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WOMEN RIGHTS OF MAINTENANCE IN INDIA

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Abstract: The right to maintenance is a crucial legal safeguard aimed at ensuring financial security and dignity for women in India, particularly in situations of marital breakdown, desertion, or neglect. Rooted in principles of social justice and gender equality, maintenance laws seek to protect women who are economically dependent on their spouses or families. Various legal frameworks, including personal laws and statutory provisions such as Section 125 of the Criminal Procedure Code, the Hindu Adoption and Maintenance Act, 1956, and the Protection of Women from Domestic Violence Act, 2005, provide mechanisms through which women can claim maintenance.

Despite the existence of these provisions, the practical realization of maintenance rights remains inconsistent due to factors such as lack of awareness, procedural delays, and socio-economic barriers. Judicial interpretations have progressively expanded the scope of maintenance to include not only basic survival needs but also a standard of living comparable to that enjoyed during marriage. Recent legal developments emphasize the importance of timely and fair maintenance to uphold women's rights and prevent destitution.

This paper examines the legal framework governing maintenance, analyses key judicial trends, and highlights the challenges faced by women in accessing these rights. It also underscores the need for reforms to ensure effective implementation and greater accessibility of maintenance provisions, thereby strengthening the protection of women's economic rights in India.

Keywords:

Women's Rights, Maintenance, Financial Security, Gender Equality, Section 125 CrPC, Domestic Violence Act, Personal Laws, Economic Justice, Legal Protection, India

INTRODUCTION:

The law relating to maintenance in India has evolved as an important instrument of social justice, aimed at preventing destitution and vagrancy among vulnerable sections of society. Earlier governed by Section 125 of the Criminal Procedure Code, 1973—an improved version of Section 488 of the Code of 1898—the provision has now been substantially retained under Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023. This transition reflects legislative continuity while aligning procedural laws with contemporary needs.

Section 144 of BNSS continues to embody the same fundamental objective: to provide a swift, summary, and inexpensive remedy for the maintenance of wives, children, and parents who are unable to maintain themselves. It is a secular provision, applicable irrespective of religion, thereby reinforcing the constitutional vision of equality and social welfare. The inclusion of parents, along with wives and children, highlights the broadened scope of legal protection against neglect and abandonment.

The provision serves as a powerful tool to safeguard the rights of women, particularly those who are financially dependent and vulnerable due to marital discord, desertion, or divorce. It imposes a legal obligation on individuals with sufficient means to provide maintenance to their dependents, thereby ensuring a life of dignity rather than mere survival. Courts have consistently interpreted maintenance provisions liberally to advance their remedial purpose and to uphold the principles of social justice.

In essence, Section 144 of BNSS carries forward the spirit of its predecessor by addressing economic injustice within familial relationships, while reinforcing the State's commitment to protecting women and other dependents from neglect and deprivation.

PROVISIONS UNDER PERSONAL LAWS:

Hindu Marriage Act, 1955:

The rights, obligations, and liabilities that result from a marriage between two Hindus are outlined in the Hindu Marriage Act of 1955 ("*H.M.A.*"). The most salient feature of this Act with respect to maintenance is its inclusivity, as it allows a person notwithstanding the gender to which they belong, to file an application before the District Judge (Family Judge), to order for maintenance under the provisions of this Act. The provisions for maintenance under this Act are:

Maintenance **pendente lite**, which is incorporated vide **Sec. 24** of the Act, empowers that the respondent may be ordered by the court to cover both the costs of the procedures and a monthly monetary support that is deemed appropriate in the light of both parties' incomes. It is notable that the male as well as the female may demand maintenance under this provision. The concerned party must file an application with the Family Court, and it must be decided within 60 days of the notice being served to the respondent.¹

Permanent alimony may be granted under **Section 25**. The court will take into account various factors, such as the respondent's income and property, the applicant's income and property, the behaviour of both parties, and any other relevant circumstances, to decide the amount of alimony to be paid. This alimony can be a one-time lump sum or a monthly payment, but it should not exceed the lifetime of the applicant. This provision applies to all factors outlined in section 24 of the act. Furthermore, this rule applies to all the circumstances that are applicable under section 37 of SMA, 1954. Also, it must be noted that if the wife **remarries** or leads an **unchaste life**, the alimony order may be modified, varied, or cancelled; if the husband engages in **sexual activity with any woman outside of marriage**, the maintenance order may be terminated in this case too.²

CRITERIA FOR MAINTENANCE

To claim maintenance, a woman must establish that she is unable to maintain herself due to financial incapacity or other valid reasons. Courts assess various factors, including:

The husband's income

The woman's financial needs

The husband's ability to pay

Maintenance can also be granted in cases of divorce or separation, ensuring financial security for women who are left without support.

