

**MAINTENANCE AND ALIMONY UNDER THE CRIMINAL PROCEDURE  
CODE AND VARIOUS PERSONAL LAWS**- Mansi Sharma<sup>1</sup>**Abstract**

Marriage is the most important institution for every society and if any marriage is dissolved by any kind of reason, then the spouse has a right to claim the maintenance and alimony from another partner. It is for financial support and well-being. Different provision of maintenance provided by the personal laws and CrPC. Maintenance is not only claimed by the wife but also claimed by the husband as well. Husband and wife are equally in the marriage for support to each other. After marriage they have the right to secure other spouses' lives as well. India is a secular country so we can see different laws for the different community people. CrPC provision is very prominent in a case of maintenance and this provision is applied to all over the personal laws. It is the matrimonial relief and it is the independent right for all. The spouse's right is not correct; it is also covered by parents and children as well. With time many amendments come across India for the right of maintenance especially in the case of the wife. In Muslim law iddat period is the biggest factor for the maintenance and court can taken a good decision for divorced wife's in Muslim law.

**Introduction**

Maintenance and alimony is not a different word, it is the similar meaning of the word. It is financial support to the spouse after the dissolution of marriage. Alimony can be classified as temporary and permanent in nature. And temporary alimony is known as pendente lite alimony.

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Alimony is the legal right and this concept of alimony arose in the English Ecclesiastical courts.<sup>2</sup> When divorce was not permitted. And it was the obligation for the spouse to give alimony to her wife. On the other hand, dharmashastra provides that it is the obligation of Every person to maintain their parents, wife and parents. It is the moral duty of every person to maintain their family.<sup>3</sup>

Maintenance is the word which is derived from the Latin word *maintenir* which means that shelter, protection and upkeep. Alimony is the word which is derived from the Latin word *alimonia* which means nourishment, food and support.

Alimony and maintenance concept is given in the Indian different personal laws like Hindu law, Muslim law, Christian law, parsi law. And in the criminal law CrPC is also given provision regarding maintenance of wife.

### **Maintenance and alimony under CrPC**

Personal laws are not given the provisions regarding maintenance and alimony but criminal law is also given provision regarding this. The criminal procedure of code under section (125-128) deals with the maintenance.

Sec-125 deals with the order for maintenance to wife in this section word “neglect or refuse to maintain” this word denotes that a person cannot refuse for the maintenance of his wife, child and parents.

Wife is the word which expands the meaning in terms of maintenance, especially in law. *Savitaben Somabhai Bhatiya v. State of Gujarat*<sup>4</sup> Legally wedded wife is only entitled to maintenance. Courts have the power to give orders for this to maintain their family and her wife as well. the husband cannot neglect this responsibility. A husband wife relationship is the one who secures and maintains one another. *Bhikaji v. Maneckji*<sup>5</sup> neglect or refusal to maintain maybe by words or by conduct it may be Express or implied. if his wife cannot maintain herself, it is the duty of the husband to maintain her if the husband neglects his wife, so the Court can

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<sup>2</sup> <https://en.m.wikipedia.org/wiki/Alimony>

<sup>3</sup> <https://lawshelf.com/coursewarecontentview/historical-background-of-alimony/>

<sup>4</sup> 2005 SCC 636

<sup>5</sup> (1907) 5 Cri LJ 334, 336 Bom

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give an order to make a monthly allowance for the maintenance. and interim maintenance can be payable from the date of order. If any person cannot take this seriously, the Court can give punishment for this. and as in the form of fine and imprisonment and issue a warrant as well

### **Cancellation of maintenance**

1. If she is living in adultery.
2. They are living separately by mutual consent.
3. Without sufficient reason she refuses to live with her husband.

Section- 126 this section provides the procedure for the maintenance.

Section-127 alteration in allowance means that if a court finds any changes or any necessary point to cancel and vary so it can be changed by the time.

Section- 128 enforcement of order for maintenance means that after the finalization of order related to maintenance a copy of order can be given to the person whom the allowance is to be paid.

Case- V.P. Shivanna V. Bhadramma<sup>6</sup> In this case section 125(3) read with the section 421 for the power for magistrate is shown for the issue a warrant for the levy of the amount of maintenance by attachment and sale of any movable property of the person in order to pay maintenance under section 125.

### **Maintenance and alimony in personal laws**

#### **Hindu Law**

1. Hindu marriage act 1955
2. Hindu adoption and maintenance act 1956

Hindu marriage act under section 24 and 25 provides the provision regarding the maintenance and alimony. The Corpus juris defines alimony as the allowance required by law to be made to a wife out of her husband estate for her support either during the matrimonial suit or its termination where the fact of the marriage is established and she proved herself entitled to a separate maintenance like maintenance alimony.

