



## Maintenance Laws

**M**aintenance is available in both civil and criminal law. Under the Code of Criminal Procedure, a woman is entitled to claim maintenance from her husband or ex-husband, provided she is unable to maintain herself, and her husband has refused to pay maintenance despite having the means to do so. Since the purpose of this law is to prevent destitution, it allows her to claim maintenance not only from her husband, but also from her parents or earning children. In civil law, the Hindu Marriage Act provides for maintenance upon divorce or during matrimonial proceedings. The Hindu Adoptions and Maintenance Act provides for maintenance in other cases (where there are no matrimonial proceedings) in accordance with the financial status of the husband.

### **Can a woman claim maintenance without getting a divorce?**

Under the Hindu Adoptions and Maintenance Act, a woman is entitled to maintenance even while she is living with her husband. Under certain conditions (such as husband's desertion, cruelty, or residence with a concubine), this Act also allows her to live separately from her husband without forfeiting her claim to maintenance. She can also claim maintenance if she is judicially separated, but not divorced.

### **Can a woman claim maintenance even if she is earning?**

**Yes.** However, the courts will take the woman's earnings into consideration while deciding the amount of maintenance that should be granted to her.

### **What is the amount of maintenance usually granted by courts?**

There is no upper limit for maintenance, which can be granted by the court. As a rule of thumb, courts normally grant one-third of the husband's income as maintenance

after divorce. This may be paid either periodically or in a lump sum.

### **Does a woman have the right to ask for provisions for residence as part of maintenance?**

**Yes.** If she is divorced or judicially separated, she is entitled to claim a separate residence for herself as part of her maintenance. Her husband will be directed to provide her with sufficient funds with which she can obtain alternative accommodation to reside in. If he cannot afford to do so, the Court may order him to give her a certain part of the matrimonial home which he will not be able to enter without her permission. The woman should also check whether the matrimonial home is registered in her name. If the house is in her name, then her husband cannot make her leave it, even if he has paid for it.

### **For what expenses can a woman claim maintenance?**

Maintenance can be claimed for "reasonable needs": these include, at the very minimum, food, clothing, residence, and medical expenses for the woman. In addition, she can also

claim maintenance for the education of her children. In the initial stage, she can also ask for "interim maintenance" while court proceedings are under way, to cover legal expenses as well as other needs.

### **On what basis do courts decide how much maintenance to award?**

The courts base their decisions about maintenance on many factors, including:

- The extent of the husband's income and property.
- The extent of her own income and property.
- The conduct of the parties: misconduct on the woman's part may affect the amount of maintenance that is granted to her.
- The financial needs of the parties and their dependents.
- The status of the parties, and any financial expectations that she may reasonably have.

### **How does a woman prove her husband's capacity to pay maintenance?**

If she is not aware of her husband's financial capacity, she can ask the

court to order him to disclose it. Salary, income-tax returns, insurance, shares and other assets such as fixed deposits or bank balance are indicators of capacity to pay. Air travel, entertainment (e.g. visits to five-star hotels), club memberships, credit cards, and ownership of mobile phones or vehicles also indicate the ability to pay maintenance. You need to show bills as proof of claims, where ever possible.

**What can a woman do if her husband does not pay maintenance even after the court orders him to do so?**

The court's orders are enforceable by any magistrate. In case of continuous non-payment, a criminal case can be filed asking the court to secure her maintenance award through a "charge" on his property. Property under a charge cannot be sold or given away by the owner. If

her husband defaults on payment of maintenance, the woman can request that the property be sold and the amount due to her recovered from the proceeds of the sale. In criminal proceedings, the husband may be imprisoned for a term till he pays the amount.

**Can the amount of maintenance be changed at a later date?**

Yes. The amount of maintenance can be changed at a later date if there is a change in circumstances of either the husband or the wife (e.g. if the husband's income increases, or if there is a steep increase in prices).

**Should a woman ask for maintenance in a lump sum or in monthly payments?**

It is advisable to claim and settle for a lump sum amount, rather than be dependent on her husband for repeated monthly payments. Moreover, a lump sum cannot be taken back once given.

**Can a woman claim maintenance even after she has re-married?**

No. Maintenance ceases upon re-marriage. Her husband can ask the court to cancel or modify its order of maintenance even if she has been "unchaste", i.e. been sexually or romantically involved with somebody else.

**Do widows have a right to maintenance?**

A Hindu widow has a right to be maintained by her father-in-law, if she cannot be maintained from her husband's estate, or by her parents or children. This right is available as long as she remains unmarried.

**What are a woman's rights to maintenance as a daughter?**

A. If she is unmarried, she has a right to maintenance (food, clothing and shelter) from her father until her marriage. She also has a right to provision for marriage expenses and joint family property. □

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