



# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed Edition :

[www.ijlra.com](http://www.ijlra.com)

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ISSN

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# **MAINTENANCE RIGHTS OF A HINDU SPOUSE – ANATOMY OF LEGAL PROVISIONS**

AUTHORED BY - MANISH DULANI

## **Introduction**

In common parlance the Maintenance could be understood as a certain amount or basic resources provided to a person for his/her sustaining a minimum basic way of life.

As a purpose the Maintenance ensures that the standard of living of the those who are dependent/entitled is in accordance with status they have had before and that they are not forced to starve, suffer or face vagrancy by mere reason of not having adequate means to support.

The Maintenance as a measure provided by law is not to punish a person for his previous deeds, but to protect rights of those who cannot support or maintain themselves.

The Maintenance is granted keeping in view the living standards and status of person liable to maintain and person to be maintained while ensuring that it's not too harsh on the person liable and not too favorable for one entitled to.

When looked at with the legal perspective the provisions granting Maintenance to a Hindu are dealt with in Section 24 and 25 of the Hindu Marriage Act, 1955, Section 18 of the Hindu Adoptions and Maintenance Act, 1956 and Section 125 of the Code of Criminal Procedure, 1973.

This article covers a deep analysis and not just the copy paste of laws to have a better understanding and interpretation of the subject-matter.

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Author's Note

Dear Reader,

*This article is broadly interpretative in nature and at many a place the words have been reproduced to impart better understanding of subject matter and because of same the article may be a little long to be read in a go and hence for the sake of convenience I have analyzed the above-mentioned provisions in 3 parts in the following order:*

- *Section 24 and 25 of the Hindu Marriage Act, 1955*
- *Section 18 of the Hindu Adoptions and Maintenance Act, 1956*
- *Section 125 of the Code of Criminal Procedure, 1973*

*To the extent possible I have tried to keep this article relevant, practical and a bit thought provoking but still there may be ambiguities, perceptions and for the same a sincere pardon.*

**Part - 1**

(Section 24 and 25 of the Hindu Marriage Act, 1955 (“the Act”))

**Provision**

**S. 24 - Maintenance pendente lite and expenses of proceedings.**

- 1) *Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable.*

*Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be.*

**Analysis**

**Sub-Section – (1)**

- Pendency of proceeding

The amount can be ordered to be provided by courts only if the proceeding is pending before court under any provision of the Hindu Marriage Act, 1955 as provision provides that **“where in any proceeding under this act”**.

- Enabling provision

The above section is an enabling provision which gives a discretionary right to court to determine the expenses to be paid by respondent to petitioner with reading as **“it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses”**

- No independent income source

To have the right on expenses and other amount it is important that the party seeking it should not have any independent income which is sufficient/reasonable to live his/her life and also to continue the proceedings of the case as provision provides that **“that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding”**.

- No gender bias

The right on expenses and other amount can be given to either the wife or husband depending on each case but not to any other person except them as provision provides **“that either the wife or the husband, as the case may be”**.

- Reasonability

The amount provided by the court be a reasonable sum considering the income of both the petitioner and respondent, as the provision provides **“having regard to the petitioner’s own income and the income of the respondent, it may seem to the court to be reasonable”**.

- No suo-moto cognizance allowed

The court cannot suo-moto order payment by one party to other party but can do so only when an application for the same has been filed made either by husband or wife as the provision provides **“it may, on the application of the wife or the husband”**.

- Statutory time limits

If the application is made by any party the same will be decided within 60 days (not absolute but directory time limit) as provision provides **“the application for the payment of the**

**expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days**” and time limit shall be counted from the date when notice is served on wife/husband (i.e. respondent) as provision provides **“sixty days from the date of service of notice on the wife or the husband”**.

#### **S. 25 - Permanent alimony and Maintenance.**

- 1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his Maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondents own income and other property, if any, the income and other property of the applicant, the conduct of the parties and other circumstances of the case, it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.
- 2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.
- 3) If the court is satisfied that the party in whose favor an order has been made under this section has re-married or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any women outside wedlock, it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just.

