



## COURTS: UNDISPUTED GUARDIAN OF IMPOVERISHED WOMEN OF INDIA

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### ABSTRACT

The women in distress always look for some ones help to minimize the problems. This happens, most often, when her husband throw her out and the children becomes much more worse for her decent life. The psychology of men are changing in relation his sexual life. This kind of mental makeup results in disowning of wife and children. Hence, the society though shows the sympathy towards her conditions, however, no one can put her life as near as to normal except by judiciary. So the Judiciary in India is very pro-woman in their approaches. There is a saying that Indian law is pro-women. In many such cases where men neglect, try to divorce their life partners with an intension of denying financial aid to the women and the children. Under these situation, the judiciary extends its loving hands to the women and projects her financial life with considerable comfort. The following is the exposition of such cases, wherein, the judiciary decided the cases as per the law and protected the women in most of the cases in India.

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## INTRODUCTION

Women in general look for support when their spouse try to divorce, reject her, suppress her wishes, owing to the sole reason of compromising the financial support for the majority of the women folk in India. That was the reason why many social revolutionaries support women to sustain themselves with their personal capacity. Men folk, though, not majority of them try their luck by divorce for flimsy reasons, so that the men of present day may go back following Kulin polygamy system where a Kulin male reported to be married 107 women and enjoyed life by routine visit of his father-in-laws houses<sup>1</sup> as brought out by Ishwar Chandra Vidyasagar, a social reformer of Bengal. Though law is not permitting second wife when the first wife is live, the sociological reason for taking such a drastic step of divorce is attributed to many reasons like woman education, financially independency, introvert in voicing her opinion or fighting for her rights. She doesn't want to stay fulfilled, doing only the mundane household chores. Women of India shoulder the family responsibilities much more than the men.

These days, with so many maladies of family life confronting, women may want to opt out of their marriage, rather than leading an unhappy married life<sup>2</sup>.

**Maintenance of wife or otherwise live in together:** Earlier, the Indian courts firmly held that only a legally married woman was entitled to claim maintenance as per the Section 125 of the CrPC -1973. The Delhi High Court, in a personal law matter<sup>3</sup>, wherein, the couple adopted live in to-gather for 14 years with out disclosing that he has a legal wife already. The woman was running the house with devotion had had borne and brought up two of his children. The view taken by the court was that the woman should not be deprived of her right to maintenance. The court further categorically expressed that denial of maintenance under such circumstances would amount to rewarding the man for defrauding the woman by concealing his first marriage. The court further ordered for granting maintenance under the personal law and the women is given the status of second wife as legally wedded. The Court was not only decided for the favour of Hindu women, but it had already sanctioned maintenance of a Muslim women

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<https://www.brainyias.com/iasbuzznews/singlenews.php?id=https://www.brainyias.com/iasbuzz/reasons-growing-divorce-rates-india/>

<sup>3</sup> Narinder Pal Kaur Chawla vs M S Chawla (2008)

<sup>1</sup> [http://indiansaga.com/history/reforms\\_vidyasagar1.html](http://indiansaga.com/history/reforms_vidyasagar1.html)

'Shah Bano Begum', even though her husband was a lawyer by profession in 1985 itself following the section 125 of Cr.P.C.<sup>4</sup>. The most outstanding attributes of the Section 125 of the Cr.P.C-1973 is the right to maintenance to all the woman irrespective of their faith in religion, birth of caste etc. Muslim Woman and her children entitled to maintenance u/s 125 CrPC as Section 3(1)(b) of the Muslim Women (Protection of Right on Divorce) Act, 1986 does not affect such right under Section 125 CrPC<sup>5</sup>. To deny the benefit of Section 125 CrPC is unreasonable, unfair and inequitable to the children only on the ground of their being born of Muslim parents<sup>6</sup>. In the instant case<sup>7</sup> the appellant and the respondent were staying together as husband and wife for a period of time. Both must be living or lived in one household and behaved in a way that led others to believe that they were husband and wife. In the beginning, their relationship may be adulterous, but, later become matrimonial consent. This aspect may be evidenced by habit and repute<sup>8</sup>. Courts also insisted that such cohabitation should be qualitative and quantitative, should be long and continuous having substance and not periodical. Parties should be living under one roof, acquiring property, and maybe even have children together, which would then move the relationship from the realm of concubinage to marriage. So, the court is very opt in issuing guidance and protecting the society from degradation. There has been a rapid growth in cases of divorce in India. Marriage among better-educated women is more durable and the difference between less-educated and better-educated women has widened over time<sup>9</sup>. Indian law contains provisions for maintenance under different laws like Section 125 of the Criminal Procedure Code, 1973; Section 24 of Hindu Adoption and Maintenance Act, 1956 and also under personal laws like the Shariat Law, etc. These laws provide that the benefit can be claimed by women even prior to divorce during separation. Her claim for maintenance is also extendable to her minor children.

**Landmark decision of Supreme Court:** The Supreme Court has set a benchmark for maintenance to be paid by a husband to his estranged wife, stating that 25% of his net salary might constitute a "just and proper" amount as alimony. The apex court's ruling follows its inclination to protect claims of women in matrimonial disputes affecting their financial status. "A Hindu woman's right to maintenance is a personal obligation so far as the husband is concerned, and it is his duty to maintain her even if he has no property"<sup>10</sup>.

**Sexual Harassment of women in workplace:** In a notable decision in the case wherein Bench, comprising of Chief Justice Verma, Justice Sujatha Manohar and Justice B.N. Kirpal issued Guidelines to prevent sexual harassment against women in work places<sup>11</sup>. Being a very bold step by the

Hon'ble court of Rajasthan resulted in the enactment of the law "Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013" by the parliament.

