



## ORIGINAL RESEARCH PAPER

Law

*Maintenance of Husband & Wife: A Study of Hindu Laws*

**KEY WORDS:** Maintenance, Husband, Wife, Divorce, Hindu Marriage Act, Code of Criminal Procedure, Domestic Violence Act, Alimony, Maintenance Act

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## ABSTRACT

This paper focuses on Maintenance received by the husband and wife in cases like divorce and other such situations. Men in India are often victimised by their wives into paying alimony and maintenance in case of a dispute. Spouse can assert support from his significant other on the off chance that he is not acquiring or is debilitated or there is perpetual inability or if the husband can demonstrate that wife is able to keep up the requirements of the house and so forth.

Where in any procedure under the Maintenance Act it appears to the Court that the spouse, by and large, has no free income adequate for his help and the important costs of the procedure, it might, on the use of the husband, arrange the wife to pay the Husband the costs of the procedure such whole as, having respect to the individual's own particular wage and the wage of the aggrieved person, it might appear to the Court to be sensible. The paper also gives a picture of whether the personal law is amenable to reform and if yes, how such reform is supported in India. It pitches certain suggestions for the law to improve as a whole and be fair and just for men as well as women.

## RESEARCH METHODOLOGY

The current paper is fundamentally based on data which is secondary in nature. Moreover, Secondary sources of data include websites, reports and journals etc. but are not restricted to the same. The approach taken up is on the lines of deriving a conclusion in the form of a statement through the inference of the data taken into consideration. Additionally it is pertinent to note that the above stated approach is a general explanation in terms of approach adopted. Majority of research work has been done via Articles, Journals and Case Laws available in online databases. Other sources like various works by learned authors have also been referred.

## SCOPE AND OBJECTIVE OF THE STUDY

The objective of the research project is to analyse the disadvantages meted out to Indian Men as compared to Women in the society in reference to receiving maintenance in a case like divorce or bigamy etc. The provisions of the law provided in the project are in lieu with Section 24 of the Hindu Marriage Act which exclusively states that it is legally valid for men to claim maintenance from their wives. The study is limited to the disadvantages to a Man in India in the areas of divorce, maintenance and marriage.

## HYPOTHESIS

Maintenance amount is a grey area which makers don't take responsibility of to define the amount for fear of being cornered from both sides; judiciary don't define it for fear of losing their grip. Under the circumstances, the 25% amount of husband's net salary, where the wife has no income, is not bad. But husband must pay on monthly basis, no lump sum, and the maximum numbers of years for maintenance may also be defined, after which the wife must look after herself.

After all it should be appreciated that every man or woman is capable of maintaining himself/herself. There must be check in the thinking that wife is entitled to maintenance based on the couple's status before separation, though they stayed for a very short period together. The idea is there must be a status factor defined in the percent based on period of togetherness and a threshold period say, 3 years to qualify for any status payment.

## INTRODUCTION

The research project talks about how maintenance emerged as a remedy for both men and women as well but with time, due to social imbalances and other factors the law became something which only women are usually obtaining throughout the course of its existence. The remedy provided to each is equal and just, as recently passed in the HC that a man's 25% of the salary can be awarded as maintenance. Maintenance cannot be termed as charity. Maintenance is a sum of money which is paid by the

husband to his wife. Under **Hindu law**, it is the **spiritual duty** of the husband to maintain his wife. And this duty continues from the date of marriage till the dissolution of marriage through a decree of divorce.

The main object of **Section 24** of the Hindu Marriage Act is to grant maintenance to the wife so that she can have financial assistance and she is able to maintain herself during the pendency of proceedings. *Husband also has a right to claim maintenance from the wife.*<sup>1</sup>

Since the object of section 24 is to provide financial assistance, the application under section 24 must be disposed of as expeditiously as possible. Be that as it may if the principle case itself has been expelled, there is no arrangement under which court can give help in an application made under section 24.

The wording utilized by section 24 is with the end goal that spouse as well as husband can guarantee upkeep. Hence this area does not separate on the premise of sex.

Section 24 is useable when the marriage itself is valid. If the marriage itself is not valid (that is it is a void marriage), then wife cannot claim maintenance under section 24 of Hindu Marriage Act.