#### **Analysis**

##### **Sub-Section – (1)**

- End of Proceedings

The provision provides that the court dealing with matter may order for a sum as Maintenance only during passing the decree of the case or any time after that, reproduced:

**“Any court exercising jurisdiction under this Act may at the time of passing any decree or at any time subsequent”.**

- No gender bias

The provision provides that an application can be given by either the wife or husband depending on each case but not any other person, reproduced:

**“On application made to it for the purpose by either the wife or the husband, as the case may be”.**

- Up to the life of applicant

The provision provides that sum can be provided only upto the life of applicant and it doesn't matter that there's any person also dependent on such applicant, reproduced:

**“For a term not exceeding the life of the applicant”.**

- Reasonability

The provision provides that amount provided by the court will be a reasonable sum considering the income of both the applicant and respondent, reproduced:

**“Having regard to the respondent's own income and other property, if any, the income and other property of the applicant, the conduct of the parties and other circumstances of the case”.**

- Secured Amount

The provision provides that the court dealing with the matter may also provide that any sum ordered to be paid by one party to the other shall be secured by a charge only on an immovable property that also the respondent's own property, reproduced:

**“And any such payment may be secured, if necessary, by a charge on the immovable property of the respondent”.**

**Sub-Section – (2)**

- Subsequent powers of court

The provision provides that if court is satisfied after making of the order of Maintenance that circumstances of either party have changed then such order can be varied, modified, rescinded by the court only when any party applies for the same to the court as the court is not suo-moto empowered to do so, reproduced:

**“If the court is satisfied that there is a change in the circumstances of either party at any**

*time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just*”.

### Sub-Section – (3)

- Circumstantial Change

The provision provides if by any reason there comes a change in the circumstances of party in whose favor the order the was earlier made i.e., remarriage, unchasteness (having sexual intercourse other than the person one is married to) or in case of husband having sexual intercourse with any women except whom wedded with, reproduced:

*“If the court is satisfied that the party in whose favor an order has been made under this section has re-married or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any women outside wedlock”*”.

However, it can be had that above provision does not prohibit casual dating (only if there’s no sexual intercourse between such persons) and another thing that it doesn’t prohibit gay sexual relations (in case of husband), reproduced:

*“That he has had sexual intercourse with any women outside wedlock”*”.

Further, the court doesn’t have suo-moto power in this case as well but only when the other party applies for it, reproduced:

*“It may at the instance of the other party”*”.

Further, the order in such circumstantial change can be

*“varied”* (to change according to the situation),

*“modified”* (to change something especially to make it more suitable for a particular purpose); or

*“rescinded”* (terminating the legal effect).

## Part - 2

(Section 18 of the Hindu Adoptions and Maintenance Act, 1956 (“the Act”))

### Provision

**S. 18 - Maintenance of wife**

1) Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her life time.

2) A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to Maintenance, —

(a) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or of wilfully neglecting her;

(b) if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband;

(c) \* \* \* \* \* (omitted)

(d) if he has any other wife living;

(e) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere;

(f) if he has ceased to be a Hindu by conversion to another religion;

(g) if there is any other cause justifying her living separately.

3) A Hindu wife shall not be entitled to separate residence and Maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.

**Analysis****Sub-Section – (1)**

- Specifically Hindu wife

The provision specifically provides the right to Maintenance only to a Hindu wife as hence a women who was not a Hindu by birth but has become a Hindu by conversion or by any other means can also apply for Maintenance under the above provision, reproduced;

**“a Hindu wife”.**

- Retrospective effect

The above provision has both retrospective and prospective effect as it entitles Maintenance to a Hindu wife whether married before or after the Act coming into force, reproduced;

**“A Hindu wife, whether married before or after the commencement of this Act”.**

- Lifetime entitlement

The Hindu wife is compulsorily entitled to be maintained during her lifetime as the provisions mentions the word shall, however the same is subject to the other provisions of the Act, reproduced;

**“Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled”.**

#### **Sub-Section – (2)**

- Entitlement to live separately

The provision entitles a wife to live separately which is in addition to her claim to Maintenance, however by living separately it does not specifically means living in a separate house or away from the place from her husband and same can be done the other way as well.

E.g., if the husband and wife live in 2/3 story house then they may still be ordered to live separately on different floors, reproduced;

**“A Hindu wife shall be entitled to live separately”.**

- Situations specified

The provision specifies certain situations only during which a wife can be entitled to live separately i.e., when the husband:

a) **“Is guilty of desertion”** –

As there is specific mention of word “**guilty**” it can be meant that the guilt must have been established already before the court.

b) **“Has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband”** –

The “**Cruelty**” (an intentional or criminal act that causes pain and suffering) need not to be meant to cause bodily pain but enough to cause “**Reasonable Apprehension**” (which could possibly imbibe the apprehension in a man of ordinary sense) of any potential harm or injury that could be caused by her husband physically or mentally and should be enough that living with her husband will be harmful or injurious for her.