JUDICIAL INTERPRETATION

The judiciary has consistently emphasized the necessity of a fair and just maintenance regime. Landmark judgments such as *Danial Latifi vs. Union of India* (2001) underscored that maintenance is a right for women and cannot be withheld arbitrarily. Courts have expanded the scope of maintenance laws to align with evolving societal norms, ensuring that women are not left financially vulnerable.

¹ <https://indiankanoon.org/doc/1449825/>

² <https://devgan.in/hma/section/25/#:~:text=Any%20court%20exercising%20jurisdiction%20under,his%20maintenance%20and%20support%20such>

Bhagwan Dutt v. Kamla Devi³ Wife's own income can be considered, but maintenance must allow a standard of living "neither luxurious nor penurious."

Chaturbhuj v. Sita Bai⁴ "Unable to maintain herself" doesn't mean destitution; insufficient earnings can still justify maintenance."

Vanamala v. H.M. Ranganatha Bhatta⁵ A divorced woman remains a "wife" for the purpose of claiming maintenance under section 125.

Rohtash Singh v. Ramendri⁶ Even if divorce was on wife's desertion, she can claim maintenance for the period she is otherwise entitled.

Savitaben Somabhai Bhatiya v. State of Gujarat⁷ Second wife of a void marriage is not entitled under section 125 (strict reading).

Badshah v. Urmila Badshah Godse⁸ Equity-oriented approach: woman duped into a void marriage can claim section 125 maintenance.

Manish Jain v. Akanksha Jain⁹ Interim maintenance depends on the applicant's own means; parents' wealth is irrelevant; amount must be reasonable, not punitive.

Rajnish v. Neha¹⁰ Supreme Court issued uniform guidelines: detailed disclosure affidavits, factors for quantum, start date of maintenance, and avoiding overlap across statutes.

Sukhdev Singh v. Sukhbir Kaur¹¹ Settles the conflict: even if a marriage is declared void under section 11 HMA, a spouse can claim interim and permanent maintenance; relief remains discretionary.

DELAY IN DISPOSAL OF MAINTENANCE CASES

One of the most common issues is prolonged litigation. Although Section 125 proceedings are meant to be summary in nature, cases often take years to conclude.

- Frequent adjournments
- Overburdened courts
- Delays in evidence submission

The Supreme Court in *Bhuvan Mohan Singh v. Meena* (2014) emphasized that maintenance proceedings must be decided expeditiously to prevent hardship to women¹²

SOCIO-ECONOMIC BARRIERS

Apart from legal hurdles, women face:

- Lack of awareness
- Financial dependency
- Social stigma

These factors discourage access to justice and effective enforcement of rights.¹³

³ 1975

⁴ 2008

⁵ 1995

⁶ 2000

⁷ 2005

⁸ 2013

⁹ 2017

¹⁰ (2021) 2 SCC 324]

¹¹ 0 3-Judge Bench, 2025

¹² *Bhuvan Mohan Singh v. Meena* (2014), (2015) 6 SCC 353

¹³ Flavia Agnes, *Family Law and Constitutional Claims*, Oxford University Press (2011).

Maintenance Provided Interimly:

According to the Supreme Court under section 18 of the Act interim maintenance can be claimed and thus is a substantive right.¹⁴ The obligation of the maintenance of the wife remains on the husband even though the wife might choose to live separately.¹⁵ Both section 18 and 21 of the said Act do not provide for any charges for maintenance on separate property of husband.¹⁶

RESIDENCE SEPARATE FROM THE RESIDENCE OF HUSBAND:

A judgment passed by the Madras High Court Stated that the wife was indeed entitled to a separate residence along with maintenance. The said wife in this case was living alone. She was living with her children. She was solely responsible for raising her kids as the wife, husband and the kids face the case of desertion. Even though the wife fails to prove the requisite grounds, she cannot be denied justice and cannot be denied relief. Maintenance claim by the wife can be covered under clause (g) of section 18(2).¹⁷

WIDOWED DAUGHTER-IN-LAWS HOLD THE RIGHT TO MAINTENANCE:

It is the rightful duty of the father-in-law to provide and maintain the daughter-in-law in case of the demise of his son who was lawfully married to the daughter-in law. She is entitled to maintenance to the point where she is unable to take proper care of herself out her own earnings or any other property.¹⁸

PARENTS AND CHILDREN TOO CAN CLAIM FOR MAINTENANCE:

Not only are the fathers obligated to but so are the mothers obligated to maintain their sons or illegitimate sons¹⁹, daughters or illegitimate daughters²⁰, Aged and infirm parents. This has thereby been elaborated in the case of Phikururavegy v. P Chinnah.²¹

Dependants Too Shall Be Entitled to Maintenance:

Maintenance of dependents:
Dependants are those who fail to have the capacity to maintain themselves. If there are any dependants of a deceased, they must be maintained and this clearly is stated in the Section 22 of The Hindu Maintenance and Adoption Act.

