Subject Name: Hindu Law
Topic Name: Maintenance of Wife

Table of Content:-

Introduction..... 1
Hindu Marriage Act, 1955..... 1
Conduct and Quantum..... 3
Cr. P.C., 1973..... 3
Hindu Adoptions and Maintenance Act, 1956..... 4
Maintenance to Wife of Live-in Relationship..... 4

Introduction

"The aged parents, a virtuous wife, and an infant child must be maintained, even by doing a hundred misdeeds," as articulated by Manu, underscores the significance of upholding familial responsibilities. In this chapter, we delve into the various provisions concerning the maintenance of a spouse, elucidated through three distinct frameworks:

1. Provisions outlined in the Code of Criminal Procedure, 1973.
2. Provisions delineated within the Hindu Marriage Act, 1955.
3. Provisions stipulated by the Hindu Adoptions and Maintenance Act, 1956.

It's crucial to note that the provisions regarding maintenance under the Cr. P.C. and the H.A. & M. Act stand as independent avenues for relief. Moreover, the entitlement to claim maintenance under the H.M. Act represents a distinct right, unaffected by the provisions of the H.A. & M. Act.

Hindu Marriage Act, 1955

Under the Hindu Marriage Act of 1955, the court is empowered to issue orders pertaining to maintenance in two distinct scenarios:

Maintenance Pendente Lite

(Interim or Temporary) and Expenses of Proceedings under Section 24: This provision enables the court to grant interim maintenance and cover the expenses of legal proceedings. Either the husband or the wife can file for this, seeking personal maintenance and financial support for legal expenses.

A key criterion for eligibility is demonstrating a lack of independent income adequate for sustenance and an inability to meet the costs of legal proceedings. The court, upon satisfying these conditions, may order the respondent to provide a reasonable sum, considering both the

petitioner's and respondent's financial circumstances. If the respondent lacks any means or income, the court may waive the requirement for maintenance.

When determining interim maintenance, the conduct of the applicant holds no relevance. Even if there are accusations of adultery, they are deemed immaterial in this context. The court, in assessing the amount of maintenance, considers various factors including the income and resources of both the applicant and the respondent, their conduct, the number of dependents, and any other pertinent factors at its discretion.

It's worth noting that the fact that the applicant receives support from relatives or friends does not constitute grounds for denying maintenance. Courts are prohibited from withholding maintenance from the wife in an attempt to coerce her into reconciliation. Such an action would constitute an abuse of judicial power.

An application under Section 24 can be initiated either before or after the submission of the written statement. Importantly, the respondent cannot evade the obligation for maintenance by simply withdrawing their petition in the matrimonial proceedings. They are still bound to adhere to the court's directive regarding interim maintenance and legal expenses.

Interim maintenance, as provided for in Section 24, may be granted from the date of filing the petition in the matrimonial proceedings until the case reaches its final resolution. However, if the petition is dismissed, any subsequent application for interim maintenance becomes untenable.

Important Links for Judiciary Free Resources (Click on Each to Open Respective Pages)	
Subject Wise Mains PYQ Solution	Essay for Judiciary
Subject Wise Notes	Legal Doctrines
Landmark Judgements	GS Notes
Weekly Current Affair	Subject Wise Prelims PYQ Solution
Free Answer Writing Course	Judgement Writing
Telegram Link	Youtube Link

Permanent Alimony

Under Section 25 (1), upon the application of either spouse, the court possesses the authority to issue an order for permanent alimony and maintenance. This can occur either at the time of granting the petition or subsequently. The court has the discretion to stipulate either a lump sum or periodic payments, extending for a duration not surpassing the lifetime of the applicant. In determining the amount, the court considers factors such as the income and assets of both parties, their conduct during the marriage, and other relevant circumstances. For instance, the court may

