

**FINANCIAL STABILITY AND CLAIM OF MAINTENANCE OF WIFE, UNDER THE
LIGHT OF RECENT DECISION OF MADHU GUPTA V. PRAVIN KUMAR
GUPTA (2014) BY THE BOMBAY HIGH COURT**

Satya Prakash Mishra and Anuttama Ghose*

ABSTRACT:

In this study an endeavour will be made to study the various circumstances where a wife is entitled to claim maintenance from her husband and how far her financial status effects is analyzed under the light of the recent decision of Madhu Gupta v. Pravin Kumar Gupta (2014) passed by that of the Bombay High Court. The principle idea behind providing maintenance is to ensure the wife with basic needs for a healthy living- during and after the marriage. The main question raised in this case is whether a financially stable wife can claim for maintenance under that of the prevailing statutes or not.

Notable legislatures in India which regulates maintenance laws are Hindu Marriage Act, 1955 (Section 24 and 19), The Hindu Adoption and Maintenance Act, 1956 (Section 18 and 26), Criminal Procedure Code 1973 (Section 125), The Muslim Women's Act, 1986. The contents of these provisions and their exceptions, grounds are discussed in details in this case analysis along with that of supporting judgements of similar nature.

There is no law in India that does not have a room to be misused. In the later past, our lawful apparatus has proactively worked for the welfare of the women of this country yet the laws that were established such a large number of times enrolled an intense misuse. Thus in the light of this case we shall discuss whether the grounds on which maintenance amount can be claimed from husband along with its exceptional circumstances as per the statutes.

KEYWORDS: Maintenance, Financial Stability, Degree of dependency, Marriage, Separation and Divorce.

* B.A. LLB (Hons.), 3rd Year, 6th Semester. KIIT School of Law, KIIT University Campus 16, Patia Bhubaneswar- 751024 (Odisha) anuttama1993@gmail.com & satyaprakashmishra15@gmail.com

INTRODUCTION

The entire idea of maintenance was introduced to see that if there is a spouse who is not independent fiscally than the other companion is ought to help him/her keeping in mind the end goal to make the living of the other individual conceivable and independent. Maintenance is the sum which a spouse is under a commitment to make to a wife during the subsistence of the marriage or upon divorce or detachment or separation, in specific situations.

The court can fix the maintenance at any amount, depending on legal principal and circumstances of the case. When deciding the quantum of maintenance to be awarded, the court takes into account the income of both parties, their status and other factors. When the wife applies for maintenance, the burden is on the husband to declare his income and other assets belonging to him. Husband of the financially stable spouse is under the obligation to take care of the basic necessities of the other until she marries or settles with somebody else.

The most important aspect of maintenance is that the party which relies on maintenance has no independent source of income to support himself/herself. The principle guide we have toward spotlight on is independent income. Should the life partner who is guaranteeing maintenance have movable or immovable property, the mate can at present case claim maintenance if the property does not yield any income. This is observed in our presence case in the **High Court of Bombay, Madhu Gupta v. Pravin Kumar Gupta (Family Court Appeal, 144 of 2013)**¹.

FACTS OF THE CASE:

In the case of Madhu Gupta v. Pravin Kumar Gupta, originally Petition No. A-382 of 2008 by the Family Court it faced a counter claim for maintenance in Appeal, 144 of 2013. The Gupta's have a child and little girl who are hitched and settled abroad. The couple has been living independently since 2007².

¹ Shibu Thomas, Times of India, Financially Stable wife cannot ask for Maintenance, <http://timesofindia.indiatimes.com/india/Financially-stable-wife-cant-claim-maintenance-Bombay-high-court/articleshow/30918626.cms> (last seen on 12.03.2015)

² Madhu Gupta v. Pravin Kumar Gupta (Family Court Appeal, 144 of 2013, <http://dogsincourtroom.blogspot.in/2014/02/financially-stable-wife-cant-claim.html> (last accessed on 12.03.2015)

The court observed that Madhu had put Rs 50 lakh in fixed deposits furthermore made investments in mutual funds. She has likewise contributed another Rs 2 lakh that she got from Pravin in a fixed deposit. She lives in a flat that she had purchased with Pravin, over which she has all possession rights. This implied that there was no rent to be paid. "It is seen that the wife is getting more than Rs 37,500 every month as interest. She has more than Rs 50 lakh in the bank. Also, (her) child is giving cash to her support and different costs. Nobody is dependent here.