However, Section 21 of the said Act states all those who fall into the definition of a dependant are rightfully so eligible for maintenance. Having a thorough knowledge of Section 22 of the said Act will give a better insight as to how important it is to fulfil the obligation towards the maintenance of the dependants according to section 21.²²

Amount of Maintenance:

It is thus in the hands of the Court to decide and determine the amount of maintenance. There is no as such fixed amount for maintenance that shall be paid. Section 23 of the said Act explains the amount of maintenance a person is eligible for. Although, once the amount has been set by a decree passed by the court it cannot be changed. In order to alter the set amount there has to be a clear justification²³

Practical Application

Under the BNSS (Section 144), the earlier Section 125 of the CrPC has now been replaced by Section 144 of the Bharatiya Nagarik Suraksha Sanhita. The BNSS clearly provides for the support and maintenance of unmarried daughters who do not have the means to support themselves. It also places greater emphasis on strict adherence to timelines to ensure speedy disposal of maintenance

¹⁴ Purusottam Mahakund v. Smt. Annapurna Mahakund AIR 1997 Ori 73

¹⁵ Nelam Malhotra V. Rajinder Malhotra, AIR 1994 Del 234

¹⁶ Sadhu Singh v. Gurudwara Sahib Narike, AIR 2006 SC 3282

¹⁷ Meera Nireshwalia v. Sukumar Nireshwalia, AIR 1994 Mad 168

¹⁸ Raj Kishore Mishra v. Meena Mishra AIR 1995 Allahabadd 70

¹⁹ Krishna Prasad Rao v Jayashri & Ors, AIR 1986 AP, 17

²⁰ Balwant Kaur v. Chanan Singh AIR 2000 SC

²¹ AIR 1970 AP 190

²² Gangubai Bhagwan Kolhe v. Bhagwan Bandu Kolhe

²³ Vasantha v. Chandren AIR 2002 Mad 214, Section 22 of the Act

applications and to reduce delays in the judicial system. In the real world, Section 125 cases progress much faster than civil lawsuits filed in court. Here is the procedure a Section 125 case takes:

Submission of the Application: A dependant files an application in the Family Court or the Court of the Judicial Magistrate.

Interim Maintenance: Realising that the final trial would take time, the court is allowed to grant the matter of “Interim Maintenance” within 60 days of notice to sustain the claimant during the process.

Evidence Stage: Both sides are required to provide evidence of their income, in the form of pay slips and bank and property documents, as well as evidence of neglect.

Order & Quantum: The amount is to be decided by the magistrate depending on the respondent’s status, as well as the needs of the claimant. There is no “fixed cap” on the order. It is discretionary with the court.

Enforcement: Should the offender fail to make payment, the court has the authority to issue a warrant for recovery of the fine. The court may then imprison him or her if there is no reason for which he or she has failed to pay, imprisoning him or her for up to a month for each month of default.

Shamima Farooqui v. Shahid Khan²⁴

The Court considered the “sufficient means” test.

The Supreme Court asserted that the husband cannot escape the responsibility of supporting his wife by arguing that he was already retired or because of his low income. The court stressed that a woman is entitled to enjoy the same lifestyle that she previously led at her marital house. The court famously stated that ‘The obligation to maintain is a sacred duty.’

REJECTION OF MAINTENANCE

The court can refuse the claim of maintenance if:

- The wife lives in adultery
- The wife has refused to live with the husband without sufficient cause
- The wife is re-married
- The applicant is independent financially

MODIFICATION OR CANCELLATION

The maintenance may be cancelled or altered under the following circumstances:

- Increase/decline in the income of the husband
- Wife is employed or re-married
- Variation in the financial needs of the claimant

TIME FRAME AND ENFORCEMENT

- Courts aim to dispose of maintenance cases within 60–90 days, though delays may occur.
- In case of default in payment of maintenance by the husband, the wife can make an application for execution of the order, and the court can:
- Issue a warrant of attachment

²⁴ [Shamima Farooqui v. Shahid Khan (2015) 5 SCC 705]

- Send the husband to jail for non-payment

MUSLIM WOMEN & SECTION 125

Muslim women can also seek maintenance under Section 125 CrPC in spite of Muslim Women (Protection of Rights on Divorce) Act, 1986, especially after the landmark Shah Bano case. They are entitled to:

- Maintenance during period of iddat
- Lump sum or reasonable provision beyond iddat
- Right to claim under CrPC if not provided in terms

KEY JUDGMENTS

1. Shah Bano Case

Decided that Muslim women are entitled to maintenance under Section 125 CrPC even after divorce.