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<sup>6</sup> 1993 cri LJ 418

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Section 24 of the act pendente lite means during the time of pendency of proceeding in maintenance is known as pendente lite or another name is temporary maintenance. Expense of proceeding means that during the time of proceeding expenses is also included. Saroj v. Ashok<sup>7</sup> traveling expenses will be included by the side of life in the scenario of expenses of litigation.

Maintenance can be claimed by the husband or wife and that claim can be classified as a personal maintenance and expense of proceeding. In this covered section 24 of Hindu Marriage Act only covered the word income not anything else. Hema v. Bhat<sup>8</sup> In this case Kerala High Court said that In interim maintenance parties income should be considered and not property what they hold.

Section 25 of the act provides the provision of permanent alimony and maintenance. In this section If the petition is dismissed then no order can be made for the petition of permanent alimony and maintenance. B.P. Achala Anand v. S. Appi<sup>9</sup> Section 25 is a welfare legislation right to maintenance under section 25 would include right to residence.

For the fixing of amount of maintenance court can required some conditions

- Income and other property of the claimant income and other property of the claimant
- Income and other property of the non claimant
- conduct of the parties
- Any particular circumstance or special factors

In Jagdish v. Manjula<sup>10</sup> It was held that the wife cannot be denied for the maintenance and alimony on the ground that decree was passed against her on the matter related to cruelty.

Grounds on which maintenance can be dismissed

1. If she or he has remarried.
2. If she (in case of wife) has not remained chaste or he (in case of husband) has sexual intercourse with any woman.

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<sup>7</sup> 1988 Raj 84

<sup>8</sup> 1986 ker 320

<sup>9</sup> (2005) 3 SCC 313

<sup>10</sup> AIR 1975 Cal 64 (65, 66)

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Hindu adoption and maintenance act under section (18- 28) provides provision related to the maintenance. In every personal law a wife is entitled to the maintenance and this maintenance word definition is given in the act under section 3(b) and it means that in all cases, provision for food, clothing, residence, education and medical attendance and treatment. in the case of an unmarried daughter, also the reasonable expenses of an incident to her marriage. This definition covers everything related to maintenance and explains the depth of meaning of maintenance.

Under section-18(2) provides the provision when wife is entitled for the maintenance-

- If he is Guilty for the desertion and willfully neglected her without any reasonable cause
- if he has treated to her in the way of cruelty
- if he has treated to her in the way of cruelty
- if he has living with other wife
- if he has ceased to be a Hindu by conversion to another religion

Under section- 18(3) provides the provision when wife is not entitled to the maintenance-

- If she has a unchaste woman
- If she has ceased to be a Hindu by conversion to another religion

For the maintenance it is the discretion of the court how to give the maintenance and what condition will be fulfilled for this. Section 23 of the act gives provisions related to this amount of maintenance.

Section 23(2) give some conditions for the amount of maintenance-

- the position and status of the parties.
- the reasonable wants of the claimant.
- if the claimant is living separately
- the value of the claimant's property and any income derived from such property, or from the claimants.

If court finds any alteration in the amount of maintenance then court can be changed by any time whether it is fixed by decree of court or by agreement. This provision is given under section 25 of the act.

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Case:- Anita Thaukral v. Shri Satbir Singh Thaukral<sup>11</sup> In this case Wife had the source of income and also had an apartment but she couldn't cover the medical expenses.

Court held that

- She will use the only one debit card of her husband.
- She will use this card for the necessary medical expenses and she will only withdraw the reasonable amount.

### **Muslim Law**

In Muslim law maintenance is known as kharcha-i-pandan. It is the duty of the husband to maintain his wife and give maintenance after the dissolution of marriage. Another obligation is that a spouse can enter into an agreement for the payment of maintenance to his wife. It is known as kharcha-i-Pandan, guzara, mewa khori. In the Arabic word Nafaqa which means “what a person spends over his family”. In the legal sense three things count in this (I) food (ii) clothing (iii) lodging.<sup>12</sup>

When right of maintenance of wife is entitled

- Status arising out of a valid marriage
- Pre- nuptial agreement entered into between the parties to the marriage

Conditions when wife is not entitled for the maintenance

- If she has been imprisoned
- If she eloped with somebody
- if she refuses to live with her husband without any reason
- if she deserted her husband and does not perform her marital duties
- If she makes an agreement of desertion on the second marriage of her husband
- If she is disobedient to his reasonable command
- If she is a minor and that is the reason marriage cannot be consummated

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<sup>11</sup> <https://indiankanoon.org/doc/43722832/>

<sup>12</sup> Ameer Ali: Mohammedan Law, Vol. II, P. 358

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Iddat period is very important in Muslim law for the entitlement of maintenance. A divorced wife is entitled to be the maintenance by her husband during the iddat period.

