



Ayana Legal

THE BUZZ

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Rajnish vs. Neha

Considering the multitude of laws under which one may seek maintenance, the Supreme Court of India, has in the judgement of Rajnish v. Neha, streamlined the process by stipulating that assets and liabilities of both parties be disclosed before any application of maintenance is decided upon.

The disclosure of assets and liabilities also requires the parties to disclose any order of maintenance that has already been granted. Hence, such amount of maintenance being received from any previous proceeding, shall either be adjusted or set-off in the amount awarded in the present proceedings.

LAWS REGARDING MAINTENANCE

Maintenance laws are designed to provide relief and support to various sections of society, including spouses, children, and elderly parents, who may be left vulnerable due to circumstances like divorce, separation, or abandonment. Spousal support, commonly referred to as maintenance or alimony, is a critical aspect of family law in India, aimed at ensuring financial stability for a spouse following the breakdown of a marriage. Rooted in principles of fairness and justice, these laws are designed to prevent economic hardship for individuals who may be financially dependent on their spouse during or after a divorce or separation. We take a look at spousal support in India

UNDER LAWS GOVERNING MARRIAGE

Section 24 of the Hindu Marriage Act, 1955 provides for interim maintenance when the other spouse has no independent income sufficient for their support or to meet the necessary expenses of the litigation proceedings.

In contrast, Section 25 states that a court may at the time of passing a decree granting divorce order that the applicant, for as long as the applicant remains unmarried, be paid maintenance of such gross, monthly or periodical sum for a duration not exceeding the life of the applicant. Similar provisions can be found under Section 36 and 37 of both the Special Marriage Act, 1954 and the Divorce Act, 1869. A marked difference being that while the Hindu Marriage Act allows either spouse to seek maintenance, both the Special Marriage Act and Divorce Act specifically use the word “wife”, placing the duty upon the husband to pay maintenance.

Criteria for Determining Quantum of Maintenance

Some of the criteria to determine quantum of maintenance laid down by the Supreme Court are:

- Age and status of the parties
- Educational and professional qualifications
- Reasonable needs of the spouse and children
- Duration of the marriage
- Whether the applicant is able to maintain the same standard of living as accustomed to in her matrimonial home

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OTHER LAWS GOVERNING MAINTENANCE

The Hindu Adoption and Maintenance Act, 1955 under Chapter III provides several clauses that deal specifically with maintenance of various dependants. Section 18 provides for maintenance of wife by her husband, which states that a Hindu wife shall not be entitled to maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion. Section 19 provides for maintenance of a widowed daughter-in-law by her father-in-law and Section 20 provides for maintenance of children and aged parents.

Before the enactment of the new criminal laws, Section 125 of the Code of Criminal Procedure provided a secular provision for maintenance of wives, children and parents. This provision has now been replaced by Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2024. The provision allows for grant of monthly allowance or interim maintenance. Any order of maintenance made shall be payable from the date of the order, or, if so ordered, from the date of the application made for maintenance. It states that a wife shall not be entitled to receive maintenance from her husband under this section if she is living in adultery, or if, without any sufficient reason, refuses to live with her husband, or if they are living separately by mutual consent.

The Protection of Women from Domestic Violence Act, 2005, under Section 20 provides for monetary reliefs to the Aggrieved Person including to meet the expenses incurred and losses suffered by the Aggrieved Person as a result of domestic violence. Clause (1)(d) of the Section provides for the grant of an order of maintenance which should be fair, reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

The court has to check the assets and liabilities and requirement and capacity to pay before passing any order of maintenance.