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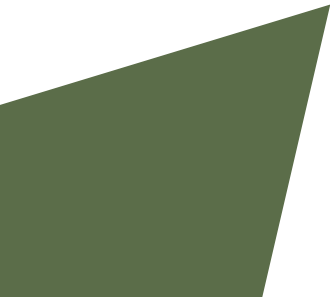
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**A Study of Maintenance under Hindu Marriage Act**

**Shoyab Mohammad**

## **ABSTRACT:**

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*This paper deals with the Maintenance of wife under the Hindu Marriage Act. The concept of maintenance aims at putting the wife back to the same position of comfort and lifestyle as she was at the time when her marriage existed. There is no fixed amount of maintenance that the husband is liable to pay to his wife, and it is upon the discretion of a family court to fix the amount of maintenance that the husband needs to pay either on a monthly basis or in form of a lump sum. Maintenance to wife is a very complicated issue under Hindu Marriage Act. It is often stated as a means to exploit the husband by asking alimony for life. Section 24 of the Hindu Marriage Act, 1955 (The **Act**) states that either husband or wife may claim maintenance pendent lite i.e. maintenance till the proceedings are in process. Further, section 25 of the Act states the grounds for permanent alimony. Maintenance to wife refers to the payments, which a husband, under certain circumstances is under an obligation to pay. The obligation of payment of maintenance can either during the subsistence of the marriage or after the dissolution of the marriage. The most important aspect of maintenance is that the party which relies on maintenance has no independent source of income to support himself/herself. The quantum of maintenance and the expenses of the proceedings have not been specified in any of the Indian Matrimonial statutes except the Divorce Act.*

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**KEYWORDS:** Maintenance, alimony, spouse, grounds, discretion, permanent.

## **INTRODUCTION**

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The whole concept of maintenance was initiated to see that if there is a spouse who is not independent economically than the other spouse should help him/her to make the living of the other person possible and independent. The maintenance may be in a gross sum or on a periodical or monthly basis. In no case, the maintenance shall be owed beyond the life of the non-Applicant. The income and property of the non-Applicant shall be considered while determining the permanent alimony. The interim maintenance is payable from the date of presentation of the petition till the date of dismissal of the suit or passing of the decree. Interim maintenance is supposed to meet the instant needs of the petitioner. The aim of the study in this research to analysis whether women needs maintenance

### **CONCEPT OF MAINTENANCE:**

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The right to claim maintenance is a right recognized under different laws in India<sup>1</sup>, each one is different from other in main and other particulars. The child, wife, aged parents, divorced wife, other near relations must obtain some subsistence for themselves. Maintenance in most cases is due to the fact of marriage. Family ties and family obligations of more or less pressing type, call for the need for maintenance. Litigations to obtain maintenance take the shape of legal battles in various countries, so also in India Government tries to solve the problem by way of certain Acts passed in the legislature. Statutory enactments try to solve the problem of mitigating the hardships of unemployed wives, children, old and infirm parents who are unable to maintain themselves, obviously, for the reason that they have no income of their own. The anti-vagrancy measures adopted by the government of India can be better utilized at the initiative of victims and for this, people, in general, should be legally conscious and active to obtain their statutory benefits. Maintenance provisions among various communities in India are enshrined mainly (a) in the personal laws of Hindu and Muslims who constitute the bulk population in India and also (b) in the Code of Criminal Procedure, 1973.

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<sup>1</sup> Indian Law Offices, Right of Divorced Wife for Grant of Maintenance under Section 125 of the Code of Criminal Procedure, 1973, <https://www.indialawoffices.com/legal-articles/right-divorced-wife-grant-maintenance> > accessed 12 June, 2020



## MAINTENANCE UNDER VARIOUS LAWS

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- a. Maintenance under Hindu Law.
- b. Maintenance under Muslim Law.
- c. Maintenance under Christian Law.
- d. Maintenance under Parsi Law.
- e. Maintenance under Code of Criminal Procedure 1973.
- f. Maintenance under Protection of women from Domestic violence Act, 2005.
- g. The Maintenance and Welfare of Parents and Senior citizens Act, 2007.

## PERSONS ENTITLED TO RECEIVE MAINTENANCE

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Maintenance may be allotted to dependent children, parents, and legally wedded wives, counting but not limited to a divorced spouse, mistress, illegitimate children, etc<sup>2</sup>. In certain cases under personal law, the Indian courts have adopted a lenient view and granted the husband the right to receive maintenance. Such right, however, is conditional and typically conferred upon the husband, only if he is incapacitated due to some accident or disease and rendered incapable of earning a livelihood<sup>3</sup>. Such an entitlement is not available to an able person, doing nothing for a living or a “wastrel”.