E.g.- The husband prolongedly shows fury towards his wife and breaks the household and other stuff but doesn’t cause any bodily harm to her, can be said to cause enough cruelty towards his wife to develop the apprehension that it will be harmful to live with her husband.

c) “Has any other wife living”-

In this case the husband needs to have another wife however such wife need not to be a Hindu but can also be from any other religion and there's mentioned “Any other wife” and also the other one must be living. However, there arises an interesting question that if the husband married such another wife and she died without this thing ever coming into the notice of his first wife then whether there will arise the attraction of this section by plain reading it appears No but the same is a case dependent.

d) “Keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere” –

In the above case the husband should have kept the concubine (means a women with whom a man cohabits without marrying her) in the same house where his wife is living and hence the house need not to be husband's own but can be rented/ joint acquired property as well and the other part “habitually resides with a concubine elsewhere” restricts living by husband with the concubine elsewhere, however the word habitually used in the section can be interpreted that husband should reside with her intermittently in a series of time e.g. once in every 7/15/30 days or so.

Also, the section uses the word “resides” and not “visits” and thus there exists an ambiguity that how much time the husband should actually spend with her, however going with an ordinary prudence and keeping in view the practice that laws are a bit women centric it can be said that even visiting the concubine frequently can attract this section, however residing only once with such concubine may not attract this section.

e) “Has ceased to be a Hindu by conversion to another religion” –

In the above case the husband should have adopted the other religion and not caste as both are completely different from each other also the above case does not include “renunciation of world” or “ceasing to be Hindu without adopting any other religion”.

Sub-Section – (3)

- Disqualifications

The above provision clearly restricts the right to both the Maintenance **and** a Separate Residence in 2 cases:

Unchasteness – The unchasteness (sexually impure, engaging in a sexual activity especially of illicit or extramarital nature) can be said to be a ground of disqualification because marriage in Hinduism is considered as a bonding of 2 souls who are believed to stay with each other for 7 births.

Conversion – If such Hindu wife converts into the other religion which can happen because of marrying into different religion or voluntarily adopting other religion, however going with the common parlance it should not cover forced Religious Conversion.

### **Additionally-**

One thing should be noted in the above Section that it provides and restricts the rights only in cases the woman is Hindu wife and hence a woman who is not a Hindu subsequently marries a Hindu man and has not converted herself as a Hindu may not be granted the rights provided above.

### **Part – 3**

(Section 125 of the Code of Criminal Procedure, 1973 (“the Code”))

“Please note that considering the subject matter of this article only the relevant part of Section 125 of the Code has been extracted and therefore the forthcoming provision and all other parts of this article may not contain an exact reproduction of the aforementioned Section as it has wider scope and covers in its ambit Maintenance of wives, children and parents”.

### **Provision**

#### **S. - 125 Order for Maintenance of wives**

*(1) If any person having sufficient means neglects or refuses to maintain--*

*(a) his wife, unable to maintain herself*

*a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the Maintenance of his wife at such monthly rate as such Magistrate thinks fit and to pay the same to such person as the Magistrate may from time to time*

direct:

*Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the Maintenance under this sub-section, order such person to make a monthly allowance for the interim Maintenance of his wife, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:*

*Provided also that an application for the monthly allowance for the interim Maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.]*

*Explanation - For the purposes of this Chapter,*

*(b) "wife" includes a women who has been divorced by, or has obtained a divorce from, her husband and has not remarried.*

*[(2) Any such allowance for the Maintenance or interim Maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for Maintenance or interim Maintenance and expenses of proceeding, as the case may be.]*

*(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each months [allowance for the Maintenance or the interim Maintenance and expenses of proceeding, as the case may be,] remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:*

*Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:*

*Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.*

*Explanation - If a husband has contracted marriage with another women or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.*

*(4) No wife shall be entitled to receive an [allowance for the Maintenance or the interim Maintenance and expenses of proceeding, as the case may be,] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.*

(5) *On proof that any wife in whose favor an order has been made under this section in living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.*

### Analysis

#### Sub-Section – (1)

- Deliberate act by husband

The words “*neglects or refuses to maintain*” denote the deliberate act by the husband to avoid providing Maintenance to his wife and hence if such intention is missing on the part of husband the same would not attract the liability under this provision.

- Sufficiency

The words “*sufficient means*” denote that the husband should himself have sufficient means to provide the Maintenance, however if the husband is himself a Bankrupt and does not have enough resources he may not be made liable under this Section.

