



**RIGHT TO MAINTENANCE:
PROCEDURAL HURDLES
AND SOCIAL REALITY**

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The Code of Criminal Procedure that provides maintenance as a substantive right presents also conditions subject to which the right is extended to a claimant. Besides, the code specifies also the jurisdiction and the procedure to be followed in the enforcement of the right. The summary relief extended under Section 125 being mainly towards fulfillment of the basic objective i.e. preventing destitution and the culmination of vagrant behavior on failure of such prevention, the procedures that are prescribed under the code are much simple.

The chapter of maintenance has been discussed under the following headings and sub-headings: Maintenance of Wife under Hindu, Muslims, Christians and Parsi Laws- (a) Analysis of the legislative provisions (b) Evaluation of the judicial pronouncements (c) Identification of pitfalls (d) Advocacy of reforms and improvements.

BASIS OF THE CLAIM

An application under Section 125 of the Criminal Procedure Code, be it by a wife, child or parent, will be entertained only on proof of following elements. The applicant needs to prove that the respondent has sufficient means and that he/she has neglected or refused to

maintain him/her. In addition, he or she has to prove her inability to maintain himself or herself.

On the side of the respondent the requisites are,

- (1) he should be having sufficient means and
- (2) There should have been neglect or refusal on his part to maintain the petitioner.

INABILITY TO MAINTAIN

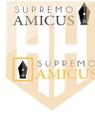
Applicant's inability to maintain herself/himself is the sine qua non for a claim of maintenance under Section 125.

The claimant may be wife, child or parent, proof of their inability to maintain themselves is a condition precedent to grant maintenance and the burden of proving the same is on them. The phrase unable to maintain does not mean that he or she should be an absolute destitute standing with tattered rags on the streets

If she for a while is taken care by some of her relatives that will suffice to prove that she is not in a position to maintain herself.

A deserted wife, at the age of 50, working as laborers for her survival, is entitled to get maintenance. The capacity to earn does not mean that he or she is able to maintain him or herself. The potential ability to earn will not be considered. The 'able body' concept cannot be extended to the case of wife for this will defeat the very

Object of the legislation. The holding of an employment sometime back does not mean she has the capacity and is able to maintain herself.



Instances are not wanting where the capacity of wife is also taken into consideration. Potential capacity of a woman is least considered for extending her the benefit. The High Courts of Karnataka and Kerala have taken the potential capacity of wife into consideration while determining her inability. The relevance of considering the income of wife, if any, has been discussed by the Supreme Court in *Bhagawan Dutt v Kamla Devi*. to settle the contrary views taken by some lower courts. “On dismissal of first application made 17 years earlier and change of circumstance in the meantime can force a woman to file a petition on the ground of her inability to maintain herself and the petition is not barred by res-judicata.

In the case of children and parents, their age and conditions of life will prove their inability to maintain themselves. Where maintenance is claimed for the child, which is only about two years old, it is obvious that it is unable to maintain itself and no specific proof is essential to prove that the child is unable to maintain itself. “Physical or mental defect on the part of major children disabling them to maintain themselves are entitled for maintenance.

Any child above the age of 18 years not being disabled by either mental or physical deformity is presumed to be having sufficient means. Old age needs no further proof to establish one's inability. But in the case of wife this at times causes much hardship.

Sufficient Means

The person against whom the claim is made must have ‘sufficient means’ based on which alone maintenance can be allowed. The courts should be satisfied on this point and then pass the order. “The words ‘having sufficient means’ do not signify only visible means of such things as real property, income, revenue, estate or employment. Besides pecuniary resources, it has its reference to the earning capacity of the individual as well. If one is healthy and able bodied it must be construed that he has the means to support his wife, child or parent.” Even in case of insolvency of the husband, the capacity to earn being there on him it is material to construe that he has means.” One's debt” or young age and inability to get a job or worldly renunciation” does not provide ground to claim that he has not sufficient means. But physical infirmity and ailments on account of which one cannot earn is material.” Income of other relations of the husband does not construe that he has means.”