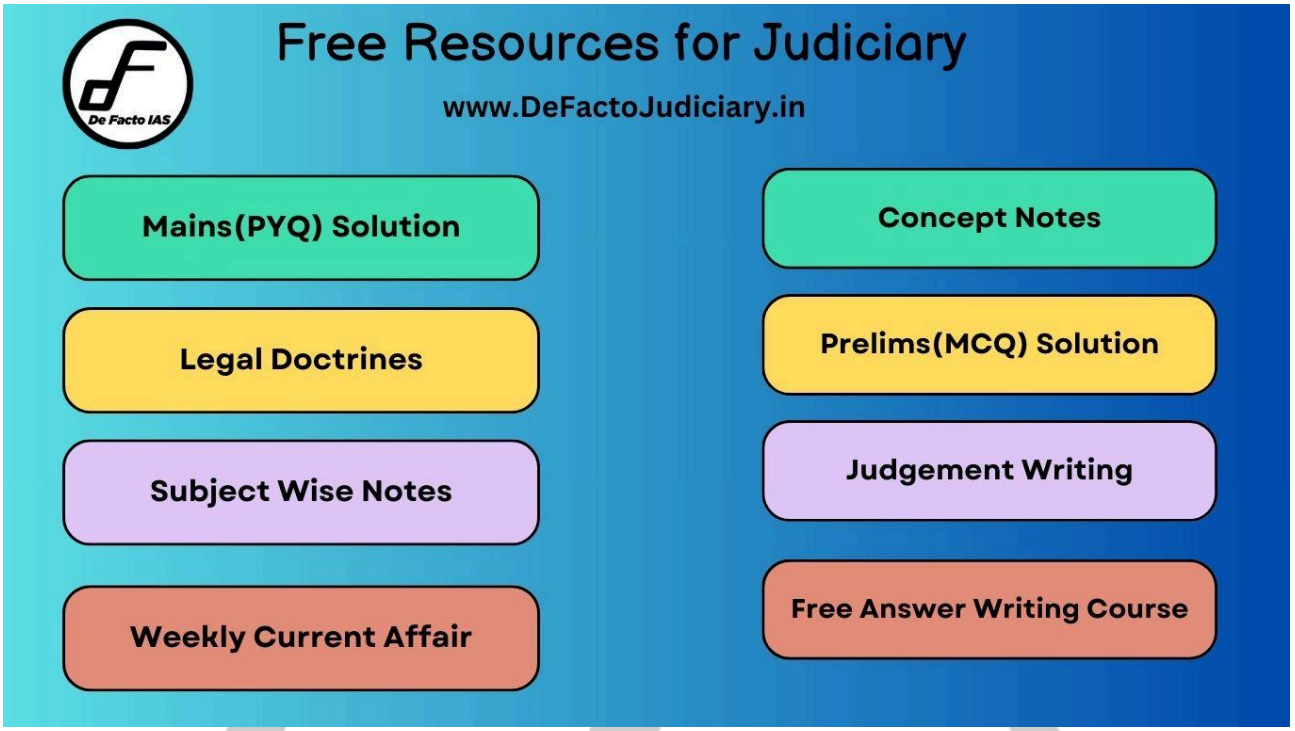
take into account whether the non-claimant has dependent family members. It's customary for courts to allocate approximately one-fifth of the husband's income to the wife, adjusting for any income she may earn herself.

Section 25 bestows upon a spouse a distinctive right, albeit not an absolute or discretionary one. It's essential to acknowledge that the right to maintenance is statutory in nature, meaning that a party cannot waive or nullify it through private agreement. Consequently, a wife cannot legally relinquish her entitlement to seek maintenance from the court in the event of matrimonial proceedings between herself and her husband, even if such an agreement were reached between them.

The court retains the authority to issue an order for maintenance even in instances where the petition is dismissed, as in both scenarios—whether the petition is allowed or dismissed—it constitutes a decree. The term "any decree" encompasses decrees of nullity (void/voidable), divorce, judicial separation, and restitution of conjugal rights, which are the four possible decrees under the Hindu Marriage Act. Therefore, even a wife in a void or voidable marriage is entitled to maintenance and alimony under Section 25. This provision has often been misconstrued, with a common misconception being that maintenance could only be granted to a separated spouse and not to a spouse involved in an illegal relationship, which is not necessarily immoral.

Conduct and Quantum

It's now firmly established that even if the conduct of the claimant under Section 25 has been less than fair towards the marriage, or if she is responsible for the marriage breakdown or guilty of a matrimonial offence, the court still retains the discretion to grant her maintenance, although the amount may be influenced. While an action may constitute misconduct for the purpose of obtaining matrimonial relief, it may not necessarily be considered when awarding maintenance. While 'conduct' is a factor in determining applications under Section 25, it shouldn't be overemphasised.



In the case of Gulab v Kamat (AIR 1985 Bom 88), it was ruled that a wife is entitled to maintenance even if the decree was granted based on her adultery. Similarly, in Jagdish v Manjula (AIR 1975 Cal 64), it was held that a wife cannot be deprived of maintenance due to a decree passed against her for cruelty.

