

A & S LAW WEEKLY

*WEEKLY LEARNING
SERIES*



A & S LAW WEEKLY
Week - 25
Maintenance



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HINDU ADOPTION AND MAINTENANCE ACT, 1956

SECTION 18 – MAINTENANCE OF WIFE



A Hindu Wife is entitled to live separately and claim Maintenance in the following situations:

- If her husband is guilty of desertion and had left her without giving any justifications.
- If the Wife doesn't feel safe to live with her husband / treats her with Cruelty which creates reasonable fear in her mind.
- If he is having an affair/ wife living .
- If he decides to Change the Religion
- If there exists any other cause for her, which justifies living separately.

NOTE : A wife cannot claim Maintenance from her husband if she is unchaste or converted to another religion

HINDU MARRIAGE ACT,1955

SECTION 24 – Maintenance Pendente Lite And Expenses of Proceedings



- If the Court believes that either husband / wife has no source of independent income to provide for his/ her support and the required expenses for the proceedings under the Act, then upon an Application made by the Dependent Spouse, the Court may order the other spouse to pay:
 - 1) The expenses for the Proceedings
 - 2) A Monthly sum during such proceedings, which the Court finds reasonable with regard to the income of both the spouses.



HINDU MARRIAGE ACT,1956

SECTION 25 – PERMANENT ALIMONY AND MAINTENANCE



- If either Husband / Wife claims for Maintenance, the Court has the Power to Pass an order for the Payment of Maintenance till the Life of the Applicant.
- The Order will be determined based on the income, property and the conduct of the parties and other circumstances of the case.
- Alimony can be paid either monthly / periodically.
- After the Order is passed, if there is any change in circumstances and the Court is satisfied it to be true, then the Parties can instigate modification / revocation of the order.
- If Court finds that the person getting alimony has remarried / had been unchaste, then the Court can either modify the Order or the Maintenance can be stopped.



SPECIAL MARRIAGE ACT, 1956

SECTION 36 – ALIMONY PENDENTE LITE



- If the Court finds that the wife has no independent income sufficient to support herself and the necessary expenses, then the Court may order the Husband to pay the expenses of the proceedings as well as for her personal needs, either weekly or monthly with regard to the husband's income.
- The application for the expenses of the proceedings should be disposed of within **60** days from the date of serving notice to the husband.



SPECIAL MARRIAGE ACT,1956

SECTION 37 – PERMANENT ALIMONY AND MAINTENANCE



- If necessary, the Court may Order that the husband should provide maintenance to the wife by even having a Charge on the husband's property / as a periodical payment / anything as the court finds it to be reasonable.
- If the court is satisfied that the Wife in whose favor an Order has been made has remarried / had been unchaste on any circumstances, then it may at the instance of the husband might Vary or modify the Order passed.

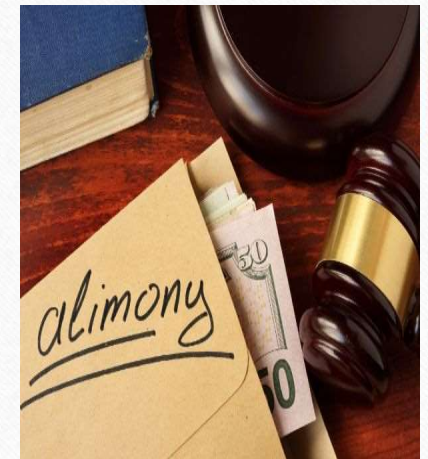


Section 36 of Indian Divorce Act

Alimony Pendente lite



- In any suit instituted by a Husband / Wife, irrespective whether the wife has obtained for the order of protection, **she may present a petition for alimony pending the suit.**
- This petition shall be served on the husband.
- The court upon satisfying the truth of the statements may pass such Order directing the husband for the payment of alimony.
- The alimony being paid shall in no case exceed $\frac{1}{5}$ of the husband's average net income for the next three preceding years from the date of Court Order and it will continue in case of a decree of dissolution of marriage / of nullity of marriage until, the decree is made absolute or confirmed.



Section 37 of Indian Divorce Act

Power to order permanent alimony



When a decree of either a dissolution of marriage / a decree of judicial separation is obtained by the wife, then the Court may Order the husband to secure the wife with

