

Deciding Factors for Maintenance

How Courts Decide Maintenance

Over and over again, whenever there is a dispute in the marriage, on question arise again and again. How much maintenance has to be given to wife.

The question also takes many shapes, from

- I earn X amount, how much maintenance
- I have n children, how much maintenance
- She file for divorce, so why should I pay maintenance
- She left on her own, so why should I pay maintenance
- She is so and so pass, how much maintenance
- She is adulterous, how much maintenance
- Her father is so and so, how much maintenance
- If I quit my job, do I have to pay maintenance
- So and so court said, 1/3rd of husband salary as maintenance
- So and so court said, 1/4th salary of husband shall be given as maintenance
- How does Percentage of part be decided when there are children and other dependents involved.

As we can see that there are varied circumstances, so how do courts go about deciding maintenance in diverse cases.

Delhi High Court in most cases has held steadfast to the Mathematical formula of apportionment. In diverse cases it has held that husband's income be apportioned in the parts which is equivalent to his dependents plus one. Each dependent should be given one part and two parts be kept with the husband as he is the earner. So based on this aspect 1/3rd of the salary of husband can be given to wife if there is no child involved and husband has no dependents. Also, if there is one child and no other dependent then wife and child together would be entitled for 1/2 of his salary. This goes on and can be the simplest formula for deciding maintenance. Similarly, if wife is earning then the same formula can be used for apportionment of income of both the parties.

However, things are not always so. The income of the parties are not always available in black and white. In such cases, how does courts come to conclusion about maintenance? The courts consider the following aspects.

CAPACITY : There is a presumption that every able bodied person must earn and maintain his wife and children. Unfortunately same presumption is not accounted for by courts for women in India. The courts don't hold a presumption that every able bodied woman should also earn. One may argue that the husband though able bodied had always been unemployed. The courts have considered this question and presumed that if such a person is married and takes a wife, it is assumed that the family had sufficient means to support him and his wife. The income based on life style etc is provided in such circumstances. The courts thus take into account not only the actual capacity but make presumptions about the capacity of the husband.

INCOME OF PARTIES : Here we are talking about income of the parties. The actual net take home income of the parties. However, courts are mindful of certain deductions on which parties have no control. Contribution to Provident Fund and other direct taxes like professional tax, income tax etc are deducted, as parties have no control over it. The courts are also somewhat liberal in taking into account deductions of pre existing liabilities like home loan, marriage loan, premiums towards life insurance policies. However, courts are mindful to check how long back these liabilities were taken. The courts are of the view that one party can not create assets while making other party destitute. In this case, the same formula is applied to the income of the applicant. It is often seen that courts have accounted for amounts deposited in wife's account on regular basis as income. Both Delhi High Court and Punjab & Haryana High Court thus asks for exhaustive list of income, asset and liabilities affidavit of parties to decide maintenance.

NEED OF PARTIES : There was a time, when it was assumed that the maintenance is only to prevent vagrancy and destitution. However, same does not hold good anymore. Over and over, courts have come to conclusion that the wife shall get sufficient maintenance to maintain herself and live in same comfort as she was living in her matrimonial home. There again the affidavit as mandated by Delhi and Punjab & Haryana High Court comes into play. If parties have genuine

medical needs, genuine need of some employees in running their business and wherewithal, the same is also accounted by courts.

CONDUCT : This seems bizarre to many men who come to weekly meetings, when I say that it is one of the deciding factors. Then how can court did not consider the adultery, cruelty, promiscuity, desertion and other aspects like she is the erring party, she is this and that while deciding maintenance. The reason is that conduct of parties is mostly visible to courts after leading evidence only. At the stage of interim or under Section 24 of Hindu Marriage Act, the courts can not look into these aspects. The courts are mainly concerned about the above aspects which I mentioned. This said, judges are also human beings, the conduct of the parties do impact the quantum of maintenance. It also impacts from which date maintenance is granted. If wife is found to be deliberately delaying the decision on interim maintenance, the same is definitely taken in account. Also, if women are caught prima facie lying on affidavits, the same has also impacted the quantum of maintenance.

EDUCATION & PREVIOUS WORK EXPERIENCE OF WIFE : For considerable time, courts were dismissing maintenance to highly educated wives, who had prior work experience. However, somewhere in late 2018, Supreme Court came out with a judgment that capacity and not capability of wife shall be taken in account while deciding maintenance. This said, not everything is lost on this ground. I have often advised people to argue on the same and some have been successful in limiting the maintenance to certain time limit like an year or two. The courts in those cases has advised the girls to find work in between. This has not worked always but has certainly benefitted some.