Although this provision refers to **only husband and wife**, this does not mean that maintenance cannot be increased because children are in the custody of wife. Family Lawyers in Chandigarh have also contended that court must consider the fact that since children are in the custody of wife, it is wife's obligation to raise and maintain the children. And for that purpose the husband must maintain and children.

As to the nature of the proceedings, it has been held that the proceedings under section 24 are not original proceedings. They are merely **interlocutory proceedings**. Lawyers sometimes compare proceedings under section 24 with proceedings under section 125 of Criminal Procedure Code. In this regard courts have clarified that both the proceedings are separate and different. Merely because order under section 125 of Criminal Procedure Code has been passed, jurisdiction of the court cannot depart under section 24 of Hindu Marriage Act. However it has also been clarified that if two orders under both the provisions mentioned above have been passed in a single matrimonial dispute then the husband is only liable to pay according to the order which mentions a higher amount.

Punjab and Haryana High Court at Chandigarh has also stated that the application made under section 24 is not barred if application under section 125 Criminal Procedure Code has been rejected.<sup>2</sup>

As Section 6 of the *Maintenance Act*<sup>3</sup> talks about Obligation of Parties on Termination of Cohabitation-

*PART 6.-(1) In the case of cohabiting parties and subject to the provisions of this section, after the termination of cohabitation each spouse has an obligation, so far as he or she is capable, to maintain the other spouse to the extent that such maintenance is necessary to meet the reasonable needs of the other spouse, where the other spouse cannot practically meet the whole or any part of those needs having regard to-*

- (a) *The circumstances specified in section 14(4); and*
- (b) *Any other circumstances which, in the opinion of the Court, the justice of the case requires to be taken into account. (2) An application for maintenance upon the termination of cohabitation may be made within twelve months after such termination, and the Court may make a maintenance order in accordance with Part VI in respect of the application.*

Altogether, it is now proved that an individual owes a duty to his/her spouse upon termination of marriage or cohabitation.

#### **SECTION 24 OF THE HINDU MARRIAGE ACT<sup>4</sup>**

Spouse can assert support from his wife however the choice is to be made by the court whether to acknowledge his case or relinquish it. The accompanying two are the conditions in the Hindu Marriage Law that worry with the support.

*Maintenance pendente lite and costs of procedures: Where in any procedure under this Act it appears to the Court that either the spouse or the husband, all things considered, has no free wage adequate for her or his help and the vital costs of the procedure, it might, on the utilization of the wife or the husband, arrange the respondent to pay the solicitor the costs of the procedure such aggregate as, having respect to the applicant's own particular wage and the wage of the respondent, it might appear to the Court to be sensible.*

*Permanent divorce settlement and upkeep:*

- (1) *Any court practicing ward under this Act may, at the season of passing any pronouncement or whenever consequent thereto, on application made to it for the reasons by either the spouse or the husband, by and large, arrange that the respondent might pay to the candidate for her or his upkeep and bolster such gross aggregate or such month to month or periodical total for a term not surpassing the life of the candidate as, having respect to the respondent's own particular pay and other property of the candidate, the lead of the gatherings and different conditions of the case, it might appear to the Court to be simply, and any such instalment might be secured, if fundamental, by a charge on the immoveable property of the respondent.*
- (2) *If the Court is fulfilled that there is an adjustment in the conditions of either party whenever after it has made a request under sub-area (1), it might at the case of either party, shift, alter or revoke any such request in such way as the court may consider just.*

To summarize, the section states that from the examination of Section 24, it is abundantly certain that the motive and intent of this Section is to empower the spouse or the wife, all things considered, who has no autonomous source of income for his or her support and necessary cost and expenses of procedures under the Act to get support costs pendent lite so that the procedures might be proceeded with no hardships on his or her part.

The advantages conceded under this Section are just impermanent in nature and there are different arrangements of law where a spouse, who is not able to maintain herself, can claim maintenance/permanent alimony from the husband e.g. Section 25 of HMA or under provisions of Hindu Adoption and Maintenance Act.

The provisions of this Section are not implied for equalising the income of spouse with that of husband however are intended to

see that where divorce or other proceedings are filed either of the party should not suffer because of paucity of source of income and the Court should pass an order even during the pendency of such a petition, Where a spouse has no wage or is with no help for looking after herself, the Court needs to pass a request considering the salary and living status of the husband.

