
ALIMONY, MAINTENANCE & ADOPTION

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1. Maintenance of Neglected Wives, Divorced Wives, Minor Children, Disabled Children & Parents who are unable to support themselves vide Cr.P.C.

The word 'Maintenance' is not defined in the Code of Criminal Procedure, 1973. Chapter IX of the Code of Criminal Procedure deals with provisions for maintenance of wives, children and parents. 'Maintenance' in general meaning is keeping something in good condition. 'Maintenance' in legal meaning is money (alimony) that someone must pay regularly to a former wife, husband or partner, especially when they have had children together. It is the duty of every person to maintain his wife, children and aged parents, who are not able to live on their own.

Scope and Objectives

Scope and objectives of proceedings for maintenance of wives, children and parents are the following:

- The proceedings are not punishable in nature. The main objective of Chapter IX of Cr.P.C. is not to punish a person who is not maintaining those whom he is bound to maintain.
- The main objective is to prevent homelessness by way of procedure to provide a speedy remedy to those who are in pain.
- It does not make any distinction between persons belonging to different religions or castes.
- It has no relation to the personal laws of parties.

Order for Maintenance of Wives, Children and Parents

Section 125 of Cr.P.C. deals with "Order of maintenance of wives, children and parents". In this Section, it is given the name of parties who are entitled to get maintenance, essential ingredients to claim and get maintenance and order of the first-class magistrate.

In the case of **Mohd. Ahmed Khan v. Shah Bano Begum**, Supreme Court delivered a judgement favouring maintenance given to an aggrieved divorced Muslim woman.

Section 125 of Cr.P.C. deals with "Order for maintenance of wives, children and parents". According to Section 125(1), the following persons can claim and get maintenance:

- Wife from his husband,
- Legitimate or illegitimate minor child from his father,
- Legitimate or illegitimate minor child (physical or mental abnormality) from his father, and
- Father or mother from his son or daughter.

Wife

In the case of **Chanmuniya v. Virendra Singh**, Supreme Court has defined 'Wife' and it includes even those cases where a man and woman have been living together as husband and wife for a reasonably long period of time. Strict proof of marriage should not be a precondition of maintenance under Section 125 of the Cr.P.C.

In the case of **Smt. Yamunabai Anantrao Adhav v. Ranantrao Shivram Adhav**, the Supreme Court held that marriage of women in accordance with Hindu rites with a man having a living spouse is completely nullity in the eye of law and she is not entitled to benefit under Section 125 of the Cr.P.C.

In the case of **Sirajmohmedkhan Janmohamadkhan v. Hafizunnisa Yasinkhan**, the Supreme Court held that maintenance can be allowed to the wife when her husband is impotent.

A wife can claim and get maintenance from her husband in the following conditions:

- She is divorced by her husband, or
- Obtained divorce from her husband, and
- She has not remarried, and
- She is not able to maintain herself.

Note: Muslim wife can also claim maintenance under Cr.PC though they have a separate Act (Muslim Women Protection of rights on Marriage Act) for them.

A wife cannot claim and get maintenance from her husband in the following conditions:

- Wife living in adultery, or
- Refuses to live with husband without any valid reasons, or
- Living separately by mutual consent.

Legitimate or Illegitimate Minor Child

'Minor' means a person who, under the provisions of Section 3 of the Indian Majority Act, 1875 is deemed not to have attained his majority i.e., above the age of 18 years.

Minor Son (Legitimate or Illegitimate) is entitled to get maintenance under Section 125 of Cr.P.C.

If Minor Daughter (Legitimate or Illegitimate) is unmarried, then she is entitled to get maintenance from her father and if she is married, then she is also entitled to get maintenance from his father but the magistrate has to be satisfied that her husband has not essential and sufficient means for the maintenance of his minor wife. In the case of **Shahbuddin v. State of UP**, a minor daughter attaining majority during the pendency of the application for maintenance was held entitled to maintenance up to the date of majority.

Legitimate or Illegitimate Abnormal Child who has attained Majority

If any major child (Legitimate or Illegitimate) is abnormal (mentally or physically unfit), then the father of that child has to maintain him and he can claim maintenance on this ground of abnormality.

Father or Mother

- Natural father and mother can claim maintenance.
- Mother includes adoptive mother, she can claim maintenance from adoptive son.
- Father can claim maintenance, it is a statutory obligation, this claim cannot be defeated by pleading that the father failed to fulfil his parental obligation.
- A childless stepmother can claim maintenance.

In the case of *Pandurang Bhaurao Dabhade v. Baburao Bhaurao Dabhade*, Bombay High Court has held that the father or mother can claim maintenance under Section 125(1)(d) if he or she is unable to maintain himself or herself. But it is also important that if parents claim maintenance to their children, children must have sufficient means to maintain their parents and yet neglects or refuses to maintain the father or mother.

Essential Elements for granting Maintenance

There are some essential conditions which should be fulfilled for claiming and granting maintenance:

1. Sufficient means for maintenance are available.
2. Neglect or refusal to maintain after the demand for maintenance.
3. The person claiming maintenance must be unable to maintain himself/herself.
4. Quantum of maintenance depends on the standard of living.

Sufficient means to Maintain the Person

If any person has sufficient means for maintenance, then it is his duty to maintain his wives, children and parents. If sufficient means are not available, then it will be a perfect and valid defence for people who are legally bound for maintenance of wife, children and parents.

