



Maintenance as Human Right in Present Scenario

Dr. Garima Singh

Ph. D. Faculty of Law, Allahabad University, Prayagraj, U.P., India

Article Info

Received : 03 Aug 2024

Published : 30 Aug 2024

Publication Issue :

July-Aug-2024

Volume 7, Issue 2

Page Number : 72-76

Abstract :- If society is to live in peaceful environment securing individual happiness our matrimonial laws must show a progressive development so that their conflicting interest could be adjusted. With fast changing attitude towards marriage and divorce, the subject of maintenance has got increased importance in the field of the Human Right, Fundamental Right and Family Laws. Long separation of husband and wife and their incompatibility of temperament has been treated as cruelty for the purposes of granting divorce. Hence, right to claim maintenance is a right recognised under various laws, each being independent of the other. Legislature while enacting these provisions were mainly concerned with preventing vagrancy and providing the discarded and abandoned wives and children with a speedy relief by way of maintenance through a summary procedure.

Keywords :- Maintenance, Human Right, Present, Scenario, summary, procedure, Legislature.

Introduction- The word Maintenance is defined under Section 3(b) of the Hindu Adoptions and Maintenance Act, 1956. It includes: In all cases, provision for food, clothing, residence, education and medical attendance and treatment. In the case of an unmarried daughter, also the reasonable expenses of marriage. The term "maintenance" means support or sustenance. The maintenance generally covers the expenses for necessities or essentials for the substance of life. However, it is not merely a right for survival of the claimant. The provision for maintenance is intended to full fill a social purpose. The object of the provision is to compel man to perform the moral obligation, which he owes to the society in respect of his wife, children and parents. The provisions seek to ensure that the neglected wife and children are not left bigger and the destitute on the scrapheap of society and they're by driven to a life of vagrancy, immorality and crime for their subsistence. Article 16 (1) of the Universal Declaration state that "men and women of full age" have the right "without any limitation owing to race, nationality, or religion to marry and found a family". They are entitled to equal rights in regard to marriage while they are married and at the dissolution of the marriage.

Maintenance as Human Right- Right to maintenance is accepted as legal right. The protection of legal right is in the first instance against the violation of human rights by state and includes protections of human rights vis-a-vis his fellowmen in the community. The protection of human rights of individual against state

arbitrary action has given rise to human rights jurisprudence, now that it includes even act by one individual as against another. Thus, the right to life assured to one needs to be protected as against not only by State action but also by such inaction on its part stop disruption by other individuals in the society¹.

The concept of human rights is Central to our age. They are the offspring of today's democratic societies. The revolutionary human rights idea that emerged in 1945 expanded to embrace rights that were previously only vaguely associated with the rucip of human rights². In addition to traditional human rights, socio-economic rights have also been acknowledged and stated to be included in the scope of human rights in National and International documents. This is because socio-economic rights are considered to be fundamental to human flourishing. One more remarkable shift in human rights jurisprudence is that persons are no longer considered foreigners under international law, and states can no longer get out of their human rights obligations towards the people they governed by claiming that those obligations do not apply to their subjects.

The human rights movement is a representation of the journey that mankind has been on throughout history, ever since the birth of an established political and social orders³. The path was taken one with a rich story and an outstanding legacy, having its roots in the moral and political doctrine of medieval Europe. The writings of John Lock and Hugo Grotius were instrumental in the development of the human right theory. These authors were followed by Rousseau nations of the social contract and Thomas Paier's "the right of man",⁴. These rights were also considered to be natural rights due to the fact that they were bestowed by the creators and the supreme being. This meant that they provided the authority for the prepositions that "mean are born free and equal in respect of their rights" which are rights that are holy and incontestable⁵.

