



# **KNOW THE LAW RELATING TO MAINTENANCE AND ALIMONY**

## **MAINTENANCE UNDER DIFFERENT ACT**

### **1. Hindu Adoptions & Maintenance Act. 1956.**

- Section 18 (1) of the Hindu Adoptions and Maintenance Act, 1956 entitles a Hindu wife to claim maintenance from her husband during her life-time. Sub- section (2) of section 18 grants her the right to live separately, without forfeiting her claim to maintenance, if he is guilty of any of the misbehaviours enumerated therein or on account of his being in one of objectionable conditions as mentioned therein. So while sustaining her marriage and preserving her marital status, the wife is entitled to claim maintenance from her husband.
- Matter may be brought before the Family Court.

### **2. Hindu Marriage Act, 1955. Under Section 24**

#### **Section 24 in The Hindu Marriage Act, 1955**

#### **Maintenance pendente lite and expenses of proceedings. -**

- Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, it may seem to the court to be reasonable:
- Section 24 entitles not only the wife but also the husband to claim maintenance pendente lite on showing that he has no independent source of income.
- Matter may be brought before the Family Court.

### 3. Hindu Marriage Act, 1955. Under Section 25

#### Section 25- PERMANENT ALIMONY AND MAINTENANCE

- Any court exercising jurisdiction under this Act may on application made to it for purpose by either the wife or the husband order that the respondent shall pay to the applicant for her or his maintenance and support such cross sum or such monthly or periodical sum for a term not exceeding the life of the applicant and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.
- If the court is satisfied that there is, a change in the circumstances of either party at any time after it has made an order , it may at the instance of either party, vary, modify or rescind any such order
- Matter may be brought before the Family Court.

### 4. Under Section 125 Cr P C

#### Section 125 Cr.P.C. provides:

- If any person having sufficient means neglects or refuses to maintain
  - (a) his wife, or
  - (b) his legitimate or illegitimate minor child,
  - (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 itself, or
  - (d) his father or mother, unable to maintain himself or herself,
- who is unable to maintain himself/herself then the court may order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate which the Magistrate thinks fit.
- Matter may be brought before the Family Court.

### 5. Protection of Women from Domestic Violence Act, 2005.

- Section 20(2) of the Act casts a duty upon the Court to award a fair, adequate and reasonable maintenance while keeping in mind the standard of living to which the aggrieved person has used to.
- Matter may be brought before the Magistrate Court(JMFC).

## 6. Muslim Women (Protection of Rights on Divorce) Act, 1986

- A Muslim husband is liable to make reasonable and fair provision for the future of the divorced wife which obviously includes her maintenance as well. Such a reasonable and fair provision extending beyond the iddat period must be made by the husband within the iddat period in terms of Section 3(1)(a) of the Act.
- Liability of Muslim husband to his divorced wife arising under Section 3(1)(a) of the Act to pay maintenance is not confined to iddat period.
- A divorced Muslim woman who has not remarried and who is not able to maintain herself after iddat period can proceed as provided under Section 4 of the Act against her relatives who are liable to maintain her in proportion to the properties which they inherit on her death according to Muslim law from such divorced woman including her children and parents. If any of the relatives being unable to pay maintenance, the Magistrate may direct the State Wakf Board established under the Act to pay such maintenance
- Matter may be brought before the Magistrate Court(JMFC).

**Important : An application for maintenance under section 125 of the Code of Criminal Procedure can be filed by a person of any religion.**

- The court decides the amount of alimony/maintenance which is to be paid by the respective spouse after examining various parameters.
- The income of the spouses, their standard of living and financial status are the factors considered. Both spouse's income, investments and net worth, as well as the financial needs of the individuals are taken into account.
- The number of years the couple has been married, the number of children and the standard of living enjoyed with husband are also considered. The husband can request stopping of payment or reducing the amount, if the wife manages to get another source of income.
- Once the court passes the order, the supporting spouse has to pay alimony till the receiving spouse remarries. If payments are not made on time, there are consequences. "The court can order the husband's employer to deduct an amount equivalent to the alimony from his salary and pay it directly to the wife.

## 7. Special Marriage Act, 1954

- For certain special form of marriages, parties being governed by the Special Marriage Act, 1954 the provision as to alimony pendent lite and permanent alimony and maintenance is enumerated in Section 36 & 37 of the Act.

- Maintenance
- There are various laws that govern the quantum of maintenance to be decided upon, and awarded by the court.
- An application for maintenance can be filed in India by the Hindus, under the Hindu Adoption and Maintenance Act, and under the Hindu Marriage Act.
- There are other personal laws for people following different faiths. Thus, people belonging to other religions are governed by such personal laws.
- However, irrespective of one's caste, creed or religion; any person can file an application for maintenance, under section 125 of the Criminal Procedure Code.
- Besides the wife and husband, the parents and children of the respondent, can also vice versa claim maintenance under this particular section.
- The Court takes into account various factors that would affect the quantum of maintenance to be decided upon, such as, the status and financial position of the parties concerned, the number of dependants on the respondent, etc.
- The order of maintenance is subject to change. In other words, the amount of maintenance once fixed by the Court can be altered if there is a change of circumstances. There can be an enhancement or reduction of the same depending on the circumstances at that particular time.
- Interim maintenance order remains valid till the permanent maintenance order is given by the court.



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