Neglect or Refusal to maintain

Any person neglects or refuses to maintain his wives, children and parents in malafide intention or in any type of egoistic behaviour on the demand for maintenance by them.

The person who claims maintenance must be unable to maintain himself/herself

It is a very important condition for granting maintenance that a person who is claiming maintenance must be unable to maintain himself/herself. For example- If a wife is earning well, then she cannot claim maintenance under this Section. In the case of **Abdulmunaf v. Salima**, it was held that the wife who is hale and healthy and is sufficiently educated to earn for herself but refuses to earn from own and claim maintenance from her husband will be entitled to claim maintenance but that her refusal to earn under the circumstances would disentitle her to get complete amount of maintenance.

Special provision for maintenance of minor married girl

*If the husband of a minor daughter does not have sufficient means to maintain her, then it is the duty of her father to give maintenance. In these circumstances, married minor daughter is entitled to get maintenance from the father. In the case of **Alok Banerjee v Atoshi Banerjee**, a person who is unable to maintain themselves.*

Quantum of Maintenance

Quantum of maintenance means the amount of maintenance. Quantum of maintenance depends on the standard of living. For example- If any issues raised in a rich family, then demand for maintenance will be more as compared to poor family according to their standard of living in a prior life.

Jurisdiction of Magistrates to deal with Maintenance Proceedings

According to Section 125(1)(d), If any person neglects or refuses to maintain his wife, children or parents, then a Magistrate of the First Class can order such person to make a monthly allowance for the maintenance of his wife, children or parents, at such monthly rate as such Magistrate thinks fit, and to pay the same to such person as the direction of magistrate.

If a minor female child is unmarried, then the magistrate can order to make such allowance, until she attains her majority. In case a minor child is married and the magistrate is satisfied that the husband of such minor female child is not possessed of sufficient means, then the magistrate can order father of the minor female child to make such an allowance for maintenance.

When a proceeding is pending regarding monthly allowance for maintenance, the Magistrate can order such person to make a monthly allowance for the interim maintenance of his wife, children or parents and the expenses of such proceeding which the Magistrate considers reasonable.

An application for the monthly allowance for the interim maintenance and expenses of proceeding should be disposed within sixty days from the date of the notice of the application to such person.

According to Section 125(2), If a court order for such allowance for maintenance or interim maintenance and expenses of the proceeding, then it should be payable from the date of the order or if so ordered, then it shall be payable from the date of application for maintenance and expenses of proceedings.

According to Section 125(3), If any person fails to comply with the order without sufficient cause, then Magistrate can order to issue a warrant for levying the amount with fines. If the person again fails after the execution of the warrant, then the punishment of imprisonment for a term which may extend to one month or until payment of sooner made is awarded.

Procedure for Maintenance

Section 126 of Cr.P.C. deals with “Procedure for maintenance”. This Section says the following:

- Proceeding under Section 125 may be taken in the following district:
 1. Where he is, or
 2. Where he or his wife resides, or
 3. Where he last resided with his wife or mother of an illegitimate child.
- Evidence to be taken in the presence of a person against whom maintenance is to be ordered.
- If a person is wilfully avoiding summons, then ex-parte evidence is taken in that case.

Alteration in Allowance

Alteration in allowance means an order to increase, decrease or remove/cancel the allowance which was ordered by the Magistrate under Section 125.

According to Section 127(1), if a magistrate ordered to give allowance for maintenance under Section 125 according to the conditions of parties at that time, but if the present conditions of parties have changed, then he can also order to alter the allowance. For example-

1. Husband had a well-settled job and means for maintenance, on this basis the Court has ordered him to maintain his wife and to allowance under Section 125. But in the present condition, the husband has no job and means for maintenance. Then, the Court can alter the allowance and can reduce the amount of allowance.
2. If a wife was not having any job or she was unable to maintain herself and she got the order of allowance under Section 125. But after some months, she is well settled and she has the means to maintain herself. In this case, the Court can order to remove or cancel allowance.

According to Section 127(2), Magistrate shall cancel or revoke any order given under Section 125 by him, if it appears that it should be cancelled in consequences of any decision of the competent Civil Court. For example- If Magistrate has ordered to give allowance to wife after divorce but Civil Court has ordered to live together. Then, Magistrate has to revoke his order which was given under Section 125.

According to Section 127(3), where an order has been made in favour of women under Section 125, then the magistrate can cancel the order in the following case:

1. If a woman is remarried after divorce.
2. If a woman has taken allowance under any personal laws after divorce.
3. If a woman has voluntarily waived her right to maintenance.

According to Section 127(4), the Civil Court shall take into account the sum which has been paid to such person as monthly allowance for maintenance and interim maintenance under Section 125 at the time of making any decree for the recovery of any maintenance or dowry.

Enforcement of order of Maintenance

Section 128 deals with “Enforcement of order of maintenance”. According to this Section, the following are the conditions for enforcement of the order of maintenance:

- Copy of order under Section 125 is given to that person free of cost in whose favour it is made. In case the order is in favour of children, then the copy of the order will be given to the guardian of children.
- If any Magistrate has made an order under Section 125, then any Magistrate of India can enforce this order where that person lives who have to give maintenance.
- The Magistrate has to satisfy two conditions before enforcement of order:
 1. Identity of parties, and
 2. Proof of non-payment of allowances.