Notwithstanding, where the spouse and her wife both are earning and both are having great pay, just on the grounds that there is some salary distinction, an order is not required to be passed under Section 24 of HMA.

'Pendente lite' means till the end of litigation.<sup>5</sup>

#### **COMPARATIVE ANALYSIS& A STUDY OF CASES**

This part of the project deals with the law in India with respect to the period of time. How over the years the scenario of receiving maintenance is changed. India being majorly dominated by the patriarchal society one can't just ignore the unjustified judgements passed against men. The men's rights activists in India claim that the divorce and child custody laws are biased against men.<sup>6</sup> They say that this allows divorced wives to stop men from seeing their children for long periods of time. They have said that alimony should not be granted if the wife is the primary earner of the family and the law should see men capable of bringing up children.<sup>7</sup>

In India, child custody is granted to the father only if the mother is mentally unstable or has left home leaving behind the child. At present, the matter custody in case of divorce is governed by two laws: Guardians and Wards Act, 1890 and Hindu Minority and Guardianship Act, 1956. But, both laws do not have any provisions for shared parenting or joint custody.<sup>8</sup>

Under the Evidence Act, 1872, if a child is born within a marriage or within 280 days of dissolution of a marriage, then the child is considered legitimate and is entitled to child support and inheritance. At present, DNA paternity tests do not take precedence over this law. The courts may still choose to ignore the genetic evidence and ask a non-biological parent to pay for child support.<sup>9</sup>

An organisation named Children's Rights Initiative for Shared Parenting (**CRISP**) has demanded better child access laws and has called the current custodial laws gender-biased. It has demanded amendments to the Guardians and Wards Act to make shared parenting mandatory.

Swarup Sarkar of Save Family Foundation has speculated that now two out of three Indian couples actively share parenting. Kumar Jahagirdar, president of C.R.I.S.P, has noted a growth in men who are the primary caregivers in the family.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is not gender neutral and applies to the protection of women only. Rajesh Vakahria<sup>10</sup>, a member of **SIFF**, has pointed out the bill was originally gender neutral until Development and some NGOs intervened and changed the name. He said that it was an out dated concept to consider that only women suffer from sexual harassment.<sup>11</sup>

As we can see in the paragraph above, the authorities in India have a mind-set regarding only women getting harassed at a workplace and didn't even consider the same for men and changed the act all together. This shows the narrow-mindedness of the people in India. Women do suffer a lot, arguably a lot more but the fact that Men in India are over looked is a shameful thing.

Did the court make any effort to provide a job to the husband and the husband refused to do the same? We have a well-established law that if a person accused in any criminal case spends more than 48 hours in jail, he is supposed to lose his job. Has our court made any effort to abolish such unfair law or tried to rectify it? If the answer is no, then why are the judges trained to assume that a husband can't lose his job when accused under 498A, Domestic Violence Act or any other criminal case is filed against him?

The laws are unfair and they are being promoted by the Indian judicial system. If one is jobless, the court will remind him about the minimum wage rate. It will say they came to court with unclean hands, and that they are hiding facts. One will be punished with a high amount of **maintenance**, with an assumption based income.

But when a well-educated, physically fit wife claim she is jobless, the judiciary totally ignores and forgets all logic and the laws of natural justice.

It is forgotten that there is a Minimum Wages Act for Women, and they willingly order the "Interim **Maintenance**" which will be beyond ones capacity to pay. One will also have to pay huge arrears, and many husbands can get trapped in a no man's land.

After the Interim Maintenance order, if the husband fails to pay the same, he can't get any relief from HC / SC through a review/revision petition, as the same will be rejected with simple logic: first pay all dues then we will consider your application. Now, one will take a loan or pay the amount to make the judge hear the petition, still there is no guarantee that one will get any relief. Judges will not give any stay on any unfair order and keep his petition pending for years. Judges will neither reject your petition nor will dispose of the petition.

It was held in the case of *Sanjay Bhardwaj & Ors. V. State & Anr*<sup>12</sup>. That-

"We are living in an era of equality of sexes. The constitution provides equal treatment to be given irrespective of sex, caste and creed. An unemployed husband, who is holding an MBA degree, cannot be treated differently from an unemployed wife, who is also holding an MBA degree. Since both are on equal footing one cannot be asked to maintain other unless one is employed and other is not employed.

