



ISSN 2582 - 211X

# LEX RESEARCH HUB JOURNAL

*On Law & Multidisciplinary Issues*

*Email - journal@lexresearchhub.com*

**VOLUME III, ISSUE I**  
**OCT - DEC, 2021**

<https://journal.lexresearchhub.com>

**Lex Research Hub  
Publications**

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# **MAINTENANCE OF WIFE UNDER INDIAN LEGAL REGIME**

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## **ABSTRACT**

The amount that the husband pays to his wife who is unable to maintain herself either during the subsistence of marriage or upon separation or divorce is known as Maintenance. It includes provisions for food, clothing, education, medical assistance, and residence so that the wife can live in the same manner to which she was accustomed.

The concept of maintenance enables the wife to live life with dignity and maintain her social status. It is the duty of a husband to maintain his wife if she does not have sufficient means to maintain herself. The amount of maintenance depends upon the earning of the husband and the necessities of the wife.

## **STATUTORY PROVISIONS UNDER HINDU LAW**

Hindu Law is considered to be the most ancient in the world and was initiated for the welfare of the people. Under Hindu Law, a husband is obliged to maintain his wife. There are various provisions which deal with the concept of maintenance under Hindu Law. All the provisions under Hindu Marriage Act, 1955 shall also apply to Sikhs, Jains and Buddhists as mentioned under Section 2 of the Hindu Marriage Act, 1955. The ancillary relief of maintenance is available upon the filing for divorce or judicial separation.

There are two types of maintenance under Hindu Law -

1. Interim Maintenance
2. Permanent Maintenance

## **INTERIM MAINTENANCE**

It is awarded by the court if the wife has no substantial means of income to maintain herself. There are no laws that determine the amount of maintenance and it is completely at the discretion of the court to decide how much maintenance is sufficient for the wife to sustain during the proceedings, keeping in mind the income of the husband. Immediate needs of the petitioner are supposed to be met by Interim maintenance. Under Section 24 of the Hindu Marriage Act, 1955 the wife can file an application for Interim maintenance.

### **PERMANENT MAINTENANCE**

It is paid to the wife by the husband in the case of divorce and the amount is determined by a maintenance petition filed before the competent Court. Section 25 of the Hindu Marriage Act, 1955 states that the Court can order a lump sum or monthly amount for the wife for a lifetime. In the future, if there is any change in the circumstances then the party may not be eligible for the maintenance.

### **HINDU MARRIAGE ACT, 1955**

According to Section 5(i) of The Hindu Marriage Act, 1955<sup>1</sup> monogamy is the rule; and Section 17 of this Act makes second marriage void, and refers to Section 494 and 495 of the Indian Penal Code (45 of 1860), according to which bigamy is a punishable offence. The second wife is entitled to maintenance under Section 125 of Cr.P.C., although she is not a legal wife.

### **HINDU ADOPTION AND MAINTENANCE ACT, 1956**

Section 18 of the Hindu Adoption and Maintenance Act, 1956<sup>2</sup> is also gender-specific. Maintenance under this section can only be claimed by the wife and not by the husband.

### **GROUND FOR WIFE ENTITLED TO MAINTENANCE**

1. The husband has deserted or willfully neglected his wife.
2. The husband has treated her with cruelty.
3. The husband is suffering from a virulent form of leprosy/venereal diseases or any other infectious disease.
4. The husband has no other wife living.
5. The husband keeps the concubine in the same house as the wife resides or he habitually resides with the concubine elsewhere.
6. The husband has ceased to be a Hindu by conversion to any other religion.
7. Any other cause justifying her separate living.

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<sup>1</sup> Hindu Marriage Act, 1955 (Act No. 25 of 1955).

<sup>2</sup> Hindu Adoption and Maintenance Act, 1956 (Act No. 78 of 1956).

### **GROUND FOR NON-ENTITLEMENT TO THE MAINTENANCE OF WIFE**

1. Wife living in adultery.
2. Wife who contracts a second marriage.
3. Wife who willfully refused to live with the husband.
4. Wife against the who decree of restitution has been passed.
5. Wife whose maintenance has been canceled by a competent Civil Court.
6. Wife is staying away with mutual consent or has foregone maintenance.
7. Divorce was her fault.