2. Alimony and Maintenance: An Independent Remedy under Indian Personal Laws

Marriage marks the beginning of a partnership that is expected to last a lifetime by the society. But this partnership does not always go the expected way due to personal reasons of partners which eventually disturb their life and make it unbearable. Divorce has helped such individuals in these situations by seeking the remedy of law to separate from their partner. Divorce is the legal method of putting a relationship to an end and it should be justified by both the parties. There is usually a monetary compensation given to the financially weak party by the financially stronger one in order for them to maintain the same standard of living after separation. This compensation is usually an obligation by law in the majority of countries.

Alimony

The term alimony is derived from the Latin word ‘Alimonia’ which means sustenance. It is also referred to as spousal support or maintenance. It is a legal obligation of a partner to their spouse to provide financial support after the course of a divorce. This financial support is based on the family laws of the country. This alimony is decided based on the earning power and the person economically dependent on the marriage.

There are mainly two types of alimony-

1. Given at the time of court proceedings- This is usually the maintenance amount.
2. Given at the time of legal separation- This can be given either in a lump sum or as a fixed monthly or quarterly payment or as per the requirements of the spouse.

The personal laws of different religions in India govern the maintenance rights of a woman. These personal laws deal with marriage, divorce, and the maintenance for which there are various provisions for people who can claim maintenance.

Alimony under Hindu Law

In Hinduism, it is considered the spiritual duty of the husband to maintain his wife and give her all the comforts.

Under Section 24 of the *Hindu Marriage Act, 1955*, both the wife and the husband are entitled to claim maintenance from their spouse. Thus, this section does not differentiate between a male and a female. This maintenance depends on certain factors like husband's earnings, assets & liabilities, wife's financial standing, employment, etc.

When the couple decides to get divorced by mutual consent, the decision on the alimony to be paid by either of the party is on account of their decision and mutual understanding. But in contested matters, the issue of alimony is decided on the merits of each case. It is also possible that no alimony is given at all based on facts and circumstances. The maintenance amount depends entirely on the discretion of the court.

The wife also has an additional option to claim maintenance under Section 18 of the *Hindu Adoptions and Maintenance Act, 1956*. The entitlement to alimony is based on the following:-

- If the husband abandons her, without any justified reason, without her consent.
- If the husband treats her with cruelty.
- If the husband has another wife.
- If the husband suffers from a virulent form of leprosy.
- If the husband has concubine in the same house.
- If the husband converted to another religion.
- If there is some other reason for the wife to live separately.
- This section is read with Section 23 of this Act, which specifies that it shall be the discretion of the court to award maintenance if any and what amount to be awarded.

However, if the couple is married under the *Special Marriage Act, 1954*, only the wife has the entitlement to claim permanent alimony.

Alimony under Muslim Law

Here the parties first need to decide which law to file under, for the purpose of claiming the alimony amount. In Muslim law, women are the ones given the right to alimony. According to Sharia, the Muslim women are given the absolute right to maintenance. The right remains unjudged even if the wife has a good financial standing and the husband is poor.

For the Muslim women, *The Muslim Women(Protection of Rights on Divorce) Act, 1986* lays down the provisions for the maintenance/alimony. After a divorce she is entitled to:-

- A reasonable and fair amount to be paid during the iddat period.
- An amount equal to the dowry agreed to be paid during the time of marriage.
- A title to the property(or properties) given to her either before or after marriage.

Also, Muslim woman is eligible to claim maintenance if:-

- She did not remarry and is unable to maintain herself after the iddat period.
- She has children and is unable to support them.
- If there isn't anyone to maintain her, the magistrate would order the State Wakf Board to pay the maintenance.

Entitlement to Alimony

It is women who are entitled to the alimony rights. Alimony rights have been based on the existence of a weaker and stronger partner in financial standing. The stronger partner needs to compensate the weaker partner for all the comfort that has been taken away. But in a recent court case, it was ordered for the working wife to be entitled to alimony as well. It was based on the ground that it is the duty of the husband to provide for the wife and she has to be put on a higher pedestal. Also, a jobless husband was ordered to pay alimony to wife having a stable income. In case of "Streedhan", the wife has exclusive rights over the same and the assets she received from her family or the husband's family are to remain hers.

The husband may also be entitled to alimony, though it is rare. It was observed in a 2014 case where the wife was accused of physical and mental torture on her physically challenged husband and eventually ordered her to pay the alimony. The bench also observed that the cruelty or conduct should be such that no reasonable person would tolerate it.

A husband can claim maintenance from his wife if there is any permanent disability owing to which he cannot earn the daily livelihood. Also, during the process if it seems that the husband is not financially independent to pay for the expenses of the court proceedings, the court may order the wife to pay the husband in such a case keeping in mind both husband and wife's income and as may seem reasonable.

Section 24 of the Hindu Marriage Act, 1955 in the above matter says the following:

"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, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable."

This was seen in **Nivya VM v. Shivaprasad N.K.[OP (FC) No. 26 of 2015 (R)]**.

Quantum of Alimony

The maintenance amount to be paid is decided by the court on the basis of some specific parameters. These parameters are both spouse's income, net worth and investment as well as their financial needs and liabilities. Their standard of living and financial standing is also taken into account. There is not a fixed formula for the decision regarding alimony amount, generally, it was considered one-third of the spouse's income for paying the alimony. In a recent Supreme Court judgment, 25% of the husband's net salary was taken as a benchmark to constitute a just and proper amount of alimony. The court also observed that the amount must be just enough to live with dignity after the marital separation.