Pravin had moved the court for divorce on the grounds of cruelty, which was dismissed by a family court. Meanwhile, Madhu too moved the court. The family court allowed her plea and granted the couple judicial separation and asked Pravin to shell out Rs 25,000 as monthly maintenance. Pravin challenged the maintenance order and a single bench of the HC set aside the maintenance order. Following this, Madhu challenged the orders and sought Rs 15,000 as maintenance.

STATUTES DEALING WITH MAINTENANCE OF WIFE IN INDIA:

Maintenance under Hindu Marriage Act, 1955:³ The practice of maintenance is prevailing in the Hindu society since very old time. Due to lack of physical strength, women were always considered to be protected and maintained by male. The system of marriage and re marriage shifts the burden to maintain.

Section 24 provides of Hindu Marriage Act, (HMA) 1955 provides for maintenance. Under this Act also, only a wife has a right to claim maintenance and basic needs. The Hindu husband is legally entitled to maintain his wife during his lifetime. However, if a wife is not a Hindu or lives separately under no legal grounds she has no right of maintenance under this provision.

According to Section 19, states that if a women has no source of living she should be maintained by her father-in-law if her husband dies. But this provision will not be applicable if the father in law himself has so specific source of income or if the wife re-marries.

³ Hindu Marriage Act, 1955
<http://www.advocatekhoj.com/library/bareacts/hinduoptions/18.php?Title=Hindu%20Adoptions%20and%20Maintenance%20Act,%201956&STitle=Maintenance%20of%20wife> (last seen on 12.03.2015)

Maintenance under The Hindu Adoptions And Maintenance Act, 1956: Under the section 18(1) of the HAMA, 1956 Hindu wife is entitled to maintenance by her husband for lifetime i.e. she will be given maintenance until she dies or her husband dies. [7] Under section 18 of this Act a Hindu wife will have legal rights towards maintenance even if both of them are staying separately from each other under the following circumstance:

- Husband is guilty of abandonment.
- The cruel behaviour of husband towards wife
- The husband is suffering from a grave form of leprosy
- The other wife of the husband is still living.
- The husband keeps a concubine somewhere else
- The Husband converted into some other religion and no longer a Hindu by religion.
- If there is any other justifying ground living separately.

But there are two exceptions which will cease a wife from claiming maintenance from her husband i.e

- (i) if she is unchaste, or
(ii) if she has converted into some other religion and not a Hindu any longer.

Section 23 of the HAMA, 1956 clarifies or defines the people who are eligible to claim maintenance and how much of maintenance i.e. the amount they can get keeping in mind the various elements. The court of law in the case of awarding maintenance has the power to give the maintenance after analyzing various factors and circumstances of the case.

Maintenance Of Wife Under The Section 125 Of CrPC: ⁴Under CrPC, only wife (a woman who has been divorced by or has obtained divorce from her husband & hasn't remarried) can claim for maintenance. A wife who refuses to stay with her husband due to legal grounds such as (bigamy, cruelty & adultery) has the right to special allowance under this act. But a wife does not possess right to claim maintenance if she's living in adultery or she's living separately by mutual consent. The various sections of CrPC are criminal in nature and are used for the criminal charges. The Section 125 of the CrPC states the provisions as follows:

*“125 Order for maintenance of wives, children and parents.
If any person leaving sufficient means neglects or refuses to maintain-*

⁴ Section - 125 of CrPC, 1973 - <http://indiankanoon.org/doc/1056396/> (last seen on 11.03.2015)

- (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,
(d) His father or mother, unable to maintain himself or herself”

Maintenance Under The Muslim Women Act, 1986: After the noteworthy judgment of the Shah Bano case, what took after the judgment were the commentators of the outcome of the judgment the Muslim personal law with immensely effected. As indicated by the Muslim group if this judgment was acknowledged than all things considered there individual law was smothered and was superseded by the Hindu law which permitted the women's entitlement to maintenance deep rooted as there was no iddat period among the Hindus.