### **QUANTUM OF MAINTENANCE**

The means and capacity of the husband against whom the award has to be made should be taken into consideration for determining the quantum of maintenance. One of the significant factors to be considered by the court in fixing the quantum of maintenance is the income of the husband. Section 23(2) of The Hindu Adoption and Maintenance Act, 1956 states the factors to be considered in determining the amount of maintenance payable to the wife - the position of and status of the parties, the reasonable wants of the claimant, the claimant if living separately is justified or not, the income of the claimant and the value of the claimant's property and the number of persons entitled to maintenance under the Act. Even if one of these grounds exists in favour of the wife, she will not be entitled to relief if she has indulged in an adulterous relationship or has converted herself into any other religion thereby ceasing to be a Hindu. It is also important to note here that to be entitled to relief, the marriage must be valid. In other words, if the marriage is illegal then the matrimonial relationship between the husband and wife is non-existent and therefore no right of maintenance accrues to the wife.

### **CASE LAWS**

In the case of K. Sivarama v. K.Bharathi that any marriage in contravention of the Hindu Marriage Act under Section 5 & 11, cannot be considered to be a valid marriage. Such a woman cannot recourse to maintenance under Section 25 of the Hindu Marriage Act for claiming maintenance.

In the case of Kulbhushan Kumar v. Raj Kumari and Anr, the court held that it is fair to provide the wife with 25% of the husband's net salary as maintenance.

In the case of *Ambaram v. Reshambai* the court held that although a lot of women, who entered into marriage without knowing about the subsistence of another marriage of her husband, deserves a sympathetic treatment yet awarding of maintenance U/S. 25 & if any appeal is to be made, it should be made to the legislature.

### **STATUTORY PROVISIONS UNDER MUSLIM LAW**

Under Muslim Law, maintenance is known as *Nafqah*, an amount that a man spends on his family and it includes fooding, clothing and lodging. Muslim Personal Law mandates a husband to maintain his wife and not a divorced wife. After the divorce the husband is required to maintain the wife for the *Iddat* period.

It doesn't matter whether she can maintain herself or not, the right to maintenance of a Muslim woman is absolute.

### **MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) ACT, 1986**

Under Section (3)(1)(a) of Muslim Women (Protection of Rights on Divorce) Act, 1986<sup>3</sup>, a Muslim husband has to make a reasonable and fair provision for the maintenance of his wife.

Under Section 4 of Muslim Women (Protection of Rights on Divorce) Act, 1986, a Muslim divorcee wife who is not re-married or able to maintain herself after the *Iddat* period is entitled to receive maintenance from her relatives who would be entitled to inherit property on her death.

### **GROUND FOR WIFE ENTITLED TO MAINTENANCE**

1. Ill-treatment by husband
2. Disagreement with the husband
3. Husband's second marriage

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<sup>3</sup> The Muslim Women (Protection of Rights on Divorce) Act, 1986 (Act No. 25 of 1986).

### **GROUND FOR NON-ENTITLEMENT TO THE MAINTENANCE OF WIFE**

1. Wife is minor and incapable of consummation
2. She refuses free access to the husband at reasonable times
3. She is disobedient
4. She has never visited his house
5. She refuses to cohabit with him without reasonable excuse
6. She abandoned conjugal home without reasons
7. She deserts him
8. She elopes with another person

### **QUANTUM OF MAINTENANCE**

The quantum of maintenance is decided by the Court based on the financial condition of the husband and the wife, and it is not prescribed under Muslim Personal Law.

The amount of maintenance to the wife under Shia Law is to be determined based on her requirements of food, clothing, residence and service, while under Hanafi Law, the financial position of both the parties is considered.

### **CASE LAWS**

In the case of Gulam Rashid Ali v. Kaushar Praveen and another, the Court held that even a Muslim divorced woman would be entitled to claim maintenance from a Muslim husband till she has not married.

In the case of Mohammed Ahmed Khan v. Shah Baano Begum, the court held that Muslim Personal Law limits the provision of maintenance till the Iddat period only but Muslim wife is entitled to claim maintenance after the Iddat period under Section 125 of the Code of Criminal Procedure, 1973.

### **STATUTORY PROVISIONS UNDER PARSI LAW**

Maintenance under the Parsi Law is governed by the Parsi Marriage and Divorce Act, 1936. A Parsi Wife can approach the Court of law under this Act to claim maintenance.

### **PARSI MARRIAGE AND DIVORCE ACT, 1936**

Under Section 39 of the Parsi Marriage and Divorce Act, 1936<sup>4</sup>, the wife can claim Alimony pendente lite. The Court can direct the husband to bear the expenses of the proceedings and provide such weekly or monthly sums to the wife during the proceedings.

Under Section 40 of the Parsi Marriage and Divorce Act, 1936, the wife can claim permanent alimony and maintenance. The permanent maintenance may be in the form of a gross sum or a monthly amount or a periodical amount for a term not exceeding the life of the wife.

### **STATUTORY PROVISIONS UNDER CHRISTAIN LAW**

Maintenance under the Christian Law is governed by The Divorce Act, 1869. A Christian Wife can approach the Court of law under this Act to claim maintenance.

