

MAINTENANCE UNDER HINDU LAW

Ayush Kapoor

Amity Law School, Noida

INTRODUCTION

In simple words, maintenance is an amount which is given in the form of financial assistance to either of the party.

All the provisions of Hindu law shall apply to Hindus including Sikh, Jains and Buddhists as defined in Section 2 of Hindu Marriage Act, 1955. According to Section 3 (b)¹, “Maintenance” includes (i) in all cases, provision for food, clothing, residence, education and medical attendance and treatment; (ii) in the case of an unmarried daughter, also the reasonable expenses of an incident to her marriage.

The basic motive of providing the maintenance is to maintain an equitable standard of living of the spouse or any other dependent personality as it was before the separation.

This article will provide you insights about various provisions relating to the maintenance under Hindu law.

Types of Maintenance:

1. **Interim Maintenance:** It is additionally known as maintenance pendente lite that the court awards while the proceedings for divorce are still going on. The aim is to provide the claimant the income for support and necessary expenses of proceedings. Section 24 of Hindu Marriage Act, 1955 deals with such kind of maintenance. Either of the spouses can claim such maintenance.
2. **Permanent Maintenance:** It means the granting of maintenance in the form of either periodical or monthly sums once the proceedings are done with. It is given in Section 25 of Hindu Marriage Act, 1955. Either of the spouses can claim such maintenance.

Who Can Claim Maintenance?

- Wife
- Widowed daughter-in-law
- Children (legitimate sons, illegitimate sons, unwedded legitimate and illegitimate daughter, married daughter unable to maintain herself)
- Parents
- Any other dependent person

1. Maintenance of wife

When husband and wife live together, it is the duty of husband to maintain wife and not of any other family members of husband.

The Hindu Adoptions and Maintenance Act, 1956

Section 18² deals with provisions for maintenance of wife:

Section 18 (1) of The Hindu Adoptions and Maintenance Act, 1956 “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.

Section 18 (2) - A married Hindu woman who lives apart with the consent of husband, is entitled to maintenance. This act lays down the subsequent grounds in case of which wife can live apart and acquire

¹ The Hindu Adoptions and Maintenance Act, 1956, §3(b)

² The Hindu Adoptions and Maintenance Act, 1956, §18

maintenance:

Desertion- Section 18(2)(a)- It is act of abandoning wife without reasonable cause and without her consent or against her wish or on the ground of willfully neglecting her.

Cruelty – Section 18(2)(b)- The husband by his conduct showed that wife was unwanted in the house and this act of his amounts to cruelty.

Leprosy – Section 18(2)(c) – Husband suffers from leprosy.

Another wife is living – Section 18(3)(d)- Even if another wife is living with wife's consent, then also she can claim separate residence and maintenance.

Keeps a concubine- Section 18(2)(e)- Keeping of concubine in same house with wife is considered a form of adultery.

Conversion – Section 18(2)(f)- If the husband has ceased to be a Hindu by conversion to another religion.

Any other justifiable cause- Section 18(2)(f) – If there is any other cause justifying her living separately which court considers grave.

Forfeiture of claim of maintenance- Section 18(3)- In the case of wife being a chaste or getting converted into some other religion and ceases to be a Hindu, then she has no right to claim separate residence and maintenance. Also, right to maintenance is lost on remarriage after divorce.

Hindu Marriage Act, 1955

Section 24 and Section 25 of the Hindu Marriage Act, 1955 relates to allowing maintenance pendente lite and permanent maintenance respectively. In *Kulbhushan Kumar (Dr) v/s Raj Kumari*³, the court declared that wife is entitled to 25% of husband's net income as maintenance.

- According to Section 24⁴, if the court deems fit that if either of the spouses doesn't have sufficient earnings for proceedings of court or to bear other necessary expenses while the proceedings are still continuing, then the court can pass an order telling the respondent to pay maintenance.
- According to Section 25⁵, the court can order the payment for maintenance to be made to the claimant in periodical or monthly sums after the proceeding complete.

Spousal maintenance is determined on the existence of various factors by the court as follows:

- Time period for which marriage lasted
- Wife's and Husband's incomes and other properties
- Liabilities of the husband, such as dependent parents
- Social status and lifestyle of both the parties
- Age and health condition of both the parties
- Expenses for education and upbringing of the child/children⁶

2. Maintenance of Widowed Daughter-in-law

³ *Kulbhushan Kumar (Dr) v Raj Kumari*, (1970) 3 S.C.C. 129

⁴ The Hindu Marriage Act, 1955, §24

⁵ The Hindu Marriage Act, 1955, §25

⁶ *How is Alimony in India Calculated?* ADITYA BIRLA CAPITAL (June 27, 2020), <https://www.adityabirlacapital.com/abc-of-money/how-is-alimony-calculated-in-India>, Last visited: 13/05/2020

According to Section 19⁷, a widowed daughter-in-law can claim maintenance from her father-in-law; provided that she doesn't have any property to earn or doesn't work to earn or is not supported from the estate of her husband or her father or her mother or from her son or daughter or their estate. It is also provided that the obligation of father-in-law shall not be enforceable if he has no means to maintain his daughter -in-law from any coparcenary property in his possession out of which daughter- in-law has not obtained any share.

