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## **FINANCIAL INDEPENDENCE VS. SPOUSAL SUPPORT: THE CHANGING FACE OF ALIMONY LAWS.**

AUTHORED BY - MADHURA RANE & POOJA SHRIDHARLA

### ➤ **ABSTRACT :**

Over the past few decades, the amount and frequency of alimony a cash transfer between separated spouses has been decreasing. Legal and social changes are partially to blame for this trend, but women's emotional reactions to divorce, such as feelings of guilt and shame, may also have an impact on how they negotiate for alimony. Because of differences in education, younger generations are less inclined to favour alimony, according to public opinions on the fairness of the system. As society has become more receptive to modern ideas and perspectives, the topic of upkeep in a live-in relationship has also been discussed. It is definitely not illegal, even though it hasn't been made legal yet. The question of whether either party may be eligible for maintenance in the event that the live-in relationship ends has also been investigated in this study. As society has become more receptive to modern ideas and perspectives, the topic of upkeep in a live-in relationship has also been discussed. It is definitely not illegal, even though it hasn't been made legal yet. The question of whether either party may be eligible for maintenance in the event that the live-in relationship ends has also been investigated in this study.

### ➤ **INTRODUCTION:**



Providing spousal assistance is the aim of alimony, allowing the couple to carry on with their regular lives following the divorce. Alimony is frequently granted to ex-spouses of long-term marriages (more than ten years, for instance), and it ends upon death, remarriage, or a court order. With the goal of providing a respectable standard of living for the economically

disadvantaged spouse following separation, alimony laws, which are mainly governed by the Hindu Marriage Act of 1955, permit one spouse to request financial support from the other spouse following a divorce, based on factors such as their financial situation, length of marriage, and ability to support themselves. This financial support is frequently referred to as "maintenance" and is determined on a case-by-case basis by the court depending on the specific circumstances of each marriage. Divorce is challenging, both emotionally and financially. Alimony plays a crucial role in providing financial support to the economically disadvantaged spouse after separation. In India, various laws govern alimony to ensure fair treatment during and after divorce. This article focuses on alimony laws in Mumbai and Maharashtra, exploring the types of alimony, their impact on individuals and society, and the latest legal developments. Alimony and maintenance are important aspects of Indian family law that are aimed to provide financial support to spouses and dependent children following divorce or dissolution. Alimony and maintenance laws involve laws that differ under purview of personal laws in India, eligibility criteria, and factors determining the amount awarded. This knowledge can empower them to make informed decisions and navigate the complexities of seeking or providing financial support after a marriage breakdown and family complexities. Lastly, our findings are consistent with research showing that married women's labour supply rises in response to increases in their relative salaries (Jones et al., 2015; Knowles, 2013; Siegel, 2017) or returns to market experience (Caucutt et al., 2002; Olivetti, 2006). In other words, a decrease in alimony is equal to a rise in women's earnings in comparison to the alternative revenue stream that alimony represents. Insofar as the alimony reforms cause the future earnings of impacted wives to rely more heavily on their current market labour, it is also equivalent to an increase in the returns to job market experience. For men, the benefits are typically less pronounced and not statistically significant. According to our interpretation of these findings, wives aim to strengthen their position in the case of a divorce, and doing so is accomplished by departing from the conventional male breadwinner model of family specialisation. For women who have a college degree We mention that the fertility rate for wives with university degrees decreased after the alimony reforms, but not for the other wives. Although all of the legislation we examine in this research restrict alimony, each state may apply these restrictions differently. Accordingly, the conservative reading of our findings is that, as anticipated by the theoretical framework and prior research, alimony reform has, on average, resulted in a statistically significant increase in the labour supply of women and a drop in fertility.

Finally, we demonstrate that our findings are resilient to a variety of sensitivity tests, including

a placebo test involving single women, and are not influenced by selection into divorce.

➤ **KEY POINTERS OF ALIMONY AND SPOUSAL SUPPORT**

Aspect	Alimony	Spousal Support
Meaning	Financial support provided in case of divorce	Financial support that can be provided during the divorce period and post-divorce period
Legality	Hindu Marriage Act, 1955 (Sections 24 & 25), CrPC Section 125	Covers alimony, interim maintenance, and rehabilitative support under different laws
Payment type	Lumpsum or periodic as per the decision	Includes maintenance, legal expenses, and other financial aid during the divorce period and also the alimony amount in case of divorce
Duration	It is usually a one-time payment or long-term payments	Can be temporary (interim maintenance) or long-term (permanent maintenance)

- **India Alimony in India is governed by personal laws based on religion:**

Hindus: Governed by the Hindu Marriage Act, 1955 (Section 24 for pendente lite, Section 25 for permanent alimony).

