

Maintenance and Alimony Under Various Personal Laws

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ABSTRACT:

Once a marriage comes to a halt, the relationship bonds that formerly existed come to an end. Thus, the financial support that once existed between the partners also comes to a stop. In cases where one of the parties had financially depended on the other party, they tend to find it difficult to support themselves, and thus the concept of maintenance comes into play. This paper revolves around the concept of maintenance under distinct personal laws that govern them. It is interesting to note the minor differences that exist between the personal laws. The paper revolves around the concept of maintenance, starting from the types of alimony till the nuances that are to be noted in different personal laws, highlighting husband's right to maintenance. As the society has become more inclusive of modern thoughts and ideas, the concept of maintenance under live-in relationship has also been discussed. Though it has not been legalised yet, it is a fact that it is not illegal either. Hence can either party claim maintenance if the live-in relationships break, is a question that has also been addressed in this paper.

KEYWORDS: Alimony Maintenance Hindu marriage act,1956 Muslim and Christian law Live-in Relationship

1. MAINTENANCE AND ALIMONY

Alimony is basically court ordered payments awarded to a spouse after separation or divorce agreement. It is to provide financial support to the spouse who makes lower income or who does not earn at all. It can be awarded to a husband or wife. The goal of alimony is to provide spousal support so they can continue living the lifestyle to which they had been accustomed after the divorce. Alimony will often be awarded to ex-spouses of long-term marriages and will stop upon death or remarriage. Alimony amount is usually decided upon the income of the person providing alimony. The purpose is to ensure that a divorce does not cause a drastic decline in quality of living for a lower earning spouse. Alimony is also sometimes called as spousal support or maintenance. If either of the spouse is suffering from any condition that makes them prevents them from earning, they can be provided with alimony. The higher-earner in a marriage could be ordered to pay alimony. Once the person who is receiving alimony remarries it is not necessary to provide further alimony. Maintenance is a financial requirement claimed by the wife or the husband that covers basic needs of life which include food, shelter, clothes, medical costs and education. The objective of maintenance is to provide the struggling husband or the wife financial assistance who don't have any sufficient independent financial source for his or her support and expenses on basic needs.

2. TYPES OF MAINTENANCE AND ALIMONY:

There are two types of alimony and maintenance:

- TEMPORARY MAINTENANCE
- PERMANENT MAINTENANCE

2.1 TEMPORARY MAINTENANCE/ALIMONY:

During the course of divorce proceedings if either of the spouse does not have any sufficient amount to pay for the expenses related to the divorce, they can seek the court for help. The court will set a reasonable amount and will order the other spouse to pay and they are bound to pay a sum of maintenance to their spouse. It is basically a temporary maintenance provided till the divorce proceedings are over.

2.2 PERMANENT MAINTENANCE/ALIMONY:

Permanent maintenance is the type of maintenance paid to the spouse who is not financially independent by the other. It can be either paid in lump sum or monthly. The amount to be paid is either ordered by the court or the couple decides it among themselves. Once the person, who is receiving maintenance gets remarried, it is not the duty of the other person to pay for their living. The amount will be fixed based on the lifestyle the person was living while being married.

3. FACTORS TO BE CONSIDERED FOR PROVIDING MAINTENANCE:

Both the spouses must disclose about the property they hold. They must not conceal any facts relating to their income or their property. Only based on their income the amount for alimony can be settled. The court also considers the lifestyle, health, liabilities, education of their children or any other responsibilities. Only after the court sees the financial condition of both the spouses, they can settle for the amount to be given for them. If both the parties are able to provide for themselves, it is not necessary for any party to pay for maintenance. The court will only decide the amount to be paid to the other party.

4. MAINTENANCE AND ALIMONY FOR HUSBANDS:

Alimony is basically general neutral. It is uncommon in India to receive alimony from the wife, but there are certain cases it is necessary that the husband receives alimony. It was shown in a case when the wife was charged for torturing her husband mentally and physically was sentenced to pay alimony to the husband. The court held that during necessary circumstances the wife is also bound to pay alimony to her husband. According to the Hindu marriage Act of 1955, husbands have the legal right to demand maintenance from their wives. According to Section 24 of the Hindu marriage act both husband and wife whoever is not financially independent or their income is not sufficient will be entitled to receive maintenance from the other. Husband is not an exception to receive maintenance.

