

MAINTENANCE TO VICTIMS OF VOID MARRIAGE

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Maintenance has been a concern of not only weaker sections but of the society as well. For weaker sections it is a problem in the sense their very survival rest on the provision made available as maintenance. The concern of the society starts when one, despite having means, fails to provide maintenance to his dependants. Such members are forced to fall upon the state for assistance or else take a career detested or prohibited by the society. Either of them is not towards promoting the interest of the society and hence it's concern. Perhaps in realization of this and with the avowed object of preventing the consequences that may tend to arise out of poverty and destitution a right, parallel to one provided under personal laws, is made available under Criminal Jurisdiction in India. The century old law had its origin from England and withstood onslaughts of social and legal changes over the period.

The right of maintenance under S.125 Cr.P.C.

The right of maintenance provided under S.125 of Code of Criminal Procedure is something novel and unparallel in Indian Legislation. It shows a blending of characteristics of criminal law, civil law and those of family law, but does not fall absolutely under any of these branches. In these proceedings, though initiated by or on behalf of destitute individuals, the State involves directly to see to the enforcement of purely a personal obligation. The provision remains as the first unified law on the personal aspect of non-homogenous communities living in India. The secular characteristics still holds good even after the passing retrograde law, the Muslim Women (Protection of Rights) on Divorce Act. The provision, which intends to prevent

starvation, protects indirectly the basic human rights. It reflects the individual well being, the central objective of International Community, protected under various Human Rights Conventions. As a measure of social justice the provision do fall within the constitutional sweep of Article 15 (3) reinforced by Article 39 of the Constitution.

The self contained provisions of the maintenance law under the criminal procedure code protects a class of people who but for this assistance would be left beggared and destitute. The remedy as a statutory right is made available to all neglected wives, discarded divorces, abandoned children and hapless parents, regardless of their religion, community or nationality. As regards wife, the phrase 'wife' means only a legitimate wife and excludes other such relations. Only a wife is entitled to claim maintenance and a woman without attaining such status is precluded from seeking maintenance. The claimant must be a legally wedded wife. A marriage proved illegal does not confer the status of wife on a woman and the right to get maintenance. The legality of the marriage is to be tested in the light of the personal laws applicable to the parties. The personal laws in India brand a marriage to be void on certain grounds but they lack uniformity and rigidity.

Claim by women of second marriage:

Of the grounds that invalidate a marriage, the chief and controversial one is bigamous marriage. Under the old Code of 1898, a Hindu second wife whose marriage is solemnized prior to 1955 was not denied maintenance. Neither the marriage was void nor she denied the status as wife. But the subsequent marriage was a valid ground for either of the wives to refuse live with her husband and claim maintenance. After 1955, any such marriage solemnized during the survival of a living spouse, the marriage can be declared null and void and the second wife denied the status of wife.

Her claim for maintenance is also not entertained. The same is the result when a wife takes second husband. But it is the woman who suffers the vices of male chauvinism. The case of *Yamunabai*¹ is a pathetic example of this sort.

Yamunabai - a pathetic example:

Yamunabai was factually married to Anantrao by observance of rites under the Hindu personal law in the year 1974. Anantrao had earlier married one Smt. Lullaby who was alive and the marriage was subsisting when he married Yamunabai. She was not informed of the existence of the first marriage. Yamunabai lived with Anantrao for a week and thereafter left the house on grounds of ill treatment. She made an application under Section 125 of the Code, which was dismissed. The matter, which was taken to Bombay High Court, was unsuccessful. Yamunabai ultimately approached the Supreme Court through a special leave petition to seek justice. The issue involved before the court was whether a Hindu woman who married after the coming into the force of the Hindu Marriage Act 1955, a Hindu male having a living lawfully wedded wife can maintain an application for maintenance under Section 125 of the Criminal Procedure Code.

The Supreme Court interpreted the language of Section 125 in the light of Section 11 read with Section 5(i) of the Hindu Marriage Act 1955 and ruled that the marriage being void from the very inception, she was not a wife and hence not entitled to maintenance. The Court did not concede the fact of intentional suppression of the early marriage by the respondent. The plea of estoppel was also turned down as being not available to defeat the provisions of law. The Court rejected the contention that the term 'wife' in Section 125 should be given a wider and extended meaning so as to

¹ Yamunabai Vs Anantarao, 1988 Cr.L.J. 793

include not only a lawfully wedded wife but also a woman married in fact by performance of necessary rites or following the procedure laid down under the law. When pointed to the extension of the benefit to a divorced woman the court distinguished the law in respect of divorced woman then, and at present. The extension of the benefit to the divorced woman being through statutory amendment pointed the absence of any such provision to extend the benefit to the appellant².