The burden of proof that the respondent has sufficient means is on the applicant. But the burden is not heavy and can be based on preponderance of probabilities. On establishment of this, the burden shifts to the respondent to show that he has no sufficient means to provide maintenance. “In the absence of any such pleading, the Court will presume that the husband or father has means.” But omission to plead that the husband has sufficient means does not take away the right of maintenance.



Neglect or Refusal to Maintain

No order for maintenance can be passed unless neglect or refusal is there by a person against whom the petition is filed. Proof of neglect or refusal is the basis of the claim for maintenance and without such proof no order of maintenance can be made even though she is living separate in exercise of her statutory right.” The term neglect is used to signify failure on the part of a person bound to maintain his wife. In wider sense, it includes disregard of duty to maintain whether intentional. Neglect or refusal need not be express but may be inferred from the conduct of the parties.” It is a question of fact and no hard and fast rule can be laid towards determining the same. Failure to maintain properly can amount to neglect, when maintenance provided is very meager and inadequate this amounts to neglect and Magistrate can entertain jurisdiction. Mere failure or omission can amount to neglect in case of children on whom father has a duty.“ Subsequent marriage by husband is a clear proof of neglect.”

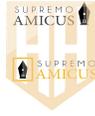
JURISDICTION

Early from the inception of the Code in 1898, the jurisdiction to deal with matters connected with claim of maintenance or its execution of the orders made if any, vested with the Judicial First Class Magistrate. After 1984, with the passing of the Family Courts Act, the jurisdiction now rests with the Family Courts constituted to deal with family matters. The Family Courts Act specifically

excludes the exercise of jurisdiction by the Magistrate Court.

Jurisdiction of the Magistrate Court

A Magistrate of First Class alone is given jurisdiction to entertain application for maintenance under Section 125 Cr.P.C.” A Court which normally exercises criminal jurisdiction is seized of this matrimonial and purely civil jurisdiction to cater to the needs of a vast majority of deprived population. This is justified on the ground that it aims at the prevention of crime or at least the tendency to take up a criminal career. The procedure that is followed by this criminal court is somewhat peculiar which does not reflect either of the civil or of the criminal jurisdiction. The discretion provided under Section 125 is very vast. Again, the jurisdiction conferred on the Magistrate is not only adjudication of the claim for maintenance but includes also the power of enforcing the same through much coercive measures. Though the litigation is between the parties, the role played by the Court is dominant and indirectly reflects the state intervention in seeing effectively the enforcement of a moral duty which every husband has against his wife, every father has against his children and every son/daughter has against his/her parents. The imprint of English practice is well lit in the magisterial system, to act as a ‘casualty clearing stations’. With the passing of the Family Courts Act, the jurisdiction now stands shifted to the Family Courts constituted to deal with family and matrimonial matters.



Jurisdiction of the Family Courts

The persistent demand for English model Family Court resulted in the formulation of the Family Courts Act 1984, to bring under one umbrella all family issues, such as marriage, divorce, maintenance and custody of children. The central theme of the enactment is the preservation of the institution of marriage giving emphasis to 'conciliation' in disputes between married partners.

Family Courts Act, 1984

All family matters at present are entrusted to the District Judge (or delegated to a Sub-ordinate Court) who is well versed in ordinary civil and criminal trials. He tries family matters in usual manner with the normal adverbial procedure. In other words, the judge who tries claims for breach of contract or tort, claims for motor vehicle accidents, and crimes, like rape and murder, also tries all matrimonial matters including custody of children and spousal maintenance. It is now realized that adjudication of family matters is entirely a different matter. It has a different culture; it has a different jurisprudence. The resolution of family conflict requires special procedures.

