

Maintenance for wife

When a couple is getting divorce, the concept of maintenance arises when one of them is financially dependent on the other and would like to seek the remedy of maintenance from him/her so that he/she can continue to live in the same standard even after getting divorce.

What is maintenance and what should it cover?

The amount payable by the husband to the wife (or wife to husband) who is unable to maintain herself either during the marriage or after divorce is called maintenance. Maintenance should include basic necessities such as food, clothing, and shelter and cover rational needs to lead a normal living and to ensure financial sustenance and wellbeing.

What are the laws governing Maintenance:

There are various personal laws governing Maintenance:

- Hindu Marriage Act, 1955 and Hindu Adoption and Maintenance Act, 1956
- Muslim Women (Protection of Rights on Divorce) Act, 1986
- Parsi Marriage and Divorce Act, 1936
- Indian Divorce Act, 1869
- Special Marriage Act, 1954
- Criminal Procedure Code (CrPC), 1973;

Who is entitled to maintenance?

Providing maintenance differs among religions – according to the Hindu Adoption and Maintenance Act, the wife, widow, children and aged parents are entitled to maintenance. According to Muslim law, wife, young children, parents, person within the prohibited degrees are entitled to maintenance.

Types of maintenance

There are two types of maintenance:

Interim Maintenance – As the name suggests, during the pendency of proceeding of divorce or separation, the court grants temporary maintenance. It is paid from the date of petition filing till the divorce decree is ordered to cover the immediate needs of the spouse. The following provisions enable the spouse to obtain temporary maintenance:

- Section 24 of Hindu Marriages Act, 1955,
- Section 125 (1) of Criminal Procedure Code (CrPC),
- Section 36 of Special Marriage Act, 1954
- Section 39 of Parsi Marriage and Divorce Act, 1936
- Section 36 of Divorce Act, 1869

This amount is paid by the financially independent spouse to the other who is dependent. It will also cover the expenses of the proceedings and other expenses that might occur during the course of the divorce proceeding.

Permanent Maintenance is the amount granted after the divorce decree is announced and it can be a gross sum or periodical or monthly payment as per the order of the court. The following provisions govern Permanent maintenance:

- Section 25 of Hindu Marriages Act, 1955,
- Section 125 of Criminal Procedure Code (CrPC),
- Section 37 of Special Marriage Act, 1954
- Section 40 of Parsi Marriage and Divorce Act, 1936
- Section 36 of Divorce Act, 1869

On what basis maintenance will be calculated?

The Court shall have the discretion in determining the amount of maintenance. To arrive at the discretion, the Court may consider the following among other things.

- Social status and position of both husband and wife
- The basic and reasonable needs of the spouse claiming maintenance.
- The income and/or financial independence of the spouse claiming the maintenance
- The lifestyle of the spouse
- The liability of the spouse providing maintenance
- The value of the movable and immoveable properties of the spouse claiming maintenance
- The income of the spouse providing maintenance
- The number of members who are financially dependent on the spouse providing maintenance

Section 23 of the Hindu Adoption and Maintenance Act and Section 125 of Criminal Procedure Code (CrPC) also provide for criteria that the Court may consider in determining the amount of maintenance to a dependant.

Can the wife claim maintenance without getting a divorce?

Yes. According to Section 18(1) of Hindu Adoption and Maintenance Act, 1956, the wife living separately from the husband is entitled to get maintenance.

- If the husband is liable for desertion.
- If the husband is liable for cruelty.
- If the husband is suffering from leprosy.
- If the husband is liable for bigamy.
- If the husband converts his religion without the consent of the wife.

Section 125 (1) (a) of Criminal Procedure Code (CrPC) also provides for a wife who is unable to maintain herself to be granted maintenance if she is neglected or refused maintenance by her spouse who has sufficient means to maintenance.

When can a husband deny maintenance to wife?

According to Section 125 (4) of the Criminal Procedure Code (CrPC), a wife is not entitled to maintenance if she is liable of adultery, refusing to live with her husband without any sufficient reason or if the divorce is sought by mutual consent. On sufficient proof, the husband can deny maintenance based on one of the above grounds.

How is the maintenance calculated?

There is no fixed formula for calculating the maintenance. Various factors are considered by the Courts including the living standards of the husband and the rational needs of the wife. However, the Supreme Court, in a recent case, has ordered that 25% of the husband's net salary be paid as maintenance to his estranged wife. The court believes that this 25% will be the 'just and proper' amount as the husband needs to take care of his family, if he has remarried.

Can working wife claim maintenance?

Yes. If the woman is earning but her income is not sufficient enough she can still claim maintenance from her husband. Usually, it is a common belief that working woman cannot claim maintenance but it doesn't hold true when the wife's earnings are not enough for her own well-being. A wife's 'earning capability' is different from her 'actual earning' and just because she is working doesn't deny her rights to claim maintenance. It's up to the court to decide whether a woman actually requires maintenance or not and it depends upon the case.

Can wife claim maintenance when both she and husband are earning almost same salary?

It depends on the case. The earning status of both the parties will be considered during maintenance proceedings. Since both the husband and wife are earning equally there is no legal obligation for the husband to provide maintenance to wife. But if the wife is holding custody of the minor child, the expenses of the child should be shared equally by the husband.

Can wife claim maintenance if she is earning exceedingly well?

No. If a woman is earning much more than her husband, she is not entitled to claim for maintenance.

Can wife claim maintenance if she remarries?

No. A wife is not entitled to maintenance if she remarries or if the divorce is by mutual consent. The wife continues to get maintenance from husband until the time set by the court comes to an end.

How to file an application for maintenance?

A case can be filed under Section 125 CRPC before the family court or judicial magistrate nearest to the husband or wife's current residence or where they resided as a couple along with essential documents such as photographs of marriage and marriage certificate as evidence.

When can you file an application for maintenance?

An application for maintenance can be filed during the divorce proceeding or after getting the divorce decree.

What is the difference between alimony and maintenance in India?

Alimony is a one-time payment usually made once the divorce is finalised and is mostly preferred in mutual consent divorces, whereas maintenance can be temporary or permanent and will be paid for continuous period of time either monthly or periodically for the sustenance of the spouse.

Is a wife entitled to maintenance automatically?

No. A wife can claim for maintenance by stating her inability to support herself financially and file for the same before, during and after a divorce. 'Maintenance' is provided for the sustained well-being of the wife after divorce if she is not financially independent and is unable to earn to maintain the same standard of living that she had during her married life.