Certain factors are taken into account that influence the alimony amount as well as duration during which it needs to be paid. They are as follows:-

1. *Duration of marriage:* Marriages that lasted for more than 10 years are entitled to a lifetime alimony.
2. *Age of spouse:* A young receipt may get it for a shorter duration of time keeping in mind their prospective career excellence and potential to become financially sound.
3. *To equalize the economic condition of both spouses:* The higher earning spouse is entitled to pay heavy amount whereas a lower earning spouse may be asked to pay an able amount for alimony.
4. *Enjoyment of successful career:* Such a spouse may be subject to pay a higher amount of alimony.
5. *The health of spouse:* If the spouse claiming for alimony is in poor health, the other spouse will be subjected to paying high alimony to ensure proper wellbeing and medication for the spouse.
6. *Child custody:* The spouse who maintains child custody will be entitled to receive a greater amount for the expenditure incurred on child's upbringing and education.
7. Liabilities of the husband (like taking care of his wholly dependent parents) and flourishing career of the wife (earning sufficient amount comfortably) will also be considered.

Maintenance

Obligation of a husband to maintain his wife arises out of the status of the marriage. Right to maintenance forms a part of the personal law. Under the Code of Criminal Procedure, 1973 (2

of 1974), right of maintenance extends not only to the wife and dependent children, but also to indigent parents and divorced wives. Claim of the wife, etc., however, depends on the husband having sufficient means. Claim of maintenance for all dependent persons is limited to Rs 500 per month. Inclusion of the right of maintenance under the Code of Criminal Procedure has the great advantage of making the remedy both speedy and cheap. However, divorced wives who have received money payable under the customary personal law are not entitled to maintenance claims under the Code of Criminal Procedure.

Maintenance under Hindu Law

Under Hindu Law, the wife has an absolute right to claim maintenance from her husband. But she loses her right if she deviates from the path of chastity. Her right to maintenance is codified in the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956). In assessing the amount of maintenance, the court takes into account various factors like position and liabilities of the husband. It also judges whether the wife is justified in living apart from husband. Justifiable reasons are spelt out in the Act. Maintenance pendente lite (pending the suit) and even expenses of a matrimonial suit will be borne by either, husband or wife, if the either spouse has no independent income for his or her support. The same principle will govern payment of permanent maintenance.

Maintenance is a right to get necessities which are reasonable from another. It has been held in various cases that maintenance includes not only food, clothes and residence, but also the things necessary for the comfort and status in which the person entitled is reasonably expected to live. Right to maintenance is not a transferable right.

The Hindu Adoptions and Maintenance Act, 1956. Maintenance, in other words, is right to livelihood when one is incapable of sustaining oneself. Hindu law, one of the most ancient systems of law, recognises right of any dependent person including wife, children, aged parents and widowed daughter or daughter in law to maintenance. The Hindu Adoptions and Maintenance Act, 1956, provides for this right.

The relief of maintenance is considered an ancillary relief and is available only upon filing for the main relief like divorce, restitution of conjugal rights or judicial separation etc. Further, under matrimonial laws if the husband is ready to cohabit with the wife, generally, the claim of wife is defeated. However, the right of a married woman to reside separately and claim maintenance, even if she is not seeking divorce or any other major matrimonial relief has been recognised in Hindu law alone. A Hindu wife is entitled to reside separately from her husband without forfeiting her right of maintenance under the Hindu Adoptions and Maintenance Act, 1956. The Act envisages certain situations in which it may become impossible for a wife to continue to reside and cohabit with the husband but she may not want to break the matrimonial tie for various reasons ranging from growing children to social stigma. Thus, in order to realise her claim, the Hindu wife must prove that one of the situations (in legal parlance 'grounds') as stated in the Act, exists.

Grounds for award of Maintenance

Only upon proving that at least one of the grounds mentioned under the Act, exists in the favour of the wife, maintenance is granted. These grounds are as follows:

- i. The husband has deserted her or has wilfully neglected her;
- ii. The husband has treated her with cruelty;
- iii. The husband is suffering from virulent form of leprosy/venereal diseases or any other infectious disease;
- iv. The husband has any other wife living;
- v. The husband keeps the concubine in the same house as the wife resides or he habitually resides with the concubine elsewhere;
- vi. The husband has ceased to a Hindu by conversion to any other religion;
- vii. Any other cause justifying her separate living.

Bar to relief: Even if one of these grounds exists in favour of the wife, she will not be entitled to relief if she has indulged in adulterous relationship or has converted herself into any other religion thereby ceasing to be a Hindu. It is also important to note here that in order to be entitled for the relief, the marriage must be a valid marriage. In other words, if the marriage is illegal then the matrimonial relationship between the husband and wife is non-existent and therefore no right of maintenance accrues to wife. However, thanks to judicial activism, in particular cases the presumption of marriage is given more weightage and the bars to maintenance are removed.

Other dependents who can claim Maintenance: Apart from the relationship of husband and wife other relations in which there is economic dependency are also considered to be entitled to maintenance by the Hindu Adoptions and Maintenance Act, 1956. Accordingly a widowed daughter-in-law is entitled maintenance from her father-in-law to the extent of the share of her deceased husband in the said property. The minor children of a Hindu, whether legitimate or illegitimate, are entitled to claim maintenance from their parents. Similarly, the aged and infirm parents of a Hindu are entitled to claim maintenance from their children. The term parent here also includes an issueless stepmother.

Maintenance under Muslim Law

Under the Muslim Law, the Muslim Women (Protection of Rights on Divorce) Act, 1986 protects rights of Muslim women who have been divorced by or have obtained divorce from their husbands and provides for matters connected therewith or incidental thereto.

