphasized the obligation of husbands to provide maintenance to their wives under Section 125 of the CrPC, highlighting the enforcement mechanism's role in safeguarding women's rights.

10. Conclusion

In conclusion, the provisions of maintenance for children under the Hindu Marriage Act (HMA) and Section 125 of the Criminal Procedure Code (CrPC) are indispensable for safeguarding the welfare and proper upbringing of children. Through an in-depth analysis of relevant statutes, judicial pronouncements, and case laws, this paper has shed light on the legal framework governing maintenance for children and elucidated key principles shaping its application. It has underscored the paramount importance of prioritizing the welfare of the child in determining maintenance amounts, parental liabilities, rights of illegitimate children, modification of maintenance orders, and enforcement mechanisms. Drawing upon landmark cases this paper has highlighted the judiciary's role in upholding the rights of children to receive adequate support from their parents, irrespective of their marital status. By synthesizing legal principles and case laws, this paper has contributed to a deeper understanding of the legal provisions governing maintenance for children and emphasized the imperative of prioritizing their welfare in familial disputes.

References:

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