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**MAINTENANCE UNDER CRPC AND A COMPARATIVE STUDY  
WITH HINDU AND MUSLIM LAW**- Harshita<sup>1</sup>**ABSTRACT**

Maintenance is described as the sum or amount payable to wife, kid, or dependent parents in order to take care for and nurture them. The amount can be paid in accordance with the court's discretion, such as annually or monthly payments depending upon the demands of the family or wife or parents. Maintenance is typically understood as the amount paid by a husband to his wife upon divorce. The concept of maintenance should be considered as a gender neutral concept of law to provide sufficient means for survival; the court enables the aggrieved person the right for maintenance under the judicial system of law. It is incredibly important for all to adhere by the rules and regulations lay by law and prohibit from misusing this system.

**KEYWORDS** – Maintenance, Hindu law, Muslim law, Husband, Wife, Marriage, Hindu marriage act.

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## **MAINTENANCE UNDER CRPC AND A COMPARATIVE STUDY WITH HINDU AND MUSLIM LAW**

The phrase "maintenance" usually refers to the act of giving something support or sustenance. The term "maintenance" is not specified in any religious group's marriage law. Maintenance entitlement is predicated on the notion that the individual receiving maintenance is unable to maintain him. In general, maintenance covers expenses for necessities or necessities for a person's basic needs. Survival is not the primary motive to assist a claimant. This stems from the provisions of the statutes, which instruct the court on the elements to be considered while establishing the amount of support. The court must consider the husband's and wife's property ownership, the husband's ability to make money, holding parties, and other conditions while determining the amount of alimony.

Maintenance is described in Indian law as the amount payable to the dependent wife, kid, or parents to take care for and nurture them. The amount can be paid in accordance with the court's discretion, such as annually based or monthly based payments. Maintenance is typically termed as the sum paid by a husband to his wife upon divorce. It contains essential necessities such as the essential means of subsistence for a human being which includes providing home and food.

Maintenance is divided into two types:

1. Interim Maintenance- The amount paid in interim maintenance shall be calculated from the date the filing the suit to the completion date of litigation. The primary goal is to assist the individual financially. The quantity of assistance received from another individual is determined by their financial status.
2. Permanent Maintenance- The amount granted to the woman by her husband after the legal proceedings are completed and the suit is dismissed on the specified grounds is referred to as permanent maintenance. The amount is determined by the facts of the case and is based on separation of the couple including different circumstances as well as the position of each person.

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### **III. MAINTENANCE UNDER HINDU LAW**

A person who is financially dependent on another person shall seek maintenance relief or compensation at the time of divorce or separation or in mutual decision of not living together. The pair will have to live apart in order to preserve their current lifestyle. The individual on whom the other person is dependent pays the maintenance. The amount paid is determined by how much the individual makes and how much the other one requires living a normal life. According to Section 24 of the Hindu Marriage Act, it mentions the concept of alimony, through which the spouse can seek temporary support. Only the Hindu Marriage Law and the Parsi Marriage Law allow both spouses to seek temporary alimony.

Maintenance is also discussed in Section 25 of the Hindu Marriage Act, it establishes the ways of providing maintenance i.e. either annually or monthly or as suggested by the families. Section 125 of the CrPC elaborates about the personal laws which shall apply to wives, children, and parents. Any person can file an application under this section for claiming maintenance. However, only personal petitions concerning personal laws may be filed under Section 25.

The Hindu Adoption and Maintenance Act establish the spouse's ability to seek maintenance from her husband. This is feasible if she is unable to support herself financially on her own. The court will direct the parties regarding the amount of maintenance based on the scenario and facts of the case, bearing in mind the monetary and dependent situation for the couple.

It is considered important to highlight that maintenance can only be obtained through one of the laws, namely personal or criminal law, and not both. Under the Hindu Adoption and Maintenance Act 1956, a Hindu wife has the right to live separately from her husband without relinquishing her claim for a variety of reasons ranging from development of child to societal pressure. There persists a common misperception that a working woman is not entitled to maintenance because she is earning and thus able to support herself. This information might be true but not fully true.