The Supreme Court ought to have realised a social realism and the plight of such victims, while giving a technical interpretation to the wife. A woman who has been kept in the dark about the husband's first marriage should not be made to suffer without any fault of hers. Her life has already been ruined because of the fraud committed by her 'husband'. Why should she be again made to suffer destitution and denied maintenance. No injustice will be caused if the erring husband is made to bear the liability. It is interesting to note that the legislature has extended the benefit towards a woman whose marriage has come to a cession on divorce. Similarly illegitimate children born out of wedlock are also provided with the relief. But unfortunately no such benefit is extended towards a woman of void marriage.

The word 'wife' means only a legitimate wife and excludes other such relations. A marriage proved illegal does not confer the status of wife to a woman and the right to get maintenance. The Hindu second wife whose marriage is void under Section 5 and 11 of Hindu Marriage Act is not entitled to maintenance. Similarly a wife taking second husband without divorcing her first husband is not entitled to maintenance, from the second husband as her marriage is illegal and void³. But a woman who has been

² Ibid.

³ Iswar Singh v. Hukum Kaur 1965 (2) Cr.L.J. 449 (All).

accepted and declared as wife notwithstanding absence of ceremonial marriage is considered to be a wife⁴. It is true; the validity of marriage has to be established to avail maintenance. Personal laws prescribe qualifications to make a marriage valid and sustainable. But when illiteracy among women in rural Indian society is rampant and when even among educated elite population legal awareness is lacking, the reality at times is shocking. The decision of the Supreme Court in *Yamunabai* goes against the interest of women who fall victims of matrimonial gambling.

The object of Section 125 is to prevent destitution and culmination of vagrancy. Again the remedy provided by the Magistrate while exercising the domestic jurisdiction under Section 125 Cr.P.C., is only very limited. The options are always open to the respondent to question the legality of the marriage before a competent civil court. Women have no absolute say in deciding their marital options and all arrangements pertaining to marriage inclusive of the choosing of her partner is predominantly done by elders, or close family relatives. Suppression of earlier marriage is a common affair, for this brings the man all fortune along with a new bride. Again, all communities excepting that of Christians consider polygamy as a regulated customary practice. It derives support either from religious belief, or divine command. After marriage when reality is known it is the woman who suffers the most. In the orthodox Indian society she can neither think of marrying again nor can seek permanent asylum at her parent's house. She has the option only to lead a hostile life with the same male member who cheated her and ruined her future for the rest of her life, or else, take a career towards preventing which Section 125 Cr.P.C. has been formulated. Hence a re-thinking is imminent for necessary changes either in the

⁴ *Bali Narayan v. Shiddheswari* 1981 Cr.L.J. 673.

Code or in the judicial approach. If not, this will lead to punishing a victim twice, once by her so-called husband and again by the judiciary.

A New Judicial Thinking:

Perhaps in realization of the error the Supreme Court tried to come to the rescue of such women in the cases to come after. The Apex Court now gives a liberal interpretation favoring the cause of woman. Unless the marriage on its face is stamped with indisputable illegality and the invalidity stares on the face, the court cannot dismiss the claim of maintenance⁵. When there is ground to presume a valid marriage, pleadings on the part of the defendant that the marriage is void, will not automatically disentitle the wife from getting maintenance. The controversy on the validity of the marriage by pleadings by parties is settled by the Supreme Court in *Sumitra Bai v. Bhikhan*⁶, wherein also a woman who fell victim of void marriage approached the Supreme Court for relief under S.125 Cr.P.C.

Both the parties in the case adopted a technical approach on the factum of marriage. In an application for maintenance for herself and her minor daughter, the wife averred that at the time of marriage, the fact that her husband was already married was not known to her and on the knowledge of this the relationship strained and her husband neglected her. The plea of the husband on the other hand was that that marriage was void for want of ceremonial rites and by reason of fraud. He averred that the lady was pregnant by some one else, which fact was concealed at the time of marriage and when he came to know of this she did not want to live with him. The Court did make the point clear that when pleadings show to prove the existence of a

⁵ Purna Bahadur Bista v. Sanita Bista 1984 Cr.L.J. 1145 (Sikkim).

⁶ AIR 1985 SC 765.

marriage at the time of marriage of the petitioner, the subsequent marriage will be a nullity and the provision can in no way extend the benefit⁷.