In *Raj Kishore Mishra v Meena Mishra*⁸, the court held that the obligation of father-in-law shall not be enforceable if he has no means to maintain his daughter -in-law from any coparcenary property in his possession out of which daughter- in-law has not obtained any share.

3. Maintenance of Children

It is the duty of both the parents to maintain their children.

Hindu Marriage Act, 1955

According to Section 26⁹, the court may, from time to time, pass orders related to the custody, maintenance and education of children or revoke any previous such order. While passing all such orders, court considers the wishes of the children.

The Hindu Adoptions and Maintenance Act, 1956

According to Section 20¹⁰, it is the duty of a Hindu whether a male or female to provide maintenance to legitimate or/and illegitimate minor children or aged parents or unmarried major daughter when they are unable to maintain themselves through any kind of earnings.

Father is obliged to maintain unmarried daughter

In the case of *Jasbir Kaur Sehgal v District Judge, Dehradun*¹¹, it was held that unmarried daughter is entitled to claim maintenance under The Hindu Adoptions and Maintenance Act, 1956. The father is obliged to maintain her unmarried daughters even if they are living separately with their mother.

Both the parents (if earning) are obliged to maintain children

In the case of *Padmja Sharma v. Ratan Lal Sharma*¹², it was held that both, a Hindu divorcee father and a Hindu divorcee earning mother are obliged to contribute for maintenance of their children under The Hindu Adoptions and Maintenance Act, 1956.

Illegitimate child can claim maintenance

In the case of *Kalla Maistry v Kanniammal*¹³, it was held that a claim for maintenance under Section 20 can validly be made by an illegitimate child who is born of adulterous intercourse.

4. Maintenance of Parents

The Hindu Adoption and Maintenance Act, 1956

⁷ The Hindu Adoptions and Maintenance Act, 1956, §19

⁸ Raj Kishore Mishra v. Meena Mishra, A.I.R. 1995 All. 70 (India)

⁹ The Hindu Marriage Act, 1955, §26

¹⁰ The Hindu Adoptions and Maintenance Act, 1956, §20

¹¹ Jasbir Kaur Sehgal v. District Judge, Dehradun, (1997) 7 S.C.C. 7 (India)

¹² Padmja Sharma v Ratan Lal Sharma, (2000) 4 S.C.C. 266 (India)

¹³ Kalla Maistry v Kanniammal, A.I.R. 1963 M. 210 (India)

According to Section 20¹⁴, it is the duty of a Hindu whether a male or female to provide maintenance to legitimate or/and illegitimate minor children or aged parents or unmarried major daughter when they are unable to maintain themselves through any kind of earnings.

Maintenance and Welfare of Parents and Senior Citizens Act,2007

Parent (father or mother whether biological, adoptive or step father or step mother, whether senior citizen or not) or grand-parent who is unable to maintain himself is entitled to claim maintenance from one or more of his adult children (son, daughter, grandson and grand-daughter but does not include a minor). Obligation of the children to maintain their parents extends to such needs of the parents which will allow them to lead a normal life. Additionally, this Act also makes provision for maintenance of childless senior citizens (who has attained the age of sixty years or above) by their relatives. The “relative” means any legal heir of childless senior citizen who is in possession of his property or would inherit it after his death, but it does not include a minor.¹⁵

According to Maintenance and Welfare of Parents and Senior Citizens Act (Amendment) Bill,2018, distant relatives can also claim maintenance and ‘children’ will include son-in-law and daughter-in-law also.

When can a stepmother claim maintenance from her stepson

In the case of *Kirtikant D. Vadodaria v State of Gujarat*¹⁶, it was held that a childless stepmother may claim maintenance from her stepson provided she is a widow or her husband, if living, is incapable of supporting and maintaining her.

5. Maintenance of Dependents

Section 21¹⁷ and Section 22¹⁸ of the act- It creates new rights of certain persons, called dependants. Dependents are relatives of deceased Hindu and they claim maintenance against the property of the deceased in the hands of heirs. The term heir includes all those persons on whom the estate of the deceased devolves. The right of dependants exists against property and not against the heirs personally. It does not arise during the lifetime of the person; they are termed dependents only after his or her death.¹⁹

The dependants under Section 21²⁰ include: father, mother, widow, minor legitimate son, minor illegitimate son, minor legitimate unmarried daughter, minor illegitimate unmarried daughter, widow’s daughter, son’s widow, grandson’s widow, son’s unmarried daughter, grandson’s unmarried daughter, son’s son’s minor son.