5. CIRCUMSTANCES WHERE ALIMONY IS NOT PROVIDED

- If the spouse receiving alimony gets married.
- If both the parties are able to maintain themselves with their income or their property.
- If the husband/wife has not remained chaste.
- If the wife/husband earns an income that would enable him or her to maintain a standard of living which is on par with that of their marital years.
- When both the parties are not in a state to pay for each other's maintenance.

6. HOW IS ALIMONY CALCULATED?

A couple can agree on alimony themselves outside of court if they negotiate their own divorce settlement. Couples can decide on the amount of money whatever they feel is appropriate, as long as both parties are in an agreement. The court must approve the agreement. If a premarital agreement addresses alimony, the terms of that agreement are usually enforced to determine how much alimony must be paid—unless there was a problem with the creation of the prenuptial agreement that causes the court to void it.

If a couple cannot agree and no premarital agreement is in place, then the court decides whether alimony should be ordered and in what amount while the following factors may be considered:

- The income of each spouse
- The length of the marriage.
- The division of marital property
- The contributions each spouse made for each other's career.

7. MAINTENANCE AND ALIMONY UNDER HINDU LAW:

Section 24 and 25 of the Hindu marriage act deals with maintenance of husband and wife. Under section 24 of the Hindu marriage act, court states that if either of the spouse is not financially independent or unable to maintain themselves, the court will order the other to provide for them. The court based on the financial state will decide the amount to be paid for maintenance. The claimant can be husband or the wife.

Section 25 deals with granting alimony on a permanent basis, the court may on the application made by the respondent, order to provide for maintenance in the form of periodical payments or a gross sum to be provided. The purpose of interpreting the provision in this way is to avoid the discrimination because both husband and wife are equal in the eyes of law.

In, **Dr. Kulbhushan vs Raj Kumari**¹, the court while deciding the amount of maintenance observed that it is determined based on the facts of each case and declared that if the court enhances or moulds the amount of maintenance, then such a decision would be justified. It was further held in this case that it would be fair to provide wife with 25% of husband's net salary as maintenance.

But this Section cannot be invoked in such a manner as to where the husband or the wife, though capable of earning does not continue to do so intentionally for the sole purpose of depending on their spouse. In **Yashpal Singh Thakur vs Smt. Anjana Rajput**², the husband incapacitated himself by stopping to run an auto rickshaw. Hence, where a person intentionally incapacitates himself, he loses the opportunity to file an application for seeking maintenance.

8. MAINTENANCE AND ALIMONY UNDER MUSLIM LAW

In Muslim law, the husband is bound to maintain his wife under any circumstance. A husband is supposed to maintain his wife even if there is no agreement between them regarding maintenance. It is the obligation of a Muslim man to maintain his wife only if she was faithful during their marriage. Under Muslim law it does not matter if the wife is earning or not or if she is capable of maintaining herself, husband is bound to maintain her; this is quiet contrary of what other religious laws and acts state where only dependent women is eligible of Right to Maintenance.

¹ 1971 AIR 234, 1971 SCR (2) 672

² AIR 2001 MP 67 a

A divorced wife is entitled to receive maintenance from her former husband during the period she is observing iddat. Iddat is basically the period of Chasity which a Muslim woman is bound to observe after the dissolution of her marriage due to the death of her husband or by divorce before she remarries. This period is to ascertain whether the women is pregnant or not and to acknowledge the certainty of paternity. Muslim law does not acknowledge any commitment on the part of the husband to maintain his former wife after he had divorced her. After the expiration of iddat period if the wife is still not able to maintain herself or is unmarried, she can seek maintenance from wafk board or her relatives.

A Muslim woman is not entitled to receive maintenance under these circumstances:

- If she elopes with some other man
- If she disobeys the reasonable command of her husband
- If she abandons her conjugal domicile and her husband without any reasonable cause.
- If she has been imprisoned
- If she has any extra-marital affair
- If the former wife remarries.

Maintenance under Muslim law differs from the other personal laws, the wife is not treated properly even after divorce, strong laws must be implemented for Muslim women.