The remedy under Section 125<sup>4</sup> is prompt and inexpensive, as compared to personal laws. The provision relating to maintenance under any personal law is, however, distinct and separate from Section 125. There is no conflict between both the legal provisions. A person is entitled to maintenance under Section 125 despite having obtained an order under the applicable personal law. The Act predicts certain positions in which it may become unbearable for a wife to continue to reside and cohabit with the husband but she may not want to break the matrimonial tie for various reasons ranging from growing children to social stigma. There is a misapprehension that a working woman is not entitled to profess maintenance as she is earning and is thus able to maintain herself. The Indian courts have recognized the right of maintenance of a working woman and held that an estranged woman can claim maintenance from her husband even if she earns a monthly income, which is not enough for her to maintain herself. Thus, earning wife is

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<sup>2</sup> *ibid*

<sup>3</sup> Right to Maintenance, *Economic and Political Weekly*, Vol. 22, No. 16 (Apr. 18, 1987), pp. 680-681

<sup>4</sup> Section 125, *The Code of Criminal Procedure*, 1973

entitled to maintenance under maintenance law for wife in India. The issue of the right to maintenance to the second wife has been faced by various High Courts as well as the Supreme Court, and the courts have given different views depending upon the facts and situations of each case, thus giving a diverse interpretation to the expression “wife” under Section 125 of the Code of Criminal Procedure<sup>5</sup>. The interim maintenance is payable from the date of presentation of the petition till the date of dismissal of the suit or passing of the decree. Interim maintenance is supposed to meet the immediate needs of the petitioner.

## **TYPES OF MAINTENANCE UNDER HINDU LAWS**

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Under the Hindu maintenance laws, there are 2 types of maintenance that can be claimed by the wife. When the wife files a maintenance petition through her divorce attorney, the burden to declare his income shifts to the husband, who has the right to defend the maintenance petition.

The types of maintenance under Hindu laws are as follows:

### **1. Interim Maintenance:**

When the wife files a maintenance petition, the court may award her interim maintenance that the husband must pay from the date on which the application was filed by the wife till the date of dismissal through her divorce law advocate. It is also known as Maintenance Pendente Lite<sup>6</sup> and is paid so that the wife can pay for the legal expenses incurred by her.

Interim maintenance is awarded by the court if the wife has no source of income to maintain herself. There are no laws that lay down the amount of this type of maintenance and it is completely upon the discretion of the court to determine how much maintenance is sufficient for the wife to sustain during the proceedings.

Section 24<sup>7</sup> of the Hindu Marriage Act, 1955 lays down that both the husband and wife can file an application for interim maintenance through their divorce advocate.

### **2. Permanent Maintenance:**

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<sup>5</sup> ibid

<sup>6</sup> Devika, Maintenance- Wife, <https://www.scconline.com/blog/post/2019/01/04/maintenance-wife/#:~:text=Permanent%20Maintenance&text=Hindu%20Marriage%20Act%2C%201955%2C%20Section,she%20remarries%20or%20remains%20chastewife/#:~:text=Permanent%20Maintenance&text=Hindu%20Marriage%20Act%2C%201955%2C%20Section,she%20remarries%20or%20remains%20chaste>

<sup>7</sup> Section 24, The Hindu Marriage Act, 1955

Permanent maintenance is paid by the husband to his wife in case of divorce, and the amount is determined through a maintenance petition filed through a **divorce law lawyer in India**. Section 25<sup>8</sup> of the Act states that the court can order the husband to pay maintenance to his wife in the form of a lump sum or monthly amount for her lifetime. However, the wife may not be eligible for maintenance if there are any changes in her circumstances.

Under Section 18<sup>9</sup> of the Hindu Adoption and Maintenance Act, 1956, a wife has the right to live separately from her husband without affecting her right to claim maintenance. Under this law, a wife can live separately from her husband in the following cases:

- The husband has deserted the wife without any reasonable cause.
- The husband has subjected the wife to cruelty.
- The husband is suffering from leprosy of virulent form.
- The husband has extra-marital affairs.
- The husband has converted to another religion.
- However, the wife is not entitled to claim maintenance in the following circumstances:
- She has ceased to be a Hindu by converting to another religion.
- She is guilty of adultery i.e. she is unchaste and indulged in physical relations with another man.
- She has remarried after the divorce.

### **CALCULATION OF MAINTENANCE UNDER HINDU LAWS**

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The amount of maintenance to pay depends upon different factors. The courts rely on the provision of Section 23<sup>10</sup> of the Act while asserting the total maintenance that the husband needs to pay to his wife. The provision lays down the following factors that must be considered to fix a maintenance amount<sup>11</sup>:

- The position and status of the husband and wife,
- Whether the wife has an actual claim for maintenance.
- If the wife is living separately, whether the reason to do so is justified.
- The wife's total property and income.