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In D. Velusamy vs. Patchaimmal<sup>2</sup>

According to the facts of this case, the woman filed a case against her husband under Section 125 of the Code of Criminal Procedure to claim maintenance. The wife was then granted maintenance by the court. Section 125 requires the spouse to care for his wife, his parents, and his legitimate or illegitimate minor kid.

In Gomaji vs. Smt. Yashoda<sup>3</sup>

The petitioner and respondent in this case were husband and wife. The husband demanded divorce under section 13 of Hindu marriage act and the wife claimed maintenance under 125 of CrPC. The court ordered the husband to pay his wife monthly maintenance in order to provide her with financial security.

According to the Hindu Adoption and maintenance Act states in section 23 that "in establishing the amount of maintenance, if any, to be given to a wife, children, or aged or infirm parents under this Act, attention shall be had to—

1. the parties' position and standing;
2. the claimant's reasonable desires;
3. Whether the claimant is justified in living apart from the claimant;
4. The claimant's property value and any income received from such property, the claimant's own earnings, or any other source;
5. eligible for maintenance under this Act."

Maintenance provisions are classified into four types: -

- (A) Provisions of the CrPC of 1973.
- (B) Provisions of the Hindu Marriage Act of 1955.
- (C) Provisions of the Hindu Adoptions and Maintenance Act of 1956.
- (D) Provisions of the Domestic Violence Protection Act of 2005.

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<sup>2</sup>CriminalAppealNos.2028-2029of2010[SpecialLeavePetition(CrI.)Nos.2273-2274/2010]

<sup>3</sup>I(1996)DMC487

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The courts have realized and recognized the rights of a working woman which needs to be protected. The courts ruled that estranged women can seek protection from their husbands even if their monthly income is insufficient to support them. As mentioned in Section 18(1) of the Hindu Adoption and Maintenance Act, 1956, the spouse is bound to receive to the maintenance amount from her husband throughout her life. Even if she lives apart from her husband, the spouse is entitled to maintenance payments. The following are some of the grounds for a wife to seek maintenance:

1. Punishable for desertion.
2. Punishable for harshness.
3. Leprosy.
4. Accountable for bigamy.
5. Converting faith without his wife's permission.

Maintenance provisions under the CrPC and the Hindu Adoption and Maintenance Act are separate reliefs provided. The right to claim relief under Hindu marriage act is different from the maintenance received under Hindu adoption and maintenance act. The jurisdiction of court cannot be challenged on the grounds of already receiving maintenance amount from either of the acts considering that both acts are separate and not governed by each other.

### **Maintenance Amount:**

The following documents are required for the Court to decide on a maintenance application:

- Personal tax returns from income tax department records
- Forms 16 and 12BA
- Letter of appointment
- Certificate of Costs
- Salary slips
- All bank accounts' bank statements
- Statements for credit and debit cards
- Title deeds to immovable property
- Vehicle registration certificate

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The Hindu Marriage Act defines the factors for interim maintenance under section 24. The following factors are:

- (a) The monetary position of parties
- (b) The necessities of the parties
- (c) The number of persons dependent
- (d) Any prior liability
- (e) The basic amount required by the wife to live the life as she was enjoying earlier. It includes food, shelter, clothing, standards, children and other factors affecting the payment capacity.

The husband's monthly salary may not always be known to the wife, especially in cases when the couple has been living apart from each other. The assets, obligations, income, liabilities and spending of the husband must be established to calculate not only the maintenance amount but also to decide permanent alimony and ownership of properties which were jointly owned earlier. In order to calculate, an affidavit shall be attached including all the valuables whether movables or immovable ascertaining their amount.

The Court has the power to determine when and how maintenance shall be granted under Section 24 of the Hindu Marriage Act. The decision taken depends on various factors such as time of litigation, conduct of parties, disclosure of properties and valuables, etc.