The procedures must be designed to help people in trouble, to reconcile and resolve their differences, and where necessary, to provide assistance. The Court adjudicating family disputes should function in a manner that it may tend to conserve and not disrupt the family life; it should be helpful and not harmful to

individual partners and their children; and it should be preservative rather than punitive to family and marriage. It is, therefore, accepted that adversary system promotes ritualistic and unrealistic response to family problems. The present system offers no legal protection to children. They are not represented by counsel and the Court does not have enough information to determine their best interest. More often than not, children are caught in the inter spousal conflicts and become pawns, weapons and ultimately victims. The fact of the matter is that adverbial process precludes reconciliation and conciliation of inter-spousal and inter-parental conflicts. Thus, no Court which is engaged in finding out what is for the welfare of the family, whether a marriage has broken down or not, which spouse should have the custody of and access to children or which spouse needs support, should rest content with the assertions and contentions of the parties and evidence led by them to prove or disprove their assertions and contentions. The Court engaged in this task requires a less formal and more active investigational and inquisitorial procedure. In other words, it is not a litigation in which parties and their counsel are engaged in winning or defeating a legal action, but an inquisition in which parties, social workers, parties, social workers, lawyers, welfare officers, and psychiatrists are engaged in finding out a solution to familial problems.

India has taken the necessary steps to form a new device for dealing for family matters. The Family Courts Act, 1984 has



been passed to give special jurisdiction to all family matters.

Constitution of Family Courts

The Family Courts Act 1984, at the first instance, stipulates for the establishment of Family Courts for those towns and cities whose population exceeds one million. It also lays down that the State Government may also set up Family Courts for other areas. Appointment of judges of Family Courts is to be made by the State Governments with the concurrence of their High Courts. A Family Court may consist of one or more judges. Where there are more than one judge, the State Government with the concurrence of the High Court will designate one of the judges as the principal judge and any other judge as additional principal judge. Section 4(3) of the Act lays down the qualification of judges of the Family Court. A person who has at least seven years experience as a judicial officer or as a member of a tribunal or who has held a post for that duration under the central or a state government requiring special knowledge of law, or who has been an advocate of a High Court (or two or more High Courts in succession) for at least seven years may be appointed as judge of the family court. Other qualifications may also be laid down by the Central Government in consultation with the Chief Justice of India. “Women will be given preference for the appointment as judges of the Family Court.” Section 4(4)(a) also lays down that “every endeavor shall be made to ensure that persons committed to the

need to protect and preserve the institution of marriage and to promote the welfare of children and qualified by reason of their experience and expertise to promote the settlement of disputes by conciliation and counseling are selected”.

There is some controversy as to what matters should come within the jurisdiction of the Family Court. The Act has brought all matters directly pertaining to the family, such as matrimonial causes, maintenance and alimony of spouses, custody, education and financial support to children, settlement of spousal property and guardianship and custody of children under the jurisdiction of family court. The Family Court has also been conferred jurisdiction for passing orders for maintenance of wives, children and parents.

Informal Procedure

The Family Courts Act opts to adopt a less formal procedure. Although Section 10 of the Act makes the procedure laid down under the Code of Civil Procedure, 1908 applicable to Family Court proceedings, it is also laid down that the Family Court is free to evolve its own rules of procedure and once the Family Court lays down its own rules of procedure they will override the rules of procedure laid down in the Code of Civil or Criminal Procedure. The Act itself contains some provision which indicates the informality of the procedure. The Family Court may receive as evidence any report, statement, document, information or other matter that may assist it effectually in resolving a dispute,



irrespective of the fact that the some would be otherwise relevant or admissible under the Indian Evidence Act 1872.

It is also not obligatory on the part of the Family Court to record the evidence of witnesses at length. It would be enough if the judge records or causes it to be recorded a memorandum of the substance of what witnesses have deposed. Such a memorandum is required to be signed by the judge and the witness, and once that is done it will form part of the record of the cases. Where the evidence of a person is of formal character it may be given by affidavit and it will constitute part of the evidence in the case. The same informality is maintained about the judgment of the Family Court. A judgment

of the Family Court should contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decisions. A decree or order of the Family Court may be executed by the same court or any other Family Court or by an ordinary Civil Court in accordance with the convenience of the party concerned.

No appeal lies against the interlocutory orders. Similarly, no appeal lies against the decrees or orders passed with the consent of the parties. As to other matters an appeal lies to the High Court both on facts and law. All appeals are to be heard by a bench consisting of two judges. No second appeal is provided. But an appeal with the special leave can lie before the Supreme Court under Article 136.

In camera proceedings

The concept of Family Court insist for confidentiality of the court record which necessitates the proceedings to be conducted in camera. Section 11 of the Family Courts Act makes it obligatory on the part of the Court to hold the proceedings in camera if any party so desires. These may also be held in camera if the Court so deems fit.

