

CHAPTER X
PROPERTY RIGHTS OF WOMEN IN INDIA
AND MAINTAINENCE

MUSLIM LAW

DAUGHTERS

- In inheritance, the daughter's share is equal to one half of the son's in keeping with the concept that a woman is worth half a man.
- She has, however, and has always had full control over this property. It is legally hers to manage, control, and to dispose of as she wishes in life or death.
- Though she may receive gifts from those whom she would inherit from, there should be no doubt that the gift is a means of circumventing the inheritance laws of one third of a man's share, since, under Muslim law, the shares of inheritance are very strict.
- Daughters have rights of residence in parent's houses, as well as right to maintenance, until they are married. In case of divorce, charge for maintenance reverts to her parental family after the iddat period (approximately 3 months). In case she has children capable of supporting her, the charge falls upon them.

WIVES

- In Islamic law, a woman's identity, though inferior in status to a man's, is not extinguished in him when she marries.

- Thus she retains control over her goods and properties. She has a right to the same maintenance he gives to his other wives, if any, and may take action against him in case he discriminates against her.
- The Supreme Court has held that in the case of divorce, a Muslim husband is liable to make reasonable and fair provision for the future of the divorced wife which obviously includes her maintenance as well. Such a reasonable and fair provision extending beyond the iddat period must be made by the husband within the iddat period in terms of Section 3 (1Ha) of the Muslim Women (Protection of Rights on Divorce) Act, 1986 and liability of Muslim husband to pay maintenance is not consigned to iddat period.
- Right to 'mehr' according to the terms of the contract agreed to at the time of marriage.
- She will inherit from him to the extent of one eighth if there are children or one fourth if there are none. If there is more than one wife, the share may diminish to one sixteenth. In circumstances, where there are no sharers in the estate as prescribed by law, the wife may inherit a greater amount by will. A Muslim may dispose of one third of his property by will, though not to a sharer in the inheritance.

MOTHERS

- In case of divorce or widowhood, she is entitled to maintenance from her children.
- Her property is to be divided according to the rules of Muslim law.
- She is entitled to inherit one sixth of her deceased child's estate.

CHRISTIAN LAW

DAUGHTERS

- She inherits equally with any brothers and sisters to her father's estate, or her mother's.
- Entitled to shelter, maintenance before marriage, but not after, from her parents.
- Full rights over her personal property, upon attaining majority. Until then, her natural guardian is her father.

WIVES

- She is entitled to maintenance, from her husband, but his failure to provide the same is not, by itself ground for divorce.
- Upon death of her husband, she is entitled to a one third share of his property, the rest being divided among the children equally.
- She must inherit a minimum of Rs.5000/- from her husband's estate, supposing the estate is more than this amount. In case it is not, she may inherit the whole.

MOTHERS

She is not entitled to maintenance from her children. In case any of her children dies without spouse or living children, she may inherit one fourth of the assets.

HINDU LAW

DAUGHTERS

- Daughters have equal right of inheritance as sons to their father's property.
- Daughters also have a share in the mother's property.

- The Hindu Succession (Amendment) Act, 2005 (39 of 2005) came into force from 9th September, 2005. the Amendment Act removes gender discriminatory provisions in the Hindu Succession Act, 1956 and gives the following rights to daughters
 - ❖ The daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son;
 - ❖ The daughter has the same rights in the coparcenary property as she would have had if she had been a son;
 - ❖ The daughter shall be subject to the same liability in the said coparcenary property as that of a son;
 - ❖ The daughter is allotted the same share as is allotted to a son;
- A married daughter has no right to shelter in her parents house, nor maintenance, charge for her being passed on to her husband. However, a married daughter has a right of residence if she is deserted, divorced or widowed.
- A woman has full rights over any property that she has earned or that has been gifted or willed to her, provided she has attained majority. She is free to dispose of these by sale, gift or will as she deems fit.

WIVES

- A married woman has exclusive right over her individual property. Unless she gifts it in part or wholly to anyone, she is the sole owner and manager of her assets whether earned, inherited or gifted to her.

- Entitled to maintenance, support and shelter from her husband, or if her husband belongs to a joint family, then from the family.
- Upon partition of a joint family estate, between her husband and his sons, she is entitled to a share equal to as any other person. Similarly, upon the death of her husband, she is entitled to an equal share of his portion, together with her children and his mother.