In **Begum Subanu alias Saira Banu vs. A.M Abdool Gafoor**³ case, the supreme court held that, regardless of a Muslim husband's right to contract a second marriage, his first wife would be entitled to ask for maintenance as mentioned. A Muslim wife, whose husband neglects to take care of her without any lawful justification, can file a suit for maintenance in a civil court under her personal law.

9. MAINTENANCE AND ALIMONY UNDER CHRISTIAN LAW:

Provisions for maintenance under Christian law are contained in The Indian divorce act, 1869.

Section 36 of The Indian divorce act states that whether instituted by the husband or the wife and whether or not they have obtained an order for protection, wife may file a petition for the pending of alimony suit. The court after making sure the statement will order the husband to pay some reasonable amount. The alimony to be received will not exceed one-fifth of the husband's income.

Section 37 of this act states about the permanent alimony. It states that the husband is bound to pay alimony to his former wife either monthly or in a lump sum, before that the court must dissolve this marriage and grant divorce. The amount will be decided only based on the income of the husband and the property the husband holds. The court has the power to modify the term of the agreement.

According to section 38, the court makes any decree or the order for the alimony, where it can be directly paid to the wife or any trustee, on her behalf which is approved by the court Even though, there are no specific provisions mentioned under the Christian marriage act regarding maintenance and alimony for their respective spouses, such right is available under the common law. If the children are also dependents in the suit who along with their mother are Christian, they are not barred under the provisions of CPC.

In **K. Kumar vs Leena** case, it was held that even though the Christian marriage act, 1872 makes no provision for maintenance. the Christian wife can invoke the provision of section 9 of the civil procedure code, 1908 to claim maintenance.

³ 1987 AIR 1103, 1987 SCR (2) 773

10. MAINTENANCE UNDER LIVE-IN RELATIONSHIP:

The live-in relationship is basically when two people live together without getting legally married. Live-in relationship is not recognized in India, but it is also not considered as unlawful. The supreme court of India has stated that, just any live-in relationship does not entitle a person to alimony. In the landmark case of **D. Velusamy vs D. Patchaiammal**⁴ it was held that a woman in a live-in relationship is not entitled to maintenance unless she fulfills the following conditions laid by the supreme court:

- The couple must hold themselves out to society as being similar to spouses.
- They must be of the legal age to marry.
- They must be qualified to enter a legal marriage

Only if these conditions are fulfilled a couple in a live-in relationship can claim for maintenance from the other. The court makes the decision regarding the maintenance to be provided to the couples who are not married and are in a live-in relationship. Only if the court approves of the maintenance amount to be provided for them, they can receive the compensation from their respective partners.

11. SUGGESTIONS:

It is to be noted that in Hindu law there is a provision for the husbands to get maintenance if they are unable to take care of themselves. But the same provision is not found in other personal laws. This may be due to the presumption that a wife is someone who has to be taken care for and cannot lead a life on her own. But we are way past the generation where such presumption existed and thus it is necessary for the husbands to also have a provision to get maintenance from wife if he is unable to tend for himself. Moving on, in regards to the maintenance in live in relationships, laws have to be meticulously drafted to avoid future conflicts. As the society is more open to the live in relationships, there is bound to arise conflicts in the same area, and there is a need for the legislation to work on this particular area. The right to maintenance for homosexual couples has not been awarded by any laws till date and there is ought to be laws for the same, as the relationship is considered valid. The legislature needs to look into these grey areas for the welfare of all the people in the society to live harmoniously and decrease the conflicts that might arise in the stipulated areas.

12. CONCLUSION:

In conclusion, maintenance or alimony serves as a crucial financial support mechanism, facilitating the well-being of individual's post-divorce. By providing a stable financial foundation, it aims to address disparities in earning capacity and ensure a fair standard of living for both parties involved. The effectiveness of alimony in fostering financial independence and equilibrium post-divorce underscores its significance in the realm of family law. Even though maintenance differs according to each law, the sole purpose of maintenance is the same i.e., to provide financial support for the other to maintain a decent standard of living in the society.

⁴ D. Velusamy v. D. Patchaiammal, (2010) 10 SCC 469 (India). [hereinafter 'Velusamy'].