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<sup>8</sup> Section 25, The Hindu Marriage Act, 1955

<sup>9</sup> Section 18, The Hindu Adoption and Maintenance Act, 1956

<sup>10</sup> Section 23 of The Hindu Marriage Act, 1955

<sup>11</sup> Maintenance Under Hindu Law, <http://www.legalserviceindia.com/legal/article-1884-maintenance-under-hindu-law.html> > accessed 20 June, 2020

- The husband's total property, income generated from this property, and his other income.
- The total number dependents and their expenses are borne by the husband.
- The personal expenses of the husband.

### **MAINTENANCE OF WIFE:**

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The right to maintenance under Hindu law is very ancient and it was one of the primary necessities of the joint family system. According to my understanding, the maintenance of the women in the joint family system was an important system and this was followed as a tradition that governed the families. It was the responsibility of the head of the family (Karta) to look after the women of the family i.e. their wives and their daughters until they were married. Later when the women grew older it was the duty of their children to mother and other old women of the family. The unchastity on part of the women excluded them from maintenance. Their remarriage ended the claim and the amount of maintenance depended upon various factors like the status of the family, requirements, wants, age, etc. Section 24<sup>12</sup> of the Hindu Marriage Act, (HMA) 1955 allocates for maintenance.

Under this Act also, only a wife has a right to claim maintenance. The Hindu husband has a legal obligation to maintain his wife during his lifetime. However, if a wife ceases to be Hindu or lives individually under no legal grounds she loses the right to claim maintenance too. Also, a Hindu wife under this act shall not be entitled to separate accommodation and maintenance from her husband if she is unchaste or converts to another religion. The wife can claim separate residence only if the husband remarries and the other wife stays in the same house. Under this act (Section 19), a (Hindu) wife after the death of her husband is entitled to be maintained by her Father-in-law, if she has no means of her own earnings. However, the right cannot be enforced if her Father-in-law does not have the means to do so and if the wife remarries. The liabilities of a Hindu to maintain others are personal liability and liability dependant on possession of property where the former arises from the mere relationship between the parties and the latter arises due to possession of the property.

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<sup>12</sup> Supra 8

## **MAINTENANCE OF WIFE UNDER SECTION 18, THE HINDU ADOPTIONS AND MAINTENANCE ACT, 1956**

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Under section 18<sup>13</sup>(1) of the HAMA, the 1956 wife is entitled to maintenance by her spouse for a lifetime i.e. she will be given maintenance until she dies or her husband dies. Under section 18 of this Act, a Hindu wife is entitled to live separately from her husband without cancelling her right to claim maintenance<sup>14</sup>. The grounds under which she can live separately are:-

- Husband is guilty of desertion
- The Husband has treated her with cruelty
- The husband is agonizing from a virulent form of leprosy
- The husband has any other wife living
- The husband keeps a concubine elsewhere
- The Husband has halted to be a Hindu by conversion to another religion and
- If there is any other cause justifying living separately

But there are two bars which will prevent a wife from claiming maintenance from her husband i.e. (i) if she is unchaste or (ii) if she halts to be a Hindu by conversion to another religion.

### **IN DETERMINING THE AMOUNT OF MAINTENANCE THE FOLLOWING HAS TO BE CONSIDERED;**

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- The net value of the estate of the deceased after providing for payment of debts.
- The provision, if any made under a will of the deceased.
- Degree of relationship with the dependent.
- Reasonable wants of the dependent.
- No. of dependents.

The claim of a dependant for maintenance does not impose any change on the estate of deceased unless a will mandates the same<sup>15</sup>. Under Section 24 of the Hindu Marriage Act, 1955 relief may be provided by way of maintenance and litigation expenses to either of the spouses if he/she is unable to maintain herself during the pendency of proceedings. Under Section 25 of the Act,

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<sup>13</sup> Supra 10

<sup>14</sup> Maintenance For Wife & Children: Under Hindu Adoptions and Maintenance Act, 1956

<https://www.hellocounsel.com/maintenance-for-wife-children-hindu-adoptions-and-maintenance-act/> > accessed on 17 June, 2020

<sup>15</sup> Anjani Kant, Right of maintenance to Indian women, Journal of the Indian Law Institute , July-September 1996, Vol. 38, No. 3 (July-September 1996), pp. 392-404

1955 both husband and wife may be granted maintenance and permanent alimony after passing a decree of restitution of conjugal rights, judicial separation, divorce, and annulment of marriage under the said Act if the husband or wife is unable to maintain himself/ herself.

## **QUANTUM OF MAINTENANCE**

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Maintenance covers not merely food, clothing, and shelter, but also includes other necessities. The quantum and type of necessities covered within the scope of maintenance may vary, depending on the status, financial position, and the number of dependents, etc and is at the discretion of the court. Antecedent to passing an order under Section 125, the court does take cognizance of the amount of maintenance already ordered under the personal law. The reasoning is based on the premise that the wife is entitled to live as per the standard and status of her husband.