Christians: Governed by the Divorce Act, 1869 (Section 36 for pendente lite, Section 37 for permanent alimony).

Muslims: The Muslim Marriage Act of 1954 regulates marriages between Muslims in India. Alimony is the financial support that one spouse provides to another after t divorce. Alimony is mainly provided when a spouse is incapable of taking care of his/her basic needs. As per Alimony laws in India, any spouse can provide alimony to another spouse, irrespective of their gender. But in most cases, it is awarded by a husband to wife in most cases.

- **There are mainly two types of alimony in India:**
  1. The interim maintenance amount that is awarded during the tenure of court proceedings is on.
  2. The final amount is awarded at the time of legal separation.

Under section 25 of the Hindu Marriage Act, it is stated that permanent alimony should be provided to the wife or husband for his or her support and sustenance. But if the wife works and her income is much lower than her husband's, she will still get help to maintain the same standard of living that her husband provided.

#### ➤ **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.

#### ➤ **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.

#### ❖ **How is Alimony calculated?**

If a couple negotiates their own divorce settlement, they might come to an agreement on alimony outside of court. As long as both partners agree, couples are free to choose any amount of money they think is appropriate. The agreement must be approved by the court. Unless there was an issue with the prenuptial agreement's establishment that led the court to declare it void, the rules of any premarital agreement that addresses alimony are typically enforced to decide how much alimony must be paid. The court determines if and how much alimony should be paid when a couple cannot agree and there is no premarital agreement in existence. The following considerations may be taken into account.

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

## ➤ METHODS



In order to carry out this study, a study group was formed among the volunteer lawyers of the Foundation and 140 alimony case and divorce case files with alimony claims took place in 11 provinces were reviewed. In the research, qualitative and quantitative analysis was performed where snowball and sampling methods were used together. The discussions on alimony, legislation and doctrine as well as the researches and data in that regard were also included in the report and the issue was investigated in a holistic way by taking into account all the aspects. In this study, the issue of permanent alimony was addressed from a sociological perspective, analyzing the legal regulations and law enforcement as a socio-judicial review in an interdisciplinary way. The results of the analysis of the cases are presented as tables and figures interpreted by the researchers. In addition to political research was carried out through the analysis of reports and statements written by the Turkish Parliament and various organizations related to the new regulation; the legislations and case laws on permanent alimony were reviewed and evaluated as a doctrinal legal research. Therefore, it has been tried to make the mentioned regulation as the subject of a systematic research, with taking into account various aspects including social reality, the related general and judicial statistical data; in order 2 to provide a sociological and legal framework related to the discussions in that regard. Finally, a sociological perspective is brought to the analysis to unpack the social reality of these legal frameworks. Although the research was prepared in the short period of two months in order to contribute to the discussions on permanent alimony in the legislative process, the sampling included in the research is diverse in terms of time, case and type of claim.

- **ALIMONY AND MAINTAINENCE:**
  - **MAINTAINENCE UNDER HINDU LAW:**

Section 24 of the Hindu Marriage Act talks about the maintainence that how a wife/Husband can claim Interim Maintainence. Only under the Hindu marriage Act and Parsi Marriage both husband and wife can claim for the Interim Maintainence in other statues, only the wife can claim the Interim maintainence. Under section 36 of the Divorce Act, The wife may find the petition for Interim maintainence. Section 25 of the Hindu Marriage Act deals with the concept of permamanent maintainence as the amount which the person has to pay the another person as maintainence in gross sum or periodically or monthly as per the orders of the court.

#### **Maintainence of wife under section 18 of Hindu Adoption and Maintainence Act, 1956:**

1. When the husband is liable for desertion.
2. When the husband is liable for cruelty.
3. When the husband is suffering from Leprosy.
4. The husband is liable for bigamy.
5. The husband converts his religion without the consent of the wife.