Exclusion of lawyers

The Family Courts Act dispenses with the service of the lawyer. Section 13 makes it abundantly clear when it lays down: "Notwithstanding anything contained in any law, no party to a suit or proceeding before a Family Court shall be entitled, as of right, to be represented by a legal practitioner".

However, the Family Court may seek the assistance of legal expert as amicus curiae whenever it considers that to do so is necessary in the interest of justice.

A perusal of Section 13 of the Act indicates that a party to a proceeding before the Family Court shall not be entitled as of right to be represented by a legal practitioner. The Act does not prescribe a total bar to representation by a legal practitioner which bar would itself be unconstitutional. The intentment of the Legislature obviously was that the problems or grounds for matrimonial break-down or dispute being essentially of a personal nature, that it may be



advisable to adjudicate these issues as far as possible by hearing the parties themselves and seeking assistance from counselors.

The Procedure for Claim of Maintenance

The formal procedure for claim of maintenance by a wife or father or mother is to make a petition under Section 125 before the Family Court, if established for the area or before the Magistrate's Court, otherwise. In case of minors, the mother or any guardian can present a petition on their behalf.

The applicant is heard. When the Court is satisfied that the applicant asking for maintenance has a *prima facie* case, the Court takes the petition on file and issues summons to require the appearance of the respondent. Before the Criminal Court both the parties are normally assisted by advocates, whereas before the Family Court their representation is specifically excluded. The parties are heard. When the respondent admits relationship and is prepared to pay maintenance, an order to that effect is passed. If the husband denies the relationship, denies payment on certain grounds justifiable, or pleads inability for want of sufficient means, the matter is posted for trial. During trial, which is by summary procedure, parties and their witnesses are examined to adjudicate the dispute in their pleadings and mainly to establish the relationship, inability to maintain oneself and possession of sufficient means. The Court then passes an order either granting or dismissing claim for maintenance.

Award of Maintenance

The legislature has favored monthly payment of maintenance an easier and convenient mode of payment under Section 125 Cr.P.C., without causing much hardship to the liable respondent and at the same time towards serving the basic objective on the part of the petitioner. The English experience might have also been a reason for this. Under Section 125 Cr.P.C. the Magistrate is required to award maintenance only at a monthly rate. The amount has to be ascertained and must be fixed unless otherwise altered under Section 127 Cr.P.C. by change of circumstances. The order can only be for payment of money 71 and not in any kind." The rate awarded should be determinate and fixed. The rate cannot be fixed on an abstract and hypothetical thing like capacity to earn." It is also not permissible to make an order at a progressively increasing rate. In fixing the amount payable at monthly rate the Magistrate should exercise his discretion fairly. Lump sum payment of maintenance is not permissible by the provisions of this statute."

Amount of Maintenance

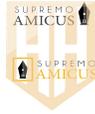
Section 125 of Cr.P.C. provides maintenance only as a summary remedy and hence the amount payable is much limited. The amount is so fixed by this provision that it fulfills modestly the needs and requirements of the wife. The objective of this remedy is not to enable the wife to live in luxury and make her



feel that her living separate is profitable and thus impede any future possibility of reconciliation. The amount must be sufficient to keep her body and soul together. Again the relief being not permanent, since the parties are well permitted to agitate their rights before the competent civil forum, the limited monetary limit is purely a stop-gap arrangement. A tracing of the legislative history goes to show that the legislators are well aware of this.

The Code of 1898 provided for an order of maintenance for a monthly allowance not exceeding fifty rupees. The Bill of 1914 proposed an increase of the amount to Rs.100. However the proposal was rejected by the Committee of 1916. But by legislative changes in Britain, when the courts in India were empowered to issue summary orders in respect of British citizens up to an amount of £2 a week, vide the Maintenance Orders Enforcement Act of 1921, a change as regards Indian citizens was felt necessary to raise the monthly award of maintenance. A similar opinion was expressed also by the Select Committee. Hence, the Amending Act of 1923 enhanced the amount to Rs.100/-. Another change was effected by the Amending Act 1955, enhancing the amount to Rs.500/- with effect from 1.1.1956." The newly enacted 1973 Code, though incorporated varying changes under Section 125 of Cr.P.C., retained the quantum, which still is applicable. But at no circumstance, the maximum amount should exceed Rs 500/-.