**Christian women and maintenance:** Though Christian women have their own law in case of marriages, however, the matrimonial is being followed under Cr.P.C 1973. It has been proved in the case of Mrs. Mary Roy of Kerala, the Bench of Chief Justice P.N. Bhagwati along with Justice R.S. Pathak gave the benefit of the Indian Succession Act, 1921<sup>12</sup>.

**Women Prisoners and their Children:** In an another case wherein the Supreme Court considered the development of children who are in jail with their mothers, either as under trial prisoners or convicts. Justice Y.K. Sabharwal, Justice C.K. Thakker and Justice P.K. Balasubramanyan observed that the jail environment was certainly not congenial for development of the children<sup>13</sup>. Court issued detailed guidelines for providing various facilities to women prisoners and their children in the following cases: pregnancy; child birth in prison; female prisoners and their children; food, clothing, medical care and shelter; education.

**General conditions for exemption for maintenance:** These laws supporting women welfare carry general exemption that a woman will no longer be entitled for any maintenance in instance of remarriage or if they get converted to another religion. There are many such instances listed<sup>14</sup>. In a case decided in the year 2017<sup>15</sup>, the Court decided that when a wife is willingly leaves husband and lives with another person allegedly her new husband who provide materials for her life will be sufficient and hence not eligible for maintenance.

**Married woman earning sufficiently not eligible for maintenance:** In an another case<sup>16</sup> wife when employed and her earning is sufficient cannot claim any maintenance, hence denied. Yet in an another case<sup>17</sup> the apex court when the wife insisted a decree of annulment of marriage was passed u/s 12 of Hindu Marriage Act 1955, she is not entitled for maintenance u/s 125 of Cr.P.C. The Court was very cautious that when a married woman leaves her husband on her wish with out any valid reasons, and when the respondent visited her parents house to call back her, she was with another person. Though the husband could not prove her being a person, however, the applicant could prove that it was the respondent, who deserted him without any sufficient reason. Under such circumstances, in the light of order passed by the single Bench of this Court in case of "Anil Kachwaha Vs. Sunita Kachwaha and others", [(2008) 2 M.P.L.J. (Cri.) 323], the respondent was not entitled to get any maintenance<sup>18</sup>. Similarly, in a different case<sup>19</sup> the Bombay High Court decided that when a married woman lives separately by mutual consent, she is not entitled for maintenance u/s 125 (4).

**Refusal of Conjugal rights by woman:** When a married women refusing to comply with decree to restitution of conjugal rights, will amount to refusal on the part of wife to

<sup>4</sup> Mohd. Ahmed Khan vs. ShahBano Begum-1985

<sup>5</sup> Mohd. Ahmed Khan v. Shah Bano Begum, (1985 SCR (3) 844).

<sup>6</sup> <http://www.legalservicesindia.com/article/2563/Right-to-Maintenance-of-a-Muslim-Women.html>

<sup>7</sup> Channuniya vs. Virendra Kumar Singh Kushwaha-2011

<sup>8</sup> Lieutenant C.W. Campbell v. John A.G. Campbell -1867

<sup>9</sup> Premchand Dommaraju.2016. Divorce and Separation in India., Population and Development Review. [https://www.researchgate.net/publication/301284623\\_Divorce\\_and\\_Separation\\_in\\_India?enrichId=rgreq-ebeb70632d865f46ce9eb8a08417b5bc-XXX&enrichSource=Y292ZJQYWdl\\_OzMwMTI4NDY\\_yMzt\\_BU\\_zo1NjU1MMD1ODAMjYyNDBAMTUxMTgzNzk2ODY2Nw%3D%3D&el=1\\_x\\_2&\\_esc=publicationCoverPdf](https://www.researchgate.net/publication/301284623_Divorce_and_Separation_in_India?enrichId=rgreq-ebeb70632d865f46ce9eb8a08417b5bc-XXX&enrichSource=Y292ZJQYWdl_OzMwMTI4NDY_yMzt_BU_zo1NjU1MMD1ODAMjYyNDBAMTUxMTgzNzk2ODY2Nw%3D%3D&el=1_x_2&_esc=publicationCoverPdf)

<sup>10</sup> <https://timesofindia.indiatimes.com/india/supreme-court-sets-alimony-benchmark-25-of-ex-husbands-net-salary/articleshowprint/58288399.cms>

<sup>11</sup> Vishaka & Ors. V. State of Rajasthan & Ors., (1997)

<sup>12</sup> Mrs. Mary Roy Etc. v. State Of Kerala & Ors, 1986 AIR SC 1011

<sup>13</sup> R.D. Upadhyay v. State of Andhra Pradesh, AIR 2006 SC 1946.

<sup>14</sup> <https://www.shoneekapoor.com/maintenance-judgements/>

<sup>15</sup> Mukesh vs Smt Sangeeta on 25 July, 2017

<sup>16</sup> Sharif Ahmed vs.Imaman Bi-1995

<sup>17</sup> K.Sivarama krishna Prasad vs. K.Bharat and another-1985

<sup>18</sup> Ram Prasad vs Smt. Geeta Mehra -2014

<sup>19</sup> Vitthal Hiraji Jadhav vs. Haranabai Vitthal Jadhav & Anr-2003

live with husband without sufficient cause and such wife is not entitled for interim maintenance<sup>20</sup>.

### **Conclusions**

Women are vulnerable to social controls, at times when she is with out any financial support suffers with children when their husbands desert her, the only solace rest with court only.

Our Indian Courts irrespective of the hierarchy supports the deserted women with utmost care. The cases referred above were the testimony of the courts support to women folk of our country. Court also cautious in their decisions that the reasons adduced by the beneficiary is genuine and in tandem with law.

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<sup>20</sup> Balaram Dash vs. Smt. Gitanjali Dash And Ors.-2000