Sometimes, the husband may in apprehension of a case getting instituted against him try to divert his resources, but the same may not work considering the women centric laws of India.

- Inability of wife

The words “*unable to maintain herself*” denote that wife should be in such a state that she can't maintain herself out of the resources available with her however the resources can be of her own or in may a cases be inherited.

e.g., It may happen that two persons may go for a love marriage in which case the wife may be from an affluent family with enough resources to her share while the husband may not be and subsequently because of any reason there may arise attraction of this provision, in such a case the wife can be said to have sufficient means.

- Proof of the deliberate act

The words “*upon proof of such neglect or refusal*” denote that the claim for Maintenance should be supported with the evidence of husband's neglect or refusal in maintaining his wife.

- Monthly period, amount and Discretion

The words “*monthly allowance*” denote the fixed period for providing the allowance to wife i.e. every month and the words “*monthly rate*” denote the amount that is to be provided every month and words “*as such Magistrate thinks fit*” denote the discretion of Magistrate in granting the Maintenance to wife who may depending on case allow or reject the application for Maintenance.

- Interim Maintenance

The words “*Magistrate may, during the pendency of the proceeding regarding monthly allowance for the Maintenance under this sub-section, order such person to make a monthly allowance for the interim Maintenance of his wife*” denote the discretion of magistrate to provide a sum as Interim Maintenance when the matter is sub-judice and the reason for providing the same could be due to the suit getting pending once instituted and hence on the side of wife it is advisable to also mention the interim maintenance as a relief while making application to magistrate and the words “*and the expenses of such proceeding which the Magistrate considers reasonable*” grant discretion to the magistrate to allow the party to claim the expenses of proceeding as well and thus the same can be mentioned as a relief along with Interim Maintenance.

- Statutory time limit

The words “*an application for the monthly allowance for the interim Maintenance and expenses, as far as possible, be disposed of within sixty days*” impose an obligation over magistrate to decide the aforesaid application within the 60 days wherever possible from date of notice to such person.

### Sub-Section – (2)

- Broader definition

The words “*a women who has been divorced by, or has obtained a divorce*” denote the wider array of the definition of wife and also include a women who has obtained divorce by herself / who has been divorced by her husband in which case on the one side the divorce is from the side of wife and the other is from the side of her husband but on the condition that such women is not married which going as per the provision does not prohibit live-in relationships / other form of relationship where such women has not remarried.

### Sub-Section – (3)

- Default by husband

The above sub-section by a plain reading is a stringent one and provides punishment on failing to comply with order of magistrate however the words “*sufficient cause*” work as a protection in the real case scenario.

E.g., if the husband earlier had a good employment or a flourished business subsequently without any fault on his part faces trouble in his employment of business and becomes unable to provide maintenance and comply with the order then he can take protection of such mishappening having happened.

- Statutory time-limit

The warrant for recovery of any amount due cannot be issued suo-moto by the court as for the same an application has to be made to the court within a year from the date such gets due.

- Supremacy to the wife

The 2<sup>nd</sup> proviso provides power to the magistrate to consider and grant maintenance / interim maintenance or expenses on the refusal of wife to live with her husband on the condition of him maintaining her if there are justifiable grounds on part of her but the proviso fails to consider the changing circumstances in the society where such grounds can be fabricated as well and also the women centric laws.

### Sub-Section – (4)

- Restrictions

The provision restricts rights to Maintenance / Interim allowance / expenses of proceedings if:

- “*She is living in adultery*”, however the word “living” implies that she must be in adultery at the time of proceedings and the wife for the time being may try to get herself out from the adultery to show that there’s no such thing on her part.

- “*Without any sufficient reason, she refuses to live with her husband*” in the given case the sufficient cause can be a good defense on part of wife

e.g. husband having extra-marital relations, frequent abuses by husband, threat to life, dowry demands etc.

- *“If they are living separately by mutual consent”* in this case it is particularly recommended on the part of the husband to have the mutual consent in writing as in the entire sub-section (4) the burden to proof appears to lie on the husband.

**Sub-Section – (5)**

- Subsequent Cancellation

The language of the provision is written in the way that even if after the passing of order by magistrate such order can be cancelled on proof (not specifically by husband) of there being grounds as same as those mentioned sub-section (4).

Also, it can be inferred from the sub-section (4) and (5) that the former applies during the proceedings and the later applies after the proceedings.

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*Dear Reader,*

*The article concludes here and I wholeheartedly thank each of you who went through it, to the extent possible I tried keeping it as per the opening note and will be obliged to have all your queries / suggestions / critics / appraises.*