The Indian government which was the congress party around then was under coercion from the Muslim gathering to bring a law which would overrule this judgment. So the council under the coercion and remembering the finished objective to retain its Muslim vote bank brought the law The Muslim Women (Protection of Rights on Divorce) Act, 1986.

As indicated by this demonstration a Muslim women is to be granted maintenance by her spouse just amid the iddat period and not after that. At the same time on the off chance that in the event that she is fiscally not free and needs upkeep than all things considered her relatives who might get the offer of her property will recompense her with support. In the situation where she doesn't have any such relatives than the State Waqf Board needs to pay her the maintenance. So in a manner the individual law of the Muslims was spared and the new law kept any contention between the two noteworthy groups of the nation. The separated wife is likewise qualified for unpaid dower and all such properties which were given to her amid her marriage by her spouse, his relatives, companions or her relatives. She also have a choice to use the provisions and directions stated in the Sections 125-128 of the CrPC, 1973.

STATUTE REFERRED IN THIS CASE :

As per the provisions of **CrPC, Section 125**⁵ we can see that Maintenance should be provided to the wife who is unable to maintain herself and could not meet with her basic

⁵ Section - 125 of CrPC, 1973 - <http://indiankanoon.org/doc/1056396/> (last seen on 11.03.2015)

needs.

Thus the situation shall reverse in case where wife is self sufficient, she can take care of her own expenses and basic needs. It is a well-settled law that only a wife who has no sufficient permanent source of income can claim and get maintenance from her husband who has sufficient means, so cannot be applied to those who are self sufficient and financially stable⁶.

JUDGEMENT DELIVERED IN THIS CASE:

The judgment was delivered by a division bench consisting of Justices Vijaya Kapse-Tahilramani and P N Deshmukh was rejecting the application for maintenance of the wife stating that only a wife with no sufficient source of permanent income can claim maintenance from her husband.

“It is a well-settled law that only a wife who has no sufficient permanent source of income can claim and get maintenance from her husband who has sufficient means,” said the judges⁷.

The wife is getting atleast an amount of Rs.37,500/- per month from the Fixed Deposits. In addition, she is getting some additional amount of interest on Rs.2,00,000/- which has been invested by her which was received by her by way of interim maintenance. In addition to this amount, she is getting some amount by way of interest on the money she has invested in Mutual Funds. All these amounts are more than sufficient for her maintenance.

It is seen that the wife is having sufficient permanent source of income to maintain herself. The learned counsel for the respondent-husband submitted that the wife is having sufficient means for her survival and therefore, she is not entitled to get maintenance.

He has placed reliance on the ratio decided by this Court in the case of Shehnaz Arvind Mudbhatkal Vs. Arvind Ramkrishna Mudbhatkal⁸ - the said case, this Court observed that the wife was earning Rs.45,000/- per month as salary and she has received Rs.11 lakhs as back-wages. Her daughters were not dependent on her. Therefore, this amount is sufficient to the

⁶ Shibu Thomas, Times of India, Financially Stable wife cannot ask for Maintenance, <http://timesofindia.indiatimes.com/india/Financially-stable-wife-cant-claim-maintenance-Bombay-high-court/articleshow/30918626.cms> (last seen on 12.03.2015)

⁷ Madhu Gupta v. Pravin Kumar Gupta (Family Court Appeal, 144 of 2013, <http://dogsincourtroom.blogspot.in/2014/02/financially-stable-wife-cant-claim.html> (last accessed on 12.03.2015)

⁸ 2011(6) Mh. L. J. 719. 13 of 15

wife for her maintenance. This Court observed that in such case, the wife is not entitled for maintenance from the husband⁹.

Looking to the evidence on record, the opinion of the Judge of the Family Court it was held that the appellant-wife is having sufficient income for her survival and she has failed to prove that she is entitled for any maintenance. Thus, no merit is there in the present Appeal. Appeal was, therefore, dismissed and maintenance was not awarded to the wife¹⁰.