#### **In Sureshtha Devi vs Om Prakash 1992 (Sec 13B) Hindu Marriage Act**

To obtain a divorce by mutual consent under Section 13-B of the Hindu Marriage Act 1955, certain prequisties must be met;

- The couple must have lived separately for a continuous period of one year.
- The couple should not have been able to live together during this period.
- Both spouses must mutually agree to dissolve the marriage.

- **MAINTAINENCE UNDER MUSLIM LAW:**

It declares that the objective of the "Women (Protection Of-Rights On Divorce) Act, 1986" is to ensure "the protection of the rights of Muslim women who have been divorced by, or have obtained divorce from, their husbands." The Act addresses matters pertaining to or incidental to it. It is evident that the Act contains no reference to the revocation, removal, or restriction of any rights that were provided to Muslim women at the time it was passed. In several sections, the Act outlines the conditions that must be met by women in order for them to qualify for maintenance. According to Section (a) of the aforementioned Act, a divorced woman is entitled to reasonable and equitable maintenance and provision from her ex-husband. The husband is required to fulfil this obligation during the term of idea, although it is not limited to that time frame.

Additionally, it stipulates that a woman who is not receiving maintenance may apply for a grant from the Walk Board in accordance with section (b), which says that if she is unable to receive maintenance from her husband, she may seek it from family members.

**Protection to Divorced Women Sub-section (1) of Section 3 lays down that a divorced Muslim woman is entitled to:**

- (a) a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband;
- (b) where she herself maintains the children born to her before or after the divorce.

**In Muhammad Ahmed Khan vs Shah Bano Begum 1985 Case Muslim Law**

The Shah Bano case (1985) was that a Muslim woman who has been divorced is entitled to maintenance under Section 125 of the Criminal Procedure Code (CrPC), even after the iddah period (waiting period after divorce), if she is unable to support herself. The Supreme Court held that the secular law (CrPC) takes precedence over personal religious laws, ensuring that a woman's right to maintenance and dignity is protected, irrespective of her religion.

This ruling established the principle that equality under the Indian Constitution should override personal laws when they violate basic human rights, especially the rights of women. The Court emphasized the need for ensuring social justice for women, especially divorced women who might otherwise be left destitute.

**The key takeaway:**

- Muslim women have the right to maintenance even beyond the iddah **period** under Section 125 of CrPC.
- Secular law can supersede personal religious laws in matters related to fundamental rights, like women's maintenance and welfare.

However, the judgment led to significant political debate, and in response, the Muslim Women (**Protection of Rights on Divorce**) Act, 1986 was passed, limiting the scope of the judgment.

- **Maintainence Under Christian Law:**

Maintenance, or alimony, under Christian law, is primarily governed by the personal laws of different countries, often influenced by secular legal systems rather than direct religious doctrine. In Christian marriages, maintenance after divorce is determined by civil laws rather than biblical principles, which traditionally discourage divorce.

### **A. Provisions Under the Indian Divorce Act, 1869**

1. Section 36 – A Christian wife can claim temporary alimony (pendente lite) while divorce proceedings are ongoing.
2. Section 37 – After divorce, a Christian woman can seek permanent alimony if she cannot support herself.

Factors Considered:

1. Husband's income and financial capacity
2. Wife's financial status and ability to earn
3. Conduct of both parties in the marriage

### **B. Maintenance Under Section 125 CrPC**

Allows Christian women (as well as women from other religions) to claim maintenance from their husbands if they are unable to support themselves.

#### **The K. Kumar vs. Leena case 2004**

The case of K. Kumar vs. Leena pertains to a legal dispute between a husband and wife, both Christians, who married in 1977. Over time, the husband developed bad habits, including alcohol consumption and illicit relationships, leading to cruelty and harassment towards his wife. In 1990, he physically assaulted her, resulting in a fractured hand. Fearing further abuse, she left him and began living separately with their two children, relying on low-paying manual labor for support. She filed a petition for maintenance, which was initially withdrawn when the husband provided a one-time payment of ₹3,000 and promised future support. However, he later ceased payments, prompting her to file a suit seeking maintenance of ₹4,000 per month for herself and her children, citing his employment with the Karnataka Electricity Board with a monthly salary of ₹14,000. The husband denied the allegations, claiming her alleged illicit relationship with her brother led to her desertion, and argued that under Christian community laws, there was no obligation to provide maintenance. The Karnataka High Court upheld the trial court's decision, granting maintenance to the wife and children, thereby dismissing the husband's appeal.