The declaration of human rights is a- one-of- a -kind and all-encompassing international document that covers the entirety of the subject of human rights. It includes a comprehensive list of human rights that it meant to serve as a universal benchmark for the accomplishments of all people from all Nations. In context the declaration is heavily based on the Magna Carta, The US Bill of Rights and the declaration of rights of man, to which some economic rights were added on USSR suggestions. The universal declaration of human rights in the documents that first acknowledged certain basic rights of man, as an individual, as fundamental rights. Those who have signed the charter of the United Nations are obligated to always respect and honour these rights, and the Universal Declaration of Human Rights was the document that did so.

In the year 1996, the General Assembly of the United Nations enacted three more covenants and legal instruments that defend and guarantee the protection of human rights. These were done so in order to give the Universal Declaration of Human Rights the force of law and make it enforceable⁶.

The covenant on civil and political rights recognises that every human being has the right to life, liberty and security of person, the right to privacy, the right to be free from cruelty in human, are degrading treatment and from torture, the right to be free from slavery, right to immunity from arbitrary arrest, the right to a fair trial, the right to recognition as a person before law, the right to be immune from retroactive sentences and right to freedom of thought, conscience and religion. It is recognizing that the family is the most basic and natural unit of social organisation and safeguard are put in place to protect both married couple and their offspring⁷.

The covenant on economic social and cultural rights also recognises a number of fundamental Human Rights including the right to work and the freedom to choose once employment, the right to fair wages and social security, the right to an adequate standard of living, the right to be free from hunger and the rights to health and education⁸. The states who rectify the covenant recognise that it is their responsibilities to work towards the improvement of standard of life in their respective populations. A committee of experts that was created by the economic and social council reviews the reports submitted by each state detailing their progress in the promotion of these rights.

The protection of marriage and family as institutions in a wonderful example of a right that crosses the ostensible divide that exist between civil and political rights on the one hand and economics, social and cultural rights on the other. Article 16 (1) of the Universal Declaration state that “men and women of full age” have the right “without any limitation owing to race, nationality, or religion to marry and found a family” . They are entitled to equal rights in regard to marriage while they are married and at the dissolution of the marriage⁹.

The provision for maintenance is intended to full fill a social purpose. The object of the provision is to compel man to perform the moral obligation, which he owes to the society in respect of his wife, children and parents. The provisions seek to ensure that the neglected wife and children are not left bigger and the destitute on the scrapheap of society and they're by driven to a life of vagrancy, immorality and crime for their subsistence. The inability of the wife, child and parents to maintain themselves could lead to social problems¹⁰.

The commission was successful in its efforts to organise a world conference in Vienna, which resulted in the affirmation of women rights as fundamental human rights, following that decision, the commission has made a significant number of forward-thinking measures to advance the status of women. On July 9, 1993 India become a party to the convention by rectifying its terms. India is a microcosm of humanity since it is home to people from a wide variety of religious, linguistic and cast backgrounds. The respect for human rights is widely held in this country and its national character does a good job of reflecting this. The American and French constitution served as inspiration for the insertion of human rights into the constitutional enactment in the Canadian constitution. The struggle for civil and political liberties in India may be traced back to the 19th century and the developments that occurred in subsequent centuries.

The Indian constitution servesas the country primary and supreme legal documents. It has provided a platform from which human rights can be take pride. The preamble layout the objective that are expected of the newly formed government. Both the fundamental rights and the directive principles will continue to function in India is dual modalities of realising the worth of human rights. The directive principles are a document that not only outlines the fundamental socio-economic policy of the governments but also given the guiding principles for the administration of a nation. The Indian constitution which is based on the British political system hire the remarkable ability to bring together a non-homogeneous population of over 300 million people who belong to wide variety of communities and speak a wide variety of languages.

This is a feature that it exclusive to the Indian constitution. The preamble, the fundamental rights and the directive principles are the most essential part of our constitution, together they continue to be a saviour for the fundamental human rights in India. Our constitution was written so that everyone in India would have

the same rights. The constitution suggests that the way to satisfy these fundamental requirements is to establish a socialist state, the goal of which would be to guarantee individual rights to freedom of thought, expression, belief and worship, social, economic and political justice, and equality of status and opportunity for all.

