

## Maintenance of Hindu Women

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### Abstract

The main reason behind the concept of Maintenance is to see that if one of the spouses is not independent financially so the other spouse help him/her in order to make the living of another person possible. In case of divorce or in the case where both the partners are not living together, the spouse who is financially dependent on the other spouse can seek the remedy of maintenance. So that she/he can maintain their life as when they lived together. Generally, Maintenance is the amount which the husband pays to his wife after divorce or the amount which the family member of the husband pays to the widow of their son. Maintenance includes basic necessities like: Food, Shelter, Clothing etc. The necessary thinks and comfort which a rational man expected to get.

The maintenance is given by the person on whom the other person depends on. The amount of the maintenance is dependent on the earning of the person and the necessities which other person required and the necessities which a rational man needs to live a normal life. In ancient period of India the woman was superior than the man. She had a right to do work for their families and have also freedom for their decision, education and as well as in their religion also.

**Keywords:** Hindu marriage Act, Criminal Procedure Code, Hindu Adoptions and Maintenance act 1956.

### Introduction

In Vedic period the women were called as vishwara ,Upanishad , Brahma Jaya Aditi, Indrani, Sarma, Reshma Urvasi, Lopamudra, Yami, shashwati,Shri , Lakhs and by many other names which has been mentioned in the Rigveda. At that age the status of women was impressive in the society. She also was capable to be on one's feet in their scenario.

But after the Vedic age, in medieval period the condition of women became worst and their status and freedom also declined in this period, which resulted that men was treated superior then the woman. The condition of women's just reversed as compared to the Vedic period, now women was treated as worker, servant and as well as just like material things. So, women was treated as sole property of her father, brother or husband and women had no right to live by her own will as she was allowed in the Vedic age. Under this stage/ period polygamy started, according this norm Muslim invaders pick any women which they wanted and kept them as a servant and there "herms".

### Discussion

Now, for protecting this types norms "purdah" system was started which infringed their freedom totally. Women's were not allowed to move one place to another neither were allowed to go anywhere according to their own free will. So in this condition women's considered as a burden on their family and the birth of a baby girl in the family was considered as a stigma upon the family. People started considering women as a curse in their family as they needed extra care and protection from their brothers and father and other male members of the family. Hence, all these conditions of women gave birth to the child marriage, Sati system, Johor, and restricted the girls from getting education due to "Purdah" system, she only work within the four corners of the house and was under continuous watch of their families eyes. In medieval ERA, woman was considered as a curse if she was widow. A widow woman was not allowed to take part in any celebration; neither was allowed to remarry with other man. In this period women exploited by the society and as well as by her own family.

But now in Modern era all system such as childmarriage, Sati system, Das system has been abolished and also given the strict laws, rules and regulations to stop them and uplift the position of women in the society through suitable legislation. Now, with the equal opportunity of education for the women and also through social awareness women are much aware of their rights and therefore they fight for their upliftment, their status, education or against harassment at the workplace. She also walks side by side with men. Though the condition of women is improving but yet it has not totally improved because still the mind of the certain section of the society is like as of a medieval period because they are habitual of discriminating against women on the fallacy of old orthodox family traditions. The example of such discriminatory situation is that the women in the society according to the UNICEF'S global reports on adolescent 2012 only 57% of boys and 53% of girls in India believe that the husband is justified in hitting his wife and abuse them. Now, in India's constitution women is treated as an equal legal citizen of the country and have an equal right in the society side by side with the men. Our constitution of India gives right to freedom ,life as well as education ( up to 14 years of age have a right to education)and also give freedom of work place, to uplift condition of women against their father and her husband constitution of India provided under article 14 and 15, that women have a right to equality and special provision shall be made for their upliftment of their position, hence to achieve Parliament of India enacted laws amongst which the law maintenance has prominent role.

### **Maintenance means-**

It is an amount which is payable by her husband for survival of his wife during the time of separation or divorce if she is not able to maintain herself.

Maintenance includes food, clothing, residence, education and medical facilities or in other case an unmarried daughter also have a expenses.<sup>1</sup>

Maintenance necessarily must encompass a provision for residence. Maintenance is given so that the women can live in the manner, more or less, to which she was 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.<sup>2</sup>

Today various laws governed for maintenance such as Hindu Marriage Act 1955, Hindu Adoption and Maintenance Act 1956. Under these laws women have a power or rights for maintenance from her husband or father etc.