This Act inter alia provides that a divorced Muslim woman shall be entitled to

- a) reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband;
- b) where she herself maintains children born to her before or after her divorce, a reasonable and fair provision and maintenance to be made and paid by her former husband for a period of two years from the respective dates of birth of such children;

- c) an amount equal to the sum of mehr or dower agreed to be paid to her at the time of her marriage or at any time thereafter according to the Muslim Law; and
- d) all property given to her before or at the time of marriage or after her marriage by her relatives or friends or by husband or any relatives of the husband or his friends.

In addition, the Act also provides that where a divorced Muslim woman is unable to maintain herself after the period of iddat the magistrate shall order directing such of her relatives as would be entitled to inherit her property on her death according to the Muslim Law, and to pay such reasonable and fair maintenance to her as he may determine fit and proper, having regard to the needs of the divorced woman, standard of life enjoyed by her during her marriage and means of such relatives, and such maintenance shall be payable by such relatives in proportion to the size of their inheritance of her property and at such periods as he may specify in his order.

Where such divorced woman has children, the Magistrate shall order only such children to pay maintenance to her, and in the event of any such children being unable to pay such maintenance, the magistrate shall order parents of such divorced woman to pay maintenance to her. In the absence of such relatives or where such relatives are not in a position to maintain her, the magistrate may direct State Wakf Board established under Section 13 of the Wakf Act, 1995 functioning in the area in which the woman resides, to pay such maintenance as determined by him.

Permanent alimony and maintenance

- 1) Any Court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on an application made to it for the purpose by either the wife or the husband, order that the defendant shall pay to the plaintiff 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 plaintiff as having regard to the defendant's own income and other property, if any, the income and other property of the plaintiff, the conduct of the parties and other circumstances of the case, it may seem to the Court to be just, and any such payment may be secured, if necessary, by a charge on the movable or immovable property of the defendant.
- 2) The Court if it is satisfied that there is change in the circumstances of either party at any time after it has made an 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.
- 3) The Court if it is satisfied that the party in whose favour, an order has been made under this section has remarried or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he had sexual intercourse with any woman outside wedlock, it may, at the instance of the other party, vary, modify or rescind any such order in such manner as the Court may deem just.

Alimony Pendente Lite

Relief of maintenance is available under section 125 of Code of Criminal Procedure and also under the Protection of Women from Domestic Violence Act. Hindu Marriage Act also provides for the relief of maintenance.

Under Hindu Marriage Act where in any proceeding under this Act it appears to the Court that either the wife or the husband has no independent income sufficient for her or his support, Court may order for payment of monthly maintenance to the petitioner by the respondent.

Section 24). For such a relief, one may file an application with the main petition or during pendency of the proceedings under this Act. Suppose you have filed a petition for decree of divorce while filing the same or during its pendency, such a relief of maintenance can be claimed. You are required to satisfy the Court that you have no independent income sufficient for her or his support and that the other party (husband or wife) has sufficient income.

While passing such an order, Court is to take into consideration income not only of the petitioner but also that of the respondent and further that the petitioner has no independent income sufficient for her or his support.

As and when -you file such an application before the Court, you are required to furnish detailed affidavit regarding your source of income or liability, if any. To prove the income of the opposite party, you may file any document in respect thereof, in case you are in possession of any such document. Otherwise, you can call upon the opposite party for production such document. These documents must pertain to source of income whatsoever it may be. Even Court may call upon the parties to file documents like income-tax-returns for the last three years, statements of accounts with any Bank, Lease deed, FDRs, etc.

Such like applications are decided on the basis of testimony of the parties as contained in detailed affidavits and the documents placed before the Court. However, one can have assistance of the Court to call witnesses or record from the employer of the opposite party to prove the income. All this material would enable the Court to come to a just conclusion about the income and liabilities of the parties, while determining the question if the applicant is entitled to any maintenance or on the point of quantum of maintenance.

Under the same provision of law, Court may also order the respondent to pay to the petitioner expenses of the proceedings, whenever Court finds that petitioner has no independent income sufficient to meet the necessary expenses to pursue or defend the proceedings. If you are to seek such a relief, you have to file an application before the Court during pendency of any petition under the Act. Generally, such a relief is claimed while claiming maintenance under section 24 of the Act.

In such like applications, you are to submit to the Court, affidavits in support of the averments made in the application. However, where the Court finds that a matter cannot be disposed of properly on the basis of affidavits, Court may call upon you to lead evidence otherwise than on affidavits.

Difference between Alimony and Maintenance under the Indian Laws

S.No.	Basis	Alimony	Maintenance
1.	<i>Meaning</i>	Under the Indian laws, alimony is the one-time payment made to the spouse who is financially unable to maintain himself/herself. The spouse who needs to pay the alimony does not require to pay any other spousal support during their lifetime after paying the alimony. The husband/wife can file an alimony petition against the other spouse with the help of a divorce attorney in India.	Maintenance is a periodic allowance paid by the husband to the wife paid monthly, annually or in any other fixed intervals decided by the court. A maintenance petition is filed by the wife against the husband when there is no prior understanding between the husband and wife regarding the amount of maintenance. A maintenance petition is mostly filed in case of contested divorce when one spouse files a one-sided divorce against the other and the latter contests it in the court.
2.	<i>Mode of Payment</i>	Alimony may be paid to the spouse in lump sum as cash or any other kind of payment method, as well as in form of property after the divorce is finalised.	Unlike alimony, maintenance is only paid in form of cash or any other kind of payment method and the husband cannot pay maintenance to wife in form of property.
3.	<i>Types</i>	Alimony is a one-time payment and is only paid after the divorce is finalised. Alimony is mostly preferred in mutual consent divorce when the husband and wife decide to separate mutually and lay down the terms of their divorce and other legal formalities like alimony/maintenance, child custody and division of assets in an amicable manner.	Maintenance can be interim or permanent. Interim maintenance is whereby the court awards maintenance to wife even during the maintenance petition if it is of the view that the wife cannot sustain herself during the court proceedings. A separate petition for claiming interim maintenance needs to be filed by the wife when she is unable to pay the legal costs that come with a divorce petition and need maintenance from the husband. Permanent maintenance is to be paid by the husband after the conclusion of divorce proceedings for lifetime of the spouse or till the time the wife gets remarried.