*"Hon'ble High Court further held that "no law provides that a husband has to maintain a wife, living separately from him, irrespective of the fact whether he earns or not. Court cannot tell the husband that he should beg, borrow or steal but give maintenance to the wife, more so when the husband and wife are almost equally qualified and almost equally capable of earning"*

In order to see the disadvantages that men face in general, in the case of *Amit Kumar V. Navjot Dubey*<sup>13</sup> the Punjab and Haryana court denied to accept the contention of the husband and upheld the decision of the district court which went against the husband and the Petitioner had to pay maintenance amount. The single bench of Justice Rekha Mittal held that,

*"Taking into consideration, prices of daily necessities of life, expenses on education of the children, who have to meet the challenges of the society and face peer pressure, I find it difficult to accept contention of the petitioner that maintenance pendente lite assessed by the court below is on higher side and requires reduction."*

The court observed that the wife is entitled to enjoy the same amenities of life as she would have been had she been staying in the matrimonial home, adding that it was the settled position of law. The Punjab and Haryana High Court has dismissed a petition against the decision of the district court, Pathankot, which granted the wife right to maintenance under the Hindu Marriage Act, 1955 even when she was earning more than her husband.

The lower court had ordered the husband to pay Rs. 15,000 per month to the wife in order to meet the expenses of the two children, who were residing with her. The petitioner sought to get rid of his responsibilities of a father on the pretext that his wife was earning more than him and he had his old parents to look after.

In the case of *Kalpna Gupta V. Santosh Gupta*,<sup>14</sup> it was held that- Contesting a divorce case against his wife Kalpna, a bank employee, for the last eleven years, Gupta claimed maintenance to meet the litigation expenses.

On November 7, a single judge bench of the Allahabad High Court in Lucknow passed an interim maintenance order directing Kalpna Gupta to pay him Rs 2000 a month.

The order comes into effect from September 1, 2005. Justice DP Singh has also directed the family court, Lucknow, to ensure regular payment of the maintenance, according to the order.

Guptas had been married in 1989. The marriage, according to the neighbours, was "doomed right from the word go as the wife was more enterprising and aggressive and Santosh had been a happy go lucky, laid back sort of person."

Kalpna was employed with the Bhagirathi Grameen Bank in Sitapur, Santosh worked with the UPTRON till 1994 when the company was declared a sick unit.

In 1997 Kalpna approached the family court for a divorce on ground of cruelty and demand of dowry by her husband and his family.

Santosh responded by filing an application under section 24 of the Hindu Marriage Act, and asked for maintenance during the pendency of litigation to support the necessary expenses of the proceedings.

He was jobless and had no funds to contest the petition, he claimed. The family court in September 2005 rejected the claim and held that

*"He was an able-bodied and healthy man and capable of earning his own livelihood and therefore did not deserve any monetary support from his spouse".*

Santosh challenged the order in the high court and proved luckier this time. In his order Justice Singh remarked that

*"Since the petitioner was residing in own house and he has to incur the expenses of his widowed mother, his responsibilities seem to be higher than that of the respondent no 1 (the wife)".*

The judge also said that  
*"Section 24 of the Hindu Marriage Act was equally applicable to both wife and husband"*

and directed that Kalpna whose salary is little above Rs. 13000 a month to pay him Rs. 2000 till the pendency of the suit to enable him to contest the case, informed Santosh's lawyer MM Shrivastava.

In the case of *Pramod Saigal v. Amrita Sanghi*<sup>15</sup>, the facts were as follows-

It is very unfortunate litigation between the husband/petitioner and wife/respondent who are Advocates of the Supreme Court and of this Court. They got married on 25th January, 1996. However, in the year 2004, the husband, who is the petitioner herein, had a health problem and he underwent various surgeries including removal of large intestine and rectum which prevented him from continuing his active practice. In the year 2009 the respondent/wife filed a divorce petition under Section 13(1) (i-a) of the Hindu Marriage Act, 1955 and a notice was issued to the husband for 9th July, 2009 who appeared and moved an application under Section 24 of the Hindu Marriage Act, 1955 for grant of maintenance and litigation expenses from the wife to enable him to contest the matter and to meet his medical expenses. The said proceedings continued for some time. The petitioner also filed an application under Order 11 CPC.