The words 'not exceeding' should be given much emphasis. The remedy under Section 125 being summary, pending enforcement of any permanent right before the competent civil court, no severe objection has come against this paltry sum so far. But with the steady increase in the cost of living coupled with the heavy increase in the inflation rate, the monetary assistance of Rs.500/- awarded in favor of successful litigant appears to be very meager to enable one to lead a destitute-free life. In fixing the maintenance, the status of the parties and the income of the opposite party need to be considered." The discretion enjoined on the Magistrate should be exercised in such a manner that it does not permit the applicant to lead a luxury life and at the same time not to drive her to a starving life. It must be modestly consistent with the needs and requirements of the wife and the status her family is accustomed to. The Magistrate has to exercise his discretion fairly in arriving at the quantum. In determining the amount of maintenance, the Magistrate has to consider several factors, related to effective enforcement of the provision. The capacity of the party alone does not weigh in this. On the part of respondent, his actual income, his own expenditure and that for his other dependents and his payment of maintenance to any other claimant is relevant. On the side of petitioner, her way of life and her own source of income are material facts to be evaluated prior to passing of an order under this provision." He should strike a balance between the financial capacity of the opposite parties and the needs of the



applicant having regard to their status. The circumstances of the case before him must also be taken into consideration. The maximum amount which can be ordered as maintenance for each applicant is Rs.500/-. The words 'in the whole' in Section 488 of the earlier Code has been misinterpreted by some courts to mean that the maximum amount awardable inclusive of all the applicants regardless of their number. Thus when a wife makes a claim for herself and for her children the maintenance amount is restricted and limited to Rs 100/- the maximum then permitted by the Code.

Execution of the Order of Maintenance

The maintenance order having been passed, it becomes the duty of the court itself to see that payments are duly made. The only legal obligation placed on the wife or the minor or parents in whose favor the order is made, is to present an application within one year from the date on which the amount becomes due. Section 125 (3) of the Code imposes such an obligation on the claimant to bring to the knowledge of the Court the breach of maintenance order by an application. When this is done, it is for the Court to get its own order enforced and see that it is complied with. The proceedings from that stage cannot be treated as one between the original parties. Non appearance of a party or its non prosecution does not entail in dropping of the proceedings. The Court has every power to enquire into the reasons for non-compliance of the order and any failure on the part of the respondent to comply

with the order without sufficient cause can empower the Court to issue a warrant for levy of the amount. Resumption of cohabitation after an order of maintenance is not a valid defense to counter an execution petitions.

Warrant for Levy of Maintenance

When an application is made under Section 125(3) for recovery of the amount, the Court is seized of a duty to see the due compliance of the order. If without sufficient cause the respondent wilfully avoided payment of maintenance, it has the power to issue a warrant for levy of the amount. The power vesting with the Magistrate is similar to that of a civil court. The issue of warrant for levy of the amount due is in the manner provided for levying fines. Any further delay on the part of respondent without there being a justifying cause may lead to his imprisonment.

Sufficient Cause for Non-Payment of Maintenance

The basis of invoking the jurisdiction of Magistrate is wilful neglect and refusal to pay maintenance on the part of respondent. Conjugal relation obligates a wife to live with her husband. If she fails to fulfill this obligation and refuses to live with her husband without there being sufficient cause this amounts to desertion. In such circumstances her living separate does not give her the right for maintenance. The respondent has sufficient cause and can offer to maintain his wife provided she comes and live with



him. But pretentious offer to avoid the legal responsibility is not permitted. if he himself is a cause for such separate living by his wife then such offers are not valid. Contracting another marriage with a woman or keeping a mistress are specifically provided as just grounds for the wife's refusal to live with her husband. An order of adjudication as insolvent does not by itself a sufficient cause within the meaning Section 125(3) not to comply with the order. This will not bar the Magistrate from proceeding with the petition.