MOTHERS

- She is entitled to maintenance from children who are not dependents. She is also a Class I heir.
- A widowed mother has a right to take a share equal to the share of a son if a partition of joint family estate takes place among the sons.
- All property owned by her may be disposed by sale, will or gift as she chooses.
- In case she dies intestate, her children inherit equally, regardless of their sex.

MAINTAINENCE

Section 125 of Criminal procedure code prescribes for maintenance of wives, children and parents.

If any person having sufficient means neglects or refuses to maintain-

- (a) His wife, who is unable to maintain herself, or
- (b) His legitimate or illegitimate minor child,
- (c) His father or mother, unable to maintain himself or herself

Court in such cases may order such person to make a monthly allowance for maintenance to the wife, child or parents

- Order issued by a Magistrate of the first class
- Magistrate can also during the pendency of the proceeding order monthly allowance for the interim maintenance
- Application for the monthly allowance for the interim maintenance and expenses of proceeding shall, as far as possible, be disposed of within **sixty days** from the date of the service of notice of the application
- “Wife” includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

IMPORTANT JUDICIAL PRONOUNCEMENTS

- **Mangatmul V. Punni Devi (1995) (5) scale 199 SC** – “maintenance must necessarily encompass a provision for residence. Maintenance is given so that the lady can live in a manner more or less to which she is accustomed. The concept of maintenance must therefore include provision for food and clothing and the like and take into account the basic need of a roof over the head
- **Sh. Rajesh Chaudhary Vs. Nirmala Chaudhary CM (M) 1385/2004 Delhi High Court**-In this case the person was **seeking** permission to ascertain the paternity of the female child. He wanted to ascertain the paternity of the child through DNA Testing which allegedly was not fathered by him. The issue whether an estranged wife claiming maintenance for herself and the child can be denied any interim maintenance while the complex issue of DNA testing on an allegation of illegitimacy of the child awaits determination.

Held that Blood-grouping test is a useful test to determine the question of disputed paternity. Courts can rely it upon as a circumstantial evidence,

which ultimately excludes a certain individual as a father of the child. **However, no person can be compelled to give sample of blood for analysis against his/her will and no adverse inference can be drawn against him/her for this refusal.** Courts in India cannot use blood test as a matter of course. Wherever applications are made for such prayers in order to have proving inquiry, the prayer for blood test cannot be entertained.

The law presumes both that a marriage ceremony is valid, and that every person is legitimate. Marriage or filiation (parentage) may be presumed, the law is general presuming against vice and immorality. The court must carefully examine as to what would be the consequence of ordering the blood test, whether it will have the effect of branding a child as a bastard and the mother as an unchaste woman." The **sustenance of a minor child and her mother, the petitioner's wife is concerned, it cannot await the determination of the alleged illegitimacy and should be ordered expeditiously if found payable.**

- **Smt. B.P. Achala Anand - Civil Appeal No. 4250 of 2000**

The Supreme Court in this case observed that right of a wife to reside in the matrimonial home under personal laws. A wife is entitled to be maintained by her husband. She is entitled to remain under his roof and protection. She is also entitled to separate residence if by reason of the husband's conduct or by his refusal to maintain her in his own place of residence or for other just cause she is compelled to live apart from him. Right to residence is a part and parcel of wife's right to maintenance.. For the purpose of maintenance the term 'wife' includes a divorced wife.

- ***Bharat Heavy Plates and Vessles Ltd., AIR 1985 Andhra Pradesh 207,***

The husband was an employee in a company. He was allotted a company quarter in which he lived with his wife. The quarter was the matrimonial home. However, differences developed between the husband and wife, leading to their estrangement and finally the wife went to the Court, charging her husband with neglect to maintain her and her three minor children. The husband left the company quarter and it was occupied only by his wife and minor children. The husband also wrote to the company, terminating the lease which was in his favour. The hovering prospects of eviction led the wife to the Court for protection, seeking an injunction restraining the company from evicting the wife and her three minor children. The High Court upheld the order impugned before it, whereby the company was restrained from evicting the wife and her minor children. the Court took into consideration the facts that the quarter was meant to be used by the employee and the husband was under an obligation to provide shelter to the wife and children. The husband and the company had both recognized the quarter to be the matrimonial home wherein the wife too was residing. The amount of rent was directed to be deducted from the salary of the husband.