Thereafter, the respondent filed an application under Order VIII Rule 10 CPC for striking off defence of the petitioner. The petitions as well as the pending applications are disposed of.

In the case of *Smt. Swati Kaushik V. Sh. Ashwini Sharma*<sup>16</sup>, it was held that,

The woman shall during the period of one year look for a job and start an independent life. After the conclusion of one year, respondent (husband) shall not pay the maintenance of woman," Additional Sessions Judge *Anuradha Shukla* Bhardwaj said.

*"The appellant will have to take up some work sooner or later, she being an educated woman having earlier work experience," the court said, adding "this maintenance, however, cannot be perpetual as argued by the counsel for the respondent (man).*

The court directed the man to pay an additional amount of Rs 10,000 per month to his wife but said "this maintenance, however, shall be for restricted period i.e. for one year from the date of this order."

In the case of, *Firdos Mohd. Shoeb Khan vs. Mohd. Shoeb Mohd Salim Khan* – Mumbai family court 2015<sup>17</sup>

The learned counsel for respondent has argued that the petitioner is well qualified and she is earning an amount of Rs.50, 000/per month, she is having sufficient income for her maintenance. It is argued by the learned counsel for respondent that before the police station Worli on 12.11.2011 the petitioner has given statement u/s 161 of CrPC. The petitioner has admitted that she has completed degree in Food and Science Nutritionist, she had worked as a dietician, she is Post Graduate in Dietician field, she had also worked with Larcen and Tubro etc. but at present she is not working. The above statement made by the petitioner clearly shows that she is well qualified and able to do job. The respondent though submitted that she is having huge investment in crores of rupees but nothing is placed on record. It is clear from the statement of petitioner that petitioner is well qualified having capacity to earn. The Hon'ble Madhya Pradesh High Court in the case of *"Mamta Jaiswal Vs. Rajesh Jaiswal* held that well qualified wife is not entitled to remain as an idle and claim maintenance from her husband.

*"In short, the wife is not entitled to advantage of her own wrong; she cannot harass the husband on the count of maintenance though she is capable to earn. In the present case in hand, the petitioner wife is very qualified, she has worked with various companies. This admitted by herself, now she is claiming that she is a housewife, having no source of income. The wife who is well qualified and claiming maintenance by sitting idle is not entitled to get maintenance, secondly she herself has admitted that though her husband is connected with garment business but he has share worth rs.5, 000/only. Considering the above circumstances, it is clear that the wife is having good capacity to earn. According to respondent, she is earning but no any documentary evidence is on record that she is earning. Nothing is on record to prove the income of respondent at this primary stage. In such circumstances, in my view, at this juncture petitioner is not entitled to get maintenance. Hence I pass the following order:*

#### ORDER

1. The application is rejected.<sup>18</sup>

Also to quote the case of *Mamta Jaiswal V. Rajesh Jaiswal*<sup>19</sup> referred to in the case above, on 24 March, 2000<sup>20</sup>

The petitioner Mamta Jaiswal has acquired qualification as MSc. M.C. M.Ed, and was working in Gulamnabi Azad. College of Education, Pusad, Distt. Yeotmal (MHS). The husband Rajesh Jaiswal is sub-engineer serving in Pimampur factory. The order which is under challenge by itself shows that Mamta Jaiswal, the wife was earning Rs. 4,000/- as salary when she was in service in the year 1994. The husband Rajesh Jaiswal is getting salary of Rs. 5,852/-. The Matrimonial Court awarded alimony of Rs. 800/- to Mamta Jaiswal per month as pendente lite alimony, Rs. 400/- per month has been awarded to their daughter Ku, Diksha Jaiswal. Expenses necessary for litigation has been awarded to the tune of Rs. 1,500/-. The Matrimonial Court has directed Rajesh Jaiswal to pay travelling expenses to Mamta Jaiswal whenever she attends Court for hearing of them matrimonial petition pending between them. Matrimonial petition has been filed by husband Rajesh Jaiswal for getting divorce from Mamta Jaiswal on the ground of

cruelty.