Sentence in Default of Payment of Maintenance Period Limitation

An application informing the Court of the breach of maintenance order passed by it arms the Magistrate with more powers to see to the compliance of the order. A willful neglect on the part of the respondent even after constraint measures being taken by the Court may lead to placing him under imprisonment. A sentence of imprisonment can be passed by the Magistrate so as to compel the respondent obey the order of the Court. But arrest and imprisonment can be resorted to only after exhausting all such coercive measures of recovery, as attachment and sale of movable property of the husband. This includes issuance of a warrant to the collector authorizing him to realize the amount as arrears of land revenue as provided under Section 421 of the Code for realization of fine. An ambiguity prevailed over the period of sentence the Court can award in default of payment of maintenance. The earlier

view was that the maximum sentence the Court can pass is one month for each month's default. Sentencing the respondent to periods more than this is observed illegal. Each complete one month's arrears was observed to make the respondent liable to a maximum term of imprisonment. Since the provision stipulates for presentation of an application for execution within a period of one year from the date on which it became due, Courts held that imprisonment cannot be to a period in excess of 12 months at the maximum.

An application for the recovery of arrears of maintenance shall be made to the Court within a period of one year from the date of the order or from the date on which it became due. No application filed after this period of limitation will be entertained nor executable. Maintenance becomes due on the date of passing of the order though it might have been granted from the date of application. The limitation of one year for recovery of arrears starts in such cases from the date of the order. The provision is intended to prevent a person entitled to maintenance from being negligent and allowing arrears to pile up until their recovery would become a hardship or an impossibility. Unlike civil courts, the Magistrate can allow arrears to aggregate only to a maximum period of one year if not ordered from the date of application. The provision is clear and in categorical terms puts an embargo on the powers of the Magistrate.



The claim for maintenance can be refused

The claim for maintenance can be refused to a wife under Sub-section (4) of Section 488 of the old Code on certain grounds, such as

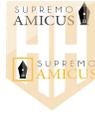
- if she is living in adultery.
- if without any sufficient reason, she refuses to live with her husband.
- if they are living separately by mutual consent.

On proof of any of the above facts an order of maintenance made in favor of any wife can also be cancelled under Sub-section (5) of the old provision. The above Sub-section had been inserted without any change in the new Code of 1973 as Sub-sections (4) and (5) of Section 125. When the new code has given a new dimension to the term 'wife' by including within its orbit even a divorced woman, whether such conditions which are imposed on wife to entitle maintenance will be applicable to divorced woman also. Or in other words, the grounds enumerated under Subsection (4) and (5) of Section 125 of the Code would be applicable only to woman whose marriage is subsisting.

Working of the System

The first formal step for a wife, child or parent who wishes to obtain maintenance is to make a petition under Section 125 before the Family Court, if one is established for the area or before the Magistrate's Court, for such other areas.

The applicant is heard. When the court is satisfied that the applicant asking for maintenance has a prima facie case, the Court takes the petition on file and issues summons to require the appearance of the respondent. Before the criminal court both the parties are normally assisted by advocates, whereas before the Family Court their representation is specifically excluded. The parties are heard. Where the respondent does not deny the relationship or is prepared to pay maintenance, an order of maintenance is passed in favor of the claimant. If the relationship is denied or the respondent denies payment on certain grounds or pleads inability for want of sufficient means, the matter is posted for trial. During trial, which is summary in nature, parties and their witnesses are examined to adjudicate the dispute based on pleadings and mainly to establish the relationship, inability to maintain oneself and absence or possession of sufficient means. The Court then passes an order either granting or dismissing the claim for maintenance. The procedure as described above though looks much simple. the disturbing findings of this research is that the real working system is ill-suited to achieve the basic objective of preventive destitution, proclaimed under Section 125 of the Criminal Procedure Code. The choice of the forum for claim of maintenance is more decided by the counsel rather than the claimant. No specific arrangement has been made before the criminal courts either before or after the passing of the Family Courts Act to receive petitions for maintenance. It is one among the other activities dealt



before the criminal court. This takes months for the claimant to see the petition being taken on file. The process for appearance of the respondent is as per the provisions of the Criminal Procedure Code. The dilatory process takes months together to secure the presence of the respondent before the Court. Even after appearance, no specific time limit is followed for filing of reply. This keeps the woman waiting for justice for long. The procedure though summary, prolong for years making the poor woman run every time to the Court as an accused. Lack of judicial officers at several courts aggravate further the situation. Finally, even after the matter is decided in favor of the woman, no immediate relief comes to her as she needs to file a separate execution petition. If the respondent takes the matter for review, the condition of the woman becomes much worse. A survey of the judicial decisions by the High Courts go to show that the wife in several instances has been kept in waiting even for years to avail the so called summary remedy under Section 125 of the Code.