This same perspective applies when a wife is found guilty of desertion. Even if a woman has committed adultery at some point, it doesn't mean she should be condemned to a life of immorality. If she has ceased such behaviour, she is entitled to maintenance. Failing to do so would likely force her into a situation of immorality, especially in a society where many women are still reliant on husbands or parents for support.

Cr. P.C., 1973

Section 125 of the Criminal Procedure Code stipulates that if a person, possessing adequate means, neglects or declines to provide maintenance to his wife who is unable to support herself, a Magistrate of the first class may, upon evidence of such neglect or refusal, mandate the individual to provide a monthly allowance for the maintenance of his wife.

Initially, the monthly rate was not to exceed Rs. 500 in total. However, through Amendment Act No. 50 of 2001, this maximum limit for the maintenance amount has been eliminated. Now, the Magistrate holds the discretion to determine the monthly rate as deemed appropriate.

If a husband enters into marriage with another woman or maintains a mistress, such actions shall be deemed justifiable grounds for his wife to refuse to cohabit with him. However, a wife is not entitled to receive maintenance from her husband under this section if she is engaging in adultery herself, or if, without valid reason, she refuses to reside with her husband, or if they are living apart by mutual agreement.

Recently, the Supreme Court reaffirmed that the term "wife" under Section 125 of the Criminal Procedure Code (Cr.P.C.) pertains exclusively to the legally married wife. The court acknowledged the argument raised by the appellant wife regarding the harsh impact of the law on women who unknowingly become involved with married men, noting that Section 125 of the Cr.P.C. does not extend protection to such women. The court identified this as a deficiency in the law that only the legislature can rectify.

However, the court emphasised that illegitimate children born from the union with the second wife are entitled to maintenance under Section 125. This underscores the court's recognition of the rights of such children within the framework of the law.

Hindu Adoptions and Maintenance Act, 1956

Section 18 of the Hindu Adoption and Maintenance Act (HAMA) outlines the provisions regarding the maintenance of a Hindu wife.

Maintenance of Wife

A Hindu wife, regardless of whether she was married before or after the enactment of this Act, is entitled to be maintained by her husband during her lifetime. This clause applies when the wife resides with her husband. However, if a wife ceases to be Hindu, she forfeits her right to claim maintenance, unless she is living with her husband and is unchaste.

Entitlement to Live Separately

A Hindu wife has the right to live separately from her husband without losing her claim to maintenance under the following circumstances:

- If the husband deserts her or wilfully neglects her.
- If the husband treats her cruelly, causing a reasonable apprehension of harm.
- If the husband suffers from a virulent form of leprosy.
- If the husband has another living wife.
- If the husband keeps a concubine in the same house or habitually resides with one elsewhere.
- If the husband converts to another religion.
- If there is any other justifiable cause for living separately.

Forfeiture of Maintenance Claim

A Hindu wife loses her entitlement to separate residence and maintenance if she is unchaste or ceases to be Hindu by converting to another religion. Therefore, her right is not absolute.

Maintenance to Wife of Live-in Relationship

Gujarat High Court and Bombay High Court

Both courts have held that alimony cannot be granted to a woman who has lived with a man without legal marriage, even if they consider themselves as husband and wife. Granting maintenance to an "unmarried wife" would, in their view, confer legal recognition to bigamy. This stance was reiterated in the case of Ranjana Kejrival v Vinod Kejrival (AIR 2009 Bom 176), making a distinction between "no marriage at all" and a "void marriage."

Delhi High Court's Contrary View

The Delhi High Court has taken a contrasting stance. In cases where a husband conceals a prior marriage and maintains a marital relationship with another woman, the second wife, unaware of the prior marriage, may be entitled to maintenance. The court reasoned that the husband should not benefit from his deception to invalidate the claim of the second "so-called wife" to maintenance. This perspective was evident in cases such as Narinder Chawla v Manjeet Chawla (AIR 2008 Del 7) and Suresh Khullar v Vijay Khullar (AIR 2008 Del 1).

Supreme Court's Observation

In D Velusamy v D. Patchaiammal (2010) 10 SCC 469, the Supreme Court considered the concept of "palimony" as developed in some jurisdictions in the USA. Palimony refers to the grant of maintenance to a woman who has lived with a man for a significant period without marrying him and is then deserted by him. While the US Supreme Court has not issued a definitive ruling on the legal right to palimony, various state courts have taken divergent views on the matter.

De Facto IAS