This revision petition arises on account of rejection of the prayer made by Mamta Jaiswal when she prayed that she be awarded the travelling expenses of one adult attendant who is to come with her for attending Matrimonial Court

#### Held:

*In the present case the husband has not challenged the order. Therefore, no variation or modification in it is necessary though this revision petition stands dismissed. The Matrimonial Court is hereby directed to decide the matrimonial petition which is pending amongst these two spouses as early as possible. The Matrimonial Court is directed to submit month wise report about the progress of the said matrimonial petition to this Court so as to secure a continuous, unobstructed progress of matrimonial petition. No order as to costs. The amount of pendente lite alimony payable to Mamta Jaiswal by husband Rajesh Jaiswal should be deposited by him within a month by counting the date from the date of order. The failure on this aspect would result in dismissal of his matrimonial petition. He should continue payment of Rs. 400/- per month to his daughter Ku. Diksha Jaiswal right from the date of presentation of application of her maintenance i.e. 14.5.1998. That has to be also deposited within a month.*

**Bombay High Court** observes that a wife who deserts her husband without any just or sufficient cause is not entitled to maintenance. The court's observation came in the awake of a case involving a marriage dispute between couples.

The court tied the knot in April 2003. According to Milind Joshi, an advocate representing the husband, the woman had abandoned his client just one and a half year after marriage without even the slightest of provocation. She did not even respond to the legal notices sent by the husband urging her to return home.

After failing to get a response, he filed a petition in a family court demanding restitution of conjugal rights. However, the wife then filed a counter petition seeking maintenance.

The family court had allowed the petition filed by the husband in July 2006, while dismissing the one filed by the wife. She then appealed against conjugal rights, which was also dismissed. When the wife still refused to return home, the husband filed another petition for divorce on the ground of cruelty. On March 16, 2009, the family court ruled in favour of the husband's call for divorce. Following this, the wife filed a new petition asking for maintenance.

In her defence, the wife urged that since divorce was already granted, she was now entitled to maintenance. Her lawyer argued that she was not previously entitled to maintenance because of her decision to live separately from her husband without sufficient reason, but since now they were legally divorced; the husband was legally liable to pay for maintenance.

However, Justice Abhay Thipsay of the Aurangabad bench of Bombay High Court dismissed the plea saying:

*"Though this argument is rather ingenious, there is actually no merit in it." He said the marriage had been dissolved because the court did not find any just or lawful reason for her to leave her husband. When this is the position, just because the marriage has been dissolved, the wife does not automatically become entitled to maintenance"<sup>21</sup>*

#### **ELIGIBILITY OF CHILDREN TO CLAIM MAINTENANCE**

In the case of *T Vimala and others versus S Ramakrishnan*, it was held that, children who become major and do not suffer from any disability can also claim maintenance from their fathers like children under the age of 18. They can get educational expenses as well under section 125 of the Criminal Code OF Procedure in the state.

The Madurai bench of the Madras high court passed an order

taking note of section 20 of the Hindu Adoption and Maintenance Act.

On September 14, 2012, the judicial magistrate court awarded maintenance of Rs 1,500 to the wife and a maintenance of Rs 1,500 and Rs 2000 as educational expenses to both daughters.

Challenging it, the man went to the principal sessions judge (PSJ), who on October 25, 2013 set aside the entire amount awarded to the first daughter who crossed 18 years and educational expenses awarded to the second daughter.

The claimants filed revision petitions against the PSJ order.

**Justice P Devadass** of the bench who passed the order said, "No doubt, section 125 of the Cr.P.C is not happily worded, since it has prescribed certain riders for a daughter or son who has attained majority to claim maintenance from the father. They must establish that they are under physical disability or they are suffering from injury.

*There may be cases where a daughter or a son, even after having attained majority, may not have sufficient financial capacity to maintain themselves and they continue to need the support of their father. This is a reality. The court should interpret the law."*

He also said,

*"In a case the Supreme Court in its zeal to advance the scheme of social justice incorporated in section 125 of Cr.P.C. maintained the maintenance granted to a daughter who attained majority and did not suffer any disability by incorporating section 20 of the Hindu Adoptions and Maintenance Act. Had the decision of the Supreme Court been produced, the thinking of the principal sessions judge would have been different. Thus, the sessions court's scrapping of maintenance granted to a daughter in the case on hand by the judicial magistrate court, Palani, is to be set aside."*

#### **MAINTENANCE FOR WOMEN IN 2017**

A woman can claim 25% of the former husband's net salary as alimony, the Supreme Court has said, setting a benchmark for maintenance paid to women by former husbands after divorce.