3. Maintenance of Divorced Women under Muslim Personal Law

Under Muslim law, a husband is obliged to maintain his wife and family, and the term maintenance signifies the amount he is liable to pay for the same. The term used for maintenance under Muslim Law is called nafaqa and it comprehends food, raiment and lodging. The wife is entitled to maintenance from husband, despite the fact that she has means to maintain herself. In addition to this, the marriage contract may stipulate payment of special allowances by the husband, and in presence of these, it becomes the obligation of the husband to pay these to the wife. Such allowances are called kharch-e-pandan, guzara, mewa khore, etc. This can be claimed as a right.

The Three sources from which these rights emanate are:

1. Muslim Personal Law.
2. Section 125, Cr.P.C.
3. The Muslim Women (Protection of Rights on Divorce) Act, 1986.

Initially, it was provided in the Cr.P.C.(earlier under section 488) that only a wife is entitled to maintenance by husband. It was claimed by the husbands that once dissolution takes place, a woman ceases to be a wife and hence is no longer entitled to maintenance.

Looking at this loophole, an amendment was made in 1973, wherein under section 125, a divorcee was entitled to maintenance till the time she remarries. Being secular in nature, this provision applies to all women, including Muslim women.

Under Muslim Personal Law, a woman is entitled to maintenance only till the end of the Iddat period. Iddat is the period when co-habitation of the parties end, on the expiry of iddat the spouses will stand divorced. The period of iddat consists of three menstrual cycles or three lunar months , in case of pregnant women , the iddat period would extend up to the time of delivery. Hence, we can see a direct conflict, since Cr.P.C. does not recognize iddat period and maintenance goes beyond the same.

In **Mohammed Haneefa v. Mariam Bi** the Court stated that in case of a clash between personal law and Cr.P.C., the former shall prevail. This position was seconded by the Supreme Court in **Saira Bano v. A.M Abdul Gafoor**.

This caused a lot of dilemma in the legislature. To resolve this dilemma, Section 127(3) (b) was added under which that if a divorced woman receives an amount due to customary or personal laws of the community, the magistrate can cancel any order for maintenance in her favour.

It was held in **Bai Tahira v. Ali Hussain Fissalli Chothia** that payment of "illusory sums" focused around the Muslim personal laws ought to be considered to diminish the measure of maintenance payable by the spouse , however that does not acquit the spouse from the liability in light of the fact that each lady independent of her religion is entitled to maintenance. The divorced wife has this right except from when the aggregate payment stipulated by custom is pretty much sufficient to substitute the maintenance.

An extra requirement was included by the Apex court in **Fuzlunbi v. K Khader Vali**. The sum focused around Muslim law must be pretty much identical to the month by month maintenance to the divorcee, required till her remarriage or demise, with a specific end goal to substitute the maintenance.

The Supreme Court expressed in **Zohara Khatoon vs Mohd. Ibrahim** that the expression "wife" in S.125 and S.127 of Cr.P.C. incorporates Muslim ladies who get separated by method for Talaq or under the Dissolution of Muslim Marriage Act,1939. Therefore, the conflict between Muslim Personal Law and Cr.P.C. still continued, and section 127 was not sufficient to satisfy the Muslim community who opposed section 125 as a detriment to their personal laws.

Mohd Ahmad Khan v. Shah Bano Begum or the Shah Bano Case

In the present case, a 62 year old woman was divorced and subsequently denied maintenance. She had not remarried. On moving the court of the Judicial Magistrate at Indore under section 125 of the Cr.P.C., and claiming maintenance of Rs 500 per month, she was awarded a maintenance of Rs 25 per month from the husband. Aggrieved by the low amount, she filed a revision petition before the Madhya Pradesh High Court, which entitled her to a maintenance of Rs 179.20 per month. The husband appealed against this order before the Supreme Court, his main contention being that since the dissolution had taken place, she ceased to be his wife and under Muslim law, he was not obliged to pay her maintenance. Also, since he had paid the dower amount during the Iddat period, the wife was not entitled to any maintenance.

The Supreme Court dismissed the appeal and upheld the decision of the High Court. The Supreme Court explained this judgment by saying that, even if there is a conflict, section 125 of Cr.P.C. is a secular law, and hence, applies to all women, irrespective of their religion. It further stated that Cr.P.C. shall prevail over Muslim Personal Law in case of a conflict.