Iddat period defined in the under section 2(b) of Muslim Women (protection of rights on divorce act) 1986 iddat period means that three menstrual courses after the date of divorce, if she is subject to menstruation and three lunar months after her divorce, if she is not subject to menstruation and if she is enceinte at the time of her divorce, the period between the divorce and the delivery of her child or the termination of her pregnancy.

When the husband is minor and the wife is an adult , in this case after the marriage it is the duty of the husband to maintain his wife but in the case of a minor the situation is changed and his father can maintain his wife as a guardian.

Muslim women protection of rights on divorce act 1986

In this act two sections are covered under the maintenance. Under section 3 and 4 can be used for the maintenance for the Muslim divorced wife. By this act every Muslim woman who is divorced women can be entitled for the maintenance to reasonable and fair provision from her former husband this maintenance can be given in the period of iddat.<sup>13</sup> According to this act Muslim divorced woman is entitled for the maintenance and if she cannot maintain herself and support as well after the other period when her husband death or after divorce during when she may not marry another men. the court have right to give order for the maintenance in the favor of divorce women the payment of maintenance by her relatives who would be entitled for the inherent property on her death according to the Muslim law. If in a case of no relative then the magistrate can give order to the state wakf board for the payment of maintenance.

### Case Laws

Shabana Bano v. Imran Khan<sup>14</sup> the Supreme Court held that a Muslim divorced woman who has no means to maintain herself is entitled to get maintenance from her former husband even after the period of iddat and she can claim the same under S.125 CrPC.

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<sup>13</sup> [https://en.m.wikipedia.org/wiki/Muslim\\_Women\\_\(Protection\\_of\\_Rights\\_on\\_Divorce\)\\_Act\\_1986](https://en.m.wikipedia.org/wiki/Muslim_Women_(Protection_of_Rights_on_Divorce)_Act_1986)

<sup>14</sup> (2009) 1 SCC 666

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Danial Lathifi v. Union of India<sup>15</sup> The court held that this provision means that the reasonable and fair provision and maintenance is not for the limited period but it is the life long until she remarries.

### **Christian Law**

In Christian law different acts are applied for the maintenance and that act is Indian divorce act 1869. In this act divorced women take help in criminal law or civil law. Sec 36 of the act is similar to the Hindu marriage act 1955 section 24 in which both acts of pendente lite alimony are used for the maintenance.

This maintenance is only claimed by the wife, not by the husband. If a divorced Christian wife cannot support her in the post divorce period she need not worry as a remedy is in store for her in law. Under S.37 of the Indian Divorce Act, 1869, she can apply for alimony/ maintenance in a civil court or High Court and, husband will be liable to pay her alimony such sum, as the court may order, till her lifetime.

In the case of when court gives the order for the maintenance then payment by the husband to his wife as in the form of monthly or weekly sums.

Under section 38 of the act. When the court gives the order and makes a decree for the maintenance then it will be given to the wife or any trustee on her behalf to be approved by the court.

### **Parsi Law**

In the Parsi marriage and divorce act 1936 is used for the maintenance and alimony for the Parsi divorced wife. Section 39 to 41 this section is come under for the provision of maintenance and alimony under this act. In the Parsi act same as the divorce act provision is used for the parties to choose both criminal and civil proceedings for the maintenance. section 39 of the act is similar to section 24 of the Hindu Marriage Act 1955. section 40 of the act says that payment of the maintenance can be given in the form of gross sum, monthly and periodical. If the court can find something and wants to change the order and decree so it can be rescind, modify and vary.

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<sup>15</sup> 2001 SC SCC 740

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**Suggestion**

In the matter of maintenance and alimony every law can cover the scenario of wife, parents and children but in a favor husbands never saw such development in the law. Laws should be made in a natural way because every time the wife is superior in the manner of maintenance. For the husband legislation should take some points for the better development in the state.

**Conclusion**

Every law is equal for the different communities of people in India. And many changes can be find in the development in Muslim law. Maintenance and alimony is very necessary for every spouse and even not for the spouse but for the life as well. Laws should be natural in form and everyone comes under the law. Personal laws are diverse in nature but it is the best implementation for the spouse to take both sides in criminal and civil court.

