

# LEGALFOXES LAW TIMES

## AN ANALYSIS ON THE MAINTENANCE UNDER HINDU LAW WITH AN EMPHASIS ON THE MAINTENANCE OF WIFE.

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### ABSTRACT

This paper mainly discuss about Maintenance of wife under Hindu Marriage Act Maintenance is the financial support that a husband needs to pay to his wife when she is unable to sustain financially on her own during the divorce proceedings as well as post-divorce. Maintenance is paid by the husband either on a monthly basis or in a lump sum so that the wife can avail the basic amenities of life such as food, clothing, shelter, etc. 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.

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Under the Hindu Marriage Act, maintenance to wife is a very complicated issue. It is frequently stated as a means of exploiting the husband by requesting lifetime alimony. According to Section 24 of the Hindu Marriage Act, 1955 (The Act), either the husband or the wife can seek maintenance pendent lite, or maintenance while the divorce proceedings are pending. Section 25 of the Act also specifies the grounds for permanent alimony. The word "maintenance to wife" applies to the payments that a husband is obligated to make under such conditions. Payment of maintenance may be required during the marriage's continuation or after its dissolution. The most important aspect of maintenance is that the party relying on it does not have a separate source of income to support himself/herself. Except for the Divorce Act, none of the Indian matrimonial statutes specify the amount of maintenance or the costs of the proceedings.

The paper is mainly divided in to 3 parts. The first part briefly explains the concept of maintenance under Hindu law. The second part mainly deals with the maintenance of wife, and

in the third part we will be comparing Hindu law with Muslim law in the concept of maintenance of wife.

KEY WORDS: MAINTENANCE, SECTION 24 OF THE HINDU MARRIAGE ACT, ALIMONY, MAINTENANCE TO WIFE

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## **INTRODUCTION**

The right to maintenance is acknowledged under various Indian statutes, each of which varies in key and minor specifics. Maintenance is the financial assistance that a husband would provide to his wife if she is unable to support herself financially during the divorce process and afterward. The husband pays maintenance to the wife on a monthly or lump-sum basis so that she has access to basic necessities including food, clothes, and shelter. 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. The child, wife, old parents, divorced wife, and other close relatives must earn a living. Family tie and family obligations of more or less pressing type, call for the need of maintenance. Family ties and family responsibilities, whether pressing or not, necessitate the need for maintenance. Litigations to receive maintenance take the form of legal battles in different countries, and the Indian government seeks to solve the problem through various Acts passed in the legislature. Statutory enactments attempt to address the issue of easing the struggles of unemployed wives, children, and elderly and infirm parents who are unable to support themselves due to a lack of income. The government of India's anti-vagrancy measures can be best used at the initiative of victims, and citizens in general should be legally aware and active in order to receive their statutory benefits. Maintenance clauses are predominantly enshrined (a) in the personal laws of Hindus and Muslims, who make up the majority of India's population, and (b) in the Code of Criminal Procedure, 1973.

## **RESEARCH QUESTIONS**

1. Briefly explain the concept of Maintenance under Hindu Law.
2. Elaborate how the maintenance of wife is considered under the 'Hindu Adoption and Maintenance Act 1956'.
3. Discuss how the maintenance of wife under Muslim law is compared to Hindu law.

- **OBJECTIVES OF THE STUDY**

- a. Study the maintenance provisions of the Hindu Marriage Act
  - b. Evaluate whether women really need maintenance.
  - c. To compare maintenance of wife with Hindu law and Muslim law
- **RESEARCH METHODOLOGY**

The present study will be based on secondary data. This doctrinal study will be further described about the maintenance under the Hindu law. The collection of Data and information will be from published papers, relevant articles, relevant cases, Google-books, Legislations, internet websites and official sources. Combination of Analytical study has been adopted because this material is formed from the facts or information already available and is analyzed in order to make a critical evaluation of the material.
  - **REVIEW OF LITERATURE**
    - In the case YamunabaiAnantraoAdhav Vs. AnantraoShivramAdhavan appeal was filed before the Apex Court where the court noticed:

“It is only where an applicant established her status on relationship with reference to the personal law that an application for maintenance can be maintained. Once the right under the section 18 is established by proof of necessary conditions mentioned therein, it cannot be defeated by further reference to the personal law. The issue whether the section is attracted or not cannot be answered except by the reference to the appropriate law governing the parties. In our view, the judgment in Shah Bano’s case does not help the appellant. It may be observed that for the purpose of extending the benefit of the section to a divorced woman and an illegitimate child the Parliament considered it necessary to include in the section specific provisions to that effect, but has not done so with respect to Women not lawfully married.”
    - The court relied on the order of a Madhya Pradesh court in another case said,

“A lady who is fighting a matrimonial petition filed for divorce, cannot be permitted to sit idle and put her burden on the husband for demanding pendente lite [during litigation] alimony from him during pendency of such matrimonial petition. Section 24 (of the Hindu Marriage Act) is not meant for creating an army of such idle persons who would be sitting idle waiting for a ‘dole’ to be awarded by her husband.”

## CHAPTER I - CONCEPT OF MAINTENANCE UNDER HINDU LAW

In the event of a divorce or if both spouses are no longer living together, the spouse who is financially dependent on the other spouse may demand maintenance. So that she or he may live their lives as they did before they were married. The person who the other person is reliant on provides the maintenance. The amount of maintenance is dictated by the person's earnings, as well as the needs that other people need and that a rational man requires in order to live a reasonable life.

Section 24 of the Hindu Marriage Act<sup>1</sup> discusses interim maintenance and how a wife or husband may invoke it. Both husband and wife can claim interim maintenance only under the Hindu Marriage Act and the Parsi Marriage Act. In certain states, only the wife has the right to seek interim maintenance. The wife can file a petition for temporary maintenance under Section 36 of the Divorce Act. Permanent Maintenance is described in Section 25 of the Hindu Marriage Act as the amount that a person must pay to another person as maintenance in gross sum, or on a periodic or monthly basis, as ordered by the court.

### Types of maintenance under Hindu law

The types of maintenance under Hindu laws are as follows:

- I. Interim Maintenance:** When a wife files a maintenance petition, the court may order the husband to pay her temporary maintenance from the date the application was filed until the date of dismissal via her divorce law attorney. It is granted by the court if the wife has no other way of supporting herself.

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<sup>1</sup><http://lawcommissionofindia.nic.in/51-100/report98.pdf>

**II. Permanent Maintenance:** In the event of a divorce, the husband pays permanent maintenance to his wife, and the sum is determined by a maintenance petition submitted by a divorce lawyer in India. According to Section 25 of the Act, the court will order the husband to pay his wife maintenance in the form of a lump sum or a monthly amount for the rest of her life. However, if the wife's circumstances alter, she can no longer be qualified for maintenance.

The wife is entitled to receive the maintenance sum from her husband before she or he dies, according to Section 18(1) of the Hindu Adoption and Maintenance Act, 1956. Even if she lives apart from her husband, a Hindu wife is entitled to maintenance on the following grounds,

- a. When the husband is liable for desertion.
- b. When the husband is liable for cruelty.
- c. When the husband is suffering from leprosy.
- d. The husband is liable for bigamy.
- e. The husband converts his religion without the consent of the wife.

❖ **Calculation of Maintenance under Hindu Laws**

The court has the authority under section 23 to determine if any fee should be paid to the wife as maintenance under this Act. The following factors will be taken into account by the court:

- The status and position of both parties.
- The wants that are claimed by the claimant are reasonable.
- If the claimant is separated than it is justified to do or not.
- Number of persons who have right to claim maintenance.

Section 25 notes that the amount of maintenance that must be paid, whether determined by a court order or an arrangement, can only be changed if materialistic conditions change. However, under Section 24, if a partner ceases to be Hindu by conversing their faith with another, they are not entitled to maintenance. In the case of [Kanchan v. Kamalendra](#) where the husband claimed for the maintenance under section 24 of the Hindu Marriage Act, 1955. However, in order to be eligible for maintenance, the husband must demonstrate that he is unable to function due to an

illness or disability. Since the wife in this case was a salaried employee receiving Rs. 2000, she needed to cover her household expenses as well as care for her child. The court further said that simply closing the company would not be considered a legitimate or strong reason for claiming support from the wife. Since the husband was capable of promoting idleness, the court would not strictly rely on the evidence to approve maintenance in these cases. This would be in direct conflict with the purpose of section 24 of this Act. After considering all of the evidence, the trial court agreed without any excuse to grant maintenance to the non-applicant husband who had submitted a maintenance argument.