Developments Post Shah Bano Case

The Rajeev Gandhi government, coming under pressure from Islamist groups decided to nullify the judgment, and in a effort to do the same, it passed The Muslim Women (Protection Of Rights On Divorce) Act, 1986. This act became one of the most controversial legislations enacted. The relevant provisions of this act are sections 3(1)(a) and 4(1), which stated that the former husband must provide "a reasonable and fair provision" and maintenance within the period of iddat and, that in case she is unable to maintain herself after the period of iddat, she can claim maintenance from her relatives and if they cannot pay, then she can claim from the Wakf Board as per S.4(2), respectively.

Position Post Enactment of The Muslim Women (Protection Of Rights On Divorce) Act, 1986- Daniel Latifi v. Union of India

In this case, a writ was filed under Article 32 challenging the constitutional validity of the Act.

In this case the constitutional validity of the Act was upheld and an interpretation of the provisions of the Act was provided. The court concluded that, one, the Act does not violate Articles 14, 15 and 21 and hence, is not ultra vires.

The court made the following interpretations. Firstly, interpreting the meaning of the term “within” used under section 3(1)(a) of the Act read with the terms fair and reasonable, the court arrived at the conclusion that the maintenance, being fair and reasonable, should exceed the iddat period but must be made within the iddat period. Such maintenance made during iddat period should be for her entire future, that is the time after the expiration of iddat period as well. The liability of the husband, therefore, is not limited to the iddat period. Therefore, this Act is not in contravention of section 125 of Cr.P.C.

Effects of Daniel Latifi Judgment

Daniel Latifi judgment basically revived the principles settled in Shah Bano case that, the husband’s liability to maintain his wife doesn’t end with the iddat period. However, it explained this principle, not as contravening the Act which was enacted as a result of the Shah Bano case, as a commentary on that Act.

Also, the Act is consistent with section 125 of the Cr.P.C. and hence, there is no scope for conflict. Hence, the position of law is that, the provisions of the Act basically emanate from principles set forth in the Shah Bano case. The same has not been changed till now, and continues to govern matters related to maintenance of Muslim women after dissolution of marriage.

The Present position

The principle has been seconded by the Supreme Court once again in **Iqbal Bano V/s. State of U.P.** In the case the court reiterated the position that divorced women are entitled for maintenance beyond the Iddat period and stated that provisions of the Act do not contravene Article 14, 15 & 21 of the Indian Constitution.

The court further observed that “right under Section 125 of Cr. P.C. extinguishes only when she receives “**fair or reasonable**” settlement u/Sec. 3 of the Muslim Women Act. The wife will be entitled to receive maintenance u/Sec. 125 of Cr.P.C. until the husband fulfils his obligation u/Sec. 3 of Muslim Women (Protection of Rights on Divorce) Act, 1986.

This was once again reiterated in the recent judgement in **Shabana Bano v. Imran Khan** that after the expiry of iddat, a divorced Muslim woman can seek maintenance under S.125CrPc as long as she doesn’t re-marry. Hence, the position as laid down in the Daniel Latifi case is the settled position and has not undergone any change.

4. Hindu Adoptions and Maintenance Act, 1956

The Hindu Adoptions and Maintenance Act (HAMA) was established in the year 1956 as part of the Hindu Code Bills. This act extends to the whole of India except the State of Jammu

& Kashmir and applies to Hindus domiciled in our country. Hindu Adoptions and Maintenance Act was introduced to codify and standardize the current Hindu legal tradition. This act dealt specifically with the legal process of adopting children by a Hindu adult, and with the legal obligations of a Hindu to provide maintenance to various family members. In this article, we look at the various aspects of the Hindu Adoptions and Maintenance Act (HAMA), 1956 in detail.

Applicability of Act

Hindu Adoptions and Maintenance Act apply to Hindus and all those considered under the umbrella term of Hindus as described below. As per the provision of this act, the following person can adopt a child in India. This act applies to any person who is domiciled in the territories:

- A person who is a Hindu by religion in any of its forms or development, including the Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj
- A person belongs to a Buddhist, Jain or Sikh can adopt a child
- A child legitimate or illegitimate whose parents are Hindus, Buddhists, Jains or Sikhs
- A child legitimate or illegitimate one of whose parents are Hindus, Buddhists, Jains or Sikhs and has been so brought up
- An abandoned child, legitimate or illegitimate of unknown parentage brought up as a Hindu, Buddhist, etc.; and
- A person who has been converted to the Hindu, Buddhist, Jain or Sikh religion

Note: To apply the Hindu Adoptions and Maintenance Act in the territories, the person should not belongs to Muslim, Christian, Parsi, or Jew by religion.

Who can Adopt a Child?

No person will be capable of being taken in adoption unless the following conditions are fulfilled

- The person should be a Hindu
- The person has not been married, unless there is a custom or usage applicable to the parties which permit persons who are married being taken in adoption
- He or she has not already been adopted
- He or she has not completed the age of fifteen years, unless there is a custom or usage applicable to the parties which permit persons who have completed the age of fifteen years being taken in adoption

Requisites of a Valid Adoption

Under the Hindu Adoptions and Maintenance Act (HAMA), only Hindus can adopt subject to their fulfilment of specific criteria. As per the provision of this act, no adoption will be valid unless fulfilling the following conditions:

- The person adopting should have the capacity and also the right, to take in adoption
- The person giving in adoption should have the capacity to do
- The person adopted should be capable of being taken in adoption
- The adoption should be made in compliance with the conditions of the Hindu Adoptions and Maintenance Act (HAMA).