The Indian constitution is a country charter on human rights and it protects a variety of rights belonging to individuals. The most important of the rights that are guaranteed by the constitution are detailed in chapter 3rd, where they are referred to as fundamental rights. They are referred to as the natural and moral rights¹¹.

The Universal Declaration sonorously declares that everyone has right to life¹². The word 'life, now is meant to include the right to basic necessities of life¹³. According to honorable Mr Justice P.N Bhagwati the right is one that include the right to live with human dignity and all that goes along with it, specifically the basic necessary of life such as adequate nutrition, clothing and shelter over the head inclusive of other facilities. He explains this right as one that includes the right to live with human dignity and all that goes along with it, without the means to life it is impossible for any person to survive. There for the right to livelihood is included in the right to life, which guaranteed by article 21 of Indian constitution¹⁴.

The right to live with human dignity inside in article 21 of Indian constitution drives its life breathe from the directive principle of State policy and more particularly clause (e) and (f) of Article 39, Article 41 and Article 42 includes the protection of the health and strength of workers both men and women, the protection of children at tender age from abuse, the opportunities and facilities for children to develop in a healthy manner and in condition of freedom and dignity, educational facilities, just and human working conditions, and maternity relief. Moreover, it also includes the protection of workers health and strength from occupation hazardous. The term "right to life" has been given a variety of different interpretations as resulted of global development in the field of human rights¹⁵.

The rights outlined in the directive principle have been acknowledged as step towards accomplishing the mission outline in the preamble of this document. In a nutshell the preamble fundamental right and directive principles of State policy all play a role in protecting fundamental human rights and can be thought of as the constitution "conscience" in its most accurate form¹⁶.

Conclusion- The provisions for maintenance are intended to fulfil a social purpose. The object of the provisions is to compel a man to perform the moral obligations, which he owes to the society in respect of his wife, children and parents. The provisions seek to ensure that the neglected wife and children are not left beggared and destitute on the scrapheap of society and there by driven to a life of vagrancy, immorality and crime for their subsistence. The inability of the wife, child and father or mother to maintain themselves could lead to social problems.

References-

1. Dr. Gangotri Chakravarti, Law of Maintenance 3rd edition 2023, Sodhi, Publications page 2.
2. George I. Dominiguiz, Enhancing Global Human Rights MC GrawHill Book Company, 1980 page 25.
3. Remark made by Justice Pathak in his forwarded "Human Rights in Changing Word" International Law Association, New Delhi, 1988 page 11.
4. Ibid

5. Sieghard, Paul, the Lawful Rights of Mankind:
6. An Introduction to the International Legal Code of Human Rights, Oxford University Press, 1985 page 28.
7. Supra page15.
8. Article 23 24 and 26 for the text of Covenant see Annexure 3, infra
9. article 6,9 and 13 for the text of covenant see Annexure 4, infra.
10. Universal Declaration of Human Rights,Article 16 (1)
11. Dr. Gangotri Chakravarti, Law of Maintenance, 3rd edition 2023 page 2.
12. Golaknath Versus State of Punjab, 1967 SC.
13. Universal Declaration of Human Rights article-3.
14. Francis Mullin Versus Union Territory of India, AIR 1979 SC page 746.
15. Francis Corolie Versus Union Territory of Delhi AIR 1981 SC page 748 to 753.
16. Olga Tellis Versus State of Maharashtra AIR 1986 SC, also in State versus HPV Umed Ram 1986 SC, T. Damodar Rao Versus S.C Municipal Corporation, Hyderabad AIR 1987 AP, Ram Sharan Antayanuprasi Versus Union of India, AIR 1989 SC, page 549, Kshetriya Pradushan Mukti Sangharsh Samiti Versus State of UP and Others AIR 1990 SC, page 2060.
17. Austin G. the Indian Constitution Cornerstone of a nation, Oxford University Press, New Delhi, 1974 page 50.