#### **IV. MAINTENANCE UNDER MUSLIM LAWS**

The Lord has instructed that you be kind to your parents, whether one or both of them live to a ripe old age. So don't say anything to them. Fie on you neither criticize them, but express respect unto them, and submit to behave humbly towards them, out of loving affection, and say "O Lord: have pity on them both, as they nurtured me and grant unto him that is of kin to you his due". - Quran, Chapter XVII.

Property is considered as mainly and organically individual in Muslim Law, just as it is in English Law. Under Muslim law, a man is obligated to support his wife and small children, as well as any relatives from whom he can inherit. The concept of maintenance was created to

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help persons who are unable to support themselves. It comprises fundamental necessities such as food, clothing, housing, and education.

The Arabic counterpart of maintenance is Nafaqah and what it essentially means is "What a person invests over his family".

Kharcha-i-pandan is a customary payment made by the husband to the wife; it is a particular allowance paid only by Muslims of rank to the wife. Mulla Kharcha-i-pandan means betel box expense paid to the wife, and the woman can claim it in court as a beneficiary.

Maintenance is known as 'Nafqah' in Muslim law in India. It is the amount he spent on the family. The woman is entitled to absolute maintenance and not based on the condition of her being able to support and maintain herself. Therefore, all Muslim Women are entitled to maintenance amount whether working women or homemakers. According to Muslim Law, it is the duty of husband to pay maintenance amount to his wife for her expenses and livelihood as well as in case of children too. This maintenance amount is regardless of her financial situation. It does not contain any conditions or liabilities.

However, there are condition in which Muslim woman cannot claim maintenance from her husband. Such condition is:

- She has not attained the age of puberty.
- Having good reason to quit her husband and marital duties.
- Where she marries another man.
- In the event that she disobeys her husband's legitimate orders

According to the Muslim women protection act, it establishes certain provisions for allowing maintenance which involves the ability of the husband to pay and provide a stable and secure future for her wife and her children

A divorced Muslim woman is entitled to maintenance in the following situations:

- While the period of Iddat, sound as well as equitable maintenance shall be paid to the

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wife, and if Mehr was taken at the time of marriage, it must be returned in full amount.

- When the woman is not in a good financial position, then maintenance shall be provided for tenure of two years.

### **Maintenance Amount:**

The amount for maintenance is not specified in any personal law. However it is at the discretion of the court to determine the quantity based on the economical and financial situation of the husband and wife, as well as considering other relevant circumstances.

The Muslim Law provides certain provision to help ascertain the amount of maintenance by taking into account the necessities of wife and position of husband. Therefore, the amount of maintenance is different for all. In cases where the husband is also unemployed and cannot give maintenance to his wife or children then the magistrate shall order the Wakf Board of that particular state to do so.

### **V. CONCLUSION**

Previously, maintenance was limited at Rs.500 each month. However, the Justice of the Peace now shall have the authority to ascertain a reasonable amount of maintenance as they deem fit. Magistrate class 1 can also provide maintenance to wife and allocate the amount to be provided by the husband to his wife. However, under Section 125 of the CrPC, the person who committed adultery or decided to separate their lives apart or refuses to live together by mutual consent shall no longer be entitled to maintenance.

Women's rights have been restored as a result of distinctive judicial pronouncements and other steps, but it turns out to be fruitful simplest when the mendacity thinking is changed. It is of utmost important in the new era of development to be capable of being economically, financially and socially independent, especially for women. There are many rights and provisions being inculcated for the protection of women's respect and dignity. maintenance as discussed above is a gender neutral concept and the amount can be provided to both the genders in case of divorce where one of the them are not sufficient of their meeting their demands, the deciding for the amount has its own factors and depends on the discretion of court. There still persists a lot of poor implementation in order to provide right kind of justice to those in need

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and there are many who take advantage of such provisions. One must always avail their right with truthfulness and honesty for proper and fair justice to be served.



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