

DAUGHTER'S DUTY TO MAINTAIN PARENTS—SUPREME COURT ON THE PATH OF SON-DAUGHTER PARITY

IT HAS been held by the Supreme Court in *V.M. Arbat v. K.R. Sawai*¹ that section 125 of the Code of Criminal Procedure 1973 enjoins not only the son but also the daughter to maintain her parents. The decision has been much acclaimed by women's rights activists as a step in the right direction as strengthening women's cause for equal rights (especially inheritance rights). And in a society obsessed with the desirability of a male issue, it may aid the inculcation of the belief that daughters are as much of an old age security as sons. Does the decision really do all that is ascribed to it? Or is there more than that meets the eye?

The case started when a father approached his married daughter from his first marriage for maintenance on the ground that he was destitute and unable to maintain himself. He was living with his second wife whom he had married when his first wife died about 30 years ago. The daughter raised a preliminary objection that section 125 did not require daughters to maintain their parents. This objection was overruled by both the magistrate and the High Court. The Supreme Court upheld their decisions though without deciding on facts whether the father in the present case was entitled to maintenance. The factual matrix, however, is important to understand why a daughter has gone up to the highest court protesting against her father's right to claim maintenance from her.

Why does the court think that such maintenance should be given? It is, says the court, because in Indian society maintenance and care of parents in their old age is an unquestioned moral duty. Even if this generalisation is not put to scientific investigation it can be countered by another generalisation, that is, in the self-same Indian society living off a daughter's earnings, especially a married daughter, is considered morally wrong if not sinful.

It can be said (and correctly) that to espouse such traditional beliefs in post-constitutional egalitarian twenty-first century India is reactionary and anachronistic. This necessarily points to the fact that just as refusal to maintain should not be permitted any refuge of obsolete traditions, duty to maintain should also not be espoused on traditional grounds. Especially as the court has not, at any point, claimed to prefer its 'chosen traditional belief' because it is more conducive to the constitutional charter of equality.

Despite these references to tradition and moral duty, the court has in the main based its decision not on any policy considerations but on a literal interpretation of section 125 aided by the provisions of the General Clauses Act 1897. The fact that the section uses the masculine pronoun "he", says the court, is of no consequence as according to this Act, "he",

1. 1987(1) SCALE 379.

unless totally repugnant to the context, includes "she". So not only the son but also the daughter is required to maintain her parents. One expected an exposition more considered than 'he includes she' from the court on a matter of great moment for women and women's rights.

In what circumstances may the daughter be required to maintain her parents? The court held, when she has independent means of subsistence and can afford to maintain them. The requirement of ability to maintain is common to all persons who are required to support destitute relatives, be they husbands, fathers or sons. Thus "independent means of income" is an ingredient necessary for only the married daughter which translated into lay language would generally mean if the woman is working.

If the daughter is under a moral duty to maintain her parents one fails to understand why it is necessary for her to have an independent means of income. Why could the court not hold that the matrimonial unit that is the husband and wife, if able to pay, are legally and morally bound to maintain the wife's destitute parents as of the husband.

The majority of women in our country do not have independent means of income. If parents of these women are reduced to destitution, are these women required by the court to be helpless spectators? The fact that women spend their entire time and energy maintaining, developing and strengthening the matrimonial home by performing core household functions, does not entitle them to siphon off even the surplus funds of the home for the care and maintenance of their destitute parents. After all, even women without "independent means of income", to use the court's words, remain daughters of their parents after marriage.

The court has missed an opportunity to plant the germ of matrimonial property or at least of joint matrimonial duties in this case. Only if the court had found liable all daughters irrespective of the ability to maintain, the inheritance rights of daughters would have been furthered. After all, our succession laws, whilst granting inheritance rights to daughters, have nowhere laid down that only daughters with independent means of income would be entitled to inheritance. The court valiantly set out on the path of son-daughter parity but balked at the first major hurdle, 'the matrimonial unit's duty to pay', and took the by-lane of independent means of income. The court, we fear, did not see the hurdle as 'matrimonial unit's duty to pay' but as 'son-in-law's duty to pay' and that, we suppose, was a totally impermissible and morally shocking proposition.

That laws by themselves do not lead to change in social attitudes is a truism, but that does not mean that laws should only reflect existent social attitudes. They can and should initiate change in social attitudes especially when such attitudes are not in conformity with our constitutional vision. At least they should symbolise the need for such change. The Supreme Court, in failing to use this opportunity to enunciate the concept of joint matrimonial duties, has missed the bus of son-daughter parity, and in fact,

in insisting on the "independent means of income" criterion, it has again underscored the generally held belief that a daughter is not the same as a son.

In our opinion the daughter's duty to maintain, as enunciated by the court, whilst it in no real way furthers the cause of women's rights, it does deal a psychological blow to the women's crusade for economic independence. In so far as it seems to be endorsing or lending weight to the street corner argument that economic independence is not all fun and play, it is also hard work and responsibility, women seeking independent economic status, beware !

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