#### ❖ **How to Claim Maintenance under Hindu Laws?**

A wife must file a maintenance petition with a family court that has jurisdiction over the matter. The maintenance petition should be filed with the aid of a good divorce lawyer in India, and it should include all of the relevant details and the remedy sought from the court. Affidavits, records relating to both the husband and wife's wages, and other required documents are filed with the maintenance petition.

## **CHAPTER II– MAINTENANCE OF WIFE**



The wife must be paid maintenance after divorce until she gets married again. The idea behind this is to let her live with her lifestyle and comfort that existed during her marriage, and it must be paid until she gets remarried. There is no fixed amount for maintenance; it is determined by the court based on the husband's earning capacity. If the husband is well-off, the maintenance would be high to accommodate the lavish lifestyle that the wife has become used to during the marriage. If this isn't the case, it must be a sufficient sum to cover all of her fair expenses.

#### ❖ **When is the wife entitled to maintenance?**

The Hindu Adoption and Maintenance Act, Section 18(2), contains a list of when a wife is entitled to maintenance. According to the Section, a wife may live apart from her husband and still be entitled to maintenance in the following circumstances:



- The husband has deserted his wife by abandoning her without any reasonable cause and without seeking her consent or deliberately ignoring her wish.
- The wife has been subject to cruelty during her marriage and considers living with her husband to be endangering her life.
- If the husband is suffering from an incurable and contagious disease.
- The husband has another wife or a mistress in the same house or he lives with another wife or mistress at some other place.
- The husband has converted to some other religion or some other reasonable grounds that can justify why the wife should live separately.

Maintenance may be charged on a monthly or annual basis. Even when the wife has some source of income and some property but needs some financial aid for necessary expenses such as medical expenses. It is the obligation of the husband to pay maintenance for such expenses if required.

#### ❖ **When maintenance is not to be paid to a wife?**

In order to financially sustain a wife after a divorce, she must be maintained. There are, however, several exceptions to this law.

According to section 18(3) of the act, a wife is not entitled to maintenance:

- A Hindu wife is not entitled to maintenance if she has committed adultery or has any other illegitimate sexual relationship with someone else.
- Also, if she no longer considers herself a Hindu and converts to a faith that does not come under the spectrum of Hinduism.

#### ❖ **Quantum of maintenance**

Maintenance requires not only food, clothes, and shelter, but also other essentials. The amount and form of necessities covered by maintenance which differ depending on the status, financial condition, and number of dependents, among other factors, and is at the discretion of the court. Prior to issuing an order under Section 125, the court considers the amount of maintenance

already ordered under personal rule. The rationale is based on the assumption that the wife is entitled to live up to her husband's standard of living and status.

### CHAPTER III– CASE LAWS RELATING TO MAINTENANCE OF WIFE UNDER HINDU LAW

#### **DR. KULBHUSHAN KUMAR VS. RAJ KUMARI AND ANR. (1970)<sup>2</sup>**

Hon'ble Supreme Court observed that Section 25 of the Hindu Marriage Act, 1955 confers power upon the court to grant a permanent alimony to either spouse who claims the same by making an application. Sub-section (2) of Section 25 of Hindu Marriage Act confers ample power on the court to vary, modify or discharge any order for permanent alimony or permanent maintenance that may have been made in any proceeding under the Act under the provisions contained in sub-section (1) of Section 25. In exercising the power under Section 25 (2), the court would have regard to the "*change in the circumstances of the parties*". It was held that **25% of the husband's net salary would be just and proper to be awarded as maintenance to the respondent-wife. The amount of permanent alimony awarded to the wife must be befitting the status of the parties and the capacity of the spouse to pay maintenance. Maintenance is always dependent on the factual situation of the case and the court would be justified in moulding the claim for maintenance passed on various factors.**

#### **MANGAT MAL V. PUNNI DEVI. (1995)<sup>3</sup>**

The Hon'ble Supreme Court in the case of Mangat Mal v. Punni Devi (1995) 6 SCC 88 held as follows Maintenance, necessarily must encompass a provision for residence. Maintenance is given so that the lady can live in the manner, more or less, to which she was accustomed. The

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<sup>2</sup><https://bnblegal.com/landmark/kulbhushan-kumar-v-raj-kumari-anr/>

<sup>3</sup><https://indiankanoon.org/doc/1245246/>

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.