According to Oxford dictionary-<sup>3</sup> "the process of preserving a condition or situation or all the state of being preserved"

***“thus maintenance is the amount which a husband is under an obligations to make to a wife during the subsistence of the marriage or upon separation or divorce under certain circumstances maintenance not only include basic necessity like food clothes, and residence but it also includes the things necessary comfort and status in which the person in title is reasonably expected to live the main aim of providing maintenance is that the wife should not be left destitute or separation or divorce from her husband”.***  
**Meaning of “wife”-<sup>4</sup>**

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<sup>1</sup> under the sec 3(b), Hindu Adoption and Maintenance Act 1956

<sup>2</sup>Case :Mangat Mal v. Punni Devi,(1995)6 ssc88

<sup>3</sup> Ramesh Chandra nagpal-modern Hindu Law, Eastern book company,lucknow

<sup>4</sup> Section 125(1),explanation(b),Crpc,1973.( D. Vellusamy v. Patchaiammal, (2010 )10 scc 469)

The term wife in includes legally wedded wife and also divorced wife.

In a simple term wife “mean” a women while performing all necessary ceremonies as applicable in the society with men in which they are belong .That women enjoy a legal status as a wife and as well as entitled for maintenance also .Under the Hindu maintenance law, maintenance are of two type which claimed by the wife husband at the time of divorce or separation

#### **Interim maintenance-**

At the time when wife files the petition for maintenance to her husband in front of court then she awarded as interim maintenance to their husband must pay at the time of divorce trial. It is also called as **pendente lite**. But it is paid according to the Court discretion or which Court decided how much money can pay to her forthe legal expenses. Whereas no certain amount is mentioned in the Hindu marriage act 1955.

It is also provided that the application for the payment of interim maintenance proceeding and monthly amount during the proceedings as far as possible, be disposed of within a 60 days from the date of service of notice on the wife and her husband in case may be<sup>5</sup>.

Wife could be filed for interim maintenance before the court dealing with the rights arising under the provision of section 18 of Hindu Adoptions and Maintenance act1956<sup>6</sup>

#### **Permanent maintenance-**

Under the permanent maintenance the husband gave to his wife the amount of money which is determined by the court to the wife petition maintenance in case of divorce.

**Law relating to maintenance-** Some laws are given in different acts for maintenance

under which wife is entitled to be enjoyed that maintenance such as :

#### **Hindu Marriage Act 1955<sup>7</sup>**

Under section 25 permanent alimony and maintenance , Any court exercising jurisdiction under this act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the casemay be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent’s own income and other property, if any, the income and other property of the applicant, [the conduct of the parties and other circumstances of the case], it may seems to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

**1.** If the court is satisfied that there is a charge in the circumstances of either party at any time after it has made on order under sub section(1), it may at the instance of either party,vary,modify or rescind any such order in such manner as the court may deem just.

**2.** If the court is satisfied that the party in whose favour an order has been made under this section has remarried or, if such partyis the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any women outside wedlock, [it may at the instance of the other party vary, modify or rescind any such manner as the court may deem just.](Under section 25 on this act provides permanent illumine and maintenance and empower the court to grant such maintenance on application made by either wife or the husband as the case may be. If the court is satisfied that there occurred in the change circumstances

<sup>5</sup>Proviso ins.by act 49 of 2001 sec 8

<sup>6</sup> *Sangeeta Piyusha Raj v.Piyusha Chaturbhuj Raj*, AIR 1998 Bom151:1998(1)HLR 495

<sup>7</sup> Under section 25 in the Hindu Marriage Act 1995 Indian kanoon

of either party. It may modify or rescind any such order in the manner Court deems fit. This section further provides that maintenance to the wife under section 18 is available to the woman until she remarries or she remains chaste. (For example living in adultery). Court may reverse the order of maintenance.)

**3.** According to **section 24** of this act that both husband and wife can file an application for interim maintenance.

### **Hindu adoption and maintenance act 1956<sup>8</sup>**

It provides maintenance of wife under section 18. Following are the provisions of this section-

- 1.** Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this act, shall be entitled to be maintained by her husband during her life time.
- 2.** A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance-
  - a)** if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or wilfully neglecting her;
  - b)** if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband;
  - c)** if he is suffering from a virulent form of leprosy;
  - d)** if he has any other wife living;
  - e)** if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere;
  - f)** If he has ceased to be a Hindu by conversion to another religion;
  - g)** if there is any other cause justifying living separately.
  - h)** A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.

The wife had been living alone and all the children had been brought up by her without any assistance and help from the husband and there was a clean case of desertion, the wife was entitled to separate residence and maintenance; *Meera Nireshwalia v. Sukumar Nireshwalia*, AIR 1994 Mad 168.