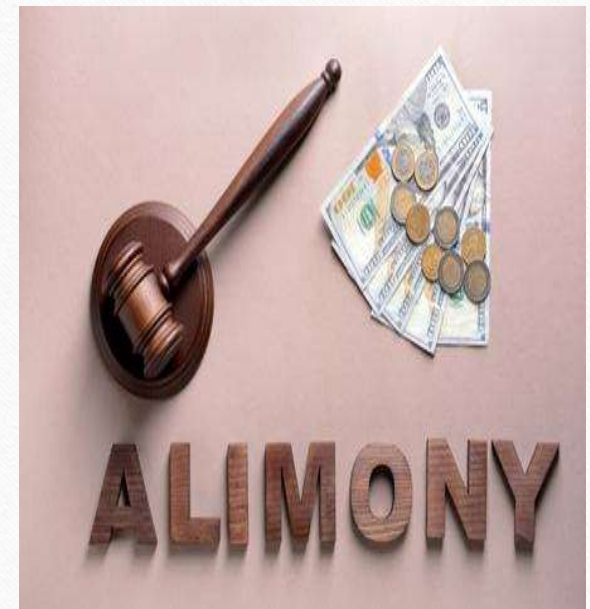
✓ gross of money

(or)

✓ annual sum of money for a term not exceeding her own life

{With regard –

- To her own fortune
- To the ability of the husband
- To the conduct of the parties}

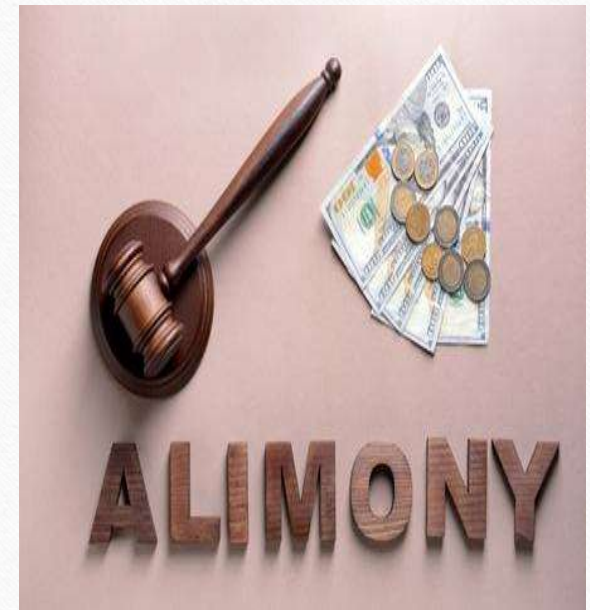


Section 37 of Indian Divorce Act - Contd.

Power to order monthly or weekly payments



- The court may Order the husband for payment to the wife monthly / weekly as her maintenance.
- If the husband from any cause is unable to make such payments, then the Court may –
 - lawfully discharge or modify the Order to temporarily suspend the same of whole amount or a part of money so ordered to be paid.
 - And again may revive the same Order in whole or any part as it deems fit.



Section 4 of The Muslim Women (Protection of Rights on Divorce) Act, 1986

Order for payment of maintenance



- When a magistrate is satisfied that a divorced women has not remarried and is unable to maintain herself after the *iddat* period, then he may Order –
 - Directing her relatives who would inherit her property on her death according to Muslim law to pay a reasonable and fair maintenance to her as deem fit.
 - The standard of life enjoyed by her during marriage and means of such relatives shall pay maintenance in proportions, which they would inherit at such periods the court may deem fit.
- If the divorced women has children, then the magistrate may Order –
 - The *children* to pay maintenance for her.
 - If any such children is in such circumstance of not being able to pay maintenance, then the *parents* of such divorced women to pay the said maintenance for her.



Section 4 of The Muslim Women (Protection of Rights on Divorce) Act, 1986 - Contd.

Order for payment of maintenance



- If any of the parents is unable to pay maintenance for her which is ordered by the Magistrate, then on proof of such inability, the Magistrate may order that the share of such relatives in the maintenance ordered by him, be paid by other relatives who have means to pay the same in such proportions, as the Magistrate deems fit.

- When a divorced women is *unable to maintain herself* and *she has no relatives* or *any of them have not enough means to pay the maintenance* or the *to pay the shares of those relatives* as ordered by the Magistrate, then the Magistrate may Order directing the **State Wakf Board** established under section **9 of the Wakf Act, 1954** or any other act for the time being in force functioning in the area in which the women resides, to pay such maintenance as determined and deemed fit.



Affidavit of Assets and Liabilities

- Disclosure of Assets and Liabilities is an important step in maintenance cases
- The law requires both the parties to file a disclosure of assets and liabilities
- Disclosure of assets and Liabilities must be done by way of an affidavit
- The Supreme Court in *Ranjesh vs Neha* laid down guidelines related to Affidavit of Assets and Liabilities

SC Guidelines on Affidavit of Assets and Liabilities

- 1. Assets and Liabilities Affidavit must be filed mandatorily for any maintenance proceedings even if any proceeding is pending before the Family court.
- 2. A petition for maintenance or interim Maintenance has to be filed by the party seeking maintenance only with an affidavit disclosing the assets and liabilities
- 3. The respondent of such petition also have to file the reply or counter statement with the affidavit disclosing the assets and liabilities

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