The approach taken by the Supreme Court in *Vimala v. K.Veeraswamy*⁸ is worth and deserves to be followed in such circumstances and this will go in consonance with the objective of Section 125 Cr.P.C. The ruling is being looked upon as one to rectify the injustice caused to a woman of second marriage in Yamunabai.

In *Vimala v. K.Veeraswamy*⁹, the appellant and the respondent got married according to Hindu rites and customs on June 30, 1983. On complaints of desertion and ill treatment, the appellant moved the court for maintenance under Section 125 of the Code. The respondent resisted the claim on the ground that the appellant was not a legally wedded wife and that he had earlier married one Veeramma. The learned Magistrate awarded a monthly allowance of Rs.500/- holding that the first marriage had not been proved. On revision by the respondent the order was set aside as against which the appellant approached the Supreme Court by special leave.

The appellant nowhere had admitted the subsistence of a valid marriage which would render the marriage illegal. The respondent admitted his marriage with the appellant according to Hindu rites but claimed that the same was repudiated as void on the ground of the existence of his earlier marriage. The Court observed that Section 125 of the Code by an extended meaning to the term 'wife' includes divorced woman, who does not enjoy the status of wife. A second wife whose marriage is void on account of the survival of the first marriage is not a legally wedded wife and hence

⁷ Ibid

⁸ (1991) 2 SCC 375.

⁹ Ibid

not entitled to maintenance. But the law can be applied only when the first marriage was proved to be valid and legal. The burden of proving the same was on the respondent who having not relieved the burden by tendering strict proof of fact in issue, the Supreme Court restored the order of the lower court and awarded maintenance.

Much recently the Supreme Court in *Dwarika Prasad Satapathy v. Bidyut Prava Dixit and another*¹⁰ has ruled so as to extend the benefit of Section 125 even to a woman who is not married in strict consonance with the required procedures under law. The stand so far established by the courts is that only when the marriage is valid before law, maintenance can be provided to a wife. But liberalizing the stand, the Supreme Court with a view to protect women who are victims of seduction by unscrupulous male members in the society has ordered maintenance in favour of such a woman.

In the above case one Dwarika Prasad Satapathy has seduced a woman, Prava Dixit, and this ultimately resulted in sexual relationship to end in pregnancy of the girl. On the mediation of elderly people, inspite of protest Satapathy married the woman in a temple. Within days of marriage a child was born. Satapathy neither cared to take his wife and child to his family nor provided them any assistance. Dixit filed a petition for maintenance, which was ordered in her favour. The revision court, which cancelled the maintenance on the plea, revised the order, by her husband that the necessary ceremonies had not been followed and hence the marriage was not valid. When the matter reached the Supreme Court, Satapathy having not denied the relation and the birth of a child out of this and ceremony that was arranged for the marriage, the court ruled though the strict procedures were not followed, this amounted to establish a

¹⁰J.T. 1999 (8) SC 329.

marriage and the relation of husband and wife. Reading the provision in the light of its objectives the court decreed maintenance in her favour.

Conclusion:

Provision of maintenance to wife, children and parents assure them an adequate standard of living. It is thus a basic human right. The State is obliged to assure this right to every individual in the society. Towards fulfillment of these obligations, the State has provided this as a right under S. 125 of the Criminal Procedure Code. The law under S.125 is looked upon as Common Civil Code atleast for the personal aspect of maintenance. But its application is made relevant to the personal laws governing the parties. The law in India touching upon the personal aspect of family life is not uniform. This led to conflictive stand being taken by Courts. As the law now stands, a Hindu minor girl can enter into a valid marriage in contravention of the Child Marriage Restraint Act and still can claim maintenance either from her father or husband. A Muslim second wife can avail maintenance whereas a hindu woman, howsoever innocent she may be, is not entitled to maintenance It is nothing short of anarchy that all divorced women excepting one who belong to Muslim community is provided with maintenance under the provisions of S.125 Cr.P.C. All these reflect an anomalous situation and insist the need to formulate the principles directed under Article 44 of the Constitution.

The matrimonial laws in India enable registration of marriages but none excepting one solemnized under the Christian Marriages Act and Special Marriage Act is mandatory. Non registration of marriages by majority of the population in India poses hardship mainly the womenfolk. Hence the need to make registration compulsory.

Pending formulation of Uniform Civil Code the remedy provided under S.125 of Cr.P.C. can be extended to all class of needy people in the relation as wife, parent and children towards achieving the real objective of preventing destitution. As regards wife prima facie evidence to establish the relation will suffice. Insistence of strict proof of marriage and imposing the burden on the applicant poses much hardship to women who fall victims of void marriage.