The Supreme Court expressed that 25% of a spouse's net pay may constitute an "equitable and legitimate" sum as divorce settlement, the Economic Times reported. The SC arrange went ahead a supplication documented by a Hoogly-based man against a Calcutta high court arrange, requesting that he pay Rs23, 000 to his offended wife as a support. The man earned Rs95, 527 a month, said the report.

However, in a relief to the petitioner, a bench of the apex court reduced the alimony amount from Rs23, 000 to Rs20, 000, in view of the fact that the petitioner had remarried and needed to provide for his new family as well.

"Twenty-five per cent of the husband's net salary would be just and proper to be awarded as maintenance to the (former) wife," the SC bench said.

#### **DIFFERENCE B/W SECTION 125 AND SECTION 24 HINDU MARRIAGE ACT**

**SECTION 125 IN THE CODE OF CRIMINAL PROCEDURE, 1973<sup>22</sup>**  
125. Order for maintenance of wives, children and parents.

- (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 itself, 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 itself

#### **SECTION 24 IN THE HINDU MARRIAGE ACT, 1955<sup>23</sup>**

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.

#### **DIFFERENCES:<sup>24</sup>**

Section 24 for only Hindus, Section 125 is for all the people in general, even parents minor son, minor daughter are also claimed under this section, and this section is considered a speedy process.

Section 24 is an interim relief which can be granted during the pending proceedings in Hindu Marriage Act. Once, case is over, Section 24 benefit will automatically stop. It is available only for Hindus.

Meanwhile,

Section 125 Cr.P.C. is a permanent maintenance relief. Even though this section is provided in criminal procedure code, it has got civil nature but the proceedings will be conducted similar to criminal case, i.e., a little bit quicker. The relief once provided in Section 125 is valid till the wife remarries. It is applicable to all religions.

#### **CONCLUSION**

Men in India have been a victim of gender biased laws for a long time and section 24 prohibited such vile usage of the law but it is operated like that in India. Women are easily able to obtain maintenance. Things are getting better now as false cases or unnecessary cases about maintenance from women are denied. Double standards are something the law wasn't made to achieve but sadly it has become the case. However, unreasonable and unfair clauses are present too which might be gender biased or fail to create any logic.

As citizens of India, it is our duty to be truthful and not discriminate as the law doesn't too.

<sup>1</sup> [simranlaw.com/maintenance-under-section-24-of-hindu-marriage-act/](http://simranlaw.com/maintenance-under-section-24-of-hindu-marriage-act/)

<sup>2</sup> [indiankanoon.org/doc/1728023/](http://indiankanoon.org/doc/1728023/)

<sup>3</sup>

<sup>4</sup> <http://moj.gov.jm/sites/default/files/laws/Maintenance%20Act.pdf>

<sup>5</sup> [indiankanoon.org/doc/1449825/](http://indiankanoon.org/doc/1449825/)

<sup>6</sup> <http://thelegiteye.in/2016/11/28/maintenance-under-section-24-of-the-hma-vs-maintenance-under-section-125-of-crpc/>

<sup>7</sup> "Push for shared parenting – Activists for law to make joint custody must in broken homes". *The Telegraph*. 17 August 2014.

<sup>8</sup> "Movement protecting men's rights launched". *The Hindu*. 5 September 2009.

<sup>9</sup> "India may opt for shared child custody". *The Times of India*. 11 November 2014.

<sup>10</sup> "India's Doubting Fathers and Sons Embrace DNA Paternity Tests". *The New York Times*. 16 August 2013.

<sup>11</sup> "Yawning gaps in yet to be notified Sexual Harassment at Workplace Act". *Zee News*. 30 November 2013.

<sup>12</sup> "Make workplace harassment laws gender neutral, demand NGOs". *The Times of India*. 26 November 2012.

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