CONCLUSION:

Section 125 of the Criminal Procedure Code (CrPC)¹¹ and Section 18 of the Hindu Adoption and Maintenance Act make provision for maintenance for wife and children by the husband. Nonetheless, given the extended way of lawful procedures, the wife and kids frequently need to endure enormous hardship when the courts pass the last request of giving maintenance. In any case in specific situations where individuals may abuse the maintenance procedure for award of cash and extravagances.

In a case a dispute arise on, "If a woman holds an MBA and if (she) has a business background, she cannot be allowed to sit idle at the cost of (her) husband," held the family court, rejecting the plea of a woman who had asked for an increase in the interim maintenance amount from her ex-husband.¹²

The women, in her request, had said she needs the support expanded on the grounds that, aside from family unit costs, she needs cash for her own costs like garments, birthday endowments, and visits to beauty parlor. According to the copy of the court's order, the lady had approached the family court requesting a separation from her businessman spouse in 2011. She had likewise recorded a domestic violence at home argument against him in the eyes of the judge court, which had requested that the spouse pay a month to month support of

⁹ Shibu Thomas, Times of India, Financially Stable wife cannot ask for Maintenance, <http://timesofindia.indiatimes.com/india/Financially-stable-wife-cant-claim-maintenance-Bombay-high-court/articleshow/30918626.cms> (last seen on 12.03.2015)

¹⁰ Madhu Gupta v. Pravin Kumar Gupta (Family Court Appeal, 144 of 2013, <http://dogsincourtroom.blogspot.in/2014/02/financially-stable-wife-cant-claim.html> (last accessed on 12.03.2015)

¹¹ Section - 125 of CrPC, 11973 - <http://indiankanoon.org/doc/1056396/> (last seen on 11.03.2015)

¹² Legal Era Blog, MBA wife's Maintenance plea rejected, <http://www.legalera.in/blogs/entry/mba-wife-s-maintenance-plea-rejected.html> (last seen on 11.03.2015)

Rs. 1.25 lakh. The woman, in her application, claimed she needs a maintenance amount of Rs. 4.5 lakh per month - Rs. 80,000 for groceries, Rs. 10,000 for toiletries, Rs. 40,000 for vegetables, fruits and milk, around Rs. 60,000 for hobbies of her two children, Rs. 4,000 for dog's expenses, and Rs. 30,000 for her personal expenses, among others.

The man, however, opposed her plea on the ground that she hid the fact that she is an MBA and runs her own business and has earning capability. "(The) Husband himself is paying society charges and bearing additional expenses of the wife and children. The wife's mother is said to have died intestate and 50% of her shares have come to her (the wife). The wife's claim comes up to Rs. 2.5-3 lakh. Also, the sale of her farmhouse fetched her Rs. 5 crore," as instructed in the court's order copy.

Thus, the court rejected and stated that interim maintenance cannot be permitted to turn out into "a bonanza for a wife". "The wife and children already have rent-free accommodation. Also, it's not as if the wife is a babysitter and cannot pursue any job..." said the court.

Cannily talking, there is no law in India that does not have a space to be abused. In the later past, our legal framework has proactively worked for the welfare of the women of this country yet the laws that were ordered such a variety of times enlisted an uncommon abuse. According to the data gathered by Save Indian Family Foundation, women were captured for making false utilization of the most mainstream Section 498 A in the year 2012.¹³

In the light of the above there are such a variety of procurements to which even the Courts infrequently reconsider before giving their decisions. The same happens such a large number of times with regards to the issue of claiming maintenance from the side of wives. The legal framework for maintenance started to be in the light of the realities that rich spouses need to pay a foreordained amount to his wife in the event that he takes separation from her. But women started taking advantages of it and even well-flourished women also started demanding maintenance from their husbands in the legal corridors.

¹³ Madhu Gupta v. Pravin Kumar Gupta (Family Court Appeal, 144 of 2013, <http://dogsincourtroom.blogspot.in/2014/02/financially-stable-wife-cant-claim.html> (last accessed on 12.03.2015)