The husband's payment of Mehar on divorce is insufficient to exempt him from the duty to pay maintenance to the wife'. The important case that was cited in this case was Fuzlunbi Versus K. Khader Vali and another²⁵,

"Bai Tahira V Ali Hussain Fissali Chothia & ANR"²⁶, Nanak Chand V. Chandra Kishore Aggarwal & others²⁷, Mst Jagir Kaur & ANR V. Jaswant Singh²⁸, Hamira Bibi v. Zubaida Bibi²⁹, SyedSabir Husain v. Farzand Hasan.³⁰

Another landmark case related to maintenance under Muslim law was **Shahada Khatoon v. Amjad Ali** (1984)³¹, in this case, the main issue was whether a divorced Muslim woman was entitled to "maintenance under Section 125 of CrPC". The court held that the provision under section 125 of CrPC was not restricted to a particular religion and any personal law and that a Muslim woman who was divorced was entitled to ask for financial aid if she was unable to maintain herself.

Section 24 declares the law relating to maintenance pendente lite and expenses of proceedings. If during the pendency of divorce proceedings, she proves her insufficiency of funds to live during the proceedings of the divorce case, then she can claim maintenance pendente lite³².

In **Mangat Pal v Punni Devi**³³, the Court has held that maintenance should enable the wife to continue her normal standard of living, which she usually did. Her husband is liable to pay her only for basic necessities, and basically, what is required of women for the standard living of life.

The court also said the husband must pay his wife for her basic necessities. In another case, **Bhuwan Mohan Singh v. Meena**³⁴ Regarding their social status and the type of society in which they move in, the husband has to provide his wife with a certain level of financial support.

In **Padmja Sharma v Ratanlal Sharma**³⁵, the court laid down that if the couple mutually divorced each other and earns enough to maintain himself/herself, then to maintain the child is not the responsibility of the father, but the mother also is equally entitled to maintain the child.

²⁵ Bai Tahira V Ali Hussain Fissali Chothia & ANR (1979) 2 S.C.C. 316

²⁶ Nanak Chand V. Chandra Kishore Aggarwal & others A.I.R. 1970 S.C. 446

²⁷ Mst Jagir Kaur & ANR V. Jaswant Singh A.I.R. 1963 S.C. 1521

²⁸ Hamira Bibi v. Zubaida Bibi A.I.R. 1916 P.C. 46

²⁹ Syed Sabir Husain v. Farzand Hasan A.I.R. 1938 P.C. 80

³⁰ Shahada Khatoon v. Amjad Ali (1999) 5 SCC 672

³¹ Section 25 of Hindu Marriage Act, 1955

³² Section 25 of Hindu Marriage Act, 1955

³³ Bhuwan Mohan Singh v. Meena AIR 2014 SC 2875

³⁴ Kalla Mistry v. Kalaimmal (1962) 2 MLJ 529

³⁵ AIR 2000 SC 1398

CONCLUSION

The legal framework governing women's right to maintenance in India reflects a strong commitment to social justice, gender equality, and protection against economic vulnerability. As highlighted throughout the paper, provisions such as Section 125 of the CrPC (now Section 144 of the BNSS), along with personal laws like the Hindu Marriage Act and the Protection of Women from Domestic Violence Act, collectively establish a comprehensive system to safeguard women from neglect and destitution.

Judicial interpretation has played a crucial role in expanding the scope of maintenance beyond mere subsistence to ensuring a dignified standard of living. Landmark judgments have reinforced that maintenance is not charity but a legal and enforceable right. Courts have also adopted an equitable and progressive approach, particularly in cases involving divorced women, second wives, and women in void marriages, thereby aligning legal principles with social realities.

However, despite the existence of robust legal provisions, practical challenges continue to hinder effective implementation. Procedural delays, lack of awareness, financial dependency, and societal stigma often prevent women from fully exercising their rights. The persistence of these issues indicates a gap between legal theory and real-world application.

In conclusion, while India's maintenance laws provide a solid foundation for protecting women's economic rights, there is a pressing need for reforms aimed at ensuring timely justice, simplifying procedures, and enhancing awareness. Strengthening enforcement mechanisms and promoting legal literacy will be essential to translate these rights into meaningful relief. Ultimately, an effective maintenance regime is indispensable for securing not only the financial stability but also the dignity and empowerment of women in society.