## **JUDICIAL PRECEDENTS**

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There is a spate of judicial precedents on the concern of maintenance. Until recently, the term „wife“ was interpreted narrowly, since the judiciary intended to protect destitute and harassed women. The Indian courts held that only a lawfully wedded woman was entitled to claim maintenance.

The change in perception vis-à-vis social relationships and the growing trend of live-in relationships has influenced the Indian mindset. This is apparent from a recent case decided by the Delhi High Court, in a personal law matter, wherein the couple had lived like a married couple for 14 years and the man had concealed the fact that he was already married. Furthermore, the woman had taken the responsibility of running the household as a housewife, treated the man as her husband, and had borne and bred two of his children. The view taken by the court was that on account of the nature of the relationship and the aforementioned facts, the woman should not be deprived of her right to maintenance, under the personal law relevant to Hindus (which constitutes almost 80 percent of Indians). The court further expressed that denial of maintenance under such circumstances would amount to putting a premium on or rewarding the man for defrauding the woman by concealing his first marriage. It was further recorded that for the purpose of granting maintenance under the personal law, women placed in the position of the second wife, can be treated as legally wedded wives and are entitled to maintenance.

In a case decided on 14 November 2008, the Apex Court has recently ruled that maintenance necessarily encompasses a provision for residence and has therefore ordered that the woman be provided with a residential facility similar to that which she had been accustomed to in the past.

## **MAINTENANCE UNDER MUSLIM LAW IN COMPARISON WITH HINDU LAW:**

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A Hindu woman is more privileged than Muslim women. On the basis that, a Hindu woman is entitled to maintenance by her husband throughout her life but in the case of Muslim women, she is entitled to maintenance by her husband only during the iddat period<sup>16</sup>. The court tried to make both the communities on the same line and tried to provide women of both the communities with maintenance throughout life. The judiciary tried to allocate women of both communities with equal opportunities and rights. However, as usual in the case of Indian democracy, the congress government bowed in front of the vote bank politics and brought in the „The Muslim Women (Protection of Rights on Divorce) Act, 1986<sup>17</sup>.“ This act completely took away the right of the women to maintenance beyond the period of iddat by the husband. Hindu women can ask for an award of maintenance under Section 125 of CrPC but in case of a Muslim woman, she can file a case under the same but will be awarded maintenance under this act only if the husband recognizes this in a way.

Under maintenance laws in India, maintenance under Muslim law is known as “Nafqah”<sup>18</sup> which means what a man spends over his family. “Nafqah” basically includes food, clothing, and lodging. A Mohammedan is bound to maintain his wife under Muslim law. Her right to maintenance is absolute and not conditional to whether she can maintain herself or no. maintenance can be denied to a wife only under the following circumstances<sup>19</sup>:

- She has not obtained puberty.
- She abandons conjugal domicile without any valid cause.
- She is disobedient to reasonable commands of her husband.
- If she has eloped with somebody.

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<sup>16</sup> Lucy Carroll, Mahr and Muslim divorcee's Right to Maintenance , Journal of the Indian Law Institute , July-September 1985, Vol. 27, No. 3 (July-September 1985), pp. 487-495

<sup>17</sup> Nanda Chiranjeevi Rao ,MARRIAGE AGREEMENTS UNDER MUSLIM LAW - A WEAPON IN THE HANDS OF MUSLIM WOMEN Author(s);, Journal of the Indian Law Institute , January-March 2013, Vol. 55, No. 1 (January-March 2013), pp. 94-103

<sup>18</sup> Supra 17

<sup>19</sup> Supra 18

The social status of the parties and the economic condition of the husband are taken into consideration while determining the quantum of maintenance.

However, according to all schools of Muslim law, the wife can claim indebtedness of past maintenance if any maintenance allowance to her was promised by the husband under any separate agreement. Such agreements are generally made to assure a wife to receive a regular pocket-allowance called Kharch-i-pandan or, Mewakhori. She is entitled to get indebtedness of maintenance also in a case where maintenance was ordered by the court but remained unpaid.

## **CONCLUSION**

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It is evident from the recent judicial decisions that the Indian courts have been progressively liberal in deciding cases pertaining to maintenance. The bone of contention however is whether a paramour can become entitled to receive maintenance merely from the factum of living with a married man, coupled with the dispute as to whether the bigamy is legally permissible. While it appears from the decisions passed under the personal laws that the same may be possible, judicial decisions pertaining to Section 125 continue to uphold the view that maintenance can be claimed only by a legally wedded wife. It is clear from the foregoing that though, over a period of time improved rights are bestowed upon Indian Hindu women, the rights available to them do not match with the rights required. 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.