Eligibility of a Male Hindu to Take Adoption

Under HAMA, any male Hindu who is of sound mind and not a minor can take a son or a daughter in adoption. If he has a wife living, he cannot adopt a child except with the consent of his wife unless the wife has completely renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

Note: In case the person has more than one wife living at the time of adoption, the consent of all the wives is mandatory unless the consent of any one of them is unnecessary for any of the reasons specified in the preceding clause. The senior wife will be classified as the [legal](#) mother of the adopted child.

Eligibility of a Female Hindu to Take in adoption

The eligibility criteria for female Hindu to take a son or daughter in adoption are given here:

- The female Hindu should be of sound mind
- The female Hindu should not a minor
- The female Hindu who is not married can adopt a child
- In case of a married female, whose marriage has been dissolved whose husband is dead or has completely renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

Conditions for a Valid Adoption

In every adoption under Hindu Adoptions and Maintenance Act (HAMA), the following conditions must be complied with:

Adoption of a Son

In case the adoption is of a son, the adoptive mother or father by whom the adoption is made should not have a Hindu son, son's son or son's son's son living at the time of adoption. They must not have a son whether by legitimate blood relationship or by adoption.

Adoption of a Daughter

If any adoption is of a daughter, the adoptive father or mother by whom the adoption is made should not have a Hindu daughter, daughter's daughter or daughter's daughter's son living at the time of adoption. They must not have a son whether by legitimate blood relationship or by adoption.

Adoption of a Female Child by a Male

If the adoption is to be taken by a male and the person to be adopted is a female, the adoptive father should at least twenty-one years older than the person to be adopted.

Adoption of a Male Child by a Female

If the adoption is to be taken by a female and the person to be adopted is a male, the adoptive mother should at least twenty-one years older than the person to be adopted.

Other Conditions

- The same child cannot be adopted simultaneously by two or more persons.
- The child to be adopted must be provided and taken in the adoption by the parents or guardian concerned or under their authority with the intent to transfer the child from the family of its birth. In case of an abandoned child or a child whose parentage is not known, from the place or family where it has been brought up to the family of its adoption.

Effect of Adoptions

As per the provision of Hindu Adoptions and Maintenance Act (HAMA), an adopted child will be deemed the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption. From the date of adoption, all the ties of the child in the family of his or her birth will be deemed to be severed and replaced by those created by the adoption in the adoptive family.

- The child cannot marry any person whom she or he could not have married if she or he had continued in the family of his or her birth.

- Any property which entrusted to the adopted child before the adoption will continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth.
- The adopted child will not divest any person of any estate which vested in him or her before the adoption.

The Right of Adoptive Parents to Dispose of Property

As per HAMA, any agreement to the contrary, an adoption does not dispossess the adoptive father or mother of the power to dispose of his or her property by transfer inter vivo or by will.

Determination of Adoptive Mother

As stated above, if a male Hindu who has a wife living adopts a child she will be deemed the adoptive mother.

- In case of adoption has been made with the consent of more than one wife, the senior most in marriage among them will be deemed to be the adoptive mother and the others to be stepmothers.
- In case a widower or a bachelor adopts a child, any wife whom he subsequently marries will be deemed the stepmother of the adopted child.
- If a widow or an unmarried woman adopts a child, any husband whom she marries consequently will be considered to the stepfather of the adopted child.

Rules for Giving in Adoption

According to the Hindu Adoptions and Maintenance Act (HAMA), no person except the father or mother or the guardian of a child will have the capacity to give the child in adoption.

Rights of Father

If the father is alive, he has the right to give in adoption, but such right will not be exercised save with the consent of the mother unless the mother has completely and finally renounced the world or has ceased to be a Hindu or has been declared by the court of competent jurisdiction to be of unsound mind.

Rights of Mother

The mother can give the child in adoption if the father is dead or has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

Rights of Guardian

The guardian of the child can give the child in adoption with the previous permission of the court to any person including the guardian himself

- In case of both the father and mother are dead
- In the case of parents are finally renounced the world
- Abandoned child
- It has been declared by a court of competent jurisdiction to be of unsound mind
- In the case of the parentage of the child is not known

Cancellation of Valid Adoption

As per the rules under the Hindu Adoptions and Maintenance Act (HAMA), the adoptive father or mother or any by another person cannot cancel the strong adoption. , The valid adoption may be annulled if the adopted child renounces his or her status as such and return to the family of his or her birth.

Prohibition of Payments

Payments related to adoption are prohibited under the Hindu Adoptions and Maintenance Act (HAMA):

- No person can receive or agree to receive any payment or rewards in consideration of the adoption of any person.
- No person can make or agree to give any payment or reward to any other person the receipt of which is prohibited by this section.
- If any person contravenes the provisions of this section, he/she will be punishable with imprisonment, which may extend to six months or with fine or with both.
- No prosecution under this section will be instituted without the previous sanction of the State Government or an officer authorised by the State Government in this behalf.

Bibliography:

<https://blog.ipleaders.in/proceedings-for-maintenance-of-wives-children-and-parents/>

<https://blog.ipleaders.in/alimony-laws/>

<http://www.legalserviceindia.com/articles/hmcp.htm>

https://www.legistify.com/blogs/view_detail/is-there-a-difference-between-alimony-and-maintenance/

<http://www.legalservicesindia.com/divorce/maintenance-expenses-proceedings.htm>

<http://www.legalserviceindia.com/legal/article-1131-maintenance-of-divorced-women-under-muslim-personal-law.html>

<https://www.indiafilings.com/learn/hindu-adoptions-and-maintenance-act/>

WWW.BNWJOURNAL.COM