The thoughtless action of the husband of evicting the wife from the house where she had been living in collusion with the purchasers of the house and the police inflicted a deep wound on her amounting to cruelty, the wife was entitled to live separately and claim maintenance; *Meera Nireshwalia v. Sukumar Nireshwalia*, AIR 1994 Mad 168.

the claim for maintenance by a wife can also be sustained under clause (g) even on a ground covered by one or other clauses i.e. clause (a) to (f) of section 18(2) substantially but not fully. Merely because the wife fails to strictly prove the specific grounds urged by her, she cannot be denied relief; *Meera Nireshwalia V. Sukumar Nireshwalia*, AIR 1994 Mad 168 (Hindu wife is entitled to be get maintenance during a life time by her husband under this section wife got maintenance and as well as separate residence if she fulfil the condition under section 18(2) such as (desertion, cruelty, leprosy, any other wife/ concubine in the same house, conversion of religion) or any other reasonable cause)

### **4. In code of criminal procedure 1973** provides that 125 CRPC -<sup>9</sup>

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

- (a)** his wife, unable to maintain herself, or
- (b)** his legitimate or illegitimate minor child, whether married or not, unable to maintain himself, or
- (c)** his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain himself, or
- (d)** his father or mother, unable to maintain himself or herself,

<sup>8</sup> under section 18 in the Hindu Adoption and Maintenance Act 1956, Indian kanoon

<sup>9</sup>Section 125 in the cr.p.c CLA's (diglot)page no 55

(e) a magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the magistrate may from time to time direct: *Explanation-* for the purpose of:

(f) "Wife" includes a woman who has been divorced by, or, has obtained a divorce from, her husband and has not remarried.

2. Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.

3. If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issued a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] remaining unpaid after the execution of the warrant to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

*Provided further* that if such person offers to maintain his wife on condition of her living with him and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing *Explanation.* —If a husband has contracted marriage with another woman keeps a mistress it shall be considered to be

just ground for his wife's refusal to live with him.

4. No wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

5. On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

Perusal of Section 125 shows that it is a secular provision providing for maintenance for women irrespective of her religion or caste and the woman belonging to any religion. Under this section wife and as well as child and parents also get maintenance.

Under this section wife shall not be entitled to receive maintenance if she is living in adultery, or refuses to live with husband without any sufficient reason or living separately with mutual consent.

6. In **divorce Act, 1869**,<sup>9</sup> provides the power to order permanent alimony under section 37 – Where a decree of dissolution of the marriage or a decree of judicial separation is obtained by the wife, the District court may order that the husband shall, to the satisfaction of the Court, secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her own life, as, having regard to her fortune (if any), to the ability of the husband, and to the conduct of the parties, it thinks reasonable; and for that purpose may cause a proper instrument to be executed by all necessary parties. Power to order monthly or weekly payments. In every such case the Court may make an order on the husband for payment to the wife of such monthly or weekly sums for her maintenance and support as the court may think reasonable: provided that if the husband afterwards from any cause become unable to

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<sup>9</sup>Section 37 in the divorce act, 1869 Indian kanoon



make such payments, it shall be lawful for the court to discharge or modify the order, or temporarily to suspend the same as to the whole or any part of the money so ordered to be paid, and again to revive the same order wholly or in part, as to the court seems fit.

**Hence**, the Divorce Act 1869 clearly provides that the district court is empowered to give the order to the husband to pay a some amount of money (monthly or weekly) for the maintenance of her wife as the court think fit. But if the husband is unable to pay the amount of money then the court discharge the amount and modified it accordingly.

**Position of Hindu women living with her partner not as a legally wedded wife but in a relationship in the nature of marriage-**

The above discussion clear that various legislation enacted by a parliament only a wife i.e., a legally wedded wife or divorcée is entitled to maintenance. But as it is the characteristics of that cannot static it should be dynamic and it should change according to the changing of society. This is the reason that honourable Supreme Court held widened the scope of wife and read that the women living in relationship in the nature of marriage (living relationship) is also entitled for maintenance under Domestic Violence Act 2005.

**Case-**

***S Khushboo v/s kanniammal&anr 2010***

“In this case Supreme Court charges against the petitioner who is the South famous actress. She claimed under section 499 of the IPC and also claimed that she live in the live in relationship. Show the court held that the living relationship concept is not illegal it is in the eyes of India’s socie”<sup>10</sup>

**Leading cases of maintenance**

***.Kalyan dey Chowdhury v Rita Dey Chowdhury nee Nandy (3rd)***<sup>11</sup> “under this case Supreme Court held that the court can very their discretion or modify or rescind

maintenance order in which the Court deems fit.”

***Prakash Babul Dangil vs The state of Maharashtra***<sup>12</sup>, (Criminal Application No. and in case of *Lalita Toppo v. State of Jharkhand 2018*

“under this case court held that if the amount of maintenance is awarded under Domestic Violence Act cannot be substituted for order of maintenance under section 125 of CRPC. The provision of the DV Act shall be in addition to and not in derogation of the other laws

***Shailja v. khobanna***<sup>13</sup> “under this case Supreme Court stating that if the wife is capable for earning that not means that she is not entitled for maintenance under which she is awarded by the court”

***Bhuwan Mohan Singh v. Meena***<sup>14</sup> “under this case the word (sustenance) is defined and the court said that the wife is not an animal she also have a dignity according to their society status .so the husband is bound to give a life with dignity“

***Badshah v. urmila Badshah Godse***<sup>15</sup> “under this case court held that if a husband who concealed her earlier marriage and contracts marriage with the second wife then the second wife is also entitled for maintenance from him. That second wife would be treated as legally wedded wife for the purpose of maintenance.”