Husband’s right to get maintenance from his wife

¹⁴ The Hindu Adoptions and Maintenance Act, 1956, §20

¹⁵ Devika Sharma, *Maintenance- Children and Parents*, SCC ONLINE, (Jan.10, 2019), <https://www.sconline.com/blog/post/2019/01/10/maintenance-children-and-parents/#:~:text=Hindu%20Adoption%20and%20Maintenance%20Act,are%20unable%20to%20maintain%20themselves>, Last visited: 13/05/2020

¹⁶ *Kirtikant D. Vadodaria v. State of Gujarat*, (1996) 4 S.C.C. 479 (India)

¹⁷ The Hindu Adoptions and Maintenance Act, 1956, §21

¹⁸ The Hindu Adoptions and Maintenance Act, 1956, §22

¹⁹ Diva Rai, *Is maintenance only for the wife or all under the Hindu Adoption and Maintenance Act*, BLOG IP READERS (Nov. 16, 2020), <https://blog.ipleaders.in/is-maintenance-only-for-the-wife-or-for-all-under-the-hindu-adoption-and-maintenance-act/>, Last visited: 13/05/2020

²⁰ The Hindu Adoptions and Maintenance Act, 1956, §21

There are provisions in Hindu Marriage Act,1955 for husband to claim maintenance from wife. Under Section 24 of Hindu Marriage Act,1955 husband is entitled to claim maintenance while the proceedings are going on if he is not in a condition to support expenses of proceedings or other necessary expenses. Under Section 25 of Hindu Marriage Act,1955 husband gets entitled to maintenance and permanent alimony in the form of monthly or periodical sums.

In the case of *Rani Sethi v Sunil Sethi*²¹, the Delhi High Court ordered the wife to pay her husband for the litigation expenses and also give a car for petitioner's use.

In the case of *Yashpal Singh v Anjana Rajput*²², it was held that husband who incapacitates himself intentionally loses the opportunity to file an application for filing for maintenance.

Criteria for Calculation of Maintenance under Hindu law

According to Section 23²³, following factors determine the amount of maintenance:

- a. The position and status of parties
- b. The reasonable wants of the claimant
- c. If the claimant is living separately, whether the claimant is justified in doing so
- d. The value of the claimant's property and any income derived from such property, or from the claimant's own earning or from any other source;
- e. The number of persons entitled to maintenance under this act

Maintenance under Section 125 CrPC

Under section 125²⁴, magistrate has the authority to order a person to give maintenance in case where that person despite of having sufficient means neglects or refuses to maintain following people:

- a. Wife who isn't able to maintain herself (including divorced and not remarried)
- b. His or her legitimate or illegitimate minor child, whether married or not, unable to maintain itself
- c. His or her 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 itself
- d. Married daughter till she attains majority if her husband isn't unable to maintain her
- e. His or her father or mother, unable to maintain himself or herself

Daughter is also obliged to maintain parents

In the case of *Vijaya Manohar Arbat v Kashirao Rajaram Sawai*²⁵, it was held that along with a son, Section 125 CrPC imposes a liability even on a daughter whether married or unmarried, having sufficient means to pay maintenance to her parents who are unable to maintain themselves.

Judicially Separated wife can also claim maintenance

In the case of *Sanju Devi v State of Bihar*²⁶, it was held that if a divorced wife is entitled to maintenance, then there is no reason why a wife who is judicially separated is not entitled to maintenance.

Children of void marriage entitled to maintenance

²¹ Rani Sethi v. Sunil Sethi, 2011 S.C.C. OnLine Del. 1632 (India)

²² Yashpal Singh v Anjana Rajput, A.I.R 2001 M.P. 67 (India)

²³ The Hindu Adoptions and Maintenance Act, 1956, §23

²⁴ Code of Criminal Procedure, §125

²⁵ Vijaya Manohar Arbat v. Kashirao Rajaram Sawai, (1987) 2 S.C.C. 278 (India)

²⁶ Sanju Devi v State of Bihar, 2018 (1) R.C.R. (CRIMINAL) 196 (India)

In the case of *Bakulabai v Gangaram*²⁷, it was held that a child born out of a void marriage between a woman and man who already has a wife is to be treated as a legitimate child who is entitled to maintenance under Section 125 CrPC.

CONCLUSION

A lot progress has been made with regard to provisions for maintenance. Not only wife but also children, parents, widowed daughter-in-law and the Hindu male himself is entitled to maintenance. The decision of court for wife being entitled to 25% of husband's income has been a landmark decision and is serving as blueprint for future cases. Also, Welfare of parents and Senior Citizens Act, 2007 has proved to be quite favourable for old age citizens. Section 125 CrPC incorporates a lot of provisions in itself which most of the times proves to be a saviour.



²⁷ *Bakulabai v. Gangaram*, (1988) 1 S.C.C. 537 (India)