### **➤ SUGGESTIONS:**

It should be mentioned that Hindu law provides for spouses to get maintenance in the event that they are unable to care for themselves. However, other personal laws do not contain the same clause. This could be because of the assumption that a wife is someone who needs to be cared for and is unable to live alone. However, that presupposition is long gone from our time, thus it is vital for husbands to include a clause allowing them to receive maintenance from their

wives in the event that they are unable to care for themselves. Going forward, legislation pertaining to the upkeep of cohabiting couples must be carefully crafted to prevent future disputes. Conflicts will inevitably occur in the same area as society becomes more accepting of live-in couples, hence legislation is required to address this specific issue. Since homosexual relationships are seen as legitimate, regulations should be passed to grant them the right to maintenance, which has not yet been granted. For the benefit of everyone in society to live in harmony and reduce the likelihood of conflicts in the designated zones, the legislature must investigate these grey areas.

1. How is alimony different in various legal systems ( Common Law vs Civil Law )?
2. How does the income of both spouses affect alimony decisions?
3. Can alimony be claimed in no fault divorce?
4. Does alimony automatically stop if the recipient remarries or cohabits?
5. Should alimony laws be reformed to reflect changing gender roles in society?

#### **Atul Subhash's case study**

- Atul Subhash – 34yrs old
- Got married in 2019
- Driven to suicide by wife, in laws, biased laws & system within 5 yrs
- Left 1.5 hrs suicide video, 40 page notes
- Wife demanded 3 crores Alimony
- Wife didn't let him even see the face of his child
- Jaunpur family Court Judge Rita Kaushik demanded 5 Lacs to settle case
- He gave lacs to his wife to help her family but then got accused of dowry
- His wife father died of disease soon after his marriage but his wife got an FIR, His family claiming he died of shock because of demand of "Dowry".
- He had to attend 120 dates in last 2 years
- Family court judge passed order of 40,000 per month maintenance for a 2 year old child because he didn't pay her the bribe she had asked.
- He used to do household chores, got his wife job in @AccentureIndia, helped brother in law financially, spent lacs on birth of his child and got his death in return
- This is on suicide Video, this is the testimony of every married man in India facing false cases from his wife and a one sided battle in the courts

In the last words of Atul – I refuse to pay and I choose death because I don't want my money to be used against me by my opponents to torture me and my family.

## ❖ CONCLUSION:

In summary, alimony or maintenance is an essential source of financial support that promotes people's wellbeing after a divorce. It seeks to resolve differences in earning ability and guarantee a fair standard of living for all parties by offering a solid financial base. Alimony's importance in the field of family law is highlighted by its ability to promote financial stability and independence after a divorce. Despite the fact that maintenance varies depending on the law, its basic goal is always the same: to give others the financial help they need to maintain a respectable quality of living in society. Although alimony is still a significant component of divorce law, how it is applied varies depending on the jurisdiction, the particulars of the marriage, and societal perceptions of marital responsibilities and financial independence. With the ultimate purpose of assisting both spouses in moving on after a divorce, it strikes a balance between economic differences and fairness for both parties. After a divorce, alimony is essential to maintaining financial justice, particularly in cases when one spouse is financially dependent on the other. Depending on individual circumstances, length of marriage, and economic inequality, it seeks to offer either short-term or long-term support. Alimony regulations should, however, strike a balance between protecting the recipient's financial stability and avoiding undue hardship for the paying spouse.

In order to promote financial independence as opposed to lifetime dependency, contemporary legal systems are progressively moving towards time-limited and need-based alimony. In light of evolving circumstances, including remarriage or better financial standing, courts also acknowledge the significance of modification and termination.

## ❖ REFERENCE:

### **Maintenance: Under Hindu, Muslim, Christian And Parsi Laws**

<https://legalserviceindia.com/articles/hmcp.htm>

<https://www.scribd.com/doc/236126769/Law-of-Maintenance>

<https://blog.ipleaders.in/maintenance-of-wife/>

<https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://onlinelibrary.wiley.com/doi/full/10.1002/pam.22661&ved=2ahUKEwj62KylnvWLAXUVbfUHHS1pBCwQFnoECEkQAQ&sqi=2&usg=AOvVaw1YqWX16wWx0h1zvDO35mVH>