✚ **BADSHAH V. URMILA BADSHAH GODSE AND ANR**

The Supreme Court, held that Maintenance of wife for her 'sustenance' does not mean animal existence but signifies leading life in a similar manner as she would have lived in the house of her husband. Husband is duty bound to enable his wife to live life with dignity according to their social status and strata.

✚ **YAMUNABAI ANANTRAO ADHAV V. ANANTRAO SHIVRAM ADHAV<sup>4</sup>**

The court held that a Hindu lady who married after coming into force Hindu Marriage Act, with a person who had a living lawfully wedded wife cannot be treated to be "legally wedded wife" and consequently her claim for maintenance under Section 125, CrPc. is not maintainable.

✚ **BADSHAH V. URMILA BADSHAH GODSE**

The court ruled that the second wife is entitled to maintenance under Section 125, and that the petitioner misled the respondent by concealing details about his first marriage. He cannot refuse his second wife's right to maintenance.

✚ **RITA CHOWDHURY V. KALYAN CHOWDHURY<sup>5</sup>**

In Rita Chowdhury v. Kalyan Chowdhury decided by the bench consisting of R. Banumathi and Mohan M. in this case the court held that there is no hard and fast rule that can be laid down for deciding the quantum of maintenance. The ability of the husband, the strata of the society to which the couple belong, the standard of living that the wife was used to at her husband's residence..

## **CHAPTER IV– COMPARISON BETWEEN MAINTENANCE UNDER HINDU AND MUSLIM LAW**

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<sup>4</sup><https://www.casemine.com/search/in/yamunabai%2Banantrao%2Badhav>

<sup>5</sup><https://indiankanoon.org/doc/87785076/>

### ➤ **Maintenance under Muslim law**

According to Muslim Law theories, the man is superior to the woman. They genuinely believed that women are incapable of supporting themselves because they are completely dependent on their husbands. In Muslim Law, the most significant relationship is that between a husband and a wife. The partnership occurs only if the wife is faithful and follows her commands. In Muslim law, a married woman has the right to receive maintenance from her husband even if she refuses to see him and the marriage cannot be consummated, but she does not have the right to receive maintenance if she is too young and lives with her mother and father. According to Islamic law, a wife has the right to maintenance if she lives apart from her husband due to his cruelty and non-payment of dower. However, she is not entitled to maintenance during her widowhood or iddat.

### **Maintenance of wife under Hindu and Muslim law: comparison**

A Hindu woman has additional freedom than a Muslim woman. According to Section 18(1) of the Hindu Adoption and Maintenance Act, 1956, a Hindu wife is entitled to receive maintenance from her husband before she or he dies. Only a Hindu may be charged under Section 125 of the Code of Criminal Procedure. Married women who divorce or are divorced by their husbands and have not remarried another man are entitled to maintenance. A married woman who refuses to live with her husband because he is liable for desertion, cruelty, or is suffering from leprosy or bigamy, or converts his religion without the wife's permission, may demand a special allowance under this Act.

However, under Muslim law, divorced women do not have the right to claim maintenance after the time of iddat and receive only the sum of meher, and after the Muslim Women (Protection of Rights on Divorce) Act, 1986<sup>6</sup>, Muslim women have been unable to claim maintenance under Section 125 of the Code of Criminal Procedure.

## **CONCLUSION**

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<sup>6</sup><https://www.indiacode.nic.in/handle/123456789/1873?locale=en>

The Indian courts have been more liberal in determining cases concerning maintenance, as demonstrated by recent court decisions. The point of contention is whether a paramour should be entitled to maintenance simply by staying with a married man, as well as the legality of bigamy. Although it appears that the same could be permissible under personal rules, judicial judgments under Section 125 continue to support the view that maintenance can only be sought by a legally married wife. Though Indian Hindu women have improved their rights over time, the rights available to them do not meet the rights needed, as shown by the preceding. Not only the poorer parts of society, but the whole society, have been worried about maintenance. It's a challenge for the weaker parts because their entire survival rests on the maintenance provision.

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