### **THE DIVORCE ACT, 1869**

Under Section 36 of the Divorce Act, 1869<sup>5</sup>, the wife can claim Alimony pendente lite. The Court can direct the husband to bear the expenses of the proceedings and alimony pending the suit.

Under Section 37 of The Divorce Act, 1869, the wife can claim permanent alimony. The permanent maintenance may be in the form of a gross sum or a monthly amount or a periodical amount for a term not exceeding the life of the wife.

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<sup>4</sup> The Parsi Marriage and Divorce Act,1936 (Act No. 3 of 1936).

<sup>5</sup> The Divorce Act 1869 (Act No. 4 of 1869).

## **STATUTORY PROVISIONS UNDER SECULAR LAW**

Maintenance under the Code of Criminal Procedure, 1973 and Protection of Women from Domestic Violence Act, 2005 is secular in nature. Any woman practicing any religion can approach the Court under the Code of Criminal Procedure, 1973 and Protection of Women from Domestic Violence Act, 2005. Secular laws break the barrier of religion and provide equal protection before the law. Cr.P.C being a secular, just and speedy method is most favorable to be opted by a woman/ divorced woman to claim maintenance from her husband.

### **THE CODE OF CRIMINAL PROCEDURE, 1973**

Under Sections 125-128 of The Code of Criminal Procedure, 1973<sup>6</sup>, a woman can claim maintenance.

Definition of wife under Section 125(1) (b) -

“Wife” includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

Section 5 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 provides that the parties can opt to be ruled by the Secular Law under Sections 125 to 128 of Cr.P.C, instead of Muslim Personal Law.

Landmark Judgment of Supreme Court in Shah Bano Case.<sup>7</sup>

### **PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005**

Under Section 20 of Protection of Women from Domestic Violence Act, 2005<sup>8</sup>, a woman can claim maintenance. The monetary relief granted under this section shall be fair, adequate, reasonable and consistent with the standard of living to which the wife is accustomed. The Court can order an appropriate lump sum payment or monthly payments of maintenance as the circumstances demand.

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<sup>6</sup> The Code of Criminal Procedure, 1973(Act No. 2 of 1974).

<sup>7</sup> Mohd. Ahmad Khan v. Shah Bano Begum, AIR 1985 SC 945.

<sup>8</sup> Protection of Women from Domestic Violence Act, 2005(Act No. 43 of 2005).

## **COMPARISON OF MAINTENANCE UNDER VARIOUS LAWS AND THE CRIMINAL PROCEDURE CODE, 1973**

In order to claim maintenance under the Hindu Marriage Act, 1955, a wife has to prove to the Court that she does not have a sufficient and independent income. Whereas in Criminal Procedure Code, 1973, she also needs to prove that her husband had either refused or neglected to maintain her.

Muslim Personal Law mandates a husband to maintain his wife and not a divorced wife but under Cr.P.C. 1973, a divorced Muslim wife can also claim maintenance.

Cr.P.C. 1973, unlike the Muslim Personal Laws, is more appropriate:-

1. As it provides maintenance to both married and divorced wives.
2. Quantum of maintenance is reasonable.
3. Maintenance is for life, unlike the Iddat period.

Cr.P.C.,1973, extends to all faiths and religions, but Parsi Marriage and Divorce Act, 1936 only governs the Parsis, and the Indian Divorce Act, 1869 only governs the Christians.

## **EARNING WIFE ENTITLED TO MAINTENANCE**

A wife can claim maintenance from her husband even though she is earning. The Hon'ble Supreme Court in the cases titled Bhagwan v. Kamla Devi<sup>9</sup> and Chaturbhuj v. Sita Bai<sup>10</sup> held that a working wife is qualified to seek maintenance under Section 125 of the Code of Criminal Procedure, 1973. The amount of maintenance is decided by the Court based on the earnings and responsibilities of both the husband and the wife.

## **CONCLUSION**

The concept of Maintenance attempts to ensure that the wife is not being neglected after separation or divorce and she is not left begging nor be the victim of the crime or follow the path of crime for her survival. Maintenance of the wife is the duty of the husband if he has sufficient means. The

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<sup>9</sup> Bhagwan Dutt v. Kamla Devi (1975) 2 SCC 386

<sup>10</sup> Chaturbhuj v. Sita Bai (2008) 2 SCC 316

concept of maintenance under different personal laws is interpreted in different ways yet the purpose for it is to grant support. It is evident from the recent judicial decisions that the Indian Judiciary is being progressively liberal and working hard to provide better maintenance. Proper implementation of the law is necessary to make it successful.

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