***Neha Tyagi v. Lieutenant Colonel Deepak Tyagi***<sup>16</sup> A father’s duty and responsibility to keep his child until they reach the age of majority cannot be excused. It is also undeniable that the child has a right to be cared for in accordance with his father’s position. This was observed by division bench judges comprising of Hon’ble Justices Mukeshkumar Rasikbhai Shah and A.S. Bopanna of the Supreme Court of India, in the matter of *Neha Tyagi vs. Lieutenant Colonel Deepak Tyagi*

<sup>10</sup> S.khushboo vs kanniammal & Anr on 28 April 2010, SLP (crl.)no. 4010 of 2008

<sup>11</sup> 2017 SLT 535

<sup>12</sup> 296 of 2017, decided on October 10, 2017

<sup>13</sup> (criminal Appeal Nos. 125-1206 of 2017

<sup>14</sup> (2015)6 SCC 353

<sup>15</sup> (2014)1 scc188

<sup>16</sup> CIVIL APPEAL NO. 6374 OF 2021

(2021). *In light of the foregoing reasons indicated above, the current appeal was dismissed by affirming the divorce/dissolution of marriage decree entered between the appellant-wife and the respondent-husband. However, the respondent-husband is ordered to pay the appellant Rs.50,000/- per month beginning in December 2019 for the support of his kid, based on the respondent's current condition.*

### **1. Rajnesh v. Neha**<sup>17</sup>

In *Rajnesh v Neha* (2020), a Supreme Court division Bench comprising of Justices Indu Malhotra and Subhash Reddy put down extensive norms to control the payment of maintenance in matrimonial cases on November 4th, 2020.

#### **Facts of the case**

In this case, the appellant, Rajnesh, was ordered by the Family Court to pay maintenance to the respondent, Neha, and their minor child. He unsuccessfully challenged this order in the Bombay High Court and finally filed an appeal before the Supreme Court. Rajnesh was ordered by the Supreme Court to pay all his debts and make interim maintenance payments.

#### **Conclusion**

#### **Guidelines by the Supreme Court of India**

1. While adjudicating this case, the Court found the need to frame guidelines that would cover overlapping jurisdiction under different enactments for maintenance payment, interim maintenance payment, determining the quantum of maintenance, the date from which maintenance is to be awarded, and the enforcement of maintenance orders.

2. The Court while addressing the conflict arising out of overlapping jurisdiction noted that, while there is no restriction on invoking multiple laws to obtain maintenance, it would be inequitable to direct the husband to pay maintenance under each of the proceedings, independent of the relief granted in a previous proceeding. As a result, the spouse seeking support must inform the Court if they have been awarded maintenance in a prior or separate proceeding. Furthermore, while determining the amount of maintenance, the Court must take

into consideration any previous maintenance order in order to reduce or offset the amount.

3. The Court has simplified the interim maintenance process in light of the judicial delay in adjudicating interim maintenance actions and the usual practice of parties concealing their financial position. The Court created affidavit templates for parties to use when declaring their financial situation. It also established deadlines to avoid delays and observed that the respondent must make their disclosure within four weeks, and the concerned court must rule on interim maintenance within four to six months.

4. The Court acknowledged that there was no straitjacket formula to calculate the quantum of maintenance. The Court noted that the same should balance the applicant spouse's interests with the responding spouse's financial competence. The Court outlined considerations to examine when determining the amount of maintenance to be paid. The following items were included on the list, namely,

The parties' status,  
The applicant's needs,  
The respondent's income and property,  
The claimant's liabilities and financial responsibilities,  
The parties' age and employment status,  
The parties' residential arrangements,  
The parties' minor children's maintenance,  
and Illness or disability.\

5. The Supreme Court noted that in the past, courts have utilised a variety of criteria to determine when maintenance should be paid to the applicant, including the date the application was filed, the date of the court order, and the date the respondent received the notification. After considering each of these cut-off dates, the Apex Court in the present case determined that awarding maintenance from the date of the application's submission would be in the applicant's best interests.

<sup>17</sup>

(2021) 2 SCC 324

**6.** The Court devised three techniques to address the challenges of implementing maintenance orders. First, the maintenance orders might be implemented in the same way as a civil court decision would, with the court having civil detention, property attachment, and other powers. Second, the court may dismiss the respondent's defence. Finally, the court has the authority to begin contempt proceedings. Any of these tools might be used by the court to enforce maintenance orders.