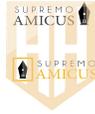
Under Hindu Law

Maintenance of wife under Hindu Law deals with the relevant provisions of Modern Hindu Law regarding the Maintenance of wife. It is a noteworthy fact that the maintenance of wife under the Hindu Marriage Act, 1955 and the Hindu Adoption and Maintenance Act, 1956. The 'evaluation of the judicial pronouncements' in which the judicial pronouncements of the various High Courts and Hon'ble Supreme Court regarding the maintenance of wife under

the Hindu Laws have been evaluated. In the process of the evaluation of the judicial pronouncements the issue involved in the case, the contention of the petitioner and the respondent, the order or the judgments of the respective High Courts or the Hon'ble Supreme Court and the merits or the demerits of the judgments has been humbly tried to put forth. Further, 'the identification of pitfalls' deals with the areas which has been in the serious requirement to be noticed and calls for some responsible steps for the reformation by the appropriate authority. The area of the pitfalls has been found during the process of the analysis of the legislative provisions and the evaluation of the judicial pronouncements. Lastly, the advocacy for reforms and improvements which deals with the suggestions and the progressive ideas for coping up with these areas of pitfalls.

Under Muslim Law

Maintenance of wife under Muslim Law deals with the responsibility of the Muslim husband to maintain his wife in the form of *Kharch-ipanadan*. After this the controversy between the Criminal Procedure Code, 1973 and Muslim Personal Law regarding the maintenance of Muslim divorcee has been discussed. The agitation of the Muslim community due to the controversial judgment of the *Shah Bano's* case which paved the way to the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986 has also been analyzed under this heading. The 'Evaluation of the judicial pronouncements' deals with the



evaluation of the decisions of the various High Courts and Hon'ble Supreme Court regarding the maintenance of Muslim divorcee. The evaluation of the cases and judicial pronouncements describe the judicial scenario before and after the *Shah Bano's* judgment. This heading also deals with the cause of the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986, and the role of judiciary towards the application of the provisions of this enactment. The reasons have also been mentioned as to why the judiciary is sometimes blamed for promoting the application of the provisions of Cr.P.C., rather the provisions of this enactment regarding the maintenance if Muslim divorcee through the sufficient case laws. Further, this part in the identification of pitfalls shows some loopholes in the hurry and rash drafting of the Muslim Women (Protection of Rights on Divorce) Act, 1986. These loopholes may be blamed to allow the judiciary to distort some intractable rules of Muslim Law regarding the maintenance of Muslim divorcee in the guise of the judicial activism which can't be said a proper way for the intrusion in the personal law of any community. Lastly, this part which is the 'advocacy of reforms and improvements', covers some humble suggestions regarding the reformation of some provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986 , as this Act has the heavy responsibility to represent manifestly the Islamic Community to the whole world.

Under Christian Law

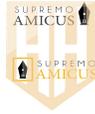
Maintenance of wife under Christian Law deals with the analysis of the relevant provisions of the Indian Divorce Act, 1869, regarding the maintenance of wife under the Christian Law. Further, it deals with the evaluation of the judicial pronouncements.

Under Parsi Law

Maintenance of the wife under Parsi Law deals with the relevant provisions of the Parsi Marriage and Divorce Act, 1988, regarding the maintenance of wife. After the analysis of the legislative provisions of the Parsi Marriage and Divorce Act, 1988, regarding the maintenance of wife, the rest of the headings, i.e., evaluation of the judicial pronouncements, identification of pitfalls, advocacy of reforms and improvements have been discussed.

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 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 great success.

